T P L
STOCK VERIFIED
1995

THE

Regulations & Proclamations

OF

TRAVANCORE

Volume VII.

1105-1109 M. E.

PUBLISHED BY PERMISSION OF THE
GOVERNMENT OF TRAVANCORE.

TRIVANDRUM:
THE ANANTHA RAMA VARMA PRESS,
1934.

(All rights reserved)

FOREWORD.

This is the Seventh Volume in the well-known Series styled "The Regulations and Proclamations of Travancore" started originally by Messrs. R. Ramalinga Aiyar and N. Krishnaswamy Aiyar and continued by the former. As originally projected, the Series was to close with the issue of the Sixth Volume as may be gathered from the Preface to it. But the perennial activity of the Legislature in Travancore has been such as to compel the learned publisher to return to the Series and to perpetuate it in order to keep abreast of the legislative progress. The present Volume opens with a Royal Proclamation dated 1-9-1105 and contains in chronological order the legislative output down to the close of 1109. In addition, the Jenmi and Kudiyan Regulation as amended by Regulation XII of 1108, the Rules and Notifications thereunder, the Case Law on various Statutes since the close of the Sixth Volume, the Case Law applying to Malabar Brahmins before the enactment of the Travancore Malayala Brahmin Regulation of 1106, the Statutes on which the Case Law bears, Index of Cases, Rules under Regulation VIII of 1100 and under other Regulations and the Rules referred to in the Case Law, High Court Circulars, etc., and Government Rules and Notifications are reproduced by way of Appendices A to G.

The value and usefulness of this serial publication can hardly be exaggerated. But for such a publication, Judicial Officers and Legal Practitioners will have to keep on rummaging the pages of the Government Gazette and would never feel confident that they are on sure ground. The risk of unexpected explosions on account of something lurking in the straggling mass of information scattered about in official publications would always be present to their mind. Therefore, those concerned in the administration of law would welcome the Series as a real boon not only supplying the requisite information but also affording a sense of security by the thoroughness of the topics dealt with eliminating the chances of pitfalls. Each Regulation is published in its legislative setting made up of the Objects and Reasons, and the discussions in the Select Committees and the Legislative bodies. Thus an accurate perspective of the enactments is afforded to Lawyers and Legislators. Rules and Notifications forming as it were the light craft aiding in the operations of the Regulations are all set out in close

succession to the Regulations. The judicial pronouncements on the provisions of the Statutes are exhaustively noted under the respective provisions, not in the words of the publisher but in the words of the learned Judges themselves. On the whole, one can not conceive of anything further to satisfy the demands of those who study or apply the law. While on the Bench and at the Bar I have found the Series quite useful and reliable. The patient industry and scrupulous care brought to bear on the work are remarkable.

The Seventh Volume, I am glad to say, maintains the same level of usefulness and excellence as the previous ones. One distinguishing feature of this Volume is that it would be accompanied by a Supplement containing the remaining Rules and Notifications under the existing Regulations. If the matter intended for the Supplement is incorporated with the main Volume, it would hardly be handy on account of the bulk. The Sixth Volume, for example, suffers from such a drawback to some extent. If too bulky and unwieldy the Volumes would get damaged too soon on account of constant use. The idea of publishing a separate Supplement is a happy one.

In conclusion, I congratulate my friend Mr. Ramalinga Aiyar for the praiseworthy service he has rendered to those interested in law and to the public generally, by the publication under consideration, and hope that he would continue to add other Volumes to the Series on the same model as future Regulations come into existence.

P. K. NARAYANA PILLAI,
Retired High Court Judge,
High Court Vakil,
Member, Sri Mulam Assembly.

TRIVANDRUM,
26—3—1110.
11—11—1934.

PREFACE.

This Volume contains the Regulations and Proclamations issued since the publication of the Sixth Volume and also the Rules and Notifications thereunder. It is compiled on the lines followed in the previous Volumes.

Regulation XII of 1108 has introduced many amendments in the Jenmi and Kudiyan Regulation, V of 1071. The original Regulation with the amending provisions duly inserted therein would be a real aid in understanding the law on the subject as it now stands revised and altered. The Regulation as amended will be found in Appendix A, with notes bearing on the provisions thereof. In the previous Volumes were given the Rules of the Civil Courts' Guide under several Regulations. The omission to embody therein the Rules under Regulation VIII of 1100 has now been made good in Appendix E, in which are also noted the amendments subsequently made to the Rules under the other Regulations.

To bring the publication up-to-date, there remain the Case Law and the Rules and Notifications under the Regulations and Proclamations contained in the previous Volumes, issued subsequent to the Sixth Volume. Appendix B gives the Case Law. In view of the passing of Regulation III of 1106, the law *re* the Malabar Brahmins is also included in this Appendix, as was done in respect of the Nayar and the Eazhava Regulations. As the Rules and Notifications would occupy about 600 pages and as the Volume would get too unwieldy if incorporated herein, they are brought together separately in a "Supplement to the Regulations and Proclamations". Convenience of handling is a material consideration in publications of this kind used for almost daily reference by Courts and Offices and the Legal Profession as well.

My hearty acknowledgments are due to M. R. Ry. P. K. Narayana Pillai Avergal B. A. & B. L., Retired Judge of the High Court and Member of the Sri Mulam Assembly for the appreciative Foreword so kindly written by him.

R. RAMALINGA AIYAR,
Retired Assistant Secretary to Government.

TRIVANDRUM,
11—11—1934.

TABLE OF CONTENTS.

Year.		Subject.		Page.
1105.	Proclamation.—	The Munro Island	...	1
,,	Regulation III.—	The Census	...	36
,,	,, IV.—	Amending Regulation V of 1063	...	42
,,	,, V.—	Amending Regulation IV of 1091	...	45
1106.	,, I.—	Amending Regulation II of 1087	...	48
,,	,, II.—	Amending Regulation I of 1090	...	50
,,	,, III.—	The Travancore Malayala Brahmin	...	52
,,	,, IV.—	Food Adulteration	...	65
		Rules.		
		I. Rules under Section 20	...	81
		II. Public Analyst Rules	...	86
1107.	,, I.—	Amending Regulation II of 1091	...	87
,,	,, II.—	Amending Regulation I of 1082	...	88
,,	,, III.—	Criminal Law Amendment	...	90
,,	,, IV.—	State Aid to Industries	...	95
1108.	,, I.—	The Travancore Wrecks	...	118
,,	,, II.—	Legislative Reforms	...	125
		I. Rules.		
		I. The Legislative Rules	...	153
		II. The Sri Chitra State Council Electoral Rules	...	173
		III. The Sri Mulam Assembly Electoral Rules	...	249
		II. Standing Orders.		
		I. The Sri Chitra State Council	...	330
		II. The Sri Mulam Assembly	...	352
		III. Notifications.		
		I. Non-official Definition Rules	...	373
		II. The Legislative (Joint Committee) Rules	...	,,
		The Sri Chitra State Council.		
		III. Re: Safe custody, preservation, &c., of election papers	...	374

Year.		Subject.		Page.
1108	Regulation II.—	Legislative Reforms		
		IV. *Re*: Grant of copies of Returns of Election expenses, &c.,	...	375
		V. Instructions *re* Recording of votes by illiterates, &c.	...	376
		VI. Forms *re* Return of Election expenses, &c.	...	377
		The Sri Mulam Assembly.		
		VII. *Re*: Safe custody, preservation, &c., of election papers	...	384
		VIII. *Re*: Grant of copies of Returns of Election expenses, &c.	...	385
		IX. Instructions *re* Recording of votes by illiterates, &c.	...	,,
		X. Forms *re* Return of Election expenses, &c.	...	386
		IV. *General.*—The Sri Chitra State Council—Orders by President	...	392
		V. The Public Accounts Committee (Supplemental) Rules	...	,,
		VI. Government Proceedings *re* T. A. to Non-official members [See also Appendix G.]	...	394
1108.	Regulation III.—	Provident Insurance Societies	...	396
		I. Rules.	...	413
		II. Notification appointing Registrar of Joint Stock Companies as Registrar under the Regulation	...	443
		III. Circular for guidance of Treasury Officers and Societies	...	443
1108.	Regulation IV.—	Town-Planning	...	445
,,	,, V.—	Amending Regulation VI of 1074	...	484
,,	,, VI.—	Amending Regulation III of 1094	...	485
,,	,, VII.—	The Travancore Kshatriya	...	490
		Rules.		
		I. The Kshatriya Marriage Rules	...	513
		II. The Kshatriya Tarward (exemption and revocation) Rules	...	515

Year.			Subject.		Page.
1108	Regulation	VIII.—	Insolvency	...	519
,,	,,	IX.—	Amending Regulation IV 1095	...	565
,,	,,	X.—	Amending Regulation V of 1095	...	567

Rules.

			Re: The Willingdon Water Works Rules [Se also Appendix G.]	... 576
,,	,,	XI.—	The Travancore Muslim Succession	... 585
,,	,,	XII.—	Amending Regulation V of 1071	... 589
1109.	,,	I.—	Amending Regulation V of 1088	... 613
,,	,,	II.—	Tea Cultivation Restriction	... 614
,,	,,	III.—	The Travancore Edavagai	... 618
,,	,,	IV.—	The Travancore (Matches) Execise duty	... 633

I. Rules.

A.	Matches (Excise duty) Order			... 646
B.	Do.	Do.	Amendment	... 656
C.	Do.	Do.	Do.	... 658
D.	Do.	Do.	Do.	... ,,

II. Notifications.

(1)	Under Section 9	... 659
(2)	*Re*: Exemption from export duty in certain cases	... 660
(3)	*Re*: Issue of matches from manufactories in boxes, etc.,	... ,,
(4)	*Re*: Prohibiting sale of matches excepting in packets, etc [See also Appendix G.]	... ,,

1109.	,,	V.—	Importation of Live Stock	... 661
,,	,,	VI.—	Amending Regulation VII of 1092	... 663

Regulation VIII of 1100. Amendment of Order IX, Rule 5 (1) ... 665

Subject.		Page.
	APPENDICES.	
A.	Regulation V of 1071 as amended by Regulation XII of 1108 ...	667
	I. Rules.	
	(1) Under Section 40-M ...	731
	(2) The Jenmikaram Payment and Commutation Rules ...	733
	(3) The Jenmikaram Recovery Rules ...	737
	II. Notifications.	
	(1) Appointing Tahsildars of Taluks as Jenmikaram Settlement Officers ...	739
	(2) Appointing the Land Revenue and Income-Tax Commissioner as Jenmikaram Settlement Officer for Travancore ...	,,
	(3) Appointing the Dewan Peishkars as Jenmikaram Settlement Officers ...	740
	(4) Authorising Taluk Jenmikaram Settlement Officers to exercise powers under Regulation VI of 1073 ...	,,
	[See also Appendix G.]	
B.	Case Law. ...	741
C.	The Regulations and Proclamations to which the Case Law refers ...	1082
D.	Index of Cases. ...	1084
E.	*I.* Rules under Regulation VIII of 1100. ...	1097
	II. Rules under other Regulations ...	1185
	III. Rules referred to in Case Law ...	1192
F.	High Court Circulars, etc. ...	1193
G.	Rules and Notifications ...	1207

Regulations and Proclamations

OF

TRAVANCORE.

THE MUNRO ISLAND PROCLAMATION.

PROCLAMATION

By Her Highness the Maha Rani Regent of Travancore, issued under date the 13th April 1930 corresponding to the 1st Medom 1105.

Whereas, in pursuance of a Royal Neet dated the 5th Thye 994 M. E., certain lands in the tract known as Munro Island in the North-Western portion of the East Kallada Pakuthy, Quilon Taluk, are held by the Church Missionary Society for certain purposes, and certain other lands also have otherwise been acquired, or are held, by them in connection therewith; and,

Whereas the Church Missionary Society have requested Our Government to accept a surrender of all those lands, which are described in the Schedule to this Proclamation and are hereinafter referred to as the Schedule lands, and have for that and other purposes executed a deed registered on the 19th Meenom 1105 as Document No. 2490 in Book No. 1 of the year 1105 in the office of the Sub-Registrar of Kottayam. We are pleased to command as follows :—

1. The rights of the Church Missionary Society in respect of the Schedule lands are hereby terminated save and except to the extent indicated in Section 5, Clause (*b*), below, and the Schedule lands shall be treated and dealt with as commanded hereinunder.

The Proclamation was published in the Gazette dated 22nd April 1930, Pt. I, P. 673.

2. From and after this day the Schedule lands shall, in all cases, be deemed to be *Pandaravakapattom* lands for all purposes, and wherever they are not already classed as such lands they shall, as soon as may be, be converted as such in the Revenue Accounts of Our Government.

3. The rent, if any, already fixed in respect of the Schedule lands by the Church Missionary Society shall be deemed to be the assessment charged on the land payable to Our Government and shall be deemed public revenue due on land.

4. The amount of the assessment referred to above shall not be liable to variation until a general revenue settlement of the lands in Our State is ordered.

5. (*a*) Such of the lands as have been demised on *pattom* by the Church Missionary Society shall be deemed to be *Pandaravaka-pattom* holdings registered under Our Government and the persons now holding under the Church Missionary Society as lessees shall, so far as Our Government are concerned, be deemed to be the present registered holders and *pattadars* under Our Government and shall have all the rights and liabilities of registered holders of *Pandaravakapattom* lands.

(*b*) Lands Survey Nos. 7184 and 7189 of the East Kallada Pakuthy in the Schedule which are in the occupation of the Church Missionary Society in *thanathu* shall also be deemed to be *Pandara-vakapattom* holdings under Our Government, the Church Missionary Society being considered the present registered holder with all the rights and liabilities of registered holders of *Pandaravakapattom* holdings.

(*c*) Schedule lands other than those provided for by Clauses (*a*) and (*b*) shall be deemed to be the property of Our Government for all purposes.

I

The registered deed of surrender referred to in the second para of the Preamble is as follows: —

No. 2490. THIS INDENTURE made the twenty fourth day of March one thousand nine hundred and thirty corresponding to the eleventh day of Meenam one thousand one hundred and five of the Malabar Era BETWEEN (1) THE RIGHT REVEREND EDWARD ALFRED LIVINGSTONE MOORE aged Fifty-nine, Britisher, Christian, Bishop in Travancore and Cochin, residing at Bishop's House, situated in Panayakkazhippu Kara, Vijayapuram Pakuthi of the Taluk of

6. It shall be lawful for Our Government to order any arrears of rent or other amounts already due in respect of all or any of the Schedule lands to be recovered as arrears of public revenue due to Our Government.

7. This Proclamation may be cited as "The Munro Island Proclamation, 1105," and shall come into force at once.

SCHEDULE.

Munro Island (which forms the subject matter of this reconveyance deed) is bounded

on the North

by Pazhayaur also known as the Kallada River;

on the East

by Survey numbers 6562, 6563, 6565/B, 6566, 6576, 6577, 6579, 6582, 6581, 6724, 6723, 6722 and 6721 of Eastern Kallada Pakuthy, Idukayil Kunnu, Puthenaur and Survey numbers 6731, 6732, 6729, 6728, 6727, 6724, 6723, 6722, 6721, 6720, 6719, 6914, 7029 and 7030 of the said Eastern Kallada Pakuthy, Kuravukuzhi Vayal, Palappazhanya Puraidam, Pallathu Vayal, Chinkarapally Kunnu, Kakkattu Cherivu, Manakadavu Moola and Peruman Kayal:

on the South

by Peruman Kayal, Idachal and Koiwila Kayal:

on the West

by Koiwila Kayal, Arinallur Kayal and Arinallur Kunnu.

The properties situated within the above boundaries fall under seven groups (A to G). The Survey numbers, extent and other particulars of the items of property comprised in each group are given below.

Kottayam in the State of Travancore; (2) THE REVEREND WILLIAM SAUNDERS HUNT aged Sixty-five, Britisher, Christian, Clerk in Holy Orders, residing at Bishop's House, situated in Panayakkazhippu Kara, Vijayapuram Pakuthi of the Taluk of Kottayam; (3) THE REVEREND GODFREY ATTWOOD NEILD SHACKLE aged Forty, Britisher, Christian, Clerk in Holy Orders, residing in Hope Villa, Valluvittu Muri, Madathuvilakam Pakuthi, Trivandrum Taluk; all being Missionaries of the Church Missionary Society; and (4) THE REVEREND CANON ROBERT WILLIAM PEACHEY aged Sixty-four, Britisher, Christian, Clerk in Holy Orders, residing in Church Mission House, Vepery in the City of Madras, Secretary to the Corresponding Committee of the Church Missionary Society, acting with the sanction and under the authority of the said CHURCH MISSIONARY SOCIETY (hereinafter referred to as "the Grantees" which expression shall include their successors and assigns also) of the one

THE MUNRO ISLAND PROCLAMATION.

The properties in this group are comprised in Inam Patta No. 1 of Eastern Kallada Pakuthy. They are all Pandaravaka Anubhogam properties situated in Eastern Kallada Pakuthy of Quilon Taluk. They lie in the Sastamkotta Sub-District of the Quilon Registration District.

Serial No.	Survey		Extent.		Paddy land or Puraidam.	Serial No.	Survey		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter	Acre.	Cent.	
1	6583	...	...	64	Paddy land	33	6615	...	...	12	Paddy land
2	6584	...	...	13	Do.	34	6616	...	...	20	Do.
3	6585	...	...	8	Do.	35	6617	...	...	13	Do.
4	6586	...	...	16	Do.	36	6618	...	...	32	Do.
5	6587	...	...	17	Do.	37	6619	...	...	4	Do.
6	6588	...	...	16	Do.	38	6620	...	...	20	Do.
7	6589	...	...	4	Do.	39	6621	...	...	4	Do.
8	6590	...	...	15	Do.	40	6622	...	...	22	Do.
9	6591	...	...	21	Do.	41	6623	...	...	4	Do.
10	6592	...	...	4	Do.	42	6624	...	...	12	Do.
11	6593	...	...	70	Do.	43	6625	...	...	12	Do.
12	6594	...	...	38	Do.	44	6626	...	...	18	Do.
13	6595	...	...	6	Do.	45	6627	...	...	9	Do.
14	6596	...	...	41	Do.	46	6629	...	...	38	Do.
15	6597	...	...	14	Do.	47	6630	...	...	8	Do.
16	6598	...	...	28	Do.	48	6631	...	...	10	Do.
17	6599	...	...	17	Do.	49	6632	...	...	13	Do.
18	6600	...	...	15	Do.	50	6633	...	...	45	Do.
19	6601	...	...	12	Do.	51	6634	...	...	82	Do.
20	6602	...	...	9	Do.	52	6635	...	...	12	Do.
21	6603	...	...	17	Do.	53	6636	...	...	7	Do.
22	6604	...	...	6	Do.	54	6637	...	...	10	Do.
23	6605	...	...	5	Do.	55	6638	...	...	6	Do.
24	6606	...	...	9	Do.	56	6639	...	...	20	Do.
25	6607	...	...	10	Do.	57	6640	...	...	10	Do.
26	6608	...	...	4	Do.	58	6641	...	...	5	Do.
27	6609	...	...	4	Do.	59	6642	...	...	20	Do.
28	6610	...	...	10	Do.	60	6643	...	...	47	Do.
29	6611	...	...	17	Do.	61	6644	...	...	46	Do.
30	6612	...	...	12	Do.	62	6645	...	...	18	Do.
31	6613	...	...	17	Do.	63	6646	...	...	7	Do.
32	6614	...	...	10	Do.	64	6647	...	...	13	Do.

part; and K. GEORGE ESQUIRE, B. A., Chief Secretary to Government, acting for and on behalf of the Government of Her Highness the Maha Rani Regent of Travancore (hereinafter referred to as "the Government" of the other part). WHEREAS by Royal Neet dated the fifth day of Thye nine hundred and ninety-four M. E., granted by Her Highness Ranee Parvathi Bai of Travancore, the properties known as Munro Island consisting of all those pieces or parcels of land situate in Eastern Kallada Proverthy in Quilon Taluk, within the following boundaries, namely on the East, the River then being cut from north to south on the eastern side of the Bhagavathy Temple situated in Bharanikavil Kunnu and through Arukuzhi Vayal, Idukayil Kunnu and Chalapurathu Vayal; on the South, Kuravukuzhi Vayal, the foot of Chinkarapalli Kunnu, Palapazhanji Purayidom,

SCHEDULE—GROUP A.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey No.	Survey Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
65	6648	...	...	30	Paddy land	98	6735	...	...	12	Paddy land
66	6649	...	...	5	Do.	99	6736	...	...	13	Do.
67	6650	...	...	13	Do.	100	6737	...	...	5	Do.
68	6653	...	...	13	Do.	101	6738	...	...	9	Do.
69	6685	...	...	10	Do.	102	6739	...	...	11	Do.
70	6686	...	...	10	Do.	103	6740	...	...	11	Do.
71	6687	...	...	7	Do.	104	6742	...	...	32	Do.
72	6688	...	...	8	Do.	105	6743	...	...	13	Do.
73	6689	...	...	13	Do.	106	6744	...	...	13	Do.
74	6690	...	...	21	Do.	107	6745	...	...	12	Do.
75	6691	...	...	10	Do.	108	6746	...	...	15	Do.
76	6692	...	...	10	Do.	109	6747	...	...	13	Do.
77	6694	...	...	12	Do.	110	6748	...	...	4	Do.
78	6695	...	...	28	Do.	111	6749	...	...	8	Do.
79	6696	...	...	3	Do.	112	6750	...	...	13	Do.
80	6697	...	...	4	Do.	113	6751	...	...	4	Do.
81	6698	...	...	54	Do.	114	6752	...	...	4	Do.
82	6699	...	...	20	Do.	115	6753	...	...	6	Do.
83	6700	...	...	13	Do.	116	6754	...	...	10	Do.
84	6701	...	...	11	Do.	117	6755	...	...	11	Do.
85	6702	...	...	11	Do.	118	6756	...	...	18	Do.
86	6703	...	...	6	Do.	119	6757	...	...	18	Do.
87	6704	A	...	7	Do.	120	6758	...	...	14	Do.
88	6706	...	...	7	Do.	121	6759	...	...	36	Do.
89	6707	...	...	6	Do.	122	6760	...	...	21	Do.
90	6710	...	...	12	Do.	123	6762	...	...	31	Do.
91	6715	...	...	64	Do.	124	6763	...	...	8	Do.
92	6716	...	...	32	Do.	125	6764	...	...	6	Do.
93	6717	...	...	13	Do.	126	6765	...	...	13	Do.
94	6718	...	...	12	Do.	127	6766	...	...	15	Do.
95	6719	...	...	11	Do.	128	6767	...	...	89	Do.
96	6720	...	...	60	Do.	129	6768	...	...	34	Do.
97	6734	...	...	16	Do.	130	6769	...	...	13	Do.

Pallath Vayal, Manakadavu Moola, Kakattu Charivu, Peruman Kayal and Idachal; on the West, Peringalath Kunnu, Arinallur Kunnu and Koiwila Kayal; and on the North, Pazhayar, (save and except four plots of land measuring seven parahs belonging to Chittumala Devaswom and four plots of land measuring thirteen parahs and six edangalies belonging to Thamaracheri Nambiyar and two plots of land measuring twenty parahs belonging to Arinallur Bhagavathy) then containing (besides the above excepted plots) in all 2828 plots of paddy land yielding an annual pattom of 8314¼ fanams and 371 pieces of garden land and 7 *varampus* yielding an annual pattom of 2056¼ fanams and more particularly mentioned and described in the said Royal Neet and Waste lands were granted as Anubhogam in perpetuity to the late Reverend Joseph Fenn of the said Church Missionary Society, then Principal of the Syrian College at Kottayam and his successors in office for the maintenance of the said Syrian College, subject, nevertheless, to the payment of 250 fanams per annum to the Government as Thirumulkazhcha; AND WHEREAS by an Award dated the 4th April 1840 made by a Committee of

Serial No.	Survey No.	Survey Letter.	Extent Acre.	Extent Cent.	Paddy land or Puraidam.	Serial No.	Survey No.	Survey Letter.	Extent Acre.	Extent Cent.	Paddy land or Puraidam.
131	6770	...	...	14	Paddy land	169	7104	...	...	12	Paddy land
132	6771	...	...	8	Do.	170	7105	...	...	8	Do.
133	6772	...	...	6	Do.	171	7106	1	...	42	Do.
134	6773	...	...	8	Do.	172	7107	...	...	15	Do.
135	6774	...	...	8	Do.	173	7108	...	...	18	Do.
136	6775	...	...	8	Do.	174	7112	...	...	14	Do.
137	6776	...	...	4	Do.	175	7113	...	...	20	Do.
138	6777	...	...	5	Do.	176	7114	...	...	36	Do.
139	6778	...	...	12	Do.	177	7115	...	...	30	Do.
140	6779	...	...	60	Do.	178	7116	...	...	29	Do.
141	6787	...	...	16	Do.	179	7117	...	...	20	Do.
142	6788	...	...	20	Do.	180	7118	...	...	7	Do.
143	6789	...	...	10	Do.	181	7119	...	...	20	Do.
144	6790	...	...	10	Do.	182	7120	...	...	13	Do.
145	6791	...	...	56	Do.	183	7121	...	...	22	Do.
146	6792	...	...	11	Do.	184	7122	...	...	15	Do.
147	6793	...	...	9	Do.	185	7123	...	...	5	Do.
148	6794	...	...	11	Do.	186	7124	...	...	15	Do.
149	6795	...	...	57	Do.	187	7125	...	...	4	Do.
150	6796	...	1	8	Do.	188	7126	...	...	9	Do.
151	6797	...	...	14	Do.	189	7125	...	...	22	Do.
152	6798	...	...	11	Do.	190	7128	...	...	16	Do.
153	6799	...	...	35	Do.	191	7129	...	...	5	Do.
154	6800	...	...	20	Do.	192	7130	...	...	4	Do.
155	6801	...	...	11	Do.	193	7135	...	...	43	Do.
156	6802	...	...	4	Do.	194	7136	...	...	7	Do.
157	6803	...	...	7	Do.	195	7137	...	...	6	Do.
158	6804	...	...	21	Do.	196	7138	...	...	7	Do.
159	6805	...	...	20	Do.	197	7139	...	...	7	Do.
160	6806	...	...	56	Do.	198	7140	...	...	11	Do.
161	6807	...	...	58	Do.	199	7141	...	...	5	Do.
162	6817	...	...	69	Do.	200	7142	...	...	18	Do.
163	6818	...	...	9	Do.	201	7235	1	...	20	Do.
164	7088	...	...	6	Do.	202	7236	...	...	17	Do.
165	7089	...	...	6	Do.	203	7237	...	...	10	Do.
166	7090	...	...	15	Do.	204	7238	A	...	29	Do.
167	7091	...	...	36	Do.	205	7239	...	...	10	Do.
168	7103	1	...	31	Do.	206	7240	...	...	50	Do.

Arbitrators appointed by (i) the Corresponding Committee of the Church Missionary Society, (ii) the Metropolitan of the Syrian Church and (iii) the Government, for the purpose of settling certain disputes which had arisen between the Church Missionary Society on the one side and the Metropolitan of the Syrian Church on the other, the said properties were *inter alia* awarded to the Church Missionary Society to be held by the Reverend the Missionaries at Kottayam and their successors and the Secretary *protem* of the Corresponding Committee of the said Society and the British Resident for the time being in Travancore or such person as the latter may authorise to act on his behalf jointly upon trust for the exclusive benefit of the Syrian community and for the education of the Syrian youths ; AND WHEREAS by the direction of the Madras Government the British Resident

SCHEDULE—GROUP A.

Serial No.	Survey No.	Survey Letter.	Extent Acre.	Extent Cent.	Paddy land or Puraidam.	Serial No.	Survey No.	Survey Letter.	Extent Acre.	Extent Cent.	Paddy land or Puraidam.
207	7241	...	...	14	Paddy land	242	7311	..	..	17	Paddy lan
208	7242	...	...	6	Do.	243	7312	..	..	16	Do.
209	7249	1	...	10	Do.	244	7320	..	..	17	Do.
210	7250	...	...	33	Do.	245	7321	..	..	18	Do.
211	7251	...	...	5	Do.	246	7322	..	..	37	Do.
212	7253	1	...	18	Do.	247	7323	..	..	13	Do.
213	7255	...	...	12	Do.	248	7324	...	...	12	Do.
214	7258	...	...	13	Do.	249	7325	...	...	21	Do.
215	7259	A	..	14	Do.	250	7329	...	...	13	Do.
216	7265	1	1	93	Do.	251	7330	...	...	7	Do.
217	7266	A	..	14	Do.	252	7331	...	...	8	Do.
218	7267	1	..	14	Do.	253	7332	...	...	10	Do.
219	7268	..	..	15	Do.	254	7333	...	...	9	Do.
220	7269	1	1	8	Do.	255	7334	...	...	6	Do.
221	7270	..	..	73	Do.	256	7335	...	...	9	Do.
222	7271	..	..	37	Do.	257	7336	...	...	31	Do.
223	7289	..	..	39	Do.	258	7337	...	...	13	Do.
224	7290	..	..	14	Do.	259	7338	...	...	10	Do.
225	7291	..	..	13	Do.	260	7339	...	...	12	Do.
226	7292	..	..	54	Do.	261	7341	...	...	7	Do.
227	7293	..	..	20	Do.	262	7342	...	...	29	Do.
228	7294	..	..	14	Do.	263	7344	...	...	5	Do.
229	7295	..	..	16	Do.	264	7345	B	...	11	Do.
230	7296	..	..	21	Do.	265	7346	...	...	14	Do.
231	7298	..	..	18	Do.	266	7347	...	...	25	Do.
232	7300	..	..	11	Do.	267	7348	...	...	39	Do.
233	7301	..	..	10	Do.	268	7350	...	...	5	Do.
234	7302	..	..	7	Do.	269	7351	...	...	17	Do.
235	7303	..	..	8	Do.	270	7352	...	...	20	Do.
236	7304	..	..	46	Do,	271	7353	...	...	7	Do.
237	7305	..	..	7	Do.	272	7354	...	...	6	Dv.
238	7306	..	..	7	Do.	273	7355	...	...	12	Do.
239	7307	..	..	28	Do.	274	7356	...	...	13	Do.
240	7309	..	..	15	Do.	275	7357	...	...	9	Do.
241	7310	..	..	19	Do.	276	7359	...	...	10	Do.

in Travancore for himself and his successors did subsequently disclaim the said trust ; AND WHEREAS during the survey operations in the Quilon Taluk certain disputes having arisen between the Trustees and the Government regarding the boundaries of the lands comprised in the Royal Neet or grant aforesaid, such disputes were settled and the boundaries of the lands comprised in the grant were more clearly defined and finally fixed by means of an Agreement with a map or plan of the said properties annexed thereto bearing date the 29th day of March 1910 and the 16th day of April 1910 and made between the Reverend F. N. Askwith, Managing Trustee, Munro Island, for and on behalf of the Church Missionary Society of the one part and Dewan Behadur P. Rajagopalachari Esq., Dewan of Travancore, for and on behalf of the Government of the other part and registered at the office of the Sub-Registrar of Trivandrum in Book I of the year 1085 Volume 26 at pages 139 to 160 as Document Number 3455 ; AND WHEREAS by virtue

Serial No.	Survey No.	Survey Letter.	Extent Acre.	Extent Cent.	Paddy land or Puraidam.	Serial No.	Survey No.	Survey Letter.	Extent Acre.	Extent Cent.	Paddy land or Puraidam.
277	7360	...	...	13	Paddy land	306	7422	...	...	11	Paddy land
278	7361	...	...	18	Do.	307	7423	...	...	14	Do.
279	7363	...	...	7	Do.	308	7424	...	...	13	Do.
280	7364	...	...	47	Do.	309	7425	...	...	16	Do.
281	7565	1	...	6	Do.	310	7426	...	...	38	Do.
282	7367	...	...	21	Do.	311	7427	...	...	5	Do.
283	7369	...	...	10	Do.	312	7428	...	...	28	Do.
284	7370	...	...	24	Do.	313	5429	...	...	19	Do.
285	7371	...	...	29	Do.	314	7430	...	...	23	Do.
286	7383	...	...	57	Do.	315	7431	...	...	14	Do.
287	7384	...	...	8	Do.	316	7432	...	...	14	Do.
288	7385	...	...	48	Do.	317	7433	...	...	17	Do.
289	7386	...	...	13	Do.	318	7434	...	...	14	Do.
290	7387	...	...	31	Do.	319	7435	...	...	7	Do.
291	7388	...	...	16	Do.	320	7436	...	...	6	Do.
292	7389	...	...	10	Do.	321	7437	...	...	5	Do.
293	7390	...	...	14	Do.	322	7438	...	...	6	Do.
294	7391	...	...	7	Do.	323	7439	...	...	14	Do.
295	7392	...	...	6	Do.	324	7440	...	...	29	Do.
296	7393	B	...	5	Do.	325	7441	...	...	26	Do.
297	7398	...	...	13	Do.	326	7442	...	...	11	Do.
298	7399	...	...	12	Do.	327	7443	...	...	14	Do.
299	7400	...	...	3	Do.	328	7444	...	...	39	Do.
300	7404	...	...	12	Do.	329	7445	...	...	11	Do.
301	7406	...	...	13	Do.	330	7446	...	...	8	Do.
302	7407	A	...	14	Do.	331	7447	...	...	17	Do.
303	7419	...	...	20	Do.	332	7448	...	...	12	Do.
304	7420	...	...	10	Do.	333	7449	...	...	7	Do.
305	7421	...	...	16	Do.	334	7450	...	...	11	Do.

of the Royal Neet, Award and Agreement aforesaid the Grantees are now well and truly seised and possessed of and otherwise entitled to all the properties mentioned therein respectively and delineated in the map or plan annexed to the said Agreement and more particularly described in the Schedules hereunder, subject only to the payment to the Government of the said Thirumulkazhcha; AND WHEREAS by reason of the constant difficulties arising in the collection of rents on the said lands from the large body of tenants holding the same and the consequent troubles and losses to the Trust arising therefrom, the Trustees of the Grant from time to time approached the Government with a view to surrender the properties to the Government in return for adequate compensation so as to ensure a more efficient fulfilment of the objects of the Trust but such negotiations could not be brought to a conclusion on account of the Government and the Trustees being unable to agree as to the exact manner of the resumption and the terms of the settlement; AND WHEREAS in continuance of such negotiations and with the sanction and authority of the Executive Committee of the said Church Missionary Society as conveyed in their Minutes dated the 23rd September 1925 the Reverend William Saunders Hunt, the then Managing Trustee, again approached the Government with certain definite proposals for the taking over of the said properties by the

SCHEDULE—GROUP A.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
335	7451	...	...	3	Paddy land	368	7488	...	...	16	Paddy land
336	7453	...	...	22	Do.	369	7489	...	...	13	Do.
337	7454	...	...	25	Do.	370	7490	...	...	12	Do.
338	7455	...	...	20	Do.	371	7491	...	...	14	Do.
339	7856	...	...	15	Do.	372	7492	...	...	14	Do.
340	7457	...	...	10	Do.	373	7493	...	...	18	Do.
341	7458	...	...	19	Do.	374	7494	...	...	22	Do.
342	7459	...	...	17	Do.	375	7495	...	...	4	Do.
343	7460	...	...	10	Do.	376	7496	...	...	9	Do.
344	7461	...	...	11	Do.	377	7497	...	...	6	Do.
345	7462	...	...	28	Do.	378	7498	...	...	9	Do.
346	7463	...	...	27	Do.	379	7501	...	...	17	Do.
347	7464	...	...	4	Do.	380	7502	...	...	41	Do.
348	7466	...	...	7	Do.	381	7503	...	...	12	Do.
349	7467	...	...	11	Do.	382	7504	...	...	40	Do.
350	7468	A	...	16	Do.	383	7505	...	...	47	Do.
351	7469	...	...	12	Do.	384	7506	...	...	6	Do.
352	7470	...	...	12	Do.	385	7507	...	...	17	Do.
353	7471	...	...	20	Do.	386	7508	...	...	24	Do.
354	7472	...	...	37	Do.	387	7509	...	...	19	Do.
355	7473	...	...	22	Do.	388	7511	...	...	25	Do.
356	7474	...	...	13	Do.	389	7523	...	...	10	Do.
357	7475	...	...	28	Do.	390	7524	...	...	12	Do.
358	7476	...	...	22	Do.	391	7525	...	...	24	Do.
359	7478	...	...	12	Do.	392	7528	...	...	25	Do.
360	7479	...	...	14	Do.	393	7529	...	...	19	Do.
361	7480	...	...	30	Do.	394	7530	...	...	9	Do.
362	7482	...	...	11	Do.	395	7531	...	...	13	Do.
363	7483	...	...	11	Do.	396	7532	...	...	37	Do.
364	7484	...	...	11	Do.	397	7534	...	...	6	Do.
365	7485	...	...	8	Do.	398	7535	...	...	7	Do.
366	7486	...	...	10	Do.	399	7536	...	...	11	Do.
367	7487	...	...	16	Do.	400	7537	...	...	16	Do.

Government and after a careful examination of the whole question the Government by their order R. O. C. No. 1415 of 26/ Revenue dated the 28th July 1927 accepted the principle of the said proposals and appointed a Committee consisting of two Government Officers, namely, R. Nilakanta Pillai Esquire and P. Viswanatha Aiyar Esquire and two Representatives of the Trustees, namely, P. Cheriyan Esquire and M. E. Ittyerah Esquire to examine the accounts of the Trust and submit a report as to what would be the fair and reasonable amount which should be paid to the Grantees annually when the properties were resumed by Government and the said Committee submitted its report on the third day of Kanni 1103 M. E.; AND WHEREAS on a careful consideration of the said Report and the attendant circumstances, the Government ultimately decided and by their letter R. O. C; No. 1415 of 26/ Revenue dated the 2nd April 1928 addressed to the Reverend William Saunders Hunt, the then Representative of the Church Missionary Society, offered to take over the said properties and in consideration for the same and for the fulfilment of the objects of the Trust to give an annual grant of

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
401	7543	...	...	6	Paddy land	437	7643	...	...	12	Paddy land
402	7544	...	...	2	Do.	438	7644	...	...	46	Do.
403	7545	...	...	6	Do.	439	7648	...	...	32	Do.
404	7548	...	...	35	Do.	440	7651	B	...	23	Do.
405	7549	...	...	18	Do.	441	7653	...	...	55	Do.
406	7550	...	...	15	Do.	442	7662	...	...	71	Do.
407	7552	...	...	11	Do.	443	7667	B	...	17	Do.
408	7553	...	...	14	Do.	444	7672	...	...	43	Do.
409	7554	...	...	12	Do.	445	7675	...	...	11	Do.
410	7556	...	...	14	Do.	446	7677	...	...	44	Do.
411	7557	...	...	16	Do.	447	7678	...	...	10	Do.
412	7558	...	...	9	Do.	448	7680	...	...	48	Do.
413	7559	...	...	35	Do.	449	7681	...	...	44	Do.
414	7560	...	...	23	Do.	450	7682	...	...	24	Do.
415	7561	...	...	79	Do.	451	7683	...	...	16	Do.
416	7567	...	...	12	Do.	452	7685	...	...	17	Do.
417	7568	1	...	12	Do.	453	7686	...	...	9	Do.
418	7570	...	...	14	Do.	454	7687	...	...	20	Do.
419	7573	1	...	14	Do.	455	7690	...	...	53	Do.
420	7574	1	...	7	Do.	456	7692	...	...	47	Do.
421	7582	1	...	31	Do.	457	7696	...	...	16	Do.
422	7587	1	1	80	Do.	458	7697	...	...	4	Do.
423	7588	1	1	13	Do.	459	7706	...	...	7	Do.
424	7589	1	1	2	Do.	460	7709	...	...	19	Do.
425	7604	...	...	78	Do.	461	7712	...	...	22	Do.
426	7605	...	...	37	Do.	462	7713	...	...	5	Do.
427	7607	...	...	19	Do.	463	7714	...	...	5	Do.
428	7609	...	...	18	Do.	464	7715	...	...	12	Do.
429	7613	A	...	74	Do.	465	7716	...	...	13	Do.
430	7620	...	...	7	Do.	466	7717	...	...	37	Do.
431	7621	...	...	26	Do.	467	7722	A	...	53	Do.
432	7623	...	...	72	Do.	468	7723	...	...	14	Do.
433	7632	...	...	12	Do.	469	7724	...	...	16	Do.
434	7634	1	...	71	Do.	470	7731	A	1	8	Do.
435	7635	1	...	41	Do.	471	7732	...	...	11	Do.
436	7637	...	...	10	Do.	472	7733	...	...	8	Do.

British Indian Rupees Five Thousand (5,000) as compensation to be paid in perpetuity to the Grantees and the said Reverend William Saunders Hunt, by his letter dated the 13th April 1928 addressed to the Government, accepted the said offer on behalf of the Grantees and the Church Missionary Society and agreed to abide by the said decision of the Government; AND WHEREAS the Government by their letter R. O. C. No. 1415 of 26/ Revenue dated the 22nd January 1929 addressed to the said Reverend William Saunders Hunt have directed that the transfer of ownership of the said properties should be effected by means of a Sale Deed to be executed by the Missionaries of the Church Missionary Society at Kottayam in conjunction with the Corresponding Secretary of the said Society at Madras as authorised by a resolution in that behalf passed by the said Society and the Grantees have agreed to do so; AND WHEREAS the Right Reverend Edward Alfred Livingstone Moore, Reverend William Saunders Hunt and

SCHEDULE—GROUP A.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
473	7734	...	...	11	Paddy land	503	7800	...	...	10	Paddy land
474	7735	...	...	10	Do.	504	7801	1	...	46	Do.
475	7736	...	...	12	Do.	505	7802	...	...	4	Do.
476	7737	...	...	10	Do.	506	7803	...	...	3	Do.
477	7738	...	...	10	Do.	507	7804	...	...	5	Do.
478	7739	...	...	12	Do.	508	7805	1	...	95	Do.
479	7740	...	...	11	Do.	509	7807	1	...	40	Do.
480	7741	...	...	6	Do.	510	7809	A	...	6	Do.
481	7751	...	...	11	Do.	511	7810	...	...	18	Do.
482	7752	...	...	8	Do.	512	7811	...	...	12	Do.
483	7753	...	...	6	Do.	513	7818	...	...	25	Do.
484	7754	...	...	13	Do.	514	7819	...	...	8	Do.
485	7755	...	...	16	Do.	515	7820	...	...	14	Do.
486	7758	...	...	13	Do.	516	7821	A	...	8	Do.
487	7760	...	...	17	Do.	517	7823	...	...	3	Do.
488	7766	...	1	11	Do.	518	7824	...	...	16	Do.
489	7767	...	...	16	Do.	519	7826	A	...	37	Do.
490	7768	1	...	50	Do.	520	7832	...	...	9	Do.
491	7769	...	...	14	Do.	521	7843	...	...	12	Do.
492	7781	...	...	8	Do.	522	7834	...	...	17	Do.
493	7782	...	...	10	Do.	523	7835	...	...	6	Do.
494	7783	...	...	11	Do.	524	7837	...	...	8	Do.
495	7786	...	...	17	Do.	525	7838	...	...	15	Do.
496	7787	...	...	8	Do.	526	7840	A	...	4	Do.
497	7788	...	...	13	Do.	527	7840	B	...	11	Do.
498	7789	...	...	20	Do.	528	7840	C/1	...	10	Do.
499	7769	...	...	13	Do.	529	7842	...	...	14	Do.
500	7797	...	...	10	Do.	530	7843	...	...	18	Do.
501	7798	1	...	14	Do.	531	7844	...	...	19	Do.
502	7899	...	...	12	Do.	532	7845	...	...	19	Do.

Reverend Godfrey Attwood Neild Shackle aforesaid are the present successors of the Reverend the Missionaries at Kottayam mentioned in the aforesaid Award and the Reverend Canon Robert William Peachey aforesaid is now the Secretary of the Corresponding Committee of the Church Missionary Society at Madras, and of these, the said Reverend William Saunders Hunt is the present Representative in Travancore and Cochin of the said Church Missionary Society and has also been re-appointed the Managing Trustee of the said Trust AND WHEREAS the Executive Committee of the Church Missionary Society being satisfied that the reconveyance of these lands in return for an annual grant in perpetuity of British Indian Rupees Five Thousand (5,000) only is beneficial and necessary in the interests of the Trust, have by resolution passed on the eighth day of May 1929 duly authorised the Grantees to execute THESE PRESENTS. NOW THIS INDENTURE WITNESSETH that in pursuance of the agreement aforesaid and in consideration of a sum of British Indian Rupees Five Thousand (5,000) to be paid every year in perpetuity by the Government to the Representative for the time being of the said Church Missionary Society in Travancore to be utilised for carrying out the objects of the Trust as laid down in the Award of 4th April 1840

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter	Acre.	Cent.	
533	7746	A	...	1	Paddy land	563	7908	...	...	10	Paddy land
534	7847	...	...	9	Do.	564	7909	...	...	9	Do.
535	7848	...	...	7	Do.	565	7910	...	...	44	Do.
536	7850	1	...	86	Do.	566	7911	...	1	89	Do.
537	7854	1	...	13	Do.	567	7913	...	...	52	Do.
538	7866	1	...	25	Do.	568	7914	...	...	17	Do.
539	7867	...	...	33	Do.	569	7915	...	...	19	Do.
540	7877	...	...	39	Do.	570	7916	...	...	8	Do.
541	7878	1	...	91	Do.	571	7917	...	...	4	Do.
542	7880	1	...	26	Do.	572	7918	...	...	8	Do.
543	7881	...	...	31	Do.	573	7919	...	...	4	Do.
544	7883	...	...	9	Do.	574	7920	...	...	9	Do.
545	7884	...	...	8	Do.	575	7921	...	...	12	Do.
546	7885	1	...	36	Do.	576	7922	...	...	36	Do.
547	7886	A/1	1	24	Do.	577	7923	...	...	26	Do.
548	7888	...	...	12	Do.	578	7924	...	...	23	Do.
549	7889	...	...	12	Do.	579	7925	...	...	11	Do.
550	7890	1	...	14	Do.	580	7926	...	...	16	Do.
551	7891	...	...	9	Do.	581	7927	...	...	10	Do.
552	5892	...	...	36	Do.	582	7928	...	...	13	Do.
553	7893	...	...	3	Do.	583	7929	...	...	8	Do.
554	7894	...	...	3	Do.	584	7930	...	...	9	Do.
555	7895	1	...	9	Do.	585	7932	...	...	17	Do.
556	7901	...	...	21	Do.	586	7933	...	...	12	Do.
557	7902	...	...	12	Do.	587	7934	...	...	16	Do.
558	7903	...	...	20	Do.	588	7935	...	...	20	Do.
559	7904	...	...	21	Do.	589	7939	...	...	6	Do.
560	7905	...	...	11	Do.	590	7940	...	...	6	Do.
561	7906	...	...	12	Do.	591	7942	...	...	2	Do.
562	7907	...	...	34	Do.	592	7943	A	...	3	Do.

aforesaid, the Grantees with the sanction and under the authority of the Church Missionary Society do hereby for themselves and their representatives, successors and assigns SELL TRANSFER CONVEY ASSIGN AND SURRENDER unto the Government as on and from the First day of Chingam 1105 M. E. all those said pieces or parcels of lands tenaments bereditamonts and premises mentioned in the said Royal Neet of 5th Thye 994 M. E. and the Award of 4th April 1840 and the Agreement of March 29th and April 16th 1910 aforesaid and delineated in the map or plan annexed to the said Agreement and more particularly described in the Schedule hereunder save and except the occupancy and improvement right in two pieces of garden lands in Eastern Kallada Pakuthi, namely, Survey No. 7184 measuring 2 (two) acres 10 (ten) cents in extent and charged with an assessment of twenty-three Chackrams only and Survey No. 7189 measuring thirty-four (34) cents in extent and charged with an assessment of Fanams eight Chackrams three and Cash twelve together with the buildings, trees and other improvements therein which are held by the Church Missionary Seminary (College) on lease from the Trust, the said Seminary duly paying the annual rent to the funds of the estate and which the grantees reserve to themselves to be held and enjoyed by them on

SCHEDULE—GROUH A.

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
593	7943	C	...	1	Paddy land	624	7998	...	1	18	Paddy land
594	7945	A	...	5	Do,	625	7999	...	...	19	Do.
595	7945	C	...	1	Do.	626	8016	...	...	37	Do.
596	7946	...	...	5	Do.	627	8017	...	...	68	Do.
597	7948	...	...	22	Do.	628	8019	...	3	59	Do.
598	7949	...	...	9	Do.	629	8020	...	...	74	Do.
599	7950	...	...	9	Do.	630	8021	...	...	61	Do.
600	7951	...	...	7	Do.	631	8022	...	1	21	Do.
601	7953	1	1	12	Do.	632	8023	...	...	82	Do.
602	7961	...	...	8	Do.	633	8024	A	...	64	Do.
603	7962	...	3	...	Do.	634	8026	B	...	4	Do.
604	7965	1	...	59	Do.	635	8027	...	...	17	Do.
605	7967	...	1	27	Do.	636	8028	...	...	5	Do.
606	7970	...	1	46	Do.	637	8029	...	...	69	Do.
607	7972	...	...	87	Do.	638	8031	...	1	60	Do.
608	7975	...	2	66	Do.	639	8032	...	...	35	Do.
609	7977	1	...	70	Do.	640	8034	...	...	31	Do.
610	7978	...	1	30	Do.	641	8035	...	...	16	Do.
611	7979	...	...	17	Do.	642	8036	...	...	39	Do.
612	7980	...	...	97	Do.	643	8037	...	...	9	Do.
613	7982	...	...	6	Do.	644	8038	...	...	12	Do.
614	7983	1	1	74	Do.	645	8040	A	...	75	Do.
615	7984	...	...	42	Do.	646	8044	B	...	13	Do.
616	7985	...	...	36	Do.	647	8045	A	...	42	Do.
617	7986	...	...	52	Do.	648	8046	...	...	14	Do.
618	7987	...	...	61	Do.	649	8047	A	...	16	Do.
619	7988	...	...	47	Do.	650	8048	...	...	63	Do.
620	7989	...	...	67	Do.	651	8049	...	...	52	Do.
621	7991	...	...	78	Do.	652	8051	...	...	26	Do.
622	7996	...	...	9	Do.	653	8115	...	...	7	Do.
623	7997	...	...	19	Do.	654	8116	...	...	8	Do.

bahalf of the said Seminary as tenants of the Government paying the assessment now charged on the aforesaid two items of property or any other amount the Government may at the times of the re-assessments deem fit to assess on them AND THE GRANTEES DO HEREBY COVENANT with the Government that the Grantees have not executed nor been party or privy to the execution of any deed of document whereby any mortgage or other charge or encumbrance has been created on the Schedule property nor submitted the property to any attachments or liens nor done or caused to be done any act or deed whereby the Grantees' title to or possession of the Schedule property is in any manner encumbered, charged or delayed or affected to any extent whatsoever ; AND the Government shall and may at all times hereafter peaceably and quietly possess and enjoy the Schedule property and receive the rents and profits thereof as on and from the First day of Chingam one thousand one hundred and five M. E. aforesaid without any lawful eviction, interruption, claim or demand whatsoever from or by the Grantees or from any person or persons lawfully or equitably claiming from, under or in trust for the Grantees except to the extent of the perpetual annuity of British Indian Rupees Five Thousand (5,000) aforesaid payable to the Grantees

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
655	8118	1	...	12	Paddy land	688	8201	...	...	29	Paddy land
656	8121	...	...	51	Do.	689	8202	A	...	37	Do.
657	8122	...	...	16	Do.	690	8205	1	...	55	Do.
658	8123	...	...	26	Do.	691	8213	B	2	13	Do.
659	8124	...	...	46	Do.	692	8216	...	...	78	Do.
660	8125	...	...	39	Do.	693	8219	1	...	69	Do.
661	8126	...	...	36	Do.	694	8220	...	...	12	Do.
662	8127	1	...	70	Do.	695	8221	1	...	19	Do.
663	8132	...	2	32	Do.	696	8223	1	...	22	Do.
664	8134	B	...	80	Do.	697	8228	A	...	17	Do.
665	8137	...	1	52	Do.	698	8228	C	...	13	Do.
666	8138	...	1	29	Do.	699	8230	A	...	4	Do.
667	8142	...	...	35	Do.	700	8242	...	...	16	Do.
668	8151	...	2	48	Do.	701	8245	B	...	29	Do.
669	8154	...	...	37	Do.	702	8254	...	...	16	Do.
670	8164	...	...	11	Do.	703	8257	...	...	16	Do.
671	8165	A	...	16	Do.	704	8258	...	...	29	Do.
672	8169	A	...	39	Do.	705	8284	A	...	9	Do.
673	8170	A	...	26	Do.	706	8295	...	...	7	Do.
674	8172	A	...	40	Do.	707	8296	1	...	11	Do.
675	8178	B	1	55	Do.	708	8297	1	...	14	Do.
676	8180	...	...	15	Do.	709	8299	1	...	13	Do.
677	8183	...	...	7	Do.	710	8300	1	...	8	Do.
678	8185	1	...	43	Do.	711	8301	1	...	9	Do.
679	8186	...	...	33	Do.	712	8352	A	...	18	Do.
680	8188	...	...	6	Do.	713	8358	1	...	11	Do.
681	8190	A	...	27	Do.	714	8361	1	...	8	Do.
682	8191	...	1	6	Do.	715	8362	1	...	14	Do.
683	8196	A	...	5	Do.	716	8364	1	...	76	Do.
684	8197	A	...	7	Do.	717	8368	...	...	48	Do.
685	8198	A	...	9	Do.	718	8371	...	...	7	Do.
686	8199	A	...	6	Do.	719	8372	B	...	7	Do.
687	8200	A	...	8	Do.	720	8375	...	...	13	Do.

as the consideration under THESE PRESENTS and free of all other claims, encumbrances, attachments or charges whatsoever, made or caused to be done or suffered by the Grantees or any person or persons lawfully or equitably claiming as aforesaid AND further the Grantees shall and will from time to time and at all times hereafter at the request and cost of the Government do and execute or cause to be done and executed by themselves or the Church Missionary Society all such further acts deeds statements admissions applications and things whatsoever for further and more perfectly assuring the Schedule property and every part thereof unto and to the use of the Government in manner aforesaid as shall or may reasonably be required. The Grantees HEREBY FURTHER AGREE that they will utilise the said perpetual annuity of British Indian Rupees 5,000 forming the consideration hereunder for carrying out the objects of the original Trust as laid down in and gatherable from the Royal Neet of 5th Thye 994 M. E. read along with the Award of 4th April 1840. THE GOVERNMENT HEREBY AGREE AND COVENANT WITH THE Grantees, that the Government will

SCHEDULE—GROUP A.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey No.	Survey Lot er.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
721	8379	A/1	...	68	Paddy land	755	8467	...	...	11	Paddy land
722	8381	B	...	8	Do.	756	8469	A	...	42	Do.
723	8382	1	...	23	Do.	757	8471	1	...	11	Do.
724	8384	A	...	31	Do.	758	8472	1	...	28	Do.
725	8385	A	...	14	Do.	759	8474	...	...	25	Do.
726	8387	1	...	31	Do.	760	8475	1	...	24	Do.
727	8396	1	...	47	Do.	761	8477	1	...	10	Do.
728	8397	1	...	22	Do.	762	8478	1	...	15	Do.
729	8401	A	...	5	Do.	763	8480	1	...	12	Do.
730	8403	A	...	10	Do.	764	8481	1	...	11	Do.
731	8415	...	...	83	Do.	765	8483	1	...	22	Do.
732	8419	1	...	11	Do.	766	8484	1	...	23	Do.
733	8420	1	...	14	Do.	767	8486	...	...	55	Do.
734	8424	1	...	19	Do.	768	8489	...	...	8	Do.
735	8425	1	...	11	Do.	769	8493	A	...	9	Do.
736	8426	1	...	12	Do.	770	8494	A	...	33	Do.
737	8429	...	...	32	Do.	771	8495	...	...	14	Do.
738	8434	...	...	23	Do.	772	8496	1	...	38	Do.
739	8435	...	...	8	Do.	773	8498	...	...	15	Do.
740	8436	...	...	33	Do.	774	8500	1	...	25	Do.
741	8437	...	...	75	Do.	775	8501	1	1	28	Do.
742	8444	B/1	...	9	Do.	776	8505	...	1	37	Do.
743	8445	A	...	20	Do.	777	8508	1	...	30	Do.
744	8448	1	...	32	Do.	778	8514	...	...	14	Dq.
745	8449	1	...	34	Do.	779	8517	...	...	19	Do.
746	8456	1	...	26	Do.	780	8528	...	...	22	Do.
747	8457	1	...	13	Do.	781	8530	1	...	32	Do.
748	8458	1	...	10	Do.	782	8535	A	...	10	Do.
749	8459	1	...	13	Do.	783	8536	A	...	4	Do.
750	8460	A	...	14	Do.	784	8537	1	...	12	Do.
751	8463	...	...	23	Do.	785	8541	...	...	8	Do.
752	8464	1	...	23	Do.	786	8542	...	...	14	Do.
753	8465	A	...	10	Do.	787	8543	...	...	10	Do.
754	8466	A	...	4	Do.	788	8544	1	...	11	Do.

pay the aforesaid perpetual annual grant of British Indian Rupees Five Thousand only in four quarterly instalments of Rs. 1,250 each beginning from the last day of Thulam 1105 M. E., and thereafter regularly at an interval of three months every year to the Representative for the time being of the Church Missionary Society in Travancore for thepurpose of the Trust provided however that the Government will in lieu of the instalments payable on the last day of Thulam 1105 M. E. and the last day of Makarom 1105 M. E. respectively pay to the said Represent-ative of the Church Missionary Society a consolidated amount of British Indian Rupees two thousand and five hundred on the first day of Medom 1105 M. E. AND that the Grantees shall no further be liable for the Thirumulkazhcha provided in the Royal Neet first aforesaid. IT IS HEREBY FURTHER AGREED AND DECLARED that out of the sum of Sirkar Rupees five thousand one hundred and forty eight Chackrams twenty-seven and Cash five now due as arrears of rents and taxes from the several tenants of the Schedule property, the Managing Trustee on behalf of the Grantees shall have the absolute right to collect realise and

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
789	8545	...	...	33	Paddy land	819	8702	...	1	38	Paddy land
790	8547	1	...	32	Do.	820	8703	...	...	33	Do.
791	8644	...	2	40	Do.	821	8704	...	...	13	Do.
792	8645	...	1	96	Do.	822	8707	...	2	94	Do.
793	8647	...	1	96	Do.	823	8709	...	4	1	Do.
794	8650	...	1	38	Do.	824	8710	...	1	98	Do.
795	8660	...	1	70	Do.	825	8711	...	1	4	Do.
796	8661	...	1	48	Do.	826	8712	...	1	23	Do.
797	8663	...	...	58	Do.	827	8713	...	...	23	Do.
798	8664	...	2	65	Do	828	8714	...	1	54	Do.
799	8665	...	...	29	Do.	829	8715	...	1	13	Do.
800	8666	...	...	24	Do.	830	8716	...	...	94	Do.
801	8669	...	...	22	Do.	831	8717	...	...	27	Do.
802	8670	...	1	22	Do.	832	8719	...	...	36	Do.
803	8671	...	...	26	Do.	833	8720	...	3	19	Do.
804	8672	...	...	41	Do.	834	8722	...	1	68	Do.
805	8673	...	...	13	Do.	835	8724	...	...	50	Do.
806	8675	...	1	85	Do.	836	8726	...	...	36	Do.
807	8676	...	3	62	Do.	837	8728	...	...	62	Do.
808	8677	...	...	7	Do.	838	8729	...	...	32	Do.
809	8679	...	...	57	Do.	839	8730	...	...	11	Do.
810	8680	...	...	92	Do.	840	8732	...	1	18	Do.
811	8681	...	...	43	Do.	841	8734	...	1	24	Do.
812	8682	...	...	26	Do.	842	8735	...	...	18	Do.
813	8683	...	1	68	Do.	843	8736	...	...	22	Do.
814	8684	...	...	59	Do.	844	8737	...	...	9	Do.
815	8685	...	1	37	Do.	845	8738	...	...	17	Do.
816	8698	...	...	70	Do.	846	8739	...	2	78	Do.
817	8700	...	...	29	Do.	847	8740	...	1	22	Do.
818	8701	...	...	26	Do.	848	8741	...	...	59	Do.

recover through Court or otherwise the sum of Sirkar Rupees two thousand one hundred and thirty-seven Chackrams seventeen and Cash two which is involved in the civil suits decreed or pending between the Managing Trustee and the tenants and the Government shall and are hereby authorised to collect realise and recover with interest the balance of Sirkar Rupees three thousand and eleven Chackrams ten and Cash three (as per separate list signed by the late Managing Trustee the Reverend Godfrey Attwood Nield Shackle as well as the present Managing Trustee the Reverned William Saunders Hunt and handed over herewith) from the respective defaulters and after deducting ten per cent on the amounts collected towards the costs of collection in addition to all actual costs and incidental expenses incurred in court where suits arise regarding them the Government shall hand over the balance once in every six months to the Representative of the Church Missionary Society for the time being in Travancore, the Government being also authorised for the purpose of facilitating the collection of arrears and settlement of the matters generally to make any reduction or remission in interest or such portion of the principal amount of the arrears of tax or rent as may be necessary according to the circumstances of each case. Provided however that Government shall not

SCHEDULE—GROUP A.

Serial No.	Survey. No.	Survey. Letter.	Extent Acre.	Extent Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy landd or Puraidam.
849	8742	...	...	47	Paddy land	879	6661	...	...	38	Puraidam.
850	8743	...	...	71	Do.	880	6662	...	...	10	Do.
851	8744	...	1	56	Do.	881	6663	...	...	46	Do.
852	8745	...	...	94	Do.	882	6664	...	...	7	Do.
853	8746	...	1	41	Do.	883	6665	...	...	33	Do.
854	8747	...	...	16	Do.	884	6666	...	...	5	Do.
855	8748	...	1	63	Do.	885	6667	...	...	13	Do.
856	8750	...	1	53	Do.	886	6668	...	...	22	Do.
857	8751	...	2	48	Do.	887	6669	...	...	17	Do.
858	8752	...	...	96	Do.	888	6670	...	...	34	Do.
859	8754	...	1	4	Do.	889	6671	...	...	8	Do.
860	8756	...	...	36	Do.	890	6672	...	...	12	Do.
861	8758	...	...	89	Do.	891	6673	...	...	8	Do.
862	8759	...	...	51	Do.	892	6674	...	...	31	Do.
863	8761	...	1	8	Do.	893	6675	...	...	7	Do.
864	8762	...	...	58	Do.	894	6676	...	...	9	Do.
865	8763	...	...	55	Do.	895	6677	...	...	5	Do.
866	8765	...	1	10	Do.	896	6678	...	...	5	Do.
867	8766	...	...	86	Do.	897	6679	...	...	18	Do.
868	8767	...	...	34	Do.	898	6680	...	...	18	Do.
869	8768	...	3	88	Do.	899	6681	...	...	4	Do.
870	8769	...	2	25	Do.	900	6683	...	...	22	Do.
871	8797	B	...	26	Do.	901	6684	...	...	16	Do.
872	8799	A	...	44	Do.	902	6693	...	...	12	Do.
873	6652	...	...	25	Puraidam.	903	6704	B	...	7	Do.
874	6654	...	...	21	Do.	904	6705	...	...	12	Do.
875	6656	...	...	22	Do.	905	6708	...	...	12	Do.
876	6657	...	...	18	Do.	906	6709	...	...	8	Do.
877	6659	...	...	46	Do.	907	6711	...	...	6	Do.
878	6660	...	...	31	Do.						

be held liable in any manner for any arrears which they may be unable to realise. IT IS ALSO HEREBY FURTHER AGREED AND DECLARED THAT for the purpose of Registration fees the value of the properties hereby transferred shall be regarded as British Indian Rupees one hundred thousand.

IN WITNESS WHEREOF the parties to THESE PRESENTS have hereunto set their hands and seals the day and year first above written.

SCHEDULE OF PROPERTIES ABOVE REFERRED TO.

II

The following is the G. O., appointing the Committee referred to in the Deed.

PROCEEDINGS OF THE GOVERNMENT OF HER HIGHNESS THE MAHA RANI REGENT.

Read :—

(1) Letter dated the 7th January 1926, from Rev. W. S. Hunt, of the Church Mission Society, Kottayam.

(2) Letter R. O. C. No. 1415 of 26/Revenue, dated the 10th April 1926 to Rev. W. S. Hunt.

(3) Letter dated the 15th April 1926 from Rev. W. S. Hunt.

(4) Letter R. O. C. No. 1415 of 26/Rev., dated the 8th June 1927 to Rev. W. S. Hunt.

(5) Letters dated the 13th June 1927 and 14th June 1927 from Rev. W. S. Hunt.

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
908	6712	...	...	13	Puraidam.	940	7106	2	...	...	Tree.
909	6713	...	...	67	Do.	941	7109	...	...	22	Puraidam.
910	6714	...	...	8	Do.	942	7110	...	...	5	Do.
911	6733	...	...	10	Do.	943	7111	...	...	4	Do.
912	6741	...	...	32	Do.	944	7131	...	...	24	Do.
913	6780	...	2	45	Do.	945	7132	...	...	37	Do.
914	6781	...	1	58	Do.	946	7133	...	...	81	Do.
915	6782	...	...	32	Do.	947	7134	...	...	8	Do.
916	6783	...	...	43	Do.	948	7143	...	...	12	Do.
917	6784	...	...	23	Do.	949	7144	...	...	64	Do.
918	6785	...	1	1	Do.	950	7145	...	...	23	Do.
919	6786	...	...	39	Do.	951	7146	...	...	69	Do.
920	7080	...	...	17	Do.	952	7147	...	...	20	Do.
921	7081	...	...	15	Do.	953	7148	A	...	37	Do.
922	7082	...	...	14	Do.	954		B	...	26	Do.
923	7083	...	...	11	Do.	955	7149	...	...	7	Do.
924	7084	...	...	10	Do.	956	7150	...	...	50	Do.
925	7085	...	...	13	Do.	957	7151	...	...	12	Do.
926	7086	...	...	29	Do.	958	7152	...	...	38	Do.
927	7087	...	...	25	Do.	959	7153	...	...	67	Do.
928	7092	...	...	10	Do.	960	7154	...	...	74	Do.
929	7093	...	...	12	Do.	961	7155	...	...	18	Do.
930	7094	...	...	12	Do.	962	7156	...	...	34	Do.
931	7095	...	...	3	Do.	963	7157	...	...	44	Do.
932	7096	...	...	7	Do.	964	7158	...	...	82	Do.
933	7097	...	...	29	Do.	965	7160	...	1	32	Do.
934	7098	...	...	75	Do.	966	7162	...	1	3	Do.
935	7099	...	—	7	Do.	967	7163	...	1	32	Do.
936	7100	...	...	4	Do.	968	7164	...	...	43	Do.
937	7101	...	...	45	Do.	969	7165	...	...	24	Do.
938	7102	...	...	29	Do.	970	7166	...	...	42	Do.
939	7103	2	...	...	Tree.	971	7167	...	...	82	Do.

Order R. O. C. No. 1415 of 26/Revenue, dated Trivandrum, 28th July 1927.

Munro Island, or as it is commonly called "Munro Thuruthu" situated in the East Kallada and Perinad Pakuthies of Quilon Taluk and West Kallada Pakuthy of Kunnathur Taluk, was granted to the Church Mission Society at Kottayam by Her Highness Parvathy Rani by a Neet dated the 5th Makarom 994, for the maintenance of a Seminary there. This tract of land at the time of the grant consisted of 371 purayidoms, 7 ridges and 4,646 paras and 6½ Edangalies of paddy fields, yielding an annual revenue of 10,370½ fanams within certain boundaries and such portion of *Chundakadu* as might be reclaimed and brought under enjoyment within such boundaries by the Mission. The property was granted under *Anubhogom* tenure, subject to an annual payment of 250 fanams to the Sirkar every year as *Thirumulkazhcha*, the remaining 10,120½ fanams being granted for the maintenance of the C. M. S. Seminary at Kottayam.

2. In his letter dated the 7th January 1926, the Rev. W. S. Hunt of the Church Mission Society, Kottayam, proposed on behalf of the Mission that Government might resume the property and give to the Trustees of the Society such sum of money as will enable them to continue to carry

SCHEDULE—GROUP A.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
972	7168	...	...	39	Puraidam.	1003	7204	...	...	35	Puraidam.
973	7169	...	...	41	Do.	1004	7205	...	...	16	Do.
974	7171	...	...	29		1005	7206	...	...	12	Do.
975	7172	...	...	29	Do.	1006	7207	...	...	30	Do.
976	7173	...	...	23	Do.	1007	7208	...	...	89	Do.
977	7174	...	...	30	Do.	1008	7209	...	...	66	Do.
978	7175	...	...	54	Do.	1009	7211	...	...	57	Do.
979	7176	...	...	12	Do.	1010	7212	...	...	53	Do.
980	7178	...	...	38	Do.	1011	7213	...	...	25	Do.
981	7179	...	...	45	Do.	1012	7214	...	...	56	Do.
982	7180	...	...	55	Do.	1013	7215	...	...	39	Do.
983	7181	...	...	35	Do.	1014	7216	...	...	16	Do.
984	7182	...	...	49	Do.	1015	7217	...	...	29	Do.
985	7183	...	...	54	Do.	1016	7218	...	...	50	Do.
986	7184	...	2	32	Do.	1017	7219	...	...	32	Do.
987	7185	...	...	79	Do.	1018	7220	...	...	79	Do.
988	7186	...	...	20	Do.	1019	7221	...	...	24	Do.
989	7187	...	...	28	Do.	1020	7222	...	...	18	Do.
990	7188	...	...	33	Do.	1021	7223	...	...	52	Do.
991	7189	...	...	37	Do.	1022	7224	...	2	20	Do.
992	7192	...	1	16	Do.	1023	7225	...	...	21	Do.
993	7193	...	1	14	Do.	1024	7226	...	...	33	Do.
994	7194	...	...	13	Do.	1025	7228	...	...	50	Do.
995	7196	...	...	67	Do.	1026	7229	...	...	89	Do.
996	7197	...	...	52	Do.	1027	7230	...	...	29	Do.
997	7198	...	...	16	Do.	1028	7232	...	...	55	Do.
998	7199	...	...	30	Do.	1029	7233	...	...	55	Do.
999	7200	...	...	62	Do.	1030	7234	...	2	1	Do.
1000	7201	...	...	56	Do.	1031	7235	2	...	...	Tree.
1001	7202	...	...	28	Do.	1032	7238	B	...	2	Puraidam.
1002	7203	...	2	...	Do.	1033	7246	...	...	12	Do.

out, on the same scale as at present, the purpose for which the property was entrusted to them. The Mission requested that an amount that would fetch an annual income of Rs. 6,000 be given to them as the price of the land or, alternatively, that an annual grant of Rs. 6,000 may be made to the Mission to be devoted to education in their establishments of Syrian Christian students. The Rev. W. S. Hunt also requested that if the above proposal is not acceptable to Government the Mission may be given such powers as will enable them to facilitate the collection of the rent due from the lands.

3. The question of the resumption of Munro Island had been brought before the Government by the C. M. S. Missionaries from time to time in the past, but the negotiations were not carried to a conclusion as the Government and the Society could not come to an agreement about the manner of th resumption and the terms of the settlement. The Society having brought up the matter again now, a careful examination of the whole question was made by Government and they have come to the conclusion that the resumption of the estate is desirable in the interest of all concerned, *viz.*, the Government, the Trustees and the tenants. From an administrative stand-point it is inconvenient to have a large extent of tax-free land in the midst of other tax-paying lands. As

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
1034	7247	...	...	16	Puraidam	1067	7315	...	1	30	Puraidam
1035	7248	...	...	67	Do.	1068	7317	...	...	53	Do.
1036	7249	2	...	...	Tree	1069	7318	...	...	29	Do.
1037	7252	...	...	23	Puraidam	1070	7319	...	1	8	Do.
1038	7253	2	...	...	Tree	1071	7326	...	...	16	Do.
1039	7256	...	...	20	Purajdam	1072	7327	...	...	24	Do.
1040	7257	...	...	7	Do.	1073	7328	...	...	25	Do.
1041	7259	B	...	5	Do.	1074	7340	...	...	35	Do.
1042	7260	...	...	18	Do.	1075	7343	...	...	12	Do.
1043	7261	...	...	22	Do.	1076	7345	A	...	5	Do.
1044	7262	...	...	14	Do.	1077	7349	...	...	30	Do.
1045	7263	...	...	15	Do.	1078	7358	...	...	4	Do.
1046	7264	...	...	39	Do.	1079	7365	2	...	...	Tree
1047	7265	2	...	...	Tree	1080	7368	2	...	...	Do.
1048	7266	B	...	7	Puraidam	1081	7372	...	...	20	Puraidam
1049	7267	2	...	...	Tree	1082	7373	...	...	11	Do.
1050	7269	2	...	...	Do.	1083	7374	...	...	8	Do.
1051	7273	...	...	23	Puraidam	1084	7375	...	...	54	Do.
1052	7274	...	...	19	Do.	1085	7376	...	...	22	Do.
1053	7275	...	...	32	Dc.	1086	7377	...	...	46	Do.
1054	7276	...	1	46	Do.	1087	7378	...	...	35	Do.
1055	7278	...	...	64	Do.	1088	7379	...	...	31	Do.
1056	7280	...	2	38	Do.	1089	7380	2	...	...	Tree
1057	7281	...	1	80	Do.	1090	7381	...	...	29	Puraidam
1058	7282	...	8	62	Do.	1091	7382	...	2	77	Do.
1059	7284	...	...	28	Do.	1092	7393	A	...	7	Do.
1060	7285	...	...	57	Do.	1093	7394	...	...	6	Do.
1061	7286	...	2	35	Do.	1094	7395	...	...	6	Do.
1062	7288	...	...	52	Do.	1095	7396	...	...	34	Do.
1063	7297	...	...	18	Do.	1096	7397	...	...	25	Do.
1064	7299	...	...	13	Do.	1097	7401	...	...	7	Do.
1065	7313	...	...	20	Do.	1098	7402	...	...	75	Do.
1066	7314	...	...	28	Do.	1099	7403	...	...	28	Do.

regards the Trustees, they are experiencing difficulty in the collection of rent from the large body of tenants on the estate from whom the Mission has to collect rents. The Mission, having no power to recover the same from defaulting tenants by coercive process, has to resort to the Civil Courts for the purpose at considerable trouble and expense. The resumption will also be a positive boon to the tenants. Their present position in the estate is precarious. They are now only tenants-at-will, having no ownership or fixity of tenure in the land. They can acquire such rights only if Government resume the property and allow the registry of land in the names of the present holders as ordinary Government land. As they are not paying any tax to Government, they are not now entitled to vote at Elections for the Assembly and the Legislative Council. All things considered the Government are convinced that the resumption of the property by the Government is desirable.

4. The Government have therefore informed the Mission that they are willing to consider the question of the resumption of the estate on payment of an annual grant to the Mission in perpetuity for the purpose of carrying out the objects of the

SCHEDULE—GROUP A.

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
1100	7405	...	...	6	Puraidam	1138	7551	...	...	13	Puraidam.
1101	7407	B	...	5	Do.	1139	7555	...	...	9	Do.
1102	7408	...	...	58	Do.	1140	7562	...	...	28	Do.
1103	7409	...	...	7	Do.	1141	7563	...	...	31	Do.
1104	7410	...	1	7	Do.	1142	7564	...	...	54	Do.
1105	7411	...	...	25	Do.	1143	7565	...	...	38	Do.
1106	7412	...	1	10	Do.	1144	7566	...	...	15	Do.
1107	7413	...	...	28	Do.	1145	7568	2	...	...	Tree.
1108	7414	...	...	50	Do.	1146	7569	...	...	25	Puraidam.
1109	7415	...	...	22	Do.	1147	7572	...	..	23	Do.
1110	7416	...	...	21	Do.	1148	7573	2	...	...	Tree.
1111	7417	...	...	20	Do.	1149	7574	2	...	...	Do.
1112	7418	...	...	23	Do.	1150	7575	...	...	56	Puraidam.
1113	7452	...	1	7	Do.	1151	7576	...	...	19	Do.
1114	7465	...	...	10	Do.	1152	7577	...	...	51	Do.
1115	7468	B	...	7	Do.	1153	7578	...	4	56	Do.
1116	7477	...	...	18	Do.	1154	7579	...	...	93	Do.
1117	7481	...	...	22	Do.	1155	7580	A	...	12	Do.
1118	7499	...	...	10	Do.	1156	7581	...	...	22	Do.
1119	7500	...	...	16	Do.	1157	7582	2	...	...	Tree.
1120	7510	...	...	30	Do.	1158	7583	...	...	28	Puraidam
1121	7512	...	...	26	Do.	1159	7584	...	...	32	Do.
1122	7513	...	...	37	Do.	1160	7585	...	...	43	Do.
1123	7514	...	...	25	Do.	1161	7586	...	...	42	Do.
1124	7515	...	...	38	Do.	1162	7587	2	...	...	Tree.
1125	7516	...	...	12	Do.	1163	7588	2	...	...	Do.
1126	7517	...	...	6	Do.	1164	7589	2	...	...	Do.
1127	7522	...	...	21	Do.	1165	7590	...	...	32	Puraidam
1128	7526	...	...	26	Do.	1166	7591	...	...	51	Do.
1129	7527	...	...	10	Do.	1167	7592	...	...	45	Do.
1130	7533	...	...	16	Do.	1168	7593	...	1	25	Do.
1131	7538	...	...	10	Do.	1169	7594	...	...	58	Do.
1132	7539	...	...	13	Do.	1170	7595	...	...	23	Do.
1133	7540	...	...	23	Do.	1171	7596	...	...	20	Do.
1134	7541	...	...	40	Do.	1172	7600	...	1	37	Do.
1135	7542	...	...	16	Do.	1173	7601	...	...	87	Do.
1136	7546	...	...	14	Do.	1174	7602	...	...	60	Do.
1137	7547	...	...	31	Do.	1175	7603	...	1	65	Do.

trust, the amount of the grant being decided after an examination of the accounts of the Trust and the position in general. This has been agreed to by the authorities of the C. M. S. The Government consider that this examination will be best done by a small mixed committee consisting of Government Officers and the representatives of the Trustees.

5. The Government accordingly resolve to appoint a Committee consisting of two Government Officers and two representatives of the Trustees. The Trustees have nominated the following two gentlemen as their representatives to work on the Committee :—

* * * *

6. The Committee thus constituted is requested to examine the accounts of receipts and expenditure of the estate from the year 1082, in which year the last re-assessment of rent was made by the

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
1176	7608	...	...	40	Puraidam	1211	7655	...	...	12	Puraidam.
1177	7610	...	...	21	Do.	1212	7656	...	18	62	Do.
1178	7611	...	...	38	Do.	1213	7657	...	...	75	Do.
1179	7612	...	...	13	Do.	1214	7658	...	...	89	Do.
1180	7613	B	...	37	Do.	1215	7659	...	1	25	Do.
1181	7614	...	...	18	Do.	1216	7661	...	3	79	Do.
1182	7615	...	...	33	Do.	1217	7663	...	...	48	Do.
1183	7616	...	...	15	Do.	1218	7664	...	...	50	Do.
1184	7617	...	...	45	Do.	1219	7665	...	...	87	Do.
1185	7618	...	...	24	Do.	1220	7667	A	...	88	Do.
1186	7619	...	...	45	Do.	1221	7668	...	...	55	Do.
1187	7622	...	1	9	Do.	1222	7669	...	...	35	Do.
1188	7624	...	1	76	Do.	1223	7670	...	...	52	Do.
1189	7625	...	2	16	Do.	1224	7671	...	...	33	Do.
1190	7626	...	...	6	Do.	1225	7673	...	...	14	Do.
1191	7627	...	...	37	Do.	1226	7674	...	...	42	Do.
1192	7628	...	...	33	Do.	1227	7676	...	...	14	Do.
1193	7629	...	...	48	Do.	1228	7679	...	...	7	Do.
1194	7630	...	...	20	Do.	1229	7688	...	...	10	Do.
1195	7631	...	...	25	Do.	1230	7689	...	...	6	Do.
1196	7633	...	...	46	Do.	1231	7691	...	...	65	Do.
1197	7634	2	...	...	Tree.	1232	7693	...	...	15	Do.
1198	7635	2	...	...	Do.	1233	7694	...	...	8	Do.
1199	7636	...	...	4	Puraidam.	1234	7698	...	...	11	Do.
1200	7638	...	...	60	Do.	1235	7699	...	...	12	Do.
1201	7639	...	...	76	Do.	1236	7700	...	...	16	Do.
1202	7640	...	...	51	Do.	1237	7701	...	...	11	Do.
1203	7641	...	...	28	Do.	1238	7702	...	...	27	Do.
1204	7642	...	...	63	Do.	1239	7704	...	...	11	Do.
1205	7645	...	...	14	Do,	1240	7705	...	...	24	Do.
1206	7646	...	...	5	Do.	1241	7707	...	...	22	Dv.
1207	7647	...	...	36	Do.	1242	7708	...	...	5	Do.
1208	7649	...	1	19	Do.	1243	7710	...	...	26	Do.
1209	7650	...	1	28	Do.	1244	7711	...	...	25	Do.
1210	7652	...	...	32	Do.	1245	7718	...	...	42	Do.

Mission in the Island, and to submit a report to Government as to what would be a fair and reasonable amount which should be paid to the Society annually when the trust property is resumed by Government. In formulating a recommendation as to the amount, the Committee will take into consideration, on the one hand, the expenditure that will have to be incurred by Government on account of the additional staff in the Land Revenue Department for collection of revenue, on account of survey, and on account of bringing the tract into line with the ordinary administrative units of the State, and other kindred objects, and, on the other hand, the probable expansion of the income from the Island and the possibility of registering the lands to the present occupants and recovering tharavila therefor.

7. The Committee is requested to start work as early as possible and to forward their report to Government before the close of Chingom 1103.

8. The Committee will hold its meetings at Quilon which will be its head-quarters. The Dewan Peishkar, Quilon, is requested

SCHEDULE—GROUP A.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
1246	7719	...	...	33	Puraidam.	1278	7775	...	...	19	Puraidam.
1247	7720	...	...	41	Do.	1279	7776	...	...	7	Do.
1248	7721	...	...	16	Do.	1280	7777	...	...	10	Do.
1249	7722	B	...	11	Do.	1281	7778	...	...	63	Do.
1250	7725	...	...	23	Do.	1282	7779	...	...	50	Do.
1251	7726	...	...	8	Do.	1283	7780	...	...	12	Do.
1252	7727	...	...	74	Do.	1284	7784	...	...	35	Do.
1253	7728	...	...	14	Do.	1285	7785	...	...	74	Do.
1254	7729	...	...	11	Do.	1286	7790	...	...	4	Do.
1255	7730	...	...	22	Do.	1287	7791	...	...	19	Do.
1256	7731	B	...	47	Do.	1288	7793	...	...	76	Do.
1257	7742	...	..	98	Do.	1289	7794	...	...	14	Do.
1258	7743	...	3	86	Do.	1290	7795	...	...	13	Do.
1259	7744	...	...	45	Do.	1291	7798	2	...	...	Tree
1260	7745	...	...	47	Do.	1292	7801	2	...	...	Do.
1261	7746	...	...	83	Do.	1293	7805	2	...	...	Do.
1262	7747	...	...	14	Do.	1294	7806	...	...	2	Puraidam.
1263	7748	...	...	34	Do.	1295	7807	2	...	...	Tree
1264	7749	...	...	20	Do.	1296	7808	...	...	9	Puraidam.
1265	7750	..	...	7	Do.	1297	7809	B	...	6	Do.
1266	7756	...	...	17	Do.	1298	7812	...	...	19	Do.
1267	7757	...	...	49	Do.	1299	7813	...	...	9	Do.
1268	7759	...	...	2	Do.	1300	7814	...	...	25	Do.
1269	7762	...	...	79	Do.	1301	7815	...	...	5	Do.
1270	7763	...	...	3	Do.	1302	7816	...	...	9	Do.
1271	7764	...	...	64	Do.	1303	7817	...	...	21	Do.
1272	7765	...	1	15	Do.	1304	7822	...	...	28	Do.
1273	7768	2	...	...	Tree	1305	7825	...	...	31	Do.
1274	7770	...	...	6	Puraidam.	1306	7826	B	...	14	Do.
1275	7771	...	...	4	Do.	1307	7827	...	...	33	Do.
1276	7772	...	...	37	Do.	1308	7828	...	...	37	Do.
1277	7773	...	...	41	Do.	1309	7829	...	...	57	Do.

to find necessary office accommodation for the Committee either in his own office or in Olai Satrom.

* * * *

III.

By G. O. R. O. C. No. 1415/26/ Rev., dated 12-4-1930, the tract known as Munro Island was taken over by Government from the Church Mission Society and constituted into a Pakuthi of the Quilon Taluk.

In their Order, Dis. No. 182 of 1931/ Rev., dated 7th February 1931, on the Report on the Administration of the Land Revenue and Survey Departments for the year 1105, the Government observed as follows in regard to this important administrative measure :—

"The tract known as the Munro Island in the Quilon Taluk, which was held from Government under the Anubhogam tenure by the Church Mission Society having been reconveyed to Government by the Society in return for an annual grant in perpetuity of Bh. Rs. 5,000, the lands were taken over by Government from the Society and constituted into the "Munro Island Pakuthi.' It is placed under the administrative control of the Quilon Tahsildar with a staff of * *. A Royal Proclamation was issued declaring the tenure of the lands surrendered by the Society to

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
1310	7830	...	...	11	Puraidam.	1339	7880	2	...	...	Tree
1311	7831	...	...	10	Do.	1340	7882	...	...	7	Puraidam.
1312	7836	...	...	5	Do.	1341	7885	2	...	...	Tree
1313	7839	...	...	12	Do.	1342	7886	A/2	...	...	Do.
1314	7840	C/2	...	...	Tree.	1343	7886	B	...	28	Puraidam.
1315	7841	...	...	33	Puraidam.	1344	7887	...	...	11	Do.
1316	7846	B	...	19	Do.	1345	7890	2	...	...	Tree
1317	7849	...	...	6	Do.	1346	7895	2	...	...	Do.
1318	7850	2	...	...	Tree	1347	7896	...	...	35	Puraidam.
1319	7851	...	...	6	Puraidam.	1348	7897	...	...	10	Do.
1320	7852	...	...	4	Do.	1349	7898	...	...	55	Do.
1321	7853	...	...	49	Do.	1350	7900	...	...	21	Do.
1322	7854	2	...	...	Tree	1351	7912	...	...	13	Do.
1323	7855	...	...	13	Puraidam.	1352	7931	...	...	10	Do.
1324	7856	...	...	10	Do.	1353	7936	...	...	13	Do.
1325	7857	...	...	68	Do.	1354	7937	...	...	39	Do.
1326	7865	2	...	...	Tree	1355	7941	...	...	16	Do.
1327	7866	2	...	...	Do.	1356	7943	B	...	2	Do.
1328	7868	...	...	16	Puraidam.	1357	7944	...	...	24	Do.
1329	7869	...	...	5	Do.	1358	7945	B	...	1	Do.
1330	7870	...	...	36	Do.	1359	7947	...	...	12	Do.
1331	7871	...	...	9	Do.	1360	7952	...	...	21	Do.
1332	7872	...	...	21	Do.	1361	7953	2	...	...	Tree
1333	7873	...	...	9	Do.	1362	7954	...	...	51	Puraidam.
1334	7875	...	...	14	Do.	1363	7955	...	...	6	Do.
1335	7876	...	...	17	Do.	1364	7957	...	...	57	Do.
1336	7878	2	...	...	Tree	1365	7959	...	...	8	Do.
1337	7878	3	...	...	Do.	1366	7960	...	...	43	Do.
1338	7879	...	...	67	Puraidam.	1367	7963	...	...	10	Do.

be changed into Pandarapattom and the lessees holding under the Society as the registered holders and pattadars with all the rights and liabilities of registered holders of Pandarapattom lands. The rent payable by the lessees to the Society before the surrender of the lands to the Government by the latter, was ordered to be treated as the assessment payable to Government on the lands by the holders and as the public revenue due on these lands. This measure was beneficial to the holders of the lands whose position rose from that of mere tenants-at-will to that of proprietors of lands entitled to all the privileges the land holders in other places enjoyed in the matter of elections to the Legislative Council, &c."

IV.

(A.) In regard to the grant of Munro Island, Volume III of the Land Revenue Manual, Pages 42—43, contains the following:—

"195. This is a grant made by Her Highness Parvathi Rani by a Neet, dated 5th Makarom 994 M. E., by which certain lands—paddy lands and gardens—in the Proverti of East Kallada in the Quilon 'Mandapathumvathukal' yielding an annual assessment of 10,370½ fanams were given under 'Anubhogam' tenure, subject to an annual payment of 250 fanams to the Sirkar as 'Thirumukakalcha', the remaining 10,120½ fanams being granted for the maintenance of the C. M. S. Seminary at Kottayam.

140

SCHEDULE—GROUP A.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
1368	7964	...	...	55	Puraidam	1402	8047	B	...	82	Puraidam
1369	7965	2	...	...	Tree	1403	8050	...	...	7	Do.
1370	7968	...	...	8	Puraidam	1404	8052	...	2	60	Do.
1371	7969	...	...	4	Do.	1405	8053	...	176	94	Do.
1372	7977	2	...	...	Tree	1406	8054	...	2	10	Do.
1373	7981	...	...	12	Puraidam	1407	8055	...	5	11	Do.
1374	7983	2	...	...	Tree	1408	8057	...	...	73	Do.
1375	7990	...	...	5	Puraidam	1409	8059	...	4	14	Do.
1376	7992	...	...	44	Do.	1410	8061	...	5	24	Do.
1377	7993	...	...	31	Do.	1411	8062	...	27	35	Do.
1378	7994	...	...	35	Do.	1412	8063	...	4	87	Do.
1379	8001	...	4	72	Do.	1413	8065	...	3	79	Do.
1380	8002	...	1	87	Do.	1414	8066	...	4	92	Do.
1381	8004	...	1	66	Do.	1415	8067	...	...	94	Do.
1382	8005	...	...	36	Do.	1416	8068	...	1	69	Do.
1383	8006	...	...	41	Do.	1417	8069	...	...	46	Do.
1384	8007	...	...	87	Do.	1418	8070	...	...	20	Do.
1385	8008	...	...	65	Do.	1419	8071	...	...	50	Do.
1386	8009	...	1	67	Do.	1420	8072	...	...	62	Do.
1387	8010	...	...	44	Do.	1421	8073	...	2	32	Do.
1388	8011	...	...	28	Do.	1422	8074	...	2	29	Do.
1389	8013	...	1	33	Do.	1423	8075	...	...	89	Do.
1390	8014	...	1	45	Do.	1424	8076	...	...	89	Do.
1391	8018	...	2	62	Do.	1425	8077	...	...	74	Dq.
1392	8024	B	...	4	Do.	1426	8078	...	2	28	Do.
1393	8025	...	...	7	Do.	1427	8079	...	1	4	Do.
1394	8026	A	...	4	Do.	1428	8080	...	1	18	Do.
1395	8033	...	...	69	Do.	1429	8081	...	...	82	Do.
1396	8039	...	...	5	Do.	1430	8082	...	...	32	Do.
1397	8040	B	...	54	Do.	1431	8083	...	...	41	Do.
1398	8042	...	...	43	Do.	1432	8084	...	1	45	Do.
1399	8043	...	...	32	Do.	1433	8085	...	...	41	Do.
1400	8044	A	...	7	Do.	1434	8086	...	1	26	Do.
1401	8045	B	...	5	Do.	1435	8087	...	...	12	Do.

"196. In connection with the settlement operations in Quilon Taluk, certain disputes arose regarding the boundaries of the lands comprised in the grant as well as certain specific lands adjoining or included in the area of the grant. * * * A final settlement was arrived at...and it was mutually agreed that an Agreement should be drawn up on the terms settled.

"197. * * The main points settled by this Agreement are :—

(1) The limits of the lands included under the Anubhogam grant were clearly defined.

(2) Certain strips of land specified in the Agreement were recognised as within the Anubhogam grant.

(3) The grantees were not to claim any lands on the eastern side of the east new river, as within the Anubhogam, except certain specified strips of land.

(4) A waterway of 100 feet in breadth was always to be left by the grantees in the east new river which was opened after the grant.

(5) Certain reclamations and accretions in the Peruman and Peringalathu Kayals specified in the Agreement which had been registered in the names of the ryots

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
1436	8089	...	...	94	Puraidam.	1467	8141	...	...	10	Puraidam.
1437	8090	...	1	63	Do.	1468	8143	...	1	24	Do.
1438	8091	...	...	47	Do.	1469	8145	...	...	80	Do.
1439	8092	...	...	22	Do.	1470	8146	...	...	63	Do.
1440	8093	...	...	73	Do.	1471	8147	...	...	10	Do.
1441	8094	...	1	36	Do.	1472	8148	...	...	61	Do.
1442	8095	...	...	26	Do.	1473	8149	...	...	24	Do.
1443	8096	...	...	46	Do.	1474	8150	...	...	6	Do.
1444	8097	...	...	38	Do.	1475	8152	...	...	32	Do.
1445	8098	...	...	68	Do.	1476	8153	...	...	7	Do.
1446	8099	...	1	7	Do.	1477	8155	...	...	24	Do.
1447	8100	...	1	55	Do.	1478	8156	...	...	50	Do.
1448	8101	...	2	15	Do.	1479	8157	...	...	26	Do.
1449	8103	...	2	15	Do.	1480	8159	...	1	19	Do.
1450	8104	...	1	60	Do.	1481	8160	...	...	26	Do.
1451	8105	...	6	6	Do.	1482	8163	...	...	9	Do.
1452	8106	...	...	9	Do.	1483	8165	B	...	5	Do.
1453	8107	...	21	70	Do.	1484	8166	...	...	8	Do.
1454	8108	...	83	55	Do.	1485	8167	...	...	25	Do.
1455	8109	...	...	48	Do.	1486	8168	...	...	14	Do.
1456	8110	...	...	5	Do.	1487	8169	B	...	7	Do.
1457	8113	...	...	39	Do.	1488	8170	B	...	10	Do.
1458	8114	...	...	46	Do.	1489	8171	...	...	19	Do.
1459	8117	...	...	32	Do.	1490	8172	B	...	92	Do.
1460	8118	2	...	...	Tree	1491	8173	...	...	63	Do.
1461	8119	...	...	26	Puraidam.	1492	8174	...	...	18	Do.
1462	8120	...	...	55	Do.	1493	8175	...	...	8	Do.
1463	8127	2	...	...	Tree.	1494	8176	...	...	77	Do.
1464	8128	...	...	56	Puraidam.	1495	8177	...	...	51	Do.
1465	8129	...	1	28	Do.	1496	8178	A	...	27	Do.
1466	8134	A	...	27	Do.	1497	8179	...	...	8	Do.

were transferred to the grantees on Pandarapattom tenure and certain other strips of land also specified in the Agreement were registered in the names of the grantees as Pandarapattom.

(6) Certain accretions and pieces of land claimed by the grantees which were situated in the West Kallada Pakuthi of Kunnathur Taluk and Perinad Pakuthi of Quilon Taluk which, though attached to the Island, could not be included within the boundaries of the grant, were given to the grantees on Pandarapattom tenure.

(7) All accretions and reclamations on both sides of the Puthanar where it flows between Mission lands were declared to belong to the grantees, but a water-way of 150 feet in breadth in Puthanar was always to be left unencroached by the grantees.

(8) The grantees were given preferential right to reclaim from Peruman, Peringalathu and Koivila Kayals adjoining their Anubhogom holdings and have the reclaimed lands registered in their names as Pandarapattom within certain specified lines marked A-A in the map annexed to the Agreement:

(9) It was declared that other future accretions and reclamations would be given on Pandarapattom to the grantees provided (*a*) it is open to the Sirkar to

SCHEDULE—GROUP A.

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
1498	8181	...	...	5	Puraidam.	1534	8232	...	...	5	Puraidam.
1499	8182	...	...	6	Do.	1535	8234	...	2	45	Do.
1500	8184	...	...	51	Do.	1536	8235	...	1	67	Do.
1501	8185	2	...	...	Tree.	1537	8237	...	3	29	Do.
1502	8187	...	...	6	Puraidam.	1538	8238	...	2	51	Do.
1503	8189	...	...	10	Do.	1539	8239	...	2	65	Do.
1504	8190	B	...	69	Do.	1540	8240	...	2	74	Do.
1505	8192	...	...	12	Do.	1541	8244	...	...	91	Do.
1506	8193	...	...	7	Do.	1542	8245	A	...	63	Do.
1507	8194	...	...	38	Do.	1543	8246	...	...	70	Do.
1508	8195	...	...	8	Do.	1544	8248	...	...	81	Do.
1509	8196	B	...	6	Do.	1545	8249	A	...	5	Do.
1510	8197	B	...	9	Do.	1546	8250	...	...	39	Do.
1511	8198	B	...	9	Do.	1547	8252	...	...	62	Do.
1512	8199	B	...	8	Do.	1548	8255	...	...	21	Do.
1513	8200	B	...	4	Do.	1549	8256	...	...	20	Do.
1514	8202	B	...	4	Do.	1550	8259	...	...	47	Do.
1515	8204	...	...	6	Do.	1551	8260	...	...	46	Do.
1516	8205	2	...	...	Tree.	1552	8261	...	...	4	Do.
1517	8206	...	...	10	Puraidam.	1553	8262	...	...	18	Do.
1518	8207	...	...	92	Do.	1554	8263	...	...	6	Do.
1519	8209	...	...	44	Do.	1555	8264	...	...	47	Do.
1520	8211	...	...	81	Do.	1556	8265	...	...	18	Do.
1521	8213	A	...	14	Do.	1557	8266	...	...	38	Do.
1522	8219	2	...	...	Tree.	1558	8268	...	1	50	Do.
1523	8221	2	...	...	Do.	1559	8269	...	...	11	Do.
1524	8222	...	...	62	Puraidam.	1560	8272	...	...	74	Do.
1525	8223	2	...	...	Tree.	1561	8274	...	1	75	Do.
1526	8224	...	...	6	Puraidam.	1562	8275	...	1	26	Do.
1527	8225	...	...	12	Do.	1563	8278	...	...	38	Do.
1528	8226	...	...	15	Do.	1564	8279	...	...	23	Do.
1529	8227	...	...	18	Do.	1565	8280	...	...	27	Do.
1530	8228	B	...	6	Do.	1566	8281	...	...	25	Do.
1531	8229	...	...	7	Do.	1567	8282	...	...	22	Do.
1532	8230	B	...	11	Do.	1568	8283	...	...	26	Do.
1533	8231	...	...	16	Do.	1569	8284	B	...	12	Do.

say whether any accretion or reclamation should be allowed to stand at all and (*b*) if the grantees be not agreeable to take pattah for such properties, it shall be lawful for the Sirkar to dispose of the same in manner that commends itself to the Sirkar.

(10) The grantees were to bear all costs of replacing missing boundary stones and the stones to be planted in localities decided by the Agreement to be included within the Anubhogam grant.

"198. The lands covered by this Agreement are situated in the East Kallada and Perinad Pakuthis of the Quilon Taluk, and West Kallada Pakuthi of Kunnathur Taluk."

(B) The terms of the Royal Neet granted in 994 M. E., and of the Agreement executed in 1085 M. E., above referred to, will be found in pages 711-723 of Volume II of the Land Revenue Manual.

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
1570	8286	...	...	17	Puraidam.	1623	8351	...	1	70	Puraidam.
1571	8289	...	...	50	Do.	1624	8352	B	...	5	Do.
1572	8291	...	...	24	Do.	1625	8354	...	...	9	Do.
1573	8292	...	...	22	Do	1626	8355	...	...	80	Do.
1574	8293	...	...	16	Do.	1627	8356	...	...	8	Do.
1575	8296	2	...	...	Tree.	1628	8357	...	...	15	Do.
1576	8296	3	...	...	Do.	1629	8358	2	...	...	Tree.
1577	8297	2	...	...	Do.	1630	8359	...	...	11	Puraidam.
1578	8298	...	...	9	Puraidam.	1631	8360	...	...	26	Do.
1579	8299	2	...	..	Tree.	1632	8361	2	...	...	Tree.
1580	8300	2	...	..	Do.	1633	8362	2	...	...	Do.
1581	8301	2	...	..	Do.	1634	8363	...	...	21	Puraidam.
1582	8302	...	...	7	Puraidam.	1635	8364	2	...	...	Tree.
1583	8304	...	...	93	Do.	1636	8365	...	...	19	Puraidam.
1584	8305	...	...	21	Do.	1637	8366	...	...	15	Do.
1585	8306	...	...	46	Do.	1638	8367	...	...	27	Do.
1586	8307	...	...	23	Do.	1639	8369	...	...	7	Do.
1587	8308	...	...	12	Do.	1640	8370	...	...	11	Do.
1588	8309	...	...	41	Do.	1641	8372	A	...	9	Do.
1589	8311	...	...	50	Do.	1642	8373	...	...	10	Do.
1590	8314	...	...	68	Do.	1643	8374	...	...	24	Do.
1591	8315	...	...	65	Do.	1644	8376	...	...	59	Do.
1592	8316	...	2	26	Do.	1645	8377	...	...	26	Do.
1593	8317	...	...	72	Do.	1646	8378	...	...	26	Do.
1594	8318	...	...	37	Do.	1647	8379	A/2	...	...	Tree.
1595	8319	...	...	62	Do.	1648	8379	B	...	9	Puraidam.
1596	8320	...	...	95	Do.	1649	8380	...	...	24	Do.
1597	8321	...	2	1	Do.	1650	8381	A	...	15	Do.
1598	8322	...	...	99	Do.	1651	8382	2	...	...	Tree.
1599	8323	...	...	58	Do.	1652	8383	...	...	50	Puraidam.
1600	8324	...	1	22	Do.	1653	8384	B	...	6	Do.
1601	8325	...	...	63	Do.	1654	8385	B	...	40	Do.
1602	8326	...	1	80	Do.	1655	8386	...	...	27	Do.
1603	8327	...	2	99	Do.	1656	8387	2	...	...	Tree.
1604	8328	...	3	66	Do.	1657	8388	...	...	19	Puraidam.
1605	8329	...	1	28	Do.	1658	8389	...	...	7	Do.
1606	8330	...	...	92	Do.	1659	8390	...	...	11	Do.
1607	8331	...	1	18	Do.	1660	8391	...	...	32	Do.
1608	8332	...	...	74	Do.	1661	8392	...	...	15	Do.
1609	8333	...	...	72	Do.	1662	8393	...	...	26	Do.
1610	8334	...	...	16	Do.	1663	8394	...	...	67	Do.
1611	8336	...	...	56	Do.	1664	8395	...	...	31	Do.
1612	8337	...	...	22	Do.	1665	8396	2	...	...	Tree.
1613	8339	...	1	5	Do.	1666	8397	2	...	...	Do.
1614	8340	...	...	76	Do.	1667	8398	...	...	13	Puraidam.
1615	8341	...	...	59	Do.	1668	8399	...	...	56	Do.
1616	8342	...	...	74	Do.	1669	8400	...	...	19	Do.
1617	8343	...	...	78	Do.	1670	8401	B	...	3	Do.
1618	8344	...	4	57	Do.	1671	8402	...	...	57	Do.
1619	8345	...	1	16	Do.	1672	8403	B	...	27	Do.
1620	8347	...	3	58	Do.	1673	8404	...	...	20	Do.
1621	8349	...	...	64	Do.	1674	8405	...	...	8	Do.
1622	8350	...	...	91	Do.	1675	8406	...	...	16	Do.

SCHEDULE—GROUP A.

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
1676	8407	...	...	12	Puraidam.	1729	8465	B	...	3	Puraidam.
1677	8408	...	...	23	Do.	1730	8466	B	...	3	Do.
1678	8409	...	...	7	Do.	1731	8468	...	...	13	Do.
1679	8410	...	...	21	Do.	1732	8469	B	...	7	Do.
1680	8411	...	...	21	Do.	1733	8470	...	2	62	Do.
1681	8412	...	...	42	Do.	1734	8471	2	...	...	Tree.
1682	8413	...	...	15	Do.	1735	8472	2	...	...	Do.
1683	8414	...	...	67	Do.	1736	8473	...	...	15	Puraidam.
1684	8416	...	...	39	Do.	1737	8475	2	...	...	Tree.
1685	8417	...	...	19	Do.	1738	8476	...	...	5	Puraidam.
1686	8418	...	...	45	Do.	1739	8477	2	...	...	Tree.
1687	8419	2	...	...	Tree.	1740	8478	2	...	...	Do.
1688	8420	2	...	...	Do.	1741	8479	...	...	20	Puraidam.
1689	8421	...	...	28	Puraidam.	1742	8480	2	...	...	Tree.
1690	8422	...	...	42	Do.	1743	8481	2	...	...	Do.
1691	8423	...	...	8	Do.	1744	8482	...	...	14	Puraidam.
1692	8424	2	...	...	Tree.	1745	8483	2	...	...	Tree.
1693	8425	2	...	...	Do.	1746	8484	2	...	...	Do.
1694	8426	2	...	...	Do.	1747	8485	...	...	43	Puraidam.
1695	8427	...	...	6	Puraidam.	1748	8486	2	...	...	Tree.
1696	8428	...	...	22	Do.	1749	8487	...	...	21	Puraidam.
1697	8430	...	...	11	Do.	1750	8488	...	...	29	Do.
1698	8431	...	...	13	Do.	1751	8490	...	...	19	Do.
1699	8432	...	...	23	Do.	1752	8491	...	...	12	Do.
1700	8433	...	...	50	Do.	1753	8492	...	...	8	Do.
1701	8438	...	...	64	Do.	1754	8493	B	...	3	Do.
1702	8439	...	...	29	Do.	1755	8494	B	...	4	Do.
1703	8440	...	...	13	Do.	1756	8496	2	...	...	Tree.
1704	8441	...	...	22	Do.	1757	8497	...	...	62	Puraidam.
1705	8442	...	...	20	Do.	1758	8500	2	...	...	Tree.
1706	8443	...	...	21	Do.	1759	8501	2	...	...	Do.
1707	8444	A	...	16	Do.	1760	8502	...	...	14	Puraidam.
1708	8444	B/2	...	...	Tree.	1761	8506	...	...	69	Do.
1799	8445	B	...	22	Puraidam.	1762	8507	...	...	91	Do.
1710	8446	...	...	7	Do.	1763	8508	2	...	...	Tree.
1711	8447	2	...	...	Tree.	1764	8509	...	...	56	Puraidam.
1712	8448	2	...	...	Do.	1765	8510	...	1	4	Do.
1713	8448	3	...	...	Do.	1766	8511	...	...	84	Do.
1714	8449	2	...	...	Do.	1767	8513	...	..	28	Do.
1715	8450	...	...	14	Puraidam.	1768	8515	...	...	14	Do.
1716	8451	...	...	9	Do.	1769	8516	...	...	21	Do.
1717	8452	...	...	59	Do.	1770	8519	...	...	82	Do.
1718	8453	...	...	55	Do.	1771	8521	...	...	87	Do.
1719	8454	...	...	9	Do.	1772	8522	...	...	99	Do.
1720	8455	...	...	21	Do.	1773	8523	...	...	36	Do.
1721	8456	2	...	...	Tree.	1774	8524	...	...	67	Do.
1722	8457	2	...	...	Do.	1775	8526	...	...	16	Do.
1723	8458	2	...	...	Do.	1776	8527	...	...	49	Do.
1724	8459	2	...	...	Do.	1777	8529	...	...	21	Do.
1725	8460	B	...	19	Puraidam.	1778	8530	2	...	...	Tree.
1726	8461	...	...	62	Do.	1779	8531	...	...	42	Puraidam.
1727	8462	...	...	63	Do.	1780	8532	...	...	57	Do.
1728	8464	2	...	...	Tree.	1781	8533	...	...	36	Do.

Serial No.	Survey.		Extent.		Paddy land or Puraidam.	Serial No.	Survey.		Extent.		Paddy land or Puraidam
	No.	Letter.	Acre.	Cent.			No.	Letter.	Acre.	Cent.	
1782	8534	...	...	17	Puraidam.	1835	8593	...	...	53	Puraidam.
1783	8535	B	...	3	Do.	1836	8594	...	...	22	Do.
1784	8536	B	...	10	Do.	1837	8595	...	...	43	Do.
1785	8537	2	...	...	Tree.	1838	8596	...	...	7	Do.
1786	8538	...	...	18	Puraidam.	1839	8597	...	...	14	Do.
1787	8539	...	...	20	Do.	1840	8598	...	...	8	Do.
1788	8540	...	...	8	Do.	1841	8599	...	...	5	Do.
1789	8544	2	...	...	Tree.	1842	8600	...	...	41	Do.
1790	8546	...	...	39	Do.	1843	8601	...	...	18	Do.
1791	8547	2	...	...	Do.	1844	8602	...	...	49	Do.
1792	8548	...	...	8	Puraidam.	1845	8603	...	...	32	Do.
1793	8550	...	2	80	Do.	1846	8604	...	...	45	Do.
1794	8551	...	4	50	Do.	1847	8605	...	...	5	Do.
1795	8552	...	4	56	Do.	1848	8606	...	...	62	Do.
1796	8553	...	1	75	Do.	1849	8607	...	...	11	Do.
1797	8554	...	5	25	Do.	1850	8608	...	...	30	Do.
1798	8555	...	7	36	Do.	1851	8609	...	1	3	Do.
1799	8556	...	14	16	Do.	1852	8610	...	...	7	Do.
1800	8557	...	6	32	Do.	1853	8611	...	...	61	Do.
1801	8559	...	3	67	Do.	1854	8612	...	...	7	Do.
1802	8560	...	1	45	Do.	1855	8613	...	...	66	Do.
1803	8561	...	27	71	Do.	1856	8614	...	...	8	Do.
1804	8562	...	6	80	Do.	1857	8615	...	...	31	Do.
1805	8563	...	2	32	Do.	1858	8616	...	...	4	Do.
1806	8564	...	...	55	Do.	1859	8617	...	...	13	Do.
1807	8565	...	...	92	Do.	1860	8618	...	...	99	Do.
1808	8566	...	2	10	Do.	1861	8620	...	...	44	Do.
1809	8567	...	2	44	Do.	1862	8621	...	4	9	Do.
1810	8568	...	4	42	Do.	1863	8622	...	...	62	Do.
1811	8569	...	2	18	Do.	1864	8623	...	7	11	Do.
1812	8570	...	5	22	Do.	1865	8624	...	15	66	Do.
1813	8571	...	...	9	Do.	1866	8625	...	4	76	Do.
1814	8572	...	...	11	Do.	1867	8626	...	2	5	Do.
1815	8573	...	...	14	Do.	1868	8627	...	6	1	Do.
1816	8574	...	...	50	Do.	1869	8628	...	...	94	Do.
1817	8575	...	...	16	Do.	1870	8629	...	3	15	Do.
1818	8576	...	...	9	Do.	1871	8630	...	3	31	Do.
1819	8577	...	...	16	Do.	1872	8631	...	6	27	Do.
1820	8578	A	...	82	Do.	1873	8632	...	...	62	Do.
1821	8579	...	1	40	Do.	1874	8634	...	...	62	Do.
1822	8580	...	...	10	Do.	1875	8635	...	...	70	Do.
1823	8581	...	...	9	Do.	1876	8636	...	1	61	Do.
1824	8582	...	...	10	Do.	1877	8637	...	3	28	Do.
1825	8583	...	...	11	Do.	1878	8638	...	3	33	Do.
1826	8584	...	...	22	Do.	1879	8639	...	1	40	Do.
1827	8585	...	...	17	Do.	1880	8641	...	...	81	Do.
1828	8586	...	...	20	Do.	1881	8642	...	1	26	Do.
1829	8587	...	...	14	Do.	1882	8643	...	5	79	Do.
1830	8588	...	...	18	Do.	1883	8648	...	3	41	Do.
1831	8589	...	...	10	Do.	1884	8651	...	1	5	Do.
1832	8590	...	...	11	Do.	1885	8652	...	...	67	Do.
1833	8591	...	...	14	Do.	1886	8663	...	2	10	Do.
1834	8592	...	...	6	Do.	1887	8658	...	...	46	Do.

Schedule—Group A.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
1888	8686	...	1	9	Puraidam	1940	8830	...	...	22	Puraidam
1889	8687	...	3	90	Do.	1941	8831	...	...	6	Do.
1890	8688	...	2	55	Do.	1942	8832	...	...	24	Do.
1891	8689	...	2	97	Do.	1943	8833	...	...	8	Do.
1892	8691	...	3	26	Do.	1944	8834	...	...	33	Do.
1893	8692	...	3	26	Do.	1945	8835	...	...	20	Do.
1894	8693	...	...	32	Do.	1946	8836	...	...	7	Do.
1895	8694	...	...	20	Do.	1947	8837	...	...	10	Do.
1896	8695	...	...	19	Do.	1948	8838	...	...	10	Do.
1897	8696	...	...	54	Do.	1949	8839	...	...	31	Do.
1898	8697	...	...	24	Do.	1950	8840	...	...	9	Do.
1899	8699	...	...	38	Do.	1951	8841	...	...	13	Do.
1900	8705	...	2	28	Do.	1952	8842	...	...	4	Do.
1901	8757	...	1	38	Do.	1953	8843	...	...	23	Do.
1902	8760	...	2	29	Do.	1954	8844	...	...	14	Do.
1903	8764	...	3	58	Do.	1955	8845	...	...	11	Do.
1904	8794	...	...	50	Do.	1956	8846	...	...	24	Do.
1905	8795	...	...	9	Do.	1957	8847	...	...	13	Do'
1906	8796	...	...	9	Do.	1958	8848	...	...	5	Do.
1907	8797	A	...	5	Do.	1959	8849	...	...	7	Do.
1908	8798	...	...	12	Do.	1960	8850	...	...	40	Do.
1909	8799	B	...	5	Do.	1961	8851	...	...	12	Do.
1910	8800	...	...	13	Do.	1962	8852	...	...	15	Do.
1911	8801	...	...	14	Do.	1963	8853	...	...	11	Do.
1912	8802	...	...	14	Do.	1964	8854	...	...	26	Do.
1913	8803	...	...	34	Do.	1965	8855	...	...	4	Do.
1914	8804	...	...	8	Do.	1966	8856	...	...	26	Do.
1915	8805	...	...	41	Do.	1967	8857	...	...	4	Do
1916	8806	...	...	12	Do.	1968	8858	...	...	14	Do.
1917	8807	...	...	7	Do.	1969	8859	...	...	49	Do.
1918	8808	...	...	11	Do.	1970	8860	...	...	4	Do.
1919	8809	...	...	13	Do.	1971	8861	...	4	20	Do.
1920	8810	...	...	11	Do.	1972	8862	...	4	97	Do.
1921	8811	...	...	16	Do.	1973	8863	...	1	58	Do.
1922	8812	...	...	4	Do.	1974	8864	...	...	18	Do.
1923	8813	...	...	42	Do.	1975	8865	...	...	20	Do.
1924	8814	...	...	10	Do.	1976	8866	...	1	12	Do.
1925	8815	...	...	48	Do.	1977	8867	...	...	8	Do.
1926	8816	...	...	71	Do.	1978	8868	...	...	31	Do.
1927	8817	...	1	8	Do.	1979	8869	...	...	28	Do.
1928	8818	...	...	5	Do.	1980	8870	...	...	8	Do.
1929	8819	...	...	9	Do.	1981	8871	...	...	44	Do.
1930	8820	...	...	12	Do.	1982	8872	...	...	34	Do.
1931	8821	...	...	24	Do.	1983	8873	...	...	6	Do.
1932	8822	...	...	6	Do.	1984	8874	...	...	8	Do.
1933	8823	...	...	30	Do.	1985	8875	...	...	57	Do.
1934	8824	...	...	4	Do.	1986	8876	...	...	10	Do.
1935	8825	...	...	18	Do.	1987	8877	...	...	81	Do.
1936	8826	...	...	5	Do.	1988	8878	...	...	10	Do.
1937	8827	...	...	16	Do.	1989	8879	...	6	3	Do.
1938	8828	...	...	10	Do.						
1939	8829	...	...	16	Do.		Total ...	...	1307	70	

One thousand three hundred and seven acres and seventy cents.

The Munro Island Proclamation.

Group B.

The properties in this Group are comprised in supplemental Inam Patta No. 1 dated the 30th Vykasi 1086 of Eastern Kallada Pakuthy. They are all Pandaravaka Anubhogom properties situated in Eastern Kallada Pakuthy of Quilon Taluk. They lie in the Sastankottah Sub-District of the Quilon Registration District.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
1	7079	D	...	10	Puraidam.	41	8905	...	...	57	Puraidam.
2	7079	E	...	55	Do.	42	8906	...	5	...	Do.
3	7079	F	...	5	Do.	43	8907	...	...	62	Do.
4	8056	9	...	12	Do.	44	8908	A	...	10	Do.
5	8056	10/A	...	16	Do.	45	8908	B	...	4	Paddy field.
6	8102	1	1	23	Do.	46	8908	C	...	7	Do.
7	8102	5	...	47	Do.	47	8909	...	...	34	Puraidam.
8	8654	1	...	50	Do.	48	8910	...	...	13	Do.
9	8773	...	41	94	Do.	49	8911	...	...	28	Do.
10	8789	...	...	7	Do.	50	8912	...	...	8	Paddy field.
11	8790	...	1	5	Paddy field.	51	8913	...	...	54	Puraidam.
12	8791	...	...	57	Puraidam.	52	8914	...	...	15	Do.
13	8792	...	...	21	Paddy field.	53	8915	...	2	20	Do.
14	8793	...	20	72	Puraidam.	54	8916	...	1	... 9	Do.
15	8880	...	3	40	Do.	55	8917	...	...	9	Paddy field.
16	8881	...	2	70	Do.	56	8918	...	...	21	Puraidam.
17	8882	...	2	96	Do.	57	8919	...	...	19	Paddy field.
18	8883	...	6	27	Do.	58	8920	...	...	9	Puraidam.
19	8884	...	4	97	Do.	59	8921	...	...	10	Paddy field.
20	8885	...	2	20	Do.	60	8922	...	...	14	Puraidam.
21	8772	5/A	4	10	Do.	61	8923	...	...	11	Paddy field.
22	8886	...	2	9	Do.	62	8924	...	...	26	Puraidam.
23	8887	...	1	66	Do.	63	8925	...	...	8	Do.
24	8888	...	2	...	Do.	64	8926	...	...	9	Do.
25	8889	...	...	65	Do.	65	8927	...	...	69	Do.
26	8890	...	1	42	Do.	66	8928	...	...	91	Do.
27	8891	...	...	14	Do.	67	8929	...	1	75	Do.
28	8892	...	...	35	Do.	68	8930	...	...	62	Do.
29	8893	...	...	21	Do.	69	8931	...	...	99	Do.
30	8894	...	...	82	Do.	70	8932	...	...	78	Do.
31	8895	...	...	10	Do.	71	8933	...	...	56	Do.
32	8896	...	1	12	Do.	72	8934	...	...	74	Do.
33	8897	...	1	65	Do.	73	8935	...	...	75	Do.
34	8898	...	...	78	Do.	74	8936	...	1	41	Do.
35	8899	...	...	15	Do.	75	8937	...	1	50	Do.
36	8900	...	...	41	Do.	76	8938	...	1	79	Do.
37	8901	...	...	15	Do.	77	8939	...	2	39	Do.
38	8902	...	...	34	Do.	78	8940	...	3	24	Do.
39	8903	...	...	35	Do.	79	8941	...	2	78	Do.
40	8904	...	...	29	Do.	80	8942	...	...	91	Do.

Schedule—Group C.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
81	8943	...	1	50	Puraidam	99	8961	...	1	48	Puraidam
82	8944	...	...	48	Do.	100	8962	...	1	10	Do.
83	8945	...	...	75	Do.	101	8963	...	...	41	Do.
84	8946	...	...	45	Do.	102	8964	...	1	23	Do.
85	8947	...	...	95	Do.	103	8965	...	5	27	Do.
86	8948	...	...	73	Do.	104	8966	...	1	36	Do.
87	8949	...	...	17	Do.	105	8967	...	3	...	Do.
88	8950	...	2	98	Do.	106	8968	...	1	96	Do.
89	8951	...	2	...	Do.	107	8969	...	1	90	Do.
90	8952	...	2	8	Do.	108	8970	...	1	12	Do.
91	8953	...	1	37	Do.	109	8971	...	1	54	Do.
92	8954	...	1	92	Do.	110	8972	...	...	30	Do.
93	8955	...	1	66	Do.	111	8973	...	...	13	Do.
94	8956	...	...	95	Paddy field	112	7654	...	2	69	Do.
95	8957	...	...	17	Puraidam	113	6565	A	...	33	Do.
96	8958	...	3	42	Do.	114	7362	...	...	14	Paddy field
97	8959	...	...	96	Do.						
98	8960	...	1	17	Do.		Total ...	...	191	13	

One hundred and ninety one acres and thirteen cents.

Group C.

The properties in this Group are comprised in Patta No. 1229 dated 30th Vykasi 1086 of Eastern Kallada Pakuthy. They are all Pandaravaka Pattam properties situated in Eastern Kallada Pakuthy of Quilon Taluk. They lie in the Sastamkotta Sub-District of the Quilon Registration District.

Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.	Serial No.	Survey. No.	Survey. Letter.	Extent. Acre.	Extent. Cent.	Paddy land or Puraidam.
1	8056	2	...	9	Puraidam	20	8060	20	...	13	Puraidam.
2	8056	3	...	5	Do.	21	8102	29	...	14	Do.
3	8056	4	...	5	Do.	22	8102	33	...	19	Do.
4	8058	1	...	9	Do.	23	8774	...	1	70	Do.
5	8058	2	...	10	Do.	24	8775	...	...	83	Paddy field.
6	8058	3	...	10	Do.	25	8776	...	1	16	Do.
7	8058	4	...	10	Do.	26	8771	...	22	58	Do.
8	8058	5	...	10	Do.	27	8778	...	2	75	Do.
9	8060	1	...	10	Do.	28	8779	...	1	89	Puraidam.
10	8060	2	...	95	Do.	29	8780	...	1	45	Do.
11	8060	3	...	27	Do.	30	8781	...	4	19	Paddy land
12	8060	4	...	29	Do.	31	8782	...	3	4	Do.
13	8060	5	...	11	Do.	32	8783	...	1	46	Do.
14	8060	6	...	11	Do.	33	8784	...	1	32	Do.
15	8060	7	...	14	Do.	34	8785	...	1	38	Puraidam.
16	8060	8	...	30	Do.	35	8786	...	2	...	Do.
17	8060	9	...	4	Do.	36	8787	...	1	44	Do.
18	8060	16	...	10	Do.						
19	8060	17	...	55	Do.		Total...	...	51	29	

Fifty one acres and twenty nine cents.

The Munro Island Proclamation.

Group D.

The property in this Group is included in Patta No. 2646 dated the 30th Vykasi 1086 of Perinad Pakuthy of Quilon Taluk. It is Pandaravaka Pattam property situated in Perinad Pakuthy of Quilon Taluk. It lies in the Kundara Sub-District of the Quilon Registration District.

Serial No.	Survey		Extent,		Paddy land or Puraidom.
	No.	Letter.	Acre.	Cent.	
1	4735	1 A/1	...	16	Puraidom.

Sixteen cents.

Group E.

The properties in this Group are comprised in Patta No. 990 dated the 3rd Kumbham 1086 of Western Kallada Pakuthi. They are all Pandaravaka Pattom properties situated in Western Kallada Pakuthi of Kunnathur Taluk. They lie in the Thevalakkara Sub-District of the Quilon Registration District.

Serial No.	Survey.		Extent.		Paddy land or Puraidom.
	No.	Letter.	Acre.	Cent.	
1	1	5	...	9	Puraidam.
2	1	6	...	18	Do.
3	1	7	...	56	Do.
4	1	8	...	32	Do.
5	1	9	...	43	Do.
6	1	10	...	29	Do.
7	1	12	...	87	Do.
8	1	13	...	17	Do.
		Total...	2	91	

Two acres and ninety one cents.

SCHEDULE—GROUP G.

GROUP F.

The properties in this Group are Pandaravaka Pattom properties. They are among those awarded to the Kottayam Seminary under Clause III of the Agreement entered into in the year 1910 between the Travancore Government and the Church Missionary Society. No Patta has been issued for these items. They are situated in Eastern Kallada Pakuthi of Quilon Taluk and in the Sastamkotta Sub-District of the Quilon Registration District.

Serial No.	Survey.		Extent.		Paddy land or Puraidam,
	No.	Letter.	Acre.	Cent.	
1	8777	...	2	18	Water logged waste.
2	8788	...	1	34	
		Total ...	2	52	

Three acres and fifty two cents.

GROUP G.

The properties in this Group are registered as Puduval in the name of the Kottayam Seminary in pursuance of the Clauses VII and VIII of the Agreement entered into in the year 1910 between the Travancore Government and the Church Missionary Society. They are Pandaravaka Pattom properties situated in Eastern Kallada Pakuthy of Quilon Taluk. They lie in the Sastamkotta Sub-District of the Quilon Registration District. No Patta has been issued with regard to these items.

Serial No.	Survey.		Extent.		Paddy land or Puraidam.
	No.	Letter.	Acre.	Cent.	
1	8772	1	...	14	Puraidam.
2	8772	2	...	14	Do.
3	8772	3	...	9	Do.
4	8772	4	1	8	Do.
5	8102	19	...	13	Do.
6	8102	3	...	7	Do.
7	8102	4	...	5	Do.
8	8102	2A	...	11	Do.
9	8102	2B	...	5	Do.
10	8102	2C	...	4	Do.
11	8102	2D	...	43	Do.
		Total...	2	33	

Two acres and thirty three cents.

REGULATION III OF 1105.

THE TRAVANCORE CENSUS REGULATION.

CONTENTS.

Preamble.
Sections.

1. Short title, extent and commencement.
2. Appointment of Census-officers.
3. Proof of appointment of Census-officers and their status as public servants.
4. Discharge of duties of Census-officers in certain cases.
5. Power of District Magistrate to call upon certain persons to give assistance.
6. Asking of questions by Census-officers.
7. Obligation to answer questions.
8. Occupier to allow access and permit affixing of numbers.
9. Occupier or manager to fill up schedule.
10. Penalties.
11. Prosecution.
12. Records of Census not open to inspection or admissible in evidence in certain proceedings.
13. Power to maks Rules.

A Regulation to provide for certain matters in connection with the taking of the Census

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 12th Edavam 1105, corresponding to the 25th May 1930, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it has been determined to take a Census of Travancore during the year 1931 A. D., and it is expedient to provide for certain matters in connection with the taking of such Census; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Regulation may be called the "Travancore Census Regulation, 1105."

(2) It extends to the whole of Travancore.

(3) It shall come into force at once.

Appointment of Census-officers.

2. (1) Our Government may appoint any person to take, or aid in or supervise the taking of, the Census within any specified local area.

(2) Persons so appointed shall be called Census-officers.

(3) Our Government may delegate to such authority, as it thinks fit, the power of appointing Census-officers which is conferred by this Section.

Proof of appointment of Census-officers and their status as public servants.

3. (1) A declaration in writing, signed by the Dewan or by any officer authorised by Our Government in this behalf, that any person has been duly appointed a Census-officer for any local area, shall be conclusive proof of such appointment.

(2) All Census-officers shall be deemed to be public servants within the meaning of the Travancore Penal Code (Regulation I of 1074).

Discharge of duties of Census-officers in certain cases.

4. (1) (*a*) Every person in the service of Our Government.

(*b*) every person (except a pilot or harbour master) having charge or control of a vessel,

(*c*) every person in charge of a lunatic asylum, hospital, work-house, prison, reformatory, or lock-up or any public, charitable, religious or educational institution,

(*d*) every keeper, secretary or manager of any chatram, hotel, boarding-house, lodging-house, emigration depot or club, and

---

Rgn. III of 1105: The Bill was published in the Gazette and introduced into the Council at the meeting held on 14-5-1930. At the same meeting, the principle of the Bill was accepted, and the Bill considered and posted for final reading (*L. C. P., Vol. XVI, Pp. 533-535*). The Bill was finally read and passed at the meeting held 15-5-1930 (L. C. P., Vol. XVI, Pp. 590-604).

The Regulation was published in the Gazette dated 3rd June 1930.

(e) every occupant of immovable property and every manager or officer of a railway or other commercial or industrial enterprise who has at the time of the taking of the Census not less than twenty persons employed under him, or living on or in such property,

shall, if so required by the District Magistrate or such other officer as Our Government may appoint in this behalf, perform such of the duties of a Census-officer in relation to the persons who at the time of the taking of the Census are under his charge or control or inmates of his house or present on or in such immovable property as such Magistrate or officer may by written order, direct.

(2) All the provisions of this Regulation relating to Census-officers shall apply, so far as they can be made applicable, to all persons while performing such duties under this Section, and any person refusing or neglecting to perform any duty which he is directed under this Section to perform shall be deemed to have committed an offence under Section 180 of the Travancore Penal Code.

Power of District Magistrate to call upon certain persons to give assistance.

