



တရားရုံးများလက်စွဲ

THE COURTS MANUAL

အတွဲ-၁

VOLUME - 1

စတုတ္ထအကြိမ်တည်းဖြတ်ခြင်း

FOURTH EDITION

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အပိုင်း ၁

ရှေ့နေများနှင့် လျှောက်လွှာရေးသူများ

PART I.

LEGAL PRACTITIONERS AND PETITION WRITERS.

THE COURTS MANUAL

PART I.

LEGAL PRACTITIONERS AND PETITION WRITERS.

CHAPTER I.

ADVOCATES AND PLEADERS.

1. The law relating to Advocates of the High Court is contained in the Bar Council Act, and the rules framed thereunder. The law relating to Pleadors is contained in the Legal Practitioners Act, and the rules framed thereunder. Such of the statutory rules, framed under these two Acts, as are of interest to subordinate courts are reproduced in this Chapter. The only sections of the Legal Practitioners Act which govern Advocates are section 36 and sections 41 to 44 inclusive.

2. Advocates and Pleadors are admitted by the High Court in accordance with rules made under section 9 of the Bar Council Act, and sections 6, 7 and 8 of the Legal Practitioners Act.

3. *Advocates' Admission Rules.* *

1. The following may be admitted as Advocates
of the Court:-

*Who may be
admitted.*

Barristers.

(a) Any person entitled to practise as a Barrister in England who has read in England in the Chambers of a practising Barrister of more than five years' standing for at least one year;

or

has subsequent to his call read Burma in the Chambers of a practising Advocate of more than ten years' standing for at least one year;

or

has prior to his call practised as a Pleador of the

* Notification No. I (Bar Council), dated the 15th March 1954, as amended by Notification No. 2 (Corrigendum), dated the 28th April 1954.

has prior to his call practised as a Pleader of the Higher Grade in Burma for at least three years; and who produces -

- (i) proof that he has passed either the Special (Law) Higher Standard Examination in Burmese conducted by the Commissioner of Examinations, Burma;

or

any examination in Burmese accepted by the Advocateship and Pleadership Examinations Board, Burma, as equivalent;

or

the English High School, or Anglo-Vernacular High School Examination with Burmese as second language;

- (b) Any Bachelor of Laws of the Yangon University, or Laws *Law graduates of the Yangon University and others.* graduates of the Yangon Arts and Science University, or those who passed the registered Lawyer course or those who have passed the laws course which the Minister of Education has recognized as such.[#]

- (i) a certificate or certificates from one or more District Judges showing that he has practised continuously as a Pleader of the Higher Grade in Burma with good repute for at least 3 years;[#]

or

proof that after admission as a Higher Grade Pleader he has held Judicial Office for at least 5 years;[#] and

- (ii) proof that he has passed either the Special (Law) Higher Standard Examination in Burmese conducted by the Commissioner of Examinations, Burma;

or

State Council Notification No. 34/77 . Bar Council Notification No. 1/96

any examination in Burmese accepted by the Advocateship and Pleadership Examinations Board, Burma, as equivalent;

or

the English High School, or Anglo-Vernacular High School Examination with Burmese as second language;

(c) Any person who produces –

Persons who pass
the Advocateship Ex-
amination.

(i) a certificate or certificates from one or more District Judges showing that he has practised continuously as a Pleader of the Higher Grade in Burma with good repute for at least five years;

or

proof that after admission as a Higher Grade Pleader he has held a Judicial Office for at least five years;

(ii) a certificate signed by the Secretary, Public Service Commission, Burma, that he has passed the Advocateship Examination held in Burma or produces a certificate signed by the Commissioner of Examinations before the 11th October 1939; and

(iii) proof that he has passed one of the Examinations in Burmese prescribed in clause (b)

(ii) above:

Provided that -

- (1) no Government Servant may include any period during which he holds a Higher Grade Pleader's Certificate while in Government Service in computing the period required by clauses (b) and (c) above unless he is holding a Judicial Office.
- (2) no person, whose name is borne on the Roll of Advocates of any Court in any foreign country and who is entitled to practise as an Advocate in any foreign country shall be admitted as an Advocate.

(3) notwithstanding anything contained in the aforesaid rules the High Court shall have the discretion in any case, with the concurrence of the Bar Council, to relax any of the conditions contained in the above rules.

2. No woman shall be disqualified for admission as an Advocate by reason only of her sex.

3. No person, who is not a Citizen of the Union of Burma, shall be admitted and enrolled as an Advocate.

4. An application for admission as an Advocate shall be made by a letter to the D.G. of the High Court requesting the Judges to admit the applicant.

The letter shall be signed by the applicant and shall state –

Contents of Letter for Admission.

- (i) his name and residence in full;
- (ii) his father's name, residence and occupation,
- (iii) his age and nationality;
- (iv) his qualification under Rule 1, and his previous occupation and career, setting forth fully and particularly any incidents in it which might possibly affect the decision on his application, or stating specifically that there have been no such incidents;
- (v) that it is his intention, if admitted, to practise in the Supreme Court, the High Court and the Courts subordinate thereto;
- (vi) whether or not he has been enrolled as an Advocate of any other High Court or Court in foreign countries and if he has been so enrolled whether his name is still borne on the Roll of every Court in which he has been enrolled;

† D.G. Director- General

- (vii) whether he has ever been censured, suspended from practice, struck off the rolls or disbarred in the country in which he may have been called or admitted or by any Court in which he may have been enrolled;
- (viii) whether he holds any appointment in the Government Service, and, if so what appointment.

5. There shall be attached the letter -

Certificate and
Testimonial.

- (i) certificates or other evidence that the applicant has the necessary qualifications for admission as set out in Rule 1;
- (ii) if the applicant has been enrolled as an Advocate of any other High Court or Courts in foreign countries, a certificate or certificates or other evidence of each such admission, and showing that his name is no longer borne on the rolls of such High Court or Supreme Court, or Courts, or, if his name has been removed, the circumstances under which it was removed;
- (iii) one or more testimonials from a person or persons in good position to the good character and conduct of the applicant;
- (iv) if the applicant has practised in any other High Court or in any Court subordinate to a High Court, a certificate or certificates that his conduct as an Advocate has been satisfactory.

6. (1). Notice of applications made under Rule 4 shall be given by the D.G. of the High Court to the Bar Council and such notice shall contain all the particulars set out in Rules 4 and 5 together with the original documents filed with the applications.

(2) No applicant shall be admitted and enrolled as an Advocate until after the expiry of fourteen days from the date of such notice.

7. The Bar Council shall be entitled, within such period of fourteen days, to prefer in writing to the High Court any objection to the admission of such applicant and in case of such an objection the High Court shall, before making any order on the application for admission, give the applicant and the Bar Council an opportunity to be heard in such manner as the High Court may decide in each case.

8. No person shall be enrolled as an Advocate until he has paid a fee of Ks.2500 (Kyats Two Thousands Five Hundreds only)[†] to the Bar Council on admission.

9. If the application be granted, the D.G. of the High Court shall on payment of the stamp duty (if any) payable and the fee prescribed under Rule 8 above, enter the applicant's name in the Roll of the Advocates of the Court, and will deliver to the applicant a certificate of Admission in Form I annexed to these rules under his signature and the seal of the Court.

10. Any Advocate of the High Court, who subsequently becomes enrolled as an Advocate of any Court in a foreign country, shall have his name struck off the Rolls of the Advocates of the High Court.

11. (1) On the request of any Advocate the High Court may suspend him from practice or remove his name from the Rolls of the Advocate of the Court.

(2) Any person who, having been admitted as an Advocate of the High Court, enters into or carries on any trade or other business shall give notice thereof in writing to the High Court who may suspend such Advocate from practice or pass such orders as the Court may think fit.

12. An Advocate, who desires to have his name struck off the Roll of Advocates, shall send an application verified by affidavit to the D.G. of the High Court and shall state therein —

- (a) the date of admission of the applicant as an Advocate of this Court;
- (b) the reason for such application;

[†] Bar Council Notification No.1/96.

(c) that no application or other proceeding against the applicant as such Advocate or as a Barrister is pending in this or any other Court, or before any of the Inns of Court or other body having jurisdiction over him as such Advocate or Barrister, and that he does not expect or apprehend that any application or proceeding will be made or taken against him as such Advocate or Barrister.

13. A certificate in Form II annexed may be issued by the D.G. of the High Court to any Advocate on his furnishing an impressed non-Judicial Stamp of the value of K 5 for the certificate to be written on.

14. The D.G. of the High Court shall keep a Roll of Advocates in Form III annexed hereto.

15. Every Advocate, whose name is borne on the Roll of Advocates of the High Court and who is in practice shall pay a subscription of Ks. 120 (Kyats One hundred & Twenty only)[†] to the Bar Council annually.

An Advocate of the High Court whose name is borne on the Roll of Advocates of the High Court and who is not in practice shall not be eligible to vote at an election to the Bar Council or to be elected thereto or to sit or vote at any meeting thereof or of any committee thereof.

The subscription shall be paid by every Advocate to the Bar Council on or before the 31st of March every year.

Without prejudice either to any suit or other proceeding for the recovery of such subscription or to any disciplinary action to which he may be liable for nonpayment thereof, an Advocate whose subscription is in arrear shall be ineligible to vote at an election to the Bar Council or to sit or vote at any meeting thereof or of any committee thereof.

[†] Bar Council Notification No. 1/96.

Form I.**IN THE HIGH COURT, RANGOON.*****Certificate of Admission and Enrolment*****ROLL No.**

I, _____, D.G. of the High Court Rangoon,
do hereby certify and declare that son of
....., of, has this day been admitted
an Advocate of the High Court, Rangoon, and his name been entered
on its Roll, under the provisions of section 8 of the Bar Council Act.

Given under my hand and the Seal of the Court this
..... day of in the year one
thousand nine hundred and

By order of the High Court,

Director -General

Form II.**IN THE HIGH COURT, RANGOON.*****Certificate of being borne on the Roll of Advocates.***

I, ..., D.G. of the High Court Rangoon,
do hereby certify and declare that the name of,
son of, is borne on the Roll of Advocates of the
High Court, Rangoon on this date.

Given under my hand and the Seal of the Court this
..... day of in the year
one thousand nine hundred and

By order of the High Court,

Director- General

Form III

Roll of Advocates of the High Court, Rangoon.

Serial No.	Name of Advocate in full.	Residence at time of admission	Father's name, residence and employment.	Age of Advocate on admission.	Nationality.	How qualified for admission.	Date of admission.	Signature of D.G.	Remarks.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

Privileges and Conduct of Advocates.

4. In exercise of the powers conferred by clause 7 of the
 Precedence Letters Patent, the High Court has admitted all
 First Grade Pleaders who were borne on its Rolls
 on the 12th December 1924 as Advocates with effect from the 1st
 January 1925. *

All Advocates of the High Court shall be entitled both to
 plead and to act for parties in Criminal and Civil cases in the Court
 and in all Courts subordinate thereto subject to the following rule as
 to precedence and pre-audience.

* Notification No. 25 (General), dated 22nd December 1924.

The relative precedence and rights of pre-audience of all Advocates of the High Court shall be decided —

(a) in the case of Barristers according to the date of their call to the Bar ;

(b) in the case of non-Barristers according to the date of their admission as Advocates, Vakils or First Grade Pleaders of a High Court or of the Chief Court of Lower Burma, or as First Grade Advocates of the Court of the Judicial Commissioner of Upper Burma :

Provided that Advocates who are *Barristers-at-Law* and who before their call to the Bar were Advocates, Vakils or First Grade Pleaders of a High Court or of the Chief Court of Lower Burma, or First Grade Advocates of the Court of the Judicial Commissioner of Upper Burma may take the date of their admission as such Advocates, Vakils or First Grade Pleaders as the date according to which their precedence and rights of pre-audience shall be decided.

5. No Advocate of a High Court other than the High Court, Rangoon, is entitled to plead or act in any Court subordinate to the High Court, Rangoon. No Judge or Magistrate has authority to permit an Advocate of another High Court to appear before him.

Advocates of other
High Courts; no right
of audience.

Inquiries into the Conduct of Advocates.

6. The following rules * have been made under section 12 (1) of the Bar Council Act, to prescribe the procedure to be followed by Tribunals and District Courts in the conduct of inquiries under section 10 (2) of the Act : -

Inquiries into conduct
of Advocates.

Rules

1. In this rules -

(i) "Act" means the Bar Council Act ;

* High Court Notification No. 23 (General), dated the 22nd November 1928, as amended by Notifications No. 5 (General), dated the 29th June 1932, and No. 11 (General), dated the 28th August 1939.

- (ii) "High Court" means the High Court,
- (iii) "Director-General" means the Director-General of the High Court,
- (iv) "Bar Council" means the Bar Council appointed under section 3 of the Act for the High Court,

2. (1) Upon the receipt by the High Court of a complaint under section 10, sub-section (2) of the Act, the D.G. shall refer the complaint to the Bar Council for opinion whether the inquiry shall be held by a Tribunal, appointed under section 11, sub-section (2) of the Act, or by a District Court.

(2) When an inquiry is ordered to be held by a District Court it shall be held by the Judge of the Court and not by any Additional Judge thereof.

3. The complaint presented under sub-section (2) of section 10, or, in cases where the High Court acts of its own motion, a statement of the case alleged against the respondent, shall be forwarded to the President of the Tribunal or the Judge of the District Court, as the case may be.

4. The Tribunal or the Judge of the District Court, as the case may be, may thereupon, in its or his discretion, forthwith frame charges against the respondent, or decide to hold a preliminary inquiry into the allegations.

5. (1) At the preliminary inquiry, if any, witnesses should be examined, documentary evidence collected, and all materials necessary in support of or relevant to the allegations should be obtained.

(2) The attendance of the respondent at the preliminary inquiry is unnecessary, but if he is present he may be asked by the President of the Tribunal or the Judge of the District Court, as the case may be, any questions which are considered necessary for the purpose of elucidating the facts. The respondent shall not, in the preliminary inquiry, be permitted to cross-examine the witnesses.

6. When the preliminary inquiry, if any, has been completed, the Tribunal or the Judge of the District Court, as the case may be, shall either -

- (i) if in its or his opinion no case for action against the respondent has been made out, report accordance in according with sub-section (2) of section 12 of the Act to the High Court, or

- (ii) if in its or his opinion there is reason for further inquiry, frame charges against the respondent, and proceed to hold a formal inquiry into the charges.

7. (1) The charges framed under Rule 4 or Rule 6 shall set out specifically, and in sufficient detail to make the respondent aware of the nature of the case against him, the allegations concerning which it is decided to hold a formal inquiry. Each separate allegation should be made the basis of a separate charge, and the charge should end by calling upon the respondent to show cause why he should not be struck off the Roll of Advocates, or suspended from practice, or otherwise punished.

(2) A copy of the charges shall be served on the respondent, and he shall be required to enter his defence in writing by a date to be fixed.

(3) The charges may be amended at any stage of the inquiry provided that the respondent is given due notice of all such amendments and is given the opportunity of recalling and further cross-examining any witnesses examined prior to the amendment.

8. On receipt of the respondent's written Statement of his defence, a date shall be fixed for proceeding with the inquiry, on which date the respondent and the witnesses in support of the charges shall be ordered to attend.

9. (1) On the date so fixed, or any subsequent date to which the inquiry may be adjourned, the formal inquiry shall be opened by a brief verbal statement of the case against the respondent by the President of the Tribunal or the Judge of the District Court, as the case may be, by reading of the charges framed against the respondent and the respondent's written statement of defence thereto. The witnesses in support of the charges shall then be examined.

(2) The respondent shall have the right to be represented by an Advocate at the formal inquiry, which shall be held in his presence or in the presence of his Advocate. He shall have the right, either personally or through his Advocate, to cross-examine all witnesses examined in support of the charges.

(3) All witnesses whom the respondent produces in his defence shall be examined, after the witnesses in support of the charges have been examined, and reasonable time shall be allowed to the respondent in which to procure the attendance of such witnesses.

(4) The statements of all witnesses examined shall be recorded in writing.

(5) The respondent may at any stage of the inquiry be asked by the President of the Tribunal or the Judge of the District Court, as the case may be, any questions which he considers necessary for the purpose of the inquiry.

(6) At any stage of the inquiry, prior to the examination of the witnesses called by him the respondent may be permitted to amend or add to his written statement of defence.

(7) A diary form, in which should be briefly recorded the action taken at each stage of the inquiry, should be prefixed to the proceedings.

10. (1) At the conclusion of the inquiry, the Tribunal or the Judge of the District Court, as the case may be, shall record a finding, which shall be filed in the proceedings, and the proceedings shall then be submitted to the High Court in accordance with sub-section (2) of section 12 of the Act.

(2) In the finding, each of the charges framed shall be discussed and a distinct finding shall be recorded on each charge.

(3) In the case of an inquiry by a Tribunal, the finding shall be signed by each member thereof, and the members may, if not unanimous in opinion, record separate findings.

11. In cases of exceptional importance or difficulty, the Tribunal or the Judge of the District Court, as the case may be, may apply to the High Court for the services of an Advocate to conduct the case against the respondent.

12. (1) A Tribunal or a Judge of a District Court, holding an inquiry under these rules, shall have power to enforce the attendance of respondents or witnesses and the production of documents, and to require the party on whose behalf witnesses are summoned to deposit the expenses of such witnesses before summons are issued, and shall have all such other necessary powers for the purpose of such inquiry as are exercisable by a Civil Court under the Code of Civil procedure.

(2) (i) Witnesses shall be paid travelling and subsistence allowances at the rates laid down in sub-rule (3) of rule 2, Order XVI, Code of Civil Procedure.

(ii) Where the complaint is made by the Bar Council or by a Court, or the case is referred by the High Court of its own motion, the expenses of witnesses called in support of the allegations shall be paid by Government. Where the complaint is made by a private party, the expenses of such witnesses shall be deposited by such party.

(iii) The expenses of all witnesses called on behalf of the respondent shall be deposited by the respondent.

13. Copies of office-notes, reports and correspondence relating to the inquiry shall not be supplied to the respondent. He may be supplied with copies of the evidence, oral and documentary, recorded at the preliminary inquiry, if any, on payment. He shall be entitled, free of charge, to a copy of the complaint or statement of the case initiating the proceedings, and to copies of the evidence recorded during the formal inquiry, and to a copy of the finding of the Tribunal or the District Court, as the case may be.

Admission and Enrolment of Pleadors.

7. The following rules relating to the qualifications, admission and enrolment of persons to be Pleadors of Subordinate Courts and Revenue Offices in Burma, have been made by the High Court, Rangoon, under the powers conferred by clause (c) of sub-section (2) of section 28 of the Union Judiciary Act, 1948, and sections 6, 7 and 8 of the Legal Practitioners' Act :-

1. These rules may be called the Pleadors' Admission Rules, 1955. * They shall come into force with effect from the 1st February 1955.

I. GRADES OF PLEADERS.

2. There shall be two *Grades of Pleadors* in the Subordinate Courts and Revenue Offices of Burma, namely :-

(a) *Pleadors of the Higher Grade*, who take out a certificate bearing a stamp of the value of Kyats 25. They shall be admitted to practise in all Civil and Criminal Courts subordinate to the High Court and all Revenue Offices subordinate to the Financial Commissioners.

* High Court Notification No. 8 (General), dated the 15th December 1954.

- (b) *Pleaders*, who take out a certificate bearing a stamp of the value of Kyats 15. They may be admitted to practise in all Criminal Courts subordinate to the High Court, and in the Rangoon City Civil Court and in Sub-divisional and Township Courts and in Small Cause Courts and in all Revenue Offices, subordinate to the Deputy Commissioners: *Provided that* a Judge or an Additional Judge of the District Court or a Deputy Commissioner may, in his discretion, permit a Pleader enrolled under this clause to appear and act before him in any special case for reason to be recorded.
- (c) The Hon'ble Judges may in their discretion permit a Pleader to practise in all Courts, subordinate to the High Court, Rangoon.

II. QUALIFICATIONS OF HIGHER GRADE PLEADERS.

3. No person who is not a Citizen of the Union of Burma, shall be admitted and enrolled as a Higher Grade Pleader.

4. An applicant must produce proof that he has passed -

(a) The Special (Law) Higher Standard Examination in
Language. Burmese conducted by the Commissioner of Examination, Burma; or

(b) The English High School or Anglo-Vernacular High School Examination with Burmese as second language;

(c) Any Examination in Burmese accepted by the Advocateship and Pledership Examinations Board, Burma, as equivalent to (a) or (b) above:

Provided that proof of being qualified in Burmese may be dispensed with in the case of applicants who were admitted to the Pledership Examinations in Burma on consideration of their five years' practice as Pleaders under the proviso (a) to Rule 4 of the Advocateship and Pledership Examination Rules, published in Judicial Department Notification No. 327, dated the 19th November 1936, as subsequently amended:

Provided also that the Hon'ble Judges may, in their discretion, relax any of the requirements in Rule 4 of the Pleaders' Admission Rules, 1955, when one or both parents of the applicant belong to one or more of the indigenous races of the Union of Burma.

5. Any applicant -

- (i) must be either a Bachelor of Laws of the Rangoon University, or must have passed either the Law. Advocateship Examination in Burma or the Pleadership Examination in Burma, and
- (ii) after becoming so qualified must have read in the Chambers of a practising Advocate of the High Court, Rangoon, of not less than five years' standing for a continuous period of at least one year:

Provided that a student for the degree of Bachelor of Laws of the Rangoon University may commence such reading when he has passed his first examination in law for that degree: Those who have passed the first year examination of the Registered Lawyers' Course[†] may read as a chamber student.

Provided also that a Pleader who has continuously practised for at least five years prior to his having passed the Pleadership Examination shall be exempted from reading as required in clause (ii).

As soon as a Chamber student has arranged to read with an Advocate, he shall submit, if reading in Rangoon, to the D.G. of the High Court and, if reading outside Rangoon, to the Judge of the District Court, a report countersigned by the Advocate with whom he has arranged to read, to the effect that he has commenced reading. On doing so he shall be registered as a candidate for admission as a Higher Grade Pleader and shall also be informed of the date from which he has been registered. The date of submission of such report shall be reckoned as the date of commencement of such reading.

With regard to his chamber reading, he shall keep a diary in Form IV annexed to these rules in which the initials of the Presiding Officer of the Court attended by him shall be obtained for each attendance. In the Supreme Court and in the High Court, the diary will be initialled by one of the D. D.G. The Advocate, who has entertained a chamber student shall look at his student's diary from time to time and to issue his certificate of the completion of chamber reading only after reference to such diary.

† The State Council Notification No. 34 / 77.

No student may engage in any other employment or occupation during the period in which he is reading in the chambers of an Advocate.

An Advocate shall not entertain more than one such student for reading in his chambers without the sanction of the D.G. of the High Court, which must be obtained for each additional candidate.

The Hon'ble Judges may in their discretion relax any of the requirements of this rule in so far as they relate to a candidate reading in the chambers of an Advocate.

Note: A register of students who are doing chamber work is maintained in the High Court only and not in District Courts. Consequently when a report of commencement of chamber work by a student is presented to a District Judge, the latter shall file it in his Court and submit a copy of it to the High Court for registration after noting thereon the date of the presentation of the report.

III. APPLICATION FOR ADMISSION AS A HIGHER GRADE PLEADER.

6. Application for admission as a Pleader of the Higher

Mode of Application. Grade shall be made to the D.G. of the High Court, either direct or through the Judge of the District Court of the district in which the applicant desires to practise, by a letter requesting the Hon'ble Judges to admit the applicant to be a Pleader of the Higher Grade.

7. In the letter the applicant shall state -

- Contents of Application for Admission.**
- (1) his name and residence in full ;
 - (2) his father's name , residence and occupation ;
 - (3) his age, nationality and place of birth ;
 - (4) his previous occupation and career, setting out fully and particularly any incident in his life which might affect the decision on his application, or stating specifically that there have been no such incidents, and
 - (5) the qualifications entitling him to admission under these rules.

With the application shall be forwarded -

- (a) certificates showing the applicant's qualification for admission ;
- (b) at least two testimonials of character from gazetted officers of Government or non-official gentlemen of similar standing ;
- (c) a certificate from the Advocate with whom he has been reading setting out the period for which he has read ; and
- (d) the stamp paper requisite for the certificate under section 25 of the Legal Practitioners' Act.

8. There shall be issued to every person admitted as a Higher Certificate. Grade Pleader, a certificate in Form I, annexed to these rules, signed by the D.G. of the High Court and specifying the grades of Courts and Revenue Offices in which such person is authorized to practise.

IV. PLEADERS.

9. Persons who have been admitted as Pleadors of the Third Grade under the Pleadors' Admission Rules, 1925, or as Pleadors of the Lower Grade under the Pleadors' Admission Rules, 1928, shall be entitled to admission as Pleadors, and to enrolment and renewal of their certificates under these rules. But no person who, prior to the date on which those Rules come into force, has not been admitted or applied for admission as a Pleader shall be entitled to admission as a Pleader.

V. ENROLMENT.

10. Save as specially provided in Part VI of these rules, every Pleader holding a certificate is entitled to be enrolled in any Court mentioned therein. A Pleader is required, before he becomes entitled to practise, to apply for enrolment to the Judge of the District Court of the district in which he intends to practise, and, unless the Judge of such District Court is aware of circumstances which render it inexpedient that he should be allowed to practise in the Courts of such district, he shall be so enrolled.

A Pleader who has not been enrolled by the Judge of the District Court shall not be entitled to practise. In any case in which enrolment is refused, he reported to the High Court for final orders. In the case of Pleaders practising in *Rangoon Town*, application for enrolment shall be made to the Chief Judge of the Rangoon City Civil Court.

11. A Judge of a District Court, or the Chief Judge, Rangoon City Civil Court, enrolling a Pleader under the last preceding rule shall intimate the fact of such enrolment to all Judges and Magistrates of the district, in whose Courts the Pleader is entitled to practise. He shall also report the fact of such enrolment to the D. G. of the High Court.

12. Whenever a Judge of a District Court, or the Chief Judge, Rangoon City Civil Court, enrolls a Pleader under Rule 10, he shall intimate the fact of such enrolment, in the case of a Higher Grade Pleader to the Commissioner of the Division and to the Deputy Commissioner of the district, and in the case of a Pleader to the Deputy Commissioner of the district, in which the Pleader intends to practise.

VI. ADMISSION AND ENROLMENT OF PUBLIC SERVANT

13. A person holding a paid appointment under Government or under a Public Authority or an appointment as a Village Headman, who is otherwise qualified under Part II of these rules for admission, may, notwithstanding anything contained in clause (ii) to Rule 5, be admitted as a Pleader but shall not be enrolled in any Court, except when he -

- (a) is at the time of his application for enrolment on leave, either pending retirement or having given an undertaking to resign on the expiry of his leave, and, if he is a Government servant, produces the sanction of the Local Government under Rule 15 of the Government Servants' Conduct Rules to his practising as a Pleader during his leave, and
- (b) has read in the chambers of a practising Advocate of the High Court, Rangoon, of not less than five years' standing for a period of at least one year as required by clause (ii) to Rule 5 :

Provided that in the case of persons who have held judicial office, the requirements of clause (b) may be relaxed at the discretion of the Hon'ble Judges.

Provided also that a Pleader who has continuously practised for at least five years prior to his having passed the Pleadership Examination shall be exempted from reading required in clause (b) above.

14. (a) Persons admitted under the terms of Rule 13 may be
 Exemption from exempted from renewing their certificates until
 Renewal. such time as they become eligible for enrolment.

(b) Such certificates shall bear an endorsement in red
 Special Endorsement ink stating that the holder is exempted from the
 on Certificates. necessity of renewing his certificate until such
 time as he ceases to be public servant or becomes eligible for enrolment under the provisions of Rule 13.

15. No Government servant, except a Magistrate, a Civil
 Special Restrictions Judge, a Police Prosecuting Officer, or a Director-
 and Concessions. General / Director or Deputy Director of
 the High Court, may include any period during which he holds a
 Higher Grade Pleader's certificate issued under these special provisions, in computing the period of three years' practice required by Rule 1 (b) (i) or of five years' practice required by Rule 1 (a) (i) of the Advocates' Admission Rule, 1954. Similarly, a Magistrate, a Civil Judge, a Police Prosecuting Officer, or a Director-General, Director, or Deputy Director of the High Court may include any period during which he holds a Pleader's certificate issued under these special provisions, in computing the period of five years' practice required to qualify for the concession set out in proviso (a) to Rule 4 of the Advocateship and Pleadership Examination Rules, and referred to in the proviso to Rule 4 above.

16. A Pleader who accepts a post under Government or un-
 Pleaders accepting der any Public Authority or a post of a Village
 Public Appointments. Headman shall give notice thereof immediately
 to the D.G. of the High Court, and his case shall thereafter be governed, *mutatis mutandis*, by the provisions of Rules 13 to 15 above.

17. The provisions of Part VI of these rules shall not apply to persons who hold a post of Public Prosecutor, or of Legal Adviser or Prosecutor to a Public Authority.

VII. RENEWAL OF CERTIFICATES

18. A Pleader who desires to practise in the next succeeding
 Application. calendar year shall, on or before the first day of October preceding that year, apply for the renewal of his certificate, and shall append to his application the certificate last issued to him and an impressed stamp of the kind and value prescribed in section 25 of the Legal Practitioners' Act. If the applicant has accepted any appointment under Government or any Public Authority he shall specify the fact in his application, and the provisions of Rules 13 to 15 *mutatis mutandis* shall apply. An application presented after the date prescribed above may be accepted for good cause shown.

19. The application for renewal shall be made to the Judge
 Procedure. of the District Court of the district in which the applicant ordinarily practises or has last ordinarily practised, and that Judge shall subject to the provisions of Rule 20 renew the certificate in one of the forms annexed and in accordance with section 7 of the Legal Practitioners' Act, if he is satisfied as to the identity of the applicant. The Judge shall forthwith report the fact of renewal to the High Court :

Provided that in the case of a Pleader who has last practised in Rangoon Town the application may be made to the Chief Judge of the Rangoon City Civil Court :

And provided also that an application for renewal by a Pleader may be presented to the Judge of a Township or Subdivisional Court, who shall forward it to the Judge of the District Court with a report as to the identity of the applicant with the person named in the certificate produced by him.

20. If the District Judge, or the Chief Judge, Rangoon City Civil Court, authorized to renew certificates considers that the character or conduct of any Pleader who has been ordinarily practising in the Court of the said District Judge, or Chief Judge, as the case may be, and who may apply for the renewal of his certificate under Rule

18, is such that his certificate should not be renewed, he shall forward the said application with a statement of and the grounds for his opinion to the High Court for orders, and the High Court shall pass thereon such orders as it thinks fit.

21. A Pleader who does not engage in actual practice, or who
 Failure to practise or renew certificate. fails to get his certificate renewed, during a period of three successive years shall be liable to lose his right to a renewal and to be struck off the Register of Pleaders:

Provided that the Hon'ble Judges may at their discretion order the name of a Pleader whose name has been struck off under this rule to be restored in the Register of Pleaders when an application of the Pleader for such restoration, with full reasons satisfactory to the Hon'ble Judges, is made to the Registrar of the High Court, Rangoon.

VIII. PLEADERS' REGISTERS AND ROLLS.

22. The D.G. of the High Court shall maintain separate
 Register of Pleaders. registers for each grade in Form III annexed to these rules, of the Pleaders to whom certificates of admission have been issued. Column 10 shall be left blank.

The registers shall be kept up-to-date by means of the reports of renewal submitted under Rule 19, by action under Rule 21, and by removing the names of Pleaders who are dead.

The registers, with the word "last" inserted before the word "renewal" in the heading of column 9 and that of column 11 changed to "Initials of Judge" shall be printed once in three years. Copies shall be supplied to all Courts.

23. (a) When a Judge of a District Court enrolls a Pleader
 Roll of Pleaders. under Rule 10, or a Judge or Magistrate receives intimation of an enrolment under Rule 11, the fact shall be noted against the name of the Pleader in column 10, and

attested by the Judge or Magistrate in column 11, of the printed register, which will thus become a Roll of Pleaders entitled to appear, plead and act in the Courts of that district, or in that Court, as the case may be, under section 8 of the Legal Practitioners' Act.

(b) Similarly when the . D.G. of the High Court receives a report of the enrolment of a Pleader under Rule 11, he shall cause the necessary entries to be made in column 10 of the registers maintained in the High Court, against the name of the Pleader, and by means of such entries the registers will become Rolls of Pleaders entitled to appear, plead and act, under section 8 of the Legal Practitioners' Act, in the subordinate Courts of the State.

(c) As soon as the new printed copy of the register is received, all entries in column 10 of the old register against the names of Pleaders whose names also appear in the new register shall be copied into the latter and attested.

It is not necessary for any Pleader to apply for re-enrolment on receipt of a renewed certificate.

IX. MISCELLANEOUS.

24. A Pleader who loses his certificate may obtain a fresh
 Lost Certificate. certificate from the . D.G. of the High Court,
 on satisfying the . D.G. that the certificate has
 been lost.

The application for a fresh certificate shall be submitted to the Judge of the District Court or in Rangoon to the Chief Judge of the Rangoon City Civil Court, who shall transmit it to the Registrar with a report after such enquiry as may be necessary. A certificate issued under this rule shall be written on a sheet bearing an impressed non-judicial stamp of the value of one kyat, to be attached to the application.

X. SUSPENSION AND DISMISSALS.

25. All Judges and Magistrates are required to bring to the notice of the Judge of the District Court every case in which a Pleader is guilty of conduct, for which he is liable to be suspended or dismissed under the provisions of the Legal Practitioners' Act.

26. Whenever a Magistrate convicts a Pleader on a criminal charge, he shall report the fact to the Judge of the District Court, who shall submit a report setting forth the circumstances of the case to the High Court for action, if necessary, under section 12 of the Legal Practitioners' Act.

27. Any person who, having been admitted as a Pleader, enters into or carries on any trade or other business shall give notice thereof in writing to the High Court who may suspend such Pleader from practice or pass such orders as the High Court may think fit.

28. (1) (i) "The Act" means the Legal Practitioners' Act,
(ii) "Judge" includes a Magistrate or the Presiding Officer of a Revenue Office, and

(iii) "Court" includes a Revenue Office.

(2) (i) The High Court may, instead of holding an inquiry under section 13 of the Act itself, direct the Judge of the District Court in which the Pleader is enrolled to hold the inquiry on charges framed by the High Court.

(ii) Before taking action under section 14 of the Act, a Judge may, if he thinks fit, hold a preliminary inquiry into the allegations against the Pleader.

(iii) At the preliminary inquiry, if any, witnesses should be examined, documentary evidence collected and all materials necessary in support of or relevant to the allegations should be obtained.

(iv) The attendance of the respondent at the preliminary inquiry is unnecessary, but if he is present he may be asked by the Judge any questions which are considered necessary for the purpose of elucidating the facts. The respondent shall not, in the preliminary inquiry, be permitted to cross-examine the witnesses, or to call any evidence.

(v) At the conclusion of the preliminary inquiry, if any, the Judge shall either record a finding that no case for action against the respondent has been made out, or frame formal charges against the respondent and proceed under section 14 of the Act.

(vi) If no preliminary inquiry is held, charges shall forthwith be framed and an inquiry held under section 14.

(3) (i) The charges so framed shall set out specifically and in sufficient detail to make the respondent aware of the nature of the case against him, the allegations concerning which it is decided to hold an inquiry. Each separate allegation should be made the basis of a separate charge and the charge should end by calling upon the respondent to show cause why he should not be struck off the Register of Pleaders or suspended from practice, or otherwise punished.

(ii) A copy of the charges shall be served on the respondent and he shall be required to enter his defence in writing by a date to be fixed.

(iii) The charges may be amended at any stage of the inquiry provided that the respondent is given due notice of all such amendments and is given the opportunity of recalling and further cross-examining any witnesses examined prior to the amendment.

(4) (i) On receipt of the respondent's written statement of his defence, a date shall be fixed for proceeding with the inquiry, on which date the respondent and the witnesses in support of the charges shall be ordered to attend.

(ii) On the date so fixed or any subsequent date to which the inquiry may be adjourned, the inquiry shall be opened by a brief statement of the case against the respondent, the Judge reading the charges framed against the respondent and the respondent's written statement of the defence thereto. The witnesses in support of the charges shall be then examined.

(iii) The respondent shall have the right to be represented by an Advocate or Pleader and the inquiry shall be held in his presence or in the presence of his Advocate or Pleader. He shall have the right to cross-examine all witnesses examined in support of the charges.

(iv) All witnesses whom the respondent desires to produce in his defence shall be examined after the witnesses in support of the charges have been examined, and reasonable time shall be allowed to the respondent in which to procure the attendance of such witnesses.

(v) The statements of all witnesses examined shall be recorded in writing.

(vi) The respondent may, at any stage of the inquiry, be asked by the Judge any questions which he considers necessary for the purpose of the inquiry.

(vii) At any stage of the inquiry prior to the examination of the witnesses called by him, the respondent shall be permitted if he so desires to amend or add to his written statement of defence.

(viii) A diary form, in which should be briefly recorded the action taken at such stage of the inquiry, shall be prefixed to the proceedings.

(5) (i) At the conclusion of the inquiry the Judge shall record a finding which shall be filed in the proceedings. In the finding each of the charges framed shall be discussed and a distinct finding shall be recorded on each charge, and the Judge shall make such recommendations as he think fit regarding the action if any, to be taken against the respondent.

(ii) The Judge shall then submit the proceedings to the High Court. If the Judge is not the District and Sessions Judge himself, the proceedings shall be submitted through the District and Sessions Court.

(6) (i) Witnesses shall be paid travelling and subsistence allowances at the rates laid down in sub-rule (3) of Rule 2, Order XVI, Code of Civil Procedure.

(ii) If the inquiry is held on complaint made by private party the expenses of all witnesses called in support of the charges shall be deposited by such party. In all other cases the expenses of such witnesses shall be paid by Government.

(iii) The expenses of all witnesses called on behalf of the respondent shall be paid by the respondent, and a sum sufficient to cover their expenses shall be deposited by him with the bailiff of the Court before they are summoned.

(7) Copies of office notes, reports and correspondence relating to the inquiry shall not be supplied to the respondent. He may be supplied with copies of the evidence, oral and documentary, recorded at the preliminary inquiry, if any, on payment. He shall be entitled, free of charge, to a copy of the complaint or statement of the case initiating the proceedings and to copies of evidence recorded during the formal inquiry, and to a copy of the finding.

XI. FORMS**Form I.*****Certificate issued to a Pleader of the Higher Grade.*****ROLL No.**

Pursuant to the rules relating to the admission of Pleader, I, hereby certify that, son of, of the district of, has been admitted a Pleader of the Higher Grade and is authorized to practise in all Courts subordinate to the High Court, Rangoon, and in all Revenue Offices in Burma subordinate to the Financial Commissioners up to the end of the year 19

Given under my hand and the Seal of the High Court
Court
this day of 19

Deputy -Director.

High Court.**Form II.*****Certificate issued to a Pleader.*****ROLL No.**

Pursuant to the rules relating to the admission of Pleader, I, hereby certify that, son of, of the district of, has been admitted a Pleader and is authorized to practise in all Courts subordinate to the High Court, Rangoon, and in the Rangoon City Civil Court and in the Subdivisional, Small Cause and Township Courts and in the Revenue Offices subordinate to Deputy Commissioners in Burma up to the close of the year 19

Given under my hand and the Seal of the Court this
. day of 19

Deputy Director

Form III

Register of Higher Grade Pleaders, Myanmar.
Pleaders

Serial No.	Name of Pleader in full.	Residence at the time of admission	Father's Name, occupation and residence.	Age of admission.	Nationality.	How qualified for admission.	Date of admission.	Date of issue and renewal of admission.	Courts in which enrolled	Signature of D. D.	Remarks.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

Form IV.

Chamber Student's Diary.

Date.	Name of the Court attended.	Case No.	Initial of Judge, Magistrate or D. D. of the Court attended.	Remarks.
(1)	(2)	(3)	(4)	(5)

Advocates' Fees.

8. The following rules have been made under section 16 of the Bar Council Act, to regulate the sums to be allowed as costs on account of Advocates' fees upon all proceedings in the High Court and Civil Courts subordinate thereto * : -

Rules.

1. The sums to be entered in the decrees of the Courts under the denomination of costs, as payable between party and party, on account of fees of Advocates shall, unless the Court decrees otherwise in its judgment, be calculated at the following rates : —

If the amount or value of the property, debt or damages claimed -

- (i) shall not exceed K 5,000 at 6 per cent. on the amount or value claimed ;
- (ii) shall exceed K 5,000 but not exceed K 20,000 at 6 per cent. on K 5,000 and 3 per cent. on the remainder;
- (iii) shall exceed K 20,000, but shall not exceed K 50,000, on K 20,000 as in sub-rule (ii) above and 1½ per cent. on the remainder;
- (iv) shall exceed K 50,000, on K 50,000 as in sub - rule (iii) above and 1 per cent. on the remainder :

Provided that —

- (a) in no case shall the amount of any fee calculated under this rule exceed K 4,500 ;
- (b) in cases undefended a fee not exceeding half only of the fee calculated at the above rates shall be allowed.

[Note: Suits in which defendants have filed written statements shall be deemed to be contested suits and, unless otherwise ordered by a Judge, fees shall be allowed at the prescribed rates though the defendants may subsequently withdraw their defence.]

* Notification N0.5 (General), dated the 30th April, 1929, as amended by Notifications No.10 (General), dated the 4th September, 1929, No.6 (General), dated the 28th April, 1930 and No.15 (General), dated the 25th September, 1939.

(c) the amount entered as payable on account of fee to an Advocate shall not be less than :-

In the High Court or District Courts.	In Sub-divisional, Township and Small Cause Courts.	In the Rangoon City Civil Court.		
		Suits exceeding K 150 in value.	Suits exceeding K 50 but not exceeding K 150 in value.	Suits not exceeding K 50 in value.
(1)	(2)	(3)	(4)	(5)
K	K	K	K	K
34	17	34	10	5

(d) The Court may if it is of opinion that a defence is false or vexatious, or has been filed merely with a view to gaining time, award to the plaintiff such further costs as the Court thinks fit, in addition to any fee calculated under this rule.

2. In declaratory suits in which no consequential relief is claimed and in other suits where it is not possible to estimate at a money value the subject-matter in dispute, in miscellaneous proceedings, in execution proceedings and in interlocutory applications other than those of a routine or formal character, the amount to be awarded on account of the Advocate's fee shall be fixed by the Court at its discretion on the following scale : -

	High Court, District Courts and Rangoon City Civil Court.	Subdivisional, Township and Small Cause Courts.
	K	K
Any sum between	17 and 170	10 and 85

Provided -

- (a) that in non-contested execution or miscellaneous proceedings and in interlocutory applications the minimum fee shall be awarded ;
- (b) that costs of interlocutory applications of a formal or routine character, *e.g.*, application for an order requiring an affidavit of documents or for transmitting process for service to another Court shall not be allowed.

3. If, in the opinion of the Court, the questions in issue in any case are such that the labour or skill of the Advocate would be inadequately remunerated by a fee fixed under rule 1 or rule 2, the Court may, for reasons to be recorded in its judgment, apply in the place of the scale laid down in rule 1 or rule 2, the scale specified below in determining the amount payable on account of the Advocate's fee:-

	High Court, District Courts and Rangoon City Civil Court.	Subdivisional, Township and Small Cause Courts.
	K	K
Any sum between . . .	34 and 340	17 and 170

In contested cases, the effective hearing of which occupies more than one full working day, a fee not exceeding the above, as the Court in its discretion shall direct, shall be payable for each subsequent day after the first. This fee shall be in addition to the fee calculated under rule 1 or rule 2 or under the first paragraph of this rule.

4. When the hearing of a suit is adjourned under Order XVII, Rule 1, of the Code of Civil Procedure, the Court may include among the costs occasioned by the adjournment, to be paid by the party applying for time, as Advocate's fee any sum not exceeding:-

* In the High Court, the Rangoon City Civil Court and District Courts any period of three hours or over shall ordinarily be held to be one full working day. Any period of less than three hours shall ordinarily be held to be half a working day.

High Court.	District Courts and Rangoon City Civil Court.	Subdivisional, Township and Small Cause Courts.
K	K	K
51	34	10

5. In a case where there are several defendants not more than one Advocate's fees shall be allowed except -

- (a) where a separate defence is set up by a defendant who has a separate interest;
- (b) where for special reasons (to be recorded in the judgment or order) the Judge considers the award of fees to more than one defendant's Advocate to be just or reasonable.

6. (i) In contested cases coming before the High Court in the exercise of its Original Civil Jurisdiction, unless the Court otherwise directs, fees shall be allowed for two Advocates actually employed by a party; and in cases of special difficulty or complexity the Court may certify for three Advocates actually employed by a party in the conduct of the case.

(ii) In contested cases coming before Courts subordinate to the High Court, the Court may, on account of the difficulty or complexity of the case, in its discretion allow fees to two Advocates actually employed by a party:

Provided that unless the Court otherwise directs in either case no fee for a junior Advocate shall be allowed when the Advocates employed are in partnership with one another.

Where fees are allowed to two Advocates, a fee of two-thirds of that allowed to the senior according to the scales shall be allowed to the junior.

7. An advocate employed in a case before any Commissioner or at any arbitration in references made by a Court, shall be allowed fees, at the discretion of the Court, not exceeding K 51 for the first hour or part of an hour of each effective sitting, and K 17 for each succeeding half-hour or part thereof after the first hour of each effective sitting.

8. For the purposes of these rules the valuation of suits and appeals shall be determined according to the rules laid down in the Court Fees Act:

Provided that in cases falling within section 7, sub-sections (v), (vi), (ix) and (x) (d), of the said Act the value of property shall be taken.

9. The Court or, in the case of the High Court, the Taxing Officer is empowered to call for a certificate from the Advocate appearing for a party in any cause or matter that he has not received as his fees or remuneration a sum less than the costs allowable on taxation under these rules. If it should appear on any such certificate that the Advocate has received less than the amount of costs allowable on taxation the Court or the Taxing Officer, as the case may be, shall not certify a sum in excess of what has been actually paid.

Pleaders' Fees.

9. The following rules have been made under section 27 of the Legal Practitioners' Act to regulate the sums to be allowed as costs on account of Pleaders' fees upon all proceedings in Civil Courts subordinate to the High Court * :-

Rules.

1. The sums to be entered in the decrees for the Courts under the denomination of costs, as payable between party and party, on account of fees of Pleaders shall, unless the Court decrees otherwise in its judgment, be calculated at the following rates :-

* Notification No. 20 (General), dated the 30th October 1928, as amended by Notification No. 11 (General), dated the 4th September 1929, Notification No. 15 (General), dated the 8th August 1930 and Notification No. 3 (General), dated the 20th September 1954.

If the amount or value of the property, debt or damages claimed-

- (i) shall not exceed K 5,000, at 6 per cent., on the amount or value claimed;
- (ii) shall exceed K 5,000 but shall not exceed K 20,000, at 6 per cent. on K 5,000 and 3 per cent. on the remainder;
- (iii) shall exceed K 20,000 but shall not exceed K 50,000, on K 20,000 as in sub-rule (ii) above and 1½ per cent. on the remainder;
- (iv) shall exceed K 50,000, on K 50,000 as in sub-rule (iii) above and 1 per cent. on the remainder.

Provided that -

(a) in no case shall the amount of any fee calculated under this rule exceed K 3,000;

(b) in cases undefended a fee not exceeding half only of the fee calculated at the above rates shall be allowed;

[Note: Suits in which defendants have filed written statements shall be deemed to be contested suits and, unless otherwise ordered by a Judge, fees shall be allowed at the prescribed rates though the defendants may subsequently withdraw their defence.]

(c) the amount entered as payable on account of fee to-

	In District Courts.	In Sub-divisional, Township and Small Cause Courts.	In the Rangoon City Civil Court.		
			Suits exceeding K 150 in value.	Suits exceeding K 50 but not exceeding K 150 in value.	Suits not exceeding K 50 in value.
(1)	(2)	(3)	(4)	(5)	(6)
A pleader of the Higher grade shall not be less than	K 17	K 10	K 17	K 10	K 5
A pleader shall not be less than.	10	5	10	10	5

- (d) the Court may if it is of opinion that a defence is false or vexatious, or has been filed merely with a view to gaining time, award to the plaintiff such further costs as the Court thinks fit, in addition to any fee calculated under this rule.

2. In declaratory suits in which no consequential relief is claimed, and in other suits where it is not possible to estimate at a money value the subject-matter in dispute, in miscellaneous proceedings, in execution proceedings and in interlocutory applications other than those of a routine or formal character, the amount to be awarded on account of the Pleader's fee shall be fixed by the Court at its discretion on the scale set out below:-

	District Courts and Rangoon City Civil Court.	Subdivisional, Township and Small Cause Courts.
To a Pleader of the Higher grade between	K 10 and 85	K 5 and 50
To a Pleader between	5 and 50	5 and 34

Provided -

(a) that in non-contested execution or miscellaneous proceedings and in interlocutory applications the minimum fee shall be awarded;

(b) that costs of interlocutory applications of a formal or routine character, *e.g.*, application for an order requiring an affidavit of documents or for transmitting process for service to another Court, shall not be allowed.

3. If, in the opinion of the Court, the questions in issue in any case are such that the labour or skill of the Pleader would be inadequately remunerated by a fee fixed under rule 1 or rule 2, the Court may, for reasons to be recorded in its judgment, apply in the place of the scale laid down in rule 1 or rule 2 the scale specified below in determining the amount payable on account of the Pleader's fee :-

	District Courts and Rangoon City Civil Court.	Subdivisional, Township and small Cause Courts.
To a Pleader of the Higher grade, any sum between.	K 170 and 17	K 85 and 10
To a Pleader any sum between.	85 and 10	50 and 5

In contested cases, the effective hearing of which occupies more than one full working day, a fee not exceeding the above, as the Court in its discretion shall direct, shall be payable for each subsequent day after the first. This fee shall be in addition to the fee calculated under rule 1 or rule 2 or under the first paragraph of this rule. *

* In the Rangon City Civil Court and District Courts any period of three hours or over shall ordinarily be held to be one full working day. Any period of less than three hours shall ordinarily be held to be half a working day.

4. When the hearing of a suit is adjourned under Order XVII, Rule 1, of the Code of Civil Procedure, the Court may include among the costs occasioned by the adjournment, to be paid by the party applying for time, Pleader's fee at the following scale :-

	District Courts and Rangoon City Civil Court.	Subdivisional, Township and small Cause Courts.
Any sum not exceeding -	K	K
To a Pleader of the Higher grade	34	10
To a Pleader	10	5

5. In a case where there are several defendants not more than one Pleader's fee shall be allowed except :-

- (a) where a separate defence is set up by a defendant who has a separate interest;
- (b) where for special reasons (to be recorded in the judgment or order) the Judge considers the award of fees to more than one defendant's Pleader to be just or reasonable.

6. In contested cases the Court may, on account of the difficulty or complexity of the case, in its discretion allow fees to two Pleaders actually employed by a party, provided that no fee for a junior Pleader shall be allowed when the Pleaders employed are in partnership with one another. Where fees are allowed to two Pleaders, a fee of two-thirds of that allowed to the senior according to the scales shall be allowed to the junior.

7. A Pleader employed in a case before any Commissioner, or at any arbitration in references made by a Court shall be allowed fees at the discretion of the Court, not exceeding :-

For a Pleader of the Higher grade	25	} For the first hour or part of an hour of each effective sitting.
For a Pleader	10	
For a Pleader of the Higher grade	10	} For each succeeding half-hour or part thereof after the first hour of each effective sitting.
For a Pleader	5	

8. For the purpose of these rules the valuation of suits and appeal shall be determined according to the rules laid down in the Court Fees Act: *Provided that* in cases falling within section 7, subsections (v), (vi), (ix) and (x) (d), of the said Act the value of the property shall be taken.

9. The Court is empowered to call for a certificate from the Pleader appearing for a party in any cause or matter that he has not received as his fees or remuneration a sum less than the costs allowable on taxation under these rules. If it should appear on any such certificate that the pleader has received less than the amount of costs allowable on taxation the Court shall not certify a sum in excess of what has been actually paid.

Dress of Advocates and Pleaders.

10. The following rules regulate the dress to be worn by Advocates and Pleaders of the Higher Grade when appearing before District and Sessions Courts or before the Judges of the Rangoon City Civil Court * :-

(1) Advocates of the High Court, Rangoon, shall wear a black gown cut after the pattern of the Cambridge B.A. gown over a black coat and, unless the coat is worn closed, a black waist-coat or kummerband; provided that Advocates who are Barristers-at-Law may wear their Barristers' robes. All Advocates shall wear bands.

(2) Pleaders of the Higher Grade shall wear a dark green gown cut after the pattern of the Cambridge B.A. gown over a black coat and, unless the coat is worn closed, a black waist-coat or kummerband. Pleaders shall not wear bands.

(3) It is not the practice to require Advocates or Pleaders to wear gowns in Courts other than those aforesaid.

* High Court Notification No. 6 (General) dated the 25th April 1947.

11. All Advocates and Pleaders who set out in Burmese their Designation of Ad- professional status on signboards, letter headings, vocates and Pleaders. etc., are required to use the authorised Burmese equivalents of their designation in English, and no others. These are:-

- (1) Advocate of the High Court - တရားရုံးချုပ်ရှေ့နေ
- (2) Pleader of the Higher Grade - အထက်တန်းရှေ့နေ
- (3) Pleader - ရှေ့နေ

Provided that Advocates who are Barristers may at their election describe themselves in Burmese as လွှတ်တော်ရှေ့နေကြီး။ ဝတ်လုံတော်ရှေ့နေ။ which is the equivalent in Burmese of the expression 'Advocate of the High Court - Barrister-at-Law.'

CHAPTER II.

Petition Writers. ❖

12. The following rules declaring what persons shall be permitted to practise as petition-writers in the Courts in the Union of Burma, regulating the conduct of business of persons so practising, and determining the authority by which breaches of the rules shall be tried, have been made under section 25, sub-section (1), clause (a) of the Courts Act, 1950 * :-

General

(1) No official of any Court and no person employed about any Court, whether as clerk, copyist or peon or in any other capacity, shall write petitions.

Note : A stamp-vendor is not a person employed about a Court.

(2) No person shall write for hire any petition to be presented to any Court unless he -

- (i) is a citizen of the Union of Burma, and
- (ii) is duly licensed under these rules by the Judge of the District Court of the district wherein he resides, or

* Notification No. 4 (General), dated the 20th October 1954.

❖ The Supreme Court provided the instructions in relating to petition-writers. (Direction No. 1/98).

(iii) is a legal practitioner, or

(iv) is a clerk to a legal practitioner and writes the petition in the course of such employment.

(3) No Court shall receive or act on any petition presented to it by any person other than a legal practitioner unless such petition is signed by a legal practitioner or is written and signed at the foot -

(a) by the petitioner himself, or

(b) by a friend of the petitioner who has received no hire in respect thereof and who is not a clerk to a legal practitioner, or

(c) by a petition-writer duly licensed under these rules.

(4) Rules (2) and (3) shall not apply to petitions presented to a Judge or Magistrate on tour at places where there is no licensed petition-writer practising.

(5) When a petition is not written by a petition-writer known to it the Court shall satisfy itself, so far may be, that it has not been written by a person practising in contravention of these rules.

(6) A Court shall not refuse to accept a petition presented by a person who does not reside within the jurisdiction of the Court merely because the petition is written by a petition-writer not licensed for that jurisdiction: provided that the Court is satisfied that the writer is qualified to write the petition in the district within which the person presenting it resides, and provided also that the petition is properly written in the language of the Court.

(7) Every petition written by a petition-writer shall be written on one side only of stout paper of foolscap size, with a blank margin of a quarter of the breadth on the left hand side, and shall be endorsed by him with his name and the number of his license, the date and the amount of the fee paid.

(8) No petition-writer shall ask or take any fee, contingent or otherwise beyond the fee endorsed on the petition and he shall give a receipt for every fee paid.

(9) The Judge of the District Court may, if he thinks fit, from time to time fix for each Court the tariff of charges for writing petitions of a simple, ordinary or routine character, and, where a tariff has been framed, no petition-writer shall for such petitions ask or accept a fee in excess of the tariff. For writing other petitions each petition-writer may make his own terms with the petitioner provided that they are moderate and reasonable. If any petition-writer asks or accepts any fee in excess of the tariff or any immoderate or unreasonable fee for a petition of a class for which a tariff does not provide, the Judge may, on complaint by the petitioner, in his discretion, order reduction or return of the fee, or may withdraw the license.

(10) Any petition-writer who writes a petition, etc., for any person who does not understand the language in which it is written shall fully and truly explain to such person the meaning and effect of all that is written in the petition.

(11) Facilities should be provided at the Court for petition-writer to practise their vocation with convenience to themselves and the public.

(12) The operation of all or any of these rules may be deferred or suspended by order of the High Court in any district or portion of a district, and by order of the Judge of the District Court in any Court subordinate to his Court, for such time as he may see fit.

Additional Rules for Rangoon.

(13) The duties imposed by these rules on the Judge of the District Court shall, in regard to the Courts of the Rangoon Town District, be discharged by the District Magistrate, Rangoon Town District, and within such limits rules (4), (11), (12), (16) shall not apply.

(14) Every petition-writer licensed by the District Magistrate, Rangoon Town District, shall keep a book in which he shall enter in the English language, or in the language of the Court, a short statement of the substance of every petition or other document which he may be called upon to write for presentation in a Court, the date on which it is to be presented, the name of the person for whom he writes it, and when a stamp is used, the name of the person who bought and sold the stamp-paper on which it is written and the date on which the stamp-paper was sold.

(15) The book so kept may be called for by the Court at any time, and any licensed petition-writer failing to produce his book when called upon by the Court to do so shall be liable to have his license revoked.

Licenses.

(16) In consultation with the Deputy Commissioner the Judge of the District Court may determine the number of licenses to be granted for the District and for each Court in it.

(17) A license shall hold good to the end of the calendar year in which it is issued and till the end of each succeeding year for which it may be extended by endorsement, which should ordinarily be made in the month of December. A petitioner-writer is not entitled to an extension of license as a matter of course. The Judge of the District Court shall have the same discretion as to granting or refusing an extension as he has with respect to the original issue of a license.

(18) Any person who desires to be licensed as a petition-writer shall apply by petition to the Judge of the District Court or to any subordinate Judge for transmission to the Judge of the District Court, and shall state the names of the Courts in which he proposes ordinarily to practise. The Judge shall satisfy himself that the applicant is of good character and that he can write in a legible hand in the language of the Court, and that he can express himself in clear, concise language. The Judge may, at his discretion, grant or refuse the license. No license shall be granted under this rule to any person who is a clerk to a legal practitioner.

(19) The license shall be in the following form :-

Petition-writer's License No.

A.B., son of C.D., residing at E, is hereby licensed to practise as a petition-writer for the Courts at (name of place) for the year 19

This license is issued subject to the condition that the holder, so long as he holds the license, shall not act as a clerk, whether paid or unpaid, to any legal practitioner.

The 19



Y.Z.,
Judge.

Endorsements.

Extended for the year 19 subject to the conditions of issue.

The December 19



Y.Z.,
Judge.

(20) Every license issued under rule (18) shall be entered in serial order in a register kept in the following form :-

Register of Petition-writers.

No. of license -	Date of issue -
Name of petition-writer -	
Residence -	
Name and description of father -	
Age -	Race -
Courts for which licensed -	

Year of first issue and each year of extension.	Signature of Judge each year.	Years of extension.	Signature of Judge each year.

(21) The Judge of the District Court may withdraw a license for good cause at any time after giving the petition-writer an opportunity to show cause against such order. The reasons for such withdrawal shall be recorded by the Judge to enable the High Court to exercise due control in the matter.

(22) When a petition-writer's license is withdrawn he shall surrender it to the Judge of the District Court.

Penalty.

(23) Breaches of any of the foregoing rules shall be triable by the Judge of the District Court or the District Magistrate, Rangoon Town District, within whose jurisdiction the petition was written.

Revision.

(24) There shall be no appeal against any order passed under these rules, but the High Court in any case which comes to its notice may pass such order as it thinks fit.

Instructions to be followed by Petition - writers

- 12 A (1) In exercise of the power conferred by Section 20 of the Myanmar Judiciary Law, the Supreme Court has issued the following instructions with regard to the issue of license as Petition-writers to practise in all the courts in Myanmar, to supervise and control the Petition-writers and make enquiries as to the breach of these instructions and to take action against Petition-writers them.
- (2) Rules regarding the issue of licence to practise as Petition-writer in all the courts, and framing of rules to be followed by Petition-writer and the taking action for the breach of the rules have been prescribed in paragraph 12 of the Myanmar Courts Manual (Third Edition). The said rules should be followed in issuing Petition-writer's license, supervising, controlling and taking action against Petition-writers, and revocation of license of Petition-writers.
- (3) It is hereby instructed to abide by the following instructions in accordance with the rules:-
- (a) **Issue of Petition -writer's licence.** The State or Divisional Judges, after consultation with the Township Judges in his State or Division as to the number of Petition-writers in each court and vetting the applications in accordance with the rules, shall issue Petition-writers licence.
 - (b) **Fixation of the rate of Petition-writers fees.** The State or Divisional Judge shall fix the rate of Petition-writers fees from time to time and shall publish these rates for public notice.
 - (c) **Supervision.** the State or Divisional Judge shall supervise Petition-writers, in accordance with the rules as contained in Paragraph 12 of the Myanmar Court Manual, through the Township Judge concerned.
 - (d) **Taking Action.** The State or Divisional Judge s hall revoke the licence of the Petition-writer who breaches the rule in accordance with the rules.

* See Instructions (directives) No. 1/89 of the Supreme Court

အပိုင်း ၂

တရားမနှင့် ရာဇဝတ်ကျင့်ထုံးနှစ်ရပ်လုံးနှင့် စပ်သျှဉ်းသည့် ညွှန်ကြားချက်များ
နှင့် အမိန့်များ။

PART II.

Instructions and Orders relating to both Civil and
Criminal Procedure.

CHAPTER III.

ADMINISTRATION AND CONDUCT OF CASES.

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

*General Management
and Control.*

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

Hours of Sitting.

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

Office Hours

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hearing of cases in
open Court.

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

Despatch of Work.

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

Adjournments.

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

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

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

This rule applies equally to criminal cases.

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

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

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

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

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

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

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

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

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

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

Disability of Judge or Magistrate.

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

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

Legal Disability of
Magistrate.

Criminal Procedure
Code, 556.

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

Method of Citing Law Reports.

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

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

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

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

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

(1) 9 L.B.R. 93 [F.B. 1917].

(2) I.L.R. 28 All. 142.

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

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

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

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

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

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

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

Language of Courts.

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

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

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

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

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

Interpreters' Fees

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

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

Requisition of High Court Interpreters. ❖

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

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

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

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

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

Dress

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

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

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

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

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

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

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

Cause-lists and Order of Business.

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

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

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

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

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

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

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

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

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

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

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

* Section 122, Burma Army Act.

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER IV.

EVIDENCE--PRISONERS ACT--OATHS ACT.

Documentary Evidence.

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

Stamping of Documents.

ရုံးတော်၌၊

၁၉

ခုနှစ်၊
နှိုင်း၊

ရာဇဝတ်တရားသူကြီးရုံးတော်၌
နံပါတ်

သက်သေခံအရာ
မည်သူကတင်ရန်ညွှန်ပြ
မည်သူကတင်ပြသည်
တင်ပြသည့်နေ့စွဲ
မည်သည့်နေ့ရက်လက်ခံသည်
မည်သည့်နေ့ရက်ပယ်သည်

တရားမတရားသူကြီး။
ရာဇဝတ်တရားသူကြီး။

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

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

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

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

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

Parabaiks and Palm-leaves.

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

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

Making of Parabaiks.

53. (1) If a document, which is in any way used in evidence, already forms part of another record from which it cannot properly be withdrawn, or if it is an entry in any shop-book, etc., which cannot reasonably be detained away from its proper place, it should not

Documents which
cannot be filed on the
record.

be permanently attached to the trial record ; but, after having been proved, when proof is requisite, and inspected by the Court and the parties, it must be marked and restored to its place (if it has been removed), and an authenticated copy of it must be put upon the trial record instead, bearing an endorsement indicating the place of custody of the original.

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

54. A court-fee is required on a copy of a document liable to stamp duty when left by any party to a suit or proceeding in place of the original withdrawn. *

Court-fee on Copy
of Document.

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

Production of Judicial
Records in Civil Cases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Order.

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

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

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

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

Dated the

Head of Department.

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

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

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

Witnesses.

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

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

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

Summonses to witnesses.

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

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

Form of Summons to
Monks and others

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

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

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

Summons to Finger
Print Expert.

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

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

Date fixed for
attendance.

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

Summons to
resident of foreign state
in criminal cases.

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

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

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

The Prisoners Act.

67. Under the provisions of the Prisoners Act-

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

* * * * *

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

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

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

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

Oaths and Affirmations—Oaths Act.

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

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

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

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

I.- *Oaths for Witnesses.*

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

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

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

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

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

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

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

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

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

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

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

For a Chinese :—

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

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

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

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

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

* The authenticated translation in Burmese is reproduced below :—

† The authenticated translation in Burmese is reproduced below :—

II.—*Affirmation for Witnesses.*

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

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

III.—*Oaths for Interpreters.*

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

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

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

“I swear that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate and explain. Manasni, Gavasni, Koonasni.”

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

“I declare that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate and explain. If I do otherwise, may I suffer the curses described in this holy book.”

For a Chinese :—

(1) “I swear before Heaven and in the presence of the Judge that I will well and truly interpret, translate, and explain all questions and answers, and all such matters as the Court may require me to interpret, translate and explain. If I do otherwise, may I disappear as this paper disappear by fire”: or

- (2) "I swear before Heaven and in the presence of the Judge, that I will well and truly interpret, translate, and explain all questions and answers, and all such matters as the Court may require me to interpret, translate and explain. If I do otherwise, may my body be broken as this cup is broken."

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

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

"I swear before God that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate and explain, and that no part of my interpretation, translation, or explanation shall be false."

IV. - *Affirmation for Interpreters.*

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

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

V. - *Oaths for Declarants of Affidavits.*

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

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

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

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

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

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

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

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

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

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

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

For a Chinese : -

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

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

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

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

VI.- Affirmation for Declarants of Affidavits.

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

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

VII.- Oaths for Jurors.

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

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

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

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

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

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

For a Chinese : -

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

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

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

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

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

VIII.- *Affirmation for Jurors.*

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

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

IX.- *Form of Kyansa*

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

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

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

Cintitam sattasankhyeyam navaṣaṅkhyeya vacakam kayavasa
cātukhyatam buddhattam samupagami.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

† A monster which has the face of a horse.

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

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

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

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

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

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

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

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

CHAPTER V.

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

Court-Fees Act.

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

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

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

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

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

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

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

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

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

(2) Impressed stamps used for denoting court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court-Fees Act. For such cancelling a round punch is supplied.

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

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

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

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

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

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

Punching of adhesive
Court-fee labels.

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

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

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

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

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

Writing of Names
across Court-fee
Labels.

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

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

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

Remission and Reduction of Court-Fees.*

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

below :-

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

A.- General

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

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

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

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

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

B.- Specific Enactments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Duty of Judge

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

Judgement in Criminal Case

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

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

Mesne Profits

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

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

Method of levying Court fees in Administration suits

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

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

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

Court Fees
Act-13,14,15

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

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

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

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

* Burma Stamp Manual (1945), page 51.

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

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

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

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

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

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

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

Valuation of Suits.

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

Stamp Act.

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

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

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

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

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

This kind of instrument is very commonly used in Burma.

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

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

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

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

Stamp Act,
33

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

Stamp Act,
35

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

Provided that -

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

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

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

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

“Impounded under section 33 of the Burma Stamp Act”

Signature

Designation

Date

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

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

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

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

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

Stamp Act,
38 (2)

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

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

The document should be forwarded in original to the Collector.

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

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

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

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

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

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

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

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

CHAPTER VI.

TRANSLATIONS AND COPIES — INSPECTION OF RECORDS.

Copies and Inspection of Records.

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

† RULES. ❖

(1) x x x x x x x x

from

(42) x x x x x x x x

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

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

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

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

Inspection of Records.

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

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

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

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

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

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

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

Costs.

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

Copying Rules

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

Chapter (1)

Title and Definitions

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

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

Chapter (2)

Controlling Officer, Authorized Officer and the Copyists.

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

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

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

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

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

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

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

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

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

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

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

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

Chapter (3)

Persons Entitled to copies

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

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

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

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

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

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

Chapter (4)

Application for copies and taking action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter (5) Rate of copying fees

42. Copying fees shall be collected as follows:-

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

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

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

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

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

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

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

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

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

Chapter (6)

Supervision and Report

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

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

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

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

Chapter (7)

General

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

Application for copy

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

5. Number of pages of the Original document

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

Date

Signature of Applicant

NRC No.

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

Received the application for uncertified / certified copy of the
 above mentioned papers of the mentioned proceeding from.....on
day of at To am/ pm

Date.

Authorized officer

Signature

Name

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

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

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

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

Date Bailiff

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

Date Authorized officer

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

Date Authorized officer

Signature

Name

Received the copy applied for.

Date Applicant / His Agent

Signature

NRC No

Judicial General Form No 17 (A)

Counterfoil

Name of applicant

Kind of copy applied for

Date of receipt of application

Date of entry in the Register

Serial No in the Register

Date of delivery

No of pages

Copying fees paid

Chalan-No

Date of Chalan

Certificate original

Date Month Year

.....

.....

As the application for copy from---

has been received and registered

under Registration No () in the

Register copies.

A copy has been issued on ()

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

pages and certified that a copying

fees of K is paid to the

government.

Authorized officer

Signature

Name

Rank

Authorized officer

Signature

Name

Rank

Certificate original

Date Month Year

.....

.....

As the application for copy from---

has been received and registered

under Registration No () in the

Register copies.

A copy has been issued on ()

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

pages and certified that a copying

fees of K is paid to the

government.

Authorized officer

Signature

Name

Rank

Original

Certificate of receipt of Application for copy

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

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

Authorized officer

Signature

Name

Rank

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

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

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

Authorized officer

Signature

Name

Rank

Judicial General Form 17.

Requisition slip to Record - Keeper

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

Authorized officer

Signature

Name

Rank

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

Record - Keeper

Signature

Name

Rank

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

Name of Court

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

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

Signature

Name

Rank

Date

Direction how to use the form

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

Name of Court

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

[illegible]

Signature Rank Date

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

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

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

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

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

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

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

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

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

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

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

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

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

Translators.

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

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

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

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

Authorized Translations.

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

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

Documents which must be translated.

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

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

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

Procedure in obtaining Translations.

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

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

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

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

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

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

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

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

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

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

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

Fees.

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

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

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

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

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

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

Inclusion of Fees as Costs.

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

Refunds and Payments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Local Translation
of documents.

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

Costs of translation
and money order
commission.

အပိုင်း ၃

တရားမကျင့်ထုံး

ဤအပိုင်းတွင် စာပိုဒ်များ နံဘေးအစွန်း၌ ထပ်မံညွှန်ပြချက် မပါမရှိဘဲ၊ ပုံသေ ဖော်ပြထားသည့် ဂဏန်းများသည် တရားမကျင့်ထုံး ဥပဒေပုဒ်များကို ရည်ညွှန်းသည့် စာလုံးနှင့် ဖော်ပြထားသည့် ဂဏန်းများနှင့် ၎င်းတို့နှင့် ဆက်တွဲပါရှိသည့် နှင့်ပြထားသော ဂဏန်းများသည်၊ တရားမကျင့်ထုံးဥပဒေ ပထမစာရင်း၌ အမိန့်မူ နည်းဥပဒေများကို ရည်ညွှန်းသည်။

PART III

Civil Procedure

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

CHAPTER VII**PROCEDURE IN SUITS AND MISCELLANEOUS PROCEEDINGS****The Law to be administered.**

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

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

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

▪ Burma Code, Volume I.