5. (1) The District Magistrate, or such officer as Our Government may appoint in this behalf for any local area, may, by written order, which shall have effect throughout the limits of his district or such local area as the case may be, call upon all owners and occupiers of land, tenure holders, farmers, and assignees of land-revenue, or their agents, to give such assistance as he needs towards the taking of a Census of the persons who are at the time of the taking of the Census on the lands of such owners, occupiers, holders, farmers and assignees.

(2) Such order shall specify the nature of the assistance required, and such owners, occupiers, holders, farmers, assignees or their agents, shall be bound to obey it.

Asking of questions by Census-officers.

6. Every Census-officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by Our Government and published in Our Government Gazette, he may be directed to ask,

Obligation to answer questions.

7. Every person of whom any question is asked under the last foregoing Section shall be legally bound to answer such questions to the best of his knowledge or belief:

Provided that no person shall be bound to state the name of any female member of his household, and that no woman shall be bound to state the name of her husband or deceased husband or of any person whose name she is forbidden by custom to mention.

Occupier to allow access and permit affixing of numbers.

8. Every person occupying any house, enclosure, vessel or other place shall allow Census-officers such access thereto as they may require for the purposes of the Census, and as, having regard to the customs of the country, may be reasonable, and shall allow them to paint on or affix to the place such letters, marks or numbers as may be necessary for the purposes of the Census.

Occupier or manager to fill up schedule.

9. (1) Subject to such orders as Our Government may issue in this behalf, any Census-officer may leave or casue to be left

(*a*) at any dwelling-house within the local area for which he is appointed, or

(*b*) with any manager or officer of any commercial or industrial enterprise who has at the time of the taking of the Census not less than twenty persons employed under him,

a schedule for the purpose of its being filled up by the occupier of such house or of any specified part thereof or by such manager or officer with such particulars as Our Government may direct regarding the inmates of such house or part, or the persons employed under such manager or officer at the time of the taking of the Census.

(2) When any such schedule has been so left, the occupier of the house or part to which it relates or the manager or officer with whom it is left shall fill it up, or cause it to be filled up, to the best of his knowledge or belief, so far as regards the inmates of such house or part, as the case may be, or the persons employed under him at the time aforesaid, and shall sign his name thereto,

and, when so required, shall deliver the schedule so filled up and signed to the Census-officer or to such person as he may direct.

Penalties.

10. In any of the following cases, namely :—

(*a*) if a Census-officer or a person appointed to be a Census-officer or a person lawfully required to give assistance towards the taking of a Census refuses or neglects to use reasonable diligence in performing any duty imposed upon him or in obeying any order issued to him in accordance with this Regulation or with any Rule duly made thereunder,

(*b*) if a Census-officer intentionally puts any offensive or improper question or knowingly makes any false return, or without the previous sanction of Our Government discloses any information which he has received by means of or for the purpose of a Census return,

(*c*) if any person refuses to answer to the best of his knowledge or belief any question asked of him by a Census-officer which he is legally bound by Section 7 to answer,

(*d*) if any person occupying any house, enclosure, vessel or other place refuses to allow a Census-officer such reasonable access thereto as he is required by Section 8 to allow,

(*e*) if any person removes, obliterates, alters or injures before the 31st day of March 1931 A. D., any letters, marks or numbers which have been painted or affixed for the purposes of the Census.

(*f*) if any occupier of a dwelling-house or part thereof or any person with whom a schedule is left under Section 9 knowingly and without sufficient cause fails to comply with the provisions of Section 9 or makes any false return under that Section,

he shall be punishable with fine which may extend to fifty rupees.

Prosecution.

11. No prosecution under this Regulation shall be instituted except with the previous sanction of the Dewan.

Records of Census not open to inspection or admissible in evidence in certain proceedings.

12. No person shall have a right to inspect any book, register or record made by a Census-officer in the discharge of his duty as such officer or any schedule delivered under Section 9 and no entry in any such book, register, record or schedule shall be admissible as evidence in any civil proceeding or any proceeding under Chapter XII or Chapter XXXV of the Code of Criminal Procedure, 1067.

Power to make Rules.

13. (1) Our Government may make Rules for carrying out the purposes of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, Our Government may make Rules providing—

(*a*) for the appointment of Census-officers and of persons to perform any of the duties of Census-officers or to give assistance towards the taking of a Census and for the general instructions to be issued to such officers and persons;

(*b*) for the enumeration of persons employed on railways and their families and of other classes of the population for whom it may be necessary or expedient to make special provisions; and

(*c*) for the enumeration of persons travelling on the night when a Census is taken.

REGULATION IV OF 1105.

A Regulation further to amend the Revenue Summons Regulation, V of 1063, as amended by Regulation V of 1099

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 19th Edavam 1105, corresponding to the 1st June 1930, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to amend the Revenue Summons Regulation, V of 1063, as amended by Regulation V of 1099, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (*a*) This Regulation may be called the Revenue Summons (Amendment) Regulation, 1105, and

(*b*) It shall come into force at once.

Rgn. IV of 1105: I. *Objects and Reasons*—(1) "It is felt that some conflict is possible between Section 7 as it stands and Section 10 as to the appellate authority in respect of orders passed under the Regulation. Further, doubts are possible as regards the appellate authority over the Division Assistants who may be invested with powers under Section 10 of the Regulation; and yet again, it is not possible, as the law now stands, to appoint Division Assistants as the appellate authority over Tahsildars for the purposes of the Regulation. Clauses 2 and 4 of the Bill are intended to meet such difficulties as the aforesaid.

"2. Clause 3 makes but a verbal correction."—*S. O & R.*

(2) In introducing the Bill, the Official Member in charge said:—"It will be seen from the Revenue Summons Regulation that it authorises specifically certain officers of the Land Revenue Department, namely, the Land Revenue Commissioner, the Peishkars, and the Tahsildars to issue summons and to punish the person summoned if he does not appear. This is Section 1 of the Regulation. The Regulation authorises also, by Section 10, the issue of a Notification by Government empowering any other Officer to issue summons and likewise [to empower him to award punishment for disregard of the summons. In respect of these orders of punishment, appeals may be necessary and provision is made for it in Section 7 of the Regulation which, as it now stands, runs as follows:—

'Any person aggrieved by an order passed against him, either in the first instance or in appeal, may appeal to the Officer to whom the Officer passing the order is immediately subordinate, within thirty days from the date of service of the notice referred to in Section 6.

Explanation.—For the purposes of this Section, a Tahsildar is immediately subordinate to a Division Peishkar, a Division Peishkar to the Land Revenue and Income-Tax Commissioner and the Land Revenue and Income-Tax Commissioner to the Dewan."

The Explanation obviously refers to appeals against the orders passed by the

Amendment of Section 7.

2. (*a*) Section 7 of the Revenue Summons Regulation, V of 1063, as amended by Regulation V of 1099 (hereinafter referred to as the said Regulation) shall be re-numbered as Sub-section (1) of Section 7, and

(*b*) the following shall be substituted, as Sub-section (2), for the Explanation now appearing, namely :—

"(2) For the purposes of Sub-section (1) Our Government may declare who the officer is to whom the officer passing the order is immediately subordinate, and in the absence of any such declaration, as amongst the Tahsildar, the Division Peishkar and the Land Revenue and Income-Tax Commissioner, the Tahsildar shall be deemed to be immediately subordinate to the Division Peishkar and the Division Peishkar to the Land Revenue and Income-Tax Commissioner."

Land Revenue Officers specifically mentioned in Section 1 and the body of the Section to appeals generally. But as regards Officers who may be empowered by Government to issue summons and to punish the recalcitrants, what Section 10 now says is that the Government may authorise any Officer to be the appellate authority in respect of the orders passed by the Officers who have been so empowered to issue summons and punish. Having regard to the provisions in Section 7 and in Section 10, it has been felt that some conflict is possible. It would be seen from Section 7 that the principle that is accepted therein is that the appellate authority is the person who is immediately superior to the Officer who passes an order. But Section 10 authorises Government to appoint *any* person to be the appellate authority, so that if the Government appoint a Division Assistant to be the appellate authority of, say, an Assistant Tahsildar it may very well be questioned whether he is the immediate superior of the Assistant Tahsildar. If such a question is raised the point will arise whether the express provision of Section 7 should be applied and a decision arrived at as to who is the immediate superior or the provisions of Section 10 which empowers Government to appoint any person as the appellate authority should be applied. Similarly, if, say, a Range Officer is given power to issue summons and punish persons who fail to appear, the appellate authority has to be appointed by Government and if the Government do it the question may yet arise whether the principle accepted by Section 7 should operate or the Government appointment should operate. For instance, if the Conservator of Forests is appointed as the appellate authority over the Range Officer, it may very well be done under Section 10. But the question may arise whether that action of Government is right and whether the D. F. O. is not the legal appellate authority because of the fact that he is the *immediate* superior of the Range Officers. It has therefore been felt that it would be expedient to rearrange these two Sections in a clear manner. So, I have proposed in the Bill to maintain the principle that the immediate superior Officer is the appellate

3. In Section 8 of the said Regulation, the word "reverse" shall be substituted for the word "revise"

Amendment of Section 8.

4. (*a*) In Section 10 of the said Regulation the second sentence shall be omitted, and

Amendment of Section 10.

(*b*) the following shall be added as an "Explanation", namely:—

"*Explanation*:—The provisions of Section 7 apply as regards the appellate authority in respect of the appeals against the orders of such officers.

---

authority but that power should be taken by Government to declare who that immediate superior authority is.

I have also amended Section 10 *inter alia* by adding an explanation that the provisions of Section 7 will operate even in regard to those Officers who are empowered to issue summons under that Section.

No new principle is really involved in the Bill * *"—*L. C. P., dated 24-4-1929.*

II. The Bill was published in the Gazette dated 16-4-1929. It was introduced and referred to a Select Committee at the meeting held on 24-4-1929 (*L. C. P., Vol. XIV., Pp. 471-474*). The Committee's Report was published in the Gazette dated 23-7-1929. It was presented to, and considered by, the Council at the meeting held on 21-1-1930 (*L. C. P. Vol. XVI., Pp. 22-23*). The Bill was finally read and passed at the meeting held on 14-5-1930 (*L. C. P. Vol. XVI. P. 532*). The Regulation was published in the Gazette dated 10-6-1930.

For the Regulations referred to in the Preamble, see Vol. I, Pp. 59-64, and Vol V, Pp. 582-583.

REGULATION V OF 1105.

A Regulation to amend the Land Conservancy Regulation, IV of 1091,

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 19th Edavam 1105, corresponding to the 1st June 1930, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to amend the Land Conservancy Regulation of 1091 (IV of 1091) for the purpose hereinafter appearing: It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Regulation may be called the Land Conservancy (Amendment) Regulation, 1105.

(2) It shall come into force on the 1st day of Chingam 1106.

Regn. V of 1105: I. *Objects and Reasons.*—(1) "The office of the Land Revenue and Income-Tax Commissioner has been in existence now for some time. It is now proposed to give the holder of that office appellate and revisional authority in respect of decisions and orders of officers subordinate to him. This is only fitting considering his position as the Head of the Land Revenue and Income-Tax Departments and would bring him into line as regards powers with Heads of Departments and will at the same time reduce the number of appeal and revision petitions that go up to the Dewan for disposal. The revisional powers of the Dewan are, however, proposed to be retained so as to enable him to interfere and give the ultimate decision when such interference seems called for. With this object amendments to Section 14 of the Regulation are proposed by this Bill, and advantage taken of the occasion to rearrange and number the several sub-Sections and paragraphs of that Section."—*S. O & R.*

(2) In introducing the Bill, the Official Member in charge said:—"The Bill relates to an amendment of Section 14 of the Land Conservancy Regulation which relates to the appeal and revision powers in respect of orders passed under the Regulation. It will be noticed from that Section that in respect of the orders passed by the Division Peishkar under the Regulation, the appellate authority is the Dewan. I propose to modify that by substituting the Land Revenue Commissioner as the appellate authority. The House is aware that it is some time since the Land Revenue Department has been organised and co-ordinated, with the Land Revenue Commissioner as its head. It is therefore only proper that he should be the appellate authority against the orders of Peishkars, as he is already in other respects. In regard to an order passed by the Peishkar under the Revenue Summons Regulation, for instance, the appellate authority is the Land Revenue Commissioner and not the Dewan. So also is the case with regard to the orders passed

2. For Section 14 of the Land Conservancy Regulation of 1091 (IV of 1091), the following shall be substituted, namely :—

Substitution of new Section for Section 14.

"14. (1) An appeal shall lie to the Land Revenue and Income-Tax Commissioner from any decision or order of a Division Peishkar passed under this Regulation.

Appeal and revision.

(2) Our Government may, by Notification in Our Government Gazette, direct that an appeal from the decision or order of any officer empowered under Section 13 shall lie to the Division Peishkar.

(3) No order shall be passed in appeal without previous notice to the party to be affected by such order.

---

under the Puduval Rules. If a Peishkar fixes *taravila* under the Puduval Rules, the appellate authority against that order will be the Land Revenue Commissioner and not the Dewan. So in all these revenue matters it is the Commissioner that is the appellate authority and not the Dewan. To co-ordinate all these things and to have an orderly arrangement, it is proposed to make the Revenue Commissioner the appellate authority against the orders of the Peishkars. This will also remove some practical difficulties which have been found to arise. I will cite here but one example. If under the Puduval Rules, the Dewan Peishkar passes an order in connection with the registry of a *Puduval* by fixing a certain amount as *taravila* and if the person who has applied for the *Puduval* feels that it is too high, he may file an appeal to the Commissioner for reduction of the *taravila*. If, while the appeal is pending, he does not pay the *taravila*, he may be turned out of the land by the Peishkar under the Land Conservancy Regulation. If such a thing is done the appeal against that has to be preferred to the Dewan. That is to say, while the question of *taravila* is pending with the Land Revenue Commissioner, the eviction matter will go to the Dewan and the Dewan not being seized of the matter before the Commissioner may even refuse to give an interim order to stay procedings. Such difficulties and troubles can be averted if all these powers are vested in the same Officer, the Commissioner, by making him the appellate authority in land conservancy matters too. But at the same time the orders passed under the Land Conservancy Regulation are very important ones and it will be the desire of the House as it is the desire of the Government that some powers should be left to Government, to revise the orders in fit cases. Such power of revision is proposed to be given although the Commissioner is made the appellate authority.".—*L. C. P., dated 24-4-1929.*

II. The Bill was published in the Gazette dated 23-4-1929. It was introduced into the Council, its principle was affirmed, and it was referred to a Select Committee at the meeting held on 24-4-1929 (*L. C. P., Vol. XIV, Pp. 474-475*). The Committee's Report was published in the Gazette dated 23-7-1929. It was presented to, and considered by, the Council at the meeting held on 21-1-1930 (*L. C. P. Vol. XVI, P. 22*). The Bill was finally read and

(4) There shall be no appeal against the decision or order passed in appeal by the Land Revenue and Income-Tax Commissioner or by a Division Peishkar.

(5) It shall be lawful for the Dewan or the Land Revenue and Income-Tax Commissioner to revise any decision or order passed by any subordinate officer under this Regulation:

Provided that no order setting aside or modifying the subordinate officer's decision or order shall be passed without giving previous notice to the party to be affected thereby.

"*Explanation*:—Any decision or order of the Land Revenue and Income-Tax Commissioner also may be revised by the Dewan."

(6) Pending disposal of any appeal or revision petition under this Regulation the appellate authority or the revisional authority, as the case may be, may suspend the execution of the order appealed or petitioned against."

---

passed at the meeting held on 14-5-1930 (*L. C. P., Vol. XVI., P. 532*). The Regulation was published in the Gazette dated 10-6-1930.

For Regulation IV. of 1091, See Vol. III. Pp. 1179-1204.

Sec. 2: The explanation occurring in the Section was not in the original Bill. It was put in by the Select Committee who said that "the provisions of Sub-Section (5) of the proposed Section 14 of the Regulation should be made clearer by express provision that the Land Revenue and Income-Tax Commissioner's decision also may be revised by the Dewan.—*S. C. R.*

REGULATION I OF 1106.

A Regulation further to amend the Travancore Registration Regulation, 1087, (Regulation II of 1087 as amended by Regulation II of 1098)

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 27th Chingon 1106, corresponding to the 12th September 1930, under Section 14 of Regulation II of 1097.

Whereas it is expedient further to amend the Travancore Registration Regulation, 1087 (Regulation II of 1087 as amended by Regulation II of 1098) for the purposes hereinafter appearing; It is hereby enacted as follows:—

Preamble.

1. (*a*) This Regulation may be called "The Travancore Registration (Amendment) Regulation, 1106", and

Short title and commencement.

Regn. I of 1106. I. *Objects and Reasons.* —(1) "It has been brought to the notice of Government that leases (Kuthakapattom leases, for example) for any the smallest rent executed by or to Government departments are liable to registration under the existing Registration Regulation [Section 10 (1) (c)] if the term reserved by such leases exceeds one year and that this is causing needless inconvenience and trouble to the departments and private parties. It has been in that connection noticed also that grants and assignments of Government land would require registration under the strict terms of the Regulation although some of them are not, as a matter of fact, registered. Records of such leases, grants and assignments are always available in Government offices and are preserved there in safe custody, and Government consider that it is not quite necessary to get them registered in the Registry offices. It is proposed by this Bill therefore to exempt leases by or to Government if the yearly rent reserved does not exceed fifty rupees and the term does not exceed twelve years and also to take power for Government to exempt any grants of land made by Government." —*S. O & R.*

(2) In introducing the Bill, the Official Member in charge said :— "As the Registration law now stands, all lease deeds for any term beyond a year have to be compulsorily registered. This provision of law has been found to cause inconvenience to private parties as well as to Government Departments in regard to leases of Government property granted by various Government Departments, for instance, the *Kuthagapattom* leases in respect of *Poramboke* lands, trees standing on *Poramboke* lands and other lands in the possession of Government. In such cases, the rent will generally be very small, say 4 or 5 chuckrams or a few Rupees. In all these cases, if the term is beyond a year—and generally it is beyond a year—the deed has to be registered. It

(*b*) It shall come into force at once.

Amendment of Section 10.

2. (*a*) In Section 10, Sub-section (2), of the Travancore Registration Regulation, 1087 (Regulation II of 1087 as amended by Regulation II of 1098) hereinafter referred to as the said Regulation, for the words, letters and brackets "Sub-clauses (*a*) and (*b*) of this Section" the following shall be substituted, namely:—

"Sub-section (1)"; and

(*b*) after clause (v), the following clauses shall be added, namely:—

"(vi) leases of immovable property executed by, or on behalf of, or to, Our Government for any term not exceeding twelve years and reserving any annual rent not exceeding fifty rupees; or

---

has to be taken to the Registry Office for the purpose by the lessee and then produced before the Government Department. It is felt that this is causing needless inconvenience to the private parties as well as to the Departments. The necessity for registering such documents may not exist as in the cases of leases in respect of private lands, because firstly in respect of Government land, it is not to the incentive of any private person to create fraudulent deeds, and secondly those deeds and the records relating thereto will be found in the Government Departments. Therefore it may not be necessary to get such deeds registered in the Registry Offices as in the case of private lands. It is therefore proposed by this Bill that lease deeds executed by Government or to Government or to the Government Departments may be exempted from compulsory registration wherever the rent is less than 50 rupees and the period is 12 years or less.

Along with that, another amendment is proposed and that is in respect of grants made by the Government. The House knows that there are many Government lands such as *Puduval* lands and other lands in the possession of Government. When these lands are granted, sometimes a *patta* is granted and sometimes a deed is granted. Under the strict law, all non-testamentary instruments creating a right to immovable property have to be registered. But as a matter of fact, as the Members of the House are aware, pattas and documents of title are not always registered. To regularise this procedure, it is proposed to take power for Government to exempt any grants of land made by Government."—*L. C. P., dated 22-1-1930.*

II. The Bill was published in the Gazette dated 14-1-1930. It was introduced into the Council, its principle was agreed to, and it was referred to a Select Committee at the meeting held on 22-1-1930 (*L. C. P., Vol. XVI., Pp. 153-154*). The Committee's Report was published in the Gazette dated 1-4-1930. It was presented to, and considered by, the Council at the meeting held on 14-5-1930 (*L. C. P., Vol. XVI., P. 533*). The Bill was finally read and passed at the meeting held on 31-7-1930 (*L. C. P., Vol. XVII., P. 41*), The Regulation was published in the Gazette dated 23-9-1930.

For the Regulations mentioned in the Preamble, see Vol. III, Pp. 260-382, and Vol, V, Pp. 358-361.

(vii) such grants or classes of grants by Our Government of immovable property or of any interest in immovable property as may be notified in this behalf by Our Government."

3. In Section 11 of the said Regulation, in Clause (*b*), the following shall be added at the end, namely :—

Amendment of Section 11.

"and other leases not required by Section 10 to be registered."

REGULATION II OF 1106.

A Regulation to amend the Travancore Village Panchayat Courts Regulation, I of 1090,

Passed by Her Highness the Maha Rani Regent of Travancore under date the 19th Makaram 1106, corresponding to the 1st February 1931, under Section 14 of Regulation II of 1097.

Whereas it is expedient to amend the Travancore Village Panchayat Courts Regulation, 1 of 1090, for the purpose hereinafter appearing; It is hereby enacted as follows :—

1. This Regulation may be called "The Village Panchayat Courts (Amendment) Regulation, 1106."

Regn. II of 1106 : *I. Objects and Reasons.* —(1) "Under Section 7 of the Village Panchayat Courts Regulation, the term of office of a President or other Judge of a Village Panchayat Court automatically expires on the lapse of two years from the date of his appointment. This has been found to cause considerable inconvenience if there happens to be a delay in the appointment of a successor; for, until the appointment is made there will be no Judge at all. It is therefore proposed by this Bill that every President and Judge should, notwithstanding the expiry of his term of two years, continue in office until a successor is appointed."—*S. O & R.*

(2) In introducing the Bill, the Official Member in charge said :—" This Bill is an amendment to Section 7 of the Village Panchayat Courts Regulation. Section 7 reads thus—'The President and the other Judges of the Village Panchayat Court shall be appointed by Our Government once in two years, according to such Rules as may, from time to time, be prescribed by Our Government in that behalf: Provided that Our Government may, by Rules made in that behalf,

2. In Section 7 of the Travancore Village Panchayat Courts Regulation, I of 1090, after the Proviso, the following shall be added, namely :—

"Provided also that every President and Judge shall, notwithstanding the expiry of two years from his appointment, remain in office, unless Our Government otherwise direct, until his successor is appointed."

---

provide for all or any of the Judges being elected by the people of the village or villages concerned.' The effect of this provision is that immediately after the expiry of two years of the appointment of a Judge he ceases to be a judge and if by some mischance or accident a successor is not appointed the Court could not function and administration of justice cannot go on properly. To avoid such contingencies an amendment is proposed to be made in this Section to the effect that although the time of two years may expire he shall continue to be a Judge until the successor is appointed."

In the course of discussion, he said :— "I make provision only for some exceptional cases when for some reason or other the time may expire and yet a successor might not have been appointed. This is not a novel provision in measures of this nature. In the Municipal Regulation a member's term is three years and there is the express provision that after the expiry of that term if a successor is not elected or appointed, the former, that is, the sitting member, may continue."—*L. C. P., dated 14-5-1930.*

II. The Bill was published in the Gazette dated 29-4-1930. It was introduced into the Council and its principle accepted at the meeting held on 14-5-1930 (*L. C. P., Vol. XVI., Pp. 535-545*). The Bill was considered at the meeting held on 31-7-1930 (*L. C. P., Vol. XVII., Pp. 41-44*). The Bill was finally read and passed at the meeting held on 16-12-1930 (*L. C. P., Vol. XVIII., Pp. 25-40*). The Regulation was published in the Gazette dated 10-2-1931.

For Regulation I of 1090, see Vol. III, Pp. 891-922.

REGULATION III OF 1106.

THE TRAVANCORE MALAYALA BRAHMIN REGULATION.

CONTENTS.

Preamble.

CHAPTER I.

Preliminary.

Sections.

1. (1) Short title.
   (2) Application.
   (3) Commencement.
2. Definitions.
   (1) "Malayala Brahmin."
   (2) "Illom."
   (3) "Karanavan."
   (4) "Anandaravan."
   (5) "Senior Anandaravan."
   (6) "Collateral branches."
   (7) "Minor."

CHAPTER II.

The Illom and its Management.

3. Powers of the Karanavan.
4. Duty of Karanavan to keep accounts.
5. Alienation of Illom property.
6. Mortgage or lease of Illom property.
7. Power to incur debts.
8. Evidence of necessity.
9. Surrender of Karanavasthanam.
10. Delegation of powers by Karanavan.
11. Marriage expenses.
12. Decree against an Illom.
13. (1) Right to maintenance.
    (2) Right to separate allotment of properties.

CHAPTER III.

Guardianship of Minors.

14. Guardianship of minors.

CHAPTER IV.

Inheritance and Intestate Succession.

15. Succession to intestate male.
16. Devolution of property of male intestate.
17. Succession to intestate female.
18. Devolution of property of female intestate.
19. Devolution of property of unmarried female intestate.

CHAPTER V.

Supplemental Provisions.

20. Right of widow.
21. Stridhanam.
22. Edapalli Swaroopam exempted.
23. Saving clause.

A Regulation to define and amend the law of succession and family management of the Malayala Brahmins

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 8th Kumbhom 1106, corresponding to the 20th February 1931, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to define and amend the law of succession and family management of the Malayala Brahmins; It is hereby enacted as follows:—

Regn. III of 1106: I. *Objects and Reasons.* —"To make provision for the better management of the Tarwads of the Namputiris, to define and limit the powers of the Karanavan, to improve the rights of the junior members and to lay down the rules of intestate succession in respect of the self-acquisitions of the Namputiris are the important objects aimed at in the Bill.

GENERAL PRINCIPLES.

The changes introduced in the Bill are for the following purposes:—

A. To define and to determine the rights of the members of the Tarwads.

B. To give more freedom of enjoyment of Tarwad properties by junior members.

C. To remove the impediments on the growth of family life experienced by the younger members of the Tarwad.

CHAPTER I.

Preliminary.

1. (1) This Regulation may be called the Travancore Malayala Brahmin Regulation of 1106.

Short title.

(2) It shall apply to all Malayala Brahmins domiciled in Travancore.

Application.

(3) It shall come into force on the 1st of Medom 1106.

Commencement.

2. In this Regulation, unless there is something repugnant in the subject or context :—

Definitions.

D. To remove the uncertainties in the law of succession.

These principles have generally been accepted by the Yogakshema Sabha and attempts are being made by the Sabha to frame a Bill with these objects in view. The changing conditions of the time and the progress of the community require these changes and, in the opinion of those who are competent to give such opinion, the best interests of the community require the changes now sought to be introduced. So far as I know, the community is eagerly looking forward to the introduction of a Bill like this.

CHAPTER I.

This Chapter deals with definitions. Care has been taken to follow the wording used in similar enactments.

CHAPTER II.

The Tarwads of the Namputiris have shown a decided tendency to decline on account of the Karanavan's undefined powers of management in respect of Tarwad properties. The Karanavans do not generally concede any rights in favour of the junior members ; litigation, strife and the consequent decline of the Tarwads are the result. There is no confidence or co-operation among the members. The provisions in this Chapter are mainly intended to remedy these defects of management. Provision is also made to give separate maintenance to those members who want to live separately.

CHAPTER III.

This Chapter deals with the guardianship of minors with respect to their person and separate property. The guardianship of the Karanavan with respect to the Tarwad properties is left untouched.

CHAPTER IV.

The question of succession to the self-acquired properties of a member of the Tarwad has been the subject of conflicting judicial decisions and the provisions contained in this Chapter are intended to give effect to the custom obtaining in this respect.

CHAPTER V.

The provision in this Chapter is made for the purpose of giving full testamentary power in respect of one's self-acquired property.

CHAPTER VI.

Provision has been made for the right of division in exceptional circumstances.

These are the important provisions contained in the Bill.

II. Leave to introduce the Bill was applied for by a Namputiri Non-official

(1) "Malayala Brahmin" includes Namputiri, Potti and others known or recognised as Malayala Brahmins but does not include those who according to the law governing them are entitled to individual partition before the passing of this Regulation.

(2) "Illom" means and includes all the members of a Malayala Brahmin joint family with community of property.

(3) "Karanavan" means the senior major male member of the Illom in whom the headship of the Illom, the right of management of its affairs and the possession of the properties thereof are vested in law, and, in the absence of such male member, the senior major female member.

---

member of the Council and was granted at the meeting held on 24-11-1926. (*L. C. P., Vol. X., Pp. 234-235*). The Bill was published in the Gazette dated 28-12-1926. The Bill was introduced into the Council and its principle accepted, and the Bill was referred to a Select Committee at the meetings held on 28 and 29-4-1927 (*L. C. P., Vol. X., Pp. 629-635 and 712-748*). At the meeting of the Council held on 25-4-1929 (*L. C. P., Vol. XIV, Pp. 526-527*), a Namputiri Non-official Member asked for leave to take charge of the Bill introduced by his predecessor in the previous Council, and it was granted. The Select Committee's Report was published in the Gazette dated 1-10-1929. It was presented to the Council and considered at the meetings held on 23-1-1930, 16, 17 and 19-5-1930 (*L. C. P., Vol. XVI, Pp. 177-213, 713-782, 813-879, and 939-999*) and 18-8-1930 (*L. C. P., Vol. XVII, Pp. 1144-1214*), and posted for final reading. The Bill was finally read and passed at the meeting held on 17-12-1930 (*L. C. P., Vol. XVIII, Pp. 116-117*). The Regulation was published in the Gazette dated 24-2-1931.

Preamble: The Select Committee substituted the words "Malayala Brahmins" for the word "Namputiris", which latter was the expression used in the original Bill. The Committee was of opinion that it was desirable to use a more comprehensive expression. This substitution was made by the Committee throughout, wherever the term "Namputiri" occurred in the original Bill.—*S. C. R.*

Sec. 2, *Sub-section (1)*: I. The term was defined in the original Bill as including "all Brahmins who, on account of the similarity of their dress, language, manners and customs are known or recognised as Malayala Brahmins."

II. The Select Committee substituted the definition as it now stands in the Regulation.

Sec. 2, *Sub-section (2)*: I. In the original Bill, "Tarwad" was the term used and defined.

II. The Select Committee substituted the word "Illom" for Tarwad," "as Malabar Brahmin families are ordinarily called "Illoms" and not "Tarwads". Such substitution was made by the Committee in the other Sections of the original Bill, wherever the word "Tarwad" was used.

The Committee also inserted the words "Malabar Brahmin" before the words "joint family" to make the meaning clear.—*S. C. R.*

Sec. 2, *Sub-section (3)*: I. The Original Bill contained neither the Explanation nor the Exception. When the Bill was considered by the Council, the Explanation was added on the motion of an Official Member.

Explanation:—"Female members of an Illom" means and includes females born in the Illom but unmarried and females married into the Illom.

Exception:—The seniority of females who have become members of the Illom by marriage shall be determined with reference to the date of marriage.

(4) "Anandaravan" means any member of an Illom other than the Karanavan.

(5) "Senior Anandaravan" means the major Anandaravan who for the time being is next in the order of succession to Karanavasthanam to the Illom.

(6) "Collateral branches" are branches of males who though descended from a common male ancestor do not stand in the direct line of ascent or descent to one another.

(7) "Minor" means a person who has not completed eighteen years of age.

CHAPTER II.

The Illom and its Management.

Powers of the Karanavan.

3. The Karanavan has the right to be in possession and management of the properties of the Illom and of the Devaswoms and other institutions over which the Illom has Uraima or such other right.

Duty of Karanavan to keep accounts.

4. The Karanavan or the manager for the time being of an Illom shall keep a true and correct account of the income and expenditure of the Illom. The account of each year shall be available for inspection in the Illom house by the major Anandaravans after the

---

II. As regards the Exception, it was in the form of an Explanation under another Section (Clause 13) in the Original Bill. The Select Committee tranferred and put it under the definition itself. The Council, at the second reading, converted it into an Exception on the motion of the same Official Member.—

L. C. P., dated 18-8-1930.

Sec. 2, *Sub-sections (5 & 6)*: These definitions were not in the original Bill. They were added by the Select Committee.—*S. C. R.*

Sec. 4: I. In the original Bill, the Section stood as follows: "The Karanavan or the Manager...The account of each year ...by the major Anandaravan at the end of the year and copies of such account

close of the year. On demand copies of accounts shall be given to any member of the Illom at his cost.

Alienation of Illom property.

5. Except for consideration and Illom necessity, and with the written consent of all the major members of the Illom, no Karanavan or other managing member shall sell Illom immovable property or execute kanom deeds in respect thereof, or mortgage it with possession for a period of more than twelve years or lease it with or without premium for a period of more than twelve years.

Nothing in this Section shall affect the right of the Karanavan to execute solely renewals of kanom deeds already executed.

Mortgage or lease of Illom property.

6. No mortgage with possession of Illom property or lease with premium exceeding one year's rent of such property for a period of twelve years or less shall be valid unless it is executed for consideration and Illom necessity and with the consent of all the major members of the Illom.

---

shall be given to those major Anandaravans who make written demands therefor ".

II. The Select Committee deleted the words " and copies of such account... demands therefor " ; as they did not " consider that the Karanavan should be under an obligation to furnish copies to junior members". The Committee also substituted the words " after the close of the year" for the words " at the end of the year."—*S. C. R.*

III. When the Bill was considered by the Council, the following was added to the Section on the motion of a Non-official Member :— "On demand copies of accounts shall be given to any member of the Illom at his cost."—

L. C. P., dated 16-5-1930.

Sec. 5: I. In the original Bill, the Section (Clause 7) was as follows : "Except for consideration.....no Karanavan shall sell Tarwad property or execute Kanom deeds in respect thereof, or mortgage it with possession for a period of more than six years, or lease it for a period of more than six years."

II. The Select Committee inserted the word " immovable " before " property " as " this only follows the Nayar and Ezhava Regulations on the subject."

For the same reason, the Committee substituted " twelve years " for " six years ", as a period of six years was too short for requiring the written consent of all the adult members."—*S. C. R.*

Such substitution was also made in Section 6 *Infra.*

The Committee also inserted the words " with or without premium " between "it" and "for," to make the meaning clear.

The Committee further added the second paragraph, as they were of opinion " that renewals of Kanoms already executed should not require the assent of all the members as the same will seriously embarrass the Karanavan."—*S. C.R* .

Sec. 6: 1. The words " with premium exceeding one year's rent " occurring between the words " lease " and " of ",

Such necessity and consent may be presumed to exist if the transaction has the written consent of the senior Anandaravans of the Karanavan's branch and of every collateral branch, if any.

Power to incur debts.

7. No debt contracted by the Karanavan or other managing member shall bind the Illom unless it be for Illom necessity.

Evidence of necessity.

8. Where a Karanavan creates a mortgage without any term in respect of Illom property or incurs a debt alleging the existence of Illom necessity, such necessity shall, as between the mortgagee or creditor on the one part and the members of the Illom who have not assented to the mortgage or debt on the other part, be presumed to have existed if the mortgagee or creditor, after using reasonable care to ascertain the existence of such necessity, has acted in good faith.

Surrender of Karanavasthanam.

9. A Karanavan shall be at liberty to give up the right of management by a unilateral surrender evidenced by a registered instrument.

Delegation of powers by Karanavan.

10. (1) (*a*) No Karanavan shall appoint any agent for managing the Illom properties except by a duly registered instrument; and

(*b*) no Karanavan shall delegate his Karanavasthanam in favour of any person.

---

were not in the original Bill. The Select Committee inserted them as they thought that "it is not desirable to interfere with the ordinary right of the Karanavan to execute leases for short periods on receipt of one year's rent in advance."—*S. C. R.*

Vide Section 5 *supra* for the substitution by the Committee of "twelve years" for "six years" which occurred in the original Bill.

2. The second paragraph of the section was also substituted by the Select Committee for the following paragraph which was in the original Bill. "Such necessity or consent shall be presumed to exist if all the major members of the Tarwad have knowledge of the transaction and if the majority of them have given their consent in writing to such transaction."

The Committee considered the amendment as "necessary in the interests of the creditor. This is also in accordance with the Nayar and the Eazhava Regulations." *S. C. R.*

Sec. 10: I. The Clause in the original Bill was as follows: "12. A Karanavan may delegate his powers only under a registered instrument."

The Select Committee left it as it was.

II. When the Bill was considered by the Council, it was amended as it now stands in the Regulation, on the motion of a Non-official Member.—

L. C. P., dated 16-5-1930.

(2) Where there is no major male or major female member in an Illom to carry on the management, any person interested in the Illom or its members may, on an application made to the Civil Court of original jurisdiction within whose limits the Illom is situated, have the affairs conducted through the manager appointed by the Court as per the order of the Court making such appointment.

Marriage expenses.

11. Where a Karanavan neglects to give a girl of the Illom in marriage even after her having completed the eighteenth year of age, her father or in his absence any other member of the Illom who has the right to perform the Udakapurvam shall have the right to have her marriage performed and he shall be entitled to realise from the Illom the amount reasonably required for that purpose.

Decree against an Illom.

12. No decree shall bind an Illom unless it is obtained against the Karanavan as such and the senior Anandaravans of his branch and of every collateral branch, if any.

Right to maintenance.

13. (1) Every member of an Illom shall be maintained by the Illom whether such member lives in the Illom house or not.

Sec. 11: The original Bill did not contain this section, nor the Select Committee's amended Bill. It was added, at the second reading of the Bill on the motion of a Non-official Member.—

L. C. P., dated 17-5-1930.

Sec. 12: This section was put in by the Select Committee who said :—"That a decree should be obtained against the Karanavan and Senior Anandaravans has been recognised in the analogous Nayar and Ezhava Regulations."—*S. C. R.*

Sec. 13: I. Sections 18 to 20 of the original Bill relating to the allotment of maintenance to the members of the Illom ran as follows :—

"18. Every member of a Tarwad who is a Grahasta shall be maintained by the Tarwad whether such member lives in the Tarwad house or not; but no other member of the Tarwad shall be entitled to get maintenance unless he lives in the Tarwad house. The amount of maintenance shall be determined with reference to the ordinary expenses of the Tarwad mentioned in Section 6 and it shall not be liable to attachment or sale in execution of any decree against him.

"19. A Grahasta who lives separate and gets separate maintenance from the Tarwad is also entitled to get maintenance for the other members of the Tarwad who live with him or under his protection.

"20. If a Karanavan refuses or neglects to give the maintenance referred to in the preceding Section, such member shall be entitled to get separate possession for enjoyment of his share in the Tarwad properties and also of the shares of those members who live with him or under his

(2) Any member of an Illom shall be entitled to get a separate allotment of properties of the Illom for his or her maintenance, as the case may be, provided there is just and sufficient cause for such allotment.

Right to separate allotment of properties.

CHAPTER III.

Guardianship of Minors.

14. Subject to the provisions of the Guardians and Wards Regulation, the following persons, in the order named, shall be the legal guardians of minors in respect of their person as also of the separate properties belonging to them, namely, the father, mother, paternal grandfather, full brothers in the order of seniority, consanguine brothers in the order of seniority and paternal uncles in the order of seniority.

Guardianship of minors.

---

protection, and he shall have all the rights and liabilities of a Karanavan mentioned in this Chapter with respect to such properties."

II. The above provisions were deleted and the following was substituted by the Select Committee:—"A Grahasta shall be entitled to get a separate allotment of properties of the Illom for the maintenance of himself, his wife and children."

The Committee said:—"Clauses 18 to 20 are the most important clauses in the Bill. It is contended that, while a Grahasta is entitled to separate maintenance whether he lives in the Illom or not, a member who is not a Grahasta is not entitled to claim such maintenance. There seems to be considerable difference of opinion on the question. It is not possible to state what exactly the majority of the community want. It is therefore proposed to leave the question open. For the sake of convenience, however, we consider that a Grahasta may claim separate allotment of property for the maintenance of himself, his wife and children. Clauses 18 to 20 are therefore deleted."—*S. C. R.*

III. When the Bill was considered by the Council, the Section as it now stands in the Regulation was put in, as a result of the amendments suggested by Non-official members.—*L. C. P., dated 17 & 19-5-1930.*

IV. It may be noted here that the original Bill contained a definition of "Grahasta" as meaning "any male member of the Tarawad who leads a householder's (Grahasta's) life after marriage in due form with mantras." The Select Committee substituted the following:—"'Grahasta' means any male member of an Illom who has married a wife from his own community." When the Bill was considered by the Council, the definition was deleted, in view of the deletion of the clause proposed by the Select Committee, as given above, the reason being that that clause was the only provision in the Bill in which the word 'Grahasta' occurred.—*L. C. P, dated 19-5-1930.*

Sec. 14: I. Section 21 of the original Bill corresponding to this Section was as follows:—"21. The following persons, in the order named, shall be the legal guardians of minors in respect of their

CHAPTER IV.

Inheritance and Intestate Succession.

Succession to intestate male.

15. On the death of a Malayala Brahmin male leaving him surviving caste widows and sons and daughters by caste wives they shall, subject to the provisions of Section 21 of the Nayar Regulation, II of 1100, take the whole of the self-acquired and separate properties left undisposed of by him at his death in equal shares:

Provided that if a son or daughter shall have predeceased the intestate, the lineal descendants of such son or daughter shall take the share which such son or daughter would have taken had he or she survived the intestate.

Devolution of property of male intestate.

16. On the death of a Malayala Brahmin male leaving him surviving none of the heirs mentioned in the preceding Section, the self-acquired and separate properties left undisposed of by him at his death shall, subject to the provisions of Section 21 of the Nayar Regulation II of 1100, devolve on the members of his Illom.

---

person as also of the separate properties belonging to them, namely, the father, uterine brothers, grand-father, undivided uncles, mother, grand-mother, half-brothers and their children."

II. The Select Committee re-drafted the Clause. They observed :—

"We are of opinion that the mother should come in after the father and the grand-father after the mother. The order is therefore modified as follows :—

"Father, mother, paternal grand-father, uterine brothers and paternal uncles."

We consider it unnecessary to go further. The provision in the clause with reference to the order should not, however, interfere with the discretion of the Court under the Guardians and Wards Regulation. Clause 21 is therefore redrafted as follows :—

"Subject to the provisions of the Guardians and Wards Regulation the following persons, in the order named, shall be the legal guardians of minors in respect of their person as also of the separate properties belonging to them, namely, the father, mother, paternal grandfather, uterine brothers, and paternal uncle."—*S. C. R.*

III. When the Bill was considered by the Council, on the motion of a Non-official Member, the words "uterine-brothers and paternal uncle" occurring after the words "paternal grand-father" were deleted, and the words "full brothers in the order of seniority, consanguine brothers in the order of seniority and paternal uncles in the order of seniority" were substituted.—*L. C. P. dated 19-5-1930.*

Sec. 15 & 16 : I. Sections 22 and 23 of the original Bill, which corresponded to these Sections were as follow :—"22. On the death of a Namputiri male leaving him surviving widows who are members of the family, undivided sons and unmarried daughters, they shall take the whole of the self-acquired and separate properties left by him at his death in equal shares. In the absence of the

17. (1) On the death of a Malayala Brahmin female leaving her surviving sons and daughters they shall take the whole of the self-acquired and separate properties left undisposed of by her at her death in equal shares:

Succession to intestate females.

---

widow, the undivided sons and the unmarried daughters shall take the whole, and, in the absence of the widow and the undivided sons, the unmarried daughters shall take the whole:

Provided that if an undivided son shall have predeceased the intestate, the lineal descendants of such son shall take the share which such son would have taken had he survived the intestate.

"23. On the death of a Namputiri male leaving him surviving none of the heirs mentioned in the preceding Section, the self-acquired and separate properties left by him at his death shall devolve on the following heirs in the order named, namely, the divided sons, brothers, father, mother, uncles and Dayadis."

II. The Select Committee amended the above Sections, and, in doing so, they observed :—

"In the matter of succession to an intestate's property, we are of opinion that no difference need be made between a divided and an undivided son. Nor is it necessary to make any distinction between a married and an unmarried daughter. Some of the witnesses who were examined are of opinion (1) that sons should inherit in the first instance and (2) only in the absence of sons the daughters should inherit and (3) that in no case should the widow inherit. There is much force in (1) and (2) of the above contentions. The majority of us are of opinion that contentions (1) and (2) should be allowed. We are also of opinion that the widow should inherit along with the daughters. In the absence of the above classes of heirs the property may go to the Illom. It is also made clear that this clause should not interfere with clause 21 of the Nayar Regulation. Clauses 22 and 23 are therefore re-drafted as follows :—

"*Clause 22.* On the death of a Malayala Brahmin male leaving him surviving sons, they shall, subject to the provisions of Section 21 of the Nayar Regulation II of 1100, take the whole of the self-acquired and separate properties left undisposed of by him at his death in equal shares. In the absence of sons, the daughters and caste widow shall take such properties in equal shares.

Provided that if a son shall have predeceased the intestate, the lineal descendants of such son shall take the share which such son would have taken had he survived the intestate.

Clause 23. On the death of a Malayala Brahmin male leaving him surviving none of heirs mentioned in the preceding Section, the self acquired and separate properties left undisposed of by him at his death shall, subject to the provisions of Section 21 of the Nayar Regulation II of 1100, devolve on the members of his Illom".—*S. C. R.*

III. 1. When the Bill was considered by the Council, on the motion of a Non-official Member, the following amendments were made:—(1) For the word "sons" occurring after the word "surviving" in the main para of Clause (22) the words, "the words "caste widows and sons and daughters by caste wives" were substituted; (2) the second sentence in the main para was omitted; and (3) the words "son or daughter" were substituted for the word "son" occurring in two places in the Proviso.—

L. C. P., dated 19-5-1930.

2. The latter Section was allowed to stand, as amended by the Select Committee.

Sec. 17: I. This Section corresponds to Section 24 of the original Bill which was as follows:—"24. On the death of

Provided that if a son or daughter shall have predeceased the intestate, the lineal descendants of such son or daughter shall take the share which such son or daughter would have taken had he or she survived the intestate.

(2) In the absence of children the properties referred to in Sub-section (1) shall be taken by the husband.

Devolution of property of female intestate.

18. On the death of a Malayala Brahmin female leaving her surviving none of the heirs mentioned in the preceding Sections the self-acquired and separate properties left undisposed of by her at her death shall devolve on the members of her husband's Illom.

Devolution of property of unmarried female intestate.

19. On the death of an unmarried Malayala Brahmin female the whole of her self-acquired and separate property left undisposed of by her shall devolve on her parents.

In the absence of her parents it shall devolve on her brothers and sisters in equal shares and in their absence it shall devolve on her Illom.

---

a Namputiri female leaving her surviving her husband, sons and grandsons, the husband shall take the whole of the self-acquired and separate properties left by her at her death.

In the absence of the husband, the sons shall take the whole in equal shares, and, in the absence of the husband and the sons, the grandsons shall take the whole in equal shares."

II. The Select Committee substituted the following Clause and, in doing so, they said :—

"We are of opinion that the children of a female should inherit her property and the husband should come in only in the absence of her children. In the absence of her husband, the members of her husband's Illom should take the same. Substitute the following for Clause 24 :—

"(1) On the death of a Malayala Brahmin female leaving her surviving sons and daughters, they shall take the whole of the self-acquired and separate properties left undisposed of by her at her death in equal shares.

Provided that if a son shall have predeceased the intestate, the lineal descendants of such son shall take the same which such son would have taken had he survived the intestate.

(2) In the absence of children, the properties referred to in Sub-section (1) shall be taken by the husband."— *S. C. R.*,

III. When the Bill was considered by the Council, on the motion of a Non-official Member, the words "or daughter" were inserted after the word "son" occurring in two places in the Proviso to Sub-section (1),—

L. C. P., dated 19-5-1930.

Sec. 18: In the Section as it stood in the original Bill, the Select Commiteee inserted the words "undisposed of "between the words "left" and "by".—*S. C. R.*

Sec. 19: This Section was added, on the motion of a Non-official Member, when the Bill was considered by the Council.—

L. C. P., dated 19-5-1930.

CHAPTER V.

Supplemental Provisions.

20. If the surviving members of an Illom are all widows they shall be entitled to divide the Illom properties equally among themselves.

Right of widow.

21. Stridhanam received by a Malayala Brahmin shall be treated as the joint property of the husband and wife.

Stridhanam.

22. This Regulation shall not apply to the Edapalli Swaroopam.

Edapalli Swaroopam exempted.

Sec. 20: I. In the original Bill, the Section stood as follows:—"27. Tarwad property shall be liable to be divided at the instance of any Grahasta member of the Tarawad if the majority of the major members with the assent of the Karanavan of such Tarwad consent to such division: Provided that, if the surviving members of a Tarwad are all widows, any of them shall be entitled to get her share."

II. The Select Committee said:—

"The members of the community do not seem to be keen about partition. Paragraph 1 of Clause 27 is therefore deleted.

As for paragraph 2 there seems to be strong opposition for its retention. It is suggested that such a provision is opposed to the custom and usage obtaining in the community, that it will prevent the prepetuation of the family by adoption and in the present state of their society, it is highly objectionable to leave a widow with wealth to live separate. The majority are for retention of the paragraph and hence it is not interfered with".—*S. C. R.*

III. When the Bill was considered by the Council, the words "they shall be entitled to divide the Illom properties equally amongst them" were substituted, on the motion of a Non-official Member, for the words "any of them shall be entitled to get her share",—*L. C. P., dated 18-8-1930.*

Sec. 21: I. The Section stood as follows in the original Bill:—"28. Stridhanam received by a Namputiri male at the time of marriage fhall be treated as Tarwad property."

II. The Select Committee observed:—"Stridhanom received by a male should according to the sense of the community go to the Illom. This is against the ruling in 25 T. L. R., 196. As the members of the community in the Council are also against any amendment, the Clause is left as it is."—*S. C. R.*

III. When the Bill was considered by the Council, on the motion of a Non-official Member, the words "male at the time of marriage shall be treated as Illom property" were deleted and the words "shall be treated as the joint property of the husband and wife" were substituted.—*L. C. P., dated 18-8-1930.*

Sec. 22: This section was added by the Select Committee. They said:—"Lastly, it is suggested by one of us, *viz.*, the members representing the Edavagais that the Edappalli Swaroopam must be exempt from the operation of the Regulation. In the first place Edappalli Swaroopam is entitled to recover the rent due under the Rent Recovery Regulation. The assignment of Puduval lands within the Edavagai is ordinarily according to Government Rules and Government rates. We therefore think it advisable to exempt the Swaroopam."—*S. C. R.*

23. Nothing in this Regulation shall affect the existing rules of the law, custom or usage except to the extent hereinbefore expressly provided for.

Saving clause.

REGULATION IV OF 1106.

THE TRAVANCORE FOOD ADULTERATION REGULATION.

CONTENTS.

Preamble.

Sections.

1.	Short title and local extent	1
2.	Definitions.	2
3.	Delegation of powers of local Food Inspector ...	3
4.	Punishment for sale, etc, of food not of the proper or prescribed quality.	5
5.	What defences not available.	6
6.	Powers of local Food Inspector for purpose of inspection.	7
7.	Penalty for preventing inspection....	8
8.	Power to seize adulterated food, etc.	9
9.	Penalty for removing or interfering with articles seized...	10
10.	Sample of articles seized to be sent to the Public Analyst	11
11.	Production of articles, etc., seized before Magistrate, and power of Magistrate to deal with them	12
12.	Purchaser may have food analysed.	13
13.	Power of local Food Inspector to purchase samples for analysis	14
14.	Procedure for analysis of food.	15
15.	Public Analyst's certificate.	16
16.	Jurisdiction of Magistrates....	17
17.	Condition of institution of prosecutions	18
18.	Limitation period for prosecution.	19

The figures on the right refer to the corresponding Sections of the Madras Prevention of Adulteration Act, III of 1918, as amended by Act II of 1928.

19. Power to declare normal constituents of articles of food.
20. Power to make Rules. 20
21. Power of local authorities to make bye-laws. ... 21
22. This Regulation supplemental to the law of local authorities.... 22
23. Repeal of a provision of the Municipal Regulation.

A Regulation to make provision for the prevention of adulteration of food

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 13th Idavom 1106, corresponding to the 27th May 1931, under Section 14 of Regulation II of 1097.

Preamble. Whereas it is expedient to make provision for the prevention of adulteration of food; It is hereby enacted as follows:

Short title and local extent. 1. (1) This Regulation may be called the Travancore Food Adulteration Regulation, 1106.

Regn. IV of 1106: *Objects and Reasons.*—(1) "The adulteration of foodstuffs offered for sale has become a growing evil in many parts of the State and it will not be denied that in the interests of public health it is highly necessary to prevent it. The law now available to check the evil is limited and inadequate. The general penal law against adulteration of foodstuffs is found in the Penal Code, Sections 270 and 271. But under that provision, the article must have become noxious or unfit for food in order that the sale of it may become punishable. There is another, and perhaps a wider, provision in the Travancore Municipal Regulation (V of 1095) Section 188, which prohibits the sale of any article of food which is not of the nature, substance or quality of the article demanded by the purchaser. Even this provision is insufficient. For one thing, it applies only to Municipal areas; and for another, it is inadequate in many respects, particularly in that it does not permit the compelling of a minimum purity being maintained in respect of any articles of food, say milk, butter, ghee, curds, buttermilk or tea, commonly sold and bought in the country. Special legislation has therefore become necessary to check the adulteration of foodstuffs and this Bill has accordingly been drafted.

2. The Bill seeks to probibit the sale, etc., of adulterated foods as also of foods below a standard of purity, if any, prescribed by Government (Clause 4). Provision is made also for the seizure and destruction of objectionable foodstuffs (Clauses 8 and 11). A public analyst is contemplated to be appointed who will analyse samples of foods sent to him by private purchasers of food or by certain public servants and issue a certificate as to the quality of the food (Clauses 10, 12, 14 and 15) and a provision has been inserted for a compulsory sale of samples of foods by food vendors (Clause 13)."—*S. O & R.*

(2) This Section shall extend to the whole of Travancore, and

Our Government may by Notification in Our Government Gazette extend all or any of the other provisions of this Regulation to any local area, municipal or non-municipal.

(3) Our Government in extending all or any of the provisions of this Regulation as provided in Sub-section (2) may extend the same in respect of any specified article of food or generally in respect of all articles of food, and Our Government may so extend the provisions only temporarily for a specified period or for the duration of any market, fair or festival or other large assembly of people.

---

(2) In introducing the Bill, the Official Member in charge said :- "The adulteration food-stuffs offered for public sale has become a growing evil in many parts of the State; and it will not be denied that in the interests of public health it is highly necessary that there should be some special legislation to meet this evil. Representations in this respect have been made to Government from many quarters. The Trivandrum Municipal Council has requested Government that legislation on the lines of the Madras Act should be passed. From another end of the country, the Tea planters have made bitter complaints to the Government that tea is being adulterated, which not only makes the tea noxious to health but also affects the reputation of Travancore tea elsewhere. This adulteration of food-stuffs seems to be a common evil which requires immediate attention at the hands of the Legislature. * * The three main objects of the Bill are these. One is to insist or to compel that food offered for sale should be of the quality it purports or is represented to be. Another is to be that foods that are sold are not adulterated and made unwholesome. And the third is that some foods, if they are so prescribed, should maintain a minimum purity, should not be below a standard quality. Whether it be of a particular quality or not, it should not go below a minimum purity. That power also is proposed to be taken by this measure. * * To carry out the purposes of this measure, Food Inspectors are proposed to be appointed who will have power to inspect food and seize such of them as are unwholesome and get them destroyed under the orders of a Magistrate. It is also proposed to appoint a Public Analyst to get a decisive ruling whether a particular sample of food is really wholesome or is really adulterated. These are the main principles involved in the Bill. * * ."—*L. C. P., dated 14-3-1930.*

II. The Bill was published in the Gazette dated 6-5-1930. It was introduced into the Council, its principle was accepted and the Bill was referred to a Select Committee at the meeting held on 14-5-1930 (*L. C. P., Vol. XVI, Pp. 555-560*)

The Select Committee's Report was published in the Gazette dated 3-12-1930. It was presented to the Council and considered, and the Bill was posted for final reading at the meeting held on 16-12-1930 (*L. C. P. Vol. XVIII, Pp. 40-68*). The Bill was finally read and passed at the meeting held on 15-4-1931 (*L. C. P. Vol. XVIII., P. 379*). The Regulation was published in the Gazette dated 2-6-1931.

---

2. In this Regulation unless there is something repugnant in the subject or context:—

Definitions.

'Food' includes every article (other than drugs or water) used by man for food or drink and all materials ordinarily used or admixed in the composition or preparation of such article and includes also flavouring matter and condiments:

'Milk' means the normal clean secretion drawn from the udder of a healthy cow or sheep or buffalo either completely, or, after the first portion of such secretion has been drawn off, to completion:

'Cream' means that portion of milk rich in milk-fat which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centrifugal force:

'Butter' means butter made exclusively from milk or cream or both or from curds with or without the addition of salt or other innocuous preservative, or of innocuous colouring matter:

'Curds' mean boiled and fermented milk holding in suspension fat and other solids contained in milk:

'Buttermilk' is fermented milk and is the residue left after removal of butter from curds by churning:

Explanation.—In churning, it is permissible to add water to curds for facilitating churning, but the resultant buttermilk shall contain not less than 8·5 per cent. of the milk solids excluding fat:

'Ghee' means ghee prepared exclusively from butter:

'Prescribed' means prescribed by Rules made under this Regulation:

Sec. 2: (1) *Food.*—In the Madras Act, "sheep's milk is used generally for food, the word "ordinarily" does not occur. The definition in the English Sale of Goods and Drugs Act of 1899 is:—"Food shall include every article used for food or drink by man other than drugs or water, and every article which ordinarily enters into or is used in composition or preparation of human food, and shall also include flavouring matter and condiments."

(2) *Milk.*—The words "or sheep" are not found in the Madras Act. The original Bill did not contain them. They were put in by the Select Committee, as it should be brought within the provisions of this measure relating to milk."—*S. C. R.*

(3) *Butter.*—The words "or from curds" found neither in the Madras Act nor in the original Bill, were inserted by the Select Committee, "as butter is made from curds."—*S. C. R.*

In the Madras Act, the definition runs thus:—"'Butter' and 'Cheese' mean respectively butter and cheese made exclusively from milk or cream or both with or without the addition of salt or other innocuous preservative, or of innocuous colouring matter."

'Public Analyst' means any person appointed by Our Government or under Rules made by Our Government, to exercise the functions of a Public Analyst under this Regulation:

Provided that no person shall be appointed Public Analyst unless he is a Chemistry Graduate of a University and has undergone a course of training in food analysis in any public health laboratory for a period not less than six months:

'Local Food Inspector' means any officer not below the rank of a Taluk Tahsildar appointed by Our Government or under Rules made by Our Government to exercise the functions of a local Food Inspector under this Regulation for any local area:

Explanation I.—The comparative rank of officers for the purpose of this provision shall be what is decided by the order of Our Government:

Explanation II.—The President of the Municipal Council shall be deemed to be the local Food Inspector for a Municipality:

'Local authority' means—

(1) in the case of any Muncipality, the Muncipal Council; and

(2) in the case of any other local area, such authority or officer as Our Government may appoint in this behalf.

Delegation of powers of local Food Inspector.

3. (1) The local Food Inspector may delegate his powers and duties under this Regulation to such persons and in such manner as may be prescribed.

---

(4) *Curds and Buttermilk.*—These are not defined in the Madras Act, nor in the original Bill. The definitions were inserted by the Select Committee, "as they are common articles of food sold in this country."—*S. O. R.*

(5) *Public Analyst.*—The Madras Act does not contain any Proviso. It was added by the Select Committee, as they were "of opinion that the Public Analyst should have some minimum qualifications if he should be of material use."—*S. C. R.*

(6) *Local Food Inspector.*—This is not defined in the Madras Act. In the definition contained in the original Bill, the Select Committee substituted the words 'officer not below the rank of a Taluk Tahsildar for the word 'person,' as they were of opinion "that the minimum rank of a person appointed as Food Inspector should be indicated in the definition." The Committee also added as a consequential provision an Explanation (I) regarding the rank of officers.

(7) *Local Authority.*—The definition is not found in the Madras Act. Instead, that Act defines 'Local Executive Officer' as a Commissioner in any Municipality which has a Commissioner, the President or Chairman of the Council in other Municipalities, etc.

Sec. 3: The Madras Act has the wording—"(1) The local executive officer may delegate, etc."

(2) Every local Food Inspector and every person to whom powers have been delegated under this Section shall be deemed to be a public servant within the meaning of Section 15 of the Travancore Penal Code.

Punishment for sale, etc., of food not of the proper or prescribed quality.

4. (1) Every person who, directly or indirectly, himself or by any other person on his behalf,

(*a*) sells any food which is not of the nature, substance or quality of the article demanded by the purchaser; or

(*b*) manufactures or stores for sale or offers or exposes for sale or hawks about or sells any food which is not of the nature, substance or quality which it purports, or is represented to be; or

(*c*) abstracts from any food any part of it so as to affect injuriously the nature, substance or quality thereof with intent that it should be sold in its altered state without notice of the alteration, or sells any article so altered without making disclosure of the alteration; or

(*d*) manufactures or stores for sale or offers or exposes for sale or hawks about or sells milk, cream, butter, curds, buttermilk, ghee, tea or coffee or any other food which is not up to the standard of purity, if

---

Sec. 4: The corresponding Sub-section (1) of Section 5 of the Madras Act is as follows:—"5. *Offences and Exceptions.*—(1) Every person who—(*a*) sells.....purchaser; (*b*) manufactures, stores or offers for sale or hawks about.....represented to be; (*c*) abstracts from any food.....disclosure of the alteration; or (*d*) offers for sale or hawks about or sells milk, cream, butter, ghee, cheese or any food which is not up to the standard of purity prescribed by the Local Government, shall be punished.....five hundred rupees: Provided that in the following cases no offence under this Section shall be deemed to have been committed—(i) where any innocuous material..... quality thereof; or (ii) where in the process.....admixed therewith; or (iii) where any innocuous material has been added or admixed or the article of food sold is not up to the standard of purity prescribed by the Local Government and before the sale, the vendor has clearly brought the fact to the notice of the purchaser either by means of a label on or with the food or in such other manner as the Local Government may, by Rule framed under Section 20 of this Act, prescribe, or (iv) where the food.....specification thereof."

any, prescribed by Our Government or any article similar to any article, in respect of which a standard of purity has been so prescribed, under a name which in any way resembles the name of such article,

shall be punished for the first offence with fine which may extend to one hundred rupees and for every subsequent offence with fine which may extend to five hundred rupees:

Provided that an offence shall not be deemed to be committed under this Section in the following cases, that is to say:—

(i) where any innocuous material has been used or admixed in the composition or preparation of the food to render the same fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the food or to conceal or debase the quality thereof; or

(ii) where in the process of production, collection, preparation or conveyance of the food some extraneous material has unavoidably been admixed therewith; or

(iii) where the food is the subject of a patent in force and is supplied in the state required by the specification thereof.

(2) In every prosecution for an offence against this Section, the Court may presume that any food found in the possession of a person who is in the habit of manufacturing or storing like articles for sale has been manufactured or stored by such person for sale.

What defences not available.

5. In any prosecution for an offence under the last preceding Section it shall be no defence to allege merely that the accused person was ignorant of the nature, substance or quality of the food sold, manufactured, stored, offered or exposed for sale or hawked about by him or that the purchaser has bought the food only for analysis.

Sec. 5. The corresponding Section (6). of the Madras Act is as follows:—" 6. *Presumptions to be made and pleas to be disallowed or allowed*.—(1) In every prosecution for an offence against the last preceding Section, it shall be no defence to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having bought only for analysis was not prejudiced by the sale;

Provided that the vendor shall not be deemed to have committed an offence under Section 5, if he proves that the food

Powers of local Food Inspector for purposes of inspection.

6. (1) The local Food Inspector or any person authorised by him in writing in that behalf may at any time by day or by night inspect and examine any food which is being manufactured for sale or is in course of transit or stored for sale or is hawked about or exposed for sale and any utensil used for preparing, manufacturing or containing any such food and he may for the purpose of such inspection or examination enter at all reasonable times and without notice any place used for the manufacture, exposure or storage for sale and no person shall offer resistance to or obstruct any such inspection, examination or entry.

(2) No claim shall lie against any person or authority for any damage or inconvenience necessarily caused by the exercise of powers under this Section or by the use of any force necessary for effecting an inspection, examination or entry.

(3) In any legal proceedings in respect of powers exercised under this Section in which it is alleged that any food was not kept exposed, hawked about, manufactured, prepared, stored, packed or cleansed for sale, or was not intended for human food, the burden of proof shall lie on the party so alleging.

---

was purchased by him as the same in nature, substance and quality as that demanded by the purchaser and with a written warranty to the effect that it was of such nature, substance and quality, that he had no reason to believe at the time when he sold the same that the food was not of such nature, substance or quality and that he sold it in the same state as that in which he purchased it.

(2) Where an employer is charged with an offence under this Act, he shall be entitled on application duly made by him to have any other person whom be charges as the actual offender brought before the Court at the time appointed for the hearing and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the Court that he used due diligence to enforce the execution of this Act and that the said other person committed the offence without his knowledge, consent or connivance, the said other person shall be convicted and the employer shall be acquitted."

Sec. 6: In the Madras Act, Section 7 runs thus:—"7. (1) The local executive officer may without notice enter any place where articles of food are being manufactured or exposed for sale at any time by day or night when the exposure for sale or manufacture is being carried on and inspect the same and any utensil or vessel used for manufacturing, preparing or containing any such article.

(2) No claim shall lie against any local authority or any person for any...force necessary for effecting an entry into any place under this Section.

(3) In any legal proceeding.....on the party so alleging."

Penalty for preventing inspection.

7. Every person who shall in any manner whatsoever offer resistance to or obstruct the local Food Inspector or any person duly authorised by him exercising powers under the last preceding Section shall be punished, where his act does not amount to an offence under the Travancore Penal Code, with a fine which may extend to fifty rupees.

Power to seize adulterated food, etc.

8. If any food or article intended for food appears to the local Food Inspector or any person duly authorised by him and acting under Section 6 to be adulterated or other than what it purports or is represented to be, or if any vessel or utensil used in manufacturing, preparing, or containing such article appears to violate any Rule made under Section 20, he may seize or carry away or secure such article, utensil or vessel, in order that the same may be dealt with as hereinafter provided.

Penalty for removing or interfering with articles seized.

9. Every person who shall remove or in any way interfere with an article secured under the last preceding Section shall on conviction be punished with fine which may extend to five hundred rupees.

Sample of articles seized to be sent to the Public Analyst.

10. When any article of food seized under Section 8 appears to the local Food Inspector to be adulterated or other than what it purports or is represented to be, he shall forthwith send a sample of such article to the Public Analyst.

Production of articles, etc., seized before Magistrate and power of Magistrate to deal with them.

11. (1) Articles of food or samples thereof, utensils or vessels seized under Section 8, shall as soon as possible be produced before a Magistrate:

Provided that where a sample or an article has been sent to the Public Analyst the article or sample thereof may be produced before the Magistrate after receipt of the Public Analyst's certificate.

Sec. 7: The wording in the Madras Act is.—"8. Every person who shall in any manner whatsoever *prevent* the local executive officer or person duly authorised by him....."

Sec. 8: The wording in the Madras Act is—"9. If any article intended for food appears.....as hereinafter provided."

Sec. 11: Clause (*c*) of Sub-section (2) does not occur in the corresponding Section 12 of the Madras Act. It was added by the Select Committee "with a view to give the Court ample discretion in the matter of the disposal of the article."—*S. C. R.*

(2) Whether or not complaint is laid before the Magistrate of any offence under the Travancore Penal Code or under this Regulation, if it appears to the Magistrate on taking such evidence as he thinks necessary that any such article is adulterated or other than what it purports or is represented to be, or any such utensil or vessel is of such kind or in such state as is described in Section 8, he may order the same—

(*a*) to be forfeited to Our Government, or

(*b*) to be destroyed at the charge of the owner or person in whose possession it was at the time of seizure in such manner as to prevent the same being again exposed or hawked about for sale or used for human food or for the manufacture or preparation of or for containing any such article as aforesaid, or

(*c*) otherwise disposed of.

Purchaser may have food analysed.

12. (1) Any purchaser of any article of food shall be entitled, if a Public Analyst has been appointed for the local area within which such article is purchased, on payment of such fees, if any, as may be prescribed, to havs such article analysed by such Public Analyst and to receive from him a certificate of the result of his analysis.

(2) Before sending such article to be analysed as aforesaid the purchaser shall notify to the seller his intention to have it so analysed; and the Public Analyst on receiving such article for analysis shall divide it into three parts, of which one is to be analysed, another to be retained by him in order to be returned with his certificate and the third to be delivered on demand to the seller: Provided that each part other than the part analysed shall be marked and sealed or fastened up in such manner as its nature permits.

Power of local Food Inspector to purchase samples for analysis.

13. (1) The local Food Inspector or any person authorised by him in writing in that behalf may require, on tendering the price for it, the sale to him during the process of manufacture, for the purpose of analysis, of such quantity of—

Sec. 13: The Madras Act, Section 14, runs thus:—"14. (1) The local executive officer may purchase a sample of any article of food from any person exposing such article for sale or from any person who is in the course of delivering or preparing to deliver it to a purchaser or consignee, and may submit it to be analysed by the

(i) any food, or

(ii) any ingredients used in the manufacture of food,

as is reasonably requisite for division and disposal under Section 14; and any person in possession of the said food or ingredients shall be bound to sell such quantity.

(2) The local Food Inspector or any person authorised by him in that behalf may also require the surrender to himself, for the purpose of analysis, of such quantity as is reasonably requisite for division and disposal under Section 14, of any food which for the purpose of sale is—

(*a*) in course of transit in any local area, or

(*b*) stored in any place in any local area

and any person in possession of the said food shall be bound to surrender such quantity:

Provided that in every such case the price of the food so surrendered shall be payable to the owner of the food, if claimed by such owner within one month from the date of the said surrender.

(3) The local Food Inspector or any person authorised by him in writing in that behalf may also require, by tender of the price, the sale to him, for the purpose of analysis, of such quantity of any food exposed or intended for sale, as is reasonably requisite for division and disposal under Section 14 and any person in possession of or exposing the same for sale shall be bound to sell such quantity.

(4) Every person who refuses to sell or surrender food to the local Food Inspector, or to the person duly authorised by him, as required by Sub-sections (1), (2) and (3) shall be punished with fine which may extend to rupees one hundred.

Procedure for analysis of food.

14. (1) The local Food Inspector or other person who purchases, for the purpose of analysis, a sample of food under Section 13, Sub-section (1) or Sub-section (3), shall, after the purchase has been completed, forthwith notify to the seller, or his agent selling the

---

public analyst appointed for the area within which such sample has been procured.

(2) Every such person who refuses to sell such sample to the local executive officer or any person duly authorised by him at the price at which he usually sells the article shall be punished with fine which may extend to Rs. 100".

article, his intention to have the same analysed and shall divide the article into three parts, to be then and there separated, and each part to be marked and sealed or fastened up in any manner which its nature will permit.

(2) The person purchasing the sample shall deliver one of the said parts to the seller or his agent, and shall retain another part for future comparison or production in case proceedings are taken and shall send the remaining part, if he deems it right to have the article analysed, to the Public Analyst appointed for the local area where the article is sold.

(3) When any food is surrendered under Section 13, Sub-section (2), the person to whom it is surrendered shall forthwith notify to the person in charge of the said food his intention to have the same analysed and shall thereupon deal with the food so surrendered in the manner provided in Sub-sections (1) and (2).

(4) If the seller or his agent or the person in charge of the food declines to accept one of the parts, the local Food Inspector or other person shall inform the Public Analyst of the fact when sending the sample for analysis and the Public Analyst on receiving the sample for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it either upon receipt of the sample or when he delivers his certificate, to be delivered to the person who sent the sample or to the local Food Inspector who shall retain it for future comparison or production in case proceedings are taken.

Public Analyst's certificate.

15. (1) Every Public Analyst to whom a sample has been sent under this Regulation shall deliver to the person so sending it a certificate in the form prescribed in the Schedule to this Regulation, or to the like effect, specifying the result of his analysis.

(2) Any document purporting to be such certificate signed by a Public Analyst may be used as evidence of the facts

---

Sec. 15: In Section 16 of the Madras Act, the Proviso to Sub-section (2) runs thus:— "Provided that any Court...to be sent for analysis to the Chemical Examiner to Government or to any public analyst designated for the purpose by the Local Government, who shall thereupon analyse...may direct."

The Select Committee made the changes now found in the Section, as they were of opinion "that the Chemical Examiner to Government is not the proper person to analyse food".—*S. C. R.*

stated therein in any proceedings under this Regulation or under Sections 270 and 271 of the Travancore Penal Code:

Provided that any Court before which a case under this Regulation may be pending, whether exercising original, appellate or revisional jurisdiction, may in its discretion, at the request either of the accused or of the complainant, cause any article of food to be sent for analysis to any expert analyst in foodstuffs who may thereupon analyse the same and report the result of such analysis to the said Court; and the expense of such analysis shall be paid by the accused or the complainant as the Court may by order direct.

Jurisdiction of Magistrates.

16. Magistrates of the Third Class shall not try any offence under this Regulation.

Condition of institution of prosecutions.

17. No prosecution under this Regulation shall be instituted except on the complaint of the purchaser or of the local Food Inspector or with the consent in writing of the local Food Inspector or under the sanction of Our Government.

Limitation period for prosecution.

18. No prosecution under this Regulation shall be commenced after the expiry of three months after the commission of the offence.

Power to declare normal constituents of articles of food.

19. Our Government may declare the normal constituents of any article of food and may determine, by Rules in this behalf, what deficiency in any of these constituents, or what addition of extraneous matter or proportion of water in a sample of any article of food, shall for the purpose of this Regulation, raise a presumption until the contrary is proved that the article of food is not genuine or is injurious to health; and a Public Analyst shall have regard to such Rules in certifying the result of an analysis under this Regulation.

Sec. 16: Under Section 17 of the the Madras Act, "Third-class Magistrates shall not try any offence under the Act unless they have been generally or specially empowered in this behalf by the Local Government. The original Bill adapted the provision. It was deleted by the Select Committee, as they thought that the power should not given to such Magistrates.

Sec. 17. Section 18 of the Madras Act runs thus:—"No prosecution under this Act shall be instituted except on the complaint of the purchaser or with the consent in writing of the local executive officer."

Power to make Rules.

20. (1) Our Government may, consistently with the provisions of this Regulation and after previous publication, make Rules to carry out the purpose of this Regulation for the whole or any part of the area to which this Regulation may have been extended.

(2) In particular and without prejudice to the generality of the foregoing power, Our Government may make Rules for—

(*a*) the appointment, removal and qualifications of, and the exercise of functions by, Public Analysts and local Food Inspectors;

(*b*) prescribing the classes or qualifications of persons to whom, and the conditions on which, the local Food Inspector may under Section 3 delegate his powers or duties;

(*c*) determining the local limits within which any local Food Inspector or any person delegated by him under Section 3 may exercise his functions;

(*d*) prescribing standards of purity for milk, cream, butter, curds, buttermilk, ghee, tea or coffee or any other food;

(*e*) prescribing the fees to be charged for the analysis of any article of food under this Regulation and the manner of paying or realising the same;

(*f*) prescribing, in the interests of the public health, the state in which utensils and vessels used for manufacturing, preparing, or containing any food intended for sale shall be kept, and prohibiting the use of utensils and vessels made, in whole or in part, of materials likely to injure such food;

(*g*) determining what deficiency in any of the normal constituents of milk, cream, butter, curds, buttermilk, ghee, tea or coffee or any other food or what addition of any extraneous matter or proportion of water in any of the same or any preparation of the same shall for the purpose of this Regulation raise a presumption until the contrary is proved that those articles of food are not genuine or are injurious to health;

(*h*) prohibiting or regulating in the interests of public health—

(i) the addition of water or other diluent or adulterant to any food;

(ii) the abstraction of any ingredients from any food; and

(iii) the sale of any food to which such addition and from which such abstraction has been made or which has beeu otherwise artificially treated;

(*i*) providing for the manner in which any receptacle containing dried, condensed, skimmed or separated milk is to be labelled or marked;

(*j*) authorising the persons taking samples of any food for the purpose of analysis under this Regulation to add preservatives to such sample for the purpose of maintaining it in a suitable condition for analysis and regulating the nature of such preservatives and the method of adding them.

(3) In making the Rules, Our Government may direct that a breach of any Rule shall be punished with fine not exceeding rupees one hundred on a first conviction and not exceeding rupees five hundred on any subsequent conviction.

Power of local authorities to make bye-laws.

21. Every local authority exercising control over any local area to which this Regulation has been extended may, under the provisions respecting the making of bye-laws of the Regulation if any under which such local authority is established, make bye-laws not inconsistent with this Regulation or the Rules made thereunder for all the purposes of this Regulation and in particular, without prejudice to the generality of the power hereby given, for the prevention of the manufacture or preparation for sale, the exposure for sale, or hawking about, or the sale, of articles of food, which are adulterated or other than what they purport or are represented to be and the inspection and regulation of places in which such articles are kept, stored, packed, cleansed, manufactured, prepared or exposed for sale, hawked about or sold.

This Regulation supplemental to the law of local authorities.

22. The provisions of Sections 2 to 21 of this Regulation shall be read, as supplemental to the Regulation, if any, under which the local authority concerned is constituted.

Repeal of a provision of the Municipal Regulation.

23. Section 188 of the Travancore Municipal Regulation, V of 1095, is hereby repealed.

SCHEDULE.

FORM OF CERTIFICATE.

To *

I, the undersigned, Public Analyst for the , do hereby certify that I received on the day of 19 from † a sample of for analysis (which then weighed) ‡ and have analysed the same and declare the result of my analysis to be as follows:—I am of opinion that the same is a sample of genuine

or

I am of opinion that the said sample contained the parts as under or the percentages of foreign ingredients as under:—

** Observations.

Signed this day of 19 ,

at A. B.

In the case of a certificate regarding milk, butter, curds, buttermilk, ghee or any article liable to decomposition, the Analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

*Here insert the name of the person sending the article for analysis.

†Here insert the name of the person delivering the sample. If the sample is received by post or by railway, entry should be made accordingly.

‡When the article cannot be conveniently weighed, this passage may be erased or the blank may be left unfilled.

**Here the Analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article potable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether it was in excess of what is ordinary or otherwise and whether the ingredients or materials mixed are or are not injurious to health.

RULES.

I

(R. O. C. No. 5122 of 1931 / L. G. B., dated 16th January 1933.) (a)

In pursuance of Notification *R. O. C. No. 5122 of 1931 / L. G. B.*, dated the 13th October 1932 published at Page 274 of Part I of the Government Gazette dated the 18th October 1932 and in exercise of the powers conferred by Section 20 of the Travancore Food Adulteration Regulation, IV of 1106, the Government of His Highness the Maha Raja are pleased to issue the following set of Rules for the working of the aforesaid Regulation:—

Rules issued under Section 20 of the Travancore Food Adulteration Regulation, IV of 1106.

PART I.—GENERAL.

1. These Rules may be called the Travancore Food Adulteration Rules.

2. In these Rules "the Regulation" means the Travancore Food Adulteration Regulation, 1106.

PART II.—Rules under clauses (*b*) and (*c*) of Sub-Section (2) of Section 20.

3. The local Food Inspector may delegate in writing all or any of his powers under the Regulation to any Chairman of a Panchayat, Health Officer, or Sanitary Inspector either by name or virtue of office. The exercise of any powers so delegated shall be subject to the control of, and revision by, the local Food Inspector.

4. The local Food Inspector or any person duly authorised by him may exercise the powers conferred on, or delegated to, him under Sections 6, 8 and 13 of the Regulation within the local area in respect of which he holds office.

PART III.—Rules under clauses (*d*) and (*g*) of Sub-Section (2) of Section 20.

Cow's Milk.

5. Where a sample of cow's milk (not being sold or offered for sale as skimmed or separated milk) contains less than 3 per cent. of milk-fat, it

(a) *T. G. G., dated 24-1-1933. Pt. I, Pp. 604—606.*

shall be presumed for the purposes of the Regulation, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

6. Where a sample of cow's milk, whether sold or offered for sale as cow's milk or as skimmed or separated cow's milk contains less than 8·5 per cent. of milk solids other than milk fat, it shall be presumed for the purposes of the Regulation, until the contrary is proved, that the milk is not genuine by reason of the addition thereto of water.

7. Where a sample of cow's milk whether sold or offered for sale as cow's milk, or as skimmed or separated cow's milk, contains less than 0·5 per cent. of nitrogen, it shall be presumed for the purposes of the Regulation, until the contrary is proved, that the milk is not genuine by reason of the addition thereto of water.

Buffalo's Milk.

8. Where a sample of buffalo's milk (not being sold or offered for sale as skimmed or separated milk) contains less than 4·5 per cent. of milk fat, it shall be presumed for the purposes of the Regulation, until the contrary is proved, that the milk is not genuine by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

9. Where a sample of buffalo's milk, whether sold or offered for sale as buffalo's milk or as skimmed or separated buffalo's milk, contains less than 9 per cent. of milk-solids other than milk-fat, it shall be presumed for the purposes of the Regulation, until the contrary is proved, that the milk is not genuine by reason of the addition thereto of water.

10. Where a sample of buffalo's milk, whether sold or offered for sale as buffalo's milk or as skimmed or separated buffalo's milk, contains less than 0·53 per cent. of nitrogen, it shall be presumed for the purposes of the Regulation, until the contrary is proved, that the milk is not genuine by reason of the addition thereto of water.

Note.—The minimum limits for nitrogen in Rules 7 and 10 above are intended to be used in those cases in which the sample of milk when it is analysed is so far decomposed that on estimation of the proportion of milk-solids other than milk-fat in the sample before decomposition will be unreliable, the proportion of nitrogen not being appreciably affected by decomposition.

Cow's or Buffalo's Milk.

11. When milk is sold or offered for sale without any indication as to whether it is derived from the cow or the buffalo, the provisions of

Rules 5, 6 and 7 shall apply thereto in all respects as if it were cow's milk sold or offered for sale :

Provided that where the milk is sold or offered for sale as skimmed or separated milk, the provisions of Rule 5 shall not apply thereto.

Maximum limit for Dirt in Cow's Milk or Buffalo's Milk.

12. Where a sample of milk, separated or skimmed milk, deposits, on standing for a period of 24 hours or less, an amount of visible sediment exceeding five parts per 100,000 (both milk and sediment being measured by volume), it shall be presumed for the purposes of the Regulation, until the contrary is proved, that the milk is not genuine by reason of its containing an excessive amount of dirt.

Butter from Cow's or Buffalo's Milk or Cream.

13. Where the proportion of water in a sample of butter made from cow's or buffalo's milk or cream exceeds 20 per cent., it shall be presumed for the purposes of the Regulation, until the contrary is proved, that the butter is not genuine by reason of the excessive amount of water therein.

Ghee.

14. Where the proportion of water in a sample of ghee exceeds 1 per cent. it shall be presumed for the purposes of the Regulation, until the contrary is proved, that the ghee is not genuine by reason of the excessive amount of water therein.

Tea.

15. (*a*) Tea shall be derived exclusively from the leaves and buds of plants of the Camellia Genus and Thea species.

(*b*) Tea shall contain

(i) a proportion of total ash of not less than 4 per cent. and not more than 8 per cent. ;

(ii) a proportion of ash soluble in boiling water which is not less than 40 per cent. of the total ash determined as in clause (i) ; and

(ii) a proportion of ash which is insoluble in dilute mineral acid not exceeding 1 per cent.

Explanation.—For the purposes of this Rule, the ash of tea shall be determined on dry tea (that is, tea dried to constant weight at 100° C).

(*c*) Where a sample of tea does not comply with all the standards specified in sub-rules (*a*) and (*b*), it shall be presumed for the purposes of this Regulation, until the contrary is proved, that the tea is not genuine,

PART IV.—Rule under clause (*e*) of Sub-section (2) of Section 20.

16. The fees to be charged by a Public Analyst for analysing samples of butter or ghee under the Regulation shall be Rs. 2 per sample and for other articles of food As. 8 per sample.

PART V.—Rules under clause (*f*) of Sub-section (2) of Section 20 and Sub-section (3) of Section 20.

17. Every utensil or vessel used for manufacturing, preparing or containing any food intended for sale shall be kept at all times in good order and repair and in a clean and sanitary condition.

18. No person shall use for manufacturing, preparing or containing any food intended for sale, any utensil or vessel which is imperfectly enamelled or imperfectly tinned or which is made of such materials or is in such a state as to be likely to injure such food or render it noxious.

19. Every utensil or vessel containing any food intended for sale shall at all times be either provided with a tight fitting cover or kept closed or covered by a properly fitting lid or by a close fitting cover of gauze, net or other material of a texture sufficiently fine to protect the food completely from dirt and flies and other insects.

20. No utensil or vessel used for the manufacture or preparation of, or containing any food intended for sale shall be kept in any place in which such utensil or vessel is likely, by reason of impure air or dust or any offensive, noxious or deleterious gas or substance or any noxious or injurious emanation, exhalation or effluvium, to be contaminated and thereby render the food noxious.

21. Whoever commits a breach of any of the Rules in this Part shall be punishable with fine not exceeding rupees one hundred in the case of a first offence and rupees five hundred for every subsequent offence.

Part VI.—Rules under clauses (*h*) and (*i*) of Sub-section (2) of Section 20 and Sub-section (3) of Section 20.

22. No person shall add water or any dried or condensed milk or any fluid reconstituted therefrom, or any skimmed or separated milk to milk intended for sale and no person shall either by himself or by any servant or agent sell or offer or expose for sale any milk to which any such addition has been made.

23. No person shall prepare for sale any mixture of ghee with other fat or oil in such proportions as to give a mixture containing less than 80 per cent. by weight of ghee in such mixture and no person shall either by himself or by any servant or agent sell or expose for sale any such mixture containing less than 80 per cent. by weight of ghee.

24. No person shall prepare for sale any mixture of fat or oil, derived from the carcass of an animal, with ghee or with any food prepared in imitation of ghee or as a substitute for ghee, whether mixed with ghee or not, and no person shall either by himself or by any servant or agent sell or expose for sale any such mixture. The term "animal" used in this Rule includes not only mammals but fish, fowl, crustaceans, mollusks and all other animals used as food.

25. If the vendor of any article intended for food knows that it is admixed with any foreign substance whatsoever or that any component part has been abstracted therefrom, he shall give due notice of such admixture or abstraction by means of distinct and clear labels in Malayalam or in any other language likely to be read and understood by the people, affixed conspicuously on each package or receptacle containing the article. Unless the vendor of any food containing an admixture, addition or deficiency, knows of his own knowledge, that the purchaser is able to read and understand the label, he shall give the purchaser the information contained in the label by word of mouth at the time of purchase.

26. No person shall abstract any ingredient from milk, without giving due notice of the same, in an unambiguous manner, of the fact of such abstraction therefrom, as prescribed in Rule 25.

27. Any receptacle containing dried, condensed, skimmed or separated milk shall be labelled with an adhesive label which shall contain the information regarding contents. The information shall be in black type, printed or written in the centre of the label, which shall be of white colour. Nothing else shall be printed or written on the label, except the name of the article. The label shall be clearly visible to the purchaser.

28. Whoever commits a breach of any of the Rules in this Part shall be punishable with fine not exceeding rupees one hundred in the case of a first offence and rupees five hundred for every subsequent offence.

Part VII.—Rules under clause (j) of Section 20.

29. Any person taking a sample of any milk for the purpose of analysis under the Regulation, may add a preservative to the sample for the purpose of maintaining it in a condition suitable for such analysis.

30. The preservative used shall be the liquid commonly known as "formalin", that is to say, a liquid containing about 40 per cent. of formaldehyde in aqueous solution.

31. The amount of preservative added shall be approximately one drop of formalin for every two ounces of milk in the sample.

32. The vessel in which a sample of milk to which formalin has been added under the Rules in this Part is kept shall have affixed to it a label stating that it has been artificially preserved.

33. In this Part 'milk' includes skimmed and separated milk.

II

(R. Dis. No. 165/31/L. G. B., dated 19th February 1934.) (a)

With reference to Notification R. O. C. No. 3355 / 33 / L. G. B., dated the 2nd December 1933, published at Page 299 of Part I of the Government Gazette dated the 5th December 1933, and in exercise of the powers conferred by Section 20 (2) (*a*) of the Travancore Food Adulteration Regulation, IV of 1106, the Government of His Highness the Maha Raja are pleased to issue the following Rules for the appointment, etc., of Public Analyst:—

1. These Rules may be called the Public Analyst Rules and shall come into force on the 1st Makaram 1109.

2. (*a*) The local authority of any local area to which the said Regulation applies may appoint a Public Analyst for such area.

(*b*) No person shall be so appointed a Public Analyst without the previous approval of Goverment; and no person so appointed shall be removed from office without the previous approval of Government.

3. No person shall be appointed Public Analyst by Government, or under Rule 2 of these Rules, unless he possesses besides the minimum qualifications laid down in Section 2 (definition of Public Analyst) of the said Regulation, the following qualification also, namely :—A. I. C. (Associate of the Institute of Chemistry of Great Britain and Ireland.)

4. Every Public Analyst shall be entitled to be paid fees according to the following:—

TABLE OF FEES.

Nature of work.		*Amount of fees.*	
Analysis of milk ...	.... Rs.	6-0-0	per sample.
Analysis of other articles of food	... Rs.	18-0-0	per sample.
Analysis of water ...	... Rs.	15-0-0	per sample.

(a) *T. G. G. dated 20-2-1934, Pt. I., P. 636.*

REGULATION I OF 1107.

A Regulation to amend the Travancore Land Customs Regulation, 1091 (Regulation II of 1091 as amended by Regulation III of 1093)

Passed by His Highness the Maha Raja of Travancore, under date the 7th Edavom 1107, corresponding to the 20th May 1932.

Whereas it is expedient further to amend the Travancore Land Customs Regulation, 1091 (Regulation II of 1091 as amended by Regulation III of 1093) for the purpose hereinafter appearing; We are pleased hereby to enact as follows:—

1. This Regulation may be called the Travancore Land Customs (Amendment) Regulation, 1107, and shall come into force at once.

2. In Section 9 of the Travancore Land Customs Regulation of 1091 (Regulation II of 1091 as amended by Regulation III of 1093), for clause (i) the following clause shall be substituted, namely :—

"(i) for the bailment, safe custody and preservation of things seized, and the disposal of things confiscated, under this Regulation."

Regn. I of 1107: This Regulation was passed direct by His Highness the Maha Raja. It was published in the Gazette dated 31st May 1932.

For the Regulations referred to in the Preamble, see Vol. III, Pp. 1140-1159 and Vol. V, P. 404.

REGULATION II OF 1107.

A Regulation to amend the Travancore Extradition Regulation of 1082 (Regulation I of 1082 as amended by Regulation II of 1094)

Passed by His Highness the Maha Raja of Travancore under date the 10th Karkatakom 1107, corresponding to the 25th July 1932.

Whereas it is expedient further to amend the Travancore Extradition Regulation of 1082 (Regulation I of 1082 as amended by Regulation II of 1094) for the purposes hereinafter appearing; We are hereby pleased to enact as follows:—

1. (1) This Regulation may be called the Travancore Extradition (Amendment) Regulation, 1107.

(2) It shall come into force at once.

2. In the Travancore Extradition Regulation of 1082 (Regulation I of 1082 as amended by Regulation II of 1094) the following Sections shall be added at the end, namely:—

"4. (1) Our Government may make Rules to carry out the purposes of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, such Rules may provide for—

(*a*) the removal of prisoners accused or in custody under this Regulation, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them;

Regn. II of 1107: I. This Regulation was passed direct by His Highness the Maha Raja. It was published in the Gazette dated 16th August 1932.

For the Regulations referred to in the Preamble, see Vol. III, Pp. 1-3 and Vol. IV, P. 451.

II. The two Sections added by this Regulation were based on the Indian Extradition Act, XV of 1903, as amended. They reproduce respectively Section 22 (Power to make Rules) and Section 23 (Detention of persons arrested, under Section 54, Clause *seventhly*, Act V, of 1908) of the Indian Act.

In Clause (*b*) of Sub-section (2) of Section 22 of the Indian Act, the wording is:—"The seizure and *the* disposition of... ...the subject of, or *required* for proof of,.....

Section 23 of the Indian Act is:—"Notwithstanding anything.....may under the orders of a Magistrate within the local limits....."

(*b*) the seizure and disposition of any property which is the subject of, or require for proof of, any alleged offence to which this Regulation applies:

(*c*) the pursuit and arrest in Travancore, by officers of Our Government or other persons authorised in this behalf, of persons accused of offences committed in British India; and

(*d*) the procedure and practice to be observed in extradition proceedings.

(3) Rules made under this Section shall be published in Our Government Gazette, and shall thereupon have effect as if enacted by this Regulation.

"5. Notwithstanding anything contained in the Code of Criminal Procedure, any person arrested without an order from a Magistrate and without a warrant in pursuance of the provisions of Section 35, clause *sevcnthly*, of the said Code, may, under the orders of a Magistrate, not below the rank of a Magistrate of the First Class, within the local limits of whose jurisdiction such arrest was made be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under Section 3."

REGULATION III OF 1107.

THE CRIMINAL LAW AMENDMENT REGULATION.

CONTENTS.

Preamble,
Sections.
I. Short title.
Commencement.
II. Amendment to Section 366 of Travancore Penal Code.
III. Insertion of new Sections 366-A and 366-B in Travancore Penal Code.
IV. Amendment of Sections 372 and 373 of Travancore Penal Code.
V. Further amendment of Section 372 of Travancore Penal Code.
VI. Further amendment of Section 373 of Travancore Penal Code.
VII. Amendment of Section 429, Code of Criminal Procedure, 1067.
VIII. Amendment of Schedule II, Code of Criminal Procedure, 1067.

A Regulation to amend the Travancore Penal Code (Regulation I of 1074, as amended by Regulations I of 1089, IV of 1094 and IX of 1097) and the Code of Criminal Procedure (Regulation V of 1067, as amended by Regulations II of 1074, III of 1074, IV of 1082, VII of 1085, VII of 1088, II of 1090, IV of 1094, III of 1095, VI of 1097, IX of 1097 and XII of 1097)

Passed by His Highness the Maha Raja, under date the 31st Chingom 1108, corresponding to the 15th September 1932, under Section 14 of Regulation II of 1097.

Whereas it is expedient further to amend the Travancore Penal Code, (Regulation I of 1074, as amended by Regulations I of 1089, IV of 1094 and IX of 1097) and the Code of Criminal Procedure (Regulation V of 1067, as amended by Regulations II of 1074, III of 1074, IV of 1082, VII of 1085, VII of 1088, II of 1090, IV of 1094, III of 1095, VI of 1097, IX of 1097 and XII of 1097), for the prevention and suppression of Traffic in Women and Girls;

It is hereby enacted as follows:

Short title. Commencement.

I. (*a*) This Regulation may be called the Travancore Criminal Law Amendment Regulation, 1107; and

(*b*) It shall come into force at once.

Regn. III of 1107. I. *Objects and Reasons.*—(1) "Although traffic in women and children cannot be said to be very prevalent in Travancore, it cannot be said to be totally absent and in any event it is considered that unless some special provisions are made in Travancore as in British India and elsewhere for preventing and suppressing the immoral traffic, Travancore might become a centre or asylum for such traffic. This Bill has accordingly been drafted to incorporate some special provisions in the Travancore Penal Code.

2. Some cognate and consequential amendments are proposed to be made in the Code of Criminal Procedure also.—*S. O & R.*

(2) In introducing the Bill, the Official Member in charge said:—"* Briefly put, and in general terms, the provisions of the Bill are designed to suppress the traffic in women and girls and to prevent and punish the keeping of brothels and the aiding of the business of prostitution". In the course of discussion, the Member read what was said in a paper called "Srimati" about the export of women from Travancore for immoral purposes and the necessity for legislation on the matter, and said:—"The Commissioner of Police has also reported that there have been instances of women migrating from Travancore for immoral and unlawful purposes and settling down outside Travancore for the purpose of prostitution. There is another imperative reason why we should have legislation on this point. Although this immoral traffic in women is not very prevalent in this country it is prevalent in other countries. It was so prevalent that it became a subject-matter of International Conferences and in 1920 and 1922 certain International agreements were come to. * India was a party to the 1922 Conference and legislation has been undertaken in British India on this point. It will be conceded that Travancore being a part of the British Empire must move in line with the rest of the Empire at least to help the other parts of the Empire in suppressing this traffic. If there is no law in Travancore, it will become an asylum for such purposes and there would be no law for suppressing it. While legislation was undertaken on this point I took the occasion as a fitting one for making provisions in regard to brothels also and I have made certain provisions on the lines of the Madras Act.

That is why you find certain provisions to punish the keeping of brothels and also the aiding of the business of prostitution. Clauses 2 and 3 of the Bill add certain provisions to Section 366 of the Penal Code and make the compulsion of adults to prostitution an offence and also the procuring of minor girls, and the importation of minor girls for immoral purposes, an offence. Clause 4 only raises the age of minority. Clause 7 incorporates certain provisions of the Madras Suppression of Brothels Act. That Clause is intended to prevent the keeping of brothels and to prevent the aiding of the business of prostitution. These are the substantial provisions of the Bill. *"

L. C. P., dated 11-8-1931.

II. The Bill was published in the Gazette dated 7-4-1931. It was introduced into the Council and referred to a Select Committee at the meeting held on 11-8-1931 (*L. C. P., Vol. XIX, Pp. 1083—1099.*) The Select Committee's Report was published in the Gazette dated 24-11-1931. It was presented to the Council and considered

II. To Section 366 of the Travancore Penal Code, the following paragraph shall be added, namely :—

Amendment of Section 366 of Travancore Penal Code.

"and whoever, by means of criminal intimidation as defined in this Code, or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

Insertion of new Sections 366—A and 366—B in Travancore Penal Code.

III. After Section 366 of the Travancore Penal Code, the following Sections shall be inserted, namely :—

Procuration of minor girl.

"366-A. Whoever, by any means whatsoever, induces any girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Importation of girl from foreign country.

"366-B. Whoever imports into Travancore from any country outside the Continent of India any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person,

---

and the Bill was posted for final reading, at the meeting of the Council held on 16-12-1931 (*L. C. P., Vol. XX, Pp. 15—20*). The Bill was finally read and passed at the meeting held on 30-7-1932 (*L. C. P., Vol. XXI, Pp. 304—305*). The Regulation was published in the Gazette dated 27-9-1932.

Sec. II: With the paragraph now added to Section 366 of the Travancore Code [redacted] the whole Section reproduces the corresponding Section (366) of the Indian Penal Code. (*Vide* also Foot note on Page 861 Volume II).

Sec. III: The two new Sections inserted after Section 366 in the Travancore Code correspond to Sections 366-A and 366-B added in the Indian Code by Act XX of 1923. For the latter Sections and the reasons therefor, see Foot note on page 862 of Volume II. See also 'Objects and Reasons' and the speech of the Official Member introducing the Bill, given above.

and whoever with such intent or knowledge imports into Travancore from British India, or any State in the Continent of India any such girl who has with the like intent or knowledge been imported into the Continent of India whether by himself or by another person, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

"*Explanation.*—'The Continent of India' means British India as defined in Section 12 of this Code together with any territories of any Indian Prince or State in alliance with His Majesty the King Emperor of India."

Amendment of Sections 372 and 373 of Travancore Penal Code.

IV. In Sections 372 and 373 of the Travancore Penal Code, for the words "minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be" the words "person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be" shall be substituted.

Further amendment of Section 372 of Travancore Penal Code.

V. To Section 372 of the same Code, the following Explanations shall be added, namely:—

"*Explanation I.*—When a girl under the age of eighteen years is sold, let for hire or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such girl shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Secs. IV, V & VI: (1) With the amendments now made in Sections 372 and 373 of the Travancore Code, these reproduce the corresponding Sections 372 and 373 of the Indian Code. See also Foot notes on pages 863—866 of Volume II.

(2) The original Bill had two more Explanations defining the words "Brothel" and "Prostitution". The Select Committee omitted them as, in their opinion, they were not quite necessary.

(3) In Explanation I added to Section 373, the word "girl" occurred in two places. The original Bill had the word "female" which is the word used in the

Explanation II.—For the purpose of this Section 'illicit intercourse' means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

Further amendment of Section 373 of Travancore Penal Code.

VI. To Section 373 of the same Code, the following Explanations shall be added, namely :—

"*Explanation I.*—Any prostitute, or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a girl under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such girl with the intent that she shall be used for the purpose of prostitution.

Explanation II.—Illicit intercourse has the same meaning as in Section 372."

Amendment of Section 429, Code of Criminal Procedure, 1067.

VII. In Section 429 of the Code of Criminal Procedure, for the word "fourteen" the word "sixteen" shall be substituted.

Indian Act. The Select Committee substituted the word "girl" for "female."

Sec. VII: Section 429 of Regulation V of 1067 reproduced Section 552 of the Indian Criminal Procedure Code. The age has, under the Section, been changed from fourteen to sixteen years. The Indian Code retains the age of fourteen years. See Page 374 of Volume I for Section 429.

Sec. VIII: The amendments made in the Second Schedule follow the Indian Procedure Code.

The original Bill contained two more Clauses. One of them added two Sections after Section 374, namely, 374-A providing punishment for keeping a brothel, and 374-B providing punishment for allowing premises to be used as a brothel. The other Clause inserted the necessary entries in the Second Schedule of the Procedure Code. These two Clauses were omitted by the Select Committee who said :—"In view of the fact that there are hardly any brothels in Travancore and in view further of the provision in the Police Regulation (Section 33) for the discontinuance of brothels, we are of opinion that the specific provisions relating to brothels in this Bill are not quite necessary at present."—*S. C. R.*

VIII. In the Second Schedule to the Code of Criminal Procedure, after the entry relating to Section 366 of the Travancore Penal Code, the following entries shall be inserted, namely :—

Amendment of Schedule II, Code of Criminal Procedure, 1067.

"366—A	Procuration of minor girl.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for ten years and fine.	Court of Session.
366—B	Importation of girl from foreign country.	Do.	Do.	Do.	Do.	Do.	Do. "

REGULATION IV OF 1107.

THE TRAVANCORE STATE AID TO INDUSTRIES REGULATION.

CONTENTS.

Preamable.

CHAPTER I.

Preliminary.

Sections.

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II.

The Board.

3. Constitution of a Board of Industries.
4. Term of office.
5. Resignation.
6. Removal of members.
7. Vacancy of Chairman or member.
8. Presiding at meetings.
9. Interested members not to vote or take part in discussion.
10. Abolition of the Board.

CHAPTER III.

General provisions regarding the giving of State aid.

11. Forms of State aid.
12. Industries which may be aided.
13. Delegation of power to give State aid.
14. Application for State aid.
15. Inspection and returns.
16. Disposal of profits during continuance of State aid.
17. Power of Government to adjust security during currency of loans.
18. Power of Government to terminate aid on account of fault.
19. Fees.
20. Supervision of assisted industry.

CHAPTER IV.

Special provisions relating to the giving of State aid by the supply of machinery on the hire-purchase system.

21. Percentage of value to be deposited by hirer.
22. Particulars to be specified in the order when application is allowed.
23. Conditions of supply of machinery in hire-purchase system.
24. Consequences of default by hirer.
25. Option of hirer to purchase machinery seized for default.
26. Termination of hiring by hirer.
27. Liability of hirer on termination of hiring under Sections 24 and 26.

Regn. IV of 1107: I. *Objects and Reasons.*—(1) "With a view to encourage industries, particularly cottage industries and industries on a small scale, by giving State aid in the shape of loans, guarantees, supply of machinery on hire-purchase system, etc.. it has been considered desirable to take statutory powers to regulate the aid, to control or supervise the industries aided and to recover the value of the aid given when it has to be recovered. It is also proposed to set up a Board of Industries to advise Government on applications for State aid. This Bill has accordingly been drafted for carrying out these purposes—*S. O & R.*

(2) In introducing the Bill, the Official Member in charge said :—"It will be admitted, nay, it will be asserted that it is one of the legitimate functions of every Government in India to foster and develop industries, although most of them may ordinarily be conducted by private individuals. Probably, there are countries where such a proposition would not be granted ; and probably in India also such a proposition would not have been granted some time ago. But now it seems to be the unanimous opinion of the people everywhere in India that the Government must intervene and do, within certain limits, all that they can to foster and develop the industries in the country. One of the commonest methods of assisting industries that can be thought of is to give them direct financial aid. It is with

28. Termination of hiring on payment of cost of machinery.
29. Penalty for omission to remove metal plate when machinery becomes property of hirer.
30. Revision.

CHAPTER V.
Miscellaneous.

31. Methods of recovery of money due.
32. Finality of decision of Government and protection of persons acting under this Regulation.
33. Persons acting under this Regulation to be deemed public servants.
34. Penalty.
35. Power to make Rules.

---

a view to give statutory basis for this, and to provide statutory ways and means for carrying it out that the Bill has been prepared.

Although it may be granted that industries must be helped by Government, I daresay that it will not be contended that to *every* industry, or at every stage of development of deserving industries, or to industries with any amount of capital the proposed aid at the hands of the Government should be given. Some restrictions have therefore to be placed as to the classes of industries eligible for Government aid. That then is the first provision in the Bill to which I would draw the attention of the House. Clause 12 of the Bill provides the classes of industries considered eligible for State aid. Under that Clause the industries that would be eligible for the aid are :—

(i) a new or nascent industry,

(ii) an industry to be newly established in an area where such industries are undeveloped or are likely to be succesful,

(iii) an industry which is likely to become more profitable by an investment of more capital,

(iv) a cottage industry including industries conducted by groups or organisation of artisans.

These are the four classes of industries eligible for State aid. With regard to this classification there is one point which I would request the House particularly to note, namely, that cottage industries of *all* classes and of *all* types will be entitled to State aid. In regard to cottage industries there is absolutely no restriction that it should be a new or nascent industry or that it should be in a particular area and so on. There is no such restriction in the case of cottage industries ; because it is the desire of Government that cottage industries should be developed and fostered to the largest extent possible.

The next point that may require explanation is in regard to the methods or the forms in which the aid is to be given. This is detailed in Clause 11 of the Bill. There is no need for me to read the whole Clause. I would simply say that, in Subclause (a), money loans, the most common form of aid, has been provided for.

The only other Sub-clause to which I would draw special attention now is Subclause (*h*) which provides for the supply

A Regulation to make provision for the giving of State aid to Industries

Passed by His Highness the Maha Raja, under date the 31st Chingom 1108, corresponding to the 15th September 1932, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to make provision for the giving of State aid to industries; It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title, extent and commencement.

1. (1) This Regulation may be called "The Travancore State Aid to Industries Regulation 1107."

(2) It shall extend to the whole of Travancore.

(3) It shall come into force on such date as Our Government may, by Notification in Our Government Gazette, appoint in that behalf.

---

of machinery on hire purchase system. This form of aid will be particularly useful to cottage industries and even to agriculture in some parts of Travancore. It is hoped that many industries would be able to take advantage of this method of aid.

The only other point to which I should like to draw the attention of the House at this stage is, with reference to the authority to be set up to judge which industry is entitled to the aid and which not. For this purpose, a board is proposed to be constituted in which there will be a non-official majority; and it is provided in Clause 14, Sub-clause 4, that no aid whatever would be granted unless the board recommends it. This provision, it is hoped, will create public confidence and will show to the public and to the people who want the aid, that the aid would be given only in deserving cases. Of course, since it is Government money that is to be given as aid, that is to say, since it is the money of the general tax-payer, some precaution has to be taken to see to the proper use of the money advanced. For this purpose, provision has been made for the inspection of the industries concerned, for proper auditing and for other necessary safeguards. These are the main principles to which I would draw attention * * ".

L. C. P. dated 14-5-1930.

II. The Bill was published in the Gazette dated 6-5-1930. It was introduced into the Council and its principle was accepted, and the Bill was referred to a Select Committee, at the meeting held on 14-5-1930 (*L. C. P., Vol. XVI, Pp. 550--555*).

The Select Committee's Report was published in the Gazette dated 17-3-1931. It was presented to the Council and considered, and the Bill was posted for final reading, at the meeting held on 11-8-1931 (*L. C. P., Vol. XIX, Pp. 1078—1083*). The Bill was finally read and passed at the meeting held on 30-7-1932 (*L. C. P., Vol.*

2. In this Regulation unless there be something repugnant in the subject or context :—

Definitions.

(1) "Board" means the Board of Industries constituted under Section 3 :

(2) "Director" means the Director of Industries, and includes any person appointed by Our Government either by name or by virtue of his office, to perform any of the functions of the Director under this Regulation :

(3) "Industry" means any industrial business or enterprise, including agriculture undertaken or conducted by any individual, company, association or body of individuals whether incorporated or not :

(4) "Machinery" includes plant, apparatus, tools and other appliances required for the purpose of carrying on any industrial operation or process :

(5) "Owner" means the person who owns any industrial undertaking, and includes the successors in interest of such person in respect of such undertaking.

Explanation.—The word 'person' includes any company or any association or body of persons whether incorporated or not :

(6) "Prescribed" means prescribed by Rules made under this Regulation : and

(7) "State aid" means aid given by, or on behalf of Government, under the provisions of this Regulation and the Rules, if any, thereunder.

XXI, P. 304). The Regulation was published in the Gazette dated 27-9-1932.

The provisions of this Regulation have been drawn from three Acts in force in the British Indian Provinces, namely, (1) The Madras State Aid to Industries Act, V of 1923, (2) The Bengal State Aid to Industries Act, III of 1931, (3) The Bihar and Orissa State Aid to Industries Act, VI of 1923.

The Preamble follows the wording of the Bengal Act. In the Madras Act, it runs thus:—"Whereas it is expedient to give power to the Local Government to assist in the establishment and development of industries in the Presidency....."

Sec. 2: I. The definitions are taken from the Bengal, and Bihar and Orissa Acts. "State Aid" is not defined in either of these Acts.

II. The definition of "Owner" in Clause (5) follows that given in the Bengal Act. The Explanation, however, is not found in that Act. It was added by the Select Committee, as "to avoid any doubt as to

32318. 1.2.54

CHAPTER II.

The Board.

3. (1) As soon as may be, after the commencement of this Regulation, Our Government may constitute a Board of Industries consisting of such number of members not less than five as Our Government may sanction.

Constitution of a Board of Industries.

(2) The Director of Industries shall *ex officio* be one of the members of the Board.

(3) The remaining members shall be appointed by nomination by Our Government:

Provided that not less than three-fifths of the total number of members sanctioned for the Board shall be non-officials:

Provided further that Rules may be made by Our Government for any of the non-official members being appointed as the result of any election.

(4) The Chairman of the Board shall be appointed by Our Government from among the members of the Board.

(5) The appointment, resignation and removal of the Chairman and members of the Board shall be published in Our Government Gazette.

4. Subject to the provisions of this Regulation and the Rules thereunder the Chairman and members of the Board shall hold office for a term of three years but may be re-appointed either by nomination or election:

Term of office.

Provided that, notwithstanding the expiration of the term, the Chairman and members shall continue to hold office, unless Our

---

the significance of the word 'owner', it was felt desirable to add the Explanation to make the position clear."—*S. C. R.*

III. The Madras Act does not contain any definitions.

Sec. 3: The constitution of the Board of Industries appears obligatory in all the Provincial Acts. Under Section 3 of the Madras Act, the Board shall consist of not less than ten and not more than twelve members including the Chairman and the *Ex Officio* members. Not more than three of the members shall be Government officials. The Bengal Board (Section 3) is to consist, including the Director, of ten members of whom six are to be elected and three to be appointed by Government. Under the same Section of the Bengal Act, the Board is given power "to co-opt for the discussion of any particular question before it not more than three members specially qualified to advise on the matter in question or having special knowledge of local conditions in the area where the industry in question is situate."

Secs. 4 & 5: Section 4 corresponds to Sub-sections (3) and (4) and Section 5 to

Government otherwise direct, until the vacancy caused by the expiration of the term has been filled up.

Resignation.

5. The Chairman or any member of the Board may resign by tendering his resignation in writing to Our Government: and, on such resignation being accepted by Our Government, shall be deemed to have vacated office.

Removal of members.

6. (1) Our Government may remove the Chairman or any member of the Board if he—

(*a*) refuses to act or becomes, in the opinion of Our Government, incapable of acting as a member of the Board;

(*b*) has been adjudicated insolvent by a competent Court of Law;

(*c*) is convicted of any such offence or is subjected by any Criminal Court to any such order as in the opinion of Our Government implies a defect of character which unfits him to continue to be the Chairman or a member, as the case may be, of the Board;

(*d*) without excuse sufficient in the opinion of Our Government, is absent without the consent of the Board from more than three consecutive meetings of the Board; or

(*e*) contravenes the provisions of Section 9.

(2) Our Government may fix a period during which any person so removed shall not be eligible for reappointment either by nomination or by election.

Vacancy of Chairman or member.

7. When the place of the Chairman or of any member of the Board becomes vacant by the expiration of his term, resignation, removal or death, a new Chairman or member shall be appointed in his stead by nomination or election as the case may be:

Sub-section (1) of Section 7 of the Bengal Act.

Sec. 6: This Section corresponds to Section 8 of the Bengal Act. Clause (*e*) is an addition not found in that Act.

Sec. 7: This Section corresponds to Section 9 of the Bengal Act which is as follows:—"9. When the place of an appointed or elected member of a Board becomes vacant by his removal, resignation

Provided that no act of the Board shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act was less than the sanctioned number.

Presiding at meetings.

8. (1) The Chairman shall preside at the meetings of the Board and shall have a second or casting vote in all cases of equality of votes.

(2) In the absence of the Chairman, the members present at the meeting may elect one of their number to preside who shall, while so presiding, have a second or casting vote in all cases of equality of votes.

(3) No business shall be transacted at any meeting of the Board unless one-half of the sanctioned number of the members of the Board are present at the meeting.

Interested members not to vote or take part in discussion.

9. No member of the Board shall vote or take part in the discussion of any question coming up for consideration at a meeting of the Board if the question is one in which he or his partner has any direct or indirect pecuniary interest or in which he is interested professionally on behalf of a client or as agent for any person other than Our Government, a local authority or a Railway Company.

---

or death, a new member shall be appointed or elected in the manner provided in Section 3, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred.

Provided that no act of the Board or of its officers, shall be deemed.....less than the number provided by Section 3."

Sec. 8: This Section corresponds to Section 11 of the Bengal Act which, however, does not contain Sub-section (3) found in the Regulation. This Sub-section was put in by the Select Committee as "it was thought desirable to provide in the Statute itself the quorum instead of leaving it to be provided for in the Rules."—*S. C. R.*

Sec. 9: This Section reproduces Section 8 of the Bihar and Orissa Act. The corresponding Sub-Section (4) of Section 3 of the Madras Act runs thus:—"No member shall vote on or take part.....if the question is one in which he has any direct or indirect pecuniary interest by himself or his partner or a client or as agent for any person other than the Government, a local authority or a Railway Company."

Section 12 of the Bengal Act is as follows: "12. No member of a Board shall vote on any question coming before the Board for consideration in which (otherwise than in its general application to all persons and properties within the Province) he has a pecuniary interest."

Abolition of the Board.

10. If in the opinion of Our Government the Board persistently makes default in the performance of the duties imposed on it or exceeds or abuses its powers, Our Government may, by Notification in Our Government Gazette, abolish the Board, whereupon the Chairman and members of the Board shall be deemed to have vacated their offices and all the functions of the Board shall thereafter be exercised by such person or persons as may be appointed in that behalf by Our Government until a new Board is constituted by Our Government.

CHAPTER III.

General provisions regarding the giving of State Aid.

Forms of State Aid.

11. (1) State aid to any industry may be in all or any of the following forms, namely :—

(*a*) the grant of a loan to be secured and repaid in the prescribed manner and upon such terms as may be fixed by the order granting it :

Provided that no such loan shall exceed the prescribed percentage of the net value of the assets of the industry to which it is granted after deducting all encumbrances thereon existing at the time when the application for the loan is made, such value being ascertained by the Director in the prescribed manner :

Provided also that every such loan shall, unless Our Government, for reasons to be recorded in writing, otherwise direct, be repayable within a period not exceeding twenty years after the date of the advance of the loan or, where the loan is advanced in instalments, after the date of the advance of the last instalment :

Sec. 10: This Section corresponds to Section 15 of the Bengal Act—Supersession of Board. The words at the end—"until a new Board is constituted by Our Government" were added by the Select Committee who said:—"After the Board was once dissolved, Government must have the power to reconstitute a Board whenever Government feel it desirable to do so."—*S. C. R.*

Sec. 11: I. This Section follows Section 19 of the Bengal Act.

Sub-sec. (*1*).—In that Act, the first Proviso to Clause (*a*) says that "no such loan shall exceed fifty per cent, of the net value of the assets....."; and the second Proviso provides that "every such loan...directs, be repayable within not more than ten or where the whole loan is secured on land or buildings or both within not more than

Provided also that Our Government, for reasons to be recorded in writing, may, on the application of the owner of an industry to which such loan has been granted in exceptional cases, vary the terms fixed by the order granting the loan :

(*b*) the guarantee of a cash credit, over-draft, or fixed advance with a bank :

(*c*) the taking of fully paid up shares and debentures :

Provided that the amount paid by Our Government for such shares and debentures shall not exceed the amount already paid by other persons for shares and debentures in the same industry :

(*d*) the guarantee of interest on preference shares and debentures :

---

twenty years after the date.....last instalment."

Clause (*b*) in the Bengal Act is as follows:—"the guarantee.....advance with a bank to be secured and the amount realised thereunder by any industry to be repaid in the prescribed manner;"

Clause (*c*) in the Bengal Act does not contain the words—"fully paid up". They were inserted in the Bill by the Select Committee as they felt "that the Government should not be called upon to face any future liabilities in connection with the shares and debentures which the Government may take."—*S. C. R.*

Clause (*d*) in the Bengal Act runs thus:—"the guarantee of interest on preference shares or debentures to be secured and the amount realised thereunder by any industry to be repaid in the prescribed manner";

Clause (*e*) in that Act is:—"the guarantee .....joint stock company to be secured and the amount realised thereunder by any industry to be repaid in the prescribed manner;"

Sub-sec. (*2*).—In the Bengal Act, Subsection (2) is as follows:—"In the case of the grant of any of the forms of State aid specified in Clauses (*f*) and (*g*) of Sub-Section (1), the Local Government shall ordinarily in the order granting such aid fix a period of years and a rate of interest on the capital invested in the industry so aided, and, if within such period the industry pays a rate of interest or a dividend in excess of the rate so fixed, the value of the aid granted as ascertained by the prescribed authority in the prescribed manner, shall be paid at the expiration of the said period by the owner of the industry to the Local Government."

II. The corresponding Section 6 (Method of giving State aid) of the Madras Act is as follows:—"6. Subject to the provisions of this Act and of the rules framed thereunder, the Local Government shall have power to give aid to an industrial business or enterprise in one or more of the following ways:—(*a*) by granting a loan; (*b*) by guaranteeing a cash credit, overdraft or fixed advance with a bank; (*c*) by paying a subsidy for the conduct of research or for the purchase of machinery; (*d*) by subscribing for shares or debentures; (*e*) by guaranteeing a minimum return on part of the capital of a joint-stock company; (*f*) by making a grant on favourable terms of land, raw material, fire-wood or water, the property of the Local Government".

(*e*) the guarantee of a minimum return on the whole or part of the capital of a joint-stock company :

(*f*) the grant on favourable terms of land, raw material, firewood, water or any other property of Our Government;

(*g*) the payment of a subsidy for—

(i) the conduct of research;

(ii) the purchase of machinery ; and

(*h*) the supply of machinery on the hire-purchase system.

(2) The condition of the grant of any of the forms of State aid specified in clauses (*f*) and (*g*) of Sub-section (1) shall ordinarily be that the value of the aid granted as ascertained by the prescribed authority in the prescribed manner shall be repaid by the owner of the industry at the expiration of such period of years as may be fixed by Our Government or the authority granting the aid, if within that period the industry pays or is able, in the opinion of Our Government, to pay interest or dividend upon the capital invested in such industry in excess of such rate as may be fixed by Our Government or the authority granting the aid.

(3) In no case shall the total value of all State aid granted to an industry as ascertained by the prescribed persons in the prescribed manner exceed the limit specified under the first Proviso to clause (*a*) of Sub-section (1).

Industries which may be aided.

12. Subject to the provisions of this Regulation and the Rules thereunder, State aid may be given by Our Government or, on behalf of Our Government, by any authority prescribed in that behalf :

III. The Bihar and Orissa Act, Section 4. follows the Madras Act, but has, in addition, another Clause (*g*)—" the supply of machinery on the hire-purchase system".

Sec. 12. I. This Section follows Section 21 of the Bengal Act and Section 5 of the Bihar and Orissa Act; but those Sections do not contain the words "or are likely to be successful" in (ii) of Clause (*a*), nor do they contain Sub-clauses (iii) and (v) found in the Regulation. Sub-clause (v) was put in by the Select Committee.

II. Sub-sec. (1) of Section 5 of the Madras Act is as follows:—"The industries to which aid may be given under this Act shall be such as have an important bearing on the economic development of the country. and shall be—(*a*) new or nascent industries, (*b*) industries to be newly introduced into areas where such industries are undeveloped, or (*c*) cottage industries."

III. The following Sub-section (2) of Section 5 of the Madras Act corresponds to the Provisos in the Regulation :—"(2)

(*a*) in any of the forms specified in Sub-section (1) of Section 11 to—

(i) a new or nascent industry,

(ii) an industry to be newly established in an area where such industries are undeveloped or are likely to be successful,

(iii) an industry which is likely to become more profitable by an investment of more capital,

(iv) a cottage industry including industries conducted by groups or organisation of artisans, or

(v) such other industrial concerns as in the opinion of Our Government deserve State aid to be given in conformity with the provisions of this Regulation;

(*b*) in the form specified in clause (*h*) of the said Sub-section to agriculture; and

(*c*) in the forms specified in clauses (*b*) and (*g*) (i) of the said Sub-section, to any industry except agriculture:

Provided that no State aid shall be given to any joint-stock company unless—

(*a*) the company is registered in Travancore with a rupee capital; and

(*b*) the company agrees to maintain the prescribed proportion of Travancoreans as members of its Board of Directors:

Provided further that every recipient of State aid shall make such provision for the training of apprentices as may be prescribed.

Delegation of power to give State aid.

13. Our Government may, subject to such Rules and conditions as may be prescribed by Our Government, delegate to any authority subordinate to them the power to give State aid.

No such aid shall be given.....(*a*) the same is registered in India on a rupee capital, and (*b*) the company conforms to such Rules as may be made by the Local Government from time to time requiring that a minimum number or a proportion of the members of its Board of management shall be Indians:

Provided further every recipient of State aid.....training of apprentices as the Local Government may from time to time prescribe."

Sec. 13: I. Under Section 20 of the Bengal Act which is followed here, the delegation by Government may be "on such terms and conditions and with such

14. (1) Applications for State aid shall be made to the Director in such manner and shall contain such particulars as may be prescribed.

Application for State aid.

(2) The Director shall make such inquiries, if any, as are prescribed by Our Government and such other inquiries as he thinks are necessary on every such application.

(3) Every application shall thereafter be placed with the remarks of the Director together with all the connected papers before the Board at a meeting for its opinion.

(4) If the Board at the meeting is of opinion that any application should not be granted, that application shall be deemed to have been rejected and no further action shall be taken on that application.

(5) In all other cases the Director shall submit to Our Government or the authority competent to give the State aid, if he is not himself competent to give the aid, the application and the opinion of the Board and all the connected papers together with such remarks, if any, as he has himself to make.

15. The owner of any industry—

(i) when an application has been made for State aid to such industry; or

Inspection and returns.

(ii) during the continuance of State aid to such industry in any of the forms specified in clauses (*a*), (*b*), (*c*), (*d*) and (*e*) of Sub-section (1) of Section 11 shall—

(*a*) comply with any general or special order of Our Government relating to the inspection of the premises,

---

limitations and restrictions as it thinks fit".

II. Under Section 7 of the Madras Act, no delegated authority " shall be empowered to grant aid to any one industrial business or enterprise of an amount or of value exceeding Rs. 10,000."

III. Section 6 of the Bihar and Orissa Act gives to the delegated authority power to give aid of an amount or value, not exceeding, in respect of any one industry, Rs. 5,000.

Sec. 14: I. Sub-section (2) of Section 8 of the Madras Act provides for publication of a notice calling for objections to the grant of the aid, if the extent of the aid exceeds Rs. 50,000 and hearing of the same and also makes provision for necessary enquiries. Section 7 of the Bihar and Orissa Act provides for publication of a notification in the case of and of an amount or value that may be prescribed.

II. Sub-section (5) of Section 8 of the the Madras Act provides that—"No aid shall be granted under this Act if the Board by a unanimous resolution at a meeting advises the rejection of the application."

Sec. 15: This Section reproduces Section 22 of the Bengal Act and corresponds

buildings or plant or stock-in-trade, employed or to be employed for the purposes of the industry;

(*b*) permit the inspection by the prescribed person of all accounts relating to the industry;

(*c*) submit the accounts relating to the industry to such audit as may be prescribed;

(*d*) furnish in the prescribed manner to the prescribed person full returns of all products manufactured and sold both as regards description and quantity;

(*e*) maintain such special accounts as may be prescribed; and

(*f*) furnish such statements as Our Government may require.

Disposal of profits during continuance of State aid.

16. (1) During the continuance of State aid to any industry the profits of such industry shall, if distributed, be distributed only after interest due on debentures and loans has been paid and a reasonable amount has been set aside for depreciation or obsolescence of machinery and buildings and a further reasonable amount has been carried to reserve fund to be utilised in the prescribed manner.

(2) No dividend shall be paid to shareholders and no profit shall be taken by the owner in excess of such percentage rate upon the amount of the paid-up capital invested in the industry as Our Government may fix from time to time during the continuance of State aid to the industry.

---

to Section 11 of the Madras Act and Section 11 of the Bihar and Orissa Act.

loan granted under the provisions of clause (*a*) of Sub-section (1) of Section 19 or of any sum guaranteed by the Local Government under the provisions of clauses (*b*), (*d*) or (*e*) of that Sub-section."

Sec. 16: I. Sub-section (1) of Section 23 of the Bengal Act runs thus:—"During the continuance.....on debentures and loans has been paid and an amount reasonable in the opinion of the Local Government has been set aside.....buildings and a further amount which shall not be less than twenty-five per cent. of the net surplus available after provision for depreciation or obsolescence has been carried to a reserve fund to be utilised in the prescribed manner and payment made to a sinking fund for the purpose of repayment in the prescribed manner of any

Sub-section (2) is the same as Sub-section 2 of Section 23 of the Bengal Act.

II. Section 17 of the Madras Act, which is the same as Section 18 of the Bihar and Orissa Act is as follows:—"17. *Disposal of profits when condition of State aid is not fulfilled.*—No recipient of State aid shall pay any dividend or distribute or take any profits in excess of such percentage rate upon the amount of the capital of the industrial business or enterprise as the

Power of Government to adjust security during currency of loans.

17. If at any time the amount of any loan outstanding together with such interest as may be due thereon on account of any State aid given is found to exceed the percentage fixed under the first Proviso to clause (*a*) of Sub-section (1) of Section 11, Our Government may either recover so much of such balance as is in excess of such percentage or accept such additional or collateral security as it may deem sufficient.

Power of Government to terminate aid on account of fault.

18. If Our Government decide for reasons to be recorded in writing to terminate the aid in respect of an industry on any of the following grounds, namely :—

(i) that any portion of the aid given has been misapplied, or

(ii) that there has been a breach by the industry of the provisions of this Regulation, or of any Rule made thereunder or of any condition of the grant, or

(iii) that the application on which the aid has been granted contained or was accompanied by, any material statement by the owner which he knew to be false, or any intentional concealment by him of any material fact, which in the opinion of Our Government it was his duty to disclose, or that any such false statement or concealment was intentionally made in any inquiry made under this Regulation by, or with the connivance of, the owner, or in any return under this Regulation, or in reply to any requisition for information under this Regulation, or

---

Government may fix from time to time, until the conditions on which State aid has been granted are fulfilled. The balance of the profits, after setting aside proper amounts for depreciation or obsolescence of plant and buildings, and for the payment of interest on debentures of loans, shall be carried to a reserve fund to be utilized in such manner as the Government may approve."

Sec. 17: This Section closely follows Section 12 of the Bihar and Orissa Act.

Sec. 18: This Section follows Section 26 of the Bengal Act. The interest charged under Clause (*b*) in that Act is twelve and a half per cent. Again, that Act does not contain the words—"and no suit shall be brought in any Civil Court to set aside or modify such order"; nor does it contain the Proviso. The Proviso was not in the original Bill. It was put in by the Select Committee who said:—"The right of suit is taken away. It is deemed desirable that the party affected should be heard by Government and the opinion of the Board invited before final orders are passed by the Government."—*S. C. R.*

(iv) that the industry is being managed in such a manner as to endanger the repayment of the value of State aid granted thereto repayable under this Regulation,

Our Government may make an order that the aid be terminated and notwithstanding anything contained elsewhere in this Regulation or in any other law, may proceed to recover from the owner,

(*a*) the whole amount of any loan outstanding together with such interest as may be due thereon, or

(*b*) in cases where the aid is given otherwise than by loan, the money value of the grant as fixed at the time when it was made, together with interest at a rate not exceeding twelve per cent. from the date of the grant till the date of realisation, and

(*c*) in the cases mentioned in clause (*a*) or (*b*) the cost of recovery, and, if Our Government so direct, the cost of any inquiry made in connection therewith;

and such order shall be final and no suit shall be brought in any Civil Court to set aside or modify such order:

Provided that no such order shall be passed without inviting the opinion of the Board and without giving the owner an opportunity to show cause why action should not be taken under this Section.

Fees.

19. Our Government may charge in respect of applications, inquiries, inspections, and audit by whomsoever made under this Regulation, such fees, if any, as may be prescribed. Arrears of such fees shall be recoverable from the owner.

Supervision of assisted industry.

20. During the continuance of State aid to an industry in any of the forms specified in clauses (*a*), (*b*), (*d*) and (*e*) of Sub-section (1) of Section 11 Our Government may, by appointing directors or inspectors, or otherwise, take such steps as they deem advisable so to control the conduct of the industry as to safeguard the interests of Our Government therein.

Sec. 19: This Section reproduces Section 27 of the Bengal Act, excepting the provision as regards recovery of arrears which is not found in that Act.

Sec. 20: This Section reproduces Section 28 of the Bengal Act.

CHAPTER IV.

Special provisions relating to the giving of State aid by the supply of machinery on the hire-purchase system.

Percentage of value to be deposited by hirer.

21. No machinery shall be supplied on the hire-purchase system unless the applicant therefor deposits with the Director such percentage of the value thereof as may be prescribed.

Particulars to be specified in the order when application is allowed.

22. When an application for the supply of machinery on hire-purchase system is allowed the Director shall, subject to and in accordance with any Rules that may be made under this Regulation, make an order specifying the following particulars, namely :—

(*a*) the amount of each instalment of rent to be paid for the hire of the machinery and the number of such instalments to be paid before the machinery shall become the property of the hirer ;

(*b*) the amount of interest, if any, to be paid with each instalment of rent on the remaining unpaid instalments;

(*c*) the dates on which and the manner in which the aforesaid payments shall be made; and

(*d*) such other particulars as may be prescribed.

Conditions of supply of machinery on hire-purchase system.

23. Until the hiring is terminated in the manner hereinafter provided, the following provisions shall apply, namely :—

Secs. 21-29: Excepting the changes noted below, these Sections closely follow Sections 21 to 29 of Chapter IV (Supply of Machinery on the hire-purchase system) of the Bihar and Orissa Act.

Sec. 23: In Clause (*c*), the words "as against Government" occur after the word "void" in the corresponding Clause of Section 23 of the Bihar and Orissa Act.

In Clause (*d*), the words "without the written sanction of Our Government" at the end, are an addition not found in that Act.

Clause (*e*) of the Section in the Bihar and Orissa Act is as follows:—"(*e*) The machinery shall bear.....five hundred rupees. It shall be presumed until the contrary is proved that machinery bearing such metal plate is the property of Government hired out under thisChapter."

A similiar provision regarding presumption was inserted in the original Bill as a separate Clause. The Select Committee deleted it as "it was felt undesirable that any presumption in favour of Government should be made as contemplated by the Clause."—*S. C. R.*

(*a*) The hirer shall pay punctually without demand the instalments of rent and amount of interest specified in the order referred to in Section 22.

(*b*) The hirer shall retain the machinery in his own possession in good and serviceable order and condition and shall not without the previous written consent of the Director either make any addition thereto or alteration therein, or remove the machinery from the premises specified in the application for the supply thereof.

(*c*) The machinery shall remain the sole and absolute property of Our Government, and any transfer thereof, or assignment of any right, title or interest therein or the creation of any mortgage, encumbrance or any charge thereon, by the hirer shall be void unless it has been made with the previous written consent of the Director.

(*d*) The machinery shall not be liable to distraint, attachment or sale by any process under any law, for the time being in force, without the written sanction of Our Government.

(*e*) The machinery shall bear a metal plate in the prescribed form and any person who wilfully removes or defaces such plate shall be liable on conviction before a Magistrate to a fine not exceeding five hundred rupees.

(*f*) The hirer shall permit the Director or any person authorised by the Director in this behalf to inspect the machinery at all reasonable times, and the Director or such other person shall have all such powers of entry as may be necessary for the purpose of making an inspection.

(*g*) In addition to the foregoing conditions the hirer shall be bound by such other conditions not inconsistent therewith as may be prescribed by Our Government or may in any particular case be imposed by the Director.

Consequences of default by hirer.

24. If the hirer makes default in paying the rent of the machinery or any sum payable as interest or any other charges due from him under this Regulation, or fails to comply with any of the conditions contained in or that may be prescribed or imposed under Section 23, the Director may immediately terminate the hiring and he or any other officer authorised by him in this behalf may thereupon enter the premises in which the machinery is for the time being kept whether such premises belong to the hirer or not, and seize and remove the same.

Option of hirer to purchase machinery seized for default.

25. If the machinery is seized and removed under Section 24, the hirer shall have the option, to be exercised within one month after such seizure, or such longer period as may be allowed by the Director in this behalf, of purchasing the same by payment to the Director of the unpaid balance of the value thereof such proportion of interest on such value as may be prescribed and the cost of and the expenses incidental to such seizure and removal.

Termination of hiring by hirer.

26. The hirer may at any time terminate the hiring by returning the machinery to Our Government in the prescribed manner.

Liability of hirer on termination of hiring under Sections 24 and 26.

27. If the Director terminates the hiring under Section 24 and the hirer does not exercise the option of purchasing the machinery under Section 25 or if the hirer returns the machinery to Our Government under Section 26, the hirer shall not be entitled to the refund of the sum deposited by him under Section 21 or to the refund or remission of any payment made by or due from him during the period of hiring, and shall be liable to pay such amount, if any, as the Director may determine in respect of any loss or damage, other than by reasonable wear and tear, that may have been caused to the machinery during the hiring.

Termination of hiring on payment of cost of machinery.

28. When after credit has been given for the amount deposited under Section 21, the hirer has paid in full all the instalments of rent mentioned in clause (*a*) of Section 22 and the amount of interest, costs and other charges payable by him, he shall become

the owner of the machinery and shall thereupon remove from the same the metal plate mentioned in clause (*e*) of Section 23 :

Provided that if at any time during the hiring the hirer pays in advance the remaining instalments of rent the interest payable in respect thereof shall be remitted.

Penalty for omission to remove metal plate when machinery becomes property of hirer.

29. If the hirer wilfully omits, after receiving due notice, to remove the metal plate from any machinery which has become his property under Section 28, he shall be liable on conviction before a Magistrate to a fine not exceeding fifty rupees and it shall be lawful for any person acting under the orders of the Director to enter the premises where the machinery is kept and remove the plate.

Revision.

30. Our Government may revise any order passed by the Director under this Chapter. Subject to such revision the order of the Director shall be final.

CHAPTER V.

Miscellaneous.

Methods of recovery of money due.

31. (1) All moneys payable or recoverable under this Regulation including any interest chargeable thereon and costs if any incurred if not paid when they are due shall be recoverable under the law for the time being in force as arrears of public or land revenue from the person aided and his surety if any and the assets of the industry aided.

(2) When any sum due as aforesaid is paid by the surety or is recovered from him or out of his property, the Peishkar may, on the application of the surety, so far as is possible, recover the same from the person aided as if it were an arrear of public or land revenue and pay it to the surety.

Sec. 29: The words at the end—"and it shall be lawful for any person.....to remove the plate"—do not occur in Section 29 of the Bihar and Orissa Act.

Sec. 31: This Section corresponds to Section 18 of the Madras Act, Section 20 of the Bihar and Orissa Act, and Sections 25 and 29 of the Bengal Act. None of these Acts provides for the recovery of the money due from the assets of the industry aided, as such.

Finality of decision of Government and protection of persons acting under this Regulation.

32. (1) The decision of Our Government as to whether the conditions laid down in or under any of the provisions of this Regulation or the Rules thereunder have been satisfied and the orders of revision under Section 30 shall be final, and no suit shall be brought in any Civil Court to set aside or modify any such decision or order.

(2) No prosecution, suit or other proceeding shall lie against Our Government or any officer of Our Government or other authority vested with powers under this Regulation for anything in good faith done or intended to be done thereunder.

Persons acting under this Regulation to be deemed public servants.

33. Every person who acts on behalf of Our Government under this Regulation including every person who conducts an inquiry under this Regulation shall be deemed to be a public servant within the meaning of Section 15 of the Travancore Penal Code.

Penalty.

34. Whoever wilfully acts in contravention of the provisions of Section 9 or Section 15 shall without prejudice to any other penalty or liability he may incur, be liable on conviction before a Magistrate of the First Class to a fine not exceeding two hundred and fifty rupees.

Power to make Rules.

35. (1) Our Government may, subject to previous publication, make Rules consistent with this Regulation for carrying out the purposes of this Regulation.

Sec. 32: I. Section 31 of the Bengal Act is as follows:—"The decision of the Local Government as to whether the conditions imposed by or under any of the provisions of this Act have been satisfied shall be final."

II. Section 31 (1) of the Bihar and Orissa Act has, in addition, the following:—"and no suit shall be brought in any Civil Court to set aside or modify any order made thereunder".

Sec 33: Section 30 of the Bengal Act runs thus:—"Every person who acts on behalf of the Local Government or the Board under this Act including.....Penal Code, and no suit, prosecution or other legal proceeding shall lie against any such or any other person for anything which is in good faith done or intended to be done under this Act".

Sec 34: This Section is not found in any of the Provincial Acts, above named.

Sec. 35: This Section corresponds to Section 19 of the Madras Act, Section 32 of the Bengal Act and to Section 32 of the Bihar and Orissa Act.

(2) In particular and without prejudice to the generality of the foregoing power, such Rules may provide for all or any of the following matters, namely :—

(*a*) the election of members of the Board under Section 3;

(*b*) the conditions, privileges and tenure of membership of the Board;

(*c*) the functions of the Board whether specified in this Regulation or not;

(*d*) the time and place of meetings of the Board, the manner in which notice of meetings shall be given, the conduct of proceedings at the meeting, the division of duties among the members, the appointment, duties and procedure of special committees consisting wholly of members of the Board or partly of such members and partly of other persons, the appointment, punishment and dismissal of officers and servants under the Board and the preparation and submission to Our Government of the minutes of the Board;

(*e*) the manner of securing and repaying the loans referred to in clause (*a*) of Sub-section (1) of Section 11;

(*f*) the manner of ascertaining the value of the assets referred to in clause (*a*) of Sub-section (1) of Section 11;

(*g*) the manner of taking security for the State aid referred to in clauses (*b*), (*d*) and (*e*) of Sub-section (1) of Section 11 and the conditions under which and the manner in which the moneys due from any industry by reason of such State aid should be repaid;

(*h*) the authority by which and the manner in which the values referred to in Sub-sections (2) and (3) of Section 11 shall be ascertained;

(*i*) the proportion of members referred to in clause (*b*) of the first Proviso to Section 12;

(*j*) the provision for training referred to in the second Proviso to Section 12;

(*k*) the delegation, and the conditions of the delegation of the power to give State aid under Section 13;

(*l*) the manner of the application for State aid and the particulars that they should contain, the inquiries which the Director shall make on applications and the form in which the Director shall make his remarks and place them before the Board and submit the papers to Our Government or other authority under Section 14;

(*m*) the person referred to in clause (*b*) of Section 15, the audit referred to in clause (*c*) of Section 15, the person to whom and the manner in which the returns referred to in clause (*d*) of Section 15 shall be furnished and the accounts referred to in clause (*e*) of Section 15;

(*n*) the manner of utilising the amount carried to reserve fund under Sub-section (1) of Section 16;

(*o*) the fees referred to in Section 19;

(*p*) the conditions of the supply of machinery on hire-purchase system under clause (*h*) of Section 23;

(*q*) the form of the metal plates referred to in Section 23, and their seizure and removal; and

(*r*) the proportion of the interest on the value of the machinery payable under Section 25.

REGULATION I OF 1108.

THE TRAVANCORE WRECKS REGULATION.

CONTENTS.

Preamble.

Sections.

1. Short title and commencement.
2. Definitions.
   (1) "Wreck".
   (2) "Salvage".
   (3) "Prescribed"
   (4) "Receiver".
3. Appointment of Receivers of wrecks.
4. (1) Finder of wreck to give notice or deliver the wreck to the Receiver.
   (2) Punishment for default.
5. Notice of wreck to be given by Receiver.
6. Claims of owners to wreck.
7. Immediate sale of wreck in certain cases.
8. All unclaimed wreck is property of Government.
9. When unclaimed wreck to be credited to Government.
10. Sale of wreck.
11. Disposal of sale proceeds of wreck.
12. Disputes as to the amount of salvage how settled.
13. Payment of salvage.
14. Disputes as to the title to wrecks.
15. Receiver discharged on delivery of wreck or sale proceeds.
16. Power to make Rules.
17. Provisions (*a*) as to creeping or sweeping in Ports, (*b*) as to Customs duties.

A Regulation to provide for the disposal of Wrecks and for Compensation for the Salvage of Wrecks

Passed by His Highness the Maha Raja under date the 21st Kanni 1108, corresponding to the 6th October 1932.

Whereas it is expedient to provide for the disposal of wrecks and for compensation for the salvage of wrecks; We are hereby pleased to enact as follows:—

Short title and commencement.

1. (1) This Regulation may be called the Travancore Wrecks Regulation.

(2) It shall come into force on such date as Our Government may, by Notification in Our Government Gazette, appoint in that behalf.

Definitions.

2. In this Regulation, unless there be anything repugnant in the subject or context—

(1) "Wreck" includes the following when found in the sea or in any tidal water or on the shores thereof:—

(*a*) goods which have been cast into the sea and then sink and remain under water;

(*b*) goods which have been cast or fall into the sea and remain floating on the surface;

(*c*) goods which are sunk in the sea but are attached to a floating object in order that they may be found again;

(*d*) goods which are thrown away or abandoned; and

(*e*) a ship abandoned without hope or intention of recovery.

(2) "Salvage" includes all expenses reasonably incurred by the salvor in the performance of the salvage services.

Regn. I of 1108: I. This Regulation was passed direct by His Highness the Maha Raja. It was published in the Gazette dated 18th October 1932.

II. The Regulation is based upon the Indian Merchant Shipping Act, XXI of 1923, Part VII—Wreck and Salvage, and the British Merchant Shipping Act, 1894, Part IX—Wreck and Salvage.

Sec. 2: 1. The definition of 'Wreck' given in Sub-section (1) reproduces that contained in Section 272 of the Indian Act.

2. The definition of 'Salvage' in Sub-section (2) follows Section 510 of the British Act which is as follows:—"(2) The expression 'Salvage' includes all expenses properly incurred by the salvor in the performance of the salvage services."

(3) "Prescribed" means prescribed by Rules made by Our Government.

(4) "Receiver" means a Receiver of wrecks appointed under Section 3 for any local limits.

Appointment of Receivers of wrecks.

3. Our Government may, by Notification in Our Government Gazette, appoint such persons as they think fit, to be "Receivers of wrecks" to receive and take possession of wrecks and to perform such duties connected therewith as are hereinafter mentioned within such local limits as Our Government may prescribe.

Finder of wreck to give notice or deliver the wreck to the Receiver.

4. (1) Any person finding and taking possession of any wreck within any local limits for which a Receiver has been appointed or bringing within such limits any wreck which has been found and taken possession of elsewhere shall, as soon as practicable—

(*a*) if he be the owner thereof give the Receiver notice in writing of the finding thereof and of the marks by which such wreck is distinguished; and

(*b*) if he be not the owner of such wreck, deliver the same to the Receiver.

Punishment for default.

(2) Any person omitting to give notice of the finding of, or to deliver, any wreck to the Receiver as required by Sub-section (1) shall on conviction be punished with fine which may extend to Rs. 1,000 and in the case of omission to deliver any wreck shall, in addition to such fine, forfeit all claims to salvage and pay to the owner of such wreck if the same is claimed, or, if the same is unclaimed, to Our Government a penalty not exceeding twice the value of such wreck. The convicting Court shall order the payment of the penalty, and it may be recovered in the same way as the fine.

Notice of wreck to be given by Receiver.

5. Where a Receiver takes possession of any wreck, he shall publish a notification in such manner and at such places as may be prescribed, containing a description of the wreck and the time at which

---

Secs. 3, 4 & 5: I. These Sections reproduce Sections 273, 274 and 276 respectively of the Indian Act, and correspond to Sections 566, 518 and 520 of the British Act.

II. The corresponding Sub-section (2) of Section 274 of the Indian Act does not contain the provision occurring at the end of Sub-section (2) of Section 4 of the

and the place where the same was found and such other particulars, if any, that may be prescribed.

Claims of owners to wreck.

6. The owner of any wreck in the possession of the Receiver, upon establishing his claim to the same to the satisfaction of the Receiver within one year from the time at which the wreck came into the possession of the Receiver, shall be entitled, upon paying the salvage and the other charges and the customs duties, if any, due, to have the wreck or the proceeds thereof delivered to him.

Immediate sale of wreck in certain cases.

7. The Receiver may at any time sell in such manner as may be prescribed any wreck in his custody if he is of opinion that,—

(*a*) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or

(*b*) it is not of sufficient value to pay for warehousing;

and the proceeds of the same shall, after meeting the charges incurred for the sale, be held by the Receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck remained unsold.

All unclaimed wreck is property of Government.

8. All unclaimed wreck found in any part of Travancore shall be the property of Our Government.

Regulation, namely, "the convicting Court shall order.....as the fine."

Sec. 6: This is an adaptation of Section 521, Sub-section (1), of the British Act, which is as follows:—"(1) The owner of any wreck in the possession of the receiver upon establishing his claim to the same to the satisfaction of the receiver within one year from the time at which the wreck came into the possession of the receiver shall, upon paying the salvage, fees, and expenses due, be entitled to have the wreck or the proceeds thereof delivered up to him."

Sec. 7: The corresponding Section 522 of the British Act is as follows:—"A receiver may at any time sell any wreck in his custody if in his opinion—(*a*) it is under the value of five pounds, or (*b*) it is so much damaged or of so perishable a nature that it cannot with advantage be kept, or (*c*) it is not of sufficient value to pay for warehousing, and the proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold."

Secs. 8 and 9: These correspond to Sections 523 and 525 (2) (*c*) respectively of the British Act.

9. Where no owner establishes a claim to any wreck in the possession of a Receiver within one year from the time at which it came into his possession, the wreck or the value thereof shall be credited to Our Government and be held subject to their orders.

When unclaimed wreck to be credited to Government.

10. If any wreck in the possession of a Receiver is unclaimed by the owner for a period of one year from the time at which it came into the possession of the Receiver or if the owner claiming the wreck fails to pay to the Receiver within such time as may be prescribed the amount due for salvage and other charges and the customs duties, if any, due, the Receiver may sell such wreck by public auction or in such other manner as may be prescribed.

Sale of wreck.

11. On the realisation of the proceeds of any sale of wreck under this Regulation, the amount due for salvage and other charges, if any, due, shall be deducted therefrom and the balance shall be paid to the owner of the wreck or if no such person appear and make a claim the same shall be credited to Our Government or disposed of in such manner as may be prescribed.

Disposal of sale proceeds of wreck.

Explanation.—The customs duties, if any, due, shall also be deducted before making any payment to the owner of the wreck.

12. If any dispute arises as regards the amount due under this Regulation for salvage, such dispute shall, upon application for that purpose, by either of the disputing parties be determined by a Magistrate having jurisdiction over the locality where the wreck is salved

Disputes as to the amount of salvage how settled.

Sec. 10: The corresponding Section 277 of the Indian Act is as follows:—"277. *Wreck may in certain cases be sold.*—If after the publication of such notification the wreck is unclaimed, or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof, the receiver of wreck may sell such wreck by public aution, if of a perishable nature, forthwith, and, if not of a perishable nature, at any period not less than six months after such notification as aforesaid."

Sec. 11: Section 278 of the Indian Act is as follows:—"278. *Proceeds how applied.*—On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same: Provided that he make his claim within one year from the date of the sale."

or delivered to the Receiver. If the Magistrate so determining is not a District Magistrate, an appeal shall lie from that determination to the District Magistrate to whom the Magistrate is subordinate, provided the appeal is filed within thirty days of the determination. The District Magistrate's decision shall be final.

Payment of salvage.

13. The amount of salvage paid to the Receiver under Section 6 or deducted by him under Section 11 shall be credited to Our Government wherever the wreck in respect of which it was paid or deducted was found by the Receiver and shall in other cases be paid by the Receiver to the person who delivered the wreck to the Receiver.

Disputes as to the title to wrecks.

14. (1) Where more than one person claim title to any wreck in the possession of a Receiver and a dispute arises between them as to that title, that dispute shall be settled by the Receiver.

(2) If any party to a dispute is dissatisfied with the decision of the Receiver, he may, within three months from the date of the communication to him of the decision, take proceedings in any Civil Court having jurisdiction in the matter for establishing his title.

Receiver discharged on delivery of wreck or sale proceeds.

15. Upon the delivery of the wreck or the payment of the proceeds of the sale of wreck by a Receiver in pursuance of the provisions of this Regulation, the Receiver shall be discharged from all liability in respect thereof but the delivery thereof shall not prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck.

Secs. 12, 13 & 14: These Sections are based on Section 275 of the Indian Act and the corresponding Sections 547-549 of the British Act.

Section 275 of the Indian Act is as follows:—"275, *Government or person finding wreck entitled to salvage.*—(1) Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of this part, by any person, not being the owner thereof, the Government or such other person so delivering such wreck as the case may be, shall be entitled to receive a reasonable sum for salvage having regard to all the circumstances of the case.

(2) Any dispute arising conserning the amount due under this Section shall be determined by a Magistrate upon application to him for that purpose by either of the disputing parties."

Sec. 15: This Section reproduces Section 527 of the British Act.

16. Our Government may make Rules—

Power to make Rules.

(*a*) for prescribing the manner of giving notice and publishing notifications under this Regulation and the persons to whom and the places at which such notices and notifications shall be sent or published;

(*b*) for prescribing the procedure for the determination of titles and claims and for fixing the amount of salvage pursuant to the provisions of this Regulation;

(*c*) for prescribing the manner of sales, advertisement of sales and all incidental steps to sales pursuant to the provisions of this Regulation;

(*d*) for prescribing the manner and places in which any wrecks may be kept in custody or warehoused;

(*e*) for fixing the fees and charges payable on account of the publication of notifications and the issue of notices and for the various processes incidental to or required for investigations or sales or for the keeping in custody or the warehousing of wrecks;

(*f*) for prescribing who shall be liable to pay the fees and charges fixed and in what manner the same shall be levied, and how the fees and charges levied shall be utilised or appropriated; and

(*g*) generally for carrying out the purposes of this Regulation.

17. Nothing in this Regulation shall be deemed—

Provisions (*a*) as to creeping or sweeping in Ports.

(*a*) to affect the provisions of Section 29 of the Travancore Ports Regulation, 1094, (Regulation I of 1094), or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention thereof, or

(*b*) as to customs duties.

(*b*) to affect the liability of the owner of the wreck to pay the customs duties, if any, due thereon, which shall be realised by the Receiver along with the salvage and the other charges, if any,

---

Sec. 17: Clause (*a*) of this Section reproduces Clause (*b*) of Section 279 of the Indian Act,

at the time of the delivery of the wreck or the balance of the sale proceeds of the wreck, as the case may be, to the owner and held subject to the orders of Our Government.

REGULATION II OF 1108.

THE TRAVANCORE LEGISLATIVE REFORMS REGULATION.

CONTENTS.

Preamble.

Sections.

1. Short title and commencement.
2. Definitions.
   - "Assembly".
   - "Council".
   - "Legislature".
   - "Office".
   - "Official and Non-official".
3. Legislature.
4. [Bill to be passed by both Chambers.]
5. (1) State Council : Composition.
   (2) President of the Council.
   (3) Chairmen of the Council.
   (4) Dewan's right to address the Council.
6. (1) The Assembly : Composition.
   [(2) Number of members of the Assembly.]
   (3) Dewan's right to address the Assembly.
7. (1)-(4) President and Deputy President of the Assembly.
   (5) Panel of Chairmen for the Assembly.
8. Dewan's right to address Joint Sittings.

N. B.—In the Regulation as published, no marginal notes are given in Sections 4, 6, 12, 13, 14, 30 and 35. In the above Contents, such notes are inserted in square brackets against the respective Sections, to facilitate reference.

9. Duration of the Council and the Assembly.
10. Sessions of the Council and the Assembly.
11. Membership of both Chambers.
12. [Seat of elected member of either Chamber becomes vacant on becoming member of the other Chamber.]
13. [Person elected to both Chambers to signify to Government the Chamber of which he desires to be member.]
14. [Right of official member of either Chamber to attend and address the other Chamber, but not to vote therein.]
15. Supplementary provisions as to the composition of the Legislature.
16. Business and Proceedings in the Legislature.
17. Measures that may not be considered by the Council and the Assembly.
18. Sanction of Dewan necessary for certain measures.
19. Powers of the Dewan in certain cases.
20. Provision for case of failure to pass legislation.
21. Reference to Joint Committee.
22. Reconsideration of Bills.
23. Assent of His Highness the Maha Raja necessary for every law.
24. Emergent Regulations.
25. Joint Committee.
26. Standing Orders.
27. Freedom of speech.
28. Budget.
29. Reference to Joint Committee.
30. [When Dewan may refer to Joint Committee.]
31. Power of Dewan in cases of refusal by the Legislature to vote the Demands.
32. Emergent expenditure.
33. Questions and Resolutions.
34. Provisions as to Rules.
35. [Government to make Rules in matters to be prescribed or regulated by Rules under this Regulation.]
36. Vacancies in the Legislature.
37. Saving Clause.
38. Regulation repealed.
39. Decision regarding interpretation of provisions.
40. The Prerogative of His Highness the Maha Raja.

A Regulation to place the Sri Mulam Popular Assembly on a statutory basis with enlarged functions and powers and to amend the law relating to the Legislative Council in such manner that the Assembly and the Council shall function as two Chambers of a Legislature

Passed by His Highness the Maha Raja of Travancore, under date the 12th Thulam 1108, corresponding to the 28th October 1932.

Preamble.

Whereas it is Our intention to provide for the increasing association of Our people with Our Government in the administration of the State, and whereas in furtherance of this intention it is expedient to place the Travancore Sri Mulam Popular Assembly on a statutory basis with enlarged functions and powers and to amend the law relating to the Travancore Legislative Council in such manner that the Assembly and the Council shall function as two Chambers of a Legislature; We are hereby pleased to enact as follows:—

Short title and commencement.

1. This Regulation may be called the Travancore Legislative Reforms Regulation II of 1108, and it shall come into force on the eighteenth day of Dhanu 1108 corresponding to the first day of January 1933.

Definitions.

2. In this Regulation, unless there is something repugnant in the subject or context—

"Assembly" means the Travancore Sri Mulam Assembly constituted under this Regulation:

Regn. II of 1108: I. The Regulation was published in an Extraordinary Issue of the Gazette dated 29th October 1932.

II. A Communique was also published along with the Regulation. It is given below.

GOVERNMENT COMMUNIQUE.

(29th October 1932.)

1. Pursuant to the announcement made by His Highness the Maha Raja at the Investiture Durbar, the Government issued a Press Communique in June last indicating the intention to reorganise the Sri Mulam Popular Assembly and the Legislative Council. Since then various representations have been made on the subject by public bodies and associations, and helpful suggestions and comments have also appeared in the Press. These have received the most careful consideration of Government.

2. The Government of His Highness the Maha Raja have resolved to inaugurate a scheme of reforms which is calculated in their opinion to serve the best interests of the State, and His Highness the Maha Raja has accordingly been pleased to enact the Travancore Legislative Reforms Regulation II of 1108.

"Council" means the Travancore Sri Chitra State Council constituted under this Regulation:

"Legislature" means the Travancore Legislature:

"Office" includes place and employment.

The expressions "official" and "non-official," where used in relation to any person, mean respectively a person who is or who is not in the civil or military service of Our Government:

Provided that Rules under this Regulation may provide for the holders of such offices as may be specified in the Rules not being treated, for the purposes of this Regulation or any of them, as officials.

Legislature.

3. Subject to the provisions of this Regulation there shall be two Chambers of the Travancore Legislature; namely, the Council and the Assembly.

4. Except as otherwise provided by or under this Regulation, a Bill shall not be deemed to have been passed by the Travancore Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as may be agreed to by both Chambers.

State Council: Composition.

5. (1) The Travancore Sri Chitra State Council shall consist of members nominated and elected in accordance with Rules made under this Regulation. The total number of members of the Council shall be thirty-seven, of whom twenty-two shall be elected. The other

---

3. The salient features of the Regulation and Rules framed thereunder are summarised below, and, in this connection, the constitution and powers of the existing institutions are briefly noticed.

The Present Constitution.

4. *The Sri Mulam Popular Assembly.*—The Sri Mulam Popular Assembly was established by Government proceedings in 1904 "to afford an opportunity to the people of expressing direct to the Government their wants and wishes and representing their views regarding the administrative measures taken by the Government from time to time." The Assembly consists of one hundred members, all non-officials. Seventy-seven of them are elected by general as well as special constituencies and twenty-three members are nominated by Government. All persons paying an annual land revenue of not less than Rs. 50 and all graduates of a recognised University of not less than ten years' standing are entitled to vote. The only function of the Assembly is to make representations on two subjects chosen by each member, the Government reserving to themselves the right to veto the discussion of any subject, which, in their opinion, it would be prejudicial in the interests of the public to allow.

5. The Assembly meets once every year, usually in February.

members of the Council shall be nominated by Our Government and ten of them shall be officials:

Provided that Rules made under this Regulation may provide for increasing the number of members of the Council as fixed by this Section and for varying the proportion which the classes of members may bear one to another, so, however, that not less than fifty-five per cent. of the members of the Council shall be elected members and that not more than one-third of the members shall be officials:

Provided also that Our Government may, for the purpose of any Bill introduced or proposed to be introduced in the Council, nominate not more than two members having special knowledge or experience of the subject-matter of the Bill, and those persons shall, in relation to the Bill, have, for the period for which they are nominated, all the rights of members of the Council and shall be in addition to the numbers above referred to.

---

6. *The Legislative Council.*—The present Council is composed of fifty members of whom fifteen are officials. Of the thirty-five non-officials, seven are nominated by Government and twenty-eight are elected by territorial and special constituencies. All persons paying an annual land tax of not less than Rs. 5 or paying income tax to Government or professional tax to a Municipality, and all graduates of a recognised University are entitled to vote. The Council is now competent to pass legislation except on certain important matters outside its scope. Subject to certain limitations the Council has also the right to discuss the budget and vote on demands for grants. The members of the Council may move resolutions and put questions on matters of general public concern.

The New Constitution.

7. *Bicameral Legislature favoured.*—Repeated representations were made in the Assembly and the Press for widening the powers of the Sri Mulam Popular Assembly; and, His Highness the Maha Raja announced that the Popular Assembly would be placed on a statutory basis with enlarged powers and functions. If the Popular Assembly was invested with such functions as legislation, discussion and voting on the budget, the moving of resolutions, etc., the Assembly would become another deliberative Chamber like the present Legislative Council. In other words, there would be two pupular institutions with similar powers but without any mutual co-ordination of functions. The reform of the Popular Assembly, therefore, necessarily involves the reconstitution of the Legislative Council in order that the two bodies might function as parts of the same Legislature. In deciding in favour of a bicameral Legislature, Government are merely re-shaping existing institutions so as to fit them into a well-recognised constitutional machinery.

8. *The proposed Legislature.*—The proposed Legislature will consist of two Chambers, viz.,

(1) The Sri Mulam Assembly, and

(2) The Sri Chitra State Council.

9. *The Sri Mulam Assembly.*—The Assembly will consist of seventy-two members of whom sixty will be non-officials and twelve officials. Forty-three

President of the Council.

(2) Our Dewan shall be *ex officio* President of the Council.

Chairmen of the Council.

(3) Our Dewan shall have power to appoint, from among the members of the Council, a Chairman and other persons to preside in his place and stead in such circumstances as may be provided for by Rules.

Dewan's right to address the Council.

(4) Our Dewan shall have the right of addressing the Council and may for that purpose require the attendance of its members.

The Assembly: Composition.

6. (1) The Assembly shall consist of members nominated and elected in accordance with Rules made under this Regulation.

(2) The total number of members of the Assembly shall be seventy-two. The number of non-official members shall be sixty of whom not less than forty-eight shall be elected. The number of nominated members shall not be more than twenty-four of whom twelve shall be officials:

---

members will be elected by general territorial constituencies and five by constituencies representing special interests. Twelve seats are reserved for representation of communities which fail to secure adequate representation by elections from the general constituencies. Thus, while at present the elected element forms fifty-six per cent. of the total number of members in the Legislative Council, the elected element will hereafter be sixty-six per cent. in the Assembly. Similarly, while the non-official element in the Legislative Council forms at present seventy per cent. of the total number of members, the non-official element in the Assembly forms eighty-three per cent. of the number of members. The seats allowed for the general constituencies for the Legislative Council are at present only forty-six per cent. of the total number of members. The revised proportion in this respect is almost sixty per cent. in the case of the Assembly.

10. *Distribution of seats: General principles.*- The Sri Mulam Popular Assembly which has now no deliberative function is composed of one hundred members. But the Legislative Council which is at present the only deliberative body is composed of fifty members. For effective and prompt disposal of business, it is considered essential that the number of members should not be unduly large and, having regard to the population and size of Travancore, it is considered that seventy-two members will be adequate for the Assembly or the First Chamber.

11. The State has a population of over five millions distributed among thirty Taluks. To allot the seats among the whole population on a strictly mathematical proportion might involve the splitting up of almost every Taluk and the grouping of portions of different Taluks for the purpose of constituting electoral units. This procedure will result in practical inconvenience in the conduct of elections. It is

Provided that Rules made under this Regulation may provide for increasing the number of members of the Assembly as fixed by this Section, and may vary the proportion which the classes of members bear one to another, so, however, that at least sixty-five per cent. of the members of the Assembly shall be elected members and at least eighty per cent. of the members of the Assembly shall be non-official members:

Provided also that Our Government may, for the purpose of any Bill introduced or proposed to be introduced in the Assembly, nominate not more than two members having special knowledge or experience of the subject-matter of the Bill, and those persons shall, in relation to the Bill, have, for the period for which they are nominated, all the rights of members of the Assembly and shall be in addition to the numbers above referred to.

Dewan's right to address the Assembly.

(3) Our Dewan shall have the right of addressing the Assembly and may for that purpose require the attendance of its members.

---

therefore proposed to treat each Taluk, as far as possible, as one electrol unit. Government have, however, decided to allow two seats for every Taluk with a population of two lakhs and above. An exception is made in the case of Thiruvella which has been allotted three seats, this Taluk having a population of over 337 thousands. The privilege of returning two members has been extended to two Taluks, the population of which falls short of two lakhs by less than 8,000 only. Each Taluk with two seats so allotted will, as at present, be divided into two groups, each group returning one member. In this respect Government have followed, as far as possible, the groupings hitherto adopted for elections to the Popular Assembly. In the case of a few constituencies the present groupings have been slightly altered so as to afford greater opportunities for representation, by election, of certain backward communities from the general constituencies. The appended statement gives the list of the constituencies together with the number of seats allotted to them.

12. *Other constituencies: Urban constituencies.*—The municipal centres in Travancore are more rural than urban in character. The municipalities vary so much in population and importance that there is no justification for allotting an equal number of seats for each municipality. In fact, the only municipality which has a population of over 50,000 is Trivandrum, and one separate seat is allotted to it. The urban interests throughout the State are, however, to be represented in the Second Chamber by one member to be elected by all the municipal councils in the State as one electoral body.

13. *Special constituencies: Planters.*—The planting community is now entitled to one seat in the Legislative Council, and this they will retain in the Assembly.

14. *Jenmies.*—The Jenmies now elect one member to the Legislative Council. They own extensive landed interests in Travancore and require special representation. They are allowed two seats in the Assembly.

15. *Commerce and Industry.*—The special constituency for commerce and

7. (1) Our Dewan shall be the President of the Assembly,

President and Deputy-President of the Assembly.

(2) There shall be a Deputy-President of the Assembly who shall preside at meetings of the Assembly in the absence of the President, or whenever necessary, in accordance with Rules made under this Regulation. The Deputy-President shall be a member of the Assembly elected by the Assembly in accordance with Rules under this Regulation and approved by Our Government.

(3) The Deputy-President shall cease to hold office if he ceases to be a member of the Assembly. He may resign office by writing under his hand addressed to Our Dewan, and may be removed from office by a vote of the Assembly with the concurrence of Our Government.

(4) The Deputy-President shall receive such salary as may be determined by the Assembly with the concurrence of Our Government.

(5) Our Dewan shall have power to appoint, from among the members of the Assembly, a panel of Chairmen to preside in such circumstances as may be provided for by Rules.

Panel of Chairmen for the Assembly.

---

industry is allowed at present to return two members to the Legislative Council. These two seats will be retained by them in the Assembly.

16. *Representation of minorities.*—Representation of minorities and of communities which are unable to secure adequate representation by election has hitherto been effected by means of nomination by Government.

17. *Communal electorates.*—The Ezhavas, the Muslims and sections of the Christian community, however, urge the creation of separate communal electorates or reservation of seats for particular communities in the joint electorates in proportion to their numerical strength. The whole question was most carefully examined by Government and they have no hesitation in declaring that the formation of communal electorates is altogether unsuited to Travancore. Even among the communities concerned, there is strong difference of opinion regarding the expediency of creating separate communal electorates. They tend to create and multiply communal cleavages in the country, a feature which it is the aim of Government to avoid.

18. *Reservation of seats.*—Reservation of seats for particular communities in joint electorates in proportion to their population is also beset with practical difficulties. The communities which advocate reservation of seats for them in the general constituencies also urge the introduction of adult suffrage. As explained elsewhere, Government do not consider it practical to introduce adult suffrage at present. If adult suffrage is ruled out as impracticable, any

8. Our Dewan shall have the right of addressing the members of the Council and the Assembly at a Joint Sitting and may for that purpose require the attendance of the members of both Chambers at such Joint Sitting.

Dewan's right to address Joint Sittings.

9. Every Council and every Assembly shall continue for four years from its first meeting:

Duration of the Council and the Assembly.

Provided that—

(*a*) either Chamber of the Legislature may be sooner dissolved by Our Government; and

(*b*) the said period may be extended by Our Government if in special circumstances they so think fit; and

(*c*) after the dissolution of either Chamber Our Dewan shall appoint a date not more than six months after the date of the dissolution for the next session of that Chamber.

10. (1) Our Dewan may appoint such times and places for holding the sessions of either Chamber of the Legislature as he thinks fit, and may also from time to time, by Notification or otherwise, prorogue such sessions.

Sessions of the Council and the Assembly.

---

electoral system based either on property or literacy qualification discloses such inequalities that even a system of reservation would not neutralise them. Therefore, in so far as these inequalities cannot be removed by election, it is inevitable that Government have, for the present, to resort to a system of selection by the representatives of the communities concerned or of nomination by Government.

19. *Representation of Ezhavas.*—The representation of the Ezhavas and the Muslims in the Legislature has engaged the special attention of Government in view of their numerical strength and the disabilities they experience in regard to voting strength. The Ezhavas in the State number over eight-and-a-half lakhs. Assuming that a few seats are reserved for Ezhavas in the general constituencies where they number most, namely, Shorthallai, Ambalapuzha, Chirayinkil and Karunagapalli, the benefit of such representation will be derived by only about one-third of the total population of Ezhavas in the State, and the bulk of the community will have to be satisfied with the exercise of the general franchise along with others. Government feel that under the new electoral scheme the Ezhavas will have greater chances than before for being returned to the Assembly, particularly from Taluks where more than one seat is provided. In the event, however, of suitable Ezhava candidates contesting seats in the general electorates being unsuccessful in getting elected, Government will provide for them at least four seats in the Assembly. They

(2) Any meeting of either Chamber of the Legislature may be adjourned by the person presiding.

(3) All questions before the Council shall be determined by a majority of votes of the members present including the presiding authority who shall, in the case of an equality of votes, have a second or casting vote.

(4) All questions before the Assembly shall be determined by a majority of votes of the members present other than the presiding member who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) All questions before the Joint Committee of both Chambers, hereinafter provided for, shall be determined by a clear majority of not less than five.

(6) The powers of either Chamber of the Legislature may be exercised notwithstanding any vacancy in the Chamber.

Membership of both Chambers.

11. An official shall not be qualified for election as a member of either Chamber of the Legislature, and if any non-official member of either Chamber accepts office in the service of Our Government, his seat in that Chamber shall become vacant.

---

will watch the result of the general elections and then decide the number of seats to be reserved. Such reservation of seats will naturally be out of those to be filled by nomination by Government. They consider it desirable, however, that the community should be given an opportunity of selecting its representatives. In this respect a system of facultative representation somewhat on the lines obtaining in Mysore for representation of minority communities seems appropriate, and Government propose to frame rules providing that, in any event, at least two representatives shall be selected by recognised associations among the community. Lest, at the initial stages, there should be complaints about the representative character of the associations so called upon to select representatives, Government will reserve to themselves the option to nominate the remaining number of members allotted to the community. If, in course of time, it is found that the associations are fully representative of the community and that their selection commands general satisfaction, Government will allow such associations the right to select the full quota of members allotted to the community. It must be remembered, however, that this is only a temporary expedient which will remain operative until such time, when, as is hoped, it will be possible for the Ezhava community to secure adequate representation by means of general elections.

20. *Muslims.*—The total population of theMuslim community is over three-and-a-half lakhs, This community is distributed among the several Taluks in very small numbers. In six Taluks they number more than 20,000, and their population exceeds

12. If an elected member of either Chamber of the Legislature becomes a member of the other Chamber, his seat in such first-mentioned Chamber shall thereupon become vacant.

13. If any person is elected a member of both Chambers of the Legislature, he shall, before he takes his seat in either Chamber, signify in writing to Our Government the Chamber of which he desires to be a member, and thereupon his seat in the other Chamber shall become vacant.

14. Notwithstanding anything contained in this Regulation or the Rules framed thereunder, an official member of either Chamber shall have the right of attending in and addressing the other Chamber but shall not have the right of vote in that other Chamber.

Supplementary provisions as to the composition of the Legislature.

15. Subject to the provisions of this Regulation, provision may be made by Rules under this Regulation as to—

(*a*) the term of office of nominated members of the Council and the Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from Travancore, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise;

10,000 only in 13 Taluks. It is thus impossible to reserve seats for this community in any of the general constituencies. The observations made in the preceding paragraph relating to the difficulty in reserving seats for Ezhavas apply with greater force to the Muslims, and Government feel convinced that the best method of representing the interests of this community will be to adopt the method of facultative representation already referred to. It is the intention of Government to provide at least two seats in the Assembly for the Muslims and the method of representation will be the same as in the case of Ezhavas.

21. *Other minorities.*—Representations have been received from Latin Christians and certain other sections of the Christian community praying for reservation of seats in the general electorate in proportion to their numerical strength. It would be difficult and inexpedient to divide the Legislature into communal compartments in proportion to the population of particular communities, sects and sub-sects. Government feel confident that important minority interests in the State will be adequately represented by suitable nomination by Government.

22. *Women.*—The women in Travancore exercise eequal right of voting with men. Government feel, however, that, for some time to come, special provision will have to be made for their representation in the Legislature. Not less than two seats in the Assembly will therefore be reserved for them out of those to be filled by nomination.

(*b*) the conditions under which and the manner in which persons may be nominated as members of the Council or the Assembly;

(*c*) the qualification of electors, the constitution of constituencies, and the method of election for the Council and the Assembly and any matter incidental or ancillary thereto;

(*d*) the qualifications for being or for being nominated or elected as members of the Council or the Assembly;

(*e*) the final decision of doubts or disputes as to the validity of an election; and

(*f*) the manner in which the Rules are to be carried into effect.

Business and Proceedings in the Legislature.

16. Provision may be made by Rules under this Regulation for regulating the course of business and the preservation of order in the Chambers of the Legislature, and as to the persons to preside at the meetings of the Council in the absence of the President, or whenever necessary, and of the Assembly in the absence of the President or whenever necessary; and the Rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subjects specified in the Rules.

---

23. *Franchise* : *Adult Suffrage.*—Representations have been made urging the introduction of adult suffrage. It is stated that adult suffrage will remove the inequalities in the representation of the various communities in the Legislature. This is apparently based on the assumption that, once adult suffrage is granted, elections will proceed on communal lines and seats will be filled in proportion to the numerical strength of each community. Adult suffrage will lose its real political value when it is relied upon merely as an expedient to serve sectional or communal interests. The divisions in Travancore are at the present moment based upon communal or sectional interests, and, unless popular parties formed on political lines come into existence, the introduction of adult suffrage is likely to endanger the larger interests of the State.

24. Although in point of literacy Travancore is exceptionally fortunate when compared with the rest of India, the objections set out in the Lothian Committee Report to the immediate introduction of adult suffrage generally hold good in the case of Travancore as well; and, in the opinion of Government, it is not feasible or practicable to introduce adult suffrage at this stage.

25. The present franchise of the Assembly rests mainly on property qualification. The electoral rules to the present Sri Mulam Populrr Assembly prescribe

17. (1) It shall not be lawful for the Council or the Assembly to consider and enact any measure relating to or affecting—

Measures that may not be considered by the Council and the Assembly.

(*a*) The Ruling Family of Travancore or any Member thereof or the management of Their Household; or

(*b*) The relations of Our Government with the Paramount Power or with Foreign Princes or States; or

(*c*) Matters governed by treaties, conventions or agreements now in force or hereafter to be made by Our Government with the Paramount Power; or

(*d*) The provisions of this Regulation and the Rules framed thereunder.

(2) It shall not be lawful for the Council or the Assembly to consider and enact, without the previous sanction in writing of Our Dewan, any measure relating to or affecting—

(*a*) Our Military forces including the Nair Brigade and Our Bodyguard; or

(*b*) Devaswoms.

---

the payment of land tax of Rs. 50 for electors and candidates. This is too high a limit. The Assembly is to be invested with wide powers and privileges and the franchise is therefore reduced to the payment of an annual land Revenue of Rs. 5. This is the limit prescribed for the existing Legislative Council.

26. In urban areas outside Trivandrum the qualification prescribed for voting is the payment of municipal tax of Rs. 3 per annum while in Trivandrum the limit prescribed is only Re. 1. Government have reduced the limit of municipal tax from Rs. 3 to Re. 1 in all cases.

27. *Qualification of elected members.*—Under the present rules for the Legislative Council a person shall not be eligible for election as a member of the Council if such person has been declared by Government to be of such reputation and antecedents that his election, in the opinion of Government, would be contrary to public interests. A substantially similar rule appears in the case of the Sri Mulam Popular Assembly as well. Government have decided to remove these restrictions.

28. *Elected Deputy-President for the Assembly.*—The Dewan will be the President of the Assembly, and the Deputy-President will be elected by the Assembly. Provision is also made for the nomination of a panel of chairmen.

The State Council.

29. *Composition.*—The total strength of the Council has been fixed at 37. This Chamber will consist of 27 non-officials and 10 officials; and of the non-officials, 16 will be elected from general constituencies and 6 from special constituencies. 5 non-officials will be nominated by Government.

30. The number of seats for general territorial constituencies being only 16, the Taluks have necessarily to be grouped for purposes of election to the Council.

Sanction of Dewan necessary for certain measures.

18. It shall not be lawful for any member to introduce in either Chamber of the Legislature, without the previous sanction in writing of Our Dewan, any measure—

(*a*) affecting the public revenues of the State or imposing any charge on such revenues; or

(*b*) affecting the religion or the religious rites and usages of any class of Our subjects; or

(*c*) repealing or amending any law in force in Travancore not passed under Section 23 of this Regulation, or Section 14 of Regulation II of 1097 or the corresponding Section of Regulation I of 1095 or of Regulation V of 1073 or of Regulation II of 1063.

In so doing, Government have paid due regard to area, population and voting strength. It is inevitable that certain Taluks have to be split up and grouped with adjoining areas. It will, however, be noticed that, as far as possible, Taluks have been treated as a whole for electoral purposes.

31. *Special constituencies.* — One seat bas been allotted to Jennies, one to planters and two to commerce and industry. To represent urban interests, all Municipal Councils are together given the right to elect one representative. The Edavagais and political pensioners who now enjoy one seat in the Legislative Council have been allowed to return one member to the State Council.

32. *Nomination.*—Government propose to reserve five seats for nomination. Their object is to secure the services of men of approved merit who have distinguished themselves in the service of the country, either as officials or non-officials.

33. *Franchise.*—The existing property qualification for the Sri Mulam Popular Assembly is payment of Rs. 50 by way of land tax. The Assembly has been reconstituted on a wide franchise. The franchise relating to the Second Chamber must essentially be different from that of the Assembly and Government have decided to fix a property qualification of the payment of an annual land tax of Rs. 25. This change will bring in a substantial addition to the number of voters. To ensure the return of men of standing and experience the present educational qualification, namely, that graduates of 10 years' standing alone will be eligible, is retained. It is further proposed to give the right of voting to all persons who earn a monthly pension of Rs. 100 and above on retirement from Government service. Persons below the age of 30 will not be eligible as voters or candidates to the Council.

Powers of the Legislature.

34. *Legislative Restrictions removed.*—Both Chambers of the Legislature have the right to initiate and pass legislation. All legislative measures generally require the assent of both Chambers before they can be passed into law. Difference of opinion between the two Chambers will be referred for decision to a Joint Committee of both Chambers consisting of an equal number of members selected by each Chamber. The present Legislative Council Regulation completely removes from the cognisance of the

Powers of the Dewan in certain cases.

19. Where in either Chamber of the Legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, Our Dewan may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of Travancore, or any part thereof, and may direct that no proceedings, or that no further proceedings shall be taken by the Chamber in relation to the Bill, clause, or amendment, and effect shall be given to such direction.

Provision for case of failure to pass legislation.

20. Where either Chamber of the Legislature refuses leave to introduce, or fails to pass in a form recommended by Our Government, any Bill, Our Dewan may certify that the passage of the Bill in that form is essential for the safety, tranquillity or interests of Travancore or any part thereof; and thereupon—

(*a*) If the Bill has already been passed by the other Chamber, the Bill shall be submitted to Us through Our Dewan in the form as originally introduced or proposed to be introduced in the Legislature or (as the case may be) in the form recommended by Our Government and the Bill, on being assented to by Us, shall become law; and

---

Council the following among other matters:—

(1) Extradition of criminals;
(2) European vagrants;
(3) The regulation of affairs relating to sea-ports;
(4) State charities;
(5) European British subjects;
(6) Coinage;
(7) Military forces;
(8) Railways; and
(9) Devaswoms.

Government consider that with certain safeguards it is only appropriate that the people's representatives should have the right to discuss such matters of vital public concern. Government have therefore decided to remove the restrictions at present imposed in regard to the discussion of these matters and to remove from the cognisance of the Council only the following matters:—

(1) The Ruling Family of Travancore or any Member thereof; or the management of Their Household; or
(2) The relations of the Government with the Paramount Power or with Foreign Princes or States; or
(3) Matters governed by treaties, conventions or agreements now in force or hereafter to be made by the Government with the Paramount Power; or
(4) The provisions of the Legislative Reforms Regulation and the Rules framed thereunder.

It will be noted that matters relating to Military Forces and Devaswoms are thrown open for discussion subject only to the previous sanction of the Dewan.

(*b*) If the Bill has not already been so passed, the Bill shall be laid before the other Chamber, and, if consented to by that Chamber in the form recommended by Our Government, shall be submitted to Us through Our Dewan as aforesaid and, on Our assent being declared thereto, shall become law; or if not so consented to, the Bill shall be submitted to Us through Our Dewan as aforesaid, and, on Our assent being declared thereto, shall become law.

Reference to Joint Committee.

21. If any Bill which has been passed by one Chamber is not, within one year after the passage of the Bill by that Chamber, passed by the other Chamber either without amendments or with such amendments as may be agreed to by the two Chambers, Our Dewan may refer the matter for decision to a Joint Committee of both Chambers hereinafter provided for, in order to discuss and settle any difference of opinion which has arisen between the two Chambers.

The provisions relating to the emergency powers of legislation and other powers vested in the Dewan to be exercised under extraordinary circumstances are, however, retained as constitutional safeguards.

Budget.

35. *Financial control.* — The Budget will be presented to both Houses. The Council and the Assembly will have the right of general discussion of the Budget although the right to reduce or omit the grants forming part of a demand will vest only in the Assembly. The Council will deal with each demand as a whole and will not be entitled to move for reduction of the grant or items of the grant comprising the demand, Differences of opinion between the two Chambers regarding the voting on demands will also be settled by reference to a Joint Committee of an equal number of members from both Chambers. Motions for reduction of grants which have been passed by the Assembly but which in the opinion of the Dewan require further consideration by the Legislature will also be referred to the Joint Committee of both Chambers. Thus, while the Assembly will have very much larger control than the Second Chamber over finance, the Second Chamber is also given an opportunity to record its opinion on the financial policy of Government.

Public Accounts Committee. — Government have provided for the constitution of a Public Accounts Committee to deal with the audit and appropriation of the accounts of Government.

36. To avoid deadlocks and to prevent a breakdown of the administrative machinery, certain extraordinary powers which are now reserved with the Dewan in regard to financial control and State expenditure are allowed to be retained by him. It is satisfactory to note in this connection that occasions have not hitherto arisen for the exercise by the Dewan of the extraordinary powers vested in him and it is hoped that such occasions will not arise in the future.

37. Under the existing Rules voting on appointments carrying a salary of Rs. 125

Reconsideration of Bills.

22. Our Dewan may, where a Bill has been passed by both Chambers of the Legislature, as also in any other case, return the Bill for re-consideration by either Chamber.

Assent of His Highness the Maha Raja necessary for every law.

23. When any Bill has been passed by both Chambers of the Legislature, the Bill shall be submitted to Us through Our Dewan for Our assent. No such Bill shall become law until We have declared Our assent thereto.

Emergent Regulations.

24. Notwithstanding anything contained in this Regulation, it shall be lawful for Our Dewan, in cases not falling under Section 17 (1) of this Regulation in which immediate legislation is required, to make and submit to Us any Bill; and every such Bill, on being assented to by Us, shall have the force of law for the space of six months from the date of its promulgation in Our Government Gazette.

Joint Committee.

25. (1) Our Government may by Rules provide for the constitution of Joint Committees consisting of an equal number of members from both Chambers of the Legislature in order to discuss and settle any difference of opinion which has arisen between the two Chambers.

(2) Our Government may by Rules and Standing Orders provide for the joint sittings of both Chambers and for meetings of

---

and above per mensem is prohibited and the proposals of expenditure relating to these items cannot be discussed. In deference to popular opinion, Government have resolved to revise this rule and provide that all appointments carrying a salary of less than Rs. 500 per mensem shall be submitted to the vote of the Legislature. While the present Rules provide that all proposals relating to heads of expenditure removed from the cognisance of the Council shall not be open to discussion by the House, the present Regulation permits such discussion if the Dewan thinks it appropriate in any particular case.

38. *Supplementary questions.*—The members of the Assembly and the Council will exercise the right to put questions and move resolutions on matters of general public concern. While at present only the member asking the question may put supplementary questions, this right is under the new Regulation extended to all members.

39. *Freedom of speech.* — Government have made express provision in the new Rules declaring that no action will lie against any member of either Chamber for statements made in the House in the course of the proceedings.

40. Government hope that the measure now enacted will be recognised as a substantial advance in the devolution of powers on the representatives of the people.

the Joint Committees for the purposes referred to in this Regulation and for the conduct of business and the procedure to be followed at such joint sittings and meetings.

Standing Orders.

26. It shall be lawful for either Chamber of the Legislature to make from time to time Standing Orders for the conduct of business and the procedure to be followed in that Chamber in so far as these matters are not provided for by Rules made under this Regulation. The first Standing Orders shall be made by Our Government, but may, with the consent of Our Dewan, be altered by the Chamber to which they relate.

Any Standing Order made as aforesaid which is repugnant to the provisions of any Rules made under this Regulation shall, to the extent of that repugnancy but not otherwise, be void.

The Sri Mulam Assembly—List of Constituencies.

Serial No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
1	Trivandrum	General Urban	The Municipal Town of Trivandrum.	1
2	Thovala	General Rural	The taluk of Thovala, the Municipal town of Nagercoil and the portion of Vadasseri pakuthy in the Agasthiswaram taluk lying outside the limits of the Nagercoil Municipality.	1
3	Agasthiswaram	Do.	The taluk of Agasthiswaram (excluding the Nagercoil Municipality and the portion of the Vadasseri pakuthy outside Municipal limits).	1
4	Kalkulam Group I	Do.	The pakuthies of Attur, Kalkulam, Thuckalai, Kapiara, Valvachagoshtam, Kotanalloor, Mekode, Ponmana, Aruvikkara, Tiruvattar and Tripparappu.	1
5	Kalkulam Group II	Do.	The pakuthies of Alur, Eraniel, Talakulam, Kadiapattanam, Manavalakurichi, Colachel and Tiruvancode.	1
6	Vilavancode	Do.	The taluk of Vilavancode.	1

Freedom of speech.

27. Subject to the Rules and Standing Orders affecting the Chamber there shall be freedom of speech in both Chambers of the Legislature. No person shall be liable to any proceedings in any Court by reason of his speech or vote in either Chamber, or by reason of anything contained in any official report of the proceedings of either Chamber.

Budget.

28. (1) The Annual Budget of the State shall be laid in the form of a statement before both Chambers of the Legislature in each year.

(2) The Council and the Assembly may deal with the Budget subject to such conditions and restrictions as to subjects and other matters as may be imposed by Our Government by Rules made under this Regulation.

The Sri Mulam Assembly—List of Constituencies.—(*contd.*)

Serial No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
7	Neyyattinkara Group I	General Rural	The pakuthies of Kulattur, Chenkal, Parasala, Kolla, Kunnattukal, Ottasekharamangalam, Perumkadavila, Neyyattinkara and Atiyannur.	1
8	Neyyattinkara Group II	Do.	The pakthies of Tiruvarattur, Karunkulam, Kottukal, Tiruvallam, Nemom, Pallichal, Vilappu, Marukil and Maranallur.	1
9	Trivandrum	Do.	The taluk of Trivandrum excluding the Municipal Town of Trivandrum.	1
10	Nedumangad	Do.	The taluk of Nedumangad.	1
11	Chirayinkil Group I	Do.	The pakuthies of Kadakkavur, Azhur, Sarkara, Vettur, Chirayinkil, Cheruniyur, Airur, Edava, Varkala and Vellalloor,	1
12	Chirayinkil Group II	Do.	The pakuthies of Kizhvalam, Edakode, Elamba, Mudakkal, Koduvazhannur, Pulimattu, Pazhayakunnummel, Kilimanur, Nagarur, Alenkod, Avanavanchery, Attingal, Kuntallur, Kizh-Attingal, Manambur, Ottur, Karavaram, Madavur, Pallikkal, Navaikulam and Chemmaruti.	1

(3) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of Our Government.

(4) The proposals of Our Government for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Assembly or the Council, nor, unless Our Dewan otherwise directs, shall they be open to discussion by either Chamber at the time when the Budget is under consideration:—

(*a*) expenditure relating to any matter removed from the cognisance of either Chamber by Section 17 of this Regulation;

The Sri Mulam Assembly—List of Constituencies —*(contd).*

Serial No.	Name of the Constituency.	Class of Constituency	Extent of Constituency.	No. of Members.
13	Quilon Group I	General Rural	The pakuthies of Mayyanad, Eravipuram, Kilikollur, Vadakkevila, Trikadavur, Quilon and Paravur.	1
14	Quilon Group II	Do.	The pakuthies of Adichanallur, Nedumpana, Trikkovilvattam, Kottamgara, Perinad and Kizhakkekallada.	1
15	Pathanapuram	Do.	The taluk of Pathanapuram.	1
16	Shencottah	Do.	The taluk of Shencottah.	1
17	Kottarakara	Do.	The taluk of Kottarakara.	1
18	Kunnathur	Do.	The taluk of Kunnathur.	1
19	Karunagapalli Group I	Do.	The pakuthies of Thekkumbhagam, Chavara, Panmana, Tevalakkara, Mainagapalli, Thodiyur and Karunagapalli.	1
20	Karunagapalli Group II	Do.	The pakuthies of Kulasekharapuram, Tazhava, Krishnapuram, Perinad and Putupalli.	1
21	Mavelikara	Do.	The taluk of Mavelikara.	1
22	Kartigapalli	Do.	The taluk of Kartigapalli.	1
23	Ambalapuzha Group I	Do.	The pakuthies of Thalavadi, Kozhimukku, Takazhi, Purakkad, Nedumudi, Champakulam and Ambalapuzha.	1

(*b*) expenditure which is obligatory under any law;

(*c*) pensions and gratuities granted by Us or with Our sanction or under Rules sanctioned by Us;

(*d*) salaries and allowances of Officers—

(i) appointed by Us under Our Sign Manual; or

(ii) whose appointments are specified in this behalf in the Rules made under this Regulation;

(*e*) interest on loans and sinking-fund charges;

(*f*) contributions made by Us or with Our sanction; and

(*g*) expenditure classified by Our Government as—

(i) Maramat, and

(ii) Political.

For the purposes of this Sub-section, the expressions "salaries" and "pensions" include remuneration, allowances, gratuities, any contribution out of the revenue to any provident fund or family pension fund and any other payments or emoluments payable to or on account of a person in respect of his office.

The Sri Mulam Assembly—List of Constituencies *—(contd).*

Serial No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
24	Ambalapuzha Group II	General Rural	The pakuthies of Alleppey, Pulinkunnu, Kainakary, Ariad North, Ariad South and Mararikulam South.	1
25	Pathanamthitta	Do.	The taluk of Pattanamthitta.	1
26	Thiruvalla Group I	Do.	The pakuthies of Mannar, Kadapra, Kizhakumbhagam, Nedumpuram, Perumkur, Kavumbhagam, Thiruvalla, Eraviperur, Kaviyur and Kurattisseri.	1
27	Thiruvalla Group II	Do.	The pakuthies of Kallooppara, Ezhumattur, Ayiroor, Koippuram and Tottapuzhacheri.	1
28	Thiruvalla Group III	Do.	The pakuthies of Aranmula, Puttankavu, Chengannur, Puliyur, Venmani, Pandalam Vadakkekara, Cherianad, Ala, Tiruvanmandur, Pandanad and Vadakkekara.	1

Explanation.—The term "Allowances" in this Section does not include travelling allowances, as defined in the Travancore Service Regulations.

(5) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to any matter not liable to be voted upon by the Legislature, the decision of Our Dewan shall be final.

(6) Subject to the provisions of Sub-section 4, the proposals of Our Government for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Assembly and of the Council in the form of Demands for Grants.

The Sri Mulam Assembly—List of Constituencies.—(*contd.*)

Seral No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
29	Kottayam Group I	General Rural	The pakuthies of Tiruvarppu, Kottayam, Nattagom, Panachikad, Vijayapuram, Aimanam, Kummanam and Kumarakam.	1
30	Kottayam Group II	Do.	The pakuthies of Pampadi, Akalakkunnam, Kudamalur, Perumbaikad, Kaipuzha, Onamturuttu and Ettumanur.	1
31	Shertallai Group I	Do.	The pakuthies of Vayalar West, Tanneermukkam South, Tanneermukkam North, Kokkotamangalam, Shertallai South, Shertallai North and Mararikulam North.	1
32	Shertallai Group II	Do.	The pakuthies of Vadutalamattattilbhagom, Pallipuram, Panavalli, Vayalar East, Turavur South, Turavur North, Arur and Taikkattucheri.	1
33	Vaikom	Do.	The taluk of Vaikom	1
34	Changanachery Group I	Do.	The pakuthies of Madapalli, Nedumkunnam, Vazhur, Vellavur, Manimala, Cheruvalli, Chirakkadavu, Kanjirapalli North and Kanjirapalli South.	1
35	Changanachery Group II	Do.	The pakuthies of Ramankari, Muttar, Velianadu, Chennankari, Nilamperur, Vazhapalli Padinjarebhagom, Kurichi, Vazhapalli Kizhakkumbhagom, Changanachery and Putupali.	1

(7) The Assembly may assent or refuse its assent to any Demand or may reduce the amount referred to in any Demand either by a lump sum reduction or by the omission or reduction of any particular item or items of expenditure of which the Grant is composed.

(8) The Council may assent or refuse its assent to any Demand, but shall not reduce the amount referred to in any Demand either by a lump sum reduction or by the reduction of any particular item or items of expenditure of which the Grant is composed.

Reference to Joint Committee.

29. In cases of disagreement between the Assembly and the Council regarding the voting of any Demand, Our Dewan shall refer such Demand to a Joint Committee of both Chambers of the Legislature, subject to such Rules as to composition and procedure as may be framed under section 25.

The Sri Mulam Assembly—List of Constituencies.—(*contd.*)

Serial No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
36	Devicolam cum Peermade	General Rural	The taluks of Peermade and Devicolam.	1
37	Meenachil Group I	Do.	The pakuthies of Minachil, Ramapuram, Bharananganam, Kondur and Punjar.	1
38	Meenachil Group II	Do.	The pakuthies of Puliyanur, Lalam, Vilavur, Kanakkari, Kidangur and Ilakkad.	1
39	Muvattupuzha	Do.	The taluk of Muvattupuzha.	1
40	Thodupzha	Do.	The taluk of Thodupuzha.	1
41	Kunnatnad Group I	Do.	The pakuthies of Vengur, Cheranallur, Perumbavur, Vengola, Asamannur, Vazhakkulam, Manikkamangalam, Manjapra and Kotakulangara.	1
42	Kunnatnad Group II	Do.	The pakuthies of Kazhukkambalam, Chemmanad, Aikaranad, Mazhavannur, Kunnatnad, Rayamangalam, Trikkakkara and Alwaye.	1
43	Parur	Do.	The taluk of Parur.	1

30. Our Dewan may likewise refer to the Joint Committee such motions for reduction of the Grant as may have been carried by the Assembly, in respect of which Our Dewan is satisfied that they require further consideration by the Legislature.

Power of Dewan in cases of refusal by the Legislature to vote the Demands.

31. The Demands as voted by the Assembly and the Council respectively, and the decision of the Joint Committee, if any, shall be submitted to Our Government and if Our Dewan declares that he is satisfied that any Demand which has been refused by the Assembly, the Council or the Joint Committee is essential to the discharge of the responsibilities of Our Government, Our Government may act as if the Demand had been assented to notwithstanding the withholding of such assent or the reduction of the amount therein referred to by the Assembly, the Council or the Joint Committee.

Emergent expenditure.

32. Notwithstanding anything contained in this Regulation, Our Dewan shall have power, in cases of emergency, to authorise such expenditure as may, in the opinion of Our Government, be necessary in

The Sri Mulam Assembly—List of Constituencies—(*concld.*)

Serial No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
44	The Travancore Planters	Planting	Non-territorial.	1
45	The Travancore Jenmies (South)	Jenmi	The Trivandrum and Quilon Divisions.	1
46	The Travancore Jenmies (North)	Do.	The Kottayam and Devicolam Divisions.	1
47	Commerce and Industry (South)	Commerce and Industry	The Trivandrum Division and the taluks of Quilon, Kottarakara, Pathanapuram and Shencottah in the Quilon Division.	1
48	Commerce and Industry (North)	Do.	The taluks of Karunagapalli, Karthigapalli, Kunnathur, Mavelikara, Thiruvalla, Pathanamthitta and Ambalapuzha in the Quilon Division and the Divisions of Kottayam and Devicolam.	1

the interest of Our Government or for the carrying on of any department or for the safety or tranquillity of Travancore or any part thereof.

Questions and Resolutions.

33. Subject to such restrictions and conditions as to subjects and other matters as may be imposed by Our Government by Rules under this Regulation, any member of either Chamber may—

(1) ask questions and supplementary questions, and

(2) move Resolutions.

Provisions as to Rules.

34. Our Government may make Rules for the purpose of this Regulation which may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to the provisions of this Regulation.

The Sri Chitra State Council—List of Constituencies.

Serial No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
1	Thovala *cum* Agasthiswaram	General Rural	The taluks of Thovala and Agastisvaram and the Pakuthies of Alur, Talakulam, Manavalakurichi and Kadiapattanam of the Kalkulam taluk.	1
2	Kalkulam *cum* Vilavancode	Do.	The pakuthies of Kappiyara, Valvachagoshtam, Attur, Thuckalai, Kalkulam, Kotanallur, Mekkod, Aruvikara, Thiruvattar, Thripparappu, Eraniel, Ponmana, Colachel, and Tiruvancod of the Kalkulam taluk and the taluk of Vilavancode.	1
3	Neyyattinkara	Do.	The taluk of Neyyattinkara and the pakuthies of Perumkulam, Veeranakavu, Ozhamalakal, Kulathummel, Vellanad and Mannurkara of the Nedumangad taluk.	1
4	Trivandrum	Do.	The taluk of Trivandrum.	1
5	Chirayinkil *cum* Nedumangad	Do.	The taluk of Chirayinkil and the pakuthies of Vamanapuram, Nallanad, Manikkal, Palode, Aryanad, Nedumangad, Karakulam, Anad, Vempayam and Pullanpara of the Nedumangad taluk.	1

35. Where any matter is required to be prescribed or regulated by Rules under this Regulation, such Rules may be made by Our Government and shall not be subject to repeal or alteration by either Chamber.

Vacancies in the Legislature.

36. (1) A nominated or elected member of either Chamber of the Legislature may resign his office to Our Dewan, and, on the acceptance of the resignation, the office shall become vacant.

(2) If for a period of six consecutive months any such member is absent from Travancore or unable to attend to the duties of his office Our Government may, by Notification published in the

The Sri Chitra State Council—List of Constituencies.—(*contd.*)

Serial No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
6	Quilon *cum* Karunagapalli	General Rural	The taluk of Quilon and the pakuthies of Thekkumbhagam, Chavara, Panmana, Tevalakara, Mainagapalli, Thodiyur and Karunagapalli of the Karunagapalli taluk.	1
7	Mavelikara *cum* Karthigapalli	Do.	The taluk of Mavelikara and the pakuthies of Muthukulam, Cheppad, Valiayakuzhi, Chingoli, Nangyarkulangarai, Karthigapalli, Haripad, Arattupuzha, Kizhakkekara, Pallippad, Kantallur, Keerikad and Pathiyur of the Karthigapalli taluk and the pakuthies of Tazhava, Kulasekharapuram, Krishnapuram, Puthuppalli and Perinad of the Karunagapalli taluk.	1
8	Ambalapuzha	Do.	The taluk of Ambalapuzha and the pakuthies of Kumarapuram, Thrikunnapuzha, Karuvatta, Cheruthana and Veeyapuram of the Karthigapalli taluk.	1
9	Thiruvalla	Do.	The taluk of Thiruvalla,	1
10	Kunnathur *cum* Pathanamthitta	Do.	The taluks of Kunnathoor and Pathanamthitta.	1
11	Kottarakara *cum* Pathanapuram *cum* Shencottah	Do.	The taluks of Kottarakara, Pathanapuram and Shencottah.	1

Government Gazette, declare that the seat of that member has become vacant.

Saving clause.

37. No law passed under the authority of this Regulation shall be deemed invalid by reason that the requisite proportion of non-official members was not complete at the time of its introduction into either Chamber of the Legislature or of its enactment.

Regulation repealed.

38. Regulation II of 1097 is hereby repealed:

Provided that—

(1) all proceedings held under that Regulation shall be deemed to have been made or held under this Regulation so far as they may be consistent with the provisions of this Regulation;

(2) (*a*) all Bills which have been finally read under that Regulation will be deemed to have been passed by both Chambers under this Regulation;

(*b*) all other Bills pending before the Legislative Council under Regulation II of 1097 shall be deemed to be pending before the Assembly under this Regulation.

The Sri Chitra State Council—List of Constituencies.—(*contd.*)

Serial No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
12	Changanachery *cum* Peermade	General Rural	The taluks of Changanachery and Peermade and the pakuthies of Punjar and Kondur of the Meenachil taluk.	1
13	Kottayam *cum* Meenachil	Do.	The taluk of Kottayam and the pakuthies of Puliyannur, Lalam, Bharananganam, Meenachil, Kainakari, Kidangoor, Ramapuram, Uzhavoor and Elakadu of the Meenachil taluk.	1
14	Muvattupuzha *cum* Thodupuzha *cum* Devicolam	Do.	The taluks of Muvattupuzha, Thodupuzha and Devicolam.	1
15	Kunnatnad *cum* Parur	Do.	The taluks of Kunnatnad and Parur.	1
16	Shertallai *cum* Vaikom	Do.	The taluks of Shertallai and Vaikom.	1
17	The Travancore Jenmies	Jenmi	Non-territorial.	1

(3) Notwithstanding anything contained in that Regulation or the Rules framed thereunder, members nominated and elected under the said Regulation shall vacate office from such date after this Regulation comes into force as may be notified by Our Government in Our Government Gazette.

Decision regarding interpretation of provisions.

39. If any dispute arises as to the interpretation or the carrying out of any of the provisions of this Regulation or the Rules framed thereunder, the decision of Our Dewan shall be final.

The Prerogative of His Highness the Maha Raja.

40. Nothing contained in this Regulation or Regulation II of 1097 or Regulation I of 1095 or Regulation V of 1073 or Regulation II of 1063 shall affect or be deemed to have affected Our Prerogative right to make and pass Regulations and Proclamations independent of the Legislature, which right is hereby declared to be and to have been always possessed and retained by Us.

The Sri Chitra State Council—List of Constituencies.—(*concld.*)

Serial No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
18	Edavagai	Edavagai and Political Pensioners.	Non-territorial.	1
19	Municipal Councils	Urban	All the Municipal Councils in the State.	1
20	The Travancore Planters	Planting	Non-territorial.	1
21	Commerce and Industry (South)	Commerce and Industry	The Trivandrum Division and the taluks of Quilon, Kottarakara, Pathanapuram and Shencottah in the Quilon Division.	1
22	Commerce and Industry (North)	Do.	The taluks of Karunagapalli. Karthigapalli, Kunnathur, Ambalapuzha, Mavelikarai, Thiruvalla and Pathanamthitta of the Quilon Division and the Divisions of Kottayam and Devicolam.	1

RULES, STANDING ORDERS AND NOTIFICATIONS.

I. RULES.

THE TRAVANCORE LEGISLATIVE RULES.

I

CONTENTS.

Rules.

1. Short title and commencement.
2. Definitions.
3. Panel of Chairmen.
4. Deputy-President of the Assembly.
5. Powers of person presiding.
6. Appointment of the Secretary.
7. Election of Deputy-President by the Assembly.
8. Questions.
9. Questions addressed to a non-official member.
10. Subject-matter of questions.
11. Form and contents of questions.
12. Notice of questions,
13. Power to allow, amend or return questions.
14. Power to disallow questions and manner of putting questions.
15. Prohibition of discussion in respect of President's order.
16. Answer to question on the ground of public interests.
17. Supplementary questions.
18. Member may decline to answer supplementary questions without notice.
19. Prohibition of discussion.
20. Motions for adjournment.
21. Restrictions on right to move for adjournment
22. (1) Method of asking leave.
    (2) Procedure to be followed.
23. (1) Procedure on motion to adjourn.
    (2) Limitation of time of discussion.
24. Power of Dewan to disallow motion for adjournment.
25. Quorum.
26. Language of the Legislature.
27. Decision on points of order.
28. Form, contents and subject-matter of speech.
29. Irrelevance or repetition.
30. Power to order withdrawal of member.
31. Publication of Bills.
32. Notice of motion for leave to introduce Bills.
33. Publication.
34. Persons by whom motions in respect of Bills may be made.

35. Effect of certification by Dewan.
36. Bills which have passed originating Chamber.
37. Notice.
38. Motion for consideration.
39. Discussion.
40. Reference to Select Committee.
41. Consideration and passing.
42. Bills passed in either Chamber without amendment.
43. Bills passed in either Chamber with amendments.
44. Return of amended Bills to originating Chamber.
45. Appointment of time for consideration of amendments.
46. Procedure on consideration of amendments.
47. Procedure consequent on consideration of amendments.
48. Convening of Joint Committee.
49. President and procedure.
50. Effect of Joint Committee.
51. Joint Committees.
52. Procedure after Report of Joint Committee.
53. Messages.
54. Effect of dissolution on pending Bills.
55. Discussion on matters of general public concern.
56. Restrictions on subjects for discussion.
57. Form and contents of resolutions.
58. Notice of resolutions.
59. Power to admit or return for amendment.
60. Power to disallow resolutions.
61. Prohibition of discussion in respect of President's order.
62. Motion and withdrawal of resolutions.
63. Limits of discussion.
64. Amendments.
65. Duration of speeches.
66. Copy to Government.
67. The Budget.
68. Demands for grants.
69. Stages of the Budget debate in Assembly.
70. General discussion.
71. Voting of grants.
72. Motions at this stage.
73. Presentation of Budget in parts.
74. (1) Stages of the Budget debate in Council.
    (2) General discussion.
    (3) Voting of grants in Council.
75. Procedure in State Council.
76. Declaration by Dewan.
77. Supplementary or additional grants.
78. [Appointments on salary or maximum salary of Rs. 500.]
79. Constitution of Committee on Public Accounts.
80. Control of Committee on Public Accounts.

Passed under the date the 12th Thulam 1108 corresponding to the 28th October 1932.

In exercise of the powers conferred by Sections 5, 6, 7, 15, 16, 25, 27, 28, 33, 34 and 35 of Regulation II of 1108, the Government of His Highness the Maha Raja are pleased to make the following Rules :—

Short title and commencement.

1. (1) These Rules may be called the "Travancore Legislative Rules."

(2) They shall come into force on the eighteenth day of Dhanu 1108, corresponding to the 1st day of January 1933.

2. In these Rules, unless the context otherwise requires,

Definitions.

"Assembly" means the Sri Mulam Assembly;

"Bill" means a proposed enactment in any stage before it has received the assent of His Highness the Maha Raja ;

"Chamber" means a Chamber of the Travancore Legislature ;

"Council" means the Travancore Sri Chitra State Council ;

"Financial Secretary" means and includes the member of either Chamber appointed by the Dewan to perform the functions assigned to the Financial Secretary under these Rules ;

"Gazette" means the Travancore Government Gazette ;

"Member" means a member of either Chamber ;

"Regulation" means the Travancore Legislative Reforms Regulation of 1108 ;

"Resolution" means a motion for the purpose of discussing a matter of general public interest ;

"Secretary" means the Secretary to either Chamber and includes any person for the time being performing the duties of the Secretary.

"Standing Order" means a standing order made under or in pursuance of the Regulation ;

In the computation of "clear days", Sundays and holidays are not excluded, but the day of the meeting and the day of receipt of notice by the Secretary are excluded.

Panel of Chairmen.

3. (1) At the commencement of every session of the Council, the President shall nominate from amongst the members of the Council a panel of not more than two chairmen, any one of whom may preside over the Council in the absence of the President, or whenever necessary, and in such circumstances as he may direct.

(2) At the commencement of every session of the Assembly, the President shall nominate from amongst the members of the Assembly a panel of not more than two chairmen, any one of whom may preside over the Assembly in the absence of the President, or whenever necessary, and in such circumstances as may be directed by the President or, in his absence by the Deputy President.

Deputy-President of the Assembly.

4. If at any time the office of the Deputy-President is vacant and there is no person authorised and able to preside over the Assembly, the Dewan shall appoint from amongst its members a chairman to preside until a Deputy-President has been duly elected and the approval of the Government to the election has been announced to the Assembly.

Powers of person presiding.

5. The Deputy President and any chairman of the Assembly and any person appointed by the Dewan to preside over the Council shall, when presiding over the Assembly or the Council, as the case may be, have the same powers as the President when so presiding, and all references to the President in these Rules shall, in these circumstances, be deemed to be references to any such person so presiding.

Appointment of the Secretary.

6. The Secretary of either Chamber and such assistants of the Secretary as the Government consider to be necessary, shall be appointed by order in writing by the Government and shall hold office during their pleasure.

Election of Deputy-President by the Assembly.

7. (1) When, owing to the expiry of the term of office of the Deputy-President of the Assembly or the existence of any vacancy in the office of the Deputy-President, the election of a Deputy-President is necessary, the Dewan shall fix a date for the holding of the election, and the Secretary shall send to every member notice of the date so fixed.

(2) At any time before noon on the day preceding the date so fixed any member may nominate another member for election by delivering to the Secretary a nomination paper signed by himself as proposer and by a third member as seconder and stating—

(*a*) the name of the member nominated, and

(*b*) that the proposer has ascertained that such member is willing to serve as Deputy-President, if elected.

(3) On the date fixed for election, the President or, in his absence, the chairman, shall read out to the Assembly the names of the members who have been duly nominated together with those of their proposers and

seconders, and, if only one member has been so nominated, shall declare that member to be elected. If more than one member has been so nominated, the Assembly shall proceed to elect a Deputy-President by ballot.

(4) For the purposes of sub-rule (3), a member shall not be deemed to have been duly nominated or to be entitled to vote, if he and his proposer and seconder have not, before the reading out of the names by the presiding member, taken the oath or made an affirmation as members of the Assembly.

(5) Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot being excluded from the election until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be.

(6) Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under sub-rule (5), the determination, as between the candidates whose votes are equal, of the candidate who is to be excluded, shall be by drawing of lots.

(7) No member who has been elected Deputy-President and whose election has not been approved by the Government shall be nominated as a candidate during the continuance of the same Assembly.

Questions.

8. Subject to the conditions and restrictions in the following Rules any member may ask any question on matters of public concern.

Questions addressed to a non-official member.

9. A question addressed to a non-official member must relate to some Bill, resolution or other matter connected with the business of the Chamber for which that member is responsible.

Subject-matter of questions.

10. (1) No question shall be asked on any of the following subjects :-

(*a*) any matter removed from the cognisance of the Legislature under Section 17 of the Legislative Reforms Regulation;

(*b*) any matter connected with the administration, management and control of the Palaces of His Highness the Maha Raja or of any other member of the Ruling Family;

(*c*) any matter which is under adjudication by a Court of Law having jurisdiction in Travancore.

(2) If any doubt arises whether any question is or is not within the restrictions imposed by sub-rule (1), the President shall decide the point and his decision shall be final.

Form and contents of questions.

11. No question shall be asked unless it complies with the following conditions, namely :—

(*a*) it shall relate to a single matter ;

(*b*) it shall be so framed as to be merely a request for information ;

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity ;

(*d*) it shall not ask for an expression of opinion or the solution of a hypothetical proposition or the solution of an abstract legal question ;

(*e*) if a question contains a statement, the member asking it must make himself responsible for the accuracy of the statement ;

(*f*) it shall not bring in any name or statement not strictly necessary to make the question intelligible ;

(*g*) a question once fully answered may not be asked again ; and

(*h*) it shall not be of excessive length.

Notice of questions.

12. A member who wishes to ask a question shall give notice in writing to the Secretary at least twelve clear days before the date fixed for the meeting at which he desires to put the question and shall together with the notice submit a copy of the question which he wishes to ask :

Provided that the President may allow a question to be put with shorter notice than twelve days and may in any case require longer notice or may extend the time for answering a question.

Power to allow, amend or return questions.

13. (1) The Secretary shall submit every question of which notice has been given to him in accordance with Rule 12 to the President whom may either allow it, or, when any question is not framed in accordance with Rule 11, may either himself amend it in such a way as to render it admissible or may cause it to be returned to the member concerned for the purpose of amendment.

(2) If the member does not, within such time as the President may fix in this behalf, resubmit the question duly amended or intimate his acceptance of the President's amendment, the question shall be deemed to have been withdrawn.

Power to disallow questions and manner of putting questions.

14. (1) The President may disallow any question or any part of a question when—

(*a*) it is in contravention of these Rules or the Standing Orders; or

(*b*) in his opinion it amounts to an abuse of the right of questioning; or

(*c*) it cannot be answered consistently with public interests.

(2) If a question or part of a question is disallowed, it shall not be placed on the list of questions nor shall it be entered in the proceedings of the Legislature.

(3) Questions shall be put and answers given in such manner as the President may, in his discretion, determine.

Prohibition of discussion in respect of President's order.

15. No discussion in the Council or the Assembly shall be permitted in respect of any order of the President under Rule 10, 13 or 14.

Answer to question on the ground of public interest.

16. The President may rule that an answer to a question in the statement of business for the day shall be given on the ground of public interests even though the question is not put or the member in whose name it stands is absent.

Supplementary questions.

17. Any member may put a supplementary question for the purpose of further elucidating any matter of fact regarding which an answer has been given :

Provided that the President shall disallow any supplementary question, if, in his opinion, it infringes the Rules as to the subject-matter of questions.

Member may decline to answer supplementary questions without notice.

18. The member to whom a supplementary question is addressed may decline to answer it without notice, in which case the supplementary question can be put only in the form of a fresh question at a subsequent meeting.

Prohibition of discussion.

19. No discussion shall be permitted in respect of any question or of any answer given to a question.

Motions for adjournment.

20. A motion for an adjournment of the business of either Chamber for the purpose of discussing a definite matter of urgent public importance may be made with the consent of the President.

Restrictions on right to move for adjournment.

21. The right to move the adjournment of either Chamber for the purpose of discussing a definite matter of urgent public importance shall be subject to the following restrictions, namely:—

(1) not more than one such motion shall be made at the same sitting :

(2) not more than one matter may be discussed on the same motion and the motion must be restricted to a specific matter of recent occurrence ;

(3) the motion must not revive discussion on a matter which has been discussed in the same session ;

(4) the motion must not anticipate a matter which has been previously appointed for consideration, or with reference to which a notice of motion has been previously given ; and

(5) the motion must not deal with a matter on which a resolution could not be moved.

Method of asking leave.

22. (1) The member asking for leave must, before the commencement of the sitting of the day, leave with the Secretary a written statement of the matter proposed to be discussed.

Procedure to be followed.

(2) If the President is of opinion that the matter proposed to be discussed is in order, he shall read the statement to the Chamber and ask whether the member has the leave of the Chamber to move the adjournment. If no objection is taken, the President shall intimate the hour at which the motion will be taken. If objection is taken, the President shall request those members who are in favour of leave being granted to rise in their places, and, if not less than fourteen members in the Assembly or eight members in the Council, as the case may be, rise accordingly, he shall similarly intimate the hour. If less than fourteen members in the case of the Assembly, and eight members in the case of the Council, rise, the President shall inform the member that he has not the leave of the Chamber.

Procedure on a motion to adjourn.

23. (1) On a motion to adjourn for the purpose of discussing a matter of urgent public importance, the only question that may be put shall be " that the Assembly/Council do now adjourn ", provided that, if the debate is not concluded earlier, it shall automatically terminate at the end of two hours, and thereafter no question shall be put.

Limitation of time of discussion.

(2) No speech during the debate shall exceed fifteen minutes in duration.

24. Notwithstanding anything contained in Rules 20 to 23 the Dewan may disallow any motion for adjournment on the ground that it cannot be moved without detriment to public interests, and, on his doing so, no further discussion of the motion shall take place.

Power of Dewan to disallow motion for adjournment.

25. In the case of the Council, the presence of at least ten members and, in the case of the Assembly, the presence of at least twelve members, shall be necessary to constitute a meeting of the Council or of the Assembly for the exercise of its powers.

Quorum.

26. The business of the Legislature shall be transacted in English, provided that the President may permit any member to address the Chamber in Malayalam or Tamil.

Language of the Legislature.

27. (1) The President or other person presiding shall decide all points of order which may arise, and his decision shall be final.

Decision on points of order.

(2) Any member may at any time submit a point of order for the decision of the President or other person presiding but, in doing so, shall confine himself to stating the point.

28. (1) The matter of every speech must be strictly relevant to the business before the Chamber.

Form, contents and subject-matter of speech.

(2) A member while speaking must not—

(*a*) refer to any matter on which a judicial decision is pending;

(*b*) make a personal charge against a member;

(c) reflect upon the conduct of His Highness the Maha Raja, or any other member of the Ruling Family, of His Majesty the King-Emperor, of the Ruler of any foreign State, of the Governor-General of India, of the Governor of any Province in British India, or of any Court of Justice having jurisdiction in Travancore;

(*d*) utter treasonable, seditious or defamatory words; or

(*e*) use his right of speech for the purpose of obstructing the business of the Chamber.

29. The President or other person presiding, after having called the attention of the Chamber to the conduct of a member who persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other members in debate, may direct him to discontinue his speech.

Irrelevance or repetition.

30. (1) The President or other person presiding shall preserve order and have all powers necessary for the purpose of enforcing his decisions on all points of order.

Power to order withdrawal of member.

(2) He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the Chamber, and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day's meeting. If any member is ordered to withdraw a second time in the same session, the President or other person presiding may direct the member to absent himself from the meetings of the Chamber for any period not longer than the remainder of the session, and the member so directed shall absent himself accordingly.

(3) The President or other person presiding may, in the case of grave disorder arising in the Chamber, suspend any sitting for a time to be named by him.

31. The Dewan may order the publication in the Gazette of any Bill (together with the Statement of Objects and Reasons accompanying it) although no motion has been made for leave to introduce the Bill. In that case, it shall not be necessary to move for leave to introduce the Bill, and, if the Bill is afterwards introduced, it shall not be necessary to publish it again.

Publication of Bills.

32. (1) Any member, other than a member acting on behalf of Government, desiring to move for leave to introduce a Bill, shall give notice of his intention, and shall, togther with the notice, submit a copy of the Bill and a full Statement of Objects and Reasons.

Notice of motion for leave to introduce Bills.

(2) If the Bill is a Bill which under the Regulation requires sanction, the member shall annex to the notice a copy of such sanction, and the notice shall not be valid until this requirement is complied with.

(3) If any question arises whether a Bill is or is not a Bill which requires sanction under the Regulation, the question shall be referred to the Dewan, and his decision on the question shall be final.

(4) The period of notice of a motion for leave to introduce a Bill under this Rule shall be one month, or, if the President so directs, a further period not exceeding in all two months.

33. As soon as may be after a Bill has been introduced, the Bill, unless it has already been published, shall be published in the Gazette.

Publication.

Persons by whom motions in respect of Bills may be made.

34. (1) No motion that a Bill be taken into consideration or be passed shall be made by any member other than the member in charge of the Bill and no motion that a Bill be referred to a Select Committee shall be made by any member other than the member in charge except by way of amendment to a motion made by the member in charge.

(2) For the purposes of this Rule "member in charge of the Bill" means, in the case of a Government Bill, any member acting on behalf of the Government and, in any other case, the member who has introduced the Bill, or, where the Bill has been laid on the table in the other Chamber, the member who has given notice of his intention to move that the Bill be taken into consideration.

Effect of certification by Dewan.

35. If the Dewan certifies that a Bill or any clause of a Bill or any amendment to a Bill affects the safety or tranquillity of Travancore or any part thereof, and directs that no proceedings or no further proceedings shall be taken thereon, all notices of motions in connection with the subject-matter of the certificate shall lapse, and, if any such motion has not already been set down on the list of business, it shall not be so set down. If any such motion has been set down on the list of business, the President or other person presiding shall, when the motion is reached, inform the Chamber of the Dewan's action, and the Chamber shall forthwith without debate proceed to the next item of business.

Bills which have passed originating Chamber.

36. Every Bill which has been passed by the originating Chamber shall be sent to the other Chamber, and copies of the Bill shall be made available to the members of that Chamber.

Notice.

37. At any time after copies have been so made available, any member acting on behalf of Government in the case of a Government Bill, or, in any other case, any member may give notice of his intention to move that the Bill be taken into consideration.

Motion for consideration.

38. On the day on which the motion is set down in the list of business which shall, unless the President otherwise directs, be not less than three days from the receipt of the notice, the member giving notice may move that the Bill be taken into consideration.

Discussion.

39. On the day on which such motion is made or on any subsequent day to which the discussion is postponed, the principle of the Bill and its general provisions may be discussed,

but the details of the Bill must not be discussed further than is necessary to explain its principles.

Reference to Select Committee.

40. Any member may (if the Bill has not already been referred to a Select Committee of the originating Chamber or to a Joint Committee of both Chambers, but not otherwise) move as an amendment that the Bill be referred to a Select Committee, and, if such motion is carried, the Bill shall be referred to a Select Committee, and the Standing Orders regarding Select Committees on Bills originating in the Chamber shall then apply.

Consideration and passing.

41. If the motion that the Bill be taken into consideration is carried, the Bill shall be taken into consideration, and the provisions of the Standing Orders of the Chamber regarding consideration of amendments to Bills and the subsequent procedure in regard to the passing of Bills shall apply.

Bills passed in either Chamber without amendment.

42. If the Bill is passed without amendment and the originating Chamber is the Assembly, a message shall be sent to the Assembly intimating that the Council have agreed to the Bill without any amendments. If the originating Chamber is the Council, the Bill with a message to the effect that the Assembly have agreed to the Bill without any amendments shall be sent to the Council.

Bills passed in either Chamber with amendments.

43. If the Bill is passed with amendments, the Bill shall be returned with a message asking the concurrence of the originating Chamber to the amendments.

Return of amended Bills to originating Chamber.

44. When a Bill which has been amended in the other Chamber is returned to the originating Chamber, copies of the Bill shall be furnished to members of that Chamber.

Appointment of time for consideration of amendments.

45. After copies of an amended Bill have been so furnished, any member acting on behalf of Government in the case of a Government Bill or, in any other case, any member after giving three days' notice, or with the consent of the President without notice, may move that the amendments be taken into consideration.

Procedure on consideration of amendments.

46. (1) If a motion that the amendments be taken into consideration is carried, the President shall put the amendments to the Chamber in such manner as he thinks most convenient for their consideration.

(2) Further amendments relevant to the subject-matter of the amendments made by the other Chamber may be moved, but no further

amendment shall be moved to the Bill, unless it is consequential upon or an alternative to, an amendment made by the other Chamber.

Procedure consequent on consideration of amendments.

47. (1) If the Chamber agrees to the amendments made by the other Chamber, a message intimating its agreement shall be sent to that Chamber.

(2) If the Chamber disagrees with the amendments made by the other Chamber or any of them, the Bill with a message intimating its disagreement shall be sent to that Chamber.

(3) If the Chamber agrees to the amendments or any of them with further amendments or proposes further amendments in place of amendments made by the other Chamber, the Bill, as further amended, with a message to that effect, shall be sent to the other Chamber.

(4) The other Chamber may either agree to the Bill as originally passed in the originating Chamber or as further amended by that Chamber, as the case may be, or may return the Bill with a message that it insists on an amendment or on amendments to which the originating Chamber has disagreed.

(5) If a Bill is returned with a message intimating that the other Chamber insists on amendments to which the originating Chamber is unable to agree, that Chamber may either—

(*a*) report the fact of the disagreement to the Dewan, or

(*b*) allow the Bill to lapse.

Convening of Joint Committee.

48. A Joint Committee of an equal number of members selected by each Chamber in accordance with Rules made by the Government in this behalf shall be convened by the Dewan by Notification in the Gazette. The time and place of the sitting of the Joint Committee shall be fixed by the President of the Council.

President and procedure.

49. (1) The President of the Council shall preside at the Joint Committee, and the procedure of the Council shall, so far as practicable, apply.

(2) Any official member of either Chamber, nominated in this behalf by the Dewan, shall also have the right to attend in and address meetings of the Joint Committee although he be not a member of such Committee.

Effect of Joint Committee.

50. The members present at a Joint Committee may deliberate and shall vote together upon the Bill as last proposed by the originating Chamber and upon amendments, if any, which have been made therein by one Chamber and have not been agreed to by the other, and any such amendments which

are affirmed by a clear majority of five shall be taken to have been carried; and if the Bill with the amendments, if any, is passed by a clear majority of five, it shall be deemed to have been duly passed by both Chambers.

Joint Committees.

51. (1) If, after a Bill has been introduced, a motion is passed in the originating Chamber recommending that the Bill should be committed to a Joint Committee of both Chambers, a message shall be sent to the other Chamber to inform it of the motion and to desire its concurrence in the motion.

(2) If the other Chamber agrees, an equal number of members shall be selected by each Chamber from that Chamber to serve on the Committee.

(3) The President of the Council or any member of the Joint Committee nominated by the President shall be the Chairman of the Joint Committee, and he shall have a second or casting vote.

(4) The time and place of the meeting of the Joint Committee shall be fixed by the President of the Council.

Procedure after Report of Joint Committee.

52. The Report of the Joint Committee shall be presented to both Chambers. The member in charge of the Bill shall present it in the originating Chamber together with the Bill and a member deputed by the Committee shall present it in the other Chamber. The Bill shall thereafter be proceeded with in the originating Chamber in the same manner as a Bill reported by a Select Committee of that Chamber.

Messages.

53. Messages between one Chamber and the other shall be conveyed by the Secretary of the one Chamber to the Secretary of the other.

Effect of dissolution on pending Bills.

54. On the dissolution of either Chamber all Bills, other than Government Bills, which have been introduced in the Chamber which has been dissolved or have been sent to that Chamber under Rule 36 and which have not been passed by the Legislature, shall lapse except under such circumstances as may be provided for by Standing Orders made in this behalf.

Discussion on matters of general public concern.

55. Any matter of general public concern may be discussed in either Chamber, subject to the following conditions and restrictions.

Restrictions on subjects for discussion.

56. (1) No such discussion shall be permitted in regard to any of the following subjects :—

(*a*) any matter removed from the cognisance of the Chamber under section 17 of the Regulation;

(*b*) any matter connected with the administration, management and control of the Palaces of His Highness the Maha Raja or of any other member of the Ruling Family ;

(*c*) any matter under adjudication by a Court of Law having jurisdiction in Travancore.

(2) If any doubt arises whether any resolution is or is not within the restriction imposed by sub-rule (1), the President shall decide the point and his decision shall be final.

Form and contents of resolutions.

57. Subject to the restrictions contained in Rule 56, any member may move a resolution relating to a matter of general public concern :

Provided that no resolution shall be admissible which does not comply with the following conditions, namely :—

(*a*) it shall be in the form of a specific recommendation addressed to the Government ;

(*b*) it shall be clearly and definitely expressed and raise a definite issue ;

(*c*) it shall not contain arguments, inferences, ironical expressions, or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity ;

(*d*) it shall not raise a question substantially identical with one on which the Chamber has given a decision within the space of one year previous.

Notice of resolutions.

58. A member who wishes to move a resolution shall give notice in writing to the Secretary at least fifteen clear days before the meeting of the Chamber at which he desires to move the resolution, and shall, together with the notice, submit a copy of the resolution which he wishes to move :

Provided that the President may allow any resolution to be moved with shorter notice than fifteen days and may, in any case, require longer notice.

Power to admit or return for amendment.

59. (1) The Secretary shall submit every resolution of which notice has been given to him in accordance with Rule 58 to the President who may either admit it, or when any resolution is not framed in accordance with Rule 57 cause it to be returned to the member concerned for the purpose of amendment.

(2) If the member does not, within such time as the President may fix in this behalf, resubmit the resolution duly amended, the resolution shall be deemed to have been withdrawn.

Power to disallow resolutions.

60. The President may disallow any resolution or part of a resolution if it contravenes any of the Rules or the Standing Orders, or if, in his opinion, it cannot be moved consistently with the public interests; and, if he does so, the resolution or part of the resolution shall not be placed on the list of business.

Prohibition of discussion in respect of President's order.

61. (1) No discussion in the Chamber shall be permitted in respect of any order of the President under Rules 56 or 60.

(2) A resolution that has been disallowed shall not be entered in the proceedings of the Chamber.

Motion and withdrawal of resolutions.

62. (1) A member in whose name a resolution appears on the list of business shall, when called on, either—

(*a*) withdraw the resolution, in which case he shall confine himself to a mere statement to that effect; or

(*b*) move the resolution.

(2) If the member when called on is absent, the resolution standing in his name shall be considered to have been withdrawn.

(3) Every resolution which has been moved shall be seconded; otherwise it shall not be discussed, nor shall any question be put on it.

Limits of discussion.

63. The discussion of a resolution shall be limited to the subject of the resolution and shall not extend to any matter as to which a resolution may not be moved.

Amendments.

64. After a resolution has been moved, any member may, subject to the Rules and Standing Orders relating to resolutions, except as to length of notice under Rule 58, move an amendment to the resolution.

Duration of speeches.

65. Except with the permission of the President, no speech shall exceed ten minutes in duration, provided that the mover of a resolution when moving the same, and the official member in charge of the subject, may speak for twenty minutes.

Copy to Government.

66. A copy of every resolution which has been passed by the Chamber shall be forwarded to the Government, but any such resolution shall have effect only as a recommendation to the Government.

The Budget.

67. A statement of the estimated annual expenditure and revenue of the State (hereinafter called the Budget) shall be presented to the Assembly and the Council at a Joint Sitting of both Chambers before the beginning of the year for which it is framed and on such day as the Dewan may appoint.

Demands for grants.

68. (1) A separate demand shall ordinarily be made in respect of the grant proposed for each department of Government:

Provided that the Government may in their discretion include in one demand grants proposed for two or more departments or make a demand in respect of expenditure which cannot readily be classified under particular departments.

(2) Each demand shall contain firstly a statement of the total grant proposed, and then a statement of the detailed estimate under each grant divided into items.

(3) Subject to these Rules, the Budget shall be presented in such a form as the Government may consider best fitted for its consideration by the Legislature.

(4) On the day on which the Budget is presented, the Financial Secretary shall explain the Budget, and the President may, if he thinks fit, make any statement thereon.

Stages of the Budget debate in Assembly.

69. The Budget shall be dealt with by the Assembly in two stages, namely,—

(*a*) a general discussion, and

(*b*) the voting of demands for grants.

General discussion.

70. (1) On a day to be appointed by the Dewan subsequent to the day on which the Budget is presented and for such time as the Dewan may allot for this purpose, the Assembly shall be at liberty to discuss the Budget as a whole or any question of principle involved therein, but no motion shall be moved at this stage, nor shall any member be entitled to divide the Assembly in respect of any such discussion on the Budget.

(2) The Financial Secretary shall have a general right of reply at the end of the discussion and the President may, if he thinks fit, make any remarks.

(3) No member other than the Financial Secretary shall speak for more than twenty minutes.

(4) The President may, if he thinks fit, prescribe a time-limit for speeches.

Voting of grants.

71. (1) Not more than seven days shall be allotted by the Dewan for the discussion by the Assembly of the demands of the Government for grants.

(2) Of the days so allotted not more than one day shall be allotted by the Dewan to the discussion of any one demand. As soon as the

maximum limit of time for discussion is reached the President shall forthwith put to the vote every question necessary to dispose of the demand under discussion.

(3) On the last day of the allotted days at 5 o'clock in the evening the President shall forthwith put to the vote every question necessary to dispose of all the outstanding matters in connection with the demands for grants.

Motions at this stage.

72. (1) No motion for appropriation can be made by either Chamber except on the recommendation of the Government.

(2) Motions may be moved at this stage by the Assembly to omit or reduce any grant or any item in a grant, but not to increase or alter the destination of a grant.

(3) When several motions relating to the same demand are offered, they shall be discussed in the order in which the heads to which they relate appear in the Budget.

(4) No motion shall be made for the reduction of a grant as a whole until all the motions for the omission or reduction of definite items within the grant have been discussed.

Presentation of Budget in parts.

73. Nothing hereinbefore contained shall be deemed to prevent the presentation of the Budget to each Chamber in two or more parts, and, when such presentation takes place, each part shall be dealt with in accordance with the foregoing Rules as if it were the Budget.

Stages of the Budget debate in Council.

74. (1) The Budget shall be dealt with by the Council in two stages, namely :—

(*a*) a general discussion, and

(*b*) the voting of demands for grants.

General discussion.

(2) (*a*) On a day to be appointed by the Dewan subsequent to the day on which the Budget is presented and for such time as the Dewan may allot for this purpose, the Council shall be at liberty to discuss the Budget as a whole or any question of principle involved therein, but no motion shall be moved at this stage, nor shall any member be entitled to divide the Council in respect of any such discussion on the Budget.

(*b*) The Financial Secretary shall have a general right of reply at the end of the discussion and the President may, if he thinks fit, make any remarks.

(*c*) No member other than the Financial Secretary shall speak for more than twenty minutes.

(*d*) The President may, if he thinks fit, prescribe a time-limit for speeches.

Voting of grants in Council.

(3) Not more than four days shall be allotted by the Dewan for the discussion by the Council of the demands of the Government for grants ; and not more than half a day shall be allotted to the discussion of any one demand.

(4) As soon as the maximum limit of time for discussion is reached, the President shall forthwith put to the vote the demand under discussion.

(5) On the last day of the allotted days, at 5 o' clock in the evening, the President shall forthwith put to the vote every question necessary to dispose of all the outstanding demands.

Procedure in State Council.

75. The Council shall consider and discuss each demand as a whole, and shall vote upon each demand as a whole. The Council shall not move for reduction of any grant or of any item in a grant making up the demand submitted to its vote.

Declaration by Dewan.

76. If the Dewan declares that he is satisfied that any demand which has been refused or reduced is essential to the discharge of the responsibilities of the Government and if the Government act as if such demand had been assented to, or, if the Government, in case of emergency, authorise such expenditure as, in their opinion, is necessary for the safety, tranquillity or interests of Travancore or any part thereof, or, if any expenditure is incurred by the Government under Section 32 of the Regulation, a statement showing the action so taken by the Government shall be laid on the table by the Financial Secretary; but no motion shall be made in regard to that action, nor shall that statement be discussed.

Supplementary or additional grants.

77. (1) An estimate shall be presented to the Assembly and the Council for a supplementary or additional grant when—

(*a*) the amount voted in the Budget of a grant for which the vote of the Legislature is necessary is found to be insufficient for the purpose of the current year, or

(*b*) a need arises during the current year for expenditure for which the vote of the Legislature is necessary upon some new service not contemplated in the Budget for that year.

(2) An estimate may be presented to the Assembly and the Council for an additional or supplementary grant in respect of any demand to

which the Assembly or the Council has previously refused its assent, or in respect of an amount which the Assembly has refused.

(3) Supplementary or additional estimates shall be dealt with by the Assembly and the Council in the same way as if they were demands for grants.

78. All appointments the salary or the maximum salary of which is Rs. 500 per mensem or above are specified for the purpose of Section 28, Sub-section (4), clause (*d*), sub-clause (ii) of the Regulation.

Constitution of Committee on Public Accounts.

79. (1) As soon as may be after the commencement of each Financial year, a Committee on Public Accounts shall be constituted for the purpose of dealing with the audit and appropriation of the accounts of the Government so far as they relate to heads of expenditure not removed from the cognisance of the Legislature under Section 28 of the Regulation and with such other matters as the Government may refer to the Committee.

(2) The Committee on Public Accounts shall consist of not more than seven members including the Chairman, of whom two shall be elected by the non-official members of the Assembly and one by the non-official members of the Council, according to the principle of proportionate representation by means of the single transferable vote, or in such other manner as may be prescribed by the Dewan. The remaining members shall be nominated by the Government.

(3) The Dewan, or a person nominated by the Dewan, shall be the Chairman of the Committee, and, in the case of an equality of votes, the Chairman shall have a second or casting vote.

Control of Committee on Public Accounts.

80. (1) In scrutinising the audit and appropriation accounts of the Government, it shall be the duty of the Committee to satisfy itself that the money voted by the Legislature has been spent within the scope of the demand granted by the Legislature.

(2) It shall be the duty of the Committee to bring to the notice of the Legislature —

(*a*) every re-appropriation from one grant to another grant;

(*b*) every re-appropriation within a grant which is not made in accordance with such Rules as may be prescribed by the Government; and

(*c*) all expenditure which the Government have requested should be brought to the notice of the Legislature.

REGULATION II OF 1108.

II

THE SRI CHITRA STATE COUNCIL ELECTORAL RULES. (a)

CONTENTS.

Rules.

1. Short title and commencement.
2. Definitions.

PART I.

Composition of Council and Constituencies.

3. Composition of Council.
4. Constituencies.

PART II.

Qualifications of Elected Members.

5. General disqualifications for being elected.
6. Special qualifications for election.

PART III.

The Electoral Roll.

7. General conditions of registration and disqualifications.
8. Qualifications of electors.
9. Electoral roll.
10. Right to vote.

PART IV.

Elections.

11. Nomination of candidates.
12. Deposit on nomination.
13. Death of a candidate before poll.
14. Procedure at election.
15. Election by more than one constituency.

Election Agents and Return of Expenses.

16. Disqualification for being election agent.
17. Revocation of appointment of election agent.
18. Return of election expenses.
19. Fixation of maximum election expenses.
20. Accounts of agents.

(a) R. O. C. No. 253/33/Legis., dated 14th March 1933.—*T. G. G. dated 14-3-1933.*

PART V.

Nominated Members.

21. General disqualifications for nomination.
22. Duration of membership.

PART VI.

General Provisions.

23. Obligation to take oath.
24. Vacation of seat.
25. Effect of subsequent disabilities or failure to take oath.
26. Vacancies.

General Elections.

27. Reconstitution of Council.
28. Publication of result of general election.
29. Powers of Government in case of difficulty.

PART VII.

The final Decision of Doubts and Disputes as to the Validity of an Election.

30. Definitions.
31. Election petition.
32. Presentation of the petition.
33. Contents of the petition.
34. Against whom it may be presented.
35. Deposit of security.
36. (1) Dismissal for default.
(2) Appointment of Commissioners.
37. Inquiry by Commissioners.
38. Place of inquiry.
39. Withdrawal of petition.
40. Abatement or substitution on death of petitioner.
41. Abatement or substitution on death of respondent.
42. Recrimination when seat claimed.
43. Attendance of Law Officers.
44. Grounds for declaring election void.
45. Report of Commissioners and procedure thereon.
46. Form of report.
47. Finding as to corrupt practices and persons guilty thereof.

PART VIII.

Special Provision.

48. Interpretation in case of doubt.

PART IX.

Miscellaneous.

49. Government to make provision regarding custody, &c., of election papers and conduct of elections.

Schedule I.—List of Constituencies.
„ **II.**—Qualifications of Electors.
General Constituencies.
Special Constituencies.
1. Municipal Councils Constituency.
2. Planters' Constituency.
3. Jenmi's Constituency.
4. Edavagai Constituency.
5. Commerce and Industry Constituencies.
„ **III.**—Rules for the preparation of electoral rolls and the conduct of elections.

Preliminary.

PART I.

Rules for the preparation of electoral rolls for the election of members for all constituencies other than the planting constituency.

CHAPTER I.

2—8. The Electoral Roll.
9—11. Claims and objections.
12—13. Revising authority.
14—16. Final publication of the roll.
17—20. General.

CHAPTER II.

22—24. Returning Officers.
25—27. Nomination of candidates.
28—32. Scrutiny of nominations.
33—54. Voting.
55—60. Counting of votes.
61—63. Miscellaneous.

PART II.

Rules for the Election of a Member for the Planting Constituency.

64—67. The Electoral Roll.
68—70. Claims and Objections.
71—75. Revising Authority.
76. The Returning Officer.
77—78. Nomination of candidates.
79—81. Scrutiny of nominations.
82—92. Voting.
93—97. Counting of votes.
98–100. Miscellaneous.
„ **IV.**—Return of election expenses.
„ **V.**—Corrupt Practices.
„ **VI.**—List of Returning Officers.
Forms I to XXII.

Rules under the Travancore Legislative Reforms Regulation II of 1108, for the election and nomination of members to the Travancore Sri Chitra State Council, the qualification of electors and members, the constitution of constituencies and the final decision of doubts and disputes as to the validity of elections

Passed by the Government of His Highness the Maha Raja under date the 14th March 1933 corresponding to the 1st Meenam 1108.

In exercise of the powers conferred by Sections 15 and 34 of the Travancore Legislative Reforms Regulation, II of 1108, the Government of His Highness the Maha Raja have been pleased to make the following Rules :—

Short title and commencement.

1. (*a*) These Rules may be called the Sri Chitra State Council Electoral Rules.

(*b*) They shall come into force at once.

Definitions.

2. In these Rules, unless there is anything repugnant in the subject or context—

(*a*) "Council" means the Travancore Sri Chitra State Council constituted under the Travancore Legislative Reforms Regulation, II of 1108;

(*b*) "Commissioners" means Commissioners appointed for the purpose of holding an election inquiry under these Rules;

(*c*) "Corrupt practice" means any act deemed to be a corrupt practice under the provisions of Schedule V;

(*d*) "Election Agent" means the person appointed under these Rules by a candidate as his agent for an election;

(*e*) "Gazette" means the Travancore Government Gazette;

(*f*) "The Regulation" means the Travancore Legislative Reforms Regulation, II of 1108;

(*g*) "Rules" includes the provisions of the Schedules; and

(*h*) "Schedule" means a Schedule to these Rules.

PART I.

Composition of Council and Constituencies

Composition of Council

3. The Council shall consist of—

(1) twenty-two elected members; and

(2) fifteen nominated members; of whom,

(*a*) ten shall be officials; and

(*b*) five non-officials.

4. (1) The elected members shall be elected by the constituencies specified in Schedule I, and the number of members to be elected by each constituency shall be as stated therein against that constituency.

Constituencies.

(2) The election of the members for the constituencies mentioned in Schedule I shall be effected by the electorates and in accordance with these Rules and with the procedure respectively prescribed in Schedule III.

PART II.

Qualifications of Elected Members.

5. (1) A person shall not be eligible for election as a member of the Council if such person—

General disqualifications for being elected.

(*a*) is a deaf-mute or a leper; or

(*b*) is a member of the Sri Chitra State Council and has made the oath or affirmation as such member; or

(*c*) is under thirty years of age, except in the case of the Municipal Councils constituency; or

(*d*) has been declared by a competent Court to be of unsound mind; or

(*e*) is an undischarged insolvent; or

(*f*) being a discharged insolvent has not obtained from a Court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or

(*g*) having been a Vakil has been dismissed or is under suspension from practising as such by order of any competent Court:

Provided that the disqualification mentioned in clause (*g*) may be removed by a specific order of Government in this behalf.

(2) A person against whom a conviction by a Criminal Court involving a sentence of imprisonment for a period of six months or more is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for election for five years from the date of the expiration of the sentence:

Provided that on application made by a person disqualified under this sub-rule, the Government may remove the disqualification by order in this behalf.

(3) If any person is convicted of an offence under Chapter IX-A of the Travancore Penal Code or Chapter IX-A of the Indian Penal Code, punishable with imprisonment for a term exceeding six months, or is, after an inquiry by Commissioners appointed under any Rules for the time being in force regarding elections to either Chamber of the Legislature constituted under the Regulation, reported as guilty of a corrupt practice as specified in Part I or in paragraph 1, 2 or 3 of Part II of Schedule V, such person shall not be eligible for election for five years from the date of such conviction or of the finding of the Commissioners, as the case may be, and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for four years fram such date.

(4) If, in respect of an election to either Chamber of the Legislature constituted under the Regulation, or in respect of an election to the Legislative Council constituted under Regulation II of 1097, a return of the election expenses of any person who has been nominated as a candidate for such election is not or has not been lodged within the time and in the manner prescribed by or under the Rules made in that behalf, or if any such return is lodged which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, neither the candidate nor his election agent shall be eligible for election for five years from the date of such election :

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this Rule or incurred under the corresponding provisions of the Rules passed under Regulation II of 1097 may be removed by an order of the Government in that behalf, and, wherever so removed, the disqualification shall cease to exist.

Special Qualifications for Election in case of certain Constituencies.

Special qualifications for election.

6. (1) (*a*) No person shall be eligible for election as a member of the Council to represent a general constituency unless his name is registered on the electoral roll of that constituency or of any other general constituency for the Council.

(*b*) No person shall be eligible for election as a member of the Council to represent a special constituency unless his name is registered on the electoral roll of that constituency :

Provided that a person whose name is registered on the electoral roll of a Commerce and Industry constituency shall be eligible for election by either of the Commerce and Industry constituencies.

(2) For the purposes of these Rules—

(*a*) "Special Constituency" means a Jenmi's, Edavaga, Planters', Commerce and Industry or Municipal Councils constituency.

(*b*) "General Constituency" means any other constituency than a special constituency.

PART III.

The Electoral Roll.

7. (1) Every person shall be entitled to have his name registered on the electoral roll of a constituency who has the qualifications prescribed for an elector of that constituency and who is not subject to any of the following disqualifications, namely :—

General conditions of registration and disqualifications.

(*a*) has been adjudged by a competent Court to be of unsound mind; or

(*b*) is under thirty years of age, except in the case of the Municipal Councils constituency :

Provided that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency or of more than one Commerce and Industry constituency.

(2) If any person is convicted of an offence under Chapter IX-A of the Travancore Penal Code, or Chapter IX-A of the Indian Penal Code, punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to either Chamber of the Legislature constituted under the Regulation, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II of Schedule V, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of five years from the date of the conviction or the report, as the case may be, or, if not on the electoral roll, shall not be so registered for a like period; and if any person is reported by any such Commissioners as guilty of any other corrupt practice, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of four years from the date of the report, or, if not on the electoral roll, shall not be so registered for a like period :

Provided that the Government may direct that the name of any person to whom this sub-rule applies shall be registered on the electoral roll.

8. The qualifications of an elector for a general or a special constituency shall be those specified in Schedule II in the case of that constituency.

Qualifications of electors.

Electoral roll.

9. (1) An electoral roll shall be prepared for every constituency in accordance with the Rules prescribed in Schedule III. It shall be published in the Gazette together with a notice specifying the mode in which and the time within which any person whose name is not entered in the roll and who claims to have it inserted therein, or 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, may prefer a claim or objection to the Revising authority.

(2) The orders made by the Revising Authority shall be final, and the electoral roll shall be amended in accordance therewith, and shall, as so amended, be republished in such manner as the Government may prescribe.

(3) The electoral roll shall come into force on the date of such republication and shall continue in force for a period of four years and after the expiration of such period a fresh roll shall be prepared in accordance with the Rules for the time being in force :

Provided that the Government may, by Notification in the Gazette, direct the preparation of a fresh roll at any time before the expiration of the said period.

(4) If a constituency is called upon to elect a member after an electoral roll has ceased to have force and before the completion of the new electoral roll, the old electoral roll shall, for the purposes of that election, continue to operate as the electoral roll for that constituency.

(5) Notwithstanding anything hereinbefore contained any person may apply to the Government for the amendment of any electoral roll for the time being in force, and the Government may, at any time after any such application has been made in respect of an electoral roll, by Notification in the Gazette, direct the preparation of a list of amendments thereto, and all the provisions of this Rule shall, as far as may be applicable, apply in the case of every such list in like manner as they apply in the case of electoral rolls :

Provided that where any such application is made for the correction of an existing entry in the electoral roll and the Government are satisfied after such inquiry, if any, as the Government may make that the entry relates to the applicant and is erroneous or defective in any particular, the Government may direct the roll to be amended accordingly.

(6) When any list of amendments has been republished under sub-rule (5) the electoral roll to which it relates shall be deemed to have been amended accordingly.

Right to vote.

10. (1) Every person registered on the electoral roll for the time being in force for any constituency shall, while so registered, be entitled to vote at an election of a member for that constituency :

Provided that—

(*a*) no person shall vote at any general election in more than one general constituency, or in more than one Commerce and Industry constituency ;

(*b*) no person shall vote at any election if he is subject to any disability stated in Rule 7; and

(*c*) no person shall vote at any election if on the date on which the poll is taken he is undergoing a sentence of imprisonment.

(2) If any person is, in the course of the hearing of an election petition under these Rules, proved to have voted at the election in contravention of the proviso to sub-rule (1), his vote shall be void.

PART IV.

Elections.

Nomination of candidates.

11. (1) Any person may be nominated as a candidate for election in any constituency for which he is eligible for election under these Rules.

(2) The Government shall appoint for each constituency—

(*a*) a date, not later than the 14th day after the date of the Notification calling upon the constituency to elect a member, for the nomination of candidates ;

(*b*) except in the case of the Planting constituency, a further date not later than the seventh day after the first-mentioned date, for the scrutiny of nominations; and

(*c*) a further date or dates on which a poll shall, if necessary, be taken :

and the dates so appointed shall be notified in the Gazette.

(3) On or before the date so appointed for the nomination of candidates, each candidate shall deliver (unless otherwise provided in Schedule III) either in person or by his proposer and seconder together, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, to the Returning Officer or to such other person as may be authorised in

this behalf by the Government, a nomination paper completed in the form prescribed in Schedule III and subscribed by the candidate himself as assenting to the nomination and by two persons as proposer and seconder whose names are registered on the electoral roll of that constituency.

(4) Any person whose name is registered on the electoral roll of the constituency, and who is not subject to any disability stated in Rule 7, may subscribe, as proposer or seconder, a nomination paper.

(5) Every nomination paper delivered under sub-rule (3) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed or does thereby appoint as his election agent for the election either himself or some one other person who is not disqualified under these Rules for the appointment and who shall be named in the declaration; and no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper.

(6) Any nomination paper which is not received before three o'clock in the afternoon on the date appointed by the Government for the nomination of candidates shall be rejected.

(7) The Returning Officer or other person authorised shall, on receiving a nomination paper under sub-rule (3), inform the person or persons delivering the same of the date, hour and place appointed for the scrutiny of nominations, and shall enter in the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed, in some conspicuous place in his office, a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder.

(8) Any candidate may withdraw his candidature by notice in writing subscribed by him and delivered to the Returning Officer or other person authorised on or before three o'clock in the afternoon on the date succeeding that appointed by the Government for the scrutiny of nominations. A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be renominated as a candidate for the same election.

(9) The Returning officer or other person authorised shall, on receiving a notice of withdrawal under sub-rule (8), as soon as may be, cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

Deposit on nomination.

12. (1) On or before the date appointed for the nomination of candidates, each candidate shall deposit or cause to be deposited with the Returning Officer the sum of two hundred and fifty rupees in cash; and no candidate shall be deemed to be duly nominated unless such deposit has been made.

(2) If a candidate, by whom or on whose behalf the deposit referred to in sub-rule (1) has been made, withdraws his candidature in the manner and within the time specified in sub-rule (8) of Rule 11, or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made; and if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative or, if not made by the candidate, shall be returned to the person by whom it was made.

(3) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is not elected and the number of votes polled by him does not exceed one-eighth of the total number of votes polled, the deposit shall be forfeited to the Government.

(4) For the purpose of sub-rule (3), the number of votes polled shall be deemed to be the number of ballot papers, other then spoilt ballot papers, counted.

(5) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is elected and thereafter his seat is declared vacant under these Rules owing to his failure to make the oath or affirmation hereinafter prescribed, the deposit shall be forfeited to the Government.

(6) The deposit made in respect of a candidate who is not elected shall, if it is not forfeited under sub-sule (3), be returned to the candidate or to the person who has made the deposit on his behalf, as the case may be, as soon as may be after the publication of the result of the election in the Gazette; and the deposit made in respect of a candidate who is elected shall, if it is not forfeited under sub-rule (5), be so returned as soon as may be after the candidate has made the oath or affirmation hereinafter prescribed or in pursuance of a direction by the Government for the return of the deposit despite the fact that the said oath or affirmation has not been made:

Provided that, if a candidate is duly nominated at a general election in more than one constituency, not more than one of the deposits made by him or on his behalf shall be returned, and the remainder shall be forfeited to the Government.

Death of a candidate before poll.

13. If a candidate who has been duly nominated dies after the date appointed for the scrutiny of nominations and before the date appointed for the taking of a poll, the Returning Officer or other authorised person referred to in sub-rule (3) of Rule 11 shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Government, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election :

Provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermanding of the poll.

Procedure at election.

14. (1) If the number of candidates who are duly nominated and who have not withdrawn their candidature in the manner and within the time mentioned in sub-rule (8) of Rule 11 exceeds one, a poll shall be taken.

(2) If there is only one such candidate, he shall be declared to be duly elected.

(3) In the absence of any nomination for a constituency or if the candidate or candidates nominated have withdrawn their candidature in the manner and within the time mentioned in sub-rule (8) of Rule 11, the Government shall, by a Notification in the Gazette, call upon the constituency to elect a person within such time as may be prescribed by the Notification :

Provided that, where the constituency, having already been called upon under this sub-rule, has failed to elect a person to fill the vacancy, the Government shall not be bound to call again upon the constituency to elect a person until such time, if any, as they think fit.

(4) Votes shall be given by ballot and in person unless otherwise prescribed in Schedule III :

Provided that no votes shall be received by proxy.

(5) Votes shall be counted by or under the supervision of the Returning Officer, and each candidate, the election agent of each candidate, and one representative of each candidate authorised in writing by the candidate shall have a right to be present at the time of counting.

(6) When the counting of votes has been completed, the Returning Officer shall forthwith declare the candidate to whom the largest number of votes has been given to be elected.

(7) When an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be

declared elected, the determination of the person to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

(8) The Returning Officer shall without delay report the result of the election to the Secretary to the Council and the name of the candidate elected shall be published in the Gazette.

Election by more than one constituency.

15. (1) If any person is elected by more than one constituency, he shall, by notice in writing signed by him and delivered to the Secretary to the Council within seven days from the date of the publication of the result of such election in the Gazette, choose for which of those constituencies he shall serve, and the choice shall be conclusive.

(2) When any such choice has been made, the Government shall call upon the constituency or constituencies for which such person has not chosen to serve to elect another person or persons, as the case may be.

(3) If the candidate does not make the choice referred to in sub-rule (1) of this Rule, the election of such person shall be void, and the Government shall call upon the constituency or constituencies concerned to elect another person or persons, as the case may be.

Election Agents and Return of Expenses.

Disqualification for being election agent.

16. No person shall be appointed an election agent who is himself ineligible for election as being subject to any disqualifications mentioned in sub-rule (3) or sub-rule (4) of Rule 5.

Revocation of appointment of election agent.

17. (1) The appointment of an election agent, whether the election agent appointed be the candidate himself or not, may only be revoked in writing signed by the candidate and lodged with the officer receiving nominations and shall operate from the date on which it is so lodged.

(2) In the event of such a revocation or of the death of any election agent whether such event occurs before, during or after the election, the candidate shall appoint forthwith another election agent and declare his name in writing to the said officer.

Return of election expenses.

18. (1) Within thirty-five days from the date of the publication of the result of an election under sub-rule (8) of Rule 14, there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate for the election, a return, in such form as the Government may

prescribe, of the election expenses of such person containing the particulars specified in Schedule IV and signed both by the candidate and by his election agent.

(2) Every such return shall contain a statement of all payments made by the candidate or by his election agent or by any person on behalf of the candidate or in his interest for expenses incurred on account of, or in respect of, the conduct and management of the election and further a statement of all unpaid claims in respect of such expenses of which he or his election agent is aware.

(3) The return shall be accompanied by declarations by the candidate and his election agent, which shall be in the form contained in Schedule IV and shall be made on oath or affirmation before a Magistrate.

(4) Notwithstanding anything hereinbefore contained, where a candidate is, owing to absence from Travancore, unable to sign the return of election expenses and to make the declaration within the period prescribed in this Rule, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent under sub-rule (3), and within fourteen days after the return of the candidate to Travancore he shall cause to be lodged with the Returning Officer a declaration made on oath or affirmation before a Magistrate in the special form for the purpose contained in the said Schedule.

(5) When any return and the declarations made in respect thereof have been lodged with the Returning Officer, the Returning Officer shall, as soon as may be, cause a notice of the date on which the return and declarations in question have been lodged, and of the time and place at which they can be inspected, to be fixed in some conspicuous place in his office and to be published in the Gazette, and any person shall, on payment of a fee of one rupee, be entitled to inspect any such return or declaration and, on payment of such fee as the Government may by Rules prescribe, to obtain a copy or copies thereof or of any part thereof.

(6) The Government shall cause to be prepared in such manner and maintained for such time, as they may direct, a record showing the names of all candidates at every election under these Rules and the name of the election agent of each such candidate and the date on which the return of election expenses of each candidate has been lodged with the Returning Officer.

Fixation of maximum election expenses.

19. (1) The Government may, by Notification in the Gazette,—

(*a*) fix maximum scales of election expenses which shall be applicable to any election held after the first elections under these Rules ; and

(*b*) prescribe the number and descriptions of persons who may be employed for payment in connection with any election held under these Rules.

(2) Any Notification issued under this Rule may make different provisions for different constituencies.

Accounts of agents.

20. Every election agent shall, for each election for which he is appointed an election agent, keep separate and regular books of account in which the particulars of all expenditure of the nature referred to in Rule 18 shall be entered, whether such expenditure is incurred by the candidate or by the election agent or by any person under the direction of the candidate or the election agent.

PART V.

Nominated Members.

General disqualifications for nominations.

21. (1) No person shall be nominated to the Council who—

(*a*) is a deaf-mute or a leper; or

(*b*) is a member of the Sri Chitra State Council and has made the oath or affirmation as such member: or

(*c*) is under thirty years of age; or

(*d*) has been declared by a competent Court to be of unsound mind: or

(*e*) is an undischarged insolvent; or

(*f*) being a discharged insolvent has not obtained from a Court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or

(*g*) having been a Vakil has been dismissed or is under suspension from practising as such by order of any competent Court:

Provided that the disqualification mentioned in clause (*g*) may be removed by a specific order of Government in this behalf.