Jurisdictions of Courts †

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

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

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

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

Proviso

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

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

<u>Sr.No</u>	<u>Judge invested with jurisdiction</u>	<u>jurisdiction invested.</u>
(a)	State or Divisional Judge	Jurisdiction to hear appeals on the decrees or orders passed by the township court in original civil suits or original proceedings.
(b)	Additional state or Divisional Judge	Jurisdiction to hear appeals distributed by the state or Divisional judge.
(c)	Deputy state or Divisional Judge	Jurisdiction to hear of appeals the value of which does not exceed kyats two millions. Proviso. Jurisdiction to hear appeals the value of which does not exceed kyats four hundred thousand if distributed by the State or Divisional Judge.
(d)	Assistant state or Divisional Judge	Jurisdiction to hear appeals the value of which does not exceed kyats one hundred thousand if distributed by the State or Divisional Judge.

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

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

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

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

Sr.No Judges invested with jurisdiction Jurisdiction invested

(a) Township Judge	To try civil original suit or original proceedings the value of which does not exceed kyats five hundred thousands.
(b) Additional Township Judge	To try civil original suits or original proceedings the value of which does not exceed kyats five hundred thousand .
(c) Deputy Township Judge	To try civil original suits or proceedings the value of which does not exceed one hundred thousands.
Proviso	May try civil original suits or original proceedings the value of which does not exceed three hundred thousand if distributed by the Township Judge.
- (4) The Township Judge shall in accordance with instruction of the Supreme Court distribute the cases to the Additional Township Judge(s) or Deputy Township Judge(s) of the township court for disposal.
- (5) The Township Judge may exercise the jurisdiction of calling for the case which he has distributed and try it himself or distribute it to the other Additional Township Judge or other Deputy Township Judge for disposal.
- (6) In the temporary absence of the Township Judge, he may authorize the other judge to distribute the case on his behalf.

Joiner of Parties.

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

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

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

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

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

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

Recognized Agents.

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

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

Pleadings

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

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

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

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

Receiving of Complaints.

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

Receipts of complaints
and applications.

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

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

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

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

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

Plan of Immoveable Property to be filed in Suit.

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

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

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

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

Jurisdiction and Value of Suit.

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

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

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

- VII. 11. **127.** In suits relating to **immoveable property** in which the Court-fee on the plaint is calculated under clause (v) or (vi) or (ix) of section 7 of the Court Fees Act, **the valuation for the purposes of jurisdiction** is not identical with the **valuation for Court-fee** but is the actual or market value of the land in suit. In every such plaint **both values should be stated**, and the plaint should not be admitted until they are stated.

Rejection and Return of Plaints.

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

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

Date of Hearing.

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

Persons exempted from appearance in Civil Courts.

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

Pankangyi Supaya,

Gaingdauks,

Gaingôks,

Gainggyôks and all Buddhist ecclesiastics of higher rank.

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

Issue of Summons.

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

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

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

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

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

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

Service of Summons.

XVI, 12-20. **137.** Courts must satisfy themselves, taking evidence when necessary, that service of summons has been duly and effectually made within a time reasonably sufficient to allow of the appearance of the defendant (*cf.*, paragraph 171).

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

XV, 9. **138.** Where the person summoned is a public officer or servant of the Burma Railways, sufficient time shall be allowed in order to give the witness an opportunity of communicating with his departmental superior, so as to arrange for the discharge of his duties during his temporary absence from his post. If it appears to be most convenient, the summons may be served through the head of his office.

V, 25, 26.

139. (1) The attention of all Judges is invited to order V, Rule 26, of the Code of Civil Procedure, whereby processes in civil cases for service on persons residing in foreign territories, are required to be served through the Political

Service of Processes on persons residing in Foreign Territories.

Agent or certain Courts. The service of such process should be affected through the Embassy concerned. In order to enable the High Court to transmit such processes to the appropriate authorities, Judges are directed that processes for service on a person or persons residing in foreign territories should first be submitted to the Supreme Court.

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

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

V, 28, XVI, 8.

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

Service on Armed Force personnel.

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

Summons received from other Courts.

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

Summons issued by Foreign Courts.

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

Expenses of Witnesses.

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

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

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

XVI. 3.

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

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

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

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

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

Trial of Cases Ex-parte.

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

Written Statements.

- VIII, 2-5. 149. The provisions of Order VIII, Rules 2 to 5, concerning written statements, require careful study. Attention is particularly drawn to Rule 5, regarding the effect of failure in the written statement to deny specifically any allegation of fact in the plaint.
- VIII, 6. 150. Written statements pleading a set-off or counterclaim require to be stamped under Article 1 of Schedule I of the Court Fees Act.

Interlocutory Applications.

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

Examinations of Parties by the Court.

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

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

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

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

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

Conduct of Trials - Adjournments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Adjournments
"for want of time."

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

Supplementary
questions by Judge.

Documentary Evidence.

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

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

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

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

XIII. 1. 2.

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

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

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

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

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

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

Histories of
Holdings.

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

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

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

162. The provisions of Order XIII regarding the use of the list
 List of Documents. of documents *tendered* in evidence

(Form $\frac{\text{Judicial}}{\text{General 23}}$) and of documents *admitted* in evidence

(Form $\frac{\text{Judicial}}{\text{General 25}}$), the marking of documents admitted, the

filing of exhibits and these lists, and the use of papers from another record, should be carefully studied (cf. Part II, paragraphs 49-55 and Part V, paragraphs 1073-1074).

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

XIII, 9.

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

Oral Evidence and Affidavits.

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

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

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

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

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

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

139.

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

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

139.

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

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

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

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

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

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

(b) When after such summons has been posted, the process-server must state either that he knows that at the time of posting, the defendant or respondent was actually residing carrying on business or at the premises on which the copy of the summons, etc., was posted or that he was told by the identifier (naming him) that he knew that at the time of posting the defendant or respondent was actually residing carrying on business in or at the said premises.

In the absence of such knowledge or information, summons or notice should not be posted unless under an order for substituted service. Reasons for not posting and returning unserved must be stated.

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

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

Judgments.

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

The judgment should contain a distinct finding on each issue.

XX, I.

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

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

Decrees.

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

XX, 6.

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

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

XX, 9.

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

XXIII, 3.

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

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

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

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

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

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

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

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

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

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

Court Fees
Act, II.

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

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

Costs

XX. 6.

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

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

The decree should show costs as follows:-

Costs of Suit.

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

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

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

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

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

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

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

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

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

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

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

XX, 21-23.

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

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

Punitive Costs.

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

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

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

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

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

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

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

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

Champerty.

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

III, 1.

XXXIII, 5.

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

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

XXV, 2.

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

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

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

Receivership Proceedings.

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

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

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

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

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

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

It should require him -

- (i) within one month of the date of appointment to take over possession of all moveable and immoveable property belonging to the estate, and to file in Court lists of all property of which he has taken possession;
- (ii) to file accounts at the end of the first month and subsequent accounts at the end of each subsequent period of three months;
- (iii) on each occasion before filing his accounts to pay all monies in his hands into the Treasury through Bailiff's Register No. I, except a sum to be fixed in the order, which he may be allowed to keep in his hands to meet current expenses. The chalan of credit to the Treasury must be submitted each time for check by the Judge when the accounts are filed.

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

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

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

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

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

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

CHAPTER VIII.

PROCEDURE IN EXECUTION.

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

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

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

Precepts.

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

Transfer of Decrees for Execution.

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

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

XXI, 6. **187.** A Court sending a decree to another Court for execution must send a copy of the decree, a certificate of non-execution, or of partial execution, as the case may be, and a copy of any order for the execution of the decree or a certificate that no such order has been made. The certificate of non-execution, or of partial execution should be in Form Civil 71.

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

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

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

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

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

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

Application for Execution.

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

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

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

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

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

XXI. 13. **198.** An application for the attachment of immoveable property should be accompanied by a plan of the land to be attached.

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

48, Limitation Act. Schedule II. 83. **200.** As an ordinary rule, an application for the execution of a decree must be made within twelve years from its date. But an application may be barred by limitation under the Limitation Act in a shorter period.

XXI. 17. **201.** If an application does not comply with the requirements of Order XXI, Rules 11(2), 12, 13 and 14, so far as applicable, it may be rejected or returned for amendment.

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

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

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

- (a) when the decree is more than three years old;
- (b) when execution is sought against the legal representative of the judgment-debtor.

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

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

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

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

Mode of Execution.

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

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

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

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

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

XXI. 24(3). 211. A date must be specified in every warrant for execution
25 (1).

Execution and Return of Warrant. on or before which it must be executed. The warrant must be returned with and endorsement showing date and manner of execution or the reason of non-execution.

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

Decrees for the partition of land.

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

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

Duty of Bailiff in execution of Process.

ATTACHMENT

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

215. In the case of the agricultural produce and the property
 × × × of an agriculturist which are liable to attachment in ex-
 × × × ecution of a decree, the methods how to function on such
 a matter were, then, shown in sections 215 and 216 of

216.
 × × × Burma Courts Manual. But in accordance with the
 × × × provisions under The Peasant's Right Protection Law, the
 agricultural produce and the property of an agriculturist
 cannot be attached in execution of a decree. Thus, the
 aforesaid sections were deleted and had to, in great care,
 study on the provisions under The Peasant's Right
 Protection Law and Court Instructions No. 3/64.

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

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

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

† Myanmar Army Act, 1959

* Judicial Department Notification No.271. dated the 5th December 1938 as amended by Notification No.65. dated the 23rd January 1939

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

Attachment of
Moveable Property.

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

(a) The warrant must be properly worded.

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

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

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

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

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

XXI. 43, 51.

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

The attention of Judges is also invited to the warning printed at the head of Form Civil 8F. This warrant of attachment is only to be used when the property is actually in the possession of the judgment-debtor. The processserver must not seize property belonging to the judgment-debtor in the possession of a third party.

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

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

XXI. 46.

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

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

XXI. 63A. to 63G.

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

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

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

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

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

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

XXI, 48

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

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

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

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

XXI, 17(4).

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

Excessive Attachment Prohibited.

XXI, 52, 53.

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

Attachment of Immoveable Property.

- XXI. 54. **231.** Attachment of immoveable property is made by a prohibitory order which should be posted on the Court-house and property and proclaimed on or near the property.
- XXI. 55. **232.** If the decree is satisfied or reversed, any attachment subsisting at the time is deemed to be withdrawn. In the case of immoveable property, if the judgment-debtor applies and pays the necessary costs, the withdrawal must be proclaimed in the manner provided for making attachments.
- XXI. 31. **233.** Property attached to enforce a decree for specific moveables remains under attachment for three months which period may on application be extended to six months if the decree is not obeyed in the meantime. At the end of that period it may be sold on the application of the decree-holder and the proceeds applied as directed in Order XXI, Rule 31. If no application for sale is made and granted, the attachment ceases after that period.
- XXI. 32. **234.** Property attached to enforce a decree for specific performance or for restitution of conjugal rights is subject to the rule in the last preceding section, the maximum period of attachment being one year instead of six months.
- XXI. 58-63. **235.** Claims to attached property or objections to attachment are investigated under Order XXI, Rules 58 - 63. Care should be taken to note in the execution record the substance of any order passed on such investigation and to communicate it to the Bailiff.
- 236.** When a warrant of attachment is issued with a view to the sale of the property attached, the Judge shall invariably enter in the diary of the case the date fixed for the return of the warrant; and shall adjourn the case to that date. The decree-holder shall be informed of the date, and shall be warned that if he fails to pay the court-fees for the proclamation of sale and for the necessary notices on or before that date, the application for execution will be dismissed and the attachment withdrawn.

Sale of Property.

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

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

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

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

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

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

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

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

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

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

- (a) the date on which the method of publishing the proclamation shall be reported to him;
 Dates to be fixed on ordering sale.
- (b) the date fixed for the sale; and

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

XXI. 67. 68.

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

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

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

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

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

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

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

XXI, 65.

249. The following order has been issued by Government -
 No clerk in the office of any Deputy Commissioner,
 Clerks not to bid at Subdivisional Officer, or Township Officer
 sales. shall, without first obtaining the Deputy Com-
 missioner's written permission to do so, bid
 for any property, moveable or immoveable, put up for sale in execu-
 tion of a decree within the district in which he is serving*. This order
 also applies to clerks employed in the offices of District Judges, and
 other Civil Judges.

XXI, 73.

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

* Appointment Department Circular No. 15 of 1892.

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

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

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

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

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

XXI. 84, 85. **255.** One-fourth of the price of immovable property must be paid at once and the rest within fifteen days.

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

- XXI, 72. **256.** Under Order XXI, Rule 72, where the decree-holder purchases the property he is entitled as of right, subject to any orders for rateable distribution of the sale proceeds, to set off the amount of his decree against his purchase money, and Order XXI, Rule 84(2), says that in such a case the Court may dispense with the deposit required by that rule.
- XXI, 84. **257.** Any loss on a resale of either moveable or immovable property may be recovered from the defaulting purchaser.
- XXI, 71. **258.** Application to have a sale of immovable property set aside may be made by the judgment-debtor or other interested person on making a deposit as provided in Order XXI, Rule 89(1), or by the decree-holder or any person whose interests are affected by the sale on the ground of material irregularity or fraud (Rule 90), or by the purchaser on the ground that the judgment-debtor had no saleable interest in the property sold (Rule 91). The period of limitation for every such application is thirty days.
- XXI, 72, 89, 90, 91, 92. **259.** When a sale is set aside under Order XXI, Rule 93, the purchaser is entitled to receive back his purchase money with or without interest as the Court may direct.
- XXI, 93. **260.** A sale of immovable property does not become absolute till it is confirmed by the Court. The order of confirmation shall be recorded in the execution file. It should not be passed till the period of limitation for applications under Order XXI, Rule 89, 90 or 91, has expired, or until any such application has been disposed of.
- XXI, 92(1) **261.** When a sale of immovable property is confirmed, the Court must grant a certificate to the purchaser on payment by him of the prescribed stamp duty. A copy of the certificate should be filed in the execution record and a copy should be sent to the Sub-Registrar.
- Limitation Act, Schedule II, Art. 166. **262.** When a sale of immovable property is confirmed, the Court must grant a certificate to the purchaser on payment by him of the prescribed stamp duty. A copy of the certificate should be filed in the execution record and a copy should be sent to the Sub-Registrar.
- XXI, 94, Stamp Act, Schedule I, Art. 18, Registration Act, 89. **263.** When a sale of immovable property is confirmed, the Court must grant a certificate to the purchaser on payment by him of the prescribed stamp duty. A copy of the certificate should be filed in the execution record and a copy should be sent to the Sub-Registrar.

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

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

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

Payment of Money.

XXI, 56, 58, 64. 265. The Court should record a formal order on the execution
 Disbursement of money. file for the payment to the decree-holder of money paid into Court, seized on attachment, or realized by sale of property, to the extent necessary to satisfy the decree, and for the disposal of any sum in excess either by payment to the judgment-debtor or otherwise. The disbursement of any money under any such order should also noted on the execution record.

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

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

Arrest and Imprisonment.

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

Exemption from arrest
under Burma Army
Act.

Section 27

(1) No person subject to this Act shall so long as he belongs to Burma Forces be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue Court or revenue officer.

(2) The Judge of any such Court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the Court by the complainant.

268. Members of either Chamber of the Union of Parliament are exempted from arrest and detention in civil prison during the continuance of any meeting of such Chamber or any Committee thereof and during 14 days before and after meeting.

Exemption of mem-
bers of the Legislature.

XXI. 32(1).

269. A woman may not be arrested or imprisoned in execution of a decree for the payment of money. A woman is liable to arrest or imprisonment in all other cases in which a male would be so liable.

Exemption of Women
from Arrest.

XXI. 37. **270.** Instead of issuing a warrant for the arrest of a judgment-debtor in execution of a decree for money, the Court may issue a notice to him to appear and show cause why he should not be sent to jail. If he does not appear, a warrant of arrest must issue if the decree-holder so requires. There is a tendency to issue warrants of arrest in cases in which the decree could be executed with success in some other way. This must be strictly checked.

XXI. 39. **271.** Before a judgment-debtor is arrested, the decree-holder must pay into Court subsistence money at the rate specified in paragraph 276 for the period between his arrest and his production in Court.

272. The actual cost of conveyance of a civil prisoner shall be borne by the Court ordering his arrest or requiring his attendance at Court, as the case may be, and shall not be charged to the judgment-creditor *see* Order XXI, Rule 38A.

A party requiring the attendance of a civil prisoner as a witness shall deposit the cost of conveying such prisoner from and to the jail.*

XXI. 37. **273.** A judgment-debtor on arrest should be brought forthwith before the Court and should not be kept in the custody of a peon or the bailiff until the date fixed for the return of the warrant.

XXI. 40. **274.** A judgment-debtor who appears in obedience to a notice issued under Order XXI, Rule 37, or who is brought up in arrest, may be released if the Court is of opinion that he is unable, from poverty or other sufficient cause, to pay the amount of the decree. Imprisonment for debt should be the exception and not the rule.

55(3) 4. **275.** Whenever a judgment-debtor is arrested in execution of a decree for money and brought before a Court under Order XXI, Rule 40, the Court shall inform him that he may apply to be declared an insolvent, and that he may be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he complies with the provisions of the law of insolvency for the time being in force.

* See section 50 of the Prisoners' Act.

If the judgment-debtor expresses his intention to apply as above and furnishes security to appear when called upon and to apply within one month to be declared an insolvent he may be released.

XXI. 39(4). **276.** (1) Before a judgment-debtor can be sent to jail the decree-holder must pay into Court subsistence money before imprisonment of judgment-debtor. Subsequent payments of subsistence money must be made to the jail.

(2) Under section 57 of the Code of Civil Procedure, the Government * has directed that the rates of subsistence allowance for civil prisoners shall be fixed in the manner provided in the following rules for the classification of such prisoners into two separate divisions, viz., the Special Division and the Ordinary Division:-

(i) Classification in the Special Division shall be confined to civil prisoners who by social status, education or habit of life have been accustomed to a superior mode of life. For prisoner so classified, the rate of subsistence allowance shall be fixed at a flat rate of Kyat three *per diem*.

(ii) Civil prisoners not included in the Special Division shall be classified in the Ordinary Division. For such prisoners the rate of subsistence allowance shall be fixed at a flat rate of Kyat 1.50 *per diem*.

277. When a civil prisoner is kept in confinement at the instance of more than one decree-holder he shall only receive the same allowance for his subsistence as if he were detained in confinement upon the application of one decree-holder. Each decree-holder shall, however, pay the full allowance for subsistence, and when the debtor is released, the balance shall be divided rateably among the decree-holders and paid to them. [See Order XXI, Rule 39(2).]

58. **278.** A person who is committed to prison in execution of a decree for the payment of a sum of money exceeding K 50 must be committed for six months; in the case of a decree for the payment of K 50 or less, for specific moveable property, for specific performance, or for an injunction, the period for which he must be committed is six weeks.

* Judicial Department Notification No. 62. dated the 7th March 1932.

The Court has no power to commit a person for a shorter period than six months or six weeks, as the case may be; but he must be released before the expiration of the period if the decree is satisfied, or if the decree-holder asks for his release or fails to pay the subsistence allowance due.

Note: The cost of clothing and bedding is not "subsistence allowance" as contemplated in section 58, Civil Procedure Code.

279. The President of the Union * has appointed the places shewn in the first column of the subjoined statement for the detention of persons ordered to be detained by the Courts situated in the districts or parts of districts shewn in the second column against such places, and has directed that all such persons if liable to detention for a period exceeding six weeks shall be transferred to such place on the expiry of one month under detention.

Those liable to detention for a period of six weeks or less should be detained in the civil prison of the district in which the Court ordering the detention is situate or in the civil prison nearest thereto.

<i>Place of confinement.</i>	<i>District or part of District.</i>
Akyab Jail . . .	Aklyab District. Hill District of Arakan. Kyaukpyu District. Sandoway District.
Rangoon Jail . . .	Rangoon Town District. Insein District. Hanthawaddy District Tharrawaddy District. Pegu District. Paungdè Subdivision of the Prome District.
Bassein Jail . . .	Bassein District. Myaungmya District.
Henzada Jail . . .	Henzada District. Maubin District. Pyapôn District.

* Judicial Department Notification No. 193, dated the 7th October 1922.

<i>Place of confinement.</i>	<i>District or part of District.</i>
Thayetmyo Jail . . .	Thayetmyo District. Prome District (excluding Paungdè Subdivision) Magwe District. Minbu District.
Moulmein Jail . . .	Amherst District. Tavoy District. Mergui District. Thatôn District.
Toungoo Jail	Toungoo District. Salween District. Meiktila District. Yemèthin District.
Mandalay Jail . . .	Mandalay District. Pakôkku District. Bhamo District. Myitkyina District. Putao District. Katha District. Shwebo District. Sagaing District. Lower Chindwin District. Upper Chindwin District. Chin Hills District. Kyauksè District. Myingyan District. Southern Shan States. Northern Shan States.

- (2) 280. In exercise of the power conferred by sub-section (2) of section 55 of the Code, the President of the Union has directed that before a warrant is issued by a Civil Court for the arrest of a railway servant of any of the classes specified in column 1 of the subjoined list, within the area noted in column 3, seven clear days' notice shall be given to the superior officer as shown in column 2: *

Provided that such arrest shall be effected within five days of the expiry of the notice, failing which a fresh notice of the arrest shall be issued.

List of Railway Servants and their Superior Officers in the Traffic, Locomotive and Engineering Departments

Class of Servants. (1)	Superior Officer to be advised and Headquarters. (2)	Extent of Jurisdiction. (3)
TRAFFIC DEPARTMENT.		
Ballast Train Inspectors Bhisties Booking Clerks Brakesmen Carpenters Cash Verifiers Conductors Coolies Cranemen Crane Porters Durwans Gardeners Gatemmen	District Traffic Superintendent, Rangoon. <i>Headquarters, Rangoon.</i> District Traffic Superintendent, Irrawaddy. <i>Headquarters, Rangoon.</i>	Insein D.O.S. to Thingangyun D.O.S., including the Suburban Stations of Latter Street, Keighley Street and Botataung. Prome to D.O.S., Insein and Letpadan to Tharrawaw (inclusive).

* Judicial Department Notification No. 14, dated the 17th January 1912, as amended by Judicial Department Notification No. 94, dated the 12th June 1913 and No. 110, dated the 22nd June 1938.

NOTE: D.O.S. = Down Outer Signal.

List of Railway Servants and their Superior Officers in the Traffic, Locomotive and Engineering Departments - contd.

Class of Servants. (1)	Superior Officer to be advised and Headquarters. (2)	Extent of Jurisdiction. (3)
	TRAFFIC DEPARTMENT.	
Goods Clerks Goods Supervisors Guards Jemadars Lampmen Luggage Clerks Number Taker Parcel Clerks Peons Platform Inspectors Pointsmen Porters Running Room Bearers Running Room Call Boys Running Room Cooks Running Room Dhobies Shunting Porters Signallers Signalmen Station Clerks Station Masters (Assistant) Station Masters Telegraph Peons Ticket Collectors Tinsmiths Traffic Inspectors Travelling Ticket Examiners. Travelling Ticket Inspectors. Trollymen Sweepers Weighment Inspectors Yard Foremen	District Traffic Superintendent. Henzada. <i>Headquarters, Henzada.</i> District Traffic Superintendent, Toungoo. <i>Headquarters, Toungoo.</i> District Traffic Superintendent, Mandalay. <i>Headquarters, Mandalay.</i> District Traffic Superintendent, Ywataung. <i>Headquarters, Ywataung.</i> Assistant Traffic Superintendent, Kyaikto. <i>Headquarters, Kyaikto.</i> Assistant Traffic Superintendent, Maymyo. <i>Headquarters, Maymyo.</i>	Bassein to Tharrawaw Shore (including Ferry) and Henzada to Kyan-gin (inclusive). D.O.S., Thingangyun to Hngetthaik and up to the U.O.S., Yamèthin. Yamèthin U.O.S. to Mandalay Shore (including Myingyan and Amarapura Shore Branches). Amarapura Shore to Myitkyina (including Alon and Katha Branches and Sagaing Ferry). North O.S. Pegu to Moulmein. Myohaung U.O.S. to Lashio.

NOTE: U.O.S. = Up Outer Signal.

List of Railway Servants and their Superior Officers in the Traffic, Locomotive and Engineering Departments - contd.

Class of Servants. (1)	Superior Officer to be advised and Headquarters. (2)	Extent of Jurisdiction. (3)
Ashpit Cleaners Bhisnes Blacksmiths Boilermakers Call Men (Call Boys) Carpenters Carriage Attendants Carriage Cleaners Carriage Examiners Carriage Inspectors Cleaners Clock Winders Crane Jemadars Drivers Fitters Fitter Coolies Firemen (First) Firemen (Second) Foremen Foremen (Assistant) Fuel Clerks (Fuel Issuers) Holders Lampmen Lifters Lighters Locomotive Inspectors Oilers Packers Painters Pointsmen Pumpmen Shed Jemadars Shunters Steampump Drivers Strikers Sweepers Tinsmiths Watch and Ward Staff Wheel Tappers Wood fuel Inspectors	LOCOMOTIVE DEPARTMENT.	
	District Loco. Superintendent, Lower District. <i>Headquarters, Rangoon..</i>	Prome South O.S. to U.O.S., Yamethin, Letpadan to Tharrawaw (inclusive) and Pegu-Moulmein Branch.
	District Loco. Superintendent, Delta District. <i>Headquarters, Hanzada.</i>	Tharrawaw (inclusive) to Kyangin and Bassein and Ferry.
	District Loco. Superintendent, Middle District. <i>Headquarters, Mandalay.</i>	Yamethin to Mandalay (including Myingyan, Lashio and Amarapura Shore Branches).
	District Loco. Superintendent, Upper District. <i>Headquarters, Ywataung.</i>	Sagaing to Myitkyina (including Alôn and Katha Branches and Sagaing Ferry).
	District Loco. Superintendent, Delta District. <i>Headquarters, Hanzada.</i>	Ferry.
Carpenters Coal Trimmers Donkeymen Ferry Commanders Ferry Engineers Firemen Fitters Helmsmen		

List of Railway Servants and their Superior Officers in the Traffic, Locomotive and Engineering Departments - conclud.

Class of Servants. (1)	Superior Officer to be advised and Headquarters. (2)	Extent of Jurisdiction. (3)
	LOCOMOTIVE DEPARTMENT-conclud.	
Khalasies Lascars (First Class) Lascars (Second Class) Serangs Storemen Tindals	District Loco. Superintendent, Upper District. <i>Headquarters, Ywataung.</i>	Sagaing Ferry.
Workmen in Railway Shops.	District Loco. Superintendent, Upper District. <i>Headquarters, Ywataung.</i> Superintendent, Workshops, Insein and Carriage and Wagon Divisional Superintendent, Insein.	Ywataung Workshops. Insein Workshops.
	ENGINEERING DEPARTMENT.	
Blacksmiths Bellowsmen Carpenters Durwans	District Engineer, Rangoon. <i>Headquarters, Rangoon.</i>	Prome to Pegu South O.S. and Tharrawaw Branch up to North Points Tharrawaw Station; also Suburban lines but excluding the length between Pagoda Road and Pazundaung Stations, both inclusive.

List of Railway Servants and their Superior Officers in the Traffic, Locomotive and Engineering Departments - conold.

Class of Servants. (1)	Superior Officer to be advised and Headquarters. (2)	Extent of Jurisdiction. (3)
	ENGINEERING DEPARTMENT. conold.	
Gate-men	District Engineer, Works District. <i>Headquarters. Rangoon.</i>	The length between Pagoda Road and Pazundaung Stations, both stations inclusive.
Hammermen	District Engineer, Henzada. <i>Headquarters. Henzada.</i>	Tharrawaw North Points to Bassein and Henzada to Kyangin.
Masons	District Engineer, Toungoo. <i>Headquarters. Toungoo.</i>	Pegu South O.S. to North O.S., Yamethin and Pegu-Moulmein line.
Patrolmen	District Engineer, Mandalay. <i>Headquarters. Mandalay.</i>	North O.S. Yamethin to Mandalay and Amarapura Shore, Maymyo, Lashio and Thazi-Myingyan Branches.
Permanent-way Inspectors	District Engineer, Ywataung. <i>Headquarters. Ywataung.</i>	Amarapura Shore to Myitkyina (including Sagaing, Alôn and Katha Branches).
Signalmen or flagmen	District Engineer, Rangoon.	All parts of the railway where Signal Inspectors and Assistant Signal Inspectors are employed.

55(B) 281. In exercise of the power conferred by sub-section (2) of section 55 of the Code, the President of the Union has directed that before a warrant is issued by a Civil Court for the arrest of an employee of the offices noted below, and of a village headman, notice shall be given to the superior officer designated in column 2 of the sub-joined list for the period specified in column 3 of the list : -

Division or office to which the employee belongs. (1)	Superior officer to be advised. (2)	Period of notice. (3)
(1) * Upper and Lower Burma Division. Postal and Telegraph Department Akyab	Directors of Posts and Telecommunications.	Seven clear days.
(2) † High Court, Rangoon.	Do. Registrar, High Court, Rangoon.	Fourteen clear days. Seven days.
(3) ‡ Village Headman.	Township or Subdivisional Officer concerned.	Fourteen days.

Miscellaneous.

XXI. 26-29.
XLI. 5, 6.

282. Provisions regarding stay of execution are contained in Order XXI, Rules 26-29, which should be read with Order XLI, Rules 5 and 6.

XXI. 97-103.

283. Provisions regarding resistance to execution are contained in Order XXI, Rules 97-103.

* Judicial Department Notification No. 63, dated the 5th June 1923.

† Judicial Department Notification No. 229, dated the 17th August 1933.

‡ Judicial Department Notification No. 351, dated the 11th December 1930.

CHAPTER IX.

ARREST AND ATTACHMENT BEFORE JUDGMENT-INJUNCTIONS.

XXXVIII. **284.** Applications for arrest or attachment of property before judgment, and the connected papers, should not be filed in the records of the suits in which they are made, but as distinct miscellaneous cases, and should be registered in Civil Register III. A reference to the miscellaneous case should be noted on the fly-leaf of the suit record.

XXXIX, 1. An application for a Temporary Injunction under Order XXXIX, Rule 1, should however be filed in the record of the suit to which it relates.

XXXVIII,
5-12. **285.** Cases in which attachment before judgment may properly be allowed are rare. Judges should carefully study Order XXXVIII, Rules 5-12.

When an application for the attachment of property before judgment is filed, the Judge must take no action until he is satisfied by evidence on affidavit or taken orally by him-

(1) that the defendant is about to dispose of or remove his property or has himself left the jurisdiction of the Court, and

(2) that his *intention* in so doing is or was to obstruct or delay the execution of any decree that may be passed against him.

If it is proved that *both* these conditions are fulfilled, the Judge should issue a notice calling upon the defendant to furnish security or to show cause against doing so. An order for conditional attachment of the property may be passed at the same time, but this should only be done when the risk of the plaintiff's being defrauded is shown to be imminent. In any case the attachment must be removed if the required security is furnished.

Judges should not be satisfied with a bare statement by an applicant that a defendant has quitted the jurisdiction of the Court, or that he is about to dispose of property or remove it from the jurisdiction of the Court, with intent to obstruct or delay the execution of any decree that may be passed against him. They should fully and carefully examine the applicant and any witnesses he may produce with a view to ascertaining whether the facts justify a conclusion that the defendant has quitted the jurisdiction or that he is about to do one of the acts mentioned in Order XXXVIII, Rule 5, with the above intent; and in orders directing conditional attachment they should set out the facts which they consider justify such a conclusion.

The attention of all Judges is also drawn to the provisions of sections 60(i)(b) and 61 of the Code of Civil Procedure, and to the necessity for satisfying themselves before issue of attachment before judgment in suits against agriculturists for recovery of rent or agricultural loans that the property sought to be attached is such as may legally be attached and sold in execution of the decree that may be passed in the suit. It must also be noted that in such suits a Receiver cannot be appointed before judgment to take possession of property which is not the subject matter of the suit and which is exempted from attachment in execution of the decree which may be passed.

286. After judgment has been given in a suit in connection with which moveable property has been attached before judgment, no further fees for safe custody and no further payments on account of feeding and tending charges should be received by the Court, unless and until an application for execution has been admitted.

287. Order XXXVIII, Rule 12, prohibits the attachment before judgment of agricultural produce in the possession of an agriculturist.

XXXIX. 3.

288. The attention of Judges is drawn to the provisions of Rule 3 of Order XXXIX by which the Court is required before granting an injunction to direct notice to be given of the application to the opposite party, in all cases except where it appears that the object of granting the injunction would be defeated by the delay.

An interlocutory injunction should be granted *ex parte* only in very exceptional circumstances and, practically speaking, should never be granted unless the plaintiff establishes in a convincing manner that by no reasonable diligence on his part could he have avoided the necessity of applying behind the back of the defendant.

Such injunctions when granted at all should invariably be limited to hold good only until a specific and very early date, *i.e.*, a minimum time within which the defendant can come effectively before the Court, and the greatest care should be taken to state exactly what the acts forbidden are.

The granting of an *ex parte* injunction is a serious responsibility and a Judge who has granted such an injunction is under a duty to take the greatest pains to do everything possible to protect the absent defendant. Injunction matters should be dealt with, not merely without breach of the Rules of Order XXXIX, but in accordance with legal principles and common-sense.

CHAPTER X. COMMISSIONS.

XXVI, 5.

289. A commission for any purpose should in no circumstances

Expenses of Commission.

be issued until the party at whose instance the commission is issued has deposited with the

Bailiff a sum sufficient to cover the expenses of the commission.

XXVI,
19-26.

Rules 19-26 of Order XXVI, prescribe the fees to be allowed to Commissioners.

XXVI.

290. (1) When commissions are issued under Order XXVI,

Postage and Registration, and Money Order Commission.

all incidental charges such as those for postage and registration, should be paid as contingent charges of the Court by which they are

issued; and should not be demanded from the person at whose instance the commission is issued.

(2) The money order commission in respect of money remitted as expenses of a commission should not be borne by Government, but should be paid out of the sum deposited for the expenses of the commission under Order XXVI, Rule 15, Code of Civil Procedure, and paragraph 289. It follows that the sum so deposited should be sufficient to cover the money order commission as well as the other expenses of the commission. The whole of this sum should be deposited in Bailiff's Register II. When money is paid out of the deposit in payment of money order commission the sum so paid should be entered separately in column 12 of Bailiff's Register II, so as to distinguish the money order commission from the other expenses remitted by the money order.

291. A commissioner appointed under the Code of Civil Procedure to take evidence has all the powers under Chapter X of the Evidence Act to control the examination of witnesses. When such a Commission is issued to a foreign Court attention to the above powers of the Commissioner should be drawn by means of a note attached to the letter issuing the commission.

COMMISSIONS FOR LOCAL INVESTIGATION.

XXVI, 9.

292. The President of the Union has directed that when, in any suit or proceeding a local investigation for any of the purposes specified in Order XXVI, Rule 9, is deemed necessary, the Court shall, before issuing a commission to a Superintendent of Land Records, or to any officer subordinate to him, obtain the sanction of the Commissioner of Settlements and Land Records, Burma, through the Collector, to the appointment of the officer selected and to the receipt by him of fees for the execution of the commission. In forwarding applications for sanction to the appointment of officers of the Land Records Department as Commissioners to make partitions of estates, Judges should state clearly : -

(a) the area and situation of the land and whether it is inside supplementary survey or not;

(b) the probable duration of the duty; and

(c). the scale and kind of survey. *

The President of the Union has sanctioned a scale of fees to be paid to officers of the Land Records Department and the apportionment of such fees between the Land Records staff and Government, for undertaking surveys or effecting partitions for private persons or Courts, in the manner indicated in the Table below:-

Class of Officer.	Fee payable by party.				Amount credited to Government for each day inclusive of days spent in travelling.		Amount payable to officer for each day exclusive of days spent in travelling.	
	For each day of work.		For each day of travelling.					
(1)	(2)		(3)		(4)		(5)	
	K	P	K	P	K	P	K	P
Surveyor	10	00	3	50	3	50	6	50
Inspector	20	00	6	50	6	50	13	50
Extra Assistant	50	00	16	50	16	50	33	50
Superintendent of Land Records or Assistant Superintendent of Land Records								
Superintendent of Land Records.	100	00	33	50	33	50	66	50

In addition to these fees, travelling allowance at the ordinary rates will be charged and credited to Government for subsequent disbursement to the officer. The minimum fee will be the fee for one day of employment *plus* travelling allowance as and when earned. The fee for days of travelling is only admissible when more than one day is spent in proceeding to the site, doing the work and returning to headquarters.

COMMISSIONS FOR TAKING EVIDENCE OR ACCOUNTS.

293. Before issuing a commission the Court shall (a) call on the party at whose instance the commission is issued to supply an abstract of the pleadings and issues for the use of the Commissioner, and (b) after consulting the parties, to make an estimate of the duration of the examination of each witness.

* Judicial Department Notification No. 190, dated the 11th June 1934.

When the estimate is exceeded the Court may enquire into the cause of delay and disallow any charges of the Commissioner which it finds to be unreasonable, or make such other order in the matter of costs as may seem just.

CHAPTER XI.

PAUPER SUITS.

XXXIII,
1 - 5.

294. On receipt of a petition to sue *in forma pauperis* the petition should be registered in Register III, and the inquiry into pauperism should be treated as a miscellaneous case. If the petition is granted, the accompanying plaint should be removed from the miscellaneous case, and registered in Register I.

Procedure on petition
to sue *in forma pauperis*.

XXXIII,
2, 3.

295. The petition and plaint must contain all the particulars required in plaints in suits, must be signed and verified, and must be presented in person. A schedule of all the property of the petitioner, and the estimated value thereof, must be attached to the petition. The consequence of any failure to comply with the provisions of Rules 2 and 3 is that the petition must be rejected. Rejection for such cause is a bar to a subsequent petition.

Form and presentation
of petition.

296. Under Order XXXIII, Rule 7, at the conclusion of a pauper suit the Court is bound to make an order by its decree that the court fee prescribed for the plaint shall be paid to the Collector, and to forward a copy of this order to the Collector. If the Court fails to make the required order, the Collector may apply at any time to the Court for the order to be made. The order may direct that the court fee shall be paid by any party or parties to the suit, and in such proportion as the Court may deem just.

Recovery of Court fees.

This order may be executed by the Collector. The Court must also order the court fee to be paid to the Collector out of any money or other property held or recovered by the Court on behalf of the party or parties ordered to pay the court fee.

GOVERNMENT PLEADERS.

297. x x x x x x x x x x x x x x x x x x x x x x
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(See CHAPTER XXVI)

CHAPTER XII.

SUITS BY OR AGAINST GOVERNMENT.

Suits by or against Government or Public Officers.

XXVII. 298. Rules for the conduct of suits by or against Government or Public Officers are contained in Government Circular No. 74 of 1910.

The provisions of section 80 of the Code of Civil Procedure regarding the necessity for notice to a public officer against whom a suit is to be filed in respect of any act purporting to be done by him in his official capacity should not be overlooked.

* Ministry of Judicial Affairs, General Branch Notification No. 61, dated the 23rd April 1948.

299. x x x x x x x x x x x x x x x x x x x x / x
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(See CHAPTER XXVI)

CHAPTER XIII

APPEAL, REFERENCE AND REVISION.

Appeals and Revisions.

300. Ordinarily no application for revision of the order of a
 Limitation of Revision Court other than the Rangoon City Civil Court,
 Applications. filed more than ninety days or of the order
 of the Rangoon City Civil Court, filed more than thirty days, after
 the date of the last order complained of will be considered, unless it
 is accompanied by an explanation of the delay and the necessary af-
 fidavits.

301. Parties are often ignorant of what copies are required,
 Copies required in and in order to save them from needless trou-
 Appeals and Revisions. ble and expense, the copying department of
 every Court should be directed to let appellants and applicants for
 revision know of what documents a copy is necessary for the pur-
 pose in view.

* Ministry of Judicial Affairs, Judicial I Branch Notification No. 200, dated the 24th May 1955.

The documents are -

For First Appeal.

XLI. 1.

- (1) A copy of the decree appealed against, that is, the decree of the Court of First Instance. This is indispensable.
- (2) A copy of the judgment on which that decree is founded that is, a copy of the judgment of the First Appellate Court. This can only be dispensed with by the Court of Second Appeal, that is, by the High Court.
- (3) A copy of the judgment of the Court of First Instance, unless dispensed with by the High Court.

302. When an application for copy of judgment and decree is received the officer entertaining the application should ascertain whether the copies are required for the purposes of appeal to the High Court; and, if so, should bring the fact to the notice of the presiding Judge of the Court.

Transmission of record
when appeal is to High
Court.

After the copies have been supplied the Judge should direct the early transmission to the High Court of the record of his proceedings, together with the proceedings of the Court of First Instance, under cover of a proceeding, reporting why the records are transmitted. Before transmitting the records the Judge should cause copies of the decree or decrees to be made and retained in his Court in case application may be made for execution of decree.

303. When proceedings are submitted to an Appellate Court the original documents produced by the parties in the Court of First Instance should ordinarily, and in the absence of special reasons to the contrary, be forwarded at the same time.

Original Documents to
be submitted.

This is particularly necessary when any question has been raised as to the genuineness of a document. The Head Clerk should be made responsible for seeing before the despatch of proceedings that all documentary evidence that ought to be on the record is complete and corresponds with the prescribed list.

304. All Judges when sending up cases called for by the High Court, either in appeal or revision, shall see that the records are forwarded under cover of Form Civil 126, which should contain particulars as to the numbers of the cases and the names of the parties, as detailed in the order calling for records.

305. At the first hearing for admission of an appeal from the decree of a Court of First Instance, the Appellate Court should lay down distinctly any points, the determination of which is, in its opinion, necessary for the right adjudication of the cause, and which have been omitted from the grounds of appeal. If any additional points are thus determined, the Court should state them to the parties or their pleaders, who should be allowed to suggest any further points, which the Court should either adopt or record its reasons for refusing to adopt. If at the actual hearing of the appeal any further point should appear necessary, the Court should lay it down, stating its reasons for this course.

XLI, 24. The provisions of Order XLI, Rule 24, which allow, in proper cases, any Appellate Court to resettle the issues framed in the Court of First Instance, should not be overlooked.

XLI, 31. **306.** (1) When a Court of first Appeal upholds the decision of the trying Court on a question of fact if there was evidence to support it that decision becomes final and it cannot be called in question in second appeal. Consequently the responsibility which rests on the first Appellate Court is equally heavy whether it affirms or reverses the decision of the Court of first instance. Therefore, in either case, the judgment of the Appellate Court should contain such discussion of the evidence as the nature of the case requires and should be such as to show that the Judge has given careful and intelligent consideration to the evidence and has arrived at a decision for himself and not merely accepted that of the trying Court. It is not enough to say merely that the Judge agrees with the finding of the Court below or sees no reason to differ from it. On the other hand it is not always necessary to discuss the evidence in close detail or to refer to every item of it, and what is required in a judgment must inevitably depend on the circumstances of the particular case.

But genearily speaking, the judgment should contain enough to show that the Judge has himself given due consideration to the evidence on the record.

XLI, 11. (2) The above applies as much to a judgment dismissing an appeal under Order XLI, Rule 11, as to one given after a hearing of both parties.

XLI, 31. (3) Where the decree appealed from is reversed or varied, the judgment must state specifically the relief to which the appellant is entitled.

When the appeal is dismissed it is not necessary to say any more (except as regards costs), for the decree of the Lower Court is confirmed. But if the appeal is allowed, whether wholly or in part, it is obviously necessary to say what the final decree in the case is to be. Where, for instance, the plaintiff has succeeded in the lower Court and this decision is reversed, the appellate judgment should say that the appeal is *allowed*, the judgment and decree of the Lower Court are set aside and the plaintiff's suit is dismissed with costs in both Courts. Again, if the suit has been dismissed by the trying Court and this decision is reversed, it is necessary to say in the appellate judgment what decree is granted to the plaintiff.

XLI, 24. 307. District Judges are reminded that, when the judgment of the Lower Court has been confirmed, varied or reversed, as much care must be taken in drafting the *decree* as in original cases; and that, in such cases, the decree should be drafted so as to contain in itself (without cross-references to other portions of the record) a complete and detailed definition of the mutual rights of the contesting parties.

308. In order that the Judge, who decided a suit or first appeal, may have an opportunity of seeing the judgment passed by the High Court in appeal or revision from his decision and may derive benefit from any criticisms which may have been made, a copy of the judgment of the High Court in all civil appeals and revisions, where the appeal or application is not summarily dismissed but is dealt with on its merits, will, immediately after its delivery, be sent by name to the Judge or Additional Judge of the District Court who passed the Judgment appealed against; that is, in the case of the first appeals it will be sent to the Judge who tried the original suit, and in the case of second appeals and revisions it will be sent to the Judge who heard the first appeal.

Supply of copies of appellate judgments passed by the High Court to the Judges who passed the Judgments appealed against.

This order will not apply to revisions under section 25 of the Burma Small Cause Courts Act.

Judges and Additional Judges of District Courts should maintain personal files of all such copies of the decisions of the High Court, which are sent to them, for their perusal and guidance in the trial of future cases.

References.

- 113, XLVI. **309.** Whenever a question is referred under section 113 and
 Reference under section Order XLVI, the Court referring the point shall,
 113. together with the statement of the point as to
 which it is in doubt and the Court's own opinion, forward the record
 of the case and all the proceedings connected therewith.

CHAPTER XIV.

PROCEDURE UNDER SPECIAL ENACTMENTS.

1. Specific Relief Act.

21. **310.** The attention of the civil Courts is drawn to the provisions of section 21 as amended of the Specific Relief Act, which forbids the specific enforcement of a contract for a reference to arbitration in the following terms:-

"Save as provided by the Arbitration Act, 1944, no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit."

42. **311.** Attention is invited to the provisions of the proviso to section 42 of the Specific Relief Act, regarding declaratory suits. The proviso does not apply to suits brought under Rule 63 of Order XXI of the Civil Procedure Code.

2. Transfer of Property Act.

312. (a) The following Table gives the dates on which the various sections of the Transfer of Property Act were brought into force in different parts of Burma:-

No. (1)	Dates and Notifications. (2)	Sections of the Act. (3)	Area. (4)
1.	1-1-1893, <i>vide</i> J. D. Notification No. 237, dated 20 th June 1892.	The whole	Area included within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon.
2.	1-1-05, <i>vide</i> J. D. Notification No. 339, dated 30 th September 1904.	The whole	Area included within the limits of Rangoon Town as from time to time defined for the purpose of the Lower Burma Courts Act, 1900, under the power conferred by section 2, clause (d) of that Act.
3.	1-1-05, <i>vide</i> J. D. Notification No. 387, dated 1 st November 1904.	(a) The whole	Areas included within the local limits of the Municipalities of Moulmein, Bassein and Akyab.
4.	1-1-05, <i>vide</i> J. D. Notification No. 387, dated 1 st November 1904.	(b) Sections 54, 59, 107, 117, 118 and 123.	Whole of Lower Burma except the areas excluded from time to time from the operation of the (Indian) Registration Act, 1877.
5.	<i>Vide</i> Section 29, Cantonment Act, 1910.	Section 54, paragraphs 2 and 3, and sections 59, 107 and 123.	Every Cantonment in British (India) with respect to transfer of property by registered instrument.

No.	Dates and Notifications.	Sections of the Act.	Area.
(1)	(2)	(3)	(4)
1.	1-9-14, <i>vide</i> J. D. Notification No. 100, dated 20 th June 1914.	Sections 54, 59, 107, 117, 118 and 123.	Whole of Upper Burma except the areas from time to time excluded from the operation of the (India) Registration Act, 1908.
7.	1-1-1922, <i>vide</i> J. D. Notification No. 200, dated 15 th December 1920.	The whole	Whole of Burma except:- (i) The Northern Shan States; (ii) The Southern Shan States; (iii) The Chin Hills; (iv) The Kachin Hill Tracts; (v) The Arakan Hill Tracts; (vi) The Victoria Point Subdivision and the Bôkpyin Township of the Megui District; (vii) The Leiktho Town- ship and the Tabye and Mabalan circles of the Tantabin Township of the Toungoo District; (viii) The Gangaw Sub- division and the Saw Township of the Pakokku District; (ix) Such parts of the Ngape, Salin and Sidôktaya Town- ships of the Minbu District as are not under supplemen- tary survey; (x) The Bhamo District, except the Municipality and Cantonment of Bhamo and the town of Shwegu;

No.	Dates and Notifications.	Sections of the Act.	Area.
(1)	(2)	(3)	(4)
7.	1-1-1922, <i>vide</i> J.D. Notification No. 200, dated 15 th December 1920.	The whole	Whole of Burma except:- (xi) The Myitkyina District except (a) the town of Myitkyina (b) the village-tract of Rampu, Okkyin, Tatkon and Sitapur of the Myitkyina Township, and (c) the Mogaung Township; (xii) The Pinlebu and Banmauk Townships of the Katha District; (xiii) The Tagaung Township of the Ruby Mines District except the village-tracts of Inywa, (East), Tonge, Maugan-Ngapichaung, Kyetta-gaung Tagaung, Kanni, Shwe-o-ya, Satkya Sinnyat, Aungtha, Magyigôn, Myadaung, Yayin and Tawya; (xiv) The Shwedwin, Mansein and Yebawmi village-tracts of the Maingkaing Township of the Upper Chindwin District; (xv) The Yeyaman tracts of the Kyaukse District, the boundaries of which are described below:-

No. (1)	Dates and Notifications. (2)	Sections of the Act. (3)	Area. (4)
7.	1-1-1922, <i>vide</i> J.D. Notification No. 200, dated 15 th December 1920 -contd.	The whole	Whole of Burma except:- <i>North</i>:-From the south-eastern corner of Mithwebök East <i>kwin</i>, No. 51A, along the Myitnge or Namtu River till it reaches the base of the Twaktuhill. <i>East</i>:-Thence along the summits of Tawing-ma, Twantaw-se and Loipantang to the summit of the Hpatumong hills. <i>South</i>:-Thence along the summits of the Yenge, Shanmango, Sisi, Mogatkyi, Mogatkale, and Wetyök hills to Wetlu-daung; thence in a westerly direction to the point where the Leikthuko <i>chaung</i> meets the north-western boundary of the Baw State. <i>West</i>:-Thence along the eastern boundaries of the Kyaukse and Singaing Townships. (xvi) The hill-tracts of the Meiktila District situated to the east of the boundary described below:-

No. (1)	Dates and Notifications. (2)	Sections of the Act. (3)	Area. (4)
7.	1-1-1922, <i>vide</i> J.D. Notification No. 200, dated 15 th December 1920 – contd.	The whole	Whole of Burma except:- - A line starting from a point situated on the eastern boundary of the Meiktila District about one and a quarter mile north of trigonometrical station and also situated on the eastern boundary of the Sindaung reserved forest and thence running southwards along the eastern boundaries of the Sindaung and Yupadaung reserved forests to a point on the south-east corner of the latter reserved forest; thence a straight line running eastwards to the north-west corner of the Yebokson reserved forest; thence a line running eastwards about three and a half miles along the northern boundary of the said reserved forest to a point about half a mile north-west of Yebokson village; thence a straight line running eastwards to the south-west corner of the Kubyin reserved forest; thence a line running along the southern boundary of the last mentioned reserve forest to a point opposite furlong post 34/5 on the Thazi-Taunggyi Public Works Department Road; and thence a line running south-eastwards up the Kywemasa stream to the southern boundary of the Meiktila District.

No. (1)	Dates and Notifications. (2)	Sections of the Act. (3)	Area. (4)
7.	1-1-1922, <i>vide</i> J.D. Notification No. 200, dated 15 th December 1920 —concl'd.	The Whole	Whole of Burma except:- (xvii) The hill-tracts of the Yamèthin District, situated to the east of the boundary described below:- From the point of contact of the eastern boundary of the Twinywa village-tract with the boundary between the Yamèthin and Meiktila Districts, a line along that village- tract boundary; thence along the eastern boundaries of Pinthaung, Kontha, Shwenyaung- bu, Dahatkôn, Wagon, Nanlon, Tanaunggon, Kanbu, Pawthwè, Theingon, Paukkaing, Myinna, Pyinbya, Indaing, Bwet, Sigon, Kanyogyi, Zigon, Chinzu Th. itseinbin, Nyaunggon, Natma, Kundaw, Natkin Kangyi Kyatpye, Thayetok, Magyigon, Kangon, Thabyegon,

No. (1)	Dates and Notifications. (2)	Sections of the Act. (3)	Area. (4)
7.	1-1-1922, <i>vide</i> J.D. Notification No. 200, dated 15 th December 1920 —concl'd.	The whole	Whole of Burma except:- (xvii) Zigon, Zayatkyi-gon, Shwemyo, Thabye- chaung, Kyauk-kwet, Pogun, Tegon, Mayin-gyi, Nan-aw, Yezin, Chaungbya Ma-u-daw, Zibyu- gon, Kyaukpon, Shanzu, Kyidaung, Nattaw-aing, We-gyi, Kado-zeik, Sebyubin and Kungyan village- tracts to a point where the eastern boundary of the latter strikes the left of the Sittang River; thence the left bank of the Sittang River southwards to the north-western boundary of the Thit- sin village-tract; thence the northern boundary of the Thit- sin and Thitkyein village-tracts to the point where it meets the boundary between the Yamèthin and Toungoo Districts. (xviii) The Putao District.
8.	22-12-1924, <i>vide</i> J.D. Notification No. 216, dated 22 nd December 1924.	The whole	Whole of Burma except:- (i) The Northern Shan States; (ii) The Southern Shan States; (iii) The Chin Hill Tracts;

No. (1)	Dates and Notifications. (2)	Sections of the Act. (3)	Area. (4)
8.	22-12-1924, <i>vide</i> J.D. Notification No.216, dated 22 nd December 1924- conclud.	The whole	Whole of Burma except:- (iv) The Kachin Hill Tracts; (v) The Arakan Hill Tracts; (vi) The Victoria Point Subdivision and the Bôkpyin Town-ship of the Mergui District; (vii) The Leiktho Town-ship and the Tabye and Mabalán Circles of the Tantabin Township of the Toungoo District; (viii) The Gangaw Subdivision and the Saw Township of the Pakôkku District; (ix) Such parts of the Ngape, Salin and Sidoktaya Town-ships of the Minbu District as are not under supplementary survey; (x) The Bhamo District, except the Municipality and Cantonment of Bhamo and the town of Shwegu; (xi) The Myitkyina District, except (a) the town of Myit-kyina, (b) the village-tracts of Rampur, Okkyin, Tatkon and Sitapur of the Myitkyina Township and (c) the Mogaung Town-ship; (xii) The Pinlèbu and Banmauk Townships of the Katha District other than the areas under supplementary survey in the said townships;

No.	Dates and Notifications.	Sectoins of the Act.	Area.
(1)	(2)	(3)	(4)
8.	22-12-1924, <i>vide</i> J.D. Notification No. 216, dated 22 nd December 1924 - conclud.	The whole	Whole of Burma except:- (xiii) The Tagaung Township of the Ruby Mines District except the village-tracts of Inywa (East), Tonge, Maugan Ngapi-Chaung, Kyettagaung, Tagaung, Kanni, Shwe-o-ya, Sinnyat, Aungtha, Magyigon, Myadaung, Yayin and Tawya; (xiv) The Shwedwin, Mansein and Yebawmi village-tracts of the Maingkaing Township fo the Upper Chindwin District; (xv) The areas east of the Rangoon-Mandalay Railway line in the Kyauksè, Meiktila and Yamèthin Districts which are not under supplementary survey except the village-tracts of Indiangtha, Kywedatson, Tagundaing, Pyinnyaung, Lèbyin, Tidwin, Myindaik and Kanbain in the Meiktila District. (xvi) The Putao District. The Putao District.
9.	20-5-1925, <i>vide</i> J.D. Notification No. 73, dated 20 th May 1925.	The Whole	

(b) The provisions of the Act, particularly as to the methods whereby sales, mortgages, leases, exchanges, and gifts of immoveable property must be effected, should be carefully studied.

313. Special attention is drawn to Order XXXIV of the Civil Procedure Code, as amended by the Transfer of Property (Amendment) Supplementary Act, XXI. of 1929. This Order, which prescribes the procedure in suits on mortgages, is applicable to all Civil Courts whether the Transfer of Property Act has been extended to the areas of their jurisdiction or not. Even where the Transfer of Property Act is not wholly in force, Courts should, for the sake of uniformity, be guided as far as may be by the provisions of sections 83 and 84 of that Act regarding the deposit of money due on mortgages.

Section 148 of the Civil Procedure Code, by which a Court is given direction to enlarge the time granted for the performance of any act, has special reference to suits on mortgages.

314. The difference between usufructuary mortgages, which are so common in this country, and other mortgages should be carefully noted. A usufructuary mortgagee as such cannot generally institute a suit for foreclosure or sale.

315. The following rules have been made for carrying out the provisions of Chapter IV of the Act in the High Court, Rangoon and in Civil Courts subordinate to it in places to which the Act has been extended * :-

Rules

(1) In these rules-

"the Act" means the Transfer of Property Act, as amended from time to time;

* Notification No. 5 (General), dated the 18th December 1922.

"mortgagor" includes every person entitled to redeem a mortgage;

"mortgagee" includes every person entitled to the benefits and remedies of the holder of a mortgage security.

(2) Every deposit under section 83 of the Act shall be accompanied by a petition stating the facts in connection with the mortgage, and the amount due for principal and interest. The petition shall be verified in the manner prescribed by the Code of Civil Procedure for verification of plants.

(3) Unless otherwise ordered, there shall be paid into Court, in addition to the sum deposited under section 83 or any subsequent section, a sum sufficient to provide for the issue and service of notices by the Court and for the mortgagee's costs of obtaining payment out of Court; and also when such payment is made under section 83, and a retransfer of the property is required, a further sum to provide for the mortgagee's costs of transferring the property, and causing such transfer to be registered.

(4) Every order for payment of money into Court, under section 83 of the Act, shall specify the sums to be paid and the purpose for which each sum is intended.

(5) The notice to be served, under section 83 of the Act shall be in Form Civil 151.

(6) Every notice directed by the Act or these rules to be served shall be served in one of the modes prescribed for service of summonses by Order V of the Code of Civil Procedure, or by sending it by registered post to the last known address of the person to be served.

(7) Where it shall appear that, previous to any payment into Court under section 83, a sufficient tender was made to, and refused by, the mortgagee, he shall not be allowed to obtain payment of the amount deposited in Court to meet his claim without deduction of the fees and charges which the mortgagor may have incurred by reason of his payment of the money into Court, nor shall he be allowed, the costs of drawing out the money paid in. Except as aforesaid, or when otherwise ordered, the mortgagee shall be allowed all costs properly incurred by him.

(8) On an application for payment of money out of Court, under section 83, by a mortgage who has complied with the orders of the Court and the provisions of the Act and of the rules made in this behalf, so far as they relate to him, or apply to his case, and who has, when required so to do, transferred the property and possession free from encumbrances, and caused such transfer to be registered, and has accounted for the documents of title which were held by him, the Court shall make such orders as to it shall seem fit for the disposal of the capital sum and interest thereon, and of the fund for costs and expenses.

(9) Every enforceable order made under section 83 may be enforced under the provisions of the Code of Civil Procedure, and shall for that purpose be deemed to have been made in a suit instituted under that Code.

3. Burma Small Cause Courts. Act.

316 to 321. x x x x x x x x x x x x x x x x x x x

x x x x x x x x x x x x x x x x x x x x x x x

(Repeal by Law No 13/74)

4. Land Acquisition Act.

322. In the absence of rules framed under section 55 of the Land Acquisition Act on the subject of appeals Collector refusing to make reference to the Court from the orders of a Collector or regarding revisions of such orders, if a Collector wrongly refuses to make a reference under section 18 of the Act, or passes any other order in the course of his proceedings which a party may

wish to appeal against, there is no authority to whom the party can make application unless it be to a superior executive or revenue officer.

323. When a reference is made to the Court under section 19 of the Land Acquisition Act, the proceedings before Court. in the Court are intended to constitute a separate inquiry and must terminate with a specific award. A mere dismissal of the application is not contemplated by the Act.

324. Proceedings before the Court under section 22 of the Land Acquisition Act are not a continuation of the administrative proceedings before the Collector, but are judicial. The decision therein must therefore be based solely on evidence before the Court or on admission by the parties.

It is compulsory for the Judge to take into consideration the matters referred to in section 23 of the Act and to allow compensation for such of them as are admitted or proved to exist.

325. Attention is drawn section 51, which is as follows:-

No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming Remission of Stamp Duty. under any such award or agreement shall be liable to pay any fee for a copy of the same.

326. The following instructions have been issued as to the disposal of monies paid into Court under sections 31 and 33 of the Land Acquisition Act * :-

(1) Every sum received from the Deputy Commissioner under section 31, sub-section (2), of the Land Disposal of Monies paid into Court. Acquisition Act shall be treated as a judicial deposit and shall be dealt with in conformity with the instructions relating to the keeping of Bailiff's Register I, save in respect of the matters dealt with below.

* See. - Direction 77, Financial Commissioner's Notification No. 150, dated 10th October 1907; Land Acquisition Manual, 1908, p. 23.

(2) Where the deposit is to be invested in the purchase of land under section 32, sub-section (1), clause (a), the purchase shall be effected under the Court's orders through the Deputy Commissioner or other Revenue authority of the district.

(3) Where the deposit is to be invested under section 32, sub-section (i), clause (b), or section 33 in Government or other approved securities, the purchase shall be effected through the Accountant-General, Burma, who will arrange for the safe custody of such securities.

In such cases the procedure laid down in Article 116 of the Civil Account Code, Volume I, shall be followed.

(4) Each item of deposit should be invested separately unless there be more than one item of deposit in favour of the same person, in which case the total amount deposited in his favour may be made the subject of one investment.

(5) The interest or other proceeds arising from either of the form of investment above mentioned shall similarly be treated as judicial deposits and similarly dealt with.

5. Burma Companies Act.

327. Rules framed under section 246 of the Burma Companies Act, were published at page 1023 *et sequi*, Part IV of the *Burma Gazette*, dated the 26th October 1940, and have been reproduced in the High Court Rules and Orders; but as they are not of general importance they have not been reproduced here.

6. Burma Succession Act.

328. The attention of Judges of District Courts is drawn to the
 Necessity for Probate, provisions of section 54 of the **Administra-**
 etc. **tor-General's Act**, of sections 253, 254 and
 269 of the **Burma Succession Act**, and of sections 20, 21 and 22 of
 the **Police Act**, regarding the procedure to be followed for the **Pro-**
tection of the Property of Deceased persons, subject to the **Burma**
Succession Act, dying within their jurisdiction.

In a case brought to notice, a portion of the effects of a deceased person, subject to the provisions of section 54 of the Administrator-General's Act, were allowed to be sent out of the country without grant of a probate, letters-of-administration, or certificate, and the present caution is therefore given to prevent the occurrence of similar irregularity.

329. The attention of District Courts is specially invited to Applicant to file a valuation of property. the provisions of section 19 I, of the Court Fees Act, which require the applicant for Probate of Letters-of-Administration to file a valuation of property in the form given in the Third Schedule of that Act. The form must be used as prescribed, with only such modifications as may be necessary. If the deceased was possessed of none of certain of the items entered in Annexure A, the word "none" should be entered opposite those items. If he was possessed of property not falling within any of those items, the property should be entered under an appropriate manuscript heading.

330. Proclamations by the District Magistrate issued under Proclamations under section 21 of the Police Act, which is the Act the Police Act. generally applied to the unclaimed estates of deceased Indians to whom the Burma Succession Act does not apply, need not be made outside the district in which the property is found.

331. Section 291 of the Succession Act *requires* security to Security. be taken from persons to whom Letters-of-Administration are granted, other than a grant under section 241 of the Act, and the District Judge *may* in his discretion demand a like bond from any person to whom probate is granted.

In a case brought to notice, in which Letters were granted without security being taken, the administrator absconded after misappropriating the property and the deceased's family were left without any effective remedy.

Generally speaking the practice should be to take a personal unregistered security bond from the surety or sureties after the fact that they are good for the amount required has been verified. If the Court learns later that one or all of the sureties are financially unsuitable, fresh security should be demanded from the administrator.

332. Section 19 I, clause (i), of the Court Fees Act, requires Court-fee on Probate or Letters-of-Administration. prepayment of the proper Court-fee before orders are passed granting Probate or Letters-of-Administration. The *ad valorem* Court-fee prescribed by Statute, which is payable in the form of an impressed stamp, if the duty is K10 or over, need not accompany the affidavit of valuation filed with the application, but should be provided when the Court has announced its intention of granting letters or probate. Such intention may be announced in an order to the following effect:-

Letters-of-Administration will be granted to
 on ^{his}~~her~~ furnishing security in K
 .. to the satisfaction of the Court, and depositing in Court within ..
days from this date of court-fee stamp sheet for K
 ... If the security is not furnished and the court-fee sheet is not
 deposited within the above period the application of
 will stand dismissed.

The rate at which the amount payable as Court-fees on Probate of a will is to be assessed must be calculated on the net value of the estate according to the scale laid down in Article 11 of the First Schedule to the Court Fees Act.

No court-fee can be levied for Probate or Letters-of-Administration when the net value does not exceed K 1,000.

333. All Probates and Letters-of-Administration issued by Courts should be engrossed or written upon the impressed stamp, filed in accordance with the procedure prescribed in the last preceding paragraph.

When however in any case the fee payable is less than K 10, the Probate or Letters should be written on stout plain paper of foolscap size, the adhesive court-fee stamp or stamps denoting the fee being affixed on the top of the paper.

334. Section 317 of the Burma Succession Act requires executors and administrators to file inventories within six months, and accounts within one year, from grants.

If an inventory and accounts are not filed within the above times, Inventories and Accounts. respectively, the Judge should of his own motion pass an order requiring the executor or administrator to file an inventory or accounts as the case may be, and cause such order to be served on the executor or administrator.

If this order is not obeyed, proceedings may be instituted be-

fore a Magistrate for the prosecution of the offender under section 176 of the Penal Code. The Probate or Letters-of-Administration may also be revoked under section 263 of the Burma Succession Act.

Upon the filing of an inventory the Judge should at once give notice by letter to the Collector of the date on which it was filed.

335. The following rules have been made by the President of the Union for the custody, preservation, and inspection of wills filed in District Courts * :-

1. All original wills presented to a District Judge in accordance with the provisions of section 276 of the Burma Succession Act shall, immediately upon the passing of the order granting Probate or Letters-of-Administration under sections 289 and 290, be committed to the care of the Head Judicial Clerk, or Chief Ministerial Officer of the Judge's Court, who shall be responsible for their safe custody.

2. The said Ministerial Officer shall, on the receipt of every original will, cause a copy of the same to be carefully entered in a register to be kept for that purpose and shall also cause to be prepared an alphabetical index, in which the name of the testator, etc., and the number and page of the register in which a copy of the will is entered, shall be recorded in the annexed form :-

Index to Wills.

Name of testator. (1)	Residence, etc. (2)	Number and year of register. (3)	Page. (4)

* Judicial Department Notification No. 106, dated the 4th March 1892.

3. The original wills shall be deposited in a fireproof safe which shall be kept in the office room of the Head Judicial Clerk or other Chief Ministerial Officer to whom the safe custody of the will may have been entrusted.

Where the Court has no iron safe the wills may be placed in a small block-tin box, the key of which shall remain with the Judge, and the District Registrar or, if there be no District Registrar, the Treasury Officer shall, if the Judge require him, lock up this box in his fireproof safe, giving it up to the Judge on his written demand from time to time.

4. Every inspection of original wills or the register thereof, as well as applications for copies of wills, shall be made within the hours fixed by the Judge, and published by a notification posted in a conspicuous place in the Court and shall be subject to the conditions contained in the rules next hereinafter following.

5. The inspection of an original will shall be allowed only on the written order of the Judge previously obtained, and shall take place in the presence of the Head Clerk, or other officer who may have charge of the same, and that officer shall be responsible that the will is not taken out of his sight during such inspection and also that no erasures or alterations are made in it.

6. Application for a copy of an original will shall be submitted to the Judge, and such copy shall only be granted subject to the conditions which attach to the inspection of original wills.

7. The following fees shall be levied in court-fee stamps for the inspections of wills, etc. :-

- (1) For the inspection of an original will - a court-fee stamp of the value of one kyat.
- (2) For the inspection of copy of a will in the register - a court-fee stamp of the value of 50 pyas.
- (3) For copies - the same fees as for inspection, in addition to the copying charges, which shall be at the usual rate obtaining in the Civil Courts, and shall be levied in the same way as such charges are levied in the Civil Courts.

8. All applications for copies or inspection of wills and registers of wills shall be entered in the register of applications for copies prescribed for the Court.

9. All wills now in any District Court shall be entered forthwith in the index prescribed by Rule 2 and copies of such wills shall be forthwith entered in chronological order in the register prescribed by Rule 2.

336. An Annual Return showing the duty levied on Probates, Letters-of-Administration, and Succession Certificates in the district for the year ending the 30th September, in Form Civil 11, should be submitted so as to reach the Registrar, High Court, by the 1st December of each year.

337. In exercise of the powers conferred by sections 223 and 236 of the Burma Succession Act, the President of the Union is pleased to make the following rules * :-

1. In these rules -

- (a) "Share capital" includes stock; and
- (b) "Trust business" means the business of acting as trustee under wills and settlements and as executor and administrator.

2. The conditions to be satisfied by a company in order to render it eligible for the grant of probate or letters-of-administration under the Burma Succession Act, shall be the following, namely:-

(1) The company shall be either-

- (a) a company formed and registered under the Burma Companies Act or under the Indian Companies Act, 1913, or under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882 or a company formed under any other Act of the Governor-General in Council or of the Indian Legislature, or

* Home Department Notification No. F.-349-32 - Judicial, dated the 17th January 1933, as amended by Notification No. F.-242-35 - Judicial, dated the 27th March 1935.

- (b) a company constituted under the law of the United Kingdom of Great Britain and Northern Ireland or any part thereof and having a place of business in India or Pakistan, or
 - (c) a company established by Royal Charter and having a place of business in India or Pakistan.
- (2) The company shall be a company empowered by its constitution to undertake trust business.
- (3) The company shall have a share capital for the time being subscribed of not less than -
- (a) K 10 lakhs in the case of a company of the description specified in sub-clause (a) of clause (1), and
 - (b) £ 100,000 in the case of a company of the description specified in sub-clause (b) of clause (1)
- of which at least one-half shall have been paid up in cash.

Provided that the President of the Union may exempt any company from the operation of this clause.

7. Administrator-General's and Official Trustee's Acts.

338. Rules under the abovementioned Acts have been framed by the Government and published in Judicial Department Notifications Nos. 50 and 51, dated the 1st April 1914; but as they are not of general importance have not been reproduced here.

8. Money Lenders Act, 1945.*

339. (1) With effect from the 3rd November, 1945, the Usurious Loans Act was repealed and sections 1, 2, 3, 10(1), 11(1), 12, 13, 14, 15, 16, 17 in so far as it relates to the provisions contained in sub-section (1) of section (15) and section 19 of the Money Lenders Act, 1945, came into force†.

* See *Burma Gazette* Part I, at page 285, dated the 27th April, 1946.

† See Notification No. 13 in the Commerce and Supplies Department, dated Simla 2nd November 1945, republished at page 288, *Burma Gazette*, Part I dated 27th April, 1946.

(2) Whereas under the Usurious Loans Act action by the Court was discretionary, the provisions of the Money Lenders Act, 1945, affecting the recovery of interest on loans advanced after the commencement of the Act are obligatory.

(2) 2. (3) The definition of the word "loan" should be carefully studied; it is more precise than that in section 2(2) of the Usurious Loans Act. In the new Act *sabape* and other transactions in goods are included in the definition, while certain important transactions are specifically excluded.

10. (4) Under the Money Lenders Act, 1945, the maximum
11. rates of interest legally recoverable on loans advanced after the com-
12. ing into force of the Act are twelve per cent per annum on secured
loans and eighteen per cent per annum on unsecured loans; agree-
13. ments to pay compound interest are void, and the total interest re-
coverable shall not exceed the principal.

(5) In respect of loans advanced before the Act came into force, in proceedings instituted before or after the commencement of the Act, Courts of first instance, Appeal and Revision, have power to reopen the accounts between the parties, go back to the original loan, and decide how much of any subsequent monies that passed or allowances that have been made shall be treated as interest, and relieve the debtor of all liability in respect of any interest so calculated as may exceed twelve per cent per annum in the case of a secured loan and eighteen per cent per annum in the case of an unsecured loan.