(2) A person against whom a conviction by a Criminal Court involving a sentence of imprisonment for a period of six months or more subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for nomination for five years from the date of the expiration of the sentence:

Provided that on application made by a person disqualified under this sub-rule the Government may remove the disqualification by order in this behalf.

(3) If any person is convicted of an offence under Chapter IX-A of the Travancore Penal Code or Chapter IX-A of the Indian Penal Code, punishable with imprisonment for a term exceeding six months, or is, after an enquiry by Commissioners appointed under any Rules for the time being in force regarding elections to either Chamber of the Legislature constituted under the Regulation, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II of Schedule V, such person shall not be eligible for nomination for five years from the date of such conviction or of the finding of the Commissioners, as the case may be; and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for four years from such date.

(4) If, in respect of an election to either Chamber of the Legislature constituted under the Regulation, or in respect of an election to the Legislative Council constituted under Regulation II of 1097, a return of the election expenses of any person who has been nominated as a candidate at that election is not or has not been lodged within the time and in the manner prescribed by or under the Rules made in that behalf, or if any such return is lodged which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, neither the candidate nor his election agent shall be eligible for nomination for five years from the date of such election :

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this Rule or incurred under the corresponding provisions of the Rules passed under Regulation II of 1097 may be removed by an order of the Government in that behalf, and, wherever so removed, the disqualification shall cease to exist.

Duration of membership.

22. (1) A nominated non-official member shall hold office for the duration of the Council to which he is nominated.

(2) Official members shall hold office for the duration of the Council to which they are nominated or for such shorter period as the Government may, from time to time, determine.

PART VI.

General Provisions.

Obligation to take oath.

23. Every person who is elected or nominated to be a member of the Council shall, before taking his seat, make, at a meeting of the Council, an oath or affirmation in the following form :—

"I, A, B, having been elected/nominated a member of this Council do solemnly swear (or affirm) that I will be faithful and loyal to His Highness the Maha Raja of Travancore and to His Majesty the King, Emperor of India, and to their heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

Vacation of seat.

24. If any person, having been elected or nominated, is found to have been subject at the time of his election or nomination to any of the disabilities stated in Rule 5 or in Rule 21, as the case may be, the Government may, if the disqualification has not been removed under these Rules by Notification in the Gazette, declare his seat to be vacant.

Effect of subsequent disabilities or failure to take oath.

25. If any person having been elected or nominated, subsequently becomes subject to any of the disabilities stated in clauses (*d*), (*e*), (*f*) and (*g*), of sub-rule (1) or in sub-rules (2), (3) and (4) of Rule 5 or of Rule 21, as the case may be, or fails to take the oath or affirmation prescribed by Rule 23 within such time as the Government consider reasonable, the Government shall, if the disqualification has not been removed under these Rules by Notification in the Gazette, declare his seat to be vacant.

Vacancies.

26. (1) When a vacancy occurs in the case of an elected member by reason of his election being declared void or his seat being declared vacant or by reason of death, acceptance of office or resignation duly accepted, the Government shall, by Notification in the Gazette, call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such Notification.

(2) If a vacancy occurs in the case of a nominated member, the Government shall nominate a person to the vacancy.

General Elections.

Reconstitution of Council.

27. (1) On the expiration of the duration of the Council or on its dissolution, a general election shall be held in order that a new Council may be constituted.

(2) On such expiration or dissolution, the Government shall, by Notification in the Gazette, call upon the constituencies referred to in Rule 4 to elect members in accordance with these Rules within such time after the date of expiration or dissolution as may be prescribed by such Notification :

Provided that, if the Government think fit, such Notification may be issued at any time not being more than three months prior to the date on which the duration of the Council would expire in the ordinary course of events.

(3) Before the day fixed for the first meeting of the Council, the Government shall make such nominations as may be necessary to complete the Council.

Publication of result of general election.

28. As soon as may be after the expiration of the time fixed for the election of members at any general election, the names of the members elected for the various constituencies at such election shall be notified in the Gazette.

Powers of Government in case of difficulty.

29. If any difficulty arises as to the preparation or publication of any electoral roll or of any list of amendments to any such roll or as to the holding of any election under these Rules, the Government may by order do anything not inconsistent with these Rules which appears to them to be necessary for the preparation or publication of the roll or for the proper holding of the election.

PART VII.

The final Decision of Doubts and Disputes as to the Validity of an Election.

Definitions.

30. In this Part and in Schedule V, unless there is anything repugnant in the subject or context,—

(*a*) "Agent" includes an election agent and any person who is held by Commissioners to have acted as an agent in connection with any election with the knowledge or consent of the candidate :

(*b*) "Candidate" means a person who has been nominated as a candidate at any election or who claims that he has been so nominated or that his nomination has been improperly refused, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election :

(*c*) "Electoral right" means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting, at an election : and

(*d*) "Returned candidate" means a candidate whose name has been published under these Rules as duly elected.

31. Save as provided for in Rule 24 no election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

Election petition.

32. (1) An election petition against any returned candidate may be presented to the Chief Secretary to Government—

Presentation of the petition.

(*a*) by any candidate or elector within fourteen days from the date on which the return of the election expenses of the returned candidate and the declarations referred to in Rule 18 are received by the Returning Officer ; or

(*b*) within thirty days from that date by an officer empowered by Government in this behalf on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed ; or

(*c*) on the ground that the returned candidate or his election agent or any other person acting with the connivance of the candidate or of his election agent has been guilty of the offence of bribery, under influence or personation as defined in Chapter IX-A of the Travancore Penal Code, in respect of the election, by any candidate or elector within fourteen days from the date on which such returned candidate, election agent or other person is convicted of such offence.

(2) An election petition shall be deemed to have been presented to the Chief Secretary to Government when it is delivered to him or to any officer appointed by Government in this behalf—

(*a*) by the person making the petition ; or

(*b*) by a person authorised in writing in this behalf by the person making the petition ; or

(*c*) by registered Post or Anchal.

(3) When the last day of the period for the presentation of an election petition under this Rule is a public holiday within the meaning of Section 24 of the Negotiable Instruments Regulation, II of 1075, or has been notified by Government, as a day to be observed as a holiday in Government offices, the petition shall be considered as having been received in due time if it is presented on the next succeeding day which is neither such a public holiday nor a day so notified.

(4) For the purposes of clause (*a*) of sub-rule (1), the date on which the return of the election expenses and the declarations referred to in Rule

18 are received by the Returning Officer shall, in the case of a candidate who has made such return and declaration in the manner provided in sub-rule (4) of that Rule, be deemed to be the date on which the declaration of the candidate under that sub-rule is received.

Contents of the petition.

33. (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure for the time being in force.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice.

(3) The Commissioners may, upon such terms as to costs and otherwise as they may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in their opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

Against whom it may be presented.

34. The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected, in which case he shall join as respondents to his petition all other candidates who were nominated at the election.

Deposit of security.

35. At the time of the presentation of the petition, the petitioner shall, except where the petition is presented under clause (*b*) of sub-rule (1) of Rule 32, deposit with it the sum of five hundred rupees in cash, as security for the costs of the same.

Dismissal for default.

36. (1) If the provisions of Rule 32, Rule 33 or Rule 35 are not complied with, the Government shall dismiss the petition.

Appointment of Commissioners.

(2) If the petition is not dismissed under sub-rule (1)—

(*a*) the Government shall appoint as Commissioners for the trial of the petition three persons of any of the following qualifications, namely,—

(i) being or having been a Judge of the High Court of Travancore, or

(ii) having been a District Judge in Travancore for a period of not less than five years, or

(iii) having been a Vakil of the High Court of Travancore for a period of not less than ten years,

and shall appoint one of them to be the President, and thereafter all applications and proceedings in connection therewith shall be dealt with and held by such Commissioners;

(*b*) the President of the Commission shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the Gazette, and may call on the petitioner to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on giving security in a like amount and procuring the execution of a like bond:

Provided that the execution of such a bond by the petitioner shall not be required in any case where the petition has been presented under clause (*b*) of Sub-rule (1) of Rule 32.

(3) When in respect of any election in a constituency more petitions than one are presented, the Government shall refer all such petitions to the same Commissioners who may, at their discretion, inquire into the petitions either in one or in more proceedings as they shall think fit.

(4) If the services of any Commissioners are not available for the purposes of the inquiry, or if, during the course of the inquiry, any Commissioner is unable to continue to attend to the same, the Government shall appoint another Commissioner and the inquiry shall recommence before the Commission as so reconstituted:

Provided that the Commissioners may direct that any evidence already recorded may remain upon the record, in which case it shall not be necessary to re-examine those witnesses who have already been examined and discharged.

(5) Nothing in this Rule shall be deemed to prevent the appointment of the President of a Commission before the other Commissioners are appointed, and, if the President is so appointed, all references to the Commissioners in these Rules shall, in respect of any matter which may be or is to

be done before the commencement of the inquiry, be deemed to be references to the President.

Inquiry by Commissioners.

37. Subject to the other provisions of these Rules every election petition shall be inquired into by the Commissioners, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure for the time being in force to the trial of suits :

Provided that it shall only be necessary for the Commissioners to make a memorandum of the substance of the evidence of any witness examined by them.

Place of inquiry.

38. The inquiry shall be held at such place as the Government may appoint :

Provided that the Commissioners may in their discretion sit for any part of the inquiry at any other place in Travancore and may depute any one of their number to take evidence at any place in Travancore.

Withdrawal of petition.

39. (1) An election petition may be withdrawn only by leave of the Commissioners, or, if an application for withdrawal is made before any Commissioner has been appointed, of the Government.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application for withdrawal is made to the Commissioners, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Gazette.

(4) No application for withdrawal shall be granted if, in the opinion of the Government or of the Commissioners, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(5) If the application is granted—

(*a*) the petitioner shall, where the application has been made to the Commissioners, be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commissioners may think fit;

(*b*) notice of the withdrawal shall be published in the Gazette by the Chief Secretary to Government or by the Commissioners, as the case may be; and

(*c*) any person who might himself have been a petitioner may within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions of Rule 35 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

Abatement or substitution on death of petitioner.

40. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners :

Provided that, where such sole petitioner was an officer empowered under clause (*b*) of sub-rule (1) of Rule 32, the proceedings may be continued by any other officer empowered in this behalf by the Government.

(2) Notice of the abatement of an election petition shall be published in the Gazette by the Commissioners or, if the petition abates before any Commissioner has been appointed, by the Government.

(3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner, and, upon compliance with the conditions of Rule 35 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

Abatement or substitution on death of respondent.

41. If before the conclusion of the trial of an election petition, the respondent dies or gives notice that he does not intend to oppose the petition, the Commissioners shall cause notice of such event to be published in the Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted for such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Commissioners may think fit.

Recrimination when seat claimed.

42. (1) Where, at an inquiry into an election petition, any candidate other than the returned candidate, claims the seat for himself, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented complaining of his election :

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of publication of the election petition under clause (*b*)

of sub-rule (2) of Rule 36, given notice of his intention to the Commissioners and made the deposit and procured the execution of the bond referred to in Rules 35 and 36, respectively.

(2). Every notice referred to in sub-rule (1) shall be accompanied by the statement and list of particulars required by Rule 33 in the case of an election petition and shall be signed and verified in like manner.

Attendance of law Officers.

43. When at any enquiry into an election petition the Commissioners so order, the Head Sirkar Vakil or some person acting under his instructions shall attend and take such part therein as they may direct.

Grounds for declaring election void.

44. (1) Save as hereinafter provided in this Rule, if in the opinion of the Commissioners—

(*a*) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by a corrupt practice, or

(*b*) any corrupt practice specified in Part I of Schedule V has been committed, or

(*c*) the result of the election has been materially affected by the improper acceptance or refusal of any nomination or by the improper reception or refusal of a vote, or the reception of any vote which is void, or by any non-compliance with the provisions of the Regulation or the Rules made thereunder, or by any mistake in the use of any form annexed thereto, or

(*d*) the election has not been a free election by reason of the large number of cases in which undue influence or bribery, within the meaning either of Part I or of Part II of Schedule V, has been exercised or committed,

the election of the returned candidate shall be void.

(2) If the Commissioners report that a returned candidate has been guilty by an agent (other than his election agent) of any corrupt practice specified in Part I of Schedule V, which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commissioners further report that the candidate has satisfied them that—

(*a*) no corrupt practice was committed at such election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent, and

(*b*) such candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at such election, and

(*c*) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character, and

(*d*) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents,

then the Commissioners may find that the election of such candidate is not void.

Explanation.—For the purposes of this Rule, "treating" means the incurring in whole or in part by any person of the expenses of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.

Report of Commissioners and procedure thereon.

45. (1) At the conclusion of the inquiry, the Commissioners shall report whether the returned candidate or any other party to the petition who has under the provisions of these Rules claimed the seat has been duly elected, and in so reporting shall have regard to the provisions of Rule 44.

(2) The report shall further include a recommendation by the Commissioners as to the total amount of costs which are payable and the persons by and to whom such costs should be paid. Such recommendations may include a recommendation for the payment of costs to the Head Sirkar Vakil or a person acting under his instructions, attending in pursuance of an order made under Rule 43.

(3) The report shall be in writing and shall be signed by all the Commissioners. The Commissioners shall forthwith forward their report to Government who, on receipt thereof, shall issue orders in accordance with the report and publish the report in the Gazette, and the orders of Government shall be final.

Form of report.

46. If, either in their report or upon any other matter, there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail, and their report shall be expressed in the terms of the views of the majority.

Finding as to corrupt practices and persons guilty thereof.

47. Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in the report—

(*a*) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or

his agent, or with the connivance of any candidate or his agent, and the nature of such corrupt practice, and

(*b*) the names of all persons (if any) who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of such corrupt practice with any such recommendations as they may desire to make, for the exemption of any such persons from any disqualifications they may have incurred in this connection under these Rules :

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

PART VIII.
Special Provision.

Interpretation in case of doubt.

48. If any question arises as to the interpretation of these Rules otherwise than in connection with an election inquiry held thereunder, the question shall be referred for the decision of Government, and their decision shall be final.

PART IX.
Miscellaneous.

Government to make provision regarding custody, etc., of election papers and conduct of elections.

49. Government may, from time to time, issue Notifications for the safe custody, preservation, inspection, grant of copies, production and destruction of election papers in respect of the several constituencies.

SCHEDULE I.

[*See Rule 4 (1).*]

List of Constituencies.

Serial No.	Name of the Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
1	Tovala *cum* Agastisvaram ...	General Rural	The taluk of Tovala and the taluk of Agastisvaram and the pakuthies of Alur, Talakulam, Manavalakurichi and Kadiyapattanam of the Kalkulam taluk.	1
2	Kalkulam *cum* Vilavankod ...	Do.	The pakuthies of Kappiyara, Valvachagostam, Attur, Tuckalai, Kalkulam, Kotanallur, Mekod, Aruvikara, Tiruvattar, Tripparappu, Eraniel, Ponmana, Colachel and Tiruvankod of the Kalkulam taluk, and the taluk of Vilavankod.	1
3	Neyyattinkara *cum* Nedumangad ...	Do.	The taluk of Neyyattinkara and the pakuthies of Perumkulam, Veeranakavu, Uzhamalakkal, Kulattummel, Vellanad and Mannurkara of the Nedumangad taluk.	1
4	Trivandrum ...	Do.	The taluk of Trivandrum.	1
5	Chirayinkil *cum* Nedumangad ...	Do.	The taluk of Chirayinkil and the pakuthies of Vamanapuram, Nallanad, Manikkal, Palode, Aryanad, Nedumangad, Karakulam, Anad, Vempayam and Pullanpara of the Nedumangad taluk.	1
6	Quilon *cum* Karunagapalli	Do.	The taluk of Quilon and the taluk of Karunagapalli.	1
7	Kottarakara and Pattanapuram *cum* Shenkotta ...	Do.	The taluk of Kottarakara, the taluk of Pattanapuram and the taluk of Shencotta.	1
8	Mavelikara and Karthikapalli *cum* Kunnattur ...	Do.	The taluk of Mavelikara, the taluk of Kunnattur and the pakuthies of Pattiyur, Keerikad, Kandallur, Arattupuzha, Mutukulam, Chingoli, Cheppad, Valiyakuzhi, Nangyarkulangara, Pallipad, Kizhakkekara, Haripad and Kartikapalli of the Kartikapalli taluk.	1
9	Ambalapuzha ...	Do.	The taluk of Ambalapuzha and the pakuthies of Kumarapuram, Trikkunnapuzha, Karuvatta, Cherutana and Veeyapuram of the Kartikapalli taluk.	1

List of constituencies—(*Concld*)

Serial No.	Name of the Constituency.	Class of Constituency	Extent of Constituency.	No. of Members.
10	Tiruvalla *cum* Pattanamtitta	General Rural	The taluk of Tiruvalla and the taluk of Pattanamtitta	1
11	Changanachery *cum* Peermade ...	Do.	The taluk of Changanachery and the taluk of Peermade.	1
12	Kottayam ...	Do.	The taluk of Kottayam.	1
13	Minachil *cum* Devicolam ...	Do.	The taluk of Minachil and the taluk of Devicolam.	1
14	Muvattupuzha *cum* Todupuzha ...	Do.	The taluk of Muvattupuzha and the taluk of Todupuzha.	1
15	Vaikam *cum* Shertallai ...	Do.	The taluk of Vaikam and the taluk of Shertallai.	1
16	Kunnatnad *cum* Parur ...	Do.	The taluk of Kunnatnad including the Alwaye municipality and the taluk of Parur.	1
17	The Travancore Jenmies ...	Jenmi	Non-territorial.	1
18	Edavagai ...	Edavagai and Political Pensioners	Non-territorial.	1
19	Municipal Councils ...	Municipal Councils	All the Municipal Councils in the State.	1
20	The Travancore Planters	Planting	Non-territorial.	1
21	Commerce and Industry (South) ...	Commerce and Industry	The Trivandrum Division and the taluks of Quilon, Kottarakara, Pattanapuram and Shencotta in the Quilon Division.	1
22	Commerce and Industry (North) ...	Do.	The taluks of Karunagapalli, Kartikapalli, Kunnattur, Ambalapuzha, Mavelikara, Tiruvalla and Pattanamtitta of the Quilon Division and the Divisions of Kottayam and Devicolam.	1

SCHEDULE II.

(*See Rule 8.*)

Qualifications of Electors.

1. For the purposes of this Schedule :—

(*a*) "Previous year" means the Malabar year proceding that in which the electoral roll or the list of amendments thereto, as the case may be, for the time being under preparation is first published under these Rules.

(*b*) "Elector" means a person whose name has been entered in the electoral roll.

(*c*) "Edavagai" means a compact area, recognised as such in the Government accounts the whole or any portion of which area is exempt from payment of land revenue to Government.

(*d*) "Proprietor" means the owner of an Edavagai.

(*e*) "Registered holder" means a holder of Pandaravagai, Sripandaravagai, Kandukrishi or Sripadamvagai land, the assessment or pattom on which may be recovered under Regulation I of 1068, and includes the holder of land belonging to any religious endowment, the rents and other dues of which may, under Regulation III of 1079, be recovered under Regulation I of 1068.

(*f*) "Tenant" means a person who holds lands under a proprietor who is entitled to recover his rent under Regulation IV of 1068.

(*g*) "Jenmi" means a Jenmi as defined in the Travancore Jenmi and Kudiyan Regulation of 1071.

(*h*) "Kudiyan" means a person who holds lands on Kanapattom as defined in the Travancore Jenmi and Kudiyan Regulation of 1071.

(*i*) "Graduate" means a person on whom a degree has been conferred by a University.

2. (*a*) For the purpose of determining any claim to any qualification under this Schedule, the entries in the land revenue accounts and the rent rolls of the Edavagai or Religious Endowments and the entries in the municipal records regarding the amounts of taxes assessed or paid shall be conclusive evidence of the facts stated therein,

(*b*) The date as on which the qualification is to be held shall be the date fixed for the purpose by the Government from time to time unless otherwise specifically provided for hereinafter.

General Constituencies.

3. Every person who has a place of residence in the constituency and who has the further qualification hereinafter prescribed for an elector shall be qualified to be an elector for a general constituency.

4. A person shall be deemed to have a place of residence in a constituency if he—

(*a*) ordinarily lives in the constituency ; or

(*b*) has his family dwelling house in the constituency and occasionally occupies it ; or

(*c*) maintains in the constituency a dwelling house ready for occupation in charge of servants and occasionally occupies it.

5. A person shall be qualified as an elector for a general constituency, who—

(*a*) is a registered holder or an inamdar of land the annual value of which is twenty-five rupees or more ; or

(*b*) is a tenant holding land the annual value of which is twenty-five rupees or more ; or

(*c*) is a Kudiyan holding land the annual value of which is twenty-five rupees or more ; or

(*d*) is a graduate of not less than ten years' standing of a recognised University in the British Empire, provided that he is not undergoing a course of instruction in any recognised institution ; or

(*e*) was in the previous year assessed in a Municipality included in his constituency to a building or land tax of not less than five rupees or was assessed to professional tax ; or

(*f*) was assessed to income tax in the previous year ; or

(*g*) is a person who earns a monthly pension of one hundred rupees or more on retirement from Government service ; or

(*h*) has been at any time a non-official member of the Travancore Legislative Council or the Sri Mulam Popular Assembly ; or

(*i*) is a discharged, retired or pensioned military officer of the Nayar Brigade or of His Majesty's Army or Navy, residing in Travancore.

Explanation I.—The expression "officer" in clause (*i*) of this paragraph includes a commissioned officer and a non-commissioned officer but does not include a "soldier" or a "private".

Explanation II.—For the purpose of this paragraph the annual value shall be calculated in the following manner :—

(i) In the case of lands paying full assessment to Government, the assessment payable to Government for the lands together with any water rate payable for their irrigation shall be taken to be the annual value of such lands.

(ii) In the case of inam lands or lands held under any other favourable tenure wholly or partially free from assessment but held directly under Government, the full assessment which such lands would bear if they were not inam or subject to such favourable tenure together with any water rate which may be payable for their irrigation shall be taken to be the annual value of such lands.

(iii) In the case of tenant, the annual value of the land held by him shall be the full assessment fixed for the land at the last settlement.

(iv) In the case of a Kudiyan holding jenmom land, the annual value shall be the full assessment which the kanom holding would bear if it were pandarapattom land.

Explanation III.—(i) In the case of wet lands coming under clauses (ii), (iii) and (iv) of Explanation II above, the annual value shall be calculated in the following manner :—

(*a*) In the Trivandrum Revenue Division one-half of the full assessment shall be commuted at 6 chuckrams per *parah* of paddy and the remaining one-half at 11 chuckrams per *parah* or on an average at 8½ chuckrams per *parah*.

(*b*) In the Quilon, Kottayam and Devicolam Revenue Divisions, three-fourths of the full assesment shall be commuted at 6 chuckrams per *parah* of paddy and the remaining one-fourth at 11 chuckrams per *parah*, or on an average at 7¼ chuckrams per *parah*.

(ii) In the case of lands where the whole or any portion of the assessment, rent or pattom is paid in paddy, the value of the paddy shall be calculated at eleven chuckrams per *parah*.

Explanation IV.—A person who holds in different constituencies lands falling under any one or two or all of the classes mentioned in clauses (*a*), (*b*) and (*c*) and whose combined annual value is twenty-five

rupees or more shall be deemed to be qualified to be an elector under this paragraph.

Explanation V.—Any person who holds lands falling under any two or all of the classes mentioned in clauses (*a*), (*b*) and (*c*) of this paragraph and whose combined annual value is twenty-five rupees or more shall be deemed to be qualified to be an elector under this paragraph.

6. If property is held jointly by the members of a joint family or by joint pattadars, the family or joint holding shall be adopted as the unit for deciding whether under this Schedule the requisite qualification exists; and if it does exist, the person qualified shall be the member authorised by a majority of the joint holders, or in the case of a joint family either a member so authorised or in the absence of such authorisation the manager thereof.

7. A person may be qualified either in his personal capacity or in the capacity of a representative of a joint family or of joint pattadars but not in both capacities.

8. Save as provided in paragraph 7 of this Schedule, no person shall be qualified as an elector in respect of any property unless he possesses the prescribed property qualification in his own personal right and not in any representative or fiduciary capacity.

Special Constituencies.

1. Municipal Councils Constituency.

9. A person shall be qualified as an elector for the Municipal Councils constituency if he is a non-official member of any Municipal Council in Travancore on the first day on which the Revising Authority sits under paragraph 13 of Schedule III annexed.

2. Planters' Constituency.

10. A person shall be qualified as an elector for the Planters' constituency if he is a member of any of the following Associations :—

(1) The South Travancore Planters' Association.

(2) The Central Travancore Planters' Association.

(3) The Mundakayam Planters' Association.

(4) The Kannan Devan Planters' Association.

Explanation.—If a firm or other body of persons, as such, is a member of any of the above mentioned Associations, the person qualified shall be the individual nominated in that behalf by such firm or other body of persons.

3. Jenmi's Constituency.

11. A person shall be qualified as an elector for the Jenmi's constituency if he has an annual income, as laid down in paragraph 12 of this Schedule, of not less than one thousand rupees.

12. (*a*) For the purpose of the above paragraph, the income in the case of jenmom lands in the enjoyment of the Jenmi himself shall be taken to be equal to the full assessment that might be levied if the lands were pandarapattom lands: and

(*b*) in the case of jenmom lands demised on kanom, the income shall be taken to be the full assessment leviable thereon if the lands were pandarapattom lands.

Explanation.—For the purpose of this paragraph, the value of the full assessment on wet lands shall be calculated in the manner specified in Explanation III (i) to paragraph (5) above; that is to say, the full assessment shall be commuted into money at an average vilatharam rate of 8½ chuckrams per *parah* of paddy in the Trivandrum Revenue Division and 7¼ chuckrams per *parah* of paddy in the Quilon, Kottayam and Devicolam Revenue Divisions.

13. In calculating the annual income of a Jenmi, the income from any source other than jenmom lands shall not be taken into consideration.

14. (*a*) Where jenmom lands stand in the name of a single holder the name of that holder alone shall be entered in the electoral roll.

(*b*) Where jenmom lands stand in the names of several persons as members of a joint family or as trustees of a Devaswom, the person qualified shall be the member authorised by a majority of the adult male members of such family or of such trustees, provided, however, that, in the absence of such authorisation in regard to a joint family, the manager thereof shall be the person qualified.

4. Edavagai Constituency.

15. A person shall be qualified as an elector for the Edavagai constituency who is a proprietor of an Edavagai or who is a political pensioner and who—

(*a*) if a proprietor, receives from the Edavagai an annual income of not less than one thousand rupees; or

(*b*) if a political pensioner, receives from the Government of Travancore, a political pension of not less than one thousand rupees in value per annum.

Explanation.—For the purpose of this paragraph, if the whole or any portion of the income is paid in paddy the value of such paddy shall be calculated at twenty chuckrams per *parah*.

16. (*a*) Where an Edavagai is registered in the name of a single person or where the political pension is awarded to a single person, the name of such person shall be entered in the electoral roll.

(*b*) Where an Edavagai is held or a pension is received by several persons as members of a joint family, the person qualified shall be the member authorised by a majority of the adult male members of such family: Provided, however, that, in the absence of such authorisation, the manager thereof shall be the person qualified.

5. Commerce and Industry Constituencies.

17. A person shall be qualified as an elector for Commerce and Industry Constituency, if he resides within that constituency and—

(*a*) is the owner of a factory, situated in Travancore which falls within the definition of a factory as defined in the Travancore Factories Regulation V of 1089, in which not less than 50 persons were simultaneously employed on any one day in the previous year; or

(*b*) is a partner in a firm owning such a factory and has been nominated in writing by the firm for the purpose of voting in its behalf; or

(*c*) is a director of a company as defined in Section 2 of Regulation I of 1092 and having a place of business in Travancore and a paid-up capital of not less than twenty-five thousand rupees, and who has been nominated in writing for the purpose of voting in its behalf by a majority of the directors; or

(*d*) is the principal officer of a company registered outside Travancore and having a place of business in Travancore and whose paid-up capital is not less than twenty-five thousand rupees; or

(*e*) is a banker, trader or merchant who was assessed to income tax in the previous year in respect of a taxable income of five thousand rupees or more; or

(*f*) is a partner or the principal officer of a firm which had a taxable income of five thousand rupees in the previous year,

such partner or principal officer having been nominated in writing for the purpose of voting in its behalf.

Explanation.—A single individual shall not be deemed a firm.

18. Any person falling under paragraph 17, clause (*a*) or (*b*), of this Schedule and who is a member of any of the Associations mentioned in paragraph 10 of this Schedule shall not be qualified as an elector for a Commerce and Industry constituency.

SCHEDULE III.

(See Rule 4 (2),)

Rules for the preparation of electoral rolls and the conduct of elections.

Preliminary.

1. "Elector" means a person whose name has been entered in the electoral roll.

PART I.

Rules for the preparation of electoral rolls for the election of members for all constituencies other than the planting constituency.

CHAPTER I.

The Electoral Roll.

2. There shall be a separate roll for each constituency. The electoral roll for each constituency shall contain the following particulars, *viz.*, the elector's name, father's or karanavan's or mother's or husband's name or other name used as erattaper (ഇരട്ടപ്പേര്), address and qualification and such further particulars as may be ordered by Government from time to time. It shall be maintained in Form I annexed with such modifications as may be required for the entry of the further particulars ordered by Government, and shall be divided into parts for each registration area comprised in the constituency and each part shall be divided into sections for each polling area within the registration area. Each polling area in a registration area shall be separately numbered and the electors in each polling area shall be numbered in one series.

3. The roll shall be kept in the vernacular of the Taluk, provided that the Goverument may direct that any particular roll or part of a roll may be kept in any language or languages.

4. (*a*) Each Municipality and each Tàluk excluding the municipal area in such Taluk shall be a separate registration area; and the Registration Officers shall be the President of the Municipal Council for each Municipality and the Tahsildar for each Taluk excluding the municipal area, if any;

(*b*) For the Municipal Councils constituency, each Municipality shall be a separate registration area and the President of the Municipal Council concerned shall be the Registration Officer:

Provided, however, that, if a Taluk or any portion thereof forms part of more constituencies than one, then the Tahsildar of such Taluk as may be notified by Government in that behalf shall be the Registration Officer:

Provided also that any of the powers and duties of the Registration Officer may be performed and exercised by any deputy for the time being approved by the Government, and the provisions of this Part shall, in respect of the powers and duties to be exercised and performed by him, apply to such deputy so far as they apply to the Registration Officer.

5. Each Registration area shall be divided into separate polling areas. Subject to any general or special instructions which Government may issue, the polling areas shall be determined—

(*a*) in Municipalities, by the Municipal Presidents concerned, and

(*b*) in non-Municipal areas, by the Registration Officers concerned:

Provided that the polling areas shall be so arranged as to give all electors such reasonable facilities for voting as are practicable in the circumstances and provided also that different polling areas may be prescribed for different constituencies in the same registration area:

Provided also that for the Municipal Councils constituency each municipal area shall be a polling area.

6. (*a*) It shall be the duty of the Registration Officer to cause inquiry to be made and to prepare, or cause to be prepared, lists of all persons within his registration area appearing to be entitled to be registered as electors in the roll for each constituency. The lists shall be prepared in the form prescribed for the roll and shall also contain particulars of the amount or tax paid or the annual value of land held in the case of property qualifications.

(*b*) The preliminary rolls shall be prepared from these lists and printed. They shall be published by posting them in the Office of the Registration Officer not later than the date fixed

by the Government in this behalf. Copies of the rolls with the notices referred to in clause (*c*) of this paragraph shall also be issued as a supplement to the Gazette.

(*c*) With the preliminary roll the Registration Officer shall publish notices in Form II annexed specifying the mode in which and the time within which claims and objections are to be preferred and the date on, and the place at which the Revising Authority will begin to sit for their disposal. The date fixed for sitting of the Revising Authority shall not be later than the date fixed by the Government in this behalf.

7. Copies of the parts of the preliminary roll relating to each registration area shall be made available for inspection and sale in the case of municipal areas in the municipal offices and in the case of other areas in the offices of the Tahsildars concerned: and in rural areas, a copy of the section relating to each pakuthy shall also be posted in the Proverthi Cutcherry or other conspicuous place in the pakuthi, with a notice in Form II.

8. The Registration Officer may—

(1) if the time prescribed by the Government for the publication of the preliminary roll has not expired, within the time so fixed, or

(2) if such time has already expired, within such further time as may be prescribed by the Government,

publish a revised preliminary roll in supersession of the roll already published or any part thereof or a list of additions and corrections thereto in the manner prescribed by the foregoing paragraphs.

Claims and objections.

9. (*a*) Any person who claims to be registered as an elector and who is not entered, or is entered in an incorrect place or manner, or with incorrect particulars, on the preliminary roll, and 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 whose name is on the roll, may prefer a claim or an objection to the Revising Authority. Such claims and objections shall respectively be sent in Forms III and IV annexed, to the Registration Officer so as to reach him on or before the date fixed by the Government in this behalf.

(*b*) Claims and objections may be preferred in person or sent by Anchal or Post.

(*c*) Claims and objections received after the prescribed date shall be rejected.

10. The Registration Officer may, of his own motion, remove from the rolls the names of persons whom he has reason to believe to be dead and also correct purely clerical or accidental mistakes and no other.

11. The Registration Officer shall, not later than the date fixed by the Government in this behalf—

(*a*) post in his own office list of all claims and objections received in time and of corrections made by him of his own motion in Form V annexed, and

(*b*) send a copy of every notice of objection to the person to whose registration objection has been taken and wherever possible give intimation to the person concerned of the correction made by him of his own motion. In the lists referred to in clause (*a*) and in the copy and intimation sent under clause (*b*), the Registration Officer shall give notice that the claims, objections and corrections will be taken into consideration by the Revising Authority at a place and on a date to be specified therein.

Revising Authority.

12. For each registration area there shall be constituted a Revising Authority consisting of the Registration Officer as chairman and two non-official gentlemen to be nominated by the Division Peishkar or the Commissioner, Devicolam, as the case may be.

13. The Revising Authority shall sit in open office on the day fixed and from day to day until all claims and objections are disposed of. They shall make such inquiry as they think fit in regard to each claim or objection and pass orders in writing thereon with reasons if a claim is rejected or an objection contested; they shall also pass final orders on the list of corrections made by the Registration Officers of their own motion. If any member of the Revising Authority is unable to attend a sitting, the Division Peishkar or the Commissioner, Devicolam, as the case may be, shall immediately nominate another person for such sitting. In case of a difference of opinion among the members, the opinion of the majority shall prevail.

Final publication of the Roll.

14. The Registration Officers shall correct the rolls in accordance with the orders of the Revising Authority and the final rolls shall be printed and published by posting them in the office of the Registration Officer not later than the date fixed by the Government in this behalf. If it is more

convenient, the preliminary rolls together with lists of additions and corrections may be published as the final roll. The lists of additions and corrections or, if it is more convenient, the entire roll as revised shall also be issued as a supplement to the Gazette. Copies of the parts of the lists or of the roll relating to each registration area shall also be made available for inspection and posted in pakuthies in the manner prescribed in paragraph 7 of this Schedule.

15. Two copies of the roll or part of the roll relating to his registration area shall be signed by each Registration Officer. One of them shall be kept in his office and the other forwarded to the Returning Officer for the constituency.

16. The Returning Officer shall combine the separate parts of each roll and form a complete roll for each constituency.

General.

17. Copies of the final roll (or of the preliminary roll with the lists of additions and corrections) relating to each registration area shall be made available for inspection and sale in the office of the Registration Officer. Complete sets of the final roll (or of the preliminary roll with the lists of additions and corrections) for the several registration areas shall be kept in the office of the Returning Officer for inspection and sale and for supply to the presiding officers at the polls.

18. The Registration Officer shall supply forms of claims and of notices of objections free on the application of any person.

19. Any notice which is required to be sent by the Registration Officer under this Part to any person shall be deemed to have been duly sent if sent by Anchal or Post to the address of that person as given by him for the purpose, or as appearing on the roll, or, if there is no such address, to his last known place of abode.

20. On the consideration of any claim or objection or other matter by the Revising Authority, any person appearing to be interested therein may appear and be heard either in person or by duly authorised agent.

21. The Government shall have power in their discretion to postpone from time to time any of the dates fixed by them under this Chapter.

CHAPTER II.

Returning Officers.

22. The Returning Officers for the constituencies mentioned in the first column of Schedule VI annexed shall be the persons respectively specified in the corresponding entry in the third column thereof.

23. (1) Any other person whom the Government may, by Notification in the Gazette, appoint in this behalf, may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer in the constituencies respectively specified in the corresponding entry in the first column thereof :

Provided that no such person shall perform any of the functions of a Returning Officer which relate to the acceptance of a nomination paper or of a paper withdrawing candidature or to the scrutiny of nominations or to the counting of votes, unless the Returning Officer is unavoidably prevented from performing the same, in which case the said functions may be performed in any constituency by the person so appointed.

(2) References to the Returning Officer in these paragraphs shall, unless a contrary intention appears, be deemed to include any person when performing any duty or function which he is authorised to perform under sub-paragraph (1)

24. (1) On the issue of a Notification of the Government calling upon a constituency to elect a member, it shall be the duty of the Returning Officer to prepare and publish a notice stating :—

(*a*) the number of persons to be elected ;

(*b*) the constituencies for which they are to be elected ;

(*c*) the date and the hour by which nomination papers should be presented to or received by the Returning Officer ;

(*d*) the date on which the nomination papers will be taken up for scrutiny ;

(*e*) the day on which, and the place or places where the votes of electors will be taken, should there be a poll, and the hours during which the poll will be open, not being less than ten hours between 7 A. M. and 6 P. M. ; and

(*f*) the day on which, and the place and hour at which, the Returning Officer will commence the counting of votes.

(2) The notice shall be published in the Gazette. The Returning Officer shall forthwith send copies of the notice to be posted within each constituency in the Municipal Offices and the Offices of the Division Peishkars, Tahsildars and Magistrates and in each rural polling station at the principal Anchal or Post Office and at the Proverthy Cutcherry.

(3) The Returning Officer may, for sufficient cause and with the previous consent of Government, extend the period fixed for polling or postpone the time fixed for commencing the counting of votes.

Nomination of Candidates.

25. Printed copies of the nomination form in Form VI annexed with the following form of declaration printed on its back, viz.,

"I (A. B.) the candidate nominated on the reverse have appointed
do hereby appoint C. D. (address) to be my election agent."

shall on application be supplied to any elector of the constituency at the office of the Returning Officer thereof.

26. On the date appointed under sub-rule (2) of Rule 11 for the nomination of candidates, and immediately after the time for the delivery of nomination papers is past, the Returning Officer shall make up a list, in Form VII annexed, of the nominations which appear to him *prima facie* to be valid and publish it on the notice board of his office with a notice that the nomination papers will be taken up by him for scrutiny on the date fixed in paragraph 24 (1) (*d*) at a place and at an hour to be specified by him.

27. On the presentation of a nomination paper, the Returning Officer may require the person or persons presenting the same to produce a copy of the electoral roll on which the candidate and his proposer and seconder are registered or of the necessary entries therein and shall satisfy himself that the name and number on the electoral roll of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral roll. Where necessary he shall direct that the former be amended so as to be in accordance with the latter.

Scrutiny of Nominations.

28. On the date appointed for the scrutiny of nominations under sub-rule (2) of Rule 11, the candidates, their election agents, one proposer and one seconder of each candidate, and one other person duly authorised in writing by each candidate, and, except for the purpose of assisting the Returning Officer, no other person, may attend at such time and place as the Returning Officer may appoint, and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner prescribed in Rule 11.

29. (1) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made at the time to any nomination, and may, either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, refuse any nomination, on any of the following grounds :—

(i) that the candidate is ineligible for election under Rule 5 or Rule 6;

(ii) that a proposer or seconder is a person whose name is not registered on the electoral roll of the constituency or is subject to any disability stated in Rule 7;

(iii) that there has been any failure on the part of the candidate or his proposer or seconder to comply with any of the provisions of Rule 12.

(2) For the purposes of this paragraph,—

(*a*) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under Rule 5 or Rule 6, or as the case may be, that the proposer or secouder is a person whose name is not registered on the electoral roll of the constituency or is subject to any disability stated in Rule 7; and

(*b*) where a person has subscribed whether as proposer or seconder a larger number of nomination papers than one, the paper so subscribed which has been first received shall be deemed to be valid.

(3) Nothing contained in clause (ii) or clause (iii) of sub-paragraph (1) shall be deemed to authorise the refusal of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

30. (1) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(2) The scrutiny shall be completed on the day appointed in this behalf under clause (*b*) of sub-rule (2) of Rule 11 and no adjournment of the proceedings shall be allowed.

31. On completion of the scrutiny of nomination and after the expiry of the period within which candidatures may be withdrawn under sub-rule (8) of Rule 11, the Returning Officer shall forthwith prepare a list of persons whose nominations have not been rejected and who have not withdrawn their candidature, and cause it to be affixed in some conspicuous place in his office.

32. If the number of such persons is greater than one, the Returning Officer shall forthwith publish in the manner prescribed in paragraph 24

(2) of this Schedule, a list in Form No. VIII annexed of the names in alphabetical order of the candidates as given in the nomination papers.

Voting.

33. The poll shall commence at 7 A. M. and be kept open till 6 P. M. It may be closed for an hour between these limits at the discretion of the Returning Officer.

34. The Returning Officer may, for sufficient cause and with the previous consent of Government, postpone the date or extend the period fixed for polling.

35. The Returning Officer shall appoint one polling station for each polling area in each constituency and shall appoint a presiding officer for each polling station and such other persons (hereinafter referred to as polling officers) to assist the presiding officer as he thinks necessary :

Provided that for the Municipal Councils constituency, each municipal office shall be the polling station.

36. The presiding officer shall keep order at the polling station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at one time, and shall exclude all other persons except—

(*a*) the polling officers, the candidates and one agent of each candidate at a time (hereinafter referred to as the polling agent) appointed in writing by the candidate and authorised in this behalf by the Returning Officer ;

(*b*) the Police or other public servants on duty, ; and

(*c*) such other persons as the presiding officer may from time to time admit for the purpose of identifying electors.

37. Subject to the provisions of paragraph 50 infra, no elector shall be admitted fo vote except at the polling station fixed under paragraph 35 for the polling area under which his name appears on the electoral roll.

38. (1) The presiding officer shall close the polling station at the hour appointed for closing under paragraphs 33 and 34, so as to prevent the admission thereto of any elector after that hour.

(2) No ballot paper shall be issued after that hour, but any elector who has received his ballot paper before that hour shall be allowed a reasonable opportunity to record his vote.

39. Each polling station shall be furnished with such number of compartments in which electors can record their votes screened from observation as the Returning Officer thinks necessary. As far as possible, separate

compartments and separate entrances and exits shall be provided for women electors.

40. The Returning Officer shall provide at each polling station materials sufficient for the purpose of enabling electors to mark the ballot papers, as many ballot boxes as may be necessary, and copies of the electoral roll or of such part thereof as contains the names of the electors entitled to vote at such station.

41. (1) Every ballot box shall be so constructed that the ballot papers can be introduced therein but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, immediately before the commencement of the poll, shall show the ballot box empty to such persons as may be present in such station so that they may see that it is empty and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers and keep it so locked and sealed.

(2) Before the polling station is open for the recording of votes, the presiding officer shall read to such persons as may be present the provisions of Section 14 of the Election Offences and Inquiries Regulation, IX of 1097, and shall explain the substance thereof in the vernacular of the Taluk.

42. (1) Every ballot paper shall be in the annexed Form IX with a counterfoil attached to it which shall be in the annexed Form IX-A. The ballot paper shall have the names of the candidates as they appear in the nomination papers arranged in alphabetical order. If there are two candidates whose names are the same, they shall be distinguished by the addition of their occupation or in some other way. Ballot papers shall be printed in such language or languages as the Government may by order direct.

(2) The ballot papers printed in each language shall be serially numbered, the serial number being printed on the face of the counterfoil and on the back of the ballot paper.

43. Immediately before a ballot paper is delivered to an elector, the number, name and description of the elector as stated in the electoral roll shall be called out, and the number of such elector shall be entered on the counterfoil. The presiding officer shall then detach the ballot paper from the counterfoil, initial the ballot paper on its back and deliver it to the elector, and a mark shall be placed on a copy of the electoral roll against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received. On the counterfoil shall be entered the name of the constituency and

the distinctive number of the polling area, if such name and number are not already printed or written on it.

44. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote and after showing to the presiding officer his (*i. e.*, the presiding officer's) initials thereon shall put his ballot paper so folded up into the ballot box. Every elector shall vote without undue delay and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

45. (1) If the elector is unable to read the ballot paper or to mark it and so states to the presiding officer and applies for assistance for reading the ballot paper or marking it, the presiding officer shall read it for him and, if so required, mark the ballot paper according to the directions of the elector and give it to him to be put into the ballot box.

(2) In the case of every elector whose ballot paper is marked in this manner by the presiding officer a note of the reason for so marking shall be made by such officer on the corresponding counterfoil of Form IX.

(3) Notwithstanding anything contained in clauses (1) and (2) above, the Government may issue instructions—

(i) as to the method of taking votes, whether by voting tokens or otherwise, or

(ii) as to the manner in, or conditions under, which the ballot paper shall be marked : and on the issue of such instructions the votes shall be taken and the ballot paper shall be marked in accordance therewith.

(4) If any elector, in the course of the hearing of an election petition under the Rules for the time being in force, is proved to have falsely stated to the presiding officer that he is unable to read or mark the ballot paper and thereupon to have recorded his vote, his vote shall be void.

46. (1) When a person presents himself to vote and at any time before a ballot paper is supplied to him, the presiding officer or polling officer may, of his own accord, and shall, if so required by a candidate or polling agent, put to such person any or all of the following questions (*a*) and (*b*) at all elections, and, at general elections, also the following question (*c*), if the election is by a general constituency and the following question (*d*) if the election is by a Commerce and Industry constituency :—

(*a*) Are you the person enrolled as follows ? (reading the whole entry from the roll)

(*b*) Have you already voted at the present election for the Council in this constituency ?

(*c*) Have you already voted at this general election for the Council in any other general constituency ?

(*d*) Have you already voted at this general election for the Council in the other Commerce and Industry constituency ?

And the person shall not be supplied with a ballot paper unless he gives an unqualified answer to the question or questions put to him and unless his answer to the question (*a*) is in the affirmative and the other questions in the negative.

(2) Except as mentioned herein, every person whose name is found on the electoral roll shall be entitled to be supplied with a ballot paper.

47. If a person representing himself to be a particular elector named on the electoral roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to receive a ballot paper in the same manner as any other elector. Such ballot paper hereinafter referred to as a tendered ballot paper, shall be of a colour different from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the elector and his number on the electoral roll and the number of the polling area to which the roll relates and shall be set aside in a separate packet and shall not be counted by the Returning Officer. The name of the elector and his number on the electoral roll and the distinctive number of the polling area to which the roll relates shall be entered in a list in Form X annexed, which shall bear the heading "List of tendered votes". The person tendering such ballot paper shall sign his name and address on that list or affix his thumb impression thereto.

Explanation.—In cases falling under this paragraph to which paragraph 48 is also applicable, the provisions of this paragraph as well as of paragraph 48 shall be followed.

48. If any polling agent declares and undertakes to prove that any person by applying for a ballot paper has committed the offence of personation, the presiding officer may require such person to enter, in the "List of challenged votes" (which shall be in Form XI annexed) his name and address or, if he is unable to write, to affix his thumb impression thereto and may further require such person to produce evidence of identification. If such person on being questioned in the manner provided in paragraph 46 gives unqualified answer to question (*a*) in the affirmative and the other questions in the negative, he shall be allowed to vote after he has been informed of the penalty for personation. The presiding officer shall make a note of the circumstances and of his order on the list of challenged votes.

49. An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot conveniently be used as a ballot paper may, on delivering it to the presiding officer and satisfying him of the inadvertence, obtain another ballot paper in place of the spoilt paper, and the latter shall, together with its counterfoil, be marked as cancelled.

50. A presiding officer, polling officer, or polling agent who is on duty at a polling station at which he is not entitled to vote shall, if he is certified by the Returning Officer of the constituency concerned to be entitled to vote at the election, be allowed to record his vote at that polling station. The name of the polling station at which he would otherwise have been entitled to vote shall be entered in the counterfoil of the ballot paper together with the other particulars to be entered therein.

51. (1) Such ballot paper shall be placed in an envelope and sealed by the presiding officer and returned with the certificate referred to in paragraph 50 to the Returning Officer who has granted the same and such returning officer shall cause such vote to be included among the other votes given for the candidate designated by the elector. The counterfoil of such ballot paper shall be placed in an envelope and shall be added at the end of the file of counterfoils of the polling station at which the vote was recorded.

(2) The certificate referred to in paragraph 50 shall be in the following form :—

"Certified that.....entitled to vote at.....for.....

.....constituency has been employed in connection with the election for .....constituency and is prevented from voting at the said station and I have therefore authorised him to vote at.....

Singnature of Returning Officer."

Date:.....

(3) On an application being made to the Returning Officer by the elector concerned for the issue of the certificate and on the Returning Officer being satisfied that there are the requisite grounds for the issue of the certificate, the Returning Officer shall prepare the certificate and forward it to the presiding officer of the polling station at which the elector will be on duty together with the ballot paper and the counterfoil and a copy of, or extract from, the electoral roll showing the number and the name of the elector on the electoral roll and the number of the polling area and the name of the polling station at which he would but for the certificate be entitled to vote.

52. The presiding officer of each polling station, as soon as practicable after the close of the poll shall, in the presence of any candidate or

polling agents who may be present, make up into separate packets and seal with his own seal and the seal of such candidates or agents as may desire to affix their seal,—

(1) each ballot box in use at such station unopened but with the key (which should also be sealed in the same manner as the ballot box) attached;

(2) the unused ballot papers, ordinary and tendered;

(3) the used tendered ballot papers;

(4) the spoilt ballot papers, ordinary and tendered;

(5) the marked copy of the electoral roll;

(6) the counterfoils of the ballot papers;

(7) the list of tendered votes; and

(8) the list of challenged votes;

and shall forward such packets to the Returning Officer.

53. The packets shall be accompanied by a statement, in a separate cover, in Form XII annexed made by the presiding officer, showing the number of ballot papers entrused to him and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt and tendered ballot papers, and ballot papers dealt with under paragraph 50.

54. Subject to any directions given in that behalf by the Returning Officer, the packets and statements shall be forwarded by the presiding officer to the Returning Officer so as to reach him not later than the day and hour fixed for the counting of votes. Each packet shall be numbered and shall bear a note (in Form XIII annexed) as to its contents and the name of the polling station. Empty boxes need not be sent, but should be handed over to the Proverthicar or such other officer as the Returning Officer may direct. Where no vote has been recorded in any constituency, the presiding officer shall submit a nil report together with the statement in Form XII.

Counting of Votes.

55. The Returning Officer shall appoint a date, which shall be not later than seven days from the date of the poll, and the time and place for the counting of votes, and shall give notice in writing thereof to all candidates and election agents.

56. (1) No person shall be allowed to be present at the counting of votes except the Returning Officer and such persons as he may appoint to assist him in counting the votes, and such other persons as have a right to be present under sub-rule (5) of Rule 14.

(2) No person shall be appointed to assist in counting the votes, who has been employed by or on behalf of any candidate for any purpose whatsoever connected with the election.

57. On the day and at the time appointed under paragrah 55 the Returning Officer shall, before he commences to count the votes, read the provisions of Section 14 of the Travancore Election Offences and Inquiries Rugulation, to such persons as may be present, and shall then proceed as follows :—

(*a*) The ballot box or boxes relating to each polling station or the envelopes containing votes under paragraph 50 shall be opened one after another, and the Returning Officer shall take out the papers therefrom, count them or cause them to be counted, and record the number thereof in a statement. Such statement shall not be shown to any candidate or agent.

(*b*) The Returning Officer shall then mix together all the ballot papers so counted and totalled up and distribute them in convenient bundles to the persons appointed to assist in counting the votes.

(*c*) When the ballot papers have been so distributed, but not before, the Returning Officer shall allow the candidates and their agents reasonable opportunity to inspect, without handling the ballot papers, and shall, on every ballot paper which is rejected, endorse the word "Rejected". If any candidate or agent present questions the correctness of the rejection, he shall also record on the ballot paper the grounds for the rejection. No candidate or agent shall be allowed to see the serial number on the back of any ballot paper.

(*d*) The Returning Officer shall, as far as practicable, proceed continuously with the counting of votes; and shall, during any necessary intervals during which the counting has to be suspended, place the ballot papers, packets and other documents relating to the election under his own seal and the seals of such candidates or agents as may desire to affix them, and shall cause adequate precautions to be taken for their custody.

58. (1) A ballot paper shall be rejected if,—

(*a*) the number of votes recorded thereon exceeds one ; or

(*b*) no vote is recorded thereon ; or

(*c*) it is void for uncertainty ; or

(*d*) it bears any mark by which the elector can be identified; or

(*e*) it does not bear the initials of the presiding officer on its back.

(2) Except on one or more of the above grounds, a ballot paper shall not be rejected.

(3) The decision of the Returning Officer as to the validity of a ballot paper shall be final, subject only to reversal on an election petition.

59. The Returning Officer shall not open the sealed packets of the tendered votes, the marked copy of the electoral roll or the counterfoils of the ballot papers. He shall verify the statement submitted by the presiding officer under paragraph 53 by comparing it with the number of counted votes and rejected ballot papers, the unused ballot papers in his possession and the tendered votes list, shall then reclose and reseal each packet which has been opened by him, and shall record on each packet a description of its contents and the date of the election to which it refers.

60. The Returning Officer shall then prepare and certify a return in Form XIV annexed setting forth—

(1) the result of the verification referred to in paragraph 59;

(2) the names of the candidates for whom valid votes have been given;

(3) the number of valid votes given for each candidate;

(4) the name of the candidate elected;

(5) the number of votes declared invalid; and

(6) the number of tendered votes given, and shall permit any candidate or any representative duly authorised under sub-rule (5) of Rule 14 to take a copy or an extract from such return.

Miscellaneous.

61. (1) The returning Officer shall, after reporting the result of the election under Rule 14, forward a copy of the return made under paragraph 60 to the Secretary to the Council, who shall thereupon publish in the Gazette the name of the candidate elected.

(2) All the packets relating to the elections shall, subject to the control of the Government, remain in the custody of the Returning Officer.

62. The packets of ballot papers whether counted, rejected or tendered, and of the counterfoils thereof, or of the declaration papers as the case may be, shall not be opened and their contents shall not be inspected or produced except under the order of a competent Court or of Commissioners appointed to hold an inquiry in respect of an election, but all other documents

relating to the election shall be open to inspection subject to such conditions as the Government may impose and to the payment of a fee of five rupees.

63. The packets aforesaid shall be retained for a period of one year and shall thereafter be destroyed subject to any direction to the contrary made by the Government, or by a competent Court or by Commissioners appointed to hold an enquiry in respect of an election.

PART II.

Rules for the Election of a Member for the Planting Constituency.

The Electoral Roll.

64. The Secretary of each of the Associations mentioned in paragraph 10 of Schedule II shall be the Registration Officer for the planting constituency.

Provided that any of the powers and duties of the Registration Officer may be performed and exercised by any deputy for the time being approved by Government, and the provisions of these paragraphs shall in respect of the powers and duties to be exercised and performed by him apply to such deputy so far as they apply to the Registration Officer.

65. The electoral roll shall be in Form XV annexed and shall be kept in English.

66. It shall be the duty of the Registration Officer to collect the necessary information and to prepare a roll of persons appearing to be entitled to be registered as electors. Only persons who, on the date fixed by Government, are entitled to exercise all the rights and privileges of members of the Associations concerned and who are not subject to any of the disqualifications enumerated in Rule 7 of the electoral rules shall be entered on the electoral roll.

67. Copies of the roll so prepared shall be posted by the Registration Officer in the office of the Associations concerned not later than the day fixed by the Government in this behalf, along with a notice specifying the date on or before which claims and objections should reach the Registration Officer, such date not being later than he day fixed by Government in this behalf and the date on and place at which the Revising Authority will sit for their disposal. The date fixed for the sitting of the Revising Authority shall not be later than the date fixed by the Government in this behalf. Copy of the roll with the notice above referred to shall be published in the Gazette.

Claims and Objections.

68. Claims and objections may be preferred in person or sent by Anchal or Post and should contain full particulars of the claim or of the grounds of objection as the case may be. Claims and objections received after the prescribed date shall be rejected.

69. The Registration Officer may of his own motion remove from the lists the names of persons whom he has reason to believe to be dead, and may make such other corrections as may be necessary.

70. The Registration Officer shall, not later than the date fixed by the Government in this behalf,—

(*a*) publish lists of all claims and objections received in time and of corrections made of his own motion in the manner prescribed in paragraph 69, and

(*b*) send a copy of every notice of objection to the person to whose registration objection has been taken and give intimation to the person concerned of the correction made by him of his own motion.

In the lists referred to in clause (*a*) and in the copy and intimation sent under clause (*b*), the Registration Officer shall give notice that the claims, objections and corrections will be taken into consideration by the Revising Authority at a place and on a date which shall be specified therein.

Revising Authority.

71. The Revising Authority shall be the Registration Officer and two members from the Associations concerned nominated for the purpose by the Commissioner, Devicolam.

72. Orders shall be passed by the Revising Authority in writing on each claim or objection with reasons if a claim is rejected or an objection contested. The Revising Authority shall also order such other corrections in the preliminary roll as may be necessary.

73. The Registration Officer shall correct the rolls in accordance with the orders of the Revising Authority and two printed copies of the rolls so corrected shall be signed by the Registration Officer. One of them shall be retained by him and the other forwarded to the Secretary to the Council.

74. The Registration Officer shall publish the final roll not later than the date fixed by the Government in this behalf in the manner prescribed in paragraph 67 above and shall keep printed copies thereof available

for inspection and sale in his office. If it is more convenient, the preliminary roll together with a list of additions and corrections may be published as the final roll.

75. The Government shall have power in their discretion to postpone from time to time any of the dates fixed by them under this Part.

The Returning Officer.

76. (*a*) On the issue of a Notification of the Government calling upon the constituency to elect a member, it shall be the duty of the Returning Officer to prepare and publish a notice stating—

(1) the name of the constituency :

(2) the number of persons to be elected ;

(3) the date appointed by the Government for the nomination of candidates and the hours between which nomination papers may be delivered ; and

(4) the day on which, the hours during which, and the place at which the poll will be taken.

(*b*) The notice shall be published—

(1) in the office of the Returning Officer,

(2) in the Gazette ; and

(3) in such newspapers as the Returning Officer may select.

Nomination of Candidates.

77. (1) The nomination of every candidate shall be made by means of a nomination paper in Form XVI annexed which shall, on application, be supplied by the Returning Officer to any elector whose name is on the electoral roll for the constituency.

(2) Every nomination paper shall be subscribed by two such electors as proposer and seconder and the candidate shall subscribe to a declaration on it expressing his willingness to stand for election and naming himself or some other person as his election agent.

(3) Every nomination paper shall be signed in the presence of the Registration Officer or of a Magistrate who shall attest the same and be sent to the Returning Officer by Anchal or Post registered and shall reach him on or before the date appointed for the nomination of candidates and at any hour not being later than 3 P. M. on the date so appointed.

78. Nomination papers which are not received by the Returning Officer within the date and the time appointed shall be rejected.

Scrutiny of Nomination.

79. (*a*) On the date appointed for the receipt of nomination papers and immediately after the time for their receipt is past, the Returning Officer shall allow every candidate, his election agent and his proposer and seconder to examine the nomination papers of all candidates which have been received by him as aforesaid.

(*b*) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made at the time to any nomination paper on the ground that it is not valid under paragraph 77 and may reject, either of his own motion or on such objection, any nomination paper on such ground; the decision of the Returning Officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given.

80. Immediately after the scrutiny and the acceptance or rejection of nomination papers in the manner described in the preceding paragraph are over, the Returning Officer shall make up a list of valid nominations and publish it on the notice board of his office.

81. (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the Returning Officer not later than 3 P. M. on the date following the day of the scrutiny of the nominations.

(2) The Returning Officer shall forthwith notify any such withdrawal and shall remove from the voting papers, if already printed, the name of the candidate who has withdrawn his candidature.

Voting.

82. No voter shall be allowed to vote in any other way than is herein provided.

83. Not less than fifteen clear days before the date fixed for the scrutiny and counting of votes, the Returning Officer shall issue through the Anchal or Post a declaration paper and a voting paper to each elector to the address entered against his name in the electoral roll, unless the elector has, since the publication of the roll, changed his address and intimated the fact in writing to the Returning Officer.

84. The declaration paper shall be in Form XVII and the voting paper in Form XVIII annexed. The same serial number shall be entered on the face of the declaration paper and on the back of the voting paper. To each

voter shall be issued the declaration paper and the voting paper whose serial number corresponds to the number which the voter's name bears on the electoral roll.

85. Before the ballot papers are issued to an elector, the Returning Officer shall—

(*a*) enter the name of the elector on the declaration paper; and

(*b*) place his initials against the name of the elector concerned in the electoral roll, or the copy of it, used for the purpose of the election.

86. With the ballot papers, the Returning Officer shall send an envelope addressed to himself in Form XIX, a smaller envelope with the number of the voting paper entered on its face and a letter in Form XX annexed. The Returning Officer shall enter the number of the ballot paper at the left hand bottom corner of the envelope in Form XIX.

87. Each elector, upon receipt of his ballot papers, if he desires to vote in the election, shall first sign the declaration in the declaration paper in the presence of a Magistrate who shall attest the signature as indicated on the form :

Provided that, if an elector resides more than five miles from the Court of the nearest Magistrate, he may have his declaration attested by any witness who knows him personally.

88. The elector shall thereafter record his vote on the voting paper by placing a mark in the form of a cross against the name of the candidate of his choice.

89. The elector shall then enclose the voting paper in the smaller envelope and stick it up and enclose the smaller envelope and the declaration paper in the larger envelope and send it by registered Anchal or Post to the Returning Officer so as to reach him not later than the date and the hour fixed in the Notification published under paragraph 76 above. The covers received after such day and hour, as well as covers received by unregistered Post or Anchal, shall be rejected :

Provided that, at his option, the elector may deposit the envelope in a ballot box which shall be provided at the Office of the Returning Officer on the day fixed for the poll between 11 A. M. and 4 P. M.

90. If an elector is incapacitated, from blindness or other physical cause, from voting in the manner prescribed above, it shall be competent to him to record his vote by the hand of any of the officers or other persons empowered to attest his declaration : and such officer or other person shall

on the declaration paper, certify the incapacity and attest the fact of his having been requested by the elector to mark the voting paper for him, and of its having been so marked by him in the presence of the elector.

91. An elector who has not received his ballot and other connected papers sent by Anchal or Post or whose papers, before their despatch back to the Returning Officer, have been inadvertently spoilt in such manner that they cannot be conveniently used, or who has lost his papers, may, on his transmitting to the Returning Officer a declaration to that effect, signed by himself before a Magistrate, require the Returning Officer to send him new papers in place of those not received, spoilt or lost:

Provided that, if an elector resides more than five miles from the Court of the nearest Magistrate, he may have his declaration attested by any witness who knows him personally; and if the papers have been spoilt, the spoilt papers shall be returned to the Returning Officer who shall cancel them on receipt.

In every case when new papers are issued, a mark shall be placed against the number of the elector's name in the roll to denote that new papers have been issued in place of those not received, spoilt or lost.

92. No election shall be invalidated by reason that an elector has not received a voting paper, provided that a voting paper has been issued to him in accordance with these paragraphs.

Counting of Votes.

93. The scrutiny of the ballot papers shall then take place. The envelopes received from voters by the Returning Officer shall first be arranged serially according to the numbers entered on them and shall then be opened one after another by the Returning Officer or in his presence. If an envelope should contain no declaration paper outside the smaller envelope containing the voting paper, the envelope enclosed shall be rejected and the Returning Officer shall endorse the word "Rejected" on that envelope. If the envelopes contain the declaration papers, the Returning Officer shall examine whether the numbers on the declaration papers and the envelopes containing the voting papers are correct. If the Returning Officer is satisfied on this point and if the declaration and attestation are *prima facie* regular, he shall file the declaration papers and put the envelopes containing the connected voting papers in a separate heap.

94. Where the Returning Officer is not satisfied that a declaration paper is the one sent out by him to the voter concerned or where the delaration or attestation is not in order, he shall endorse the word 'Rejected' on the back of the declaration paper and keep it with the connected voting paper

in a separate bundle. If more than one declaration paper or more than one smaller envelope containing the voting paper is enclosed in one and the same envelope, all the declaration papers and envelopes containing the voting papers shall be rejected and the Returning Officer shall endorse the word "Rejected" on the back of each declaration paper, and keep the declaration papers so rejected and the envelopes enclosed containing the voting papers in the same bundle of rejected papers.

95. The Returning Officer shall then open the envelopes containing the voting papers except those rejected under paragraphs 93 and 94 and shall examine them and count the votes.

96. (*a*) The Returning Officer shall endorse the word "Rejected" on every voting paper that he rejects, and, where the rejection order is questioned by any candidate or agent, give brief reasons for his order. Rejected voting papers shall be kept separate.

(*b*) He shall count the voting papers accepted by him as valid, record the votes secured by each of the candidates in Form XXI annexed and declare the election of the candidate to whom most valid votes have been given.

Explanation:—In case of equality of votes, the provision of sub-rule (7) of Rule 14 shall apply.

97. (*a*) Upon the completion of the counting, the Returning Officer shall seal up in separate packets—

(1) the counted voting papers;

(2) the rejected declaration papers and connected voting papers;

(3) the voting papers rejected at the count;

(4) the file of declaration papers; and

(5) the marked copy of the electoral roll.

(*b*) He shall also prepare and certify a return in Form XXII annexed and permit any candidate or his agent to take a copy of his return or of the return in Form XXI.

Miscellaneous.

98. (1) The Returning Officer shall, after reporting the result of the election under Rule 14, forward a copy of the return made under paragraph 97 to the Secretary to the Council, who shall thereupon publish in the Gazette the name of the candidate elected.

(2) All the packets relating to the elections, shall, subject to the control of the Government, remain in the custody of the Returning Officer,

99. The packets of ballot papers whether counted, rejected or tendered, and of the counterfoils thereof, or of the declaration papers as the case may be, shall not be opened and their contents shall not be inspected or produced except under the order of a competent Court or of Commissioners appointed to hold an enquiry in respect of an election, but all other documents relating to the election shall be open to inspection subject to such conditions as the Government may impose and to the payment of a fee of five rupees.

100. The packets aforesaid shall be retained for a period of one year and shall thereafter be destroyed subject to any direction to the contrary made by the Government or by a competent Court or by Commissioners appointed to hold an enquiry in respect of an election.

SCHEDULE IV.

(See Rule 18.)

Return of Election Expenses.

1. Under the head of receipts, there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money, security or equivalent of money was received in respect of expenses incurred on account of, or in connection with, or incidental to, the election, and the amount received from each person, club, society or association separately.

2. Under the head of expenditure there shall be shown—

(*a*) the personal expenditure of the candidate incurred or paid by him or his election agent, including travelling and all other personal expenses incurred in connection with his candidature;

(*b*) the name, and the rate and total amount of the pay, of each person employed as an agent (including the election agent), clerk or messenger;

(*c*) the travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerks or messengers;

(*d*) the travelling expenses of persons, whether in receipt of salary or not, incurred in connection with the candidature, and whether paid or incurred by the candidate, his election agent or the person so travelling;

(*e*) the cost, whether paid or incurred, of—

(i) printing;

(ii) advertising ;

(iii) stationery ;

(iv) postage ;

(v) telegrams ; and

(vi) rooms hired either for public meetings or as committee rooms ;

(*f*) any other miscellaneous expenses whether paid or incurred.

NOTE—(1) All expenses incurred in connection with the candidature whether paid by the candidate, his election agent, or any other person, or remaining unpaid on the date of the return are to be set out.

(2) For all items of five rupees and over, unless from the nature of the case (*e. g.* travel by rail or postage) a receipt is not obtainable, vouchers are to be attached.

(3) All sums paid but for which no receipt is attached are to be set out in detail with dates of payment.

(4) All sums unpaid are to be set out in a separate list.

3. The forms of declarations referred to in Rule 18 shall be as follow :—

I. Form of Declaration by Election Agent.

I.....being the appointed election agent for.....a candidate for election to the Travancore Sri Chitra State Council from the..... constituency do hereby solemnly affirm that the above return of election expenses is true to the best of my knowledge and belief, and that except the expenses herein set forth, no expenses of any nature whatsoever have to my knowledge or belief been incurred in, or for the purpose of,.....'s candidature.

Election Agent.

Solemnly affirmed before me.

(Magistrate).

II. Form of Declaration by Candidate.

I.....being a candidate for election to the Travancore Sri Chitra State Council from the.....constituency do hereby solemnly affirm that the above return of election expenses is true to the best of my knowledge and belief, and that, except the expenses herein set forth, no expenses of any nature whatsoever have to my knowledge or belief been incurred in, or for the purpose of, my candidature.

Candidate.

Solemnly affirmed before me.

(Magistrate)

III. Special Form of Declaration by Candidate under Rule 18, sub-rule (4).

I.....being a candidate for the election to the Travancore Sri Chitra State Council from the.....constituency do hereby solemnly affirm that the return of election expenses signed by my election agent is (with the exceptions noted below) true to the best of my knowledge and belief, and that (with the exceptions noted below) no expenses of any nature whatsoever other than the expenses therein set forth have to my knowledge or belief been incurred in, or for the purposes of, my candidature.

Particulars of exceptions.

Candidate.

Solemly affirmed before me.

(Magistrate.)

SCHEDULE V.

(Vide Rules 5, 7, 33, 44 and 47).

The following shall be deemed to be corrupt practices for the purposes of these Rules :—

PART I.

Bribery.

1. A gift, offer or promise by a candidate, or his agent, or by any other person with the connivance of a candidate or his agent, of any gratifications to any person whomsoever, with the object, directly or indirectly, of inducing—

(*a*) a person to stand or not to stand as or to withdraw from being, a candidate ; or

(*b*) an elector to vote or refrain from voting at an election, or as a reward to—

(*a*) a person for having so stood or not stood or for having withdrawn his candidature ; or

(*b*) an elector for having voted or refrained from voting.

Explanation.—For the purposes of this paragraph, the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money, and includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bona fide* incurred at or for the purposes of any election and duly entered in the return of election expenses prescribed by these Rules.

Undue influence.

2. Any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of any electoral right.

Explanation.—(1) Without prejudice to the generality of the provisions of this clause, any such person as is referred to herein who—

(*a*) threatens any candidate or voter or any person in whom a candidate or voter is interested, with injury of any kind; or

(*b*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter within the meaning of this clause.

(2) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this clause.

Personation.

3. The procuring or abetting or attempting to procure by a candidate or his agent or by any other person with the connivance of a candidate or his agent, the application for a voting paper at any election in a constituency, by a person in the name of any other person whether living or dead or in a fictitious name or by a person having no right to vote at that election by reason of his having already voted in that constituency or in any other constituency or the false statement by an elector to a presiding officer that the elector is unable to read or mark the ballot paper.

4. The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, which statement is reasonably calculated to prejudice the prospects of such candidate's election.

Authorisation of expenditure.

5. The incurring or authorising by a candidate or his agent of expenditure or the employment of any person by a candidate or his agent in contravention of the provisions of any Notification of the Government issued under Rule 19 of the Rules.

PART II.

Act under Part I.

1. Any act specified in Part I when done by a person who is not a candidate or his agent or a person acting with connivance of a candidate or his agent.

Personation.

2. The application for a voting paper at any election in a constituency by a person in the name of any other person, whether living or dead, or in a fictitious name or by a person having no right to vote at that election by reason of his having already voted in that constituency or in any other constituency or the false statement by an elector to a presiding officer that the elector is unable to read or mark the ballot paper.

Bribery.

3. The receipt of, or agreement to receive, any gratification, whether as a motive or as reward—

(*a*) by a person to stand or not to stand as, or to withdraw from being a candidate, or,

(*b*) by any person whomsoever for himself or any other person for voting or refraining from voting or for inducing or for attempting to induce any elector to vote or refrain from voting or any candidate to withdraw his candidature.

Payment for conveyance.

4. Any payment or promise of payment to any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of recording his vote.

Hiring and use of public conveyances.

5. The hiring, employment, borrowing or using for the purposes of the election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire:

Provided that any elector may hire any boat, vehicle or animal or use any boat, vehicle or animal which is his own property to convey himself to or from the place where the vote is recorded.

Incurring expense without authority.

6. The incurring or authorisation of expenses by any person other than a candidate or his election agent on account of holding any public meeting or upon any advertisement, circular or publication or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate unless he is authorised in writing so to do by the candidate.

Hiring of liquor shops.

7. The hiring, using or letting, as a committee-room or for the purpose of any meeting to which electors are admitted, of any building, room or other places where intoxicating liquor is sold to the public.

Issue of circulars, etc., without printer's and publisher's names printed thereon.

8. The issuing of any circular, placard or poster having reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

SCHEDULE VI.

(See Paragraph 22, Schedule VI).

List of Returning Officers.

Constituency.	Registration areas included in the constituency.	Returning Officer.
	General Rural.	
1. (1) Tovala *cum* Agastiswaram...	(*a*) Tovala taluk. (*b*) Agastiswaram taluk (excluding the Nagercoil Municipality). (*c*) The pakuthies of Alur, Talakulam, Manavalakurichi and Kadiyapattanam of the Kalkulam taluk. (*d*) Nagercoil Municipal town.	Assistant Dewan Peishkar, Padmanabhapuram.
(ii) Kalkulam *cum* Vilavankod...	(*a*) The pakuthies of Kappiyara, Valvachagoshtam, Attur, Tuckalai, Kalkulam, Kotanallur, Mekod, Aruvikara, Tiruvattar, Tripparappu, Eraniel, Ponmana, Colachel and Tiruvankod of the Kalkulam taluk (excluding the Padmanabhapuram and Colachel Municipalities). (*b*) Vilavankod taluk (excluding the Kuzhittura Municipality). (*c*) Padmanabhapuram Municipal town. (*d*) Colachel Municipal town. (*e*) Kuzhittura Municipal town.	
2. (i) Neyyattinkara *cum* Nedumangad...	(*a*) Neyyattinkara taluk (excluding the Neyyattinkara Municipality). (*b*) The pakuthies of Perunkulam, Veeranakavu, Uzhamalakkal, Kulattummel, Vellanad and Mannurkara of the Nedumangad taluk. (*c*) Neyyattinkara Municipal town.	Assistant Dewan Peishkar, Trivandrum.
(ii) Trivandrum...	(*a*) Trivandrum taluk (excluding the Trivandrum Municipality). (*b*) Trivandrum Municipal town.	
3. Chirayinkil *cum* Nedumangad...	(*a*) Chirayinkil taluk (excluding the Attingal Municipality). (*b*) The pakuthies of Vamanapuram, Nallanad, Manikkal, Palode, Aryanad, Nedumangad, Karakulam, Anad, Vembayam and Pullampara of the Nedumangad taluk. (*c*) Attingal Municipal town,	Dewan Peishkar, Trivandrum.

List of Returning Officers—(*contd.*)

Constituency.	Registration areas included in the constituency.	Returning Officer.
4. Quilon *cum* Karunagapalli...	(*a*) Qulion taluk (excluding the Quilon Municipality). (*b*) Karunagapalli taluk (excluding the portion of the Kayankulam Municipality falling within that taluk. (*c*) Quilon Municipal town. (*d*) The portion of the Kayankulam Municipal town falling within the Karunagapalli taluk.	Assistant Dewan Peishkar, Quilon.
5. (i) Kottarakara and Pattanapuram *cum* Shencotta ...	(*a*) Kottarakara taluk. (*b*) Pattanapuram taluk. (*c*) Shencotta taluk (excluding the Shencotta Municipality). (*d*) Shencotta Municipal town.	Dewan Peishkar, Quilon.
(ii) Mavelikara and Kartikapalli *cum* Kunnattur ...	(*a*) Mavelikara taluk (excluding the Mavelikara Municipality and the portion of the Kayankulam Municipality falling within that taluk). (*b*) The pakuthies of Pattiyur, Keerikad, Kandallur, Arattupuzha, Mutukulam, Chingoli, Cheppad, Valiakuzhi, Nangyarkulangara, Pallipad, Kizhakkekara, Haripad and Kartikapalli of the Kartikapalli taluk (excluding the portion of the Kayankulam Municipality falling within that taluk). (*c*) Kunnattur taluk. (*d*) Mavelikara Municipal town. (*e*) The portion of the Kayankulam Municipality falling within the Mavelikara and Kartikapalli taluks.	
6. Ambalapuzha ...	(*a*) Ambalapuzha taluk (excluding the Alleppey Municipality.) (*b*) The pakuthies of Kumarapuram, Trikkunnapuzha, Karuvatta, Cherutana and Veeyapuram of the Kartikapalli taluk. (*c*) Alleppey Municipal town.	Assistant Dewan Peishkar, Alleppey.
7. Tiruvalla *cum* Pattanamtitta...	(*a*) Tiruvalla taluk (excluding the Tiruvalla Municipality). (*b*) Pattanamtitta taluk. (*c*) Tiruvalla Municipal town.	Assistant Dewan Peishkar, Chengannur.

List of Returning Officers—(*concld.*)

Constituency.	Registration areas included in the constituency.	Returning Officer.
8. (i) Changanacherry *cum* Peermade ...	(*a*) Changanachery taluk (excluding the Changanachery Municipality). (*b*) Peermade taluk (*c*) Changanachery Municipal town.	Assistant Dewan Peishkar, Kottayam.
(ii) Kottayam...	(*a*) Kottayam taluk (excluding tho Kottayam Municipality), (*b*) Kottayam Municipal town.	
9. (i) Meenchil *cum* Devicolam...	(*a*) Meenachil taluk. (*b*) Devicolam taluk.	Dewan Peishkar, Kottayam.
(ii) Muvattupuzha *cum* Thodupuzha ...	(*a*) Muvattupuzha taluk. (*b*) Thodupuzha taluk.	
10. (i) Vaikam *cum* Shertallai ...	(*a*) Vaikam taluk (excluding the Vaikam Municipality). (*b*) Shertallai taluk. (*c*) Vaikam Municipal town.	Assistant Dewan Peishkar, Perumbavur.
(ii) Kunnatnad *cum* Parur ...	(*a*) Kunnatnad taluk (excluding the portion of the Alwaye Municipality falling within that taluk). (*b*) Parur taluk (excluding the Parur Municipality and the portion of the Alwaye Municipality falling within that taluk). (*c*) Alwaye Municipal town. (*d*) Parur Municipal town.	
	Special.	
1. The Travancore Jenmies ...		Assistant Dewan Peishkar, Alleppey.
2. Edavagai ...		Assistant Dewan Peishkar, Chengannur.
3. Municipal Councils ...		Assistant Dewan Peishkar, Quilon.
4. The Travancore Planters ...		Commissioner, Devicolam.
5. Commerce and Industry ... (South)		Dewan Peishkar, Trivandrum.
6. Commerce and Industry ... (North)		Assistant Dewan Peishkar, Alleppey.

FORM I.

(Vide Paragraph 2, Schedule III.)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Electoral Roll for Constituency.

Part Section. Registration area Polling area No, Polling station.

Serial Number.	Name.	Father's or karanavan's or mother'sor hubsand's name used as erattaper. ഇരട്ടപ്പേർ	Address (village or street and door numbor.)	Head of Qualification.
(1)	(2)	(3)	(4)	(5)

FORM II.

(Vide Paragraph 6 (c), Schedule III.)

TRAVANCORE SRI CHITRA STATE COUNCIL

Name of Constituency.

The preliminary electoral roll of voters for the.....registration area is herewith published for general information.

Any person who claims to be entered in this roll and who is not entered in it or is entered in an incorrect place or manner or with incorrect particulars may put in a claim to the Revising Authority to have his name entered, or the registry corrected.

Any person whose name is on the roll and who objects to the correctness of the entry or to the inclusion of his own name or of the name of any other person whose name is on the roll may prefer an objection to the Revising Authority.

Claims shall be preferred in Form III and objections in Form IV appended to this notice. Copies of the forms will be supplied free by the Registration Officer on application.

Claims and objections may be presented to the Registration Officer at any time during office hours or sent by Anchal or Post, but must reach him on or before.....

Claims and objections which are not preferred in proper form or are not received by the date prescribed will be rejected.

All claims and objections received in time and in proper form will be heard by the Revising authority at.....on.....

Date *Registration Officer.*

FORM III.

(*Vide Paragraph 9 (a), Schedule III.*)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Correction of Registry.

NOTICE OF CLAIM FOR_____

REGISTRATION.

To

The Revising Authority of.....Registration Area.

Sir,

I hereby give you notice that I claim to have $\frac{\text{the registry of my name corrected}}{\text{my name entered}}$ in the roll of electors for the constituency of.....as follows :—

Name in full of claimant and father's or karanavan's or mothers's or husband's name or other name used as erattaper. (ഇരട്ടപ്പ്) (1)	Address (village street and door number.) (2)	Head of qualification. (3)	Nature and full particulars of the claim. (4)

I declare that I attained the age of 30 years on .....

Date. *Signature of Claimant.*

FORM IV.

(*Vide Paragraph 9 (a), Schedule III*).

TRAVANCORE SRI CHITRA STATE COUNCIL.

Notice of Objection to Registration.

To

The Revising Authority of.....Registration area.

Sir,

I hereby give you notice that I object to the name of the person mentioned and described below being retained in the electors' roll for the polling area of.....in the registration area of.....for the constituency of.....

Name of person objected to (1)	Number in preliminary roll. (2)	Nature of objection. (3)

Date.

Signature of objector.
Address

Polling area and number in preliminary roll.

FORM V.

(Vide Paragraph 11 (a), Schedule III).

TRAVANCORE SRI CHITRA STATE COUNCIL.

List of Claims and Objections.

(a) The following persons have put in claims to be registered as elctors (or to have the registry of their names corrected) on the roll for the constituency of

Polling area.	Name of claimant.	Address.	Head of qualification.

(b) The following objections have been received regarding entries in the roll for the constituency of

Polling area.	Name of objector and number on roll.	Name of person objected to and number on roll.

(c) The following corrections have been made by the Registration Officer of his own motion in the roll for the constituency of

Polling area.	Number on roll	Naturo of correction.

The above claims and objections will be heard and corrections finally considered by the Revising Authority on.....at.....

Date *Registration Officer.*

FORM VI.

(Vide Paragraph 25, Schedule III.)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Nomination Paper.

Name of the constituency for which the candidate is nominated ... _____

Name of candidate ... _____

Father's or karanavan's name or other erattaper (ഇരട്ടപ്പേര്) ... _____

Age ... _____

Constituency on the electoral roll of which the candidate is registered as an elector ... _____

*Number of the candidate in the electoral roll of the constituency in which he is registered as an elector ... _____

Name of the proposer ... _____

*Number of the proposer in the electoral roll of the constituency ... _____

Signature of the proposer ... _____

Name of the seconder ... _____

*Number of the seconder in the electoral roll of the constituency ... _____

Signature of the seconder ... _____

Declaration by Candidate.

I hereby declare that I agree to this nomination and that I have appointed / do hereby appoint _____ to be my election agent for the election.

Date _____

Signature of candidate _____

*Where the electoral roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division, a description of the sub-division in which the name of the person concerned is entered must also be given here.

(To be filled in by the Returning Officer or other authorised person).

Serial No. _____

Certificate of Delivery.

This nomination paper was delivered to me at (date and hour _____

_____

Returning Officer or other authorised person.

Certificate of Scrutiny.

I have scrutinised the eligibility of the candidate, the proposer and the seconder, and find that they are respectively qualified to stand for election, to propose and to second the nomination.

Returning Officer or other authorised person.

N. B.—This nomination paper will not be valid unless it is delivered to the Returning Officer, or other person authorised to receive it, on or before_____ 110 , between 11 A. M. and 3 P. M.

FORM VII.

(*Vide Paragraph 26, Schedule III.*)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Preliminary list of Nominations.

1. Serial number.
2. Name of candidate.
3. Father's or karanavan's name or other erattaper (ഇരട്ടപ്പേര്).
4. Occupation and address.
5. Name of proposer.
6. Name of seconder.

Note.

The nomination papers will be taken up for scrutiny at $\frac{\text{A. M.}}{\text{P. M.}}$ on the day of at (place)

Date *Returning Officer.*

FORM VIII.

(*Vide Paragraph 32, Schedule III.*)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Final list of candidates for election.

.....Constituency.

Serial number.	Name of candidate.	Address of candidate.
1.		
2.		
3.		
4. etc.		

Note.

The poll will be taken on the day of 110 between and at the polling stations already notified.

Date. *Returning Officer.*

FORMS IX, AND IX—A.

[*Vide Paragraph 42 (1), Schedule III.*]

TRAVANCORE SRI CHITRA STATE COUNCIL.

FORM IX—A.

FORM IX.

Ballot Paper.

Counterfoil.
Serial No.

Outerfoil.
Front.

Constituency.....

Number of polling area.....

Number of elector on electoral roll ...

Names of candidates.	Mark showing the elector's choice.

N. B. Please see instructions on the back.

Back of Outerfoil.

Instructions.

(1) The number of candidates for whom you may vote is only one.
(2) Place a cross mark thus × against the name of the candidate for whom you wish to vote.
(3) The mark should be placed against not more than one name.

Serial No.

FORM X.

(*Vide Paragraph 47, Schedule III.*)

TRAVANCORE SRI CHITRA STATE COUNCIL.

List of Tendered Votes.

Polling area No.....

Name of constituency.	Name of elector.	Number on electoral roll.	Number of votes recorded.	Signature of elector if literate or thumb impression of elector if illiterate, and address.

FORM XI.

(Vide Paragraph 48, Schedule III.)

TRAVANCORE SRI CHITRA STATE COUNCIL.

List of Challenged Votes.

Polling area No.....

Name of constituency.	Number on electoral roll.	Name.	Signature of elector if literate or thumb impression of elector if illiterate.	Name of identifier, if any.

Order of the Presiding Officer in each case *Presiding Officer.*

FORM XII.

(Vide Paragraph 53, Schedule III.)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Statement sent by Presiding Officer at in the Taluk of after the polling at polling area on 110 for the constituency.

Description.	Number received.	Number of ballot papers in box or packet.	Number unused.	Number spoilt.	Ballot papers dealt with under paragraph 50.	Balance.
Ordinary ballot papers.						
Tendered ballot papers.						

Date *Presiding Officer.*

FORM XIII.

(Vide Paragraph 54, Schedule III.)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Note of Contents.

Name and number of polling area.	Number of ballot box or packet.	Number of ballot papers in box or packet.
Total.		

Station.

Date. *Presiding Officer.*

FORM XIV.

(*Vide Paragraph 60, Schedule III.*)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Return showing results of the election for Constituency.

Names of candidates for whom votes have been given.	Number of valid votes.
A B C D E F	
Number of valid votes.	
Number of votes declared invalid.	
Number of tendered votes.	

(I have verified the statements forwarded by the presiding officers and found them $\frac{\text{correct}}{\text{to contain the following errors}}$).

I do hereby declare that the following candidate has been duly elected:

Date *Returning Officer.*

FORM XV.

(*Vide Paragraph 65, Schedule III.*)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Electoral Roll.

Serial Number. Name of individual. Father's name. Address in full.

FORM XVI.

(*Vide Paragraph 77, Schedule III.*)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Nomination Paper.

1. Name of candidate.
2. Father's name.
3. Age.
4. Address and occupation.
5. Signature of proposer and number on electoral roll.
6. Signature of seconder and number on electoral roll.

Candidate's declaration.

I declare that I am willing to stand for election and that I have appointed as my election agent.

SIGNATURE OF CANDIDATE,

Date. *Signature of Registration Officer or Magistrate.*

Instruction.

Nomination papers which are not received by the Returning Officer on or before.....of.....110 , at any hour not being later than 3 P. M. on that date shall be invalid.

FORM XVII.

(Vide Paragraph 84, Schedule III.)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Declaration paper.

Constituency. Election.

Serial No.

Elector's name and number on the roll.

Elector's declaration.

I (name in full and designation) declare that I am an elector for this constituency and have signed no other voting paper at this election for this constituency.

Date. Signature of elector.

Station.

Address.

Attestation.

I declare that the above signature was affixed in my presence by who is personally known to me (or who has been identified to my satisfaction).

Date. Signature.

Station.

Designation and address.

FORM XVIII.

(Vide Paragraph 84, Schedule III.)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Ballot paper.

Voting paper.

Constituency. Election.

Names of candidates.

FORM XIX.

(*Vide Paragraph 86, Schedule III.*)

(Face of envelope.)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Election.

Constituency.....

Poll on.....

To

The Returning Officer,

No, ...Constituency,

.....(Station and address.)

FORM XX.

(*Vide Paragraph 86, Schedule III.*)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Letter of intimation.

.....Constituency.

Sir,

The persons whose names are printed on the voting paper sent herewith have been nominated as candidates for the Travancore Sri Chitra State Council. Should you desire to vote at this election, I have to request that you will—

(*a*) first sign the declaration paper in the presence of a Magistrate and obtain his attestation as indicated on the form ;*

(*b*) then mark your vote in the column provided for the purpose in the voting paper ;

(*c*) enclose the voting paper in the smaller envelope ; and

(*d*) put the smaller envelope and the declaration paper in the envelope addressed to me and return it to me by registered Anchal or Post so as to reach me not later than 3 P. M. on the day of 193 .

Station.

Date. *Returning Officer.*

* NOTE :—If you reside more than five miles from the Court of the nearest Magistrate, you may have your declaration attested by any witness who knows you personally.

FORM XXI.

(Vide Paragraph 96 (b), Schedule III.)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Results of the polling.

Name of candidate.	Number of votes recorded in his favour.
A	
B	
C	
D	
Total number of valid votes.....	
Total number of invalid votes.....	

I declare that has been duly elected.

Signature.

Date. *Returning Officer.*

FORM XXII.

(Vide Paragraph 97 (b), Schedule III.)

TRAVANCORE SRI CHITRA STATE COUNCIL.

Return of Returning Officer.

Total number of electors on roll.	Number of ballot papers issued originally.	Number issued in place of ballot papers reported as not received, spoilt or lost.	Number of ballot papers received.	Number of declaration papers and connected papers rejected.	Number of voting papers rejected at the count.	Number of voting papers counted.	Number of declaration papers filed separately.	Remarks.
1	2	3	4	5	6	7	8	9

Date. *Returning Officer,*

III
THE SRI MULAM ASSEMBLY ELECTORAL RULES. (a)

CONTENTS.

Rules.

1. Short title and commencement.
2. Definitions.

PART I.

Composition of Assembly and Constituencies.

3. Composition of Assembly.
4. Constituencies.

PART II.

Qualifications of Elected Members.

5. General qualifications for being elected.

Special Qualifications for Election in case of certain Constituencies.

6. Special qualifications for election.

PART III.

The Electoral Roll.

7. General conditions of registration and disqualifications.
8. Qualifications of electors.
9. Electoral Rolls.
10. Right to vote.

PART IV.

Elections.

11. Nomination of candidates.
12. Deposit on nomination.
13. Death of a candidate before poll.
14. Procedure at election.
15. Election by more than one constituency.

Election Agents and Return of Expenses.

16. Disqualification for being election agent.
17. Revocation of appointment of election agent.
18. Returning of election expenses.
19. Fixation of maximum election expenses.
20. Accounts of agents.

PART V.

Nominated Members.

21. General disqualifications for nominations.
22. Duration of membership.

(a) R. O. C. No. 254/33/ Legis., dated 14th March 1933.—*T. G. G. dated 14-3-1933.*

PART VI.

General Provisions.

Rules.

23. Obligation to take oath.
24. Vacation of seat.
25. Effect of subsequent disabilities or failure to take oath.
26. Vacancies.

General Elections.

27. Reconstitution of Assembly.
28. Publication of result of general election.
29. Powers of Government in case of difficulty.

PART VII.

The final Decision of Doubts and Disputes as to the Validity of an Election.

30. Definitions.
31. Election petition.
32. Presentation of the petition.
33. Contents of the petition.
34. Against whom it may be presented.
35. Deposit of security.
36. (1) Dismissal for default.
    (2) Appointment of Commissioners.
37. Inquiry by Commissioners.
38. Place of inquiry.
39. Withdrawal of petition.
40. Abatement or substitution on death of petitioner.
41. Abatement or substitution on death of respondent.
42. Recrimination when seat claimed.
43. Attendance of Law Officers.
44. Grounds for declaring election void.
45. Report of Commissioners and procedure thereon.
46. Form of report.
47. Finding as to corrupt practices and persons guilty thereof.

PART VIII.

Special Provision.

48. Interpretation in case of doubt.

PART IX.

Miscellaneous.

49. Government to make provision regarding custody, &c., of election papers and conduct of elections.

Schedule I.—List of Constituencies.
„ II.—Qualifications of Electors.
General Constituencies.
Special Constituencies.

Schedule II.—(*Concld.*)
1. Planters' Constituency.
2. Jenmi's Constituency.
3. Commerce and Industry Constituencies.

„ **III.**—Rules for the preparation of Electoral Rolls and the conduct of Elections.

Preliminary.

PART I.

Rules.

Rules for the preparation of Electoral Rolls for the election of members for all constituencies other than the planting constituency.

CHAPTER I.

2— 8. The Electoral Roll.
9—11. Claims and objections.
12—13. Revising authority.
14—16. Final publication of the Roll.
17—21. General.

CHAPTER II.

22—24. Returning Officers.
25—27. Nomination of Candidates.
28—32. Scrutiny of Nominations.
33—54. Voting.
55—60. Counting of votes.
61—63. Miscellaneous.

PART II.

Rules for the Election of a Member for the Planting Constituency.

64—67. The Electoral Roll.
68—70. Claims and Objections.
71—75. Revising Authority.
76. The Returning Officer.
77—78. Nomination of candidates.
79—81. Scrutiny of nominations.
82—92. Voting.
93—97. Counting of votes.
98-100. Miscellaneous.

Schedule IV.—Return of election expenses.
„ **V.**—Corrupt Practices.
„ **VI.**—List of Returning Officers.
Forms I to XXII.

Rules under the Travancore Legislative Reforms Regulation, II of 1108, for the election and nomination of Members to the Travancore Sri Mulam Assembly, the qualification of Electors and Members, the constitution of constituencies and the final decision of doubts and disputes as to the validity of elections.

Passed by the Government of His Highness the Maha Raja under date the 14th March 1933, corresponding to the 1st Meenam 1108.

In exercise of the powers conferred by Sections 6, 15 and 34 of the Travancore Legislative Reforms Regulation, II of 1108, the Government of His Highness the Maha Raja have been pleased to make the following Rules:—

Short title and commencement.

1. (*a*) These Rules may be called the Sri Mulam Assembly Electoral Rules.

(*b*) They shall come into force at once.

Definitions.

2. In these Rules, unless there is anything repugnant in the subject or context,—

(*a*) "Assembly" means the Travancore Sri Mulam Assembly constituted under the Travancore Legislative Reforms Regulation, II of 1108;

(*b*) "Commissioners" means Commissioners appointed for the purpose of holding an election inquiry under these Rules;

(*c*) "Corrupt practice" means any act deemed to be a corrupt practice under the provisions of Schedule V;

(*d*) "Election Agent" means the person appointed under these Rules by a candidate as his agent for an election;

(*e*) "Gazette" means the Travancore Government Gazette;

(*f*) "The Regulation" means the Travancore Legislative Reforms Regulation, II of 1108;

(*g*) "Rules" includes the provisions of the Schedules; and

(*h*) "Schedule" means a Schedule to these Rules.

PART I.

Composition of Assembly and Constituencies.

3. The Assembly shall consist of—

Composition of Assembly.

(1) forty-eight elected members; and

(2) twenty-four nominated members, of whom,

(*a*) ten shall be officials; and

(*b*) fourteen non-officials.

Constituencies.

4. (1) The elected members shall be elected by the constituencies specified in Schedule I, and the number of members to be elected by each constituency shall be as stated therein against that constituency.

(2) The election of the members for the constituencies mentioned in Schedule I shall be effected by the electorates and in accordance with these Rules and with the procedure respectively prescribed in Schedule III.

PART II.

Qualifications of Elected Members.

General disqualifications for being elected.

5. (1) A person shall not be eligible for election as a member of the Assembly if such person—

(*a*) is a deaf-mute or a leper; or

(*b*) is a member of the Sri Mulam Assembly and has made the oath or affirmation as such member; or

(*c*) is under twenty-one years of age; or

(*d*) has been declared by a competent Court to be of unsound mind; or

(*e*) is an undischarged insolvent; or

(*f*) being a discharged insolvent has not obtained from a Court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or

(*g*) having been a Vakil has been dismissed or is under suspension from practising as such by order of any competent Court:

Provided that the disqualification mentioned in clause (*g*) may be removed by a specific order of Government in this behalf.

(2) A person against whom a conviction by a Criminal Court involving a sentence of imprisonment for a period of six months or more is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for election for five years from the date of the expiration of the sentence:

Provided that on application made by a person disqualified under this sub-rule the Government may remove the disqualification by order in this behalf.

(3) If any person is convicted of an offence under Chapter IX—A of the Travancore Penal Code or Chapter IX—A of the Indian Penal Code, punishable with imprisonment for a term exceeding six months, or is, after

an inquiry by Commissioners appointed under any Rules for the time being in force regarding elections to either Chamber of the Legislature constituted under the Regulation, reported as guilty of a corrupt practice as specified in Part I or in paragraph 1, 2 or 3 of Part II of Schedule V, such person shall not be eligible for election for five years from the date of such conviction or of the finding of the Commissioners, as the case may be; and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for four years from such date.

(4) If, in respect of an election to either Chamber of the Legislature constituted under the Regulation, or in respect of an election to the Legislative Council constituted under Regulation II of 1097, a return of the election expenses of any person who has been nominated as a candidate for such election is not or has not been lodged within the time and in the manner prescribed by or under the Rules made in that behalf, or if any such return is lodged which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, neither the candidate nor his election agent shall be eligible for election for five years from the date of such election :

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this Rule or incurred under the corresponding provisions of the Rule passed under Regulation II of 1097 may be removed by an order of the Government in that behalf, and wherever so removed, the disqualification shall cease to exist.

Special Qualifications for Election in case of certain Constituencies.

6. (1) (*a*) No person shall be eligible for election as a member of the Assembly to represent a general constituency unless his name is registered on the electoral roll of that constituency or of any other general constituency for the Assembly.

Special qualifications for election.

(*b*) No person shall be eligible for election as a member of the Assembly to represent a special constituency unless his name is registered on the electoral roll of that constituency :

Provided that a person whose name is registered on the electoral roll of a Commerce and Industry constituency or a Jenmi's constituency shall be eligible for election by either of the Commerce and Industry constituencies or either of the Jenmi's constituencies, as the case may be.

(2) For the purposes of these Rules—

(*a*) "Special Constituency" means a Jenmi's, Planters' or Commerce and Industry constituency.

(*b*) "General Constituency" means any other constituency than a special constituency.

PART III.
The Electoral Roll.

General conditions of registration and disqualifications.

7. (1) Every person shall be entitled to have his name registered on the electoral roll of a constituency, who has the qualifications prescribed for an elector of that constituency and who is not subject to any of the following disqualifications, namely :—

(*a*) has been adjudged by a competent Court to be of unsound mind ; or

(*b*) is under twenty-one years of age :

Provided that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency or of more than one Commerce and Industry constituency or of more than one Jenmi's constituency.

(2) If any person is convicted of an offence under Chapter IX-A of the Travancore Penal Code, or Chapter IX-A of the Indian Penal Code, punishable with imprisonment, for a term exceeding six months or is, after an inquiry by Commissioners appointed under any Rules for the time being in force regarding elections to either Chamber of the Legislature constituted under the Regulation, reported as guilty of a corrupt practice as specified in Part I, or in, Paragraph 1, 2 or 3 of Part II of Schedule V, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of five years from the date of the conviction or the report, as the case may be, or, if not on the electoral roll, shall not be so registered for a like period ; and if any person is reported by any such Commissioners as guilty of any other corrupt practice, his name, if on the electoral roll, shall be removed therefrom, and shall not be registered thereon for a period of four years from the date of the report, or, if not on the electoral roll, shall not be so registered for a like period :

Provided that the Government may direct that the name of any person to whom this sub-rule applies shall be registered on the electoral roll.

Qualifications of electors.

8. The qualifications of an elector for a general or a special constituency shall be those specified in Schedule II in the case of that constituency.

Electoral Rolls.

9. (1) An electoral roll shall be prepared for every constituency in accordance with the Rules prescribed in Schedule III. It shall be published in the Gazette together with a notice specifying the mode in which and the time within which any person whose name is not entered in the roll and who claims to have it inserted therein, or 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, may prefer a claim or objection to the Revising Authority.

(2) The orders made by the Revising Authority shall be final, and the electoral roll shall be amended in accordance therewith, and shall, as so amended, be republished in such manner as the Government may prescribe.

(3) The electoral roll shall come into force on the date of such republication and shall continue in force for a period of four years and after the expiration of such period a fresh roll shall be prepared in accordance with the Rules for the time being in force :

Provided that the Government may, by Notification in the Gazette, direct the preparation of a fresh roll at any time before the expiration of the said period.

(4) If a constituency is called upon to elect a member after an electoral roll has ceased to have force and before the completion of the new electoral roll, the old electoral roll shall, for the purposes of that election, continue to operate as the electoral roll for that constituency.

(5) Notwithstanding anything hereinbefore contained any person may apply to the Government for the amendment of any electoral roll for the time being in force, and the Government may, at any time after any such application has been made in respect of an electoral roll, by Notification in the Gazette, direct the preparation of a list of amendments thereto, and all the provisions of this Rule shall, as far as may be applicable, apply in the case of every such list in like manner as they apply in the case of electoral rolls :

Provided that, where any such application is made for the correction of an existing entry in the electoral roll and the Government are satisfied after such inquiry, if any, as the Government may make that the entry relates to the applicant and is erroneous or defective in any particular, the Government may direct the roll to be amended accordingly.

(6) When any list of amendments has been republished under sub-rule (5), the electoral roll to which it relates shall be deemed to have been amended accordingly.

10. (1) Every person registered on the electoral roll for the time being in force for any constituency shall, while so registered, be entitled to vote at an election of a member for that constituency :

Right to vote.

Provided that—

(*a*) no person shall vote at any general election in more than one constituency, or in more than one Commerce and Industry constituency or in more than one Jemmi's constituency ;

(*b*) no person shall vote at any election if he is subject to any disability stated in Rule 7 ; and

(*c*) no person shall vote at any election if on the date on which the poll is taken he is undergoing a sentence of imprisonment.

(2) If any person is, in the course of the hearing of an election petition under these Rules, proved to have voted at the election in contravention of the proviso to sub-rule (1), his vote shall be void.

PART IV.

Elections.

11. (1) Any person may be nominated as a candidate for election in any constituency for which he is eligible for election under these Rules.

Nomination of candidates.

(2) The Government shall appoint for each constituency—

(*a*) a date, not later than the 14th day after the date of the Notification calling upon the constituency to elect a member, for the nomination of candidates ;

(*b*) except in the case of the Planting constituency, a further date, not later than the seventh day after the first-mentioned date, for the scrutiny of nominations ; and

(*c*) a further date or dates on which a poll shall, if necessary, be taken :

and the dates so appointed shall be notified in the Gazette.

(3) On or before the date so appointed for the nomination of candidates, each candidate shall deliver (unless otherwise provided in Schedule III) either in person or by his proposer and seconder together, between the hours of eleven o' clock in the forenoon and three o' clock in the afternoon, to the Returning Officer or to such other person as may be authorised in this behalf by the Government, a nomination paper completed in the form prescribed in Schedule III and subscribed by the candidate himself as

assenting to the nomination and by two persons as proposer and seconder whose names are registered on the electoral roll of that constituency.

(4) Any person whose name is registered on the electoral roll of the constituency, and who is not subject to any disability stated in Rule 7, may subscribe, as proposer or seconder, a nomination paper.

(5) Every nomination paper delivered under sub-rule (3) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed or does thereby appoint as his election agent for the election either himself or some one other person who is not disqualified under these Rules for the appointment and who shall be named in the declaration; and no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper.

(6) Any nomination paper which is not received before three o' clock in the afternoon on the date appointed by the Government for the nomination of candidates shall be rejected.

(7) The Returning Officer or other person authorised shall, on receiving a nomination paper under sub-rule (3), inform the person or persons delivering the same of the date, hour and place appointed for the scrutiny of nominations, and shall enter in the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed, in some conspicuous place in his office, a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder.

(8) Any candidate may withdraw his candidature by notice in writing subscribed by him and delivered to the Returning Officer or other person authorised on or before three o' clock in the afternoon on the date succeeding that appointed by the Government for the scrutiny of nominations. A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be renominated as a candidate for the same election.

(9) The Returning Officer or other person authorised shall, on receiving a notice of withdrawal under sub-rule (8), as soon as may be, cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

Deposit on nomination.

12. (1) On or before the date appointed for the nomination of candidates, each candidate shall deposit or cause to be deposited with the Returning Officer the sum of two hundred and fifty rupees in cash; and no candidate shall be deemed to be duly nominated unless such deposit has been made.

(2) If a candidate, by whom or on whose behalf the deposit referred to in sub-rule (1) has been made, withdraws his candidature in the manner and within the time specified in sub-rule (8) of Rule 11 or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made; and if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative or, if not made by the candidate, shall be returned to the person by whom it was made.

(3) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is not elected and the number of votes polled by him does not exceed one-eighth of the total number of votes polled, the deposit shall be forfeited to the Government.

(4) For the purpose of sub-rule (3), the number of votes polled shall be deemed to be the number of ballot papers, other than spoilt ballot papers, counted.

(5) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is elected and thereafter his seat is declared vacant under these Rules owing to his failure to make the oath or affirmation hereinafter prescribed, the deposit shall be forfeited to the Government.

(6) The deposit made in respect of a candidate who is not elected shall, if it is not forfeited under sub-rule (3), be returned to the candidate or to the person who has made the deposit on his behalf, as the case may be, as soon as may be after the publication of the result of the election in the Gazette; and the deposit made in respect of a candidate who is elected shall, if it is not forfeited under sub-rule (5), be so returned as soon as may be after the candidate has made the oath or affirmation hereinafter prescribed or in pursuance of a direction by the Government for the return of the deposit despite the fact that the said oath or affirmation has not been made:

Provided that, if a candidate is duly nominated at a general election in more than one constituency, not more than one of the deposits made by him or on his behalf shall be returned, and the remainder shall be forfeited to the Government.

Death of a candidate before poll.

13. If a candidate who has been duly nominated dies after the date appointed for the scrutiny of nominations and before the date appointed for the taking of a poll, the Returning Officer or other authorised person referred to in sub-rule (3) of Rule 11 shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Government, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election:

Provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermanding of the poll.

Procedure at election.

14. (1) If the number of candidates who are duly nominated and who have not withdrawn their candidature in the manner and within the time mentioned in sub-rule (8) of Rule 11 exceeds one, a poll shall be taken.

(2) If there is only one such candidate, he shall be declared to be duly elected.

(3) In the absence of any nomination for a constituency or if the candidate or candidates nominated have withdrawn their candidature in the manner and within the time mentioned in sub-rule (8) of Rule 11, the Government shall, by a Notification in the Gazette, call upon the constituency to elect a person within such time as may be prescribed by the Notification :

Provided that, where the constituency, having already been called upon under this sub-rule, has failed to elect a person to fill the vacancy, the Government shall not be bound to call again upon the constituency to elect a person until such time, if any, as they think fit.

(4) Votes shall be given by ballot and in person unless otherwise prescribed in Schedule III :

Provided that no votes shall be received by proxy.

(5) Votes shall be counted by or under the supervision of the Returning Officer, and each candidate, the election agent of each candidate, and one representative of each candidate authorised in writing by the candidate shall have a right to be present at the time of counting.

(6) When the counting of votes has been completed the Returning Officer shall forthwith declare the candidate to whom the largest number of votes has been given to be elected.

(7) When an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of Returning Officer and in such manner as he may determine.

(8) The Returning Officer shall without delay report the result of the election to the Secretary to the Assembly and the name of the candidate elected shall be published in the Gazette.

15. (1) If any person is elected by more than one constituency, he shall, by notice in writing signed by him and delivered to the Secretary to the Assembly within seven days from the date of the publication of the result of such election in the Gazette, choose for which of those constituencies he shall serve, and the choice shall be conclusive.

Election by more than one constituency.

(2) When any such choice has been made, the Government shall call upon the constituency or constituencies for which such person has not chosen to serve to elect another person or persons, as the case may be.

(3) If the candidate does not make the choice referred to in sub-rule (1) of this Rule, the election of such person shall be void, and the Government shall call upon the constituency or constituencies concerned to elect another person or persons, as the case may be.

Election Agents and return of Expenses.

16. No person shall be appointed an election agent who is himself ineligible for election as being subject to any disqualifications mentioned in sub-rule (3) or sub-rule (4) of Rule 5

Disqualification for being election agent.

17. (1) The appointment of an election agent, whether the election agent appointed be the candidate himself or not, may only be revoked in writing signed by the candidate and lodged with the officer receiving nominations and shall operate from the date on which it is so lodged.

Revocation of appointment of election agent.

(2) In the event of such revocation or of the death of any election agent whether such event occurs before, during or after the election, the candidate shall appoint forthwith another election agent and declare his name in writing to the said officer.

18. (1) Within thirty-five days from the date of publication of the result of an election under sub-rule (8) of Rule 14, there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate for the election, a return, in such form as the Government may prescribe, of the election expenses of such person containing the particulars specified in Schedule IV and signed both by the candidate and by his election agent.

Returning of election expenses.

(2) Every such return shall contain a statement of all payments made by the candidate or by his election agent or by any person on behalf of the candidate or in his interests for expenses incurred on account of, or in respect of, the conduct and management of the election and further a

statement of all unpaid claims in respect of such expenses of which he or his election agent is aware.

(3) The return shall be accompanied by declarations by the candidate and his election agent, which shall be in the form contained in Schedule IV and shall be made on oath or affirmation before a Magistrate.

(4) Notwithstanding anything hereinbefore contained, where a candidate is, owing to absence from Travancore, unable to sign the return of election expenses and to make the declaration within the period prescribed in this Rule, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent under sub-rule (3), and within fourteen days after the return of the candidate to Travancore he shall cause to be lodged with the Returning Officer a declaration made on oath or affirmation before a Magistrate in the special form for the purpose contained in the said Schedule.

(5) When any return and the declaration made in respect thereof have been lodged with the Returning Officer, the Returning Officer shall, as soon as may be, cause a notice of the date on which the return and declarations in question have been lodged, and of the time and place at which they can be inspected, to be fixed in some conspicuous place in his office and to be published in the Gazette, and any person shall, on payment of a fee of one rupee, be entitled to inspect any such return or declaration and, on payment of such fee as the Government may, by Rules prescribe, to obtain a copy or copies thereof or of any part thereof.

(6) The Government shall cause to be prepared in such manner and maintained for such time, as they may direct, a record showing the names of all candidates at every election under these Rules and the name of the election agent of each such candidate and the date on which the return of election expenses of each candidate has been lodged with the Returning Officer.

Fixation of maximum election expenses.

19. (1) The Government may, by Notification in the Gazette,—

(*a*) fix maximum scales of election expenses which shall be applicable to any election held after the first elections under these Rules; and

(*b*) prescribe the number and descriptions of persons who may be employed for payment in connection with any election held under these Rules.

(2) Any Notification issued under this Rule may make different provisions for different constituencies.

20. Every election agent shall, for each election for which he is appointed an election agent, keep separate and regular books of account in which the particulars of all expenditure of the nature referred to in Rule 18 shall be entered, whether such expenditure is incurred by the candidate or by the election agent or by any person under the direction of the candidate or the election agent.

Accounts of agents.

PART V.

Nominated Members.

General disqualifications for nominations.

21. (1) No person shall be nominated to the Assembly who,—

(*a*) is a deaf-mute or a leper; or

(*b*) is a member of the Sri Mulam Assembly and has made the oath or affirmation as such member; or

(*c*) is under twenty-one years of age; or

(*d*) has been declared by a competent Court to be of unsound mind; or

(*e*) is an undischarged insolvent; or

(*f*) being a discharged insolvent has not obtained from a Court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or

(*g*) having been a Vakil has been dismissed or is under suspension from practising as such by order of any competent Court:

Provided that the disqualification mentioned in clause (*g*) may be removed by a specific order of Government in this behalf.

(2) A person against whom a conviction by a Criminal Court involving a sentence of imprisonment for a period of six months or more, subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for nomination for five years from the date of the expiration of the sentence:

Provided that, on application made by a person disqualified under this sub-rule, the Government may remove the disqualification by order in this behalf.

(3) If any person is convicted of an offence under Chapter IX-A of the Travancore Penal Code or Chapter IX-A of the Indian Penal Code, punishable with imprisonment for a term exceeding six months, or is, after an inquiry by Commissioners appointed under any Rules for the time being

in force regarding elections to either Chamber of the Legislature constituted under the Regulation, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II of Schedule V, such person shall not be eligible for nomination for five years from the date of such conviction or of the finding of the Commissioners, as the case may be; and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for four years from such date.

(4) If, in respect of an election to either Chamber of the Legislature constituted under the Regulation, or in respect of an election to the Legislative Council constituted under Regulation II of 1097, a return of the election expenses of any person who has been nominated as a candidate at that election is not or has not been lodged within the time and in the manner prescribed by or under the Rules made in that behalf, or if any such return is lodged which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, neither the candidate nor his election agent shall be eligible for nomination for five years from the date of such election :

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this Rule or incurred under the corresponding provisions of the Rules passed under Regulation II of 1097 may be removed by an order of the Government in that behalf, and wherever so removed, the disqualification shall cease to exist.

22. (1) A nominated non-official member shall hold office for the duration of the Assembly to which he is nominated.

Duration of membership.

(2) Official members shall hold office for the duration of the Assembly to which they are nominated or for such shorter period as the Government may, from time to time, determine.

PART VI.

General Provisions.

23. Every person who is elected or nominated to be a member of the Assembly shall, before taking his seat, make, at a meeting of the Assembly, an oath or affirmation in the following form :—

Obligation to take oath.

"I, A. B., having been elected/nominated a member of this Assembly, do solemnly swear (or affirm) that I will be faithful and loyal to His Highness the Maha Raja of Travancore and to His Majesty the King, Emperor of India, and to their heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

Vacation of seat.

24. If any person, having been elected or nominated, is found to have been subject at the time of his election or nomination to any of the disabilities stated in Rule 5 or in Rule 21, as the case may be, the Government may, if the disqualification has not been removed under these Rules by Notification in the Gazette, declare his seat to be vacant.

Effect of subsequent disabilities or failure to take oath.

25. If any person, having been elected or nominated, subsequently becomes subject to any of the disabilities stated in clauses (*d*), (*e*), (*f*) and (*g*), of sub-rule (1) or in sub-rules (2), (3) and (4) of Rule 5 or of Rule 21, as the case may be, or fails to take the oath or affirmation prescribed by Rule 23 within such time as the Government consider reasonable, the Government shall, if the disqualification has not been removed under these Rules by Notification in the Gazette, declare his seat to be vacant.

Vacancies.

26. (1) When a vacancy occurs in the case of an elected member by reason of his election being declared void or his seat being declared vacant or by reason of death, acceptance of office or resignation duly accepted, the Government shall, by Notification in the Gazette, call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such Notification.

(2) If a vacancy occurs in the case of a nominated member, the Government shall nominate a person to the vacancy.

General Elections.

Reconstitution of Assembly.

27. (1) On the expiration of the duration of the Assembly or on its dissolution, a general election shall be held in order that a new Assembly may be constituted.

(2) On such expiration or dissolution, the Government shall, by Notification in the Gazette, call upon the constituencies referred to in Rule 4 to elect members in accordance with these Rules within such time after the date of expiration or dissolution as may be prescribed by such Notification :

Provided that, if the Government think fit, such Notification may be issued at any time not being more than three months prior to the date on which the duration of the Assembly would expire in the ordinary course of events.

(3) Before the day fixed for the first meeting of the Assembly, the Government shall make such nominations as may be necessary to complete the Assembly.

28. As soon as may be after the expiration of the time fixed for the election of members at any general election, the names of the members elected for the various constituencies at such election shall be notified in the Gazette.

Publication of result of general election.

29. If any difficulty arises as to the preparation or publication of any electoral roll or of any list of amendments to any such roll or as to the holding of any election under these Rules, the Government may by order do anything not inconsistent with these Rules which appears to them to be necessary for the preparation or publication of the roll or for the proper holding of the election.

Powers of Government in case of difficulty.

PART VII.

The final Decision of Doubts and Disputes as to the Validity of an Election.

30. In this Part and in Schedule V, unless there is anything repugnant in the subject or context,—

Definitions.

(*a*) "Agent" includes an election agent and any person who is held by Commissioners to have acted as an agent in connection with any election with the knowledge or consent of the candidate;

(*b*) "Candidate" means a person who has been nominated as a candidate at any election or who claims that he has been so nominated or that his nomination has been improperly refused, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election:

(*c*) "Electoral right" means the right of a person to stand or not to stand as, or to withdraw from being a candidate, or to vote or refrain from voting, at an election; and

(*d*) "Returned candidate" means a candidate whose name has been published under these Rules as duly elected.

31. Save as provided for in Rule 24 no election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

Election petition.

32. (1) An election petition against any returned candidate may be presented to the Chief Secretary to Government—

Presentation of the petition.

(*a*) by any candidate or elector within fourteen days from the date on which the return of the

election expenses of the returned candidate and the declarations referred to in Rule 18 are received by the Returning Officer ; or

(*b*) within thirty days from that date by an officer empowered by Government in this behalf on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed ; or

(*c*) on the ground that the returned candidate or his election agent or any other person acting with the connivance of the candidate or of his election agent has been guilty of the offence of bribery, undue influence or personation as defined in Chapter IX-A of the Travancore Penal Code, in respect of the election, by any candidate or elector within fourteen days from the date on which such returned candidate, election agent or other person is convicted of such offence.

(2) An election petition shall be deemed to have been presented to the Chief Secretary to Government when it is delivered to him or to any officer appointed by Government in this behalf—

(*a*) by the person making the petition ; or

(*b*) by a person authorised in writing in this behalf by the person making the petition ; or

(*c*) by registered Post or Anchal.

(3) When the last day of the period for the presentation of an election petition under this Rule is a public holiday within the meaning of Section 24 of the Negotiable Instruments Regulation, II of 1075, or has been notified by Government as a day to be observed as a holiday in Government Offices, the petition shall be considered as having been received in due time if it is presented on the next succeeding day which is neither such a public holiday nor a day so notified.

(4) For the purposes of clause (*a*) of sub-rule (1), the date on which the return of the election expenses and the declarations referred to in Rule 18 are received by the Returning Officer shall, in the case of a candidate who has made such return and declaration in the manner provided in sub-rule (4) of that Rule, be deemed to be the date on which the declaration of the candidate under that sub-rule is received.

Contents of the petition.

33. (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and

verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure for the time being in force.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice.

(3) The Commissioners may, upon such terms as to costs and otherwise as they may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in their opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

Against whom it may be presented.

34. The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected, in which case he shall join as respondents to his petition all other candidates who were nominated at the election.

Deposit of security.

35. At the time of the presentation of the petition, the petitioner shall, except where the petition is presented under clause (*b*) of sub-rule (1) of Rule 32, deposit with it the sum of five hundred rupees in cash as security for the costs of the same.

Dismissal for default.

36. (1) If the provisions of Rule 32, Rule 33 or Rule 35 are not complied with, the Government shall dismiss the petition.

Appointment of Commissioners.

(2) If the petition is not dismissed under sub-rule (1) :—

(*a*) the Government shall appoint as Commissioners for the trial of the petition three persons of any of the following qualifications, namely,—

(i) being or having been a Judge of the High Court of Travancore, or

(ii) having been a District Judge in Travancore for a period of not less than five years, or

(iii) having been a Vakil of the High Court of Travancore for a period of not less than ten years,

and shall appoint one of them to be the President, and thereafter all applications and proceedings in connection therewith shall be dealt with and held by such Commissioners ;

(*b*) the President of the Commission shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the Gazette, and may call on the petitioner to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on giving security in a like amount and procuring the execution of a like bond :

Provided that the execution of such a bond by the petitioner shall not be required in any case where the petition has been presented under clause (*b*) of sub-rule (1) of Rule 32.

(3) When in respect of any election in a constituency more petitions than one are presented, the Government shall refer all such petitions to the same Commissioners who may, at their discretion, inquire into the petitions either in one or in more proceedings as they shall think fit.

(4) If the services of any Commissioners are not available for the purposes of the inquiry or, if, during the course of the inquiry, any Commissioner is unable to continue to attend to the same, the Government shall appoint another Commissioner and the inquiry shall re-commence before the Commission as so reconstituted :

Provided that the Commissioners may direct that any evidence already recorded may remain upon the record, in which case it shall not be necessary to re-examine those witnesses who have already been examined and discharged.

(5) Nothing in this Rule shall be deemed to prevent the appointment of the President of a Commission before the other Commissioners are appointed ; and, if the President is so appointed, all references to the Commissioners in these Rules shall, in respect of any matter which may be or is to be done before the commencement of the inquiry, be deemed to be references to the President.

Inquiry by Commissioners.

37. Subject to the other provisions of these Rules every election petition shall be inquired into by the Commissioners, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure for the time being in force to the trial of suits :

Provided that it shall only be necessary for the Commissioners to make a memorandum of the substance of the evidence of any witness examined by them.

Place of inquiry.

38. The inquiry shall be held at such place as the Government may appoint:

Provided that the Commissioners may in their discretion sit for any part of the inquiry at any other place in Travancore and may depute any one of their number to take evidence at any place in Travancore.

Withdrawal of petition.

39. (1) An election petition may be withdrawn only by leave of the Commissioners, or, if an application for withdrawal is made before any Commissioner has been appointed, of the Government.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application for withdrawal is made to the Commissioners, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Gazette.

(4) No application for withdrawal shall be granted if, in the opinion of the Government or of the Commissioners, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(5) If the application is granted—

(*a*) the petitioner shall, where the application has been made to the Commissioners, be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commissioners may think fit;

(*b*) notice of the withdrawal shall be published in the Gazette by the Chief Secretary to Government or by the Commissioners, as the case may be; and

(*c*) any person who might himself have been a petitioner may within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions of Rule 35 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

Abatement or substitution on death of petitioner.

40. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners:

Provided that, where such sole petitioner was an officer empowered under clause (*b*) of sub-rule (1) of Rule 32, the proceedings may be continued by any other officer empowered in this behalf by the Government.

(2) Notice of the abatement of an election petition shall be published in the Gazette by the Commissioners or, if the petition abates before any Commissioner has been appointed, by the Government.

(3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner, and, upon compliance with the conditions of Rule 35 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

Abatement or substitution on death of respondent.

41. If before the conclusion of the trial of an election petition the respondent dies or gives notice that he does not intend to oppose the petition, the Commissioners shall cause notice of such event to be published in the Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted for such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Commissioners may think fit.

Recrimination when seat claimed.

42. (1) Where, at an inquiry into an election petition, any candidate, other than the returned candidate, claims the seat for himself, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented complaining of his election :

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of publication of the election petition under clause (*b*) of sub-rule (2) of Rule 36, given notice of his intention to the Commissioners and made the deposit and procured the execution of the bond referred to in Rules 35 and 36, respectively.

(2) Every notice referred to in sub-rule (1) shall be accompanied by the statement and list of particulars required by Rule 33 in the case of an election petition and shall be signed and verified in like manner.

Attendance of Law Officers.

43. When at an enquiry into an election petition the Commissioners so order, the Head Sirkar Vakil or some person acting under his instructions shall attend and take such part therein as they may direct.

Grounds for declaring election void.

44. (1) Save as hereinafter provided in this Rule, if in the opinion of the Commissioners—

(*a*) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by a corrupt practice, or

(*b*) any corrupt practice specified in Part I of Schedule V has been committed, or

(*c*) the result of the election has been materially affected by the improper acceptance or refusal of any nomination or by the improper reception or refusal of a vote, or the reception of any vote which is void, or by any non-compliance with the provisions of the Regulation or the Rules made thereunder, or by any mistake in the use of any form annexed thereto, or

(*d*) the election has not been a free election by reason of the large number of cases in which undue influence or bribery, within the meaning either of Part I or of Part II of Schedule V, has been exercised or committed,

the election of the returned candidate shall be void.

(2) If the Commissioners report that a returned candidate has been guilty by an agent (other than his election agent) of any corrupt practice specified in Part I of Schedule V which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commissioners further report that the candidate has satisfied them that—

(*a*) no corrupt practice was committed at such election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent, and

(*b*) such candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at such election, and

(*c*) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character, and

(*d*) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents,

then the Commissioners may find that the election of such candidate is not void.

Explanation.—For the purpose of this Rule, "treating" means the incurring in whole or in part by any person of the expenses of giving or providing any food, drink, entertainment or provision to any person with the object, directly, or indirectly, of inducing him or any other person to

vote or refrain from voting or as a reward for having voted or refrained from voting.

Report of Commissioners and procedure thereon.

45. (1) At the conclusion of the inquiry, the Commissioners shall report whether the returned candidate or any other party to the petition who has under the provisions of these Rules claimed the seat has been duly elected, and in so reporting shall have regard to the provisions of Rule 44.

(2) The report shall further include a recommendation by the Commissioners as to the total amount of costs which are payable and the persons by and to whom such costs should be paid. Such recommendations may include a recommendation for the payment of costs to the Head Sirkar Vakil or a person acting under his instructions, attending in pursuance of an order made under Rule 43.

(3) The report shall be in writing and shall be signed by all the Commissioners. The Commissioners shall forthwith forward their report to Government who, on receipt thereof, shall issue orders in accordance with the report and publish the report in the Gazette, and the orders of Government shall be final.

Form of report.

46. If, either in their report or upon any other matter, there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail, and their report shall be expressed in the terms of the views of the majority.

Finding as to corrupt practices and persons guilty thereof.

47. Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in the report—

(*a*) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with the connivance of any candidate or his agent, and the nature of such corrupt practice, and

(*b*) the names of all persons (if any) who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of such corrupt practice with any such recommendations as they may desire to make for the exemption of any such persons from any disqualifications they may have incurred in this connection under these Rules.

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

PART VIII.

Special Provision.

Interpretation in case of doubt.

48. If any question arises as to the interpretation of these Rules otherwise than in connection with an election inquiry held thereunder, the question shall be referred for the decision of Government, and their decision shall be final.

PART IX.

Miscellaneous.

Government to make provision regarding custody, etc., of election papers and conduct of elections.

49. Government may, from time to time, issue Notifications for the safe custody, preservation, inspection, grant of copies, production and destruction of election papers in respect of the several constituencies.

SCHEDULE I.

List of Constituencies.