Provided that not more than six years has elapsed between such consolidation and the institution of the suit, and provided that the reopening of the accounts does not affect the decree of a Court in a previous suit.

Provided further that if anything has been paid or allowed in respect of interest in excess of the rates mentioned above, the creditor cannot be required to repay the amount so paid or allowed.

In the case of a mortgage, or pledge, or any security given or agreement made, in respect of the loan, the Court has power to set aside or revise the security given or agreement made, and further power to order the creditor to indemnify the debtor if the creditor has parted with the security.

(6) A District Court may exercise similar powers in Insolvency Cases, on an application by a creditor for admission of his debt in the schedule framed under section 33 of the Burma Insolvency Act.

14. (7) A debtor may deposit in Court any sum tendered as
 15. principal or interest, which the creditor refuses to accept, and the Act
 16. provides for the disposal of this money and the legal effect of the
 17. deposit. The taking of an incorrect or incomplete document as evidence of a loan makes such document void, and is punishable with fine. Molesting a debtor to recover a debt is a cognizable offence.

9. Burma Insolvency Act.

340. Statutory rules issued under the Burma Insolvency Act, Statutory Rules. are reproduced in Appendix II.

74. 341. The provisions of section 74, regarding summary administration of the insolvent's estate, when his Small insolvencies. property is not likely to exceed K 500 in value, should be invariably invoked in small insolvencies.

342. Section 27 of the Burma Insolvency Act directs the Court to specify in the order of adjudication "the Pendency of cases. period within which the debtor shall apply for his discharge": and section 43 (1) directs that "if the debtor does not apply for an order of discharge within the period specified by the Court the order of adjudication shall be annulled." Under section 33 of the same Act creditors should tender proof of their respective debts and the Court should frame a schedule of such creditors and debts.

An insolvency case in the District Court is therefore still pending until the Court has either annulled the adjudication or disposed of the application for discharge under section 41(2) of the Burma Insolvency Act.

4, 68. 343. There is a tendency, especially on the part of the public

Claim to property as a to regard possession of property by a Receiver
against the Receiver. in an insolvency case in the same light as an

attachment in an execution case, and to treat a subsequent inquiry on an application for removal of the Receiver from possession as an ordinary miscellaneous application for the removal of an attachment after decree. An application to decide a question of title to property arising from a Receiver having taken possession of the property falls under section 4 of the Burma Insolvency Act, and any decision on such application is final and binding for all purposes as between, on the one hand, the debtor and the debtor's estate and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them. Consequently the decision is in fact *res judicata*, and ordinarily no subsequent suit would lie to decide the question of title to such property. An inquiry, therefore, under section 4 of the Burma Insolvency Act is of much greater importance than a miscellaneous inquiry for removal of attachment under the Civil Procedure Code. The inquiry should be conducted and tried like a regular suit as it is in fact an action to establish the title to the property. There should be a proper statement of the claim and written statements by the respondent or respondents. Issues should be framed and the procedure should follow in general the lines of a regular suit. Such proceeding form part of the insolvency proceedings and should not be filed separately as separate proceedings.

20. 344. Where the debtor is the petitioner, and where property is

Interim Receiver. disclosed in the petition, an *interim* Receiver
should ordinarily be appointed at once to take

possession of the property. The Court should not wait until the debtor is adjudicated, but should appoint an *interim* Receiver as soon as the debtor files his petition disclosing the fact that he has property.

Where, however, a creditor is the petitioner an *interim* Receiver can only be appointed on the application of a creditor. Where the debtor is the petitioner, it will ordinarily not be possible to require the deposit of fees before the *interim* Receiver is appointed.

24. 345. When a debtor is examined under section 24 on the date fixed for hearing his petition, he should be examined as to his property and dealings under subsection (2) of section 24 in order that the Receiver may have early information on these points, and if any of the creditors wish to question the debtor thereon, they should be given an opportunity to cross examine the debtor on these points. But when sufficient *prima facie* information for this purpose has been obtained from the debtor, his detailed examination should be reserved until his application under section 41 for discharge is before the Court, when the matters referred to in section 42 will have to be considered and both the creditors and the Court will in most cases be in a better position to examine the debtor.

29. 346. When a defendant in a suit is adjudicated insolvent during the pendency of the suit, the proceedings in the suit should ordinarily be stayed. In any case in which the suit is one to establish a claim which in the insolvency would be a provable debt or liability, the correct course is to stay the suit and for the plaintiff to prove his claim in the insolvency, obtaining at the same time leave to prove for the costs incurred in the suit. The only cases in which suits should be allowed to go on against the insolvent or the Receiver are cases in which the insolvent has an interest of his own, or cases in which the plaintiff is insisting upon a right which is not a mere claim to a provable debt, *e.g.*, where the plaintiff is a mortgagee insisting upon his security. The principles upon which this section is based should be brought to the notice of all subordinate Courts.

33. 347. A schedule of creditors and the debts due to them must invariably be framed as soon as possible after debts have been proved. The framing of a schedule is obligatory under the Act, and failure to carry out the provisions of section 33 shows extremely bad administration on the part of the Judge conducting the case.

It is also important to notice that any creditor of the insolvent may, at any time before the discharge of the insolvent, prove his debt and apply to the Court for an order directing his name to be entered in the schedule under sub-section (3) of section 33. If a creditor makes such an application after the schedule has already been framed, the Court must issue notice to the Receiver, and also to the other creditors who have already proved their debts, and must fix a date for hearing any objections to the application.

42.

348. (1) Cases frequently arise in which an insolvent whose
Applications for discharge. assets are not equal to fifty pyas in the Kyats applies for discharge on the ground that his business has failed, or that his crops have been destroyed by flood, or for some other reason, and in such cases there is frequently no opposition to his application for discharge. In these cases, it is not usually necessary to undertake a detailed examination of the insolvent as to his method of conducting his business. The burden of proving that the insolvent's position has resulted from circumstances for which he cannot justly be held responsible is of course on the insolvent, but if he has not otherwise done anything for which his discharge might be refused, and if there is no opposition to his application for discharge, discharge may ordinarily be granted on the *prima facie* statement of the insolvent giving the reasons for his position.

(2) The Court should insist on the presentation of the application for discharge within the prescribed time. If at the time of considering the application for discharge it appears that there is still property to be realised, the discharge can, if necessary, be suspended.

53. 54.

349. When a Receiver has been appointed, he is the proper
Annulment of Transfers. person to make applications for annulment of transfers under sections 53 and 54. A creditor wishing to take action under either of these sections must first move the Receiver to take action, and if the latter refuses to do so, the former may then move the Court direct. Under no circumstances should the creditor be allowed to move the Court direct in the first instance.

56.

350. Frequently a creditor alleges that the insolvent has prop-

Taking possession of
property from a third
party.

erty which has not been disclosed and in such cases he sometimes moves the Receiver to take possession of the property from the possession of a third party. Sub-section (3) of section 56 lays down that where a Receiver is appointed the Court may remove the person in whose possession or custody any property is from the possession or custody thereof, provided that the Court may not remove from the possession or custody of property any person whom the insolvent has not a present right so to remove. Consequently, a Receiver should not act arbitrarily on the application of a creditor to take possession of property from a third party. When he receives such an application, he should refer the matter to the Court, and the Court must then decide the question whether the insolvent has the right to remove the person in possession. It should not order the Receiver to take possession until it has satisfied itself that the insolvent has a present right to remove the person in possession. Suspected collusion between a third party and the insolvent does not justify an arbitrary seizure of the property, either by the Receiver on his own authority, or under an order of the Court, and it is essential that in each case an inquiry as to the insolvent's present right to remove a third party from possession must first be held by the Court. If, owing to the delay which must necessarily be caused by holding such an inquiry, the property becomes incapable of seizure, the remedy lies in the prosecution of the insolvent under section 69.

59.

351. Sales by a Receiver in insolvency are not governed by

Sales.

the Civil Procedure Code, and formal proclamations of sale are unnecessary. Sales in insolvency proceedings can be conducted by the Receiver as private sales, and if a good offer is received there is no necessity to advertise the property, or to auction it. Subject to the general supervision of the Court, the Receiver has an unfettered discretion to accept any offer which he may consider to be to the advantage of the estate.

62, 63, 64.

352. In declaring *interim* dividends, a Receiver must retain sufficient money to meet the cases mentioned in section 62. Under section 64, before declaring a final dividend, notices in Form No. 15, must issue to the creditors who have not proved their debts.

Dividends.

69.

353. Whenever there appears to be sufficient proof that an insolvent has committed any of the offences described in section 69, a prosecution should invariably be instituted.

Prosecutions.

354. The remuneration of Receivers appointed in Insolvency cases is provided for in Rule 20 of the rules under the Act, which rules should invariably

Remuneration of Receivers.

be consulted before passing orders under the Act. In order to secure uniformity in the remuneration paid to Receivers in all districts, the following directions are issued for the observance of District Courts:-

(1) A Receiver appointed in an Insolvency case should ordinarily be paid a commission on the amount of the estate which he realizes, after deducting sums paid to secured creditors.

(2) The Receiver should also be paid a further commission on amounts distributed as dividends to unsecured creditors.

(3) The usual rate of commission is five per cent on amounts so realized and a further five per cent on amounts distributed as dividends.

The remuneration of the Receiver should ordinarily be at this rate in all cases, but if, owing to the peculiar circumstances of any case, the Judge thinks that the remuneration should be at some other rate, he may fix any other suitable rate for that particular case, but if he does so his reasons for departing from the usual rate of five per cent should be recorded in writing.

(4) When the Receiver realizes the security of a secured creditor the Judge may, for reasons to be recorded in writing, direct an additional remuneration to be paid to him, in the shape of a percentage on the amount so realized in cases where the Receiver has, independently of his work in connection with the general realization of the estate, done special work for the benefit of such secured creditor.

(5) All fees payable to a Receiver under Rule 20 and this paragraph shall be credited by him to Government through Bailiff's Register No. 1.

355. (1) The appointment of the Bailiff as Receiver in an Insolvency case is by an order in writing signed by the Court. Copies of the order sealed with the seal of the Court are served on the debtor and forwarded to the Bailiff, who should be supplied with a copy of each Insolvency petition in regard to which he is appointed as Receiver, and also a copy of the Court Schedule of creditors and debts when such Schedule has been framed under section 33 of the Act. The property of the insolvent thereupon vests in the Receiver. The court fixes the amount to be paid as remuneration for the services of the Bailiff as Receiver out of the assets of the insolvent.

(2) Each Bailiff who is called upon to act as a Receiver in Insolvency Cases should maintain the following books :-

- (1) Register of Insolvency Cases (Form Civil 7B).
- (2) Cash Book (Form Civil 178).
- (3) Ledger (Form Civil 179).
- (4) Bailiffs Register No. 1 for Insolvency Cases.

(3) Copies of the insolvency petitions presented to the Court under section 13 of the Burma Insolvency Act, when received by the Receiver, should be recorded in the Register of Insolvency Cases (Form Civil 7B) with particulars as required by the form.

(4) The fundamental Account is the *Cash Book* which is maintained in Form Civil 178. It should show in chronological order according to date all receipts and disbursements. On its receipt side should be shown all monies received for which the Receiver is required to give receipts ^{Judicial} ~~General~~ 27 under section 59 (b) of the Burma Insolvency Act, and which he should within 48 hours deposit in the Treasury as Civil Court deposits, except such amount as the Court may allow him to retain in his hands for emergent or contingent expenditure.

Every sum received in cash must be entered immediately in the cash received column, and when it is credited to the Treasury it must be entered in both the Treasury receipt column and the cash expenditure column. This procedure will enable separate balances to be made showing the cash in hand and the balance in the Treasury and there will be no difficulty in checking the cash in hand. All disbursements except emergent or contingent expenditure, are drawn from the Treasury under the Court's orders. In making disbursements he should draw up a voucher in Form T.F. No. 70 and hand it to the payee after it has been signed by the Judge. In fact, in regard to both receipt and disbursement, he must obey the ordinary rules contained in paragraphs 1032 - 1051.

The Cash Book should be balanced every day on which there are transactions, and the Cash Book should be checked and the cash balance verified once a month by the District Judge or by an Assistant Judge who has been invested with powers under the Burma Insolvency Act. The District Judge should perform the check himself, but if there is an Assistant Judge who exercises jurisdiction in insolvency cases, at the district headquarters the District Judge may by order delegate this duty to him. A yearly balance should also be entered up in Cash Book on the 30th September of each year showing the following particulars :-

- (i) Balance of previous year.
 - (ii) Total receipts.
 - (iii) Total amount of claims satisfied.
 - (iv) Other expenses, including commission.
 - (v) Balances carried forward.
- (5) The Ledger should be maintained in Form Civil 179.
 Ledger. It should be divided into cases and estates, each

one of which should get one or more pages in the ledger. Every item in the Cash Book should be carried forward to the Ledger, which should be written up from the Cash Book once a week.

The Ledger should be balanced on the 30th September each year, or earlier if an estate is closed before that date. The balance at the credit of each estate should be verified with the Bailiff's Register No. I, and a certificate to that effect recorded in the Ledger with the initials of the Bailiff. The Receiver should go through his accounts in October each year and transfer to the *lapsed deposit account*, - taking the Treasury Officer's signature in his Ledger - all sums which feel due for payment and could have been drawn by the persons concerned on or before the end of September *three years earlier, e.g.* in October 1953 he will transfer all such amounts which could have been drawn before the end of September 1950.

(6) The Bailiff should maintain a separate register in the form of Bailiff's Register No. I for insolvency cases, and on no account should any transaction relating to insolvency be entered in the general Bailiff's Register No. I. **Bailiff's Register No. I.** The receipts and payments appearing in the Cash Book should be recorded at once in this register, the receipts being recorded in chronological order and the payments against the respective receipts out of which they are made. This register should check with the Cash Book and the Ledger.

(7) In addition to the registers mentioned above, the **File of orders.** Bailiff Receiver should maintain an ordinary correspondence file for each insolvency case. In this file should be placed copies of the order appointing him as Receiver and other orders of the Court, copies of the reports of the Bailiff as Receiver in the case, copies of chalans and vouchers, and all other papers connected with the particular case.

356. Where an Official Receiver has been appointed under **Official Receivers.** section 57 of the Act, the above orders regarding the accounts of the Bailiff as Receiver in Insolvency cases, shall apply *mutatis mutandis* to the Official Receiver, who shall maintain exactly similar registers, accounts and records.

357. The accounts of the Bailiff as Receiver in Insolvency **Audit and Audit Fees.** cases or of the Official Receiver if there is one, will be audited either annually or biennially by the outside Audit Department of the Accountant-General's Office. The cost of the audit as fixed by Government shall be paid out of the respective estates.

10. Mussalman Wakf Act.

358. (1) In exercise of the powers conferred by section 1, sub-section (2) of the Mussalman Wakf Act, the President has directed that sections 2 to 13 of the Act shall come into force in the following districts with effect from the 1st August 1924 * ; -

(1) Rangoon Town District.	(4) Bassein District.
(2) Mandalay District.	(5) Akyab District.
(3) Amherst District.	(6) Prome District.

(2) In exercise of the powers conferred by section 2, clause (b) of the Mussalman Wakf Act, the President of the Union has designated the District Court, Hanthawaddy, as the Court for all purposes under the Act in all cases arising within the limits of the Ordinary Original Civil Jurisdiction of the High Court, Rangoon.†

(3) Rules under the Act have been framed and were published in Judicial Department Notification No. 241, dated the 12th September 1924 as amended by Miscellaneous Department Notification No. 35, dated the 14th October 1931 and Miscellaneous Department (Ministry of Education), Notification No. 6, dated the 9th January 1935.

11. Arbitration (Protocol and Convention) Act.

359. The following rules for the regulation of matters connected with proceedings in Courts subordinate to the High Court have been made under section 10 of the Arbitration (Protocol and Convention) Act * :-

Rules

1. All applications, affidavits and proceedings under

Title of applications, etc.	the Act shall be instituted in the matter of the Act and in the matter of the arbitration.

* Judicial Department Notification No. 178, dated the 22nd July 1924.

† Judicial Department Notification No. 179, dated the 22nd July 1924.

‡ High Court Notification No. 2 (General), dated the 19th January 1939.

2. Applications under section 3 of the Act shall be made in writing and shall be numbered and registered as miscellaneous proceedings.
3. The procedure in all proceedings under the Act shall be in accordance with the provisions of the Code of Civil Procedure.
4. Upon an application for stay of proceedings under section 3 of the Act being filed the Court shall direct notice to be given to the party or parties to the legal proceedings, other than the applicant, requiring him or them to show cause, within a time specified, why the order should not be made, unless the Court is satisfied that the object of the application would be defeated by the delay occasioned by such notice.
5. The party seeking to enforce a foreign award shall produce with his application :-
 - (a) the document specified in section 8(1) of the Act and, where such document is in a foreign language, a translation thereof into English certified in the manner prescribed by sub-section (2) of section 8;
 - (b) the original agreement for arbitration or an authenticated copy thereof and when the same is in a foreign language, a translation thereof into English certified in the manner prescribed by sub-section (2) of section 8 of the Act;
 - (c) an affidavit or affidavits showing that the award is a foreign award and that the conditions mentioned in sub-section (1) of section 7 or the Act are satisfied; and
 - (d) other necessary documents in support of his application.

6. If the application under section 5 of the Act be presented without the document specified in Rule 5 (a) above, it shall forthwith be returned to the party presenting it. If such application is unaccompanied by the documents specified in Rule 5 (b) and (c) above, the Court may allow a reasonable time within which such documents must be filed.

7. **The provisions of the Code of Civil Procedure relating to execution of decrees and orders shall, *mutatis mutandis*, be applicable to the execution of decrees and orders under the Act.**

8. **The fees in respect of proceedings under the Act shall be according to the scales of fees in force in civil Courts subordinate to the High Court, so far as the same are applicable.**

12. Arbitration Act, 1944.

360. **Section 89 and the Second Schedule of the Code of Civil Procedure and the Arbitration Act, 1899, have been repealed by the Arbitration Act, 1944, which is in force throughout the Union of Burma. Consequently all arbitrations must be conducted in accordance with the provisions of the Arbitration Act, 1944. See section 47.**

361. **Rules under section 44 of the Act have not yet been published by the High Court.**

362. **Arbitrator's fees for every effective meeting should not ordinarily exceed three gold mohurs for the first two hours and one gold mohur for each succeeding hour.**

အပိုင်း ၄

ရာဇဝတ်ကျင့်ထုံး

အနက်အဓိပ္ပာယ် ခွဲခြားရန် မလိုလျှင် “စစ်ဆေးစီရင်ခြင်း” ဟူသော စကားတွင် “စုံစမ်းစစ်ဆေးခြင်း” ဟူသော စကားပါဝင်သည်။ ထို့ပြင် “စစ်ဆေးစီရင်သည်” ဟူသော စကားတွင် “စုံစမ်းစစ်ဆေးသည်” ဟူသော စကားပါဝင်သည်။ ဤအပိုင်း၌ နှစ်ဘေးအနား ကွက်လပ်တွင် စာလုံးမရှင်ပြထားသည့် ဂဏန်းများသည် ၎င်းတို့အပေါ်၌ ပြထားသည့် အက်ဥပဒေ၏ အခန်းများကို ရည်ညွှန်းသည်။ ပုံဆွဲနှင့် ပြထားသည့် ဂဏန်းများမှာ ၎င်းတို့အပေါ်၌ ပြထားသည့် အက်ဥပဒေ၏ ပုဒ်မများကို ရည်ညွှန်းသည်။ အခြားနည်း သီးခြား ဖော်ပြထားခြင်း မရှိလျှင် ကိုးကားဖော်ပြထားသော ပုဒ်မသည်၊ ရာဇဝတ်ကျင့်ထုံး ဥပဒေ၏ ပုဒ်မဖြစ်သည်။

PART IV.

Criminal Procedure.

Where there is no need for distinction the words "trial" and "try" include "inquiry" and "inquire into" respectively. In this Part, in the marginal notes Roman numerals denote the Chapters and Arabic numerals the section of the Act under which they appear. A section quoted, unless otherwise specified, is a section of the Code of Criminal Procedure.

Chapter 15

Jurisdiction of Magistrates and their ranks.

Their special Powers.

363. The Supreme Court, after establishing and constituting the State Courts, Divisional Courts and Township Courts, had invested them with Criminal Powers in accordance with the provisions of Judiciary Law.

364. The Supreme court, under section II of the Judiciary Law, had invested the Township Magistrates with Special Powers to make out sentences in all *Magistrates invested with powers* criminal case except cases in which death sentence may be imposed under section 30 of Criminal Procedure Code by virtue of their post.

Besides the Township Magistrates, the Additional Township Magistrates who are invested with Firstclass powers had been invested with Special Powers under the Same Section.

Those Magistrates who had been invested with Special Power under section 30 of the Criminal Procedure Code can make out adequate punishment and they are directed to exercise their Powers independently in cases where there are no difficulties.

365. A member of the Myanmar Police Force who committed any offence under the provisions of section II to 25 of the Law shall be tried by the Police Court under section 26 of the Myanmar Police Discipline Law. Apart from these offences, any member of Myanmar Police Force who committed offences under the existing Laws shall be tried by the courts constituted and established under the Judiciary Law. The courts shall follow the following instructions with regard to taking over of the Myanmar Police Force who are to be tried the courts.

(a) In cases where the members of the Myanmar Police Force committed offence under the Myanmar Police Force Discipline Law and offences under the existing Laws in the same transaction or where the member of the Myanmar Police Force and other

civilians committed offence jointly, the members of the Myanmar Police Force shall be tried by the Police Court, and then for the offence under the existing Laws, they shall be handed over to the criminal courts.

(b) The members of the **Myanmar Police Force** who committed offence under other existing Laws only shall be handed over to the criminal courts.

(c) The criminal court should know whether the accused Member of Myanmar Police Force has been taken cognizance by the Police court if so, the stage of the case at the Police Court. Therefore the Criminal Court, in order to try a member of the Myanmar Police Force under section 26 of the Myanmar Police Force, Discipline Law shall inform Police Station, Police Force, Police Battalion and Police Training School where the accused is posted and take over the accused. If there is any difficulties in taking over the accused, the criminal court shall put for ward the case to the higher court and the copy of its action shall be submitted to the Supreme Court.

Therefore in direct complaint cases or in cases sent up to the Court, or in cases, after examining the witness where it appears that any member of the Myanmar Force is found to have committed any offence, except those offences under Myanmar Police Force Law they shall be tried by in accordance with the above instructions, Criminal Procedure Code and the provisions of the Courts Manual.

Benches of Magistrates.

366. The Supreme Court may, under Section 8 of Judiciary Law instruct the State or Divisional Courts or Township Courts to try Criminal Cases by a bench of more than one Magistrate.

Distribution of Criminal Cases.

367. (a) The State or Divisional Judge may try himself the criminal cases sent up to the State or Divisional Court, or distribute them to his subordinate Judges of State or Divisional rank if any for disposal.

(b) It was necessary that the Judge should distribute Criminal Cases basing on the following facts.

(1) The fact of even distribute based on the number of cases distributed per month and the number of cases pending case before a judge.

(2) The fact of Criminal Power of each Judge and his efficiency in the disposal of cases should be taken into consideration.

(3) The important criminal cases and complicated criminal cases should be tried by the experienced Judges.

(4) Contested Cases should be fairly distributed so as to gain experience.

(5) Arrangement should be made for those cases which can be disposed of in a day or in few days, to be disposed of speedily.

(6) To train Judicial Officers to gain well rounded experience by letting them handle different types of cases.

(c) In distributing Judge shall consider the following

*Facts to be
considered
in
distributing
cases*

main facts in distributing Criminal Cases.

(1) The State or Divisional Judge, Additional/ Deputy/ Assistant State or Divisional Judge in charge of District or the Township Judge shall try the important cases and complicated cases himself.

(2) The State or Divisional Judge or Judge in charge of District or Township Judge should distribute new cases only after considering the number of pending cases at his court and that of his subordinate Judges.

(3) Though number of pending cases should be considered as one criterion, special care should be taken in distributing cases which can be disposed of in a day and which would take a lot of Magistrates time.

(4) To distribute cases in accordance with the jurisdiction and power of the Assistant Judges-important cases to the experienced Judge **and** petty cases to the inexperienced Judge.

(5) To ~~distbriute~~ distribute cases which are likely to be contested appropriately in **order to gain** judicial trial experience to the Assistant Judges. In doing **so he** shall consider the number of contested pending before such Judge.

(6) By giving chance to handle and try various kinds of cases and make competent Judges of his subordinator, the Distributing shall distribute suitable case to them.

(D) So as there shall be no delay in **distribution** civil cases, the State Judges or the Divisional **Judges** or the *distributing of civil cases* Judges in charge of District or the Township Judge shall carry out as follows: -

(1) To accept petitions and applications at the appointed hours of office hours and the important applications after recess.

(2) To issue office order assigning duty to a suitable Judge or Judicial officer of accepting application and petitions in temporary absence.

(3) To make arrangements so as to reach the trial Judge the petitions or applications within part of an hour.

(4) The Distributing Judge shall make the list of petitions or applications to whom they are distributed.

(5) The Judges shall make list petitions according to type of suits of those they received for disposal and if they cannot actually dispose of them efficiently they shall report to their State Judges or Divisional Judges or Township Judge mentioning reasons therefor.

368. The name of post, rank and Jurisdiction of Judges.

(a) The names of posts and ranks of the Judges at the State or Divisional Court (the State or Divisional courts stationed at the Headquarters of a District) are defined in accordance with their responsibilities as follows: -

(1) The State Judge or the Divisional Judge.

(2) The Additional State Judge or the Additional Divisional Judge.

(3) The Deputy State Judge or the Deputy Divisional Judge.

(4) The Assistant State Judge or the Assistant Divisional Judge.

(b) The names and ranks of the Judges at the Township court are defined in accordance with their responsibilities, as follows.

(1) The Township Judge.

(2) The Additional Township Judge.

(3) The Deputy Township Judge.

Remarks. This is just a complete statement of names and ranks in accordance with the Courts. The subordinate judges are not kept where it is not necessary in relation to volume of work.

CHAPTER XVI.

PREVENTIVE LAW.

Security for **Keeping** the Peace.

VIII

369. A Magistrate of **the third class** or a Magistrate of the second class, **not being** a Subdivisional Magistrate, has **no power** to require any person to execute a **bond to keep** the peace under section 106, or **section 107**.

Procedure of Magistrate of second or third class.

In cases falling under section 106 **such a** Magistrate should forward the accused to the District or **Subdivisional** Magistrate to whom he is subordinate. In cases falling under **section 107** such a **Magistrate may** issue a warrant for the arrest of **the accused** and may **send him up to be dealt** with by the District or **Subdivisional** Magistrate to whom he is subordinate, or by any Magistrate of the first class. He must **record** the reasons for his action and **send** a copy of them with the accused.

349.
107 (3).

106.

370. No person can be bound down to keep the peace under section 106 unless he is convicted of one or other of the offences specifically mentioned in that section, or of some other offence involving a breach of the peace, or of abetment of any such offence.

Procedure under section 106.

120 (1).

371. If the accused is sentenced to imprisonment, the period for which security is required runs from the date of expiry of sentence.

107 (2).

372. A miscellaneous proceeding should not be opened in cases **falling** under section 106. The proceedings should continue in the **regular** trial.

373. No Magistrate can demand security for **keeping** the peace under section 107 unless **either** the person concerned **or** the place **where** disturbance is apprehended is within **the local** limits of the

Procedure under section 107.

Magistrate's jurisdiction. But no Magistrate **other than** a District Magistrate can proceed under this section unless **both the person and** the place are within his local jurisdiction. In **case where** a Subdivisional Magistrate or Magistrate of the first class wishes proceedings taken under this section, and either the person or the place is beyond his jurisdiction, he should report the matter to the District Magistrate under sub-section (3), and may arrest the person concerned and send him to the District Magistrate.

Security for Good Behaviour.

108. **374.** It should be noted that proceedings under section 108
 Proceedings against the Editor, etc., of registered publica-
 against editor of tions require the sanction of the President of
 newspaper. the Union.

375. Prosecutions under section 110 in regard to persons who
 Unconvicted have never before been convicted should not
 offenders. be very readily sanctioned. In such cases Mag-
 istrates should take great care to test evidence
 for the prosecution and to assure themselves beyond reasonable doubt
 that the accused is really an habitual offender of the class named.
 They should not rest satisfied merely with bare statements that the
 accused is reputed to be an habitual offender.

112. **376. (1)** No person should be called upon to give security
 Information. except upon credible, clear and substantial in-
 formation. Although a police report is cred-
 ible information, Magistrates must not take action too readily upon
 such reports. It is not sufficient ground for calling upon any person to
 give security for good behaviour that he drinks, or consumes opium,
 or gambles, or has a bad reputation, or lives on his relations, having
 independently of relations no ostensible means of livelihood, or al-
 lows a man who has been convicted of theft to live in his house. But
 persons who earn their living, wholly or in part, by unlawful gaming
 may be called upon to give security under section 17 of the Gam-
 bling Act, and those who earn their living, wholly or in part, by un-
 lawful manufacture, transport, importation, exportation, sale or pur-
 chase of opium or any excisable article or by abetting such unlawful
 manufacture, transport, importation, exportation, sale or purchase of
 opium or any excisable article may be called upon to give security
 under section 3 of Part II of the Opium Act, or section 64-A of the
 Burma Excise Act, as the case may be.

110.

(2) Credible information against habituals under section 110 must show that the person informed against is leading an habitually dishonest life and, in the sense, is dangerous to society. The mere fact of a previous conviction for an offence or previous convictions for offences is not sufficient to justify a Magistrate in taking action under section 110, unless there is some additional evidence to show that the person complained against has done some act, or has resumed habits, indicating an intention on his part to return to his former course of life. Again, after the expiration of a term of security some new proof of bad livelihood or of the fact that the person is not capable of following any honest calling is necessary before fresh security may be demanded.

377. Security for keeping the peace for good behaviour should not be demanded from a person who is already undergoing a sentence of imprisonment for a criminal offence. Proceedings already commenced against such prisoner may, if the circumstances justify it, be renewed after his sentence for the criminal offence has expired.

*Proceedings against
Persons undergoing
Imprisonment.*

117 (5).

378. The power to deal with more than one person in the same enquiry should be used with discretion and only when it is quite clear that section 117, sub-section (5), properly applies.

Joinder of trials.

379. Before an order under section 112, Criminal Procedure Code, calling upon a person to find security can be confirmed, the truth of the information upon which the Magistrate has acted must be enquired into and such further evidence as may be necessary taken. The mere readiness of such person to give security does not justify the Magistrate in confirming his order without complying with the requirements of section 117 of the Criminal Procedure Code.

*Evidence must be
recorded*

380. No person ought to be proceeded against under both sections 109 and 110 of the Code of Criminal Procedure in the same proceeding. When action is taken under section 110 the question of having ostensible means of subsistence should be excluded from the preliminary order.

118. **381.** In fixing the amount of security, a Magistrate should consider the station in life of the person concerned, and should not demand more security than such person might reasonably be expected to furnish.

123(4) **382.** Only on the failure of a person to give security when called upon to do so does the law authorize imprisonment. He should not therefore be sent to jail forthwith on the order requiring security being passed. A reasonable time should be allowed, within, which to furnish security.

383. The period for which imprisonment in default of giving security is ordered must coincide with the period for which security is demanded.

384. The amount of the bond for which the surety, if there is only one, should be rendered liable, or the sureties, if there are more than one, should be jointly and severally rendered liable, should be the same as that in which the accused is bound down.

385. The character and class of sureties should be specified both in the preliminary order under section 112 and in the order under section 118, Code of Criminal Procedure.

Before any person is accepted as a surety for good behaviour the Magistrate should satisfy himself that that person is of good character, is able to pay the penalty in the bond and lives in a place where he is likely to be able to exercise some supervision over the conduct of the suspect.

386. Officials of the Court, or the near relations of such officials should not be accepted as sureties, unless they are nearly related to or are near neighbours of, the person called upon to give security.

No person shall be accepted as a surety in any case who is known or believed to be making a profession of becoming surety for others in consideration of payment.

387. When a Magistrate makes an order under section 118 of the Code of Criminal Procedure requiring a person to give security for more than one year, the Magistrate himself has no power to pass any order for imprisonment in default of the security being given. If the person does not or cannot give the required security, the Magistrate must submit the proceedings to the Sessions Judge with the respondent if he is in custody, and if he is not in custody must issue a warrant for the detention of the accused pending the orders of the Sessions Judge.

The Proceedings in such a case are not laid before the Sessions Judge for confirmation of an order, but for the purpose of his passing an order himself under section 123 (3) of the Criminal Procedure Code.

388. Before dealing with a reference under section 123 sub-section (2), of the Code of Criminal Procedure, the Sessions Judge is bound to fix a date for the hearing and to give reasonable notice to the person concerned and to hear him if he wishes to be heard either personally or by a pleader.

389. A person committed to jail for failure to furnish security can be released only by order of the Court by which the security was required or of the District Magistrate. When a Sessions Judge, under section 123, leaves the order of the Magistrate demanding security unaltered and merely directs the imprisonment of the accused till security is furnished, the Magistrate may accept security if tendered.

When a Sessions Judge passes a fresh order demanding security, the acceptance of the security rests with him. But sureties may be tendered to the Magistrate who dealt with the case, who should send on the application with a report to the Sessions Judge.

390. Section 117, sub-section (3), enables a Magistrate acting under section 107, 108, 109 or 110 to make an ad interim order for security during the pendency of the inquiry in certain cases.

391. Section 17 of the Gambling Act, section 3 of the Opium Act, Part II and section 64A of Burma Excise Act, contain provisions for demanding security for good behaviour from persons who earn their living, wholly or in part, by unlawful gaming and by illicit dealing in opium and excisable articles, respectively. (See paragraphs 823 and 836.) ♦

Surveillance of Criminals.

565 **392.** All Sessions Judges, District Magistrates, Subdivisional Magistrates and Magistrates of the first class are empowered, under section 565, to pass orders of surveillance against previously convicted offenders. Attention is invited to the rules made by the President of the Union under that section, published in Judicial Department Notification No. 33, dated the 25th January 1902. Special attention is directed to Rule 1, which requires the order under section 565 to be entered on the warrant of imprisonment (*cf.*, paragraph 706).

Public Nuisances and Disputes as to Immoveable Property.

X-XII.
133 - 148. **393.** District Magistrates and Subdivisional Magistrates have powers under section 133, 143, 144, 145 and 147 without special investment. All magistrates of the first class have powers under sections 133, 145, and 147 without special investment. No under Magistrates, can have powers under sections 133, 145 and 147.

Any Magistrate may be invested by the President of the Union or the District Magistrate, with powers under section 143, and any Magistrate except a Magistrate of the third class, may be empowered by the President of the Union or the District Magistrate to act under section 144.

No Magistrate other than a District Magistrate or Subdivisional Magistrate can have powers under section 148.

In proceeding under these chapters, the prescribed procedure must be strictly observed. Magistrates must avoid proceeding under these chapters in matters which ought to be considered by a Civil Court.

♦ The Gambling Law (The Pyithu Hluttaw Law No. 6/1986) repealed The Gambling Act, 1899. The Repeal of Laws (The State Law and Order Restoration Council Law No. 1/1992) repealed The opium Act.

394. Magistrates acting in the exercise of their jurisdiction under section 144 of the Criminal Procedure Code must comply fully with the provisions of sub-section (1) of the section, which require that the written order would state the material facts of the case and that it should be served in the manner provided by section 134 of the Criminal Procedure Code. A proceeding under section 144 is a judicial proceeding and as such is subject to the revisional jurisdiction of the High Court (see *Thakin Ba Thaung v. King-Emperor*, Indian Law Reports, 12 Rangoon 283). It is essential, therefore, that the written order should state in full the material facts, and the grounds which the Magistrate considers to be sufficient to justify him in proceeding under the section in order that the High Court may be in a position to determine whether the order has issued in the exercise of a proper judicial discretion. Attention is directed in this connection to the judgment in *Aung Bala v. The District Magistrate, Rangoon*, (1939 Rangoon Law Reports 294).

An order passed under section 144 of the Criminal Procedure Code is to be served in the manner provided by section 134. That is to say, it must be served in the manner provided in the Code of Criminal Procedure for the service of a summons, and if it cannot be so served, it must be published in the manner provided in the Government's Judicial Department Notification No. 305, dated the 21st September 1939, and copies thereof must be posted at such place or places as may be fittest for conveying the information to the person or persons to be served or to the public, as the case may be. In every case the record of the proceedings must show clearly in what manner the order has been served.

CHAPTER XVII.

PROCEDURE IN GENERAL - CONDUCT OF TRIALS.

Arrest.

395. When a person for whose arrest a warrant has been issued cannot be found after a reasonable search, the officer to whom the warrant is addressed shall not return it to the Magistrate, but shall send a report stating the facts, and asking for orders whether to return the warrant or not.

Warrant of arrest.

If the warrant contains a direction to take bail, the report shall be submitted so as to reach the Magistrate not later than the morning of the day fixed in the warrant for the appearance of the accused.

396. The President of the Union has ordered that in the event
 Intimation to Foreign Embassies concerned of the arrest of their employees. of the arrest of an employee of a foreign Embassy intimation is to be immediately given to the Embassy concerned.

397. It is by no means necessary that a police-officer should
 Mode of effecting arrest. in arresting an accused person immediately proceed to put handcuffs on him, or to tie him with cord or chain. Such articles are used as means of restraint, and their use can only be justified under the provisions of sub-section (2) of section 46 of the Criminal Procedure Code, or under the general provisions contained in section 50 of the same Code.

When the offence against an accused is a bailable offence, the police have no authority to attempt to put handcuffs on him on the first instance, and would only be justified in using them if for some special reason there had been reasonable grounds for believing that he, after a proper arrest, would attempt to escape and was likely to do so, or he could not be got to go to the police-station except by such amongst other means.

Trivial resistance to unlawful force on the part of an arresting officer does not constitute an offence under section 224, Penal Code.

It is highly important that Magistrates should check any abuse by police-officers of their powers and should insist on the plain provisions of the law being carried out. It is obvious that the abuse of the use of handcuffs may be made the means of very great oppression by unscrupulous officers.

Proclamation and Attachment.

398. (1) An accused should not ordinarily be proclaimed under section 87 unless and until the Magistrate, after recording evidence under section 512, finds that there is *prima facie* proof of the offence.

88(6A)(6E)

(2) When any claim is preferred or objection made to property attached under section 88 as being the property of a proclaimed offender it must be inquired into by the attaching Court, provided the claim is made within six months of the date of the attachment. An order made after such inquiry is conclusive, save for the right of the claimant to file a civil suit to establish the right claimed under section 88, sub-section (6d).

Searches.

96, 98, 99A,
100.

399. (a) A search-warrant under section 96 or 99A can be issued by any Magistrate. Under sections 98 and 100 a search-warrant can be issued only by a District Magistrate, Subdivisional Magistrate, or Magistrate of the first class.

(b) Care should be taken not to issue a search-warrant under section 100 for persons alleged to be wrongfully confined until the Magistrate is convinced that a *prima facie* case exists for action under this section. In the majority of cases in which the wrongful confinement does not fall within the terms of the definition in section 340, Penal Code, there is a civil remedy.

165

400. A police-officer making an investigation may, without a search-warrant, under the provisions of section 165, cause search to be made for anything necessary for the purposes of an investigation into any offence which he is authorized to investigate. He may by order in writing, delegate his powers to conduct such search to any officer subordinate to him.

102, 103

401. The provisions of sections 102 and 103 apply to all searches. The provisions of section 103 must be strictly complied with. Any material irregularity in the conduct of a search appearing at a trial should be brought to the notice of the District Magistrate by the trying Magistrate.

A police-officer conducting a search can by order in writing, compel a person to act as witness of the search.

402. The attention of all Sessions Judges and Magistrates is invited to the last sentence of subsection (2) of section 103, of the Code of Criminal Procedure, which reads, "but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it."

The plain provision of law is frequently disregarded with the result that witnesses of searches are illegally and unnecessarily brought to Court, trials prolonged and expenditure on account of diet and travelling allowance of witnesses unnecessarily increased.

Remands.

403. (1) When the police apply to have an accused person remanded under section 167 of the Code of Criminal Procedure, they need not send up the complainant or any witness. They must send the accused person to the Magistrate, and must send with him an application in *Police Form 32*, and a copy of all the special diaries in the case up to the date on which the remand is applied for. No remand can be ordered until the accused has been brought before the Magistrate and had an opportunity of showing cause against it.

167 (2). (2) Remands into police custody, under section 167 (2), cannot be granted by a Magistrate of the third class.

167 (2). **404.** Section 167 empowers the Magistrate to authorize detention in such custody as he thinks fit. The remand should ordinarily be to jail, if there is a jail in the subdivision. If there is no jail the remand should ordinarily be to the police-station at the headquarters of the subdivision or township. Detention in an outlying police-station or outpost or any other place should not be authorized except in cases of real necessity, as for instance, where there is reason to believe that the accused can point out stolen property or materially assist in elucidating a case or bringing other offenders to justice. In every case the place in which the accused is to be confined shall be specified in the Magistrate's order and warrant.

167 (3).

405. (1) The Magistrate shall record on the back of the application, with his own hand, his order, and the reason for ordering detention. He shall also

Reasons for granting remands. record his reasons for the particular place of detention he has selected, if that place is not a headquarters station, or if it is not the jail in cases where a jail is available.

(2) The reasons for granting a remand must be definite. A bald statement that the police want time to examine witnesses is not sufficient. The facts which give rise to the suspicion that the accused has committed an offence, and the direction in which further investigation can be made, should be specified.

406. When an accused person is remanded a note should be endorsed by the Magistrate on the police case diary stating the fact that a remand has been ordered and the date to which the accused is remanded.

407. If the police investigation is completed within the time allowed under section 167, a remand should not be granted on the ground that the complainant or accused is in hospital, or that the witnesses are absent, or that time is wanted to arrest another accused in the same case, or any similar ground. In such cases the duty of the police is to submit the charge sheet at once under sections 170 and 173, Code of Criminal Procedure, leaving it to the Magistrate to postpone the commencement of the trial under section 344, if necessary.

408. The Magistrate should retain the application, and issue a remand warrant to the police in Form Criminal 71. If the accused is subsequently sent up for trial this warrant should be attached to the charge sheet and should be placed by the magistrate on the process record. If he is not sent up for trial it should be returned to the Magistrate who issued it, with an endorsement when the accused is released.

Filing of remand order.

409. Applications for remands under section 167 shall not be registered. They shall be kept in a current file of the year in which they are received. If the accused is not sent up for trial, the remand warrant, when returned, shall be placed in this file next to the application on which it was issued.

Remand orders being kept in a current file of the year should be treated as correspondence and destroyed after three years (Rule 12 of paragraph 1190.)

167 (2). **410.** No remand under section 167, Code of Criminal Procedure, may be ordered for more than fifteen days counted from the date of production. Cases of illegal detention in police custody are far too frequent. Whenever an accused person is produced before a Magistrate under section 170 the Magistrate should ascertain whether the period spent by the accused in police custody was legal, and if it was not, should submit a report to the District Magistrate.

411. If the accused is remanded to a jail, and is released without trial, an intimation of his release should always be sent by the Magistrate to the officer in charge of the jail.

Intimation to jail on
release of accused.

Inquests.

174. **412 . (1)** An investigation into the circumstances of a sudden or suspicious death, within clause (a), (b) or (c) of section 174 (1), must always be held.

176 (2) It is obligatory on the nearest Magistrate empowered to hold inquests to hold an inquiry into the cause of death of any person who dies while in the custody of the police, and also, unless a first information report has been recorded under the provisions of section 154, of any person who dies under circumstances falling within clause (a), (b) or (c) of section 174(1). At the conclusion of the inquiry the Magistrate is bound to come to a finding as to the cause of death.

Cognizance of Offences.

190-192.

413. Section 190 of the Code of Criminal Procedure prescribes in sub-section (1) the three modes in which a Magistrate may take cognizance of an offence. It should be noted that only Magistrates holding the offices specified in sub-section (1) and other Magistrates specially empowered under sub-sections (2) and (3) can take cognizance of offences. Any other Magistrate can try an offence only when the case has been duly transferred to him for trial under section 192, and when the offence is shown in Schedule I of the Code as triable by a Magistrate of his class.

414. When a Magistrate takes cognizance of an offence under section 190 (1) (c) he cannot himself try the offence if the accused objects to his doing so. The Magistrate must, under section 191, inform the accused of his right to object. The record must show that the accused has been so informed, and his statement in reply should be recorded.

But after a Magistrate has taken cognizance of an offence in one of the three methods in section 190, he gets the seizin of the whole case and his jurisdiction to bring every body concerned in the commission of the offence to justice for a cognizable offence is in no way restricted. If on a trial of a person sent up by the police for a cognizable offence, the Magistrate makes another person a co-accused, he exercises his powers under section 351 and not under section 190(c) of the Code of Criminal Procedure. Therefore he is not bound to transfer the case under section 191 of the Code [*Maung The v. Maung Chit Kywe*, (1940), R.L.R. 676].

Proceedings requiring Sanction or Complaint of a Public Officer or a Court, or a Specified Person.

195, 196,
196A, 197,
198, 199.

415. The provisions of section 190 are limited by section 195, 196, 196A, 197, 198 and 199, which provide that cognizance of certain specified offences can be taken only either on the complaint or certain specified authorities or persons or with the sanction or written consent of certain specified authorities. The provisions of these sections vary in detail and should be carefully studied. There are also in certain special or local Acts provisions that prosecutions for certain offences can only be instituted with sanction. In all such cases, the record should show that the proceedings have been instituted with the requisite authority.

416. The provisions of section 195 require special attention. Prosecutions for the offences specified in this section cannot be instituted on sanction. They can be instituted **only on the complaint** in writing of the public servants or Courts **specified** in the section.

Complaint in this paragraph means, complaint conforming to clause (h) of section 4 of the Code of Criminal Procedure which excludes a police report. Police charge sheet usually submitted to Courts by the police for all cognizable offences is not a proper complaint as required under section 195, Code of Criminal Procedure [*vide Jagdeo Panday v N.C. Hill*, (1938) R.L.R. 150].

476, 476A,
476B.

417. The making of a complaint by a Court is governed by the provisions of sections 476, 476A and 476B. Procedure on application to lay complaint.

In making such a complaint a Court may act either on its own motion or on application. In either case it should ordinarily hold a preliminary inquiry unless there is already on the record of the case in, or in relation to, which the offence is alleged to **have been committed**, sufficient material to render such inquiry **unnecessary**. In the absence of special reasons for **not doing so**, the Court should give the person against whom it is **proposed** to make a complaint an opportunity of showing cause why such complaint should not be made.

418. Courts should be careful not to institute proceedings under section 476 without good reason. On the other hand, Courts must not shrink from the trouble involved in the prosecution of offences against public justice and similar crimes. It is their duty to see that the law for ensuring respect for truth in matters of judicial evidence is not wantonly broken with impunity. But a complaint should not be made unless the evidence available is sufficient to make out a *prima facie* case, and there is a reasonable prospect of a conviction resulting from the prosecution. Necessity for exercise of discretion in laying complaint.

419. The complaint should set out all necessary particulars of the offence alleged and the person or persons by whom it is alleged to have been committed. There should be annexed to it a list of the witnesses who can give evidence for the prosecution and of the documentary evidence to be produced. If possible the documentary evidence should be sent along with the complaint.

420. In a complaint of the offence of giving false evidence the exact words which are alleged to be false should, if possible, be specified. In the case of contradictory statements, either of which must be false if the other is true, the exact words of both statements should be specified. When a complaint is made under section 209, 210 or 211 of the Penal Code and there is evidence that the person against whom the complaint is made has given or fabricated false evidence this offence also should be included in the complaint.

421. Private persons should not be allowed to conduct the prosecution in cases instituted under section 195, 196, 196A, or 197 of the Code of Criminal Procedure. In cases falling under section 198 or section 199 no person other than one competent to make a complaint should be allowed to conduct the prosecution.

196. 422. All Commissioners and Deputy Commissioners have been empowered to make or authorize the making of complaints of offences punishable under section 294A of the Penal Code*: but not of other offences mentioned in section 196. They cannot, however, dispose themselves of applications for leave to prosecute which relate to other than Chinese lotteries, and Deputy Commissioners cannot try cases for the prosecution of which they have given sanction.†

Procedure on Complaint.

423. Complaints should be received daily at a fixed hour at the commencement of the day's sitting.

* Home Department Notification No. 558, dated the 7th May 1897; 2 Rules Manual, 79.

† Government Circular No. 43 of 1897.

The District Magistrate may order that in a station where there are more than one Magistrate, complaints shall in the first instance be presented to one specified Magistrate, but such order shall not restrict a Magistrate's liberty to accept complaints when touring away from his headquarters.

424. In order to facilitate the classification of cognizable cases by the police, whenever a direct complaint of a cognizable case is made to a Magistrate, he should ascertain from the complainant whether any report of the case has previously been made to the police, and if he finds that this has been done, he should at once inform the District Superintendent of Police of the fact that a direct complaint has been made to the Court. The adoption of this procedure will enable the District Superintendent of Police to make the necessary arrangements for the disposal of the report made to the police.

200.

425. (a) When a Magistrate takes cognizance of an offence on complaint, he must, unless the complaint is in writing and he transfers it to a subordinate Magistrate,-

- (i) at once examine the complainant upon oath or affirmation;
- (ii) reduce the substance of the examination to writing;
- (iii) sign it; and
- (iv) cause it to be signed by the complainant;

but he is not bound to examine a complainant already examined by a transferring Magistrate.

(b) The examination of a complainant should not be a mere form, but an intelligent enquiry into the subject-matter of the complaint and the evidence producible in support of it, carried far enough to enable the Magistrate to determine whether there is or is not sufficient ground for proceeding. It is not sufficient that the complainant should merely speak to what is set out in his written complaint, but it must appear from his examination that the essential ingredients of a criminal charge are present and that there is a prospect of its being made out.

Especially is care necessary in cases wherein the dispute is of a quasi-civil nature concerning the possession of land or agricultural produce; such cases are sometimes contested at great length and often result in the unnecessary harassing of agriculturists and labourers when they are required for work on their fields.

202.

426. The power of referring complaints to the police for in-

Reference to Police.

vestigation should be exercised with discretion. Ordinarily an investigation should seldom be ordered except in cases where the offence charged is cognizable by the police and the complainant has not laid an information to them in the first instance.

A Magistrate of the third class has no power to refer a complaint to the police for investigation but he may hold a preliminary inquiry himself before issuing process.

203.

427. It is necessary for Magistrates to act on the provisions of section 203 and dismiss unfounded and illfounded complaints. They must briefly record their reasons for so doing.

428. The time and labour devoted by Magistrates to cases under section 447 of the Penal Code is frequently

Complaints of criminal
trespass.

out of proportion to their importance. In the majority of cases brought under this section the object of the complainant is to obtain in a cheap and speedy manner a remedy which ought to be sought by means of a civil suit. Magistrates are not authorized to dismiss complaints, or to discharge or acquit the accused, merely on this ground, because the facts which entitle a person to bring a civil suit may also constitute the offence of criminal trespass, but they should not allow prosecutions where the wrong is purely of a civil nature. In many cases where servants acting under their employer's orders enter upon land in the possession of another the ruling in *Shwe Kun v. King Emperor* (3 L.B.R., 278) is applicable. Such servants are not guilty of criminal trespass if they enter on the land in good faith in obedience to their employer's orders and without any intention of annoying the person in possession. A full and complete examination of the complainant and a careful consideration of the above and similar matters will enable Magistrates to dismiss summarily many more complaints of criminal trespass than they do, or in any event will enable them to discharge the accused after a brief hearing.

Compensation under section 545, Code of Criminal Procedure, should never be granted to a complainant when it appears that his object in instituting the prosecution was merely to assert a title to the land.

204.

429. Schedule II of the Code distinguishes, in column 4 the Nature of process to be issued. offences for which a summons and those for which a warrant should *ordinarily* issue in the first instance, and it is left to the discretion of the Magistrate to issue a summons instead of a warrant when he sees fit.

In exercising this discretion, Magistrates must be guided by the circumstances of each individual case, the main point for consideration being whether, having regard to the nature of the offence charged and the age, sex, position, etc., of the accused, his appearance can be secured or not without his arrest. For instance, it would very seldom be necessary to issue a warrant against a person of settled residence for an alleged offence under section 504, Penal Code.

430. When members of the Civil Police are prosecuted for Intimation to be given to the District Superintendent of Police regarding prosecution of members of the Civil Police. offences otherwise than under section 43 of the Police Act (*see* paragraph 812) intimation should be given to the District Superintendent of Police in all cases in which the prosecution is instituted on complaint or by the Magistrates *suo motu*. In the case of Subordinate Magistrates the intimation should be sent through the District Magistrate. The object of this instruction is to ensure that the Magistrate may, in deciding the case and in considering the sentence (if any) to be awarded, have an opportunity of taking into consideration the past record of the accused in the police and such other circumstances as the District Superintendent of Police may wish to urge in extenuation or mitigation of the sentence. [*cf.* paragraph 190 (6), Burma Police Manual, V Edition, 1940, Volume I.]

Charges.

19., 221.
240.

431. Chapter XIX of the Code should be read along with head
Contents of charge. XXVIII of Schedule V. The charge-sheet
should bear-

- (i) the seal of the Court;
- (ii) the name and office of the Magistrate;
- (iii) his powers;
- (iv) his territorial jurisdiction; and
- (v) the date.

432. The charge should state the offence with which the ac-
cused is charged, and if the law which creates
Statement of offence. the offence gives it any specific name the
offence may be described in the charge by that name only. If the law
which creates the offence does not give it any specific name so much
of the definition of the offence must be stated as to give the accused
notice of the matter with which he is charged; the law and section of
the law against which the offence is said to have been committed
must be mentioned in the charge.

433. (a) Under the provisions of section 221(7), Code of
Criminal Procedure, in every case in which
Charge of previous conviction. there are *prima facie* grounds for believing
the accused to have been previously convicted of an offence, by rea-
son of which previous conviction he is liable to enhanced punish-
ment or punishment of a different kind for a second or subsequent
offence, he must be formally charged with the previous conviction.
Form Criminal 82 should be used for this purpose. This rule applies
in all cases to which section 75 of the Penal Code or any other provi-
sion of law allowing enhanced punishment for a second or subse-
quent offence is applicable, even if the Court does not propose to
pass a sentence heavier than the maximum sentence allowed by the
substantive section under which the accused is charged. (*Cf.* para-
graph 644.)

(b) If the charge of the previous convictions is omitted
at the time when the charge of the substantive offence is framed, it
may be added at any time before sentence is passed.

(c) Examples of cases in which enhanced punishment may be awarded for a second or subsequent offence, other than under the Penal Code, are section 4 of the Metal Tokens Act, sections 11 and 12 of the Gambling Act, section 46 of the Burma Excise Act, and section 9D, Opium Act.

222. **434.** The charge must contain such particulars as to the time
Particulars as to time, and place of the alleged offence, and the person, if any, against whom, or the thing, if any, in respect of which, it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.

233. **435.** (1) For every distinct offence of which any person is
Joinder of charges. accused there must be a separate charge and every such charge must be tried separately
234. except in the cases mentioned in sections 234, 235, 236, and 239; three offences of the same kind committed within the space of twelve months may be tried together.

233, 234, **(2)** Special attention is directed to the provisions of the
235. Code concerning the joinder of charges. Misjoinder altogether invalidates the proceedings.

436. Attention is invited to section 222 (2), which contains a
Charge of criminal special provision concerning charges of criminal breach of trust, etc. breach of trust or misappropriation.

437. The attention of all Magistrates is drawn to the necessity
Form of charge of for care in framing a charge of murder under
murder. section 302 of the Penal Code. The charge of such an offence should read simply:-

'That on at you committed murder by causing the death of'. Such words as 'knowingly' or 'intentionally' should not be inserted. The insertion of such words is wrong and makes the charge illegal.

438. (1) If at the close of the case for the prosecution it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged *in the alternative* as laid down in section 236. Alternative charges cannot be combined together in one head of charge. If it is desirable to charge the accused in the alternative two separate alternative charges must be framed.

(2) Where alternative charges have been framed, at the end of trial the Magistrate must come to a distinct finding as to the facts of the case. The Magistrate cannot compromise his doubts as to the true facts by convicting the accused in the alternative. A conviction in the alternative is only possible where there is a doubt as to the law applicable to a certain set of facts which have been proved.

(3) If the accused is charged with only one offence, and at the conclusion of the trial it appears from the evidence that he committed another offence for which he might have been charged under section 236, he may, under section 237, be convicted of the offence which is proved to have been committed by him, although he was not charged with it, *provided that* the facts which the accused would have to meet on a charge for such offence are the same as on the offence actually charged.

238. **439.** So also, when an accused is charged with an offence, *e.g.*, murder, and the evidence only establishes a minor offence, (say) culpable homicide not amounting to murder, or voluntarily causing grievous hurt, the accused may, under section 238, be convicted of the minor offence though not charged with it.

240. **440.** Even when more charges than one are made against the same person, and a conviction has been had on one of them, it is not necessary that the Court should proceed to convict or acquit on the remaining charges. Under section 240 the officer conducting the prosecution may withdraw the remaining charges, or the *Court may of its own motion stay the trial* on such charges, and therefore need not pass any order of conviction with respect to them.

Summons Cases.

242, 243.
244, 245.

441. In the trial of a summons case by a Magistrate the following procedure must be observed. The opening proceedings should be recorded on Form Criminal 73:-

Procedure in summons cases.

- (i) the particulars of the offence of which he is accused must be stated to the accused, such particulars being shown on the proceeding itself and not by reference to some other paper and
- (ii) the accused must be asked if he has any cause to show why he should not be convicted; but
- (iii) it is not necessary to frame a formal charge;
- (iv) if the accused admits that he has committed the offence of which he is accused, his admission should be recorded as nearly as possible in the words used by him; and
- (v) if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly;
- (vi) if the accused does not make such admission, or the Magistrate does not convict him under section 243, the Magistrate must proceed to hear the complainant (if any); and
- (vii) take all such evidence as may be produced in support of the prosecution; and also
- (viii) hear the accused, or, if the accused does not wish to give evidence on his own behalf, examine the accused; and
- (ix) take all such evidence as he produces in his defence;
- (x) take any other evidence he may of his own motion cause to be produced.

XX, 244.

442. It is in the discretion of the Magistrate to summon witnesses for the parties, and he may require their reasonable expenses to be deposited before

doing so. He should see that material evidence is not shut out through the mere ignorance or want of means of either the complainant or accused. The record should show what takes place with respect to the summoning of or refusal to summon witnesses.

There is no provision of law obliging a party to the proceedings to make a written application for the summoning of witnesses or to put in a written list of witnesses.

247. 443. If on the day fixed for hearing, the complainant, where
Absence of complainant. the case has been instituted on complaint, does
not appear, the Magistrate is *bound* to acquit
the accused, unless for some reason he thinks proper to adjourn the
hearing to some other day or unless the complainant is a public serv-
ant whose personal attendance is dispensed with by the Magistrate.

205. 444. (1) Under the provisions of section 205, when a sum-
mons for the attendance of the accused is issued the Magistrate may
dispense with the personal attendance of the accused and permit him
to appear by pleader. Without such permission the accused is not at
liberty to absent himself on any date fixed for hearing of the case.

(2) The complainant is not obliged to attend if he wishes
to abandon the prosecution, unless he has been expressly required to
attend as a witness.

Warrant Cases.

252. 445. In warrant cases the opening proceedings should be re-
Procedure in warrant cases. corded on Form Criminal 73. The Magistrate
must proceed to-

- (i) hear the complainant (if any), and
- (ii) take all such evidence as may be produced in sup-
port of the prosecution.

254. **446.** (1) If, when all the evidence for the prosecution has been taken or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence which the Magistrate is competent to try and which can adequately be punished by him, he shall frame in writing a charge against the accused.

255. After the charge has been framed it must be read and explained to the accused and he must be asked if he is guilty or has any defence to make.

255. **447.** If the accused pleads guilty, the Magistrate must record the plea and may in his discretion convict him thereon:

448. (1) If the accused refuses to plead to the charges, or claims to be tried, he must be asked whether he wishes to cross-examine any of the witnesses for the prosecution. The record should show that the accused has been asked this.

As soon as a charge is framed against the accused and he has pleaded thereto, he is required to state *forthwith* whether he wishes to cross-examine any of the prosecution witnesses already examined.

(2) The intention of this provision is not to prevent cross-examination as the case proceeds. An accused cannot be compelled to cross-examine witnesses for the prosecution before he has been charged. But he should be permitted and encouraged to do so at the close of the examination-in-chief of each witness.

449. Magistrates ought not to wait till the prosecution case is completed before framing a charge against the accused. The moment the stage has been reached when there is sufficient evidence for presuming that an accused person has committed an offence triable under the charge, the charge sheet should be drawn up. The framing of the charge does not automatically close the case for the prosecution. The remaining witnesses for the prosecution should be examined, and, if necessary cross-examined and re-examined. Witnesses examined before the framing of the charge must of course be recalled for cross-examination if the accused demands their recall, but the accused has no right to recall prosecution witnesses examined after the framing of the charge.

The accused must state, immediately after he has pleaded to the charge, which prosecution witnesses already examined he wishes to recall for cross-examination.

253, 256.

450. (1) If a charge has been framed, after the examination, Evidence by or examination of the accused: cross-examination and re-examination of all the prosecution witnesses, including the cross-examination and re-examination of witnesses (if any) recalled at the request of the accused after the charge, the accused must be asked by the Magistrate whether he wishes to give evidence on his own behalf. If the accused decides to give evidence, he should be considered to be a defence witness on his own behalf and examined, cross-examined (subject to the provisos to section 342(1), and re-examined on oath in the same way as any other witness. If he decides not to give evidence, the Magistrate must examine him not on oath, under the provisions of section 342(2). Thereafter the evidence for the defence must be taken [see also paragraph 454 (1)].

(2) Where the accused has been discharged under the provisions of section 253, or has been convicted on his own plea of guilty under section 255 (2), the question of allowing the accused an opportunity to give evidence does not arise.

257.

451. It is the Magistrate's duty to ascertain the names of person likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and to summon as witnesses such of them as he thinks necessary. He is also bound to issue process for the attendance of witnesses desired by the accused, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice, in which case the ground of the refusal must be recorded. A deposit of the reasonable expenses of a witness may be required before summoning him, but the circumstances of the accused should be considered before making this requirement. No written application for summoning witnesses and no written list of witnesses can be required.

*Summary Trials.*XXII.
260-265.

452. The power of trying certain offences in a summary way is intended generally to be exercised only in simple cases. Cases of intricacy or difficulty or importance from the points of law involved or otherwise, should not ordinarily be tried summarily. If a longer record than that prescribed for a summary trial is called for in any case, the case should be tried regularly according to the ordinary procedure. (See also paragraph 615.)

453. Directions concerning summary trials by Benches of Magistrates are given in paragraph 366.

Evidence by and Examination of Accused.

342 (1).

454. (1) In all cases, whether tried regularly or summarily, and whether tried by a Magistrate or by a Court of Session, and whether a summons case or a warrant case, the accused is a competent witness on his own behalf and shall, if he so desires, be examined on oath as a witness in the same manner as any other witness. *But the accused cannot be examined as a witness except at his own desire.* Moreover an accused person is not a competent witness for the co-accused tried in the same trial and he cannot be examined as a defence witness for such a co-accused [*Poonatu v. The King*, (1947), R.L.R. 214].

(2) At the conclusion of the case for the prosecution, and when the accused is called upon to enter upon his defence, the Magistrate or Judge must ask the accused whether he desires to give evidence on his own behalf or not and must warn him in the manner required by proviso (b) to section 342(1). If the accused desires to give evidence he should be examined as a witness before the witnesses for the defence (if any). The restrictions on the evidence of the accused and the questions which may be asked him, which are contained in the provisos to section 342 (1) must be carefully observed.

342 (2).

364

(3) If the accused declines to give evidence on his own behalf the Magistrate or Judge must examine him, after the prosecution case is closed and before he is called upon to enter upon his defence, FOR THE PURPOSE OF ENABLING HIM TO EXPLAIN ANY CIRCUMSTANCES APPEARING IN EVIDENCE AGAINST HIM.

364. It is not permissible to examine the accused for ANY other purpose. Questions in the nature of cross-examination to elicit the truth are forbidden. Such examination shall NOT be on oath. Examination of the accused for the same purpose is optional at any previous stage of the case, but in practice it will be found superfluous in almost every case. The examination must be recorded in the manner laid down in section 364.

Right of Accused to be defended.

342. 455. (1) Every person accused may of right be defended by a pleader.

(2) * In exercise of the powers conferred by section 561A of the Code of Criminal Procedure, the High Court, Rangoon, has made the following rules requiring Pleaders appearing in Criminal Cases to file stamped powers of attorney :-

Filing of Powers by
Pleaders.

- (i) No pleader shall act for any person in any Criminal Court unless he has been appointed for the purpose by such person by a document in writing signed by such person.
- (ii) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the case are ended so far as regards the client.
- (iii) For the purpose of rule (2) any application for revision, any appeal from any judgment or order in the case, and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the case or of obtaining refund of monies paid into the Court in connection with the case shall be deemed to be proceedings in the case:

* High Court Notification No.2 (General), dated the 16th February 1927.

Provided that nothing in these rules shall be deemed to apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party:

Provided further that nothing in these rules shall be deemed to apply to any pleader appearing in any Court on behalf of a prisoner in jail or other person in duress or under restraint by any Court or its officers, who produces a written authority signed by such prisoner or person in the presence of the jailor or any other officer in whose custody he is.

Note : Under section 4 (1) (r), Code of Criminal Procedure, the term "pleader" includes an advocate of the High Court.

456. The President of the Union has sanctioned the adoption of the following rules for the defence of soldiers charged with criminal offences and prosecuted by Government in Civil (as distinguished from Military) Court * :-

Defence of soldiers
charged with criminal of-
fences.

Rules.

(1) When soldiers are to be tried by a Civil Court (*i.e.*, a Court which is not a Military Court) upon any criminal charge, the local Military authorities (**General Officers** Commanding Districts) should consult the District **Magistrate** and arrange with him for the selection and remuneration of an **Advocate** or a Pleader, as the importance and necessities of the case may require.

(2) The fee to be paid to the **Advocate** or Pleader must not exceed K 100 per diem when the trial is before a High Court, and K50 per diem in all other cases.

(3) It is to be clearly understood that the local authorities are only to appoint an advocate or a pleader in cases where they think it desirable, and are to fix the fee beforehand (subject to the maximum amounts stated above) at whatever sum may be reasonable, with reference to the customary rates of the localities concerned.

* Judicial Department Circular No. 11 of 1893.

(4) The expenditure incurred will be a military charge.

(5) These rules apply to troops, including regimental warrant officers and all regimental non-commissioned officers and private soldiers. They do not apply to soldiers on leave when at their homes, but do apply to reservists of the Army when called out for training or service.

Engagement of Advocates or Pleaders at Government expense on behalf of poor persons accused of offences punishable with death. † ❖

457. (1) In every case in which a person is accused of an offence punishable with death the committing Magistrate, before forwarding the committal record to the District Magistrate, will record in the diary-sheet whether the accused was represented by an Advocate or a Pleader in the proceedings before him. He will also record his opinion whether the accused or his family can afford to engage legal assistance for his trial in the Court of Session, or the High Court as the case may be, giving the reasons of his opinion. The District Magistrate, on receipt of the report for the committing Magistrate, unless he considers that the accused or his family can afford to engage legal assistance, will proceed to engage an Advocate or a Pleader to appear for the accused in the Court of Session, or in the High Court as the case may be, offering a fee at the rate of remuneration prescribed in rule (6). The District Magistrate before forwarding the record to the Sessions Judge, or to the High Court, will note in the diary-sheet therein whether or not he has engaged an Advocate or a Pleader, stating the reasons for his action. Even when the Magistrate has found that the accused and his family have means enough, it is open to the High Court or the Court of Session to request the District Magistrate to provide legal assistance for the accused at the trial. The Session Judge may make a similar request to the District Magistrate when a further enquiry has been directed under section 375 of the Code of Criminal Procedure, or when a new trial has been ordered upon a charge of an offence punishable with death. The District Magistrate will in like manner provide legal assistance for such poor persons who are accused of offences punishable with death before other Courts and Tribunals empowered to try such offences and to pass a sentence of death.

† Ministry of Judicial Affairs "G" Circular No. 17 of 1949, dated the 3rd November 1949.

❖ The Attorney General's Office Direction No. 9/1988, dated 19-12-1988.

When an Advocate or Pleader is briefed, he is briefed for the whole case, that is till the final determination of the case by the trial Court. A person sent up for trial on a capital charge should be defended throughout the trial by the Advocate or Pleader engaged at Government expense even though the charge ultimately framed or altered to may be for an offence which is not punishable with death.

(2) In all cases Advocates or Pleaders should be engaged in sufficient time to enable them to receive instructions and to study the necessary documents. As soon as orders for the engagement of legal assistance have been passed, the Advocate or Pleader shall examine the committal record and decide what parts of the records he really requires to be copied to enable him to conduct the case properly. Copies of only such parts of the record as the Advocate or Pleader for the defence thinks really necessary should be supplied. Fees for the copies will be charged but paid by Government, provided that the District Magistrate is satisfied that the copies applied for are essential for the ends of justice.

(3) Superintendents of jails shall forward to the Registrar, Supreme Court, or the Registrar, High Court, all appeals to the Supreme Court, or High Court, from condemned prisoners who desire the Supreme Court or the High Court to provide legal assistance. If the Advocate or Pleader who has defended the prisoner at the trial has been engaged by Government he shall submit to the Registrar under sealed cover copies of the records and documents he has been furnished with under rule (2) together with his notes, and the Registrar shall deliver the same without breaking the seal to the Advocate engaged for the prisoner in the Supreme Court or the High Court.

(4) In the case of an appeal by the President against the acquittal of any person accused of capital offence the High Court will provide legal assistance for his defence on receipt of intimation from the President of the receipt of a report of the Commissioner of the Division under Rule 4 of Judicial Department Circular No. 30 of 1924 that such assistance is necessary.

(5) The Supreme Court or the High Court will provide legal assistance in all appellate proceedings for all condemned prisoners unable to provide themselves therewith and for the defence of respondents in similar circumstances who are called upon to show cause why a lesser sentence should not be enhanced to a sentence of death; and may provide legal assistance to such prisoners in references under section 374, Code of Criminal Procedure, or in enquiries held before the High Court under section 375.

(6) The following rates of fees are authorized for Advocates or Pleaders engaged under the preceding paragraphs :-

(i) Supreme Court or High Court - K75 for the first day and K 50 for each succeeding day.

(ii) Court of Session or any other Court or Tribunal empowered to pass a sentence of death - K50 per case, payable as soon as the Advocate or Pleader accepts the brief, and an additional fee of K 25 per diem for each day's appearance in excess of two, provided that the Court or Tribunal certifies that such appearance was necessitated either by the necessarily protected hearing of the case or by the unavoidable postponement of the hearing which could not reasonably have been foreseen by the Advocate or Pleader.

Daily rates are not to be paid for appearances merely to hear judgment.

It is an obligation of the Union to provide for the defence of accused persons at public expense. In providing for payment of fees on the above scale, the Government appeals to the tradition of the bar that the defence of poor persons is an act of merit on the part of Advocates and Pleaders, and trusts that the scale may receive ready acceptance, even though the fees may be less than those which would be paid by wealthy clients charged with grave offences.

(7) These orders do not contemplate the engagement of an Advocate or a Pleader to appear in any Court or Tribunal aforesaid in remote stations where there are no Advocates or Pleaders in residence, nor the engagement of an Advocate or a Pleader to appear in any case on behalf of the accused person in the preliminary inquiry held by the committing Court.

458. The advocates or pleaders engaged by Government on behalf of poor persons accused of offences punishable with death should be required to examine the committal record, and to decide what parts of the record they really require to be copied to enable them to conduct the case properly in the Sessions Court. Copies of only such parts of the record as the advocates or pleaders for the defence think really necessary should be supplied.