[*See Rule 4 (1).*]

Serial No.	Name of Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
		I. SOUTHERN DIVISION.		
1	Trivandrum ...	General Urban	The municipal town of Trivandrum.	1
2	Tovala	General Rural	The taluk of Tovala, the municipal town of Nagercoil and the portion of Vadasseri pakuthi in the Agastiswaram taluk lying outside the limits of the Nagercoil municipality.	1
3	Agastisvaram ...	Do.	The taluk of Agastisvaram (excluding the Nagercoil municipality and the portion of Vadasseri pakuthi outside the municipal limits).	1
4	Kalkulam I ...	Do.	The pakuthies of Attur, Kalkulam, Tuckalai, Kappiyara, Valvachagoshtam, Kotanallur, Mekod, Ponmana, Aruvikara, Tiruvattar and Tripparappu and the Padmanabhapuram municipality of the Kalkulam taluk.	1
5	Kalkulam II ...	Do.	The pakuthies of Alur, Eraniel, Talakulam, Kadiapattanam, Manavalakurichi, Tiruvankod, Colachel and the Colachel municipality of the Kalkulam taluk.	1
6	Vilavankod ...	Do.	The taluk of Vilavankod.	
7	Neyyattinkara I ...	Do.	The pakuthies of Kulattur, Chenkal, Parassala, Kolla, Kunnattukal, Ottasekaramangalam, Perunkadavila, Neyyattinkara and the Neyyattinkara municipality of the Neyyattinkara taluk.	1
8	Neyyattinkara II...	Do.	The pakuthies of Atiyannur, Tirupuram, Karunkulam, Kottukal, Tiruvallam, Nemam, Pallichal, Vilappil, Marukil and Maranallur of the Neyyattinkara taluk.	1
9	Nedumangad ...	Do.	The taluk of Nedumangad.	1
10	Trivandrum ...	Do.	The taluk of Trivandrum (excluding the municipal town of Trivandrum).	1

List of constituencies—(*Contd.*)

Serial No.	Name of Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
11	Chirayinkil I ...	General Rural	The pakuthies of Azhur, Sarkara, Kadakkavur, Chirayinkil, Vettur, Cheruniyur, Ottur, Karavaram, Vellalur, Nagarur and Alenkod of the Chirayinkil taluk.	1
12	Chirayinkil II ...	Do.	The pakuthies of Kizhvalam, Airur, Edakod, Elamba, Mudakkal, Koduvazhannur, Pulimat, Pazhayakunnumel, Kilimanur, Avanavanchery, Attingal, Koontallur, Kizh Attingal, Manambur, Madavur, Pallikkal, Navaikulam, Edava, Varkala, Chemmaruti and the Attingal municipality of the Chirayinkil taluk.	1
	II. CENTRAL DIVISION.			
13	Quilon I ...	General Rural	The pakuthies of East Kallada, Perunad, Kottankara, Trikkoilvattam, Nedumpana, Adichanallur, Vadakkevila, Kilikollur and Meenad of the Quilon taluk.	1
14	Quilon II ...	Do.	The pakuthies of Paravur, Eravipuram, Quilon, Trikkadavur and Munro Island and the Quilon municipality of the Quilon taluk.	1
15	Karunagapalli ...	Do.	The pakuthies of Thekkumbhagam, Chavara, Panmana, Thevalakara, Mainakappalli, Tazhava, Todiyur, Karunagapalli, Kulasekharapuram and Krishnapuram of the Karunagapalli taluk and the municipal town of Kayankulam.	1
16	Karthikapalli I ...	Do.	The pakuthies of Arattupuzha, Trikkunnapuzha, Kumarapuram and Kartikapalli of the Kartikapalli taluk and the pakuthies of Perunad and Putupalli of the Karunagapalli taluk.	1
17	Kartikapalli II ...	Do.	The pakuthies of Keerikad, Pattiyur, Kandallur, Mutukulam, Cheppad, Chingoli, Valiakuzhi, Nangyarkulangara, Pallipad, Kizhakkekara, Veeyapuram, Cherutana, Haripad and Karuvatta of the Kartikapalli taluk.	1
18	Kottarakara ...	Do.	The taluk of Kottarakara.	1
19	Kunnattur *cum* Pattanapuram ...	Do.	The taluk of Kunnattur and the taluk of Pattanapuram.	1

List of constituencies—(*Contd.*)

Serial No.	Name of Constituency.	Class of Constituency.	Extent of Constituency.	No. of Members.
20	Shencotta	General Rural	The taluk of Shencotta.	1
21	Mavelikara	Do.	The taluk of Mavelikara.	1
22	Pattanamtitta	Do.	The taluk of Pattanamtitta.	1
23	Ambalapuzha I	Do.	The Pakuthies of Talavadi, Kozhimukku, Takazhi, Purakad, Nedumudi, Champakulam and Ambalapuzha of the Ambalapuzha taluk.	1
24	Ambalapuzha II	Do.	The pakuthies of Alleppey, Pulinkunnu, Kainakari, Aryad North, Aryad South and Mararikulam South and the Alleppey municipality of the Ambalapuzha taluk.	1
25	Tiruvalla I	Do.	The pakuthies of Kadapra, Kizhakkumbhagam, Nedumpuram, Peringara, Kavumbhagam, Tiruvalla, Kaviyur and Kurattisseri and the Tiruvalla municipality of the Tiruvalla taluk.	1
26	Tiruvalla II	Do.	The pakuthies of Kalloopara, Ezhumattur, Airur, Koyipram, Tottapuzhachery and Eraviperur of the Tiruvalla taluk.	1
27	Tiruvalla III	Do.	The pakuthies of Aranmula, Mannar, Puttankavu, Chengannur, Puliyur, Venmani, Pandalam Vadakkekara, Cheriyanad, Ala, Tiruvammandur, Pandanad and Vadakkekara of the Tiruvalla taluk.	1
	III. NORTHERN DIVISION.			
28	Kottayam I	General Rural	The pakuthies of Tiruvarpu, Kottayam, Nattakam, Panachikad, Vijayapuram, Aimanam, Kummanam and Kumarakam and the Kottayam municipality of the Kottayam taluk.	1
29	Kottayam II	Do.	The pakuthies of Pampadi, Akalakunnam, Kudamalur, Perumbaikad, Kaipuzha, Onamturuttu and Ettumanur of the Kottayam taluk.	1
30	Shertallai I	Do.	The pakuthies of Vayalar West, Tannirmukkam North, Tannirmukkam South, Kokkotamangalam, Shertallai North, Shertallai South and Mararikulam North of the Shertallai taluk.	

List of constituencies—(*Contd*)

Serial No.	Name of Constituency.	Class of Constituency	Extent of Constituency.	No. of Members.
31	Shertallai II	General Rural	The pakuthies of Vadutalamattattil-bhagam, Pallipuram, Panavalli, Vayalar East, Turavur South, Turavur North, Arur and Taikat-tuchery of the Shertalli taluk.	1
32	Vaikam	Do.	The taluk of Vaikam.	1
33	Changanachery I	Do.	The pakuthies of Madapalli, Raman-kari, Muttar, Veliyanad, Chennan-kari, Nilamperur, Vazhapalli East, Vazhapalli West, Kurichi, Changanachery, and the Changana-chery municipality of the Changa-nachery taluk.	1
34	Changanachery *cum* Peermade II	Do.	The pakuthies of Putupalli, Nedun-kunnam, Vazhur, Vellavur, Mani-mala, Cheruvalli, Chirakadavu, Kanjirapalli North and Kanjira-palli South of the Changanachery taluk and the taluk of Peermade.	1
35	Minachil I	Do.	The pakuthies of Minachil, Rama-puram, Bharananganam, Kondur and Poonjar of the Minachil taluk.	1
36	Minachil II	Do.	The pakuthies of Puliyannur, La-lam, Uzhavur, Kanakkari, Kidan-gur and Elakad of the Minachil taluk.	1
37	Muvattupuzha I	Do.	The pakuthies of Enanallur, Kota-mangalam, Kuttamangalam, Va-rappetti, Eramallur, Muvattu-puzha and Arakuzha of the Mu-vattupuzha taluk.	1
38	Muvattupuzha II	Do.	The pakuthies of Koottattukulam, Tirumaradi, Piravam, Ramaman-galam and Mulavur of the Mu-vattupuzha taluk.	1
39	Thodupuzha *cum* Devicolam	Do.	The taluk of Todupuzha and the taluk of Devicolam.	1
40	Alwaye	Do.	The pakuthies of Airur and Kadun-gallur of the Parur taluk and the pakuthies of Alwaye, Vazhakulam, Trikkakara of the Kunnatnad taluk and the Alwaye munici-pality.	1

List of Constituencies—(*Concld.*)

Serial No.	Name of Constituency.	Class of Constituency	Extent of Constituency.	No. of Members.
41	Kunnatnad I	General Rural	The pakuthies of Aikaranad, Vengur, Asamannur, Kunnatnad, Chemmanad, Kazhukkambalam, Vengola, Mazhuvannur and Rayamangalam of the Kunnatnad taluk.	1
42	Kunnatnad II	Do.	The pakuthies of Manjapra, Manikkamangalam, Kotakulangara, Perumbavur and Cheranallur of the Kunnatnad taluk and the pakuthies of Puttanvelikara, Parakadavu, Chengamanad, Puttanchira and Vadakkekara of the Parur taluk.	1
43	Parur ...	Do.	The pakuthies of Alengad, Parur, Kottuvalli, Ezhikara, Varapuzha, Edappalli North and Edappalli South and the Parur municipality of the Parur taluk.	1
44	The Travancore Planters	Planting	Non-territorial.	1
45	The Travancore Jenmies (South)	Jenmi.	The Trivandrum and Quilon Divisions.	1
46	The Travancore Jenmies (North)	Do.	The Kottayam and Devicolam Divisions.	1
47	Commerce and Industry (South)	Commerce and Industry	The Trivandrum Division and the taluks of Quilon, Kottarakara, Pattanapuram and Shencotta in the Quilon Division.	1
48	Commerce and Industry (North)	Do.	The taluks of Karunagapalli, Kartikapalli, Kunnattur, Mavelikara, Tiruvalla, Pattanamtitta and Ambalapuzha in the Quilon Division and the Divisions of Kottayam and Devicolam.	1

SCHEDULE II.

(See Rule 8.)

Qualifications of Electors.

1. For the purposes of this Schedule—

(*a*) "Previous year" means the Malabar year preceding that in which the electoral roll or the list of amendments thereto, as the case may be, for the time being under preparation is first published under these Rules.

(*b*) "Elector" means a person whose name has been entered in the electoral roll.

(*c*) "Edavagai" means a compact area, recognised as such in the Government accounts, the whole or any portion of which area is exempt from payment of land revenue to Government.

(*d*) "Proprietor" means the owner of an Edavagai.

(*e*) "Registered holder" means a holder of Pandaravagai, Sripandaravagai, Kandukrishi or Sripadamvagai land, the assessment or pattom on which may be recovered under Regulation I of 1068, and includes the holder of land belonging to any religious endowment, the rents and other dues of which may, under Regulation III of 1079, be recovered under Regulation I of 1068.

(*f*) "Tenant" means a person who holds lands under a proprietor who is entitled to recover his rent under Regulation IV of 1068.

(*g*) "Jenmi" means a Jenmi as defined in the Travancore Jenmi and Kudiyan Regulation of 1071.

(*h*) "Kudiyan" means a person who holds lands on Kanapattom as defined in the Travancore Jenmi and Kudiyan Regulation of 1071.

(*i*) "Graduate" means a person on whom a degree has been conferred by a University.

2. (*a*) For the purpose of determining any claim to any qualification under this Schedule, the entries in the land revenue accounts and the rent rolls of the Edavagai or Religious Endowments and the entries in the municipal records regarding the amounts of taxes assessed or paid shall be conclusive evidence of the facts stated therein.

(*b*) The date as on which the qualification is to be held shall be the date fixed for the purpose by the Government from time to time unless otherwise specifically provided for hereinafter.

General Constituencies.

3. Every person who has a place of residence in the constituency and who has the further qualification hereinafter prescribed for an elector shall be qualified to be an elector for a general constituency.

4. A person shall be deemed to have a place of residence in a constituency if he—

(*a*) ordinarily lives in the constituency; or

(*b*) has his family dwelling house in the constituency and occasionally occupies it; or

(*c*) maintains in the constituency a dwelling house ready for occupation in charge of servants and occasionally occupies it.

5. A person shall be qualified as an elector for the urban constituency who—

(*a*) was assessed in the previous year to a building or land tax of not less than one rupee or was assessed to professional tax; or

(*b*) holds within the constituency one of the qualifications in respect of the holding of land hereinafter prescribed for an elector of a rural constituency; or

(*c*) is a graduate of a recognised University in the British Empire, provided that he is not undergoing a course of instruction in any recognised institution; or

(*d*) was assessed to income tax in the previous year; or

(*e*) is a discharged, retired or pensioned military officer of the Nayar Brigade or of his Majesty's Army or Navy, residing in Travancore.

Explanation.—The expression "officer" in clause (*e*) does not include a "soldier" or a "private".

6. A person shall be qualified as an elector for a rural constituency, who—

(*a*) is a registered holder or an inamdar of land the annual value of which is five rupees or more; or

(*b*) is a tenant holding land the annual value of which is five rupees or more; or

(*c*) is a Kudiyan holding land the annual value of which is five rupees or more ; or

(*d*) is a graduate of a recognised University in the British Empire, provided that he is not undergoing a course of instruction in any recognised institution ; or

(*e*) was in the previous year assessed in a Municipality included in his constituency to a building or land tax of not less than one rupee or was assessed to professional tax ; or

(*f*) was assessed to income-tax in the previous year ; or

(*g*) is a discharged, retired or pensioned military officer of the Nayar Brigade or of His Majesty's Army or Navy, residing in Travancore.

Explanation I.—The expression "officer" in clause (*g*) of this paragraph includes a commissioned officer and a non-commissioned officer but does not include a "soldier" or a "private."

Explanation II.—For the purpose of this paragraph the annual value shall be calculated in the following manner :—

(i) In the case of lands paying full assessment to Government, the assessment payable to Government for the lands together with any water rate payable for their irrigation shall be taken to be the annual value of such lands.

(ii) In the case of inam lands or lands held under any other favourable tenure, wholly or partially free from assessment but held directly under Government, the full assessment which such lands would bear if they were not inam or subject to such favourable tenure together with any water rate which may be payable for their irrigation shall be taken to be the annual value of such lands.

(iii) In the case of a tenant, the annual value of the land held by him shall be the full assessment fixed for the land at the last settlement.

(iv) In the case of a Kudiyan holding jenmom land, the annual value shall be the full assessment which the kanom holding would bear if it were pandarapattom land,

Explanation III.—(i) In the case of wet lands coming under clauses (ii), (iii) and (iv) of Explanation II above, the annual value shall be calculated in the following manner :—

(*a*) In the Trivandrum Revenue Division one-half of the full assessment shall be commuted at six chuckrams per *parah* of paddy and the remaining one-half at 11 chuckrams per *parah*, or on an average at 8½ chuckrams per parah.

(*b*) In the Quilon, Kottayam and Devicolam Revenue Divisions, three-fourths of the full assessment shall be commuted at six chuckrams per *parah* of paddy and the remaining one-fourth at 11 chuckrams per *parah*, or on an average at 7¼ chuckrams per *parah*.

(ii) In the case of lands where the whole or any portion of the assessment, rent or pattom is paid in paddy, the value of the paddy shall be calculated at eleven chuckrams per *parah*.

Explanation IV.—A person who holds in different constituencies lands falling under any one or two or all of the classes mentioned in clauses (*a*), (*b*) and (*c*) and whose combined annual value is five rupees or more shall be deemed to be qualified to be an elector under this paragraph.

Explanation V.—Any person who holds lands falling under any two or all of the classes mentioned in clauses (*a*), (*b*) and (*c*) of this paragraph and whose combined annual value is five rupees or more, shall be deemed to be qualified to be an elector under this paragraph.

7. If property is held jointly by the members of a joint family or by joint pattadars, the family or joint holding shall be adopted as the unit for deciding whether under this Schedule the requisite qualification exists: and, if it does exist, the person qualified shall be the member authorised by a majority of the joint holders, or in the case of a joint family either a member so authorised or in the absence of such authorisation the manager thereof.

8. A person may be qualified either in his personal capacity or in the capacity of a representative of a joint family or of joint pattadars, but not in both capacities.

9. Save as provided in paragraph 7 of this Schedule, no person shall be qualified as an elector in respect of any property unless he possesses the prescribed property qualification in his own personal right and not in any representative or fiduciary capacity.

Special Constituencies.

1. Planters' Constituency.

10. A person shall be qualified as an elector for the Planters' constituency if he is a member of any of the following Associations:—

(1) The South Travancore Planters' Association;

(2) The Central Travancore Planters' Association;

(3) The Mundakayam Planters' Association;

(4) The Kannan Devan Planters' Association.

Explanation.—If a firm or other body of persons, as such, is a member of any of the above-mentioned Associations, the person qualified shall be the individual nominated in that behalf by such firm or other body of persons.

2. Jenmi's Constituencies.

11. A person shall be qualified as an elector for a Jenmi's constituency if he has an annual income, as laid down in paragraph 12 of this Schedule, of not less than five hundred rupees, and has a place of residence in that constituency.

Explanation.—The provisions of paragraph 4 of this Schedule shall apply as regards the place of residence contemplated in this paragraph.

12. (*a*) For the purpose of the above paragraph, the income in the case of jenmom lands in the enjoyment of the Jenmi himself shall be taken to be equal to the full assessment that might be levied if the lands were pandarapattom lands, and

(*b*) in the case of jenmom lands demised on kanom, the income shall be taken to be the full assessment leviable thereon if the lands were pandarapattom lands.

Explanation.—For the purpose of this paragraph, the value of the full assessment on wet lands shall be calculated in the manner specified in Explanation III (i) to paragraph 6 above; that is to say, the full assessment shall be commuted into money at an average vilatharam rate of 8½ chuckrams per *parah* of paddy in the Trivandrum Revenue Division and at 7¼ chuckrams *per parah* of paddy in the Quilon, Kottayam and Devicolam Revenue Divisions.

13. In calculating the annual income of a Jenmi, the income from any source other than jenmom lands shall not be taken into consideration.

14. (*a*) Where jenmom lands stand in the name of a single holder, the name of that holder alone shall be entered in the electoral roll.

(*b*) Where jenmom lands stand in the names of several persons as members of a joint family or as trustees of a Devaswom, the person qualified shall be the member authorised by a majority of the adult male members of such family or of such trustees provided, however, that in the absence of such authorisation, in regard to a joint family, the manager thereof shall be the person qualified.

3. Commerce and Industry Constituencies.

15. A person shall be qualified as an elector for a Commerce and Industry constituency, if he resides within that constituency and—

(*a*) is the owner of a factory, which falls within the definition of a factory as defined in the Travancore Factories Regulation, V of 1089, which is situated in Travancore and in which work has been carried on during the previous year, or

(*b*) is a partner in a firm owning such a factory and has been nominated in writing by the firm for the purpose of voting in its behalf; or

(*c*) is a director of a company as defined in Section 2 of Regulation I of 1092 and having a place of business in Travancore and a paid-up capital of not less than ten thousand rupees, and who has been nominated in writing for the purpose of voting in its behalf by a majority of the directors; or

(*d*) is the principal officer of a company registered outside Travancore and having a place of business in Travancore and whose paid-up capital is not less than ten thousand rupees; or

(*e*) is a banker, trader or merchant who was assessed to income tax in the previous year; or

(*f*) is a partner or the principal officer of a firm which was assessed to income tax in the previous year, such partner or principal officer having been nominated in writing for the purpose of voting in its behalf.

Explanation.—A single individual shall not be deemed a firm.

16. Any person falling under paragraph 15, clause (*a*) or (*b*), of this Schedule and who is a member of any of the Associations mentioned in paragraph 10 of this Schedule shall not be qualified as an elector for a Commerce and Industry constituency.

SCHEDULE III.

[*See Rule 4 (2)*].

Rules for the Preparation of Electoral Rolls and the Conduct of Elections.

Preliminary.

1. "Elector" means a person whose name has been entered in the electoral roll.

PART I.

Rules for the preparation of electoral rolls for the election of members for all constituencies other than the Planting constituency.

CHAPTER I.

The Electoral Roll.

2. There shall be a separate roll for each constituency. The electoral roll for each constituency shall contain the following particulars, *viz.*, the elector's name, father's or karanavan's or mother's or husband's name or other name used as erattaper (ഇരട്ടപ്പേര്), address and qualification and such further particulars as may be ordered by Government from time to time. It shall be maintained in Form I annexed with such modifications as may be required for the entry of the further particulars ordered by Government, and shall be divided into parts for each registration area comprised in the constituency and each part shall be divided into sections for each polling area within the registration area. Each polling area in a registration area shall be separately numbered and the electors in each polling area shall be numbered in one series.

3. The roll shall be kept in the vernacular of the taluk, provided that the Government may direct that any particular roll or part of a roll may be kept in any language or languages.

4. Each Municipality and each taluk excluding the municipal area in such taluk shall be a separate registration area ; and the Registration Officers shall be the President of the Municipal Council for each Municipality and the Tahsildar for each taluk excluding the municipal area, if any :

Provided, however, that, if a taluk or any portion thereof forms part of more constituencies than one, then the Tahsildar of such taluk as may be notified by Government in that behalf shall be the Registration Officer :

Provided also that any of the powers and duties of the Registration Officer may be performed and exercised by any deputy for the time being approved by the Government, and the provisions of this Part shall, in respect of the powers and duties to be exercised and performed by him, apply to such deputy so far as they apply to the Registration Officer.

5. Each registration area shall be divided into separate polling areas. Subject to any general or special instructions which Government may issue, the polling areas shall be determined—

(*a*) in Municipalities, by the Municipal Presidents concerned ; and

(*b*) in non-municipal areas, by the Registration Officers concerned ;

Provided that the polling areas shall be so arranged as to give all electors such reasonable facilities for voting as are practicable in the circumstances and provided also that different polling areas may be prescribed for different constituencies in the same registration area.

6. (*a*) It shall be the duty of the Registration Officer to cause inquiry to be made and to prepare, or cause to be prepared, lists of all persons within his registration area appearing to be entitled to be registered as electors in the roll for each constituency. The lists shall be prepared in the form prescribed for the roll and shall also contain particulars of the amount of tax paid or the annual value of land held in the case of property qualifications.

(*b*) The preliminary rolls shall be prepared from these lists and printed. They shall be published by posting them in the office of the Registration Officer not later than the date fixed by the Government in this behalf. Copies of the rolls with the notices referred to in clause (*c*) of this paragraph shall also be issued as a supplement to the Gazette.

(*c*) With the preliminary roll the Registration Officer shall publish notices in Form II annexed specifying the mode in which and the time within which claims and objections are to be preferred and the date on, and the place at, which the Revising Authority will begin to sit for their disposal. The date fixed for the sitting of the Revising Authority shall not be later than the date fixed by the Government in this behalf.

7. Copies of the parts of the preliminary roll relating to each registration area shall be made available for inspection and sale in the case of municipal areas in the municipal offices and in the case of other areas in the offices of the Tahsildars concerned; and in rural areas, a copy of the section relating to each pakuthy shall also be posted in the Proverthi Cutcherry or other conspicuous place in the pakuthi, with a notice in Form II.

8. The Registration Officer may—

(1) if the time prescribed by the Government for the publication of the preliminary roll has not expired, within the time so fixed; or

(3) if such time has already expired, within such further time as may be prescribed by the Government;

publish a revised preliminary roll in supersession of the roll already published or any part thereof or a list of additions and corrections thereto, in the manner prescribed by the foregoing paragraphs.

Claims and Objections.

9. (*a*) Any person who claims to be registered as an elector and who is not entered, or is entered in an incorrect place or manner, or with incorrect particulars, on the preliminary roll and 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 whose name is on the roll, may prefer a claim or an objection to the Revising Authority. Such claims and objections shall respectively be sent in Forms III and IV annexed, to the Registration Officer so as to reach him on or before the date fixed by the Government in this behalf.

(*b*) Claims and objections may be preferred in person or sent by Anchal or Post.

(*c*) Claims and objections received after the prescribed date shall be rejected.

10. The Registration Officer may, of his own motion, remove from the rolls the names of persons whom he has reason to believe to be dead and also correct purely clerical or accidental mistakes and no other.

11. The Registration Officer shall, not later than the date fixed by the Government in this behalf—

(*a*) post in his own office list of all claims and objections received in time and of corrections made by him of his own motion in Form V annexed, and

(*b*) send a copy of every notice of objection to the person to whose registration objection has been taken and wherever possible give intimation to the person concerned of the correction made by him of his own motion.

In the lists referred to in clause (*a*) and in the copy and intimation sent under clause (*b*), the Registration Officer shall give notice that the claims, objections and corrections will be taken into consideration by the Revising Authority at a place and on a date to be specified therein.

Revising Authority.

12. For each registration area there shall be constituted a Revising Authority consisting of the Registration Officer as chairman and two non-official gentlemen to be nominated by the Division Peishkar or the Commissioner, Devicolam, as the case may be.

13. The Revising Authority shall sit in open office on the day fixed and from day to day until all claims and objections are disposed of. They

shall make such inquiry as they think fit in regard to each claim or objection and pass orders in writing thereon, with reasons if a claim is rejected or an objection contested; they shall also pass final orders on the lists of corrections made by the Registration Officers of their own motion. If any member of the Revising Authority is unable to attend a sitting, the Division Peishkar or the Commissioner, Devicolam, as the case may be, shall immediately nominate another person for such sitting. In case of a difference of opinion among the members, the opinion of the majority shall prevail.

Final publication of the Roll.

14. The Registration Officers shall correct the rolls in accordance with the orders of the Revising Authority and the final rolls shall be printed and published by posting them in the office of the Registration Officer not later than the date fixed by the Government in this behalf. If it is more convenient, the preliminary rolls together with lists of additions and corrections may be published as the final roll. The lists of additions and corrections or, if it is more convenient, the entire roll as revised shall also be issued as a supplement to the Gazette. Copies of the parts of the lists or of the roll relating to each registration area shall also be made available for inspection and posted in pakuthies in the manner prescribed in paragraph 7 of this Schedule.

15. Two copies of the roll or part of the roll relating to his registration area shall be signed by each Registration Officer. One of them shall be kept in his office and the other forwarded to the Returning Officer for the constituency.

16. The Returning Officer shall combine the separate parts of each roll and form a complete roll for each constituency.

General.

17. Copies of the final roll (or of the preliminary roll with the lists of additions and corrections) relating to each registration area shall be made available for inspection and sale in the office of the Registration Officer. Complete sets of the final roll (or of the preliminary roll with the lists of additions and corrections) for the several registration areas shall be kept in the office of the Returning Officer for inspection and sale and for supply to the presiding officers at the polls.

18. The Registration Officer shall supply forms of claims and of notices of objections free on the application of any person.

19. Any notice which is required to be sent by the Registration Officer under this Part to any person shall be deemed to have been duly sent if sent by Anchal or Post to the address of that person as given by him for the

purpose, or as appearing on the roll, or, if there is no such address, to his last known place of abode.

20. On the consideration of any claim or objection or other matter by the Revising Authority, any person appearing to be interested therein may appear and be heard either in person or by duly authorised agent.

21. The Government shall have power in their discretion to postpone from time to time any of the dates fixed by them under this Chapter.

CHAPTER II.

Returning Officers.

22. The Returning Officers for the constituencies mentioned in the first column of Schedule VI annexed shall be the persons respectively specified in the corresponding entry in the third column thereof.

23. (1) Any other person whom the Government may, by Notification in the Gazette, appoint in this behalf, may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer in the constituencies respectively specified in the corresponding entry in the first column thereof :

Provided that no such person shall perform any of the functions of a Returning Officer which relate to the acceptance of a nomination paper or of a paper withdrawing candidature or to the scrutiny of nominations or to the counting of votes, unless the Returning Officer is unavoidably prevented from performing the same, in which case the said functions may be performed in any constituency by the person so appointed.

(2) References to the Returning Officer in these paragraphs shall, unless a contrary intention appears, be deemed to include any person when performing any duty or function which he is authorised to perform under sub-paragraph (1).

24. (1) On the issue of a Notification of the Government calling upon a constituency to elect a member, it shall be the duty of the Returning Officer to prepare and publish a notice stating—

(*a*) the number of persons to be elected ;

(*b*) the constituencies for which they are to be elected ;

(*c*) the date and the hour by which nomination papers should be presented to or received by the Returning Officer ;

(*d*) the date on which the nomination papers will be taken up for scrutiny ;

(*e*) the day on which, and the place or places where the votes of the electors will be taken, should there be a poll, and the hours during which the poll will be open, not being less than ten hours between 7 A. M. and 6 P. M; and

(*f*) the day on which, and the place and hour at which, the Returning Officer will commence the counting of votes.

(2) The notice shall be published in the Gazette. The Returning Officer shall forthwith send copies of the notice to be posted within each constituency in the municipal offices and the offices of the Division Peishkars, Tahsildars and Magistrates and in each rural polling station at the principal Anchal or Post Office and the Proverthi Cutcherry.

(3) The Returning Officer may, for sufficient cause and with the previous consent of the Government, extend the period fixed for polling or postpone the fime fixed for commencing the counting of votes.

Nomination of Candidates.

25. Printed copies of the nomination form in Form VI annexed with the following form of declaration printed on its back, *viz.*,

"I (A. B.), the candidate nominated on the reverse, have appointed / do hereby appoint C. D. (address) to be my election agent".

shall on application be supplied to any elector of the constituency at the office of the Returning Officer thereof.

26. On the date appointed under sub-rule (2) of Rule 11 for the nomination of candidates, and immediately after the time for the delivery of nomination papers is past, the Returning Officer shall make up a list, in Form VII annexed, of the nominations which appear to him *prima facie* to be valid and publish it on the notice board of his office with a notice that the nomination papers will be taken up by him for scrutiny on the date fixed in paragraph 24 (1) (*d*) at a place and at an hour to be specified by him.

27. On the presentation of a nomination paper, the Returning Officer may require the person or persons presenting the same to produce a copy of the electoral roll on which the candidate and his proposer and seconder are registered or of the necessary entries therein and shall satisfy himself that the name and number on the electoral roll of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral roll. Where necessary he shall direct that the former be amended so as to be in accordance with the latter.

Scrutiny of Nominations.

28. On the date appointed for the scrutiny of nominations under sub-rule (2) of Rule 11, the candidates, their election agents, one proposer and one seconder of each candidate, and one other person duly authorised in writing by each candidate, and, except for the purpose of assisting the Returning Officer, no other person may attend at such time and place as the Returning Officer may appoint, and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner prescribed in Rule 11.

29. (1) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made at the time to any nomination, and may, either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, refuse any nomination, on any of the following grounds :—

(i) that the candidate is ineligible for election under Rule 5 or Rule 6 ;

(ii) that a proposer or seconder is a person whose name is not registered on the electoral roll of the constituency or is subject to any disability stated in Rule 7 ;

(iii) that there has been any failure on the part of the candidate or his proposer or seconder to comply with any of the provisions of Rule 12.

(2) For the purposes of this paragraph,—

(*a*) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under Rule 5 or Rule 6, or, as the case may be, that the proposer or seconder is a person whose name is not registered on the electoral roll of the constituency or is subject to any disability stated in Rule 7 ; and

(*b*) where a person has subscribed whether as proposer or seconder a larger number of nomination papers than one, the paper so subscribed which has been first received shall be deemed to be valid.

(3) Nothing contained in clause (ii) or clause (iii) of sub-paragraph (1) shall be deemed to authorise the refusal of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

30. (1) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(2) The scrutiny shall be completed on the day appointed in this behalf under clause (*b*) of sub-rule (2) of Rule 11 and no adjournment of the proceedings shall be allowed.

31. On completion of the scrutiny of nomination and after the expiry of the period within which candidatures may be withdrawn under sub-rule (8) of Rule 11, the Returning Officer shall forthwith prepare a list of persons whose nominations have not been rejected and who have not withdrawn their candidature and cause it to be affixed in some conspicuous place in his office.

32. If the number of such persons is greater than one, the Returning Officer shall forthwith publish in the manner prescribed in paragraph 24 (2) of this Schedule, a list in Form No. VIII annexed of the names in alphabetical order of the candidates as given in the nomination papers.

Voting.

33. The poll shall commence at 7 A. M. and be kept open till 6 P. M. It may be closed for an hour between these limits at the discretion of the Returning Officer.

34. The Returning Officer may, for sufficient cause and with the previous consent of Government, postpone the date or extend the period fixed for polling.

35. The Returning Officer shall appoint one polling station for each polling area in each constituency and shall appoint a presiding officer for each polling station and such other persons (hereinafter referred to as polling officers) to assist the presiding officer as he thinks necessary.

36. The presiding officer shall keep order at the polling station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at one time, and shall exclude all other persons except—

(*a*) the polling officers, the candidates, and one agent of each candidate at a time (hereinafter referred to as the polling agent) appointed in writing by the candidate and authorised in this behalf by the Returning Officer;

(*b*) the police or other public servants on duty; and

(*c*) such other persons as the presiding officer may from time to time admit for the purpose of identifying electors.

37. Subject to the provisions of paragraph 50 *infra*, no elector shall be admitted to vote except at the polling station fixed under paragraph 35 for the polling area under which his name appears on the electoral roll.

38. (1) The presiding officer shall close the polling station at the hour appointed for closing under paragraphs 33 and 34, so as to prevent the admission thereto of any elector after that hour.

(2) No ballot paper shall be issued after that hour, but any elector who has received his ballot paper before that hour shall be allowed a reasonable opportunity to record his vote.

39. Each polling station shall be furnished with such number of compartments in which electors can record their votes screened from observation as the Returning Officer thinks necessary. As far as possible, separate compartments and separate entrances and exits shall be provided for women electors.

40. The Returning Officer shall provide at each polling station materials sufficient for the purpose of enabling electors to mark the ballot papers, as many ballot boxes as may be necessary, and copies of the electoral roll or of such part thereof as contains the names of the electors entitled to vote at such station.

41. (1) Every ballot box shall be so constructed that the ballot papers can be introduced therein but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, immediately before the commencement of the poll, shall show the ballot box empty to such persons as may be present in such station, so that they may see that it is empty and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers and keep it so locked and sealed.

(2) Before the polling station is open for the recording of votes the presiding officer shall read to such persons as may be present the provisions of Section 14 of the Election Offences and Inquiries Regulation, IX of 1097, and shall explain the substance thereof in the vernacular of the taluk.

42. (1) Every ballot paper shall be in the annexed Form IX with a counterfoil attached to it which shall be in the annexed Form IX-A. The ballot paper shall have the names of the candidates as they appear in the nomination papers arranged in alphabetical order. If there are two candidates whose names are the same, they shall be distinguished by the addition of their occupation or in some other way. Ballot papers shall be printed in such language or languages as the Government may by order direct.

(2) The ballot papers printed in each language shall be serially numbered, the serial number being printed on the face of the counterfoil and on the back of the ballot paper.

43. Immediately before a ballot paper is delivered to an elector, the number, name and description of the elector as stated in the electoral roll shall be called out, and the number of such elector shall be entered on the counterfoil. The presiding officer shall then detach the ballot paper from the counterfoil, initial the ballot paper on its back and deliver it to the elector, and a mark shall be placed on a copy of the electoral roll against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received. On the counterfoil shall be entered the name of the constituency and the distinctive number of the polling area, if such name and number are not already printed or written on it.

44. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote and after showing to the presiding officer his (*i. e.*, the presiding officer's) initials thereon shall put his ballot paper so folded up into the ballot box. Every elector shall vote without undue delay and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

45. (1) If the elector is unable to read the ballot paper or to mark it and so states to the presiding officer and applies for assistance for reading the ballot paper or marking it, the presiding officer shall read it for him and if so required, mark the ballot paper according to the directions of the elector and give it to him to be put into the ballot box.

(2) In the case of every elector whose ballot paper is marked in this manner by the presiding officer, a note of the reason for so marking shall be made by such officer on the corresponding counterfoil of Form IX.

(3) Notwithstanding anything contained in clauses (1) and (2) above, the Government may issue instructions—

(i) as to the method of taking votes, whether by voting tokens or otherwise, or

(ii) as to the manner in, or conditions under, which the ballot paper shall be marked,

and on the issue of such instructions the votes shall be taken and the ballot paper shall be marked in accordance therewith.

(4) If any elector, in the course of the hearing of an election petition under the Rules for the time being in force, is proved to have falsely stated

to the presiding officer that he is unable to read or mark the ballot paper and thereupon to have recorded his vote, his vote shall be void.

46. (1) When a person presents himself to vote and at any time before a ballot paper is supplied to him, the presiding officer or polling officer may, of his own accord, and shall, if so required by a candidate or polling agent, put to such person any or all of the following questions (*a*) and (*b*), at all elections, and, at general elections, also the following question (*c*), if the election is by a general constituency, and the following question (*d*) if the election is by a Commerce and Industry constituency, and the following question (*e*) if the election is by a Jenmi constituency.

(*a*) Are you the person enrolled as follows ? (reading the whole entry from the roll).

(*b*) Have you already voted at the present election for the Assembly in this constituency ?

(*c*) Have you already voted at this general election for the Assembly in any other general constituency ?

(*d*) Have you already voted at this general election for the Assembly in the other Commerce and Industry constituency ?

(*e*) Have you already voted at this general election for the Assembly in the other Jenmi constituency ?

And the person shall not be supplied with a ballot paper unless he gives an unqualified answer to the question or questions put to him and unless his answer to the question (*a*) is in the affirmative and the other questions in the negative.

(2) Except as mentioned herein, every person whose name is found on the electoral roll shall be entitled to be supplied with a ballot paper.

47. If a person representing himself to be a particular elector named on the electoral roll applied for a ballot paper after another person have voted as such elector, the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to receive a ballot paper in the same manner as any other elector. Such ballot paper (hereinafter referred to as a tendered ballot paper) shall be of a colour different from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the elector and his number on the electoral roll and the number of the polling area to which the roll relates and shall be set aside in a separate packet and shall not be counted by the Returning Officer. The name of the elector and his number in the electoral roll and the distinctive number of the polling area to which the roll relates shall be entered in a list in Form X annexed,

which shall bear the heading " List of tendered votes ". The person tendering such ballot paper shall sign his name and address on that list or affix his thumb impression thereto.

Explanation.—In cases falling under this paragraph to which paragraph 48 is also applicable, the provisions of this paragraph as well as of paragraph 48 shall be followed.

48. If any polling agent declares and undertakes to prove that any person by applying for a ballot paper has committed the offence of personation, the presiding officer may require such person to enter, in the " List of challenged votes " (which shall be in Form XI annexed), his name and address, or, if he is unable to write, to affix his thumb impression thereto and may further require such person to produce evidence of identification. If such person on being questioned in the manner provided in paragraph 46 gives an unqualified answer to question (*a*) in the affirmative and the other questions in the negative, he shall be allowed to vote after he has been informed of the penalty for personation. The presiding officer shall make a note of the circumstances and of his order on the list of challenged votes.

49. An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot conveniently be used as a ballot paper may, on delivering it to the presiding officer and satisfying him of the inadvertence, obtain another ballot paper in place of the spoilt paper, and the latter shall together with its counterfoil, be marked as cancelled.

50. A presiding officer, polling officer, or polling agent who is on duty at a polling station at which he is not entitled to vote shall, if he is certified by the Returning Officer of the constituency concerned to be entitled to vote at the election, be allowed to record his vote at that polling station. The name of the polling station at which he would otherwise have been entitled to vote shall be entered in the counterfoil of the ballot paper together with the other particulars to be entered therein.

51. (1) Such ballot paper shall be placed in an envelope and sealed by the presiding officer and returned with the certificate referred to in paragraph 50 to the Returning Officer who has granted the same, and such Returning Officer shall cause such vote to be included among the other votes given for the candidate designated by the elector. The counterfoil of such ballot paper shall be placed in an envelope and shall be added at the end of the file of counterfoils of the polling station at which the vote was recorded.

(2) The certificate referred to in paragraph 50 shall be in the following form :—

" Certified that.....entitled to vote at.....for..... constituency has been employed in connection with the election for.....

constituency and is prevented from voting at the said station and I have therefore authorised him to vote at.....

Signature of Returning Officer."

Date.....

(3) On an application being made to the Returning Officer by the elector concerned for the issue of the certificate and on the Returning Officer being satisfied that there are the requisite grounds for the issue of the certificate, the Returning Officer shall prepare the certificate and forward it to the presiding officer of the polling station at which the elector will be on duty together with the ballot paper and the counterfoil and a copy of, or extract from, the electoral roll showing the number and the name of the elector on the electoral roll and the number of the polling area and the name of the polling station at which he would but for the certificate be entitled to vote.

52. The presiding officer of each polling station, as soon as practicable after the close of the poll, shall, in the presence of any candidates or polling agents who may be present, make up into separate packets and seal with his own seal and the seal of such candidates or agents as may desire to affix their seal,—

(1) each ballot box in use at such station unopened but with the key (which should also be sealed in the same manner as the ballot box) attached ;

(2) the unused ballot papers, ordinary and tendered ;

(3) the used tendered ballot papers ;

(4) the spoilt ballot papers, ordinary and tendered ;

(5) the marked copy of the electoral roll ;

(6) the counterfoils of the ballot papers ;

(7) the list of tendered votes ; and

(8) the list of challenged votes ;

and shall forward such packets to the Returning Officer.

53. The packets shall be accompanied by a statement, in a separate cover, in Form XII annexed made by the presiding officer, showing the number of ballot papers entrusted to him and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt and tendered ballot papers, and ballot papers, dealt with under paragraph 50.

54. Subject to any directions given in that behalf by the Returning Officer, the packets and statements shall be forwarded by the presiding officer

to the Returning Officer so as to reach him not later than the date and hour fixed for the counting of votes. Each packet shall be numbered and shall bear a note (in Form XIII annexed) as to its contents and the name of the polling station. Empty boxes need not be sent, but should be handed over to the Proverthicar or such other officer as the Returning Officer may direct. Where no vote has been recorded in any constituency, the Presiding Officer shall submit a nil report together with the statement in Form XII.

Counting of Votes.

55. The Returning Officer shall appoint a date, which shall be not later than seven days from the date of the poll, and the time and place for the counting of votes, and shall give notice in writing thereof to all candidates and election agents.

56. (1) No person shall be allowed to be present at the counting of votes except the Returning Officer and such persons as he may appoint to assist him in counting the votes, and such other persons as have a right to be present under sub-rule (5) of Rule 14.

(2) No person shall be appointed to assist in counting the votes, who has been employed by or on behalf of any candidate for any purpose whatsoever connected with the election.

57. On the day and at the time appointed under paragraph 55 the Returning Officer shall, before he commences to count the votes, read the provisions of Section 14 of the Travancore Election Offences and Inquiries Regulation, to such persons as may be present, and shall then proceed as follows,—

(*a*) The ballot box or boxes relating to each polling station or the envelopes containing votes under paragraph 50 shall be opened one after another, and the Returning Officer shall take out the papers therefrom, count them or cause them to be counted, and record the number thereof in a statement. Such statement shall not be shown to any candidate or agent.

(*b*) The Returning Officer shall then mix together all the ballot papers so counted and totalled up and distribute them in convenient bundles to the persons appointed to assist in counting the votes.

(*c*) When the ballot papers have been so distributed, but not before, the Returning Officer shall allow the candidates and their agents reasonable opportunity to inspect, without handling the ballot papers, and shall, on every ballot paper which is rejected, endorse the word "Rejected". If any candidate or agent

present questions the correctness of the rejection, he shall also record on the ballot paper the grounds for the rejection. No candidate or agent shall be allowed to see the serial number on the back of any ballot paper.

(*d*) The Returning Officer shall, as far as practicable, proceed continuously with the counting of votes; and shall, during any necessary intervals during which the counting has to be suspended, place the ballot papers, packets and other documents relating to the election under his own seal and the seals of such candidates or agents as may desire to affix them, and shall cause adequate precautions to be taken for their custody.

58. (1) A ballot paper shall be rejected if—

(*a*) the number of votes recorded thereon exceeds one; or

(*b*) no vote is recorded thereon; or

(*c*) it is void for uncertainty; or

(*d*) it bears any mark by which the elector can be identified; or

(*e*) it does not bear the initials of the presiding officer on its back.

(2) Except on one or more of the above grounds, a ballot paper shall not be rejected.

(3) The decision of the Returning Officer as to the validity of a ballot paper shall be final, subject only to reversal on an election petition.

59. The Returning Officer shall not open the sealed packets of the tendered votes, the marked copy of the electoral roll or the counterfoils of the ballot papers. He shall verify the statement submitted by the presiding officer under paragraph 53 by comparing it with the number of counted votes and rejected ballot papers, the unused ballot papers in his possession and the tendered votes list, shall then reclose and reseal each packet which has been opened by him, and shall record on each packet a description of its contents and the date of the election to which it refers.

60. The Returning Officer shall then prepare and certify a return in Form XIV annexed setting forth—

(1) the result of the verification referred to in paragraph 59;

(2) the names of the candidates for whom valid votes have been given;

(3) the number of valid votes given for each candidate;

(4) the name of the candidate elected;

(5) the number of votes declared invalid; and

(6) the number of tendered votes given,

and shall permit any candidate or any representative duly authorised under sub-rule (5) of Rule 14 to take a copy or an extract from such return.

Miscellaneous.

61. (1) The Returning Officer shall, after reporting the result of the election under Rule 14, forward a copy of the return made under paragraph 60 to the Secretary to the Assembly, who shall thereupon publish in the Gazette the name of the candidate elected.

(2) All the packets relating to the elections shall, subject to the control of the Government, remain in the custody of the Returning Officer.

62. The packets of ballot papers whether counted, rejected or tendered, and of the counterfoils thereof, or of the declaration papers as the case may be, shall not be opened and their contents shall not be inspected or produced except under the order of a competent Court or of Commissioners appointed to hold an inquiry in respect of an election, but all other documents relating to the election shall be open to inspection subject to such conditions as the Government may impose and to the payment of a fee of five rupees.

63. The packets aforesaid shall be retained for a period of one year and shall thereafter be destroyed subject to any direction to the contrary made by the Government, or by a competent Court or by Commissioners appointed to hold an enquiry in respect of an election.

PART II.

Rules for the Election of a Member for the Planting Constituency.

The Electoral Roll.

64. The Secretary of each of the Associations mentioned in paragraph 10 of Schedule II shall be the Registration Officer for the planting constituency :

Provided that any of the powers and duties of the Registration Officer may be performed and exercised by any deputy for the time being approved by Government, and the provisions of these paragraphs shall in respect of the powers and duties to be exercised and performed by him apply to such deputy so far as they apply to the Registration Officer.

65. The electoral roll shall be in Form XV annexed and shall be kept in English.

66. It shall be the duty of the Registration Officer to collect the necessary information and prepare a roll of persons appearing to be entitled to be registered as electors. Only persons who, on the date fixed by Government, are entitled to exercise all the rights and privileges of members of the Associations concerned and who are not subject to any of the disqualifications enumerated in Rule 7 of the electoral Rules shall be entered on the roll.

67. Copies of the roll so prepared shall be posted by the Registration Officer in the office of the Associations concerned not later than the day fixed by the Government in this behalf, along with a notice specifying the date on or before which claims and objections should reach the Registration Officer, such date not being later than the day fixed by Government in this behalf and the date on and place at which the Revising Authority will sit for their disposal. The date fixed for the sitting of the Revising Authority shall not be later than the date fixed by the Government in this behalf. Copy of the roll with the notice above referred to shall be published in the Gazette.

Claims and Objections.

68. Claims and objections may be preferred in person or sent by Anchal or Post and should contain full particulars of the claim or of the grounds of objection as the case may be. Claims and objections received after the prescribed date shall be rejected.

69. The Registration Officer may of his own motion remove from the lists the names of persons whom he has reasons to believe to be dead, and may make such other corrections as may be necessary.

70. The Registration Officer shall, not later than the date fixed by the Government in this behalf,—

(*a*) publish lists of all claims and objections received in time and of corrections made of his own motion in the manner prescribed in paragraph 69, and

(*b*) send a copy of every notice of objection to the person to whose registration objection has been taken and give intimation to the person concerned of the correction made by him of his own motion.

In the lists referred to in clause (*a*) and in the copy and intimation sent under clause (*b*) the Registration Officer shall give notice that the claims, objections and corrections will be taken into consideration by

the Revising Authority at a place and on a date which shall be specified therein.

Revising Authority.

71. The Revising Authority shall be the Registration Officer and two members from the Associations concerned nominated for the purpose by the Commissioner, Devicolam.

72. Orders shall be passed by the Revising Authority in writing on each claim or objection with reasons if a claim is rejected or an objection contested. The Revising Authority shall also order such other corrections in the preliminary roll as may be necessary.

73. The Registration Officer shall correct the rolls in accordance with the orders of the Revising Authority and two printed copies of the rolls so corrected shall be signed by the Registration Officer. One of them shall be retained by him and the other forwarded to the Secretary to the Assembly.

74. The Registration Officer shall publish the final roll not later than the date fixed by the Government in this behalf in the manner prescribed in paragraph 67 above and shall keep printed copies thereof available for inspection and sale in his office. If it is more convenient, the preliminary roll together with a list of additions and corrections may be published as the final roll.

75. The Government shall have power in their discretion to postpone from time to time any of the dates fixed by them under this Part.

The Returning Officer.

76. (*a*) On the issue of a Notification of the Government calling upon the constituency to elect a member, it shall be the duty of the Returning Officer to prepare and publish a notice stating—

(1) the name of the constituency ;

(2) the number of persons to be elected ;

(3) the date appointed by the Government for the nomination of candidates and the hours between which nomination papers may be delivered ; and

(4) the day on which, the hours during which, and the place at which the poll will be taken.

(*b*) The notice shall be published—

(1) in the office of the Returning Officer;

(2) in the Gazette ; and

(3) in such newspapers as the Returning Officer may select.

Nomination of Candidates.

77. (1) The nomination of every candidate shall be made by means of a nomination paper in Form XVI annexed which shall, on application, be supplied by the Returning Officer to any elector whose name is on the electoral roll for the constituency.

(2) Every nomination paper shall be subscribed by two such electors as proposer and seconder and the candidate shall subscribe to a declaration on it expressing his willingness to stand for election and naming himself or some other person as his election agent.

(3) Every nomination paper shall be signed in the presence of the Registration Officer or of a Magistrate who shall attest the same and be sent to the Returning Officer by Anchal or Post registered and shall reach him on or before the date appointed for the nomination of candidates and at any hour not being later than 3 P. M. on the date so appointed.

78. Nomination papers which are not received by the Returning Officer within the date and the time appointed shall be rejected.

Scrutiny of Nominations.

79. (*a*) On the date appointed for the receipt of nomination papers and immediately after the time for their receipt is past, the Returning Officer shall allow every candidate, his election agent and his proposer and seconder to examine the nomination papers of all candidates which have been received by him as aforesaid.

(*b*) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made at the time to any nomination paper on the ground that it is not valid under paragraph 77 and may reject, either of his own motion or on such objection, any nomination paper on such ground; the decision of the Returning Officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given.

80. Immediately after the scrutiny and the acceptance or rejection of nomination papers in the manner described in the preceding paragraph are over, the Returning Officer shall make up a list of valid nominations and publish it on the notice board of his office.

81. (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the Returning Officer not later than 3 P. M. on the date following the day of the scrutiny of the nominations.

(2) The Returning Officer shall forthwith notify any such withdrawal and shall remove from the voting papers, if already printed, the name of the candidate who has withdrawn his candidature.

Voting.

82. No voter shall be allowed to vote in any other way than is herein provided.

83. Not less than fifteen clear days before the date fixed for the scrutiny and counting of votes, the Returning Officer shall issue through the Anchal or Post a declaration paper and a voting paper to each elector to the address entered against his name in the electoral roll, unless the elector has since the publication of the roll, changed his address and intimated the fact in writing to the Returning Officer.

84. The declaration paper shall be in Form XVII and the voting paper in Form XVIII annexed. The same serial number shall be entered on the face of the declaration paper and on the back of the voting paper. To each voter shall be issued the declaration paper and the voting paper whose serial number corresponds to the number which the voter's name bears on the electoral roll.

85. Before the ballot papers are issued to an elector, the Returning Officer shall—

(*a*) enter the name of the elector on the declaration paper; and

(*b*) place his initials against the name of the elector concerned in the electoral roll, or the copy of it, used for the purpose of the election.

86. With the ballot papers, the Returning Officer shall send an envelope addressed to himself in Form XIX, a smaller envelope with the number of the voting paper entered on its face and a letter in Form XX annexed. The Returning Officer shall enter the number of the ballot paper at the left-hand bottom corner of the envelope in Form XIX.

87. Each elector, upon receipt of his ballot papers, if he desires to vote in the election, shall first sign the declaration in the declaration paper in the presence of a Magistrate who shall attest the signature as indicated on the form:

Provided that, if an elector resides more than five miles from the Court of the nearest Magistrate, he may have his declaration attested by any witness who knows him personally.

88. The elector shall thereafter record his vote on the voting paper by placing a mark in the form of a cross against the name of the candidate of his choice.

89. The elector shall then enclose the voting paper in the smaller envelope and stick it up and enclose the smaller envelope and the declaration paper in the larger envelope and send it by registered Anchal or Post to the Returning Officer so as to reach him not later than the date and the hour fixed in the Notification published under paragraph 76 above. The covers received after such day and hour, as well as covers received by unregistered Post or Anchal, shall be rejected :

Provided that, at his option, the elector may deposit the envelope in a ballot box which shall be provided at the office of the Returning Officer on the day fixed for the poll between 11 A. M. and 4 P. M.

90. If an elector is incapacitated, from blindness or other physical cause, from voting in the manner prescribed above, it shall be competent to him to record his vote by the hand of any of the officers or other persons empowered to attest his declaration ; and such officer or other person shall, on the declaration paper, certify the incapacity and attest the fact of his having been requested by the elector to mark the voting paper for him, and of its having been so marked by him in the presence of the elector.

91. An elector who has not received his ballot and other connected papers sent by Anchal or Post or whose papers, before their despatch back to the Returning Officer, have been inadvertently spoilt in such manner that they cannot be conveniently used, or who has lost his papers, may, on his transmitting to the Returning Officer a declaration to that effect, signed by himself before a Magistrate, require the Returning Officer to send him new papers in place of those not received, spoilt or lost :

Provided that, if an elector resides more than five miles from the Court of the nearest Magistrate he may have his declaration attested by any witness who knows him personally; and if the papers have been spoilt, the spoilt papers shall be returned to the Returning Officer who shall cancel them on receipt.

In every case when new papers are issued, a mark shall be placed against the number of the elector's name in the roll to denote that new papers have been issued in place of those not received, spoilt or lost.

92. No election shall be invalidated by reason that an elector has not received a voting paper, provided that a voting paper has been issued to him in accordance with these paragraphs.

Counting of Votes.

93. The scrutiny of the ballot papers shall then take place. The envelopes received from voters by the Returning Officer shall first be arranged serially according to the numbers entered on them and shall then be opened one after another by the Returning Officer, or in his presence. If an envelope should contain no declaration paper outside the smaller envelope containing the voting paper, the envelope enclosed shall be rejected and the Returning Officer shall endorse the word " Rejected " on that envelope. If the envelopes contain the declaration papers, the Returning Officer shall examine whether the numbers on the declaration papers and the envelopes containing the voting papers are correct. If the Returning Officer is satisfied on this point and if the declaration and attestation are *prima facie* regular, he shall file the declaration papers and put the envelopes containing the connected voting papers in a separate heap.

94. Where the Returning Officer is not satisfied that a declaration paper is the one sent out by him to the voter concerned or where the declaration or attestation is not in order, he shall endorse the word 'Rejected' on the back of the declaration paper and keep it with the connected voting paper in a separate bundle. If more than one declaration paper or more than one smaller envelope containing the voting paper is enclosed in one and the same envelope, all the declaration papers and envelopes containing the voting papers shall be rejected and the Returning Officer shall endorse the word " Rejected " on the back of each declaration paper and keep the declaration papers so rejected and the envelopes enclosed containing the voting papers in the same bundle of rejected papers.

95. The Returning Officer shall then open the envelopes containing the voting papers except those rejected under paragraphs 93 and 94 and shall examine them and count the votes.

96. (*a*) The Returning Officer shall endorse the word " Rejected " on every voting paper that he rejects and, where the rejection order is questioned by any candidate or agent, give brief reasons for his order. Rejected voting papers shall be kept separate.

(*b*) He shall count the voting papers accepted by him as valid, record the votes secured by each of the candidates in Form XXI annexed and declare the election of the candidate to whom most valid votes have been given.

Explanation.—In case of equality of votes, the provision of sub-rule (7) of Rule 14 shall apply.

97. (*a*) Upon the completion of the counting, the Returning Officer shall seal up in separate packets—

(1) the counted voting papers;

(2) the rejected declaration papers and connected voting papers;

(3) the voting papers rejected at the count;

(4) the file of declaration papers; and

(5) the marked copy of the electoral roll.

(*b*) He shall also prepare and certify a return in Form XXII annexed and permit any candidate or his agent to take a copy of his return or of the return in Form XXI.

Miscellaneous.

98. (1) The Returning Officer shall, after reporting the result of the election under Rule 14, forward a copy of the return made under paragraph 97 to the Secretary to the Assembly, who shall thereupon publish in the Gazette the name of the candidate elected.

(2) All the packets relating to the elections, shall, subject to the control of the Government, remain in the custody of the Returning Officer.

99. The packets of ballot papers whether counted, rejected or tendered, and of the counterfoils thereof, or of the declaration papers as the case may be shall not be opened and their contents shall not be inspected or produced except under the order of a competent Court or of Commissioners appointed to hold an enquiry in respect of an election, but all other documents relating to the election shall be open to inspection subject to such conditions as the Government may impose and to the payment of a fee of five rupees.

100. The packets aforesaid shall be retained for a period of one year and shall thereafter be destroyed subject to any direction to the contrary made by the Government or by a competent Court or by Commissioners appointed to hold an enquiry in respect of an election.

SCHEDULE IV.

(*See Rule 18.*)

Return of Election Expenses.

1. Under the head of receipts, there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money, security or equivalent of money was

received in respect of expenses incurred on account of, or in connection with, or incidental to, the election, and the amount received from each person, club, society or association separately.

2. Under the head of expenditure there shall be shown—

(*a*) the personal expenditure of the candidate incurred or paid by him or his election agent, including travelling and all other personal expenses incurred in connection with his candidature ;

(*b*) the name, and the rate and total amount of the pay, of each person employed as an agent (including the election agent), clerk or messenger;

(*c*) the travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerks or messengers ;

(*d*) the travelling expenses of persons, whether in receipt of salary or not, incurred in connection with the candidature, and whether paid or incurred by the candidate, his election agent or the person so travelling ;

(*e*) the cost, whether paid or incurred, of—

(i) printing ;

(ii) advertising ;

(iii) stationery ;

(iv) postage ;

(v) telegrams ; and

(vi) rooms hired either for public meetings or as committee rooms ;

(*f*) any other miscellaneous expenses whether paid or incurred.

NOTE—(1) All expenses incurred in connection with the candidature whether paid by the candidate, his election agent, or any other person, or remaining unpaid on the date of the return are to be set out.

(2) For all items of five rupees and over, unless from the nature of the case (*e. g.* travel by rail or postage) a receipt is not obtainable, vouchers are to be attached.

(3) All sums paid but for which no receipt is attached are to be set out in detail with dates of payment.

(4) All sums unpaid are to be set out in a separate list.

3. The forms of declarations referred to in Rule 18 shall be as follow :—

I. Form of Declaration by Election Agent.

I.....being the appointed election agent for.....a candidate for election to the Travancore Sri Mulam Assembly from the..... constituency do hereby solemnly affirm that the above return of election expenses is true to the best of my knowledge and belief, and that, except the expenses herein set forth, no expenses of any nature whatsoever have to my knowledge or belief been incurred in, or for the purpose of,.....'s candidature.

Election Agent.
Solemnly affirmed before me.
(Magistrate).

II. Form of Declaration by Candidate.

I.....being a candidate for election to the Travancore Sri Mulam Assembly from the.....constituency do hereby solemnly affirm that the above return of election expenses is true to the best of my knowledge and belief, and that, except the expenses herein set forth, no expenses of any nature whatsoever have to my knowledge or belief been incurred in, or for the purpose of, my candidature.

Candidate.
Solemnly affirmed before me.
(Magistrate)

III. Special Form of Declaration by Candidate under Rule 18, sub-rule (4).

I.....being a candidate for the election to the Travancore Sri Mulam Assembly from the.....constituency do hereby solemnly affirm that the return of election expenses signed by my election agent is (with the exceptions noted below) true to the best of my knowledge and belief, and that (with the exceptions noted below) no expenses of any nature whatsoever other than the expenses therein set forth have to my knowledge or belief been incurred in, or for the purpose of, my candidature.

Particulars of exceptions.

Candidate.
Solemly affirmed before me.
(Magistrate.)

SCHEDULE V.

(*See Rules 5, 7, 33, 44 and 47*).

The following shall be deemed to be corrupt practices for the purposes of these Rules :—

PART I.

Bribery.

1. A gift, offer or promise by a candidate, or his agent, or by any other person with the connivance of a candidate or his agent, of any gratifications to any person whomsoever, with the object, directly or indirectly, of inducing—

(*a*) a person to stand or not to stand as, or to withdraw from being, a candidate ; or

(*b*) an elector to vote or refrain from voting at an election, or as a reward to—

(*a*) a person for having so stood or not stood or for having withdrawn his candidature ; or

(*b*) an elector for having voted or refrained from voting.

Explanation.—For the purposes of this paragraph, the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money, and includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bona fide* incurred at or for the purposes of any election and duly entered in the return of election expenses prescribed by these Rules.

Undue influence.

2. Any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of any electoral right.

Explanation.—(1) Without prejudice to the generality of the provisions of this clause, any such person as is referred to herein who—

(*a*) threatens any candidate or voter or any person in whom a candidate or voter is interested, with injury of any kind ; or

(*b*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter within the meaning of this clause.

(2) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this clause.

3. The procuring or abetting or attempting to procure by a candidate or his agent or by any other person with the connivance of a candidate or his agent, the application for a voting paper at any election in a constituency, by a person in the name of any other person whether living or dead or in a fictitious name or by a person having no right to vote at that election by reason of his having already voted in that constituency or in any other constituency or the false statement by an elector to a presiding officer that the elector is unable to read or mark the ballot paper.

Personation.

4. The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, which statement is reasonably calculated to prejudice the prospects of such candidate's election.

5. The incurring or authorising by a candidate or his agent of expenditure or the employment of any person by a candidate or his agent in contravention of the provisions of any Notification of the Government issued under Rule 19 of the Rules.

Authorisation of expenditure.

PART II.

1. Any act specified in Part I when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

Act under Part I.

2. The application for a voting paper at any election in a constituency by a person in the name of any other person, whether living or dead, or in a fictitious name or by a person having no right to vote at that election by reason of his having already voted in that constituency or in any other constituency or the false statement by an elector to a presiding officer that the elector is unable to read or mark the ballot paper.

Personation.

3. The receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

Bribery.

(*a*) by a person to stand or not to stand as, or to withdraw from being, a candidate; or

(*b*) by any person whomsoever for himself or any other person for voting or refraining from voting or for inducing or for attempting to induce any elector to vote or refrain from voting or any candidate to withdraw his candidature.

Payment for conveyance.

4. Any payment or promise of payment to any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of recording his vote.

Hiring and use of public conveyances.

5. The hiring, employment, borrowing or using, for the purposes of the election, of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire.

Provided that any elector may hire any boat, vehicle or animal or use any boat, vehicle or animal which is his own property to convey himself to or from the place where the vote is recorded.

Incurring expense without authority.

6. The incurring or authorisation of expenses by any person other than a candidate or his election agent on account of holding any public meeting or upon any advertisement, circular or publication or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate unless he is authorised in writing so to do by the candidate.

Hiring of liquor shops.

7. The hiring, using or letting, as a committee-room or for the purpose of any meeting to which electors are admitted, of any building, room or other places where intoxicating liquor is sold to the public.

Issue of circulars, etc., without printer's and publisher's names printed thereon.

8. The issuing of any circular, placard or poster having reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

SCHEDULE VI.

[*See Paragraph 22, Schedule III.*]

List of Returning Officers.

Constituency. (1)	Registration areas included in the constituency. (2)	Returning Officer. (3)
	General Urban.	Assistant Dewan Peishkar, Trivandrum.
1 (i) Trivandrum	Trivandrum municipal town.	
	General Rural.	
(ii) Neyyattinkara I	(*a*) The pakuthies of Kulattur, Chenkal, Parassala, Kolla, Kunnattukal, Ottasekharamangalam, Perunkadavila and Neyyattinkara of the Neyyattinkara taluk (excluding the portion of the Neyyattinkara municipality).	
(iii) Neyyattinkara II	(*b*) Neyyattinkara municipal town, The pakuthies of Atiyannur, Tirupuram, Karunkulam, Kottukal, Tiruvallam, Nemam, Pallichal, Vilappil, Marukil and Maranallur of the Neyyattinkara taluk (excluding the portion of the Neyyattinkara municipality).	
(iv) Trivandrum	Trivandrum taluk (excluding the Trivandrum municipality).	
2 (i) Tovala	(*a*) Tovala taluk. (*b*) Nagercoil municipal town. (*c*) The portion of the Vadasseri pakuthi in Agastisvaram taluk lying outside the limits of the Nagercoil municipality.	Assistant Dewan Peishkar, Padmanabhapuram.
(ii) Agastisvaram	Agastisvaram taluk (excluding the Nagercoil municipality and the portion of the Vadasseri pakuthi lying outside the municipal limits).	
(iii) Kalkulam I	(*a*) The pakuthies of Attur, Kalkulam, Tuckalai, Kappiyara, Valvachagoshtam, Kotanallur, Mekod, Ponmana, Aruvikara, Tiruvattar and Tripparappu of the Kalkulam taluk (excluding the Padmanabhapuram municipality). (*b*) Padmanabhapuram municipal town.	
(iv) Kalkulam II	(*a*) The pakuthies of Alur, Eraniel, Talakulam, Kadiyapattanam, Manavalakurichi, Tiruvankod and Colachel (excluding the Colachel municipality). (*b*) Colachel municipal town.	

List of Returning Officers—(*contd.*)

Constituency. (1)	Registration areas included in the constituency. (2)	Returning Officer. (3)
(v) Vilavankod	(*a*) Vilavankod taluk (excluding the Kuzhittura municipality.)	
	(*b*) Kuzhittura municipal town.	
3. (i) Chirayinkil I	The pakuthies of Azhur, Sarkara, Kadakkavur, Chirayinkil, Vettur, Cheruniyur, Ottur, Karavaram, Vellalur, Nagarur and Alenkod of the Chirayinkil taluk (excluding the portion of the Attingal municipality).	Dewan Peishkar, Trivandrum.
(ii) Chirayinkil II	(*a*) The pakuthies of Kizhvalam, Airur, Eadkod, Elamba, Mudakkal, Koduvazhannur, Pulimat, Pazhayakunnummel, Kilimanur, Avanavancherry, Attingal, Koontallur, Kizh-Attingal, Manambur, Madavur, Pallikkal, Navaikulam, Edava, Varkala and Chemmaruti of the Chirayinkil taluk (excluding the portion of the Attingal municipality).	
	(*b*) Attingal municipal town.	
(iii) Nedumangad	Nedumangad taluk.	
4 (i) Quilon I	The pakuthies of East Kallada, Perunad, Kottankara, Trikkoilvattam, Nedumpana, Adichanallur, Vadakkevila, Kilikollur and Meenad of the Quilon taluk (excluding the portion of the Quilon municipality).	Assistant Dewan Peishkar, Quilon
(ii) Quilon II	(*a*) The pakuthies of Paravur, Eravipuram, Quilon, Trikkadavur and Munro Island of the Quilon taluk (excluding the portion of the Quilon municipality).	
	(*b*) Quilon municipal town.	
(iii) Karunagapalli	(*a*) The pakuthies of Tekkumbhagam, Chavara, Panmana, Tevalakara, Mainakapalli. Tazhava, Todiyur, Karunagapalli, Kulasekharapuram and Krishnapuram of the Karunagapalli taluk (excluding the portion of the Kayankulam municipality).	
	(*b*) Kayankulam municipal town.	
5 (i) Kartikapalli I	(*a*) The pakuthies of Arattupuzha, Trikkunnapuzha, Kumarapuram and Kartikapalli of the Kartikapalli taluk.	Dewan Peishkar, Quilon.
	(*b*) The pakuthies of Perunad and Putupalli of the Karunagapalli taluk.	

List of Returning Officers—(*contd.*)

Constituency. (1)	Registration areas included in the constituency. (2)	Returning Officer. (3)
(ii) Kartikapalli II	The pakuthies of Keerikad, Pattiyur, Kandallur, Mutukulam, Cheppad, Chingoli, Valiakuzhi, Nangyarkulangara, Pallipad, Kizhakkekara, Veeyapuram, Cherutana, Haripad and Karuvatta of the Kartikapalli taluk (excluding the portion of the Kayankulam municipality).	
(iii) Kottarakara	Kottarakara taluk.	
(iv) Kunnattur *cum* Pattanapuram	(*a*) Kunnattur taluk. (*b*) Pattanapuram taluk.	
(v) Shencotta	(*a*) Shencotta taluk (excluding the Shencotta municipality). (*b*) Shencotta municipal town.	
(vi) Mavelikara	(*a*) Mavelikara taluk (excluding the Mavelikara municipality and the portion of the Kayankulam municipality). (*b*) Mavelikara municipal town	
6 (i) Pattanamtitta	Pattanamtitta taluk.	Assistant Dewan Peishkar, Chengannur.
(ii) Tiruvalla I	(*a*) The pakuthies of Kadapra, Kizhakkumbhagam, Nedumpuram, Peringara, Kavumbhagam, Tiruvalla, Kaviyur and Kurattisseri of the Tiruvalla taluk (excluding the Tiruvalla municipality). (*b*) Tiruvalla municipal town.	
(iii) Tiruvalla II	The pakuthies of Kallupara, Ezhumattur, Airur, Koyipuram, Tottapuzhachery and Eraviperur of the Tiruvalla taluk.	
(iv) Tiruvalla III	The pakuthies of Aranmula, Mannar, Puttankavu, Chengannur, Puliyur, Venmani, Pandalam Vadakkekara, Cheriyanad, Ala, Tiruvammandur, Pandanad and Vadakkekara of the Tiruvalla taluk.	
7 (i) Ambalapuzha I	The pakuthies of Talavadi, Kozhimukku, Takazhi, Purakad, Nedumudi, Champakulam and Ambalapuzha of the Ambalapuzha taluk.	Assistant Dewan Peishkar, Alleppey.
(ii) Ambalapuzha II	(*a*) The pakuthies of Alleppey, Pulinkunnu, Kainakari, Aryad North, Aryad South and Mararikulam South (excluding the Alleppey municipality). (*b*) Alleppey municipal town.	

List of Returning Officers—(*contd.*)

Constituency. (1)	Registration areas included in the constituency. (2)	Returning Officer. (3)
8 (i) Kottayam I	(*a*) The pakuthies of Tiruvarpu, Kottayam, Nattakam, Panachikad, Vijayapuram, Aimanam, Kummanam and Kumarakam of the Kottayam taluk (excluding the Kottayam municipality).	Assistant Dewan Peishkar, Kottayam.
	(*b*) Kottayam municipal town.	
(ii) Kottayam II	The pakuthies of Pampadi, Akalakunnam, Kudamalur, Perumbaikad, Kaipuzha, Onamturuttu and Ettumanur of the Kottayam taluk.	
(iii) Changanachery I	(*a*) The pakuthies of Madappalli, Ramankari, Muttar, Veliyanad, Chennankari, Nilamperur, Vazhapalli East, Vazhapalli West, Kurichi and Changanachery of the Changanachery taluk (excluding the Changanachery municipality).	
	(*b*) Changanachery municipal town.	
(iv) Changanachery *cum* Peermade II	(*a*) The pakuthies of Putupalli, Nedunkunnam, Vazhur, Vellavur, Manimala, Cheruvalli, Chirakadavu, Kanjirapalli North and Kanjirapalli South of the Changanachery taluk.	
	(*b*) Peermade taluk.	
9. (i) Shertallai I	The pakuthies of Vayalar West, Tannirmukkam North, Tannirmukkam South, Kokkotamangalam, Shertallai North, Shertallai South and Mararikulam North of the Shertallai taluk.	Assistant Dewan Peishkar, Perumbavur.
(ii) Shertallai II	The pakuthies of Vadutala Mattattilbhagam, Pallipuram, Panavalli, Vayalar East, Turavur South, Turavur North, Arur and Taikattuchery of the Shertallai taluk.	
(iii) Vaikam	(*a*) Vaikam taluk (excluding the Vaikam municipality).	
	(*b*) Vaikam municipal town.	
(iv) Alwaye	(*a*) The pakuthies of Airur and Kadungallur of the Parur taluk (excluding the portion of the Alwaye municipality).	
	(*b*) The pakuthies of Alwaye, Vazhakulam and Trikkakkara of the Kunnatnad taluk (excluding the portion of the Alwaye municipality).	
	(*c*) Alwaye municipal town.	

List of Returning Officers—(*concld.*)

Constituency. (1)	Registration areas included in the constituency. (2)	Returning Officer. (3)
(v) Kunnatnad I	The pakuthies of Aikaranad, Vengur, Asamannur, Kunnatnad, Chemmanad, Kazhukkambalam, Vengola, Mazhuvannur and Rayamangalam of the Kunnatnad taluk.	
(vi) Kunnatnad II	(*a*) The pakuthies of Manjapra, Manikkamangalam, Kotakulangara, Perumbavur and Cheranallur of the Kunnatnad taluk. (*b*) The pakuthies of Puttanvelikara, Parakadavu, Chengamanad, Puttanchira and Vadakkekara of the Parur taluk.	
(vii) Parur	(*a*) The pakuthies of Alengad, Parur, Kottuvalli, Ezhikara, Varapuzha, Edapalli North and Edapalli South of the Parur taluk (excluding the Parur municipality). (*b*) Parur municipal town.	Assistant Dewan Peishkar, Perumbavur.
10. (i) Minachil I	The pakuthies of Minachil, Ramapuram, Bharananganam, Kondur and Poonjar of the Minachil taluk.	Dewan Peishkar, Kottayam.
(ii) Minachil II	The pakuthies of Puliyannur, Lalam, Uzhavur, Kanakkari, Kidangur and Elakad of the Minachil taluk,	
(iii) Muvattupuzha I	The pakuthies of Enanallur, Kotamangalam, Kuttamangalam, Varappetti, Eramallur, Muvattupuzha and Arakuzha of the Muvattupuzha taluk.	
(iv) Muvattupuzha II	The pakuthies of Koottattukulam, Tirumaradi, Piravam, Ramamangalam and Mulavur of the Muvattupuzha taluk.	
(v) Thodupuzha *cum* Devicolam	(*a*) Todupuzha taluk. (*b*) Devicolam taluk.	
	Special.	
1 The Travancore Planters		Commissioner, Devicolam.
2 The Travancore Jenmies (South)		Dewan Peishkar, Trivandrum.
3 The Travancore Jenmies (North)		Assistant Dewan Peishkar, Kottayam.
4 Commerce and Industry (South)		Dewan Peishkar, Trivandrum.
5 Commerce and Industry (North)		Assistant Dewan Peishkar, Alleppey.

FORM I.

[*Vide Paragraph 2, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Electoral Roll for Constituency.

Part Section.	Registration area Polling area No.			Polling station.
Serial Number.	Name.	Father's or karanavan's or mother's or husband's name or other name used as erattaper.	Address (village or street and door number.)	Head of Qualification.
(1)	(2)	ഇരട്ടപ്പുള്ള (3)	(4)	(5)

FORM II.

[*Vide Paragraph 6 (c), Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Name of Constituency.

The preliminary electoral roll of voters for the.....registration area is herewith published for general information.

Any person who claims to be entered in this roll and who is not entered in it or is entered in an incorrect place or manner or with incorrect particulars may put in a claim to the Revising Authority to have his name entered, or the registry corrected.

Any person whose name is on the roll and who objects to the correctness of the entry or to the inclusion of his own name or of the name of any other person whose name is on the roll may prefer an objection to the Revising Authority.

Claims shall be preferred in Form III and objections in Form IV appended to this notice. Copies of the forms will be supplied free by the Registration Officer on application.

Claims and objections may be presented to the Registration Officer at any time during office hours or sent by Anchal or Post, but must reach him on or before.....

Claims and objections which are not preferred in proper form or are not received by the date prescribed will be rejected.

All claims and objections received in time and in proper form will be heard by the Revising authority at.....on.....

Date *Registration Officer.*

FORM III.

[*Vide Paragraph 9 (a), Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Correction of Registry.

NOTICE OF CLAIM FOR——————

REGISTRATION.

To

The Revising Authority of.....Registration Area.

Sir,

I hereby give you notice that I claim to have $\frac{\text{the registry of my name corrected}}{\text{my name entered}}$ in the roll of electors for the constituency of.....as follows :—

Name in full of claimant and father's or karanavan's or mother's or husband's name or other name used as erattaper. (ഇരട്ടപ്പേര്) (1)	Address (village street and door number.) (2)	Head of qualification. (3)	Nature and full particulars of the claim. (4)

I declare that I attained the age of 21 years on .....

Date. *Signature of Claimant.*

FORM IV.

[*Vide Paragraph 9 (a), Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Notice of Objection to Registration.

To

The Revising Authority of.....Registration area.

Sir,

I hereby give you notice that I object to the name of the person mentioned and described below being retained in the electors' roll for the polling area of.....in the registration area of.....for the constituency of.....

Name of person objected to (1)	Number in preliminary roll. (2)	Nature of objection. (3)

Date.

Signature of objector.

Address

Polling area and number in preliminary roll.

FORM V.

[*Vide Paragraph 11 (a), Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

List of Claims and Objections.

(*a*) The following persons have put in claims to be registered as electors (or to have the registry of their names corrected) on the roll for the constituency of

Polling area.	Name of claimant.	Address.	Head of qualification.

(*b*) The following objections have been received regarding entries in the roll for the constituency of

Polling area.	Name of objector and number on roll.	Name of person objected to and number on roll.

(*c*) The following corrections have been made by the Registration Officer of his own motion in the roll for the constituency of

Polling area.	Number on roll.	Nature of correction.

The above claims and objections will be heard and corrections finally considered by the Revising Authority on.....at.....

Registration Officer.

Date.

FORM VI.

[*Vide Paragraph 25, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Nomination Paper.

Name of the constituency for which the candidate is nominated ... _____

Name of candidate ... _____

Father's or karanavan's name or other erattaper (ഇരട്ടപ്പ്) ... _____

Age ... _____

Constituency on the electoral roll of which the candidate is registered as an elector ... _____

*Number of the candidate in the electoral roll of the constituency in which he is registered as an elector ... _____

Name of the proposer ... _____

*Number of the proposer in the electoral roll of the constituency ... _____

Signature of the proposer ... _____

Name of the seconder ... _____

*Number of the seconder in the electoral roll of the constituency ... _____

Signature of the seconder ... _____

Declaration by Candidate.

I hereby declare that I agree to this nomination and that ~~I have appointed~~ do hereby appoint _____ to be my election agent for the election.

Date _____

Signature of candidate _____

*Where the electoral roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division, a description of the sub-division in which the name of the person concerned is entered must also be given here.

(*To be filled in by the Returning Officer or other authorised person.*)

Serial No. _____

Certificate of Delivery.

This nomination paper was delivered to me at (date and hour _____

_____

Returning Officer or other authorised person.

Certificate of Scrutiny.

I have scrutinised the eligibility of the candidate, the proposer and the seconder, and find that they are respectively qualified to stand for election, to propose and to second the nomination.

Returning Officer or other authorised person.

N. B.—This nomination paper will not be valid unless it is delivered to the Returning Officer, or other person authorised to receive it, on or before_____ 110 , between 11 A. M. and 3 P. M.

FORM VII.

[*Vide Paragraph 26, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Preliminary list of nominations.

1. Serial number.
2. Name of candidate.
3. Father's or Karanavan's name or other erattaper (ഇരട്ടപ്പേര്).
4. Occupation and address.
5. Name of proposer.
6. Name of seconder.

Note.

The nomination papers will be taken up for scrutiny at $\frac{\text{A. M.}}{\text{P. M.}}$ on the day of at (place)

Date. *Returning Officer.*

FORM VIII.

[*Vide Paragraph 32, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Final list of candidates for election.

.....Constituency.

Serial number.	Name of candidate.	Address of candidate.
1.		
2.		
3.		
4. etc.		

Note.

The poll will be taken on the day of 110 between and at the polling stations already notified.

Date. *Returning Officer.*

FORMS IX AND IX—A.

[*Vide Paragraph 42 (1), Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

FORM IX—A.

FORM IX.

Ballot Paper.

Counterfoil.
Serial No.

Outerfoil.
Front.

Constituency.....

Number of polling area.....

Number of elector on electoral roll ...

Names of candidates.	Mark showing the elector's choice.

N. B. Please see instructions on the back.

Back of Outerfoil.

Instructions.

(1) The number of candidates for whom you may vote is only one.
(2) Place a cross mark thus × against the name of the candidate for whom you wish to vote.
(3) The mark should be placed against not more than one name.

Serial No.

FORM X.

[*Vide Paragraph 47, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

List of Tendered Votes.

Polling area No.....

Name of constituency.	Name of elector.	Number on electoral roll.	Number of votes recorded.	Signature of elector if literate or thumb impression of elector if illiterate, and address.

FORM XI.

[*Vide Paragraph 48, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

List of Challenged Votes.

Polling area No.....

Name of constituency.	Number on electoral roll.	Name.	Signature of elector if literate or thumb impression of elector if illiterate.	Name of identifier, if any.

Order of the Presiding Officer in each case *Presiding Officer.*

FORM XII.

[*Vide Paragraph 53, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Statement sent by Presiding Officer at in the Taluk of after the polling at polling area on 110 for the constituency.

Description.	Number received.	Number of ballot papers in box or packet.	Number unused.	Number spoilt.	Ballot papers dealt with under paragraph 50.	Balance.
Ordinary ballot papers.						
Tendered ballot papers.						

Date. *Presiding Officer.*

FORM XIII.

[*Vide Paragraph 54, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Note of Contents.

Name and number of polling area.	Number of ballot box or packet.	Number of ballot papers in box or packet.
Total.		

Station.

Date. *Presiding Officer.*

FORM XIV.

[*Vide Paragraph 60, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Return showing results of the election for Constituency.

Names of candidates for whom votes have been given.	Number of valid votes.
A B C D E F Number of valid votes. Number of votes declared invalid. Number of tendered votes.	

(I have verified the statements forwarded by the presiding officers and found them $\frac{\text{correct}}{\text{to contain the following errors}}$).

I do hereby declare that the following candidate has been duly elected :—

Date. *Returning Officer.*

FORM XV.

[*Vide Paragraph 65, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Electoral Roll.

Serial Number. Name of individual. Father's name. Address in full.

FORM XVI.

[*Vide Paragraph 77, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Nomination Paper.

1. Name of candidate.
2. Father's name.
3. Age.
4. Address and occupation.
5. Signature of proposer and number on electoral roll.
6. Signature of seconder and number on electoral roll.

Candidate's declaration.

I declare that I am willing to stand for election and that I have appointed.....as my election agent.

SIGNATURE OF CANDIDATE,

Date. *Signature of Registration Officer or Magistrate.*

Instruction.

Nomination papers which are not received by the Returning Officer on or before.....of.....110 , at any hour not being later than 3 P. M. on that date shall be invalid.

FORM XVII.

[*Vide Paragraph 84, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Declaration paper.

Constituency. Election.

Serial No.

Elector's name and number on the roll.

Elector's declaration.

I (name in full and designation) declare that I am an elector for this constituency and have signed no other voting paper at this election for this constituency.

Date. Signature of elector.

Station.

Address.

Attestation.

I declare that the above signature was affixed in my presence by who is personally known to me (or who has been identified to my satisfaction).

Date. Signature.

Station.

Designation and address.

FORM XVIII.

[*Vide Paragraph 84, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Ballot paper.

Voting paper.

Constituency. Election.

Names of candidates.

FORM XIX.

[*Vide Paragraph 86, Schedule III.*]

(Face of envelope.)

TRAVANCORE SRI MULAM ASSEMBLY.

Election.

Constituency.....

Poll on.....

To

The Returning Officer,

No. .....Constituency,

.....(Station and address.)

FORM XX.

[*Vide Paragraph 86, Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Letter of intimation.

.....Constituency.

Sir,

The persons whose names are printed on the voting paper sent herewith have been nominated as candidates for the Travancore Sri Mulam Assembly. Should you desire to vote at this election, I have to request that you will—

(*a*) first sign the declaration paper in the presence of a Magistrate and obtain his attestation as indicated on the form ;*

(*b*) then mark your vote in the column provided for the purpose in the voting paper ;

(*c*) enclose the voting paper in the smaller envelope ; and

(*d*) put the smaller envelope and the declaration paper in the envelope addressed to me and return it to me by registered Anchal or Post so as to reach me not later than 3 P. M. on the day of 193 .

Station.

Date. *Returning Officer.*

* NOTE :—If you reside more than five miles from the Court of the nearest Magistrate, you may have your declaration attested by any witness who knows you personally.

FORM XXI.

[*Vide Paragraph 96 (b), Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Results of the polling.

Name of candidate.	Number of votes recorded in his favour.
A B C D	
Total number of valid votes..... Total number of invalid votes.....	

I declare that has been duly elected.

Signature.

Date. *Returning Officer.*

FORM XXII.

[*Vide Paragraph 97 (b), Schedule III.*]

TRAVANCORE SRI MULAM ASSEMBLY.

Return of Returning Officer.

Total number of electors on roll.	Number of ballot papers issued originally.	Number issued in place of ballot papers reported as not received, spoilt or lost.	Number of ballot papers received.	Number of declaration papers and connected papers rejected.	Number of voting papers rejected at the count.	Number of voting papers counted.	Number of declaration papers filed separately.	Remarks.
1	2	3	4	5	6	7	8	9

Date. *Returning Officer,*

II. STANDING ORDERS.

I. THE SRI CHITRA STATE COUNCIL. (a)

CONTENTS.

Standing Orders.

1. Short title and commencement.
2. Definitions.

Meetings of the Council.

3. Summoning of Council.
4. Effect of prorogation.

Sittings of the Council and Arrangement of Business.

5. Ordinary sitting.
6. Arrangement of business.
7. List of business.
8. Business outstanding at end of day.
9. Time for questions.
10. Giving of notice.
11. Giving of notice to members.

Questions.

12. List of questions.
13. Questions how put.

Motion for Adjournment for Purposes of Debate.

14. Time of asking leave.
15. Limitation of time of discussion.

General Rules of Procedure.

16. Adjournment for failure of quorum.
17. Members' places.
18. Members to rise when speaking.
19. Explanations.
20. Motions.
21. Admissibility of motions.
22. Identical motions.
23. Repetition of motions.
24. Order of speeches and right of reply.
25. Rules as to amendments.
26. Closure.
27. Adjournment.
28. Strangers.
29. Power to order withdrawal of strangers.

(a) R. O. C. No. 890 of 33/ Legis., dated 18th July 1933.—*T. G. G. dated 18-7-1933.*

Standing Orders.

Legislation.

30. Copies of Bills to be sent to members.
31. Motion for leave to introduce.
32. Introduction and motions thereafter.
33. Joint Committee of both Chambers.
34. Taking into consideration.
35. Constitution of Select Committee and its procedure.
36. Constitution of Joint Committee and its procedure.
37 Quorum of Select Committees and of Joint Committees.
38. Reports by Select Committee or Joint Committee.
39. Printing and publication of reports.
40. Presentation of reports.
41. Procedure on report after presentation.
42. Proposal of amendments.
43. Notice of amendments.
44. Order of amendments.
45. Submission of Bills clause by clause.
46. Passing of Bills.
47. Withdrawal of Bills.
48. Authentication of Bills.
49. Submission of Bills to His Highness the Maha Raja.
50. Reconsideration by the Council of the Bills returned by the Dewan.
51. Dewan to communicate to the Council His Highness the Maha Raja's assent or dissent.

Resolutions.

52. Notice of amendments.
53. Withdrawal of resolutions.
54. Order of amendments.
55. Division of resolutions.
56. Resolutions not discussed.
57. Effect of withdrawal.

Financial Business.

58. No discussion of Budget on day of presentation.
59. Notice of motions.

Communications between the Government and the Council.

60. Communications from the Government to the Council.
61. Communications from the Council to the Government.

Petitions to the Council.

62. Form and contents of petition.
63. Presentation of petitions.
64. Duties of member presenting a petition.
65. Procedure.
66. General form of petitions.

Amendment of Standing Orders.

67. Notice of proposal to amend the Standing Orders.
68. Procedure.

Standing Orders.

69. Reference to Select Committee.
70. Subsequent procedure.

Duties of the Secretary.

71. Duties of Secretary.

Books and Records.

72. Report of proceedings of Council.
73. Register and index of letters and petitions.

Miscellaneous.

74. Regulation of the conduct of business.
75. Application to Secretary for information.

Schedule I.—Ballot procedure for determining relative precedence of non-official Bills and Resolutions.

„ **II.**—Form of petition relating to a matter under the consideration of the Council.

Standing orders of the Travancore Sri Chitra State Council made by the Government of His Highness the Maha Raja under Section 26 of the Travancore Legislative Reforms Regulation, II of 1108.

Short title and commencement.

1. (1) These Standing Orders may be called "The Travancore Sri Chitra State Council Standing Orders."

(2) They shall come into force at once.

Definitions.

2. In these Standing Orders, unless there is anything repugnant in the subject or context. :—

(1) 'Assembly' means the Travancore Sri Mulam Assembly.

(2) 'Bill' means a proposed enactment in any stage before it has received the assent of His Highness the Maha Raja.

(3) 'Chamber' means a Chamber of the Travancore Legislature.

(4) 'Council' means the Travancore Sri Chitra State Council.

(5) 'Financial Secretary' means and includes the member of either Chamber appointed by the Dewan to perform the functions of the Financial Secretary under the Rules and the Standing Orders.

(6) 'Gazette' means the Travancore Government Gazette.

(7) 'Meeting' means a meeting of the Council.

(8) 'Member' means a member of the Council.

(9) 'Motion' means a proposal made by a member for the consideration of the Council relating to any matter which may be discussed by the Council, and includes an amendment.

(10) 'Notification' means a Notification in the Gazette.

(11) 'Regulation' means the Travancore Legislative Reforms Regulation, II of 1108.

(12) 'Resolution' means a motion for the purpose of discussing a matter of general public interest.

(13) 'Rules' means the Travancore Legislative Rules.

(14) 'Secretary' means the Secretary to the Council and includes any person for the time being performing the duties of the Secretary.

(15) 'Session' means the whole period from the time when the Council is assembled to the time when it is prorogued.

(16) 'Standing Order' means a Standing Order of the Council.

(17) In the computation of 'clear days' Sundays and holidays are not excluded, but the day of the meeting and the day of receipt of notice by the Secretary are excluded.

Meetings of the Council.

Summoning of Council.

3. (1) The Dewan shall by notification appoint the date and place for a session of the Council.

(2) The Secretary shall issue a summons to each member for the date and place so appointed.

(3) After the commencement of a session the Council shall sit on such days as the Dewan, having regard to the state of business of the Council, may from time to time direct.

Effect of prorogation.

4. (1) On the termination of a session—

(i) all pending notices shall lapse, and fresh notice must be given for the next session ;

(ii) Bills which have been introduced shall be carried over to the pending list of business of the next session :

Provided that, if the member in charge of a Bill makes no motion in regard to the same during two complete sessions, the Bill shall lapse, unless the Council, on a motion by that member, in any future session of the same Council, makes a special order for the continuance of the Bill.

(2) Bills (other than Government Bills), provision relating to the lapse of which on the dissolution of a Council is made in Rule 54 of the Rules, shall not lapse if the member in charge of the Bill is returned to the new Council, or the Council, on a motion of any other member desiring to take charge of the same, makes a special order for the continuance of the Bill.

Sittings of the Council and Arrangement of Business.

Ordinary sitting.

5. (1) While in session, the meetings of the Council shall, subject to the direction of the Dewan, ordinarily commence at 11 A. M. and ordinarily terminate at 4-30 P. M.

(2) After the commencement of the meeting and at such time as the President may, by order, direct, from time to time, the Secretary shall report to the Council the Bills which have received the Royal assent and the Bills which have been disallowed since the last meeting. He shall also at such time as the President may, by order, direct, from time to time, read out messages, if any, from the other Chamber.

Arrangement of business.

6. (1) The Dewan, after considering the state of business of the Council, shall allot so many days as may, in his opinion, be possible compatibly with the public interests, for the business of non-official members in the Council, and may allot different days for the disposal of different classes of such business, and on days so allotted for any particular class of business, business of that class shall have precedence. On other days no business, other than Government business, shall be transacted except with the consent of the Government. The Dewan may also alter the allotment from time to time.

(2) On days allotted for the transaction of Government business, the Secretary shall arrange the business of the Council in such manner or in such order as the Government may direct.

(3) The relative precedence of notices of Bills given by non-official members shall be determined by ballot to be held in accordance with the procedure set out in Schedule I :

Provided that the President may, from time to time, make such variations in the said procedure as he may consider necessary or convenient.

(4) On a day, if any, specially allotted for the disposal of non-official Bills, Bills which have already been introduced by non-official members, shall have priority over all other business, provided that the notice required by the Rules or Standing Orders has been given. And such Bills shall have relative precedence in the following order, namely :—

(*a*) Bills introduced in the Council in respect of which the next stage is the presentation of the Report of a Joint or Select Committee ;

(*b*) Bills passed by the Assembly in respect of which the originating Chamber was the Council ;

(*c*) Bills introduced and passed in the Assembly ;

(*d*) Bills introduced in the Council in respect of which a motion has been carried to the effect that the Bill be taken into consideration ;

(*e*) Bills introduced in the Council in respect of which the Report of a Joint or Select Committee has been presented ; and

(*f*) other Bills.

(5) The relative precedence of Bills falling under the same clause of sub-order (4) shall be determined by ballot to be held at such time and in such manner as the President may direct :

Provided that the President may, in any case, himself determine the order without any ballot :

Provided also that the Bills falling under clause (*f*) which remain over from the preceding session shall, subject to the provisions of sub-order (1) (ii) of Standing Order 4, have priority over other such Bills in the order of the date of their introduction.

(6) The relative precedence of notices of resolutions given by the non-official members shall be determined by ballot to be held in accordance with the procedure set out in Schedule I :

Provided that the President may, from time to time, make such variations in the said procedure as he may consider necessary or convenient.

List of business.

7. (1) A list of business for the day shall be prepared by the Secretary and a copy thereof shall be made available for the use of every member.

(2) Save as otherwise provided in the Rules or Standing Orders, no business not included in the list of business for the day shall be transacted at any meeting without the leave of the President.

(3) Save as otherwise provided by the Rules or Standing Orders, no business requiring notice shall be set down for a day earlier than the day after that on which the period of the notice necessary for that class of business expires.

Business outstanding at end of day.

8. All non-official business appointed for any day and not disposed of on that day shall stand over until the next day of the session available for business of the class to which it belongs, or until such other day in the session so available as the member in charge may, with the consent of the President, notify.

Time for questions.

9. The first hour of every meeting shall be available for the asking and answering of questions.

10. (1) Every notice required by the Rules or Standing Orders shall be given in writing addressed to the Secretary and signed by the member giving notice and shall, if not sent by Anchal or Post, be left at the Notice Office, which shall be open for this purpose between the hours of 11 A. M. and 3 P. M. on every day except Sunday or a public holiday.

Giving of notice.

(2) Notices left when the office is closed shall be treated as given on the next open day.

(3) Notice sent by Anchal or Post shall be treated as given on the day on which it was actually received by the Secretary.

11. (1) The Secretary shall make every effort to circulate to each member a copy of every notice or other paper, which is, by these Standing Orders, required to be made available for the use of members.

Giving of notice to members.

(2) A notice or other paper shall be deemed to have been made available for the use of every member if a copy thereof is deposited in such manner and in such place as the President may, from time to time, direct.

Questions.

12. Questions which have not been disallowed shall be entered in the list of questions for the day and shall be called, if the time made available for questions permits, in the order in which they stand in the list, before any other business is entered upon at the meeting.

List of questions.

13. Questions shall be put and answers given in such manner as the President may, in his discretion, determine.

Questions how put.

Motion for Adjournment for Purposes of Debate.

14. Leave to make a motion for an adjournment of the business of the Council for the purpose of discussing a definite matter of urgent public importance must be asked for, after questions and before the list of business for the day is entered upon.

Time of asking leave.

15. (1) Subject to the provisions of Rule 22 (2) of the Rules, the debate on a motion to discuss a matter of urgent public importance shall ordinarily be taken up at 3-30 P. M. and, if not earlier concluded, shall automatically terminate at 5-30 P. M. and thereafter no question can be put.

Limitation of time of discussion.

(2) During the debate it shall be within the discretion of the President to allow the mover and the official member answering him to speak for more than fifteen minutes.

General Rules of Procedure.

Adjournment for failure of quorum.

16. If within half an hour from the time appointed for holding a meeting on any day, the quorum specified in Rule 25 of the Rules is not present or if the President on a count at any time during a sitting ascertains that ten members are not present he shall adjourn the Council till the next day on which the Council ordinarily sits.

Members' places.

17. The members shall sit in such order as the President may appoint.

Members to rise when speaking.

18. A member desiring to make any observations on any matter before the Council shall speak from his place, shall rise when he speaks and shall address the President. At any time, if the President rises, any member speaking shall resume his seat.

Explanations.

19. When, for the purposes of explanation during discussion or for any other sufficient reason, any member has occasion to ask a question of another member on any matter then under the consideration of the Council, he shall ask the question through the President.

Motions.

20. (1) A matter requiring the decision of the Council shall be brought forward by means of a question put by the President on a motion proposed by a member.

(2) Save as otherwise provided for in the Rules or Standing Orders, a member who wishes to move a motion shall give notice of his intention to the Secretary six clear days before the meeting at which he intends to move the motion :

Provided that the President may in his discretion admit at any time any motion without such notice or admit at any time any motion at shorter notice than that prescribed by this sub-order.

(3) Votes may be taken by voices or division, and shall be taken by division if any member so desires. The President shall determine the method of taking votes by division.

(4) The result of a division shall be announced by the President and shall not be challenged.

Admissibility of motions.

21. (1) Except as otherwise provided for in the Rules, the President shall decide on the admissibility of a motion.

(2) The President may disallow any motion when in his opinion it does not comply with the Rules or Standing Orders.

Identical motions.

22. Where substantially identical motions stand in the names of two or more members, the President shall decide whose motion shall be moved, and the other motions shall thereupon be deemed to be withdrawn.

Repetition of motions.

23. A motion must not raise a question substantially identical with one on which the Council has given a decision in the same session ;

Provided that nothing in this Standing Order shall, unless the President in any case otherwise directs, be deemed to prevent the making of any of the following motions, namely :—

(*a*) any motion for the amendment of a Bill which has been recommitted to a Select Committee ;

(*b*) any motion for the amendment of a Bill made after the return of the Bill by the Dewan for reconsideration by the Council ;

(*c*) any motion for the amendment of a Bill which is consequential on, or designed merely to alter the drafting of, another amendment which has been carried ;

(*d*) any motion which has to be, or may be, made within a period determined by or under the Rules or Standing Orders.

Order of speeches and right of reply.

24. (1) After the member who moves has spoken, other members may speak to the motion in the order in which they are called by the President. If any member who is so called upon does not speak he shall not be entitled, except by the permission of the President, to speak to the motion, at any later stage of the debate.

(2) Except in the exercise of a right of reply or as otherwise provided by the Rules or Standing Orders, no member shall speak more than once to any motion except, with the permission of the President, for the purpose of making a personal explanation, but in that case, no debatable matter may be brought forward.

(3) A member who has moved a motion may speak again by way of reply, and if the motion is moved by a non-official member, the official member in charge of the motion or of the department to which the matter relates shall, after the mover has replied, have the right of speaking whether he has previously spoken in the debate or not :

Provided that nothing in this sub-order shall be deemed to give any right of reply to the mover of an amendment to a Bill or to a Resolution save with the permission of the President.

(4) The President may in all cases address the Council before putting a question to the vote.

Rules as to amendments.

25. (1) An amendment must be relevant to, and within the scope of, the subject-matter of the clause or motion to which it relates.

(2) An amendment may not be moved which has merely the effect of a negative vote.

(3) Every amendment which has been moved shall be seconded; otherwise it shall not be discussed nor shall any question be put on it.

(4) An amendment on a question must not be inconsistent with any previous decision on the same question given at the same stage of any Bill or motion.

(5) The President may refuse to put an amendment which in his opinion is frivolous.

(6) In respect of any motion or any Bill under consideration, the President shall have power to select the new clauses or amendments to be proposed, and may, if he thinks fit, call upon any member who has given notice of an amendment, to give such explanation of the object of the amendment as may enable him to form a judgment on its admissibility.

Closure.

26. (1) At any time after a motion has been made, any member may move "That the question be now put", and unless it shall appear to the President that such motion is an abuse of the Rules or Standing Orders or an infringement of the rights of reasonable debate, the question "That the question be now put" shall be put forthwith and decided without amendment or debate.

(2) When the motion "That the question be now put" has been carried, the question on the original motion, the debate on which has thus been terminated, shall be put and decided without amendment or further debate:

Provided that the President may allow any member any right of reply which he may have under the Standing Orders.

(3) Notwithstanding the provisions of sub-orders (1) and (2), the official member in charge of a Bill may in the course of any debate on the Bill intimate to the President that the Dewan is prepared, if necessary, to use his powers under Section 20 of the Regulation and to pass the Bill into law in spite of the refusal of the Council to do so, and may request him to put the question on any motion then under discussion; and, unless he considers that the request is an abuse of the Rules or Standing Orders or an

infringement of the rights of reasonable debate, the President shall put the question which shall be decided without amendment or debate.

Adjournment.

27. A motion that any meeting or business be adjourned or postponed or that the Council pass to the business next in order in the statement of business, may, if the President consents, be moved at any time and without previous notice as a distinct question but not so as to interrupt a speech. If the motion is carried, the meeting or business shall be adjourned or postponed accordingly or if the motion carried be that the Council pass to the business next in order in the statement of business, the business then under discussion shall be considered to be disposed of. On such motions, the question put shall only be 'That the meeting be now adjourned' or 'That the business be postponed' or 'That the Council do now pass to the business next in order in the statement of business' as the case may be.

Strangers.

28. The admission to the Council Chamber of—

(1) visitors to the Visitors' Gallery,

(2) representatives of the Press to the Press Gallery, and

(3) officials to the Official Gallery,

during the sittings of the Council shall be regulated in accordance with the orders made by the President.

Power to order withdrawal of strangers.

29. The President, whenever he thinks fit, may order the Visitors' or Press Gallery to be cleared.

Legislation.

Copies of Bill to be sent to members.

30. When a Bill has been published under Rule 31 of the Rules, a copy of the Bill and the Statement of Objects and Reasons shall be made available for the use of every member.

Motion for leave to introduce.

31. If a motion for leave to introduce a Bill is opposed, the President after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from a member who opposes the motion, may without further debate put the question.

Introduction and motions thereafter.

32. (1) At any time after a Bill has been published in the Gazette, the member in charge of the Bill may introduce it.

(2) When introducing a Bill, the member in charge of it shall move that the Bill be read in Council.

(3) If the motion be seconded, the principle of the Bill and its general provisions may then be discussed and if the motion be carried, the Secretary shall read the title of the Bill.

(4) The member in charge may then immediately move that the Bill be referred to a Select Committee composed of such members as he may specify in his motion.

(5) If the Council agrees to such a motion, it shall appoint the Committee and may direct that its report shall be submitted within a specified period.

Joint Committee of both Chambers.

33. A motion recommending that a Bill be committed to a Joint Committee of both the Chambers, under Rule 51 (1) of the Rules, may be moved at any stage at which a motion for the reference of the Bill to a Select Committee may be moved.

Taking into consideration.

34. If no motion for referring the Bill to a Select Committee under sub-order (4) of Standing Order 32 or to a Joint Committee of both Chambers under Standing Order 33 is made or if a motion is made and negatived, the member in charge shall not move that the Bill be taken into consideration until the expiration of fifteen clear days from the date on which the Bill was read under sub-order (2) of Standing Order 32 :

Provided that the President may, in his discretion, suspend this Standing Order and allow the motion to be made at once or before the expiration of fifteen clear days.

Constitution of Select Committee and its procedure.

35. (1) The official member in charge of the department to which the Bill relates, if he be a member of the Council, and the member in charge of the Bill shall be members of every Select Committee and it shall not be necessary to include their names in any motion for the appointment of a Committee.

(2) The other members of the Committee shall be named by the Council when the motion that the Bill be referred is made, or at any subsequent sitting.

(3) The President shall nominate one of the members of the Committee to be its chairman, and may nominate one of them (whether the chairman or not) to be the convener of the Committee. In the case of an equality of votes in the Committee, the chairman shall have a second or casting vote.

(4) A Select Committee may hear expert evidence and the representatives of any special interests affected by the measures before them and

may for the purpose of obtaining information invite any person to be present at its sittings.

(5) Where the official member in charge of the department to which the Bill relates is not a member of the Council, he shall have the right of attending at, and taking part in the deliberations of, meetings of the Select Committee, but shall not be a member of the Committee.

Constitution of Joint Committee and its procedure.

36. (1) The equal number of members to be selected from each Chamber of the Legislature under Rule 51 (2) of the Rules shall be fixed by the President of the Council in respect of each Bill having regard to all the circumstances of the case.

(2) The members from the Council to be selected by the Council under Rule 51 (2) of the Rules shall be selected by a motion passed in the Council. The member in charge of the Bill or any other member authorised in this behalf by the Dewan shall submit to the vote of the Council, in the form of a motion, the names of the members of the Council to be so selected, and, if the motion is carried, they shall be deemed to be the members selected by the Council to serve on the Joint Committee:

Provided that the members so selected shall always include the member in charge of the Bill, if he be a member of the Council.

(3) The official member in charge of the department to which the Bill relates (whether he be a member of the Joint Committee or not) shall have the right of attending at, and taking part in the deliberations of, the meetings of the Joint Committee but shall not vote therein unless he be a member of the Joint Committee.

(4) A Joint Committee may hear expert evidence and the representatives of any special interests affected by the measure before them, and, may for the purpose of obtaining information, invite any person to be present at its sittings.

Quorum of Select Committees and of Joint Committees.

37. (1) In the case of a Select Committee or a Joint Committee the quorum shall be one-half of the number of members in each, and no business shall be transacted at any sittings of either a Select Committee or a Joint Committee unless such quorum, including the member in charge of the Bill, be present.

(2) If, at any time fixed for any meeting of the Select Committee or the Joint Committee or at any time during such meeting, a quorum is not present, the chairman of the Committee shall either adjourn it forthwith to a future day, or shall defer the commencement or suspend the proceedings

of the meeting for such period in the same day as he may deem reasonable, and, if at the expiry of such period a quorum is not present, he shall adjourn the Committee to a future day.

(3) Where a Select Committee or a Joint Committee has been adjourned in pursuance of sub-order (2) on three successive days fixed for the meetings of the Committee, the Chairman of the Committee may stay further proceedings and may report the reason for so doing to the Council.

(4) If the Council has fixed a period within which the Select Committee or the Joint Committee shall submit its report upon a Bill, and the Committee is unable for any reason to submit its report within that period, the Dewan may from time to time extend the period on the application of the member in charge of the Bill.

(5) The chairman of a Select Committee shall have power to report to the Dewan the name of any member of the Select Committee who neglects or is unable to attend its sittings or, by death, resignation or otherwise, ceases to be a member of the Committee; and the Dewan may in such cases (whether there be a report or not) appoint out of the members of the Council an additional member to the Committee.

Reports by Select Committee or Joint Committee.

38. (1) After publication of a Bill in the Gazette, the Select Committee or the Joint Committee to which the Bill has been referred shall make a report thereon.

(2) Reports may be either preliminary or final.

(3) While a Select Committee or a Joint Committee is sitting to consider a Bill, all communications relating to the Bill which are received by the Secretary shall be referred to it.

(4) The Select Committee or the Joint Committee shall in their report, state whether or not, in their judgment, the Bill has been so altered as to require republication, and whether the publication directed by the Rules or by the Standing Orders has taken place and the date on which publication has taken place.

(5) If any member of a Select Committee or a Joint Committee desires to record a minute of dissent on any point, he must sign the majority report, stating that he does so subject to his dissent, and must at the same time hand in his minute.

Printing and publication of reports.

39. The report of the Select Committee or the Joint Committee, any minutes that may have been recorded by individual members of the Committee and, if the Bill has been amended, the Bill as amended by the Committee, shall be caused by the Secretary to be printed and a copy made available

for the use of every member of the Council. The report and minutes, if any, and, if the Bill has been amended, the Bill as amended, or such portion thereof as may have been amended, shall also, unless otherwise directed by the Committee, be published in the Gazette in the languages in which the original Bill was published.

Presentation of reports.

40. The report of the Select Committee on a Bill shall be presented to the Council by the member in charge of the Bill, who shall, if he makes any remarks, confine himself to a brief statement of facts.

Procedure on report after presentation.

41. (1) After the presentation of the final report of the Select Committee on a Bill, the member in charge may move—

(i) that the Bill as reported by the Committee be taken into consideration; but any member may object to its being so taken into consideration if a copy of the report has not been available for the use of members for seven days, or if three months have not elapsed from the date of the first publication of the Bill; and such objection shall prevail unless the President, in the exercise of his power to suspend this order, allows the report to be taken into consideration; or

(ii) that the Bill be re-committed either

(*a*) without limitation, or

(*b*) with respect to particular clauses or amendments only, or

(*c*) with instructions to the Committee to make some particular or additional provision in the Bill.

(2) If the member in charge moves that the Bill be taken into consideration any member may move as an amendment that the Bill be re-committed.

Proposal of amendments.

42. When a motion has been agreed to by the Council that a Bill be taken into consideration, any member may propose an amendment of such Bill.

Notice of amendments.

43. (1) If notice of a proposed amendment has not been given to the Secretary six clear days before the sitting of the Council at which the Bill is to be considered, any member may object to the moving of the amendment, and such objection shall prevail, unless the President, in the exercise of his power to suspend this order, allows the amendment to be moved.

(2) The Secretary shall if time permits cause every notice of a proposed amendment to be printed, and a copy shall be made available for the use of every member.

(3) If any member is unacquainted with English, the Secretary shall also, if the President so directs, cause every such notice to be translated into Malayalam or Tamil, as the case may be, for his use.

Order of amendments.

44. Amendments shall ordinarily be considered in the order of the clauses of the Bill to which they respectively relate, and in respect of any such clause a motion shall be deemed to have been made 'That this clause stand part of the Bill'.

Submission of Bills clause by clause.

45. Notwithstanding anything in the foregoing Orders, it shall be in the discretion of the President, when a motion that a Bill be taken into consideration is carried, to submit the Bill, or any part of the Bill, to the Council clause by clause. When this procedure is adopted, the President shall call each clause separately, and, when the amendments relating to it have been dealt with, shall put the question that this clause or, as the case may be, this clause as amended stand part of the Bill.

Passing of Bills.

46. (1) When a motion that a Bill be taken into consideration has been carried, and no amendment of the Bill is made, the member in charge may at once move that the Bill be passed.

(2) If any amendment of the Bill is made, any member may object to any motion being made on the same day that the Bill be passed, and such objection shall prevail unless the President, in the exercise of his power to suspend this Standing Order, allows the motion to be made.

(3) Where the objection prevails, a motion that the Bill be passed may be brought forward on any future day.

(4) At the stage of the motion for passing the Bill, and prior to the making of the motion, the Council shall consider the amendments, if any, moved on behalf of Government. No amendments other than those connected with the amendments moved on behalf of Government shall, without the special permission of the Dewan, be brought up for consideration at this stage.

Withdrawal of Bills.

47. The member in charge of a Bill may at any stage of the Bill move for leave to withdraw the Bill; and if such leave is granted, no further motion may be made with reference to the Bill, and the Bill shall be deemed to have been withdrawn.

Authentication of Bills.

48. When a Bill is passed by the Council a copy thereof shall be signed by the President.

Submission of Bills to His Highness the Maha Raja.

49. When a Bill has been passed by both Chambers a copy thereof shall be forwarded to the Dewan by the Secretary for submission to His Highness the Maha Raja.

Reconsideration by the Council of the Bills returned by the Dewan.

50. When a Bill is returned by the Dewan for reconsideration by the Council, the point or points referred for consideration shall be put before the Council by the President, and shall be discussed and voted upon in the same manner as amendments to a Bill, or in such other way as the President may consider most convenient for their consideration by the Council.

Dewan to communicate to the Council His Highness the Maharaja's assent or dissent.

51. In cases where the Council is the originating Chamber in respect of a Bill, the Dewan shall communicate to the Council His Highness the Maha Raja's assent or dissent by certificate in writing at the foot of the Bill, and the Bill with such certificates shall be lodged in the records of the Council.

Resolutions.

Notice of amendments.

52. (1) If notice of an amendment to any resolution has not been given two clear days before the day on which the resolution is moved, any member may object to the moving of the amendment and such objection shall prevail unless the President in the exercise of his power to suspend this Standing Order allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every amendment to be printed and a copy thereof to be made available for the use of every member.

Withdrawal of resolutions.

53. (1) A member who has moved a resolution or an amendment to a resolution shall not withdraw the same except by the leave of the Council.

(2) No discussion shall be permitted on a motion for leave to withdraw, except with the permission of the President.

Order of amendments.

54. (1) When an amendment to any resolution is moved, or when two or more such amendments are moved, the President shall, before taking the sense of the Council thereon, state or read to the Council the terms of the original motion and of the amendment or amendments proposed.

(2) It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been brought forward.

55. When any resolution involving several points has been discussed, it shall be in the discretion of the President to divide the resolution, and put each or any point separately to the vote as he may think fit.

Division of resolutions.

56. If a resolution which has been admitted is not discussed during the session, it shall be deemed to have been withdrawn.

Resolutions not discussed.

57. When a resolution has been withdrawn with the leave of the Council, no resolution raising substantially the same question shall be moved during the same session.

Effect of withdrawal.

Financial Business.

58. There shall be no discussion of the Budget on the day on which it is presented.

No discussion of Budget on day of presentation.

59. If notice of a motion to omit any demand has not been given two clear days before the day on which the demand is to be considered, any member may object to the moving of the motion and such objection shall prevail unless the President, in the exercise of his power to suspend this Standing Order, allows the motion to be made.

Notice of motions.

Communications between the Government and the Council.

60. Communications from the Government to the Council are made only :—

Communications from the Government to the Council.

(1) by a speech by the Dewan, or

(2) by a written message through the President.

61. Communications from the Council to the Government shall be made :—

Communications from the Council to the Government.

(1) by formal address after motion made and carried in the Council ; and

(2) through the President.

Petitions to the Council.

62. (1) Petitions to the Council must—

Form and contents of petition.

(*a*) relate to some matter actually under the consideration of the Council ;

(*b*) be addressed to the Travancore Sri Chitra State Council ;

(*c*) be dated and signed by the petitioner or petitioners and countersigned by a member of the Council ; and

(*d*) be in respectful and temperate language.

(2) The Council shall not receive petitions proposing the expenditure of public moneys or the imposition of any charge on public revenues.

Presentation of petitions.

63. No petition addressed to the Council shall be presented except by a member of the Council.

Duties of member presenting a petition.

64. Every member presenting a petition to the Council shall confine himself to a statement of the parties from whom it comes, of the number of signatures attached to it and of the material allegations contained in it and to the reading of the prayer of the petition.

Procedure.

65. If the petition is in conformity with the provisions of Standing Order 62, the Secretary shall, if so required by the President, read it to the Council or shall make an abstract of it and read the abstract to the Council. The President shall not allow any debate or any member to speak upon or in relation to such petitions.

General form of petitions.

66. The general form of petition set out in Schedule II, with such variations as circumstances of each case require, may be used and, if used, shall be sufficient.

Amendment of Standing Orders.

Notice of proposal to amend the Standing Orders.

67. (1) Unless the President otherwise directs, not less than one month's notice of motion for leave to amend the Standing Orders shall be given, and the notice shall be accompanied by a draft of the proposed amendments.

(2) The motion shall be set down for such day as the President may direct.

Procedure.

68. When the motion is reached, the President shall read the draft amendments and ask whether the member has the leave of the Council. If objection is taken, the President shall request those members who support the motion to rise in their places and, if more than fifteen members rise accordingly, the President shall intimate that the member has the leave of the Council.

Reference to Select Committee.

69. (1) Where a member has the leave of the Council to proceed, he shall move that the draft amendments be referred to a Select Committee.

(2) If that motion is carried, the draft amendments shall be referred to a Select Committee of which a chairman of the Council, nominated by the President, shall be the chairman and the Law Officer of Government, if

he be a member of the Council, shall be a member. The remaining members shall be selected by the Council in such manner as the President may determine.

Subsequent procedure.

70. After a draft has been referred to a Select Committee, the procedure in regard to Bills similarly committed shall, as far as may be, be followed with such variations as the President may consider necessary or convenient.

Duties of the Secretary.

Duties of Secretary.

71. The Secretary shall be bound to perform the following duties in addition to those specified by any Rule or Standing Order :—

(1) to take charge of the records of the Council ;

(2) to keep the prescribed books ;

(3) to attend all meetings and to take minutes of the proceedings ;

(4) to superintend the printing of all papers ordered to be printed ;

(5) to note in Bills the amendments ordered by the Council and to scrutinise all Bills and Regulations in view to preventing typographical errors and clerical mistakes ;

(6) to prepare and revise the marginal abstracts of Bills and Regulations and the headings and arrangement of Chapters and the numbering of the clauses thereof and to check and correct the references to the numbers of the clauses, etc., made in Bills ;

(7) to carry on correspondence under the orders of the Council ;

(8) to read the messages received from the Secretary to the Assembly ,

(9) to help when required to do so in the framing of Bills ; and

(10) to generally assist the Council.

Books and Records.

Reports of proceedings of Council.

72. The Secretary shall, under the control of the President, cause to be prepared a full report of the proceedings of the Council at each of its meetings and shall, as soon as practicable, publish it in such form and manner as the President may from time to time direct.

Register and index of letters and petitions.

73. A register and index of all letters and petitions addressed to or despatched under orders of the Council, shall be maintained by the Secretary.

Miscellaneous.

74. The President shall have power to regulate the conduct of business in the Council in all matters not specifically provided for in the Regulation, the Rules or the Standing Orders.

Regulation of the conduct of business.

75. Any member may apply to the Secretary for any papers, returns or information connected with the business before the Council and the President shall determine whether such papers, returns or information can be furnished.

Application to Secretary for information.

SCHEDULE I.

[*See Standing Order 6 (3) and (6).*]

Ballot procedure for determining relative precedence of non-official Bills and Resolutions.

1. Not less than one week before each day allotted for the disposal of non-official business in the Council, the Secretary to the Council will cause to be placed in his office a numbered list of Resolutions or Bills received till then and admitted by the President, with the names of the movers. This list will be kept open for three days.

2. On the fourth day, a ballot will be held in the Secretary's office or such other place as may be notified to the members at such hour as may be specified by him and any member who wishes to attend may do so.

3. Papers with numbers corresponding to those in the list published under Rule 1 will be placed in a box.

4. A clerk will take out at hazard from the box one of the papers and the Secretary will call out the corresponding name which will be then entered on a priority list. This procedure will be carried out till all the numbers have been drawn in the case of a ballot for Bills and six numbers in the case of a ballot for Resolutions.

5. Priority on the list will entitle the member to have set down, in the order of his priority, for the day with reference to which the ballot is held, any Bill or any Resolution, as the case may be, of which he has given the notice required by the Rules or Standing Orders.

SCHEDULE II.

(See Standing Order 66.)

Form of Petition relating to a matter under the consideration of the Council.

TO THE TRAVANCORE SRI CHITRA STATE COUNCIL.

(Here insert title of Bill, if it relates to a Bill or other particulars in other cases)

(Here insert name and address of the petitioner)

(Here insert concise statement of case)

(Here enter the prayer)

Whereas a Bill (or other matter) entitled a Bill (or other matter).....
.....
is now under the consideration of the Council, the humble petition of.....
.....
sheweth.....
.....
and accordingly your petitioner prays that.....
.....
and your petitioner as in duty bound will ever pray.

Signature of petitioner.

Countersignature of member presenting.

II. THE SRI MULAM ASSEMBLY. (a)

CONTENTS.

Standing Orders.

1. Short title and commencement.
2. Definitions.

Meetings of the Assembly.

3. Summoning of Assembly.
4. Effect of prorogation.

Sittings of the Assembly and Arrangement of Business.

5. Ordinary sitting.
6. Arrangement of business.
7. List of business.
8. Business outstanding at end of day.
9. Time for questions.
10. Giving of notice.
11. Giving of notice to members.

Questions.

12. List of questions.
13. Questions how put.

Motion for Adjournment for Purposes of Debate.

14. Time of asking leave.
15. Limitation of time of discussion.

General Rules of Procedure.

16. Adjournment for failure of quorum.
17. Members' places.
18. Members to rise when speaking.
19. Explanations.
20. Motions.
21. Admissibility of motions.
22. Identical motions.
23. Repetition of motions.
24. Order of speeches and right of reply.
25. Rules as to amendments.
26. Closure.
27. Adjournment.
28. Strangers.
29. Power to order withdrawal of strangers.

Legislation.

30. Copies of Bills to be sent to members.
31. Motion for leave to introduce.

(a) R. O. C. No. 891 of 33/ Legis., dated 18th July 1933.—*T. G. G. dated 18-7-1933.*

Standing Orders.

32. Introduction and motions thereafter.
33. Joint Committee of both Chambers.
34. Taking into consideration.
35. Constitution of Select Committee and its procedure.
36. Constitution of Joint Committee and its procedure.
37. Quorum of Select Committees and of Joint Committees.
38. Reports by Select Committee or Joint Committee.
39. Printing and publication of reports.
40. Presentation of reports.
41. Procedure on report after presentation.
42. Proposal of amendments.
43. Notice of amendments.
44. Order of amendments.
45. Submission of Bills clause by clause.
46. Passing of Bills.
47. Withdrawal of Bills.
48. Authentication of Bills.
49. Submission of Bills to His Highness the Maha Raja.
50. Reconsideration by the Assembly of the Bills returned by the Dewan.
51. Dewan to communicate to the Assembly His Highness the Maha Raja's assent or dissent.

Resolutions.

52. Notice of amendments.
53. Withdrawal of resolutions.
54. Order of amendments.
55. Division of resolutions.
56. Resolutions not discussed.
57. Effect of withdrawal.

Financial Business.

58. No discussion of Budget on day of presentation.
59. Notice of motion.

Communication between the Government and the Assembly.

60. Communications from the Government to the Assembly.
61. Communications from the Assembly to the Government.

Petitions to the Assembly.

62. Form and contents of petition.
63. Presentation of petitions.
64. Duties of member presenting a petition.
65. Procedure.
66. General form of petitions.

Amendment of Standing Orders.

67. Notice of proposal to amend the Standing Orders.
68. Procedure.

Standing Orders.

69. Reference to Select Committee.
70. Subsequent procedure.

Duties of the Secretary.

71. Duties of Secretary.

Books and Records.

72. Report of proceedings of Assembly.
73. Register and index of letters and petitions.

Miscellaneous.

74. Regulation of the conduct of business.
75. Application to Secretary for information.

Schedule I.—Ballot procedure for determining relative precedence of non-official Bills and Resolutions.

„ II.—Form of petition relating to a matter under the consideration of the Assembly.

Standing orders of the Travancore Sri Mulam Assembly made by the Government of His Highness the Maha Raja under Section 26 of the Travancore Legislative Reforms Regulation, II of 1108.

Short title and commencement.

1. (1) These Standing Orders may be called "The Travancore Sri Mulam Assembly Standing Orders."

(2) They shall come into force at once.

Definitions.

2. In these Standing Orders, unless there is anything repugnant in the subject or context. :—

(1) 'Assembly' means the Travancore Sri Mulam Assembly.

(2) 'Bill' means a proposed enactment in any stage before it has received the assent of His Highness the Maha Raja.

(3) 'Chamber' means a Chamber of the Travancore Legislature.

(4) 'Council' means the Travancore Sri Chitra State Council.

(5) 'Financial Secretary' means and includes the member of either Chamber appointed by the Dewan to perform the functions of the Financial Secretary under the Rules and the Standing Orders.

(6) 'Gazette' means the Travancore Government Gazette.

(7) 'Meeting' means a meeting of the Assembly.

(8) 'Member' means a member of the Assembly.

(9) 'Motion' means a proposal made by a member for the consideration of the Assembly relating to any matter which may be discussed by the Assembly, and includes an amendment.

(10) 'Notification' means a Notification in the Gazette.

(11) 'Regulation' means the Travancore Legislative Reforms Regulation, II of 1108.

(12) 'Resolution' means a motion for the purpose of discussing a matter of general public interest.

(13) 'Rules' means the Travancore Legislative Rules.

(14) 'Secretary' means the Secretary to the Assembly and includes any person for the time being performing the duties of the Secretary.

(15) 'Session' means the whole period from the time when the Assembly is assembled to the time when it is prorogued.

(16) 'Standing Order' means a Standing Order of the Assembly.

(17) In the computation of 'clear days' Sundays and holidays are not excluded, but the day of the meeting and the day of receipt of notice by the Secretary are excluded.

Meeting of the Assembly.

Summoning of Assembly.

3. (1) The Dewan shall by notification appoint the date and place for a session of the Assembly.

(2) The Secretary shall issue a summons to each member for the date and place so appointed.

(3) After the commencement of a session, the Assembly shall sit on such days as the Dewan, having regard to the state of business of the Assembly, may from time to time direct.

4. (1) On the termination of a session—

Effect of prorogation.

(i) all pending notices shall lapse, and fresh notices must be given for the next session ;

(ii) Bills which have been introduced shall be carried over to the pending list of business of the next session :

Provided that, if the member in charge of a Bill makes no motion in regard to the same during two complete sessions, the Bill shall lapse, unless the Assembly, on a motion by that member, in any future session of the same Assembly, makes a special order for the continuance of the Bill.

(2) Bills (other than Government Bills), provision relating to the lapse of which on the dissolution of an Assembly is made in Rule 54 of the Rules, shall not lapse if the member in charge of the Bill is returned to the new Assembly, or the Assembly, on a motion of any other member desiring to take charge of the same, makes a special order for the continuance of the Bill.

Sittings of the Assembly and Arrangement of Business.

Ordinary sitting.

5. (1) While in session, the meetings of the Assembly shall, subject to the direction of the Dewan, ordinarily commence at 11 A. M. and ordinarily terminate at 4-30 P. M.

(2) After the commencement of the meeting and at such time as the President may, by order, direct, from time to time, the Secretary shall report to the Assembly the Bills which have received the Royal assent and the Bills which have been disallowed since the last meeting. He shall also at such time as the President may, by order, direct, from time to time, read out messages, if any, from the other Chamber.

Arrangement of business.

6. (1) The Dewan, after considering the state of business of the Assembly, shall allot so many days as may, in his opinion, be possible compatibly with the public interests, for the business of non-official members in the Assembly, and may allot different days for the disposal of different classes of such business, and on days so allotted for any particular class of business, business of that class shall have precedence. On other days no business, other than Government business, shall be transacted except with the consent of the Government. The Dewan may also alter the allotment from time to time.

(2) On days allotted for the transaction of Government business, the Secretary shall arrange the business of the Assembly in such manner or in such order as the Government may direct.

(3) The relative precedence of notices of Bills given by non-official members shall be determined by ballot to be held in accordance with the procedure set out in Schedule I :

Provided that the President may, from time to time, make such variations in the said procedure as he may consider necessary or convenient.

(4) On a day, if any, specially allotted for the disposal of non-official Bills, Bills which have already been introduced by non-official members shall have priority over all other business, provided that the notice required by the Rules or Standing Orders has been given. And such Bills shall have relative precedence in the following order, namely :—

(*a*) Bills introduced in the Assembly in respect of which the next stage is the presentation of the Report of a Joint or Select Committee ;

(*b*) Bills passed by the Council in respect of which the originating Chamber was the Assembly ;

(*c*) Bills introduced and passed in the Council ;

(*d*) Bills introduced in the Assembly in respect of which a motion has been carried to the effect that the Bill be taken into consideration;

(*e*) Bills introduced in the Assembly in respect of which the report of a Joint or Select Committee has been presented; and

(*f*) other Bills.

(5) The relative precedence of Bills falling under the same clause of sub-order (4) shall be determined by ballot to be held at such time and in such manner as the President may direct:

Provided that the President may, in any case, himself determine the order without any ballot:

Provided also that the Bills falling under clause (*f*) which remain over from the preceding session shall, subject to the provisions of sub-order (1) (ii) of Standing Order 4, have priority over other such Bills in the order of the date of their introduction.

(6) The relative precedence of notices of resolutions given by the non-official members shall be determined by ballot to be held in accordance with the procedure set out in Schedule I:

Provided that the President may, from time to time, make such variations in the said procedure as he may consider necessary or convenient.

List of business.

7. (1) A list of business for the day shall be prepared by the Secretary and a copy thereof shall be made available for the use of every member.

(2) Save as otherwise provided in the Rules or Standing Orders, no business not included in the list of business for the day shall be transacted at any meeting without the leave of the President.

(3) Save as otherwise provided by the Rules or Standing Orders, no business requiring notice shall be set down for a day earlier than the day after that on which the period of the notice necessary for that class of business expires.

Business outstanding at end of day.

8. All non-official business appointed for any day and not disposed of on that day shall stand over until the next day of the session available for business of the class to which it belongs, or until such other day in the session so available as the member in charge may, with the consent of the President, notify.

Time for questions.

9. The first hour of every meeting shall be available for the asking and answering of questions.

10. (1) Every notice required by the Rules or Standing Orders shall be given in writing addressed to the Secretary and signed by the member giving notice and shall, if not sent by Anchal or Post, be left at the Notice Office, which shall be open for this purpose between the hours of 11 A. M. and 3 P. M. on every day except Sunday or a public holiday.

Giving of notice.

(2) Notices left when the office is closed shall be treated as given on the next open day.

(3) Notice sent by Anchal or Post shall be treated as given on the day on which it was actually received by the Secretary.

11. (1) The Secretary shall make every effort to circulate to each member a copy of every notice or other paper, which is, by these Standing Orders, required to be made available for the use of members.

Giving of notice to members.

(2) A notice or other paper shall be deemed to have been made available for the use of every member if a copy thereof is deposited in such manner and in such place as the President may, from time to time, direct.

Questions.

12. Questions which have not been disallowed shall be entered in the list of questions for the day and shall be called, if the time made available for questions permits, in the order in which they stand in the list, before any other business is entered upon at the meeting.

List of questions.

13. Questions shall be put and answers given in such manner as the President may, in his discretion, determine.

Questions how put.

Motion for Adjournment for Purposes of Debate.

14. Leave to make a motion for an adjournment of the business of the Assembly for the purpose of discussing a definite matter of urgent public importance must be asked for, after questions and before the list of business for the day is entered upon.

Time of asking leave.

15. (1) Subject to the provisions of Rule 22 (2) of the Rules, the debate on a motion to discuss a matter of urgent public importance shall ordinarily be taken up at 3-30 P. M. and, if not earlier concluded, shall automatically terminate at 5-30 P. M. and thereafter no question can be put.