Tender of Pardon to Accomplice.

337. **459.** Every case, where a person has accepted a tender of pardon under section 337, sub-section (1), and has been examined under sub-section (2), must be committed to the Court of Session or High Court for trial, unless the Magistrate inquiring into the case discharges the accused.

Postponements and Adjournments.

460. When an accused is brought before a Magistrate for enquiry or trial under section 170, section 344 is the law applicable to postponements. If at that time the investigation has been completed, the police report under section 173 must be forwarded with the accused. Whether the investigation has been completed or not, the Magistrate may direct a remand for any reasonable cause *e.g.*, the investigation being incomplete but there being sufficient evidence available to justify the accused being brought before the Magistrate. Even though some of the witnesses are present, the Magistrate may, in his discretion, postpone the commencement of the case and remand the accused if there is good cause for doing so, *e.g.*, where it is clearly desirable for the ends of justice to have all the witnesses for the prosecution examined on the same day or in continuous succession.

461. Section 344 does not require evidence for the prosecution to be taken in order to justify a remand, but it would be improper without cogent reason to harass the witnesses for the prosecution by not examining them all in continuous succession when they are produced.

462. It is not a reasonable cause of postponement under section 344, except for a short period, that there are other accused in the case for whose arrest it is considered by the Magistrate desirable to wait in order that all the accused may be put on their trial together. Such an order consults the convenience of the Magistrate and witnesses only whereas every accused has a right to have the evidence, against him recorded at as early a period as possible.

463. Sometimes grave delay occurs in Criminal cases owing to the fact that one or more of the accused are wanted simultaneously in different Courts either in the same or in different districts. To avoid such delays District Magistrates should issue instructions to the Police and to Jail Superintendents requesting them to arrange that the case of any accused person whose trial is pending in more Courts than one is at once brought to the notice of the trying Magistrate. On receiving such an intimation the trying Magistrate, if he cannot dispose of the case at once, should communicate immediately (if necessary by telegram) with the other Court informing it of the date fixed for hearing and the probable duration of the trial before him. The two Courts should then keep each other informed of their arrangements, and make every endeavour to dispose of the cases with due regard to each other's convenience. The name of any accused against whom cases in two or more Courts are pending should be specially brought to the notice of the District Magistrate *if either trial exceeds six weeks* from the date of his first appearance in Court.

464. The common practice of adjourning a case, because all
 Absence of witnesses. the witnesses for the prosecution or defence
 are not in attendance, is prohibited, except in
 cases where it may be sometimes desirable to postpone a trial or
 inquiry for a short period in order that, when commenced, it may be
 continuous and conducted in such order in regard to the examination
 of witnesses as may best set out the facts to be given in evidence.
 (See also paragraph 608)

465. Postponements, because an advocate or a pleader for the
 Absence of Advocate or prosecution or defence cannot attend when a
 Pleader. case is called or cannot remain throughout the
 time the Magistrate can devote to the case, should be most rare and
 ordinarily confined to the case of an advocate or a pleader being at-
 tacked by sudden illness on the day of hearing, incapacitating him
 from coming to or remaining in Court.

466. Similarly the practice is prohibited of adjourning a case
 Want of time. for days for want of time, and telling the wit-
 nesses to come again on another day. All
 Courts must bear in mind that the accused is entitled to have his case
 tried as early as possible.

If a case cannot be taken up on the date fixed every endeavour
 should be made to take it up on the following day.

In time of congestion of work in any Court, subordinate Mag-
 istrates should make an immediate report to the District Magistrate
 whenever they are forced by circumstances to adjourn a case, whether
 at the first or at any later hearing, for any period longer than 15 days.

467. The postponement of judgment after the hearing of a case
 is authorized in certain circumstances when the accused has another
 case pending against him. (See paragraph 701.)

468. When a case has once been adjourned without the ex-
 Precedence to be amination of the witnesses in attendance, it
 given to adjourned cases. should be given preference over other cases
 on the next day fixed for hearing.

469. A separate warrant is required with every under-trial prisoner forwarded to jail for confinement, and in the case of every under-trial prisoner who, after confinement in jail, is not sent back there for further confinement, an intimation should be forwarded to the officer in charge of the jail of his release or other manner of disposal.

470. In view of the desirability of maintaining in jails some records to explain unusually long detentions of under-trial prisoners for the information of official visitors and others, an entry of the cause of detention in the case of second remand should be made on the remand order issued under section 344 in Form Criminal 72.

471. X X X X X X X X X X X X X X X X X X X X X X
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472. In the event of more than one remand being necessary the original detention order should be returned to the Jailor on each occasion of the production of the prisoner for retention till the final disposal of the case.

473. District Magistrates are expected carefully to check detention in custody by the fortnightly returns of subordinate Courts in which pending cases have to be shown.

474. Whenever a convict is produced in Court from jail under an order in Form Criminal 54, if his further attendance on a later day is required, the Court shall send with the convict on his return to the jail a fresh production order in the above form; and shall also attach to that order a remand order in Form Criminal 72. A release warrant should not be sent in respect of a convict who has been produced under an order in Form Criminal 54.

* Judicial Department Notification No.2 , dated the 15th January 1964

Strictures by Magistrates and Judges on the Conduct of the Police.

475. (1) Allegations of tutoring of witnesses, of the manufacture or suppression of evidence, and of extorting confessions of guilt by threats or inducements, are sometimes adopted as the line of defence in the Criminal Courts of this country and it is inevitable that Court should express their opinion freely on such allegations. It is however essential, both for the maintenance of public confidence in the administration of justice, and also for the protection of the police-force, that judicial comments on such allegations should be carefully weighed, should not go beyond the evidence available, and should lead when necessary to adequate investigation.

The following general principles should therefore be borne in mind by Magistrates and Judges who consider that the evidence before them calls for strictures upon the methods employed by the police :-

(a) The misconduct to which attention is drawn in a judgment should be relevant to the case under trial. But matters which are not strictly relevant to the case but which have come to light in the course of the trial may be made the subject of a separate note.

(b) Such strictures should be expressed in restrained and temperate language and Judges and Magistrates should refrain from pre-judging the special enquiry which is to follow.

(2) Orders regulating the procedure to be adopted in the case of retracted confessions and alleged misconduct by the police are contained in paragraphs 571 and 605.

(3) In all cases where strictures are passes by Magistrates upon the conduct of the police, as disclosed in cases coming before them, whether in the judgment or in a separate note, a copy of the judgment or note shall be sent at once by the Magistrate to the District Magistrate concerned, or in Rangoon Town to the Commissioner of Police.

The District Magistrate will cause the allegations to be enquired into by a senior officer of police, or will direct a magisterial enquiry according as he may think fit, in accordance with the instructions contained in Police Department letter No. 10 - 7P. -6, dated the 4th March 1912. The Commissioner of Police, Rangoon, will take corresponding action.

(4) In Sessions trials where strictures are passed by a Court of Session or by the High Court, if the facts are not sufficient to warrant the immediate institution of criminal proceedings and if the Court is of opinion that an enquiry of a special nature (other than a departmental or police investigation) is necessary, a copy of the note or judgment embodying this opinion shall at once be sent to the District Magistrate. The District Magistrate will then report the matter by the ordinary channel for the orders of the President of the Union who will issue instructions for a public enquiry to be held by a Commission of officers and will appoint the officers for that purpose. Such a Commission will ordinarily consist of two officers not belonging to the Police Department one of whom has had judicial experience.

(5) In all other cases where strictures have been passed by a Court of Session or by the High Court, *i.e.*, where criminal proceedings or a special enquiry are not considered necessary, a copy of the note or judgment embodying the strictures shall be sent to the District Magistrate, who will either proceed as in sub-paragraph (3) above or if he considers it desirable, move the President of the Union to direct a special enquiry by Commission.

(6) Judges and Magistrates will seldom have the opportunity to investigate thoroughly the allegations made against the police in the course of trial. They will seldom have more than a *prima facie* case showing good grounds for enquiry. They should accordingly in such cases abstain from recording definite findings on accusations which are to be the subject of future special enquiry.

476. The provisions contained in paragraph 475 regarding strictures by Magistrates and Judges upon methods employed in the investigation of cases by Police Officers shall apply *mutatis mutandis* to Excise Officers.

The Use of Handcuffs and Leg-irons.

477. The President of the Union has issued the following instructions regarding the use of handcuffs and leg-irons of under-trial and convicted prisoners when they are produced in Court either to give evidence or to answer charges framed against them :-

- (1) When a prisoner is before a Court either on trial or as a witness, handcuffs should be removed unless
in Rangoon, the Court Police Officer
outside Rangoon, the prosecuting police-officer or where there
is no prosecuting police officer the senior police-officer in
charge of the case
 is of opinion, after consulting the police-officer in charge of the prisoner, that there is a reasonable expectation that the prisoner will use violence or that an attempt will be made to rescue him.
- (2) When a prisoner is brought to Court in leg-irons, the leg-irons should not be removed.

Sessions Judges and Magistrates should bring to the notice of the District Superintendent of Police or the Superintendent of the Jail any seeming departure from the rules which may be observed by them.

Composition of Offences.

478. Criminal cases can only be compounded in accordance with the provisions of section 345. In regard to the offences mentioned in sub-section (1) of section 345, if the complainant or informant desires to compound the offence composition must be allowed, and the Magistrate has no power to impose any condition.

In regard to the offences mentioned in sub-section (2), if the complainant or informant applies for permission to compound the offence the Magistrate may in his discretion either refuse or allow composition, and he may impose suitable conditions under which composition will be allowed. In cases concerning these offences the Magistrate is required to exercise a judicial discretion in refusing or allowing composition, and consequently it is necessary that before composition is allowed there should on the record sufficient materials on which that discretion can be exercised.

The order of the Magistrate allowing or refusing composition should always show that he has really considered whether the case is one in which composition should be allowed or not. Cases of offences not compoundable under either sub-section of section 345 can only be withdrawn under sections 494 and 495, and not by private prosecutors.

479. The attention of Magistrates is directed to the amendments to section 345, which have considerably reduced the number of compoundable offences.

Hurt.

480. Before granting permission to compound an offence, which is only compoundable with the permission of the Court, under sub-section (2) of section 345, the Magistrate should consider whether the complainant or informant, who has applied for composition, should not be required to pay the costs of the prosecution, or whether the accused himself should not be required to pay the costs, as a condition of allowing composition. Ordinarily the expenses of witnesses attending the Criminal Courts in cases sent up by the police are paid by Government, but it is hardly reasonable that the State should be burdened with such charges when the proceedings are brought to a termination by the complainant's or informant's own act or in consequence of an agreement entered into by him with the accused. (cf. paragraph 638).

Costs of prosecution.

Bail

497.

481. (1) In *non-bailable cases*, an accused person may, for reasons to be recorded in writing, be released on bail but he shall not be released on bail, if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

Provided that any person under the age of 16, any women or any sick or infirm person may be released on bail in any case.

482. The High Court or a Court of Session, acting under section 498, cannot admit a person to bail without first giving Government an opportunity of being heard.

483. The following instructions should be observed for the surveillance of accused persons, who have been released on bail, while they are present in Court for the trial of the cases against them:-

(1) *Police Cases* -

- (a) The accused must report to the Court Prosecuting Officer at 10-30 a.m., and the Court Prosecuting Officer should then search him and place him before the Magistrate.
- (b) Before the accused is charged he should be placed in the dock, and in non-bailable cases after the accused has been charged his bail bond should be cancelled.

(2) *Direct Cases.* - In direct cases the Magistrate may in his discretion direct that the same procedure shall be followed as in police cases.

(3) In any event, as soon as the Magistrate has decided to sentence the accused to a term of imprisonment, he should, before passing judgment in the case, inform the Court Prosecuting Officer, and have the accused arrested, searched, and placed in the dock. (See paragraph 48.)

Compensation, Costs and Rewards.

545.

484. In passing judgment the Court may order the whole or any part of the fine recovered to be applied on three objects, namely:-

- (i) in defraying expenses properly incurred in the prosecution;
- (ii) in compensation for the injury caused by the offence committed where substantial compensation is, in the opinion of the Court, recoverable by civil suit,
- (iii) in certain cases, to innocent third parties, in compensation for injury or loss caused to them as a result of the conviction of the accused.

(b) Compensation should be freely and liberally granted when called for by the circumstances of the case, but should be stringently withheld in trivial and merely litigious proceedings.

546 A.

485. The provisions of section 546A, which on conviction of

Costs.

a non-cognizable offence in a case instituted upon complaint provide for an order directing the accused, in addition to payment of the fine, if any, imposed, to pay to the complainant certain expenses incurred by the latter should he carefully noted. Under this section only the Court-fee paid upon the petition of complaint, and the process-fees paid by the complaint for service of processes on the accused or on the prosecution witnesses may be included in the order. The subsistence and travelling allowances of witnesses or the stamp-fee paid on a pleader's power-of-attorney cannot be included. When a Magistrate passes an order for the payment of costs to a complainant under section 546A of the Code of Criminal Procedure he should state in his order the amount of costs to be paid. If, in crediting the amount recovered, the same chalan is used for both fine and fees, the amount of each must be separately stated.

250.

486. When the Magistrate discharges or acquits the accused

Compensation to accused for frivolous complaints.

and is satisfied that the accusation against him was false and either frivolous or vexatious, he should proceed under section 250.

In all proper cases compensation should be granted to persons subjected to false and either frivolous or vexatious complaints.

250 (1).

487. (1) If the Magistrate considers that compensation under section 250 should be awarded, he must in his order of discharge or acquittal, call upon the complainant to show cause against an order under that section, or direct the issue of a summons to the complainant to appear and show cause. After completion of the order of discharge or acquittal, the Magistrate has no power to open the case in order to call upon the complainant to show cause, or to order the issue of a summons to the complainant for that purpose.

250 (2).

(2) It is no longer necessary for the Magistrate to stay delivery of judgment until the complainant has stated his objections under sub-section (2). The Magistrate must record and consider any cause which the complainant may show against the order under section 250, but he may do this by a separate order passed after the order of discharge or acquittal of the accused has been made.

250 (2A). (3) An order awarding compensation under section 250 may provide that the complainant shall suffer simple imprisonment not exceeding 30 days in default of payment.

488. The procedure in paying out compensation or costs is prescribed in paragraphs 1047 and 1048 of Chapter XXIX.

489. (1) Criminal Courts must bear in mind that they have no power to grant rewards out of fines imposed by them unless authorized to do so by any legal enactment. The Penal Code confers no authority to pay any rewards out of fines. Rewards must also not be confounded with compensation granted under the provisions of section 545.

Rewards.

(2) In the absence of any special provision on the subject, an order for the payment of a reward out of a fine imposed by a Criminal Court should be made when passing judgment and not on a subsequent date, when the order would be illegal.

490. Rules for the offer and payment of rewards in criminal cases will be found in the Burma Police Manual, Fifth Edition, 1940, page 98.

491. With regard to the payment of rewards in excise and opium cases and in cases under the Forest Act, *see* paragraphs 869, 820 and 838.

Payment of Expenses of returning home to persons sent up for trial by the Police and acquitted or discharged.

492. The following instructions have been issued by the President of the Union as to the payment of travelling expenses to their homes to persons sent up for trial by the police and acquitted or discharged * :-

(1) The expenses shall be paid by order of the Court by which the accused person is acquitted or discharged.

(2) The payment shall be made only in cases in which the Court is satisfied that hardship would result if payment were not made. It shall be within the discretion of the Court to refuse payment, for reasons to be recorded in writing, in any case the circumstances of which are such that in the opinion of the Court payment should be withheld.

* Judicail Department Circular No. 61 of 1909.

(3) For the purposes of these rules account shall be taken of the distance from the Court to the place where the accused was arrested or where summons was served on him, or of the distance from the Court to the accused's home, whichever is less.

(4) Every accused person sent up for trial by the police may, on his acquittal or discharge, be given a sum of 25 pyas, whatever may be the distance from the Court to his home.

(5) In addition he may be given 13 pyas per diem, for his journey home. Fifteen miles in the case of a man, and ten miles in the case of a woman shall be considered a day's journey.

(6) Where the journey has to be made by railway or by steamer a sum of money equivalent to the cost of a railway or steamer ticket of the lowest class may be given in addition.

(7) Payment under Rules 5 and 6 shall be made only in cases where the accused on his acquittal or discharge has to proceed to a place not less than 15 miles distant from the Court, if the accused is a man, or 10 miles if a woman.

(8) Where it appears to the Court that the accused person is unable to travel on foot owing to illness or physical infirmity, he may be furnished with cart-hire for such portion of the journey as he may have to perform by road.

(9) Payment may be made under these rules in cases where an accused person is acquitted by an Appellate Court while on bail.

(10) All payments made under these rules will be debitable to the budget grant of contingencies of the Courts by which they are made.

The amount paid to the acquitted or discharged person should be entered in column 14 of Criminal Register 1 and his receipt taken there.

Payment of Expenses to enable indigent persons to return home after sentences of whipping have been inflicted upon them by a Magistrate of a Court at an outstation, where there is no jail.

493. Magistrates are authorized at their discretion to make payments, when necessary, to indigent persons in order to enable them to return home after sentences of whipping have been inflicted upon them at outstations where there is no jail. The amount paid in such cases should be the railway or steamer fare by the lowest class or, in the case of a road journey, subsistence allowance at the rate of 19 pyas per diem, allowing 18 miles as a day's journey. It will not be necessary to pay in addition a subsistence allowance of 25 pyas as is done in the case of destitute prisoners released from jail (paragraph 572, Burma Jail Manual, 1950).

If the steamer journey takes more than one day subsistence allowance at the rate of 19 pyas a day may, however, be given in addition to the steamer fare. All payments made under the authority of these orders will be debited to the budget grant for "Contingencies" of the Court concerned.

Transfer and Withdrawal of Cases.

528 (3). 494. All District Magistrates in Burma have been authorized by the President of the Union * to withdraw from the Magistrates subordinate to them any classes of cases which they think proper.

346-347. Reference to Superior Magistrate and for Higher Punishment.

495. Subordinate Magistrates are strictly forbidden to assume jurisdiction by trying for a minor offence where a major offence has been committed. Use should be made of the powers of reference and committal conferred by sections 346 and 347 (see also paragraphs 496 and 497).

349. 496. It should be noted that a Subordinate Magistrate forwarding an accused to the District Magistrate or Subdivisional Magistrate for punishment is not required to convict but to record the opinion that the accused is guilty. A Magistrate receiving a case under section 349 cannot return it for further enquiry. If a District Magistrate, he can quash the proceedings and withdraw the case for trial before himself or some other qualified Magistrate. In that case the proceedings must be begun afresh from the beginning.

497. If the information required in a judgment in a criminal case is not already given in the reasons recorded for referring a case for higher punishment, then it should appear in the judgment recorded by the Magistrate to whom the case is referred.

* Judicial Department Notification No. 45, dated the 3rd February 1897.

When the necessary information is given in the reasons recorded for referring the case, it need not be repeated at length in the judgment of the Magistrate sentencing the accused, but may be incorporated therein by use of general terms. But in every case the reasons or opinion recorded by the referring Magistrate should be attached to the judgment of the Magistrate to whom the case is referred as part of the decision in the case, and a copy thereof should be given or forwarded whenever a copy of the final judgment is furnished.

Proceedings on Evidence recorded by another Magistrate

350. **498.** Section 350 refers to cases in which one Magistrate succeeds another in the same office, and also to cases transferred from one Court to another. Right to *de novo* trial. The second Magistrate on commencing his proceedings should satisfy himself that the accused is acquainted with the provision allowing him to demand a rehearing of the witnesses if he wishes, and should record the fact on hearing the proceedings.

499. In a *de novo* trial under section 350, the witnesses for the prosecution and the accused must be examined afresh and a fresh charge must be framed.

Contempt of Court.

480, 481. **500.** Attention is drawn to the requirements of section 481 in cases in which a Court proceeds under Section 480.

A Magistrate who does not promptly and duly follow the procedure prescribed by section 480 in the trial of any offence specified therein is barred by section 487 from himself trying the offence.

487. **501.** Except as provided in section 480 and 485, Judge or Bar to Jurisdiction. Magistrate cannot try any person for any offence referred to in section 195, when committed before himself or in contempt of his authority, or when brought under his notice in the course of a judicial proceeding.

Criminal Lunatic and Accused Persons believed to be of Unsound Mind.

502. For the procedure in regard to lunatics generally, including non-criminal lunatics, see under the heading "Lunacy Act," Chapter XXVII, paragraphs 844-859.

503. The President of the Union has directed that the medical officers holding charge of the appointments mentioned in the subjoined schedule may, if so required by a Magistrate, examine persons who are believed to be of unsound mind and give evidence as regards the mental condition of such persons :-

<i>Appointment.</i>	<i>Station.</i>
Superintendent of Jail	Yangon
Superintendent of Jail	Insein.
Superintendent of Jail	Mandalay.
Medical Superintendent, Mental Hospital	Tadagale.*

In any case in which the accused is charged with an offence punishable with death or transportation for life and it is considered desirable that he should be kept under observation under section 464 (1) or 465(1) or for the purpose of coming to a finding under section 470 of the Code of Criminal Procedure, the Court is enjoined to avail itself of the services of the Medical Superintendent, Mental Hospital, Tadagale.

In Yangon when proceedings under section 464(1) of the Code of Criminal Procedure are taken in the case of male lunatics, in cases other than those of the description mentioned above, the accused should not, as a matter of course, be sent to the Mental Hospital, Tadagale, but only where the peculiar circumstances of the case justify such a course, *e.g.*, where the accused is very dangerous to others or noisy.

504. If the crime of which such person is accused be an offence against the person or if there is reason to believe that he has at any time, been aggressive, the Magistrate or Court of Session shall consult the Medical Officer under whose observation the lunatic has been detained, and he shall have before him the information detailed in paragraph 859 *infra* as far as possible, before accepting bail under section 466 of the Code of Criminal Procedure.†

* Judicial Department Notification No. 182, dated the 23rd September 1922 as amended by Notification No. 218 (*Corrigendum*), dated the 9th August 1940.

† Judicial Department Notification No. 65, dated the 5th May 1913.

505. (1) There is no necessity for a Judge or Magistrate when
 Detention of Lunatic. ordering person to be detained in safe custody
 under the provisions of section 466 (2) or
 471(1) of the Code of Criminal Procedure, to refer the case for orders
 to Government. The lunatic should be committed to a jail or to the
 Mental Hospital, Tadagale (as the case may be), under a warrant in
 Form Criminal 133 and the report of the action taken should be sent
 separately to Government.

(2) The report to Government, required by section 466
 (2) or 471(1) in the case of persons of unsound mind, should be made
 by Sessions Judges and Magistrates direct to the Secretary to the
 Government of the Union of Burma, Ministry of Judicial Affairs,
 and not through the High Court or the superior officers of the Magis-
 trate concerned.

506. Whenever a Judge or Magistrate applies for the orders of
 the Government under section 30 (1) of the
 Medical History Sheet. Prisoners' Act, he must forward a Medical
 History Sheet in the Form (Medical) *vide* Chapter XXVII, paragraph
 L.A.3 858.

It is most important that the Medical History Sheet should be
 in the correct form and be countersigned by the Judge or Magistrate
 when forwarded.

507. Whenever under the provisions of section 46, or section
 471, Code of Criminal Procedure, a Court directs that the accused
 person be confined in a lunatic asylum or other suitable place of safe
 custody, the Court shall, on the application of the Superintendent of
 the asylum or jail in which the accused is to be confined, forward the
 proceedings for his perusal, with a request that they may be returned
 within fifteen days.

508. The following statutory rules to regulate the transfer of criminal lunatics to asylums have been made by the President of the Union under the provisions of section 91, sub-section (1), clause (e) of the Lunacy Act * :-

Transfer of Criminal
Lunatic to Asylum.

1. A criminal lunatic who has been ordered by a Court or Magistrate under the provisions of section 466, sub-section (2), or section 471, sub-section (1), of the Code of Criminal Procedure, to be kept in safe custody in any place other than the Mental Hospital, Tadagale, shall be transferred to the Mental Hospital, Tadagale.

2. A criminal lunatic who is sent to a jail for observation under section 464 of the Code of Criminal Procedure, shall not be transferred to a lunatic asylum until the receipt of such orders authorizing his confinement therein: provided that, if any such criminal lunatic has been detained in the jail for more than a month, the Superintendent of the Jail shall make a special report to the Inspector-General of Prisons, who will take such action as may be necessary in the matter.

3. If any prisoner becomes insane after his admission to a jail, report regarding his case shall immediately be submitted by the Superintendent of the Jail to the Inspector-General of Prisons, with a view of obtaining the orders of the President of the Union for his removal to a lunatic asylum. The Superintendent shall forward with his report a nominal roll and medical history sheet of the lunatic. Full details of the lunatic's antecedents and connections, as required by the medical history sheet, shall be obtained from the Magistrate of the district to which the lunatic belongs.

4. On receipt of a warrant or order for the removal of a criminal lunatic to a lunatic asylum, the Superintendent of the Jail shall make arrangements for the removal of the lunatic to the asylum mentioned in the warrant or order. Every precaution shall be taken to secure that the lunatic is properly cared for while in transit to the asylum. The lunatic shall be sent in charge of a police escort, and proper arrangements shall be made regarding his clothing, bedding and food. Two suits of clothing shall be provided. Fetters shall not be used unless absolutely necessary.

* Judicial Department Notification No. 67, dated the 5th May 1913, as amended by Notification No. 41, dated the 11th May 1924.

5. Prisoners who become insane while undergoing imprisonment in jail, may, in urgent cases (*i.e.*, if the lunatic is noisy, filthy or dangerous), be transferred to the asylum by the Superintendent of the Jail in communication with the Superintendent of the Lunatic Asylum in anticipation of Government sanction.

6. Each criminal lunatics received into an asylum shall be accompanied with the following documents :-

(i) In the case of criminal lunatics under section 466 or section 471, Code of Criminal Procedure:-

- (a) Warrant of the Magistrate or Court.
- (b) Medical History Sheet.
- (c) Abstract from Jail Medical case-book.
- (d) Extract from Proceedings of the case.
- (e) Descriptive Roll.
- (f) Certificate of fitness for transfer.

(ii) In the case of criminal lunatics under section 30 (1), Prisoners' Act:-

- (a) Warrant.
- (b) Medical History Sheet.
- (c) Abstract from Jail Medical case-book.
- (d) Extract from Proceedings of the case.
- (e) Descriptive Roll.
- (f) Certificate of fitness for transfer.
- (g) Committal warrants with a note as to the total amount of remission earned while in jail from the original date of confinement to date of transfer to an asylum made on the back of the committal warrant.

7. When a prisoner, who has developed insanity in jail while undergoing a sentence of imprisonment, cannot be transferred, under a Government order, so as to reach a lunatic asylum before his sentence expires, he shall be detained until the expiration of his sentence, and then be handed over to the police along with the certificate of the medical officer and the medical history sheet.

509. In amplification of these rules, the following instructions have been issued by the President of the Union for the guidance of Judges and Magistrates and officers concerned* :-

1. The Magistrate or Court of Sessions making a detention order under section 466 (2), or section 471(1) of the Code of Criminal Procedure, shall invariably submit the proceedings and connected papers to Government who may in their executive capacity vary the order as circumstances may require. When lunatic prisoner is reported to be capable of making his defence and is sent up for trial under section 473 of the Code of Criminal Procedure, the Medical Superintendent of the mental hospital will forward his medical history sheet carefully filled in, together with an abstract from the case-book, detailing the chief events of his history, with a recorded opinion of his case.

2. The following are the principles on which Government will act in disposing of the cases of criminal lunatics sent up for orders under sections 474 and 475 of the Code of Criminal Procedure :-

(1) Final orders will not be issued unless the luna-

(1) Medical History tics' papers are accompanied by a medical history sheet to accompany every case.

A.- Recovered Criminal Lunatics.

(2) If the crime be against the person, the cause

(ii) Crime : Offence *ganja* or other intoxicant, and the type of insanity acute or chronic mania, a period of three years should be spent in a mental hospital free from all signs of insanity before any action is taken.

against person.
Cause : *Ganja*, etc.,
Type: Acute or chronic
mania.

(a) At the end of that time, if under forty years of age and in good physical health, he may undergo a period of probation of six years in the mental hospital.

(a) Age under 40
years.

* Department of Health and Public Works (Medical Branch), "G" Circular No. 7 of 1940, dated the 11th March 1940.

- (b) Age over 40 years. (b) If over forty years of age, or in poor physical health, the period of probation in the mental hospital may be shortened according to circumstances of crime and nature of security offered.

In any case security should, if possible, be taken on the expiry of his period of probation in the mental hospital.

- (3) If the crime be an offence against the person,
 (iii) Crime : Offence against person. the type of insanity acute or chronic mania,
 Cause : Not *ganja*, etc. and the alleged cause not *ganja* or other intoxicant, a period of at least four years, complete freedom from insanity should be spent in a mental hospital before action is taken.
 Type : Acute or chronic mania.
 (a) At the end of that time, if under forty years of age and in good physical health, he should undergo a probation of four years in the mental hospital.
 (a) Age under 40 years.
 (b) If over forty years of age, the period of probation in the mental hospital might be shortened, according to circumstances of health and surety. Security should, if possible, be taken before his final release from mental hospital supervision.
 (b) Age over 40 years.

- (4) If the crime be not an offence against the person, but the lunatic has at any time exhibited dangerous or violent tendencies and the type of insanity is acute or chronic mania, he should be treated exactly as above, except that the period of probation in the mental hospital may be shortened in accordance with the kind and degree of violence exhibited. Security should, if possible, be taken before his final release.
- (iv) Crime : Not offence against person but mental attitude aggressive.
 Type, Acute or chronic mania.

(5) **If the crime be not an offence against the person and there be no history that the lunatic was at any time aggressive, he may generally be treated much as if he were a non-criminal lunatic.** Government will generally be guided in such cases by the recommendations of the Visitors and of the Medical Superintendent of the mental hospital in which the lunatic has been confined.

(6) **If the crime be murder, the type of insanity melancholia, a period of at least six years' complete freedom from insanity should be passed in a mental hospital, before action is taken. During the last year of this period the recovered criminal may be allowed access to the bazaar under certain regulations.**

(a) **If at the end of that period he is still under forty years of age, he should not be released except on excellent security.**

(b) **If over forty years of age, security should, if possible be obtained.**

(7) **If the crime be attempt to commit suicide, and not murder, the type melancholia, and if he has not exhibited any violent tendencies while under observation, some relaxations of the rules may be permitted according to circumstances of age, period of detention, etc.**

B.- Unrecovered Criminal Lunatics.

(8) (a) **If the crime be an offence against the person, the type chronic mania of the irritable aggressive kind, it will seldom be possible to release the lunatic during the continuance of insanity except in advanced age and on exceptional security.**

(viii) Crime : Offence against person.

(a) Type : Irritable chronic mania.

- (b) Type : Hypomania. (b) If the crime be an offence against the person, the type of insanity hypomania of the amiable kind, a lunatic may be released after passing six to ten years in that condition, but only on security.

If below forty years of age, detention should generally be ten years; if over forty years of age, six years may suffice.

- (9) If the crime be not an offence against the person, or if an offence against the person of a trivial nature and the lunatic has never exhibited aggressive symptoms, he may generally be treated much as if he were a non-criminal lunatic, and Government, when dealing with his case under section 474, will be guided chiefly by the recorded opinion of the Medical Superintendent of the mental hospital as to the propriety of releasing him and by the recommendations of the Visitors.

- (a) Type : Hypomania. (a) If his mental attitude be hypo-mania, characterised by good humour, cheerfulness and amiability, and he is able to earn a livelihood, he may generally be released with or without security.

- (b) Type : Slight chronic dementia. (b) If it be chronic dementia or imbecility of slight degree, he may be released on similar conditions.

- (c) Type : Irritable chronic mania or pronounced demantia. (c) If he be suffering from chronic mania of the irritable mischievous type or chronic dementia of a more pronounced character, he may still be released, but only on satisfactory security that he will be properly cared for and prevented from doing injury to himself or others.

- (d) If the chronic mania be of ~~inveterate~~ type or the dementia or imbecility of the last degree, the lunatic can only be safely and humanely treated in a mental hospital.
- (d) Type : Worst degrees of chronic mania, dementia or imbecility.

Offences triable under Military, Naval or Air Force Law.

549. **510.** In exercise of the powers conferred by sub-section (1) of section 549 of the Code of Criminal Procedure, and in supersession of the rules published in Judicial Department (Judicial I Branch) Notification No 365, dated the 23rd July 1946, the President of the Union makes the following rules* applicable to cases in which persons subject to military, naval or air force law shall be tried by a Court to which the said Code applies or by a court-martial:-

(1) These Rules may be called the Criminal Procedure (Military Offenders) Rules, 1950.

(2) Where a person subject to military, naval or air force law is brought before a Magistrate and charged with an offence for which he is liable under the Burma Army Act,[†] the Burma Naval Volunteer Reserve (Discipline) Act, 1940 (Act No. XV of 1940), the Burma Naval Discipline Act, 1947, (Burma Act No. LXXXI of 1947), the Burma Volunteer Air Force (Discipline) Act, 1941 (Burma Act III of 1941), the Burma Air Force (Discipline) Act, 1947 (Burma Act XLV of 1947), to be tried by a court-martial, such Magistrate unless he is moved by the competent military, naval or air force authority to proceed against the accused under the Code of Criminal Procedure shall, before so proceeding give notice to the Commanding Officer of the accused, and until the expiry of a period of twenty-one days from the date of service of such notice, shall not-

* Judicial Branch Notification No. 102, dated the 24th May 1950, published at page 368 of *Burma Gazette*, Part I, of 3rd June 1950.

† Myanmar Army Act 1959.

- (d) If the chronic mania be of ~~inveterate~~ type or the dementia or imbecility of the last degree, the lunatic can only be safely and humanely treated in a mental hospital.
- (d) Type : Worst degrees of chronic mania, dementia or imbecility.

Offences triable under Military, Naval or Air Force Law.

549. **510.** In exercise of the powers conferred by sub-section (1) of section 549 of the Code of Criminal Procedure, and in supersession of the rules published in Judicial Department (Judicial I Branch) Notification No 365, dated the 23rd July 1946, the President of the Union makes the following rules* applicable to cases in which persons subject to military, naval or air force law shall be tried by a Court to which the said Code applies or by a court-martial:-

(1) These Rules may be called the Criminal Procedure (Military Offenders) Rules, 1950.

(2) Where a person subject to military, naval or air force law is brought before a Magistrate and charged with an offence for which he is liable under the Burma Army Act,[†] the Burma Naval Volunteer Reserve (Discipline) Act, 1940 (Act No. XV of 1940), the Burma Naval Discipline Act, 1947, (Burma Act No. LXXXI of 1947), the Burma Volunteer Air Force (Discipline) Act, 1941 (Burma Act III of 1941), the Burma Air Force (Discipline) Act, 1947 (Burma Act XLV of 1947), to be tried by a court-martial, such Magistrate unless he is moved by the competent military, naval or air force authority to proceed against the accused under the Code of Criminal Procedure shall, before so proceeding give notice to the Commanding Officer of the accused, and until the expiry of a period of twenty-one days from the date of service of such notice, shall not-

* Judicial Branch Notification No. 102, dated the 24th May 1950, published at page 368 of *Burma Gazette*, Part I, of 3rd June 1950.

† Myanmar Army Act 1959.

(a) convict the accused under section 243, acquit him under section 247 or section 248, or hear him in his defence under section 244 of the said Code, or

(b) frame a charge against the accused under section 254 of the said Code, or

(c) make an order committing the accused for trial by the High Court or the Court of Session under section 213 of the said Code, or

(d) transfer the case for inquiry or trial under section 192 of the said Code.

(3) Where, within the period of twenty-one days mentioned in Rule 2, or at any time thereafter before the Magistrate has done any act or issued any order referred to in that rule, the Commanding Officer of the accused gives notice to the Magistrate that, in the opinion of competent military, naval or air force authority, as the case may be, the accused should be tried by a court-martial, the Magistrate shall stay proceedings and, if the accused is in his power or under his control, shall deliver him, with the statement prescribed by section 549 of the said Code to the authority specified in the said section.

(4) Where a Magistrate has been moved by competent military, naval or air force authority, as the case may be, under Rule 2, and the Commanding Officer of the accused subsequently gives notice to such Magistrate that, in the opinion of such authority the accused be tried by a court-martial, such Magistrate, if he has not before receiving such notice done any act or issued any order referred to in Rule 2, shall stay proceedings and, if the accused is in his power or under his control, shall in the like manner deliver him, with the statement prescribed in section 549 of the said Code, to the authority specified in the said section.

(5) Where an accused person, having been delivered by the Magistrate under Rule 3 or 4, is not tried by a court-martial for the offence of which he is accused, or other effectual proceedings are not taken, or ordered to be taken, against him, the authority concerned shall inform the Magistrate, with a brief statement showing why no proceeding had been taken against the accused person, and the Magistrate shall report the circumstances, with his comment thereon, if any, to the President.

(6) Where a Magistrate having jurisdiction is of opinion that proceedings ought to be instituted before him in respect of any alleged offence, he may, by written notice, require the military, naval or air force authority concerned at its option either to deliver the offender to him to be proceeded against according to law or to postpone the proceedings pending a reference to the President, and in every such case the said authority shall either deliver the offender in compliance with a requisition or shall forthwith refer the question as to the Court before which proceedings are to be instituted for the determination of the President, whose order thereon shall be final.

(7) In these rules "competent military authority" means the General Officer Commanding, Burma Army and all Commanders of North and South Burma Sub-Districts, Northern and Southern Commands or, Divisions or, Brigades or, Areas; "competent naval authority" means the Officer, not below the rank of Commander, Commanding Burma Navy; "competent air force authority" means the Officer, not below the rank of Wing Commander, Commanding Burma Air Force and the words "the Magistrate" include a Judge having jurisdiction to try the accused persons.

511. Under section 41[†] of the Burma Army Act, every person subject to the Act who commits any civil offence shall be deemed guilty of an offence under military law and be triable by Court-martial, except where the offence is murder or culpable homicide, in relation to a person not subject to military law, or rape, and is committed by a person not on active service. The result of these provisions of law is that the procedure prescribed in paragraph 526 must be followed in all cases in which a person subject to military law is brought before a Magistrate and charged with any offence, unless that offence is murder or culpable homicide, in relation to a person not subject to military law, or rape, and was committed by a person not on active service.

[†] Section 71. 72 Myanmar Army Act 1959.

Cognizable Offences under Special and Local Acts.

512. The following is a list of offences under Special and Local Acts, which are cognizable with the meaning of section 4 (f) Code of Criminal Procedure, and should be classified as such:-

Acts.	Sections.
The Arms Act	19, 19A and 20.
The Union Military Police Act	25 – 38.
The Burma Excise Act	30 – 34 inclusive, 37 and 38, [if accused found committing the offence – see section 54 (a)].
The Ferries Act	26.
The Burma Post Office Act	52 (including abetments and attempts).
The Railways Act	100, 101, 119 – 121 inclusive, 126 – 129 inclusive, and 130 (1).
The Rangoon Police Act	30 and 31 read with section 54, Code of Criminal Procedure.
The Registration Act	81 and 82.
The Burma Salt Act	9, 10 and 13, read with section 9.
The Burma Telegraph Act	25, 26, 27 and 29 (including attempts).
The Metal Tokens Act	4.
The Burma Official Secrets Act	3 and 4.
The Births, Deaths and Marriages Registration Act.	27
The Burma Aircraft Act	8 (including abetments and attempts).
The Public Property Protection Act. 1947.	6 (1).
The Restriction of Bribery and Corruption Act, 1948.	4 (2).

CHAPTER XVIII.

ABSCONDING ACCUSED.

513. (1) When an accused person absconds or cannot be found and the Magistrate is satisfied that it will be useless to issue further process he should take steps under section 512 (*see* paragraph 1164). But when evidence is recorded under section 512, it is desirable that it should be recorded as soon as possible after the fact of the absconding of the accused has been ascertained. In proceedings of this kind the following instructions should be observed :-

(1) When a Magistrate proposes to proceed under section 512 of the Code of Criminal Procedure, he should first of all record evidence that the accused person has absconded and that there is no immediate prospect of arresting him. Evidence on these points should be recorded before any evidence relating to the alleged offence is taken.

(2) If the Magistrate considers that the evidence so recorded proves that the accused has absconded and that there is no immediate prospect of arresting him, he should record a finding to that effect. This finding may be recorded on the diary. It is important and should on no account be omitted.

(3) After recording the finding above-mentioned, the Magistrate should proceed to record the evidence against the accused. In so doing, he should make the record as full and detailed as possible. The Honourable Judges have observed that evidence recorded under section 512 of the Code of Criminal Procedure is often recorded in a very brief and perfunctory manner, and is seldom of much value. The Magistrate should try to ascertain all that the witnesses know about the case and should question them carefully for this purpose.

(4) In hurt cases and cases of a similar nature Magistrates must be particularly careful to record the medical evidence, and in cases in which death has been caused they must see that there is adequate evidence on the record to establish the identity of the body. As owing to the absence of the accused the provisions of section 509, Code of Criminal Procedure, are not applicable to such

cases, District Magistrates should as far as possible arrange for their disposal at the station where the medical officer, whose evidence is required, resides.

(5) When the evidence has been recorded the Magistrate should consider whether there is sufficient *prima facie* proof of the offence. If there is, he can proceed under sections 87 and 88. If there is not sufficient *Prima facie* proof of the offence, he should refuse to issue either proclamation or attachment. In petty cases it is not necessary to take any step under sections 87 and 88, even if there is sufficient *prima facie* proof of the offence. Proclaiming a man for a petty offence makes him a fugitive from justice and is likely to drive him to more serious crime. In case of doubt, a reference should be made to the Sub-divisional or District Magistrate.

(6) **In a case in which there are more than one accused**, where any of the accused abscond before, or in the course of, the trial if evidence is recorded to prove that such accused have absconded and that there is no immediate prospect of arresting them, and if the Magistrate records a finding that this has been proved, the evidence subsequently taken in the case can be used in accordance with the provisions of section 512 of the Code of Criminal Procedure. A separate miscellaneous proceeding should be drawn up, on which should be noted the number and description of the regular trial in which the evidence is recorded. This miscellaneous proceeding should be registered in Criminal Register No. II; and its number should be noted in the diary of the regular trial. A note should also be made on the cover of the regular trial record, so that when the ordinary time for its destruction arrives, it may not be destroyed but **may be transferred to the separate miscellaneous proceeding mentioned above**. Where evidence that some of the accused have absconded and that there is no immediate prospect of arresting them cannot be recorded at once, the trial of the remaining accused should proceed and separate proceedings under section 512 of the Code of Criminal Procedure should be held in respect of the absconding accused.

(2) Magistrates should note that it is only the Court which is competent to try or commit for trial for the offence complained of an accused person who has absconded and of whose arrest there is no immediate prospect which may take action under section 512 of the Code of Criminal Procedure. Thus a third class Magistrate

not empowered to commit for trial under section 206, Code of Criminal Procedure, could not record evidence under this section against an absconder accused of dacoity.

(3) The attention of Magistrates is called to the second sentence of section 512 (1) of the Code of Criminal Procedure. When evidence has been recorded under this section, and the offender is subsequently arrested and sent up for trial, no statement previously recorded under section 512 of the Code of Criminal Procedure can be admitted in evidence against him unless and until it is proved that the witness who made it is dead or incapable of giving evidence, or that his attendance cannot be procured without an amount of delay, expense, or inconvenience which, in the circumstances of the case, would be unreasonable.

CHAPTER XIX.

MISCELLANEOUS CASES (MAINTENANCE AND BONDS).

Maintenance

488 (8). **514.** When a person ordered, under section 488 of the Code of Criminal Procedure, to pay maintenance has ceased to reside in the jurisdiction of the Magistrate who passed the order, an order for the recovery of arrears may be made either by the Magistrate who passed the order for payment of maintenance or by a Magistrate having jurisdiction in the place where such person resides.

489. **515. (1)** The fact that a child for whose maintenance an order has been passed has grown older constitutes a change in the circumstances of the person receiving maintenance.

(2) Although divorce is not "a change in circumstances" such as is referred to in section 489, it is ground for enquiry under section 488 (5) whether the parties are living separately by mutual consent, and also cause for refusing to enforce an order of maintenance under section 490, Code of Criminal Procedure.

488 (6).

516. Evidence of neglect or refusal to maintain must be taken in the presence of the husband or father, as the case may be, and an order to pay maintenance cannot be passed in the absence of the husband or father; provided that if the Magistrate is satisfied that he is wilfully avoiding service or wilfully neglects to attend Court, the case may be heard and determined *ex-parte*.

Record of Evidence.

517. (1) It is only when there is wilful neglect to comply with an order directing payment of maintenance that a Magistrate can issue a warrant to levy the amount due.

Enforcement of order.

(2) An order for the payment of arrears of maintenance due under a private agreement between husband and wife is not authorised under section 488, only an order for a future allowance can be passed.

(3) An order of imprisonment in anticipation of a default of payment of the maintenance ordered under section 488 is illegal.

488 (3).

(4) The maximum sentence which may be imposed on any one occasion under section 488 (3) is one month.

(5) Arrears of maintenance can be recovered for one year only.

Recovery of Arrears.

406 A.

518. Under section 406, an appeal lies to the Court of Session against any order of a Magistrate passed under section 488 or section 489.

Appeals.

Bonds.

518.

519. In lieu of executing bond, the Court may in any case permit the deposit, to such amount as it may fix, a sum of money or Government securities. When security is ordered under Chapter VIII, the Court may require the deposit of a sum of money or Government securities, not exceeding K 100 in value, in lieu of executing a bond.

Deposit of Money in lieu of Bond.

514 B.

520. In all cases when a minor is required to execute a bond, a bond executed by a surety or sureties only may be accepted instead.

Bond of Minor.

521. (1) When the bond is for the appearance of a person before a Court, that Court only may declare that the bond has been forfeited.

Forfeiture of Bond.

(2) A bond must be construed strictly, and the amount of the bond cannot be forfeited in case of failure to appear in a Court to which the case been transferred, if the obligation to appear in that Court has not been specified in that bond. Hence, ordinarily when a case is transferred, if the accused is on bail, a fresh bond to appear before the Court to which the case is transferred should be taken from him. * But see section 170 (3), Code of Criminal Procedure.

514.

522. When the penalty of a bond has been paid the bond is discharged and neither principal nor sureties are subject further liability, whether part of the penalty has been remitted under section 514, sub-section (5), or not.

Discharge of Bond.

523. The whole or any part of the penalty of a bond may be recovered from the principal or any of the sureties. But not more than the sum named can be recovered in the whole.

Recovery of Penalty.

CHAPTER XX.

COMMITTAL INQUIRIES AND SESSIONS TRIALS.

Inquiry into Cases triable by Courts of Session.

18.
206-220

524. The following explanatory summary of the provisions of Chapter XVIII is given for the guidance of all Magistrates empowered to commit for trial : -

Procedure in Committal Inquiry.

208.

(1) The Magistrate must examine all witnesses for the prosecution, and should also summon and examine any witnesses whom the accused desires to call prior to the consideration of question of charge.

209 (2) If the Magistrate, after recording all the evidence for the prosecution and the evidence of any witnesses called by the accused at this stage, and (if he considers it necessary) examining the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him finds that no case has been made out against the accused, it is his duty to discharge the accused. The accused may be discharged at any earlier stage of the inquiry if the Magistrate considers the charge to be groundless.

210 If the Magistrate finds that there is sufficient evidence to establish a *prima facie* case that accused has committed an offence triable by the Court of Session he must frame a charge and read and explain it to the accused. The accused must not be asked to plead to the charge.

211 (3) When the charge has been read and explained to the accused he should be required to state forthwith whether he desires to give evidence on his own behalf and whether he desires to call witnesses on his trial, and the Magistrate must warn the accused in the manner required by proviso (b) to section 342 (1). The accused shall then be required to give in at once a list of the witnesses whom he wishes to be summoned for the defence on his trial.

212 (4) If the accused states that he does not desire to give evidence on his own behalf the Magistrate shall examine the accused generally on the whole case, as required by section 342 (2), for the purpose of enabling him to explain any circumstances appearing in evidence against him. If the accused states that he does desire to give evidence on his own behalf, the Magistrate may take the evidence of the accused, but is not bound to do so.

212 (5) The Magistrate may also summon and examine any of the witnesses named in the list given in by the accused, but is not bound to do so.

213 (6) If, after examining the accused or hearing the evidence of the accused and hearing the evidence of witnesses for the defence under sub-paragraph (5), the Magistrate considers that there are no longer grounds for putting the accused on his trial he may cancel the charge and discharge the accused. Otherwise, the Magistrate should make an order committing the accused for trial.

(7) The Magistrate must always record his reasons for discharging the accused, but reasons for committing the accused for trial need not be recorded.

(8) After committal, the Magistrate should examine the evidence, and make a list of witnesses for the Court of Session, placing them as far as possible in chronological order of the events to which they testify. If any witness for the prosecution can give no relevant evidence, or is wholly superfluous, the Public Prosecutor should be asked whether he wants the witness and unless he gives a good reason, the witness should be excluded from the list. If any witness for the defence has no relevant evidence to give, the accused should be asked whether he wants him; if the accused does not want him, or if the witness seems to be named for the purpose of vexation or delay, or of defeating the ends of justice, he should be excluded from the list *unless the accused deposits his expenses.* (See also para 577.)

(9) All witnesses whether for the prosecution or for the defence who have appeared before the Magistrate and are in the Court of Session list should be caused to execute bonds to attend at the Court of Session when called on. These bonds are of great importance and it is the duty of Committing Magistrates and Public Prosecutors to see that they are properly drawn up and duly executed.

The bond should be in Criminal Form 137 and the date to be entered upon it is the date fixed for the opening of the next sessions or the date which the District Magistrate may have intimated under paragraph 567 as being the first date on which the Sessions Court is likely to be able to take up a new case.

(10) When notice of the date finally fixed for trial is received from the District Magistrate, the Committing Magistrate shall at once issue summonses to the witnesses and fix a date for the return of the summonses. On that date, his clerk shall report whether all the witnesses have been duly served, and if they have not, further steps shall be taken to procure their attendance.

(11) If, after the witnesses have executed bonds, it should appear for any reason that their attendance at the Court of Sessions is not required, the Committing Magistrate must at once give them notice to this effect. If after summonses have issued to witnesses the date of the trial is changed, he must issue fresh summonses with a note to the effect that the earlier summonses have been cancelled.

211, 291. **525.** (1) As inconvenience is liable to arise at Sessions trial from accused persons wishing to call witnesses of whom no list has been given to the Magistrate and who are not in attendance, owing to doubts whether the accused have fully understood their obligation to give in a list of all the witnesses required for the defence in sufficient time before the trial, Committing Magistrates shall carefully explain to accused persons the provisions of sections 211 and 291.

List if Defence
witnesses; Obligation
of Accused.

(2) Magistrates shall, in all cases which they are about to commit for trial, record in their own handwriting that, after reading and explaining the charge or charges to the accused, they have required him to give in at once orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial. Magistrates shall also warn accused and advocates or pleaders appearing for them that if such a list is not given in at once, a list will not necessarily or as a matter of course be accepted at a later stage either in the Committing Court or in the Court to which the accused is committed for trial; and also that if the list given in at once is not complete a further list will not necessarily or as a matter of course may be accepted. The acceptance of a further list under sub-section (3) of section 211 is a matter of discretion which must be exercised with reference to the circumstances of each case. The provisions of the latter part of section 216 should be considered in all cases.

(3) Magistrates shall warn the accused and advocates or pleaders appearing for them that if a list of witnesses is not given in at once, the High Court or Court of Session will not summon witnesses named in a list given in to it as matter of course, and that the Judge dealing with the case may and probably will require to be satisfied that the persons named as witnesses can give material and relevant evidence in the case and that their attendance is necessary for the ends of justice.

216 (4) The power of refusal to summon witnesses before the Court of Session, which the Magistrate possesses in certain circumstances, should be very cautiously exercised, and reasons should be fully recorded in each instance.

- 208(1). 526. (1) The accused is not bound to produce any witnesses before a charge is framed, but any witnesses so produced must, under section 208 (1), be examined by the Magistrate. With regard to witnesses
- 211(2). Magistrate's inquiry
212(2). to be thorough and
213(2). expeditious.

cited under section 211 (2) after the charge has been framed, under section 212 it is within the discretion of the Magistrate to examine them or not, as he thinks fit. Ordinarily, they need not be examined, but there may be circumstances under which it is desirable that the Committing Magistrate should examine them; for instance, if the Magistrate is of opinion that their evidence might be of such weight as to justify him in cancelling the charge and refusing to commit, under section 213 (2).

- 208(2). (2) The accused has, under section 208 (2), the right to cross-examine the prosecution witnesses. The cross-examination of each witness should however always, follow immediately after his examination-in-chief and should be curtailed as much as possible. The provisions of section 256 (1), Code of Criminal Procedure, operate only in the trial of warrant cases and not in committal enquiries, and the accused must not be allowed to reserve his cross-examination till the examination-in-chief of all the prosecution witnesses is over.
- 256(1).

(3) A Committing Magistrate should not confine himself to examining only the witnesses produced for the prosecution or defence. He should remember that he is holding an *inquiry* and that his business is to elicit the truth and to see that the case as presented to the Court of Sessions is complete. It is his duty to call, of his own motion, and examine all such additional witnesses for the prosecution (who are not cited in the charge sheet) as appear from his inquiry to be able to give relevant evidence concerning the facts of the case.

- 208, 212. (4) Sections 208 and 212 give a committing Magistrate full power to call and examine any witnesses for the prosecution or defence who have not been produced before him. So also a Committing Magistrate fails in his duty if he simply records the depositions of witnesses as given in answer to questions put by the Public Prosecutor or by the accused. He should himself examine the witnesses in the interests both of the prosecution and the defence; and more especially should he do this when the accused is undefended and unable, through ignorance, to cross-examine the witnesses for the prosecution properly.

(5) Committal inquiries must be completed with the utmost expedition, otherwise they fail in one of their main objects, which is to obtain a record of each witness's evidence at the earliest possible moment. Committal inquiries should be conducted only by whole-time Magistrates as the statements of the prosecution witnesses should be recorded without any delay.

527. In all important criminal cases, and especially in Investigating Officer cases of murder, dacoity, and robbery, it is to be a witness. desirable that the police officer by whom the investigation was conducted should be in readiness to be examined, if necessary, as a witness in regard to the circumstances of the investigation. The police officer should bring with him his diary of the case.

528. Dying depositions made to a Magistrate authorized Dying Depositions. to take them, though not made in the presence of the accused, need not be proved by that officer. They may be tendered in evidence under section 80 of the Evidence Act. It is necessary, however, to prove the identity of the deponent and this can best be done not by summoning the Magistrate, who will rarely be in a position to prove it, by summoning someone else who was present at the time the deposition was taken.

Where the dying deposition has been recorded by a Magistrate not authorized to record it, the deposition has to be proved by the recording Magistrate. Even in such cases it is not necessary for the Magistrate to repeat the record *verbatim* in his evidence; it is sufficient for him merely to refer to the record and satisfy to its correctness, and that it was made by the person and under the circumstances in question. (See *Sulaiman v. The King* 1941, Rangoon, 528.)

529. Committing Magistrates should invariably record Medical Evidence. the evidence of the proper Medical Officer before committing to Court of Session any case regarding an offence affecting the human body :

Provided that where there is already prima facie evidence to warrant a commitment to the Sessions Court, and the evidence of the Medical Officer is likely to be of a purely formal character, and great inconvenience would result from his being summoned to a Magistrate's Court, the examination need not be taken by the Committing Magistrate, but his attendance before the Sessions Court if required by the Sessions Judge, should be ensured.

530. In cases committed to the Sessions regarding offences affecting the human body the medical witnesses should, among other things, be specially questioned on the following points: -

(1) The nature of the wound or wounds, if any, inflicted, and in the case of incised wounds, their length, breadth and depth.

(2) The precise locality of the wound.

(3) In cases where death has been caused - although by resorting to proper remedies and skilful treatment the death might have been prevented - whether -

(a) the person whose death has been caused was labouring under any disease or bodily infirmity, and if so, whether the injury inflicted was likely to cause his death;

(b) the injury inflicted was sufficient in the ordinary course of nature to cause death;

(c) the injury inflicted was merely likely to cause death.

(4) In cases where death has been caused, the age of the deceased and whether the post-mortem examination showed that the deceased was a person of sound constitution.

(5) The exact day and hour of arrival at the hospital of the person injured by the accused, and the date and hour of his death or departure from hospital.

(6) Whether death was accelerated by any causes beyond the control of the accused, e.g., by the delay which occurred in taking the deceased to hospital, by the mode in which he was conveyed, or by the treatment he received there, or by any illness or disease he contracted in or before admission to hospital unconnected with the injuries he received from the accused.

(7) The direction from which the blow was probably delivered.

(8) Whether the wound probably or would certainly cause death.

See also paragraphs 625 to 627 with regard to the method to be adopted in examining Medical Officers.

531. Committing Magistrates are reminded that a Medical Officer's report of a *post-mortem* examination is not evidence and therefore cannot be substituted for the Medical Officer's deposition. The Medical Officer may, if he desires to do so, refresh his memory by referring to any report he may have submitted, and he may be cross-examined upon that report, but the report itself is not evidence. But when such a report is relevant under section 32, Evidence Act, it can be proved by the Assistant who was present at the *post-mortem* or by some one familiar with the medical officer's hand-writing. Another doctor can then in the witness box give expert opinion based on the report.

532. A medical witness should invariably be required to state in evidence what rank he holds in the medical profession, or under Government, and what experience he has had in medical work generally, or in treating cases similar to that with respect to which he has been called upon to give evidence.

509

533. (1) The deposition of medical witness, in order to be admissible in evidence under section 509, must either show on its face that it was taken and attested by a Magistrate in the presence of the accused, or must be proved to have been so taken and attested.

(2) To avoid the necessity of examining a witness in order to prove that the requirements of section 509 have been fulfilled, it is ordered that a Magistrate who has taken the evidence of a medical witness in the presence of the accused shall subscribe the deposition thus : -

" *The foregoing deposition was taken in the presence of the accused * , who had an opportunity of cross-examining the witness. The deposition was explained to the accused, and was attested by me in*

*his (or her)
their* presence.

Magistrate."

* The names of the accused persons should be inserted.

534. When a confession of the accused to a Magistrate is tendered in evidence it should be ascertained whether provisions of the law have been strictly complied with. If those provisions have not been complied with, the Court of Session cannot admit the confession without special proof, and for this purpose the Committing Magistrate should take the necessary evidence and include the names of the witnesses, such as the Magistrate who recorded the confession, in the list of witnesses for the prosecution in the Court of Session. He should also see that the circumstances under which the confession came to be made are duly brought out in evidence. Attention is invited to paragraphs 600 to 607.

535. If an accused person who is to be committed to the Court of Session is charged with previous convictions he must not be asked to plead to them. The Committing Magistrate should use his discretion as to summoning witnesses to prove the identity of the accused with the previously convicted person before the Court of Session.

536. When an offence charged is triable by Magistrate as well as by a Court of Session, the Magistrate must exercise his own discretion in deciding whether the case should be committed or whether the justice of the case will be fully satisfied by a sentence which he himself is authorised to pass. Cases which present no legal difficulty, and in which the accused can be adequately punished by a Magistrate under his ordinary or special powers, should not be committed to Sessions.

537. In every case in which the accused is charged with committing an offence as a result of which death has ensued and there is any doubt whether the intention or knowledge of the accused was such that the offence amounts to culpable homicide, the Magistrate inquiring into the case ought to commit the accused to Sessions. In such cases when the Magistrate is clearly of opinion that the accused has not committed an offence amounting to culpable homicide he must exercise his discretion in determining whether the accused should be committed to Sessions or whether the case can adequately be disposed of by a Magistrate.

538. A Committing Magistrate, when enquiring into a case with a view to commitment, should
 Discharge of Accused. commit to Sessions where a *prima facie* case is made out for the prosecution, or where the guilt or innocence of the accused depends on the proper determination of a difficult question of law. If he considers the evidence for the prosecution to be false, however numerous the witness may be, he ought to discharge the accused. If the Magistrate is in doubt as to their credibility but the evidence if believed would be sufficient for a conviction, or if the evidence is conflicting and there is doubt as to the true facts, he should not take on himself the functions of a superior Court, but should commit the case. It is however a waste of time and unfair to the accused to commit him to Sessions where there can be no reasonable expectation of a conviction.

539. If two or more persons are accused in any case arising out of the same act
 More than one accused. or transaction, and the Magistrate has not the necessary powers to enable him to try any one of them, or to punish him adequately, the Magistrate should hold a preliminary inquiry, and, if a *prima facie* case is made out against that accused, he should commit all the accused, against whom a *prima facie* case is made out, to the Court of Session.

540. The Committing Magistrate should send a letter
 Report of Commitment. reporting commitment in Form Criminal 85 through the District Magistrate to the Sessions Judge and should send with the letter-

- (1) The record of the inquiry ;
- (2) a duplicate of the charge, signed by himself;
- (3) a list of witnesses for the prosecution and defence;
- (4) a list of exhibits other than documents.

541. An intimation of the committal in Form Criminal 86 must be sent direct to the Sessions Judge, immediately the commitment has been made.

542. (1) **The list of witnesses** should contain the
 List of Witnesses. following information : -

Name of witness ;
 class, under the rules for payment of expenses ;
 residence ;

and in respect of the journey to the Court of Session --

- (a) railway fare according to class ;
- (b) steamer fare according to class ;
- (c) distance which must be travelled by boat ;
- (d) distance which must be travelled by road ;

(2) A list of witnesses for the prosecution and defence attached to the letter reporting commitment under paragraph 540 should always be filed in the Sessions record immediately after the commitment order. When the record is sewn up and paged at the conclusion of the trial, the page on which the evidence of each witness commences should be entered on the list so that it may serve as an index.

543. (1) **The list of exhibits** other than documents
 List of Exhibits. should give the number assigned to and
 a full description of, each article.

(2) The exhibits themselves should be securely packed, and sent with papers to the District Magistrate if the Committing Court is not at the headquarters of the district. It is the duty of the District Magistrate's Bailiff to produce the exhibits before the Court of Session at the trial, unless the Sessions Judge directs that the exhibits be taken charge of by an officer of the Sessions Court. If he does so direct, the Court of Session shall keep a Bailiff's Register III, and the exhibits should be forwarded by the District Magistrate to the Court of Session.

544. (1) When the papers are received in the District
 Duty of District Magistrate. Magistrate's office, the Head Judicial
 Clerk should at once examine them, and submit them to the District Magistrate with a report in Form Criminal 89. The District Magistrate should then give such orders and take such steps as may be necessary to remedy any defects disclosed in the report.

(2) The District Magistrate should himself examine the record to ascertain whether the inquiry has been as complete as possible, and should take steps to remedy any defects that he discovers.

545. The record and other papers should be forwarded with as little delay as possible to the Court of Session, a copy of the charge and of the list of witnesses being retained in the District Magistrate's office.

546. The duty of fixing the date of the commencement of each Sessions trial, and of producing the accused before the Sessions Court on the date so fixed or any date to which the case may be postponed, shall rest with the District Magistrate. The date should be fixed in consultation with the Sessions Judge, who should, immediately on receipt of the intimation of committal in Form Criminal 86, communicate to the District Magistrate the date on which the trial will be taken up.

The date so fixed and any change in it must be communicated at once to the Committing Magistrate.

The date for the trial of cases committed to the Sessions should be so arranged that the prosecutors and witness may not be brought from their homes to the place where Sessions is held before they are actually required.

547. The District Magistrate will from time to time intimate to all Committing Magistrates what days are still free for new trials at the next Sessions, and when all the days allowed for one Sessions are full, will at once direct them to fix any new cases for a subsequent Sessions.

548. (1) The District Magistrate must see that prosecutors and witnesses receive timely written notice of the date on which their attendance before the Sessions Court is required. Such notice may be served upon them either direct, or through the Committing Magistrate, as the District Magistrate in each case may determine.

(2) If the prosecutor and witnesses are not in attendance on the date fixed for trial, the District Magistrate should see that the Public Prosecutor is properly instructed as to the grounds, if any, upon which he is to apply to the Sessions Court for a postponement of the case.

549. (1) The District Magistrate should give timely Notice to, and Duty of notice of commitments to the Public Prosecutor. The Public Prosecutor is required to make themselves fully acquainted with the facts of the cases in which he is engaged, and for this purpose he should be permitted to examine the police diaries and the commitment records.

(2) Sessions Judges should exact a proper degree of attention on the part of Public Prosecutors to the duty which rests upon the latter to communicate with the Committing Magistrate under the orders, if necessary, of the Sessions Court or High Court, and to see that any additional evidence available and required is in readiness when the trial takes place, or, if necessary, apply for a postponement or adjournment in order that such evidence may be adduced.

(3) Sessions Judges will bring to the notice of the District Magistrate every instance in which the Public Prosecutor betrays ignorance of the facts of a case, or otherwise fails in the discharge of his duty.

550. Public Prosecutors should be required to examine the committal record and to decide what parts of the record they really require to be copied to enable them to conduct the case properly in the Sessions Court. Supply of copies of the committal records to Public Prosecutors. Copies of only such parts of the record as the Public Prosecutors think really necessary should be supplied.

551. Should the District Magistrate be absent from the headquarters of his district when the time arrives for making the arrangements referred to in paragraphs 544 to 550 inclusive, he shall specially delegate his duties to one of his subordinates, who will be held personally responsible foreseeing that the arrangements are duly carried out. Delegation of District Magistrate's Duties.

552. Not less than two days before the commencement of Sessions at the headquarters of the Sessions Judge, and, in other cases, as soon as the Sessions Judge arrives at the headquarters of a district in which Sessions are to be held, the District Magistrate or the officer delegated under paragraph 571, should send to the Sessions Judge a nominal list of the cases and of the dates fixed under paragraph 546 for the commencement of each trial. List of Cases fixed for Trial.

Sessions Trials.

553. In the first week in December in every year Sessions Judges shall fix the number of Sessions to be held in each district of their divisions during the year following and the dates on which respectively the Sessions are to begin, the number varying with the estimated or average number of trials. Sessions will be held at the headquarters of each district.

554. The following is a list of Sessions Divisions and the Districts* comprised in each division :-

Name of Sessions Division and Headquarters.	Name of Districts of which the Sessions Division consists.
1. Akyab	Akyab, Kyaukpyu, sandoway
2. Rangoon	Rangoon Town, Hanthawaddy
3. Insein	Insein
4. Tharrawaddy	Tharrawaddy
5. Prome	Prome, Thayetmyo
6. Bassein	Bassein
7. Henzada	Henzada
8. Myaungmya	Mayungmya, Maubin
9. Pyapon	Pyapon
10. Pegu	Pegu
11. Toungoo	Toungoo
12. Moulmein	Amberst, Salween
13. T haton	Thaton
14. Tavoy	Tavoy, Mergui
15. Mandalay	Mandalay
16. Shwebo	Shwebo, Katha
17. Myingyan	Myingyan, Pakokku
18. Meiktila	Meiktila, Kyaukse
19. Pyinmana	Yamethin
20. Magwe	Magwe, Minbu
21. Sagaing	Sagaing, Lower Chidwin, Upper Chindwin.
† 22. Myitkyina	Bhamo, Myitkyina

* Ministry of Judicial Affairs (General Branch) Notification No. 77, dated the 30th March 1951.

† Ministry of Kachin State (Miscellaneous Branch) Notification No. 3 dated the 18th April 1951.

Expect with the sanction of the High Court, there shall be not less than eight Sessions per year in each district.

555. The arrangements made under the last two preceding paragraphs shall be reported without delay to the High Court for approval; but they may be carried out unless disapproval is communicated.

556. Printed notices of the dates fixed for Sessions shall be supplied in December to the District Magistrate and through him to every Magistrate empowered to commit for trial.

557. Sessions Judges shall report to the High Court every instance in which they fail to commence Sessions on the date fixed, explaining the circumstances in which the failure has arisen.

558. Supplementary Sessions may be held whenever the Sessions Judge finds it expedient to do so, and the District Magistrate may, at any time when he considers an extra Sessions necessary, ask the Sessions Judge to arrange a supplementary Sessions. The Sessions Judge should comply with such request if he can reasonably do so.

No report need be sent to the High Court, but a note should be made on Form Criminal No. 15 when submitting the list of persons committed to the Court of Session whose trial has not been concluded.

559. At each Sessions all persons, other than insane

All prisoners awaiting trial to be produced at Sessions.

persons detained in a lunatic asylum, awaiting trial at the Court of Session, shall be brought before the Judge in open Court; and if the

Public Prosecutor is not prepared to go to trial in any particular case, he shall be required to show cause, properly supported, why the accused should not be acquitted and released, the accused himself being also heard in answer to such cause shown.

560. Sessions trials must not be lightly postponed. A

Postponement of Trials.

Sessions Judge is not justified in postponing to a subsequent Session cases of which notice has been received before the commencement of the Session next ensuing

on the ground that the number of days which have been assigned for that particular Session has been filled up.

344, 503, 508. All commitments of which timely notice is received before the commencement of a Session should be disposed of at that Session, unless there is some good reason for postponement. The detention of an accused person in jail is in itself no trivial infliction, and it is only justified when there is apparently a good case against the prisoner, and when the Judge is satisfied that for the ends of justice it is necessary to postpone the trial.

561. The power of a Court of Session to adjourn a trial for the production of further evidence necessary for the ends of justice is discretionary power. It should, as a rule, be exercised when a proper compliance with the provisions of sections 533 and 540 of the Code of Criminal Procedure renders an adjournment necessary, but such adjournments will rarely be necessary in Sessions trials for the ends of Justice if Public Prosecutors and Committing Magistrates perform their duties efficiently.

533,540 562. A Sessions Judge is not competent to return a case for trial by the Magistrate who committed it.

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564. (1) If the Sessions Judge thinks that the charge framed by the Committing Magistrate should be amended without altering the section he may make the amendment on the Magistrate's charge, and the amendment so made should be attested by the initials of the Sessions Judge. If there is not room to make the amendment legibly a fresh charge on the proper form should be drawn up and signed by the Sessions Judge.

(2) Whenever the Sessions Judge thinks it expedient to add or substitute a fresh charge under a different section, the fresh charge should be drawn up on the proper form and signed by the Sessions Judge.

(3) In every case the diary should contain a note of the fact that the amendment is made, and when a fresh charge is framed the diary should show whether the fresh charge is substituted for, or in addition to, the original charge.

565. It should appear on the proceedings of the Sessions trial that the charge was duly read and explained to the accused, and his plea must be recorded in Form Criminal 94. The accused should be required to plead by his own mouth and not through his advocate.

566. Sessions Judges should bear in mind the procedure laid down in section 310, Code of Criminal Procedure, when the accused is charged with an offence after a previous conviction.

567. If the accused, on being called on to plead, does not admit all the elements which go to make up the charge against him, a plea of not guilty should be recorded. A plea of an accused charged with murder or culpable homicide, which only admits that he killed the deceased is not a plea of guilty. No inference as to the guilt of an accused should be drawn from his plea so long as the plea is not a distinct admission of the charge. Without such admission the charge must be proved.

568. When the accused makes no answer to the enquiry whether he is guilty it should be ascertained whether he is obstinately mute or dumb. If he is found to be obstinately

mute, a plea of not guilty should be recorded.

If he is found to be dumb, it should be ascertained if he is sane or capable of being tried. If he is found sane, a plea of not guilty should be recorded; if insane, the procedure laid down in Chapter XXXIV of the Code should be followed.

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164, 364, 533

570. (1) Sessions Judges should be careful not to

Admission of Confessions. admit to Sessions record, or to receive in evidence, the statements and confessions of the accused, unless they have

been duly recorded in the manner laid down in sections 164 and 364 or have been duly proved under section 533.

(2) Where there has been no attempt to comply with the provisions of sections 164 and 364, the confession is inadmissible in evidence. It is only where such an attempt has been made, and there is only a formal defect that the provisions of section 533 can be invoked.

(3) Where there are defects, curable under section 533, in recording the confession or other statement of an accused person, it is the duty of the Public Prosecutor to have in readiness and to tender evidence that such person duly made the statement recorded, or to apply for an adjournment or for the issue of a commission to secure such evidence.

571. If an accused person, when produced before the Sessions Court, retracts a confession previously made and then, for the first time, accounts for it by charges of improper inducement, pressure or other misconduct against the police or other persons in authority, or if the Committing Magistrate, although such charges were made before him, has failed to comply properly with the directions contained in paragraph 605, the Judge should himself make such inquiry as is possible, and should record his opinion whether the allegations are proved or disproved. If he considers that there are grounds for believing them true, he should bring the matter to the notice of the District Magistrate, with a view to his taking any departmental action that may be necessary (see paragraphs 475 and 600 to 607).

540

572. Whilst the provisions of section 533 are complied with when the Court takes all such admissible evidence as may be tendered under that section, the provisions of section

540 are not complied with if the Court does not (in cases where the Public Prosecutor has failed in his duty in the above respect) of its own motion call for production of any such evidence, or summon any necessary witness on the point, if such evidence appears to it essential to the just decision of the case.

Summoning Additional Evidence.

Evidence Act, 33.

573. Under section 33 of the Evidence Act the deposition taken by the Committing Officer of a witness not present at the trial cannot be admitted as evidence in the Sessions Court unless it is proved that the witness is dead, or the Court is satisfied that for sufficient cause his attendance cannot be procured.

Previous Depositions.

288. Evidence Act, 155.

574. The attention of all Sessions Judges is called to the provisions of section 288, in cases where a witness gives evidence before the Sessions Court which is at variance with that given before the Committing Magistrate. The purpose of that section is to make depositions given before Committing Magistrates evidence for the purpose of the trial in the Court of Session whenever the Judge, in the exercise of his discretion, determines that they are to be used in that way. It is the duty of the Sessions Judge, on observing such discrepancies, to examine the witness in respect of them, especially in cases where the accused is undefended; and, if he adopts this course then he ought, in ordinary case, to make the deposition taken by the Committing Magistrate, on which he has examined the witness, evidence in the case. When he has accepted any such deposition as evidence, it must be detached from the committal record, marked as an exhibit, and attached to the Sessions record. Most Sessions Judges fail to make sufficient or proper use of the provisions of section 288.

Discrepancies in Witnesses' Statement

575. It is open to the Sessions Court to accept as true a statement made by a witness before the Committing Magistrate, although contradicted by the witness in the Sessions Court, if the Judge considers that, from the evidence of the witness given before him, or of other witnesses given before him; the original statement is worthy of belief. The Judge, however, cannot discard altogether the evidence taken before him and convict solely on the evidence recorded by the Committing Magistrate.

576. Where **medical evidence** is necessary, medical witnesses should ordinarily be examined by the Court of Session at the trial. In cases where the attendance of a medical witness cannot conveniently be secured, as for instance where he has been transferred to another station, or where he is a resident of a place at a distance from the place where the Sessions are held, his deposition recorded and attested by the Committing Magistrate can be admitted under section 509, and his personal attendance before the Court of Session should whenever possible, be dispensed with. On receipt of the record of the proceedings before the Committing Magistrate the Judge should consider the deposition of the medical officer and if the case is one in which he thinks it proper that the medical officer should be examined as a witness at the trial, he should without delay take the necessary steps to secure his attendance.

577. The Court of Session cannot direct the prosecution to call or tender for cross-examination by the defence a witness who was examined on behalf of the prosecution in the committal proceedings, but who is not called for examination before the Court of Session because the prosecution has reason to believe that the witness is a false witness, or is likely to give false testimony, or is not in a position to give material information in connection with the offence charged. All that the prosecution can be called upon to do is to have the witness present at the trial so as to give the Court or the defence, as the case may be, an opportunity of examining him. When such a witness is examined as a witness for the defence, the prosecution must be given the right to cross-examine him. *See Nga Aung Gyi and another v. King-Emperor, I.L.R. 14 Ran., 45.*

Witnesses not examined by prosecution to be present at the trial.

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579. All statements or confessions of an accused, depositions of Medical Officers and reports of the Chemical Examiner tendered in evidence under sections 509 and 510, and the depositions of witnesses tendered in evidence under sections 32 and 33 of the Evidence Act, should, if received by the Sessions Court, be put in and read **before the accused is called upon to enter on his defence.**

164, 287, 218,
364, 509, 510.

580. When a Sessions Judge admits the confession or examination of an accused person, the deposition of a Medical Officer, or the report of the Chemical Examiner, or the deposition of a witness, he should record on the face of the document over his signature and date of signature as follows: -

Evidence
Act, 32, 33.

" *Admitted under section 287 or 288, or 509 or 510, Code of Criminal Procedure, or section 32 or section 33, Evidence Act* " (as the case may be); and if the deposition is admitted under section 32 or section 33 of the Evidence Act, he must further record his reasons for admitting it on a separate sheet of paper or on the diary.

581. (1) The examination of the accused (if any) by the committing Magistrate should be tendered by the Public Prosecutor and read out at the conclusion of the examination of the prosecution witnesses.

289 (2) When the prosecution case is concluded, the accused must be asked whether he desires to give evidence on his own behalf and he must be warned in the manner provided by section 342 (1). *See* paragraph 454.

342 (1).

342 (2). (3) If the accused declines to give evidence he should be examined in the manner and for the purposes laid down in section 342 (2).

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582. (1) The Judge, in a case tried without a Jury, may at any time view the place in which the offence charged is alleged to have been

Local Inspection committed, or any other place in which any transaction material to the trial is alleged to have occurred. See paragraph 621.

293.

(2) In a case tried by Jury, if the Judge thinks that the Jury should view any such place, he should make an order to that effect and give notice thereof to the Public Prosecutor and the accused. He should appoint an officer of the Court to conduct them in a body to the place and also appoint a person by whom the place shall be shown to them.

The officer appointed to take care of the Jury will thereupon make all necessary arrangements for taking them in a body to the spot. He shall not, except with the permission of the Court, suffer any other person to speak to or hold any communication with any of the Jury. He shall not allow any other person to travel in the same conveyance with them.

He shall see that the person appointed to show the place does not say anything to them more than is necessary for the purpose of pointing out the spot and shall report to the Judge any breach of this instruction.

The officer appointed to show the spot shall not do or say more than point it out to them. He will point out the places where the witnesses are alleged to have been and also the various places connected with the offence charged, such as houses, wells, tanks, threshing floor and the like, deposed to in the evidence.

The Public Prosecutor or the advocate or pleader for the accused shall not be allowed to make any statements in the hearing of the Jury. They may ask the officer showing the place to point out any other places or things but should only do so in the immediate presence of the Advocate or pleader for the other party. They must express no opinions and utter no argument.

The Judge on making an order to view should invariably explain to the Jury that the order is made for the sole purpose of enabling them to understand the evidence that is laid before them and that they must not use anything they may see there as evidence but must give their opinion on the evidence given before them in Court.

583.	x	x	x	x	x	x	x
	x	x	x	x	x	x	x

371.

584. Sessions Judges are reminded that, when passing a **capital sentence**, it is necessary to inform the person on whom sentence is passed that if he wishes to **appeal** he must do so within seven days; and the Judge should certify on the record that he has informed the prisoner of the period within which his appeal should be preferred. The record should not be submitted for confirmation of sentence until the expiration of seven days from the date of the sentence, unless a copy of the judgment has been furnished for an appeal within that time.

585. When a reference is made to the High Court for confirmation of a death sentence, all the police records including the investigating officer's diaries and statements made by witnesses to the police should be submitted together with the judicial records. The Sessions Judge should see that the police records are complete. A typed copy of the judgment should be filed at the end of the trial record when the original judgment itself is not type-written.

586. Sessions Judges are required to intimate to the Secretary to the Government of the Union of Burma, Ministry of Judicial Affairs the date fixed for the execution of every prisoner sentenced to death, as soon as a warrant has been issued under section 381 of the Code of Criminal Procedure.*

587. All documentary exhibits or depositions admitted at the trial filed with the committal proceedings should be removed to the Sessions record, a note being made on the former of the papers so taken. If any of such documents, *e.g.*, the deposition of a deceased witness or the deposition of a witness admitted under section 288, is not already included in the list of exhibits, it should be added thereto and marked with the corresponding number.

* Notification No. 12 (General), dated the 9th September 1905.

588. The Committal record should be kept along with the Sessions record, until the case is finally disposed of, when it should be returned to the committing Magistrate through the District Magistrate.

589. In extension of the provisions contained in section 373, Code of Criminal Procedure, it is ordered that, at the conclusion of a trial in a Court of session, the Court shall send a copy of its judgment, finding and sentence, or of the heades of the charge to the Jury, to the District Magistrate for communication to the Committing Court.

590. The judgment of the High Court in appeal from a Court of Session shall be sent in duplicate to the Sessions Court, one to be filed in the Sessions trial record and the other to be forwarded with the committal proceedings to the District Magistrate for transmission to the Committing Magistrate (*cf.* paragraph 794).

Report of Cases of Infanticide.

401,402,
Penal Code,
54,55.

591. Sessions Judges are directed to report to the High Court all cases in which women are found guilty of murdering their infant children, in order that the Government may consider whether any commutation or reduction of sentence should be allowed under sections 54 and 55 of the Penal Code or under sections 401 and 402 of the Code of Criminal Procedure.

Expenses of Jurors

592.	x	x	x	x	x	x	x
x x	x	x	x	x	x	x	x

Trial by Jury

593.	x	x	x	x	x	x	x
x x	x	x	x	x	x	x	x

CHAPTER XXI
EVIDENCE AND WITNESSES.
Statements recorded by the Police.

594. Section 162 of the Code of Criminal Procedure does not apply to an information laid to the Police under section 154. The First Information Report may therefore be proved and admitted in evidence in the following cases :-

- (a) when the informant is dead and the information is admissible under section 32 of the Evidence Act ; and
- (b) when the informant is examined as a witness.

In the former case the information is substantive evidence of the facts stated in it, under section 32 of the Evidence Act. In the latter case the information is not substantive evidence of the facts stated in it, but may be used under section 157 of the Evidence Act to corroborate the testimony of the informant, or under section 145 to contradict him or under section 155 (3) to impeach his credit.

But if the complainant goes back on his complaint and gives a different account in evidence before the Court, his previous report (F.I.R.) becomes inadmissible as there being no substantive evidence for its corroboration. [*K.E. Vs. Nga Hlaing*, (1928). VI I.L.R., Ran., 481].

Only the original foil signed by the informant is admissible in evidence, unless such facts are proved as render a copy admissible under the ordinary rules applicable to the admission of secondary evidence of documents. Paragraphs 1412 and 1418 of the Burma Police Manual, 5th Edition prescribe the submission of the original foil to the Court and this should be insisted on.

595. (1) The provisions of section 162 of the Code of Criminal Procedure must be carefully studied.

Sub-section (1) lays down that a statement made to a police officer during an investigation shall not be used for any purpose at the trial of or magisterial inquiry into any offence which was under investigation at the time when the statement was made, save as provided in the provisos to the section. This applies whether the statement has been recorded in writing or not.

(2) The effect of the section may be summarised as follows:-

(1) Unless the witness has been declared hostile under the provisions of section 154 of the Evidence Act, Witnesses may not be questioned in examination-in-chief as to statements made by them to the police. They may not be so questioned in cross-examination as to any statement not recorded in writing. But they may be cross-examined and re-examined on statements recorded in writing in accordance with the procedure laid down in sub-section(1).

(2) Under sub-section (2) copies of such statements must be furnished to the accused on his request. In simple cases this provision may be complied with by the Court showing the original statement to the accused or his pleader, unless the accused demands that a copy to be given to him, in which event a copy must be given. This applies equally to statements recorded in police diaries. Copies of the statements or of extracts of the statements made to the police may however only be furnished by the Court. The procedure by which the Public Prosecutor is sometimes told to give copies to the defence pleader is a system liable to abuse and is strictly forbidden.

(3) If it is desired to use any part of the recorded statement to contradict the witness his attention should be drawn to that part of the record of his statement. The record can then be proved by the evidence of the police officer who recorded it and should be filed as an exhibit (Section 145, Evidence Act).

(4) There is no legal obligation imposed upon either the Public Prosecutor or the Court to advise the accused to request the Court to refer to the statement of any witness to the police under section 162, but it must ever be borne in mind that it is the duty of the Public Prosecutor and any other official who may be conducting a prosecution to prosecute, not to persecute, the accused, and that responsibility rest upon him not to allow the Court or Jury to place reliance unwittingly upon the evidence of a witness who to his knowledge made a contradictory statement to the police in the course of the preliminary investigation, and in such circumstances he ought to inform the Court that it might be expedient that the accused should be made aware that he would be entitled to be supplied with a copy of the witness's statement to the police if he made a request to the Court in that behalf.

Further, There is nothing in section 162 which prevents the Court, if in its discretion it elects to do so, from informing the accused of his right, for the purpose of contradiction the evidence of the witness, to request the Court to refer to the previous statement of the witness to the police, and to supply the accused with a copy thereof as provided in the section ; or, if the accused makes a request to the Court in that behalf, to prevent the Court from pointing out to the accused, if it chooses to do so, any passages in the statement which may appear to be material for the purpose in hand. On the other hand, merely because the Court thinks it well to inform the accused of his rights under the section it does not follow that it would be prudent for the accused in every case to ask for a copy of the statement ; and it is for the accused, and not for the Court, to decide whether the accused should exercise the right given to him under section 162.

(5) When a witness has thus been cross-examined on the record of his statement to the police, the prosecutor or the accused may re-examine him on it, but only for the purpose of explaining any matter referred to in the cross-examination.

(6) Except for the purpose of proving a recorded statement as above provided, investigating police officers may not be examined as to statements made to them by witnesses, other than statements in the first information report and statements of which evidence is admissible under section 22 of the Evidence Act.

Subject to this restriction they may, and in suitable cases should, be examined as to the general course of their investigation.

(7) Section 27 and section 32, clause (1), of the Evidence Act are expressly exempted from the operation of Section 162. Consequently statements made to the police by a deceased person as to the cause of his death, or as to any of the circumstances which resulted in his death, may be proved in cases in which the case of that person's death comes into question. Also evidence to any information received from an accused person, which falls within the provisions of section 27, may be given.

596. Under section 172 any Criminal Court may send for the special police diary of a case under inquiry or trial in such Court, and may use the diary 'not as evidence, but to aid it in such inquiry or trial'. It may, for instance, be of importance in a case that the Court should know when a witness first made a statement in connection with the case, or whether any particular person made or did not make a statement. Neither the accused nor his agent is entitled under the section to see the special diary for any purpose unless it has been used by the Court for enabling the police officer who made it to refresh his memory or for the purpose of contradicting him. Police officers ought not to include statements of witnesses in the police diaries.

Dying Declarations.

597. Any person may record a statement made in his hearing by another person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. But where the statement is recorded by any person other than a Magistrate authorized to record a statement under section 164 (1) of the Code of Criminal Procedure the statement must be duly proved and cannot be tendered in evidence under section 80 of the Evidence Act.

164.

598. (1) When a Magistrate records the statement of a dying witness under section 164, the accused should be present if it is possible to procure his attendance. The Magistrate should assist the accused to make his cross-examination as full and complete as possible. If any police special diaries are available the Magistrate should read them, as they may suggest important questions to put to the witness. The deposition should show on the face of it the time and place at which it was recorded, the names of the accused persons who were present or the fact that none were present, and the official designation of the Magistrate under his signature.

(2) In cases where a dying deposition is recorded through an interpreter, if the accused is not present on the occasion, the interpreter should be required to make a statement to the effect that the dying deposition as recorded is a true and correct interpretation of the words of the witness. This statement should be recorded immediately after the dying deposition has been recorded.

(3) A miscellaneous proceeding should be opened, in which should be filed the dying deposition, and on the cover of which should be noted the number and description of the Regular Trial in which the dying deposition is admitted as evidence. This miscellaneous proceeding should be registered in Crimianl Register No. II and its number should be noted in the diary of the Regular Trial.

Statements made to a Magistrate during investigation.

164.

599. (1) Section 164, Code of Criminal Procedure, does not empower a Magistrate to 'hold an inquiry' into an offence under investigation. It merely empowers him to record a statement of a person who is desirous of making it. A Magistrate has no authority under the section to require the attendance of any person or to examine any person and there is no obligation on any person to make a statement to him. A statement recorded under section 164 is on an entirely different footing to a statement recorded by a Police Officer under section 161, as under the latter section the person examined is compelled to make a statement whereas under section 164 any statement recorded must be a statement voluntarily made.

(2) The section was never intended to enable the Police, as it were, to put seal on the statement of a person by sending that person before a Magistrate practically under custody to have him examined before the trial and therefore compromised in his evidence when judicial proceedings are regularly taken.

The 'statements' contemplated by section 164 are 'voluntary statements', and the intention of the section is that the persons making the statements should appear before the Magistrate voluntarily. It is an abuse of the section for the police to produce witnesses before a Magistrate, or to direct them to appear before a Magistrate for the purpose of having their statements recorded under this section, and Magistrates should record such statements only if they are satisfied that the person who appears before them does so voluntarily, and wishes to have his statement recorded. Under this section a Magistrate has no authority to examine the person, but only has authority to record his authority to record his voluntary statement.

Evidence
Act 32.

(3) As regards the use which can be made of a statement recorded under section 164, such a statement cannot be used as substantive evidence of the facts stated in it unless, of course, it is itself a relevant fact under section 32 of the Evidence Act. It can be used only for contradicting the evidence given at the trial by the person making the statement. A person making a statement under section 164 may be put on oath if he is not an accused. A person can be convicted under section 193, Penal Code for contradictory statements made under section 164 and subsequently in evidence in the regular trial, but in order to support such a conviction it would be necessary to prove that the statement purporting to have been made under section 164 was made voluntarily.

Confessions and Statements of Accused.

164. 600. Failure of justice is liable to result from neglect of the precautions required by law to secure a correct and trustworthy record of confessions or examinations of accused persons. When any Magistrate fails in his duty in this respect, his explanation should be called for by the Superior Court before which his proceedings come and should be attached to the record. If the explanation is unsatisfactory and the Superior Court considers that it cannot dispose of the matter itself it should report the case to the High Court.

164, 342, 364. 601. Confessions by accused persons may be made in the course of an investigation, before the commencement of a Magisterial enquiry or trial, or they may be made during the enquiry or trial when the accused are examined. Section 164 relates to the former, section 342 to the latter, and section 364 to both.

164, 364.

602. The following rules for the recording of confessions of accused persons otherwise than in the course of an enquiry or trial have been made with the sanction of the President of the Union.*

Rules.

(1) Ordinarily and unless there are exceptional reasons to the contrary, as for instance when an open record would be detrimental to the public interest or such procedure would cause unreasonable delay, a confession should be recorded in open Court and during Court hours.

(2) A confession may be recorded by the Magistrate who will enquire into the case with a view to committal. Though it is not illegal for Magistrate who has recorded the confession of an accused, to try him subsequently, it is highly objectionable and improper for him to do so. It cannot be recorded by an Honorary Magistrate or by a Magistrate of the third class or, unless specially authorized by the President of the Union in this behalf, by a Magistrate of the second class. A Magistrate of the second class should not be recommended for powers under section 164 unless there is a real necessity for a Magistrate so authorized in the township in which he is stationed.

(3) In order to ensure compliance with the provisions of sections 164 and 364 of the Code of criminal Procedure, Form Criminal 69 has been prescribed for use by every Magistrate recording a confession. The Magistrate must exercise the utmost care in entering all the details required by the form. It is his duty to satisfy himself in every reasonable way that the confession is made voluntarily, and with this end in view he should endeavour to ascertain the exact circumstances leading up to the confession, the length of time during which the accused has been in the custody of the police and whether any action on the part of the police may have induced the accused to confess. He should, whenever feasible before recording the confession of the accused give him a few hours for reflection in circumstances in which he cannot be influenced by the police.

* Notification No. 6 (General), dated the 19th September 1946, as amended by Notification No. 2 (General), dated the 25th February 1948.

He should not invite complaints of police ill-treatment, though of these, if spontaneously made, cognizance should of course be promptly taken, but it should be made clear to the prisoner that the making of a statement or not is within his discretion, and any indications of the use of improper pressure should at once be investigated.

(4) The Magistrate should not cross-examine the accused, but should remember that the more detailed a confession is the greater are the chances of correctly estimating its value, and should do his utmost to elicit from the accused a full and detailed statement of all that he knows, relevant to the offence committed, and to ascertain whether he is able and willing to point out or identify any place, person or thing in support of his statement.

(5) When the confession is being recorded, none of the police who has been concerned in the accused's arrest or in the investigation of the case should be allowed to be within sight or hearing of the accused. No police officers should be present except such as may be necessary to secure the safe custody of the accused.

(6) The Magistrate should add to the certificate required by section 164 of the Code of Criminal Procedure, a statement in his own hand of the grounds on which he believes that the confession is genuine.

(7) Once an accused person has been taken before a Magistrate to make a confession, the existing remand shall cease to be valid and a fresh remand shall be given by that Magistrate only.

(8) An accused person who has made a confession should, wherever possible, be remanded to jail and never to a police station other than the station at the headquarters of a district, unless the accused has stated to the Magistrate in his confession that he is able and willing to point out or identify any place, person or thing in support thereof. A police officer asking for a remand to other than jail custody should be required definitely to state the object of such a remand and a general statement that the accused may be able to give further information should not be accepted. The period of the remand should always be as short as possible.

(9) When the police take an accused person who has confessed to point out or identify any place, person or thing in support of his confession, they shall, whenever it is possible, be accompanied by a Magistrate, who should, whenever possible, be the Magistrate who recorded the confession.

(10) An accused person, who has been produced for the purpose of making a confession and who has declined to do so or has made a statement which is not self-incriminating, should in districts where there is a jail be remanded to the jail and in other districts to the police-station at district headquarters.

(11) When an accused person who has made a confession is remanded to jail, a note of the fact of his confession and a request that he should, if possible, be kept entirely apart from all other prisoners should be entered on the warrant.

(12) A confession should be filed in a miscellaneous proceeding. Any written communication made to the Magistrate by the police regarding the wish of the accused to make a confession should be filed with it.

164 (3). **603.** It is necessary to warn an accused before recording his confession that he is not bound to make a confession and that if he does so it may be used in evidence against him.

364. **604.** (1) When a confession is taken under section 164, it must be recorded in the manner prescribed in section 364 to which attention is specially directed. Under that section whenever the accused is examined -

- (a) the whole of such examination,
- (b) including every question put to him, and
- (c) every answer given by him, must be recorded,
- (d) in full,
- (e) in the language in which he is examined ;
- (f) in cases in which the examination of the accused is not recorded by the Judge or Magistrate himself, he is bound as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English.

(2) Under section 164 read with section 364, Code of Criminal Procedure, it is necessary that each question and answer should be recorded separately.

When the confession is taken in one continuous narrative, contrary to the provisions of the Code, no presumption of genuineness arises under section 80 of Evidence Act, and the confession as it stands is not admissible as evidence. The Court should, in such a case examine the Magistrate who recorded the confession, under sub-section (1) of section 533, Code of Criminal Procedure. He should be asked to state so far as he can remember the nature of the questions put to the accused. It is desirable to ascertain whether any leading questions were put and whether the Magistrate at the time of recording the confession had any knowledge from other sources of the facts of the case and of the facts which the accused might be expected to state. The accused should be present at the examination of the Magistrate and should be given an opportunity of cross-examination.

(3) When a confession has been recorded in accordance with law, the provisions of section 80 of the Evidence Act apply, and the presumption arises that the record of the confession is genuine. Consequently the confession proves itself, and it is unnecessary to examine the Magistrate who recorded the confession as witness.

605. If an accused, on being brought before a Magistrate Retracted Confessions. either for inquiry with a view to commitment or for trial, retracts a confession previously made and accounts for making it by charges of improper inducement, pressure or other misconduct against the police or other persons in authority, the Magistrate is bound to give him an opportunity of proving his allegations. It is of the greatest importance that accusations of the kind mentioned brought against the police should invariably be thoroughly sifted. It is the duty of the Magistrate not only to examine such witnesses as the accused may be able to produce, but to call any witnesses whom he himself may have reason to think able to give evidence in the matter, and to hold a searching inquiry into the allegations. He must invariably record in his order his opinion whether the allegations have been proved or disproved, and if he considers that there are grounds for believing them true, he must report the matter to the District Magistrate, with a view to his taking any departmental action that may be necessary (*cf.*, paragraphs 475 and 571).

606. Statements other than confessions taken under section 164 must be recorded in such of the manners prescribed for recording evidence as in the opinion of the Magistrate is best fitted for the circumstances of the case.

607. Confessions should not under any circumstances be treated as correspondence. A confession, as soon as possible after it is recorded, must be made into a miscellaneous proceeding, on the cover of which should be noted the number and description of the Regular Trial (if any) in which the confession has been filed. This miscellaneous proceeding should be registered in Criminal Register No. II and its number noted in the diary of the Regular Trial. Such proceedings should not be handed over to the Police, but a District Superintendent of Police may apply to the District Magistrate for permission to inspect the proceedings.

Attendance and Examination of Witnesses.

608. The evidence of witnesses shall be recorded as soon as possible after their attendance. If an adjournment of a case is necessary without examining the witnesses in attendance, they should be examined, as a rule, at the first sitting of the Court on the following day. *See also paragraphs 460 to 466.*

609. Every witness must be examined *viva voce* in open Court, and a Judge or Magistrate must not be engaged in any other business while the examination of witnesses is going on. All evidence must be taken in the presence of the accused, or his pleader when his personal attendance is dispensed with.

Medical Witnesses.

610. In order to reduce the inconvenience resulting from the summoning of medical officers away from their stations to give evidence in criminal cases, the following instructions are issued for the guidance of Magistrates : -

(1) In cases where the trial Court sits at a station other than that where the medical witness is stationed he may, whenever the case admits of it, be examined by a Magistrate at the place where he is stationed. Similarly, whenever a Magistrate is about to send a case in which medical evidence is required to another station for disposal he should, before doing so, read the report of the medical officer, and if it appears to him that the personal attendance of the medical witness at the trial will not be essential, he should, if the medical witness is stationed at the place where he is sitting, examine him in the presence of the accused under section 509, Code of Criminal Procedure.

It depends on each case whether or not the trial Court can dispense with the appearance of the medical witness before it. In simple cases, where the medical evidence is practically formal, it will not ordinarily be necessary to summon the medical witness, but where a full knowledge of the facts of the case is essential and where the medical witness must be examined in detail on points other than the mere description of injuries, the Magistrate who hears the case must usually examine the medical witness.

A committing Magistrate must, subject to the provisions of paragraph 529, always examine the medical witness in committal cases.

(2) The medical witness should not as a rule be summoned or sent up by the police at the first hearing with the other witnesses. The trying Magistrate should examine the record and the medical report and should in each case pass a definite order as to whether he is to be summoned or not, and as to how his evidence is to be taken if it has not already been taken.

If he is to be summoned, he should be called when most of the evidence for the prosecution has been recorded and when a charge is to be framed or after it is framed so that he can be cross-examined at once.

(3) Magistrates should, when possible, arrange with the medical witness direct the hour and date of his attendance, and no avoidable delay should occur in examining him when he appears. Early notice should be given to him if a case is postponed, and when he appears no adjournment should, save in very exceptional circumstances, be granted till he has been examined.

(4) The instructions contained in paragraphs 530 to 533 inclusive must be carefully followed in the examination of medical witnesses.

(5) These instructions apply not only to cases which are sent from outstations to the District or other specially empowered Magistrates at headquarters for disposal or for orders in accordance with paragraph 690 (2), but to all cases which are sent for disposal to any Magistrate in another station.

611. All Magistrates should bear in mind that the absence of a medical officer from his station may be attended with grave consequences to persons in need of medical aid. The summoning of medical witnesses who have been transferred to other districts is often particularly objectionable, and Magistrates should constantly endeavour to make arrangements which will render such a course unnecessary. In some cases it may be possible for the medical officer, if he is known to be under orders of transfer, to be examined before his departure under section 509, Code of Criminal Procedure, even though the case as a whole cannot be heard at the same time ; or if the medical witness has actually left the station, the necessary evidence may sometimes be suitably obtained by the issue of a commission under section 503 or section 506. If a Magistrate has several cases pending before him in which the examination of a medical witness who has been transferred is necessary, it should generally be possible to arrange for his examination in all the cases at one visit.

It is not intended to suggest that the interests of justice should be sacrificed in any way ; it must necessarily be left to the Magistrate himself to judge whether the actual attendance of the medical witness is likely to be required. It should be understood, however, that a medical officer from another station should not be summoned as a matter of course at the same time as the other witnesses in a case, but that the Magistrate should give his personal attention to the question whether the attendance of the medical witness cannot be dispensed with, or to the making of such an arrangement as will best suit his convenience.

Taking and Recording of Evidence.

360(1)

612. As the evidence of each witness taken under section 356 is completed, it must be read over to him in the presence of the accused or of his pleader so that they can hear it read over and give their undivided attention thereto. The section does not require the Judge or Magistrate himself to read the deposition over to the witness. It may be read to him by the Judge or Magistrate or by an officer of the Court, but it must not be handed over to the witness to read himself. When the deposition has been read over to the witness, he should be asked by the Judge or Magistrate himself whether it is correct. If the witness admits the correctness of the record, or when any necessary corrections have been made at the instance of the witness, the Judge or Magistrate shall certify to this effect at the foot of the record.

Some such words as "Read and acknowledged correct" over the signature are sufficient and suitable. Although the law does not explicitly require that this certificate should be appended to a deposition, the Hon'ble Judges consider it desirable to prescribe this procedure as a rule of practice by all subordinate Courts. The accused or his pleader may be allowed to draw attention to inaccuracies in the deposition of the witness, but they are not entitled to the opportunity of suggesting corrections in the record.

613. A Magistrate should add the figure (1), (2) or (3) after the word "Magistrate" to show the class of Magistrates to which he belongs. A District or Subdivisional Magistrate should sign as such, and the latter should also indicate by the figure (1) or (2) whether he is of the first or second class.

The date on which the certificate is signed should be noted immediately below the signature of the Judge or Magistrate.

614. Magistrates sometimes adopt the practice of treating the evidence in one case as evidence in another. The usual method appears to be to examine witnesses who appear in both cases once only, and to file in one case a carbon copy of their evidence in the other. Whether or not the two cases are cross-cases, this procedure is contrary to law and the practice must not be adopted.

355 615. The cases in which a memorandum of the substance
 Memorandum of of the evidence is sufficient are specified
 evidence. in section 355. It should be noticed that
 this section does not refer to the record of evidence in summary
 trials. The reference is to cases which may be, but are not, tried
 summarily.

356.

616. In all inquiries and trials, other than summary trials and the trials mentioned in section 355, the Magistrate or Judge, under the provisions of section 356 of the Code of

Criminal Procedure, shall take down the evidence in the language of the Court with his own hand, or cause it to be taken down in writing in the language of the Court from his dictation and under his personal direction and superintendence. All evidence must be recorded in open Court. Depositions must be signed by the Magistrate or Judge. (*See* paragraph 35.)

359.

617. Evidence should ordinarily be taken down in narrative form; but the Judge may take down any particular question and answer. Evidence should be recorded in the first person. When a witness repeats anything said by another person, the actual words used should as nearly as possible be repeated. Thus a witness should not be allowed to say: "The accused said he had done it." The proper form is: "The accused said: I did so and so."

In recording evidence it is essential to mark clearly the beginning of each stage of the examination of the witness, *i.e.*, examination-in-chief, cross-examination, and re-examination.

Evidence of identification.

618. In recording evidence regarding the identification of exhibits or of accused persons produced before the Court, the exhibits or the accused should be shown to the witness in the Court, and it should first be definitely recorded in the evidence that the witness has examined them in Court and has in Court testified to their identity, and his reasons for being able to identify them should be recorded. Then should follow the evidence of other occasions, since the occurrence of the offence, on which the witness has seen and identified these exhibits or accused persons, this being merely corroborative of the primary evidence that the witness is able to identify them before the Court.

When there is no explicit statement that the witness is able to identify the exhibits or the accused before the Court, but merely evidence to the effect that he has identified them on some previous occasion or occasions, out of Court and not on oath, it has to be implied from that the witness also intended to identify them in Court. It would often be difficult to justify such an implication, and it should never be necessary to have to resort to it. Moreover, a mere statement of a witness himself, that he succeeded at some test of his ability to recognise the exhibits or the accused, is not very strong corroboration of his own statement that he is able to identify them in Court. Such evidence should also be given by other persons who witnessed the test, and their evidence is then of considerable value to corroborate the identification by the witness made before the Court.

619. In criminal trials in which part of the evidence is the finding of clothes, etc., stained with human blood the size of the blood-stains is frequently of great importance. When an article is sent to the Chemical Examiner for examination, the stained portions are usually cut out and it is impossible to tell whether the size of the stains was the same as that of the portions removed. Moreover, the appellate Court has not even the mutilated article before it, and the report of the Chemical Examiner never sets out the extent of the stains which were found. Sessions Judges and Magistrates should therefore be very careful in all cases in which blood-stained clothing, etc., forms a part of the evidence to record evidence as to the size of the stains.

363. **620.** If the Judge or Magistrate thinks any remarks respecting the demeanour of a witness whilst under examination are material he is bound to record them. This should be done immediately when the deposition is signed, so that the fresh impression made at the time, and not a later impression induced by reflection on other circumstances, may be preserved.
- Remarks on demeanour of witness.

Local Inspection.

- 539 B. **621.** (1) A Judge or Magistrate may, at any stage of the proceedings, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been

committed, or any other place which it is necessary in his opinion to view for the purpose of properly appreciating the evidence given before him.

(2) When such inspection is made, the Judge or Magistrate must at once record a memorandum of any relevant facts observed at the inspection. This memorandum shall form part of the record of the case, and a copy thereof must be furnished, free of cost, to the Public Prosecutor, complainant or accused, on application.

(3) In the case of a trial by jury the Judge cannot make a local inspection unless the jury are also allowed a view. *See* paragraph 603.

Commissions for Examinations of Witnesses.

40. 503, 508.

Issue and Execution
of Commissions.

506.

622. No Court below that of a District Magistrate can issue, and no Magistrate of a class below the first can execute a commission for the examination of a witness. If any Magistrate other than a District Magistrate thinks the issue of a commission desirable or necessary, he must apply to the District Magistrate stating the reasons for the application.

508 A.

Commissions to and
from foreign countries.

623. The provisions relating to execution of commissions issued in criminal cases to and from foreign countries are laid down in sections 503 (3), 505, 507 and 508 A of the Code of Criminal Procedure as amended by the Code of Criminal Procedure (Amendment) Act No. XLV of 1954. [*See* Ministry of Judicial Affairs Notification Nos. 305 and 306, dated the 11th August 1955, reproduced in Appendix V (II).]

624. In criminal cases, Commissions or Letters of Request to obtain evidence cannot be issued except under Chapter XL of the Code of Criminal Procedure. Apart from the special provisions contained in Chapters XL and XLI of the Code of Criminal Procedure, all evidence against an accused person must be given in his presence in open Court. Consequently Commissions or Letters of Request for the examination of witnesses in criminal cases cannot be issued to any foreign country. Such evidence,

even if recorded on commission taken in a foreign country, would not be receivable as evidence at the trial of the accused. Where a witness is residing in a foreign country within a reasonable distance from the Court, the Court should seek the assistance of the Government in attempting to procure the attendance of the witness.

Medical Evidence.

625. Some Magistrates neglect to examine medical officers properly to ascertain whether injuries amount to grievous hurt or not.

The instructions at the foot of page 3 of Police Form 75 are intended for the assistance of the police in framing their final reports, but when the case comes into Court it is not the duty of the medical witness to classify hurts. The Magistrate should elicit from him all facts that have any bearing on section 320, Penal Code, and then the Magistrate should himself decide whether the hurt is grievous or not. It is not for the witness to say "I classify the hurt as grievous " but "I found the bone partially cut through," or "A chip was cut off the bone," or "The thumb was dislocated," or "I considered the patient's life was in danger for a day and a half because" or "The patient was discharged on 7th June, but he would not be fit to reap for another week," or so forth.

The instructions in paragraphs 530 and 532 should, in so far as they are applicable, be followed whenever a medical witness is examined.

626. Medical evidence relating to the injuries and the condition of patients admitted into hospitals is frequently given not by the medical officer who actually attended on the patient, but by some other medical officer who makes his statement by referring to the history sheet and temperature chart prepared by the officer who actually attended on the patient. Such a statement is merely hearsay and is not admissible in evidence.

An entry in a hospital record of a case (*e.g.* the "history sheet") is not an entry in a public record within the meaning of section 35, Evidence Act, but it is an entry made in the course of professional duty under section 32 (2), and if the medical officer who made the entry cannot appear as a witness himself (for any of the reasons given in section 32) the entry may be proved by anyone acquainted with his handwriting.

But in the ordinary course the medical officer himself who made the entry should of course appear as witness and be examined orally, and if he appears he can bring with him and refresh his memory (under section 159) from the hospital records.

627. Care must always be taken to connect the evidence of the medical officer with the report, if any, of the Chemical Examiner in the case. If the medical officer examined the complainant's injuries, he should be asked to identify the complainant at the trial. If his evidence has reference to the examination of a corpse, it must be shown by a connected chain of evidence that the corpse which he examined was that of the person whose death is the subject of the inquiry.

Chemical Examiner's Report.

628. The procedure in sending things for chemical analysis is prescribed in Judicial Department "G" Circular No.15 of 1930 as subsequently amended by "G" Circular No.60 of 1930, reproduced below :-

(1) Articles which require examination by the Chemical Examiner should be sent by the Police Investigating Officer direct to the Chemical Examiner. They should not be sent through the Civil Surgeon or the Police Surgeon unless exceptional circumstances require such a course. After the examination has been completed, the Chemical Examiner should return the articles direct to the Police Investigating Officer from whom they were received.

(2) Before the article is despatched to the Chemical Examiner it must be packed in the presence of the Police Investigating Officer, who must seal it personally with a special seal to be used for this purpose only. A letter in Burmese or English describing in detail the contents of the packet, and, if necessary, the alleged contents of the articles, *e.g.*, " six small bottles said to contain cocaine, " and a short history of the case, including the section of the Penal Code or of any other Act under which the case is instituted, must

be despatched by registered post or by peon, as the case may be, simultaneously with the packet, in which should be enclosed a duplicate copy of the letter.

A specimen of the seal used in packing the articles should be enclosed with the original copy of the letter which is sent in a cover separate from the packet. The sealed packet and the letter should then be placed in an outer cover on which the Police Investigating Officer must sign his name. In cases in which the packet can be taken by bearer to the Chemical Examiner's office the Police Investigating Officer should hand it over to some responsible person for delivery to the Chemical Examiner personally. In other cases the article should be sent by registered post direct to the address of the Chemical Examiner. It should be stated in the letter whether the packet is sent by registered post or by bearer, and in the latter case the bearer's name should be entered in the letter.

(3) On receipt the Chemical Examiner should first note the marks or number and the signature on the outer cover of the packet. He should then see whether the seals on the inner cover are intact, should note the impressions upon them, and compare them with the specimen of the impression forwarded with the letter. If he is satisfied that these are in order, he should open the inner cover and compare the contents with the description given in the letter. If no specimen of the impression is received, the article should be refused and returned. If there is more than one article the seals on each should be separately examined and noted. The result of these observations should be recorded at the time in a note-book under the appropriate date.

(4) The articles should be returned by the Chemical Examiner only to the person from whom they were received and to no other person. The Chemical Examiner should at the same time write a separate letter containing (i) the impression of the seal used by him in sealing the packet and a description of the contents of the packet, (ii) a list of the articles returned and a statement of the method of despatch, (iii) his report concerning each article examined. The articles should be packed in the manner described above.

(5) When articles are returned by post, the rules for the transmission of articles by post (*see* Article 248, Burma Medical Manual) should be observed.

(6) The report on articles examined should be drawn up as nearly as may be, in the following form :-

Report No. of the the Chemical Examiner to the Government of the Union of Burma, upon submitted to him for examination and report by analysis

The ^{was} received by me ^{through the post} on the day of a about ^{were} ^{a.m.} ^{p.m.}

I examined the label on the packing cover and found that it purported to bear the signature of

I examined the seal impressions on the and, as far as I could judge, they were intact and corresponded with the impression of the seal stated by in his letter to me, No. , dated the to have been used by him in closing the

After examining and analysing ^{the} the contents of the I report thereon as follows : -

Chemical Examiner to the Government of the Union of Burma

(7) The Chemical Examiner should make a special report to the Secretary to the Government of the Union of Burma, Ministry of Judicial Affairs of any cases in which parcels received from Police Investigating Officers are improperly packed, or in which the forwarding letter is incomplete, or does not agree with the contents of the packet.

(8) In cases in which a Magistrate or Judge considers it necessary himself to send articles for examination to the Chemical Examiner, a similar prodecure must be followed. Form Criminal 77 should be in submitting articles for examination. The articles must be packed in his presence sealed by him personally with the seal of his Court, and despatched direct either by registered post or by bearer to the Chemical Examiner, who in returning them will return them direct to the Magistrate or Judge from whom he received them.

(9) The correct establishment of the identification of articles sent for chemical analysis is essential. In all cases the Police Investigating Officer who despatched the articles must be examined as a witness, and when the article is sent by bearer, the bearer must also be called as a witness to prove that the article which he handed over to the Chemical Examiner is the article which was handed over to him for delivery. When articles are sent by post evidence should be adduced to prove that the article was posted. It is desirable to reduce as far as possible the number of person whom it is necessary to call as witnesses as to the identity of articles, and therefore it is essential that they should pass through as few hands as possible. Consequently Police Officers should not delegate their duties in this should be handled personally by the Chemical Examiner, and should pass through as few hands as possible in his office. It should be remembered that if an article passes from one clerk to another, either in the Police office or in the Chemical Examiner's office, it becomes necessary to call each of those clerks as witnesses to establish its identity.

629. Form Criminal 77 should be prepared in triplicate. One copy should be kept as an office copy and placed on the record of the case in connection with which the article is submitted. The second copy should be forwarded together with a specimen of the seal used for sealing the article prior to its despatch, in a separate sealed cover to the Chemical Examiner. The third copy should be packed carefully between the article submitted and the outer covering of the packet.

630. The appointment of an officer to the gazetted post of Chemical Examiner or Assistant Chemical Examiner for Customs and Excise made in the ordinary way is sufficient to constitute that officer a Chemical Examiner or Assistant Chemical Examiner to Government for the purpose of section 510 of the Code of Criminal Procedure. Consequently the provisions of that section apply to their reports in any criminal case.

Documentary Evidence.

631. For orders and instructions regarding documentary evidence, see Part II, paragraphs 49 - 59, and Part V, paragraphs 1075 -1086.

Payment of Expenses to Complainants and Witnesses.

632. The following rules have been made by the President of the Union* under the provisions of section 544 of the Code of Criminal Procedure, for the payment of the expenses of complainants and witnesses attending any Criminal Court in Burma for the purpose of any enquiry, trial, or other proceeding before such Court under the said Code :-

I. The Criminal Courts may at their discretion pay, according to the scale set forth in Rule III, the expenses of complainants and witnesses either for the prosecution or for the defence -

(1) in all cases which are cognizable by the police;

[NOTE. - In cognizable cases which are instituted on direct complaint Magistrates should not pay the expenses of complainants and witnesses when the prosecution is instituted in furtherance of a private dispute between the complainant and the accused and such expenses should rarely be paid in cases of complaints of offences under section 440 or section 447, Penal Code, relating to damage to crops or trespass to agricultural land, as such cases are usually of a quasi - civil nature.]

(2) in all cases entered in column 5 of the Schedule II as not bailable;

(3) in all cases in which witnesses are compelled to attend the Court under sections 94, 103, 208, 217, 257 and 540 of the Code of Criminal Procedure; and

(4) in all cases where the prosecution is instituted or carried on by, or under the orders or with the sanction of Government or any Judge, Magistrate, or public officer or in which the presiding officer thinks the prosecution to be directly in furtherance of the interests of public justice.

* Judicial Department Notification No. 7, dated the 3rd January 1923, as amended by Notifications No. 3, dated the 2nd January 1929; No. 105, dated the 9th April 1930; No. 490, dated the 21st December 1931; No. 49, dated the 13th February 1934; No. 123, dated the 4th April 1934; No. 168, dated the 21st May 1934; No. 191, dated the 11th June 1934; No. 297, dated the 4th September 1934; No. 337, dated the 8th October 1934; No. 65, dated the 15th March 1937 and No. 164, dated the 20th March 1948.

II. Expenses of complainants and witnesses shall be payable, according to the scale set forth in Rule III, on account of their journeys to and from the Court and for the days during which they have been absent from their homes for the purposes of the trial proceedings, etc., :

Provided that -

- (1) a Government servant whose salary exceeds K 10 per month giving evidence in his official capacity -
 - (a) When giving evidence at a place more than five miles from his headquarters, shall not receive anything under these rules, but shall be given a certificate of attendance ;
 - (b) When giving evidence at a place not more than five miles from his headquarters, shall not receive anything under these rules, but shall be given a certificate of attendance, on which he may claim only the actual travelling expenses he has incurred from the contingent allotment of the head of his office.
- (2) A Government servant whose salary does not exceed K 10 per mensem giving evidence in his official capacity shall receive his expenses from the Court.
- (3) A Government servant giving evidence in his private capacity shall receive actual travelling expenses under these rules and shall also receive subsistence, special or expert allowances.
- (4) In cases in which the Magistrate acquits the accused under section 245 or section 247 of the Code of Criminal Procedure, and is of opinion that the complaint was frivolous or vexatious, the expenses of the complainant shall not be paid.
- (5) A servant of a local authority giving evidence in his official capacity shall not be paid witness fees but shall be given a certificate of attendance.

- (6) A member of a local authority, unless debarred by some other rule, *e.g.*, if he is a Government servant, shall, in all cases, be entitled to receive witness fees as a private person.

[NOTE. 1. - Whenever the expenses of a Government servant summoned as a witness in his official capacity have to be deposited in advance, the term "expenses" shall be interpreted to mean the travelling and handling allowances admissible under Civil Service Regulations]

[NOTE. 2.- Any fees or expenses which may be deposited in cases falling within *proviso* 1 (a) shall be credited to Government under the head XVII-Justice - D. Miscellaneous Fees and Fines-b. Miscellaneous Fees and Fines.]

- III. The scale of expenses payable shall be as follows:-

Subsistence Allowance	Travelling Allowance
K 3.15	Actual Travelling Expenses.

The abovementioned amendment must be enforced with effect from the 1st October, 1966.

- IV. Allowances shall be paid under the orders of the Court, and in the presence of the presiding officer, and ordinarily at the conclusion of the trial, enquiry, or other proceeding. The presiding officer of the Court shall check the statement of charges and will be responsible that unauthorized charges are not allowed:

Provided that, for sufficient reason, the Court may direct that the said allowances shall be paid to the person summoned at the time of serving the summons.

[Note. - This rule does not apply to the High Court, Rangoon, where the charges are passed by the Clerk of the Court and the payments are made by the Account.]

- V. In cases committed to the Court of Session, or to the High Court, the Magistrate who commits the case shall note in the list of witnesses the class to which in his opinion, each belongs.

633. (1) Under the note to Rule (i) of the rules relating to the payment of expenses to complainants and witnesses in paragraph 632, the Court has a discretion to order that witness expenses shall not be paid in cases instituted on direct complaint, even when the offence complained of is cognizable. In summons cases the Magistrate may, under section 244 (3), Code of Criminal Procedure, require that the witness expenses be deposited in Court before the summons is issued. The procedure when witnesses are summoned for failure to deposit expenses, under section 244(3) of the Code of Criminal Procedure, is to acquit the accused under section 245 (1) because the alleged offence has not been proved.

(2) In warrant cases section 544 of the Code of Criminal Procedure does not allow the Court to demand payment of witness expenses in *advance* from the complainant before the issue of process is allowed. The effect of this section combined with the rules in paragraph 632 is that in non-cognizable or bailable *warrant* cases instituted on complaint the expenses of witnesses will have to be paid by the complainant after they have been discharged, while in other cases the Magistrate has a discretion to refuse to order payment by Government of any witnesses whom he thinks to have been unnecessarily summoned, or to have given false evidence.

634. Rule IV of the Rules for the payment of expenses to witnesses, reproduced in paragraph 632, says that the allowances shall be paid ordinarily at the conclusion of the trial. It does not of course mean that witnesses shall not be paid for each attendance. It means that if they attend and are examined they shall not be paid at the conclusion of the evidence of each witness, but at the conclusion of the trial (or more usually at end of the day's hearing).

Whenever a case is adjourned without examining witnesses who are in attendance these witnesses should be paid their expenses for that attendance on the day on which they attend and the case is adjourned.

635. Only actual travelling expenses are to be paid to complainants and witnesses, and the scales laid down in paragraph 632 are not rates of travelling allowance, but the maximum limits, for each class, up to which actual travelling expenses can be paid under the rules.

Payments of travelling allowances at the rates mentioned in paragraph 632, or at any other rate, where no actual travelling expenses have been incurred, is not in accordance with the rules. Strict adherence to the rules is essential, and such payments should not be made under any circumstances.

636. It is left to the discretion of the Courts to pay the expenses of such witnesses for the Courts to satisfy themselves that the expenses are paid of all witnesses for the defence who are properly entitled to them, that is, of all witnesses, whatever may be the nature of their evidence, who attended Court on subpoena in good faith and without collusion with the accused.

637. The Courts should not pay the expenses of witnesses who give evidence that appears to be wilfully false or who have been brought to Court with their own connivance, not because they know anything about the case, but because their presence there is desired by the accused or themselves.

638. When a Magistrate has granted permission, under sub-section (2) of section 345, Code of Criminal Procedure, to compound a case on the condition that the complainant or informant, or the accused, shall pay the costs of the prosecution, the following rules should be observed for ensuring compliance with the condition; (*cf.*, paragraph 480) :-

- (i) If, at the time the Magistrate decides to allow composition no expenses have yet been paid to the witnesses for the prosecution, the Magistrate should order the complainant or informant to pay the necessary amount (which the Magistrate should specify) to the Bailiff, who will thereupon make the necessary entries in his Register No.II and disburse the expenses to the witnesses in the presence of the Magistrate. The Magistrate should make a note of the total amount paid in the diary of the case, and should at the same time cause a note to be made of the amount paid to each witness in the appropriate column of Criminal Register III. Until the amount has been so recovered and paid out to the witnesses, the order allowing composition should not be passed.

It will not be necessary to recover the expenses of witnesses in the above manner if the witnesses themselves agree to have their expenses settled by the complainant or informant out of the Court, but if the witnesses so agree the Magistrate should note the fact of such agreement in the diary of the case.

(ii) Where witnesses' expenses have already been paid by Government, the Magistrate should order the complainant or informant to pay the amount so paid by Government to the Bailiff, who will enter the amount in his Register I and pay it into the Treasury by chalan headed "Refund to Government of witness fees after composition." The Magistrate should then with his own hand certify in the diary of the case that he has inspected the chalan showing the refund of witness-fees to the Treasury and should himself enter its number and date in the diary. He should also cause a note in red ink to be made against each entry in Criminal Register III of the payment of expenses of witnesses in the case as follows: "Refunded by Chalan No.....dated.....". Only when the above procedure has been fully carried out, should the order allowing composition be passed.

(iii) Where at the time of composition the expenses of some witnesses have already been paid by Government and other witnesses have not yet been paid their expenses, the Magistrate should comply with sub-paragraph (i) in respect of the expenses which have not yet been disbursed, and with sub-paragraph (ii) in respect of the expenses which have already been disbursed.

(iv) The above instructions apply *mutatis mutandis* if the accused is ordered to pay the costs of the prosecution as a condition of allowing composition.

639. Each Court should be provided with funds, by permanent advance or otherwise, for prompt payment of witnesses whose expenses are borne by the State.

CHAPTER XXII.

HABITUAL OFFENDERS-PREVIOUS CONVICTIONS AND ACQUITTALS.

Habitual and Previously Convicted Offenders.

640. (1) Accused persons who have been previously convicted of offences punishable under Chapter XII or Chapter XVII of the Penal Code with imprisonment for three years or more, and who are again prosecuted for any such offence, should not be tried by a Magistrate of the second or third class unless he is of the opinion that he can award an adequate sentence. On conviction the proceedings should be submitted to the Subdivisional Magistrate for perusal.

348. (2) Magistrates should remember that these cases must under section 348 be either committed to the Court of Session or transferred to a Special Power Magistrate for disposal, or tried through out by the Magistrate himself. They cannot be referred for higher punishment under section 349.

641. In cases sent up for inquiry or trial by the police (except in cases under sections 269, 277, 280, 283, 285, 286, 289, 291 to 294, Penal Code, section 34, Act VI of 1945 and any Municipal or Local law) the police will send up a descriptive-roll of the accused in a form prescribed by the Inspector-General of Police. When an accused person who has been previously convicted is sent up for trial for an offence under the Gambling or the Excise Act a note showing that he has been previously convicted will be made in red ink against his name on the Report or Charge Sheet, as the case may be, and copy of Form Criminal 34 Police 65 A will be attached to the Bail Bond by the officer sending up the case. If no previous conviction is known or suspected against the accused, this will be on white paper*. If a previous conviction is known or suspected, the form will be on yellow paper †, and will give the necessary particulars of previous convictions so far as known to the police including convictions of offences other than those punishable under Chapters XII and XVII of the Penal Code.

642. In police cases the Court should ascertain, by reference to the police form referred to in the last paragraph, whether any previous convictions are recorded against the accused rendering him, if convicted of the charge on which he has been sent up for trial, liable to enhanced punishment under section 75 of the Penal Code.

* Form No. Crime 20
Police 43

† Form No. Crime 21
Police 44

The judgment should show whether all or any of the previous convictions recorded by the police have been judicially proved at the trial of the accused ; and in case of conviction a certificate in accordance with the decision in the judgment on this point, signed by the Judge or Magistrate himself, should be endorsed on the descriptive-roll in Form No. ~~Crime 21~~ ^{Police 44}, which must accompany the warrant of imprisonment.

643. When an accused is sentenced to imprisonment for a period exceeding a month and no descriptive-roll has been sent up by the police, a descriptive-roll in Criminal Form 99 (white paper) where there are no previous convictions or Form 100 (unbleached paper) where previous convictions have been judicially proved at the trial of the accused, shall be prepared by the Court Police Officer, or, where there is no Court Police Officer, by the Head Clerk of the Court, and shall be attached to the warrant of imprisonment. The roll in Criminal Form 100 shall be signed by the Judge or Magistrate himself.

644. Under the provisions of section 221 (7) of the the Code of Criminal Procedure, in every case in which there are *prima facie* grounds for believing the accused to have been previously convicted of an offence, by reason of which previous conviction he is liable to enhanced punishment or punishment of a different kind under the provisions of section 75 of the Penal Code or of any other law, he must be charged with the previous conviction. Form Criminal 82 should be used for this purpose. This rule applies in all cases to which section 75 of the Penal Code or any provision of law allowing enhanced punishment for a second or subsequent offence is applicable even if the Court does not propose to pass a sentence heavier than the maximum sentence allowed by the substantive section under which the accused is charged.

The accused should be required to plead to the charge of the previous conviction and if he does not admit it the charge should be tried at the conclusion of the trial for the substantive offence. The charge must be proved in the manner laid down in section 511 of the Code of Criminal Procedure, and the Court should record a finding in the judgment as to whether the accused has been so previously convicted or not.

The charge of previous conviction, if omitted at the time of framing the charge for the substantive offence, may be added at any time before sentence is passed.

645. In many cases in which the accused has been previously convicted of a similar offence or of some other offence indicating moral turpitude, but to which no special provision of law allowing enhanced punishment in the case of a second or subsequent conviction applies, it is nevertheless expedient to pass a more severe sentence than would be passed on a first offender in a similar case. In such cases the record must show clearly that the previous convictions have been either admitted or proved.

When the trial is concluded, but before sentence is passed, the Court should proceed to try the previous convictions. Form Criminal 83 should be used for this purpose.

Without *prima facie* grounds for believing an accused to have been previously convicted he should not be asked whether he has been previously convicted.

646. A conditionally released prisoner can violate the conditions of his release in three ways, namely (a) breaking an ordinary condition of his release, *e.g.*, failing to report at a police station at the time specified in the order of conditional release, (b) committing a new offence, and (c) absconding.

In case (a) the Government can take action under section 401 of the Code of Criminal Procedure, and no prosecution under section 227, Penal Code, need be launched.

In case (b) there need not be any prosecution under section 227, Penal Code. The proper course in such a case is for the Court to try him for the offence and record a finding thereon. If the finding is one of conviction the proceedings should be forwarded to Government in the Home Department before sentence is passed in order that steps may be taken to revive the original sentence. When the original sentence has been revived the convicting Court under the provisions of section 397, Code of Criminal Procedure, may proceed to pass sentence for the new offence, and may at its option direct the sentence which it then pronounces to run consecutively or concurrently with the revived sentence.

If sentence for the new offence is wrongly pronounced before the old sentence has been revived the effect is that the revived sentence and the fresh sentence must, of necessity, run concurrently.

Case (c) is on a different footing. The second part of section 227, Penal Code, provides for a punishment to the maximum extent of one year's rigorous imprisonment, *in addition to the punishment prescribed by the first part of the section*, on conviction for the offence of violating a condition of a remission of punishment in a particular way, *viz.*, by absconding. In such a case the Government will presumably refrain from taking action under section 401 (3), Code of Criminal Procedure, and the Court trying the absconder should not take steps to have the original sentence revived by the Government, because it has adequate power to deal with the accused under section 227, Penal Code.

When a Borstal or Senior Training School lad commits an offence when on licence under section 33 of the Prevention of Crime (Young Offenders) Act, sentence should be passed in the case without referring the matter to Government but a copy of the judgment should be submitted to the Secretary to the Government of the Union of Burma, Ministry of Judicial Affairs.

Mode of Proving Previous Conviction or Acquittal.

511.

647. A previous conviction or acquittal may be proved -

- (a) by an extract duly certified to be a copy of the sentence or order ; or in the case of a conviction either,
- (b) by certificate signed by the Superintendent of the Jail in which the sentence was executed (Form No. Police 31)or
- (c) by the production of the warrant under which the punishment was suffered :

together with, in each of these cases, evidence of the identity of the accused with the person convicted or acquitted. The documents and any evidence taken will be filed immediately after the proceeding trying the previous conviction (Form Criminal 83).

The common mistake of supposing that a certificate in Form No. ^{Crime 21}_{Police 44} fulfils the requirements of section 511 should be avoided.

NOTE. - A certified extract from Criminal Register 1 is admissible under section 65 (c) of the Evidence Act as secondary evidence of a previous conviction only when the original record of the trial has been destroyed or lost.*

648. Proof of the identity of the **accused** with the person named in the certificate or extract is **necessary** unless the previous conviction is admitted.

649. The accused should not be asked in his evidence or examination concerning previous conviction of which there is no evidence. Without proof of the authorized kind of a previous conviction the mere admission of an accused person does not justify the use of the conviction to affect the punishment to be inflicted.

650. The attention of all Magistrates is particularly directed to the law regarding Finger Print Impressions as expounded in *Hulost v. King*

Emperor (4 L.B.R., 125) the headnote of which is printed below :-

"The accused was charged with theft after three previous convictions under Chapter XVII of the Penal Code. To prove these convictions which the accused denied, certain 'Finger Impression Slips' were produced, together with statement signed by the officer in charge of the Finger-print Bureau to the effect that the impressions appearing thereon were those of the person against whom the specified convictions had been had. An officer of the Finger-print Bureau took impressions of the accused's fingers in Court and identified him as the person whose finger-prints appeared on the 'Finger Impression Slips.'

Held, - that the previous convictions of the accused stated on the slips were not proved merely by the production of such slips.'

* 43 Calcutta 973, 983.

651. (1) A Court requiring the services of a Finger-print Expert should make out a summons to "The Finger-print Expert" (not to any particular officer by name), which should be addressed through the District Superintendent of Police to the Assistant Deputy Inspector-General of Police (Crime). Inspectors and Sub-Inspectors of Police cannot ordinarily be regarded as experts.

No person other than an expert who holds a certificate granted to him by the Assistant Deputy Inspector-General of Police (Crime), to the effect that he is competent to give an opinion on finger impressions, should be allowed to give an expert opinion on finger-prints.

(2) When a second opinion on a disputed finger-print is necessary, the case should be referred to an expert from another Finger-print Bureau.

(3) In Criminal Cases, Fees, Travelling and Subsistence Allowances of the Expert are not payable by the Court. (*cf.* paragraph 62.)

Summoning of Jailors.

652. Great inconvenience is frequently caused by the summoning of jailors or assistant jailors to attend Court for the purpose of proving the previous convictions of accused persons. The grounds of complaint are -

(i) that members of the jail staff are frequently summoned and kept waiting several days before they are examined, particularly in Sessions cases, and

(ii) that members of the jail staff are frequently summoned though they cannot identify the prisoner.

All Magistrates must exercise careful discretion in the matter of summoning members of the jail staff, and before a jailor or assistant jailor is summoned the Superintendent of Jail should be asked whether or not any member of the staff can identify the accused, and arrangements should be made to have such a person sent if he is likely to be required.

Sessions Judges should also make arrangements that, if a Sessions case is postponed, intimation of that fact should, if possible, be sent (by telegram if necessary) to the jail concerned.

CHAPTER XXIII.

JUDGMENTS-PUNISHMENTS-SENTENCES-CLASSIFICATION
OF PRISONERS.**Judgments.**

366

653. Judgment must be pronounced in open Court, in the presence of the accused, or, if his personal attendance during the trial has been dispensed with and he is acquitted or the sentence is one of fine only, in the presence of his pleader. Every Sessions Judge or Magistrate, when passing a sentence which includes a fine, shall, at the time of delivery of judgment, draw the attention of the accused to the notice prescribed by paragraph 1059, Courts Manual, which is exhibited outside all Courts indicate the whereabouts of the Bailiff's office and mention the Bailiff's name. A note that this has been done should be made in the diary of the record.

Delivery of Judgment.

367(1).

654. A judgment must be written in the language of the Court. It must be dated and signed in open Court at the time of pronouncing it. It may be dictated. If dictated, or written with a typewriter, every page of the judgment must be signed by the Magistrate or Judge.

Contents of Judgments.

A judgment, once signed, cannot be altered or reviewed except to correct a clerical error.

369

655. In cases in which two or more accused are tried together, and in which the charges against the various accused rest on evidence not entirely the same, the judgment should contain : -

Judgment in joint trials.

(i) A brief but adequate statement of the case, with such general discussion of the prosecution evidence as may be called for.

(ii) A similar statement and discussion of the defence case in so far it as is common to all or most of the accused.

(iii) A separate statement and discussion of the evidence against and for each accused, with definite findings thereon. When the evidence against two or more accused is the same, such accused might be dealt with as a group instead of singly, the defence evidence for each being treated separately so far as may be necessary. When the charges against the accused vary the charge against each should be stated in this part of the judgment.

(iv) The sentence or order passed in regard to each accused.

Copies of Judgments or Intimation of Result of Trial in certain cases.

656. Whenever a charge of any offence committed by a Result Trial of Union of Military Policeman. **Union Military policeman** is enquired into or tried by a Criminal Court, the Court shall inform the Battalion Commandant or Adjutant of the result of the enquiry or trial.

Whenever a Union Military Policeman is an appellant or respondent in a criminal appeal, the Appellate Court shall inform the Battalion Commandant or Adjutant of the result of the appeal.

A copy of the judgment need not be furnished unless specially applied for; if so applied for, it shall be furnished free of charge.

657. Whenever a Criminal Court sentences a Conviction of Reservist. **reservist of the Burma Army** to transportation or imprisonment for any term exceeding three months, intimation of the sentence shall be sent by the Court to the Adjutant-General.

658. (1) Whenever a Conviction or Acquittal of Government Servant. **Government official** is judicially **convicted** of any offence, a copy of the judgment must be sent to the Head of the Department in which he is employed. The copy shall be supplied free of charge.

(2) Whenever a Government pensioner is judicially convicted of any offence a copy of the judgment must be sent to the Deputy commissioner of the District in which he is

convicted for the purpose of action under Article 351 of the Civil Service Regulations. The copy shall be supplied free of charge.

(3) Whenever a Government official is acquitted or discharged by a Criminal Court, a copy of the judgment or order shall be supplied free of charge, on the application of the Head of the Department. District Magistrates are requested to make suitable arrangements for the observance of this order by subordinate Courts.

659. The Secretary to the Government of the Union of Burma, Ministry of Judicial Affairs, shall be furnished with detailed particulars of all cases in which any certified officer of the Mercantile Marine is convicted of any serious offence. These particulars should be supplied as soon as possible, after conviction, and should be accompanied in each instance by two copies of the judgment of the convicting Court.

660. (1) Magistrates are requested to furnish to Divisional Forest Officers concerned a return in Form ^{Forrest} M. 24 of all forest cases decided by them whether prosecuted by a Forest Officer or not.

(2) The statement should be forwarded as soon as the case is decided, and any correspondence regarding it should be addressed by the Forest Officer to the Magistrate through the District Magistrate, and should be replied to by the same channel.

661. 'As regards copies of judgments in Sessions Trials and appeals and references therefrom, see paragraphs 589 and 590.

661 A. In the case of persons who have been convicted and sentenced to three years' imprisonment or more a copy of the judgment of the Appellate Court, if there is any appeal, shall be supplied free of charge on application by the Inspector-General of Prisons for the purpose of making necessary entries in the history sheet of the prisoners concerned.

Punishments.

(1) *imprisonment.*

662. In all Acts, Ordinances and Regulations,* unless the contrary is specified, "imprisonment" means either rigorous or simple imprisonment.

663. Imprisonment for a fraction of a day should not be awarded unless it is the only period that can legally be imposed. There is, however, no objection to sentence of imprisonment until the rising of the Court, where only a nominal sentence is called for.

664. While it is not desired to infringe in any way upon the discretionary powers possessed by Magistrates in sentencing offenders, it is necessary to emphasize the evils arising from sentencing offenders to short terms of imprisonment of three months or less.

Particularly in the cases of the labouring classes, the deterrent effect of such sentences is small, as vaccination, inoculation, etc., take up three weeks and the convict has then only short time to serve and cannot be put to any work demanding continuity of effort. As a rule he is employed in menial tasks connected with the domestic economy of the Jail and generally has an easy time. On the other hand, the moral effect of prison life is generally bad, while the associations are degrading, and the loss of character and self-respect involved in even the shortest term of imprisonment often tends to create a criminal. It is recognized that in some case no other form of punishment than a short term of imprisonment can be imposed, and a short sentence of imprisonment should not be avoided by passing a sentence for a longer term than the circumstances of the case really require. But in every case the Magistrate, before passing a sentence of imprisonment for a term of three months or less, should first consider whether some other order, such as the imposing of a fine or a sentence of whipping, release on probation under section 562, Code of Criminal Procedure, or the granting of time under section 388 in which to realize the amount of fine imposed, may not suitably be

* General Clauses Act, section 2.

passed. A sentence of a short term of imprisonment should not be passed until all other possible alternatives have been considered. Second and third class Magistrates should freely make use of the provisions of section 349, Code of Criminal Procedure, by forwarding the accused to the District or Subdivisional Magistrate to receive a punishment different in kind from or more severe than which can be imposed by them.

665. Sentences of a few days' imprisonment impose considerable work upon the staff of the jails, and considerable expense upon the State, and should be avoided whenever possible. When a prisoner is received in the jail there are many formalities to be complied with and forms to be filled up, and when he is released he must be provided, with substance allowance for the day on which he is released and with a free passage to his home. Under the Jail Rules as they stand, when a sentence expires on a Sunday the prisoner is to be released on the preceding Saturday, and it frequently happens that a prisoner is received in the jail on a Saturday only for the purpose of being immediately released.

Accordingly where it is necessary to pass a short sentence of imprisonment as a deterrent for a minor offence, or in default of payment of a small fine, the period of the sentence should however trivial the offence or however small the fine, not be one of less than five days (*cf.* paragraph 683 *infra*).

666. It is common practice for the Courts to pass a
 Simple Imprisonment. sentence of simple imprisonment, not because a minor degree of moral turpitude is involved in the crime committed, but in view of the prisoners' presumed unfitness for labour. The Courts should not take into consideration any question of the physical fitness of a convict to labour. It is for the jail authorities to ascertain what labour is appropriate to a prisoner's strength and to put him that only ; the Courts have merely to consider the amount and nature of the imprisonment appropriate to the offence, and the character and status of the offender. and they should realize that by selecting simple instead of rigorous imprisonment they make a very essential difference in the way in which a prisoner will be treated on his admission to jail.

667. Reasons for inflicting solitary confinement under section 73 and 74 of the Penal Code should always be recorded by the Court when passing sentence. The power to impose solitary confinement in England has been abolished since 1893, and as the sentence ordinarily hinders any attempt to reform the prisoner and results in deterioration rather than improvement of his mental faculties, it should never be awarded as part of a sentence in case tried summarily ; nor should it be awarded on first conviction. Sentences of solitary confinement passed for separate offences, whether in the same or more than one trial, should not in the aggregate exceed *three* months.

(2) *Transportation.*

668. (1) Sentences of transportation are not carried out in practice. Consequently Sessions Judges and Magistrates exercising Special Powers should not exercise the option which they possess under section 59 of Penal Code except in very serious cases, such as offences under sections 123 - 130 of the Code, and a sentence of transportation should not ordinarily be passed unless it IS ESSENTIAL UNDER the Code, *e.g.*, in the case of life sentences.

Penal Code,
59

(2) Under section 59 of the Penal Code, a sentence of imprisonment is NOT commuted to one of transportation. The correct procedure is to sentence the offender to transportation under the section under which the offence is punishable read with section 59 of the Penal Code.

(3) *Whipping*

669. to 681.	x	x	x	x	x	x
x x x	x	x	x	x	x	x

(4) *Fines.*

Penal Code,
63 - 70.

682. Sentences of fine should never be passed without due regard to the means of the person fined to pay the fine.

Penal Code,
8.

Excessive fines are prohibited by law and should be carefully avoided.

683. (1) The attention of all Courts is called to sections 64 to 67 inclusive of the Penal Code and also to section 33 of the Code of Criminal Procedure, relating to sentences of imprisonment in default of payment of fine.

(2) Under section 65, Penal Code, the term of imprisonment in default must not exceed one-fourth of the maximum term of imprisonment fixed for the offence, if the offence is punishable with imprisonment as well as fine.

Penal Code,
65.

This rule applies whether imprisonment is actually awarded or not. It applies to cases where imprisonment or fine, but not both, can be awarded, no less than to cases in which both imprisonment and fine can be imposed.

(3) Subject to the rule in sub-paragraph (2), in cases punishable with imprisonment as well as fine where a sentence of fine only is passed, the Magistrate may award, in default of payment of fine, imprisonment up to the limit of his ordinary powers, *e.g.*, in a case of simple theft under section 379, Penal Code, if fine only is imposed a Magistrate of the first class may award, in default of payment, imprisonment for nine months, a Magistrate of the second class imprisonment for six months and a Magistrate of the third class imprisonment for one month.

33 (1) (a).

33 (1) (b). (4) Where a Magistrate sentences to imprisonment and fine, the period of imprisonment awarded in default of payment of the fine cannot exceed one-fourth of the period which the Magistrate has power to impose substantively. Thus in the case in sub-paragraph (3) a Magistrate of the first class cannot award more than six months, a Magistrate of the second class more than one month and a half, and a Magistrate of the third class more than one week.

Penal Code.
67. (5) If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of fine -

- (a) must be simple; and
- (b) the term for which the Court directs the offender to be imprisoned in default of payment of fine must not exceed two months when the amount of the fine does not exceed K 50, four months when the amount does not exceed K 100, and six months in any other case.

33 (1) (a). In this case a Magistrate of the third class cannot award imprisonment for more than one month in default of payment of a fine. (See also paragraph 665 *supra*.)

Penal Code.
66. 684. Imprisonment awarded in default of payment of a fine may be of any kind which may be imposed for the offence.

General
Clauses Act.
25. 685. The rules contained in paragraphs 683 and 684 apply to all fines imposed under any Act, Regulation, Rule or Bye-law, unless there is an express provision to the contrary. Courts should be careful to see that there is no express provision excluding from the operation of this rule, *e.g.*, in section 47 of the Police Act, there is an express provision overriding it.