Limitation of time of discussion.

(2) During the debate it shall be within the discretion of the President to allow the mover and the official member answering him to speak for more than fifteen minutes.

General Rules of Procedure.

Adjournment for failure of quorum.

16. If within half an hour from the time appointed for holding a meeting on any day, the quorum specified in Rule 25 of the Rules is not present or if the President on a count at any time during a sitting ascertains that twelve members are not present he shall adjourn the Assembly till the next day on which the Assembly ordinarily sits.

Members' places.

17. The members shall sit in such order as the President may appoint.

Members to rise when speaking.

18. A member desiring to make any observations on any matter before the Assembly shall speak from his place, shall rise when he speaks and shall address the President. At any time, if the President rises, any member speaking shall resume his seat.

Explanations.

19. When, for the purposes of explanation during discussion or for any other sufficient reason, any member has occasion to ask a question of another member on any matter then under the consideration of the Assembly, he shall ask the question through the President.

Motions.

20. (1) A matter requiring the decision of the Assembly shall be brought forward by means of a question put by the President on a motion proposed by a member.

(2) Save as otherwise provided for in the Rules or Standing Orders, a member who wishes to move a motion shall give notice of his intention to the Secretary six clear days before the meeting at which he intends to move the motion :

Provided that the President may in his discretion admit at any time any motion without such notice or admit at any time any motion at shorter notice than that prescribed by this sub-order.

(3) Votes may be taken by voices or division, and shall be taken by division if any member so desires. The President shall determine the method of taking votes by division.

(4) The result of a division shall be announced by the President and shall not be challenged.

Admissibility of motions.

21. (1) Except as otherwise provided for in the Rules, the President shall decide on the admissibility of a motion.

(2) The President may disallow any motion when in his opinion it does not comply with the Rules or Standing Orders.

22. Where substantially identical motions stand in the names of two or more members, the President shall decide whose motion shall be moved, and the other motions shall thereupon be deemed to be withdrawn.

Identical motions.

23. A motion must not raise a question substantially identical with one on which the Assembly has given a decision in the same session ;

Repetition of motions.

Provided that nothing in this Standing Order shall, unless the President in any case otherwise directs, be deemed to prevent the making of any of the following motions, namely :—

(*a*) any motion for the amendment of a Bill which has been recommitted to a Select Committee ;

(*b*) any motion for the amendment of a Bill made after the return of the Bill by the Dewan for reconsideration by the Assembly ;

(*c*) any motion for the amendment of a Bill which is consequential on, or designed merely to alter the drafting of, another amendment which has been carried ;

(*d*) any motion which has to be, or may be, made within a period determined by or under the Rules or Standing Orders.

24. (1) After the member who moves has spoken, other members may speak to the motion in the order in which they are called by the President. If any member who is so called upon does not speak, he shall not be entitled, except by the permission of the President, to speak to the motion, at any later stage of the debate.

Order of speeches and right of reply.

(2) Except in the exercise of a right of reply or as otherwise provided by the Rules or Standing Orders, no member shall speak more than once to any motion except, with the permission of the President, for the purpose of making a personal explanation, but in that case, no debatable matter may be brought forward.

(3) A member who has moved a motion may speak again by way of reply, and if the motion is moved by a non-official member, the official member in charge of the motion or of the department to which the matter relates shall, after the mover has replied, have the right of speaking whether he has previously spoken in the debate or not :

Provided that nothing in this sub-order shall be deemed to give any right of reply to the mover of an amendment to a Bill or to a Resolution save with the permission of the President.

(4) The President may in all cases address the Assembly before putting a question to the vote.

Rules as to amendments.

25. (1) An amendment must be relevant to, and within the scope of, the subject-matter of the clause or motion to which it relates.

(2) An amendment may not be moved which has merely the effect of a negative vote.

(3) Every amendment which has been moved shall be seconded ; otherwise it shall not be discussed nor shall any question be put on it.

(4) An amendment on a question must not be inconsistent with any previous decision on the same question given at the same stage of any Bill or motion.

(5) The President may refuse to put an amendment which in his opinion is frivolous.

(6) In respect of any motion or any Bill under consideration, the President shall have power to select the new clauses or amendments to be proposed, and may, if he thinks fit, call upon any member, who has given notice of an amendment, to give such explanation of the object of the amendment as may enable him to form a judgment on its admissibility.

Closure.

26. (1) At any time after a motion has been made, any member may move " That the question be now put ", and unless it shall appear to the President that such motion is an abuse of the Rules or Standing Orders or an infringement of the rights of reasonable debate, the question " That the question be now put " shall be put forthwith and decided without amendment or debate.

(2) When the motion " That the question be now put " has been carried, the question on the original motion, the debate on which has thus been terminated, shall be put and decided without amendment or further debate :

Provided that the President may allow any member any right of reply which he may have under the Standing Orders.

(3) Notwithstanding the provisions of sub-orders (1) and (2), the official member in charge of a Bill may in the course of any debate on the Bill intimate to the President that the Dewan is prepared, if necessary, to use his powers under Section 20 of the Regulation and to pass the Bill into law in spite of the refusal of the Assembly to do so, and may request him to put the question on any motion then under discussion ; and, unless he considers that the request is an abuse of the Rules or Standing Orders or an

infringement of the rights of reasonable debate, the President shall put the question which shall be decided without amendment or debate.

Adjournment.

27. A motion that any meeting or business be adjourned or postponed or that the Assembly pass to the business next in order in the statement of business, may, if the President consents, be moved at any time and without previous notice as a distinct question but not so as to interrupt a speech. If the motion is carried, the meeting or business shall be adjourned or postponed accordingly or if the motion carried be that the Assembly pass to the business next in order in the statement of business, the business then under discussion shall be considered to be disposed of. On such motions, the question put shall only be 'That the meeting be now adjourned' or 'That the business be postponed' or 'That the Assembly do now pass to the business next in order in the statement of business' as the case may be.

Strangers.

28. The admission to the Assembly Chamber of—

(1) visitors to the Visitors' Gallery,

(2) representatives of the Press to the Press Gallery, and

(3) officials to the Official Gallery,

during the sittings of the Assembly shall be regulated in accordance with the orders made by the President.

Power to order withdrawal of strangers.

29. The President, whenever he thinks fit, may order the Visitors' or Press Gallery to be cleared.

Legislation.

Copies of Bills to be sent to members.

30. When a Bill has been published under Rule 31 of the Rules, a copy of the Bill and the Statement of Objects and Reasons shall be made available for the use of every member.

Motion for leave to introduce.

31. If a motion for leave to introduce a Bill is opposed, the President after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from a member who opposes the motion, may without further debate put the question.

Introduction and motions thereafter.

32. (1) At any time after a Bill has been published in the Gazette, the member in charge of the Bill may introduce it.

(2) When introducing a Bill, the member in charge of it shall move that the Bill be read in Assembly.

(3) If the motion be seconded, the principle of the Bill and its general provisions may then be discussed and if the motion be carried, the Secretary shall read the title of the Bill.

(4) The member in charge may then immediately move that the Bill be referred to a Select Committee composed of such members as he may specify in his motion.

(5) If the Assembly agrees to such a motion, it shall appoint the Committee and may direct that its report shall be submitted within a specified period.

Joint Committee of both Chambers.

33. A motion recommending that a Bill be committed to a Joint Committee of both the Chambers, under Rule 51 (1) of the Rules, may be moved at any stage at which a motion for the reference of the Bill to a Select Committee may be moved.

Taking into consideration.

34. If no motion for referring the Bill to a Select Committee under sub-order (4) of Standing Order 32 or to a Joint Committee of both Chambers under Standing Order 33 is made or if a motion is made and negatived, the member in charge shall not move that the Bill be taken into consideration until the expiration of fifteen clear days from the date on which the Bill was read under sub-order (2) of Standing Order 32 :

Provided that the President may, in his discretion, suspend this Standing Order and allow the motion to be made at once or before the expiration of fifteen clear days.

Constitution of Select Committee and its procedure.

35. (1) The official member in charge of the department to which the Bill relates, if he be a member of the Assembly, and the member in charge of the Bill shall be members of every Select Committee and it shall not be necessary to include their names in any motion for the appointment of a Committee.

(2) The other members of the Committee shall be named by the Assembly when the motion that the Bill be referred is made, or at any subsequent sitting.

(3) The President shall nominate one of the members of the Committee to be its chairman, and may nominate one of them (whether the chairman or not) to be the convenor of the Committee. In the case of an equality of votes in the Committee, the chairman shall have a second or casting vote.

(4) A Select Committee may hear expert evidence and the representatives of any special interests affected by the measures before them and

may for the purpose of obtaining information invite any person to be present at its sittings.

(5) Where the official member in charge of the department to which the Bill relates is not a member of the Assembly, he shall have the right of attending at, and taking part in the deliberations of, meetings of the Select Committee, but shall not be a member of the Committee.

Constitution of Joint Committee and its procedure.

36. (1) The equal number of members to be selected from each Chamber of the Legislature under Rule 51 (2) of the Rules shall be fixed by the President of the Council in respect of each Bill having regard to all the circumstances of the case.

(2) The members from the Assembly to be selected by the Assembly under Rule 51 (2) of the Rules shall be selected by a motion passed in the Assembly. The member in charge of the Bill or any other member authorised in this behalf by the Dewan shall submit to the vote of the Assembly, in the form of a motion, the names of the members of the Assembly to be so selected, and, if the motion is carried, they shall be deemed to be the members selected by the Assembly to serve on the Joint Committee :

Provided that the members so selected shall always include the member in charge of the Bill, if he be a member of the Assembly.

(3) The official member in charge of the department to which the Bill relates (whether he be a member of the Joint Committee or not) shall have the right of attending at, and taking part in the deliberations of, the meetings of the Joint Committee but shall not vote therein unless he be a member of the Joint Committee.

(4) A Joint Committee may hear expert evidence and the representatives of any special interests affected by the measure before them, and, may for the purpose of obtaining information, invite any person to be present at its sittings.

Quorum of Select Committees and of Joint Committees.

37. (1) In the case of a Select Committee or a Joint Committee the quorum shall be one-half of the number of members in each, and no business shall be transacted at any sittings of either a Select Committee or a Joint Committee unless such quorum, including the member in charge of the Bill, be present.

(2) If, at the time fixed for any meeting of the Select Committee or the Joint Committee or at any time during such meeting, a quorum is not present, the chairman of the Committee shall either adjourn it forthwith to a future day, or shall defer the commencement or suspend the proceedings

of the meeting for such period in the same day as he may deem reasonable, and, if at the expiry of such period a quorum is not present, he shall adjourn the Committee to a future day.

(3) Where a Select Committee or a Joint Committee has been adjourned in pursuance of sub-order (2) on three successive days fixed for the meetings of the Committee, the chairman of the Committee may stay further proceedings and may report the reason for so doing to the Assembly.

(4) If the Assembly has fixed a period within which the Select Committee or the Joint Committee shall submit its report upon a Bill, and the Committee is unable for any reason to submit its report within that period, the Dewan may from time to time extend the period on the application of the member in charge of the Bill.

(5) The chairman of a Select Committee shall have power to report to the Dewan the name of any member of the Select Committee who neglects or is unable to attend its sittings or, by death, resignation or otherwise, ceases to be a member of the Committee; and the Dewan may in such cases (whether there be a report or not) appoint out of the members of the Assembly an additional member to the Committee.

Reports by Select Committee or Joint Committee.

38. (1) After publication of a Bill in the Gazette, the Select Committee or the Joint Committee to which the Bill has been referred shall make a report thereon.

(2) Reports may be either preliminary or final.

(3) While a Select Committee or a Joint Committee is sitting to consider a Bill, all communications relating to the Bill which are received by the Secretary shall be referred to it.

(4) The Select Committee or the Joint Committee shall, in their report, state whether or not, in their judgment, the Bill has been so altered as to require republication, and whether the publication directed by the Rules or Standing Orders has taken place and the date on which publication has taken place.

(5) If any member of a Select Committee or a Joint Committee desires to record a minute of dissent on any point, he must sign the majority report, stating that he does so subject to his dissent, and must at the same time hand in his minute.

Printing and publication of reports.

39. The report of the Select Committee or the Joint Committee, any minutes that may have been recorded by individual members of the Committee and, if the Bill has been amended, the Bill as amended by the Committee, shall be caused by the Secretary to be printed and a copy made available

for the use of every member of the Assembly. The report and the minutes, if any, and, if the Bill has been amended, the Bill as amended, or such portion thereof as may have been amended, shall also, unless otherwise directed by the Committee, be published in the Gazette in the languages in which the original Bill was published.

Presentation of reports.

40. The report of the Select Committee on a Bill shall be presented to the Assembly by the member in charge of the Bill, who shall, if he makes any remarks, confine himself to a brief statement of facts.

Procedure on report after presentation.

41. (1) After the presentation of the final report of the Select Committee on a Bill, the member in charge may move—

(i) that the Bill as reported by the Committee be taken into consideration; but any member may object to its being so taken into consideration if a copy of the report has not been available for the use of members for seven days, or if three months have not elapsed from the date of the first publication of the Bill; and such objection shall prevail unless the President, in the exercise of his power to suspend this order, allows the report to be taken into consideration; or

(ii) that the Bill be re-committed either

(*a*) without limitation, or

(*b*) with respect to particular clauses or amendments only, or

(*c*) with instructions to the Committee to make some particular or additional provision in the Bill.

(2) If the member in charge moves that the Bill be taken into consideration, any member may move as an amendment that the Bill be re-committed.

Proposal of amendments.

42. When a motion has been agreed to by the Assembly that a Bill be taken into consideration, any member may propose an amendment of such Bill.

Notice of amendments.

43. (1) If notice of a proposed amendment has not been given to the Secretary six clear days before the sitting of the Assembly at which the Bill is to be considered, any member may object to the moving of the amendment, and such objection shall prevail, unless the President, in the exercise of his power to suspend this order, allows the amendment to be moved.

(2) The Secretary shall if time permits cause every notice of a proposed amendment to be printed, and a copy shall be made available for the use of every member.

(3) If any member is unacquainted with English, the Secretary shall also, if the President so directs, cause every such notice to be translated into Malayalam or Tamil, as the case may be, for his use.

Order of amendments.

44. Amendments shall ordinarily be considered in the order of the clauses of the Bill to which they respectively relate, and in respect of any such clause a motion shall be deemed to have been made 'That this clause stand part of the Bill'.

Submission of Bills clause by clause.

45. Notwithstanding anything in the foregoing Orders, it shall be in the discretion of the President, when a motion that a Bill be taken into consideration is carried, to submit the Bill, or any part of the Bill, to the Assembly clause by clause. When this procedure is adopted, the President shall call each clause separately, and, when the amendments relating to it have been dealt with, shall put the question that this clause or, as the case may be, this clause as amended stand part of the Bill.

Passing of Bills.

46. (1) When a motion that a Bill be taken into consideration has been carried, and no amendment of the Bill is made, the member in charge may at once move that the Bill be passed.

(2) If any amendment of the Bill is made, any member may object to any motion being made on the same day that the Bill be passed, and such objection shall prevail unless the President, in the exercise of his power to suspend this Standing Order, allows the motion to be made.

(3) Where the objection prevails, a motion that the Bill be passed may be brought forward on any future day.

(4) At the stage of the motion for passing the Bill, and prior to the making of the motion, the Assembly shall consider the amendments, if any, moved on behalf of Government. No amendments other than those connected with the amendments moved on behalf of Government shall, without the special permission of the Dewan, be brought up for consideration at this stage.

Withdrawal of Bills.

47. The member in charge of a Bill may at any stage of the Bill move for leave to withdraw the Bill; and if such leave is granted, no further motion may be made with reference to the Bill, and the Bill shall be deemed to have been withdrawn.

Authentication of Bills.

48. When a Bill is passed by the Assembly, a copy thereof shall be signed by the President.

Submission of Bills to His Highness the Maha Raja.

49. When a Bill which has been passed by the Council is passed by the Assembly, the Secretary shall send a copy of the Bill signed by the President to the Secretary of the Council to be forwarded to the Dewan for submission to His Highness the Maha Raja.

Reconsideration by the Assembly of the Bills returned by the Dewan.

50. When a Bill is returned by the Dewan for reconsideration by the Assembly, the point or points referred for consideration shall be put before the Assembly by the President, and shall be discussed and voted upon in the same manner as amendments to a Bill, or in such other way as the President may consider most convenient for their consideration by the Assembly.

Dewan to communicate to the Assembly His Highness the Maha Raja's assent or dissent.

51. In cases where the Assembly is the originating Chamber in respect of a Bill, the Dewan shall communicate to the Assembly His Highness the Maha Raja's assent or dissent by certificate in writing at the foot of the Bill, and the Bill with such certificate shall be lodged in the records of the Assembly.

Resolutions.

Notice of amendments.

52. (1) If notice of an amendment to any resolution has not been given two clear days before the day on which the resolution is moved, any member may object to the moving of the amendment and such objection shall prevail unless the President in the exercise of his power to suspend this Standing Order allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every amendment to be printed and a copy thereof to be made available for the use of every member.

Withdrawal of resolutions.

53. (1) A member who has moved a resolution or an amendment to a resolution shall not withdraw the same except by leave of the Assembly.

(2) No discussion shall be permitted on a motion for leave to withdraw, except with the permission of the President.

Order of amendments.

54. (1) When an amendment to any resolution is moved, or when two or more such amendments are moved, the President shall, before taking the sense of the Assembly thereon, state or read to the Assembly the terms of the original motion and of the amendment or amendments proposed.

(2) It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been brought forward.

55. When any resolution involving several points has been discussed, it shall be in the discretion of the President to divide the resolution, and put each or any point separately to the vote as he may think fit.

Division of resolutions.

56. If a resolution which has been admitted is not discussed during the session, it shall be deemed to have been withdrawn.

Resolutions not discussed.

57. When a resolution has been withdrawn with the leave of the Assembly, no resolution raising substantially the same question shall be moved during the same session.

Effect of withdrawal.

Financial Business.

58. There shall be no discussion of the Budget on the day on which it is presented.

No discussion of Budget on day of presentation.

59. If notice of a motion to omit or reduce any grant has not been given two clear days before the day on which the demand is to be considered, any member may object to the moving of the motion and such objection shall prevail unless the President, in the exercise of his power to suspend this Standing Order, allows the motion to be made.

Notice of motion.

Communications between the Government and the Assembly.

60. Communications from the Government to the Assembly are made only :—

Communications from the Government to the Assembly

(1) by a speech by the Dewan, or

(2) by a written message through the President.

61. Communications from the Assembly to the Government shall be made :—

Communications from the Assembly to the Government.

(1) by formal address after motion made and carried in the Assembly ; and

(2) through the President.

Petitions to the Assembly.

62. (1) Petitions to the Assembly must—

Form and contents of petition.

(*a*) relate to some matter actually under the consideration of the Assembly ;

(*b*) be addressed to the Travancore Sri Mulam Assembly ;

(*c*) be dated and signed by the petitioner or petitioners and countersigned by a member ; and

(*d*) be in respectful and temperate language.

(2) The Assembly shall not receive petitions proposing the expenditure of public moneys or the imposition of any charge on public revenues.

Presentation of petitions.

63. No petition addressed to the Assembly shall be presented except by a member of the Assembly.

Duties of member presenting a petition.

64. Every member presenting a petition to the Assembly shall confine himself to a statement of the parties from whom it comes, of the number of signatures attached to it and of the material allegations contained in it and to the reading of the prayer of the petition.

Procedure.

65. If the petition is in conformity with the provisions of Standing Order 62, the Secretary shall, if so required by the President, read it to the Assembly or shall make an abstract of it and read the abstract to the Assembly. The President shall not allow any debate or any member to speak upon or in relation to such petitions.

General form of petitions.

66. The general form of petition set out in Schedule II, with such variations as circumstances of each case require, may be used and, if used, shall be sufficient.

Amendment of Standing Orders.

Notice of proposal to amend the Standing Orders.

67. (1) Unless the President otherwise directs, not less than one month's notice of a motion for leave to amend the Standing Orders shall be given, and the notice shall be accompanied by a draft of the proposed amendments.

(2) The motion shall be set down for such day as the President may direct.

Procedure.

68. When the motion is reached, the President shall read the draft amendments and ask whether the member has the leave of the Assembly. If objection is taken, the President shall request those members who support the motion to rise in their places and, if more than twenty members rise accordingly, the President shall intimate that the member has the leave of the Assembly.

Reference to Select Committee.

69. (1) Where a member has the leave of the Assembly to proceed he shall move that the draft amendments be referred to a Select Committee.

(2) If that motion is carried, the draft amendments shall be referred to a Select Committee of which the Deputy President, or, in the event of that office being vacant, a chairman of the Assembly nominated by the President, shall be the chairman and the Law Officer of Government, if

he is a member of the Assembly, shall be a member. The remaining members shall be selected by the Assembly in such manner as the President may determine.

Subsequent procedure.

70. After a draft has been referred to a Select Committee, the procedure in regard to Bills similarly committed shall, as far as may be, be followed with such variations as the President may consider necessary or convenient.

Duties of the Secretary.

Duties of Secretary.

71. The Secretary shall be bound to perform the following duties in addition to those specified by any Rule or Standing Order :—

(1) to take charge of the records of the Assembly ;

(2) to keep the prescribed books ;

(3) to attend all meetings and to take minutes of the proceedings ;

(4) to superintend the printing of all papers ordered to be printed ;

(5) to note in Bills the amendments ordered by the Assembly and to scrutinise all Bills and Regulations in view to preventing typographical errors and clerical mistakes ;

(6) to prepare and revise the marginal abstracts of Bills and Regulations and the headings and arrangement of Chapters and the numbering of the clauses thereof and to check and correct the references to the numbers of the clauses, etc., made in Bills ;

(7) to carry on correspondence under the orders of the Assembly ;

(8) to read the messages received from the Secretary to the Council ;

(9) to help when required to do so in the framing of Bills ; and

(10) to generally assist the Assembly.

Books and Records.

Reports of proceedings of Assembly.

72. The Secretary shall, under the control of the President, cause to be prepared a full report of the proceedings of the Assembly at each of its meetings and shall, as soon as practicable, publish it in such form and manner as the President may from time to time direct.

Register and index of letters and petitions.

73. A register and index of all letters and petitions addressed to or despatched under orders of the Assembly, shall be maintained by the Secretary.

Miscellaneous.

Regulation of the conduct of business.

74. The President shall have power to regulate the conduct of business in the Assembly in all matters not specifically provided for in the Regulation, the Rules or the Standing Orders.

75. Any member may apply to the Secretary for any papers, returns or information connected with the business before the Assembly and the President shall determine whether such papers, returns or information can be furnished.

Application to Secretary for information.

SCHEDULE I.

[*See Standing Order 6 (3) and (6)*]

Ballot procedure for determining relative precedence of non-official Bills and Resolutions.

1. Not less than one week before each day allotted for the disposal of non-official business in the Assembly, the Secretary to the Assembly will cause to be placed in his office a numbered list of Resolutions or Bills received till then and admitted by the President, with the names of the movers. This list will be kept open for three days.

2. On the fourth day, a ballot will be held in the Secretary's office or such other place as may be notified to the members at such hour as may be specified by him and any member who wishes to attend may do so.

3. Papers with numbers corresponding to those in the list published under Rule 1 will be placed in a box.

4. A clerk will take out at hazard from the box one of the papers and the Secretary will call out the corresponding name which will be then entered on a priority list. This procedure will be carried out till all the numbers have been drawn in the case of a ballot for Bills and six numbers in the case of a ballot for Resolutions.

5. Priority on the list will entitle the member to have set down, in the order of his priority, for the day with reference to which the ballot is held, any Bill or any Resolution, as the case may be, of which he has given the notice required by the Rules or Standing Orders.

SCHEDULE II.

(*See Standing Order 66.*)

Form of Petition relating to a matter under the consideration of the Assembly.

TO THE TRAVANCORE SRI MULAM ASSEMBLY.

(Here insert title of Bill, if it relates to a Bill or other particulars in other cases)

Whereas a Bill (or other matter) entitled a Bill (or other matter)..... is now under the consideration of the Assembly, the humble petition of.....

(Here insert name and address of the petitioner)

sheweth.....

(Here insert concise statement of case)

and accordingly your petitioner prays that.....

.....

(Here enter the prayer)

and your petitioner as in duty bound will ever pray.

Signature of petitioner.

Countersignature of member presenting.

III. NOTIFICATIONS, &c.

I
NON-OFFICIAL DEFINITION RULES.

(R. Dis. No. 255/33/Legis., dated 29th April 1933.) *

In exercise of the powers conferred by Section 2, proviso, of the Travancore Legislative Reforms Regulation II of 1108, the Government of His Highness the Maha Raja are pleased to make the following Rules in supersession of the Non-Official Definition Rules, 1103, passed under date the 5th December 1927 :—

1. (*a*) These Rules may be called the Non-Official Definition Rules, 1108.

(*b*) They shall come into force at once.

2. The holder of any office in the civil or military service of Government, if the office is one which does not involve both the following incidents, namely, that the incumbent

(*a*) is a whole-time servant of Government, and

(*b*) is remunerated either by salary or fees,

shall not be treated as an official for the purposes of election to the Travancore Sri Mulam Assembly or to the Travancore Sri Chitra State Council.

3. If any question arises whether for the purposes of these Rules, any officer is or is not a whole-time servant of Government or any remuneration is or is not salary or fees, the decision of Government shall be final.

II.
THE TRAVANCORE LEGISLATIVE (JOINT COMMITTEE) RULES.

(R. Dis. 357/1933/Legis., dated 26th June 1933.) (*a*).

In exercise of the powers conferred by Sections 25 and 34 of the Travancore Legislative Reforms Regulation, II of 1108, the Government of His Highness the Maha Raja have been pleased to make the following Rules for the constitution of the Joint Committees provided for by Rule 48 of the Travancore Legislative Rules.

---

* *T. G. G., dated 2-5-1933. Pt. II, P. 432.*

(*a*). *T. G. G., dated 27-6-1933, Pt. II, P. 591.*

1. These Rules may be called the Travancore Legislative (Joint Committee) Rules and shall come into force at once.

2. The terms used in these Rules shall have the same meaning as in the Travancore Legislative Rules.

3. The Joint Committee shall consist of thirty members, fifteen selected by the Assembly and fifteen selected by the Council in the manner hereinafter prescribed.

4. Any member of the Assembly or the Council (whether official or non-official) shall be eligible for membership in the Joint Committee.

5. The official member in charge of the measure to be considered by the Joint Committee, or any other member authorised in this behalf by the Dewan, shall submit to the vote of each chamber, in the form of a motion, the names of the members of that chamber to be selected to serve on the Joint Committee, and, if the motion is carried, they shall be the members selected by that chamber to be members of the Joint Committee.

6. These Rules shall be read as supplemental to the Travancore Legislative Rules.

III
THE SRI CHITRA STATE COUNCIL.

Notification for the safe custody, preservation, grant of copies, inspection and production of election papers.

(R. Dis. No. 577/33 Legis., dated 24th October 1933.) (a)

In exercise of the powers conferred by Rule 49 of the Sri Chitra State Council Electoral Rules and in supersession of the Notification R. Dis. No. 326 of 33/Legis., dated the 12th June 1933, issued under the said Rule, the Government of His Highness the Maha Raja are pleased to issue this Notification for the safe custody, preservation, inspection, grant of copies, production and destruction of election papers in respect of the several constituencies of the Sri Chitra State Council.

1. Preliminary Electoral Rolls (three copies) and Final Electoral Rolls once prepared or revised, and

papers and files relating to claims for correction of the Preliminary Rolls or for registration and objections to registration and lists of such claims and objections,

---

(a) *T. G. G., dated 24-10-1933.*

shall be preserved until the next revision of the Electoral Rolls of the constituency to which they relate has been completed and may thereafter be destroyed.

The said papers shall be forwarded by the officers concerned after the result of the election is notified to the Returning Officer of the constituency to which they relate and shall be kept in his record-room until destruction.

2. The nomination papers of candidates and the orders passed thereon by the Returning Officers and the withdrawals from candidature shall be kept in the offices of the Returning Officers they relate to and shall be destroyed after three years unless otherwise ordered by the Returning Officers.

3. Certified copies of the documents mentioned in paragraphs 1 and 2 above, authenticated by the Returning Officer or any person authorised by him for the purpose, shall be given on payment of the same fees as are prescribed for grant of copies of revenue records in Notification Dis. No. 756 of 21/Revenue, issued under date the 26th July 1921, at page 733 of the Land Revenue Department sheet of the Government Gazette, dated the 2nd August 1921, as amended by Notifications Dis. No. 1046 of 23/Revenue, dated the 22nd August 1923, and Dis. No. 1217 of 23/Revenue, dated the 20th September 1923.

4. Election petitions with the proceedings and reports of the Election Commissioners thereon shall be kept by the Secretary to the Sri Chitra State Council and shall be destroyed after three years unless otherwise ordered by him.

5. Preliminary Electoral Rolls in excess of the numbers prescribed above and other correspondence regarding the preparation of rolls and papers furnished by Presiding Officers may, except where otherwise provided for under the Rules for the conduct of elections, be disposed of under the orders of the Returning Officer.

IV

THE SRI CHITRA STATE COUNCIL.

Rules *re* the grant of copies of the Returns of Election Expenses and the Declarations made in respect of them.

(R. Dis. No. 328 of 33/Legis., dated 12th June 1933.) (a)

In exercise of the powers conferred on them by Rule 18 (5) of the Sri Chitra State Council Electoral Rules, the Government of His Highness

(a) *T. G. G., dated 12-6-1933.*

the Maha Raja are pleased to prescribe the following Rule to regulate the grant of copies of the returns of election expenses and the declarations made in respect of them.

Rule.

Certified copies of the returns of election expenses and the declarations made in respect of them authenticated by the Returning Officer or any person authorised by him for the purpose shall be given on payment of the same fees as are prescribed for the grant of copies of revenue records in Notification Dis. No. 756 of 21/Revenue, issued under date the 26th July 1921, at page 733 of the Land Revenue Department sheet of the Government Gazette dated the 2nd August 1921, as amended by Notifications Dis. No. 1046 of 23/Revenue, dated the 22nd August 1923 and Dis. No. 1217 of 23/Revenue, dated the 20th September 1923.

V

THE SRI CHITRA STATE COUNCIL.

Instructions in respect of the recording of votes by illiterate and incapacitated persons at the Sri Chitra State Council.

(R. Dis. No. 324 of 33/Legis., dated 12th June 1933.) (a)

Under paragraph 45 (3) of Schedule III to the Sri Chitra State Council Electoral Rules the Government of His Highness the Maha Raja are pleased to issue the following instructions in respect of the recording of votes by illiterate and incapacitated persons at the Sri Chitra State Council Elections.

1. The votes of electors unable to read or mark the ballot paper shall be recorded under the provisions of paragraph 45 (1) and (2) of Schedule III to the Sri Chitra State Council Electoral Rules which are as follow :—

"45 (1). If the elector is unable to read the ballot paper or to mark it and so states to the presiding officer and applies for assistance for reading the ballot paper or marking it, the presiding officer shall read it for him and if so required mark the ballot paper according to the directions of the elector and give it to him to be put into the ballot box.

(2) In the case of every elector whose ballot paper is marked in this manner by the presiding officer, a note of the reason for so marking shall be made by such officer on the corresponding counterfoil of Form IX".

(a) *T. G. G. dated 13-6-1933.*

2. The presiding officer should not ask the elector for whom he wishes to vote or undertake to mark the ballot paper unless a specific request is made to him by the elector for assistance. If the presiding officer is required by the elector to mark the ballot paper he should mark it according to the directions of the elector and give it back to the elector to be put into the ballot box.

3. The candidates and their polling agents shall be permitted to be present at and observe the proceedings including the presiding officer's marking the ballot paper and making the entry in the counterfoil.

4. The presiding officer should see that no crowd assembles round an illiterate or incapacitated elector while inside the polling station and that the elector is not subjected to pressure or influence from others in exercising his choice. No one other than the candidates and their polling agents should be allowed to be present at or near the place where his voting takes place.

VI
THE SRI CHITRA STATE COUNCIL.

Forms *re* Return of Election Expenses and Register of Election Expenses.

(R. Dis. No. 330 of 33/Legis., dated 12th June 1933.) (a)

In exercise of the powers conferred by Rule 18 (1) of the Sri Chitra State Council Electoral Rules, the Government of His Highness the Maha Raja are pleased to prescribe Form No. 1 for the return of election expenses to be lodged by every person who has been nominated as a candidate for election to the Sri Chitra State Council.

The returns shall be accompanied by declarations in the forms prescribed in Schedule IV of the said Rules.

2. In pursuance of Rule 18 (6) of the said Rules, Form No. II is prescribed for the purpose of maintaining a record of election expenses by the Returning Officers, and the time for which such record should be preserved is fixed at 6 years.

(a) *T. G. G., dated 13-6-1933.*

FORM NO. 1.

THE SRI CHITRA STATE COUNCIL.

[*Vide Rule 18 (1)*]

Return of Election Expenses.

For the.....constituency

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
Received of A. B., candidate for the above constituency. (Or when the candidate is his own election agent) Paid by me, A. B., candidate for the above constituency. Received of— (1) (2) (3) (4) etc., etc., Total Receipts ...		(A) The personal expenditure of the candidate incurred or paid by him or by his election agent on his behalf including travelling and all other personal expenses incurred in connection with his candidature. Paid by me, C. D., as election agent. (Or when the candidate is his own election agent). Paid by me, A. B., candidate as my own election agent) (1) On—— (2) On—— (3) On—— (4) On—— (1) Paid to.....on..... (2) „ .....on..... (3) „ .....on..... (4) „ .....on..... etc., etc. Details of all expenditure incurred by or on behalf of the candidate whether in payment for personal services rendered on account of hotel bills, for travelling whether by rail or in hired conveyance, or for the purchase of books or election literature, etc., should be shown, either in the account or in a separate list annexed to and referred to in the account.		
Here set out the name and description of every person, club, society or association, whether the candidate or not, from whom any money, securities, or equivalent of money was received in respect of expenses incurred on account of or in connection with or incidental to the above election. The amount received from each such person, club, society, etc., to be shown separately)				

Return of Election Expenses—(*contd.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
		(B) The name and the rate and the total amount of the pay of each person employed as an agent (including the election agent), clerk or messenger. Received by me, C. D., as election agent for A. B. (When the candidate is his own election agent, the above item will be omitted. (1) Paid to.....as sub-agent, at..... (2) ..... (3) ..... (4) ..... etc. (The name and description of each sub-agent and any sum paid to him must be set out separately.) (1) Paid to.....as polling agent at the polling station of..... (2) (3) (4) (1) Paid to.....as clerk for .....days' services. (2) (3) (4) (1) Paid to.....as messenger for.....days' services (2) (3) (4) etc. (The name and description of every agent, clerk and messenger, and the sum paid to each, must be set out separately either in the account or in a separate list annexed to and referred to in the account with the receipted vouchers of the person employed.) (C) The travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerks or messengers.		

Return of Election Expenses—(*contd.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
		Received by me for travelling expenses as election agent. (1) On.....Rs..... (2) On.....Rs..... (3) On.....Rs.....		
		Total ...		
		(If the candidate is his own election agent, leave out the above items.) (1) Paid to.....sub-agent of the polling area of.....as travelling expenses.		
		(The name and description of every sub-agent or polling agent and the sum paid to each on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account, which should include purchase of tickets by rail, hire of vehicles or refreshments provided.) (1) Paid to.....as clerk for travelling expenses. (2) (3) (4)		
		(The name and description of every clerk and the sum paid to him on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account, which should include purchase of tickets by rail, hire of vehicles or refreshments provided) (1) Paid to.....as messenger for travelling expenses. (2) (3) (4)		
		(The name and description of every messenger and the sum paid to him on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account, which should include purchase of tickets by rail, hire of vehicles or refreshments provided.)		

Return of Election Expenses—(*contd.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
		(D) The travelling expenses of persons, whether in receipt of salary or not, incurred in connection with the candidature, and whether paid or incurred by the candidate, his election agent or the person so travelling. (Under this head should be included any payments made by the candidate, or by the election agent on account of any person who travels in connection with the candidature other than persons whose travelling expenses have been shown in the statement under C above.) (E) The cost, whether paid or incurred, of— (i) printing, (ii) advertising, (iii) stationery, (iv) postage, (v) telegrams, and (vi) rooms hired for public meetings or as committee rooms. (i) Paid on account of printing— (1) To.....on..... (2) To.....on..... (3) To.....on..... (4) To.....on..... Total Printing... (The name and description of each person and the nature of the goods supplied, or the work and labour done by each must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5.) (ii) Paid on account of advertising (1) To.....on..... (2) To.....on..... (3) To.....on..... (4) To.....on..... Total Advertising...		

Return of Election Expenses—(*contd.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
		(The name and description of each person and the nature of the goods supplied, or the work and labour done by each must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5. (iii) Paid on account of stationery (1) To.....on..... (2) To.....on..... (3) To.....on..... (4) To.....on..... Total Stationery... (The name and description of each person and the nature of the goods supplied, or the work and labour done by each must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5. (iv) Paid on account of Postage (Lump sum may be shown) (v) Paid on account of Telegrams (Lump sum may be shown) (vi) Paid for the hire of rooms. A room hired for a public meeting or for a committee room or for an office must be named or described so as to identify it, and the name and description of every person to whom any payment was made for each such room, together with the amount paid, must be set out separately either in the account or in a separate list annexed to and referred to in the account.) (F) Any other miscellaneous expenses whether paid or incurred. Paid to.....on..... to.....on..... (The name and description of each person to whom any sum is paid, and the reason for which it was paid to him, must be set out separately either in the account or in a separate list annexed to and referred to in the account.)		

Return of Election Expenses—(*concld.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
		In addition to the above, I am aware, as election agent for (A. B.) of the following disputed and unpaid claims, namely:— Disputed claims by..... for..... (Here set out the name and description of each person whose claim is disputed, the amount of the claim and the goods, work or other matter on the ground of which the claim is based.) Unpaid claims by..... for..... (Here state the name and description of each person to whom any such claim is due, and the amount of the claim and the goods, work and labour or other matter on account of which the claim is due.) Grand Total...		

Signature of the election agent. *Signature of the candidate.*

Declarations as in the forms prescribed in Schedule IV to the Sri Chitra State Council Electoral Rules.

FORM II.

THE SRI CHITRA STATE COUNIL.

[*Vide Rule 18 (6.)*]

Register of Election Expenses.

Serial No. of Constituency.	Name of Constituency.	Class of Constituency.	Date of election.*	Name of candidate.†	Name of election agent	Date on which return of election expenses was lodged with Returning Officer.	Amount of expenses. Rs.	ch.	c.

*Enter in this column the date of publication in the Gazette of the result of election.

†The name of *every* person who has been nominated as a candidate should be mentioned.

VII

THE SRI MULAM ASSEMBLY.

Notification for the safe custody, preservation, inspection and production of election papers.

(R. Dis. No. 325 of 33/Legis., dated 12th June 1933.) (a)

In exercise of the powers conferred by Rule 49 of the Sri Mulam Assembly Electoral Rules, the Government of His Highness the Maha Raja are pleased to issue this Notification for the safe custody, preservation, inspection, grant of copies, production and destruction of election papers in respect of the several constituencies of the Sri Mulam Assembly.

Preliminary Electoral Rolls (three copies) and Final Electoral Rolls once prepared or revised, and

papers and files relating to claims for correction of the Preliminary Rolls or for registration and objections to registration and lists of such claims and objections,

shall be preserved until the next revision of the Electoral Rolls of the constituency to which they relate has been completed and may thereafter be destroyed.

The said papers shall be forwarded by the officers concerned after the result of the election is notified to the Returning Officer of the constituency to which they relate and shall be kept in his record-room until destruction.

2. Certified copies of the above mentioned documents authenticated by the Returning Officer or any person authorised by him for the purpose, shall be given on payment of the same fees as are prescribed for grant of copies of revenue records in Notification Dis. No. 756 of 21/Revenue, issued under date the 26th July 1921, at page 733 of the Land Revenue Department sheet of the Government Gazette, dated the 2nd August 1921, as amended by Notifications Dis. No. 1046 of 23/Revenue, dated the 22nd August 1923 and Dis. No. 1217 of 23/Revenue, dated the 20th September 1923.

3. The nomination papers of candidates and the withdrawals from candidature shall be kept in the offices of the Returning Officers they relate to and shall be destroyed after three years unless otherwise ordered by the Returning Officers.

4. Election petitions with the proceedings and reports of the Election Commissioners thereon shall be kept by the Secretary to the Sri Mulam Assembly and shall be destroyed after three years unless otherwise ordered by him.

(a). *T. G. G., dated 13-6-1933.*

5. Preliminary Electoral Rolls in excess of the number prescribed above and other correspondence regarding the preparation of rolls and papers furnished by Presiding Officers may except where otherwise provided for under the Rules for the conduct of elections, be disposed of under the orders of the Returning Officer.

VIII.

THE SRI MULAM ASSEMBLY.

Rules *re* the grant of copies of the Returns of Election Expenses and the Declarations made in respect of them.

(*R. Dis. No. 327 of 33/Legis., dated 12th June 1933.*) (a)

In exercise of the powers conferred on them by Rule 18 (5) of the Sri Mulam Assembly Electoral Rules, the Government of His Highness the Maha Raja are pleased to prescribe the following Rule to regulate the grant of copies of the returns of election expenses and the declarations made in respect of them.

Rule.

Certified copies of returns of election expenses and the declarations made in respect of them authenticated by the Returning Officer or any person authorised by him for the purpose shall be given on payment of the same fees as are prescribed for the grant of copies of revenue records in Notification Dis. No. 756 of 21/Revenue, issued under date the 26th July 1921, at page 733 of the Land Revenue Department sheet of the Government Gazette, dated the 2nd August 1921, as amended by Notifications Dis. No. 1046 of 23/Revenue, dated the 22nd August 1923 and Dis. No. 1217 of 23/Revenue, dated the 20th September 1923.

IX.

THE SRI MULAM ASSEMBLY.

Instructions in respect of the recording of votes by illiterate and incapacitated persons at the Sri Mulam Assembly.

(*R. Dis. No. 324 of 33/Legis., dated 12th June 1933.*) (a)

Under paragraph 45 (3) of Schedule III to the Sri Mulam Assembly Electoral Rules, the Government of His Highness the Maha Raja are pleased to issue the following instructions in respect of the recording of votes by illiterate and incapacitated persons at the Sri Mulam Assembly Elections.

1. The votes of electors unable to read or mark the ballot paper shall be recorded under the provisions of paragraph 45 (1) and (2) of Schedule III to the Sri Mulam Assembly Electoral Rules which are as follow :—

"45 (1). If the elector is unable to read the ballot paper or to mark it and so states to the presiding officer and applies for

(a) *T. G. G., dated 13-6-1933.*

assistance for reading the ballot paper or marking it, the presiding officer shall read it for him and if so required mark the ballot paper according to the directions of the elector and give it to him to be put into the ballot box.

(2) In the case of every elector whose ballot paper is marked in this manner by the presiding officer, a note of the reason for so marking shall be made by such officer on the corresponding counterfoil of Form IX".

2. The presiding officer should not ask the elector for whom he wishes to vote or undertake to mark the ballot paper unless a specific request is made to him by the elector for assistance. If the presiding officer is required by the elector to mark the ballot paper he should mark it according to the directions of the elector and give it back to the elector to be put into the ballot box.

3. The candidates and their polling agents shall be permitted to be present at and observe the proceedings including the presiding officer's marking the ballot paper and making the entry in the counterfoil.

4. The presiding officer should see that no crowd assembles round an illiterate or incapacitated elector while inside the polling station and that the elector is not subjected to pressure or influence from others in exercising his choice. No one other than the candidates and their polling agents should be allowed to be present at or near the place where his voting takes place.

X.
THE SRI MULAM ASSEMBLY.

Forms *re* Return of Election Expenses and Register of Election Expenses.

(R. Dis. No. 329 of 33/Legis., dated 12th June 1933.) (a)

In exercise of the powers conferred by Rule 18 (1) of the Sri Mulam Assembly Electoral Rules, the Government of His Highness the Maha Raja are pleased to prescribe Form No. I for the return of election expenses to be lodged by every person who has been nominated as a candidate for election to the Sri Mulam Assembly.

1. The returns shall be accompanied by declarations in the forms prescribed in Schedule IV of the said Rules.

2. In pursuance of Rule 18 (6) of the said Rules, Form No. II is prescribed for the purpose of maintaining a record of election expenses by the Returning Officers, and the time for which such record should be preserved is fixed at six years.

(a) *T. G. G., dated 13-6-1933.*

FORM NO. I.

THE SRI MULAM ASSEMBLY.

[*Vide Rule 18 (1.)*]

Return of Election Expenses.

For..... constituency.

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
Received of A. B., candidate for the above constituency. (Or when the candidate is his own election agent) Paid by me, A. B., candidate for the above constituency. Received of- (1) (2) (3) (4) etc., etc., Total Receipts (Here set out the name and description of every person, club, society or association, whether the candidate or not, from whom any money, securities or equivalent of money was received in respect of expenses incurred on account of or in connection with or incidental to the		(A) The personal expenditure of the candidate incurred or paid by him or by his election agent on his behalf including travelling and all other personal expenses incurred in connection with his candidature. Paid by me, C. D., as election agent. (Or when the candidate is his own election agent) Paid by me, A. B., candidate (as my own election agent) (1) On—— (2) On—— (3) On—— (4) On—— (1) Paid to.....on..... (2) „ .....on..... (3) „ .....on..... (4) „ .....on..... etc., etc., Details of all expenditure incurred by or on behalf of the candidate whether in payment for personal services rendered on account of hotel bills, for travelling whether by rail or in hired conveyance, or for the purchase of books or election literature, etc., should be shown, either in the account or in a separate list annexed to and referred to in the account. (B) The name and the rate and total amount of the pay of each person employed as an agent (including the election agent), clerk or messenger. Received by me, C. D., as election agent for A. B. (When the candidate is his own election agent, the above item will be omitted.) (1) Paid to.....as sub-agent, at..... (2) ..... (3) ..... (4) ..... etc. (The name and description of each sub-agent and any sum paid to him must be set out separately.)		

Return of Election Expenses. (*contd.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
above election. The amount received from each such person, club, society, etc., to be shown separately.)		(1) Paid to.....as polling agent at the polling station of..... (2) (3) (4) (1) Paid to.....as clerk for..... .....days' services. (2) (3) (4) (1) Paid to.....as messenger for.....day's services. (2) (3) (4) etc. (The name and description of every agent, clerk and messenger, and the sum paid to each, must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers of the person employed.) (C) The travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerks or messengers. Received by me for travelling expenses as election agent. (1) On..... ..Rs..... (2) On.....Rs..... (3) On.....Rs..... Total		
		(If the candidate is his own election agent, leave out the above items,) (1) Paid to.....sub-agent of the polling area of..... as travelling expenses. (2) (3) (4) (The name and description of every sub-agent or polling agent and the sum paid to each on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account, which should include purchase of tickets by rail, hire of vehicles or refreshments provided.) (1) Paid to.....as clerk for travelling expenses. (2) (3) (4)		

Return of Election Expenses—(*contd.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
		(The name and description of every clerk and the sum paid to him on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account which should include purchase of tickets by rail, hire of vehicles or refreshments provided.) (1) Paid to.....as messenger for travelling expenses. (2) (3) (4)		
		(The name and description of every messenger and the sum paid to him on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account, which should include purchases of tickets by rail, hire of vehicles or refreshments provided.)		
		(D) The travelling expenses of porsons, whether in receipt of salary or not, incurred in connection with the candidature, and whether paid or incurred by the candidate, his election agent or the person so travelling ;		
		(Under this head should be included any payments made by the candidate, or by the election agent on account of any person who travels in connection with the candidature other than persons whose travelling expenses have been shown in the statement under C above.)		
		(E) The cost, whether paid or incurred, of— (i) printing, (ii) advertising,- (iii) stationery, (iv) postage, (v) telegrams, and (vi) rooms hired for public meetings or as committee rooms.		
		(i) Paid on account of printing— (1) To.....on..... (2) To.....on..... (3) To.....on..... (4) To.....on..... Total Printing...		
		(The name and description of each person and the nature of the goods supplied, or the work and labour done by each must be set out separately either in the account or in a separate		

Return of Election Expenses—(*contd.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
		list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5.) (ii) Paid on account of advertising (1) To..... on..... (2) To.....on..... (3) To.....on..... (4) To.....on..... Total Advertising ... (The name and description of each person and the nature of the goods supplied, or the work and labour done by each must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5.) (iii) Paid on account of stationery (1) To.....on..... (2) To.....on..... (3) To.....on..... (4) To.....on..... Total Stationery (The name and description of each person and the nature of the goods supplied, or the work and labour done by each must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5) (iv) Paid on account of Postage (Lump sum may be shown) (v) Paid on account of Telegrams (Lump sum may be shown) (vi) Paid for the hire of rooms. (A room hired for a public meeting or for a committee room or for an office must be named or described so as to identify it, and the name and description of every person to whom any payment was made for each such room together with the amount paid, must be set out separately either in the account or in a separate list annexed to and referred to in the account) (F) Any other miscellaneous expenses whether paid or incurred. Paid to.....on..... to.....on..... (The name and description of each person to whom any sum is paid, and the reason for which it was paid to him, must be set out sepa-		

Return of Election Expenses—(*concld.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
		rately either in the account or in a separate list annexed to and referred to in the account).		
		In addition to the above, I am aware, as election agent for (A. B.) of the following disputed and unpaid claims, namely:—		
		Disputed claims by..... for.....		
		(Here set out the name and description of each person whose claim is disputed, the amount of the claim and the goods, work or other matter on the ground of which the claim is based.)		
		Unpaid claims by..... for		
		(Here state the name and description of each person to whom any such claim is due, and the amount of the claim and the goods, work and labour or other matter on account of which the claim is due.)		
		Grand Total.		

Signature of the election agent. *Signature of the candidate.*

Declarations as in the form prescribed in Schedule IV to the Sri Mulam Assembly Electoral Rules.

FORM No. II.

THE SRI MULAM ASSEMBLY.

[*Vide Rule 18 (6)*]

Register of Election Expenses.

Serial No. of Constituency.	Name of Constituency.	Class of Constituency.	Date of election*	Name of candidate †	Name of election agent.	Date on which return of election expenses was lodged with Returning Officer.	Amount of expenses.		
							Rs.	ch.	c.

* Enter in this column the date of publication in the Gazette of the result of election.

† The name of *every* person who has been nominated as a candidate should be mentioned.

IV. GENERAL.

THE TRAVANCORE SRI CHITRA STATE COUNCIL.

The following Orders have been made by the President under Rule 14 (3) of the Travancore Legislative Rules :—

1. If any member desires an oral answer on the floor of the House to any of his questions he must mark his question with a star thus *, when he gives notice of it. Any question not so marked with a star will not be answered orally: only written answers will be supplied for being printed in the official report of the proceedings of the day. Supplementary questions therefore will arise only out of the answers to starred questions.

2. Of the questions brought on for answering, the unstarred questions will not be called and the answers supplied to them by Government will be caused to be printed, along with the questions, in the official report of the proceedings of that day.

3. As regards the starred questions, when the time for asking questions arrives, the President will call successively each member in whose name a question appears on the notice paper. The member so called will rise in his place and ask the question by reference to its number on the notice paper. The Government member will then read out his answer from his copy. Supplementary questions may then be put by any member.

4. When all the starred questions have been called, the President will call again, if question time is not exceeded thereby, any question which had not been asked by reason of the absence of the member in whose name it stands or was not answered by reason of the absence of the official member to answer it.

5. If a member is not present to ask the question the answer to it will not be given, unless the President rules otherwise under Rule 16 of the Travancore Legislative Rules.—*Dated 27th July 1933.*

V. THE PUBLIC ACCOUNTS COMMITTEE (Supplemental) RULES.

(R. O. C. No. 1434 of 33/Legis., dated 16th May 1934.)

In exercise of the powers conferred by Section 34 of the Travancore Legislative Reforms Regulation, II of 1108, the Government of His Highness the Maha Raja are pleased to make the following Rules :—

Regulation II of 1108.

1. (*a*) These Rules may be called the Public Accounts Committee (Supplemental) Rules and shall be read with, and as supplemental to, the Travancore Legislative Rules.

(*b*) They shall come into force at once.

2. The number of members of the Committee on Public Accounts (hereinafter referred to as the Committee) provided for by the Travancore Legislative Rules shall be six including the Chairman.

3. The Financial Secretary shall be the Convener of the Committee and shall also act as Secretary to the Committee under the directions of the Chairman.

4. Casual vacancies in the Committee shall be filled as soon as possible, after they occur, by election by the Chamber concerned or by nomination by Government according as the member who has vacated his seat was an elected member or nominated member, and any person so elected or nominated shall hold office for the period for which the person in whose place he is elected or nominated, as the case may be, would have held office.

5. The Committee shall meet whenever called by the Chairman.

6. Seven days' notice of meetings shall ordinarily be given, but such notice may, in special cases, be dispensed with by the Chairman.

7. Three members including the Chairman shall constitute the quorum for the meetings of the Committee.

8. A copy of the agenda for the meetings together with copies of such relevant papers as may be determined by the Chairman shall be made available to the members in such manner as the Chairman may direct.

9. The Audit and Appropriation Accounts shall be laid before the Committee by the Financial Secretary.

10. The Financial Secretary shall, subject to the directions of Government, place annually before the Committee a list of the supplementary grants obtained by Government during the previous year for schemes of new expenditure treated as "new services" with a request for the opinion of the Committee as to whether they are "new services" or not.

11. Subject to the control of Government, the Financial Secretary may report any type of financial irregularity to the Committee. In particular, the following classes of cases shall, subject to like control, be reported, namely :—

(*a*) The incurring of expenditure without the requisite sanction.

(*b*) The incurring of expenditure without appropriation.

(*c*) Careless estimating resulting in avoidable supplementary estimates, excess demands or unnecessary lapses of grants.

(*d*) Breaches of the Rules laid down in the Account Code.

(*e*) Cases of fraud or neglect in treasuries or other offices which handle public money.

12. In scrutinising the Audit and Appropriation Accounts and in dealing with any other matter referred to the Committee, the Committee may examine the Secretary to Government, or the Head of the Department, concerned or any other Government Officer as a witness.

13. The recommendations of the Committee shall be embodied in a report which shall be laid before both the Chambers.

14. The Financial Secretary shall move, on such day as may be fixed by the Dewan, that the report of the Committee be taken into consideration. The Chamber concerned shall thereupon be at liberty to discuss the report for such time as may be allotted by the Dewan and, during that time, to make any additional recommendations in connection therewith. Such recommendations shall be in the form of resolutions; and the stage at which, and the order in which, each such resolution shall be moved and discussed shall be determined by the President having regard to all the circumstances.—*T. G. G., dated 22-5-1934, Pt. II, P. 264.*

VI. PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHA RAJA OF TRAVANCORE.

I

(No. Fl. 1406 dated 28th July 1933, dated 28th July 1933.)

The question of the grant of Travelling Allowance to the Non-official members of the Sri Mulam Assembly and the Sri Chitra State Council having been duly considered by Government, they are pleased to sanction the following Rules being issued in the matter :—

1. The Non-official members of the Sri Mulam Assembly and the Sri Chitra State Council will, for their journeys to attend the meetings of the said Assembly or the Council as the case may be, be given Travelling Allowance at the rates admissible to First Class Officers of the State, provided, however, that members whose place of residence is at Trivandrum will be allowed a daily allowance of Rs. 5 for the days they actually attend the meetings.

2. If any member temporarily absents himself for any part of the sessions he will not be entitled to any allowance for the period of such absence.

3. But members of the State Council who have to attend a joint sitting of the Council and the Assembly during the Budget session, will, for the interval between the termination of the joint sitting and the commencement of the sitting of the Council, be allowed either Travelling Allowance for their journeys to and from their place of residence or Daily Allowance for the period, whichever is less.

4. Members will be given Travelling Allowance under these Rules for their journeys to attend meetings of Select Committees or meetings to discuss amendments to Bills or other matters connected with their duties as members.

5. Government reserve to themselves the right to amend or modify these Rules at their discretion.

II

(No. Fl. 1188 dated 3rd July 1934.)

Government are pleased to sanction the following supplementary Rules being issued in continuation of the Rules already laid down in their order No. Fl. 1406 dated 28th July 1933 for regulating the grant of Travelling Allowance to the Non-official Members of the Sri Mulam Assembly and the Sri Chitra State Council :—

1. The Non-official Members of both the Houses will be allowed to draw daily allowance in addition to Travelling Allowance when their arrival at or departure from the meeting Head Quarters falls on any day on which the Assembly or the Council may be holding its sittings.

2. They will be allowed to draw daily allowance for the days of the meetings of the Council or the Assembly irrespective of the maximum limit of 10 days laid down in Article 453, Service Regulations.

3. They will be allowed Travelling Allowance to attend a meeting of the Council or the Assembly or any Committee thereof from their usual place of residence (*i. e.*, their permanent place of residence).

4. They will be allowed to draw mileage for their journeys only to or from the central point at each station as fixed by Government under Article 420, Service Regulations.—*T. G. G., dated 10-7-1934, Pt. I, 1279.*

REGULATION III OF 1108.

THE TRAVANCORE PROVIDENT INSURANCE SOCIETIES REGULATION.

CONTENTS.

Preamble.
Sections.

Preliminary.

1. Short title, extent and commencement 1*
2. Definitions. 2
3. Application of Regulation 3
4. Deposit by Societies.

General.

5. Insurable interest 4
6. Provision to be made by Rules 5
7. Registration of Provident Insurance Societies ... 6
8. Name of Society and change of name
9. Unregistered society not to receive premium or contribution... 7
10. Amendment of Rules 8
11. Right to supply of copies of Rules 9
12. Register of Members 10
13. Publication of authorised, subscribed and paid-up capital ... 11
14. Office 12
15. Amalgamation or transfer
16. Procedure on amalgamation or transfer
17. Revenue account and balance sheet 13
18. Delivery and publication of revenue account, etc. ... 14
19. Record of insurance effected on life other than life of person insuring 15
20. Inspection of books 16
21. Inquiry 17
22. Cancellation of registry 18
23. Liquidators 19

Appeals.

24. Appeals 20

* The figures on the right side refer to the corresponding Sections of the British Indian Provident Insurance Societies Act, V of 1912.

Offences and Procedure.

Sections.
25. Penalty for non-compliance with Regulation ... 21
26. Penalty for falsifying documents 22
27. Cognizance of offences 23

Rules.

28. Rules 24

Miscellaneous.

29. Saving of existing policies 25

A Regulation to provide for the regulation of Provident Insurance Societies

Passed by His Highness the Maha Raja of Travancore under date the 17th Dhanu 1108, corresponding to the 31st December 1932, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to provide for the regulation of Provident Insurance Societies; It is hereby enacted as follows:—

Preliminary.

Short title, extent and commencement.

1. (1) This Regulation may be called "The Travancore Provident Insurance Societies Regulation of 1108."

(2) It shall extend to the whole of Travancore.

(3) It shall come into force on the first day of Kumbhom 1108.

Definitions.

2. In the Regulation, unless there is anything repugnant in the subject or context:—

(1) "Court" means the principal Civil Court of original jurisdiction in a district:

Regn. III of 1108: I. *Objects and Reasons.*—(1) "The object of this Bill is to provide for the better control of Provident Insurance Societies, not being Life Assurance Companies proper, which undertake insurance on births, marriages or deaths. Such societies are subject to special legislation in British India, by the Indian Provident Insurance Societies Act, 1912 (V of 1912). The existence of such societies in Travancore has been brought to the notice of Government, and it is considered that special legislation should be introduced in Travancore too to control their operations in the interest of the public. This Bill has accordingly been prepared on the lines of the British Indian Act referred to.

2. The main provisions of the Bill are designed to secure (1) that all societies of the nature of those defined in the Bill shall be registered, (2) that full publicity

(2) "Financial year" means each period of twelve months at the end of which the balance of the accounts of any Provident Insurance Society is struck, or, if no such balance is struck, then the calendar year :

(3) "Life assurance business" means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life :

(4) "Policy of assurance on human life" means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life :

(5) "Policy holder" means the person who for the time being is the legal holder of the policy for securing the contract with the Provident Insurance Society :

(6) Where a Provident Insurance Society grants annuities upon human life, "Policy" includes the instrument evidencing the contract to pay such an annuity, and "Policy-holder" includes annuitant:

(7) "Prescribed" means prescribed by Rules made under this Regulation :

---

shall be given to the proceedings of the societies and (3) that Government shall be empowered to deal effectively with societies which are clearly fraudulent or insolvent.—*S. O. & R.*

(2) In introducing the Bill and explaining the principles involved, the Official Member in charge said :—"Recently in Travancore, the activity in the promotion of these Provident Insurance Companies has been very great, and we have during the last two or three years about 150 companies started for carrying on life assurance and provident insurance business. It has been considered expedient that they should be brought under control as elsewhere. In British India, there is an Act imposing control on the working of the Provident Insurance Societies, and the Bill that is now placed before the Council is only an adaptation of that Act. The main principle involved in this Bill is that the Provident Insurance Societies, those that come under the definition of that term in this Bill, will be subject to certain control by the Government, the chief of which is that they should be registered by the Registrar appointed by Government and should be subjected to enquiry and investigation by the Registrar on his own motion. If they are found to be unworkable or if they are found to do business fraudulently, their registration may be cancelled, and once their registration is cancelled, they would not be able to collect premiums."

In the course of the discussion, the Official Member said that the Bill "is only

(8) "Provident Insurance Society" means any person who, or body of persons whether corporate or unincorporate which, receives premiums or contributions for insuring money to be paid on the birth, marriage or death of any person or on the happening of such other contingency or class of contingency as may be prescribed : and

(9) "Registrar" means any person who may be appointed by Our Government to perform the duties of the Registrar under this Regulation.

Application of Regulation.

3. Nothing in this Regulation shall apply to any Provident Insurance Society carrying on life assurance business, which undertakes to pay on any life assurance policy or series of life assurance policies on any one life, an annuity exceeding fifty rupees, or a gross sum exceeding five hundred rupees, or which receives or undertakes to receive by way of premium or contribution for life assurance on any one life any sum exceeding two hundred and fifty rupees where the said premiums or contributions are payable for one year or a limited number of years, or exceeding twentyfive rupees in any one year where the premiums or contributions are unlimited in number and terminable on death or the occurrence of an uncertain event :

---

an adaptation of the Act in British India. That enactment has not been found to be defective or unworkable yet in any way in practical working."—*L. C. P., dated 23-4-1932.*

II. The Select Committee, in reporting on the Bill, made some preliminary observations which are extracted here:—

"2. There has been a considerable rush in the incorporation of companies proposing to do insurance work during the last two years. Before the beginning of 1107 there were only 13 companies of this type, while the number registered during 1107 (247) has gone up to 468 on 25-3-1108. Except a few of these, all have been of the dividing type. Institutions working on this basis have been condemned by experts as unscientific, unsound and unworkable. Though all the actuaries in British India are agreed in this view regarding such schemes, Mr. Marathey of Poona has made certain constructive suggestions as to how the working of such societies could be improved, himself feeling diffident about the beneficial results of such working, but suggesting innovations with a view to save the several thousands of poor people who had joined such societies. In view of the large mass of the public involved in the schemes already started here, we have adopted some of his suggestions, and provided for safeguards which are, in our opinion, necessary to ensure a satisfactory working of the societies working on this line. A copy (Appendix B) of the Report of the Provident Society Vigilance Committee appointed in Bombay for enquiring into the working of societies of this type there, and extracts (Appendix C) from the letters written on the subject by Messrs. H. L. Humphreys and G. S. Marathey, M. A., A. I. A., published in some of the

(3) The deposit may be made by the subscribers to the rules of a Society produced for registration, or any of them, in the name of a proposed Society and, upon the registration of the Society, shall be deemed to have been made by, and to be part of the assets of, the Society.

(4) The deposit shall be deemed to form part of the Provident Insurance Fund of the Society, and such fund shall be absolutely the security of the policy-holders.

General.

Insurable interest.

5. (1) No Provident Insurance Society shall receive any premium or contribution for insuring money to be paid on the death of any person other than the person paying such premium or contribution or the wife, husband, child, grandchild, parent, brother or sister of such person, nor shall any such Society issue any policy in which a person other than any such relation is nominated as the payee of the money insured.

(2) No assignment of any policy shall take effect or be recognized for any purpose unless such assignment as attested by any such person as is prescribed in that behalf or is effected by an instrument registered under the law for the time being in force for the registration of assurances.

---

more companies are too poor to deposit Rs. 5000, and yet are prepared to work honestly the concerns may be amalgamated. The subscribers of the companies need not therefore suffer. I think it is a very simple provision for honest companies * " After discussion, the amendment was put to vote and declared lost.—*L. C. P., dated 17-12-1932.*

See also note under Sections 15 and 16.

Sec. 5: In the Indian Act, Section 4 is as follows:—"No Provident Insurance Society shall receive any premium or contribution for insuring money to be paid on the death of any person other than the person paying such premium or contribution or the wife, husband, child, parent, brother or sister of such person." This was adopted in the original Bill. All the additions found in the Section, with the exception of one noted below, were made by the Select Committee "to prevent frauds and also to clear the existing doubts as regards the legal effect of nominations made by policy-holders."—*S. C. R.*

When the Bill was considered by the Council, the words "grand child" were inserted between the words "child" and "parent" in Sub-section (1), on the motion of a Non-official Member who proposed the amendment "with a view to see that some understanding is arrived at with reference to the working of the companies now existing. Under the Rules they allow policies to children also."—*L. C. P., dated 17-12-1932.*

(3) The nomination of any such relation as is mentioned in Sub-section (1) as the payee in any policy shall take effect as an assignment on the death of the policy-holder.

Provision to be made by rules.

6. Every Provident Insurance Society shall, by its rules,—

(*a*) specify the object, name and registered office of the society;

(*b*) prescribe the proportion of the annual income of the society derived from premiums or contributions which may be disbursed for the expenses of management of the society;

(*c*) in the case of a society which by rule or practice divides any part of the funds thereof, provide for the payment of all debts due by the society existing at the time of division before any such division has taken place;

(*d*) specify the provisions regarding the safeguards relating to the correctness of the particulars to be contained in the proposal for the policy and the identity of the proposer;

(*e*) provide for the transfer to the reserve fund or other modes of disposal of arrears realized in cases of revivals of policies not taken as available for distribution among the policy holders entitled to claim the same in cases of societies of the dividing type;

(*f*) provide for the payment of the assured amounts in cases of dividing societies with respect to life assurance policies after the expiry of a specified period during which payments are required to be made regularly only on the death of the insured; and

(*g*) provide for any other matters which may be prescribed.

Registration of Provident Insurance Societies.

7. (1) (*a*) Every Provident Insurance Society shall, within six months from the commencement of this Regulation, or, if established after the commencement of this Regulation, before it receives

---

Sec. 6: The original Bill followed the British Indian Act which does not contain clauses (*d*), (*e*) and (*f*). These additional provisions were inserted by the Select Committee by way of adopting some of Mr. Marathey's suggestions.—*S. C. R.*

Sec 7: In Sub-section (1), the Indian Act does not contain Clause (*b*). Again, the

any premium or contribution, apply to the Registrar for registration under this Regulation, and shall deliver to him a copy of the rules of the society.

(*b*) Such applications and rules shall, in the case of incorporated bodies, be signed by the directors of the society on the date of the registration and shall be accompanied by a list of directors as required under Section 87 of the Travancore Companies Regulation, I of 1092, and a statement signifying the consent of the directors as required under Section 84, in the form prescribed therefor, under the said Regulation.

(2) The Registrar shall, on being satisfied that such rules comply with the provisions of this Regulation, acknowledge the receipt of the rules and register the society and its rules.

(3) If the Registrar is not satisfied that the rules or any of them comply with the provisions of this Regulation, he shall send to the Provident Insurance Society a notice by Post or Anchal stating in what respect such rule or rules is or are not in accordance with the provisions of this Regulation and calling upon such society to deliver to him an amended rule or rules within sixty days.

(4) On receipt of a notice under Sub-section (3), the Provident Insurance Society may within sixty days deliver to the Registrar an amended rule or rules in conformity with this Regulation, and the Registrar shall thereupon acknowledge the receipt of the rules and register the society and its rules as hereinbefore provided.

Name of the Society and change of name.

8. (1) Notwithstanding anything contained in Section 7 (2), no Provident Insurance Society shall be registered by a name identical with that by which a company or society already in existence is registered or so nearly resembling that name as to be calculated to deceive, except where the company or society in existence is in the

---

period within which application should be made for registration is, in the Indian Act, "three months." This period was changed into six months, and Clause (*b*) was inserted, by the Select Committee "to make the time consistent with the new provisions added relating to deposit and also to provide safeguards against officers of the Society being nominated and such nomination notified to the Registrar, without themselves agreeing to act as such."—*S. C. R.*

Sec. 8: The Indian Act does not contain any corresponding Section. It was inserted by the Select Committee who said:—"These provisions are intended to avoid the existence of more than one institution

course of being dissolved and signifies its consent in such manner as the Registrar requires.

(2) If a Provident Insurance Society, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company or society in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first mentioned Provident Insurance Society may, with the sanction of the Registrar, change its name.

(3) A Provident Insurance Society shall not be registered by a name which contains any of the following words, namely :— "Maha Raja", "Royal", "Crown", "Emperor", "Empire", "Empress", "Imperial", "King", "Queen", "Government", or words expressing or implying Our sanction, approval or patronage, or that of His Majesty the King Emperor, or the Government of India, or a Local Government in India, except where the consent of Our Government to the use of words as part of the name of the Society, signifying Our sanction, approval, or patronage is obtained by an order in writing under the hand of the Chief Secretary to Our Government, or, in the case of words expressing or implying the sanction, approval or patronage of His Majesty the King Emperor, the Government of India or a Local Government in India, the Governor-General in Council, signifies his consent to the use of such words as part of the name of the Society by order in writing under the hand of one of the Secretaries to the Government of India.

(4) Any Provident Insurance Society may, by special resolution and subject to the approval of Our Government signified in writing under the hand of the Chief Secretary to Our Government, change its name.

(5) Where a society changes its name, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of having done so. On the issue of such a certificate, the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the society, or render defective any legal proceedings by

---

with an identical name and also to prevent the use of names calculated to imply Royal or Government patronage. Necessary provision has been made to enable alterations of names if considered necessary or expedient.—*S. C. R.*

or against the society; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Unregistered society not to receive premium or contribution.

9. No Provident Insurance Society shall receive any premium or contribution, unless it is registered in accordance with the provisions of this Regulation:

Provided that this prohibition shall only apply to a society established before the commencement of this Regulation:—

(*a*) When such society has applied for registration and made the deposits in accordance with the provisions of Section 7 from the date of the order of the Registrar refusing registry.

(*b*) When such society has not applied and made the deposit as aforesaid—after six months from the commencement of this Regulation.

Amendment of rules.

10. (1) No amendment of any rule of a Provident Insurance Society shall be valid until the same has been registered under this Regulation for which purpose a copy of the amended rule shall be sent to the Registrar.

(2) The Registrar shall, on being satisfied that any amendment of a rule is not contrary to the provisions of this Regulation, issue to the society an acknowledgment of the registration of the same.

Right to supply of copies of rules.

11. Every Provident Insurance Society shall, on demand, deliver free of cost to any member of the society a copy of the rules of the society, and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee.

Register of members.

12. Every Provident Insurance Society which is not registered under the Travancore Companies Regulation, 1092, shall cause to be kept in the prescribed form a register of the names and addresses of its members.

Sec. 9: In the wording of the Indian Act, which was followed in the original Bill, the Select Committee inserted the words "and made the deposit" in Clauses (*a*) and (*b*) of the Proviso, and substituted "six months" for "three months" in Clause (*b*). They said that "these changes are intended to make the deposit an essential prerequisite for registration and also to bring the provisions in harmony with the preceding Section (7)."—*S. C. R.*

Publication of authorized, subscribed and paid-up capital.

13. Where any notice, advertisement or other official publication of a Provident Insurance Society contains a statement of the amount of the authorized capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

Office.

14. Every Provident Insurance Society which is not registered under the Travancore Companies Regulation, 1092, shall have an office on the outside of which it shall display and keep displayed its name in English and one of the vernaculars prevailing in the locality in a conspicuous position, in legible letters, to which all communications and notices may be addressed, and shall give notice to the Registrar of the situation of such office and of any change therein.

Amalgamation or transfer.

15. (1) Where it is intended to amalgamate two or more Provident Insurance Societies or to transfer the business of one Society to another, such Society or Societies may apply to the Court, by petition, to sanction the proposed arrangement.

(2) Before any such application is made to Court, notice of the intention to make the application shall be published in Our Government Gazette at least one month before the application is made.

(3) A statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, shall be prepared and a report from an expert agreed to by the Societies proposing such amalgamation or transfer with respect to the state of affairs of the Societies concerned, shall be obtained and copies of the statement and reports shall be transmitted to each policy-holder of the societies, unless the Court otherwise directs.

Secs. 15 and 16: These Sections are not found in the Indian Act. They were inserted by the Select Committee and are "intended to give an opportunity to existing societies to continue to work by joining others in case of inability to make the required deposit by themselves, and also to give other facilities for work."—*S.C.R.*

See also note under Section 4.

(4) The agreement or deed under which the amalgamation or transfer is effected shall be kept open for the inspection of the policy holders and share-holders at the offices of the Societies for a period of 15 days after the last publication of the notice under Sub-clause (2).

(5) The Court after hearing the Directors and persons whom it considers entitled to be heard upon the petition, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.

(6) The Court shall not sanction the amalgamation or transfer in any case in which it appears to the Court that 1/10 or more of the total number of policy holders of the Society which it is proposed to amalgamate or in any Society the business of which it is proposed to transfer, dissent from the amalgamation or transfer.

(7) No Provident Insurance Society shall amalgamate with another, or transfer its business to another unless the amalgamation or transfer is sanctioned by the Court in accordance with this Section.

Procedure on amalgamation or transfer.

16. Where an amalgamation takes place between any Provident Insurance Societies or where the business of one such Society is transferred to another, the combined Society or the purchasing Society, as the case may be, shall within one month from the date of the completion of the amalgamation or transfer, deposit with the Registrar :—

(*a*) certified copies of statements of the assets and liabilities of the Societies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer ; and

(*b*) a certified copy of the agreement or deed under which the amalgamation or transfer is effected ; and

(*c*) certified copies of the expert's reports upon which the agreement or deed is founded ; and

(*d*) a declaration by the Society, that to the best of the belief of the signatory or signatories every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein

fully set forth, and that no other payments beyond those set forth have been made, or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer.

Revenue account and balance sheet.

17. Every Provident Insurance Society shall, at the expiration of each financial year, prepare a revenue-account and balance sheet in the prescribed form and verified in the prescribed manner, and shall cause them to be audited by an auditor possessing the prescribed qualifications whose report in the prescribed form shall be attached to such balance sheet.

Delivery and publication of revenue account, etc.

18. Every Provident Insurance Society shall, within three months of the expiration of each financial year, deliver to the Registrar, the revenue-account, balance sheet and the auditor's report required by Section 17, and shall publish them in the prescribed manner.

Record of insurances effected on life other than life of person insuring.

19. Every Provident Insurance Society shall maintain in the prescribed form a record of every insurance effected on a life other than the life of the person insuring, and shall deliver a copy of such record to the Registrar, together with the balance sheet, revenue-account and auditor's report referred to in Section 17.

Inspection of books.

20. The books of every Provident Insurance Society shall at all reasonable hours be open to inspection by the Registrar, or by any person appointed by him in this behalf or by any member of the society.

Inquiry.

21. (1) The Registar may, if he thinks fit, of his own motion, and shall, upon the application of ten or more members or policy-holders of a Provident Insurance Society, hold or direct an inquiry to be held by a person

---

Sec. 17: The words at the end—" whose report in the prescribed form shall be attached to such balance sheet "—do not occur in the Indian Act and were added by the Select Committee " to make the auditor's reports more useful and also to require them to contain suggestions, whenever possible, to improve the working of the societies as is required to be made in the periodical actuarial valuation reports usual in the case of life assurance companies."—*S. C. R.*

Secs. 18 & 19: Consequential amendments were made by the Select Committee to bring the provisions in conformity with those in the preceding sections.

Sec. 21: (1) The Indian Act provides for the enquiry being " held by an *actuary*

possessing the prescribed qualifications appointed by him by order in writing in this behalf as to the solvency of any Provident Insurance Society or as to the manner in which the business of any such society is conducted.

(2) An application to the Registrar under Sub-section (1) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for an inquiry.

(3) The Registrar may require the applicants under Sub-section (1) to give such security as he thinks fit for the costs of the proposed inquiry before such an inquiry is held.

(4) All expenses of, and incidental to, or preliminary to, any inquiry made on application as aforesaid shall be paid by the applicants therefor or out of the funds of the society or by the members or officers of the society in such proportions as the Registrar may direct by order in writing.

(5) An order made under Sub-section (4) shall on application be enforced by any Civil Court having local jurisdiction in the same manner as a decree of such Court.

(6) A person holding an inquiry under this Section shall have access to all the books and documents of the society, and shall have power to call upon the society and the officers of the society to furnish such statements and other information in relation to its business as he may direct.

(7) The result of the inquiry shall be communicated to the society and to the applicants (if any).

Cancellation of registy.

22. When an inquiry has been held under Section 21, the Registrar may, if he is satisfied—

(*a*) that the society is insolvent, or must necessarily become so, or

(*b*) that the business of any such society is conducted fraudulently or not in accordance with the Rules thereof,

after giving previous notice in writing in such manner as he thinks fit specifying briefly the grounds of the proposed cancellation, cancel the registry of the society.

---

possessing the prescribed qualifications" etc. The Select Committee substituted the words "a person" for "an actuary."

Liquidators.

23. (1) Where the registry of a Provident Insurance Society is cancelled in accordance with the provisions of Section 22, the Registrar may appoint a liquidator to wind up the society.

(2) A liquidator appointed under Sub-section (1) shall have power—

(*a*) to institute or defend any legal proceedings on behalf of the Society by his name of office;

(*b*) to determine the contribution to be made by members of the Society, respectively, to the assets of the Society;

(*c*) to investigate all claims against the Society and to decide questions of priority arising between claimants;

(*d*) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and

(*e*) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society.

(3) Subject to any Rules of procedure made under this Regulation, a liquidator appointed under this Section shall, in so far as such powers are necessary to carry out the purposes of this Section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Civil Procedure Code, 1100.

(4) Orders made under this Section shall on application be enforced as follows:—

(*a*) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court;

(*b*) when made by the Court on appeal, in the same manner as a decree of the Court.

Appeals.

Appeals.

24. (1) An appeal shall lie to the Court within thirty days—

(*a*) from an order of the Registrar refusing to register a Provident Insurance Society or any rules or amendments of rules of such society;

(*b*) from an order of the Registrar cancelling the registry of a society;

(*c*) from an order made by a liquidator appointed under Section 23.

(2) Save as hereinbefore expressly provided, orders made under this Regulation shall be final and conclusive.

Offences and Procedure.

Penalty for non-compliance with Regulation.

25. Any Provident Insurance Society which contravenes any of the provisions of this Regulation, or makes default in complying with any of its requirements, and every director, manager or secretary or other officer or agent of the society, who is knowingly a party to such contravention or default, shall be punishable with fine which may extend to five hundred rupees, or in the case of continuing default, with fine which may extend to two hundred and fifty rupees for every day during which the default continues.

Penalty for falsifying documents.

26. If any register, account, balance sheet or other document required by this Regulation is false in any particular to the knowledge of any person who signs it, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Cognizance of offences.

27. No Court inferior to that of a Magistrate of the First Class shall try any offence against this Regulation.

Rules.

Rules.

28. (1) Our Government may make Rules to carry out the purposes of this Regulation.

Sec. 25: In the wording of the Indian Act as adopted in the original Bill, the words "contravenes any of the provisions of this Regulation or" were inserted, and consequential changes made, by the Select Committee "as the penalisation of the contravention of the provisions of the Regulation has also been considered necessary to ensure a satisfactory working of the societies."—*S. C. R.*

Sec. 28: In Clause (*c*) of Sub-section (2), the word "report" not in the Indian Act was inserted before the words "or register," and in Clause (*c*), the words "and

RULES, NOTIFICATIONS, &c.

I. RULES.

CONTENTS.

Rules.

1. Definitions.
2. Section 2 (8). Contingencies prescribed.
3. Deposit by society established before the Regulation.
4. Section 6. Matters to be provided for by the Societies' Rules.
5. [Copies of Rules in English to be sent to Registrar.]
6. Section 7. Application for registry.
7. Sections 7 and 10. Acknowledgments.
8. Section 12. Register of Members.
9. Register of policy holders.
10. Register of Directors, Managers, &c.
11. Section 17. Audit of Societies not registered under the Travancore Companies Regulation.
12. Section 17. Particulars of Auditor's report.
13. Section 17. Form of accounts.
14. Sections 17 and 18. Accounts to be filed with the Registrar.
15. Section 18. Revenue Account and Balance Sheet to be placed before a general meeting.
16. Section 17. Auditor's qualification.
17. [Who shall not be appointed Auditors.]
18. Section 19. Form of record of insurance effected on life other than life of person insuring.
19. Section 21. Qualifications of the person who may be directed by the Registrar to hold an inquiry.
20. Power of Registrar to call for a list of the assets of the Society.
21. Section 22. Power of Registrar to postpone order under Section 22.
22. Section 23. Liquidator, Removal of—by Registrar.
23. Liquidator's remuneration.
24. Liquidation proceedings. Section 28 (2) (*g*).
25. Liquidator may reduce contracts.
26. Section 28 (*d*). Fees.
27. Inspection and grant of copies.
28. Manner of publication of documents. Section 28 (1).
29. Registrar not responsible for accuracy of returns.
30. [Title.]

Schedule.

Forms.

(R. O. C. 350/33/Judl. dated 20th June 1933.) (a)

In exercise of the powers conferred on them by Section 28 of the Travancore Provident Insurance Societies Regulation of 1108 (III of 1108), the Government of His Highness the Maha Raja are pleased to issue the following Rules :—

The Travancore Provident Insurance Societies Rules.

Definitions.

1. In these Rules unless there is anything repugnant in the subject or context—

(*a*) "The Regulation" means the Travancore Provident Insurance Societies Regulation of 1108 (III of 1108).

(*b*) "Society" means a Provident Insurance Society to which the Regulation applies.

(*c*) "Provident Insurance business" means any class of business to which the Regulation applies.

(*d*) "Dividing Society business" means Provident Insurance business under which the amount payable on the policy money becoming due is not fixed but depends either partly or wholly on the results of the division of any portion of the premium income or funds amongst the policies which have become due for payment in proportion to the premiums received under each class in any specified period.

(*e*) "Bond investment business" means the issue of bonds or policies by which the Society in return for premiums or subscriptions payable at periodical intervals of one year or less contracts to pay the legal holder of the bond or policy a sum at a future date either with or without the other specified benefits such as the right to share in the profits of the Society or to an advance for certain specified objects and not being life assurance business.

(*f*) "Ordinary Life Assurance business" means life assurance business transacted on similar lines to those adopted by ordinary life assurance companies namely by granting annuities on human life or by assuring a fixed sum payable at death, on survivance or on the happening of any contingency dependent on human life in return for a premium which is fixed at the outset for each age at entry.

(a) *T. G. G., dated 20-6-1933, Pt, I, Pp. 1266-1283.*

(g) "Special Resolution" referred to in Section 8 (4) of the Regulation means in cases where the Provident Insurance Society is a body of persons incorporated under the Travancore Companies Regulation, I of 1092, a resolution passed and confirmed in accordance with Section 79 of the said Regulation. In other cases, the term shall mean a resolution passed with the consent of the proprietor or all the proprietors of the Society concerned.

Section 2 (8). Contingencies prescribed.

2. The provisions of the Regulation shall, in addition to the contingencies of birth, marriage and death prescribed in Section 2 (8) of the Regulation, extend to the receipt of premiums or contributions for insuring money to be paid on the happening of the following contingencies and shall apply to any Society receiving such premium or contributions, namely :—

(a) Accident,
(b) Attainment of a certain age,
(c) Baptism among Christians,
(d) Bond investment business,
(e) Namakaranam (naming of a child),
(f) Pilgrimage to sacred places,
(g) Sickness,
(h) Sunnat among Mohamedans,
(i) Unemployment or retirement from business,
(j) Upanayanam (the thread ceremony among the Hindus),
(k) Vidhyabyasa (School going ceremony),

In the case of women.

(l) Attainment of puberty.
(m) Santhikalyanam (consummation of marriage),
(n) Confinement,
(o) Kettukalyanam,
(p) Seemantham (the ceremony during the first pregnancy of a woman).
(q) Widowhood.

Deposit by Society established before the Regulation.

3. The applicant for deposit under Section 4 of the Regulation shall, if the Society is established before the commencement of the Regulation, furnish the Registrar with any information and evidence required by him to show that it is so established.

4. (i) In accordance with the provisions of Section 6 of the Regulation every society—

(*a*) If already existing, shall provide, within six months from the commencement of the Regulation, for such of the matters mentioned in Section 6 of the Regulation and in the attached Schedule as are not already provided for in their Rules; always subject to the condition that the terms of the then existing contracts shall not be altered to the detriment of the policy-holders.

Section 6. Matters to be provided for by the Societies' Rules.

And, if in any case it is made to appear to the Registrar that the circumstances are such that a longer period than six months should be allowed, he may extend that period by such time as he may think fit, and

(*b*) if not existing, shall provide in their Rules before registration under the Regulation for the matters mentioned in Section 6 of the Regulation and in the said Schedule.

(ii) The Registrar may exempt any Society from providing for any of the matters in the Schedule on the ground of their unsuitability to such Society.

5. In cases where the Rules of the Society are in English, a copy of the same, and in cases where they are not in English a true translation thereof in English shall within one month from the date of the adoption of the Rules be sent to the Registrar.

Section 7. Application for registry.

6. All applications for registration of Societies shall be in Form I and shall be signed by all the signatories to the Rules.

Sections 7 and 10. Acknowledgments.

7. Upon the registration of a Society the Registrar shall grant an acknowledgment to the Society in Form II and on the registration or delivery of any document required to be registered or delivered he shall grant an acknowledgment in Form III.

Section 12. Register of Members.

8. The Register of Members prescribed by Section 12 of the Regulation shall be maintained in Form IV.

Register of policy holders.

9. Every Society shall maintain a register containing the names of all policy holders under each class of insurance in Form V or as near thereto as circumstances admit.

Register of Directors, Managers, &c.

10. Every Society shall keep at its registered office a register containing the names, addresses and occupations of its Directors, Managers, Secretaries and all other officers or agents of the Society and shall send to the Registrar a copy thereof and shall within 30 days of the occurrence notify to the

Registrar any change among such Directors, Managers, Secretaries or other officers or agents.

Section 17. Audit of Societies not registered under the Travancore Companies Regulation.

11. The accounts of every Society not subject to audit in accordance with the provisions of any law for the time being in force in Travancore regarding the registration of Companies shall be audited in accordance with that law.

Section 17. Particulars of Auditor's report.

12. Every Auditor auditing under the Regulation the accounts of a Society shall make a report to the members on those accounts and on every revenue account, profit and loss account and balance sheet to be laid before the Society in general meeting during his tenure of office. The Auditor shall state in his report—

(*a*) Whether or not he has obtained all the information and explanations he has required: and

(*b*) Whether, in his opinion, the accounts and balance sheet referred to in the report are drawn up in conformity with the law.

(*c*) Whether such accounts and balance sheet exhibit a true and correct view of the state of the Society's affairs according to the best of his information and the explanations given to him and as shown by the books of the Society.

(*d*) Whether or not he has personally verified the whole of the investments with the securities and other vouchers and is satisfied as to their correctness.

(*e*) Any other matters that he considers should be brought to the notice of the members or policy-holders of the Society.

Section 17, Form of accounts.

13. The accounts shall consist of the revenue account, profit and loss account and balance sheet as prescribed in Forms VI, VIII and IX. A Society may, if it so desires, submit a separate revenue account (precisely similar to Form VI) for any class of business carried on by it but the transactions in respect of a class of business not prescribed under the Regulation shall not be shown in a revenue account showing the transactions in respect of any business which is so prescribed. The accounts shall be verified and the certificate of verification shall be signed by all the Directors of the Society and by the Manager and one of the other responsible officers. If any of these omit to sign the reason shall be stated. Statements in the following Forms VII and X to XVII shall also be prepared each year and signed by

the Chairman or Managing Director (if any) as well as by the Manager or one of the other responsible officers of the Society :—

Form VII.—Giving particulars of expenditure which has not been charged as such.

Form X.—Giving particulars of the relationship existing between the lives assured and those effecting policies.

Form XI.—Giving particulars of the numbers of policies effected at different ages.

Form XII.—Giving the magnitude of the Society's policy contracts.

Form XIII.—Giving particulars of the new business each year.

Form XIV.—Showing for each year additions to and deductions from the number of policies and the sums assured thereunder.

Form XV.—Giving particulars for each year since the formation of the Society of the number of policies that have gone off the books for various reasons.

Form XVI.—Showing the claims under dividing Society business arranged according to the duration of the policies.

Form XVII.—Giving examples of the sums paid in past years under dividing Society business.

The Registrar may, on the application and with the consent of a Society, alter these Forms as regards that Society for the purpose of adapting them to the circumstances of that Society.

14. The accounts with the Auditor's report and statements referred to in Rule 13 signed by the Chairman or Managing Director (if any) as well as the Manager and one of the responsible officers of the Society shall be delivered to the Registrar.

Sections 17 and 18. Accounts to be filed with the Registrar.

15. The revenue account and balance sheet together with the Auditor's report shall be laid before an annual general meeting within three months of the expiration of each financial year of the Society, and if the general meeting before which the accounts are laid does not adopt them, a statement of the fact and of the reasons therefor shall be annexed to the balance sheet and to all copies thereof.

Section 18. Revenue Account and Balance Sheet to be placed before a general meeting.

16. Registered Auditors as also Holders of Audit-Certificates as per the Notification and Rules under Section 148 of the Travancore Companies Regulation, I of 1092, respectively, shall be entitled to be Auditors and to act as such in respect of the accounts of any Society.

Section 17. Auditor's qualification.

17. The following persons, that is to say—

i. a director, officer or agent of the Society,

ii. a partner of such director, officer or agent, and

iii. any person in the employment of such director, officer or agent shall not be appointed an Auditor of the Society.

Section 19. Form of record of insurance effected on life other than life of person insuring.

18. The record of insurance effected on lives other than lives of the persons insuring referred to in Section 19 of the Regulation shall be maintained in Form XVIII. The copy delivered to the Registrar shall be signed in the manner prescribed in Rule 14.

Section 21. Qualifications of the person who may be directed by the Registrar to hold an enquiry.

19. The following persons shall be qualified for holding enquiries under Section 21 of the Regulation, *viz* :—

i. Any one entitled to act as Auditor under Rule 16. or

ii. a fellow or an Associate of the Institute of—Actuaries, London, or of the Faculty of Actuaries in Scotland, or

iii. such other person as may be authorised by—Government in this behalf :—

Power of Registrar to call for a list of the assets of the Society.

20. When in the course of an enquiry under Section 21, the Registrar is satisfied that a Society is insolvent or must necessarily become so or that its business is conducted fraudulently or not in accordance with the Rules of the Society and that it is unsafe to leave the assets of the Society in the hands of the existing management, the Registrar may, in the interim between the issue of a notice under Section 22 and the appointment of a liquidator under Section 23, call upon the directors to furnish a complete list of the assets of the Society, and to undertake not to deal with them without his permission.

Section 22. Power of Registrar to postpone order under Section 22.

21. The Registrar before cancelling the registry of a Society under Section 22 may,

(*a*) suspend further proceedings for such time as he thinks fit, to enable the unpaid subscribed capital, or a sufficient part thereof, to be called up for the purpose of making good deficiencies in the funds ;

(*b*) consent to the Society reducing the amount of its contracts upon such terms and subject to such conditions as he thinks just as a means towards winding up.

22. Any liquidator appointed by the Registrar may be removed by him if it is proved to his satisfaction that the duties entrusted to such liquidator have not been faithfully discharged. Any vacancy so caused shall be filled by the Registrar.

Section 23. Liquidator-Removal of, by Registrar.

23. There shall be paid to the liquidator such salary or remuneration by way of percentage or otherwise as the Registrar may direct.

Liquidator's remuneration.

24. The procedure to be followed by a liquidator appointed by the Registrar shall be as under—

Liquidation procedure. Section 28 (2) (*g*).

(*a*) He shall immediately take into custody or under his control all the property, effects and actionable claims to which the Society is or appears to be entitled and the documents and records belonging to the Society.

(*b*) He shall within one month from the date of his assuming charge hold a meeting of the creditors of the Society of which not less than seven days' notice shall be sent by Post or Anchal to all persons who appear to him to be creditors, specifying the time and place of the meeting. He shall also advertise notice of the meeting once in the Government Gazette and once at least in some News-paper circulating in the District where the registered office or principal place of business of the Society was situate.

He shall at the meeting explain to the creditors the financial condition of the Society and ascertain from each creditor how much is due to him from the Society.

(*c*) He may at any time summon a general meeting of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon such meetings at such times as the creditors or contributories by resolution may direct or whenever requested in writing to do so by one-tenth in value of the creditors or contributories.

(*d*) He shall in the administration of the assets of the Society and in the distribution thereof among its creditors have regard to any directions that may be given by creditors or contributories at any general meeting or by the Registrar.

(*e*) He may with the sanction of the Registrar employ such legal assistance as may be necessary in the institution or defence of any legal proceedings and such establishment as may be required.

(*f*) He shall keep proper books in which shall be entered the proceedings at meetings and such other matters as the Registrar may prescribe ;

Any creditor or contributory may, subject to the control of theRegistrar, personally or by his agent inspect any such books ; and

(*g*) He shall submit to the Registrar a report of the progress in liquidation at such intervals as the Registrar may direct.

Liquidator may reduce contracts.

25. When a liquidator has been appointed in terms of Section 23 of the Regulation he may, if he thinks fit, reduce the amount of each of the contracts of the Society upon such terms and subject to such conditions as he may think just, as a means towards winding up. If the contracts are not to be reduced in amount as here provided, the liquidator shall ascertain the value of the liability of the Society to each person appearing by the books of the Society to be entitled to or interested in policies granted by such Society. He shall give written notice to such person of the value so ascertained.

Section 28 (*d*). Fees.

26. The following fees shall be payable to the Registrar in cash or by money order for matters transacted under the Regulation.

(1) Registration of a Society (Section 7)	Rs.	50
Provided that a Society which has already been registered under the Travancore Companies Regulation, I of 1092, on payment of the prescribed fee need pay only a moiety of this fee, *i. e.*, Rs. 25 for registration under this Regulation.		
(2) Registration of amendment of a Rule (Section 10)	,,	3
Provided that no more than a single fee of Rs. 3 shall be leviable for the amendment of more than one Rule when such amendment is intimated to the Registrar in the same communication. Provided also that in the case of a Society which is also registered under the Travancore Companies Regulation, I of 1092, a fee of one rupee only shall be charged for an amendment of rule passed by means of special resolution.		
(3) Filing balance sheet and revenue account.	,,	3
Provided that in the case of a Society which is also registered under the Travancore Companies Regulation, I of 1092, and has to file a balance sheet thereunder a fee of one rupee only shall be charged for filing balance sheets and revenue accounts.		

(4) Filing Notice of the Situation of the Registered Office and of any change therein (Section 14).	,,	Rs. 3
(5) Filing List of Directors (Section 7 (*b*)	,,	3
(6) Filing Consent of Directors (Section 7 (*b*)	,,	3
(7) Filing copy of the Register of Directors, Managers, Secretaries etc., and of any change therein (Rule 10)	,,	3

Provided that in the case of a Society which is Registered under the Travancore Companies Regulation, I of 1092, and has to file the same documents as those referred to in 4 to 7 under that Regulation, a fee of one rupee only shall be charged for each.

Inspection and grant of copies.

27. Documents required under the Regulation or the Rules made thereunder to be submitted by a Society to the Registrar shall be open to inspection on payment of a fee of one rupee; and any person may procure a copy of any such document or a part thereof on payment of a fee of two Annas for every hundred words or fractional part thereof required to be copied.

Manner of publication of documents, Section 28 (*f*).

28. A notice or other document shall, unless otherwise specially provided for by the Regulation or the Rules, be deemed to have been duly published under the Regulation if copies printed in English or in Vernacular are sent to the Registrar and to all members and policy holders and are also displayed in a conspicuous place in the Registered Office of the Society and in any branch office thereof where any part of its business is transacted.

Registrar not responsible for accuracy of returns.

29. The receipt of any return or statement by the Registrar or an acknowledgment by him of the fact that it has been received and filed does not imply that a valid return has been made or indicate approval of anything it contains.

30. These rules may be called the Travancore Provident Insurance Societies Rules.

SCHEDULE SHOWING MATTERS TO BE PRESCRIBED BY THE RULES OF A SOCIETY. (RULE 5).

(*a*) The name and place of the registered office, the objects of the Society and the whole of the contingencies in respect of which it will receive premiums.

(*b*) That the Society shall not issue any policy either to or for the use, of any person other than the life assured without inserting in the policy the name of the person by whom, and for whose

use, it is effected and unless the life assured has given his consent in writing to the insurance being effected (if the latter be not of age the written consent of his legal guardian is required). The rule shall also provide that the amount to be assured under a policy effected by or for the use of a person other than the life assured shall not be unreasonable for the purpose of covering the expense or loss which such person has a *bonafide* expectation that he will incur in the event of the death of the life assured.

(*c*) The persons who may effect policies and the persons on whose lives policies may be effected, stating for each class of contingency the limits of age for male and female lives separately; the maximum age for charging uniform premiums and the rates of extra premiums to be imposed on ages above the said maximum age; also the conditions to be complied with by persons applying for insurance in respect of each class of contingency, stating the payments to be made—

(1) on application;

(2) on admission;

(3) as monthly or other periodical premiums or contributions and the period for which they are payable;

(4) as fine or other charge for late payment of premiums or contributions;

(5) on any other account in respect of the insurance.

(*d*) The maximum, including all bonus, additions, or other benefits, payable (1) at death and (2) on the happening of each other contingency insured against by the Society under policies effected on any one life since the date of the Regulation and the maximum number of policies under each different class of Provident Insurance business which a single person may hold.

(*e*) The conditions under which any policy holder may become entitled to any of the benefits assured, especially as regards

(1) the period, if any, during which the happening of the contingency insured against will entitle the policy holder

(*a*) to receive no payment;

(*b*) to receive a reduced payment in which case the particulars will be required to be stated in the rule;

(2) difference as regards benefits between male and female lives.

(3) any advance or loan which is guaranteed after payment of premiums for a stated number of years;
(4) any benefits of whatever kind which are determined by lot or ballot;
(5) the exact method of division in the case of dividing Society business;
(6) the nature of the evidence required to prove birth, marriage, death or other event on the happening of which the insured amount is payable;

(*f*) Disqualifications due to change of occupation, residence, or other specified cause;

(*g*) The length of notice to be given to policy-holders of any required payment of premium before the benefits under the policy lapse or are modified in any way as a result of non-payment, also the consequences of delay in paying any premium or other contribution; also the conditions under which the right to full benefit will be restored to a policy-holder whose policy has been altered in any way in consequence of any payment being made late.

(*h*) The terms under which any policy may be
(1) surrendered for a cash payment or
(2) kept in force for a reduced benefit without liability to payment of further premiums.

(*i*) That the conditions governing policies as regards matters mentioned in (*e*), (*f*), (*g*) and (*h*) above shall be fully set forth in each policy issued after a period not exceeding one month from the date of the registration of the rules providing for such matters.

(*j*) The appointment, qualifications and powers of the managing body and officers of the Society, the amount of security that any of them should deposit for the due and faithful fulfilment of their duties, the conditions under which they may be removed, the method of voting at the meetings of the managing body and the number constituting a quorum.

(*k*) As to the rights (if any) of policy-holders
(1) to vote at a general meeting of the Society,
(2) to appoint persons to represent them on the managing body, and
(3) to appoint an Auditor.

(*l*) The length of notice to be given of general (or special) meetings of the Society; the length of notice required to be given of

any resolution to be proposed at these meetings; the method of voting at them and the number constituting a quorum; and the matters which must be brought before such meetings.

(*m*) The class of security in which the funds of the Society may be invested.

(*n*) The procedure to be adopted in making new rules or in altering or repealing existing rules, and prescribing that no such amendment or repeal shall detrimentally affect the terms of contracts then existing, and that copies of amended rules required under Section 10 (1) to be sent to the Registrar shall be so sent within one month from the date of their adoption and that within one month after their registration a copy of any alteration in the rules which in any way applies to or affects the rights of the then existing policy contracts shall be sent to each policy-holder.

(*o*) The allowance payable to agents or canvassers, the proportion of the annual income of the Society derived from premiums or contributions which may be disbursed for the expenses of management of the Society, and the method of apportioning the income and the expenses between each class of Provident Insurance and any other class of business which the Society may transact.

(*p*) That in the case of a Society which by Rule or practice divides any part of the funds thereof, such Society shall provide for the payment of all debts due by the Society existing at the time of division before any such division has taken place.

(*q*) That every Society shall keep a separate account of all receipts and disbursements in respect of each class of business transacted and the receipts (less the disbursements) of each class shall be carried to and form a separate fund with an appropriate name; Provided that nothing in this rule shall require the investments of any fund of a class of business prescribed under the Regulation to be kept separate from the investments of any other such fund, but the rule shall provide that the investments of any fund of a class of business not prescribed under the Regulation shall be kept separate from the investments of the funds of business which is so prescribed and shall not be shown in the balance sheet (Form IX) for the later business.

(*r*) That a fund of any particular class of business prescribed under the Regulation shall be as absolutely the security of the policy-holders of that class as though it belonged to a Society carrying on no other business than insurance of that class, and shall not be liable for any contracts of the Society for which it would not have been liable had the business of the Society been only that of insurance of that class, and shall not be applied directly or indirectly for any purposes other than those of the class of business to which the fund is applicable.

(*s*) The provision, if any, made for the financial position of the Society being ascertained by an actuary or other suitable person.

(*t*) The method of ascertaining the amount of profit made by the Society, the minimum percentage of divisible profits to be transferred to the reserve before distribution to share holders and policy holders and the method of such distribution.

(*u*) That the paid-up capital shall not be treated as part of the Society's assets for the purpose of showing a divisible surplus at the time of any inquiry of the financial condition of the Society.

(*v*) That no sum resulting from a call on shares and no portion of the other assets shall be released from liability in respect of Provident Insurance business until the funds applicable of such business are solvent otherwise than by a reduction of the policy contracts. The rule shall also prescribe that no money shall be allocated for payment of dividends on shares unless such funds are solvent otherwise than by a reduction of such contracts.

(*w*) That after the accounts have been duly audited, a copy thereof and of the Auditor's report as also of the statements detailed in rule 13 shall be sent to every member and policy-holder entitled to vote at a general meeting, so that, at least seven days shall intervene between the day on which they are sent and the last day on which notice of any resolution to be brought before the general meeting will be accepted. That during the period from the date when such accounts and statements have to be sent to members until the time of their adoption in general meeting, they shall be deposited at the registered office and copies thereof at the principal branches

or agency offices, for the inspection of any member or policy-holder of the Society.

(*x*) That the accounts, reports and statements prescribed under the Regulation and under the Rules shall be laid before the annual general meeting within three months of the expiration of each financial year of the Society (except in the case of a report by an actuary or other person on the financial position of the Society when nine months are allowed) and within 15 days after having been laid before the general or special meeting of the Society and before the expiration of the before mentioned period of three months (or nine months in the case of the financial report mentioned above) three copies in English and one in the vernacular, if any, of such accounts, auditor's report, statements, and financial report mentioned above (if any) as well as the report of the Directors or other managing body and of each resolution adopted at such meeting, shall be sent to the Registrar. The rules shall also prescribe that after the accounts have been passed and the report adopted by the Society, they together with a copy of each resolution adopted at the meeting passing such accounts or reports shall within one month from the date thereof be sent to each member and to each policy-holder.

(*y*) That any member or policy-holder shall be entitled at any time to be furnished by the Society with a copy of any part of any document, abstract, statement, or report, which has been submitted to the members or policy-holders at a charge not exceeding two annas for every hundred words or part thereof required to be copied.

(*z*) The procedure to be followed in the event of voluntary winding-up of the Society if it be not registered under the Travancore Companies Regulation, I of 1092, prescribing also the notice to be given to the Registrar regarding the appointment of a liquidator and the final dissolution of the Society.

FORM I.
(Rule 6)

The Travancore Provident Insurance Societies Regulation III of 1108.

Application to register a society.

Name of Society.

To

The Registrar of Provident Insurance Societies,
Travancore.

Application to register a society under the above name is made by the undersigned.

1. The society is a Provident Insurance Society providing for the contingencies mentioned in annexure I appended hereto.

2. The matters required to be set forth in the rules are provided for in the manner shown in the schedule given in annexure II appended hereto.

Witness to the signature
(with address and description).

Signatures (with address and description).

Date.

(ANNEXURE I TO FORM I.)

.....

Contingencies which the society provides for.

(*a*) ... ...
(*b*) ... ...
(*c*) ... ...

(ANNEXURE II TO FORM I.)

.....

Statement showing the numbers of the rules of the society which provided for the several matters required to be set forth in the Rules under the Regulation.

Matters required to be set forth in the rules.		Number of the rule or rules of the Society in which the matter is provided for.
(*a*)	1	...
(*b*) (From the Schedule to the Rules under the Regulation).	2	...
(*c*)	3	...
(*d*)	4	...

FORM II.
(Rule 7)

.....

Acknowledgment of Registration.

The Registrar of Provident Insurance Societies, Travancore, has the honor to acknowledge the receipt of the rules of " the ". The Society and its rules have been registered as No. of under the Travancore Provident Insurance Societies Regulation III of 1108.

Seal.

Dated 19 . Registrar of Provident Insurance Societies.

FORM III.

(*Rule 7*)

Memorandum acknowledging receipt of documents.

Office of the Registrar of
Provident Insurance Societies.

The Registrar of Provident Insurance Societies, Travancore, has the honor to acknowledge the receipt of the undermentioned document and fees. The document has been $\frac{\text{registered}}{\text{filed}}$ pursuant to Travancore Provident Insurance Societies Regulation III of 1108.

Dated. Registrar of Provident Insurance Societies.

Document Fees.

Rs. As.

To

The

FORM IV.

(*Rule 8*)

Register of Members maintained pursuant to Section 12 of the Travancore Provident Insurance Societies Regulation III of 1108.

Folio in Register Ledger.	Serial number.	Date of admission.	Name.	Father's name.	Occupation and address.	Statement of shares held, if any.	Amount paid or agreed to be considered as paid on each share.	Date on which he ceased to be a member and the reasons therefor.
1	2	3	4	5	6	7	8	9

FORM V.

(*Rule 9*)

Register of Policy Holders.

	1	Policy number.	
	2	Date of admission.	
	3	Life assured's occupation, address, also father's name, etc., if life assured be a minor; if the life assured be female, either the husband's or the father's name, etc., must be stated.	
	4	Name, occupation, and address of policy-holder when other than life assured.	
	5	Relationship between life assured and policy-holder.	
	6	Age at entry of life assured.	
I. Life Assurance.	7	Minimum amount.	Sum assured.
	8	Maximum amount definitely promised.	
	9	Maximum amount which will not be exceeded but which may never be paid.	
	10	Contingency on which minimum sum assured is payable.	
	11	Contingency on which maximum amount definitely promised is payable.	
II. Marriage Insurance.	12	Amount of each.	Premium.
	13	When payable.	
	14	Number of years payable.	
	15	Name and address of the nominee if any and the relationship to the assured.	
	16	Date of withdrawal.	
	17	Cause of withdrawal, (death, survivance, expiry of term, surrender, forfeiture.)	
	18	Amount paid on withdrawal.	

FORM VI.

(*Rule 13*).

Revenue account of the Society for the year ending 19
(for all business prescribed under the Regulation).

	Rs.		Rs.
Amount of funds at the beginning of the year—		Dividends to shareholders payable on 19 for the year ending 19	
Life Assurance Fund		(This is to be stated here by Societies not supplying a Profit and Loss account)	
Marriage Insurance Fund		Claims under policies and outstanding—	
Investment Reserve Fund			Rs.
Dividend Reserve Fund		By death	
Other funds (to be stated separately)		By survivance	
Shareholders' capital paid up at beginning of year		By marriage	
Shareholders' capital paid up during the year	Rs.	By birth	
Premiums		(Other classes to be specified)	
insuring sums at death			
„ on survivance only			
„ on marriage			
„ at birth			
„ for other benefits (to be specified)			
Consideration for annuities granted	Rs.	Annuities	
Interest, dividend and rents falling due in year		Surrenders, including surrenders of Bonus additions	
Less income-tax thereon.—		Bonuses in cash	
Entrance fees		Bonuses in reduction of premiums	
Charge for policy stamps		Expenses—	
Fines or other charges on account of premiums paid late		Commission	
Other sums falling due in year (accounts to be specified)		Agents' and Canvassers' allowances.	
		Salaries, etc., (other than to agents and canvassers)	
		Travelling expenses	
		Directors' fees	
		Auditors' fees	
		Medical fees	
		Actuarial fees	
		Rents for Offices belonging to and occupied by the Society.	
		Rents of other offices occupied by the Society	
		Law charges	
		Advertising	
		Printing and Stationery	
		Other expenses incurred in year (accounts to be specified)	
		Other payments (accounts to be specified)	
		Shareholders capital paid up at the end of the year as per Balance Sheet.	
		Life Assurance Fund	
		Marriage Insurance Fund	
		Investment Reserve Fund	
		Dividend Reserve Fund	
		Other funds (to be separately stated).	

NOTE.—(1) Items in this account to be net amounts after deduction of the amounts paid and received in respect of reassurance of the Society's risks.

(2) Every Society transacting dividing society business shall show in its accounts both the premium income and the claims of each class of such business separately from the premiums and claims of the other classes of business transacted by the Society.

(3) If any class of policy is not qualified for full benefits until after the first year or other stated period, the premium income of that class will be separated accordingly in the above account. In the case of a society having more than one qualifying period for any such business the premium income shall be shown separately for each qualifying period.

(4) If any sum has been deducted from the expenses account and taken credit for in the balance sheet as an asset, the sum so deducted shall be shown as in Form VII which shall be submitted along with the revenue account. Any sum treated as an asset in this manner should be written off through the revenue account within five years from the date on which the expense was incurred; but, in any case the amount must not be treated as an asset at the time of any actuarial valuation made hereafter of the Society's assets and liabilities.

(5) The Society may, if it so desires, show in this account the amount of commission on new business separately from commission on renewal premiums.

(6) In the REVENUE ACCOUNT should be entered all the financial transactions of the Society by way of income and expenditure during the year, whether such transactions have been completed by the actual receipt or payment of cash or are outstanding at the end of the year.

(7) On the *Income* side of this account should appear the premiums falling due in the year for each different class of insurance, also interest, entrance fees, fines and other sums due to the Society during the year (whether received or not) under the several items provided in the forms.

(8) Investments made or realised should not be entered in this account but only the *gain* or *loss* made on their realisation, which should appear as income, if gain, and as expenditure, if loss.

(9) No deposits in, or withdrawals from, Bank are to be brought into this account.

(10) On the *expenditure* side should appear all expenses and other charges incurred during the year (whether paid or outstanding) under the several items provided in the form. Bad debts, losses on Agents' balances should be shown as expenditure.

(11) No item can be included in the funds at the end of the year which was not included in the funds at the beginning of the year unless it is shown as an item of income of the year. Similarly no diminution can be made in any of the funds in any year without appearing as an item of expenditure in the revenue account of that year.

(12) The amount of each different fund at the beginning of the year shown on the income (or left-hand) side of the revenue account should be the same amount which was stated in the Balance sheet of the societies last return as the amount of those funds at the end of the year.

(13) If the balance of any account shown in the previous return be found incorrect, the corrected balance should be brought forward in the next return, and an explanation of the difference given on the form itself.

Verified with the books, accounts and vouchers and found correct.

Directors.

Manager.

Secretary or other responsible Officer.

FORM VII.

(*Rule 13.*)

Statement regarding preliminary expenses, extension of business, etc.

	Rs.
Balance at beginning of year of preliminary and other expenses not shown as expenditure in the Revenue Account, but appearing as assets in the Balance sheet of the Society for the year ending 19	...
Addition thereto during the year *not* shown as expenditure in the Revenue Account	...
Less amount written off during the year as per Revenue Account	...
Balance at the end of the year of preliminary and other expenses not yet shown as expenditure in the Revenue Account but meantime shown as assets in the Balance Sheet	...
Total	

The Society shall state what arrangements, if any, have been made to write off this balance.

FORM VIII.

(*Rule 13.*)

Profit and Loss Account of the Society for the year ending 19 (to be completed by all Societies except those carrying on no other business than ordinary life assurance).

	Rs.		Rs.
Balance of last year's account*	...	Dividends to share holder payable on 19	
Interest and dividends not carried to other accounts	...	for the year ending 19	...
Less income-tax thereon	...	Expenses not charged to other accounts	...
Profits realised † (accounts to be specified)	...	Loss realised † (accounts to be specified)	

Other receipts (accounts to be specified)	...	Other payments (accounts to be specified)	...
		Balance being net profits carried to Balance sheet	...

If the balance of this account shows a loss, that fact should be clearly stated in the account itself and in the Balance sheet, and should not be described simply as Balance or Debit balance.

Verified with books, accounts and vouchers and found correct.

} Directors.

, Manager.

Secretary or other responsible officer.

* The only sum which it is permissible to enter here is the amount of interest and dividends produced by the investments representing the paid-up capital.

† Profits (or losses) which do not belong to any specific fund and any profit (or loss) on the realisation of investments representing paid-up capital shall be entered here.

FORM IX.

(*Rule 13*).

Balance sheet of the Society for the year ending 19 for the classes of business prescribed under the Regulation which are transacted by the Society.

Liabilities.		Rs.	*Assets.*	Rs.
Funds.	Life Assurance Fund		Mortgages of property	
	Marriage Insurance Fund		Loans on society's policies within their surrender value	
	Investment Reserve Fund		Loans on personal security	
	Dividend Reserve Fund		Other loans (to be specified)	
	Other funds contained in Revenue Account (to be stated separately)		Investments in Government securities or in other bonds, debentures, stocks and shares (to be given in detail here, or if numerous the details may be stated on a schedule, the total of the schedule agreeing with the Balance Sheet figure)	
	Balance of Profit and Loss Account			
	Total Funds as per Revenue and Profit and Loss Accounts			
Capital	Share holders' capital paid at end of year as per Revenue Account.		House property	
			Branch and agency balances	
			Outstanding premiums renewables*	

	Rs.		Rs.
Outstanding liabilities	* Claims admitted or intimated but not paid, as under :— Life Assurance Marriage Insurance Other classes of business (to be specified) Unpaid Dividends* Deposits * Cheques issued but not presented for payment Other sums owing by the Society*(such as sums borrowed by the Society, commission due but unpaid, surrender values outstanding, to be stated separately under each class of business.	Outstanding interest, dividends and rents* Interest accrued but not payable * Cheques paid into Bank and in course of realisation Cash on deposit with the.....Bank Cash in hand or on current account with the.....Bank. Other assets (to be specified).	

Verified with the books, accounts and vouchers and found correct.

Directors.

Manager.

Secretary or other responsible Officer.

* These sums are or have been included in the corresponding items in Form VI.

NOTE.—(1) The balance sheet must state how the values of the stock exchange securities are arrived at and a certificate must be appended, signed by the same persons as signed the balance sheet to the effect that in their belief the assets other than Preliminary Expenses, Bad Debts, Goodwill, Cost of purchase of business and other organisation Expenses set forth in the balance sheet are in the aggregate fully of the value stated therein, less any investment reserve fund taken into account and that in arriving at this decision they have not attached to Stock Exchange Securities a value which after due allowance is made for investment Reserve Fund exceeds the market value at the close of the financial year less an allowance for any accrued interest taken credit for by the Society in cases where an allowance for it is included in the market price.

(2) A certificate must be appended hereto, signed by the same persons as signed the balance sheet and by the Auditor, to the effect that no part of any fund has been applied directly or indirectly for any purpose other than the class of business to which it is applicable.

(3) Societies having investments with any uncalled liability shall state separately the full amount thereof.

(4) Particulars must be given of all loans, including temporary advances, except loans on policies within their surrender values, made at any time during the year to any director or officer of a society or to any other society in which any of the said directors or officers may hold the position either of director or of officer.

(5) Particulars must be given of all commission or other allowance due or paid to any director or manager or other responsible officer of the Society in respect of new business procured.

(6) Particulars must be given of the balance of the above mentioned branch and agency balances and outstanding premiums, interest, dividends and rents remaining unpaid at the date of the auditor's report.

(7) On the Liabilities (or left hand) side of the Balance Sheet there should be brought from the Revenue Account the amounts of the Funds at the end of the year, as indicated on the form; and the particulars stated of any debts incurred on behalf of the Society, cash (if any) due by the society, and any other liabilities incurred by it which may be outstanding at the end of the year.

(8) On the Assets (or right hand) side should be shown the Society's investments together with the cash in hand and any other assets of the Society.
Amongst such other assets will be, for instance—
branch and agency balances;
outstanding premiums;
outstanding interest;
interest accrued but not payable;
cheques paid into Bank and in course of realisation.

(9) The amounts of these items shown in the balance sheet will, in the main, be received during the next financial year, but they must not again be included amongst the premiums, interest or cash in the Revenue Account, as they have already been included in the amount shown in that year's Revenue Account as "Amount of Funds at the beginning of the year."

10) Some of these outstanding items which have been taken credit for as an asset may never be paid at all. The amount of those not realised will have to be written off through the Revenue Account and the funds will be decreased accordingly.

FORM X.

(*See Rule 13.*)

Submitted by the Society for the year ending 19 .

1	Number of tables in Prospectus of society.		
	Table No. 1	Table No. 2	Etc.
	2	3	4
(1) Number of policies assuring money to be paid on death of male life effected during the year by the life assured			
" " his wife ...			
" " " son ...			
" " " daughter ...			
" " " grandson ...			
" " " granddaughter ...			
" " " father ...			
" " " mother ...			
" " " brother ...			
" " " sister ...			
" " " any person other than the above relations ...			

(2) Number of policies assuring money to be paid on the death of a female life effected during the year by the life assured				
"	"	" her husband ...		
"	"	" son ...		
"	"	" daughter ...		
"	"	" grandson ...		
"	"	" granddaughter ...		
"	"	" mother ...		
"	"	" brother ...		
"	"	" sister ...		
"	"	" any person other than the above relations ...		
Total number of policies (assuring money to be paid on death) effected in the year under each different class.				

FORM XI.

(*Rule 13.*)

Submitted by the Society for the year ending 19 .

Age of life assured. (1)	Number of policies effected in the year under review assuring sums payable at death. Table No. 1 (2)	Table No. 2 (3)	Table No. 3 (4)	Etc. (5)
Under 5 years ...				
Over 5 and under 10 ...				
" 10 " 15 ...				
" 15 " 20 ...				
" 20 " 25 ...				
" 25 " 30 ...				
" 30 " 35 ...				
" 35 " 40 ...				
" 40 " 45 ...				
" 45 " 50 ...				
" 50 " 55 ...				
" 55 " 60 ...				
" 60 " 65 ...				
" 65 " 70 ...				
" 70 " ...				
Total number effected under each of the life assurance tables.	(These totals should agree with the totals in Form X.)			

FORM XII.

(*Rule 13.*)

Submitted by the Society for the year ending 19 .

	Rs. A. P.
Largest amount of annuity paid during the year on any one life under a policy or policies issued after the commencement of the Regulation ; namely	
Largest amount of annuity which the society contracted during the year to pay in the same or in any future year on any one life.	
Largest amount at risk during the year on any one life under life assurance policies effected since the commencement of the Regulation.	
Largest amount of whole life premiums received or undertaken to be received during the year under life assurance policies on any one life effected since the commencement of the Regulation.	
Largest amount of premiums received or undertaken to be received during the year under life assurance policies effected since the commencement of the Regulation on any one life where the premiums are payable for the following limited periods :—	
1 year	
2 years	
3 years	
4 years	
5 years	
6 years	
and so on up to the longest term inclusive	

What for each class of insurance business other than that of life assurance was the largest sum insured during the year against the happening of any one contingency connected with any one person, no matter whether the insurance be under one or more policies—

Class of insurance.	Maximum sum assured.
Birth	
Failure of issue	
Marriage	
Bond investment business	
Unemployment	
Sickness	
Accident	

When the amount payable under a policy varies, it shall, for the purposes of statements XII, XIII and XIV, be taken as assuring the amount of the maximum limit which the society stipulates will not be exceeded. If there be no such limit this shall be stated and the largest amount definitely undertaken to be paid shall be entered in these statements.

FORM XIII.

(*Rule 13*).

Submitted by the Society for the year ending 19 .

Contingency on which sum assured or other benefit is payable.	Table in Prospectus of society.	Total new insurances effected during the year under review.				
		Number of policies.	Sum assured or annual benefit payable*	Renewal premium.	Single premium.	
Death (Including death combined with some other contingency.)	No. ...		Rs.	Rs. as. p.	Rs. as. p.	State also—Number and annual amount of new annuities and the consideration received.
	No. ...					
	No. ...					
	No. ...					
	Etc. ...					
	Total ...	†				
Survivance of a fixed period only.	No. ...					
	No. ...					
	Etc. ...					
	Total ...					
Marriage	No. ...					
	Etc. ...					
	Total ...					
Birth	No. ...					
	Etc. ...					
And so on for other classes.	Total ...					

* See footnote to Form XII. † This total should agree with the total number shown on Forms X and XII.

FORM XIV.

(*Rule 13.*)

Submitted by the Society for the year ending 19 .

	Policies insuring money to be paid on death.		Policies insuring money to be paid only on survivors.		Annuities.		Marriage policies.		and so on for each other class of business.
	No.	Sum assured (excluding bonus additions).	No.	Sum assured.	No.	Annuity per annum.	No.	Sum assured.	
		Rs.		Rs.		Rs.		Rs.	
(1) Policy at the end of previous year.									
(2) New policies issued as per statement XIII.									
(3) Old policies revived.									
(4) Old policies changed and increased.									
Total.									
Discontinued during year.									
(5) By death									
(6) By maturity or the happening of the contingencies insured against.									
(7) By expiry of term.									
(8) By surrender.									
(9) By forfeiture.									
(10) By change and decrease.									
(11) By not taken up.									
Total discontinued.									
Total existing at end of year.									

See foot note to Form XII.

FORM XV.
(*Rule 13*).

Submitted by the Society up to the close of the year ending 19 .

Year when policy effected. (1)	Number of policies effected in each year. (2)	Number remaining in force at end of year under review. (3)	The difference between the figures of columns (2) and (3) being made up of the following.				
			Claims by death. (4)	Claims by maturity of policy other than by death. (5)	Surrenders (6)	Forfeitures. (7)	Term policies expired. (8)
(Commence with the first year the company granted insurances of any kind and give the particulars for each year thereafter.)							

A statement in similar form must be given for each table under which the society has at any time issued policies.

Statements required by this form need not be given until within six months after the close of the first financial year entered upon after the adoption of these Rules.

FORM XVI.
(*Rule 18.*)

Statement submitted by the Society of claims arising in the year ending 19 . under each class of dividing society business. Number of claims arising in year by death of life assured.—

After payment of premium.	Table No. 1.	Table No. 2.	Table No. 3.	Etc.
For less than one year				
For one year but less than two years				
For two years „ three „				
For three years „ four „				
and so on				

If the amount of the sum payable in event of death in the first few months be ascertained by a different rule than for deaths occurring later, the first column should be altered accordingly, so that the deaths may be ascertained during each period for which a different method of calculation applies. For instance, in the case of a society paying nothing in event of death before six months' premiums have been paid and returning the premiums paid in the case of claims when but less than eleven months' premiums have been paid, the first column would be shown as follows:—

For less than six months.
For six months but less than eleven months.
For eleven months but less than twelve months.
For one year but less than two years and so on.

A similar statement must be given of claims by marriage, by birth and under each other class of dividing society business undertaken by the society, and a reconcilement shown between the figures in such statements and the amounts shown in the revenue account.

FORM XVII.

(*Rule 13*).

Statement submitted by the Society up to the close of the year ending 19 . of the claims by death under its dividing society policies.

Statement giving examples of the total sum (including all advances or further benefits no matter when paid) that would have been paid in past years under a policy becoming a claim by death shortly before the policy had been in force for 1, 2, 3, 4 and 5 full years, respectively, all premiums having been paid up to date of death.

Total sum paid at death in return for premiums of Rs. received in each year.

Financial year in which claim occurred.	Number of years premiums paid prior to date of death.				
	1	2	3	4	5
	Rs.	Rs.	Rs.	Rs.	Rs.
19 ... ... (this being first year of society).	...	...	...	...	...
19	...	...	...	...	...
19	...	...	...	...	...
19	...	...	...	...	...
19	...	...	...	...	...
1932	...	...	...	...	...
1933 and so on	...	...	...	...	...

If the particulars required by the above table vary for different ages at entry, particulars must be given separately for age at entry 40 as well as for the youngest and for the oldest ages at entry for which such policies are now obtainable according to the rules of the society.

If the period of division be other than one year the form of statement will be adjusted accordingly.

Particulars must be stated of the periods, if any, during which policies becoming claims do not qualify for full benefits.

A similar statement must be given separately for each other class of dividing society business transacted by the society.

FORM XVIII.

(*Rule 18*).

Record of Insurances effected on life other than the life of the person insuring.

Number of policy.	Date of admission.	Name of person insuring with father's name, occupation and address.	Name of person on whose life the insurance is effected, his age, father's name, occupation and address	Details of relationship between the persons mentioned in columns (3) and (4).	Rate of premium	Class of insurance	Date of withdrawal by			
							Surrender	Forfeiture	Death	Maturity.
1	2	3	4	5	6	7	8	9	10	11

II. NOTIFICATION.

(*R. O. C. No. 350/33/Judl., dated 17th February 1933.*) (a)

It is hereby notified that, with the sanction of His Highness the Maha Raja, the Registrar of Joint Stock Companies is appointed, under Section 2 (9) of the Travancore Provident Insurance Societies Regulation, III of 1108, to perform the duties of the Registrar under that Regulation.

III. CIRCULAR.

(BY FINANCIAL SECRETARY.)

(*No. Fl. 221, dated 8th February 1933.*) (b)

The attention of all Divisional and Sub-Treasury Officers is invited to Section 4 of Regulation III of 1108 *re* Provident Insurance Societies and the following provisional instructions are issued for their guidance and the guidance of the Provident Insurance Societies.

2. The deposit required to be kept with the Chief Account Officer under the said Section 4 shall be received at all treasuries on behalf of the Chief Account Officer. Such deposits will, for account purposes and for such purposes only, be treated as Savings Bank deposits.

(a) *T. G. G., dated 21-2-1933, Pt. I, P. 741.*

(b) *T. G. G., dated 14-2-1933, Pt. I, P. 721.*

3. The application for making the deposit shall be accompanied by a declaration in form herewith appended, and chalans in triplicate, the last two being countersigned by the Registrar appointed by the Government.

4. A pass-book shall be opened in the name of the depositor and entries made therein from time to time as in the case of ordinary Savings Bank accounts. The pass-book shall, on no account, be handed over to the depositor, but will be retained by the Treasury Officers themselves and kept in the Treasury strong-room.

5. On the day on which any deposit is received at the treasury on this account, the Treasury Officer should communicate the fact of such receipt to the Registrar giving full particulars of each such deposit.

6. The Treasury Officers should, in addition, in the first week of Chingom each year, submit a statement to the Chief Account Officer showing all such pass-books held by them with full particulars for being published in the Government Gazette.

7. No amount deposited shall be allowed to be withdrawn by the depositor nor shall the account be operated or transferred by the Treasury Officer except in accordance with law and with the written orders of the Chief Account Officer. Provided however that the interest payable in accordance with Sub-section (2) of Section 4 may be paid by the Treasury Officer to the depositor on accrual of the interest.

To

All Divisional and Sub-Treasury Officers.

DECLARATION FORM.

I or We.....

.....

hereby undertake not to operate on the amount deposited at present, or to be deposited hereafter, as per Section 4 of Regulation III of 1108, except in pursuance of any law or any legal order enabling me or us to do so, provided that any interest payable thereon under Sub-section (2) of Section 4 shall be payable to me or us on its accrual.

Countersigned. Signature Depositor.

Registrar.

Station.....

Date.....

Certified that the account has been marked off as Deposit under Provident Insurance Societies Regulation III of 1108 and its number also distinguished accordingly in all the registers.

Treasury Officer,

.....Treasury.

Date.....

REGULATION IV OF 1108.

THE TRAVANCORE TOWN-PLANNING REGULATION.

CONTENTS.

Preamble.

CHAPTER I.

Preliminary.

Sections.

1. Short title, extent and commencement 1
2. Definitions 2

CHAPTER II.

Town-Planning Schemes.

3. Matters that may be dealt with in scheme ... 4
4. Reconstituted plots 5

CHAPTER III.

Making variation and revocation of schemes and their effect.