Application of rule
regarding imprison-
ment in default of fine.

Sentences.

686. When a person is convicted of a single offence, the Court, subject to the provisions of section 562, must pass some sentence upon him, even though it be a nominal one.

35. 687. Separate sentences of transportation or imprisonment passed at one trial run consecutively, unless the Court, as it may do, direct them to run concurrently.

397. 688. Separate sentences passed at separate trials run consecutively unless the Court which passes the subsequent sentence directs that such subsequent sentence shall run concurrently with the sentence previously passed on the accused.

689. The President of the Union has drawn attention to
Sentences in Coinage Cases. the inadequacy of the sentences which in some instances are passed by the Courts for offences relating to the coinage. Magistrates are therefore reminded of the necessity for the imposition of suitable sentences in such cases. Sessions Judges and District Magistrates are also requested to scrutinize carefully all sentences passed in such cases. In any instance in which the sentence of the Court is obviously insufficient, application should be made to the High Court to revise and enhance the sentence.

690. (1) The attention of Magistrates is called to the
Sentences in Hurt Cases. advisability of passing really deterrent sentences in cases in which hurt is caused by a knife or other deadly weapon. The use of knives on the slightest provocation, and often without any provocation at all, is far too frequent in Burma. The most likely method of suppressing this dangerous practice is to make the punishment severe and certain.

(2) Where an accused is sent up for trial under section 326, Penal Code, for causing grievous hurt with a deadly weapon, a reference should always be made to the District Magistrate, in order that he may, if he thinks fit, try the case in exercise of his special powers or transfer it to a Sepcial Power Magistrate for trial. Many cases of this kind are hardly distinguishable from attempts to murder, punishable under section 307 of the Penal Code. Magistrates, other than the District Magistrate or a Magistrate specially empowered under section 30, can rarely impose a sufficiently severe sentence in these cases.

691. In some districts theft of valuable plough or car-cattle from cultivators' houses or grazing grounds may be common, and the prevalence of the crime and the fact that it

results in cultivators losing their means of cultivating their land and so their livelihood may be reasons for passing deterrent sentences. Even in such cases, however, other circumstances such as the age and previous history of the offender must be taken into consideration in assessing the sentence; and such cases must be clearly distinguished from cases of casual theft of animals of small value and utility, usually left to graze in the jungle, in which no reasons for passing deterrent sentences normally exist. The attention of Magistrate is drawn to the ruling in *Po Nyein v. K E.*, 9 L.B.R. 167, in which the principles to be followed in assessing punishment in cases of theft of boats and cattle are laid down.

Attention is also drawn to the remarks in that judgment on the question of enhancement of sentence owing to previous conviction.

692. (1) Attention is invited to the observations in the judgment in the case of *King-Emperor v. Nga Ba Shein* (I.L.R. 6 Rang. 391) concerning the reception of statements regarding the character of an accused person

in order to assist the Court in the assessment of the appropriate punishment to be inflicted when the accused has been found guilty. These observations are equally applicable to the question of the classification of a convicted person as 'habitual' or 'non-habitual'.

(2) In all cases in which a person is sent up for trial on a charge of any of the offences mentioned in the schedule below a brief history of the accused will in future be compiled by the investigating officer, or some officer deputed by him, from his own knowledge and by enquiry from headmen and others who are likely to be acquainted with the past history of the accused. This history will contain reference to facts which tend to show that the accused is of criminal habit.

It will state the offences of which the accused has been convicted or suspected, with details showing whether they were serious or petty, and giving the dates of commission and grounds of suspicion ; whether the accused associates with criminals and/or has been led astray by them ; whether the particular form of crime is prevalent in the locality. It will also state any facts or circumstances in favour of the accused, such as previous good character, the state of his health, bodily and mental. This history will be in the possession of the Public Prosecutor or Court Prosecuting Officer.

(3) At the conclusion of the trial, if the case ends in the conviction of the accused, after the completion of the Judgment and before delivery of it or pronouncement of sentence the Sessions Judge or Magistrate should ask the Public Prosecutor or Court Prosecuting Officer whether there is anything in the history of the accused of sufficient importance to be brought to the notice of the Court to assist in the assessment of punishment and/or classification of the accused as 'habitual' or 'non-habitual'. If the reply is in the affirmative, the police officer who prepared the history must be examined on oath or affirmation, in the presence of the accused, as to the matters mentioned therein. A summary of his statement should be recorded. The Sessions Judge or Magistrate may himself call for and peruse the history, but the matters mentioned in the history may not be taken into consideration unless and until they have been deposed to on oath, in the presence of the accused, by the officer who prepared it. This officer must state which matters he knows of his own knowledge and which he has learnt by enquiry. If the accused does not challenge the accuracy of the history the Court is entitled to take it into consideration on the question of sentence and/or classification, notwithstanding that some parts of it may be hearsay. If the accused does deny any fact stated, that fact must be left out of account, or, if the Sessions Judge or Magistrate thinks the fact of sufficient importance to justify this course, an adjournment must be given to enable the prosecution to call witnesses and prove it by legal evidence.

(4) Depositions of witnesses called to give evidence as to the history of the accused should be filed in the record of the case immediately after the oral or, if any, the documentary evidence for the defence.

(5) In some cases the only matter of importance mentioned in the history may be a list of previous convictions of the accused. In such a case the Judge or Magistrate, instead of examining the officer who compiled the history, should call for and peruse the records of the cases in which the accused was previously convicted in order to see the nature of the offences committed.

(6) Notwithstanding the above instructions, in every case in which it is alleged that a convicted accused has a previous conviction or convictions, such previous convictions must always be judicially proved in the ordinary way (*vide* paragraphs 647 to 652 *spra*).

Schedule.

1. Offences under the -
Penal Code. - Sections 182, 211, 215 (cattle), 216A, 231 - 240, 242 - 253, 255 - 263, 311, 328, 363 - 369, 379-382, 384, 386-389, 392-402, 403(cattle), 404, 406-409, 411-414, 418-420, 429-433, 435-440, 440-450, 454-462, 489A-489D.
Arms Act. - Sections 19,20.
Rangoon Town Police Act. - Section 31.
Burma Gambling Act. - Section 12.
2. Attempts to commit any of the above offences.
3. Offences under Chapter XVI of the Penal Code, where there is reason to believe that the accused habitually commits offences against the person.

693. The reasons for passing sentences of exceptional severity must be stated on the record. Local circumstances, especially in the case of such Acts as the Opium and Excise Acts, may form a good reason but should be explained.

Reasons for severe sentences

694. In cases of timber theft, where it is obvious that the infliction of a small fine will be more than balanced by the profits derived from the sale of the stolen timber, and particularly in districts where timber theft is a common offence, Magistrates are instructed to see that the punishment which they impose in respect of such offences is of a sufficiently deterrent nature.

Sentences in Timber
Theft cases.

695. When a recommendation for clemency is made in the course of a judgment or appellate order in a criminal case, such recommendation should be brought directly to the notice of the President of the Union through the High Court.

Recommendations
for Clemency.

Release of First Offenders.

696. Subdivisional Magistrates, even though Magistrates of the second class, have jurisdiction under section 562 without being specially empowered. Other second class Magistrate, unless specially empowered by the President of the Union and Magistrates of the third class cannot act under sub-section (1) of section 562. When a second class Magistrate, not specially empowered, or a third class Magistrate is of opinion that the powers conferred by section 562, sub-section (1), should be exercised, he must proceed under the proviso to sub-section (1) and submit the proceedings to the Subdivisional Magistrate or a Magistrate of the first class.

Magistrates em-
powered under Section
562.

697. (a) In the case of Males under 21 years of age and females of any age convicted of any offence except offences punishable with death or transportation for life and in the case of males not under 21 years of age convicted of an offence punishable with imprisonment for not more than seven years, the accused may, in certain circumstances, be released on probation of good conduct.

Release on Pro-
bation.

(b) The application of the section is not confined to youthful offenders convicted of trivial offences in extenuating circumstances. The most important points for consideration are the fact that the accused is a first offender and the antecedents of the accused.

The following general principles are laid down for the guidance of Magistrates in the application of section 562 : -

(1) Where an offender has hitherto borne a good character (a matter to be enquired into) and the offence is trivial and not marked by any features indicating a criminal mind, the normal procedure should be to release such an offender on probation under section 562, and if in such case Magistrate does not so release the offender he should give his reasons fully for not doing so.

(2) Where such circumstances as aforesaid (*i.e.*, previous good character, etc.), do not exist the Magistrate, while still at liberty to apply section 562, must do so only after careful consideration of the facts and after careful scrutiny of the provisions of the section, and in such cases his reasons for releasing the offender on probation must be fully stated.

698. The accused may be required to enter into a bond for any period not exceeding three years.
 Period of Probation; Sureties. If sureties are demanded, care should be taken to see that the persons of sufficient means and standing and are also in position to exercise continuously a good influence over the accused.

Execution of Sentences.

562 (1A).

699. Sub-section (1A) of section 562 provides, in respect of certain offences, for the release of an offender against whom no previous conviction is proved after due admonition.
 Release with Admonition.

It should be noted that it is only in case of the offences specified in the sub-section that orders can be passed under it. The most important points to consider, before applying this sub-section, are the youth or immature mental development of the accused, his antecedents and the trivial nature of the offence. All Magistrates can act under sub-section (1A) of section 562 of the Code of Criminal Procedure and release first offenders after due admonition.

383.

700. The attention of Magistrates is invited to section 383 of the Code of Criminal Procedure, which requires the Court sentencing an accused person to imprisonment to send him

forthwith, with the commitment warrant, to the jail in which he is to be confined. The transfer under escort of prisoners sentenced to confinement for periods not exceeding a few days involves unnecessary expense and inconvenience, and Magistrates at stations where there are no jails should, for this reason, avoid passing short sentences of imprisonment where there is suitable alternative. When a short sentence is unavoidable, as is sometimes the case, particularly when imprisonment is imposed in default of the payment of a fine, the prisoner must be sent to jail without avoidable delay except when it is impossible for him to reach the jail in time to undergo any part of his sentence therein, in which case he must of necessity be detained in police custody.

383. 366 (1)
(a).

701. Cases have occasionally come to notice in which a person sentenced to imprisonment has been kept in police custody for a considerable period to stand his trial in another case at the same place, or because his presence was required in connection with a police investigation in another case. Such procedure besides involving a contravention of section 383 of the Code of Criminal Procedure, may have very serious result of depriving the prisoner of facilities for appealing against his sentence in the first case until the period of limitation has expired. In the case of a prisoner who is required to stand his trial in a second case at the place where the jail in which he is confined is situated, the proper course would be to send a production order (Form Criminal 54) to the officer in charge of the jail under section 37 of the Prisoners Act. This section, however, does not seem to contemplate the production of a prisoner for the purpose of a police investigation, and in the case of a Court at a place where there is no jail, the procedure above referred to may involve much inconvenience. At a place where there is no jail, when a trial has concluded and the Magistrate has decided to convict and to pass a sentence of imprisonment or transportation, if the accused is required at the same place to stand his trial in another case or for a police investigation, delivery of judgment in the first case should be postponed until the completion of the trial in the latter case, unless such course is likely to involve prolonged delay in the disposal of the first case.

702. Warrants of imprisonment directed to Superintendents of Jails and Warrants directed to the keeper of a Subdivisional or Township Lock-up should be in Burmese. It is illegal to sentence any person to confinement in a police Lock-up - 7. L.B.R. 62.

703. In every warrant, the kind of imprisonment, whether simple or rigorous, should be specified in full. The use of the letters S and R to indicate this is prohibited.

704. On every warrant of imprisonment or release from imprisonment issued by a Criminal Court, the number of the case in which the warrant is issued should be entered.

705. Where a sentence of imprisonment is passed in a summary trial, the Court shall note at the top of the committal warrant the words "Criminal Summary Trial No. _____" and when a case is not a regular criminal case it should be entered in warrant as "Miscellaneous."

565. 706. An order passed under section 565 shall be entered on the warrant. See paragraph 392.

707. When a sentence of imprisonment is passed upon a person already under sentence of imprisonment, the new period of imprisonment commences at the expiration of the sentence such person is undergoing unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence. Hence every subsequent warrant issued relating to the same accused should be clearly headed "*To take effect on expiry of (or to run concurrently with) sentence in previous case No. _____*".

708.[†] When an accused person is sentenced in the original trial to a term of imprisonment but a re-trial is ordered on appeal or revision by a superior Court, and in the re-trial the accused is again sentenced to a term of imprisonment, the subsequent sentence of imprisonment takes effect from the date of the judgment in the re-trial and not from the date of the original sentence, and the period of imprisonment already undergone after sentence passed in the original case and before the order for re-trial was passed cannot count towards the sentence passed in the re-trial.

[†] See B.L.R.(1967) P 348 and Court Instruction No.6.

But in passing sentence in the re-trial the period which the accused has already spent in jail or under custody may be taken into consideration.

709. In every case in which two or more persons are jointly charged and convicted of an offence, a separate warrant or order must be issued for the commitment to prison of each sentence passed upon him.

Separate Warrant
for each accused.

710. When a Superior Court modifies a sentence passed by an Original Court, the sentence of the Superior Court shall unless specially otherwise directed in the warrant, count from the first day of imprisonment under the original sentence.

Modified Sentence
of Imprisonment.

711. When a prisoner has been committed to jail to undergo two separate sentences of imprisonment of transportation, one of which is to take effect from the expiry of the other (whether the sentences have been passed on the same or on different days), if the first sentence is set aside on appeal or revision, the second sentence will take effect from the date on which it (the second sentence) was passed.

Effect of reversal of
first of two sentences.

712. Every warrant must be signed by the Judge or Magistrate who passed the sentence. The practice of allowing a subordinate to sign warrants "for" a superior is strictly prohibited. Judges and Magistrates should record the terms of sentences on the Committal warrants in their own handwriting both in figures and in words.

Warrants to be
signed by Judge or
Magistrate.

713. It is the duty of the Judge or Magistrate who signs
 Warrant of Release. a warrant of release to see that the entries
 therein correspond exactly with those in
 the original warrant of imprisonment on the record, so that no
 room for doubt may be given as to the identity of the person
 whose release is intended. Among these entries is that of the
 number of the case.

714. The attention of Sessions Judges is invited to para-
 Remissions. graph 832 *et seq.* of the Jail Manual
 which prescribe rules for the shortening
 of sentences by the grant of remissions.

The note to paragraphs 852 and 853, Jail Manual, makes
 it important that the classification of convicts under clause (b),
 (c) or (d) of paragraph 833 should be correctly made, and the
 following instructions are accordingly issued :-

(1) In every case of life sentence the convicting Court
 shall endorse on the warrant of commitment, for the information
 of the jail authorities, the class, whether (1), (2) or (3), to which
 the prisoner belongs for the purpose of the remission rules.

(2) If in any case the classification is not made, the jail
 authorities should refer the warrant to the Court, which will
 then have the proper entry made on it.

(3) If there is any doubt as to the entry to be made, the
 Court should decide the question by a reference to the record of
 the case or by further inquiry, if necessary.

715. If a sentence of death is confirmed by the High
 Capital sentences. Court the warrant issued by the Sessions
 Date of Execution. Judge to the Jailor shall specify that the
 execution is not to be carried out until a
 day therein named that he shall be at least 21 days from the
 date of receipt of the order of confirmation and may be as
 many more up to 28 days as the Sessions Judge, having regard
 to the situation of the Jail in which condemned prisoner is
 confined, may think fit. In the case of prisoners confined at
 Akyab, Kyaukpyu, Sandoway, Tavoy and Mergui, the period
 shall be fixed at not less than 28 days and not more than 35
 days. A copy of his own judgment together with the High
 Court's order of confirmation shall be sent to the Sessions Judge
 so that he can make out on the warrant completely.

This is necessary because the proceedings are submitted to the President of the Union as soon as the order of confirmation is passed for reference in connection with the petition for clemency. He should return this copy when it is no longer required.

NOTE. - That the fixation of the date of sentence of death is subject to the power of Government to suspend or commute the sentence under sections 401 and 402 of the Code of Criminal Procedure.

716. (1) Along with every warrant, whether of commitment or release or communicating an amendment of sentence or the payment of a fine or portion thereof addressed to the Jailor of a prison, a duplicate copy thereof shall be sent, which shall forthwith be returned to the Court which issued it by the said Jailor with a duly dated endorsement under his signature to show that he has received the original. In any case in which undue delay occurs in the receipt by the Court of the duplicate copy a letter shall be sent to the Superintendent to enquire the reason.

(2) The Jail to which the accused has been sent should be noted in the Case Diary when the warrant is signed. If this is not done, and the record is called in appeal or revision before the duplicate warrant is returned, it may be difficult for the superior Court to discover the whereabouts of the accused.

(3) On the return of the duplicate warrant duly signed, by the Jailor it shall be filed in the trial record.

717. The original warrant is sent under paragraph 573 of the Jail Manual to the District Magistrate of the District in which the Court which issued the warrant is situated. Where the record is in the record-room the warrant will be sent to the Record-keeper to be filed in the case concerned. Where it is still in the Court which issued the warrant, the later will be forwarded to that Court. Any request about intimating the death of a prisoner to his relatives will be transmitted to the Court of issue in any case.

718. to 725	x	x	x	x	x	x
x x x	x	x	x	x	x	x

726. When a fine imposed in addition to imprisonment is paid immediately, the warrant of imprisonment shall be endorsed with a note of the payment under the signature of the Magistrate issuing the warrant.

727. When a Court recovers a fine, or any portion thereof, inflicted upon a prisoner who is already in jail, or who is liable to be further detained in jail in default of payment of that fine, the Court shall be held responsible for the immediate communication* to the Jailor of the fact of recovery.

728. The fact that the payment of a fine has been intimated to the jail authorities shall be recorded in the diary of the case under the signature of the presiding officer of the Court. And when a Court has intimated to the Superintendent of the Jail the payment of a fine it shall obtain and place on the record a prompt acknowledgment of the receipt of the intimation and shall see that the warrant of imprisonment is returned at once (if there is no substantive term of imprisonment) or as soon as any substantive term of imprisonment has expired.

729. (1) In the case of fines (or other money) of which a refund has been directed in appeal or revision, the procedure prescribed in paragraphs 1047 and 1048 of Part V should be followed when the order of the superior Court is certified to the inferior, but a notice to the person to whom the fine or other money is to be refunded should issue at once.

* The communication should be by a warrant in Form Criminal 177.

(2) It is the duty of the Original Court on receipt of the Appellate or Revisional Court's order for the refund of a fine, to notify immediately the substance of such order to the person affected thereby and, if such fine has been levied, promptly to prepare the payment order (in Treasury Form No. 48) and deliver it to the payee whether he applies for it or not. No written application for the refund of a fine ordered by the Appellate or Revisional Court is necessary from the person entitled to such refund, but if an applicant for refund should at any time present a written application it should be accepted on plain paper without any court-fee.

Directly a refund has been made, a report in Form Criminal No. 126 shall be submitted to the Appellate or Revisional Court ordering such refund.

730. (1) According to section 545 of the Code of Criminal Procedure, money realized by fines cannot be paid away as compensation in appealable case until the appeal has been decided or is barred by limitation. This provision, however, does not prevent occasional difficulties from arising in cases where no appeal lies nor one has been presented, but in which the fine is set aside on revision. Further under various special Acts Magistrates have power to give rewards to informers and others out of fines, and there is nothing to prevent Magistrates from paying these rewards at once. Moreover, it is expedient for the better protection of the revenue that rewards opium cases and the like should be promptly paid. Therefore cases must occasionally arise in which a fine is set aside upon appeal or revision, but the money realized by the fine has been paid away in whole or part to a third party.

(2) In all such cases the amount of the fine must be refunded in full to the person by whom it was paid; and the order of the superior Court ordering a refund is sufficient authority for its payment from the Treasury. It does not, however, follow that Government should bear the loss of the amount which has been paid away in compensation or rewards, and it appears that in most cases the recipients of compensation or rewards refund them when invited so to do.

It is accordingly directed that in all cases where a fine has to be refunded and part or the whole has been paid away in compensation or reward, the persons to whom the fine has been paid in whole or part shall be invited to repay the money. If they refuse, steps shall ordinarily be taken to recover the amount under section 547 of the Code of Criminal Procedure, which has been held to apply to such recoveries.

If the amount or any portion of it is irrecoverable, or if it is considered that recovery should be waived on the ground that the person who received the reward is, on the merits of the case, equitably entitled to keep it and its recovery would involve undue hardship, the Deputy Commissioner shall move the Commissioner to accord sanction to the writing off of the amount up to a limit of K 1,000 or to obtain the sanction of the President of the Union if the amount exceeds K 1,000.

(3) In Opium and Excise cases non-official persons shall not be invited or required to refund without the special sanction of Deputy Commissioner.

Recovery of Fines.

731. (1) The Law relating to the realization of fines is contained in sections 386 to 388 of the Code of Criminal Procedure, and sections 64 to 70 to the Penal Code.

(2) Action for the recovery of a fine may be taken in either or both of the following ways, namely :-

- (a) issue of distress warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;
- (b) issue a warrant to the Collector, authorizing him to realize the amount by execution according to Civil process against the moveable or immoveable property, or both, of the defaulter.

(3) Ordinarily a Distress Warrant under section 386 (1) (a) should first issue. Then, if no moveable property belonging to the offender can be discovered, or his moveable property is insufficient to pay the whole of the fine, a warrant under section 386 (1) (b) may issue to the Collector.

386 (1) (a)

732. (1) A warrant issued under section 386 (1) (a) for the levy of fine by attachment and sale of moveable property should ordinarily be directed to a police officer and the Magistrate issuing it should fix a time for the sale and for the return of the warrant. If no one claims the property distrained, the police have the power of selling it within the time specified in the warrant without any previous reference to the Magistrate. If a claimant comes forward, then the ownership of the property distrained must be determined by the Magistrate and not by the police.

(2) On opening a proceeding under section 386 one distress warrant should be issued as a matter of course and on the receipt of the report thereon the Magistrate should scrutinize it. If the report explicitly states that there is no moveable property which can be attached, the Magistrate must not continue to issue fresh distress warrants unless and until he has satisfied himself by personal enquiry or otherwise that moveable property exists which can be attached in satisfaction of the fine.

386 (1) (b)

733. When the offender possesses no moveable property, or his moveable property is insufficient to satisfy the fine, the Magistrate should make inquiries as to whether he possesses any immovable property. If he does, a warrant under section 386 (1) (b) may issue to the Collector. But such a warrant should not be issued until the Magistrate has satisfied himself that there is property capable of attachment.

Where, in the opinion of the Magistrate, it is more expedient to do so, action under section 386 (1) (b) may be taken against the offender's moveable property, in lieu of or in conjunction with the issue of a distress warrant.

388.

734. Under the provisions of section 388, where an offender has been sentenced to fine only or to fines in addition to a nominal sentence of imprisonment, a Court may order the fine to be paid at any future date within thirty days of the date of sentence, or to be paid in not more than three instalments, at intervals not more than thirty days apart.

The execution of the sentence of imprisonment in default may be suspended on the execution of a bond.

Penal Code,
70.

735. (1) When a convicted person is sent to jail for default of payment of fine, proceedings for the recovery of the fine should at once be opened, and every effort should be made to recover the fine while he is undergoing the sentence in jail. But, under

the proviso to section 386 (1), when the accused has completely served the sentence in default further steps to recover the fine cannot be taken unless for special reasons to be recorded in writing the Court considers that the offender is able to pay the whole or some part of the fine; and consequently, in the absence of such special reasons, when the whole of the sentence in default has been served steps should be taken under sub-paragraph (2) to strike off the fine as irrecoverable.

(2) When, after having taken all such steps as he considers feasible for the recovery of a fine, the Magistrate is of opinion that the fine or any part thereof, is irrecoverable, he should submit his proceedings to the District Magistrate with a recommendation that the fine, or the unrecovered portion thereof, be struck off as irrecoverable. The District Magistrate, on receipt of the proceedings, shall then pass such orders thereon as he thinks fit, either striking off the fine, or directing what further steps shall be taken by the Magistrate for its recovery.

Subordinate Magistrates are forbidden to write off fines on their own authority. No fine or any part thereof should normally be struck off as irrecoverable before the accused has undergone the substantive sentence of imprisonment (if any) passed in addition to the fine, and also the sentence of imprisonment passed in default of payment of fine.

(3) Subject to the provisions of the proviso to section 386 (1), a fine or any part thereof which remains unpaid, may be levied at any time within six years after the passing of sentence and the death of the offender does not discharge from the liability any property of which he dies possessed; *vide* section 70, Penal Code. There is no provision in the Codes which provides for the remission of irrecoverable fines, and when a District Magistrate writes off a fine as irrecoverable he is acting merely under the executive instructions contained in sub-paragraph (2).

The mere fact that the District Magistrate has written off a fine as irrecoverable is no bar to the Magistrate taking action to levy the fine within the time allowed by section 70 of the Penal Code, if it subsequently appears that the person from whom it was due has acquired the means of paying it.

547. 736. Attention is drawn to section 547 which provides for
 Recovery of money the recovery of any money payable by
 other than fines. order of a Court.

**Classification of Prisoners as " Habituals " and
 " Non-habituals." ***

737. I. -The following persons shall be liable to be classified as " habitual criminals, " namely:-

- (i) any persons convicted of an offence punishable under Chapters XII, XVII and XVIII of the Penal Code, whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he is by habit a robber, house-breaker, dacoit, thief or receiver of stolen property, or that he habitually commits extortion, cheating, counterfeiting coin, currency notes or stamps, or forgery ;
- (ii) any person convicted of an offence punishable under Chapter XVI, of the Penal Code, whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he habitually commits offences against the person ;
- (iii) any person committed to or detained in prison under section 123 (read with section 110) of the Code of Criminal Procedure, or any person committed to or detained in prison under section 123 read with section 109 of the Code of Criminal Procedure, who on a previous conviction has been classified as an habitual ;
- (iv) any person convicted of any of the offences specified in (i) above when it appears from the facts of the case, even although no previous conviction has been proved, that he is by habit a member of a gang of dacoits or of thieves, or a dealer in slaves or in stolen property ;

* Judicial Department Notification No. 121, dated the 4th May 1940, as amended by Notification No. 3, dated the 18th January 1950.

- (v) any person convicted by a competent Court or Tribunal acting outside the Union of Burma, of an offence which would have rendered him liable to be classified as a habitual criminal if he had been convicted in a Court established in the Union of Burma.

Explanation. - For the purposes of this definition the word "conviction" shall include an order made under section 118, read with section 110 of the Code of Criminal Procedure.

II. - The classification of a convicted person as a habitual criminal should ordinarily be made by the convicting Court, but if the convicting Court omits to do so, such classification may be made by the District Magistrate, or, in the absence of an order by the convicting Court or District Magistrate, and pending the result of a reference to the District Magistrate, by the officer in charge of the jail where such convicted person is confined :

Provided that any person classed as a habitual criminal may apply for revision of the order.

III. - The convicting Court or the District Magistrate may, for reasons to be recorded in writing, direct that any convicted person or any person committed to or detained in prison under section 123 (read with section 110) of the Code of Criminal Procedure shall not be classed as a habitual criminal and may revise such direction.

IV. - Convicting Courts or District Magistrates as the case may be may revise their own classifications and the District Magistrate may alter any classification of a person made by convicting Court or any other authority provided that the alternation is made on the basis of facts which were not before such Court or authority.

NOTE. - The expression "District Magistrate" wherever it occurs in Rules II, III and IV above means the District Magistrate of the district in which the criminal was convicted, committed or detained.

V. - Every habitual criminal shall as far as possible be confined in a special jail in which no prisoner other than habitual criminals shall be kept ;

Provided that the Inspector-General of Prisons may transfer to this special jail any prisoner, not being a habitual criminal, whom, for reasons to be recorded in writing, he believes to be of so vicious or depraved a character and to exercise, or to be likely to exercise, so evil an influence on his fellow-prisoners that he ought not to be confined with other non-habitual prisoners, but a prisoner so transferred shall not otherwise be subject to the special rules affecting habitual criminals.

2. The President of the Union desires to draw special attention to Rule II above and considers it would be advantageous if the High Court would instruct Magistrates to exercise great care in classifying criminals as habituals and would bring specially to their notice the obligation ordinarily imposed on them to make the classification. In cases of doubt Subordinate Magistrates should, if possible, refer to the District Magistrate for guidance. If such reference be not possible, then Magistrates should leave the matter undecided, and omit to fill in the certificate at the foot of the warrant. The classification will then be made by the Superintendent of the Jail. In order that the control of the District Magistrate over classification by the jail authorities may be effectual, the Superintendent of the Jail should report to the District Magistrate cases in which the classification has been made by him because of the Magistrate's omission.

3. Attention is also drawn to the cases of men who, after being classed as habituals during a term of imprisonment, are after release again convicted and are calssed as non-habituals. Sometimes this occurs through the carelessness of the Magistrate, sometimes because the fact that a man had previously been classed as a habitual was not brought to the Magistrate's notice. In the opinion of the President of the Union a man who has once been classed as a habitual should in all subsequent convictions be classed as a habitual unless so long a term has elapsed since his previous conviction as may be held to have purged him of the criminal habit. When a man has wrongly been classed as a non-habitual after previous classification as a habitual, the Superintendent of the Jail should apply to the convicting Court to correct the mistake. Under the Rule IV In paragraph 1 above a convicting Court may revise its own classification and Superitendents of Jails should not fail to move Subordinate Courts to revise incorrect classifications where necessary. Any refusal or neglect to do so on the part of Subordinate Court should be brought to the notice of the District Magistrate.

4. There is also the case of a habitual prisoner who while in jail is convicted of some such offence as causing hurt and is sentenced to an additional term of imprisonment. A person convicted and sentenced under these circumstances, should the President of the Union considers, be classified as a habitual for the additional term.

5. In order to enable inspecting officers to see in what way Subordinate Courts exercise their powers of classification, an entry of the classification of any person as a habitual should be made in the remarks column of the Magistrate's "General Register of Cases brought to trial". Officers who inspect Courts or Jails should make a point of seeing that Subordinate Courts exercise a proper discretion in this matter and should notice cases of habitual carelessness or inattention to the prescribed principles.

6. Another point on which there appears to be some misapprehension is as to the nature of the proof which should be required of a previous conviction, before a prisoner is classified as habitual. The classification of prisoners is an executive and not a judicial act, and for the purposes of such classification a previous conviction need not be proved in the same way as it has to be proved for judicial purposes. It is sufficient if the Court is satisfied on such evidence as may be produced by the Police or the Superintendent of the Jail that a prisoner has actually been previously convicted.

7. Under Rule V in paragraph 1 above every habitual criminal shall as far as possible be confined in a special jail in which no prisoner other than habitual criminals shall be kept.

The object of keeping habituals apart from non-habituals is to prevent non-habituals, many of whom may be men who have committed crime in a momentary outburst of passion or yielding to temptation and who are not in any way hardened criminals, from being contaminated by association with habituals who are ordinarily by character or by habit irreclaimable criminals. Moreover prison life is purposely made harder for habituals than for non-habituals. The incorrect classification of a non-habitual as a habitual exposes the prisoner to contaminating influence which would otherwise be avoided, while the classification of habitual as a non-habitual prisoner from experiencing the full deterrent effects of prison life.

8. The general orders regarding the classification of prisoners as habituals and non-habituals must be the same for adult and adolescent prisoners, but the President of the Union considers that in the case of adolescents there is not the same reason to consider them to be recidivists merely because, for example, of one previous conviction for an offence punishable under Chapter XVII of the Penal Code. The matter is of considerable importance owing to the Borstal system which is applied to adolescent prisoners. Several cases have however been brought to the notice of the President of the Union of prisoners who have been classified as "habituals" who are not by character and habit irreclaimable criminals, and who are likely to benefit by the Borstal system.

In such cases the convicting Courts should make full use of the discretion granted to them in Rule III in paragraph 1 above.

9. With reference to this provision the President of the Union desires to impress upon District Magistrates that it is necessary to exclude from a Borstal school hardened young criminals who are likely to contaminate other criminals ; but that it is not desired to subject to contamination in other jails young criminals who are not irreclaimable, merely because of a rigid interpretation of the definition of a habitual criminal.

738. Under Rule I (i) and (ii) of the rules in paragraph 737 above a previous conviction in itself is *not* a sufficient reason for classifying a prisoner as an habitual ; it is only *one of the circumstances* to be taken into consideration in deciding whether a prisoner is by habit a robber, house-breaker, dacoit, thief, or receiver of stolen property, or habitually commits any of the offences specified in sub-rules (i) and (ii). A prisoner who, although previously convicted of the offences mentioned in these sub-rules, has never been imprisoned (*e.g.*, who was previously sentenced to whipping or fine, was released under section 562, Code of Criminal Procedure, or being a young offender, was detained in a Borstal or Senior Training School) should under no circumstances be classified as an habitual unless there are strong reasons for so classifying him under sub-rule (iv). The words 'It is sufficient if the Court is satisfied on such evidence as may be produced by the Police or Superintendent of the Jail that a prisoner has actually been previously convicted' in sub-paragraph (6) of paragraph 737, refer merely to the sufficiency of proof of the fact of previous conviction, and not to the sufficiency of evidence for classification as an habitual.

They do *not* mean that to be satisfied that a prisoner has been previously convicted is sufficient ground for classifying him as an habitual.

Whenever a prisoner is classified as an habitual, full reasons for the classification must be set out in the judgment as well as on the Jail warrant. See also paragraph 692 as regards the history of the accused.

739. Sessions Judges and Magistrates in all cases of conviction shall note on the police form showing the result of the trial and order of the Court, which is returned to the police at the conclusion of the trial, and also on the sentence warrant addressed to the officer in charge of the jail, whether the convict is to be classed as a habitual criminal or not.

Classification of
habituals.

740. See paragraph 714 with regard to the importance of the correct classification of convicts.

Star Class System of Classification of Prisoners.

741. (1) The Star Class System of classification of prisoners has been introduced in the Jails in Burma and the following instructions are issued to all Sessions Judges and Magistrates on whom the duty of classification in part will fall.

(2) The following classes of convicted offenders should not be recommended for classification as "Star Class": -

- (i) Prisoners classified as habitual offenders in accordance with the orders contained in Judicial Department Notification No. 121, dated the 4th May 1940, as amended by Notification No. 3, dated the 18th January 1950, and reproduced in paragraph 737. Only non-habitual offenders may be classified as "Star Class".
- (ii) Prisoners sentenced to Simple Imprisonment.

(iii) Youthful or adolescent prisoners merely on account of their age, as far as possible.

(3) The "Star Class" is confined to prisoners classified by Judges and Magistrates as non-habitual, and should consist of convicts who have not been previously convicted of serious crime and whose previous life has not been habitually criminal or their habits depraved. Facts which would entitle a prisoner to be classified as "Star" are that his previous character has been good, that his antecedents are not criminal, and that his crime does not indicate grave cruelty or gross moral turpitude or depravity of mind. The age of the prisoner on the date of any previous conviction and on the date of his present offence should be taken into account, and the whole circumstances of the case should be considered with a view of determining whether the prisoner is already of so corrupt a mind or disposition that he may contaminate others and cannot be much further corrupted himself. Generally speaking, the classification as "Star Class" should be restricted to prisoners convicted of comparatively venial offences, and to prisoners who are clearly deserving of preferential treatment.

If a Judge or Magistrate is in doubt as to whether a prisoner should be recommended for classification as "Star" or not, he may, after passing judgment in the case, make enquiries of the police or of any respectable persons whom the prisoner may name, or who are likely to be able to furnish reliable information about the prisoner, before making his recommendation. The statements made by persons from whom such inquiries, if any, are made should be briefly recorded, but not on oath, and should be filed in the case-record immediately after the judgment.

(4) In the case of every convicted person who is recommended for inclusion in the "Star" class, the Judge or Magistrate shall attach to the warrant of commitment to jail a statement of particulars concerning the convict and his offence in the prescribed form. The particulars required by this form shall be entered therein by the Judge or Magistrate personally.

(5) The classification of a prisoner as “Star Class” is an executive and not a judicial act. The recommendation of the Judge or Magistrate in this matter is not binding on the Jail authorities and may not be revised by the Superintendent of the Jail in which the prisoner is confined. The recommendation of the Judge or Magistrate is in fact advisory only, and the final classification will be made by the Superintendent of the Jail, subject to the control of the Inspector-General of Prisons.

Classification of Convicted Prisoners

† 742. x x x x x x x x x x x x x x x x x x x x x x x x x x x x
x x x x x x x x x x x x x x x x x x x x x x x x x x x x

†Judicial Department (Jail Branch) Notification No.2, dated
the 15th January 1964.

Chapter24

About Child Offenders.

743. The Child Law The State Law & Order Restoration Council Law No. 9 of 1993 was promulgated on 14th July 1993. The Young offenders Act of 1939 and The Children Act of 1955 were replaced by this law. Therefore the Juvenile Courts shall follow the provisions The Child Law of 1993 in the trial of child offenders and young offenders.

744. In The Child Law child is defined as a person who has not attained 16 (Sixteen) years of age and youth as person who has attained 16(sixteen)years of age but has not attained 18 (eighteen) years of age. Therefore the Juvenile Court shall follow the provisions of sections 41,42,43,44,45,46,47,48,49, of The Child Law 1993.

745. It is instructed to follow the provisions S-28 and the section provisions as follows: -

" Nothing is an offence which is done by a child under seven years of age." Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient nationality of understanding to judge of the nature and consequences of his conduct that occasion.

The trial and conviction of child offenders.

746. The Juvenile Court

(a) On receipt of a juvenile case shall scrutinize supporting evidence in respect of the age of the child and determine whether a child or not on the Birth Certificate, National Identity Card, Foreigner's Registration certificate, true extract of the school substantial evidence, submitted with the case.

(b) Shall have jurisdiction in respect of a child who has not attained age of sixteen years at the time of the commission of the offence and shall proceed with the trial after recording the decision that offender is a child .

(c) During the trial the child on the execution of a bond shall be released or entrust to the care of parents or guardians with certain conditions or temporary care station for child welfare or other suitable place with certain conditions. Under no reason remand shall be ordered.

(d) Pending the trial even if the child attains sixteen years of age he shall be deemed to be a child and passed order under this Law.

(e) Shall try juvenile offences punishable with death or transportation or imprisonment for a term exceeding 3 years in the manner in which a warrant case is tried.

(f) Shall try juvenile offences other than the type of offences in sub-section (e) in the manner in which a summons case is tried.

747. The Juvenile court shall abide by the following in trying juvenile cases: -

(a) Shall try the case in a Separate Court or building or if there is no Separate Court or building in a building or room other than that in which the ordinary sittings of the court are held.

(b) No person other than the parents, guardians, staff of the Court, Law Officers, members of the Myanmar Police Force on duty and not in uniform, persons directly concerned with the case and persons who have been granted permission by the Juvenile Court shall be present at the place of trial;

(c) If the child or his parents or guardians can not or do not wish to engage a lawyer and makes an application to be defended with the assistance of to do so;

(d) Shall make available the service of an interpreter if necessary.

(e) Shall dispose of the speedily.

748. The Juvenile Court has the following powers in respect of the trial of Juvenile Cases: -

(a) may direct any one who is present at the place of trial including the child to leave court house at anytime during the trial if it is considered it is necessary in the interest of the child. If necessary is may cause to use force in so directinge to leave the Court house.

(b) may try the case in the inquiry or trial of the case if it is considered that the presance of the accused is not necessary;

(c) may direct the parents or guardians in whose custody and care the child is at present to attend everyday on which the sittings of the Courts are held.

(d) may allow the inserting and announcing of information regarding the identity of the child who is accused of committing on offence or who is a witness in any case, in the Radio, Television, Newspapers, Magazines, Journals and Publications and displaying and making use of photograph of the child if it is beleived to be of benefit to the child.

(e) may direct the relevant probation affair to make inquiries and to summit a report of the personal history, character, conduct, behaviour and environmental circumstances of the child and his parents or guardians.

(f) may, if it is considered appropriate inform the child or his parents or guardian of gist of the report submitted by the probation officer under sub-section (e) of section 43 of the law.

749. The Juvenile court shall., before passing an order of a child who is found guilty, take into consideration the followings and pass an order which is reformative and which will be beneficial to the child; -

- (a) the age and character of the child;
- (b) the environment circumstances of the child;
- (c) the main cause of committing the offence;
- (d) the report submitted by the Probation officer;
- (e) other circumstances and facts which are required to be

taken into consideration in the interest of the child.

750. Notwithstanding anything contained in any existing law, a death sentence, transportation for life or a sentence of whipping shall not be passed on any child.

751. A child shall not ordinarily be sentenced to imprisonment. Only if the Juvenile court is satisfied that the child has committed on offence punishable with death or transportation for life under any existing law or that the child is of so unruly or depraved a character or absolutely uncontrollable, he shall be sentenced to imprisonment. Such sentence of imprisonment shall not exceed a term of seven years.

752. The Juvenile court may pass only of the following orders in respect of a child who should not be sentenced to imprisonment.

(a) if the offence committed is not serious and the character of the child is not yet perverted;

(1) may release him after due admonition;

(2) may imposed a fine if he has attained the age fourteen years and has income. If he is a child who has no income a fine may be impesed on his parents or guardians;

(b) whether the offence committed is serious or not, if the character of the child is not yet perverted and in order to deter further commission of offence such a child shall be entrusted to the custody of his parents or guardians on execution of a bond for good behaviour for a period not exceeding three years.

(c) may cause the child to submit to the supervision and management of Probation officer for a period not exceeding three years.

(d) whether the offence committed is serious or not, or if the child is of perverted character or if the child is not yet perverted but has no parents or guardians or even if the child has parents or guardian but they are not in a position to admonish and take care of the child, may commit such child to the custody of any training school for a minimum term of two years or till he attains the age of eighteen years as a maximum term;

753. The Juvenile court may -

(a) in addition to the sentence of imprisonment passed under section 46 or passed under section 47 of

(b) if the following conditions are fulfilled pass an amending order to entrust a child who complied with the order passed under section 47 sub-section(c) or sub-section (d) for at least one year to the custody of his parents or guardians concerned with or without a bond

(1) improvement in the moral character of the child;

(2) being a child who has parents or guardian;

(3) not being an offence under Narcotic Drugs and psychotropic Substances Law;

(c) exercise the power mentioned in sub-section (b) of Section 48 on the application of the Principal of the training school concerned, Probation Officer or parents or guardians;

754. (1) There shall be right of appeal or right of revision against the order or decision passed in accordance with the provisions of the Criminal Procedure Code.

(2) If a sentence of imprisonment is passed on the child by a Juvenile or an Appellate court or a court of Revision a copy of the sentence shall be sent to the Ministry.

Trial of youth offenders

755. A Youth Trial of youth who has committed offence who at the time of commission of the offence has attained the age of sixteen years but has not attained the age of 16 years shall be sent up for prosecution to the court which has jurisdiction in respect of the offence. In sending up such case for prosecution it shall be accompanied by supporting evidence with respect to the age of the youth.

756. The relevant court shall before commencement of the trial of the offence with which the youth is charged, decide whether the accused is a youth or not. From the birth certificate, citizenship scrutinising card, Foreigner's Registration certificate, true copy of an extract of the school Admission Register, Doctor's medical certificate or other valid supporting evidence included in the proceedings and record such decision.

757. Notwithstanding the fact that the youth has attained the age of eighteen years on the date of passing the sentence, the court shall deem if such person were youth and pass order accordingly.

(2) The court shall take into consideration the following before passing an order on the youth who is found guilty; -

- (a) The age and character of the youth;
- (b) The environmental circumstances of the youths residence.
- (c) The physical and mental condition of the youth;
- (d) The cause of committing the offence notwithstanding anything contained in any existing law -

(a) a sentence of death or transportation for life shall not be passed on the youth.

(b) if a sentence of imprisonment is passed on the youth, its maximum term shall not exceed ten years.

CBM3

758. As the Ministry of Social Welfare, Relief and Resettlement informed the Supreme Court by its letter no2160/sa.27/law/2-3/91, The Supreme Court redirect the Township Court to send the children who committed the offence to the different types of training schools mentioned below: -

- (a) Boys under twelve years of age to Youth Training School at No 114(B) Inya Road, Yangon:
- (b) Boys above twelve years of age to youth Training School, Hnget-Au-San Village, Yangon Division;
- (c) Boys above twelve years of age who committed petty crimes to Training School at No 64. Kaba-aye-zedi Road at Myaukpyin, Mandalay and at Khangyi ward, Mawlamyaing.
- (d) Girls shall be sent to Training School for Girls at No 49. Malikka Street, Yangon and Training School for Girls at the corner of 30th and 64th street, Mandalay.

759.[†] x x x x x x x x x x x x x x x x x x x x x x x x x x x x
to

[illegible]

764. Section 52 of The Child Law contains provisions with regard to custody and care of Children and Youths in prisons. The Jail Department has made arrangements for the separate admittance and receptacles of child prisoners and youth prisoners so as to enable to put all the such prisoners at Meiktila Jail alone. The Jail Department has under its letter No. 1001/1/2/U Sa. dated 16-2-95 informed the Supreme Court to send those children and youths who are convicted of offences by the Juvenile Courts and the Supreme Court has redirected all the courts concerned on. 7th March 1995.

† Deleted by Law No.9/93

CHAPTER XXV.

Appeal, Reference and Revision.*Limitation of Appeals.*

Limitation
Act,
Second
Schedule.

765. The periods within which appeals must be brought in the Court to which an appeal lies are given below. These periods are to be calculated from the date of sentence :-

Arts. 150.	(1) In an appeal from a death sentence passed by a Sessions Judge	7 days
154.	(2) In an appeal to any Court other than a High Court	30 days
155.	(3) In an appeal to a High Court except where death sentence has been passed or a judgment of acquittal	60 days

766. Ordinarily no application for revision will be considered, if filed more than 60 days after, the date of the last order complained of, unless it is accompanied by an explanation of the delay and the necessary affidavits.

Limitation of Revision
applications

Right of appeal.

767. (1) The only sentences that are not appealable are :-

	(a) a sentence of imprisonment not exceeding three months only, or of whipping only, passed by a Court of Session;
413.	(b) a sentence of imprisonment not exceeding one month only, or of fine not exceeding K100 only, passed by a District Magistrate or a first class Magistrate ;
414.	(c) in Summary trials, a sentence of imprisonment not exceeding one month only, or of fine not exceeding K200 only, passed by a Magistrate empowered under section 260.

415A. (2) Where more persons than one are convicted in one trial and an appealable sentence has been passed in respect of anyone of such persons, all or any of the persons convicted have a right of appeal.

(3) If any of the accused in a case has been sentenced by a Magistrate in the exercise of Special Powers for a term of imprisonment exceeding four years, or to transportation, the appeal of every accused lies to the High Court.

Appeals under Preventive Sections of the Code.

406. 768. Appeals from orders under section 118, requiring a person to give security for keeping the peace or for good behavior ordinarily lie, under section 406, to the Court of Session.

But under the first proviso to that section the President of the Union has declared that in the following districts appeals from such orders made by a Magistrate other than the District Magistrate shall lie to the District Magistrate :-

Pegu.	Shwebo.	Insein. ⁵	Rangoon. ¹⁰
Tharrawaddy.	Mandalay.	Yamethin. ⁵	Pyapôn. ¹¹
Henzada.	*Amherst.	Kyaukse. ⁵	Maubin. ¹¹
Thayetmyo.	Myingyan. ¹	Prome. ⁶	Kyaukpyu. ¹²
Magwe.	Meiktila. ²	Toungoo. ⁶	Lower Chindwin. ¹³
Minbu.	Katha. ³	Mergui. ⁷	Akyab. ¹⁴
Pakōkku.	Bassein. ⁴	Thatôn. ⁸	Myaungmya. ¹⁵
Sagaing.	Hanthawaddy. ⁵	Tavoy. ⁹	

* Judicial Department Notification No. 51, dated the 21st April 1924.

¹ Judicial Department Notification No. 502, dated the 4th June 1924.

² Judicial Department Notification No. 147, dated the 3rd July 1924.

³ Judicial Department Notification No. 622, dated the 8th July 1922.

⁴ Judicial Department Notification No. 156, dated the 12th July 1924.

⁵ Judicial Department Notification No. 246, dated the 25th September 1924.

⁶ Judicial Department Notification No. 256, dated the 9th October 1924.

⁷ Judicial Department Notification No. 276, dated the 3rd November 1924.

⁸ Judicial Department Notification No. 317, dated the 22nd December 1924.

⁹ Judicial Department Notification No. 318, dated the 22nd December 1924.

¹⁰ Judicial Department Notification No. 98, dated the 29th June 1925.

¹¹ Judicial Department Notification No. 264, dated the 28th December 1925.

¹² Judicial Department Notification No. 76, dated the 4th May 1927.

¹³ Judicial Department Notification No. 75, dated the 20th March 1929.

¹⁴ Judicial Department Notification No. 202, dated the 20th June 1934.

¹⁵ Judicial Department Notification No. 335, dated the 17th November 1932.

Appeals in Maintenance Cases.

769. An appeal lies to the Court of Session from any order of a Magistrate passed under section 488 or section 489.

Petitions of Appeal or for Revision.

770. Except in the case of petitions forwarded by the Superintendent of a Jail, no attention shall ordinarily be paid to petitions of appeal or revision if forwarded through the post. All petitions so received shall, unless the Court after perusal thinks it necessary to take action upon them, be kept apart without being registered, and if the petitioner does not appear within one month in person, or by duly authorized agent, or pleader, shall be destroyed.

771. Several persons convicted in the same case may appeal, or apply for revision, either jointly in one petition, in which case the petition shall be registered as one appeal or revision case, or separately, in which case the petitions shall be registered as separate appeals, or revision cases.

772. (1) A petition of appeal, by or on behalf of a convicted person, must be signed either by the appellant himself or by a pleader authorized by writing signed by the appellant to present an appeal for him.

(2) (i) A petition of appeal or for revision signed and filed by a pleader on behalf of a prisoner in jail under an authority signed by the prisoner need not bear a court-fee stamp.

(ii) A pleader appearing in Court on behalf of a prisoner in jail need not file a stamped power of attorney, as long as he produces a "written authority" signed by the appellant or applicant in the presence of the jailor or any other officer in whose custody he was. A pleader acting however without such a written authority must file a stamped power of attorney (*cf.*, paragraph 455).

773. Every petition of appeal or revision shall, except where the appellant or petitioner is in jail, be presented in open Court by the appellant or petitioner in person, or by his duly authorized agent or pleader, and the date of presentation shall be noted on it.

If the presiding officer of the Court is absent on tour, the petition may be presented as follows :-

In the Sessions Court, to the Head Clerk.

In the District Magistrate's Court, to the officer appointed by the District Magistrate to be in charge of the current duties of his office during his absence.

If the appellate Court is that of a Subdivisional Magistrate specially empowered to hear appeals, the Court shall, for purposes of limitation, be held to be closed when the Subdivisional Magistrate is absent from his headquarters on tour.

420. 774. A prisoner in jail may present a petition of appeal or for revision to the officer in charge of the jail, who shall forward it to the appellate or revisional Court concerned.

Where the appeal lies to the High Court from the judgment of a Sessions Judge or Magistrate, other than a Magistrate or the Rangoon Town District,, the petition of appeal must be accompanied by a copy of the judgment appealed against. Where, however, the appeal lies to a Court other than the High Court, or is from the judgment of a Magistrate of the Rangoon Town District, the petition need not be accompanied by a copy of the judgment.

A petition for revision must invariably be accompanied by copies of the judgments for the revision of which application is made.

If revision is sought of a judgment, order or sentence in a case tried by jury, the petition must be accompanied by a copy of the judge's charge to the jury.

The officer in charge of the jail before forwarding a petition of appeal or for revision should satisfy himself that the petition is accompanied by copies of all necessary papers.

775. The officer in charge of the jail shall note on every petition of appeal or for revision presented to him the date of application by the prisoner to the officer in charge of the jail for a copy of the judgment, the date of the actual delivery of the copy to the prisoner, and the date of the presentation of the petition to the officer in charge of the jail. He should also note thereon the prisoner's jail number.

In the case of appeals filed by pleaders, the prisoner's jail number should be noted on the "written authority" which is signed by the appellant in the presence of a jailor.

776. Petitions of appeal, or for revision, not accompanied by copies of the necessary papers, and petitions of appeal in cases where no appeal lies, should not be transmitted to the appellate or revisional Court, but should be returned to the petitioner with an endorsement by the officer in charge of the jail showing the date of presentation.

777. In any case where an appeal lies, no application for revision made by an accused can be entertained. Where no appeal lies, the accused may apply for revision.

778. (1) As soon as an appealable sentence is passed by a Magistrate, sentencing an accused person to imprisonment, the Magistrate shall ask the prisoner whether he intends to appeal, and if he expresses his intention of doing so the record must be forwarded at once to the appellate Court concerned. The prisoner should be informed that he is entitled to a free copy of the judgment. The Magistrate must also satisfy himself that the case number, year, name of the convicting court, and the section under which the prisoner is convicted, are correctly and clearly stated in the warrant of commitment to jail, to ensure that the particulars may be correctly shown in the memorandum of appeal. Except in the case of Magistrates of the Rangoon Town District, when the appeal lies to the appeal lies to the High Court the record must not be sent until a copy of the judgment has been supplied to the accused for purposes of appeal.

(2) In all cases where a copy of judgment is supplied for purposes of appeal, as soon as the copy has been supplied the record shall be submitted direct to the appellate Court with a report in Form ~~Judicial~~ General 14 that a copy of a judgment has been supplied.

(3) In submitting records to the High Court for purposes of appeal, process-files should not be sent up, unless expressly called for by the High Court, if such process-files are maintained separately from the main record. *This does not apply to cases where a death sentence was passed. In such cases the whole record must be submitted.* In hurt and murder cases (in which a death sentence is not passed) the police medical report, if not admitted as an exhibit but filed in a separate process-file, should be removed from the process-file and submitted with the main record.

779. Petitions of appeal or revision from a prisoner in jail shall be forwarded by the officer in charge of the jail direct to the appellate or revisional Court, while intimation of the fact in the case of an appeal shall at once be given in Jail Form No. 69 to the Court whose sentence or order is appealed against.

On receipt of the notice the Sessions Judge or Magistrate, as the case may be, shall at once forward the record of the case direct to the appellate Court, if it has not been forwarded already. No notice to the Sessions Judge or Magistrate need be given if the petition presented to the officer in charge of the jail is a petition for revision.

Admission and Hearing of Petitions of Appeal or for Revision.

780. All petitions of appeal, or for revision, when presented in the manner laid down in these rules, and all petitions received by post on which any action is taken by the appellate or revisional Court, shall be immediately registered in the proper register; but a petition of appeal shall not be admitted, and notice, under section 422, shall not be issued without the orders of the presiding Judge of the appellate Court. The date of presentation or receipt (if received by post), registration, and admission of any petition shall be noted in the diary of the proceedings of the appellate Court.

781. If the appellant presents his appeal in person or by a pleader, a date shall be fixed for hearing the petition, and notice of such a date shall be given to the appellant or his pleader, provided that, with the consent of the appellant or his pleader, a petition of appeal may be heard on the day on which it is presented.

782. If the appellant is in jail, and sends his petition of appeal through the officer in charge of the jail, it may be heard either on the day on which it is presented, or on a date fixed for hearing it, as the Judge of the appellate Court thinks fit.

140. 783. No party has any right to be heard, either personally or by pleader, before any Court when exercising its revisional jurisdiction unless the Court proposes to pass an order to the prejudice of the accused.

421. **784.** Before summarily dismissing a petition of appeal the appellate Court is not bound to call for, or to look into when sent up, the record of the original case. It should, however, do so in all cases in which the judgment of the original Court does not clearly set forth the facts of the case or the evidence on which the conviction was based, and also in all cases where, from a perusal of the judgment of the original Court, the appellate Court thinks there may be reasonable doubt as to the guilt of the convicted persons.
422. **785.** In an appellate Court does not summarily dismiss a petition of appeal under section 421, it **must admit the** Admission of appeal petition and fix a date for hearing the appeal, of which due notice (Form Criminal No. 158) must be given to the appellant or his pleader, and to the officers appointed by the President in that behalf under section 422* namely the Attorney-General and the Director, Bureau of Special Investigation in respect of appeals preferred to the High Court and the District Magistrate in respect of all other appeals.
- 424,
367. **786.** By section 424, the provisions of section 367 are made Judgment in appeal. applicable to the judgments of Courts of appeal other than the High Court; but where the point or points for determination have been sufficiently set forth in the judgment of the original Court, it is not necessary, though it may be sometimes desirable, that the appellate Court should again set them forth in its judgment. It is necessary, however, that the appellate Court should give fully the seasons for its decision.

References to the High Court under Section 438.

787. All reports under section 438 should be by proceeding containing the following particulars -

- (i) a brief analysis of the case;
- (ii) the sentence or order of the subordinate Court, with the name of, and the powers exercised by, the Magistrate passing it;

* Judicial I Branch Notification No. 30, dated the 22nd January 1948 and Ministry of Judicial Affairs, General Branch Notification No. 533, dated the 3rd December 1955.

- (iii) the particular portion of the finding, sentence or order which is considered incorrect, illegal, or improper, or the particular portion of the proceedings which is considered irregular;
- (iv) the grounds on which it is suggested that the High Court should exercise the powers conferred by section 439;
- (v) a note showing how much of the sentence passed has been already undergone by the accused; and if the sentence was one of fine or whipping whether the fine has been realized or the whipping inflicted;
- (vi) the recommendation of the Judge or Magistrate;
- (vii) a note whether the execution of the sentence has been suspended.

NOTE._ These particulars should not be numbered nor set out in paragraphs corresponding to the numbers (i) to (vii) above. The proceeding should be composed in the same way as a judgment.

788. A true copy of the report should be forwarded to the Registrar with the records of the case reported upon and with the revisional proceedings of the Court or Magistrate making the report. No covering letter should be sent.

789. More than one case should not be reported upon in one proceeding.

790. The inferior Court should, whenever it may seem desirable to do so, be called on to submit an explanation with regard to the point on which it is proposed to make the reference, and the explanation should be sent with the report.

791. In cases in which an appeal lies from the sentence or order in respect of which it is proposed to make a report, the report should not ordinarily be made until the period of appeal has expired.

792. The provisions of section 391, extending the period during which the execution of a sentence of whipping may not be carried out in the case of an appeal being preferred, do not apply to a report under section 438 so that when a recommendation is made that a sentence of whipping be reversed the execution of the sentence should always be suspended by express order under the provisions of the latter section.

- 438 793. (1) Before reporting a case to the High Court under section
 438 with a recommendation to set aside a conviction, a Sessions
 Judge should issue a notice to the District Magistrate, not as a matter
 of legality but as a matter of courtesy and convenience; but in other
 types of revision cases, for instance, illegal sentences, imprisonment
 of the wrong kind, excessive imprisonment in default of payment of
 fine, etc., no notice to the District Magistrate need be issued.
- 439 (2). (2) Section 439 (2) is complied with if the respondent has an
 opportunity of being heard either personally or by pleader, either
 before the Sessions Judge or District Magistrate who reports the
 case or before the High Court. Consequently the respondent should
 be summoned to appear, or, if in custody, be produced; before the
 Sessions Judge or District Magistrate, and, if he appears, heard
 before the reference is made, and his statement or argument should
 be incorporated in the report made under paragraph 812. If a Public
 Prosecutor appears before the High Court to report the reference,
 the respondent is entitled to be heard before the High Court.

Communication of Orders of Appellate or Revisional Court.

794. A Court of appeal, revision, or reference shall always certify its decision to the Court whose judgment or order has been referred or appealed against. Where the judgment or order is that of a Magistrate subordinate to the District Magistrate the certified decision shall be sent through the District Magistrate. The original proceedings shall at the same time be returned to the lower Court. Where a retrial is ordered two copies of the judgment should be sent to the lower Court (*cf.*, paragraph 1127).

795. A Court of appeal, revision, or reference, in all cases where it does not (1) modify a sentence, or (2) order a retrial or commitment for trial, or (3) set aside both the conviction and sentence, and at the same time direct the release of the accused, shall, at the conclusion of its proceedings, send direct to the officer in charge of the jail in which the accused is confined a certified copy of its formal order for the information of the prisoner : provided that this rule does not apply to cases in which the revisional Court has not been moved by application of the accused to exercise its revisional jurisdiction, and sees no ground for interfering with the conviction and sentence passed by the lower Court.

796. If a Court of appeal, revision, or reference, (1) sets aside a conviction and sentence of the lower Court and directs the release of a prisoner in jail, or (2) modifies the sentence of the lower Court or orders a retrial or commitment for trial, it shall send direct to the officer in charge of the jail in which the prisoner is confined (i) a warrant of release (Form Criminal 175) or (ii) a fresh warrant prepared in conformity with the orders passed and, where necessary, a warrant for the detention of the accused. On receipt of such warrant the officer of the jail shall forward the warrant under which the prisoner was sentenced with an endorsement stating how it has been replaced to the Court from which the committal warrant issued, and that Court shall thereupon inform the appellate, revisional, or reference Court (in Form Criminal 125) of the return of the committal warrant and of the report made by the officer in charge of the jail.

797. Sometimes difficulty is experienced in tracing the entries in Jail Appeal Registers when formal orders are received from appellate Courts. To obviate this, the jail number of the prisoner concerned should invariably be entered in the formal orders issued by appellate Courts to jails intimating the results of criminal appeals.

798. In cases dealt with by the High Court, it will comply with the provisions of paragraph 795 and also with the provisions of paragraph 796, so far as these latter provisions relate to acquittals or retrials or commitments for trial. Where the High Court alters the conviction only, or the sentence only, or both the conviction and sentence, of the lower Court, it will, by issue of a formal order, direct the lower Court to make such orders as are conformable with its judgment or order, and such Court shall thereupon issue a fresh warrant carrying into effect the order of the High court.

On receipt of such fresh warrant the officer of the jail shall forthwith return to the said lower Court the committal warrant under which the prisoner was originally sentenced with an endorsement stating how it has been replaced, and thereupon that Court shall forthwith inform the High Court (in Form Criminal 125A) of the issue of the fresh warrant and of the return of the committal warrant by the officer in charge of the jail. At the same time as the formal order to the lower Court is issued, the High Court will also send direct to the officer in charge of the jail in which the prisoner is confined a certified copy of its formal order for the information of the prisoner.

799. If the prisoner shall have already undergone the modified sentence of imprisonment awarded by the Court of appeal, revision, or reference, at the time when the order of that Court is passed, that Court shall send a warrant of release to the officer in charge of the jail (Form Criminal 178) on receipt of which the said officer shall proceed as laid down in paragraph 796.

381. **800.** These rules do not apply to cases in which the sentence is reversed or modified by the High Court under section 376. In such cases the Sessions Judge should act in conformity with section 381 of the Code (*see* Forms Criminal 102, 102A).

801. Warrants of release may be sent by registered letter to the officer in charge of the jail. Warrants or orders of release by telegram are prohibited.

802. When a sentence in any case sent up by the police on a charge sheet or falling under the sections mentioned in paragraph 1454, Police Manual, 5th Edition, is altered in appeal or revision, the District Magistrate should inform the District Superintendent of Police by sending him a memorandum in Form Criminal 180. The District Superintendent of Police may also be allowed to peruse the record if he so desires.

Appeals against Acquittals.

803. (1) The statutory limitation for the period within which an appeal against an acquittal can be filed is six months, but no such appeals will ordinarily be sanctioned after the expiration of three months from the date of the order of acquittal.

The President of the Union wishes, however, to emphasize the extreme importance of applications for appeals against acquittals being dealt with as expeditiously as possible and earnestly hopes that this will be carefully borne in mind by all officers, and that recommendations for appeals against acquittals will be submitted with the least possible delay.

(2) Full opportunity will be given to an accused person against whose acquittal an appeal has been filed, to attend, should he so desire, either personally or by a representative, when the appeal is being heard. If the accused is in custody, arrangements will be made in every case for him to be brought before the appellate Court. If he is not in custody, in case of poverty, he will be provided with sufficient funds to enable him to proceed to the appellate Court, *i.e.*, his fare for the journey to the appellate Court, and in the event of the appeal being dismissed from the appellate Court to his place of residence, and in addition subsistence allowance at the rates laid down for 'Ordinary Labouring Classes' in Rule III (1)* of the Rules for the payment of expenses of complainants and witnesses attending criminal Courts published with Judicial Department Notification No. 7, dated the 3rd January 1923, as subsequently amended.

(3) A fee of K 50 for the counsel engaged on behalf of the accused will also be paid in all cases of poverty whatever may be the result of the appeal, and whether the accused is, or is not in attendance when the appeal is heard. In such cases, the Government will arrange for counsel to appear on behalf of the accused, but the accused is at liberty to engage counsel himself and supplement the fee paid by the Government, in order to obtain an advocate of superior calibre should he so desire.

(4) When submitting a proposal that an appeal should be filed against an acquittal, Commissioners of Divisions will in future report whether the accused person is so poor that he requires assistance as specified in paragraphs (2) and (3) above, and whether he desires to engage counsel himself. They will also advise what amount, if any, including subsistence allowance should be paid to an accused person who is not in custody to enable him to proceed to the appellate Court.

* Judicial Department Circular No.7, dated 26th May 1969.

(5) Sanction to the payment of the amounts considered necessary under paragraphs (2) and (3) above will be given at the time when orders are passed that an appeal shall be filed. Charges under the rules referred to will be incurred by the Deputy Commissioners and will be debitable to the head '22G. Criminal Courts-*b*. Other Magistrate - (4) contingencies.' The expenditure on account of fees paid to advocates and pleaders not in the service of the Government incurred by Commissioners of Divisions, the Registrar, High Court and District Magistrates will be debitable to the head '22C. Law Officers-*b*. Mofussil Establishment-(4) Contingencies'; and that incurred by the Attorney-General will be debitable to the head '22C. Law Officers-*a*. Attorney-General-(4) Contingencies.'

(6) Recommendations for appeals against acquittals will be made by officers in their executive and not in their judicial capacities. A Deputy Commissioner who desires to recommend an appeal against an acquittal will forward the record of the case, together with a *certified copy* of the judgment it is proposed to appeal against and a concise history of the facts and a statement of the grounds of appeal, too the Commissioner of Division, who will, if he agrees with the Deputy Commissioner, submit the case for the orders of the President of the Union.

(7) In submitting proposals for appeals against acquittals, Commissioners and Deputy Commissioners will invariably give their own independent opinions and not merely forward the representations of Public Prosecutors or District Superintendents of Police.

(8) The right of appeal under section 417 of the Code of Criminal Procedure will be exercised in important cases only.

Important cases are defined to be-

- (a) cases of intrinsic importance in which the crime is serious and the judgment of the Court is considered to be a grave miscarriage of justice, or
- (b) cases which may not be of intrinsic importance, but in which it is necessary to obtain an authoritative decision upon a doubtful point of law seriously affecting administrative action or the interests of the public.

(9) An appeal will not ordinarily be ordered on an application by a private individual unless the application is supported by the recommendation of the local administrative officers.

(10) The orders relating to assistance to be given to poor persons shall be applied also in the cases of applications to the High Court for enhancement of sentence where the accused person is in indigent circumstances. The report required by paragraph (4) above shall be submitted in such cases also.*

427 804. When on an appeal which has been preferred against an acquittal by the President of the Union under section 417, Code of Criminal Procedure, an order is passed for the arrest of the accused under section 427, Code of Criminal Procedure, the Court before which the accused is produced shall, after taking action under section 427, Code of Criminal Procedure, report to the High Court whether the accused has been released on bail pending the disposal of the appeal or committed to prison, and, if so, the prison in which he has been detained.

* Judicial Department 'G' Circular No.19 of 1940, dated the 23rd May 1940.

CHAPTER XXVI

Public Prosecutors

805. The Government has appointed the Attorney General and the Deputy Attorney General as Ex-officio Public Prosecutors generally. Among the duties of the Attorney General are included the ones such as bringing to the notice of the State Peace and Development Council; the Government; the departments if their acts are not in accordance with law; tendering legal advice when so requested by the State Peace and Development Council; the Government or the Ministry; giving legal protection to the people in order to enable them to fully enjoy their legal rights and privileges; filing necessary appeal or revision to the Supreme Court in respect of adjudication of Courts in different levels that are not in accordance with law; scrutinizing; drafting and translating laws; revising law, revising laws to conform with the times and issuing law manuals, performing other duties as are prescribed by existing laws or by procedures or directives made under this law, and other duties as are assigned by the State Peace and Development Council.

The Attorney General has issued Directive No. 1/88 in exercise of the duties and functions conferred on him for further performance to duties. According to that directive, all Law Officers (public prosecutors) shall carry out the duties efficiently and without failure since they are service personnel of the State and that relevant Law Officers shall perform the duties of Public Prosecutors as may be necessary at different levels of Courts of law. In addition, the Law Officers at different levels shall carry out their duties and functions as prescribed in the existing laws or directives or memorandums having effect as directives as well as the instructions given by the different levels of Peace and Development Councils.

Besides, the attorney General in exercise of the duties and powers conferred on him has prescribed the duties and functions of the Law Officers assigned to State/Divisional level, District level and Township level Law Offices.

It is prescribed that Law Officers at different levels shall perform the following duties and functions under the supervision of the Attorney General:-

- (a) tendering Legal advice to the Peace and Development Council, Government departments and organizations such as boards and corporations at respective levels.:
- (b) examining any complaint lawfully made by a citizen who is said to be deprived of his rights and privileges and taking necessary measures;
- (c) tendering advice in cases which are to be sent up to the Court to be in accordance with law;
- (d) appearing at the trial of a person who has violated criminal law;
- (e) acting or pleading for the State in civil cases where the State is plaintiff or defendant;
- (f) submitting of the Attorney General judgements, orders and decisions of the judicial Courts which are found to be inconsistent with law; and
- (g) performing and exercising such other duties and powers prescribed by the Attorney General.

The Law Officers, if they are not permitted to serve exceeding 60 years of age in respect of special cases for public interests under the Fundamental Rule 56, paragraph (8), sub-paragraph (3) amended by Notification No. 587 dated 7th November, 1953 of the Department of Finance and Revenue, shall take pension when attaining the age of sixty.

Law Officers shall not only be entitled to enjoy the salaries or pay scales prescribed by the Government from time to time but the existing rules and bye-laws in respect of travelling allowance, leave and pension of the officers of the same rank of other Government Departments shall also be relevant to the Law Officers.

The Law Officers shall not perform non-governmental private case.

RULES FOR THE REPRESENTATION OF THE GOVERNMENT IN CRIMINAL CASES

806. The following rules have been prescribed for the representation of the Government by the relevant authorities:-

I. REPRESENTATION OF THE GOVERNMENT BY THE
LAW OFFICERS

In respect of appeals preferred in the Supreme Court, the Attorney General of the Union of Myanmar is the officer appointed by the Chairman of the State Peace and Development Council to receive such notice.

NOTE-I. The Supreme Court, Yangon, on admitting an appeal, furnishing as of course to the Attorney General, without application by him under section 422, a copy of the grounds of appeal.

II. The Office of the Attorney General has, or should have, information regarding all cases whether tried by the State, Divisional Court or District Court or by Magistrates invested with special powers under section 30, Code of Criminal Procedure, in which the appeal lies to the Supreme Court.

III. (i) When a notice of appeal is received from the Supreme Court, the Attorney General before deciding whether a Law Officer should be asked to appear on behalf of the Government, shall first consider whether there is any reasonable probability of the appeal succeeding if an appearance on behalf of the Government is not made. The fact that, in a jail appeal, the accused will, usually be unrepresented should be taken into consideration. No requisition shall be made in unimportant cases and even in important cases where there is no reasonable ground to apprehend that the appeal will succeed. A perusal of the ground of appeal should normally suffice with the Attorney General's own knowledge of the case for determining this point. If it is considered that the appearance of a Law Officer is necessary, the Attorney General shall at once requisition his services.

(ii) In every appeal against a conviction for murder, the Attorney General will instruct the Law Officer to appear as a matter of course.

IV. If the Law Officer is not satisfied that his services are necessary in any particular case, it is open to him to make a further reference to the Attorney General.