5. Appointment of Director of Town-planning ... 7
6. A scheme to determine lines of improvement and development of towns ... ... 8(3)
7. Declaration of intention to make or adopt scheme ... 9
8. Notification of resolution to make or adopt scheme ... 10
9. Publication of draft scheme 11
10. Power of Government to require Council to make schemes ... 12
11. Contents of draft scheme 13
12. Sanctioning of scheme by Government... ... 14
13. Variation or revocation of scheme 15
14. Compensation to persons affected by variation or revocation of scheme 16
15. Permission to be taken for construction, etc., after publication of draft scheme 17
16. Obligation on owners to comply with scheme after sanction... 18
17. Power of responsible authority to enforce scheme ... 19

The figures on the right side refer to the corresponding Sections of the Madras Town-Planning Act, VII of 1920, as amended by Act II of 1930.

CHAPTER IV.

Compensation for injurious affection and contribution for betterment.

Sections.

18. Right to compensation 20
19. No right to compensation for building, etc., subsequent to first notification 21
20. Exclusion or limitation of compensation in certain cases ... 22
21. Application for sanction for withdrawal or modification of the scheme 22-A
22. Power to levy betterment contribution 23
23. Betterment contribution how calculated ... 24
24. Assessment and collection of betterment contribution ... 25
25. Option of objecting owner to require Council to acquire his property 26

CHAPTER V.

The Arbitrator.

26. Government to appoint arbitrator 27
27. Powers and duties of arbitrator 28
28. Appeal against arbitrator's decision 29

CHAPTER VI.

Finance.

29. Municipal Town-planning fund 30
30. Power to borrow 31
31. Government grants or loans to Town-planning fund ... 32

CHAPTER VII.

Land Acquisition.

32. Modification of Land Acquisition Regulation ... 33
33. Notification under Section 12 to have effect as declaration under Section 6 of the Land Acquisition Regulation ... 34
34. Sections 14, 22 and 23 of the Land Acquisition Regulation superseded 35

CHAPTER VIII.

Miscellaneous.

Sections.

35. Power of Councils to make agreements 36
36. Town-planning committee 37
37. Joint Town-planning committee 38
38. Power of Government to arbitrate in disputes between local authorities 41
39. Powers of control of Government 42
40. Powers of entry, etc. 43
41. Power of Government to make Rules 44
42. Previous publication of the Rules 44-A
43. Penalty for breach of the provisions of the scheme ...44-B

CHAPTER IX.

Town-Planning Trusts.

44. Creation of Town-planning trusts 45
45. Constitution of trusts 46
46. Chairman may be given salary 47
47. Removal of trustees 48
48. Disabilities of trustees removed 49
49. Application to trusts of this Regulation and their power to borrow 50
50. Payment to trust by Municipal Councils ...50-A
51. Vesting in Municipal Council of streets laid out or altered, and open spaces provided by the trust under a scheme ... 52
52. Ultimate dissolution of trust and transfer of its assets and liabilities to Municipal Council 53
53. Power of Government to make Rules for trusts ... 54

CHAPTER X.

Transfer of Proceedings.

54. Transfer of proceedings from one authority to another ... 55

[A Regulation to regulate the development of Towns to secure to their present and future inhabitants sanitary conditions, amenity and convenience

Passed by His Highness the Maha Raja of Travancore under date the 17th Dhanu 1108, corresponding to the 31st December 1932, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient that the development of Towns should be regulated to secure to their present and future inhabitants sanitary conditions, amenity and convenience; It is hereby enacted as follows :—

CHAPTER I.

Preliminary.

Short title, extent and commencement.

1. (1) This Regulation may be called "The Travancore Town-planning Regulation."

(2) It shall extend to the whole of Travancore.

(3) It shall come into force at once.

Definitions.

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

(1) "Chairman," means the "Commissioner of the Municipality" in the case of a Municipality having a Commissioner and the "President of the Municipal Council" in the case of other Municipalities.

(2) "Council" means the Municipal Council of the area concerned.

(3) "Director" means the Director of Town-planning appointed under this Regulation.

Regn. IV of 1108: I. *Objects and Reasons.*—(1) "The object of this Bill is to provide for the development of urban areas in accordance with a predetermined plan with a view, as is stated in the Preamble to the Bill, " to secure to their present and future inhabitants sanitary conditions, amenity and convenience." The towns in this State are growing from day to day. But they are growing in a haphazard manner. This is not only injurious to the health, convenience and happiness of the present and future inhabitants of the town but would also result in direct and indirect loss to the public, direct loss in that enormous sums may have to be spent in the future for the improvement of the towns and indirect loss in that waste of time, energy and health may be caused on account of the mal-arrangement of the various parts, such as streets, residential areas, industrial areas, etc., going to make up towns. It is considered advisable therefore that

(4) "Municipality" means any local area declared as a Municipality under the Travancore Municipal Regulation, V of 1095, or any other law relating to the organisation and administration of Municipalities for the time being in force.

(5) "Owner" includes the person for the time being receiving, or entitled to receive, whether on his own account or as agent, trustee, guardian, manager or receiver for another person, or for any religious or charitable purpose, the rents or profits of the property in connection with which the word is used.

(6) "Plot" means a continuous portion of land held in one ownership, other than land used, allotted or reserved for any public or Municipal purpose.

(7) "Prescribed" means prescribed by Rules made under this Regulation.

---

in order that efficient cities may come into being the development of the urban areas should proceed in accordance with schemes previously thought out and designed. The Bill provides for such Town-planning schemes being settled and drawn up, generally through the municipal councils, and for the grant of the requisite coercive power to enforce development in accordance with the schemes. The Trivandrum Municipal Council recently considered the question of town-planning for their city and have recommended the enactment of a law on the lines of the Madras Town-Planning Act. This Bill is accordingly drawn up, generally on the lines of the Madras Act (Act VII of 1920 as amended by Act X of 1930), and is capable of being applied to all towns in Travancore.

(2) Chapter I is the usual "preliminary" chapter and gives the interpretation of terms, etc. Chapter II explains what a town-planning scheme is and what it may contain. Chapter III (Clauses 5 to 17) provides for the making, variation and revocation of town-planning schemes. As an expert adviser to the Government and the municipalities, a Director of Town-planning is proposed to be appointed (Clause 5). No scheme will become final until it has received the sanction of Government (Clause 12). The obligation on owners to comply with the provisions of a scheme is provided for by Clauses 16 and 17, a breach thereof being also punishable under Clause 43. It is obvious that when schemes are enforced some properties may be affected prejudicially and others may increase in value. Provision is made for compensating the former (Clauses 18 to 21) and for the municipalities getting a portion of the latter, by means of annual "betterment contributions" (Clauses 22 to 25). In order to decide disputes arising in the course of the enforcement of schemes, such as in fixing the amount of compensation or betterment contributions, arbitrators are proposed to be appointed (Chapter V, Clauses 26 to 28). The necessary financial powers and obligations of the municipal councils towards the working of schemes are provided for in Chapter VI of the Bill; and provision is made in Chapter VII for the acquisition of lands required for the purposes of schemes. The formation of town-planning committees, the

(8) "Reconstituted plot" means a plot which is in any way altered by the making of a Town-planning scheme otherwise than by the severance of land used, allotted or reserved for any public or municipal purpose.

(9) "Responsible authority" means the authority or person, who is specified in a scheme as responsible for carrying out or enforcing the observance of all or any of the provisions of the scheme or for enforcing the execution of any works which under the scheme are to be executed by any authority, owner or other person.

(10) "Scheme" means a Town-planning scheme and includes a plan relating to a Town-planning scheme.

(11) "Town-planning" includes town improvement.

---

exercise of power by Government to compel the making and observance of schemes, the enforcement of the provisions of schemes and certain other miscellaneous matters are provided for in Chapter VIII. Although municipal councils have generally to undertake the duty and responsibility for the making and carrying out of schemes, it may sometimes become necessary to constitute special Town-Planning Trusts as regards schemes in any area with powers and functions similar to those exercisable by municipal councils for similar purposes. Provision is made for this in Chapter IX. Provision is made also for the transfer of any proceedings under the proposed Regulation from one authority to any other authority competent to take charge of the same (Chapter X)."—*S. O & R.*

(2) In introducing the Bill, the Official Member in charge said:—"As will be noticed from the Preamble to the Bill, the general object of this measure is the development of towns. That development is proposed to be achieved by means of a previously settled plan called a town-planning scheme. The object of such regulation is, as is explained in the Preamble to the Bill, to secure to their present and future inhabitants sanitary conditions, amenity and convenience. What a town is will be readily understood. A town is a collection of houses or buildings with an agglomeration of population. The buildings need not necessarily be residential, their purpose may be industrial or educational or ameliorative, curative and so forth. And, the population that conglomerates in a town does so for various purposes, not necessarily residential. Thus, what goes to make up a town are the various classes of buildings together with the open space, the roads, the drainage system, lighting system, &c. Now this town has grown up not in a day or two but day by day, and bit by bit. It is growing up in a haphazard manner without any previous design. We can easily imagine what a town will be like and what the consequences will be if a town grows up in this fashion without any arrangement. There may be a school here and immediately next to it there may be a factory emitting offensive fumes, and next to it a hospital. The residential quarters may be in one place and the commercial quarters in another place, say five miles away. The roads may be narrow, and traffic may not be easy on such roads. There may not be space enough for motor cars to pass, and even if you want to

CHAPTER II.

Town-Planning Schemes.

3. A Town-planning scheme may provide for all or any of the following matters :—

Matters that may be dealt with in scheme.

(*a*) the laying out or re-laying out of land, either vacant or already built upon, as building sites or for any of the purposes mentioned in this Section;

(*b*) the construction, diversion, extension, alteration, improvement or closure of streets, roads and communications;

(*c*) the construction, alteration, removal or demolishing of buildings, bridges and other structures;

(*d*) the acquisition by purchase, exchange or otherwise, of any land or other immovable property within the area included in the scheme whether required immediately or not;

---

widen the roads it may not be possible to do so now at a reasonable cost. These conditions which affect the sanitation, convenience and amenity do not arise by any deliberate action of course. They are more by accident or rather by an utter absence of any well-defined plan or design in the development of the town. An expert in town-planning recently explained that the sanitary conditions, convenience and amenity represent the three-fold nature of man, namely the body, mind and spirit. Sanitary conditions are required for his physical well-being, *i. e.*, to make urban life possible. Convenience is required for his mental balance, *i. e.*, to make urban life tolerable. And amenity is required to meet the desires of his senses, that is, to make urban life attractive. Thus, to serve the citizen in his three-fold requirements it is necessary that the town should be planned beforehand in some definite manner.

To plan is to take forethought. Town-planning is the use of intelligence and forethought in the development of towns. That being so, you must intelligently design beforehand and make the town grow according to that design. Even if you look at it from a merely economic point of view it will be seen that to plan beforehand and then make a thing according to the plan is cheaper. It is only a millionaire who can afford to do things without a plan, that is, without counting the cost. A man who does things without planning, if he is not rich, is rightly regarded as a fool. We say of him that 'his head will never save his heels'. The poorer the man and the poorer the town, the more essential does a plan become. That being a patent fact it is always cheaper to develop the towns in accordance with some well-defined plan. I am not an expert enough to point out the various defects of our towns. I would draw the attention of the House to what may perhaps be taken to be a defect of Trivandrum merely to illustrate my point. Take the case of the Chalai Bazaar. It is a busy centre but has a very narrow road between the two rows of shops for the shopgoers

(*e*) the redistribution of boundaries and the reconstitution of plots, belonging to owners of property comprised in the scheme;

(*f*) the disposal by sale, exchange, lease, or otherwise of land acquired or owned by the council;

(*g*) transport facilities;

(*h*) water-supply;

(*i*) lighting;

(*j*) drainage inclusive of sewage and of surface draining and sewage disposal;

---

and the ordinary passer-by and also for the good-wagons, *chakkada vandis,* as also for the men with head-loads. All these have to pass by the same narrow road. Now, just imagine that at the time when the Chalai Bazaar was being built there were a plan, and anticipating the future, parallel roads behind the shops had been constructed even then. What a convenience it would have been! Apart from the mere convenience it would be more economic for the shop-owners to bring the goods and therefore for the purchasers also, not to speak of sanitary conditions. I do not want to expatiate on the many advantages of a town-planning system. There is legislative provision for town-planning in England. In India, there is an Act in Madras. This Bill is drawn up generally on the lines of the Madras Act with one difference. According to the Madras Act it is compulsory for every Municipality to prepare a scheme and submit it to Government. But here I have left it to the option of the Municipality concerned. * I may add, in support of the necessity for the measure that the Government, having in view an extension of the Trivandrum town, decided to have a town-planning law passed, so that it may be directly applied to the extension.

Independently of the Government's intention, the Trivandrum Municipal Council considered the matter and they recommended to Government the passing of a law for town-planning on the lines of the Madras Act. Besides, the P. W. Department who are in charge of roads, who are very often called upon to ease curves of roads, also felt the need for a town-planning law."

Discussion ensued, and in making a few running observations on some of the comments made, the Official Member in charge said:—"* * I may, in this connection, read to the House, as they may no doubt be interested to hear it, what the Ministry of Health in England has laid down in a memorandum in regard to the necessity for town-planning. It reads:—

'The importance of providing for the systematic development of areas cannot be too highly estimated. Now less than ever can we afford the waste which has been the result of the haphazard growth of towns in the past; and therefore, in conformity with the measures which are now being taken for economy, wise action is necessary as regards town-planning. For industry, even more than for housing, the gains of proper town-planning are great by locating factories, workshops, and businesses in the places best adapted for them and by providing betimes for proper roads and other communications and thus avoiding the later necessity of costly street improvements. The works or measures for which provision is made in town planning schemes will need to be

(*k*) the allotment or reservation of land for streets, road-squares, houses, buildings for religious and charitable purposes, open spaces, gardens, recreation grounds, schools, markets, shops, factories, hospitals, dispensaries, Government and Municipal buildings and public purposes of all kinds;

(*l*) construction of houses;

(*m*) the preservation of objects and buildings of archaeological or historical interest or of natural beauty or actually used for religious purposes or regarded by the public with special religious veneration;

(*n*) the imposition of conditions and restrictions in regard to the character, number, architectural features and height of buildings allowed in specified areas, and the purpose to which buildings or specified areas may or may not be appropriated; and the provision and maintenance of sufficient open space about buildings;

---

carried out of course, *only as when development makes them necessary.*'

Mark the last portion. The work need not be done at once all together. If a scheme is there it may be carried out as and when necessity or occasion arises. It is further stated in the memorandum:

'Local authorities should, at the outset at least, make their town-planning schemes as simple as possible, concentrating on the two essentials, settling the principal lines of communication and allocating areas for the purposes for which they are best suited (zoning) whether industrial, business, residential, or as open spaces; this procedure will make for economy and for efficiency.'

Thus, it will be seen that what the Government are aiming at is not exactly to provide a luxury but to procure, on an economical and efficient basis, sanitary conditions, amenity and convenience.

In regards to finance, * the main funds on which the cost of carrying out a town-planning scheme is intended to be a charge on the general Municipal revenues. No doubt, the Government might advance money, *i. e.*, make grants, and the Municipality may borrow too. One point, however, to be remembered particularly, is that there will be repayment for whatever is done by means of the betterment contributions. Thus if a scheme is wisely carried out a house or property may increase in value from Rs. 50 to Rs. 150, and then the Municipality will get good income out of it because the house has risen in value by reason of the scheme having been carried out though at some initial cost. In this connection it will be interesting for the House to know what has been said of Paris—one of the best planned cities. It is said that over £20,00,00,000 had been spent on the great improvements to the City of Paris during the last century or so. It was planned by an expert who because of the enormous cost of it was charged with ruining the Emperor, but the Emperor's property it was found actually increased in value five times by the improvements. Paris to-day has about the finest road system of the large cities of the world. It is the most magnetic city in the world attracting the spending public

(*o*) the suspension, restriction, or modification so far as may be necessary for the proper carrying out of the scheme, of any provision in the Travancore Municipal Regulation, V of 1095, or in any Rule or bye-law made under the said Regulation and in force in the area included in the scheme;

(*p*) the advance to the owners of land or buildings comprised within the scheme, upon such terms and conditions as may be provided by the scheme, of the whole or part of the amount required for the erection of buildings or for the carrying out of the works, alterations or improvements in accordance with the scheme;

(*q*) such other matters not inconsistent with the object of this Regulation as may be prescribed.

---

from its four corners. The two hundred millions is to-day regarded as a good investment. Any excuse is said to be good enough for a visit to Paris.

On the question of finance there is one aspect that has to be stressed. It is not exactly the lack of money that stands in the way of a scheme being carried out and it does by no means follow that if there is money the scheme will be carried out. It is not a question after all of lack of funds. It is more a question of control than of construction.

On the question of compelling Municipalities to prepare schemes it may be mentioned that a town-planning scheme can be carried out successfully and properly only if the citizens co-operate and co-operate heartily. Provision is made in the Bill for the owners of dwellings and citizens being consulted in the matter of town-planning schemes, and if necessary a conference should be arranged between the members of the Municipality and the citizens before a scheme is submitted to Government. In fact, the owners may themselves prepare a scheme and submit it to the Municipal Council, so that, if the citizens are desirous of improving a locality, the Municipality cannot lag behind. They will be compelled by public opinion to prepare and carry out schemes that are necessary in the best interests of the city. If, in spite of all these the Municipality does not move in the matter, then the Government can proceed to compel. There is provision for it in the Bill.* ".—*L. C. P., dated 16-12-1931.*

II. The Bill was published in the Gazette dated 22-9-1931. It was introduced into the Council and its principle was accepted, and the Bill was referred to a Select Committee at the meeting held on 16-12-1931 (*L. C. P., Vol. XX, Pp. 20-58*). The Select Committee's Report was published in the Gazette dated 12-4-1932. It was presented to the Council at the meeting held on 21-4-1932 (*L. C. P., Vol. XX, Pp. 346—351*). The Report was considered and the Bill was posted for final reading, at the meetings held on 22 and 23-4-1932 (*L. C. P., Vol. XX, Pp. 468—489 and 584—588*). The Bill was finally read and passed at the meeting held on 20-12-1932 (*L. C. P., Vol. XXII. Pp. 707—708*). The Regulation was published in the Gazette dated 3-1-1933.

4. (1) The size and shape of every reconstituted plot shall be so determined as to render it, so far as may be, suitable for building purposes.

Reconstituted plots.

(2) In order to render original plots more suitable for building purposes, the scheme may contain proposals—

(*a*) to form a reconstituted plot by the alteration of the boundaries of an original plot;

(*b*) to provide, with the consent of the owners, that two or more original plots, each of which is held in ownership in severalty or in joint ownership, shall thereafter, with or without alteration of boundaries, be held in ownership in common as a reconstituted plot;

(*c*) to allot a plot with his consent to any owner dispossessed of land in furtherance of the scheme; and

(*d*) to transfer the ownership of a plot from one person to another with the consent of the latter.

CHAPTER III.

Making Variation and Revocation of Schemes and their Effect.

5. (1) Our Government may appoint a person to be Director of Town-planning for Travancore and may assign to him from time to time such establishment as they think fit.

Appointment of Director of Town-planning.

(2) The cost of such officer and his establishment shall be borne by Our Government.

(3) Municipal Councils shall consult the Director on such matters relating to Town-planning, and in such manner as may be prescribed. If any difference arises between the Director and a Council on any matter so prescribed, it shall be referred to Our Government whose decision shall be final.

Sec. 4: In Clauses (*c*) and (*d*) of Subsection (2), the words "with his consent" and "with the consent of the latter" do not occur in the corresponding clauses of Section 5 (2) of the Madras Act. They were inserted by the Select Committee, as "no person should be allotted a plot, or be made the owner of a plot without his consent".—*S. C. R.*

6. A Town-planning scheme shall determine the lines on which the improvement and development of the areas included in the scheme shall proceed and shall provide for such of the matters referred to in Section 3 and to such extent as may be prescribed.

A scheme to determine lines of improvement and development of towns.

7. (1) A Municipal Council may, at any time, by resolution, decide to prepare a scheme in respect of any land, within the municipal area, or in its vicinity outside such area, or to adopt with or without modifications a draft scheme proposed by all or any of the owners of any such land. The Chairman shall then have a plan prepared showing the land proposed to be included in the scheme, the surrounding lands and any existing streets.

Declaration of intention to make or adopt scheme.

(2) No Town-planning scheme made or adopted by a Municipal Council shall include any area outside its limits without the sanction of Our Government.

(3) The decision of Our Government as to whether any land is in the vicinity of a Municipal area shall be final.

8. The resolution under Section 7 shall be published by notification in the prescribed manner by the Chairman; and such notification shall state that a copy of the plan is kept for the inspection of the public at all reasonable hours at the Municipal office.

Notification of resolution to make or adopt scheme.

9. (1) If the resolution is to make a scheme, the Municipal Council shall, within twelve months from the date of the notification under Section 8 or within such further period, not exceeding twelve months, as Our Government may allow, and after consulting, in the prescribed manner, the owners of lands and buildings in the area affected, prepare and publish a draft scheme.

Publication of draft scheme.

(2) If the resolution is to adopt a draft scheme proposed by owners, the Council shall, without delay, publish such scheme.

10. Notwithstanding anything contained in Sections 7 to 9, Our Government may, in respect of any Municipality, after making such inquiry as they may deem necessary, by notification in Our Government

Power of Government to require Council to make schemes.

Sec. 10: The Madras Act, Section 12, does not contain the second para.

Gazette, require the Council to prepare, publish and submit for their sanction a draft scheme as respects any land in regard to which a Town-planning scheme may be made.

Such requisition shall operate and be treated in every respect as a resolution passed by the Council under Section 7 and the Council shall proceed as if by a resolution the Council had decided to prepare the scheme.

Contents of draft scheme.

11. (1) Every draft scheme shall contain the following particulars:—

(*a*) a plan showing the lines of existing and proposed streets;

(*b*) the ownership of all lands and buildings in the area to which the scheme relates;

(*c*) the area of all such lands whether public or private;

(*d*) a full description of all details of the scheme under such clauses of Section 3 as may be applicable;

(*e*) an estimate of the cost of the scheme;

(*f*) regulations for enforcing or carrying out the provisions of the scheme; and defining the responsible authority and the period for which such responsible authority shall function; and

(*g*) any other particulars or plans that may be prescribed or specially required by Our Government.

(2) Every draft scheme which includes a housing scheme shall also contain the following particulars, namely:—

(i) the approximate number and the nature of the houses to be provided by the responsible authority;

(ii) the approximate extent of land to be acquired and the localities in which land is acquired;

(iii) the average number of houses per acre; and

(iv) all matters incidental to the housing scheme.

(3) A draft scheme may provide that any person who commits or knowingly permits a breach of any specified provision of the scheme, or who neglects or fails to comply with any such provision, shall, on conviction, be punishable under Section 43.

Sanctioning of scheme by Government.

12. (1) If within sixty days from the date of the publication of a draft scheme any person affected by such scheme communicates in writing any objection or suggestion relating thereto, the Council shall consider such objection or suggestion and may modify the scheme as it thinks fit.

(2) The scheme as passed or adopted by the Council together with all written objections and suggestions shall thereupon be submitted to Our Government for sanction and the fact of such submission shall be published in the prescribed manner.

(3) Our Government may, after considering the objections and suggestions, if any, and making such inquiry as they think fit, sanction the scheme with or without modifications, or may refuse to sanction the scheme or may return the scheme to the Council for reconsideration :

Provided that unless a modification is, in the opinion of Our Government, verbal or inconsequential, Our Government shall not sanction the scheme with such modification without the consent of the Council :

Provided further that when a scheme is returned to the Council for reconsideration, the Council shall resubmit it to Our Government within six months from the date of its receipt and Our Government may then deal with the scheme in the manner mentioned in this Sub-section :

Provided further that if the Council fails to resubmit the scheme within the time specified in the foregoing proviso, Our Government may, in relation to the scheme, pass such orders as they may deem fit.

(4) When a scheme returned for reconsideration is modified by the Council, the scheme as so modified shall, before resubmission to Our Government for sanction, be published and passed by the Council in the same manner as a draft scheme,

---

Sec. 12: (1) In the second Proviso to Sub-section (3), the period allowed in Section 14 of the Madras Act is *three* months. As this period was considered too short by the Select Committee, they changed it to *six* months.—*S. C. R.*

(2) Sub-section (5) of Section 14 of the Madras Act does not contain the words "and in such other manner as may be prescribed." These words were inserted by the Select Committee as "a Gazette notification is not by itself sufficient and

(*a*) in cases in which the modification involves the inclusion in or exclusion from the scheme of any land or the acquisition of any land not originally proposed to be acquired, and

(*b*) in every other case in which the modification is, in the opinion of the Council or of Our Government, of sufficient importance to require the following of this procedure.

(5) The sanction of Our Government to a scheme under Sub-section (3) shall be published by notification in Our Government Gazette and in such other manner as may be prescribed and such notification shall state at what place and time the scheme will be open to the inspection of the public.

(6) A notification published under Sub-section (5) shall be conclusive evidence that the scheme has been duly made and sanctioned. The scheme shall have effect from the date of publication of such notification, and the execution of the scheme shall be commenced forthwith:

Provided that, where the scheme so provides the execution of the scheme or any part thereof may be deferred until such time as may be fixed in the scheme.

Variation or revocation of scheme.

13. (1) A Town-planning scheme sanctioned under Section 12 may at any time be revoked or varied by a subsequent scheme, published and sanctioned in accordance with this Regulation:

Provided that the Municipal Council shall be competent to modify a scheme after it has been sanctioned by Our Government under Section 12 by an agreement entered into with the persons interested in the scheme and with the concurrence of Our Government.

(2) (*a*) Our Government may, at any time by notification in Our Government Gazette, vary or revoke a scheme sanctioned under Section 12.

---

some other form of notification, say, by beat of tom-tom as may be determined by rules, should also be published".—*S. C. R.*

Sec. 13 (2) (*b*): The Select Committee inserted the words "mentioning the reasons for the proposed variation or revocation and." These words do not occur in Section 15 (2) (*b*) of the Madras Act. They also substituted the words "interested in" for the words "affected by." The latter are the words used in the Madras Act.

(*b*) Before issuing such notification Our Government shall publish in the prescribed manner a draft of such notification together with a notice mentioning the reasons for the proposed variation or revocation and specifying a date on or after which such draft will be taken into consideration and shall consider any objection or suggestion which may be received in respect of such draft from the Council or any person interested in the scheme before the date so specified.

Compensation to persons affected by variation or revocation of scheme.

14. If at any time after the day on which a scheme has come into force such scheme is varied or revoked, any person who has incurred expenditure for the purpose of complying with such scheme shall be entitled to receive compensation from the Municipal Council in so far as, by reason of the variation or revocation of such scheme, such expenditure has ceased to be in any way beneficial to him.

Permission to be taken for construction, etc., after publication of draft scheme.

15, After the publication of a notification under Section 8 or Section 10, no person shall erect, or proceed with, any building or work on, or enter into or carry out a contract in respect of, land within the area included in the scheme, unless he has applied for and obtained permission, in cases where a scheme has not been sanctioned, from the Municipal Council, and in other cases, from the responsible authority :

Provided that, if the Council or the responsible authority omits for three months from the date of receipt of such application to communicate to the applicant any order thereon, it shall be deemed to have granted the permission.

Obligation on owners to comply with scheme after sanction.

16. From the date of the notification of Our Government sanctioning a scheme under Section 12, all owners of lands and buildings in the area affected by the scheme who propose to construct or reconstruct or in any way alter or add to buildings shall conform in every particular with the requirements of such scheme ; and no building shall be constructed or reconstructed in any area in which building is expressly forbidden in the scheme, or which is reserved in the scheme for any purpose incompatible with building.

Power of responsible authority to enforce scheme.

17. (1) On and after the day on which the scheme comes into force, the responsible authority may make a provisional order requiring an owner—

(*a*) to remove, pull down or alter within a specified period any building or other work in the area included in the scheme which is such as to contravene the scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with; or

(*b*) to execute within a specified period any work which it is the owner's duty to execute under the scheme, where the responsible authority is of opinion that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) The responsible authority shall serve a copy of the provisional order made under Sub-section (1) on the owner, together with a notice requiring him to show cause, within a reasonable time to be specified in such notice, why the order should not be confirmed.

(3) If the owner fails to show cause to the satisfaction of the responsible authority, the responsible authority may confirm the order granting such further period, as it may deem fit, to execute the work and such order shall be communicated to and be binding on the owner and may be enforced. The expenses of enforcement may be recovered in the prescribed manner. An appeal shall lie to Our Government against the order of the responsible authority and their decision shall be final.

CHAPTER IV.

Compensation for injurious affection and contribution for Betterment.

Right to compensation.

18. Any person whose property is injuriously affected by any refusal to grant the permission applied for under Section 15 or by the making of a Town-planning scheme shall, if he makes a claim for the purpose within the time (if any) limited by the scheme, not being less than three months after the date of publication of a notification by Our Government sanctioning the scheme under Section 12, be entitled to obtain compensation in respect thereof from the Municipal Council.

No right to compensation for building, etc., subsequent to first notification.

19. A person shall not be entitled to obtain compensation under Section 18 on account of any building erected on, or contract made, or other thing done, with respect to land included in a scheme after the date of the publication of the notification under Section 8 or Section 10:

Provided that this provision shall not apply to any building erected, contract made or other thing done in accordance with a permission granted under Section 15.

Exclusion or limitation of compensation in certain cases.

20. (1) Where a property is alleged to be injuriously affected by reason of any provisions contained in a Town-planning scheme, no compensation shall be paid in respect thereof, if or in so far as the provisions are such as would have been enforceable without compensation under any law, Rule or bye-law at the time in force.

(2) Property shall not be deemed to be injuriously affected by reason of any provisions inserted in a scheme, which impose any conditions or restrictions in regard to any of the matters specified in Section 3, clause (*m*) or clause (*n*).

(3) Where a person is entitled to compensation under this Regulation in respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any other Regulation, he shall not be entitled to compensation in respect of that matter or thing under both the Regulations, nor shall he be entitled to any larger compensation under this Regulation than he would be entitled to under the other Regulation.

Application for sanction for withdrawal or modification of the scheme.

21. (1) The Municipal Council may, within three months from the date of an award of compensation in respect of property injuriously affected, make an application to Our Government to sanction the withdrawal or modification of all or any of the provisions of the scheme which gave rise to the claim for compensation and give notice of such application to the owner of such property.

(2) If Our Government accord such sanction, the award of compensation shall stand cancelled, and the Municipal Council shall pay the costs, if any, awarded by the arbitrator in connection with the claim for compensation.

(3) Nothing contained in this Section shall affect the right of the owner to make a fresh claim for compensation in respect of the modified scheme sanctioned by Our Government under Sub-section(2).

(4) No award of compensation in respect of property injuriously affected shall be enforceable within three months from the date thereof, or, if notice has been given under Sub-section (1), pending the orders of Our Government on the application made under the same Sub-section.

Power to levy betterment contribution.

22. Where by the making of any Town-planning scheme the value of any property has increased or is likely to increase the Municipal Council, if it makes a claim for the purpose within the time (if any) limited by the scheme, not being less than three months after the date of publication of a notification of Our Government sanctioning a scheme under Section 12, shall be entitled to recover from the owner of such property an annual betterment contribution for such term of years and at such uniform percentage of the increase in value not exceeding ten per centum as may be fixed in the scheme:

Provided that the aggregate amount of the contributions so recovered shall not exceed one-half of the maximum increase in value during the aforesaid term of years as ascertained under the next following Section.

Betterment contribution how calculated.

23. The betterment contribution shall be levied according to the following principles:—

(*a*) In respect of each property on which the contribution may be levied under Section 22 its market value at the date of the publication of the notification under Section 8 or Section 10 shall be estimated without reference to the improvements contemplated in the scheme.

(*b*) In each of the financial years following that in which the scheme takes effect under Section 12, Sub-section (6), the market value of each such property on the first day of Chingam of that year shall be estimated by the Chairman.

(*c*) If, in any financial year, the market value estimated under clause (*b*) does not exceed that estimated under

clause (*a*), no betterment contribution shall be levied for that year.

(*d*) If, in any financial year, the estimated market value under clause (*b*) exceeds that under clause (*a*), the Municipal Council shall levy on the difference a betterment contribution according to the percentage fixed in the scheme :

Provided that in estimating the market value of land under clause (*a*) or clause (*b*) the value of buildings or other works erected or in the course of erection on such land shall not be taken into consideration.

Assessment and collection of betterment contribution.

24. (1) The betterment contribution shall be a first charge on the property on which it is due, subject to the prior payment of land revenue, if any, due to Our Government thereon, and shall be paid in half-yearly instalments of one-half of the amount fixed for the year.

(2) (*a*) Our Government may make Rules for the assessment and collection of the betterment contribution and subject to such Rules, (i) the Chairman shall have the same powers and shall adopt the same procedure for the assessment and collection of the betterment contribution as he has for the assessment and collection of the house tax or property tax, (ii) persons affected shall have the same right to receive notice of the assessment and to object to the assessment and to appeal in respect thereof as they have in respect of the building or land tax or property tax as the case may be and (iii) decisions on appeal shall to the same extent be final and conclusive; and

(*b*) lands and buildings exempt from the building or land tax or property tax as the case may be shall also be exempt from any betterment contribution,

Option of objecting owner to require Council to acquire his property.

25. (1) If the owner of any property, separately registered in the Municipal assessment books and assessed to a betterment contribution in any particular year, objects to the amount of such contribution on the ground that the market value estimate under

clause (*b*) of Section 23 is excessive, he shall state the market value which, he contends, is correct, and may, within thirty days of the date on which the determination of his objection or appeal becomes final, by written notice, require the Municipal Council to acquire the property together with any buildings or other works that may exist thereon.

(2) The Council shall thereupon either acquire the property or accept the market value as stated by the owner and revise its assessment of the betterment contribution in accordance therewith.

(3) In case the Council elects to acquire the property, the compensation payable therefor shall be determined according to the provisions of the Land Acquisition Regulation, XI of 1089, as modified by Chapter VII of this Regulation:

Provided that the compensation payable for the property, apart from the buildings or other works thereon, shall not exceed the market value stated by the owner under Sub-section (1)

CHAPTER V.

The Arbitrator.

Government to appoint arbitrator.

26. (1) After a scheme has been sanctioned Our Government may, and if so required by the Council or any person interested in the scheme shall, appoint an arbitrator with sufficient establishment to discharge all or any of the following duties:—

(*a*) to pass such orders as may be required under clauses (*a*) to (*d*) of Sub-section (2) of Section 4;

(*b*) to define, and, where necessary, to demarcate, or cause the demarcation of, the reconstituted plots or the areas allotted to, or reserved for, the purposes mentioned in clause (*k*) of Section 3;

(*c*) to decide, in reference to the claims made, whether any property is injuriously affected within the meaning of Section 18 and award the compensation, if any, to be paid to the owner concerned in accordance with the provisions contained in Chapter IV; and

(*d*) to determine, in reference to the claims made, the properties which are liable to the betterment contribution

under Section 22 and estimate and record their market value at the date of the notification under Section 8 or Section 10 as the case may be in accordance with the provisions of clause (*a*) of Section 23.

(2) The decisions of the arbitrator under clauses (*a*) and (*b*) of Sub-section (1) shall be read as part of the scheme sanctioned under Section 12 and shall be final and binding on all persons:

Provided that where any such decision is in conflict with any provision in the scheme it shall require the approval of Our Government and, on such approval being given, shall be deemed, to the extent mentioned in such decision, to have varied the sanctioned scheme.

Powers and duties of arbitrator.

27. (1) The arbitrator shall give notice of his proceedings and conduct them in the prescribed manner and communicate his decision to the parties concerned.

(2) An arbitrator shall have all the powers of a Civil Court under the Code of Civil Procedure, 1100, for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and compelling the production of documents and material objects.

(3) The costs of and incidental to all proceedings before the arbitrator shall be in his discretion and the arbitrator shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid.

Appeal against arbitrator's decision.

28. (1) Any party aggrieved by any decision of the arbitrator under clause (*c*) or clause (*d*) of Sub-section (1) of Section 26 may, within three months from the date of the communication of such decision, appeal to the High Court.

(2) The decision of the arbitrator under clause (*c*) or clause (*d*) of Sub-section (1) of Section 26 and, when an appeal has been preferred under Sub-section (1), the decision on such appeal shall be read as part of the scheme sanctioned under Section 12 and shall be final and binding on all persons.

CHAPTER VI.

Finance.

Municipal town-planning fund.

29. (1) The receipts of a Municipal Council under this Regulation or any town-planning scheme made thereunder shall form a separate town-planning fund and all expenditure under this Regulation or any town-planning scheme thereunder shall be defrayed out of such fund. No portion of the fund shall, except with the sanction of Our Government, be expended for purposes not provided for by this Regulation.

(2) The moneys required, in the first instance, to establish such fund, and any deficiency from time to time occurring in such fund by reason of the excess of expenditure over receipts shall, subject to such Rules as Our Government may frame in this behalf, be supplied out of the general municipal fund or out of moneys borrowed in pursuance of this Regulation.

(3) Separate accounts shall be maintained by each Municipal Council for its town-planning fund.

Power to borrow.

30. A Municipal Council taking action under this Regulation shall be deemed to have the same powers and be subject to the same laws and rules for the purpose of borrowing money as it has and is subject to for general municipal purposes, and the making and execution of a town-planning scheme shall be deemed a municipal purpose for which money may lawfully be borrowed.

Government grants or loans to town-planning fund.

31. Our Government may, subject to such terms and conditions as may be prescribed, give loans or grants to any Municipal Council towards its town-planning fund.

CHAPTER VII.

Land Acquisition.

Modification of Land Acquisition Regulation.

32. Immovable property required for the purposes of town-planning scheme shall be deemed to be land needed for a purpose within the meaning of the Land Acquisition Regulation, XI of 1089, and may be acquired under the said Regulation modified in the manner provided in this Chapter.

Notification under Section 12 to have effect as declaration under Section 6 of the Land Acquisition Regulation.

33. Notwithstanding anything in the Land Acquisition Regulation, XI of 1089, a notification under Section 12 shall operate in respect of any land required for the purposes of the scheme as a declaration under Section 6 of the said Regulation and no further declaration be necessary, but it shall not be incumbent on our Government or officer authorised in that behalf, to take immediate steps for the acquisition of such land: Provided that if the land is not acquired within three years from the date of the notification, it shall cease to have effect as a declaration under Section 6 of the Land Acquisition Regulation, XI of 1089.

Sections 14, 22 and 23 of the Land Acquisition Regulation superseded.

34. (1) The provisions of Sections 14, 22 and 23 of the Land Acquisition Regulation, XI of 1089, shall have no application in the acquisition of property for the purposes of this Regulation.

(2) In determining the amount of compensation to be awarded for land acquired under the said Regulation for such purposes the Division Peishkar and the Court shall take into consideration—

(*a*) the market value of the land at the date of publication of the notification under Section 8 or Section 10 as the case may be;

(*b*) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Division Peishkar's taking possession thereof;

(*c*) the damage (if any) sustained by the person interested, at the time of the Division Peishkar's taking possession of the land, by reason of severing such land from his other land or by reason of the acquisition injuriously affecting his other property movable or immovable in any other manner, or his earnings: Provided that this clause shall not apply in the case of offensive industries, which must, under the provisions of the scheme, be removed;

(*d*) if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any)

incidental to such change: Provided that this clause shall not apply in the case of offensive industries, which must, under the provisions of the scheme, be removed.

(3) But the Division Peishkar and the Court shall not take into consideration—

(*a*) the degree of urgency which has led to the acquisition or its compulsory character;

(*b*) any disinclination of the person interested to part with the land acquired;

(*c*) any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit;

(*d*) any damage which is likely to be caused to the land acquired after the date of publication of the notification under Section 8 or Section 10, as the case may be, by or in consequence of the use to which it will be put;

(*e*) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

(*f*) any outlay or improvements on the land acquired commenced, made or effected after the date of publication of the notifications referred to in clause (*d*), unless they are covered by a permission obtained under Section 15;

(*g*) any outlay or improvements on, or disposal of, the land acquired which, having regard to the time at which they were made and other circumstances appear to have been commenced, made or effected with intent to obtain increased compensation;

(*h*) the special suitability or adaptability, if any, of the land for any purpose, if that purpose is one to which it could be applied only in pursuance of statutory powers or for which there is no market apart from the special needs of a particular purchaser or the requirements of a Government Department or any local authority.

(4) If the market value of any land or building is specially high by reason of the use thereof in a manner which could be restrained by any Court, or is contrary to law or public policy or is detrimental to the health of the inmates of the building or to the public health, the amount of the increased value due to such user shall be disregarded in determining the amount of compensation.

CHAPTER VIII.

Miscellaneous.

Power of Councils to make agreements.

35. A Municipal Council shall be competent to make an agreement with any person in respect of any matter which is to be provided for in a town-planning scheme, subject to the power of Our Government to modify or disallow such agreement, and, unless it is otherwise expressly provided thereon, such agreement shall take effect on and after the day on which the scheme comes into force :

Provided that if the agreement be modified by Our Government, either party shall have the option of avoiding it if he so elects within the prescribed period.

Town-planning Committee.

36. Subject to such Rules as Our Government may make in this behalf, a Municipal Council may appoint a special town-planning committee composed either wholly of members of the Municipal Council, or partly of such members and partly of others, and may delegate to such committee power to dispose of, in relation to a particular scheme or to town-planning in general, matters of a specified nature which, under the provisions of this Regulation, are reserved for the decision of the Council :

Provided that no person, other than a member of the Council, shall be appointed to such committee unless such appointment is supported by not less than one-half of the sanctioned strength of the Council :

Provided also that the number of persons who are appointed to any committee who are not members of the Council shall not exceed one-third of the number of members of such committee,

Joint town-planning committee.

37. (1) Subject to such Rules as Our Goverment may make in this behalf, a Municipal Council may, and if so required by Our Government, shall, join with one or more than one other local authority in constituting a joint town-planning committee for the making of a joint town-planning scheme or for any purpose connected with town-planning in which they are jointly interested or for which they are jointly responsible.

(2) A joint town-planning committee may include persons who are not members of the local authorities concerned but who possess in their opinion special qualifications or represent institutions or corporations interested in the work of the committee.

Provided that the number of such persons shall not exceed one-third of the total number of members of the joint committee.

(3) (i) Our Government may make Rules to carry out the purposes of Sub-section (1).

(ii) In particular and without prejudice to the generality of the foregoing power Our Government may make Rules to provide for—

(*a*) the total number of members of the joint committee;

(*b*) the number of such members who shall be members of the local authorities concerned and the number of such members who may be outsiders;

(*c*) the qualifications of persons who shall be members of the joint committee or the manner in which they shall be appointed or elected;

(*d*) the qualifications of the person who shall be the chairman of the joint committee or the manner in which he shall be elected or appointed;

(*e*) the term of office of members and chairman;

(*f*) the manner in which the committee shall be put in funds and shall account therefor; and

(*g*) the procedure of the committee.

(4) Rules made under Sub-section (1) or (3) may be varied or revoked, provided all the local authorities concerned assent to such variation or revocation.

(5) If any difference of opinion arises between local authorities under any of the foregoing provisions of this Section, it shall be referred to Our Government whose decision shall be final.

(6) If Our Government take action under Sub-section (1) they may issue such directions as they may think necessary or desirable in respect of all or any of the matters referred to in Sub-section (3).

(7) When a joint town-planning committee has been constituted such committee shall exercise the powers and perform the duties of the Municipal Council, and its chairman the powers and duties of a chairman under this Regulation.

(8) Any joint town-planning scheme made by a joint committee may provide for the execution of the scheme or any part thereof jointly by all or two or more of the local authorities concerned or specify the parts of the scheme to be executed at the expense of the several local authorities in their respective areas and the said specified parts of the scheme shall after the publication of the notification under Section 12 have effect in the areas to which they relate as separate schemes.

Power of Government to arbitrate in disputes between local authorities.

38. Any dispute between any two local authorities in regard to any matters arising under any of the provisions of this Regulation shall, in case of their failure to settle it amicably between themselves, be referred for adjudication to Our Government whose decision shall be final.

Powers of control of Government.

39. (1) If Our Government are satisfied, after giving the Municipal Council an opportunity of explanation and considering any other representations that may be made to them, that a Municipal Council—

(*a*) has failed to take the requisite steps for having a satisfactory town-planning scheme prepared and sanctioned in a case where a town-planniug scheme ought to be made, or

(*b*) has failed to adopt any scheme proposed by owners of any land in a case where the scheme ought to be adopted, or

(*c*) has unreasonably refused to consent to any modifications or conditions imposed by Our Government,

Our Government may, as the case may require, order the Municipal Council to prepare and submit for the approval of Our Government such a town-planning scheme or to adopt the scheme, or to consent to the modifications or conditions so inserted;

Provided that, where the Municipal Council has failed to adopt a scheme, Our Government, in lieu of making such an order as aforesaid, may approve the proposed scheme, subject to such modifications or conditions, if any, as Our Government think fit, and thereupon the scheme shall have effect as if it had been adopted by the Municipal Council and sanctioned by Our Government.

(2) If Our Government are satisfied, after giving the Municipal Council or the responsible authority as the case may be an opportunity of explanation, that a Municipal Council or a responsible authority has failed to enforce effectively the observance of a scheme which has been finally sanctioned, or any provisions thereof, or to execute any works which under the scheme or this Regulation the Council or the responsible authority is required to execute, Our Government may order the Council or the responsible authority to do all things necessary for enforcing the observance of the scheme or any provisions thereof effectively, or for executing any works, which, under the scheme or this Regulation, the Council or the responsible authority is required to execute.

(3) For the purposes of this Section Our Government shall have the same powers of calling for records, of causing inspection to be made, and of enforcing their orders or appointing persons to enforce them as they have under the enactment relating to Municipalities for the time being in force.

Powers of entry, etc.

40. For the purpose of the making or execution of any town-planning scheme, the Municipal authorities or the responsible authority or persons appointed by Our Government under Section 39, Sub-section (3), their subordinates and contractors shall have the same power to enter upon, survey and set up marks on property and to do all acts necessary for such purposes, subject to the same conditions and restrictions, as they have for other municipal purposes under the enactment relating

to the Municipalities for the time being in force, and persons interfering with the exercise of such powers by the Municipal authorities or the responsible authority or persons appointed by Our Government, their officers, servants or contractors, shall be liable to the same penalties.

Power of Government to make Rules.

41. (1) Our Government may make Rules consistent with this Regulation, either generally or for any particular area, to carry out all the purposes of this Regulation and such Rules may be incorporated in any scheme by a reference thereto in the scheme, subject to any modifications that may be set out in the scheme.

(2) In particular and without prejudice to the generality of the foregoing power, Our Government shall have power to make Rules in respect of the following matters :—

(*a*) the manner of publication of the notifications under Section 8 and of the draft scheme under Section 9 ;

(*b*) the further particulars or plans for inclusion in schemes under Section 3, clause (*q*) and Section 11, Sub-section (1), clause (*g*);

(*c*) the scale of all plans made under this Regulation, the particulars to be shown in them, the manner in which such particulars shall be shown, the colouring of such plans and all such matters;

(*d*) what streets or roads and improvements thereto provided in a town-planning scheme shall be made or carried out at the expense of the Municipal Council, the owners of the property or both,

(*e*) the kinds of expenditure connected with town-planning which shall be met out of current revenues and those that shall be met out of loans or other capital receipts;

(*f*) what receipts shall be credited to the town-planning fund referred to in Section 29 and what expenditure shall be debited to it;

(*g*) the powers that may be delegated to the committees constituted under Section 36 ;

(*h*) the manner in which all documents and plans prepared under this Regulation shall be made accessible to the public;

(*i*) the procedure to be adopted for securing co-operation on the part of the Municipal authorities with the owners or persons interested in the property proposed to be comprised in a town-planning scheme by such means as may be expedient, the summoning, presidency and procedure of such conferences and all such matters;

(*j*) the procedure to be observed by the Municipal Council and responsible authority, in cases where owners commit default, or delay the carrying out of works or improvements, and for recovering the cost from the owners liable therefor;

(*k*) the securing of reasonable speed in the preparation or adoption of schemes by Municipal Council and the procedure to be followed for enabling Our Government to act in the case of default or dilatoriness on the part of the Municipal Council or the responsible authority in making, adopting or executing a scheme and to recover from such Council the expenses of such action;

(*l*) the calculation, assessment and collection of the betterment contribution;

(*m*) the regulation of the procedure before the arbitrator;

(*n*) the delegation of powers to and the duties that shall be discharged by, the Director, and the matters on which and the manner in which he shall be consulted by Municipal Councils and responsible authorities;

(*o*) the accounts that each Municipal Council shall keep for its town-planning fund, and their audit;

(*p*) inquiries and reports as to the beginning and the progress and completion of works and other action under any scheme;

(*q*) sanitary principles and building regulations to be observed in drawing up schemes;

(*r*) the funds which shall be transferred by the Municipal Council to the responsible authority, the administration

of such funds, the accounts to be kept in respect thereof and their audit;

(*s*) matters other than those referred to in the foregoing clauses which are expressly required or allowed by this Regulation to be prescribed.

(3) In making any Rule, Our Government may provide that a breach thereof shall be punishable with fine which may extend to one hundred rupees.

Previous publication of the Rules.

42. The power to make Rules under this Regulation shall be subject to the condition of previous publication.

Penalty for breach of the provisions of the scheme.

43. (1) Where a scheme sanctioned under this Regulation has provided that any person who commits or knowingly permits a breach of any specified provision of the scheme or who neglects or fails to comply with any such provision shall be punishable under this Section, the responsible authority shall send to any person who commits or knowingly permits a breach of any such provision of the scheme or neglects or fails to comply with any such provision, a notice calling on him to discontinue the breach or cause it to be discontinued or to comply with such provision of the scheme.

(2) If after the expiry of one month from the date of receipt of the notice by such person under Sub-section (1) the breach or neglect or failure continues, such person shall, on conviction, be punishable—

(i) with fine which may extend to one hundred rupees, and

(ii) if the breach, neglect or failure continues after such conviction, with fine which may extend to fifteen rupees for every day during which the breach, neglect or failure continues after such conviction.

CHAPTER IX.

Town-Planning Trusts.

Creation of Town-planning Trusts.

44. (1) When Our Government, after consulting the Municipal Council, decide that the interests of town-planning in any particular area will be best served by entrusting it to a special board, they may, by notification in Our Government Gazette, constitute such board, to

be called "The (name of town or other area) Town-Planning Trust" hereinafter referred to as "The Trust"; and thereupon the duty of carrying out the provisions of this Regulation in such local area shall, subject to the conditions and limitations hereinafter contained, be vested in the trust.

(2) The trust shall be a body corporate and have perpetual succession and a common seal and shall by the aforesaid name sue and be sued.

Constitution of trusts.

45. (1) The trust shall consist of—

(*a*) a chairman appointed by Our Government;

(*b*) persons elected by the members of the Municipal Council or of other local authorities or both; and

(*c*) persons appointed by Our Government either by name or by virtue of their office.

(2) The trust may also include representatives of transport companies, chambers of commerce, co-operative societies and similar bodies or associations, either elected or nominated by them.

(3) Our Government shall fix the strength of the trust, the number of trustees to be elected under clause (*b*) of Sub-section (1), the local authorities by whom they shall be elected, the number of trustees to be appointed by Our Government under clause (*c*) of Sub-section (1) and the number of trustees to be elected or nominated under Sub-section (2) and the bodies or associations by whom they shall be elected or nominated: Provided that the number of trustees appointed by Our Government shall not exceed one-third of the sanctioned strength.

(4) Each trustee shall hold office for five years.

Chairman may be given salary.

46. The chairman of the trust may receive such salary or remuneration as may be sanctioned by Our Government. No other trustee shall receive any salary or other remuneration from the funds of the trust.

Removal of trustees.

47. (1) Our Government may remove from the trust any trustee, other than an *ex-officio* trustee, who—

Sec. 47: (1) (c): The wording in Section 48 (1) (*c*) of the Madras Act is as follows:—"(*c*) has been sentenced by a Criminal Court to imprisonment for a term exceeding six months or to transportation, or has been ordered to find

(*a*) refuses to act, or becomes incapable of acting, or absents himself for more than three consecutive months from the meetings of the trust or of any committee of which he is a member and is unable to explain such absence to the satisfaction of the trust, or

(*b*) is an undischarged insolvent or has compounded with his creditors, or

(*c*) has been convicted of any offence by a Criminal Court or has been ordered to find security for good behaviour under the Criminal Procedure Code, such conviction or order implying in the opinion of Our Government moral turpitude on the part of the person so convicted or ordered and not having been subsequently reversed or the offender pardoned, or

(*d*) has knowingly acquired or continued to hold, without the permission in writing of Our Government, directly or indirectly or by a partner, any share or interest in any contract or employment, with, by, or on behalf of, the trust, or

(*e*) has knowingly acted as a trustee in a matter other than a matter referred to in clause (iv) or clause (v) of the proviso to this Sub-section in which he or a partner had directly or indirectly, a personal interest, or in which he was professionally interested on behalf of a client, principal or other person, or

(*f*) being a legal practitioner in any suit or other proceedings, acts or appears on behalf of any other

---

security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned, or." This was adopted in the original Bill and passed by the Select Committee. When the Bill was considered by the Council, a Non-official member brought forward an amendment "intended to secure a seat as trustee to persons who might be convicted according to the Criminal Procedure Code for a political offence which may not involve *moral turpitude*, There are the temperance and other movements, and prohibition orders are in plenty. It is likely that the security sections are applied to respectable persons and useful citizens. My intention is just to prevent such useful members of society from being stigmatised, in regard to the trusts which are to work for the good of the people." After discussion, on the suggestion of the Official Member in charge, the wording of the amendment was changed into what now appears in the Section, and the amendment was carried.—*L. C. P., dated 23-4-1932.*

person against the trust or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the trust:

Provided that a person shall not be deemed for the purpose of Sub-section (1) to acquire or continue to have any share or interest in a contract or employment by reason only of his—

(i) having a share or interest in any lease, sale or purchase of land or buildings, or in any agreement for the same, provided that such share or interest was acquired before he became a trustee, or

(ii) having a share in a joint-stock company which shall contract with, or be employed by, or on behalf of, the trust, or

(iii) having a share or interest in a newspaper in which an advertisement relating to the affairs of the trust is inserted, or

(iv) holding a debenture or otherwise being interested in a loan raised by, or on behalf of, the trust, or

(v) being retained by the trust as a legal practitioner, or

(vi) having a share or interest in the occasional sale of an article, in which he regularly trades, to the trust to a value not exceeding in any one year, such amount as the trust, with the sanction of Our Government, may fix in this behalf.

(2) Our Government may remove from the trust a trustee who in their opinion has so abused his position as a trustee as to render his continuance as a trustee detrimental to the public interest:

Provided that when Our Government propose to take action under the foregoing provisions of this Section an opportunity of explanation shall be given to the trustee concerned, and when such action is taken, the reasons therefor shall be placed on record.

Disabilities of trustees removed.

48. (1) A trustee removed under clause (*a*) or clause (*c*) of Sub-section (1) of Section 47, or under Sub-section (2) of that Section shall not be eligible for further election or nomination for a period of three years from the date of his removal.

(2) A trustee removed under clause (*b*) of Sub-section (1) of Section 47 shall not be so eligible until he has obtained his discharge or has paid his creditors in full, as the case may be.

(3) A trustee removed under any other provision of Section 47 shall not be so eligible until he is declared to be no longer ineligible and he may be so declared by an order of Our Government.

Application to trusts of this Regulation and their power to borrow.

49. (1) When a trust has been duly constituted, the provisions of Chapters I to VIII of this Regulation shall, within the area entrusted to it for town-planning purposes, apply in full as though the words "trust" and "chairman of the trust" were substituted for "Municipal Council" and "chairman of the council or chairman."

(2) A trust constituted under this Chapter shall for the purpose of borrowing money have the same powers and be subject to the same laws and rules as a Municipal Council under Section 50.

Payment to trust by Municipal Councils.

50. The Municipal Council in whose area a trust operates shall pay annually to the trust such amount as may be agreed on between them or as may be fixed by Our Government.

Vesting in Municipal Council of streets laid out or altered and open spaces provided by the trust under a scheme.

51. (1) Whenever the Municipal Council is satisfied—

(*a*) that any street laid out or altered by the trust has been duly levelled, paved, metalled, flagged, channelled, sewered, and drained in the manner provided in the scheme sanctioned by Our Government under this Regulation, and

(*b*) that such lamps, lamp-posts, and other apparatus as the Municipal Council may consider necessary for the lighting of such street and as ought to be provided by the trust have been so provided, and

(*c*) that water and other sanitary conveniences ordinarily provided in a Municipality have been duly provided in such street,

the Municipal Council, after obtaining the assent of the trust or failing such assent, the assent of Our Government under Subsection (3), shall, by a written notice affixed in some conspicuous position in such street, declare the street to be a public street; and the street shall thereupon vest in the Municipal Council, and shall thenceforth be maintained, kept in repair, lighted, and cleansed by the Municipal Council.

(2) When any open space for purposes of ventilation or recreation has been provided by the trust in executing any scheme, it shall, on completion, be transferred to the Municipal Council by resolution of the trust and shall thereupon vest in and be maintained at the expense of the Municipal Council:

Provided that the Municipal Council may require the trust, before any such open space is so transferred, to enclose, level, turf, drain and lay out such space and provide foot-paths therein, and if necessary, to provide lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the trust and the Municipal Council in respect of any matter referred to in the foregoing provisions of this Section, the matter shall be referred to Our Government, whose decision shall be final.

Ultimate dissolution of trust and transfer of its assets and liabilities to Municipal Council.

52. (1) When the trust created for an area has executed all schemes sanctioned under this Regulation, or so far executed them as to render its continued existence, in the opinion of Our Government, unnecessary, Our Government may by notification declare that the trust shall be dissolved from such date as may be specified in this behalf in such notification; and the trust shall be deemed to be dissolved accordingly.

(2) From the said date—

(*a*) all properties, funds and dues which are vested in or realisable by the trust and the chairman, respectively, shall vest in and be realisable by the Municipal Council and the chairman of the council, respectively; and

(*b*) all liabilities which are enforceable against the trust shall be enforceable only against the Municipal Council; and

(*c*) for the purpose of completing the execution of any scheme, sanctioned under this Regulation, which has not been fully executed by the trust, and of realising properties, funds, and dues referred to in clause (*a*), the functions of the trust and the chairman under this Regulation shall be discharged by the Municipal Council and the chairman of the council, respectively.

Power of Government to make Rules for trusts.

53. (1) Our Government shall have power to make Rules not inconsistent with this Regulation and applicable to all trusts or to any trust—

(*a*) as to the election, nomination and appointment of trustees, and the commencement of their terms of office;

(*b*) as to the resignation by trustees of their offices, and the filling of casual vacancies;

(*c*) as to the meetings of the trust, the procedure to be followed in summoning, adjourning and conducting the proceedings of such meetings;

(*d*) as to the constitution of committees of trust and the function that may be delegated to them;

(*e*) as to the officers and servants who may be employed by the trust, the authority by whom they may be appointed and punished, the salaries of such officers and servants and the institution, where necessary, of a provident fund or gratuity system for their benefit;

(*f*) as to the accounts to be kept and the returns to be submitted by the trust;

(*g*) as to the manner in which the accounts of the trust shall be audited and published and as to the powers of auditors in respect of disallowance and surcharge;

(*h*) as to the making and execution of contracts on behalf of the trust;

(*i*) as to the mutual relations, financial and other, of a trust and local authorities; and

(*j*) generally for the guidance of trusts and public officers in all matters connected with the carrying out of the provisions of this Regulation.

(2) Every trust may from time to time, with the previous sanction of Our Government, make bye-laws consistent with this Regulation and with any Rules made thereunder for carrying out the purposes of this Regulation.

CHAPTER X.

Transfer of Proceedings.

Transfer of proceedings from one authority to another.

54. (1) Our Government may, by notification and from a date to be specified in such notification, transfer the proceedings commenced under this Regulation in respect of any land by any authority having jurisdiction to any other authority having jurisdiction over such land.

(2) Before issuing a notification under Sub-section (1) Our Government shall communicate to the authorities affected the grounds on which they propose to make the transfer, fix a reasonable period for them to show cause against the proposal and consider their objections, if any.

(3) The authority to whom a transfer of proceedings is made under Sub-section (1) may continue such proceedings from the stage which they had reached on the date specified in the notification.

(4) When making a transfer of proceedings under Sub-section (1) Our Government may direct the authority to whom the transfer is made to reimburse the authority from whom the transfer is made the net expenditure which the last mentioned authority may, up to the date of such transfer, have incurred on such proceedings.

(5) From the date specified in the notification under Sub-section (1) all rights and assets which, for the purposes of the proceedings transferred by such notification are vested in, and all obligations and liabilities which for the same purposes are enforceable against, the authority from whom the transfer is made, shall vest in or be enforceable against the authority to whom the transfer is made.

REGULATION V OF 1108.

A Regulation to amend the Travancore Wills Regulation, VI of 1074

Passed by His Highness the Maha Raja of Travancore, under date the 17th Dhanu 1108, corresponding to the 31st December 1932, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to amend the Travancore Wills Regulation 1074, (VI of 1074), for the purpose hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. This Regulation may be called "The Travancore Wills (Amendment) Regulation, 1108" and it shall come into force at once.

Deletion of Section 8.

2. Section 8 of the Travancore Wills Regulation 1074, (VI of 1074), shall be omitted.

Regn. V of 1108: I. *Objects and Reasons.*—"Section 8 of the Travancore Wills Regulation, VI of 1074, deals with the testamentary power of Marumakkathayam Mahomedans. The Muslim Succession Bill which has been already reported to the Council by its Select Committee takes away the Marumakkathayam law of inheritance prevalent among certain sections of the Muslims relating to properties subject to testamentary powers. When the Muslim Succession Bill becomes law, there will be no Muslim who follows Marumakkathayam inheritance as the Mahomedan law of inheritance takes the place of Marumakkathayam law of inheritance in the Muslim Succession Bill. Therefore Section 8 in the Wills Regulation dealing with the testamentary power of the Muslims following Marumakkathayam law becomes meaningless. Further, the presence of it in the Wills Regulation may give rise to unnecessary litigations. The Select Committee members on the Muslim Succession Bill have anticipated this difficulty and made observations in the report for the necessity of repealing Section 8 of the Wills Regulation. By this Bill, I am only carrying out the wishes of the Select Committee on the Muslim Succession Bill."—*S. O & R.*

II. The Bill was brought in by a Mahomedan Non-official member of the Council. It was published in the Gazette dated 7-6-1932, was introduced into the Council, and its principle was accepted at the meeting held on 13-8-1932 (*L. C. P., Vol. XXI, P. 1419*). It was not referred to a Select Committee, but was considered and posted for final reading at the meeting held on 19-12-1932 (*L. C. P., Vol. XXII, Pp. 619-620*). The Bill was finally read and passed at the meeting held on 20-12-1932 (*L. C. P., Vol. XXII, Pp. 709-710*). The Regulation was published in the Gazette dated 3-1-1933.

Sec. 2: Section 8 of the Wills Regulation, VI of 1074, to be omitted is as follows:—"8. *Testamentary power of Marumakkathayam Mahomedans.*—Every person who is a Mahomedan by faith but who follows the Marumakkathayam law of inheritance may dispose of by Will his self-acquired and separate property subject to the conditions laid down in Section 6."

REGULATION VI OF 1108.

A Regulation further to amend the Travancore Chitties Regulation of 1094, (III of 1094)

Passed by His Highness the Maha Raja of Travancore under date the 17th Dhanu 1108, corresponding to the 31st December 1932.

Preamble.

Whereas it is expedient further to amend the Travancore Chitties Regulation of 1094, (III of 1094, as amended by Regulations VII of 1097 and I of 1100) for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Regulation may be called "The Travancore Chitties (Amendment) Regulation, 1108."

Regn. VI of 1108: I. *Objects and Reasons.* (1) "It has been represented to Government that in view of the economic distress prevailing at present it should be made possible to postpone the instalments of chitties without much difficulty. The matter was considered by the Economic Development Board, and a Bill to amend the Chitties Regulation of 1094 was, subsequently, drafted and published in the Gazette. Since then, the matter was further considered by the Board, and their present recommendations are embodied in the new Section 52 proposed by Clause 3 of this Bill, to be added to the Regulation. This Section would enable instalments in chitties being postponed. But as a postponement for an indefinite period may not be economically beneficial, it is proposed that the postponement should not be for any period beyond a year; a power will however be reserved with the Government to allow further postponements according as the economic condition may demand from time to time. When an instalment is postponed the prized subscribers will pay six per cent. interest on the subscriptions due from them.

2. The Regulation declares that transactions partaking of the nature of a chitty but not falling within the statutory definition of it are void. It has been brought to the notice of Government that, nonetheless many such transactions, *e. g.*, the "Kurichitties" are now started and conducted. Government feel that a penalty should be imposed for the conduct of, and participation in, such transactions. A new Section (Section 53) is proposed therefore to be added for the purpose (See Clause 3 of the Bill)."—*S. O & R.*

(2) In introducing the Bill, the Official Member in charge said:—"There are two distinct principles involved. The first is the provision for the postponement of the instalments of a chitty and the other is a provision for penalising what is called the Kurichitties.

In regard to the first, namely, the postponement of the instalments of a chitty, the reason for the introduction of the proposed measure is that representations have been made to the Government that owing to the scarcity of money in the country some special remedy or machinery must be provided for the postponement of the instalments of a chitty so that people who have not the money to

(2) It shall come into force at once.

Amendment of Section 3.

2. In Section 3 of the Travancore Chitties Regulation of 1094, III of 1094, as amended by Regulations VII of 1097 and I of 1100, (hereinafter referred to as the said Regulation), after clause (11) the following clause shall be added, namely :—

"(12) 'Amendment Regulation' means the Travancore Chitties (Amendment) Regulation, 1108".

---

pay for the chitties may be afforded sufficient facilities for continuing in the chitty without being treated as defaulters. At the same time, it is thought that the power to postpone should not be allowed indefinitely. It is therefore proposed at present that the power should be exercised for postponement only to the extent of one year, and after that power should be left to the Government to prescribe further periods of say one year or two years, according as the economic conditions improve or not for which the postponement may be made. This matter was considered by the Economic Development Board and it is on their advice that the measure has been drafted and practically it is their recommendation that is sought to be implemented by Clause 2 of the Bill, *i. e.*, the Section proposed to be added as Section 52 in the Regulation.

With regard to the other principle, the House is certainly aware that there is what is called Kurichits and there is a large number of them in the country. What are these Kurichits? Probably it may not be possible to generalise them in such a way as to bring all sorts of Kurichits under a firm definition, but most of them come within the meaning of the 'transactions *partaking* of the nature of chitties' which are declared void by the Chitties Regulation. Section 4 of the Regulation lays down that—'Transactions partaking of the nature of a chitty but not falling within the definition in Sub-section (1) of Section 3 are void.'

Then in the definition of 'Chitty' laid down by Section 3 (1), certain explanations and an illustration are given which will show what chitties are valid and what are void, and it will be seen that what are called Kurichitties are void. Although the Chitties Regulation declares that these transactions 'partaking of the nature of a chitty' are void, there is no provision in the Regulation to penalise them, that is to say, it is declared that such and such transactions are void, but what is the punishment for a person who still conducts such transactions and how is a person who is able to persuade other people to become subscribers to such transactions to be prevented. There is now no way. The transactions being void, the subscribers will not have any remedy in a Court of Law for claiming the prize. If he pays two or three rupees and soon after wins a prize amount of say Rs. 300 and the prize money is not paid to him, the prize winner cannot go to a Court of Law to help him to get the prize money. However, that is a different matter. Since the Kurichitty has been declared by law to be a void transaction and since there are many enterprises for carrying on these Kurichits, it is considered advisable that a penalty be imposed against the conduct of these chitties. Therefore, a Section is proposed to be added to the Chitties Regulation, namely, the proposed Section 53, which will penalise any person who conducts a Kurichitty or procures or solicits money, from people towards such chitties."—*L. C. P., dated 10-12-1932.*

II. The Bill was published in the Gazette dated 30-8-1932. The Bill was

Addition of new Sections 52 and 53.

3. In the said Regulation, after Section 51, the following Sections shall be added, namely :—

Resolution for altering Chitty dates.

"52. (1) Notwithstanding anything contained in the foregoing provisions, the date of any instalment, or the dates of the instalments, in a Chitty, as well as the date on which the Chitty is to terminate, may be altered by a resolution passed at a meeting, convened for the purpose, of the general body of the subscribers by a majority of not less than two-thirds in number of the subscribers present at the meeting, such majority being also not less than three-fourths in value of the general body of the subscribers. On such resolution being passed, the altered dates shall be deemed to be the provision of the Variola as if originally contained in the Variola and shall be subject in like manner to further alteration by a resolution similarly passed :

Provided that neither the date of any instalment in a Chitty nor the date for the termination of a Chitty shall, by such resolution, be postponed beyond one year from the date of the passing of the Amendment Regulation.

Explanation.—A subscriber may be present and vote at a meeting either in person or by proxy.

(2) A true copy of every such resolution shall be filed by the foreman with the Registrar within twenty-one days of the date of the resolution, in default of which the foreman shall be liable to a fine not exceeding one hundred rupees ; and every subscriber shall

---

introduced into the Council, and its principle was accepted, after long discussion at the meetings held on 10 and 17-12-1932 (*L. C. P., Vol. XXII, Pp. 68---107 and 569—579*). The Bill was not referred to a Select Committee. It was taken up as an emergency measure, considered and posted for final reading at the meetings held on 17,20 and 21-12-1932 (*L. C. P., Vol. XXII, Pp. 569-601, 710-735, and 789-791.*) The Bill was finally read and passed at the meeting held on 22-12-1932 (*L. C. P., Vol. XXII, Pp. 797-798*). The Regulation was published in the Gazette dated 3-1-1933.

For the Regulations referred to in the Preamble, see Volume IV, Pages 452-516 and Volume V, Pages 278 and 610.

Sec. 3 : *New Section 52.* (1). I. The words "such majority being also not less than three-fourths in value of the general body of the subscribers" occurring at the end of the first sentence, were not in the Bill as introduced. They were added at the final reading of the Bill, on the motion of the Official Member in charge who, to a query, said that the expression "general body of the subscribers" included prized as well as non-prized subscribers.—*L. C. P., dated 22-12-1932.*

be supplied by the foreman with a true copy of the resolution in default of which the foreman shall be liable to a fine not exceeding ten rupees.

(3) When the date of any instalment in a Chitty is postponed by a resolution passed under Sub-section (1) the amount of the subscription due from the prized subscribers shall carry interest at the rate of six per centum per annum from the original date of the instalment to the date to which the instalment was postponed, and such interest shall for all the purposes of this Regulation and of the contract between the parties be deemed to have become a part of the subscription due for the instalment. The amount of such interest shall, on the date to which the instalment was postponed, be distributed by the foreman amongst the non-prized subscribers rateably according to the value of the ticket held by each, provided that no defaulting subscriber shall be entitled to receive any amount in the distribution.

Illustration.

(*a*) If the date of an instalment in a Chitty is postponed from the 1st Chingom to the 1st Kumbham and the subscription due from a prized subscriber is Rs. 100, he will have to pay Rs. 103 on the 1st Kumbham; if by his default to make payment on that date he becomes liable to pay in a lump the defaulted as well as the future subscriptions, the subscription due on the 1st Kumbham will be taken to be Rs. 103.

(*b*) If there are ten prized subscribers in the Chitty each having to pay a subscription of Rs. 100, which by the addition of interest is enhanced to Rs. 103, the total amount representing the interest portion of the subscriptions is Rs. 30; this amount, whether actually collected or not, shall be distributed by the foreman amongst the non-prized subscribers: or if any non-prized subscriber so agrees, may be credited towards the subscription due from him. If any non-prized subscriber becomes a defaulter as regards the payment of his subscription he will not be given any portion of the interest, and what was allotable in respect of his ticket will be taken by the foreman.

II. In the Proviso, the original Bill contained the words "or beyond such further period or periods as Our Government may fix from time to time" at the end after the word "Regulation." See Statement of Objects and Reasons above. The words were deleted on the motion of a Non-official member.—*L. C. P., dated 20-12-1932.*

III. The Explanation was added on the motion of the Official Member in charge who said—"It may not always be possible for subscribers to be present at a meeting. * * On the analogy of the provision in the Companies Regulation, this amendment has been drafted."—*L. C. P., dated 20-12-1932.*

(4) (*a*) The foreman may convene the meeting referred to in Sub-section (1) on his own initiative, and

(*b*) the foreman shall convene such a meeting on the requisition of not less than twenty-five per cent. of the number of subscribers, and if the foreman refuses or omits to call the meeting to take place within twenty-one days of the receipt of such requisition, more than fifty per cent. of the number of subscribers may convene the meeting; and the foreman so refusing or omitting to call the meeting shall, on conviction, be liable to a fine which may extend up to one hundred rupees.

(*c*) In every case of a meeting being convened, not less than fourteen days' notice shall be given to the subscribers specifying the date, hour and place of meeting.

Punishment for partaking in transactions declared void by Section 4.

53. Any person who conducts or is responsible for the conduct of any transaction of the nature of those declared void by Section 4 and any person who pays any money towards any such transaction or collects or solicits any money for any such transaction shall be punishable with imprisonment of either description for a term which may extend to six months or with fine or with both ".

Sec. 3: *52 (4).* Sub-section (4) was not in the original Bill and was put in on the motion of the Official Member in charge who said:—"This amendment is intended to provide the machinery for calling a meeting. If the foreman calls a meeting it is alright. If he refuses to call a meeting, 25 per cent of the number of subscribers can demand to convene a meeting. If he does not respond to that, then this provision will apply. The House may ask an explanation as to why I have provided that more than 50 per cent. of the subscribers can convene a meeting. If any number less than 50 per cent. can convene, then a meeting may be convened in two different places and conflicts will then arise. * To avoid such conflicts, I have provided that more than 50 per cent. of the number of subscribers may convene a meeting. *"—*L. C. P., dated 20-12-1932.*

REGULATION VII OF 1108.

THE TRAVANCORE KSHATRIYA REGULATION.

CONTENTS.

CHAPTER I.

Preliminary.

Preamble.

Sections.

1. Short title, commencement and application.
2. Definitions.

CHAPTER II.

Marriage and its Dissolution.

3. Classes of conjugal unions of Kshatriyas which are valid marriages.
4. Registration of marriage.
5. Invalidity of subsequent marriage.
6. Dissolution of marriage.
7. Petition for dissolution of marriage.
8. Notice to be given to counter-petitioner.
9. When and how order of dissolution should be passed.
10. Court order of dissolution to be forwarded to authority registering marriages.
11. The provisions of Nayar Regulation to govern dissolution of marriages of Kshatriya males with Nayar females.

CHAPTER III.

Guardianship.

12. Guardianship of minor wife and children.

CHAPTER IV.

Testamentary Powers.

13. Testamentary disposition.

CHAPTER V.

Intestate Succession.

14. Where intestate Kshatriya male has left widow, mother or lineal descendants.

15. Rules of distribution of estate under Section 14.
16. Where intestate Kshatriya has left widow and mother only.
17. Where intestate Kshatriya has left mother's Thavazhi only.
18. Where intestate Kshatriya male has left father and grand-mother's Thavazhi only.
19. Where intestate Kshatriya male has left none of the heirs specified in Sections 14, 16, 17 and 18.
20. Where intestate Kshatriya female has left children or lineal descendants by deceased children.
21. Where an intestate Kshatriya female has left her husband and mother.
22. Where an intestate Kshatriya female has left her husband and mother's Thavazhi.
23. No rights to parties to marriage not in force at one's death.
24. Where Kshatriya female has left father and grand-mother's Thavazhi.
25. Where intestate Kshatriya female has left none of the heirs specified in Sections 20 to 22 and 24.
26. (1) Where intestate non-Kshatriya male has left a Kshatriya widow, children or lineal descendants of deceased children.
(2) Where non-Kshatriya husband follows the ordinary Hindu law.
27. Devolution of property acquired by gift or bequest.
28. Possession of intestate's estate till division.

CHAPTER VI.

Tarwad and its Management.

29. Powers of Karanavan.
30. Delegation by Karanavan.
31. Surrender of Karanavastanam, unilateral.
32. Karanavan to maintain a correct inventory of valuable movables and to keep accounts.
33. (1) Alienation of Tarwad property.
(2) Saving as regards renewals of Kanam.
(3) Registry of Kilimanoor lands not affected.
34. Mortgages and leases of Tarwad property.
35. Debts when binding.
36. Charges on Tarwad property when not binding.
37. Presumption regarding necessity.
38. Decree against Tarwad when binding.

CHAPTER VII.

Maintenance.

39. Right to maintenance.
40. Right of Kshatriya widows and minor children except unmarried daughters.
41. Duty of Kshatriya to maintain non-Kshatriya wives and children.
42. Duty to maintain father.

CHAPTER VIII.

Partition.

43. Right to partition.
44. Female member entitled to claim the shares of her minor children.
45. Claim to partition by Thavazhi or Thavazhi group.
46. No alienable or heritable right until partition.
47. When Karanavan or managing member entitled to additional properties.
48. Procedure when division of property or right is inconvenient.
49. Saving regarding Kilimanoor and Poonjar Edavagais.

CHAPTER IX.

Miscellaneous.

50. Right, etc., not conferred and unaffected by the Regulation.
51. Application for exemption from provisions relating to partition.
52. Revocation of exemption.
53. Rules.

A Regulation to define and amend the law relating to marriage, succession, partition, Tarwad management and maintenance of the Malayala Kshatriyas (excluding the members of the Royal Family of Travancore)

Passed by His Highness the Maha Raja of Travancore, under date the 17th Dhanu 1108, corresponding to the 31st December 1932, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to define and amend the law relating to marriage, succession, partition, Tarwad management and maintenance of the Malayala Kshatriyas (excluding the members of the Royal Family of Travancore); It is hereby enacted as follows :—

CHAPTER I.

Preliminary.

1. (1) This Regulation may be called The "Travancore Kshatriya Regulation of 1108".

Short title, commencement and application.

(2) It shall come into force on the first day of Medom 1108.

(3) It shall apply to all Malayala Kshatriyas (excluding the members of the Royal Family of Travancore) domiciled in Travancore, and to such Kshatriyas not so domiciled, and non-Kshatriyas, whether so domiciled or not, as have, or shall have, marital relations with Kshatriyas domiciled in Travancore, and also to all Malayala Kshatriyas, wherever domiciled, in respect of their properties in Travancore.

Regn. VII of 1108: I. *Objects and Reasons.*—"The present anomalous position of the Kshatriya community, as also the other smaller Marumakkatayam communities is too patent to require any detailed exposition. While the progress of social ideas in other Marumakkatayam communities, like the Nayar, the Vellala and the Ezhava, has been recognised in proper Regulations, no such enactment has as yet been made so far as the Kshatriyas and others are concerned, with the result that the natural development of these communities has been retarded. It is obvious that, unless Legislature hastens to supply this longfelt want, the future of these communities will continue to be far from prosperous. The present state of affairs is, therefore, obviously unsatisfactory, and some enactment to define and amend the law of marriage, succession, maintenance and Tarwad management is very much overdue. "In Marumakkatayam law, the earlier views as to the powers of the Karanavan have given way to the views reducing him to be a Manager. The other members have succeeded in vindicating their rights as co-owners and in liberating their right of maintenance from some of its harassing restrictions. Smaller groups of family units are being recognised for purposes of succession." Marriage relation has a clear, legal as well as social recognition. The Nayar Regulation has already codified these ideas. The Nambudiris have now a Bill before the Legislature to consolidate their personal law. The other Marumakkatayees also have to get a corresponding legal recognition for their social existence. The question of marriage affords a good illustration. If a Kshatriya female is married to a Nambudiri in the ordinary socially recognised manner, that marriage is not now legally recognised in any statute while his similar marriage with a Nayar female, as also his marriage with a caste wife are considered legal unions.

Without abrogating the principles of the Marumakkatayam law, now accepted and followed, I have attempted to define and amend such law in the light of the already existing Nayar Regulation and other similar Regulations and in the light of the present progressive ideas. Though this measure is meant primarily for the Kshatriya community, Government are empowered to extend its application duly to other similarly placed Marumakkatayee communities as well". —*S. O & R.*

II. The Select Committee who considered and reported on the Bill made considerable changes in its provisions. They

2. In this Regulation, unless there is something repugnant in the subject or context—

Definitions.

(1) "Kshatriya" includes the members of all communities commonly known or recognised as Malayala Kshatriyas:

(2) "Marumakkathayam" means the system of inheritance in which descent is traced in the female line:

(3) "Thavazhi of a female" means a group of persons consisting of that female, her children and their issue how low-so-ever in the female line, or such of that group as are alive:

(4) "Thavazhi of a male" means the Thavazhi of his mother:

(5) "Collateral Thavazhies" are Thavazhies of females who, though descended from a common ancestress, do not stand in the direct line of ascent or descent from one another:

---

prefaced their amended Bill with a Report which indicates generally the lines they followed in recommending the changes. The Report is given below. It may also be noted that, when the Report and the amended Bill came up for consideration by the Council, though notice had been given of several amendments, they were not moved excepting those relating to certain verbal alterations.

Select Committee's Report.

"The Committee held in all 9 sittings of 23 days. As resolved upon by the Council, the Minority Marumakkathayam Bill of Mr. L. R. Raja Raja Varma was considered by the Committee, and evidence taken as regards the points involved in the Bill at several important centres in the State in the neighbourhood of which, a large number of the Kshatriya population was residing, namely, Mavelikara, Tiruvalla, Kottayam, Vaikam, Alwaye and Trivandrum. In all, 148 witnesses (139 males and 9 females) were examined by the Committee of whom 15 (13 males and 2 females) belonged to Kolaswaroopam Raja families, 5 to the other Raja families (Panthalam, Poonjar etc.), 14 to Koil Tampuran families, 14 others to the Samantha Kshatriya families, 85 (78 males and 7 females) to the Tampan, Tirumulpad and Pandarathil families, 14 to Samantha families, 1 to Ambalavasi class and 1 to the Nambudiri community. Four of the witnesses examined produced written statements setting forth in detail, their views on such points, to two of which 16 others had subscribed their signatures (9 Koil Tampurans, and 7 Tirumulpads, 3 of whom were males and four females.) One other witness examined by the Committee filed a statement producing a newspaper cutting in support of the view expressed by him regarding partibility. Besides these, 46 memorials and written statements were received by the Committee containing the signatures of 694 persons (303 males and 391 females) comprising 87 members of Kolaswaroopam Raja families (45 males and 42 females), 189 of other Raja families such as Panthalam and Poonjar, (47 males and 142 females), 105 Koil Tampurans (38 males and 67 females), 294 of the Tampans, Tirumulpads and Pandarathil sects, (160 males and 134 females) 1 Samantha (male), and 18 Ambalavasis (12 males and 6 females). Leaving the Samanthas, Ambalavasis and Nambudiris out of account, the Committee has been able to get the views in the aggregate

(6) "Tarwad" means and includes all the members of a Marumakkathayam family, with community of property:

(7) "Karanavan" means the senior major male member of the Tarwad, in whom the headship of the Tarwad, the right of management of its affairs and possession of the properties thereof are vested in law, and in the absence of such male member, the senior major female member.

(8) "Anandaravan" means any member of a Tarwad other than the Karanavan:

(9) "Senior Anandaravan" means the major Anandaravan who, for the time being, is next in order of succession to Karanavastanam in the Tarwad:

(10) "Minor" means a person who has not completed eighteen years of age:

(11) "Prescribed" means prescribed by Rules made by Our Government under this Regulation.

---

of 687 Malayala Kshatriyas (416 males and 271 females) or nearly 28·65 of the total Kshatriya population in Travancore (1,566 males, and 1,370 females or 2,396 in all).

"Copies of the Proceedings of the 10th meeting of the Koraliya Kshatriya Maha Sabha at Karunagapalli on 22nd Medam 1107 and that of the report of the Committee appointed by the Koraliya Kshatriya Youth League to consider the Kshatriya Bill and the draft Kshatriya Bill prepared by Mr. L. R. Raja Raja Varma Koil Tampuran and the memorandum attached thereto were also received and duly considered.

"As there was a sharp difference of opinion as regards defining the communities to be brought under 'Kshatriyas'. we have contented ourselves by defining the above expression as comprising all the members of the Malayala Kshatriya community known and recognised as such. Monogamy has been made strictly enforceable in the case of future marriages and registration by a prescribed authority made essential for the validity of future marriages. Out of deference to the wishes of a large section of the community, endogamous marriages between members sufficiently remote from each other in relationship have been made permissible. Free divorce has also been provided for with adequate provisions for avoiding separations in moments of impulse.

"A nominal compensation not exceeding Rs. 100 has been fixed as payable under orders of Court after a summary proceeding in cases of dissolution, care being taken that the causes of the divorce should not be allowed to be enquired into in such proceedings. The provisions of the Nayar Regulation regarding divorce have however been declared applicable in cases of marriages of Kshatriya males with Nayar females.

"Necessary provisions for guardianship, intestate succession, and Tarwad management have been inserted on the lines of those contained in the Nayar Regulation with changes considered necessary to suit the wishes of a majority of the community. Maintenance for Kshatriya and non-Kshatriya children from

CHAPTER II.

Marriage and its Dissolution.

3. The conjugal union of—

Classes of conjugal unions of Kshatriyas which are valid marriages.

(*a*) a Kshatriya male or female with a Kshatriya female or male, as the case may be, subject to such restrictions of consanguinity and affinity, as are approved by the community or communities to which they belong, or

(*b*) a Kshatriya male or female with a non-Kshatriya female or male, as the case may be, where such union is permissible according to recognised usage,

shall be deemed to be a valid marriage for the purpose of this Regulation, if registered in the manner hereinafter provided for :

---

the father and also that of the members of Kshatriya families from their Tarwad have been suitably provided for and provisions made for the maintenance of fathers and incapacitated major children.

"As it was found that a large body of the witnesses examined by the Committee and those who sent up memorials and statements desired to introduce partibility in Kshatriya families, the necessary provisions have been inserted agreeably to their wishes. Out of the 132 witnesses of the Kshatriya community examined by the Committee, 99 males and 8 females were for conferring the right of partition on demand to each and every one in the family, while 4 required the conferring of such rights only on the application by a majority and 9 others advocated thavazhee partition while 7 were for continuing the families as impartible, the remaining 5 not having expressed either way on this question. It may be worthy of note here to observe that all the 82 (*i. e.*, 76 males and 6 females) examined from among Tampans, Tirumulpads, Pandarathils, etc., have unequivocally expressed themselves for an out and out partition on demand by any single member. Out of the Koil Tampurans examined 7 were for such partition, 3 for individual partition on demand by a majority, 3 for thavazhee partition, and 1 alone for impartibility. Among the Kolaswaroopam Rajas, 10 were for out and out partition on demand by any single member, and 6 for thavazhee partition, none of them having advocated impartibility. Among the other Rajas (Pandalam, Poonjar, etc,) 3 were for out and out partition, one advocated the grant of such rights only on the majority acceding to it and one alone praying for the impartibility to be continued. Of the Samantha Kshatriyas examined by the Committee, all except one were in favour of partition. Of the persons who have sent up memorials and written statements, 462 persons (214 males and 248 females) have favoured partition absolutely, while one favoured thavazhee partition, and 2 others were in favour of allowing individual partition on the application by a majority of the adult persons, while 215 persons (79 males and 136 females) were against partition. It may be pointed here that all the Tampans and Tirumulpads who had filed memorials or written statements were for allowing partition on demand by any single member. Even among the other Kshatriya families, Karnavans of some of the families such as, Mariappalli, Pallam, Lakshipuram and

Provided that, notwithstanding the provisions of Section 3 of the Nayar Regulation, II of 1100, marriages of Kshatriya males with Nayar females shall be valid, whether registered in the manner herein provided for or openly solemnised by the presentation of cloth as provided for in the Nayar Regulation, II of 1100:

Provided also, that marriages, where both parties are Kshatriyas, shall not be deemed to be invalid by reason of consanguinity or affinity alone, if they are removed from the common ancestress by more than four degrees, except in cases where both the parties are members of the same undivided family:

Provided further, that all marriages in force on the date of the commencement of this Regulation shall be valid, irrespective of registration.

Elanji Mantrakoikal, expressed themselves completely in favour of partition. It was also brought out in the course of evidence that partition deeds were effected in some families on a *per capita* basis and that upon the representation of certain members of some of the families, about political pensions in this State, and Malikhana in British India, a division thereof was allowed, and payments ordered on that basis. To meet the wishes of the community, the Committee has therefore provided for individual partition on demand by any single member, also enabling a thavazhee partition if all the adult members of such thavazhee demand it. Provision has also been made for exemption being granted by Government on the application of a majority of the members of a Tarwad from the operation of the sections relating to partition absolutely or from that of the sections relating to individual partition, and revoking such exemption if applied for later by the then majority of adult members.

"There was a proposal that there should be a provision in the Bill to enable the Government *suo moto* to exempt certain families from the operation of the sections relating to partition, wholly or in part. This was objected to by the Mover in which view the majority of the members present concurred.

"As the Committee considered a recasting of the whole Bill necessary in the light of the evidence before them, the Bill introduced into the Council has been changed considerably and another drawn up afresh * *."

III. The Bill was brought in by a Kshatriya Non-official Member. Leave to introduce the Bill was applied for and granted at the meeting of the Council held on 17-12-1930. (*L. C. P., Vol. XVIII, P. 132*). The Bill was published in the Gazette dated 7-4-1931. It was introduced into the Council, its principle was affirmed and the Bill was agreed to be referred to a Select Committee at the meeting held on 16-4-1931 (*L. C. P., Vol. XVIII, Pp. 453-507*). Members of the Select Committee were nominated at the meeting held on 10-8-1931 and two more members were added at the meeting held on 11-8-1931 (*L. C. P, Vol. XIX, Pp. 987-988 and 1103*). The Select Committee's Report was published in the Gazette dated 6-12-1932. It was presented to the Council and Bill considered at the meeting held on 19-12-1932 (*L. C. P., Vol. XXII, Pp. 612-619*). The Bill was finally read and passed at the meeting held on 20-12-1932 (*L. C. P., Vol. XXII, P. 709*). The Regulation was published in the Gazette dated 3-1-1933.

---

4. (*a*) The registration required under Section 3 shall be done on application by the parties to the union, or their guardians, by such authority in such manner and on such conditions as to payment of fees, custody of the records evidencing the registration and generally all other matters relating and incidental thereto, and necessary therefor, as may be prescribed by Our Government in this behalf. If the parties to any marriage in force on the date of the commencement of this Regulation apply for such registration, the same shall be similarly effected.

Registration of marriage.

(*b*) Certificates in such form, as may be prescribed by Our Government in this behalf, shall, on such registration, be issued to each of the parties to the union or marriage or their guardians making the application by the authority registering the same.

5. The subsequent marriage of—

(*a*) any Kshatriya male or female having a wife or husband, as the case may be, or

Invalidity of subsequent marriage.

(*b*) any non-Kshatriya male or female having a Kshatriya wife or husband as the case may be, or

(*c*) any non-Kshatriya male or female having a non-Kshatriya wife or husband, as the case may be, with a Kshatriya female or male as the case may be,

shall be void.

6. A marriage may be dissolved only in one of the following ways :—

Dissolution of marriage.

(i) by the death of either party ;

(ii) by mutual consent evidenced by an instrument registered under the law in force relating to registration of documents ;

(iii) by a formal order of dissolution as hereinafter provided.

7. Notwithstanding anything contained in the Civil Courts Regulation, a husband or wife or his or her guardian, as the case may be, when an application could not be legally made by him or her direct, may present a petition for dissolution of the marriage under

Petition for dissolution of marriage.

Section 6, Sub-section (iii), in the Court of the District Munsiff within the local limits of whose jurisdiction the counter-petitioner resides, carries on business, or personally works for gain, or if the counter-petitioner resides, works for gain, or carries on business in any place outside Travancore, in the Court of the District Munsiff, within whose jurisdiction the petitioner resides, works for gain, or carries on business. The petitioner shall, in all cases, offer in the petition itself, reasonable compensation not exceeding one hundred rupees for payment to the counter-petitioner on dissolution. The petitioner shall produce along with his petition, such fees for the transmission of the copy of the order of dissolution to the registering authority as herein below required, and in such manner as may be prescribed by Our Government in this behalf.

Notice to be given to the counter-petitioner.

8. A copy of such petition shall be served on the counter-petitioner at the expense of the petitioner in the manner provided for the service of summons on a defendant in the Civil Procedure Code.

When and how order of dissolution should be passed.

9. (1) Six months after the service of the copy of the petition under Section 8, if the petition is not withdrawn in the meantime, the Court shall declare in writing that the marriage shall stand dissolved, and thereafter proceed to determine the amount of compensation payable to the counter-petitioner, if necessary:

Provided that the Court shall not, in such cases, enquire into the causes of the dissolution of the marriage, but confine its enquiry solely to the status of the parties, and award, by its order, a sum not exceeding one hundred rupees as compensation.

(2) The procedure prescribed under the Civil Procedure Code for the trial of Small Cause suits shall, as far as possible, be applicable to enquiries under this Section.

(3) So far as it decrees payment of compensation, such order shall be executable as a decree under the Code of Civil Procedure, on payment of Court fees on the amount adjudged.

Court order of dissolution to be forwarded to authority registering marriages.

10. A copy of the order of dissolution shall be forwarded by the Court to the authority competent to register the marriage under this Regulation. Such authority shall register the order in such manner as may be prescribed by Our Government.

323/F.N.28+61

11. Notwithstanding anything contained in Sections 7 to 10, the provisions of the Nayar Regulation, II of 1100, relating to dissolution of marriages, shall alone apply to marriages between Kshatriya males and Nayar females.

The provisions of Nayar Regulation to govern dissolution of marriages of Kshatriya males with Nayar females.

CHAPTER III.

Guardianship.

12. (1) The husband shall be the legal guardian of his minor wife in respect of her person and separate property.

Guardianship of minor wife and children.

(2) Save as regards married daughters under the guardianship of their husbands, the following persons in the order named shall be the legal guardians of the minor children in respect of their person and separate property the mother, the father, the uterine brothers, the uterine sisters, the mother's brothers, and the major male members of the grand-mother's Thavazhi how-high-so-ever, the nearer excluding the more remote.

CHAPTER IV.

Testamentary Powers.

13. A Kshatriya may dispose of by Will the whole of his or her self-acquired and separate property.

Testamentary disposition.

CHAPTER V.

Intestate Succession.

14. On the death of a Kshatriya male leaving him surviving a widow or widows, or mother or both, and children, or lineal descendants of deceased children, or all, they shall, notwithstanding the provisions of Section 21 of the Nayar Regulation, or any other law for the time being in force governing the parties, take, after deducting all reasonable expenses for his funeral, the whole of his self-acquired and separate property left undisposed of by him at his death, and, in the absence of the mother and the widow, the children, and the lineal descendants of deceased children

Where intestate Kshatriya male has left widow, mother, or lineal descendants.

shall take the whole. In the absence of the mother, the widow, children and the lineal descendants shall take the whole.

Rules of distribution of estate under Section 14.

15. The distribution of the estate under Section 14 shall be according to the following Rules :—

(i) The widow or widows, if there are more than one, and the mother shall each be entitled to a share equal to that of a son or daughter.

(ii) Sons and daughters shall take the property in equal shares, provided that if a son or daughter shall have predeceased the intestate, the lineal descendants of such child shall take the share which such child would have taken had it survived the intestate.

(iii) The grand-children shall take in equal shares what their father or mother would have taken, had he or she survived the intestate. In like manner, the property shall go to the surviving lineal descendants of the intestate, where they are all in the degree of great grand-children to him or in a more remote degree.

Illustrations.

(*a*) A dies intestate leaving B and C two widows, D his mother, E a son, F a daughter and the lineal descendants of a deceased son G. B, C, D, E and F each gets 1/6th of the estate and the lineal descendants of G together get 1/6 of the estate.

(*b*) A dies leaving him surviving B a son, C a daughter, and two grand-children by deceased daughter D, and two grand-children and a great grand-child by a deceased grand-child, by a deceased son E. B and C shall be entitled to 1/4 of A's estate. Each of the grand-children by D shall be entitled to 1/8. Each of the grand-children by E shall be entitled to 1/12, and the great grand-child by E to the remaining 1/12 of A's estate.

Where intestate Kshatriya has left widow and mother only.

16. On the death of a Kshatriya male, leaving him surviving, no children or lineal descendants of deceased children, but only his widow or widows and his mother, they shall take such property, after defraying his funeral expenses, equally. In the absence of the widow, the mother shall take the whole.

Where intestate Kshatriya has left mother's Thavazhi only.

17. On the death of a Kshatriya male leaving him surviving neither his mother nor his lineal descendants, but only his widow and his mother's Thavazhi, one-half of the self-acquired and separate

property left undisposed of by him at his death, after meeting the funeral expenses, shall devolve on his widow, and the other half on his mother's Thavazhi. In the absence of the mother's Thavazhi the widow shall take the whole, and in the absence of the widow, the mother's Thavazhi shall take the whole.

Where intestate Kshatriya male has left father and grand-mother's Thavazhi only.

18. On the death of a Kshatriya male, leaving him surviving none of the heirs mentioned in Sections 14, 16 and 17, but only his father and his grand-mother's Thavazhi, one-half of the self-acquired and separate property left undisposed of by him at his death shall similarly devolve on his father, and the other half on his grand-mother's Thavazhi. In the absence of the grand-mother's Thavazhi, the father shall take the whole, and in the absence of the father, the grand-mother's Thavazhi shall take the whole.

Where intestate Kshatriya male has left none of the heirs specified in Sections 14, 16, 17 and 18.

19. On the death of a Kshatriya male, leaving him surviving none of the heirs specified in Sections 14 and 16 to 18, the self-acquired and separate property left undisposed of by him at his death, after meeting his funeral expenses, shall devolve on the Thavazhi of his great grand-mother, or on the Thavazhi of his more remote female ascendants, the nearer excluding the more remote.

Where intestate Kshatriya female has left children or lineal descendants by deceased children.

20. On the death of a Kshatriya female, leaving her surviving, her husband, her mother or both, and her children, or the lineal descendants of her children, or both, they shall take the whole of the separate or self-acquired property left undisposed of by her on her death after meeting her funeral expenses in equal shares. In the absence of the husband and the mother, the children and the lineal descendants shall take the whole, and in the absence of the mother, husband, children and the lineal descendants shall take the whole.

The provisions of Section 15, Sub-sections (ii) and (iii) shall apply to the distribution of the estate among the children and the lineal descendants under this Section.

Where an intestate Kshatriya female has left her husband and mother.

21. On the death of a Kshatriya female, leaving her surviving no children or lineal descendants of deceased children, but only her husband and her mother, one-half of her self-acquired and separate property left undisposed of by her on her death shall similarly devolve on her mother, and the other half on her husband. In the absence of the husband the mother shall take the whole.

Where an intestate Kshatriya female has left her husband and mother's Thavazhi.

22. On the death of a Kshatriya female, leaving her surviving neither her mother nor her lineal descendants, but only her husband and her mother's Thavazhi, one-half of her self-acquired and separate property left undisposed of by her at her death shall likewise devolve on her husband and the other half on her mother's Thavazhi. In the absence of the mother's Thavazhi, the husband shall take the whole, and in the absence of the husband, the mother's Thavazhi shall take the whole.

No rights to parties to marriage not in force at one's death.

23. Nothing in Sections 20 to 22 shall confer any right on any person whose marriage with the deceased was not in force on the date of her death.

Where Kshatriya female has left father and grand-mother's Thavazhi.

24. On the death of a Kshatriya female, leaving her surviving none of the heirs mentioned in Sections 20 to 22, but only her father and her grand-mother's Thavazhi, one-half of the self-acquired and separate property left undisposed of by her at her death shall, after meeting her funeral expenses, devolve on her father, and the other half on her grand-mother's Thavazhi. In the absence of the grand mother's Thavazhi, the father shall take the whole, and in the absence of the father, the grand-mother's Thavazhi shall take the whole.

Where intestate Kshatriya female has left none of the heirs specified in Sections 20 to 22 and 24.

25. On the death of a Kshatriya female, leaving her surviving none of the heirs set forth in Sections 20 to 22 and 24, the self-acquired and separate property left undisposed of by her at her death, shall similarly devolve on the Thavazhi of her great-grand-mother, or on the Thavazhi of her more remote female ascendants, the nearer excluding the more remote.

Where intestate non-Kshatriya male has left a Kshatriya widow, children or lineal descendants of deceased children.

26. (1) (*a*) On the death, after the commencement of this Regulation, of a non-Kshatriya male, leaving him surviving a Kshatriya widow or widows, or Kshatriya children, or the lineal descendants of such children, or all, and also other widows in whom, or in whose children, if any, by such husband, a right to inherit his separate or self-acquired property is recognised by law, or children by such widows, or those by other similar deceased non-Kshatriya wives who may have predeceased such non-Kshatriya male, such Kshatriya widow, widows, Kshatriya children, or Kshatriya lineal descendants, or all, shall, notwithstanding the provisions of Section 21 of the Nayar Regulation, II of 1100, and those of Sections 15 and 16 of the Travancore Malayala Brahmin Regulation, III of 1106, be entitled, after deducting the reasonable expenses for his funeral, to take along with such other widows, children or lineal descendants, the separate or self-acquired property left undisposed of by him after his death, each taking an equal share, subject to the provisions of Section 15, Sub-sections (ii) and (iii) of this Regulation.

(*b*) Provided that where a Malayala Brahmin leaves behind him a Kshatriya widow or widows, or Kshatriya children, or both, or lineal descendants of such children, or all, but has not left behind him a caste widow, or children by his caste wives, Kshatriya widow or widows, his Kshatriya lineal descendants and other widows of the kind referred to in clause (*a*) of Sub-section (1) of this Section, and the lineal descendants by such wives, and his Illom, shall take equally such self-acquired or separate property, the Illom being given at such distribution the same share as a widow under clause (*a*) of this Sub-section.

Where non-Kshatriya husband follows the ordinary Hindu Law.

(2) In cases where such non-Kshatriya male happens to be one following the ordinary rules of Hindu Law, the share accruing under Sub-section (1) (*a*) to his caste widows and his caste lineal descendants, when co-existing with other widows or

other lineal descendants or both, will have to be computed together and the whole portion of the self-acquired or separate property so accruing allowed to be taken by such person among them, as is entitled to be the manager of the coparcenary of such heirs under the law governing them, and the same allowed to be divided, by such persons only as are entitled thereto by such law, and in such manner as is required thereby, or otherwise dealt with as laid down thereunder :

Provided that, in the absence of lineal male descendants of caste wives where the deceased has left behind him a caste widow or widows, his mother or other caste heirs according to the law applicable to them, or all, the shares of the caste widow or widows, and his lineal descendants, if any, shall be computed under Sub-section (1), clause (*a*), of this Section and the same allowed to be taken by the manager of the coparcenary constituted by the caste widow or widows and other heirs according to the law governing them, if any, to be dealt with in the manner required by the same.

Illustrations.

(*a*) A, a Nambuthiri, dies leaving behind him B, a Kshatriya widow, C and D, his children by B, E, a caste-widow, and F and G, children by E, and H, a Nayar widow, J and K children by H. B to H, J and K will each be entitled to an 1/9 share in A's separate and self-acquired properties.

(*b*) A, a Nambuthiri, dies leaving behind him B, a Kshatriya widow, C her son, D and E two daughters by another Kshatriya wife who predeceased him, and F and G two grand-sons by another daughter who had predeceased him, H, a caste widow, and J, a son by her. B to E, H and J will each be entitled to an 1/7 share of the separate and self-acquired property of A, and F and G each to an 1/14th share.

(*c*) A, a Nambuthiri, dies leaving behind him B, a Kshatriya widow, C and D sons by another Kshatriya wife, the marriage with whom was not subsisting on the date of his death, E, a caste widow, F and G children by his caste wives, and H, a widow of another community, the rights of the offspring of marriage with members of which community, to inherit his separate or self-acquired property have not been recognised by any law, or custom or usage having the force of law, and J his son by H. B to G alone will each get an 1/6 share in his separate or self-acquired property.

(*d*) A, a Nambuthiri Brahmin, dies leaving behind him, B, a Kshatriya widow, C and D Kshatriya children, E and F members of his Illom other than his caste widow and lineal descendants, G, a Nayar widow, and H and J Nayar children. B to D and G to J will each get an 1/7 share in his self-acquired or separate property and his Illom consisting of E and F will get the remaining 1/7 share.

(*e*) A, a Tulu Brahmin following the ordinary Mitakshara law of inheritance, dies leaving behind him B, a Kshatriya widow, C, a Kshatriya son, D, a

Kshatriya daughter, E, a Nayar widow, F and G children by E, H and J his caste widows, K and L two sons by caste wives and M, N and O, three daughters by his caste wives. B to G will each be entitled to get an 1/13 share in A's separate or self-acquired property, allotting to each of H and J to O an 1/13th share for computation purposes alone. The 7/13th share accruing to them will be allowed to be taken by K, or any other manager of the coparcenary, for the time being, to be disposed of, in the manner allowed by the law governing them.

(*f*) A, a Tamil Brahmin, dies leaving behind him B, a Kshatriya widow, C, a Kshatriya son, D, a Kshatriya daughter, E and F two caste widows, G, a daughter by a deceased caste wife, and H and J two other heirs entitled to hold his property jointly with E and F under the law, as administered in Travancore. B to D will each take an 1/6 share in A's separate or self-acquired property. E to G will be allotted an 1/6 share each for purposes of computation. The aggregate of the shares accruing to them, *viz.*, 1/2, will be handed over to the manager of the coparcenary of which E and F and the other heirs above referred to are members, for being disposed of according to the law governing them.

Devolution of property acquired by gift or bequest.

27. Property acquired by gift or bequest by a Kshatriya wife, or Kshatriya widow, or Kshatriya child or children from the husband or father, as the case may be, after the commencement of this Regulation, shall, unless a contrary intention is expressed in the instrument of gift or devise, if any, belong to the wife or widow and each of the children in equal shares.

Possession of intestate's estate till division.

28. The seniormost Kshatriya male member among the lineal descendants of the intestate, or in the absence of any adult male member, the Kshatriya widow or the oldest of the Kshatriya widows, if there are more than one, shall be entitled to the possession and management of the estate mentioned in Sections 14, 15, 16, 20 and 26 until division is effected, In like manner the Karanavan of the Thavazhi mentioned in Sections 18, 19, 21, 22 and 24, shall be entitled to the possession and management of the estate referred to therein, until division is effected.

CHAPTER VI.

Tarwad and its Management.

Powers of Karanavan.

29. The Karanavan shall have the right to be in possession and management of all the properties belonging to the Tarwad, and of the Devaswoms and other institutions of which the Tarwad has Uraima or such other right.

Delegation by Karanavan.

30. No Karanavan shall delegate his powers, as such, to any one, but may appoint managers under registered powers of attorney for management and doing other acts incidental thereto.

Surrender of Karanavastanam, unilateral.

31. The Karanavan shall have the right to give up the management by a unilateral surrender evidenced by a registered instrument.

Karanavan to maintain a correct inventory of valuable movables, and to keep accounts.

32. The Karanavan, or the manager of the Tarwad for the time being, shall maintain a true and correct inventory of all valuable movables of the Tarwad, and keep a correct and true account of all receipts and disbursements of the Tarwad. Such inventory and accounts shall be available, on reasonable notice, for inspection by the adult Anandaravans in the Tarwad house, or such other place as may be appointed in this behalf by such Karanavan or managing member, and at such times as may be fixed therefor by him. On demand, copies of such inventory or accounts shall be given to any member of the Tarwad at his or her cost.

Alienation of Tarwad property.

33. (1) Except for consideration and Tarwad necessity, and except with the written consent of all the major members of the Tarwad, no Karanavan or other managing member shall sell immovable properties or valuable movables, belonging to the Tarwad, or execute Kanam deeds for immovable properties, or mortgage the same with possession, or lease them, for a period of more than 12 years.

Saving as regards renewals of Kanam.

(2) Nothing in this Section shall affect the right of the Karanavan to execute solely renewals of Kanam deeds that are already in force.

Registry of Kilimanoor lands not affected.

(3) The provisions of this Section shall not apply to the right of registry of unregistered lands in the Kilimanoor and Pazhaya Kummummol pakuthies or to the disposal of timber, standing or felled, in the forests therein.

Mortgages and leases of Tarwad property.

34. No mortgage with possession, or lease with a premium for more than one year's rent for a period of twelve years or less, with respect to immovable properties belonging to the Tarwad, shall be valid,

unless it is executed for consideration and Tarwad necessity, with the consent of all the major members of the Tarwad. Such necessity shall be presumed to exist if the transaction has the written consent of the senior Anandaravan of the Karanavan's branch and that of every collateral branch, if any.

Debts when binding.

35. No debt contracted by the Karanavan or managing member shall bind the Tarwad unless it be for Tarwad necessity.

Charges on Tarwad property when not binding.

36. No Karanavan shall, without the written consent of all the adult members of the Tarwad, invest any holder of Tarwad property with the right of erecting any building thereon, or appurtenances thereto, intending payment of compensation at redemption, or of effecting substantial modifications therein, or of converting the nature of the land, or of planting the same, in any manner prejudicial to the interests of the Tarwad, or create other charges thereon, detrimental to the rights of its members.

Presumption regarding necessity.

37. Where the Karanavan incurs a debt, alleging the existence of necessity, such necessity shall, as between the creditor on the one part, and the members of the Tarwad who have not consented to the debt on the other part, be presumed to have existed, if the creditor, after using reasonable care to ascertain the existence of necessity, has acted in good faith.

Decree against Tarwad when binding.

38. No decree shall bind the Tarwad, unless it is obtained against the Karanavan, as such, and the senior Anandaravan of his Thavazhi, and of every other Thavazhi collateral to the same, if any.

CHAPTER VII.

Maintenance.

Right to maintenance.

39. Every member of a Tarwad shall be maintained by the Tarwad whether such member lives in the Tarwad house or not.

Explanation.—No minor member of a Tarwad shall be deemed to be entitled to maintenance at a lesser rate than a major, on the mere ground that he or she is a minor.

Right of Kshatriya widows and minor children except unmarried daughters.

40. Notwithstanding the provisions for maintenance from the Tarwad detailed above, a Kshatriya wife and minor children, except married daughters under the guardianship of their husbands, and unmarried major daughters and major sons incapacitated through mental or physical infirmity, living with the father, shall be entitled to claim the same, from the husband or father, as the case may be.

Duty of Kshatriya to maintain non-Kshatriya wives and children.

41. Every Kshatriya male shall be bound to maintain his non-Kshatriya wife and non-Kshatriya minor children, except married daughters under the guardianship of their husbands, and unmarried major daughters and major sons, incapacitated through mental or physical infirmity living with him.

Duty to maintain father.

42. Every Kshatriya, who is unable to maintain himself or herself, as the case may be, shall have the right to be maintained by his or her children, as the case may be, if possessed of sufficient independent means, and every Kshatriya shall be bound, if possessed of such means, to similarly maintain his or her non-Kshatriya father unable to maintain himself.

CHAPTER VIII.

Partition.

Right to partition.

43. Every member of a Tarwad shall have the right to divide himself or herself, as the case may be, from the Tarwad, by making a demand for the purpose, and on such demand such member shall be entitled to such share in the Tarwad properties as will fall to such member, if a division per capita were made among all the members of the Tarwad on the date of such demand :

Provided that such demand is made in one of the following ways :—

(*a*) by the presentation of a plaint in a suit for partition or that of a written statement or other pleading claiming a share in a suit for partition, or

(*b*) by an unequivocal declaration in writing registered in accordance with the law for the time being in force for the registration of documents.

Female member entitled to claim the shares of her minor children.

44. Every female member claiming her share of the Tarwad properties may also claim the shares of her minor children therein

Claim to partition by Thavazhi or Thavazhi group.

45. (1) Notwithstanding anything contained in Section 43, any Thavazhi or other group of members of a Tarwad, shall have the right to divide from the Tarwad by making a demand for the purpose, and on such demand, such Thavazhi or such other group, as the case may be, shall be entitled to such share in the Tarwad properties as will be equivalent to the aggregate of the shares of the Thavazhi or other group, as the case may be, if a demand be made by each of such members of the Thavazhi or group, as the case may be, on the date of the demand :

Provided that the demand by the Thavazhi or other group shall be made in such manner as is provided for by Section 43 by all the adult members of the Thavazhi or group, as the case may be.

(2) The Thavazhi or the group, as the case may be, shall hold such share jointly as if it were Tarwad property belonging to such Thavazhi or group, with all the rights and obligations incidental to Tarwad properties, and such other rights and obligations arising from the provisions of this Regulation.

No alienable or heritable right until partition.

46. Until partition, no member of a Thavazhi or group in a Tarwad shall be deemed to have a definite share in Tarwad property. A demand under Section 43 or 45, as the case may be, will also constitute a partition for the purposes of this Section.

When Karanavan or managing member entitled to additional properties.

47. One-fourth of the aggregate made up of the acquisitions, if any, made during a Karanavan's management, with the aid of the income from Tarwad property, and the amount of liabilities of the Tarwad incurred before he or she became Karanavan, discharged by him or her, as the case may be, after setting off the liabilities incurred during such management, shall be treated as such Karanavan's acquisition at the time of partition.

48. If the property or right rendered divisible under this Chapter is incapable of actual division, or cannot be divided without seriously lessening its value or utility, the enjoyment in common, by turns, as circumstances of the particular case will permit, or in such other manner as may be considered proper, may be made.

Procedure when division of property or right is inconvenient.

49. Nothing in this Chapter shall confer any right of partition as regards the rights of the Kilimanoor Estate, as such, or as regards the rights of the Tarwad of the Poonjar Chief in respect of lands within the limits of the Poonjar Edavagai.

Saving regarding Kilimanoor and Poonjar Edavagais.

CHAPTER IX.

Miscellaneous.

50. Nothing in this Regulation shall be deemed to affect any Rule of Marumakkathayam law, custom, or usage, except to the extent expressly provided for in this Regulation.

Right, etc., not conferred and unaffected by the Regulation.

51. (1) The majority of the adult members of a Kshatriya Tarwad may apply to Our Government for exemption of their Tarwad from the operation of the provisions of Sections 43 and 45 together or from that of Section 43 alone.

Application for exemption from provisions relating to partition.

(2) On recipt of such application, Our Government may cause an enquiry to be made by such authority, and in such manner, as may be prescribed, and if they are satisfied that a majority of the adult members of the Tarwad have signed the application with their free consent, such exemption shall be granted, and a notification published in Our Government Gazette with respect thereto in such form as may be prescribed.

52. Upon an application by a majority of the adult members of a Kshatriya Tarwad for revoking the exemption granted under the preceding Section, Our Government shall cause an enquiry, by such authority, and in such manner, as may be prescribed, and shall, on their being satisfied that such majority have signed the application

Revocation of exemption.

with their full consent, revoke the exemption prayed for by a notification in Our Government Gazette in such form as may be prescribed in that behalf.

Rules.

53. (1) Our Government may make Rules to carry out the purposes of this Regulation.

(2) In particular and without prejudice to the foregoing power, such Rules may—

(*a*) constitute the authority empowered to register marriages under Section 4, and record dissolutions thereof, and prescribe the forms of application and the procedure to be adopted by the authority so constituted;

(*b*) regulate the conditions to be satisfied, the fees to be paid, the forms of the certificates to be issued on and such other matters necessary for, and incidental to, such registration;

(*c*) prescribe the fees to be paid for the transmission of copies of orders of dissolution under Section 10;

(*d*) prescribe the forms of the application for exemption under Section 51, and the revocation thereof under Section 52, and the authority which should conduct the enquiries relating thereto, and the nature of, and the procedure to be followed in such enquiries on such applications, and the forms of the notifications in Our Government Gazette relating to the grant of such exemption or the revocation thereof.

(3) The Rules made under this Regulation shall be published in Our Government Gazette and thereupon shall have the force of law.

RULES AND FORMS.

I

THE KSHATRIYA MARRIAGE RULES.

(R. O. C. No. 274 / 1933 Legis., dated 11th April 1933.) (a)

In exercise of the powers conferred by Sections 4, 7, 10 and 53 of the Travancore Kshatriya Regulation of 1108 (VII of 1108), the Government of His Highness the Maha Raja are pleased to make the following Rules :—

1. These Rules may be called the Kshatriya Marriage Rules.

2. In these Rules

(*a*) " Regulation " means the Travancore Kshatriya Regulation of 1108 (Regulation VII of 1108).

(*b*) " Registration Law " means the Travancore Registration Regulation of 1087 and the Rules thereunder.

3. The authority competent to register marriages under the Regulation shall be the officers competent to register documents under the Registration Law.

4. A marriage under the Regulation shall be registered by the registration, under the Registration Law, of a document (hereinafter called a document of marriage) executed by the parties to a conjugal union containing a declaration that they are parties to such union and an application that the union shall be registered as a marriage under the Regulation.

Explanation.—If any party to a document of marriage is a minor, the execution of the document shall be made on his or her behalf by the guardian.

5. (1) Subject to the provisions of the Regulation and these Rules the document of marriage shall be registered and otherwise dealt with as a document coming under Section 11 of the Travancore Registration Regulation of 1087, and all provisions of the Registration Law shall apply in respect of the document, subject to the following exceptions namely :—

(i) no document of marriage shall be registered if either party to the document, or his or her representative as the case may be, objects to the registration of the document, and

(ii) the document of marriage shall not be returned to the parties but shall be forwarded by the registering officer to the Director of Registration.

(*a*) *T. G. G., dated 11-4-1933, Pt. II, Pp. 416—417.*

Explanation.—The document, if registered, shall be entered in Book III provided for by Section 43 of the Travancore Registration Regulation of 1087.

(2) The documents of marriage forwarded to the Director of Registration under these Rules shall be filed by him in the order of their receipt in a book entitled "Book of Kshatriya Marriages" and preserved by him in safe custody. He shall also keep a list or register of the documents so filed.

6. Every officer competent to register marriages under these Rules shall keep a register in the following form :—

REGISTER OF KSHATRIYA MARRIAGES.

Under Regulation VII of 1108.

Serial No.	Name and description of parties to the marriage.		Date of the registration of marriage and the number given to the document of marriage in the Register.	Remarks.
	of husband.	of wife.		

7. Every officer registering a marriage under these Rules shall, on completion of the registration, make the necessary entries in the Register of Kshatriya Marriages kept in his office under these Rules, and issue a Certificate of Marriage to each of the parties, (or to their representatives, as the case may be), in the following form with his signature and the seal of his office: —

The Travancore Kshatriya Regulation of 1108,
(VII of 1108).

Office of.....

Certificate of Marriage

Issued to ——— Husband / Wife

This is to certify that the marriage of the persons named below has been registered in my office on ——— (date) and that the document relating to the marriage has been given number ——— of the year ——— in Book ——— of my office.

Name and description of husband.

Seal.

Name and description of wife.

Signature.....

Designation.....

8. Along with the presentation of the document of marriage for registration, the person who so presents shall produce a sum of Rs. 2 also as fee for the issue of the Certificate of Marriage.

Explanation.—Fees for the registration of the document shall be paid in accordance with the Registration Law.

9. (1) In the application for the dissolution of a marriage under Section 7 of the Regulation, the applicant shall state where the marriage was registered, in case it was registered, and also the number and date of registration. Along with the application, the applicant shall pay (besides other fees if any) a sum of Re. 1 for the transmission of the order of dissolution as required by the said Section 7. The fee shall be paid in such manner as it were a fee for processes paid to the Court wherein the application is made. The applicant shall pay also such sums as the Court may require for the preparation of the copy to be transmitted.

(2) If the order of dissolution is passed, the Court shall transmit a copy of the order to the officer who registered the marriage and, in case the marriage was one not registered, to the Director of Registration.

(3) The officer receiving the copy shall file it in a book entitled "Dissolution of Kshatriya Marriages" kept for the purpose. He shall also keep a list or register of the copies so filed. The book as well as the list or register shall be preserved in safe custody.

(4) In case the marriage is one registered in his office, the officer shall also enter in the remark column of the Register of Marriages kept under Rule 6 the fact that the marriage has been dissolved and the particulars of the dissolution.

II
THE KSHATRIYA TARWAD (EXEMPTION AND REVOCATION) RULES.

(R. O. C. No. 274 / 1933 Legis., dated 11th April 1933.) (a)

In exercise of the powers conferred by Sections 51, 52 and 53 of the Travancore Kshatriya Regulation of 1108 (VII of 1108), the Government of His Highness the Maha Raja are pleased to make the following Rules:—

1. These Rules may be called the Kshatriya Tarwad (Exemption and Revocation) Rules.

2. In these Rules

"Regulation" means the Travancore Kshatriya Regulation of 1108 (VII of 1108).

3. An application for exemption under Section 51 of the Regulation, or for revocation of exemption, under Section 52 of the Regulation shall

(a) *T. G. G., dated 11-4-1933, Pt. II, Pp. 417—419.*

be addressed to the Chief Secretary to Government and either sent to him by registered Anchal or Post, or delivered to him by any of the applicants in person or by a duly authorised agent.

4. (*a*) The application shall contain the following particulars:—

(1) Whether the application is under Section 51 for exemption from the provisions of Sections 43 and 45 together or from that of Section 43 alone, or under Section 52 for the revocation of an exemption from the provisions of Sections 43 and 45 together or from that of Section 43 alone.

(2) The name and address of the Tarwad in respect of which the exemption or revocation of exemption is applied for.

(3) The names and full descriptions (including particulars of residence) of the applicants.

(4) The names and full descriptions (including particulars of residence) of all the other adult members of the Tarwad.

(5) The names and full descriptions (including particulars of residence) of all the minor members of the Tarwad.

(6) A declaration that the applicants form a majority of the adult members of the Tarwad, that there are no members in the Tarwad other than those mentioned in the application and that such majority sign the application with their free or full consent.

(*b*) The application shall be signed and verified in the manner of signing and verifying plaints filed in Civil Courts and shall be supported by the affidavits of the applicants as to the truth of the statements contained in the application.

5. On receipt of the application the Government shall forward it to any officer of the Land Revenue Department not below the rank of a Tahsildar directing him to make an inquiry whether the application is signed by the majority of the adult members of the Tarwad with their free or full consent.

6. The Government shall publish a notice in the Government Gazette notifying the fact of the receipt of the application and the name of the officer to whom it has been forwarded for inquiry. The notice may be in the following form or as nearly as may be thereto :—

NOTICE.

THE TRAVANCORE KSHATRIYA REGULATION OF 1108.

It is hereby notified that an application under Section 51 of the above mentioned Regulation purporting to be made by a majority of the adult members of the Kshatriya

Tarwad described below for the exemption of the Tarwad from the provisions of Sections 43 and 45 together / Section 43 alone of the Regulation has been received by Government on ——— and that it has been forwarded to ——— for inquiry and report.

Description of Tarwad.

Place.
Date. *Chief Secretary to Government*

NOTICE.

THE TRAVANCORE KSHATRIYA REGULATION OF 1108.

It is hereby notified that an application under Section 52 of the above-mentioned Regulation, purporting to be made by a majority of the adult members of the Kshatriya Tarwad described below for the revocation of an exemption granted under Section 51 of the Regulation, has been received by Government on ——— and that it has been forwarded to ——— for inquiry and report.

Description of Tarwad.

Place.
Date. *Chief Secretary to Government.*

7. The officer directed to make the inquiry shall, on receipt of the application, issue a notice to all the adult members of the Tarwad mentioned in the application and to such others as he may think necessary, notifying that he proposes to make an inquiry on the application and that he is prepared to hear, at such time and place as he may fix, any person in support of or against the grant of the application.

8. The officer directed to make the inquiry shall make the inquiry in a summary way in order to find out whether a majority of the adult members of the Tarwad have signed the application and whether such majority have signed it with their full or free consent. He shall have the power to adjourn the inquiry from time to time and also to examine parties and witnesses appearing before him.

9. After the inquiry, he shall make a report to Government stating whether in his opinion a majority of the adult members of the Tarwad have signed the application and whether such majority have signed it with their free or full consent and whether he recommends the grant or the rejection of the application. The report shall contain also a brief statement of the reasons for the opinion of the officer. All the papers relating to the inquiry shall be forwarded to the Government with the report.

10. The Government may, in their discretion, make any such further inquiry as they may deem fit.

11. Upon the Government being satisfied that a majority of the adult members of the Tarwad have signed the application with their free or full

consent, the Government shall grant the application and publish a Notification in the Government Gazette in the following form:—

(FORM FOR GRANT OF EXEMPTION).

NOTIFICATION.

THE TRAVANCORE KSHATRIYA REGULATION OF 1108.

Section 51.

Whereas a majority of the adult members of the Kshatriya Tarwad described below have applied to the Government of His Highness the Maha Raja under the above-cited Section 51 for the exemption of the Tarwad from the operation of the provisions of Sections 43 and 45/ Section 43 alone:

And whereas the Government are satisfied on inquiry that the majority of the adult members of the Tarwad have signed the application with their free consent;

Now therefore, the Government, in exercise of the powers conferred on them by the above-cited Section 51, are pleased hereby to grant the exemption applied for.

Description of Tarwad.

Place.

Date. *Chief Secretary to Government.*

(FORM FOR REVOCATION OF EXEMPTION).

THE TRAVANCORE KSHATRIYA REGULATION OF 1108.

Section 52.

Whereas a majority of the adult members of the Kshatriya Tarwad described below have applied under the above-cited Section 52 to the Government of His Highness the Maha Raja for the revocation of the exemption granted in respect of the Tarwad by Notification No..... published at page.....of the Government Gazette dated.....;

And whereas the Government are satisfied on inquiry that such majority have signed the application with their full consent;

Now therefore the Government, in exercise of the powers conferred on them by the above cited Section 52, are pleased hereby to grant the application and revoke the exemption.

Description of Tarwad.

Place.

Date. *Chief Secretary to Government.*

REGULATION VIII OF 1108.

THE TRAVANCORE INSOLVENCY REGULATION.

CONTENTS.

Preamble.

Sections.

1. Short title, extent and commencement. 1
2. Definitions. 2

PART I.

Constitution and Powers of Court.

3. Insolvency jurisdiction. 3
4. Power of Court to decide all questions arising in insolvency. 4
5. General powers of Courts. 5

PART II.

Proceedings from Acts of Insolvency to Discharge.

Acts of Insolvency.

6. Acts of insolvency. 6

Petition.

7. Petition and adjudication... 7
8. Exemption of corporation, etc, from insolvency proceedings ... 8
9. Conditions on which creditor may petition. 9
10. Conditions on which debtor may petition. 10
11. Courts to which petitions shall be presented. 11
12. Verification of petition. 12
13. Contents of petition. 13
14. Withdrawal of petition. 14
15. Consolidation of petitions. 15
16. Power to charge carriage of proceedings. 16
17. Continuance of proceedings on death of debtor. 17
18. Procedure for admission of petition. 18
19. Procedure on admission of petition. 19
20. Appointment of interim receiver. 20
21. Interim proceedings against debtor. 21

The figures on the right side refer to the corresponding Sections of the British Indian Provincial Insolvency Act, V of 1920, as amended by Acts IX and XXXIX of 1926, Act XI of 1927. and Act X of 1930.

Sections.

22. Duties of debtor. 22
23. Release of debtor. 23
24. Procedure at hearing. 24
25. Dismissal of petition. 25
26. Award of compensation. 26

Order of adjudication.

27. Order of adjudication. 27
28. Effect of an order of adjudication. 28
29. Stay of pending proceedings 29
30. Publication of order of adjudication. 30

Proceedings consequent on order of adjudication.

31. Protection order. 31
32. Power to arrest after adjudication. 32
33. Schedule of creditors. 33
34. Debts provable under the Regulation. 34

Annulment of adjudication.

35. Power to annul adjudication of insolvency. 35
36. Power to cancel one of concurrent orders of adjudication. ... 36
37. Proceedings on annulment. 37

Compositions and schemes of arrangement.

38. Compositions and schemes of arrangement. 38
39. Order on approval. 39
40. Power to re-adjudge debtor insolvent 40

Discharge.

41. Discharge. 41
42. Cases in which Court must refuse an absolute discharge. ... 42
43. Adjudication to be annulled on failure to apply for discharge. 43
44. Effect of order of discharge. 44

PART III.

Administration of property.

Method of proof of debts.

45. Debt payable at a future time. 45
46. Mutual dealings and set off 46
47. Secured creditor. 47
48. Interest. 48
49. Mode of proof. 49
50. Disallowance and reduction of entries in schedule. 50

Effect of Insolvency on antecedent transactions.

Sections.

51. Restriction of rights of creditor under execution 51
52. Duties of Court executing decree as to property taken in execution. 52
53. Avoidance of voluntary transfer. 53
54. Avoidance of preference in certain cases. 54
55. By whom petitions for annulment may be made. 54-A
56. Protection of *bona fide* transactions. 55
57. Appointment of receiver. 56
58. Power to appoint Official Receivers. 57
59. Powers of Court if no receiver appointed. 58
60. Duties and powers of receiver. 59
61. Power to require information regarding insolvent's property. ... 59-A

Distribution of property.