V. (a) The Director of the Prosecution Department on behalf of the Attorney General, when instructing the Law Officer to appear in appeals or revisions in the Supreme Court, should not be content merely to request him to appear and support the order or conviction as the case may be but should, to facilitate his work and assist in the exhaustive presentation of the case, embody in his instructions such remarks as may occur to him in connection with it, reference to any authorities with which he may be acquainted, and suggestions as to the points to which attention should be specially directed in the argument.

(b) When any important principle is involved in a case, the Law Officer shall refer to the appropriate branch of the office of the Government in order to ascertain if the Government has any special instructions to give or wishes to indicate any matters on which stress should be made.

VI. In cases where the Attorney General or the Law Officer feels strongly that it would not be consistent with his duty to the Court to support a conviction and that he should withdraw from the case, he may do so on his own responsibility, but he should intimate the reasons for his action as early as possible to the officer instructing him.

VII. It may occasionally happen that, in an appeal or other criminal proceeding, the Supreme Court may, sus motis, express a desire that a Law Officer should appear on behalf of the Government although his services have not been previously requisitioned. In such a case the Law Officer should at once address the Government in the matter.

VIII. On receipt of notice of appeal in cases instituted by the Myanmar Railway Administration under the Railways Act or by the Forest Department, District Magistrates shall at once inform the General Manager, Myanmar Railways, or the Divisional Forest Officer concerned, as the case may be, of the time and place where the appeal will be heard so that they may arrange to assist the District Magistrate to uphold the conviction if they desire to do so.

MATTER REGARDING LAW OFFICER TO APPEAR
IN RESPECT OF CASE FILED AT COURT UNDER
THE MYANMAR IMMIGRATION (EMERGENCY
PROVISIONS) ACT, 1947

807. The Office of the Attorney General issued the memorandum dated 23rd February, 1990, on the matter relating to the Law Officer to appear in respect of the case filed at the Court under the Myanmar Immigration (Emergency Provisions) Act, 1947. In that memorandum, the following have been instructed: -

1. Since the Myanmar Immigration (Emergency Provisions) Act, 1947 has been amended by the Law Amending the Myanmar Immigration (Emergency Provisions) Act, 1947 (The State Law and Order Restoration Council Law No. 2/90), the penalty of section 13 can be passed from a minimum of 6 months to a maximum of 5 years under such amendment so that the cases instituted under that section has become cognizable offence. Thus, in the cases instituted under section 13 of that Law, the Law Officers shall appear on behalf of the Government.

2. It is hereby instructed that the Law Officers shall, in respect of the cases instituted under section 13 of that Act, carry out to get definite and complete evidentiary necessities, in appearing at the Court, perform in effective manner so that the ingredients of the offence shall be envisaged resulting no weaknesses, and submit to the Court for passing effective and deterrent punishment.

3. On failing to pass effective and deterrent punishment, the revision shall be filed and on acquittal, in spite of being true case, appeal against acquittal shall be submitted level by level.

MATTER REGARDING LAW OFFICER TO ABIDE BY
IN RESPECT OF APPLYING FOR BAIL AT COURT

808. The Office of the Attorney General has issued the Directive No.1/89 dated 13th January, 1989 on the matter regarding the Law Officer to abide by in respect of applying for bail at the Court. In that Directive.

1. The Law Officer shall, where the Court informs the Law Officer to give remark or argument in respect of submitting application by the accused to admit to bail in criminal case, carry out as follows: -

(a) where the offence for which bail is applied is an offence for which admitting to bail is expressly prohibited under any law, argument shall be submitted to the Court in accordance with the provision of that law.

(b) regarding non-bailable offence, if the accused applies to admit to bail, objection shall be submitted in accordance with section 497 of the Code of Criminal Procedure. Regarding the important case, for example, the case in which the State takes interest and the case that is concerned with the policy matter, the Law Officer, shall not merely objecting in the ordinary sense of the expression lodge strong objection to the Court emphatically giving reasons in full context why bail should not be admitted.

Where the organization that files the case submits points for objection to admit to bail, those points shall also be submitted to the Court.

(c) regarding bailable offence, in normal practice, it shall be submitted to the court in accordance with the provision of section 496 of the Code of Criminal Procedure.

(d) regarding bailable offence, where the organization that files the case gives information due to special circumstances, such points shall be submitted to the Court.

(e) where the relevant Peace and Development Council gives instruction regarding either bailable offence or nonbailable offence due to special circumstances, submission shall be made to the Court in accordance with such instruction.

DIRECTIVE REGARDING SCRUTINY WHETHER
APPEAL AGAINST ACQUITTAL SHOULD BE
SUBMITTED OR NOT IN CRIMINAL CASE

809. The Attorney General, in exercise of the power conferred on him under section 4, sub-section (d) of the Attorney General's Law, issued the Directive relating to Prosecution No. 1/98, dated 14th September, 1998, regarding scrutiny whether appeal against acquittal should be submitted or not in criminal cases. In that Directive -

1. On receiving the submission by any of the following organizations or persons suggesting appeal against acquittal under section 417 of the Code of Criminal Procedure should be submitted concerning the order acquitting the accused in criminal case, the Prosecution Department of the Office of the Attorney General and the different levels of Law Offices shall abide by this Directive: -

(a) submitting by Law Officer who conducted the trial of the case;

(b) submitting by any of the aggrieved person or the department that files the case or any of the relevant Government departments;

(c) submitting by the relevant Law Office due to information passed by any of the regional organizations;

(d) submitting after scrutiny by different levels of Law Offices;

(e) submitting by the relevant Law Office under instruction of the Office of the Attorney General.

2. Where the Law Officer desirous of submitting appeal against acquittal regarding an order of acquittal is the Township Law Officer, District Law Officer or State/ Divisional Law Officer, such officer shall complete form (B) attached herewith, then attach that document to the relevant proceeding, and together with the certified copy or copies of the judgement, of the relevant Court(s) submit the proceeding to the Office of the Attorney General within 15 days from the date of receiving such certified copy of judgement.

3. Where the Law Officer who conducted this trial of the case desirous of submitting appeal against is not the Township Law Officer, District Law Officer or State/Divisional Law Officer, such Law Officer shall complete form (A), then attach that document to the relevant proceeding, and together with the certified copy or copies of the judgement(s) of the relevant Court(s) submit the proceeding within 7 days to his superior Township Law Officer, District Law Officer or State/Divisional Law Officer.

4. The Township Law Officer, district Law Officer or State/ Divisional Law Officer shall, on receiving the proceeding submitted under the above-mentioned paragraph 3, submit the same after filling his own appraisal and remark to the Office of the Attorney General within 15 days.

5. If any of the aggrieved person or the department that files the case or any of the Government department or organization is desirous of submitting to file an appeal against acquittal, the following shall be carried out: -

(a) within 30 days from the date of sentence for acquittal, application shall be submitted to the relevant Law Office.

(b) if it is that any of the aggrieved person submits application after 30 days, affidavit / oath-taking note shall be submitted attached thereto giving reasons for exceeding limitation. Where the application is submitted by the department that files the case or any of the Government department or organization after exceeding 30 days, sufficient reasons shall be mentioned in the application for exceeding the prescribed days.

(c) any of the aggrieved person shall stick court-fees of 5-kyat-stamp, on the application submitted to the Township Law Office and District Law Office. On the application submitted to the State / Divisional Law Office court-fees of 10-kyat-stamp shall be stuck.

(d) Together with the application, full address(es) of the respondent(s) and complete set of documents mentioned in the prescribed Annexure shall be attached thereto.

6. Since it is prescribed that appeal against acquittal shall be submitted within 6 months from the date of sentence for acquittal, with respect to submission of application to file an appeal against acquittal after passing 6-month period, the relevant Township Law Officer, District Law Officer or State / Divisional Law Officer shall carry out as follows: -

(a) if it is that application is submitted by any of the aggrieved person, the application shall not be accepted but return the same together with all the documents attached thereto after giving explanatory note attached thereto.

(b) if it is that application is submitted by the department that files the case or any of the Government department or organization, the application and all the documents attached there to shall be returned to the department or organization that has made application mentioning that application cannot be accepted due to passing of limitation and that if desirous of submitting application, it can be done so through the Head of that Department to the Office of the Attorney General.

7. The Township Law Officer, District Law Officer or the State / Divisional Law Officer who has received the submission under paragraph 5 shall carry out as following: -

(a) if it is the case that he has personally conducted, Form (1) shall be filled up and attached to the relevant proceeding and together with the documents of appendix (A) that he has already received, that proceeding shall be submitted to the Office of the Attorney General within 15 days from the date on which the application has been received.

(b) if it is not the case that he has personally conducted, Form (1) shall be filled up and attached to the relevant proceeding and the relevant Law Officer who has conducted the case shall be instructed to resubmit the same within 15 days.

(c) when the Law Officer who has conducted the trial of the case resubmits under the above sub-paragraph (b), his own appraisal and remark shall be filled up and the proceeding together with the documents of Appendix (A) shall be submitted to the Office of the attorney General within 15 days from the date of receiving the resubmission of the Law Officer who has conducted the case.

(d) if it is not the case that Law Officer has bot conducted, Form (1) shall be filled up, and attaching the documents of Appendix (A) shall be submitted to the Office of the Attorney General within 30 days from the date of receiving the application.

8. if any of the orgars of power on legal affairs informs the Law Office that appeal against acquittal should be filed in respect of the case that has been conducted by any of the Law Officers the Township Law Officer, District Law Officer or State / Divisional Law Officer shall abide by and carry out in accordance with the above paragraph (7), sub-paragraphs(a), (b)and (c).

9. If any of the regional organs of power assumes that appeal against acquittal should be submitted in respect of the case that Law Officer has not conducted, relevant Law Office shall be informed attached with the documents of Appendix(A) thereto and mentioning the full address(es) of the respondent(s). On receiving the information letter, the Township Law Officer, District Law Officer or State / Divisional Law Officer shall, after completing Form (1) and attaching the documents of Appendix (A), Submit to the Office of the Attorney General within thirty days from the date of receiving the information letter.

10. Concerning matters to which the Law Officer who conducted the trial of the case assumes that appeal against acquittal should not not filed regarding the case in which trial the Law Officer has conducted, the relevant Law Officer shall abide by and carry out as follows: -

(a) the Law Officer who conducted the trial of the case shall, after filling in the proceeding in full the reasons why appeal against acquittal should not be filed, submit to the relevant Township Law Officer, District Law Officer or State / Divisional Law Officer.

(b) the Township Law Officer, District Law Officer or State / Divisional Law Officer shall, on scrutinizing the proceeding submitted by the relevant Law Officer who conducted the trial of the case assumes that in his opinion appeal against acquittal should filed although the Law Officer who conducted the trial of the case gave remark that appeal against acquittal should not be filed, instruct to the relevant Law Officer who conducted the case to resubmit after filling Form(1) in full and to ask for the certified copy or copies of the judgement(s) of the Court(s).

(c) the Law Officer who conducted the trial of the case shall, after filing Form (1) in full and attaching the same in the proceeding thereto, resubmit the proceeding to the relevant Township Law Officer, District Law Officer or State/Divisional Law Officer within 7 days from the date of receiving the certified copy or copies of judgement(s) of the Court(s).

(d) on resubmitting as such, the Township Law Officer, District Law Officer or State / divisional Law Officer shall, after filling his own appraisal and remark in form (1) regarding appeal should be filed or not, submit such proceeding to the Office of the Attorney General together with the certified copy or copies of judgements(s) of the Court(s).

11. The Township Law Officer, District Law Officer of State / Divisional Law Officer -

(a) on scrutinizing the proceeding submitted by the relevant Law Officer who conducted the trial of the case finds that the remark - appeal against acquittal should not be filed - of the Law Officer who conducted the trial of the case is acceptable to him, he shall fill up his remark in full in the proceeding and the case shall be closed.

(b) decides that appeal against acquittal not be filed regarding the case that he personally conducted the trial of the case, his own remark shall be filled in the proceeding in full and the case shall be closed.

12. (a) if the District Law Officer or State / Divisional Law Officer assumes that, either by scrutinizing the case completion report submitted by the Township Law Offices or by any means of information, it is necessary to scrutinize whether appeal against acquittal should be filed or not, relevant Township Law Office shall be instructed to fill the Form (1) in full and to resubmit.

(b) The Township Law Office that received such instruction shall, after filling up Form (1) in full and attaching the same in the relevant proceeding thereto, submit the proceeding to the relevant District Law Office within 15 days from the date of receiving the instruction.

(c) On receiving such resubmission, the District Law Officer shall, after scrutinizing whether appeal against acquittal should be filed or not and filling his own appraisal and remark in Form (1), submit the proceeding to the State / Divisional Law Office within 15 days from the date of receiving the submission.

(d) On receiving such resubmission, the State / Divisional Law Officer shall, after scrutinizing whether appeal against acquittal should be filed or not and filling his own appraisal and remark in Form (1), submit the proceeding to the Office of the Attorney General within 15 days from the date of receiving the submission.

(e) The Prosecution Department of the Office of the Attorney General shall, it assumes that appeal should be filed after scrutinizing such proceeding, inform to the relevant Township Law Office to ask for and submit the certified copy of the judgement of the Court.

(f) The relevant Township Law Office shall, on receiving the certified copy of the judgement, submit the same to the Office of the Attorney General within 7 days.

13. (a) The State / Divisional Law Officer assumes that, either by scrutinizing the case completion report submitted by the District Law Offices or by any means of information, it is necessary to scrutinize whether appeal against acquittal should be filed or not, relevant District Law Office shall be instructed to fill the Form (1) in full and to resubmit.

(b) The District Law Office that received such instruction shall, after filling up Form (1) in full and attaching the same in the relevant proceeding thereto, submit the proceeding to the relevant state / Divisional Law Office within 15 days from the date of receiving the instruction.

(c) On receiving such resubmission, the State / Divisional Law Officer shall, after scrutinizing whether appeal against acquittal should be filed or not filling his own appraisal and remark in Form (1), submit the proceeding to the Office of the Attorney General within 15 days from the date of receiving the submission.

(d) The Prosecution Department of the Office of the Attorney General shall, if it assumes that appeal should be filed after scrutinizing such proceeding, inform to the relevant Law Office(s) of the Court(s).

(e) The relevant Law Office(s) shall, on receiving the certified copy or copies of the judgement(s), submit the same to the Office of the Attorney General with 7 days.

14. (a) The Prosecution Department of the Office of the Attorney General assumes that either by scrutinizing the

case completion report submitted by Law Offices or by any means of information, it is necessary to scrutinize whether appeal against acquittal should be filed or not, relevant Law Office shall be instructed to fill the Form (1) in full and to resubmit together with the certified copy or copies of the judgement(s) of the Court(s).

(b) The Law Office that received such instruction shall, after filling up Form (1) in full and attaching the same in the relevant proceeding thereto, submit the proceeding to the Office of the Attorney General within 15 days from the date of the relevant Court(s).

(c) In the matter instructed by the Office of the Attorney General as such, it shall be carried out according to the instruction of the Office of the Attorney General as mentioned in the above paragraph though the State / Divisional Law Office or District Law Office instructs in the same manner. It shall be resubmitted to the upper level Law Office(s) informing such matter has already been carried out.

15. Regarding appeal / revision, if it is discharging to file appeal against acquittal on the order passed by the State / Divisional Court, the State / Divisional Law Office or District Law Office shall carry out the necessities prescribed under this Directive, also ask for the proceeding of the relevant Township Law Office and send to the Office of the Attorney General. Special consideration shall be given the proceeding of the Township Law Office.

16. In filing application to avail certified copy or copies of the relevant Court(s) to file appeal against acquittal, application shall be filled to the relevant Court(s) within 7 days from the date of passing the sentence or from the date of receiving information letter to file the appeal.

17. The Law Officers shall, in compiling Form (1), compile two sets and one set shall be attached to the proceeding of the relevant Law Office and shall send the same to the relevant Law Office or Office of the Attorney General in accordance with this Directive the remaining one set shall be kept as office copy. The copy of submission letter with which the proceeding has been sent as such shall be sent to the relevant upper - level Law Offices.

18. On receiving the submission after scrutiny regarding appeal against acquittal should be filed or not by the Office Of

the Attorney General, the Prosecution Department of the Office of the Attorney General shall fill up Form(2) attached herewith in full and submit the same to the Deputy Attorney General according to the office procedure.

19. If it is assumed that appeal against acquittal should be filed regarding the original case the trial of which is conducted by the Law Officers of the Office of the Attorney General, the Law Officer who conducted the trial of the case shall, after filling up Form(1) in full and availing the certified copy of relevant Court, submit the same to the Director of the Prosecution Department of the Office of the Attorney General within 15 days from the date of receiving such certified copy of judgement. The Prosecution Department of the Office of the Attorney General shall, after filling up in Form(2) in full, submit the same to the Deputy Attorney General according to the office procedure.

20. If it is assumed that the order of acquittal in appeal/ revision cases heard by the Supreme Court should be filed special appeal to enable re-scrutiny and to pass judgement by Full Bench of the Supreme Court under section 6 of the Judiciary Law, the Law Officer who conducted the case shall, after writing his own appraisal and remark in full, submit the same to the Deputy Attorney General together with the relevant proceeding(s) in accordance with the office procedure.

21. (a) If any of aggrieved person is desirous of filing special appeal so as to enable re-scrutiny and to pass judgement by Full Bench of the Supreme Court under section 6 of the Judiciary Law regarding the acquittal order of the Supreme Court, application shall be submitted to the Office of the Attorney General within 30 days from the date of passing acquittal order together with the documents mentioned in Appendix (A) thereto.

(b) In applying so, the full addresses of the applicant and respondent(s) shall be mentioned and court-fees of 15-kyat-stamp, shall also be stuck. Regarding the matter that application is filed after 30 days, affidavit /oath-taking note shall also be attached thereto.

(c) Regarding the application submitted after 6 months from the date of passing acquittal order, the Office of the Attorney General shall, after giving explanation that limitation and all documents attached thereto or return giving explanation as such.

22. If any of the department that files the case or relevant Government department or organization assumes that appeal shall be filed to enable re-scrutiny and to pass judgement by the Supreme Court under section 6 of the Judiciary Law regarding acquittal order of the Supreme Court, submission shall be filed to the Office of the Attorney General reasons.

23. When the submission under the above- mentioned paragraphs 21 and 22 is received by the office of the Attorney General, the Prosecution Department of the office of the Attorney General shall, after writing appraisal and remark whether or not special appeal should be filed or not in full, submit to the Deputy Attorney General in accordance with the office procedure with the relevant proceeding attached thereto.

24. Regarding submission after scrutiny by different levels whether or not appeal against acquittal or special appeal should be filed, the decision shall be made by the Deputy Attorney General. If the Deputy Attorney General decides appeal or special appeal should be filed, the Prosecution Department of the Office of the Attorney General shall carry out continuously to file appeal or special appeal to the Supreme Court during the limitation. If it is decided that appeal or special appeal should not be filed, the case shall be closed.

25. The Prosecution Department of the Office of the Attorney General shall inform the decision of the Office of the Attorney General to the relevant Law Office(s) and the Government department, organization or person that has filed application. The relevant proceeding(s) shall be returned to relevant Law Offices(s) when the Office of the Attorney General decides appeal should not be filed or decision has been made by the Court after appeal is filed by the Office of the Attorney General.

26. If it is found that submission has not seen filed though appeal or special appeal should be filed or failing to abide by this Directive, the relevant Law Officer having responsibility will be taken effective action.

MATTER TO BE CONDUCTED BY LAW OFFICERS IN CRIMINAL REVISIONS/APPEAL

810. Regarding the matter to be conducted by Law Officers in criminal revisions/appeals, the Office of the Attorney General (Formerly the Central Law Office) issued a Directive dated 16th September, 1974. In that Directive, regarding the matter to be conducted by law Officers the following directives are issued.

Criminal Revision

1. Regarding Criminal revision, there are roughly three classes of cases : -

- (a) cases in which Government applies for revisions;
- (b) cases filed by relevant persons or outsider aggrieved persons due to dissatisfaction (1) enhancement (2) reduction, (3) alteration, or (4) setting aside of sentences ;
- (c) cases in which a convicted person applies for revision , after the appeal allowed him by law has failed or where no appeal is allowed by law.

2. Regarding documents for cases mentioned in above paragraph 1(a), the Law Officers shall file the application for revision by the instruction of the Councils, Besides, application for permission to be heard under section 440, of the Code of Criminal Procedure shall also be filed of the Court.

Regarding the classes of cases mentioned in sub-paragraphs (b) and (c) of paragraph (1), if the case is important, the relevant Court shall send a notice information that the Law Officer is obliged to conduct in the hearing of that case. If the notice of the Court information that the Law Officer is obliged to conduct as such., the Law Officer shall conduct in such cases.

Regarding the criminal revisions, the provisions of section 440 of the Code of Criminal Procedure should also be taken into account.

3. If the matter arises to file revision regarding criminal cases in which Law Officers conducted, and if that revision needs to be filed at the State/Divisional Court, the relevant Law Office, carry out under the permission of the State/ Divisional Law Office. If the revision needs to be filed at the Supreme Court, the relevant Law Officer shall submit the matter to the Office of the Attorney General through the State / Divisional Law Office information application for revision should be filed.

In criminal appeals in which the Government is involved either as appellant or respondent, the Law Officer shall conduct on behalf of the Government.

**DIRECTIVE REGARDING REQUEST FOR PERMISSION
TO CONDUCT AS PROSECUTING LAWYER
IN CRIMINAL CASES**

811. The Attorney General, in exercise of the power conferred on him under sub-section(d) of section 4 of the Attorney General's Law, issued the Directive No.1/99 dated 21st January, 1999 regarding request for permission to conduct as prosecuting lawyer in criminal cases. In that Directive :-

1. The Law Officers who are obliged to conduct in criminal original cases, appeals, revisions and general applications in which the Government is involved shall take responsibility and carry out according to the provisions of section 493 of the Code of Criminal Procedure and section 4(a) of the Attorney General's Law.

2. In any of the trial of cases or appeals to which the Law Officers have to take responsibility, if the aggrieved person is desirous of hiring outside lawyer and granting him permission to conduct as prosecuting lawyer, the following shall be abided by and carried out :-

- (a) application shall be filed to the Law Office in which the Law Officer who is conducting the relevant criminal offence has been serving.
- (b) Power of Attorney that the outsider lawyer will submit to the relevant Court shall be attached to the application.
- (c) if application is filed to the Township Law Office or District Law Office, 5-kyat - stamp shall be stuck on the application.
- (d) if application is field to the State / Divisional Law Office, 10-kyat- stamp shall be stuck on the application.
- (e) if application is filed to the Office of the Attorney General, 15-kyat- stamp shall be stuck on the application.

3. The different levels of Law Offices which have received the application filed under above-mentioned paragraph 2 shall abide by and carry out as follows : -

- (a) if it is the Township Law Office to which application is filed regarding whether or not hired outside lawyer be permitted to conduct as prosecuting lawyer, if it is the District Law Office, by the District Law Officer, if it is the State / Divisional Law Office by the State/Division Law Officer, if it is the Office of the Attorney General by the Director of the Prosecution Department of the Office of the Attorney General.
- (b) if it is decided that permission should not be granted, the Power of Attorney that has been attached to the application shall be given back or returned to the applicant giving reasons why permission it not granted.
- (c) if it is decided that permission should be granted, it shall be written on the document of Power of Attorney addressing to the relevant Court the expression "Permission is hereby granted to assist the Law of Officer who conducts trial of the criminal case only" in its exactness that Power of Attorney and shall be given back or returned to the applicant to enable for submitting to the relevant Court.

4. In the sort of case whether cognizable or non-cognizable offence, due to direct complaint is filed at the Court, where the Court, on making inquiry under section 200 of the Code of Criminal Procedure, decides to take action as cognizable offence and where notice is served in writing by the Court to enable the Law Officer to conduct in the trial of that case, and where the aggrieved person is desirous of hiring outside lawyer and granting him to conduct as prosecuting officer, it shall be abided by and carried out as prescribed in the above paragraphs 2 and 3.

5. The outside layer who is granted permission to conduct as the prosecuting lawyer regarding cases in which trial the Law Officer is responsible to conduct, shall abide by and carry out the following : -

- (a) it shall be accepted that he has to assist only the relevant Law Officer.

- (b) the relevant matters of the cases that he is desirous of submitting to the Court including the matters that he is desirous of examining the witnesses shall be submitted to the Law Officers who conducts the trial of the case in writing.
 - (c) without having permission of the Law Officer who conducts the trial of the case, examination of the witnesses at the Court, submission of exhibits, presenting facts to the Court, cross - examination and giving argument shall not be conducted.
 - (d) if the Law Officer who conducts the trial of the case grants permission, examination of witnesses at the Court, submission of exhibits, presenting facts to the Court, cross-examination and giving argument shall be conducted within the framework of permission.
6. The Law Officer who is responsible and conducts the case to which the outside lawyer has been granted permission to conduct as the prosecuting officer shall abide by and carry out the following :-
- (a) when the relevant case is heard, the responsible Law Officer who conducts the trial of the case shall personally leads and conducts.
 - (b) it shall be accepted that the outside Lawyer conducts to assist him only.
 - (c) if the outside lawyer submits to him in writing regarding the matters that he is desirous of examining the witnesses, the matters that he is desirous of submitting to the Court and cross questions, they shall be filed properly at the relevant case file of documents.
 - (d) if the matters that are submitted by the outside lawyer are found to be worthy leading to truth when closely assertiveness, the examination of witnesses, presenting facts to the Court, cross - examination shall be conducted. If the matters are assumed to be unworthy leading to fall through, the suggestion made by the outside lawyer may be rejected.
 - (e) If the Law Officer who conducts the trial of the case assumes that considering the circumstances and process of the said case, his own functions and duties may not be affected shall grant permission regarding part of his functions and duties or a certain duty to be performed by the outside lawyer in assistance.

- (f) when the Law Officer who conducts the trial of the case grants permission under sub-paragraph(e), part of his functions and duties or a certain duty that he has granted permission shall be mentioned reducing to writing. Such granting of permission shall be exactly recorded in the case file of documents.
- (g) if permission is granted as such, the outside lawyer shall be permitted to study the police papers to the extent to which he has been permitted during the office hours. It shall be taken care that the outside lawyer shall not be permitted to study the statements of the witnesses contained in the police papers to more than the extent to which he has been permitted.
- (h) though the outside lawyer is granted permission to assist him in the case that he conducts under sub-paragraph (e), special care shall be taken that the duty of prosecution of the Law Officer who conducts the trial of the case will not be lessened.

7. If the outside lawyer who is conducting the case is found during the process of hearing the case conducting not in the rightful means at any stage of the process, the reason that such person should not be permitted to continue conducting the case shall be recorded sufficiently, and the Law Officer who initially has granted permission shall submit to the relevant Court in that case.

8. If it is sufficiently found that the outside lawyer who has been granted permission to conduct as the prosecuting officer has conducted without abiding by the instructions contained in this Directive or has conducted in one way or another so as not to enable for disclosing the truth on the case he has been granted permission to conduct, action shall be taken against him under the existing laws, rules and regulations.

9. If it is sufficiently found that the Law Officer who conducts the trial of the case has conducted without abiding by the instructions contained in this Directive or mismanaged unjustly in conducting the said case, action shall be taken against him under the existing laws, rules and regulations.

CHAPTER XXVII

PROCEDURE UNDER SPECIAL ENACTMENTS.

1. Police Act.

43 **812.** Subordinate Magistrates should not institute cases against Police Officers under section 43 without obtaining the Prosecution of Police Officers. **Previous sanction** of the District Magistrate. If a Subordinate Magistrate is of opinion that a Police Officer should be prosecuted under section 43, he should submit a report of the facts to the District Magistrate, who, after consulting the District Superintendent of Police, will sanction or decline to sanction the prosecutions as he sees fit.

813. Whenever a complaint is made against a police officer for which no sanction is required the Magistrate should make a report to the District Magistrate, in order that the District Magistrate may, if he thinks fit, take action under paragraph 222 (4) of the Burma Police Manual, 5th Edition, 1940.

Intimation will be given by the District Magistrate to the Superintendent of Police in all cases in which the prosecution of a police officer for an offence, other than an offence under section 43 of the Police Act, is instituted on complaint or by a Magistrate *suo motu*.

814. The above orders do not apply in cases in which Union military policemen are tried by Commandants or officers officiating in such appointments for offences triable by them.

815. Section 50 provides for the method of recovery of money payable under sections 23, 24, 25 and 26.

Recovery of moneys
and imprisonment in
default of fine.

Though the provisions of sections 64 to 70 of the Penal Code (both inclusive) are applicable to the offences under the Police Act, the operation of section 63 of the Penal Code is modified by the proviso to section 47, which allows imprisonment in default of fine to extend up to 8 days, the maximum provided in section 47.

20,21,22,47.

816. (1) The attention of all Magistrates is drawn to the orders in paragraphs 1044, 1237-1243 and 1604, of the Burma Police Manual, 5th Edition, prescribing the procedure to be adopted with regard to the reporting of the seizure or possession of property

Disposal of Property
seized by Police.

by the Police under sections 51, 53, 523 and 550, Code of Criminal Procedure, to a Magistrate. It has been observed that the Police are apt to detain property seized under these sections for indefinite periods, owing to the loose manner in which many Magistrates pass orders. If the Magistrate does not pass an order for the immediate return of the property to its owner, the Police must send in a list in Form Criminal 27 and the Magistrate must open out a Miscellaneous case and enter it in Register II, Criminal. If when the Police report in Form Criminal 27 is submitted to him, the Magistrate passes orders for the property to be returned to its owner or detained during further inquiry by the Police he need not, unless the special circumstances of the case require it, open a miscellaneous proceeding in his Court, but in the event of his passing an order of detention must fix a definite date, not generally more than 7 days ahead, by which the Police must submit a further report of the action taken. If he passes orders for the disposal of the property in any other way, *e.g.*, by proclamation or sale, he must straightaway open a miscellaneous case, and enter it in his Criminal Register No. II.

(2) Section 523 of the Code of Criminal Procedure prescribes the procedure to be followed by the Police upon seizure of property taken under section 51 of the Code or stolen.

When a Magistrate is dealing with property under this section imposes any conditions such as the execution of a bond it is his duty, and not the duty of the Police, to fix, the amount for which the bond is to be executed and the terms of the bond, including the amount of the stamp to be affixed to the bond, who is to supply the stamp, and how the bond is to be executed. In such a case, however, a Court-fee stamp is required, which is to be supplied by the party who is ordered to execute the bond. It is advisable to have two attesting witnesses to the bond.

Where property is ordered to be delivered without conditions the order of the Magistrate should state specifically that no conditions are imposed.

2. Arms Act.

19. 817. A Magistrate of the second or third class is not empowered to try an offender under section 19 of the Arms Act.

Jurisdiction.

818. The definition of "arms" contained in section 4 should be carefully noted. For the purposes of section 13 "Arm" and "going only certain other kinds of knives have been armed" declared to be 'arms' by the last clause of section

13. The effect of this provision is that a person commits the offence of "going armed" under section 19 (e) if he goes armed without a license with a knife with a pointed blade rigidly affixed, or capable of being rigidly affixed, to the handle, and measuring in all over five inches in length, even though such knife is intended exclusively for domestic, agricultural or industrial purposes.

819. A Magistrate of the first class who is not specially-empowered under section 30 of the Code of Criminal Procedure cannot try an offender under section 19A of the Arms Act. *See* section 2 of the Arms (Temporary Amendment) Act No. LI of 1951.

3. Opium Act. ❖

820. to 824.	x	x	x	x	x	x
x x x	x	x	x	x	x	x

❖ The State Law and Order Restoration Council Law No. 1/1992 repealed The opium Act.

4. Railways Act.

133. 825. A Magistrate of the second or third class cannot try any offence under the Railways Act.

Subject to the above provision offences are triable according to the rules contained in Schedule II of the Code of Criminal Procedure, under the head ' Offences against other laws. ' Thus, offences under sections 126 and 127 are triable only by the Court of Session, or District Magistrate or other Magistrate exercising special powers under section 30 of the Code of Criminal Procedure. Offences under the Railways Act should ordinarily be tried by a Stipendiary Magistrate and not by Honorary Magistrates.

115. 826. (1) Attention is invited to section 115. Fines imposed under sections 112 and 114 and recovered shall not be credited to Government until the portion of the fine due to the Railway is paid. The total amount should however be made over to the Bailiff and entered at once in his Register II. Railway official authorized by the Station Master shall at headquarters as often as it is thought desirable draw the amounts due and shall acknowledge receipt in column 14 of that Register.

(2) When the amount due has to be sent to a station not at the headquarters of the District, Subdivision or Township, the money due shall be sent once a week by money order or Remittance Transfer Receipt to the Station Master who shall acknowledge receipt. A note shall be made on the money order or on a slip of paper attached to the Remittance Transfer Receipt of the particulars of the account on which the money had been recovered. The receipt of the Station Master shall be filed in the " Receipt " file of the Court concerned and a note shall be made on the diary sheet of each case of the fact that the amount due to the Railway has been sent and acknowledged. So too when money is paid direct to an authorized official the amount paid and the date of acknowledgment of receipt shall be noted in the diary. After the amount due to the Railway Administration has been paid, the surplus, if any, should be at once transferred to Bailiff's Register No. I and credited to Government.

827. Attention is invited to sections 106, 112, 114, 116, 131, 132 and 133 as amended by the Railways (Amendment Act) No. LXXII of 1954.

828. It is desirable that a Magistrate making an enquiry into a Railway accident should, before bringing to trial any person whom he may consider to be criminally liable for the accident, take the evidence or the opinion of the Government Inspector of Railways on any technical points involved, under Rule 24 of the Rules contained in Railway Department Notification No. 1926T, dated the 19th March 1930. Rules 22–27 of these rules, relating to the duties of Magistrates with regard to accidents such as described in section 83 of the Railway Act, are reproduced below :—

Duties of Magistrates
in connection with
Railway accidents.

Duties of Magistrates.

22. Whenever an accident, such as is described in section 83 of the Act, has occurred in the course of working a railway, the District Magistrate, or any other Magistrate, who may be appointed in this behalf by the President of the Union, may either—

- (a) himself make an enquiry into the causes which led to the accident ; or
- (b) depute a subordinate Magistrate, who if possible, should be a Magistrate of the first class to make such an enquiry; or
- (c) direct an investigation into the causes which led to the accident to be made by the police.

23. Whenever it is decided to make an enquiry under clause (a) or clause (b) of Rule 22, the District Magistrate or other Magistrate appointed as aforesaid or the Magistrate deputed under clause (b) of Rule 22, as the case may be, shall proceed to the scene of the accident and conduct the enquiry there, and shall at once advise the General Manager and the Government Inspector by telegraph of the date and hour at which the enquiry will commence, so as to enable the railway administration to summon the requisite expert evidence.

24. A Magistrate, making an enquiry under Rule 22, may summon any railway servant, and any other person whose presence he may think necessary, and, after taking the evidence and completing the enquiry, shall, if he considers there are sufficient grounds for a judicial enquiry, take the requisite steps for bringing to trial any person whom he may consider to be criminally liable for the accident. Whenever technical points are involved the Magistrate should call for the opinion of the Government Inspector or professional persons.

25. The result of every enquiry or investigation made under Rule 22 shall be communicated by the Magistrate to the General Manager and to the Government Inspector.

26. If, in the course of any judicial enquiry, into an accident occurring in the course of working a railway, the Magistrate desires the assistance of the Government Inspector or of the General Manager, or the attendance of any officer of the railway, to explain any matter relating to railway supervision, management or working he will issue a requisition to the General Manager for the attendance at Court of an officer competent to explain such matter, stating at the same time the nature of the assistance required. In summoning railway servants, the Magistrate will take care not to summon so large a number of the employees, specially of one class, on the same day, as to cause inconvenience to the working of the railway. In the case of very serious accidents it will generally be advisable for the Magistrate to obtain a report, from both the Government Inspector and the General Manager, in regard to the accident, before finally concluding the judicial enquiry.

27. On the conclusion of any such judicial enquiry the Magistrate shall send a copy of his decision to the General Manager, and to the Government Inspector, and shall, unless in any case he thinks it unnecessary to do so, report the result of the enquiry to the President of the Union.

5. Gambling Act *

829. to 836.	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x

(Repealed by Law No. 6.1986 ; Gambling Law)

6. Forest Act †

837. to 840.	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x

(Repealed by Law No.8.1992; Forest Law)

* Law No.6. 1986, Gambling Law " Appendix VI ↵

† Law No.8. 1992, Forest Law " Appendix VII ↵

7. Village Act.

- 7 **841.** The provisions of section 45 of the Code Criminal Procedure
 Duties of Headmen in are replaced in the Union of Burma by the
 regard to crime. provisions of section 7 of the Village Act.
28. **842.** Magistrates are prohibited by section 28 of the Act from
 Sanction to prosec- entertaining complaints against headmen of village-
 tion tracts, members of village committees and rural
 policemen (*e.g.*, *Ywagaungs*) in respect of acts
 or omissions punishable under the Act, unless the prosecution is instituted
 by order of the Deputy Commissioner. This prohibition applies to acts
 and omissions which constitute offence under the Penal Code if such
 acts or omissions are also punishable under the Village Act.
- 9(2)(e). **843.** For cases which have been declared by the President of the
 Cases triable by Union under the provisions of sub-section (2),
 Village Committees. clause (e) of section 9 of the Village Act, to be
 triable by Village Committees, *see* the
 notifications on page 25, Village Manual.

8. Lunacy Act.

(*For procedure in regard to Criminal Lunatics, vide paragraphs*
 502–509 ante.)

844. All first class Magistrates have been empowered under clause
 Jurisdiction of (6) of section 3 to perform the functions of a
 Magistrates. Magistrate under the Act.* But it is not desirable
 that all first class Magistrates should ordinarily
 perform these functions and therefore the District Magistrate shall by
 standing order designate for every township, subdivisional or district
 headquarters the first class Magistrate who shall ordinarily carry out the
 duties of a Magistrate under the Act :

Provided that at the headquarters of a district or subdivision such
 Magistrate shall be the Subdivisional Magistrate when present at
 headquarters.

* Judicial Department Notification No. 59, dated the 5th May 1913.

845. The maximum period of detention of non-criminal lunatics for observation as to their state of mind is fixed by section 16 of the Lunacy Act at thirty days only.

Period of detention of non-criminal Lunatics for Observation.

846. The attention of Magistrates is invited to the orders requiring that asylums or mental hospitals should be reversed only for criminal lunatics, lunatics who are absolutely dangerous and those who, having no friends or belongings, may be in the acute stage in which there is most hope of recovery from medical treatment, *e.g.*, toxic cases as the result of alcohol, ganja and cocaine habits, malaria, typhoid, etc. It is unnecessary and unwise to go to the extent of admitting into Government asylums or mental hospitals and maintaining at the public expense all the insanes who are presented for admission. Persons suffering from the temporary results of intemperance or debauchery, harmless mental defectives, wandering vagrants and those whom their friends ought to support should be kept out of public asylums or mental hospitals. These principles should be borne in mind by Magistrates in dealing with persons brought before them under the Lunacy Act. †

Admission into Asylum.

847. Magistrates are requested to collect and forward to the Medical Superintendent, Mental Hospital, Tadagale, as much information as possible concerning the previous history and the cause of the insanity of every civil lunatic whom they may send there.

History of Civil Lunatics.

The attention of Magistrates is invited to the Department of Health and Public Works (Medical Branch), 'G' Circular No. 7 of 1940, dated the 11th March 1940 and to the need for strictly observing the orders contained therein regarding the admission of civil lunatics into the Mental Hospital, Tadagale.

† Department of Health and Public Works (Medical Branch) 'G' Circular No. 7 of 1940, dated 11th March 1940.

- 7 or 10. 848. A Magistrate may not authorize the admission of the lunatic under section 7 or 10 into an Asylum of Mental Hospital situate outside Burma except under and in accordance with any general or special order of the President of the Union made in this behalf under section 85 * (*c.f.* paragraph 852).
85. Reception Order on petition.

849. The form of medical history sheet prescribed by Judicial Department Notification No. 63, dated the 5th May 1913, shall be used in all cases in which –

- (i) a Magistrate (sections 14 and 15 of the Lunacy Act) or District Court (section 25 of the Lunacy Act) orders a lunatic to be received into a mental hospital ;
- (ii) a Magistrate or Court orders a criminal lunatic to be kept in safe custody in a mental hospital, under section 466 (2), or section 471 (1) of the Code of Criminal Procedure ; or
- (iii) the orders of Government are applied for under section 30 (1) of the Prisoners' Act.

The Medical Superintendent of the mental hospital may ask the Committing Officer to make further enquiry upon any point regarding which the information given in the medical history sheet is obscure or obviously incorrect, and, the Committing Officer shall thereupon take such further evidence as might be available and forward the record of his proceedings to the Medical Superintendent of the Mental Hospital. †

- 7, 10, 14 or 15. 850. A Magistrate making a reception order under section 7, 10, 14 or 15 shall, in the case of a lunatic domiciled in Burma, enquire into and declare the district Councils, Municipalities, Notified Areas, Deputy Commissioners' Local Funds, Hill Tracts Local Funds or Civil Stations not included in Municipalities, in the Jurisdictions of which the lunatic has resided for a period of not less than six months out of the year immediately preceding the date of commencement of the proceedings under the Act.
- Inquiry as to residence of Lunatic and payment of cost of maintenance.

* Public Health Department (Ministry of Education) Notification No. 90, dated the 15th August 1933.

† Judicial Department Circular No. 13 of 1924

If the lunatic has not so resided in the area of a single Local Body, the Magistrate shall enquire into and declare the areas of the various Local Bodies in which the lunatic has resided during the six months immediately preceding the date of commencement of the proceedings and the period of residence in each such area. He shall see that the required entries are made in the medical history sheet in the prescribed form or are communicated as soon as possible to the Superintendent of the Asylum or Mental Hospital. If the Magistrate is unable to make such a declaration he shall record the reasons for his inability to do so.

A Court making an order under section 25 or 26 shall, if the lunatic has not sufficient property for his maintenance in the Asylum or Mental Hospital and if no person legally bound to maintain such lunatic has sufficient means for payment of the cost of maintenance of the lunatic in the Asylum or Mental Hospital, make a similar enquiry and declaration.†

7, 10, 14 or 15. **851.** When a Magistrate makes a reception order under section 7, 10, 14 or 15 of the Lunacy Act, he should send a copy of such order together with the copy of the order or classification made after holding the enquiry envisaged in paragraph 850, read with paragraph 855, at once to the Local Bodies concerned in order to give them early intimation of their financial liability in the matter.

Maintenance of
pauper lunatics.

852. As soon as it is known that a lunatic, who has been admitted to an Asylum or Mental Hospital in Burma is domiciled elsewhere than in Burma, in fact (with details of the case) should be brought to the notice of the President of the Union if the Superintendent of the Asylum or Mental Hospital and the Director of Medical and Health Services, Burma, consider that action should be taken for the removal of the lunatic, under section 35, to India or Pakistan (*c.f.* paragraph 848).

Report to Govern-
ment in case of luna-
tics domiciled else-
where than in Burma.

† Public Health Department (Ministry of Education) Notification No. 90, dated the 15th August 1933.

853. In the case of non-criminal lunatics dealt with under section 14 and 15 of the Lunacy Act, the Magistrate ordering their reception in the asylum is responsible for their proper despatch. The following statutory rules* have been issued under section 91 (1) (f) of the Act :—

Despatch of
Lunatics.

Rules.

(1) When a Magistrate has made an order under section 14 or section 15 of the Act for the detention of a civil lunatic in a asylum, he shall arrange, in communication with the police, for the despatch of the lunatic with the suitable escort. The reception order, the medical history sheet † in the prescribed form (duly countersigned), the evidence of the medical witness, if taken, and any other papers that may be necessary and that may have a bearing on the insanity of the lunatic shall be forwarder to the Superintendent of the Lunatic Asylum by registered post. A duplicate of the reception order and of the medical history sheet must be given to the escort accompanying the lunatic. If for any reason the lunatic is unable to start at once for the asylum, he shall be sent to the jail for such detention as may be necessary. The order under section 14 or 15 is sufficient warrant for such detention.

(2) No lunatic shall be despatched to the asylum unless a medical officer certifies immediately before despatch that he is fit to travel ; the original of such certificate shall be sent to the Superintendent of the Lunatic Asylum by post.

(3) The Magistrate shall satisfy himself that the lunatic is provided with sufficient clothing and bedding for his protection and comfort during the journey. He shall provide the escort with sufficient means to purchase such food as the lunatic is likely to require on the journey, and shall instruct the officer in charge to take the lunatic to the nearest hospital for treatment in event of his showing signs of sickness.

* Judicial Department Notification No. 68, dated the 5th May 1913, as amended by General Department Notification No. 507, dated the 30th December 1922.

† Form (Medical).
L.A. 3

- (4) A female lunatic shall always be accompanied by a female attendant or relative in addition to the police escort.

854. Any expenditure incurred by Magistrates in carrying out the provisions of paragraph 853 by purchase of clothing or provision of travelling expenses (including those of the female attendant or relative sent as escort) shall be treated as Criminal Courts contingent expenditure :—

Cost of Despatch to Asylum.

Provided that—

- (1) where the cost of maintenance of a lunatic is recoverable from Municipal or Town Funds, such cost should be paid from such fund in the first instance ;
- (2) where an order has been passed by a Civil Court under Chapter V of the Act for the reception of a lunatic in an asylum, the guardian or relative obtaining such order is responsible for his transmission to the asylum.

855. (a) With reference to liability of the local authorities to pay for pauper lunatics, the President of the Union is pleased to direct that the words 'sent to public asylums from the municipality' in section 87, subsection (1), clause (c) of the Municipal Act, 'sent to public asylums from the area under authority of the District Council' in section 36, clause (c) of the Rural Self-Government Act, 'sent to public asylums from City' in section 25 (XXV) of the City of Rangoon Municipal Act, and 'sent from Cantonment to public lunatic asylums and mental hospitals' in clause (d) of the second proviso to section 109 of the Cantonment Act, shall be held to apply to the following classes of lunatics:—

Maintenance charges of Lunatics.

- (i) lunatics admitted to an asylum or mental hospital under a reception order made under section 7, 10, 14 or 15 of the Lunacy Act, for the payment of cost of whose maintenance no engagement has been taken from the friends or relatives ;
- (ii) lunatics admitted to an asylum or mental hospital under section 25 or dealt with under section 26 of the Lunacy Act, who have not sufficient properties for their maintenance in the asylum or mental hospital and no persons legally bound to maintain such lunatics have sufficient means for payment of the cost of maintenance of the lunatics and asylum or mental hospital.

(b) The cost of maintenance of such lunatics in the asylum or mental hospital shall ordinarily be payable by the Local Authority or Cantonment Authority concerned on the basis of residence for a period of not less than six months out of the year immediately preceding the date of commencement of the Proceedings under the Lunacy Act. If a lunatic has not resided in the area of a single Local Authority or Cantonment Authority for a minimum period of six months out of the year immediately preceding the commencement of the Proceedings, the cost of maintenance will be payable in proportion by Local Authorities or Cantonment Authorities concerned in whose areas the lunatic has resided during the six months immediately preceding the date of commencement of the Proceedings under the Lunacy Act.

(c) Magistrates and Courts are required under the Rules contained in the Public Health Department (Ministry of Education) Notification No.90, dated the 15th August 1933, to make strict enquiry as to the domicile of lunatics.

In sending a lunatic to the asylum or mental hospital, the Magistrate or the Court shall, if possible, expressly state in the order the Local Authority or Cantonment Authority in whose areas the lunatic has resided for a period of not less than six months out of the year immediately preceding the date of commencement of the Proceedings under the Lunacy Act after affording the Local Authorities or Cantonment Authorities concerned the opportunity of adducing evidence to show that the lunatic has not so resided. If the lunatic has not so resided in the area of a single Local Authority or Cantonment Authority the Magistrate or the Court shall enquired into and determine the areas of the various Local Authorities or Cantonment Authorities in which the lunatic has resided during the six months immediately preceding the date of commencement of the Proceedings and the period of residence in each such area after affording the Local Authorities or Cantonment Authorities concerned the opportunity of adducing evidence to show that the lunatic has not so resided. The Medical Superintendent of the asylum or mental hospital will then have no difficulty in deciding which Local Authority or Authorities or Cantonment Authority or Authorities should be called upon to pay for the cost of maintenance of the lunatic. If in any case the Magistrate or the Court is unable to arrive at a finding about a lunatic's place of residence, the fact shall be stated in the order.

(d) The decision as to the residence of the lunatic recorded by the Magistrate making the reception order or by the Court making the order under section 25 or 26 of the Lunacy Act, shall be final ; provided that if the Magistrate or the Court is unable to make a decision as to the residence of the lunatic, the Medical Superintendent of the mental hospital shall refer the question to the Commissioner of the Division in which the lunatic is known to have resided during the year immediately preceding the commencement of the Proceedings under the Act. The Commissioner may cause, such further enquiries to be made as he may think fit, and may order that the cost of maintenance of the lunatics shall be paid by any local authority or authorities within his jurisdiction, in such proportions as may seem to him to be equitable. If the Commissioner considers that a portion of such cost should be borne by any local authority outside his jurisdiction, he shall refer the matter to the other Commissioners concerned. If the Commissioners are not in agreement the case should be referred for the orders of the President of the Union.

The President of the Union in cases referred to him may order that the cost of maintenance shall be paid by any Local Authority or Authorities or Cantonment Authority or Authorities. *

33. 856. When a lunatic is detained under the Lunacy Act, and the case is brought before the Magistrate under section 33 of that Act, the Superintendent of the Asylum shall furnish in writing all the details required by the form in paragraph 885 for the information of the said Magistrate, together with his own opinion of the safety of releasing the lunatic.

Discharge of
Lunatics.

In the event of the lunatic having at any time exhibited a tendency to violence the Magistrate shall satisfy himself that a sufficient length of time has elapsed since such manifestation to render a recurrence improbable, and that the sureties are in a position to control the actions of the lunatic should it recur. †

* Department of Health and Public Works (Medical Branch), 'G' Circular No. 7 of 1940, dated the 11th March 1940.

† Judicial Department Notification No. 65, dated the 5th May 1913.

857. Re-admission into the mental hospital of ex-criminal lunatics who have been of discharged from the mental hospital on security and made over to the care of friends requires the sanction of the President of the Union. On orders being passed the original warrant may be held to revive.†

858. The following form of Medical History Sheet of Lunatics must invariably be used—‡

MEDICAL HISTORY SHEET OF LUNATICS

(FORM $\frac{\text{MEDICAL}}{\text{L.A. 3.}}$)

Note— (1) The ultimate responsibility for the preparation of this form rests with the Committing Officer, who must see that the requisite information is supplied by the police and the Medical Officer without undue delay.

(2) If any of the particulars in this statement are not known, the fact should be stated.

A.—QUESTIONS TO BE ANSWERED BY THE POLICE.

Part I.—General.

1. (a) Name of patient in full.
- (b) Age of patient.
- (c) Sex of patient.
- (d) Caste, race or creed of patient.
- (e) Place of birth of patient—Village, Town, District.
- (f) Recent place of abode—Street, Quarter, Town.
- (g) Length of stay at recent place of abode.
2. Names of patient's father and mother.
3. Marks whereby the patient may be identified

† Department of Health and Public Works (Medical Branch), 'G' Circular No. 7 of 1940, dated the 11th March 1940.

‡ Judicial Department Notification No. 31, dated the 4th April 1918, as amended by Public Health Department (Ministry of Education) Notification No. 90, dated the 15th August 1933.

4. Condition or mode of life, previous occupation (if any) and temperament.
5. Married or single or widowed.
6. (a) Whether homeless or living with relatives or friends.
 (b) Full address of relatives or friends, if any.
 (c) Names and addresses of relatives or other persons who are legally bound to maintain the patient.
 (d) Whether they are able and willing to take charge of the patient;
 or
 (e) whether they are able and willing to bear the cost of his maintenance at the Asylum.
 (f) If not, give reasons for their inability or unwillingness.
7. Religion.

Part II.—Present Attack.

8. If the patient has been charged with committing any crime specify—
 - (i) the nature of crime, attaching a copy of the first information report to the police ;
 - (ii) the detailed circumstances under which it was committed, with special reference to—
 - (a) absence or inadequacy of motive.
 - (b) the conduct of the supposed lunatic before, during and after commission of the crime,
 - (c) any previous history of insanity and especially of similar symptoms.
9. Reason for suspecting insanity.

10. Supposed exciting cause or causes of present attack, and date.
11. Duration of present attack.
12. Present behaviour and demeanour before—
 - (a) the Police and
 - (b) the Magistrate or other Committing Officer.

Part III.—Previous History and Habits.

13. State—
 - (a) whether any member of the patient's family has been or is affected with insanity, and, if so, give details as far as possible;
 - (b) whether the patient has experienced—
 - (i) loss of property and, if so, give details with dates,
 - (ii) loss of relatives and, if so, give details with dates,
 - (iii) family troubles or disappointment, or anxiety and, if so, when, with whom and under what circumstances,
 - (iv) any cause for—
 - (a) grief,
 - (b) shame,
 - (c) shock or fright,
 - (d) any other strong emotional experience, such as those resulting from over-work or self-abuse ;
 - (c) whether the patient has had—
 - (i) ill-health (specify nature of illness and date) ;

- (ii) delirium with fever during sickness or after exposure to glare or sun (give details with date) ;
- (iii) insanity at or after any epochal period or condition of life ;
- (d) whether the patient has a history of —
 - (i) fits,
 - (ii) faintness,
 - (iii) sudden and temporary forgetfulness or absent-mindedness,
 - (iv) violent and unreasonable fits of temper (give dates and note whether there are scars on the face on account of falls during fits, etc.) ;
- (e) (i) whether he is addicted to any spirits or drugs,
- (ii) if so, for how long has he been so addicted, and
- (iii) what is the name of the spirit or drug and the quantity habitually taken ;
- (f) whether he is a member of any political or religious society.

14. State—

- (a) whether the patient has had any exaltation or depression or excitement (specify cause or causes and dates) ;
- (b) whether the patient has at any time exhibited suicidal symptoms (give full description of any such attempts with dates) ;
- (c) whether the patient has at any time exhibited symptoms of being dangerous to others. (Give full descriptions of any such symptoms with dates, and say whether such symptoms occurred in relation to fits or faintness of which the patient has been unaware.)

15. State—

(a) whether the patient has had previous attacks of insanity and, if so,

(b) number, duration and nature of such previous attacks ;

(c) age (if known) at onset of first of these attacks.

16. Signature and rank of the Investigating Police Officer.

Part IV.

17. Whether the Committing Officer has any more information from the Police or relatives or friends, contradicting or amplifying the answers to the preceding queries.

B.—QUESTIONS TO BE ANSWERED BY MEDICAL OFFICER.

1. State of bodily health. Give details as to general health, abnormality of features or development, and presence of tubercular disease.

2. Any discharge from urethra, any bubo or any rash over body with sore-throat or sore on the private parts.

3. Whether subject to epilepsy, or other disease.

4. Whether suicidal, and, if so, reasons for classing him as such.

5. Whether dangerous to others, and, if so, reasons for classing him as such.

6. Supposed cause of insanity.

7. Symptoms exhibited.

Dated the

Medical Officer.
Magistrate or Judge.

859. The following form must be used on an application for the discharge of a lunatic under section 33 of the Lunacy Act :—

Form of Medical History Sheet to be sent to the Government with the Visitor's recommendations regarding criminal lunatics, or to the Superintendent of a Jail on the transfer of a lunatic.

(1—13 to be filled in by the Superintendent of the Asylum : 14 to be filled in by the Magistrate of the district to which the lunatic belongs.)

1. Name and sex.
2. Crime.
3. Present age.
4. Physical health.
5. Probable cause of insanity.
6. Type of insanity.
7. Duration of insanity and has it been continuous ? giving dates.
8. Has he at any time shown aggressive symptoms ?
9. If so, when and what kind ?
10. If reported sane, how long since last manifestation of insanity ?
11. Is he subject to relapses ? If so, give dates.
12. Is he capable (a) of taking care of himself, (b) of earning his livelihood ?
13. How has he been employed while in asylum ?
14. If security is obtainable, its nature and the social position and character of the sureties.

9. Myanmar Excise Act

860. The powers and duties assigned to Excise Officers under section 56 of the Act shall be exercised within their respective jurisdiction by Police Officers of and above the rank of Head Constable [see Excise Department (Ministry of Forests) Notification No. 35, dated the 25th November 1934, reproduced under heading F at page 36, Burma Excise Manual, 1945.]

Ex-officio Excise
Officers

861. The powers and duties assigned to Excise Officers under section 23, 53 (a) and (b), 54 and 56 shall be exercised within their charges by headmen of village-tracts and wards [*see* Excise Department (Ministry of Forests) Notification No. 35, dated the 25th November 1934, reproduced under heading F at page 36, Burma Excise Manual, 1945.]

62. 862. No Magistrate of the third class who is not specially empowered
 Jurisdiction of by the District Magistrate in this behalf shall take
 Magistrates. cognizance of or try any offence under the Act.

63. No Magistrate shall take cognizance of an offence punishable (a) under section 39, section 40 or section 41 except on the complaint or report of the collector or of an Excise Officer authorised by him in this behalf ; or (b) under any other section of the Act, except on his own knowledge or suspicion or on the complaint or report of an Excise or Police Officer.

Except with the special sanction of the President of the Union, no Magistrate shall take cognizance of any offence punishable under the Act, unless the prosecution is instituted within six months after the date on which the offence is alleged to have been committed.

2. 863. (1) In trials of offences in respect of alcoholic liquor the record
 Kind and Quantity must show that the liquor is one of the kinds
 of Liquor. specified in section 2 (a) and (b) of the Act or in
 the Notifications * under the Act. Much
 inconvenience is caused when the liquor is described merely as fermented liquor. The kind of liquor should also be noted in the weekly and monthly statements.

(2) When the question whether an offence has been committed or not turns on the quantity of liquor found, the quantity should be stated in measures prescribed in Excise Department Notification No. 61, dated the 14th June 1928, as subsequently amended.

* See Notifications J and K at pages 42 and 43, Burma Excise Manual.

864. (1) *Tari* is defined in section 2 (r) of the Burma Excise Act, as the sap or juice whether fermented or unfermented of any kind of palm tree. Unfermented *tari* is included in the term 'alcoholic liquor' as defined in section 2 (a) of the Act and 'alcoholic liquor' is

The Law relating
to offences
concerning *tari*.

included in the term 'excisable article' [*vide* section 2 (f) of the Act].

(2) Under Financial Department Notification No. 72, dated 18th September 1917, as amended by Excise Department Notification No. 37, dated 8th November 1923, which are reproduced at page 45, Burma Excise Manual, *throughout the whole of Burma tari* is exempt from the provisions of section 12 of the Burma Excise Act. Consequently in any part of Burma *tari* may be collected or manufactured without a license, and therefore a conviction under section 37 of the Excise Act in respect of *tari* cannot be had under any circumstances.

(3) Furthermore, under the above mentioned Notifications, in *Upper Burma tari* is exempt from all the provisions of the Burma Excise Act in places outside a radius of five miles from a licensed *tari* shop. Consequently in Upper Burma, in the case of any offence in respect of *tari*, the fact that the offence was committed within a distance of five miles from a licensed *tari* shop is an essential ingredient of the offence and therefore this fact must be included in the particulars of the offence stated to the accused and must be proved at the trial. Unless this is done the conviction will be bad.

(4) In Lower Burma, and subject to the restrictions in sub-paragraph (3) in Upper Burma, a conviction under section 30 (a) of the Burma Excise Act for the possession of *tari* can be had if the quantity which may be lawfully possessed in accordance with Financial Department Notification No. 77, dated the 18th September 1917, as subsequently amended by Excise Department Notifications No. 69, dated the 6th October 1926, No. 83, dated the 10th December 1926, No. 61, dated the 14th June 1928, No. 36, dated the 16th June 1930, No. 14, dated the 22nd April 1933, and No. 15, dated the 17th March 1934, and reproduced at page 49, Burma Excise Manual.

865. (1) The quantities of various excisable articles that a person is entitled to possess are laid down in Financial Department Notification No. 77, dated the 18th September 1917, as subsequently amended.

Distinction between
Sections 30 (a) and 37.

(2) When an accused person is sent up for trial on an allegation that he was in possession of a quantity of any excisable article in excess of the quantity prescribed by this notification, section 30 (a) of the Burma Excise Act is applicable and he should, if found guilty, be convicted of an offence under that section.

(3) Section 37 of the Burma Excise Act more properly applies to a case of possessing of an excisable article in a quantity within the limit prescribed by the abovementioned notification, and for a conviction under that section it is necessary for the prosecution to prove that the accused knew or had reason to believe that the same had been unlawfully imported, transported, manufactured, cultivated, or collected, or that the prescribed duty had not been paid thereon. [See section 44 of the Excise Act.] In stating the particulars of the offence to the accused, under 242 of the Code of Criminal Procedure, the statement must allege such knowledge or belief as the section requires, otherwise a conviction under this section cannot be had.

866. Magistrates should bear in mind when trying cases under the
 Analysis of Exhibits Opium or Excise Acts that the exhibit may not be what it purports to be. Care should therefore be taken to see that, for example, opium is not a composition of *ngapi* and other substances, that cocaine is not sulphate of magnesium, and that *tari* is not composed of anything but the sap of any kind of palm tree. Even when the accused pleads guilty to the charge, Magistrates should, when they have any doubt, ascertain from the Civil Surgeon or the Chemical Examiner what the composition of the exhibit really is.

867. The following general directions are issued for the guidance of
 Sentences Magistrates in passing sentence on persons convicted of offences under the Excise and Opium

Laws :—

(1) In the cases of persons convicted for the possession of a small quantity of liquor, or *gania*, apparently for their own consumption, a fine, graduated according to the quantity possessed, is ordinarily a sufficient punishment.

(2) Where from the large quantity of liquor or drugs seized, or from the possession of implements of manufacture, or from other circumstances of the case, it may reasonably be inferred that the offender is engaged in an illicit traffic in liquor or drugs, Magistrates should consider whether the appropriate punishment is a fine proportionate to the probable profits of the trade with or without imprisonment.

(3) (a) In cocaine and morphia cases a sentence of fine only is usually inadequate. In cases under section 31 of the Burma Excise Act, Magistrates should note that imprisonment is now imperative—section 2 of the Burma Excise (Amendment) Act, 1954 (Act XL of 1954).

(b) In cases of conviction for the import, possession, or sale of cocaine really deterrent sentences should be inflicted. As it is retailed to consumers in quantities varying from the one thirty-second part of a grain to a grain, there being 480 grains in an ounce, the profits made by illicit vendors are not less than K 50 an ounce, and unless measures are taken to make those engaged in the illicit traffic of the drug realize that the punishment inflicted will in all probability be one of imprisonment, no deterrent effect will be produced.

(4) Excise cases from an exception to general principle of the undesirability of passing sentences of imprisonment of three months or less.

(5) Regarding sentences in opium cases, *see* section 9 (1) (2) with proviso thereto, and sections 9A, 9B, 9D, 9E of the Act.

(6) In awarding imprisonment in default of payment of fine Magistrates must remember the restrictions imposed by sections 64 to 67 of the Penal Code. *See* paragraphs 683 to 685.

868. Confiscated cocaine including all drugs, synthetic or other, having
 Confiscated Drugs. a like physiological effect to that of cocaine which
 has been manufactured by recognized makers and
 is contained in intact phials, or which been examined previous to
 confiscation by the Chemical Examiner to Government and has been
 passed by him as fit for use and the phials of which have been resealed
 by the Chemical Examiner, shall be sent by the confiscating Court to the
 Collector of Rangoon. Any confiscated cocaine which is not fit for
 despatch to the Collector of Rangoon according to the above, shall be
 destroyed by the confiscating Court. (*Cf.*, Excise Directions 184 and
 185, pages 206 and 207, Burma Excise Manual.)

869. (1) The present Excise Act does not authorize Magistrates to
 Rewards grant rewards out of fines. In order to enable the
 Collector to take action as regards rewards, Magistrates are required to submit to him for information all completed proceedings in enquiries and trials under the Excise, Opium and the Dangerous Drugs Act. The Record will be submitted through the Superintendent of Excise. (See Direction 59 at page 159, Burma Excise Manual.)

(2) In order that there may be as little delay as possible in paying rewards in cases in which appealable sentences are passed, the Magistrate should in every such case warn the convict that if he wishes to appeal he should apply for a copy of the judgment very promptly, otherwise there may be delay in furnishing it. If a copy is applied for, the record should not be sent to the Collector, until the appeal has been disposed of. If an application for a copy is not received within ten days from date of sentence, the record should be sent to the Collector on the eleventh day.

In cases in which non-appealable sentences are passed, the record should be sent without delay after sentence is passed.

10. The Inland Steam Vessels Act.

870. The following instructions prescribing the procedure to be followed in Burma by Courts making investigations under section 33 of the Inland Steam Vessels Act are published in Marine and Commerce Department Notification No. 14, dated the 21st March 1930 :—

Instructions for the guidance of Courts investigating casualties under the Inland Steam Vessels Act.

1. When a Court appointed or directed by the President of the Union to make investigations under section 33 of the Inland Steam Vessels Act has assembled, the Magistrate, who should be the Presiding Officer of the Court, should open the proceedings by reading the statement of the case and the orders appointing the members of the Court, directing them to make the investigation, and fixing the place for making the same.

He should also read a copy of any notices of investigation that may have been issued by the President of the Union.

2. The Government and any person upon whom a notice of investigation has been served, shall be deemed to be parties to the proceedings; and any other person may be permitted by the Court to appear at the investigation and become a party to the proceedings.

3. At the time and place appointed for holding the investigation the Court may proceed with the investigation, whether the parties upon whom notices of investigation have been served, or any of them, are present or not.

4. The proceedings in the investigation should commence with the production and examination of witnesses, by the representative of Government. These witnesses, after examination on behalf of the Government, may be cross-examined by the parties in such order as the Court may direct, and may then be re-examined by the representative of Government.

5. Every witness so called shall be sworn or affirmed, and his evidence taken down by the Presiding Officer in writing.

6. When the examination of the witnesses produced by him has been concluded, the representative of Government shall state in open Court the questions in reference to the casualty and the conduct of the certificated officers or other persons connected therewith, upon which the opinion of the Court is desired. The Court shall record these questions.

In framing the questions for the opinion of the Court the representative of Government may make such modifications in additions to, or omissions from, the questions in the notice of investigation as, having regard to the evidence which has been given, he may think fit.

7. If the Court considers it probable that any certificate should be dealt with, an adjournment should be granted and the attendance of two persons having experience in the conditions of inland navigation secured to act as assessors.

Before such an adjournment is granted the Court shall ascertain whether the holder of the certificate has received a copy of the statement of the case. If he has, the fact should be recorded on the proceedings; if he has not, a copy should be delivered to him forthwith and the fact duly recorded.

In other investigations, which do not involve the cancelling or suspension of a certificate, the Court may, in its direction, appoint as assessor a person conversant with maritime affairs, and may adjourn for the purpose of obtaining his attendance.

8. When any investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of an engineer, one at least of the assessors should be a mercantile marine engineer holding a first class certificate of competency, and actually employed in his calling.

9. After the questions for the opinion of the Court have been stated, the Court shall proceed to hear the parties to the investigation upon, and determine, the questions so stated. Each party to the investigation will be entitled to address the Court and produce witnesses, or recall any of the witnesses who have already been examined for further examination, and generally adduce evidence. The parties shall be heard and their witnesses examined, cross-examined, and re-examined in such order as the Court may direct. The representative of Government may also produce and examine further witnesses, who may be cross-examined by the parties, and re-examined by the representative of Government.

10. When the whole of the evidence in relation to the questions for the opinion of the Court has been concluded, any of the parties who desire to do so may address the Court upon the evidence, and the representative of Government may address the Court upon the whole case.

11. Upon the conclusion of the investigation the Court shall deliver no judgment, but shall transmit to the President of the Union the proceedings in the case together with its finding and recommendation thereon, and the opinions of the assessors, if anywhere appointed. The assessors should not sign the finding, but should deliver their opinions in writing to be recorded on the proceedings.

11. Maintenance Orders Enforcement Act.

871. x x x x x x x x x x x x x x x x x x x x x x
 x x x x x x x x x x x x x x x x x x x x x x
 x x x x x x x x x x x x x x x x x x x x x x

Deleted by Law No.1/92

12. Myanmar Merchant Shipping Act.

872. Magistrates empowered under section 249 of the Burma Merchant Shipping Act, when making formal investigations, should on all occasions observe the instructions set out below as far as possible, but these instructions should not be treated as a rigid or complete code of procedure.

Instructions to be observed in the conduct of investigations into shipping casualties.

(1) When a formal investigation has been applied for, the officer appointed under section 246 (3) of the Burma Merchant Shipping Act should cause a notice, to be called a notice of investigation, to be served upon the owner, master, and officers of the ship, as well as upon any person who in his opinion ought to be served with such notice.

(Amendment - Appendix VIII)

The notice should contain a statement of the questions which, on the information then in possession of the said officer, he intends to raise on the hearing of the investigation, and should be in the form annexed, with such variations as circumstances may require. The said officer may, at any time before the hearing of the investigation, by a subsequent notice, amend, add to, or omit any of the questions specified in the notice of investigation.

(2) Section 254 (1) of the Burma Merchant Shipping Act provides that when any investigation involves, or appears likely to involve, any question as to the cancellation or suspension of the certificate of a master, mate or engineer, two of the assessors shall be persons having experience in the merchant service. The opinions of the assessors on all the questions put to the Court together with, if necessary, their reasons for those opinions should be delivered in writing to the Court and should be recorded in the proceedings.

(3) The officer on whose application the investigation is undertaken, and any person upon whom a notice of investigation has been served, should be deemed to be parties to the proceedings; and any other person may be permitted by the Court to appear at the investigation and become a party to the proceeding.

(4) At the time and place appointed for holding the investigation the Court may proceed with the investigation, whether the parties upon whom notices of investigation have been served, or any of them, are present or not.

(5) The proceedings in the investigation should commence with the production and examination of witnesses by the representative of the Government. These witnesses, after examination on behalf of the Government, may be cross examined by the parties in such order as the Court may direct, and may then be re-examined by the representative of the Government.

(6) When the examination of the witnesses produced by him has been concluded, the representative of the Government should state in open Court the questions in reference to the casualty and the conduct of the certificated officers or other persons connected therewith, upon which the opinion of the Court is desired.

In framing the questions for the opinion of the Court the representative of the Government may make such modifications in, additions to, or omissions from, the questions in the notice of investigation as, having regard to the evidence which has been given, he may think fit.

(7) After the questions for the opinion of the Court have been stated, the Court shall proceed to hear the parties to the investigation upon and determine, the questions so stated. Each party to the investigation will be entitled to address the Court and produce witnesses, or recall any of the witnesses who have already been examined for further examination, and generally adduce evidence. The parties will be heard and their witnesses examined, cross-examined, and re-examined in such order as the Court may direct. The representative of the Government may also produce and examine further witnesses, who may be cross-examined by the parties, and re-examined by the representative of the Government.

(8) When the whole of the evidence in relation to the questions for the opinion of the Court has been concluded, any of the parties who desire to do so may address the Court upon the evidence, and the representative of the Government may address the Court upon the whole case.

(9) Where the cancellation or suspension of an officer's certificate is not involved, the Court need not, unless for any reason it sees fit so to do, deliver its decision in open Court, but may send or deliver to the parties a copy of the report required by section 257 of the Burma Merchant Shipping Act to be transmitted to the President of the Union.

(10) Where the cancellation or suspension of an officer's certificate is involved, the Court should deliver its decision in open Court, and should send or deliver to the parties a copy of the report required by section 257 of the Act to be transmitted to the President of the Union.

(11) Where the cancellation or suspension of an officer's certificate granted in the United Kingdom is involved, the Court of a Magistrate having jurisdiction under section 249 of the Burma Merchant Shipping Act, should be held to be 'a Court of summary jurisdiction' for the

purpose of the proviso in section 470 (1)(a) of the Merchant Shipping Act, [read with section 478 (5) of that Act and section 258 of the Burma Merchant Shipping Act], with the result that the Court referred to should not cancel or suspend a certificate of the kind in question unless one at least of the assessors concurs in the finding of the Court.

(12) The representative of the Government should bring to the notice of the Court the desirability of the Court stating its finding in explicit terms and not in the form of a recommendation to the President of the Union and, in any case, where the Court is of the opinion that a Certificate of Competency should be dealt with or a censure should be imposed, of the Court dealing with the matter direct under section 264 of the Burma Merchant Shipping Act.

873. Forms in connection with the above rules are to be found in Appendix IV.

13. Myanmar Salt Act †

874.	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x

(Repealed by Law No.6, 1992, Salt Enterprise Law)

†Law No.6, 1992, Salt Enterprise Law Appendix IX

14. Factories Act.

875. (1) No Court inferior to that of a Magistrate of the first class can try any offence under this Act or any rule or order made thereunder other than an offence under section 66 or section 67. Furthermore no prosecution under the Act, except a prosecution under section 66 can be instituted except by or with the previous sanction of the Inspector. For limitation of prosecutions, *see* section 75 of the Act.

(2) The District Magistrate, on receipt of a complaint in writing from one of the full-time Inspectors of facts which constitute an offence under the Factories Act should ordinarily take cognizance under section 190 (1) (a) of the Code of Criminal Procedure without examining the Inspector [*vide* section 200, proviso (a) of the Code] and transfer the case for trial to an experienced Magistrate invested either with first class or Special Powers, bearing in mind that so far as possible all offences under the Factories Act in a district should be heard by the same Magistrate.

(3) The Magistrate to whom the case had been transferred should, without examining the Inspector [*vide* section 200, proviso (aa) of the Code of Criminal Procedure] in the first instance procure the attendance of the accused and deal with him under the provisions of sections 242 and 243 of the Code of Criminal Procedure. Only in cases where the Magistrate finds that it is necessary to proceed under section 244 of the Code should he require the attendance of the Inspector, and for this purpose the accused should be bound over for appearance on another day. In fixing a date for such appearance it should be remembered that the Inspector may be away from Headquarters and ample time should be allowed. All the other prosecution witnesses should be summoned for that day and, if possible, the defence witnesses also.

(4) The Magistrate trying the case may usually find it convenient to allow the Inspector, if present, to conduct the prosecution [section 495 (1), Code of Criminal Procedure].

(5) In cases in which the Magistrate intends to visit the local due notice should be given to the Inspector and the accused (*vide* section 53⁽¹⁾B of the Code of Criminal Procedure).

(6) In assessing the penalty in cases of conviction Magistrates empowered to try cases under the Act should bear in mind that the Factories Act applies to all factories and that those employers who comply with the requirements thereof would be subject to a handicap if other employers are allowed to contravene the provisions of the Act and escape with too light a penalty.

(7) In cases where it appears that the accused has within the last two years been convicted of an offence punishable under clauses (b) to (f) of section 60 of the Act the provisions of section 61 which provide for an enhanced penalty in certain cases after previous conviction should be borne in mind. In providing previous convictions the provisions of section 511 of the Code of Criminal Procedure should be followed.

APPENDIX I
RULES AND DIRECTIONS UNDER THE BURMA INSOLVENCY
ACT.

THE BURMA INSOLVENCY RULES, 1924. *

Notices.

(1) Whenever publication of any notice or other matter is required by the Act to be made in an official Gazette, a memorandum of the date of the advertisement and the page on which it appeared shall be filed with the record of the case. In any case in which the Court directs that notice shall be advertised in a local newspaper, a copy of such advertisement together with a memorandum of the date of its publication, shall be filed with the record.

(2) Notice of the order fixing the date of the hearing of a petition under section 19 (1) of the Act shall be published in the local Official Gazette and may also be published in such local newspaper or newspapers as the Court thinks fit.

A copy of the notice shall also be served on each creditor named in a debtor's petition either in the manner indicated in Order V of the First Schedule of the Civil Procedure Code, or by forwarding it by post in a registered cover to the address of the creditor as given in the petition or otherwise ascertained by the Court.

The same procedure shall be followed in the case of notices of the date for consideration of a proposal for composition or scheme of arrangement under section 38 (1).

(3) The Court may direct that notice of an order of adjudication under section 30 or of an order annulling an adjudication under section 35, 36, 39 or 43 of the Act shall be published in such local newspaper or newspapers as it thinks fit, in addition to the publication in the local Official Gazette required by section 37 (2) of the Act.

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.

* High Court Notification No. 2 (General), dated the 2nd April, 1924.

(4) The notice to be given by the Court under section 50 shall be served on the creditor or his pleader, or may be sent by post, by registered letter.

(5) 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, may be sent by post, registered.

(6) Notice of the date of hearing of an application for discharge under section 41 (1) shall be published in the local Official Gazette, and may also be published in such local newspaper or newspapers as the Court thinks fit. Copies shall also be sent by post, registered, to all creditors, whether they have proved or not.

(7) Whenever a notice is sent by post in accordance with any of these rules, the receipt issued by the post office to the sender must always be filed on the record of the case, or in the case of a notice sent by the Receiver, with his proceedings in the case. Such receipts accompanied by a certificate by an officer of the Court that such notice has been duly posted shall be sufficient evidence that the notice was duly sent to the persons to whom it was addressed.

The cost of postage shall in every case be paid by the Court, on receipt of the process fees provided for under the Court Fees Act.

(8) In addition to the methods of publication prescribed in the foregoing rules, any notice or order may be punished in such other manner as the Court may direct, as for instance, by affixing copies in the Court-house or by beat of going in the village in which the insolvent resides.

Proceeding by or against Firms.

(9) 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 add also his own signature, e.g., "Brown and Co. by James Green, a partner in the said firm."

(10) Any notice of petition or other proceeding 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 in Burma or India 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.

(11) 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 of the Court in a name or style other than his own.

(12) Where a firm of debtors files 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.

(13) In cases of partnership the debtors shall submit their schedule in respect of their partnership affairs, and each debtor shall submit his schedule in respect of his separate affairs.

(14) (a) An order of adjudication made against a firm shall operate as if it were an order of adjudication made against each of the persons who at the date of the order is a partner in that firm.

(b) Subsequent proceedings shall continue in the name of the firm so far as is practicable, but applications for discharge must be made by the partners individually.

(15) The joint creditors (that is, creditors of the firm) and each set of separate creditors (that is, the creditors of each partner in respect of his separate affairs) may severally accept compositions or schemes. 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.

(16) Where proposals for compositions or schemes are made by a firm, and by the partners therein individually, the proposal 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.

(17) 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.

(18) 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 where 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 right therein.

Interim receivers. *

(18A)(a) The Court, before making, on the application of any person other than the debtor an order under section 20 of the Act, appointing an Interim Receiver of the property of the debtor or of any part thereof, shall direct the person on whose application the Interim Receiver is appointed to deposit in Court such sum not exceeding K 68 as the Court may think necessary towards the fee of the Interim Receiver as fixed by the Court, and such further sum as the Court thinks fit for the expenses which may be incurred by him.

(b) If the sums deposited under sub-rule (a) shall prove to be insufficient, the person on whose application the order has been made shall from time to time deposit in Court such additional sum as the Court may, on the application of the Interim Receiver, from time to time direct, and such sums shall be deposited within 24 hours after the making of the order therefor.

If such additional sums shall not be so deposited, the

* High Court Notification No. 14 (General), dated the 1st December 1927, as amended by High Court Notification No. 7 (General), dated the 11th June 1930.

order appointing the Interim Receiver may be discharged by the Court.

(c) If an order appointing an Interim Receiver is followed by an order of adjudication, the deposits made by the person on whose application such Interim Receiver was appointed shall be repaid to him (except and in so far as such deposits may be required by reason of insufficiency of assets for the payment of the costs, charges and expenses incurred by the Interim Receiver) out of the proceeds, of the estate.

Receivers.

(19) 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 who should be supplied with a copy of each Insolvency petition in regard to which he is appointed Receiver and also a copy of the Court schedule of creditors and debts when such a schedule has been framed under section 33 of the Act.

(20) (a) 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 realized, after deducting any sums paid to the secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividends.

(b) When a Receiver realizes the 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 creditor.

(21) 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. The cost of the audit shall be fixed by the Court and shall be paid out of the estate.

The Receiver shall also without undue delay deposit in the Treasury as Civil Court Deposits all money which he shall receive ex-

cept such amount as the Court may allow him to retain in his hands for emergent or contingent expenditure.

(22) 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 up to date. and shall be entitled to such copy on payment of the charges laid down in High Court Notification No. 9 (General), dated the 14th June 1923.

(23) 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 seven day's notice to the debtor and to every creditor of the time and place appointed for each meeting. Such notice may be sent by post, registered.

Proof of debts.

(24) If 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 person on behalf of all such creditors. Such proof shall be in Form No. 13 in the Appendix.

Dividends.

(25) The amount of any dividend may, at the request and risk of creditor, be transmitted to him by post.

Summary Administration.

(26) 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 proceedings in a local paper.
- (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 17 in the Appendix.

- (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.

Cost.

(27) All proceedings under the Act down to and including the making of an order of adjudication shall be in the first instance at the cost of the party prosecuting the same, but when an order of adjudication has been made, the petitioning creditor shall be allowed his costs out of the estate.

(28) 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.

Forms.

(29) The Forms annexed to these rules, with such variations as circumstances may require, shall be used for the matters to which they severally relate.

Explanatory Notes.

1. It will be noticed that the rules in the foregoing paragraph provide, amongst other things, for the service of various notices by post. In connection with this matter the attention of Judges is invited to the provisions of section 13 (1) (d) of the Act. It is important that adequate addresses should always be as far as possible insisted on.

2. Under section 59 (a) and (g) of the Act, Receiver may sell or mortgage the land of an insolvent and, where no Receiver has been appointed, under section 58 Courts have all the rights of, and may exercise all the powers conferred on, a Receiver under the Act. Transfer documents must be executed as required by law. Intimation of such sales and mortgages should be given to the officer, in the circumstances, and in the manner prescribed in Order XX, Rules 21-23, and in Order XXI, Rule 104, regarding the communication of decrees to the Land Records Department.

3. On the day fixed for hearing an insolvency petition the Court is bound to examine the debtor, if he is present, as to his conduct, etc. [section 24(2)]. The words "that for any sufficient cause " in sub-section 1 of section 25 of the Act are governed by the words "satisfied by the debtor " in that sub-section. A Court exercising jurisdiction under the Act has power to reject or dismiss a petition by a debtor for adjudication as an insolvent, if it considers that such petition is an abuse of the process of the Court, but nothing short of obvious fraud would render an insolvent liable to have his petition reject on the ground of such abuse (6 L.B.R., 146).

4. The examination of a debtor under section 24 of the Act should be regarded as if it were the public examination of an insolvent under section 27, Rangoon Insolvency Act, that is to say, as a means of discovering as much as can be discovered at the time about the debtor's property and his conduct and dealings. On passing the adjudication order the Court may fix a date for a further examination of the debtor under section 22 of the Act. The date should be after a period sufficient to give the creditors ample time to investigate the truth of the debtor's statements on his first examination, and if they desire to do so, to prepare charges against him of offences punishable under section 69, or to make any representations to the Court against granting him an absolute order of discharge when the debtor applies for such an order (6 L.B.R., 146).

(FORM No. 1)

Debtor's Petition.

[Section 13 (1), Burma Insolvency Act.]

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19

(a) Insert name and address and description of debtor.

(b) State name of Court and particulars of decree in respect of which the order of detention has been made by

1; (a) . . . ordinarily residing at, or "carrying on business at," or "personally working for gain at," or "in custody at " being unable to pay my debts, hereby petition that I may be adjudged an insolvent in consequence of the order of (b),

(d) State if such petition has been filed but dismissed, the reason for such dismissal or, as the case may be, following the terms of section 13 (1) clause f(ii).

I have not on any previous occasion filed a petition to be adjudged an insolvent, or (d)

Verification clause as in complaints.

SCHEDULES A- (DEBTS)								
Name of Creditor	Residence of Creditor.	Amount of debt.	Nature of debt.		Security		Re- marks.	
					Na- ture. (5)	Amo unt (6)		
(1)	(2)	(3)	(4)		(5)	(6)	(7)	
			K	P		K	P	

Column 5. - In this column state the nature of property, whether land, house, gold, etc., and the nature of the security, whether deposit, pledge without possession, pledge with possession, mortgage, deposit of title-deeds, etc.

SCHEDULE B - (ASSETS)**(1) Moveable and Immoveable Property.**

Description of property	Place where situated	In whose possession	In the case of Land.		Value of property.	If Mortgaged, state.		Remarks
			Name of Kwin and holding No.	Area		Name and residence of mortgagee.	Amount of mortgage.	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
			K	P		K	P	

Column 9. - In the remarks column state if petitioner is only part owner of the property, and, if so, who the other owners are, and what his share in the property is.

(2) Debts owing to Petitioner.

Name of Debtor	Residence of Debtor	Nature of Debt	Amount of Debt		When contracted	Good, bad, or doubtful	Security		Remarks
							Nature	Amount	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(9)
			K	P			K	P	

Column 3. - In this column enter particulars as in column 4 of Schedule A.

(FORM NO. 2 .)

No. in Bailitt' Register.

Notice to Creditors of the Date of Hearing of an Insolvency Petition.
(Section 19, Burma Insolvency Act.)

IN THE DISTRICT COURT OF

MISCELLANEOUS NO OF 19
In the matter of

To

WHEREAS (a)

(a) Here insert name, description and address.

has applied to this Court, by a petition dated 19 , to be declared an insolvent under the Burma Insolvency Act and your name appears in the list of creditors filed by the aforesaid debtor : this is to give you notice that the Court has fixed the . . . day of . . . 19 . . . for the hearing of the aforesaid petition and the examination of the debtor. If you desire to be represented in the matter, you should attend in person or by duly instructed pleader.

The particulars of the debt alleged in the petition to be due to you are as detailed below.

Given under my hand and the seal of the Court this day of 19

Jadge.

PARTICULARS OF DEBT.

(FORM NO. 3 .)

Bond under Section 21 (1) of the Burma Insolvency Act.

IN THE DISTRICT COURT OF

MISCELLANEOUS NO OF 19

KNOW ALL MEN by these presents that we

son(s) of residing at and son(s) of residing at are jointy and severally bound unto Judge of the District Court in K to be paid to the said or to his succeessor in office or to the assigns of the judge of the said District Court for the time being for which **pay**ment to be made, we bind ourselves and each of us in the whole our and each of our heirs, executors, and administrators, jointly and severally by these presents.

(a) Here
enter name,
description
and address
of debtor.

WHEREAS (a)

has been ordered under section 21 (1) of the Burma Insolvency Act,
to give reasonable security for his appearance until final orders are
made upon the insolvency petition filed by him
his creditors and
Whereas and have consented to
be sureties for the said

Now the condition of the above obligation is such that if the
said shall appear before the Court whenever
called upon by it to do so, than this obligation shall be void and of no
effect, otherwise, the same shall remain in full for and effect.

IN WITNESS whereof we have hereunto set our hands this . . .

Sureties to day of 19 .

sign on the
right side of
line.

Witnesses to
sign on the
left side and
to give their
description
and addre-
sses.

Signed by -----

in the presence of-----

(FORM NO. 4.)

Warrant of Committal of Debtor in Insolvency Proceedings.

[Section 21 (1), Burma Insolvency Act.]

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19

Applicant. } .v { Respond-
ent.

To

THE SUPERINTENDENT OF THE JAIL AT

WHEREAS, son of residing at has
been ordered to give security for his appearance until final orders are
passed on the insolvency petition filed by him
his creditors and has failed
to do so.

These are to directy you to detain the said in custody until the further orders of this Court.

Given under my hand and the seal of the Court this day of 19

Judge.

(FORM NO. 5.)

Order of Adjudication.

(Section 27, Burma Insolvency Act.)

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

In the matter of

(a) Here in-
sert name, de-
scription
and address of
debtor.

(b) Here insert
" the Official
Receiver" or
"the debtor
himself" or "A.
B. . . . a credi-
tor."

Pursuant to a petition, dated the against (a).
.. and on the application of (b). and on reading and
hearing it is ordered that the debtor be, and the said debtor
is hereby, adjudged insolvent. And it is further ordered that the said
debtor do apply for his discharge within days from this date.
months

The Court will proceed to frame a schedule of creditiors and
debts by 19 and proof of debts which it is desired to
have included in the schedule should reach the Court seven days at
least before that date, provided that application for entry of a debt in
the schedule may be made at any time before the discharge of the
insolvent. A debt may be proved by delivering or sending by post in
a registered letter to the Court an affidavit verifying the debt. The
affidavit must contain or refer to a statement of account showing the
particulars of the debt and must specify the voucher; (if any) by which
the debt can be substantiated.

Given under my hand and the seal of the Court this. day
of 19 .

Judge.

(FORM NO. 6.)

No. in Bailiff's Register.

Notice of Application by Unscheduled Creditor.

[Section 33 (3), Burma Insolvency Act.]

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

In the matter of an insolvent.

To

(a) Here enter name,
description
and address.

WHEREAS (a)

who claims to be a creditor of (a). for whose adjudication as an insolvent a petition was filed in this Court on the day of 19, has tendered proof of the debt due to him by the said and has applied, to this Court for an order directing his name to be inserted in the schedule as a creditor for such debt : This is to give you notice that the said application will be heard in this Court on the day of 19, when you should appear personally or by Pleader, if you desire to object to it.

Given under my hand and the seal of the Court this day of 19

Judge

(FORM NO. 7.)

Order Annulling Adjudication.

(Section 35, 36, 39, or 43, Burma Insolvency Act.)

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

In the matter of an insolvent.

(a) Here enter name,
description
and address

On the application of (a)., and on reading and hearing is ordered that the order of adjudication dated against of, be and the same is hereby annulled, ...

Given under my hand and the seal of the Court this day of 19

Judge.

(FORM NO. 8.)

Notice to creditors of the date of consideration of a composition or scheme of arrangement.

[Section 38 (1), Burma Insolvency Act.]

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19

Take notice that the Court has fixed the day of 19 for the the consideration of a composition (or scheme of arrangement) submitted by A.B., the debtor in the above insolvency petition. No creditor who has not proved his debt before the aforesaid date will be permitted to vote on the consideration on the above matter. If you desire to be represented at the abovementioned hearing, you should be present in person or by duly instructed pleader with your proofs.

Judge

(FORM NO. 9.)

List of creditors for use at meeting held for consideration of composition or scheme.

[Section 38 (2), Burma Insolvency Act.]

IN THE DISTRICT COURT OF

- MISCELLANEOUS NO. OF 19 .

Meeting held at this day of 19

No	Name of all creditors whose proofs have been admitted	Here state as to each creditor, whether he voted, and, if so, whether personally or by pleader	Amount of assets		Amount of admitted proof	
			K	P	K	P
		Total.				

Required number of majority

Required value, K

(FORM NO. 10.)

Notice to creditors of application for discharge.

[Section 41 (1), Burma Insolvency Act.]

IN THE DISTRICT COURT OF

(a) Here enter name, description and address.

MISCELLANEOUS NO. OF 19 .

In the matter of (a). insolvent.

TAKE notice that the abovenamed insolvent has applied to the Court for his discharge, and that the Court has fixed the day of 19 , ... at o'clock for hearing the application.

Given under my hand and the seal of the Court this day of 19

Judge,

NOTE. - The provisions of section 42 (1) of the Act are on the reverse.

(Reverse.)

[Section 42 (1), Burma Insolvency Act.]

THE Court shall refuse to grant an absolute order of discharge under section 41 on proof of any of the following facts, namely :-

- (a) that the insolvent's assets are not of a value equal to fifty pyas in the kyat on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to fifty pyas in the kyat on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held

responsible ;

- (b) that the insolvent has omitted to keep such books of accounts as are usual and proper in the business carried on by him and has sufficiently disclosed his business transactions and financial position within the three years immediately preceding his insolvency ;
- (c) that the insolvent has continued to trade after knowing himself to be insolvent ;
- (d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it ;
- (e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities ;
- (f) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs ;
- (g) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors ;
- (h) that the insolvent has, on any previous occasion, been adjudged an insolvent or made a composition or arrangement with his creditors ;
- (i) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraudulent breach of trust.

(FORM NO. 11.)

Order of discharge subject to conditions as to earnings after-acquired property and income.

[Section 41 (2) (c), Burma Insolvency Act.]

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

In the matter of

(1) Here On the application of (1)
enter name, ... adjudged insolvent on the
description day of 19, and upon taking into consideration the
and address; report of the Official Receiver (or Receiver) as to the insolvent's
conduct and affairs and hearing and creditors ;

(2) (a) be dis- It is ordered that the insolvent (2)
charged forth-
with or After setting aside out of the insolvent's earnings, after-acquired
(b) be dis- property, and income, the yearly sum of K for the support of
charged on the; himself and his family, the insolvent shall pay the surplus (3) if any,
or
(c) be dis- of such earnings, after -
charged sub- acquired property, and income to the Court of Official Receiver (or
ject to the fol- Receiver) for distribution among the creditors in the insolvency. An
lowing condi- account shall, on the first day of January in every year, or within
tions as to his fourteen days thereafter, be filed in these proceedings by the insolvent,
future earn- setting forth a statement of his receipts from earnings, after-acquired
ings, after-ac- property, and income during the year immediately preceding the said
quired prop- date, and the surplus payable under this order shall be paid by the
erty, and in insolvent into Court or to the Official Receiver (or Receiver) within
come. fourteen days of the filing of the said account.

(3) or such
portion of the
surplus as the
Court may de-
termine.

Given under my hand and the seal of the Court this
day of 19 . . .

Judge

(FORM NO. 12.)

Proof of debt.

[Section 49, Burma Insolvency Act.]

General Form.

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

(a) Here insert
number given
in the notice.In the matter of No. (a)
of 19(b) Address in
full.

I, ... of (b) make oath and say (or solemnly and

(c) State
consideration
and specify

sincerely affirm and declare) :-

the vouchers
(if any) in
support of the
claim.

1. That the said were at the date of the petition, viz., the
was
 day of 19, and still is justly and truly indebted to
are
 me in the sum of K for (c) as shown by the
 account endorsed hereon (or the following account, viz.,) for
 which sum, or any part thereof, I say that I have not nor hath any
 person by my order to my knowledge or belief for my use had or
 received any manner of satisfaction or security whatsoever save and
 except the following (d) :-

(d) Here enter
details of
securitiers,
bills, or the
like.

Admitted to vote for K Sworn at
 . . this day of before me.

*Deponent's signature.**Commissioner.**Judge or Official Receiver.*

(FORM NO. 13.)

Proof of debt of workmen.

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

(a) Full
name of
deponent.I (a) of (b) make oath and say (or solemnly and
sincerely affirm and declare) :-(b) Fill in
address of
deponent,
stating

1. That (c) was at the date of the adjudication,
 viz, the day of 19 , and still am justly and truly indebted to
is

whether he is the debtor or the foreman, etc., of the debtor, or other person on behalf of the workmen and others employed by the debtor.

(c) "I" or "the said ."

(d) "My employ" or "the employ of the above named debtor."

(e) "Me" or "the above named debtor"

the serveral persons whose names, addresses and descriptions appear in the schedule endorsed hereon in sums severally set out against their names in the sixth column of such schedule for wages due to them respectively as workmen or others in (d) in respect of services rendered by them respectively to (e) during such periods before the date of the receiving order as are set out against their respective names in the fifth column of such schedule, for which said sums, or any part thereof, I say that thay have not nor hath any of them had or received any manner of satisfaction or security whatsoever.

Admitted to vote for K Sworn at

. . . this day of before me.

Deponent's signature.

Judger or Official Receiver *Commissioner.*

(FORM NO. 14.)

Order appointing a receiver

(Section 56, Burma Insolvency Act.)

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

In the matter of

(a) Here enter name, description and address of the insolvent.

WHEREAS (a) was adjudicated an insolvent by order of this Court, dated 19 . ., and it appears to the Court that the appointment of a Receiver for the property of the insolvent is necessary.

It is ordered that a receiving order be made against the insolvent and a receiving order is hereby made against the insolvent and of

(or the Official Receiver) is hereby constituted Receiver of the property of the said insolvent.

And it is further ordered that the said Receiver (not being the Official Receiver) do give security to the extent of and that his remuneration be fixed at

Given under my hand and the seal of the Court this
..... day of 19 .

Judge

(FORM NO. 15.)

*Notice to persons claiming to be creditors of intention to declare
final dividend.*

(Section 64, Burma Insolvency Act.)

IN THE DISTRICT COURT OF

MISCELLANEOUS NO OF 19 .

TAKE Notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the Court on or before the day of 19 , or such later day as the Court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this day 19 Receiver.

(Address.)

To

X. Y .

(FORM NO. 16.)

Warrant of committal of debtor in insolvency proceedings.

(Section 69, Burma Insolvency Act.)

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

To

THE SUPERINTENDENT OF THE JAIL AT

(a) Here enter name, description and address. (b) Here enter the substance of (a), (b) or (c). as the case may be, of section 69

WHEREAS a petition has been presented to this Court that (1)

..... may be adjudged an insolvent :

AND WHEREAS the said has been found upon inquiry duly made to have (2) and has been sentenced by this Court to simple imprisonment for the term of

YOU ARE HEREBY directed to receive the said into your custody, together with this warrant, and carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court this day of 19 .

Judge

(FORM NO. 17.)

Summary administration - Notice to creditors.

(Section 74, Burma Insolvency Act.)

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

(a) Here enter name, description and address of debtor.

In the matter of (a)

Take notice that on the day of 19 . the abovenamed debtor presented a petition to this Court praying to be adjudicated an insolvent, and that on the day of 19 the Court being satisfied that the property of the debtor is not likely to exceed K 500, directed that the debtor's estate be administered in a summary manner and appointed the day of 19 for the further hearing of the said petition and the examination of the said debtor.

Also take notice that the Court may on the aforesaid date then and there proceed to adjudication and distribution of the assets of the aforesaid debtor. It will be open to you to appear and give evidence on that date. Proof of any claim you desire to make must be lodged in Court on or before that date.

Given under my hand and the seal of the Court this
 . day of 19 .

Judge.

(FORM NO. 18 .)

Notice to show cause why charge should not be framed.

(Section 70, Burma Insolvency Act.)

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

In the matter of insolvent.

To

THE INSOLVENT ABOVENAMED.

WHEREAS upon the report of the Receiver (or the representation of

(a) Here
 set out the
 substance of
 the offence or
 offences in
 the words of
 section 69 of
 the Act spe-
 cifying the
 same, or as
 near thereto
 as circumst-
 ances admit

of

a creditor), it has been made to appear to the Court that there is rea-
 sonable ground to believe that you have committed the following
 offence or offences, namely, (a)

You are hereby required to appear before this Court on the . . .
 . day of 19 . at 11 A.M. in the forenoon, to show cause, if
 any you have , why a charge (or charges) should not be framed
 against you of having committed the offence (or offences) aforesaid.

Given under my hand and the seal of the Court this
 day of 19 .

Judge.

(FORM NO. 19 .)

Warrant against debtor about to abscond, etc.

[Section 21 (3), Burma Insolvency Act.]

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

(a) Here enter name, description and address of debtor.

In the matter of (a) To

THE BAILIFF OF COURT, AND

THE SUPERINTENDENT
OFFICER-IN-CHARGE OF THE JAIL AT

WHEREAS it hath been to the satisfaction of the Court that there is probable reason for believing that the abovenamed debtor with intent to defeat or delay his creditors or to avoid the process of the Court (b)

(b) Specify the facts in the words of the proviso (i) or (ii) of section 21.

These are therefore to require you the said Bailiff to take the said (a)

and to deliver him to the Superintendent
Officer-in-charge of the jail
at and you the said Superintendent
Officer-in-charge of the said jail to receive
the said and him safely to keep
in the said prison until such time as this Court may order.

Given under my hand and the seal of the Court this day
of 19 .

Judge.

(FORM NO. 20 .)

Warrant of Arrest

(Section 21 (3), Burma Insolvency Act.)

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

(a) Here enter name, description and address of debtor.

In the matter of (a) To

THE BAILIFF OF THE COURT

(b) Here enter name, of the applicant.

WHEREAS on the application of (b) it hath been made to appear to the satisfaction of the Court that there is reason for believing that the abovenamed debtor (c)

(c) specify
the facts in
the words of
section 32.

These are to command you to arrest the said debtor and to bring him before this Court with all convenient speed.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day and manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court this day of
19

Judge.

(FORM NO. 21.)

Warrant of Arrest for Recommitment under Section 23 (2).

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19 .

In the matter of

To

THE BAILAFF OF THE COURT

WHEREAS the abovenamed debtor was released from custody under an order of this Court, dated the day of 19 . And whereas by order, dated the day of 19 , this Court has ordered the said to be arrested and recommitted to his former custody pursuant to section 23 (2) of the Burma Insolvency Act. These are to command you to arrest the said and to bring him before the Court with all convenient speed.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court this day
of 19 .

Judge.

(FORM NO. 22.)

Warrant of Recommitment of Insolvent under Section 23 (2).

IN THE DISTRICT COURT OF

(a) Full
name of
debtor.

MISCELLANEOUS NO. OF 19

In the matter of (a)

To

SUPERINTENDENT OF THE JAIL AT

WHEREAS the abovenamed debtor who was imprisoned under a warrant (b) was released from custody by order of this Court, dated the day of 19 , pursuant to the provisions of the Burma Insolvency Act. And whereas the order of adjudication made against the said debtor having been annulled, this Court did by order, dated the day of 19 , order the said debtor to be recommitted to his former custody under section 23 (2) of the said Act.

(b) Give
full parti-
culars.

These are to command you to receive the said (a) back into your custody in the Civil prison and there to keep him according to the tenor of the warrant aforesaid. And you, the Superintendent of the said jail, will take note that upon receipt of the said (a) into your custody under this recommitment all processes which were in force against the person of the said (a) at the time of such release as aforesaid shall be deemed to be still in force against him as if such order of release had not been made.

Given under my hand and the seal of the Court this day of 19

Judge.

Note :- Subsistence allowance of prisoner for days at the rate of K 15 per mensem sent herewith, K

(FORM NO. 23.)

Protection Order.

[Section 31 (1), Burma Insolvency Act.]

IN THE DISTRICT COURT OF

MISCELLANEOUS NO. OF 19

In the matter of

insolvent.

Ex-parte-

UPON reading the application of the insolvent abovenamed
praying for an order for his protection from arrest and upon hearing
this day for the insolvent, and for the creditors.

(a) Full name.

* Where

schedule is not
filed and the
other applies
to any speci-
fied debts add
here

"following"

and specify
the debts,

omitting

"entered, etc."

(b) Enter

full name,

description

and address

of creditor.

It is ordered that the insolvent (a)

be and he is hereby granted protection from arrest and detention in
custody until the final disposal of the matter of his insolvency unless
in the meantime this order shall be revoked, and that such protection
shall commence and take effect from the date hereof, and shall be in
respect of the debts and liabilities * entered in the insolvent's sched-
ule with the exception of the debts due to (b)

Given under my hand and the seal Court this day of

..... 19

Judge.

* Notification No. 8 (General), dated the 4th March 1940.

APPENDIX II .

RULES UNDER THE GUARDIANS AND WARDS ACT.

The Hight Court, Rangoon * has made the following rules under section 50 of the Guardians and Wards Act :-

1. In these rules except where the context requires or declares
Definitions. another meaning :
 - (a) 'Judge' means and includes a Judge of the Hight Court, Rangoon or a Judge of a District Court subordinate to that Court.
 - (b) 'Registrar' means the Registrar of the High Court, Rangoon, Original Side, and includes the Deputy Registrars on the Original Side of the said Hight Court.
2. All proceedings under the Act shall be entitled in the
Title of proceedings. matter of the Act and in the matter of the minor.
3. An application by any person, other than the Collector,
Application for ap- for the appointment of a guardian, or for a
pointment of guard- declaration that a person is the guardian of a
ian. minor shall be by original petition.
4. The application shall, in addition to the particular required
Contents of appli- by section 10 of the Act, state whether the
cation. minor is entitled to any property absolutely, or subject to the rights or interests of any other person, and whether any property is subject to any, and what, incumbrance ; and shall specify all persons of the same degree of relationship as, or of nearer degree than the proposed guardian, and where a female is proposed as guardian, the nearest male relation of the minor.

* Notification No. 8 (General), dated the 4th March 1940.

5. Where the father of the minor is living, and is not proposed as guardian, the application shall also state any facts relied on as showing that he is unfit to act as guardian of the minor, or that he consents to the application.

Where father of
minor is living.

6. Where it is proposed to deal with any property of the minor in manner mentioned in section 29 of the Act, the grounds of the application, and the relief prayed, shall be stated shortly in the original petition, and it shall not be necessary to present a separate petition or application.

Where property
of minor is pro-
posed to be dealt
with.

7. The declaration of the willingness of the proposed guardian to act may be written at the foot of, or annexed to, or exhibited with, the petition.

Declaration of
willingness of pro-
posed guardian.

8. Notice of the application in the form prescribed (O. S. Civil 116) shall be issued and served in manner prescribed for summons to a defendant.

Notice of and setting
down application

The Judge or Registrar may also direct the petitioner to publish the notice in such newspaper or newspapers as he thinks fit, and shall direct such publication in any case in which the petitioner is the Collector, or is not a relation of the minor.

9. Unless the Judge otherwise orders, a person appointed or declared to be guardian of the property of the minor shall give security, in the bond of himself (From ^{O. S.} Civil 117) and one or more sureties for the amount or value of the moveable property, and of twice the amount of the annual rents, profits or other income of the moveable and immoveable property, to be received or accounted for by the guardian : and shall furnish the statement of the property and debts mentioned in sub-section (b) of section 34 of the Act, and shall pass his account once in every six months.

Security by
guardian.

Statement of pro-
perty and passing
accounts.

10. If the security mentioned in Rule 9 be furnished by the guardian by his executing a Bond with a surety or sureties (including in the latter term a Guarantee Society) the surety or sureties shall be entitled, by an application, to bring to the notice of the Court any act, omission or neglect of any duty cast on him by law on the part of the guardian or any other circumstances which would entitle the surety or sureties to be discharged from the obligation created by such Bond and the Court may thereupon make such order and on such terms as it may think fit. Such application may be made by petition to the Judge who deals with miscellaneous matters.

11. The surety or sureties mentioned in Rule 10 shall be entitled to notice of any application to the Court on the part of the guardian or any other party interested, relating to any property in the management or under the control of the guardian which may affect the risk undertaken by the surety or sureties under the Security Bond furnished by the guardians and the Court upon hearing the said surety or sureties may make such order as to his or their costs of appearance on such application, as to it may seem fit. No order passed on any such application shall, however, be vitiated by any irregularity in or failure to effect service of the notice herein mentioned.

12. When the person appointed a guardian of the person and/
 Consequence of non- or property of a minor on giving security fails
 completion of Security. to complete the security required to be furnished by him within three months from the date of the order requiring the security to be given unless the time for furnishing security has been extended, the petition for the appointment of such guardian as aforesaid may be taken off the file; provided that notice has been given by its inclusion in one of the Registrar's lists. An endorsement to the effect that it has been taken of the file shall be signed by a Registrar under and by virtue of this rule and without further order.

13. At the hearing, the Judge may determine the amount to be allowed for the maintenance and education of the minor, and the amount, if any to be allowed to the guardian as his remuneration, and may also give any special direction as to the powers to be exercised by the guardian.

14. Where any person is entitled to maintenance out of the property, or to reside in any house of the minor, the judge may fix the amount to be paid to such person for maintenance, or in respect of maintenance and residence, or give such directions with respect thereto as he thinks fit.

15. An application for leave to deal with immoveable property of a minor by way of sale, mortgage, lease, or otherwise, shall be made by a verified petition stating concisely the substance of the order prayed for : and shall be supported by the affidavit of some disinterested and independent person, stating what, in his opinion, is the value of the property proposed to be dealt with and the best manner of disposing thereof in the interest of the minor and also by the affidavit of some person, acquainted with the circumstances of the minor, showing the necessity or advantage of the said disposition.

If leave to sell is granted, the sale shall, unless the Court otherwise orders, be made by public auction with the sanction of the Court : and the sale shall be conducted in manner prescribed by rules by the Official Referee.

If a particular sale or other disposition of property is authorized, and unless the Court otherwise orders, the proceeds realized, by such sale or disposition shall be paid into Court, and the deed of assignment, or other document required to carry out the transaction shall be brought into Court, and shall be settled and approved by the Registrar.

16. An application for the discharge or removal of a guardian appointed or declared by the Judge shall be made by petition. Except where the minor has attained his full age, the application shall also pray for the appointment of a guardian in place of the guardian to be discharged or removed. Notice of the application shall be given to all parties on whom notice issued on the original petition, and to such other persons as the Judge or a Registrar may think fit.

17. Unless otherwise directed, a guardian shall not be discharged from his liabilities until he has filed and passed his accounts, and has paid, into Court or as otherwise ordered, any balance which may be found to be due from him.

18. All persons to whom notice of the original petition for the appointment or declaration of a guardian was assued may, at any time during the minority of the minor, and without obtaining an order for this purpose, inspect and take copies of the said statement and accounts : and any person interested in the person and property of the minor may, at any time, apply by petition supported by an affidavit showing the nature of his interest, and the purpose for which the same is required, for leave to inspect and take copies of the said statement and accounts.

19. Monies belonging towards shall, unless otherwise ordered, be invested in Government securities or in such other manner as a Judge may direct.

20. An allowance may be granted to a guardian in respect of any special work or service to be performed by him, other than work or service in connection with the custody or care of the person, or the general control and management of the property of the minor, and shall not exceed in amount the remuneration usually paid for the said work or service : and except as aforesaid, no remuneration shall be allowed to a guardian.

21. The costs of any application with respect to the person or
 Costs property of a minor may, where the applica-
 tion is for his benefit, be ordered to be paid
 out of the income of the property, or where
 that is insufficient, out of capital monies, or monies realized by sale
 or mortgage of any property of the minor authorized by a Judge for
 this purpose.

APPENDIX III

FORMS UNDER THE BURMA MERCHANT SHIPPING ACT.
NOTICE OF INVESTIGATION.

To
of or belonging to the
Ship of

I hereby give you notice that the President of the Union has ordered a formal investigation into the circumstances attending the (stranding and loss of the Steam Ship " " of at or near on or about the) and that subjoined hereto is a copy of a statement of the case upon which the said investigation has been ordered. I further give you notice to produce to the Court (your Certificate of Competency, the Log Books of the Vessel, and) any (other) documents relevant to this case which may be in your possession.

I have further to give you notice that, on the information at present obtained by the President of the Union the questions annexed hereto are those upon which it appears desirable, and upon which he proposes to take the opinion of the Court ; but these questions will be subject to alteration, addition, omission or amendment by the representative of the President of the Union at the investigation after the witnesses called by him have been examined.

Dated this day of

Principal Officer, Mercantile Marine Department,
----- *District.*

The ----- Ship ----- of the Port of ----
----- Official No. -----

Statement of Case.

The following is a statement of the case on which an investigation is ordered :-

The above-named Ship left ----- for -----
on the ----- day of ----- 19 , with a crew of -----
----- hands all told, ----- passengers and about -----
tons of ----- cargo.

On ----- the ----- day of ----- at -----
 m, the weather being ----- the wind blowing -----
 from ----- with the sea ----- and the course being
 ----- the vessel was under ----- making
 about -----knots.

(*Brief account of casually.*)

(Sd.)

Principal Officer, Mercantile Marine Department,
 -----*District.*

----- 19

**Specimen sets of questions to be framed for the consideration
 of a Court of formal investigation**

N. B,- The actual questions to be put to the Court will, of course,
 depend upon the circumstances of each case.

Loss.

1. What was the cost of the S.S ----- to her
 owners ?
2. What was the ship's value when she last left -----?
3. What insurances were effected upon and in connection
 with the ship ?
4. When the vessel left -----on the -----:-
 - (a) Were deadlights fitted to the side scuttles as required
 by regulations and, if so, were they efficient ? Were the ventilators to
 the holds of such size, material, and type, as to ensure safety ?
 - (b) Was she in good and seaworthy condition as re-
 gards hull and equipment ?
 - (c) Was she properly supplied with boats, life-saving
 appliances and distress signals ?

(d) What was the amount and description of cargo carried ? Was it properly stowed and secured from shifting ?

(e) Were the hatchways properly covered and adequately protected and secured ?

(f) Was the vessel provided with adequate means for quickly freeing the decks of any water shipped thereon ?

(g) Was the vessel in proper trim and has she the proper freeboard for the intended voyage ?

5. Was the ship so loaded, on her last voyage, as to ensure safe stability ?

6. Was the form of the S.S ----- such as to ensure safety at sea with the freeboard assigned for the intended voyage when she was fully laden with a deadweight cargo ?

7. What is the cause of the vessel not having been heard of since she was reported as passing ----- on the -----?

8. Were means provided for closing the open ended air pipes on deck ? If not, was it possible for water shipped to get down through the air pipes into the ballast tanks ?

9. Were the pumping arrangements adequate and in good order and condition ?

10. Was the design and stability of the S.S -----such as to ensure safety at sea with the freeboard assigned when laden with a -----cargo ?

11. What were the means on board for launching the boats and were they sufficient and in good order ?

12. Did the vessel carry any cargo or bunker coal on deck ? If any, what was the amount and description of the same ?

If any, how was it stowed, and would it be likely to be a source of danger to the vessel in a seaway ?

13. Was the vessel so loaded as to ensure safety on the intended voyage ?

14. Was there any loose water in the ballast tanks ? If may, what was the amount and would it be likely to be a source of danger to the vessel in a seaway ?

15. What was the angle of keel at which the righting forces vanished ? Were the range and righting forces such as would ensure safety, when heavy seas were shipped ?

16. Was the Master supplied with such information regarding the vessel's stability as would enable him to load her so as to ensure seaworthiness ?

17. Were the ventilators as constructed and fitted of sufficient strength to ensure safety ?

18. Were the open air pipes to the tanks and bunkers likely to be a source of danger under sea conditions ?

19. Who was responsible for the safe and proper loading of the cargo ?

20. Was the cargo or any portion of it liable to alter its position in the ship at sea if precautions were not taken against shifting ?

21. In the loading of the cargo could measures have been taken to prevent it shifting ? If so, were any, and , if any , what measures taken to prevent it shifting ? Ought any such measure to have been taken ?

22. Did the vessel receive any damage during loading or at the time of leaving -----?

23. Was she provided with sufficient spare hatches, tarpaulins and wedges for securing them ? Were such hatches, tarpaulins and wedges, if any, stowed so as to be readily available if or when required ?

24. Were range and righting forces such as would ensure safety when heavy seas were shipped on one side of the vessel ?

25. Was the loss of the ----- caused or contributed to by the instability of the vessel ?

26. Was such instability (if any) brought to the knowledge of the owners, the Marine Superintendent and Master, or any of them and if so, when ?

27. In bad weather or in certain conditions of wind and sea did the vessel ship heavy water on deck and take a list ?

Loss of A New Vessel.

1. Before being handed over to her owners :-

(a) What investigation was made by the builders into the stability of the -----?

(b) Was the extent of the investigation sufficient to form a guide as to the safe loading of the ship ?

(c) What information regarding stability was supplied to the owners ?

2. (a) What was the metacentric height of the ----- when she left ----- on the -----?

(b) What was the maximum righting arm and at what angle did it occur ?

(c) Were the righting arms sufficient to provide safety at sea in the condition in which the vessel left ----- having regard to the dimensions, design and arrangement of the ship ?

(d) Was this metacentric height sufficient having regard to the type, design and loading of the vessel for the intended voyage ?

3. Between the time the vessel was first put into commission in ----- and in ----- :-

(a) What voyages did the ship make ?

(b) What was the ship's behaviour at sea on such voyages ?

(c) In bad weather or in certain conditions of wind and sea did the vessel ship heavy water on deck and take a list ?

(d) If so, did the ship readily free herself of the water shipped on deck, and if not, why not ?

(e) What was the cause of the vessel taking a list and did she readily recover the upright condition ?

(f) Were the ship and crew in danger on these occasions ?

Stranding and Total Loss.

1. On the voyage on which the vessel stranded, what were the courses set and steered, the speed of the ship and the conditions of the weather and visibility encountered from time to time and at what times, and during, what periods of time ?

(a) From midnight of the -----until the ship was abreast of the -----

(b) From that time until she was abreast of -----

(c) From that time until she was stranded -----

2. What measures (if any) were taken by the master to ascertain and verify his position on arrival abreast of the ----- and ----- and if any such measures were taken were they proper and sufficient ?

3. What was the position of the ship when she was abreast of ----- and considering the state of weather and visibility, were safe and proper courses and steered after departure from that position so as to pass the -----at a safe distance and was due and proper allowance made for possible leeway, tide and current ?

4. Whilst proceeding on the voyage after -----been passed, and considering the state of weather and visibility-

(a) Ought the master at any times or time, and if so when, to have taken observations or used the lead to determine the position of the ship ?

(b) Did the master take proper measures to ascertain and verify his position before the vessel went ashore ?

(c) If the lead was not used, was such omission justifiable ?

(d) Was the master justified in proceeding at the speeds or speed at which the vessel was navigated ?

5. What was the cause of the stranding ?

6. Was the vessel seriously damaged in consequence of the stranding and has she been lost, or abandoned ?

7. Was the stranding of the S.S -----and the serious damage (if any) which she sustained thereby caused by the wrongful act or default of the master or any other person ?

Loss of Oil Carrying Vessel.

1. What tanks were fitted into and what alterations were made in the ship by or to the orders of her last owners ? Were such tanks and other alterations well designed, constructed of suitable material, and properly fitted and secured in position ?

2. What means were provided for securing the hatchways ?
Were such means proper and sufficient ?

3. What was the amount and description of cargo carried ?
Were the cargo tanks property filled and secured from shifting ?

Stranding of a Vessel.

1. What number of compasses had the vessel, were they in good order and sufficient for the safe navigation of the vessel, and when and by whom were they last adjusted ?

2. Did the master ascertain the deviation of his compasses by observations from time to time ? Were the errors correctly ascertained and the proper corrections to the courses applied ?

3. What was the position of departure from ----- on the evening of the ----- ? Was the position correctly ascertained and verified ? Was a safe and proper course then set to pass ----- at a safe distance and thereafter steered and was due and proper allowance made for possible leeway or currents, if any ?

4. Were safe and proper alterations made in the course at or about ----- off the ----- and from time to time thereafter, and were due allowances made for leeway and currents, if any ?

5. Were all measures possible taken to ascertain and verify the position of the vessel from time to time on the ----- ?

6. Having regard to the state of the weather at and after ----
----- of the ----- should -

- (a) the speed of the vessel have been reduced ?
- (b) soundings have been taken ?
- (c) was a good and proper look-out kept ?

7. Was the vessel navigated with proper and seamanlike care?

8. Was the stranding and serious damage to the S.S -----
caused by the wrongful act or default of her master or any other person.

APPENDIX IV.

INSTRUCTIONS FOR THE SERVICE OF SUMMONS IN
CIVIL CASES OUTSIDE THE UNION OF BURMA AND FOR
THE ISSUE OF LETTERS OF REQUEST FOR THE EXAMINA-
TION OF WITNESSES.

1. SERVICE OF SUMMONS OUTSIDE THE UNION OF BURMA.

1. General,- (a) Service of summons on defendants residing out of the Union of Burma is provided for in Order V, Rules 25, 25A and 26 of the Code of Civil Procedure. Under Rule 25, where the defendant is residing outside the Union of Burma, the summons may be addressed to him at the place where he is residing, and sent to him by post. When this course is adopted, the summons should be sent by registered post with an acknowledgment paid for. An acknowledgment purporting to be signed by the person to be served or the endorsement thereon by a postal servant that the person refused the letter, is *prima facie* proof of service thereof.

Under Rule 25 A, where the defendant resides in India or Pakistan the summons may be served by registered post.

(b) Under Rule 26 (a) of Order V . where a Court has been established or continued or a Political Agent has been appointed or where under Rule 26 (b) the President of the Union has declared by notification that service by a foreign Court of any summons issued by a Court in the Union of Burma shall be deemed to be valid service, the summons may be sent to such Political Agent or Court by registered post for the purpose of being served upon the defendant, and an endorsement on the duplicate of the summons, signed by the Political Agent or by the Judge or other officer of the Court, to the effect that the summons has been served on the person named therein, is proof of service.

All processes issued for service in places outside the Union of Burma shall be accompanied by translations thereof in the Language of the country in which they are to be served.

2. Special instructions in regard to service of process in Civil cases on persons residing out of the Union of Burma are set out hereunder for information and guidance :-

The attention of all Judges is drawn to Rule 26. Order V, of the Code of Civil Procedure, where by processes in civil cases for service on person residing in foreign territories, are required to be served through the Political Agents or certain Courts. Instructions have now been received from the Ministry of Judicial Affairs that service, of such process should be affected through the Embassy concerned. In order to enable the High Court to transmit such processes to the appropriate authorities, Judges are directed that processes for service on a person or persons residing in Foreign Territories should first be submitted to the High Court.

In order to enable a person from a foreign territory to attend a Court in Burma on the date fixed Judges are directed that whenever a person residing in foreign territory is required to appear before a Court in Burma, at least four months' clear notice from the date of issue of a notice to the date on which such person is required to appear before a Court should be given.

It has been represented to the High Court that such processes could be sent by the issuing Courts by post direct to the persons concerned under the provisions of Order V, Rules 25 and 25A, of the Code of Civil Procedure. The attention of Judges is therefore drawn to the distinction between Rules 25, 25A and 26 of Order V of the said Code. In this connection it should be noted that the provisions of these three Rules, which specifically refer to summonses, apply equally to all forms of process by virtue of Rule 2 of Order XLVIII of the Code :-

Rule 25 is the general provision for service of process by post on a person who resides anywhere outside the Union of Burma, *i.e.*, in any foreign territory, and has no agent in the Union empowered to accept service. *Cf.*, paragraph 139 of the Court Manual.

Rule 25A provides that where the person to be served resides in Indian or Pakistan, the Court may, in addition to or in substitution of any other mode of service, serve the process in the manner indicated therein, *i.e.*, by registered post with acknowledgment due. *Cf.*, paragraph 142 of the Courts Manual.

Rule 26 can properly apply only where, in the foreign territory in which the person to be served resides, there is-

(a) a Political Agent appointed, or a Court has been established or continued, with power to save the process ;

or

(b) any other Court which has been notified as having power to serve the process.

With reference to the provisions of Rule 26 Courts may not be in a position to easily verify whether conditions (a) and (b) above have been fulfilled. So they may not issue process under the Rule ; but when they do issue, the above instruction will have to be followed.

Ordinarily, process for service in Indian or Pakistan should be issued by registered post with acknowledgment due under Rule 25A. For other foreign countries, the post should also be used under Rule 25, provided that there is no agent in Burma capable of accepting service.

11. COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

MINISTRY OF JUDICIAL AFFAIRS.

NOTIFICATIONS.

The 11th August 1955.

No. 305.- Whereas provisions already exist for taking the evidence of witnesses residing in the United Kingdom in relation to criminal matters in Courts in the Union of Burma for examination (4) of section 503 of the Code of Criminal Procedure, hereby directs that Commissions from Courts in the Union of Burma for examina-

tion of witnesses in the United Kingdom shall be issued, in the form annexed hereto to the President, the Lord Chief Justice and the Judges of Her Majesty's Supreme Court of the Judicature, Law Courts (Strand London W.C. 2) within the limits of whose jurisdiction the witness resides, and the said Lord Chief Justice and Judges of Her Majesty's Supreme Court may themselves examine the witness, or direct any competent Court, or authority subordinate to them to examine such witness :-

ANNEXURE.

IN THE COURT OF.....
Commission to examine witness outside the Union of Burma
Section 503 (4) of the Code of Criminal Procedure

To,

THE PRESIDENT. LORD CHIEF JUSTICE AND
 JUDGES OF HER MAJESTY'S SUPREME COURT
 OF JUDICATURE, LONDON.

WHEREAS it appears to me that the evidence of
 is necessary for the ends of justice in case No.
 (.....vs.) in the Court of
 and that such witness is residing within the limits of the jurisdiction
 of your Hon'ble Court and his attendance cannot be procured without
 an amount of unreasonable delay, expense or inconvenience, I
have the honour to request and do hereby request that for
 the reasons aforesaid and for the assistance of the said Court, you as
 the President and the Judges of the said Supreme Court, or someone
 or more of you, will be pleased to summon the said witness to attend
 at such time and place as you shall appoint before someone or more
 of you, or such other Court or authority as according to the procedure
 of your Hon'ble Court is competent to examine or cause to be exam-
 ined the said witness on oath or affirmation upon the interrogatories
 which accompany this Commission (or *viva voce*).

Any party to the proceedings may appear before you or before
 any competent Court or authority directed by you in this behalf by a
 Counsel-at-law or, if not in custody, in person, and may examine,
 cross examine, or re-examine (as the case may be) the said witness.

And I further have the honour to request that your Hon'ble Court or any competent Court or authority directed by you will be pleased to cause the answers of the said witness to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for indentification, and that your official seal (if any) or in such other way as is in accordance with the procedure of your Hon'ble Court and to return the same, together with this Commission through the Embassy or Consulate concerned to the undersigned at the earliest possible date.

Given under my hand and the seal of the Court this
day of 19 .



Judge.
 Magistrate.

No. 306- In exercise of the powers conferred by section 503 (4) of the Code of Criminal Procedure (as amended) the President of the Union of Burma prescribes the following rules for taking the evidence of witnesses in a country or place outside the Union of Burma in relation to criminal matters:-

- (1) Any District Magistrate, Court of Session or the High Court in exercising its powers to issue through proper channel a Commission for the examination of a witness residing in a country or place not within the Union of Burma under the provisions of section 503 of the Criminal Procedure Code may address to the Supreme Court of the country concerned a letter of request to appoint a Commissioner to examine the witness on oath or affirmation and to receive documents produced by or through him. In the case of a District Magistrate or a Court of Session the letter of request shall be sent through the High Court. Where the Burmese Consular Officer within whose jurisdiction the witness to be examined on commission resides is permitted by the law of the country to take evidence, a Commission may be issued through proper channel to such Consular Officer for execution.

- (2) When any such letter of request is issued to the Supreme Court of the country within whose jurisdiction the witness resides, powers shall be given to the said Court to appoint any suitable person as Commissioner for the examination of the witness and reception of documents produced by or through him.
- (3) All papers connected with the execution of the Commission shall be in the English language or accompanied by translations thereof in English.
- (4) Interrogatories, cross interrogatories and re-interrogatories shall always be sent for the execution of the Commission.
- (5) Either party may attend at the taking of the evidence before the Commissioner in person or by Pleader and may examine, cross-examine and re-examine (as the case may be) the said witness.
- (6) When it is known that neither party proposes to attend at the taking of the evidence on commission, this should be state in forwarding the letter of request.

By order,

THAN E,

*Secretary to the Govt. of the Union of Burma,
Ministry of Judicial Affairs.*

III. LETTERS OF REQUEST.

1. General.- Under section 77 of the Code of Civil Procedure a Letter of Request may be issued to examine a witness residing at any place not within the Union of Burma. It is generally possible to invite a foreign Government, through the diplomatic channels, to execute Letters of Request from Courts in the Union of Burma in civil matters, as an act of courtesy.

The general procedure is that the Court issuing the Letter of Request should use Form 8 in Appendix H of the First Schedule of the Code of Civil Procedure. The letter in this form, which should contain a concise narrative of the action of the parties thereto and the full names, description and addresses of the intended witnesses and be signed by the Judge and bear the seal of the Court, should be sent to this Court with a forwarding letter, and then this Court will ask the Ministry of Judicial Affairs, Union of Burma, to take the necessary steps to have the Letter of Request executed by the Court to which it is addressed. With the issue of the Letter of Request, the necessary fees should also be remitted to the Court concerned to ensure prompt and speedy execution. The duty of providing the necessary translation into the language of the country in which the witness is to be examined should be placed on the party asking for the Letter of Request. If the proper description of the foreign judicial authority is not known, the Letter of Request should be addressed to the Competent Judicial Authority in (name of the country concerned). It is, however, necessary that interrogatories and cross-interrogatories should be sent in every case with a Letter of Request, and also translations of the Letter of Request and of the interrogatories and cross-interrogatories and the documents accompanying it. A Letter of Request should not be issued to a Consular Officer, but only to a Court. When it is desired that evidence should be taken by a Consular Officer, a commission should be issued to him. The incorrect issue of a Letter of Request to a Consular Officer may be of some importance since a person acting as a Commissioner has no compulsory powers, but must confine himself to inviting the witness to present himself and to answer the question addressed to him. If such a witness declines to do so, the Consular Officer can only state the fact in the deposition prepared by him in compliance with the request of the Court. If, on the other hand, recourse is had to a Letter addressed to a foreign Court concerned, the latter can, if necessary, exercise its powers of compulsion. It is therefore important that this distinction between a Letter of Request and a commission should be noted.

A list of all the documents, together with a translation of the list into the language of foreign country to which the Letter of Request is issued, should in every case accompany the papers, and the Letter of Request and other documents, which should be as far as possible in chronological order, should be numbered or lettered to correspond with this list. The Letter of Request and all accompanying documents and translations should be sewn together in a parchment paper cover down the left-hand side, the ends of the tape with which they are sewn being brought out on to the front cover and the ends sealed with the seal of the Court. Where this is not done by the issuing Court it will be done by the High Court before the Letter of Request is forwarded.

It is to be noticed that in Letters of Request it is not proper to fix a day for the return of the evidence. When it is known that neither party proposes to attend at the taking of the evidence, this should be stated in the covering letter forwarding the Letter of Request, as it may avoid delay.

A Letter of Request should not be issued unless there is sufficient time for the execution to be completed before the hearing of the cause or matter in which the evidence is to be used.

The Government of India has requested that in the case of Letters of Request issued to India, the Letter of Request should not be addressed to the Chief Justice of a High Court in India, but to the Judge of the Subordinate Court within whose jurisdiction the witness to be examined resides, and that when this is not known, to the High Court concerned or to such Court as may be specified by the said High Court. These instruction should be therefore followed in the issue of all Letters of Request to be sent to India for execution.

IV. EXPENSES.

Whenever a Letter of Request for the examination of a witness is issued, the necessary expenses for serving the witness and executing the Letter of Request must be deposited by the party asking therefor before the issue thereof, and the party must further give a written undertaking to defray any further expenses incurred beyond the amount deposited. It is not possible to give any estimate of the expenses to be incurred in all cases, but the estimate should always be made on the generous side. An intimation of the amount so deposited should be given in the forwarding letter.

APPENDIX V

NOTIFICATIONS UNDER ORDER XXI, RULE 48 (1), OF
THE CODE OF CIVIL PROCEDURE.

(1) Judicial Department Notification No. 148, dated the 15th November 1923, as amended by Notifications No. 329, dated the 1st October 1934, No. 118, dated the 17th April 1935 and No. 117, dated the 29th June 1937.

In pursuance of Order XXI, Rule 48, sub-rule (1), of the rules in the First Schedule to the Code of Civil Procedure, the President is pleased to direct that notices of orders attaching the salary or allowances of Officers shown in column 1 of the Schedule hereto annexed shall be sent to the officers specified in each case in column 2 of the Schedule :-

Officers whose salary is to be attached. (1)	Officer to whom notice should be sent. (2)
1. Gazetted officers stationed in Rangoon belonging to the following departments :-	
(a) Land Revenue (including Settlement and Land Records) and General Administration.	(i) Registration. (j) Police. (k) Marine. (l) Education. (m) Ecclesiastical. (n) Medical. (o) Public Health.
(b) Excise.	
(c) Income-tax.	
	(p) Veterinary.
	The Accountant-General, Burma. Do. Do. Do. Do. Do. Do. Do.

Officers whose salary is to be attached. (1)	Officer to whom notice should be sent. (2)
(d) Political. (q) Agricultural (e) Stamps. (r) Printing. (f) Accounts. (s) Co-operative Societies. (g) Judicial. (h) Prison. (t) Colonization.	The Accountant-General, Burma. Do. Do. Do. Do.
2. Officers (excluding clerks and menials) belonging to any of the departments specified in item 1 above, and not mentioned in any other item in this list— If stationed in Rangoon If stationed outside Rangoon	The Accountant-General, Burma. The Treasury Officer of the district in which stationed. If the officer draws his pay at Rangoon the notice should be sent to the Accountant-General, Burma. Where the officer whose salary is to be attached is himself Treasury Officer, the notice should be addressed to the Deputy Commissioner of the District.
3. The following gazetted officers or classes of gazetted officers stationed outside Rangoon :- (a) All officers of the Burma Commission. (b) Judges of the rank of District and Sessions Judge or higher rank. (c) Superintendents of Jails (d) Officers of Civil Police of the rank of Assistant Superintendent or higher rank. (e) Officers of the Military Police of the rank of Assistant Commandant or Assistant Adjutant or higher rank. (f) Port Officers, the Marine Transport Officer, Mandalay; the Superintendent of Government Vessels and Launches, Upper Burma; River Surveyors and Assistant River Conservators.	The Accountant-General, Burma. Do. Do. Do. Do. Do.

Officers whose salary is to be attached. (1)	Officer to whom notice should be sent. (2)
(g) Inspectors of Schools, the Inspector of Schools and Assistant Inspectors of Schools.	The Accountant-General, Burma.
(h) Government Chaplains and Chaplains of the Additional Clergy Society	Do.
(i) Civil Surgeons	Do.
(j) Gazetted officers of the Agricultural Department.	Do.
(k) The Superintendent, Archeological Survey.	Do.
(l) Gazetted officers of the Co-operative Societies Department.	Do.
(m) Gazetted officers of the Colonization Department.	Do.
(n) The Superintendent, Cinchona Cultivation, and his Assistants.	Do.
(o) The Superintendent, Geological Survey, Burma Circle, and his Assistants.	Do.
(p) Gazetted officers of the Insein Engineering Institute.	Do.
(q) Gazetted officers of the Civil Veterinary Department.	Do.
(r) Officers of the Burma Frontier Service.	Do.
4. The Director of Publicity, Burma.	Do.
5. The Chemical Examiner to Government and his Assistants.	Do.
6. The Protector of Emigrants and Immigrants and his Assistants.	Do.
7. Inspectors of Steam Boilers and Prime Movers.	Do.

Officers whose salary is to be attached. (1)	Officer to whom notice should be sent. (2)
8. Officers under the Indian Factories Act, 1911 - If stationed in Rangoon If stationed outside Rangoon	The Accountant-General, Burma. The Treasury Officer of the district in which stationed. If the officer draws his pay at Rangoon notice should be sent to the Accountant-General, Burma.
9. Officers and establishment of the Customs Department stationed in Rangoon.	The Chief Collector of Customs.
10. Officers (excluding clerks and menials) of the Customs Department stationed outside Rangoon.	The Treasury Officer of the district in which stationed.
11. (a) Gazetted officers of the Public Works Department of the rank of and above sub-Engineers drawing pay in Rangoon or stationed in Rangoon.	The Accountant-General, Burma.
(b) Gazetted officers of the Public Works Department of the rank of and above Sub-Engineers if stationed outside Rangoon and not drawing pay at Rangoon.	The Treasury Officer of the district in which the officer draws his pay.
(c) Divisional Accountants (Public Works Department) attached to the Executive Engineer's Office.	The Executive Engineer.
12. Establishment of the Examiner, Local Fund Accounts, Burma.	The Examiner of Local Fund Accounts, Burma, Rangoon.

Officers whose salary is to be attached. (1)	Officer to whom notice should be sent. (2)
13. Subordinate Establishments, office or other, of Superintending Engineers, Public Works Department, and of the Superintending Engineer, Department of Public Health, Burma.	The Superintending Engineer concerned.
14. Subordinate Public Works Officers and office establishment of Executive Engineers including Subdivisional clerks.	The Executive Engineer.
15. Establishments of the Superintendent of Stores, Public Works Department, Rangoon and the Electrical Inspector, Burma.	Superintendent of Stores, Public Works Department, Rangoon, or the Electrical Inspector, Burma as the case may be.
16. Subordinate Public Works Officers and office establishment of the Chin Hills Independent Subdivision.	The Officer-in-charge.
17. The Chief Conservator of Forests, Burma.	The Chief Conservator of Forests, Burma. *
18. The Conservator of Forests, Hlaing Circle.	The Conservator of Forests, Hlaing Circle.*
19. The Conservator of Forests, Delta Circle.	The Conservator of Forests, Delta Circle. *
20. The Conservator of Forests, Sittaung Circle.	The Conservator of Forests, Sittuang Circle.*
21. The Conservator of Forests, Tenasserim Circle.	The Conservator of Forests, Tenasserim Circle.*
22. The Conservator of Forests, Northern Circle.	The Conservator of Forests, Northern Circle.*
23. The Conservator of Forests, Chindwin Circle.	The Conservator of Forests, Chindwin Circle.*
24. The Conservator of Forests, Central Circle.	The Conservator of Forests, Central Circle.*
25. The Conservator of Forests, Working Plans Circle.	The Conservator of Forests, Working Plans Circle.*

* Note. - The notices in the case of the Gazetted officers in the Forest Department drawing pay at the office of the Accountant-General, Burma, should be sent to the Accountant-General, Burma.

Officers whose salary is to be attached. (1)	Officer to whom notice should be sent. (2)
26. The Conservator of Forests, Utilization Circle.	The Conservator of Forests, Utilization Circle.*
27. Gazetted Officers of the Burma Forest School, Pyinmana.	The Director of the School.
28. All other forest Officers and subordinates (including Forest Engineers, Timber Assistants and European Gardener).	The Divisional Forest Officer and Silviculturist. *
29. Establishments in the Civil Secretariat.	The Under-Secretary, concerned.
30. Officers of the Chief Engineers, Buildings and Roads and Irrigation Branches.	The Chief Engineer concerned.
31. Establishment of High Court, Rangoon.	The Registrar, High Court, Rangoon.
32. Establishment of the Administrator-General, Burma.	The Administrator-General, Burma.
33. Establishment of the Financial Commissioner, Burma.	The Secretary to the Financial Commissioner.
34. Establishment of all Magistrates in Rangoon.	The District Magistrate, Rangoon.
35. Establishments of the Central and Local Stamp Depôts, Rangoon.	The Superintendent of Stamps, Rangoon.
36. Establishment of the Veterinary Adviser to the Government of Burma in Rangoon (including office establishment and Veterinary Assistant).	The Veterinary Adviser to the Government of Burma, Rangoon.

* Note. - The notices in the case of the Gazetted officers in the Forest Department drawing pay at the office of the Accountant-General, Burma, should be sent to the Accountant-General, Burma.

Officers whose salary is to be attached. (1)	Officer to whom notice should be sent. (2)
37. Establishment of the University of Rangoon.	The Registrar of the University.
38. Establishment of the University College, Rangoon.	The Principal of the College.
39. School Masters and clerks of Government English and Anglo-Vernacular Schools directly under the control of the Director of Public Instruction, Burma.	The Headmaster of the School, concerned.
40. Establishment of the - (a) Office of the Civil Surgeons, Rangoon East and West. (b) Male and Female Dispensaries, Pazundaung. (c) Kemmendine Dispensary.	(a) The Civil Surgeon Concerned. (b) The Civil Surgeon, Rangoon East. (c) The Civil Surgeon, Rangoon West.
41. Establishment of the General Hospital, Rangoon.	The Medical Superintendent, General Hospital, Rangoon.
42. Establishments of Lunatic Asylums (including office establishments, keepers, etc.).	Superintendent of Lunatic Asylums.
43. Establishment of the Dufferin Hospital, Rangoon.	The Medical Superintendent, Dufferin Hospital, Rangoon.
44. The Rangoon Pasteur Institute employees.	The Director, Pasteur Institute, Rangoon.
45. Establishment of the Government Medical School, Rangoon.	The Superintendent, Government Medical School, Rangoon.
46. Establishment of the Contagious Diseases and Plague Hospital of the Municipal Corporation of the City of Rangoon.	The Municipal Commissioner for the City of Rangoon.
47. Establishments of Commissioners of Divisions.	Commissioners of Divisions.
48. Establishments of Deputy Commissioners (including Revenue, Treasury, Judicial, Criminal, Stamp and Registration Departments, Veterinary Inspectors, Veterinary Assistants, Trade Registration and Deputy Commissioner's Local Fund Establishments).	Deputy Commissioners.

Officers whose salary is to be attached. (1)	Officer to whom notice should be sent. (2)
48A. Establishments under the control of District and Sessions Judges (including Bailiffs and Process-servers).	The District and Sessions Judge concerned.
48B. Establishments of Income-tax Department.	Income-tax Officers.
49. Land Sale and Rent Fund employees.	Deputy Commissioners.
50. Establishments of Superintendents of Excise (including office establishments, Inspectors, Deputy Inspectors and Sub-Inspectors).	Superintendents of Excise.
51. Establishment of Superintendents of Jails (including office establishment, Jailors and Jail Warders).	Superintendents of Jails.
52. Establishment of District Superintendents of Police (including office establishments and Police-force).	District Superintendents of Police.
53. Establishment of the Superintendents of the Police Supplies, Rangoon.	The Superintendent of Police supplies, Rangoon.
54. Establishments of Adjutants and Commandants of Military Police (including office establishments and Military Police-force).	The Adjutants or Commandants.
55. Establishments of Civil Surgeons (including civil dispensary establishment).	Civil Surgeons.
56. Establishment of Land Records Department (including office establishment, Inspectors, Surveyors, etc.)	Superintendents of Land Records.
57. Establishment of Settlement Department (including Inspectors, Surveyors, etc.).	Settlement Officers.

Officers whose salary is to be attached. (1)	Officer to whom notice should be sent. (2)
58. Office establishments of Deputy Inspectors of Schools and Sub-Inspectors of Schools.	Deputy Inspectors of Schools.
59. Schoolmasters of Vernacular Schools other than Government Vernacular Schools.	The Chairman of the District Board concerned.
60. Deputy Inspectors of Schools; Sub-Inspectors of Schools, Schoolmasters and clerks of Government Anglo-Vernacular, Normal and Government Vernacular Schools; Headmasters of Elementary Training classes; Government Manual Training Teachers and Teachers of Government Monastic Training Schools.	Inspector of Schools of the Circle in which they lie.
61. Non gazetted staff and establishment of the Insein Engineering Institute.	The Principal of the Institute.
62. The staff and establishments of the Saunders Weaving Institute, Mandalay (including the Principal).	The Treasury Officer, Mandalay.
63. Establishment of the Registrar, Co-operative Societies, Burma.	The Registrar, Co-operative Societies, Burma, Rangoon.
64. Establishment of the Director of Agriculture, Burma.	The Director of Agriculture, Burma, Rangoon.
65. Establishment of the Development Commissioner, Burma.	The Secretary to the Development Commissioner, Burma.
66. Employees of the Rangoon Development Trust.	The Chairman.
67. Employees of the Municipal Corporation of the City of Rangoon.	The Municipal Commissioner for the City of Rangoon.
68. Municipal employees.	President of the Municipality.

55(B) 281. In exercise of the power conferred by sub-section (2) of section 55 of the Code, the President of the Union has directed that before a warrant is issued by a Civil Court for the arrest of an employee of the offices noted below, and of a village headman, notice shall be given to the superior officer designated in column 2 of the sub-joined list for the period specified in column 3 of the list : -

Division or office to which the employee belongs. (1)	Superior officer to be advised. (2)	Period of notice. (3)
(1) * Upper and Lower Burma Division, Postal and Telegraph Department Akyab	Directors of Posts and Telecommunications.	Seven clear days.
(2) † High Court, Rangoon.	Do. Registrar, High Court, Rangoon.	Fourteen clear days. Seven days.
(3) ‡ Village Headman.	Township or Subdivisional Officer concerned.	Fourteen days.

Miscellaneous.

XXI. 26-29.
XLI. 5, 6.

282. Provisions regarding stay of execution are contained in Order XXI, Rules 26-29, which should be read with Order XLI, Rules 5 and 6.

Stay of Execution.

XXI. 97-103.

283. Provisions regarding resistance to execution are contained in Order XXI, Rules 97-103.

Resistance to Execution.

* Judicial Department Notification No. 63, dated the 5th June 1923.

† Judicial Department Notification No. 229, dated the 17th August 1933.

‡ Judicial Department Notification No. 351, dated the 11th December 1930.