62. Priority of debts. 61
63. Calculation of dividends. 62
64. Right of creditor who has not proved debt before declaration of a dividend. 63
65. Final dividend. 64
66. No suit for dividend. 65
67. Management by and allowance to insolvent. 66
68. Right of insolvent to surplus. 67
69. Committee of inspection. 67-A

Appeal to Court against receiver.

70. Appeal to Court against receiver. 68

PART IV.

Penalties.

71. Offences by debtors. 69
72. Procedure on charge under Section 71. 70
73. Criminal liability after discharge or composition. 71
74. Undischarged insolvent obtaining credit. 72
75. Disqualifications of insolvent. 73

PART V.

Summary administration.

76. Summary administration. 74

PART VI.

Appeals.

Sections.
77. Appeals. 75

PART VII.

Miscellaneous.

78. Costs. 76
79. Court to be auxiliary to each other. 77
80. Limitation. 78
81. Power to make Rules. 79
82. Delegation of powers to Official Receivers. 80
83. Repeal. 83
84. Application of Regulation to pending cases.

A Regulation to consolidate and amend the law relating to Insolvency in Travancore

Passed by His Highness the Maha Raja of Travancore, under date the 17th Dhanu 1108, corresponding to the 31st December 1932, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to consolidate and amend the law relating to Insolvency in Travancore; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Regulation may be called "The Travancore Insolvency Regulation, 1108".

(2) It extends to the whole of Travancore.

Regn. VIII of 1108: I. *Objects and Reasons.*—"1. The law of insolvency as administered by the Civil Courts in Travancore is contained in the Travancore Insolvency Regulation (VIII of 1090), which was enacted more than fifteen years ago. Experience of the practical working of the Regulation during these years has brought to light many defects, which have from time to time provoked criticism from many quarters, and recently the High Court too have invited the Government to amend the Regulation. This Bill has accordingly been prepared to amend, and re-cast, the existing Regulation.

2. In general terms, the complaint against the Regulation has been that it lends itself to the protection of fraudulent debtors, and that it subjects an undischarged insolvent to little or no practical inconvenience. One principal defect in the Regulation arises from the fact that the conduct of the debtor in many cases never comes under the scrutiny of the Court. The stage at which the misconduct of the debtor should come before the Court, and at which most of the provisions affecting a fraudulent insolvent would operate, is when he applies for his discharge. But there is nothing in the

(3) It shall come into force on the first day of Kumbhom 1108.

2. (1) In this Regulation, unless there is anything repugnant in the subject or context,—

Definitions.

(*a*) "Creditor" includes a decree-holder, "Debt" includes a judgment debt, and "Debtor" includes a judgment debtor:

(*b*) "District Court" means the principal Civil Court of original jurisdiction in any area:

Regulation which requires him to apply for his discharge, and in practice such applications appear to be rare. To remedy this, it is proposed by the Bill to make provisions which will compel an insolvent to apply to the Court, within a fixed period, for his discharge on pain of his losing the protection afforded by the insolvency proceedings. The Court will have power to extend from time to time the period once fixed, but if the application for the discharge is not made within the period allowed the adjudication will be annulled and a fresh petition on the same facts will be barred. Those provisions will appear from clauses 27, 43, 10 (2) and 35(1) of the Bill.

3. For another important matter, it does not appear, under the Regulation as it stands, that it is open to the Court to reject the application of a debtor who applies to be adjudged insolvent even though he may not be really insolvent, that is to say, even though he is not unable to pay his debts. This has come for comment at the hands of the High Court more than once. Provision to rectify this is made in clause 10 (1) of the Bill. Again, as the law now stands, a debtor gets, on adjudication as insolvent, automatic protection from arrest and detention for debts, whether he be an honest debtor or a fraudulent debtor. This is proposed to be changed, and protection from arrest will be at the discretion of the Court, (See clauses 23 and 31). Another defect in the existing Regulation is the absence of a general provision clearly defining the power of the Courts to decide questions of fact and law arising in insolvency proceedings. In certain cases, *e. g.*, those mentioned in Section 16 (3) ("reputed ownership" provision) and Sections 35 and 36, (avoidance of voluntary transfers and fraudulent preferences) the Court is empowered to pass orders and Section 46 defines the general powers of the Court in regard to proceedings under the Regulation, but nowhere is a general power specifically conferred on the Court to deal with and decide important questions of law and fact (*e. g.*, a question of title to property) which may arise in the insolvency proceedings. This would seem to be a defect and may hamper the speedy realisation of assets. Provision is accordingly made in the Bill (See clause 4) to give the Court full power to decide all questions arising out of insolvency.

4. Other defects too have been noticed in the existing Regulation. The present Regulation was enacted on the lines of the then law of the British Indian Provinces namely, the Provincial Insolvency Act, 1907 (III of 1907). This was subsequently amended in British India by the Provincial Insolvency Act 1920, which again received some slight amendments afterwards. The High Court has recommended an amendment of the Travancore Regulation on the lines of the present Provincial Insolvency Act of British India. This Bill is accordingly drafted on the lines of that Act". *S. O & R.*

(2) In introducing the Bill, the Official Member in charge said:—

(*c*) "Prescribed" means prescribed by Rules made under this Regulation :

(*d*) "Property" includes any property over which or the profits of which any person has disposing power which he may exercise for his own benefit :

(*e*) "Secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor ; and

(*f*) "Transfer of property" includes a transfer of any interest in property and the creation of any charge upon property.

"* * The principle of the Insolvency law is that once a person becomes an insolvent, his property has to be taken hold of and distributed among his creditors most equitably and most expeditiously through an agency of the State, namely, the Civil Court. That is one side of the Insolvency law, and on the other side, there is the liberation of the person of the insolvent. He has to be given absolute freedom of person and freedom to acquire properties in the future if he has once rendered a correct account of his previous transactions and surrendered his properties for distribution among his creditors. So that, the efficiency of the Insolvency Law depends upon the proper combination of the applications of these two principles, namely, a correct and expeditious distribution of the assets of the insolvent and the proper discharge of the insolvent by giving him the liberty of his person when he has got himself discharged. * *

The first Insolvency Regulation for Travancore was passed 15 years ago by Regulation VIII of 1090. Since then it has been found that it has got some very vital defects. * * When the Regulation was first passed into law, the law which was in force at the time in Madras was an Act of 1907 which has subsequently been replaced by an Act of 1920 and it has been found that it would be more convenient and advantageous if we also modify our law in accordance with the law in British India. The defects in the existing Regulation came to the notice of the High Court also on more than one occasion and they have recommended to the Government that the corresponding British Indian Act should be adopted for Travancore purposes also. The same demand has been made in the Popular Assembly and I believe on one occasion in this House also. The present Bill is therefore drafted on the lines generally of the British Indian Act now in force."—*L. C. P. dated 11-8-1931.*

II. The Bill was published in the Gazette dated 7-4-1931. It was introduced into the Council and referred to a Select Committee at the meeting held on 11-8-1931 (*L. C. P., Vol. XIX, Pp. 1099-1100*). The Committee's Report was published in the Gazette dated 13-12-1932. It was presented to the Council and considered, and the Bill posted for final reading at the meeting held on 17-12-1932 (*L. C. P., Vol. XXII, Pp. 667-669*). The Bill was finally read and passed at the meeting held on 20-12-1932 (*L. C. P., Vol. XXII. Pp. 708-709.*) The Regulation was published in the Gazette dated 3-1-1933.

[Regulation VIII of 1090, which has been superseded by the present Regulation,

(2) Words and expressions used in this Regulation and defined in the Code of Civil Procedure, 1100, not hereinbefore defined, shall have the same meanings as those respectively attributed to them by the said Code.

PART I.

Constitution and Powers of Court.

Insolvency jurisdiction.

3. The District Courts shall be the Courts having jurisdiction under this Regulation.

Power of Court to decide all questions arising in insolvency.

4. (1) Subject to the provisions of this Regulation, the Court shall have full power to decide all questions whether of title or priority or of any nature whatsoever and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognisance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case:

---

was based on the Provincial Insolvency Act of 1907. As the later Act of 1920 differed considerably from the Act of 1907, most of the Sections of the former Act were quoted in dealing with the 1090 Regulation, in view to facilitate reference and comparison. Extracts were also given from the Statement of Objects and Reasons, the Select Committee's Report and from the speeches of the Official Member in charge of the Bill which became Act V of 1920. These are contained in the foot-notes given in pages 978 to 1031 of the Third Volume. Reference may be made to them in explanation or elucidation of the provisions of the present Regulation based as it is on Act V of 1920.]

Sec. 3: The original Bill had a Proviso as in the Provincial Act, for Government investing any Court subordinate to a District Court with concurrent jurisdiction in any class of cases. It was deleted by the Select Committee who said:—"There is no necessity for delegating the powers of a District Court to Munsiffs' Courts. In the present state of trade and industry in Travancore, cases of insolvency occur generally in large centres of trade and industry where a District Court is functioning. The complicated nature of enquiry into conflicting claims arising in insolvency proceedings should be dealt with by Judicial Officers of great experience to ensure public confidence. Hence the change. We are aware, that a Proviso like this finds a place in the Provincial Insolvency Act, 1920, of British India. But the conditions obtaining in Travancore are, in our opinion, considerably different and there is no justification for incorporating the Proviso in the Travancore law."—*S. C. R.*

Sec. 4: The Proviso to Sub-section (1) is not in the Provincial Act. It was added by the Select Committee as they considered "that in the matters of claims not arising out of the insolvency, the Insolvency Court should not have power to adjudicate questions unless all the parties agree thereto".—*S. C. R.*

Provided that, unless all the parties agree, the power hereby given shall not be exercised for the purpose of adjudicating upon any claim not arising out of the insolvency.

(2) Subject to the provisions of this Regulation and notwithstanding anything contained in any other law for the time being in force, every such decision shall be 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.

(3) Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in Sub-section (1), but has reason to believe that the debtor has a saleable interest in any property, the Court may without further inquiry sell such interest in such manner and subject to such conditions as it may think fit.

General powers of Courts.

5. (1) Subject to the provisions of this Regulation, the Court, in regard to proceedings under this Regulation, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.

(2) Subject as aforesaid, the High Court shall have, in regard to proceedings under this Regulation in District Courts, the same powers and shall follow the same procedure, as it has and follows in regard to civil suits.

PART II.

Proceedings from Act of Insolvency to Discharge.

Acts of Insolvency.

Acts of Insolvency.

6. A debtor commits an act of insolvency in each of the following cases, namely :—

(*a*) if, in Travancore or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally ;

(*b*) if, in Travancore or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors ;

(*c*) if, in Travancore or elsewhere, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;

(*d*) if, with intent to defeat or delay his creditors,

(i) he departs or remains out of Travancore,

(ii) he departs from his dwelling house or usual place of business or otherwise absents himself,

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him;

(*e*) if any of his property has been sold in execution of the decree of any Court for the payment of money;

(*f*) if he petitions to be adjudged an insolvent under the provisions of this Regulation;

(*g*) if he gives notice to any of his creditors that he has suspended or that he is about to suspend, payment of his debts; or

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this Section the act of an agent may be the act of the principal.

Petition.

Petition and adjudication.

7. Subject to the conditions specified in this Regulation, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this Section, and on such petition the Court may make an order of adjudication.

Exemption of corporation, etc., from insolvency proceedings.

8. No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Conditions on which creditor may petition.

9. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(*b*) the debt is a liquidated sum payable either immediately or at some certain future time, and

(*c*) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

Conditions on which debtor may petition.

10. (1) A debtor shall not be entitled to present an insolvency petition unless he is unable to pay his debts, and

(*a*) his debts amount to five hundred rupees; or

(*b*) he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or

(*c*) an order of attachment in execution of such a decree has been made and is subsisting against his property.

(2) A debtor in respect of whom an order of adjudication made under this Regulation has been annulled owing to his failure to apply, or to prosecute an application for his discharge, shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.

11. Every insolvency petition shall be presented to the District Court having jurisdiction in any local area in which the debtor ordinarily resides or carries on business or personally works for gain, or if he has been arrested or imprisoned, where he is in custody:

Court to which petition shall be presented.

Provided that no objection as to the place of presentment shall be allowed by the High Court in the exercise of its appellate or revisional jurisdiction unless such objection was taken at the earliest possible opportunity in the Court by which the petition was heard, and unless there has been a consequent failure of justice.

Explanation.—For purposes of this Section a debtor, who has not paid the debts he had contracted while engaged in a business, shall be deemed to be still carrying on the business.

12. Every insolvency petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1100, for signing and verifying plaints.

Verification of petition.

13. (1) Every insolvency petition presented by a debtor shall contain the following particulars, namely:—

Contents of petition.

(*a*) a statement that the debtor is unable to pay his debts;

(*b*) the place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody;

(*c*) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for

Sec. 11: The "Explanation" at the end, is not in the Provincial Act. It was added by the Select Committee who said:—"There was some difference of opinion amongst the members of the Committee as to the significance of the expression 'carrying on business.' They had before them the case of a debtor who carried on extensive business in Travancore, incurred heavy liabilities and left the place of business. At the time of the presentation of the insolvency petition, he might, in fact, not be carrying on business. The question seems to have been raised both in British India and in England. The latest English and Indian decisions on the subject are for interpreting the words "carrying on business" on the lines of the Explanation set forth above. To avoid any doubt as to the proper interpretation of these words, the Explanation is added".—*S. C. R.*

the attachment of his property, together with particulars of the decree in respect of which any such order has been made;

(*d*) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they are known to, or can, by the exercise of reasonable care and diligence, be ascertained by him;

(*e*) the amount and particulars of all his property, together with—

(i) a specification of value of all such property not consisting of money;

(ii) the place or places at which any such property is to be found; and

(iii) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1100, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree;

(*f*) a statement whether the debtor has on any previous occasion filed a petition to be adjudged an insolvent, and (where such a petition has been filed)—

(i) if such petition has been dismissed, the reasons for such dismissal, or,

(ii) if the debtor has been adjudged an insolvent, concise particulars of the insolvency, including a statement whether previous adjudication has been annulled and, if so, the grounds therefor.

(2) Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (*b*) of Sub-section (1), and shall also specify—

(*a*) the act of insolvency committed by such debtor, together with the date of its commission; and

(*b*) the amount and particulars of his or their pecuniary claim or claims against such debtor.

Withdrawal of petition.

14. No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

15. Where two or more insolvency petitions are presented against the same debtor, or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

Consolidation of petitions.

16. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Regulation in the case of a petitioning creditor.

Power to change carriage of proceedings.

17. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued so far as may be necessary for the realisation and distribution of the property of the debtor.

Continuance of proceedings on death of debtor.

18. The procedure laid down in the Code of Civil Procedure, 1100, with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of the insolvency petitions.

Procedure for admission of petition.

19. (1) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition.

Procedure on admission of petition.

(2) Notice of the order under Sub-section (1) shall be given to creditors in such manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under Sub-section (1) shall be served on him in the manner provided for the service of summons.

20. The Court when making an order admitting the petition may, and where the debtor is the petitioner ordinarily shall, appoint an interim receiver of the property of the debtor or of any part thereof, and may direct him to take immediate possession thereof or of any part thereof, and the interim receiver shall thereupon have such of the powers conferable on a receiver appointed under the Code of Civil Procedure, 1100, as the Court may direct. If an interim receiver is not so appointed the Court may make such appointment

Appointment of interim receiver.

at any subsequent time before adjudication, and the provisions of this Sub-section shall apply accordingly.

Interim proceedings against debtor.

21. At the time of making an order admitting the petition or at any subsequent time before adjudication the Court may, either of its own motion or on the application of any creditor, make one or more of the following orders, namely :—

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition and direct that, in default of giving such security, he shall be detained in the civil prison;

(2) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1100, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree;

(3) order a warrant to issue with or without bail for the arrest of the debtor, and direct either that he be detained in the civil prison until the disposal of the petition or that he be released on such terms as to security as may be reasonable and necessary :

Provided that an order under clause (2) or clause (3) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

(i) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside them, or

(ii) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

Duties of debtor.

22. The debtor shall, on the making of an order admitting the petition, produce all books of account, and shall at any time thereafter give such inventories of his property, and such lists of his creditors and debtors and of the

debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments and generally do all such acts and things in relation to his property as may be required by the Court or receiver or as may be prescribed.

Release of debtor.

23. (1) At the time of making an order admitting the petition or at any subsequent time before adjudication, the Court may, if the debtor is under arrest or imprisonment or is likely to be arrested or imprisoned in execution of the decree of any Court for the payment of money, order his release or the stay of the arrest or imprisonment, as the case may be, on such terms as to security as may be reasonable and necessary.

(2) The Court may at any time order any person who has been so released to be re-arrested and re-committed to the custody from which he was released or revoke any order of stay so made.

(3) At the time of making any order under this Section, the Court shall record in writing its reasons therefor.

(4) The wilful default by a debtor to perform the duties imposed on him under Section 22 after being called upon to do the same by the Court may be considered in making any order under this Section.

Procedure at hearing.

24. On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof of the following matters, namely :—

Sec. 23: The words 'or is likely to be arrested or imprisoned' and the words 'or the stay of the arrest or imprisonment, as the case may be' occurring in Sub-section (1) were inserted by the Select Committee, as also, the words 'or revoke any order of stay so made' in Sub-section (2). The original Bill followed the Provincial Act and did not contain the above words. The Select Committee said:—"As the provision in the Bill stands, actual arrest or imprisonment is necessary if the Court should, in any case, even in a very fit case, be able to exercise the power granted by this Clause. We think that it is not necessary that an actual arrest or imprisonment should be made a condition precedent to the exercise of the powers of the Court. Even if a person is about to be arrested or imprisoned, the Court should have the power in a fit case to stay the arrest or imprisonment".—*S. C. R.*

Sub-section (4), not in the Provincial Act, was also inserted by the Select Committee.

Sec. 24: In the Provincial Act, there is one more Sub-section—(4)—which runs as follows: "(4). A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall

(*a*) that the creditor or the debtor, as the case may be, is entitled to present the petition :

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are *prima facie* grounds for believing the same and the Court, if and when so satisfied, shall not be bound to hear any further evidence thereon ;

(*b*) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order admitting the petition ; and

(*c*) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

Dismissal of petition.

25. (1) In the case of a petition presented by a creditor, where the Court is not satisfied with the proof of his right to present the petition or of the service on the debtor of notice of the order admitting the petition, or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

---

be made by the Judge, and shall form part of the record of the case." This was incorporated in the original Bill ; but the Select Committee deleted it. They said :—"Clause 5 (1) of this Bill refers to the Civil Procedure Code for purposes of procedure in connection with enquiries under this Regulation. Order XVIII, Rule 7, of the Code of Civil Procedure provides for the substance of the examination being made by the Judge. There is no necessity, therefore, of retaining this Sub-clause".—*S. C. R.*

Sec. 25 : The Explanation to Sub-section (1) was added by the Select Committee who said :—" As the Sub-clause stands, apparently the power of the Court is restricted to dismiss the petition against all the debtors, even though a case may be made out against one or more of the debtors. Section 96 of the Presidency Towns Insolvency Act and Section 115 of the English Bankruptcy Act, 1914, make an express provision for sustaining the petition against some of the debtors. That probably would be the interpretation

Explanation.—In the case of a petition presented against two or more debtors, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

(2) In the case of a petition presented by a debtor, the Court shall dismiss the petition if it is not satisfied of his right to present the petition.

Award of compensation.

26. (1) Where a petition presented by a creditor is dismissed under Sub-section (1) of Section 25, and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realised as if it were a fine.

(2) An award under this Section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

Order of adjudication.

Order of adjudication.

27. (1) If the Court does not dismiss the petition it shall make an order of adjudication and shall specify in such order the period within which the debtor shall apply for his discharge.

(2) The Court may, if sufficient cause is shown, extend the period within which the debtor shall apply for his discharge, and in that case shall publish notice of the order in such manner as it thinks fit.

Effect of an order of adjudication.

28. (1) On the making of an order of adjudication, the insolvent shall aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors.

---

placed on Sub-clause (1) by the Court even as it stands. But to avoid any controversy on the point, we have added the Explanation. It is drafted on the lines of the provision in the Presidency Towns Insolvency Act and the English Bankruptcy Act".—*S. C. R.*

Sec. 28: I. At the end of Sub-section (2), the wording in the Indian Provincial Act, as in Regulation VIII of 1090, is:—"without the leave of the Court *and* on such terms as the Court may impose."

II. The proviso to Sub-section (2) does not occur in the Provincial Act. It occurs

(2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided and shall become divisible among the creditors and thereafter, except as provided by this Regulation, no creditor to whom the insolvent is indebted in respect of any debt provable under this Regulation, shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court on such terms as the Court may impose :

Provided that nothing in this Sub-section shall affect the power of any secured creditor to realise or otherwise deal with his security, in the same manner as he would have been entitled to realise or deal with it if this Sub-section had not been enacted.

(3) All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver, and the provisions of Sub-section (2) shall apply in respect thereof.

(4) The property of the insolvent for the purposes of this Section shall not include any property (not being books of account) which is exempted by the Code of Civil Procedure, 1100, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

---

in Section 17 of the Presidency Towns Insolvency Act, III of 1909.

III. The Provincial Act has the following Sub-section (3) :—" (3) For the purposes of Sub-section (2), all goods being at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent."

This found a place in the original Bill. The Select Committee deleted it. They said :—"We are aware that this Subclause finds a place in the existing Insolvency Regulation. In the present state of trade and industry in the country, we do not feel the necessity of introducing the doctrine of ' reputed ownership ' in the Insolvency Regulation. The main reason ordinarily urged in favour of such introduction is to prevent a trader getting false credit on the strength of goods lying in his premises though the bulk of them may have been mortgaged or much of it may not have been paid for. This misconception is, to some extent, due to ignorance of the nature of mercantile transactions obtaining in the different centres of trade and industry in this State. In the ordinary course of business, goods are landed in the godowns of the merchants. The parties do not invariably settle the price at the time of landing. Several preliminary operations have to be performed before the goods are actually sold, such

(5) An order of adjudication shall relate back to and take effect from the date of the presentation of the petition on which it is made.

Stay of pending proceedings.

29. Any Court in which a suit or other proceeding is pending against a debtor shall, on proof that an order of adjudication bas been made against him under this Regulation, either stay the proceeding, or allow it to continue on such terms as such Court may impose.

Publication of order of adjudication.

30. Notice of an order of adjudication, stating the name, address and description of the insolvent, the date of the adjudication, the period within which the debtor shall apply for his discharge and the Court by which the adjudication is made shall be published in Our Government Gazette and in such other manner as may be prescribed.

Proceedings consequent on order of adjudication.

Protection order.

31. (1) Any insolvent in respect of whom an order of adjudication has been made may apply to the Court for protection, and the Court shall on such

---

as, drying of yarn and garbling of pepper. In those cases, the ownership of the property cannot be said to have passed to the owner of the yard, though to a stranger coming into the premises it may create that impression. There are cases where an open loan is granted by banks on the security of goods lying in the yard of the debtor secured by proper vouchers, which, if carefully examined, would indicate that a debtor is not the absolute owner of the goods. To a very large extent the beneficial ownership is vested in the creditor. As the section stands, the claims of innocent third parties may be jeopardised for the purpose of enlarging the rights of unsecured creditors. We do not find any moral justification for this course. Each case should be settled on its merits. We are not for any statutory presumption being made in favour of unsecured creditors generally at the sacrifice of the interests of others. We are aware that a similar provision regarding reputed ownership finds a place both in the Provincial Insolvency Act and the Presidency Towns Insolvency Act of British India. But conditions of the course of business in Travancore do not justify the retention of this sub-clause. The omission of this sub-clause would not in any way interfere with the doctrine of estoppel as set forth in Section 115 of the Indian Evidence Act."—*S. C. R.*

(3) In the Provincial Act, the following Sub-section occurs:—" (6) Nothing in this Section shall affect the power of any secured creditor to realise or otherwise deal with his security, in the same manner as he would have been entitled to realise or deal with it if this section had not been passed."

See also Sub-sections 2 and 5 of Section 16 of Regulation VIII of 1090—Vol. III, pages 999-1000.

Sec 31: I. The wording of Sub-section (1) in Section 31 of the Provincial Act is—" (1) Any insolvent.....for protection, and the Court *may* on such application make an order.....detention." This was the

application make an order for the protection of the insolvent from arrest or detention :

Provided that the Court may, for reasons to be recorded in writing, either make an order refusing protection or make the order for protection subject to such terms and conditions as the Court thinks proper :

Provided further that the Court may, at any time, for reasons to be recorded in writing, revoke or modify any order under this Sub-section.

Explanation.—The refusal of protection or an order for protection on terms and conditions may apply either in respect of all the debts of the debtor or to any of them as the Court thinks proper.

(2) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order applies, and any insolvent arrested or detained contrary to the terms of such an order shall be entitled to his release :

Provided that no such order shall operate to prejudice the rights of any creditor in the event of such order being revoked or the adjudication annulled.

(3) Any creditor shall be entitled to appear and oppose the grant of a protection order or to apply for the revocation of any order under this Section.

---

wording adopted in the original Bill. The Select Committee substituted the word "shall" for "may."

2. The two Provisos and the Explanation occurring in Sub-section (1) were added by the Select Committee who said—"As the Sub-clause in the Bill stands, it is left entirely to the discretion of the Court to make a protection order or not as regards the person of the insolvent. The English Law appears to grant an automatic protection as regards the person of the bankrupt. The practice in the British Indian Courts under the Provincial Insolvency Act appears also to be that a protection order as regards the person will be granted as a matter of course on an order of adjudication being made, but it is open to the Court to refuse to make such an order if there are any special reasons to support such a refusal. We think, therefore, that Sub-clause (1) may be so amended as suggested above, and Sub-clause (2) omitted in order that an insolvent may get a protection order as a rule, unless there be any reasons which will militate against such protection being granted."—*S. C. R.*

2. In the Provincial Act, the following Sub-section (2) occurs:—"(2) A protection order may apply either to all the debts of the debtor, or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit."

Power to arrest after adjudication.

32. At any time after an order of adjudication has been made, the Court may, if it has reason to believe, on the application of any creditor or the receiver, that the debtor has absconded or departed from the local limits of its jurisdiction with intent to avoid any obligation which has been or might be imposed on him by or under this Regulation, order a warrant to issue for his arrest, and on his appearing or being brought before it may, if satisfied that he was absconding or had departed with such intent, order his release on such terms as to security as may be reasonable or necessary, or if such security is not furnished, direct that he shall be detained in the Civil prison for a period which may extend to three months.

Schedule of creditors.

33. (1) When an order of adjudication has been made under this Regulation, all persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Regulation shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts and the amount of debts, respectively, and shall frame a schedule of such persons and debts:

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debts shall not be included in the schedule.

(2) A copy of every such schedule shall be posted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Regulation and not entered in the schedule, and the Court, after

This was adopted in the original Bill. The Select Committee deleted it.

See above note.

3. The wording of Sub-section (3) in the Provincial Act (Sub-section 4) is—"Any creditor shall.....protection order". This was adopted in the original Bill. The Select Committee added at the end the words—"or to apply for the revocation of any order under this Section".

Sec. 33: In Sub-section (3) of the Provincial Act, the wording is:—"Any creditor of the insolvent.....tender proof of *his* debt and apply.....".

causing notice to be served on the receiver and the other creditors who have proved their debts, and hearing their objections (if any), shall comply with or reject the application.

Debts provable under the Regulation.

34. (1) Debts which have been excluded from the schedule on the ground that their value is incapable of being fairly estimated and demands in the nature of unliquidated damages arising otherwise than by reason of a contract or a breach of trust shall not be provable under this Regulation.

(2) Save as provided by Sub-section (1), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Regulation :

Provided that a person having notice of the presentation of any insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

Explanation.—For the purposes of this Section "liability" includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of, money, or money's worth whether the payment is, as respects amount, fixed or unliquidated, as respects time, present or future, certain or dependent on any contingency or contingencies, as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

Sec. 34: I. The Proviso to Sub-section (2) and the Explanation are not found in the Provincial Act. The Explanation occurs in Section 46 of the Presidency Towns Insolvency Act, III of 1909.

II. Besides the above, the original Bill also contained the following additional Explanation :—

"Explanation II.—The true owner of any goods which have been deemed, by reason of the provisions of Sub-section (3) of Section 28, to be the property of an insolvent may prove for the value of such goods". This was omitted by the Select Committee "as not necessary in view of the omission of Clause 28 (3)"—*S. C. R.*

Annulment of adjudication.

Power to annul adjudication of insolvency.

35. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, the Court shall, on the application of the debtor or of any other person interested, by order in writing, annul the adjudication. And the Court may, of its own motion or on application made by the receiver or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of Sub-section (2) of Section 10, not entitled to present such petition.

(2) For the purposes of this Section, any debt disputed by a debtor shall be considered as paid in full. if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

Power to cancel one of concurrent orders of adjudication.

36. If in any case in which an order of adjudication has been made, it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor, and that the property of the debtor can be conveniently distributed by such other Court, the Court may annul the adjudication or stay all proceedings thereon,

Proceedings on annulment.

37. (1) Where an adjudication is annulled, all sales and disposition of property, and payments duly made and all acts theretofore done, by the Court or receiver shall be valid, but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint or in default of any such appointment, shall revert to the debtor to the extent of his right or

---

Sec. 35: Sub-section (2) does not occur in the Provincial Act.

Sec. 36: The wording in the Provincial Act is:—"If, in any case in which.....and that the property of the debtor can be *more* conveniently distributed.....stay all proceedings thereon".

Sec. 37: In the Provincial Act, Sub-section (2) is as follows:—"Notice of every order annulling.....Gazette and in such *other* manner as may be prescribed",

interest therein on such conditions (if any) as the Court may, by order in writing, declare.

(2) Notice of every order annulling an adjudication shall be published in Our Government Gazette and in such manner as may be prescribed.

Compositions and schemes of arrangement.

38. (1) Where a debtor, after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal, and shall issue a notice to all creditors in such manner as may be prescribed.

(2) The Court may direct a meeting of the creditors and the receiver, if any, to be held in such manner as may be prescribed for the consideration of the proposal and if on such consideration, a majority in number and three-fourths in value of all the creditors whose debts are proved and who are present in person or by proxy, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the receiver, if a receiver has been appointed, or of the Court in other cases, calculated to benefit the general body of creditors.

Sec. 38: The corresponding Section of the Provincial Act is as follows:—

"38 (1) Where a debtor after the making of an order.....and shall issue notice to all creditors in such manner as may be prescribed.

(2) If, on the consideration of the proposal, a majority in number and three-fourths in value of all the creditors whose debts are proved and who are present in person or by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors.

(4) Where the Court is of opinion, after hearing the report of the receiver if a receiver has been appointed, and after considering any objection which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(5) If any facts are proved.....against the debtor's estate.

(6) No composition or scheme.....property of an insolvent.

(7) In any other case the Court may either approve or refuse to approve the proposal ".

The above was the wording adopted in the original Bill. The Select Committee

(4) The receiver, if a receiver has been appointed, or the debtor in other cases shall submit a report of the proceedings of the meeting, and if the proposal has been accepted by the creditors, the debtor or the receiver, may apply to the Court to approve it and notice of the time appointed for hearing the application shall be given to each creditor and where the Court is of opinion after hearing the report of the receiver, if a receiver has been appointed, as to the terms of the proposal, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable or not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

Explanation.—Any creditor may be heard by the Court in opposition to the proposal notwithstanding that he may at a meeting of the creditors have voted for its acceptance,

(5) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than ten Chuckrams in the rupee on all the unsecured debts provable against the debtor's estate.

(6) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

(7) In any other case the Court may either approve or refuse to approve the proposal.

(8) No composition or scheme shall in any case be approved by the Court unless it has been accepted by all the creditors or could be deemed to have been duly accepted by the creditors under the provisions of Sub-section (2).

Order on approval.

39, If the Court approves the proposal the terms shall be embodied in an order of the Court, and the Court shall frame a schedule in accordance with the provisions of Section 33, the order of adjudication shall be annulled,

---

made the changes now found in the Section, and also added Sub-section (8). In regard to the changes made in Sub-section (4), the Committee said :—"We consider it better to make express provision for a meeting of the creditors for considering composition. Hence the amendments."—*S. C. R.*

and the provisions of Section 37 shall apply and the composition or scheme shall be binding on all the creditors entered in the said schedule so far as relates to any debts entered therein.

Power to re-adjudge debtor insolvent.

40. If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, re-adjudge the debtor insolvent and annul the composition or scheme but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. When a debtor is re-adjudged insolvent under this Section, all debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in the insolvency.

Discharge.

Discharge.

41. (1) A debtor may, at any time after the order of ajudication and shall, within the period specified by the Court, apply to the Court for an order of discharge, and the Court shall fix a day, notice whereof shall be given in such manner as may be prescribed, for hearing such application, and any objections which may be made thereto.

(2) Subject to the provisions of this Section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver—

(*a*) grant or refuse an absolute order of discharge; or

(*b*) suspend the operation of the order for a specified time; or

(*c*) grant an order of discharge subject to any conditions with respect to any earnings or income which afterwards become due to the insolvent, or with respect to his after-acquired property.

Cases in which Court must refuse an absolute discharge.

42. (1) 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 fourteen Chuckrams in the rupee 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 fourteen Chuckrams in the rupee 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 account as are usual and proper in the business carried on by him and as sufficiently disclose 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 Regulation 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 fraud or fraudulent breach of trust.

(2) For the purposes of this Section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(3) The powers of suspending, and of attaching conditions to, an insolvent's discharge may be exercised concurrently.

Adjudication to be annulled on failure to apply for discharge.

43. (1) If the debtor does not appear on the day fixed for hearing his application for discharge or on such subsequent day as the Court may direct, or 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, and the provisions of Section 37 shall apply accordingly.

(2) Where a debtor has been released from custody under the provisions of this Regulation and the order of adjudication is annulled under Sub-section (1), the Court may, if it thinks fit, re-commit the debtor to his former custody, and the officer in charge of the prison to whose custody such debtor is re-committed shall receive such debtor into his custody according to such re-commitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if no order of adjudication had been made.

Effect of order of discharge.

44. (1) An order of discharge shall not release the insolvent from—

(*a*) any debt due to Our Government;

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party;

(*c*) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or

(*d*) any liability under an order for maintenance made under Section 366 of the Code of Criminal Procedure.

(2) Save as otherwise provided by Sub-section (1), an order of discharge shall release the insolvent from all debts provable under this Regulation.

Sec. 44: In the Provincial Act, the corresponding Section (44) does not contain Sub-section (4) and the Explanation thereunder. This Sub-section reproduces the corresponding Sub-section (3) of Section 45 of the Presidency Towns Insolvency Act, III of 1909. The Explanation is not found in that Act. It was added by the Select Committee who said :—"We are of opinion that it should be made clear that though the order of discharge may, so long as it stands, be conclusive evidence, it may be set aside on the ground of fraud or collusion."—*S. C: R.*

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

(4) An order of discharge shall be conclusive evidence of the insolvency and of the validity of the proceedings therein.

Explanation.—Nothing in Sub-section (4) shall be deemed to prohibit the Court from rescinding the order on the ground that it was obtained by fraud or collusion.

PART III.

Administration of Property.

Method of proof of debts.

Debt payable at a future time.

45. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Mutual dealings and set off.

46. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Regulation, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account and no more, shall be claimed or paid on either side respectively :

Provided that a person shall not be entitled under the Section to claim the benefits of any set off against the property of an insolvent in any case where such person had at the time of giving credit to the insolvent notice of the presentation of any insolvency petition by or against him.

Sec. 46: The Provincial Act, Section 46, does not contain any Proviso. This is taken from the corresponding Section 47 of the Presidency Towns Insolvency Act, III of 1909.

Secured creditor.

47. (1) Where a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

(2) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.

(3) Where a secured creditor does not either realise or relinquish his security he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may at any time before realisation redeem it on payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realises it, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this Section, he shall be excluded from all share in any dividend.

Interest.

48. (1) On any debt or sum certain whereon interest is not reserved or agreed for and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Regulation, the creditor may prove for interest at a rate not exceeding six per centum per annum;

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Regulation includes interest or any pecuniary consideration in lieu of

interest, the interest or consideration shall, for the purposes of dividend be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Mode of proof.

49. (1) A debt may be proved under this Regulation by delivering, or sending by post in a registered letter to the Court an affidavit verifying the debt.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

Disallowance and reduction of entries in schedule.

50. (1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt.

(2) The Court may also, after like enquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter or, in the case of a composition or scheme, upon the application of the debtor.

Effect of Insolvency on Antecedent Transactions.

Restriction of rights of creditors under execution.

51. (1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition.

(2) Nothing in this Section shall affect the rights of a secured creditor in respect of the property against which the decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver.

Duties of Court executing decree as to property taken in execution.

52. Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an insolvency petition by or against the debtor has been admitted the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the suit in which the decree was made and of the execution shall be a first charge on the property so delivered and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer.

53. Any transfer of property not being—

(i) a transfer made before, or at, and in consideration of, marriage, or

(ii) a transfer made to, or for, the wife or children of the transferor of property that has accrued to the transferor in consideration of the marriage or in right of his wife, or

(iii) a transfer made in favour of a purchaser or incumbrancer in good faith and for valuable consideration,

shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be voidable against the receiver, and may be annulled by the Court.

Avoidance of preference in certain cases.

54. (1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from

---

Sec. 53: The corresponding Section of the Provincial Act is as follows:—"53. Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court." This was adopted in the original Bill. The Select Committee substituted the Section as it stands now. They said:—"The substantial change that we propose is the introduction of Clause (ii) of the Section that we now propose. A Clause to this effect does not find a place in the British Indian Acts, the Provincial Insolvency Act or the Presidency Towns Insolvency Act. But it was introduced in our existing Regulation on the lines of the English Bankruptcy Act. We think that the provision is a desirable one and may be retained. The Section that we propose is, for all practical purposes, the existing Section 35."—*S. C. R.*

Sec. 54: In the Provincial Act, the Section is as follows:—"54. (1) Every transfer of property.....from his own money in

his own money in favour of any creditor or of any person in trust for any creditor with a view of giving that creditor or any surety or guarantor for the debt due to such creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

By whom petitions for annulment may be made.

55. A petition for the annulment of any transfer under Section 53, or of any transfer, payment, obligation or judicial proceeding under Section 54, may be made by the receiver or, with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such petition.

Protection of *bona-fide* transactions.

56. Subject to the foregoing provisions of this Regulation with respect to the effect of insolvency on an execution, and with respect to the avoidance of certain transfers and preferences, nothing in this Regulation shall invalidate in the case of an insolvency—

(*a*) any payment by the insolvent to any of his creditors;

(*b*) any payment or delivery to the insolvent;

(*c*) any transfer by the insolvent for valuable consideration; or

(*d*) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication, and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

---

favour of any creditor, with a view of giving that creditor a preference over the other creditors shall, if such person is adjudged insolvent on a petition.....the receiver and shall be annulled by the Court.

(2) This Section.....creditor of the insolvent."

Realisation of property.

57. (1) The Court may, at the time of the order of adjudication, or at any time afterwards appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

Appointment of receiver.

(2) Subject to such conditions as may be prescribed, the Court may—

(*a*) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property ; and

(*b*) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent.

(3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is from the possession or custody thereof :

Provided that nothing in this Section shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

(4) Where a receiver appointed under this Section—

(*a*) fails to submit his accounts at such periods and in such form as the Court directs, or

(*b*) fails to pay the balance due from him thereon as the Court directs, or

(*c*) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

(5) The provisions of this Section shall apply, so far as may be, to interim receivers appointed under Section 20.

58. (1) Our Government may appoint such persons as they think fit (to be called "Official Receivers") to be receivers under this Regulation within such limits as they may prescribe.

Power to appoint Official Receivers.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Regulation, he shall be the receiver for the purpose of every order appointing a receiver or an interim receiver issued by any such Court, unless the Court for special reasons otherwise directs.

(3) Any sum payable under clause (*b*) of Sub-section (2) of Section 57 in respect of the services of an Official Receiver shall be credited to such fund as Our Government may direct.

(4) Every Official Receiver shall receive such remuneration out of the said fund or otherwise as Our Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

Powers of Court if no receiver appointed.

59. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Regulation.

Duties and powers of receiver.

60. Subject to the provisions of this Regulation, and such other provisions as may be prescribed, the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent,

(*b*) give receipts for any money received by him; and may, by leave of the Court, do all or any of the following things, namely:—

(*c*) carry on business of the insolvent so far as may be necessary for the beneficial winding up of the same;

(*d*) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent;

(*e*) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court;

Sec. 60: The Select Committee inserted after the word "Regulation," the words "and such other provisions as may be prescribed," as they considered "that the receiver's acts should be regulated by such detailed rules as may be prescribed by the High Court, particularly with respect to dealings with immovable property."—*S. C. R.*

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts;

(*h*) refer any dispute to arbitration; and compromise all debts, claims and liabilities, on such terms as may be agreed upon; and

(*i*) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

Power to require information regarding insolvent's property.

61. (1) The Court may, on the application of the receiver or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in the prescribed manner any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent or his dealings or property, and the Court may require any such person to produce any document in his custody or power relating to the insolvent or to his dealings or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may by warrant cause him to be apprehended and brought up for examination:

Sec. 61: I. Sub-sections (1) and (2) of the corresponding Section 59-A of the Provincial Act read thus:—"(1) The Court, if specially empowered in this behalf by an order of the Local Government or any officer of the Court so empowered by a like order may, on the application.....any person whom the Court or such officer as the case may be, may deem capable..... and the Court or such officer may require .....property.

"(2) If any person.....before the Court or such officer at the time.....made known to and allowed by the Court or such officer, the Court or such officer may, by warrant,.....examination."

Provided that no such warrant shall in any case be issued where the person summoned could not have been compelled to appear if such person were summoned as a witness by the Court.

(3) The Court may examine any person so brought before it concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner.

(4) If, on his examination, any such person admits that he is liable to pay the insolvent any sum of money the Court may, on the application of the receiver, order him to pay such receiver at such time and in such manner as to the Court seems expedient, such sum, or any part thereof, either in full discharge of the whole amount, or not, as the Court thinks fit.

(5) Orders made under Sub-section (4) shall be executed in the same manner as decrees for the payment of money under the Code of Civil Procedure, 1100.

(6) The Court shall have the same powers to issue commissions for the examination of any person liable to examination under this Section as it has for the examination of witnesses under the Code of Civil Procedure, 1100.

Distribution of Property.

62. (1) In the distribution of the property of the insolvent, there shall be paid in priority to all other debts—

Priority of debts.

(*a*) all debts due to Our Government or to any local authority; and

(*b*) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

II. The Proviso to Sub-section (2) does not occur in the Provincial Act; as also Sub-sections (4), (5) and (6). In regard to Sub-sections (4) and (5) inserted by the Select Committee, they said:—"We consider it desirable that there should be some expeditious method of recovering moneys admitted to be due to the insolvent. Hence the above provisions, which are drawn up on the lines of the corresponding provisions in the Presidency Towns Insolvency Act. The Travancore Laws Delays Commissioner has also recommended a similar provision being made."—*S. C. R.*

(2) The debts specified in Sub-section (1), shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in Sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them,

(4) In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Regulation, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

Calculation of dividends.

63. (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

(*a*) debts provable under this Regulation and appearing from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to render their proofs;

(*b*) debts provable under this Section, the subject of claims not yet determined;

Sec. 63: The Select Committee added the words "in the manner prescribed" at the end of Sub-section (2) after the word "dividends", and also added Sub-sections (3), (4), (5) and (6). They said that these "Sub-clauses are proposed in order to secure expeditious declaration of dividends."— *S. C. R.*

(*c*) disputed proofs or claims; and

(*d*) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of Sub-section (1), all money in hand shall be distributed as dividends in the manner prescribed.

(3) The first dividend (if any) shall be declared and be distributed within one year after the adjudication, unless the receiver satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(4) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(5) Before declaring a dividend, the receiver shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt.

(6) When the receiver has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and if any creditor so requires, a statement in the prescribed form as to the particulars of the estate shall also be sent to him.

Right of creditor who has not proved debt before declaration of a dividend.

64. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final dividend.

65. When the receiver has realised all the property of the insolvent or so much thereof as can, in the opinion of the Court, be realised without needlessly protracting the receivership, he shall declare a final dividend; but before so doing he shall give notice in manner prescribed to the

persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice, he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited or if the Court, on application by any such claimant, grants him further time for establishing his claim, then on the expiration of such further time, the property of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons.

No suit for dividend.

66. No suit for a dividend shall lie against the receiver; but where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Management by and allowance to insolvent.

67. (1) The Court may, after giving such notice as may be prescribed to the receiver and the creditors and hearing such of them as may appear in that behalf, appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct.

(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court.

Right of insolvent to surplus.

68. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors with interest as provided by this Regulation and of the expenses of the proceedings taken thereunder.

Sec. 67: *Sub-section* (*1*).—The words "after giving such notice as may be prescribed to the receiver and the creditors and hearing such of them as may appear in that behalf" do not occur in the Provincial Act (Sec. 66). They were inserted by the Select Committee.

69. (1) The Court may, if it thinks fit, authorise the creditors who have proved their debts to appoint a committee of inspection for the purpose of superintending the administration of the insolvent's property by the receiver.

Committee of inspection.

(2) The persons appointed to a committee of inspection shall be creditors who have proved their debts or persons holding general powers of attorney from such creditors.

(3) The committee of inspection shall have such powers of control over the proceedings of the receiver as may be prescribed.

Appeal to Court against receiver.

70. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just:

Appeal to Court against receiver.

Provided that no application under this Section shall be entertained after the expiration of thirty days from the date of the act or decision complained of.

PART IV.

Penalties.

71. If a debtor, whether before or after the making of an order of adjudication,—

Offences by debtors.

(*a*) wilfully fails to perform the duties imposed on him by Section 22 or to deliver up possession of any part of his property which is divisible among his creditors under this Regulation, and which is for the time being in his possession or under his control to the Court or to any person authorised by the Court to take possession of it, or

(*b*) fraudulently with intent to conceal the state of his affairs or to defeat the objects of this Regulation,

(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any document relating to such of his affairs as are subject to investigation under this Regulation, or

---

Sec. 70: The Proviso to Section 68 of the Provincial Act provides a limit of twenty-one days.

(ii) has kept or caused to be kept false books, or

(iii) has made false entries in or withheld entries from or wilfully altered or falsified any document relating to such of his affairs as are subject to investigation under this Regulation, or

(c) fraudulently with intent to diminish the sum to be divided among his creditors or to give an undue preference to any of his creditors,

(i) has discharged or concealed any debt due to or from him, or

(ii) has made away with, charged, mortgaged or concealed any part of his property of any kind whatsoever, he shall be punishable on conviction with imprisonment which may extend to one year.

Procedure on charge under Section 71.

72. Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary, that there is ground for inquiring into an offence referred to in Section 71 and appearing to have been committed by the insolvent, the Court may record a finding to that effect and make a complaint of the offence in writing to a Magistrate of the First Class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure.

Criminal liability after discharge or composition.

73. Where an insolvent has been guilty of any of the offences specified in Section 71, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Undischarged insolvent obtaining credit.

74. (1) An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine or with both.

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in Sub section (1), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate

of the First Class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial.

Disqualifications of insolvent.

75. (1) Where a debtor is adjudged or re-adjudged insolvent under this Regulation, he shall, subject to the provisions of this Section, be disqualified from—

(*a*) being appointed or acting as a Judicial Officer;

(*b*) being elected to any office of any local authority where the appointment to such office is by election or holding or exercising any such office to which no salary is attached; and

(*c*) being elected or sitting or voting as member of any local authority.

(2) The disqualifications which an insolvent is subject to under this Section shall be removed, and shall cease if—

(*a*) the order of adjudication is annulled under Section 35. or

(*b*) he obtains from the Court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(3) The Court may grant or refuse such certificate as it thinks fit, but any order or refusal shall be subject to appeal,

---

PART V.

Summary Adminstration.

Summary administration.

76. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Regulation shall be subject to the following modifications, namely :—

(i) unless the Court otherwise directs, no notice required under this Regulation shall be published in Our Government Gazette;

Sec. 75: Clause (*a*) of Sub-sec. (1) of Sec, 73 of the Provincial Act is:—"being appointed or acting as a *Magistrate*."

(ii) on the admission of a petition by debtor, the property of the debtor shall vest in the Court as a receiver;

(iii) at the hearing of the petition, the Court shall inquire into the debts and assets of the debtor and determine the same by order in writing and it shall not be necessary to frame a schedule under the provisions of Section 33;

(iv) the property of the debtor shall be realised with all reasonable despatch and thereafter, when practicable, distributed in a single division;

(v) the debtor shall apply for his discharge within six months from the date of adjudication; and

(vi) such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that the Court may at any time direct that the ordinary procedure provided for in this Regulation shall be followed in regard to the debtor's estate, and thereafter the Regulation shall have effect accordingly.

PART VI.

Appeals.

Appeals.

77. (1) The debtor, any creditor. the receiver or any other person aggrieved by a decision come to or an order made by the Court under the provisions of this Regulation may appeal to the High Court and the decision or order shall for the purposes of the appeal be deemed to be a decree of the Court passed in the exercise of its original civil jurisdiction.

(2) The period of limitation for an appeal under this Section shall be sixty days.

PART VII.

Miscellaneous.

Costs.

78. The costs of any proceeding under this Regulation, including the costs of maintaining a debtor in the civil prison, shall, subject to any Rules made nnder this Regulation, be in the discretion of the Court in which the proceeding is had.

79. All Courts having jurisdiction in insolvency and the officers of such Courts, respectively, shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

Courts to be auxiliary to each other.

80. (1) The provisions of Sections 5 and 12 of the Travancore Limitation Regulation, shall apply to appeals and applications under this Regulation.

Limitation.

Explanation.—For the purposes of the said Section 12, a decision under Section 4 of the Regulation shall be deemed to be a decree.

(2) Where an order of adjudication has been annulled under this Regulation, in computing the period of limitation prescribed for any suit or application for the execution of a decree other than a suit or application in respect of which the leave of the Court was obtained under Sub-section (2) of Section 28 which might have been brought or made but for the making of an order of adjudication under this Regulation, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded :

Provided that nothing in this Section shall apply to a suit or application in respect of a debt provable but not proved under this Regulation.

81. (1) The High Court may, with the previous sanction of Our Government, make Rules for carrying into effect the provisions of this Regulation.

Power to make Rules.

(2) In particular and without prejudice to the generality of the foregoing powers, such Rules may provide—

(*a*) for the appointment and remuneration of receivers (other than Official Receivers), the audit of the accounts of all receivers and the costs of such audit,

(*b*) for meetings of creditors,

(*c*) for the procedure to be followed where the debtor is a firm,

(*d*) for the procedure to be followed in the case of estates to be administered in a summary manner, and

(*e*) for any matter which is to be or may be prescribed.

(3) All Rules made under this Section shall be published in Our Government Gazette and shall, on such publication, have effect as if enacted in this Regulation.

Delegation of powers to Official Receivers.

82. The High Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Regulation, the Official Receiver shall, subject to the directions of the Court, have all or any of the following powers, namely :—

(*a*) to frame schedules and to admit or reject proofs of creditors;

(*b*) to make interim orders in any case of urgency : and

(*c*) to hear and determine any unopposed or *ex parte* application,

Explanation.—The provisions of Section 70 shall apply to any act or decision of the Official Receiver.

Repeal.

83. The Travancore Insolvency Regulation (VIII of 1090) is hereby repealed.

Application of Regulation to pending cases.

84. The provisions of this Regulation shall, as far as may be, apply also in all cases of insolvency pending in the Courts on the date of the commencement of this Regulation.

Sec. 84 : This Section was added by the Select Committee.

REGULATION IX OF 1108.

A Regulation to amend the Travancore Police Regulation, IV of 1095,

Passed by His Highness the Maha Raja of Travancore, under date the 17th Dhanu 1108, corresponding to the 31st December 1932, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to amend the Travancore Police Regulation of 1095 (Regulation IV of 1095) for the purpose hereinafter appearing; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Regulation may be called "The Travancore Police (Amendment) Regulation, 1108."

(2) It extends to the whole of Travancore,

(3) It shall come into force at once.

Regn. IX of 1108: I. *Objects and Reasons.*—(1) "Drivers, conductors and passengers in public passenger vehicles, such as motor buses, are not infrequently found drunk and disorderly. The existing provision of the Police Regulation (Section 51) intended to check drunkenness and disorderly conduct in public places does not seem wide enough to cover such cases. As it is necessary to ensure orderliness in public passenger vehicles, this Bill has been drafted, to amend the Police Regulation, Section 51".—*S. O & R.*

(2) In introducing the Bill, the Official Member in charge said:—"The principle of the Bill is simple. It is the amendment of a particular section of the Police Regulation, namely, Section 51 which provides for penalising any person for riotous and indecent behaviour in streets and public places. It reads thus:—"Section 51. Whoever is found drunk and incapable of taking care of himself, is guilty of any riotous, disorderly or indecent behaviour in any street or public place or in any place of public amusement or resort or on board any passenger boat or vessel; and whoever is guilty of any violent, disorderly, or indecent behaviour in any Court or Police-station or other public office shall be liable to a fine which may extend to fifty rupees, or to imprisonment of either description for a term which may extend to eight days." A doubt has been felt as to whether that provision will apply to the disorderly and drunken behaviour in public passenger vehicles. No doubt the House will concede that riotous behaviour in public passenger vehicles is objectionable as in public streets. To remove this doubt this amendment is proposed".—*L. C. P., dated 16-12-1931.*

II. The Bill was published in the Gazette dated 15-9-1931. It was introduced into the Council at the meeting held on 16-12-1931 (*L. C. P., Vol. XX, Pp. 58-59*). Being a very small Bill, it was not referred to a Select Committee. The Bill was considered and posted for final reading at the meeting held on 21-4-1932 (*L. C. P., Vol. XX, P. 346*). It was finally read and passed at the meeting held on 20-12-1932 (*L. C. P., Vol. XXII, P. 708*). The Regulation was published in the Gazette dated 3-1-1933,

2. In Section 51 of the Travancore Police Regulation of 1095 (Regulation IV of 1095),

Amendment of Section 51.

(*a*) after the word "vessel" the words "or in any public passenger vehicle" shall be inserted, and

(*b*) the following shall be added as an "Explanation," namely:—

Explanation.—'Public passenger vehicle' means a vehicle used for carrying passengers for hire or reward other than a vehicle which carries passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum.

Sec. 2: For Section 51 of Regulation IV of 1095, see above.

The corresponding Section 75 of the Madras City Police Act, III of 1888, is as follows:—"Whoever is found drunk and incapable of taking care of himself, is guilty of any riotous, disorderly or indecent behaviour in any street or thoroughfare, in any place of public amusement or resort, or on board any passenger boat or vessel, and whoever is guilty of any violent, disorderly or indecent behaviour in any Police Court, Office, or Station, shall be liable on conviction to fine not exceeding fifty rupees, or to imprisonment not exceeding one month, or to both."

REGULATION X OF 1108.

A Regulation to amend the Travancore Municipal Regulation, V of 1095,

Passed by His Highness the Maha Raja of Travancore, under date the 17th Dhanu 1108, corresponding to the 31st December 1932, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to amend the Travancore Municipal Regulation, V of 1095, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Regulation may be called "The Travancore Municipal (Amendment) Regulation, 1108."

(2) It shall come into force at once.

Regn. X of 1108: I. *Objects and Reasons.*- (1) "The law that now governs the working of Municipalities is Regulation V of 1095. Government are aware that this Regulation stands in need of general amendment; and Government are taking steps towards that. In the meanwhile, owing to the expected early completion of the water-supply works which Government have undertaken for the benefit of the Trivandrum City, some special amendments in the existing Regulation are felt to be urgently necessary. This Bill has accordingly been prepared for the purpose of introducing such amendments. A water-supply for any Municipality may under the Bill be provided either by the Government or the Municipal Council; and in case Government provide the water-supply system it may be worked by the Government through their own officers or may be handed over to the Council for being worked; if the Government work the system the Council will have to make a contribution towards the expenses (See the proposed Sections 198 and 199), A water-tax may be levied by the Council for defraying the expenses connected with the water-supply system, [See proposed Section 61 (7)]. Specific provisions are also made as regards private water-supply (See proposed Sections 202 to 205). —*S.O & R.*

(2) In introducing the Bill, the Official Member in charge said:—"Government have undertaken to prepare one Bill for the Trivandrum town and another for the other Municipalities. As the House is aware, the Bill for the Trivandrum City is ready and I may inform the House that the other Bill is under preparation. To get through these Bills in the Council, much time would be required as many principles are involved in them. The Select Committees have to sit for a long time, the second reading of the Bills may take some days. All these mean that the Bills before they become law may have to pass through say some eighteen months. In the meantime, an urgent necessity has arisen for certain specific amendments. The Trivandrum Water Supply scheme which the Government have undertaken to carry out is nearing completion, and the Government hope to supply water in the town before the close of 1108. Some special provisions have become necessary to enable the working of the water-supply. First of all, the question will arise whether the Government should undertake the working themselves or hand over the

2. In Section 3 of the Travancore Municipal Regulation, V of 1095, (hereinafter referred to as the said Regulation) after clause (36), the following Clause shall be added, namely :—

Amendment of Section 3.

"(37) The 'Amendment Regulation' means the Travancore Municipal (Amendment) Regulation, 1108."

3. In Section 61 of the said Regulation, for Clause (7), the following, shall be substituted, namely :—

Amendment of Section 61.

"(7) A yearly water and drainage tax on buildings or lands or both not exceeding ten per cent. of the annual value of such building or land or both upon which the tax is imposed :

---

supply to the Municipality ; and if they hand it over to the Municipality, whether they should not make a contribution. Again, the Municipality may require additional funds for which they must have the power to tax. If the Government are to work out the supply, they would have to spend out of the general tax-payer's money to the exclusive advantage of the Trivandrum citizens. In view of these, this Bill has been prepared and is now placed before the Council. The chief principle involved in this Bill is that the Municipality should be enabled to levy a tax for water-supply and drainage. It is proposed that the rate of tax should be not less than five per cent, of the rental value of the houses. It is also provided by this Bill that it is open to the Government either to work the supply themselves or hand it over to the Municipality".— *L. C. P., dated 27-7-1932.*

II. The Bill was published in the Gazette dated 12-7-1932. It was introduced into the Council, its principle was accepted, and the Bill referred to a Select Committee at the meetings held on 27 and 30-7-1932 (*L. C. P., Vol. XXI, Pp. 42-64 and 305-322*). The Select Committee's Report was published in the Gazette dated 29-11-1932. It was presented to the Council and considered at the meetings held on 12, 14 and 15-12-1932 (*L. C. P., Vol. XXII, Pp. 139-206, 343-374 and 383-389*). The Bill was finally read and passed at the meeting held on 20-12-1932, (*L. C. P., Vol. XXII. P. 707*). The Regulation was published in the Gazette dated 3-1-1933.

For Regulation V of 1095, see Vol. IV, Pp. 796—994.

Sec. 2: Section 3 of the Municipal Regulation deals with "Interpretation-Clause."

Sec. 3: I. In the original Bill, Clause (7) was as follows :—"(7) A yearly water and drainage tax on buildings or lands or both not below five per cent. of the annual value,....." This was passed by the Select Committee. When the Bill was considered by the Council, there was considerable discussion over this Clause in regard to the rate of tax to be levied. For the words "not below five per cent" a non-official Member moved the substitution of the words "not exceeding five percent."; another non-official member, the words "not exceeding seven per cent." while a third non-official Member moved that the words "not exceeding ten per cent', might be substituted. These amendments were discussed at great length, and finally the last mentioned amendment was put to vote and carried by a large majority.— *L. C. P. dated, 12-12-1932.*

Provided that—

(i) such tax shall be levied only for the purpose of defraying the expenses connected with any water-supply and drainage system, and

(ii) the Municipal Council may, with the sanction of Our Government, exempt any local area from the whole or a proportion of the water and drainage tax on the ground that such areas are not deriving benefit from the water-supply or drainage system."

4. In the said Regulation for Chapter VIII, the following shall be substituted, namely :—

"CHAPTER VIII.

Water-supply.

Construction of water-works.

198. Our Government, or any Municipal Council with the sanction of Our Government, may construct, lay or erect filtering tanks, reservoirs, engines, conduits, pipes, fountains or such other works within or without the Municipality for supplying it with water, for the use of the inhabitants.

II. Section 61 of Regulation V of 1095 deals with "Levy of taxes." Clause (7) thereof is as follows :—"61. Any Municipal Council * * * may impose all or any one or more of the following taxes, that is to say:— * * * (7) A yearly water and drainage tax on buildings or lands or both not exceeding five per cent. of the annual value of the building or land or both upon which the tax is imposed: Provided that—(i) such tax shall be levied only to enable the Municipal Council to provide for expenses connected with the construction, maintenance, repair, extension or improvement of water or drainage works heretofore or hereafter to be provided, and the proceeds of the said tax shall be solely devoted to defraying the said expenses; (ii) no such tax shall be levied upon any land exclusively used for agricultural purposes and not deriving any benefit from the water or drainage works on account of which the tax is imposed."

Sec. 4: I. Chapter VIII of Regulation V of 1095 deals with "Water-supply." For Sections 198 to 205 contained in that Chapter, see Vol. IV, Pages 941 to 943. Those Sections were based on Sections 96 to 102 of the Punjab Municipal Act, III of 1911.

II. The Sections now substituted follow the provisions of the Madras City Municipal Act, IV of 1919, as amended and the Madras District Municipalities Act, V of 1920, as amended. The corresponding Sections of the former Act are 164 to 173, and those of the latter Act are 126 to 135. The modifications made in adopting the Sections of these Acts are indicated below, reference being made only to the Madras City Municipal Act.

III. *Section 198.*—Section 164 of the Madras City Act is as follows:—"164. The Corporation may, with the sanction of the Governor in Council, construct..... conduits, pipes or other works without the limits of the City for supplying it with water, and may provide tanks, reservoirs, engines, mains, fountains and other conveniences within the said limits for the

199. (1) Our Government or the Municipal Council may provide a supply of drinking water within the Municipality and may erect stand-pipes, fountains or other conveniences for the gratuitous supply of water.

Provision of gratuitous supply of water.

(2) Any water-supply system constructed by and vesting in Our Government may, on such terms as may be settled by Our Government and the Municipal Council, be handed over to the Municipal Council for its being worked and so long as the arrangement lasts, the water-supply shall be deemed a Municipal water-supply.

(3) Notwithstanding anything contained in Sub-section (2), it shall be lawful for Our Government to work the Government water-supply system through their own officers, and in such cases an annual contribution of such amount as may be fixed by Our Government after ascertaining the views of the Municipal Council shall be paid by the Council to Our Government:

---

use of the inhabitants."—The Select Committee substituted the words "fountains or such," for the word "or" which was in the original Bill before the words "other works", and omitted the words—"and may provide tanks, reservoirs, engines, mains, fountains and other conveniences within the said limits" which were in the original Bill before the words "for the use of the inhabitants."—*S. C. R*

Section 199.—I. Section 165 of the Madras City Act is as follows:—"165 (1) The Corporation shall provide a supply of wholesome drinking water within the city and shall erect sufficient stand pipes, fountains, or other conveniences for the gratuitous supply of water.

(2) The Corporation shall, as far as possible, make adequate provision that such supply is continuous throughout the year."

II. Sub-sections (2) and (3) found in the Regulation do not occur in the Madras City Act. They were in the original Bill. See Objects and Reasons above given. The Select Committee passed them. The Proviso to Sub-section (3) was added on the motion of a non-official Member, when the Report of the Select Committee was considered by the Council.—*L. C. P., dated 14-12-1932.*

Section 200.—The corresponding Section 166 of the Madras City Act is as follows:—"166. It shall not be.....to enter on land vested in the Corporation along which a conduit or pipe runs or on any premises connected with water-supply."

The original Bill adopted the wording of the above Section. The Select Committee substituted the words—"and used in connection" for the words—"along which a conduit.....connected." They said:—"The wording of the Clause as it stands appear to be too wide. To restrict it to the limits really intended, the change of wording is proposed."—*S. C, R.*

Section 201.—I. Sub-section (1) follows Section 167 of the Madras City Act; but it does not contain the Proviso, which was also not in the original Bill. The Proviso was added by the Select Committee who said:—"In the case of a Government water-supply system, it is not enough if the Municipal Council's permission is

Provided that such amount shall not exceed the amount that the Council can raise by taxation under the provisions of Section 61 (7).

Trespass on water-supply premises.

200. It shall not be lawful for any person, except with permission duly obtained, to enter on land vested in Our Government or the Municipal Council and used in connection with water-supply, and any person who enters without such permission shall, on conviction, be punishable with fine which may extend to twenty-five rupees.

---

obtained. The permission of Government, through an Officer appointed in that behalf, shall also be taken".—*S. C. R.*

II. Sub-section (2) of Section 167 of the Madras City Act is as follows:—"(2). If any building, wall or other structure be so erected or any street or railway be so constructed, the Commissioner may, with the approval of the Standing Committee, cause the same to be removed or otherwise dealt with as to him shall appear fit and the expenses thereby incurred shall be paid by the persons offending." This was the wording adopted in the original Bill. The Select Committee substituted the Sub-section as it now stands, "to suit the change made in respect of the proposed Section 201 (1)."—*S. C. R.*

Section 202:—This Section follows Section 168 of the Madras City Act. The words "subject to such Rules.....time to time", and the words "and any owner.....twenty-five rupees" are not found in that Act.

Section 203.—I. This Section corresponds to Section 169 of the Madras City Act. Under the Proviso to Sub-Section (1), as amended by the Madras Act, VI of 1925, the Commissioner shall not, without the sanction of the Standing Committee, agree to supply water to any building assessed at an annual value of less than sixty Rupees. The original Bill provided for 'an annual value of less than forty-eight rupees.' The Select Committee substituted "twenty-four" for "forty-eight.—*S. C. R.*

II. In Sub-section (2) of Section 169 of the Madras City Act, the annual value is to be not less than sixty rupees. The original Bill put the sum at forty-eight rupees. The Select Committee substituted ninety-six rupees for forty-eight, as they were of opinion "that the compulsion provision ought not to be applied in the initial stages in respect of houses having so low a rental as forty-eight rupees." —*S. C. R.*

The Madras Act does not contain the penal provision.

III. In the Madras Act, there is a Sub-section (3) to Section 169 which makes it compulsory for the owner to obtain certificate from the Commissioner as to a sufficient supply of wholesome water within or within a reasonable distance of the house, before any dwelling house, assessed at an annual value of not less than sixty rupees and constructed or reconstructed after the commencement of the Act, being occupied or permitting the same to be occupied. A similar provision was in the original Bill. But the Select Committee omitted it, as they thought "that in the initial stages, the provisions of Sub-section 2 of Section 203 would be enough."—*S. C. R.*

Sections 204 & 205.—These Sections closely follow Sections 170 and 172 respectively of the Madras City Act.

Section 205-A.—This Section reproduces Section 173 of the Madras City Act,

---

201. (1) Without the permission of the Municipal Council no building, wall or other structure shall be newly erected and no street shall be constructed over any water-mains :

Prohibition of buildings over water-mains.

Provided that in the case of a Government water-supply system, the permission of such Officer, as may be appointed in this behalf by Our Government, shall also be required before any such building, wall or other structure is newly erected, or any street constructed, over the water-mains.

(2) If, in contravention of the aforesaid provision, any building, wall or other structure be erected or any street constructed, the President may, with the approval of the Municipal Council in the case of a Municipal water-supply, and with the approval of Our Government in the case of the Government water-supply, cause the building, wall, structure or street, as the case may be, to be removed or otherwise dealt with, and the expenses thereby incurred shall be paid by the person offending.

202. All house connections with the water-supply mains, whether the connections be within or without the premises to which they belong, shall, subject to such Rules as may be framed by Our Government from time to time, be under the control of the Municipal Council, but shall be altered, repaired and kept in proper order, at the expense of the owner of the premises to which they belong, or for the use of which they were constructed, and in conformity with bye-laws made in that behalf ; and any owner who contravenes the provisions of this Section shall, on conviction, be punishable with fine which may extend to twenty-five rupees.

Control over house connections.

203. (1) The Municipal President may, on application by the owner or occupier of any building, arrange, in accordance with the Rules and bye-laws, to supply water thereto for domestic consumption and use :

Private water-supply for domestic consumption and use and the powers of the President to enforce provision of water-supply.

Provided that the President shall not, without the sanction of the Municipal Council, agree to supply water to any building assessed at an annual value of less than twenty-four rupees.

(2) Whenever it appears to the President that any dwelling-house assessed at an annual value of not less than ninety-six rupees

is without a proper supply of water for domestic consumption and use and that such a supply can be furnished from a main not more than one hundred feet distant from any part of such building, the President may, by notice, require the owner to obtain such supply and to execute all such works as may be necessary for that purpose in accordance with Rules and bye-laws; and any owner failing to comply with such requisition shall, on conviction, be punishable with fine which may extend to twenty-five rupees.

(3) The cost of making the connection and the cost or hire of meters shall be borne by the applicant and shall be recoverable in the same manner as the water and drainage tax.

(4) For all water supplied under this Section, in excess of a maximum determined by Rules and bye-laws, payment shall be made at such times and under such conditions as may be laid down in such Rules and bye-laws and shall be recoverable in the same manner as the water and drainage tax.

Explanation.—Supply of water for domestic consumption and use shall not be deemed to include a supply—

(*a*) for any trade, manufacture or business,

(*b*) for gardens or for purposes of irrigation,

(*c*) for building purposes,

(*d*) for fountains, swimming baths, public baths, tanks in or near temples, churches and mosques or for any ornamental or mechanical purpose, and

(*e*) for animals or for washing vehicles where such animals or vehicles are kept for sale or hire,

but shall be deemed to include a supply—

(i) for flushing latrines or drains,

(ii) for all baths other than swimming baths or public baths, and

(iii) for the consumption and use of inmates of hostels, boarding houses and residential clubs and for baths used by such inmates.

President's power to supply water for non-domestic purposes.

204. (1) The Municipal President may, subject to such Rules as may be framed by Our Government from time to time and with the sanction of the Municipal Council, supply water for any purpose other than domestic consumption and use on receiving a written

application specifying the purpose for which such supply is required and the quantity likely to be consumed.

(2) For all water supplied under Sub-section (1), payment shall be made at such rates and on such conditions as may be laid down by such Rules as may be framed by Our Government from time to time.

Power to cut off water-supply.

205. (1) The Municipal President may cut off the supply of water from any premises—

(*a*) if the premises are unoccupied;

(*b*) if any water-tax or any sum due for water or for the cost of making a connection or the cost or hire of a meter or the cost of carrying out any work or test connected with the water-supply which is chargeable to any person by or under this Regulation is not paid within thirty days after a bill for such tax or sum has been presented;

(*c*) if after receipt of a notice from the President requiring him to refrain from so doing the owner or occupier continues to use the water or to permit it to be used in contravention of any Rule or bye-law made under this Regulation;

(*d*) if the owner or occupier wilfully or negligently damages his meter or any pipe or tap conveying water;

(*e*) if the occupier refuses to admit the President into premises which he proposes to enter for the purpose of executing any work or of placing or removing any apparatus or of making any examination or enquiry in connection with the water-supply, or prevents the President from doing such work, placing or removing such apparatus or making such examination or enquiry;

(*f*) if any pipes, taps, works or fittings connected with the water-supply are found on examination by the President to be out of repair to such an extent as to cause waste or contamination of water; and

(*g*) if the owner or occupier causes pipes, taps, works or fittings connected with the water-supply to be placed. removed, repaired or otherwise interfered with in violation of the bye-laws.

(2) The expense of cutting off the supply shall be paid by the owner or occupier of the premises.

(3) In cases under clause (*b*) of Sub-section (1) as soon as any money for non-payment of which water has been cut off, together with the expense of cutting off the supply, has been paid by the owner or occupier, the President shall cause water to be supplied as before on payment of the cost (if any) of reconnecting the premises with the water-works.

(4) No action taken under this Section shall relieve any person from any penalties or liabilities which he may otherwise have incurred.

Non-liability of Council when supply is reduced or not made in certain cases.

205-A. The Municipal Council shall not be liable to any penalty or damages for cutting off the supply of water or for not supplying water, in the case of unusual drought, other unavoidable cause or accident, or the necessity for relaying or repairing pipes.

Power of Government and of Municipal Council in respect of making connections and communications with the water-main.

205-B. For the purpose of providing or maintaining the water-supply or of making or maintaining communications or connections with the mains and generally for the purpose of this Chapter, Our Government and the Municipal Council shall have all the powers which are conferred upon the Council in respect of drainage and the supply of gas by Sections 128 to 132."

RULES.

THE WILLINGDON WATER WORKS RULES.

(R. O. C. 1288/33 P. W., dated 13th July 1934.)

In exercise of the powers conferred by Sections 202 to 204 of the Travancore Municipal Regulation, V of 1095, as amended by Regulation X of 1108, the Government of His Highness the Maha Raja are pleased to make the following Rules :—

(1) (*a*) These Rules may be called the "Willingdon Water Works Rules" and shall come into force at once.

(*b*) They shall apply to the Municipal Town of Trivandrum.

2. In these Rules unless there be anything repugnant in the subject or context,—

(*a*) "Municipal Council" means the Municipal Council, Trivandrum :

(*b*) "President" means the President of the Municipal Council, Trivandrum :

(*c*) "Water-supply" means the water-supply within the Municipal Town of Trivandrum :

(*d*) "Regulation" means the Travancore Municipal Regulation, V of 1095, as amended by Regulation X of 1108 :

(*e*) "House-connection" means the connection by pipe from the public water main to the limit of the house or premises concerned or to the meter whichever is farther from the main :

(*f*) "Communication pipe" means the pipe that is laid from the end of the house connection and from which pipes called "Supply pipes" are taken off for the purposes of distribution of water :

(*g*) "Supply-pipe" means the pipe line that is taken off from the Communication pipe and from which smaller pipes called "Service pipes" are taken to the various parts of the premises or buildings :

(*h*) "Service pipe" means pipe taken off from the supply pipe to the various parts of the premises or buildings to feed taps ; and

(*i*) "Water-supply installation" means the pipe work and fittings within the house or premises concerned excluding the house connection.

3. Except in so far as is otherwise provided in the Regulation or in these Rules, the Water Supply Department shall be responsible for all work connected with water-supply. *

4. (*a*) Applications for house connections (ferrule connections) from the public water mains shall be made to the President in Form No. 1, appended to these Rules.

(*b*) Along with the application the applicant shall deposit with the President an estimate fee of half a rupee which shall in no case be returned.

(*c*) The President shall forward such application with the estimate fee to the Water Works Engineer.

5. (*a*) On receipt of the application and the estimate fee, the Water Works Engineer shall cause an estimate of the cost of providing the house connection to be prepared and issue to the applicant a notice in Form No. 2 appended to these Rules intimating to him the estimated cost and calling upon him to deposit the same with the Water Works Engineer within the time fixed in the notice.

(*b*) If the deposit be made as called for, the Water Works Engineer shall issue a receipt to the applicant and provide as early as possible the house connection applied for.

(*c*) If the amount be not deposited within the time fixed in the notice or within such further time as may be allowed by the Water Works Engineer he may reject the application.

6. (*a*) If the actual cost of the house connection exceeds the amount deposited by the applicant under Rule 5, the excess amount shall be paid by the applicant within one week of the demand notice made therefor by the Water Works Engineer in Form No. 3, but if the actual cost be less than the deposited amount the balance amount shall be refunded to the applicant on his executing a receipt.

(*b*) If the excess amount be not paid by the applicant as required under Clause (*a*) or within such further time as may be allowed by the Water Works Engineer he may not only realise such amount from the applicant but also request the President to withhold supply of water from the applicant. In case of such request the President shall accordingly withhold the supply.

7. (*a*) No repairs to any house connection shall be made except through the Water Supply Department.

* Under Section 199 (3) of the Regulation Government have resolved to work the water-supply system through their officers of the Water Supply Department.

(*b*) Applications for such repairs shall be made to the Water Works Engineer in writing and the provisions of Rules Nos. 5 and 6 shall, as far as may be, be applicable to them.

8. (*a*) When, in the opinion of the Water Worke Engineer, any house connection stands in urgent need of repairs, he may, after issuing a notice to the owner or occupier of the house or premises concerned, in Form No. 4, calling upon him to deposit the estimated cost of the repairs, start the work of repairs.

(*b*) A copy of the notice issued under Clause (*a*) shall be sent to the President.

(*c*) If the cost of repairs be not deposited within the period fixed in the notice, the Water Works Engineer may not only realise the amount from the owner or occupier but also request the President in Form No. 5 to cut off the supply of water from the premises concerned.

(*d*) If the actual cost of the repairs be more or less than the estimated cost the difference shall, as the case may be, be recovered from or refunded to the owner or occupier. The provisions contained in Rule 6 shall, as far as may be, apply to such recovery or refund.

9. Whenever any supply of water has to be cut off from any house or premises under the provisions of the Regulation or these Rules, the Water Works Engineer may request the President to do so in Form No. 5, and the President shall act accordingly.

Explanation.—Nothing in this Rule shall be deemed to prevent the President from acting on his own initiative.

Provided that the President shall, before cutting off the supply of water, issue a notice.

(i) in Form No. 6 when the supply is to be cut off under Clause (*a*) of Sub-section (1) of Section 205.

(ii) in Form No. 7 ,, (*b*) ,, ,,

(iii) in Form No. 8 ,, (*c*) ,, ,,

(iv) in Form No. 9 ,, (*d*) ,, ,,

(v) in Form No. 10 ,, (*e*) ,, ,,

(vi) in Form No. 11 ,, (*f*) ,, ,,

(vii) in Form No. 12 ,, (*g*) ,, ,,

10. (*a*) Whenever any owner or occupier desires to have his house connection closed temporarily, he may apply in writing to the Water Works Engineer.

(*b*) Along with the application to close the house connection, the applicant shall deposit with the Water Works Engineer an

amount equal to one-half of the actual cost of the connection when it was first made, to meet the charge for closing and re-opening the connection.

11. No house connection shall be allowed,

(*a*) in respect of any house or premises if the annual rental value thereof be less than Rs. 24-, or

(*b*) in any locality where the capacity and pressure of the public water mains do not permit of a separate supply being given to the houses or premises situated therein without detriment to service through public street fountain.

12. (*a*) No person other than plumbers duly licensed by the Water Works Engineer under Rules contained in the Schedule shall be employed by the owner or occupier of a house or premises in the construction, alteration, repair, or extension of any water-supply installation.

(*b*) Water-supply installations shall be laid only in accordance with the Rules in the Schedule and in accordance with the plan and specifications approved by the Water Works Engineer in Form No. 13.

13. No connection shall be established between any water supply installation and the house connection except through the Water Supply Department and no installation shall be connected with the house connection until the installation has been inspected and approved by the Water Works Engineer or any other person acting under his orders.

14. (*a*) Except with the previous sanction of the Water Works Engineer no alteration or extension shall be made to any water-supply installation.

(*b*) Repairs to water-supply installation may however be made by the owners or occupiers of houses or premises after giving intimation to the Water Works Engineer of the nature of the repairs to be done, the work of repairs being entrusted to licensed plumbers only as provided for in Rule 12 (*a*).

15. Every house or premises to which water is supplied shall be provided with a separate house connection, a separate stop cock, and a separate meter for such house connection.

16. (*a*) Meters of a type approved by the Water Works Engineer shall be provided at the cost of the owner or occupier of the house or premises but shall be kept under the lock and key of the Water Supply Department.

(*b*) The meter shall be read, sealed, repaired, and maintained by the Water Supply Department.

17. The meter shall, wherever practicable, be placed above ground level inside the house or premises concerned in such manner as to be adequately protected from damage by weather or other causes.

18. Except as otherwise provided in the Regulation or in these Rules water shall be supplied for *bona-fide* domestic purposes alone.

19. (*a*) The quantity of water which the owner or occupier of any house or premises will be allowed to draw free of charge from his house connection shall be regulated on the basis of the annual rental value of the house or premises as follows :—

(1) 65 gallons per day for house or premises whose annual rental value does not exceed Rs. 100.

(2) 100 gallons per day for house or premises whose annual rental value exceeds Rs. 100 but does not exceed Rs. 240.

(3) 125 gallons per day for house or premises whose annual rental value exceeds Rs. 240 but does not exceed Rs. 480.

(4) 140 gals. ,, Rs. 480 ,, ,, ,, Rs. 960.

(5) 150 gals. ,, Rs. 960 ,, ,, ,, Rs. 1200.

(6) 160 gals. ,, Rs. 1200

(*b*) Water drawn in any month in excess of the quantity prescribed by Clause (*a*) shall be charged at the rate of 21 Chs. per unit of 1000 gallons. In making calculation, any fraction of a unit which is not more than 500 gallons shall be left out of account, and any fraction which is more than 500 gallons shall be counted as one unit.

20. (*a*) Supply of water under Section 204 of the Regulation (for purposes other than domestic consumption and use) shall be at the rate of Rs. 1-Chs. 14-0 c. per 1000 gallons.

Provided that water supplied for washing the following classes of vehicles kept for sale or for hire shall be at an annual flat rate as shown below against each class of vehicle :—

		Rs.	chs.	c.
Bullock bandy	...	4	0	0
Jutkha drawn by a single horse	...	5	0	0
Phaeton	...	6	0	0
Eight seater motor car	...	15	0	0
Car or taxi car	...	15	0	0
Motor bus	...	30	0	0

Explanation.—The rate of Rupee 1-chs. 14 per 1000 gallons shall apply also to water supplied to the P. W. D. or to the Municipality for road-work, road-making or building purposes.

(*b*) In all cases of application for supply of water under Section 204 of the Regulation, the President shall consult the Water Works Engineer and if the latter objects, the President shall not make such supply of water unless otherwise ordered by Government.

(*c*) The application for supply of water under Section 204 shall be made in Form No. 14.

21. (*a*) The charges due for water drawn in excess of the maximum fixed by Rule 19 and for water supplied under Rule 20, shall be paid by the owner or applicant as the case may be to the Water Works Engineer on bills signed by him and presented for payment to such owner or applicant;

Provided that any payment of such charges made by any person on behalf of the owner or applicant shall be accepted by the Water Works Engineer.

(*b*) If the charges are not paid on bills presented as aforesaid, the Water Works Engineer may transfer such bills to the President and the President shall realise the amounts of the bills according to law.

22. On the application of the owner or occupier of a house or premises, the Water Works Engineer may furnish a memorandum to the applicant showing the excess consumption of water for any portion of a month and the probable charges therefor.

23. (*a*) Meters shall be read, as far as possible, within the 5th of every month after giving notice in Form No. 15.

(*b*) The meter reader shall leave with any available person in the house or premises, a slip in Form No. 15 showing the consumption of water during the preceding month.

24. Complaints, if any, relating to the accuracy of the reading should be made in writing to the Water Works Engineer within 10 days of the delivery of the slip, and in case the complaint relates to the non-receipt of the slip, it should be made before the end of the month.

25. (*a*) The owner or occupier of any house or premises may apply to the Water Works Engineer or any person authorised in that behalf to have the meter tested. A test fee of one rupee shall be paid along with the application.

(*b*) When the application is made and the test fee is paid, the meter shall be tested. If on testing it is found that the quantity registered by the meter exceeds 10 per cent of the correct quantity, the test fee shall be refunded to the

applicant; otherwise, it shall be credited to Government. The result of the testing shall be intimated to the applicant in Form No. 16.

26. Notwithstanding anything contained in Rule 25, the Water Works Engineer may on his own initiative test any meter at any time between sunrise and sunset on giving not less than 24 hours' notice in Form No. 17 to the occupier of the house or premises concerned.

27. If, on examination, any meter be found to be out of order and not registering correctly, the consumption during the period dating from the last reading till the repair of the meter or the putting up of a correct meter shall after notice in Form No. 18 be calculated at the average daily consumption registered for any previous period during which, in the opinion of the Water Works Engineer the meter was registering correctly and the consumption of water was not abnormal.

28. Meters damaged beyond repair shall be replaced by the Water Works Engineer with new meters at Government cost. The owner or occupier of the house or premises concerned shall, unless he pays the cost of the new meter, be liable to pay a monthly hire of a quarter of a rupee for the meter.

29. The Water Works Engineer may on behalf of Government exercise the powers under Section 205-A of the Regulation.

30. (*a*) The Water Works Engineer or any person authorised by him may, without any notice, stop or reduce the supply of water in any public main or sub-main for the purpose of making repairs or renewals:

Provided that when the stoppage is over an extensive area or is due to exigencies which can be foreseen such previous intimation as is possible under the circumstances, shall be given by general tom-tom.

(*b*) The supply of water to any premises may after giving notice in Form No. 19 be shut off for the purpose of making repairs, renewals, or any other work connected with water supply.

31. The foregoing Rules shall apply *mutatis mutandis* to all public institutions such as schools, temples, mosques, churches, public offices, etc:

Provided that the maximum quantity of water which each such institution may have free of charge shall be fixed by the Water Works Engineer from time to time.

32. Every boiler for generating steam which requires water shall be supplied with water from a cistern, and not directly from the service pipe, and every such cistern shall be supplied with a ball valve, detective or a warning pipe, and proper means of access for inspection thereof.

33. Every person to whom a house connection is given shall maintain the house connection in good order and repair.

SCHEDULE.

Rules regarding license to plumbers and their work.

1. (*a*) The authority to grant licenses to plumbers shall be the Water Works Engineer to whom application for licenses shall be made

(*b*) The license shall be in Form No. 20.

2. (*a*) Any person, applying to the Water Works Engineer for a license, shall, along with the application pay a license fee of Bh. Rs. 10 and produce an agreement signed by him in Form No. 21 with the security amount mentioned therein.

(*b*) The Water Works Engineer on being satisfied of the competency of the applicant by practical examination or otherwise, may issue a license in Form No. 20. If the application be rejected the license fee and security amount deposited by the applicant shall be returned to him.

(*c*) The license shall hold good only for a period of one year from the date of issue of license but may be renewed year after year on payment of the license fee of Bh. Rs. 10 mentioned in Clause (*a*).

3. A list of licensed plumbers shall be kept in the Office of the Water Works Engineer.

4. The plumbers shall carry out all water supply installation work (including new installations, alterations, and repairs) subject to the Rules herein contained and in accordance with the orders that may be issued from time to time by the Water Works Engineer or any person acting under his orders.

5. The plumber selected by the owner or occupier of a house or premises for the construction of a new water supply installation or for the extension, alteration or repair of an existing water supply installation shall present to the Water Works Engineer an estimate (in duplicate) with a specification describing the work and with a dimensioned sketch plan of the proposed installation, extension, alteration or repair as the case may be.

6. On approval by the Water Works Engineer of the estimate presented under Rule 5 of this Schedule the plumber may collect all the materials, such as, taps, pipes, valve, etc., necessary for the work, but shall not commence work until the materials have been inspected and approved by the Water Works Engineer or any other duly authorised officer of the Water Supply Department and until the plumber is satisfied that the owner or occupier has duly applied for house connection.

7. (*a*) The Water Works Engineer or other officers of the Water Supply Department authorised in that behalf may inspect the works of plumbers at any stage.

(*b*) If on inspection, it is found that any material used or work done is not of the approved pattern or specification the plumber shall in accordance with the orders of the officer concerned replace the materials with materials of the approved pattern or reconstruct the work as the case may be.

8. Any plumber, requiring water to be shut off from or let on to any place in connection with his work may apply to the Water Works Engineer but shall on no account interfere with any street tap, cock or valve for the purpose.

9. Every plumber shall keep a book in Form No. 22 supplied by the Water Supply Department in which he shall enter all details of work done by him in connection with any water supply installation. Such book shall be the property of the Water Supply Department and shall be sent to the Water Works Engineer on the 15th of every month for perusal and return.

10. (*a*) The Water Works Engineer may by a written order fine a licensed plumber, suspend or cancel, with or without forfeiture of security, the license of any plumber who is guilty of breaking or evading any Rule, bye-law or other orders of the Water Supply Department or any of the foregoing Rules or any Government Order relating to water supply or who fails to comply with any reasonable order given him by a duly authorised officer of the Water Supply Department or whose work, in the opinion of the Water Works Engineer is not satisfactory.

(*b*) The order of the Water Works Engineer shall be final, subject to the result of any appeal to the Chief Engineer filed within 30 days of the communication of the order of the Water Works Engineer to the plumber.

11. Any plumber whose license has been cancelled or suspended shall return his license to the Water Works Engineer within 24 hours of the communication to him of such cancellation or suspension.

12. If two or more plumbers form themselves into a company or partnership, any penalty imposed under these Rules shall be operative against every plumber constituting such company or partnership unless the order imposing the penalty shows otherwise.—*T. G. G., dated 26-7-1934, Pt. I, 1339.*

[For Forms see App. G.]

REGULATION XI OF 1108.

THE TRAVANCORE MUSLIM SUCCESSION REGULATION.

A Regulation to amend the law relating to inheritance and succession among the Muslims of Travancore

Passed by His Highness the Maha Raja of Travancore, under date the 17th Dhanu 1108, corresponding to the 31st December 1932, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to amend and define the rules of law applicable to intestate succession among the Muslims governed by the Marumakkathayam law of inheritance : It is enacted as follows :—

Regn. XI of 1108: I. *Objects and Reasons.* —(1) "A Muslim, according to the religion of Islam, is not allowed to follow any other law except the Islamic Law. According to the opinions of the Islamic Jurists, a Muslim who follows a non-Islamic Code for inheritance is outside the sphere of "the Islam." Hence it is obligatory for all Muslims to be governed by the Islamic Law of Inheritance.

The Islamic Code of inheritance is accepted by all authorities of jurisprudence as one of the best codes available on the subject.

Even communities that were governed by Marumakkathayam Law from time immemorial have changed the law substantially and made their children also to inherit their property as their heirs. Partition has been accepted as the common feature of every Regulation at the modern time.

It is accepted by all reasonable people that individuality is the key-note of progress. The unhealthy competition between the manager of the Tarwad and the other members is invariably perceived even in families which hold huge Tarwad properties.

All the civilized communities considered that it is unnatural to leave one's children without inheriting his properties after his death.

It is unfortunate to see that some Muslims in Travancore are following the Marumakkathayam law, against the clear instruction of the Holy Koran. They have not only been living as traitors to the religion but they have become the object of ridicule by all the civilized communities. The majority of these people are living in Edava, Odathi and other adjacent places. I do not believe that there is anybody among them who desire to retain this inheritance; on the other hand a great majority among them have repeatedly been raising their voice to change this system.

The community as a whole wish to see that the Marumakkathayam system of inheritance is removed among these Muslims and bring them into the fold of the Mahomedan law of inheritance. The Bill is only an attempt to give Legislative recognition to this wish."—*S. O & R.*

II. The Bill was published in the Gazette dated 3-6-1930 to elicit and consider the views of the members of the Muslim community and of all those interested. Leave to introduce the Bill was applied for by a Mahomedan non-official Member and granted at the meeting held on 17-12-1930 (*L. C. P. Vol., XVIII, P. 133*). The Bill was introduced into the Council at the meeting held on 18-4-1931 (*L. C. P., Vol, XVIII, Pp. 648-652*). It was referred to

a Select Committee at the meeting held on 10-8-1931 (*L. C. P., Vol. XIX., P. 989*). The Select Committee's Report was published in the Gazette dated 8-3-1932. The Committee's Report was presented to the Council, and considered, and the Bill posted for final reading at the meeting held on 25-4-1932 (*L. C. P., Vol.* XX, *Pp. 624-625*). The Bill was finally read and passed at the meeting held on 19-12-1932 (*L. C. P., Vol.* XX*II*, *Pp. 611-612*). The Regulation was published in the Gazette dated 3-1-1933.

III. The Select Committee in their Report on the Bill explain the object and scope of the measure Extracts therefrom are appended :— " * * *

The Committee resolved to take the evidence of such witnesses at the Sivagiri School, Varkala, in the neighbourhood of which Marumakkathayee Mahomedans are living in large numbers. It has not been possible for the Committee to trace the origin of the adoption of the Marumakkathayam law of descent, by the followers of the Mahomedan religion. These Mahomedans are found in large numbers in the pakuthies of Edava, Odathi, and Paravur situated in the taluks of Quilon and Chirayinkil. The Committee held two sittings at the Sivagiri School, on the 19th and 20th of Vrischikam 1107, and examined in all forty-six witnesses. All these witnesses are followers of the Marumakkathayam law of succession. From the evidence of these witnesses, the Committee found that, except in the matter of intestate succession to self-acquired and separate properties of deceased members, they conformed in all other respects to Makkathayee Mahomedans. The control of the Tarwad and of its properties is vested in the senior adult male member of the family. The ladies of these families never leave their Tarwad houses, but their husbands come and live with them maintaining their wives and children. If the contribution made by the husband is insufficient, the Tarwad of these ladies contributes to their proper maintenance and upkeep. Tarwad properties are seldom divided. From the evidence of the witnesses we found that there is a general concensus of opinion in their midst that succession to self-acquired and separate properties must be regulated by the Mahomedan Law of inheritance in all cases of intestate succession as against the usage now obtaining amongst them under which such properties descend to the thavazhies of the acquirer, that is, to their sisters and sisters' children. There are Mahomedans, who are following the Mahomedan Law, with whom the Marumakkathayee Mahomedans inter-marry, though such cases have been very rare. A lady following the Marumakkathayam Law who marries a Makkathayee Mahomedan, retains all rights in her Tarwad while at the same time her claim for a share in the estate of the husband according to Mahomedan Law is well recognised. Children of such union retain their rights in their own Tarwad, while they also get their share of the father's property as under Mahomedan Law. As regards a Makkathayee Mahomedan lady marrying in a Marumakkathayam family she has no right against the Tarwad of the husband and her children do not inherit any portion of their father's acquisitions. There seems to be a general concensus of opinion amongst these Marumakkathayee Mahomedans that it is obnoxious to the tenets of the Mahomedan religion that the devolution of such properties should be regulated by customary law. The joint family tie has been weakening in this community as in other communities in Travancore following the Marumakkathayam law of inheritance. A change which would reconcile the succession to the principles of Mahomedan Law and to the dictates of natural love and affection has been ardently advocated in the community ever since 1082 M. E. as could be gathered by the committee from the documents produced before the Committee

for inspection. In the absence of a statutory change in the law of succession and with the limitations imposed on the right of testamentary disposition created by the Travancore Wills Regulation, VI of 1074, which allowed only one-half of the estate to be disposed of by will, it had not been possible for this community to realise its ambition of falling into line with other Mahomedans living in Travancore. Associations were formed in the areas referred to above, resolutions advocating a change were passed in these meetings and submitted to Government. But it has not been possible for the community to secure the necessary law being passed as in answer to the representation made by the community, the Government informed the community that the initiative must come from a representative of the community in the Legislative Council. * *

This Bill purports to be drafted on the lines of the Madras Act, Mappilla Succession Act, I of 1918. In parts of North Malabar and in Cassergod of South Canara, the Mahomedans were following the Marumakkathayam or Alyasanthanam law of inheritance and it was for the purpose of bringing it into accord with the Mahomedan Law that the Mappilla Succession Act was passed by the Madras Legislative Council. We may state here that the reform that was advocated and finally adopted related to the devolution of the self-acquired property of Mahomedans dying intestate. The question of Tarwad properties was not touched by this piece of legislation. In the course of the discussion that took place at the introduction of the present Bill in the Legislative Council and in the course of our examination of the witnesses at Sivagiri a natural desire was expressed that the future management and control of the Tarwad properties should also be regulated in accordance with Mahomedan Law. The inherent difficulties of the situation were not sufficiently appreciated by the advocates of the change either in the Council or in the course of the evidence that the witnesses placed before the Committee. The lines of devolution laid down by Mahomedan Law relate exclusively to the self-acquired and separate property of a Mahomedan dying intestate. The idea of a corporation like the Hindu Joint Family or of a Marumakkathayam Tarwad was unknown to the genius of Mahomedan Law, and naturally no provision was made for the purpose. The evidence of the witnesses recorded by the Committee shows that if there is to be a fair partition of the common Tarwad property, it must be on a *per capita* basis and the future devolution of properties obtained on such partition may no doubt be regulated according to Mahomedan Law. But the difficulties inherent to the adoption of some such summary method in dealing with this Bill are serious. In the first place that question was not definitely before the House. In the second place several of the witnesses distinctly admitted that in none of their formal meetings was any resolution passed dealing with the division of the Tarwad properties, though there was a natural desire to secure a state of things under which the devolution would be entirely in accordance with the Mahomedan Law. It is thus clear that the community affected has not up till now formed any definite conclusions as to how such partition should be effected. In passing, we may observe the Mappilla Act of Madras deals only with separate and self-acquired property of a Mahomedan dying intestate governed by the Marumakkathayam law of succession. We therefore cannot consider the desirability of the partition of Tarwad property, the lines on which such partition should be effected and the devolution thereof subsequently. The immediate requirements of the community would be sufficiently met by confining this piece of legislation to properties of which the intestate has absolute power of disposal. To give effect to this intention we have modified the draft Bill on the lines indicated below.

THE MUSLIM SUCCESSION REGULATION XI OF 1108.

1. (i) This Regulation may be called "The Travancore Muslim Succession Regulation of 1108;" and it shall come into force at once.

Short title.

Local extent.

(ii) It extends to the whole of Travancore.

Persons to whom this Regulation is applicable.

(iii) It applies to Muslims domiciled in Travancore who are governed by the Marumakkathayam law of inheritance and also, in respect of immovable property situated within Travancore, to Muslims domiciled outside Travancore who are governed by such law of inheritance.

Property in respect of which a deceased Muslim is considered to have died intestate.

2. A person is considered to die intestate in respect of all property of which he has not made a testamentary disposition capable of taking effect.

Explanation.—Property in this Section does not include Tarwad property unless the person dying intestate was exclusively entitled to it.

Devolution of property.

3. Such property shall, notwithstanding any customs to the contrary, devolve upon his heirs in the order laid down by the rules of Mahomedan Law.

We may observe that under the existing Travancore Wills Regulation, VI of 1074, it is open to Marumakkathayee Mahomedans to dispose of by will their self-acquired and separate property to an extent not exceeding one-half. When the present Bill is passed into law they would cease to be followers of the Marumakkathayam Law, so far as self-acquired and separate properties are concerned. But they would still continue to be Marumakkathayees so far as the Tarwad properties are concerned. A conflict of opinion might arise in future as to the extent of the testamentary power possessed by a Marumakkathayee Mahomedan. It may be considered after this Bill is passed. The Committee seriously considered the desirability of making an amendment in this Bill itself disqualifying every member of the community from alienating by will any share larger than the one allowed by the Mahomedan Law. We feel however the proper course will be to move for the amendment of the Wills Regulation, VI of 1074. on the lines of the Madras Mappilla Wills Act, VII of 1928, or in any other appropriate manner. * * * "—*S. C. R.*

Sec. 1. (iii) The Select Committee redrafted the provision and explained the same as follows:—"The real idea underlying this provision is to apply the law with reference to domiciled Travancoreans both as regards movable and immovable properties. But with reference to individuals who are not domiciled in Travancore whose Courts have normally no jurisdiction over such persons, the intention of the Committee is that the devolution of such immovable properties in Travancore belonging to a non-domiciled Mahomedan should also be regulated by this measure". —*S. C. R.*

Sec. 2: "The explanation was added by the Select Committee. They said:—"The Explanation is embodied for making it clear that the measure relates only to properties specified in the Explanation and not to Tarwad property generally. This measure is intended to apply only to self-acquired and separate property and to place the matter beyond all doubt." —*S. C. R.*

REGULATION XII OF 1108.

THE TRAVANCORE JENMI KUDIYAN (AMENDMENT) REGULATION.

CONTENTS.

Preamble.

Sections.

I. Short title and commencement.

II. Amendment of Section 1.

II-A. Substitution of a new Section for Section 2.

S. 2. No right between Jenmi and Kudiyan unless expressly provided for.

III. Amendment of Section 3 and substitution of new clauses.

S. 3.

(11) Renewal fees. } Fractional fee. }

(12) Customary dues. } Commuted cess. }

(14) Jenmivaram.

(15) Settlement pattom.

(16) Settlement pattamicham.

(17) Jenmikaram.

(18) Prescribed.

(19) Amendment Regulation.

III-A. Amendment of Section 4.

IV. Substitution of new Sections for Sections 5 to 14.

S. 5. Kudiyan owner of land subject only to payment of Jenmikaram.

S. 6. Apportionment of Jenmikaram as amongst various lands.

S. 7. Jenmikaram how fixed on land being divided.

S. 8. Renewal fees not to exceed 30 per cent. of kanam.

S. 9. Jenmikaram, first charge on land.

S. 10. Kudiyan's liability on Jenmis' right being transferred.

S. 11. Kudiyan's liability on holding being transferred.

S. 12. Kudiyan's liability on Jenmis' right in land being divided. .

S. 13. Renewals not obligatory.

S. 14. Revision of Jenmikaram.

V. Substitution of a new heading for Part A of Chapter III.
VI. Amendment of Section 15 (1).
VI-A. Amendment of Section 15 (2).
VII. Substitution of new Sections for Sections 16 to 18.
S. 16. When summary suit will not lie.
S. 17. Jenmikaram alone payable to Jenmi—with interest if in arrears.
S. 17 (5) Renewal fees for expired period how payable.
S. 18. Jenmikaram payable only in money.
VIII. Amendment of Section 19.
IX. Omission of Sections 20 to 26.
X. Substitution of new heading for Part B of Chapter III.
XI. Insertion of a new Section, 26-A.
S. 26-A. Jenmi may apply to Tahsildar to recover Jenmikaram under Revenue Recovery processes.
XII. Substitution of a new Section for Section 27.
S. 27. Jenmikaram may be deposited by Kudiyan.
XIII. Amendment of Section 28.
XIV. Amendment of Section 29.
XV. Substitution of new Sections for Sections 30 and 31.
S. 30. Procedure on deposit of Jenmikaram.
S. 31. Further procedure on deposit.
XVI. Substitution of a new heading for Part C of Chapter III.
XVII. Amendment of Section 33.
XVIII. Amendment of Section 39.
XIX. Amendment of Section 40.
XX. Insertion of a new Chapter, Chapter IV.

CHAPTER IV.

COLLECTION AND PAYMENT OF JENMIKARAM BY GOVERNMENT.

S. 40-A. Power of Government to assume collection of Jenmikarams.
S. 40-B. Settlement of Jenmikaram and Register of Jenmikarams.
S. 40-C. Jenmikaram Settlement Officer.
S. 40-D. Preliminary notification for settlement of Jenmikaram.
S. 40-E. Final notification notifying completion of Register of Jenmikarams.
S. 40-F. (1) Jenmikarams to be paid to Government and recoverable as arreas of land revenue.

(2) Jenmikaram to be paid in money only.
S. 40-G. Jenmikarams to be paid to Jenmi deducting cost of collection.
S. 40-H. Jenmikaram to be paid only to Government.
S. 40-I. Jenmikarams must be collected according to the Register of Jenmikarams.
S. 40-J. Revision of Register of Jenmikarams.
S. 40-K. Subsequent changes *re* Jenmikaram, etc., may be recorded.
S. 40-L. When suits against Government will lie and when not.
S. 40-M. Power to make Rules.
S. 40-N. What land can be sold for Jenmikaram.
XX-A. Insertion of a new heading Chapter V—Miscellaneous.
XXI. Amendment of Section 44.
XXII. Addition of new Sections, 45 to 47.
S. 45. Apportionment of compensation money on land acquisition.
S. 46. Government to fix commutation rates on advice of Committees.
S. 47. Limitation period for Jenmikaram.
XXIII. Amendment of long title.
XXIV. Amendment of preamble.

A Regulation to amend the Travancore Jenmi and Kudiyan Regulation of 1071 (V of 1071)

Passed by His Highness the Maha Raja of Travancore, under date the 17th Dhanu 1108, corresponding to the 31st December 1932, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to amend the Travancore Jenmi and Kudiyan Regulation of 1071, Regulation V of 1071, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

I (*a*) This Regulation may be called "The Travancore Jenmi and Kudiyan (Amendment) Regulation, 1108".

(*b*) It shall come into force at once.

N. B. The Jenmi and Kudiyan Regulation V of 1071, with the amendments made by Regulation XII of 1108 incorporated therein, is given as Appendix A. The foot-notes thereunder contain the objects and reasons of the Amending Regulation, as also of its various provisions, &c.

II. In Section 1 of the Travancore Jenmi and Kudiyan Regulation of 1071, Regulation V of 1071, hereinafter referred to as the said Regulation, the words and figures "para 2 of Section 5 and" occurring in the proviso shall be omitted.

Amendment of Section 1.

II-A. For Section 2 of the said Regulation, the following shall be substituted namely:—

Substitution of a new Section for Section 2.

"2. No custom or customary right as between the Jenmi and the Kudiyan shall prevail unless provided for in this Regulation expressly or by necessary implication."

No right between Jenmi and Kudiyan unless expressly provided for.

III. In Section 3 of the said Regulation—

Amendment of Section 3 and substitution of new clauses.

(*a*) the words "periodical renewal of the right on "occurring in clause (1) shall be omitted;

(*a*-1) in clause (1) number the existing Explanation as Explanation 1, and add the following as Explanation 2, namely:—

"Explanation 2.—For the purposes of this definition, the payment of Jenmikaram shall be deemed to be the payment of michavaram or customary dues and the payment of renewal fees";

(*a*-2) in clause (2) for the word "proprietory" the word "jenmom" shall be substituted, and for the word "lands" where it occurs a second time, the word "right" shall be substituted;

(*b*) between the words "assessed" and "rent" occurring in clause (9) the word "annual" shall be inserted;

(*c*) in clause (10) the word "annual" shall be inserted before the word "residual" and the word "annually" occurring after the word "deliverable" shall be omitted;

(*d*) for clause (11), the following shall be substituted, namely:—

"(11) 'Renewal fees,' means such fees as Atukkuvatu, Sakshi, Opputusi or the like agreed to be paid by the Kudiyan to the Jenmi periodically on occasions when the Kanapattom is renewable, and includes the 'fractional fee'.

Renewal fees, Fractional fee.

and, 'fractional fee' means the fee fixed as claimable (in substitution of the renewal fees) in annual instalments at the rate of seven per cent. of the aggregate value or amount of the renewal fees due on the expiry of twelve years, or in annual instalments proportionately lower in percentage when renewal on the expiry of any longer period is provided for by the Kanapattom.

Explanation.—When a Kanapattom provides for Purushantra Polichezhuttu (renewal on the death of the Jenmi or Kudiyan) or for renewal when a temple may be renovated, or when the language of the instrument raises a reasonable doubt as to the length of the period on the expiry of which renewal is enforceable, it shall be deemed that renewal on the expiry of every thirty-six years was intended and agreed upon by the parties".

(*e*) for clause (12), the following shall be substituted, namely:—

"(12) 'Customary dues' means cesses or perquisites consisting of (i) Onakkazhcha, Panchaphalam, Utsavakoppu or the like due annually or periodically on specific dates, and (ii) Arukazhcha, Kalasavari or the like due at periodical intervals, which though specific, are not previously ascertainable, whenever such cesses or perquisites are payable by the Kudiyan to the Jenmi in accordance with the terms of a Kanappattom; and

Customary dues. Commuted cess.

'Commuted cess' means the commuted money value of customary dues, if any, ascertained as claimable by the Jenmi every year after the commencement of the Amendment Regulation according to the calculation made in the manner specified hereunder; that is to say:—

(i) when Kalasavari is claimable by a Jenmi, it shall be assumed that he is entitled to five per cent. of one Kalasavari cess every year;

(ii) when Arukazhcha is claimable by a Jenmi, it shall be assumed that he is entitled to sixteen per cent. of one Arukazhcha cess every year;

(iii) when other customary dues are claimable by a Jenmi, the annual value of such shall be ascertained by calculation;

(iv) in valuing any customary dues payable in kind, the commutation price specified in the contract of Kanapattom or understood to be the one conformable to the local customary rate, whichever is the lower, shall be the guide;

(v) the sum total of the value or amounts of the customary dues ascertained as annually payable to the Jenmi in accordance with the calculation made under clauses (i) to (iv) shall be deemed to be the 'commuted cess' in any given case" and

(*f*) the following shall be substituted for clause (14), namely:—

Jenmivaram.

"14. Jenmivaram in respect of a jenmom land or holding means the total of the amounts of the annual michavaram, the fractional fee and the commuted cess in respect thereof,"

and after clause (14) so substituted, the following clauses shall be added, namely:—

Settlement pattom.

"(15) Settlement pattom in respect of a jenmom land means the pattom fixed by Our Government for the Land Revenue purposes at a general Revenue Settlement and includes also the proportionate pattom chargeable on each portion of a land wherever the land is divided for any reason.

Settlement pattamicham.

(16) Settlement pattamicham in respect of a jenmom land means its settlement pattom *minus* the tax due thereon to Our Government.

Explanation.—Wherever the settlement pattom is fixed in kind, 'tax' means the tax in kind fixed with reference to the settlement pattom although the tax may be payable to Our Government in money.

Jenmikaram.

(17) Jenmikaram in respect of a Jenmom land or holding means the amount payable in respect of that land or holding under the provisions of this Regulation by the Kudiyan to the Jenmi every year in lieu of all and every one of the Jenmi's claims in respect of the land or holding, such Jenmikaram being fixed as follows:—

(*a*) so long as the last general Land Revenue Settlement made by Our Government remains in force, the Jenmivaram shall, except in the case of cherikkal lands, be

the Jenmikaram, and, in the case of cherikkal lands, the settlement pattamicham with reference to the said last Revenue Settlement *minus* the interest on the kanam amount shall be the Jenmikaram ; and

(*b*) if the Jenmikaram as under clause (*a*) is altered or revised at or after any future general Land Revenue Settlement under the provisions of this Regulation, such altered or revised Jenmikaram shall thenceforward be the Jenmikaram and, if it is not so altered or revised, the then existing Jenmikaram shall continue to be the Jenmikaram.

Explanation 1.—Payment of or the liability to pay the Jenmikaram is equivalent to paying or the liability to pay the michavaram, renewal fees and customary dues.

Explanation 2.—When any Jenmom land or holding is divided for any reason, the Jenmivaram and the Jenmikaram chargeable proportionately on each part shall respectively be the Jenmivaram and the Jenmikaram due on that part.

Explanation 3.—The term 'cherikkal land' means all land recognised as such in the Sirkar accounts in which paddy or other cultivation is or has been carried on in recurring periods and on which, until the last Revenue Settlement, *malavaram* or *vilameladi* tax alone has either been levied or was leviable by Our Government when such land was cultivated.

(18) 'Prescribed' means prescribed from time to time by Our Government by Rules or by Notification in Our Government Gazette.

Prescribed.

(19) 'The Amendment Regulation' means the Travancore Jenmi and Kudiyan (Amendment) Regulation, 1108."

Amendment Regulation.

III-A. In Section 4 of the said Regulation, the word "his" occurring before the words "jenmom lands" shall be omitted.

Amendment of Section 4.

IV. For Sections 5 to 14 of the said Regulation, the following Sections shall be substituted, namely :—

Substitution of new Sections for Sections 5 to 14.

"5. From and after the commencement of the Amendment Regulation, the Jenmi shall not have any right, claim or interest in any land in a holding except the right to receive the Jenmikaram thereon and the Kudiyan shall be deemed to be the owner of the land subject only to the payment of the Jenmikaram.

Kudiyan owner of land subject only to payment of Jenmikaram.

Explanation 1.—The Jenmi's right as well as the Kudiyan's right is heritable as well as transferable by sale, gift or otherwise.

Explanation 2.—Notwithstanding any usage or contract to the contrary, no Kudiyan has the right to relinquish or apply for permission to relinquish his holding or any portion thereof and no Jenmi has the right to evict or sue for the eviction of a Kudiyan from his holding or any portion thereof. This prohibition shall apply also in the case of all applications made and suits instituted even before the commencement of the Amendment Regulation if such applications or suits are pending disposal on the date of commencement of the Amendment Regulation and were made or instituted, as the case may be, after the 19th Meenom 1105. The term 'suit' herein includes also applications for the execution of decrees passed in suits.

Explanation 3.—Notwithstanding any usage or contract to the contrary, every Kudiyan has the right to make any use of the land in his holding, to change its character either by converting wet land into garden land or by converting garden land into cultivable wet land or in any other manner, to cut down and appropriate any trees standing thereon, to alter the course of cultivation in respect thereof and, in short, to do or suffer any thing to be done on the land without reference to, or interference from, the Jenmi.

Explanation 4.—Notwithstanding any usage or contract to the contrary, every Kudiyan has the right to make any improvement in respect of his holding without reference to, or interference from, the Jenmi, and no Kudiyan shall thereby become liable to pay any higher Jenmikaram on account of any increase of production or any change in the nature of the crop raised in consequence of such improvement.

Explanation 5.—The Jenmi's right to the Jenmikaram shall be deemed to be immovable property,

Apportionment of Jenmikaram as amongst various lands.

6. (1) If in a holding there are more parcels of land than one, each having settlement pattom assessed separately, the Jenmikaram of the entire holding shall be ascertained in accordance with the provisions of this Regulation and distributed in respect of each parcel of land in the proportion of the settlement pattamicham bearing on such parcel of land.

(2) The Jenmikaram so distributed in respect of each parcel of land shall be the Jenmikaram due thereon.

Jenmikaram how fixed on land being divided.

7. If any Jenmom land is divided for any reason, the Jenmikaram on each portion of the land shall be fixed in the proportion of the Sirkar tax that will be fixed on such portion of land and the Jenmikaram so fixed shall be the Jenmikaram due thereon.

Renewal fees not to exceed 30 per cent. of Kanam.

8. Notwithstanding any usage or contract to the contrary, it shall not be lawful hereafter to take into account in any case as renewal fees any amount exceeding thirty per cent. of the kanam.

Jenmikaram, first charge on land.

9. The Jenmikaram of a holding together with the interest, if any, due thereon, when it becomes an arrear, shall be claimable by the Jenmi and shall, subject to the priority of the rights of Our Government, be a first charge on the holding.

Kudiyan's liability on Jenmi's right being transferred.

10. No Kudiyan shall, when, without his consent, the Jenmi's right in any Jenmom land is transferred by sale, gift or otherwise, be liable to the transferee for the Jenmikaram which became due after the transfer and was paid to the Jenmi whose right was so transferred unless the transferor or transferee has, before the payment, given notice of the transfer to the Kudiyan by registered Anchal or Post.

Kudiyan's liability on holding being transferred.

11. When a Jenmom land or holding is divided or is transferred by sale, gift or otherwise by the Kudiyan without the consent of the Jenmi, the Kudiyan shall continue liable for the Jenmikaram accruing due after such division or transfer unless and until notice by registered Anchal or Post of the division or transfer is given to the Jenmi by any sharer or by the transferor or transferee, as the case

may be, and until pokkuvaravu is effected in the Land Revenue records in accordance with the division or transfer.

Explanation.—This provision does not affect any liability of any sharer or transferee as between such person and other sharers or the transferor, as the case may be, to pay the Jenmikaram.

Kudiyan's liability on Jenmi's right in land being divided.

12. No division of the Jenmi's right in any Jenmom land shall be binding on the Kudiyan thereof, unless it is made with the consent of the Kudiyan or notice thereof is given to the Kudiyan by registered Anchal or Post informing him of the prescribed particulars of the division, and the Jenmikaram which may become due subsequent to such division made without such consent may until the receipt of the notice be paid to Jenmi entitled thereto before such division.

Renewals not obligatory.

13. Notwithstanding any usage or contract to the contrary, it shall not be obligatory on the Jenmi to renew, or on the Kudiyan to accept the renewal of, a contract of Kanapattom.

Revision of Jenmikaram.

14. (1) Notwithstanding any usage or contract to the contrary, the Jenmikaram of any land shall not be liable to alteration or revision at any time except after any future general Land Revenue Settlement by Our Government.

(2) Whenever Our Government make any general Land Revenue Settlement in the future and the amount of the settlement Pattamicham at that settlement and the amount of the then existing Jenmikaram in respect of any Jenmom land are found to differ, the Jenmikaram shall be liable to be enhanced or reduced as the case may be in the proportion that the settlement pattamicham bears to the Jenmikaram:

Provided that in no case shall any Jenmikaram be enhanced by more than ten per cent. thereof;

Provided also that in the case of the Land Revenue Settlement next following that now in force no Jenmikaram of any land shall be enhanced if within twelve years preceding the date of the commencement of the operations for such settlement there has been an enhancement of michavaram in respect of that land.

Explanation 1.—If there is no difference between the amount of the Settlement pattamicham at any future Revenue Settlement and the amount of the then existing Jenmikaram, such Jenmikaram shall continue to be the Jenmikaram during the currency of such settlement also.

Explanation 2.—When the Settlement pattamicham or the Jenmikaram or both consist of paddy or other commodity and money such commodity portion shall, for the purposes of comparison, be commuted into money at the average commutation rate, the average being taken on the rates of the three years immediately preceding the date of such comparison. This average rate is intended only for the purposes of comparison, and when the Jenmikaram has to be enhanced or reduced in any proportion the commodity portion and the money portion shall each be enhanced or reduced, as the case may be, in that proportion.

(3) From and after the 1st day of Chingom 1108 no enhancement or reduction of the Jenmi's dues, whether Jenmikaram or michavaram, shall be made otherwise than in accordance with the provisions of this Regulation; and even if a Court has decreed contrariwise on or after the said 1st day of Chingom 1108, the Court shall review that decision and pass a decision in accordance with the provisions of this Regulation on application being made for the purpose by any aggrieved party within six months of the commencement of the Amendment Regulation.

Explanation.—Nothing in the Travancore Limitation Regulation (VI of 1100) or the Code of Civil Procedure, 1100, shall be deemed to bar such applications for review.

(4) The enhanced Jenmikaram or the reduced Jenmikaram due on a land, as the case may be, shall be payable from the 1st day of Chingom in the year next following that in which the Revenue Settlement comes into operation in respect of that land, and with effect from that day the enhanced Jenmikaram or the reduced Jenmikaram, as the case may be, shall (in case there be enhancement or reduction) be the Jenmikaram due thereon."

Substitution of a new heading for Part A of Chapter III.

V. In Chapter III of the said Regulation, for the heading of Part A, the following shall be substituted, namely :—

"Part A—Jenmikaram and its recovery".

Amendment of Section 15 (1).

VI. For Section 15, Sub-section (1), of the said Regulation, the following shall be substituted, namely :—

"15. (1) Every contract of Kanapattom made or renewed after the commencement of the Amendment Regulation shall, in addition to other particulars, specify—

(*a*) the name, if any, the description and the extent of the holding, and

(*b*) the Settlement pattom, the Settlement pattamicham, the Jenmivaram and the Jenmikaram in respect of the land or each of the several parcels of land comprised in the holding."

Amendment of Section 15 (2).

VI-A. In Section 15, Sub-section (2), clause (*a*), of the said Regulation, for the words 'Michavaram or other dues are', the words 'Jenmikaram or any portion thereof is' shall be substituted.

Substitution of new Sections for Sections 16 to 18.

VII. For Sections 16 to 18 of the said Regulation, the following Sections shall be substituted, namely :—

When Summary suit will not lie.

"16. No summary suit or claim for enforcing payment of any Jenmikaram shall be entertained by the Courts under this Regulation unless either the Jenmikaram or the renewal fees and customary dues, with reference to which the Jenmikaram has to be ascertained, are specified in the Kanapattom or its counterpart duly registered or in a decree of a Civil Court obtained in a regular suit between the Jenmi and the Kudiyan.

Jenmikaram alone payable to Jenmi with interest if in arrears.

17. (1) Subject to the provisions of this Regulation every Jenmi shall be entitled to receive and every Kudiyan shall be bound to pay in respect of all land in the latter's holding the Jenmikaram due thereon, and notwithstanding any contract or usage to the contrary the Jenmi shall not be entitled to receive and the Kudiyan shall not be bound to pay anything else in respect of the land.

(2) The Jenmikaram shall be payable in such instalments and on such dates as Our Government may, by Rules made under this

Regulation, prescribe, or, in the absence of such Rules, at or before the close of each Malabar year.

(3) The Jenmikaram or any instalment of Jenmikaram payable on any date, if it is not paid on or before that date, shall become an arrear on the first day after that date.

(4) An arrear shall bear simple interest at the rate of nine per cent. per annum when it is payable in money or in paddy, and at the rate of six per cent. per annum if it is collected or recovered by Our Government under the provisions of Chapter IV.

Renewal fees for expired period how payable.

(5) When according to the terms of any contract of Kanapattom renewal fees are payable on the expiry of a specified period and part only of such period has expired before the commencement of the Amendment Regulation, an amount which bears to the aggregate amount or value of such renewal fees the same proportion as the expired part of the period bears to the whole period specified in the contract shall be payable by the Kudiyan to the Jenmi without interest within three years from the commencement of the Amendment Regulation or with interest at six per cent. per annum thereafter within a further period of three years.

Jenmikaram payable only in money.

18. Where the Jenmikaram or any portion of it consists of paddy or other commodity the Kudiyan shall be entitled to pay in money the value of such paddy or other commodity at the commutation rates fixed under the provisions of Section 46."

Amendment of Section 19.

VIII. In Section 19 of the said Regulation, for the words "michavaram or customary dues" the words "any Jenmikaram" shall be substituted.

Omission of Sections 20 to 26.

IX. Sections 20 to 26 of the said Regulation shall be omitted.

Substitution of new heading for Part B of Chapter III.

X. For the heading of Part B of Chapter III of the said Regulation, the following shall be substituted, namely :—

"Part B.—Summary recovery and deposit of Jenmikaram."

Insertion of a new Section 26-A.

XI. In Part B of Chapter III of the said Regulation, before Section 27, the following Section shall be inserted, namely :—

"26-A. (1) It shall be competent to the Jenmi of any holding, without prejudice to any other right of action that he may have, to make an application to the Tahsildar of the Taluk in which the holding is situated to recover the arrears of any Jenmikaram in respect of that holding :

Jenmi may apply to Tahsildar to recover Jenmikaram under Revenue Recovery Processes.

Provided that the arrears are not more than one year old on the date of the application.

(2) The application shall be in such form and shall contain such particulars as may be prescribed by Our Government and shall be signed and verified by the Jenmi in the manner prescribed by the Code of Civil Procedure, 1100, for the signing and verification of plaints.

(3) The applicant shall from time to time pay to the Tahsildar such fees as may be prescribed by Our Government for the several processes that may be necessary for realising the arrears. The applicant shall be entitled to a refund of any portion of such fees that may remain unexpended at the termination of the proceedings.

(4) If the Tahsildar is satisfied that the application has been duly presented, that the arrears are due from the Kudiyan, that the applicant is entitled to recover them and that they are not more than one year old on the date of the application, he shall proceed to recover the amount of the arrears and interest and the fees paid under Sub-section (3) by the applicant as if they were an arrear of public revenue due to Our Government and the provisions of the Revenue Recovery Regulation, I of 1068, (as amended by Regulations III of 1087, VIII of 1094, X of 1097 and II of 1099) shall, *mutatis mutandis*, apply to all the proceedings.

(5) (*a*) The amount that is recovered shall be paid by the Tahsildar to the applicant on taking a receipt from him in a form as near as may be to that contemplated by Section 19.

(*b*) A copy of the receipt with the attestation of the Tahsildar shall be given free of cost to the Kudiyan if he applies for it.

Explanation,—Nothing in this Section shall be deemed to bar the right of civil suit which any aggrieved party may have in law."

Substitution of a new Section for Section 27.

XII. For Section 27 of the said Regulation, the following Section shall be substituted, namely :—

Jonmikaram may be deposited by Kudiyan.

"27. (*a*) When a Jenmi refuses to accept Jenmikaram tendered by the Kudiyan, or

(*b*) when the Kudiyan in any case is doubtful as to the person entitled to receive the Jenmikaram,

the Kudiyan may make an application to the Court of the District Munsiff having jurisdiction over the place where the holding or any part of it is situated for permission to deposit in such Court the entire amount of the Jenmikaram due in respect of the holding till then together with the interest due thereon under this Regulation."

Amendment of Section 28.

XIII. In Section 28 of the said Regulation, for clause (*d*), the following shall be substituted, namely :—

"(*d*) the entire amount of the Jenmikaram and the interest due thereon up to date and the value, at the commutation rates, of such portion of it as is in kind."

XIV. In Section 29 of the said Regulation,

Amendment of Section 29.

(*a*) for the word "Michavaram" the word "Jenmikaram" shall be substituted in both the places where it occurs,

(*b*) omit the words "at market rates",

(*c*) omit the words "or other dues" occurring before the word "specified" and

(*d*) for the words "or dues" occurring before the words "being commuted", the words "and the interest, if any, due thereon" shall be substituted.

Substitution of new Sections for Sections 30 and 31.

XV. For Sections 30 and 31 of the said Regulation, the following Sections shall be substituted, namely :—

Procedure on deposit of Jenmikaram.

"30. (1) When such application as is aforesaid is made the Court shall grant the permission applied for and accept the deposit unless it appears on an examination of the applicant that the application

has been made without justifying grounds or unless he has failed to pay the fee, if any, chargeable for the issue of the notice hereinafter referred to.

(2) The applicant shall be entitled to a receipt from the Court accepting the deposit, and the deposit shall be deemed to be a payment made by the Kudiyan to the Jenmi in respect of the Jenmikaram or arrear due.

Further procedure on deposit.

31. (1) The Court accepting the deposit shall give notice of the same to every person who is reasonably believed to claim or to be entitled to the deposit, and may, after hearing such of them as may appear in Court, pay the amount thereof or remit the same less the Hundi or Money Order commission by Anchal Hundi or Postal Money Order to any person appearing to the Court to be entitled to the same or may, if it thinks fit, retain the deposit pending the decision of a competent Civil Court as to the person so entitled.

(2) Nothing in this Section shall affect the right of any party to institute a regular suit in a competent Civil Court to contest the payment, remittance or order made under Sub-section (1) or to recover the amount from the party, if any, to whom it has been paid or remitted under Sub-section (1) but, so far as the Kudiyan is concerned, the receipt granted under Sub-section (2) of Section 30 shall be deemed a full acquittance in respect of the amount covered by the receipt and shall have the same force and effect as a receipt granted by the person rightfully entitled to receive the amount."

Substitution of a new heading for Part C of Chapter III.

XVI. For the heading of Part C in Chapter III of the said Regulation, the following shall be substituted, namely :—

"Part C.—Of the Jurisdiction of Courts over petty claims for Jenmikaram."

Amendment of Section 33.

XVII. In Section 33 of the said Regulation, for the words "Michavaram, renewal fees or customary dues", the word "Jenmikaram" shall be substituted.

Amendment of Section 39.

XVIII. In Section 39, Sub-section (1), of the said Regulation, for the words "Michavaram or renewal fees or customary dues", the word "Jenmikaram" shall be substituted.

XIX. In Section 40 of the said Regulation, for the figures, words and brackets "568 of the Civil Procedure Regulation (II of 1065)" the following shall be substituted, namely :—

Amendment of Section 40.

"89 of the Code of Civil Procedure 1100."

XX. After Section 40 of the said Regulation, the following Chapter shall be inserted, namely :—

Insertion of new Chapter, Chapter IV.

"CHAPTER IV.

Collection and payment of Jenmikaram by Government.

40-A. It shall be lawful for Our Government to assume the collection of Jenmikarams for payment over to the Jenmi concerned.

Power of Government to assume collection of Jenmikarams.

Explanation.—Our Government shall assume the collection in respect of all the Jenmam lands in the State at the same time although the proceedings towards such assumption may be made in respect of all the Jenmam lands in the State together or of such lands in any local area or in such other convenient groups as may be determined by Our Government.

40-B. (1) For carrying out the purposes of the foregoing Section, Our Government shall as soon as may be, cause a Register of Jenmikarams to be prepared, after settling the Jenmikarams, showing in respect of each Jenmam land the Survey Number and such other particulars of description as may be prescribed, the names of the Jenmi and the Kudiyan, the Settlement pattamicham, the Jenmivaram, the Jenmikaram, the date and nature of the document, if any, on the basis of which the Jenmikaram was fixed and such other particulars as may be prescribed.

Settlement of Jenmikaram and Register of Jenmikarams.

(2) The Register may be prepared for the whole State or for each pakuthi or other local area or for such groups of lands as may be determined by Our Government.

Explanation.—The 'Register of Jenmikarams' shall for the purposes of this Regulation mean the Register in respect of the whole State or in respect of the pakuthi or other local area or the group concerned.

Jenmikaram Settlement Officer.

40-C. Our Government may appoint any person or persons that they may deem fit for the settlement of the Jenmikarams and the preparation of the Register of Jenmikarams and such person or persons (referred to hereinafter as the Jenmikaram Settlement Officers) may, for such settlement and such preparation, make such investigation and follow such procedure as may be prescribed.

Preliminary notification for settlement of Jenmikaram.

40-D. Not less than one month before the work of the settlement of Jenmikarams and the preparation of the Register of Jenmikarams is proposed to be begun, Our Government shall publish in Our Government Gazette, and in such other manner, if any, as may be prescribed, a notification giving notice of the appointment of the Jenmikaram Settlement Officer for the pakuthi, local area or group concerned and calling upon the Jenmis and Kudiyans and all persons interested to supply all necessary information and render all assistance in the matter.

Final notification notifying completion of Register of Jenmikarams.

40-E. When the preparation of the Register of Jenmikarams has been completed in the prescribed manner in respect of the whole State and such Register has received the approval of Our Government, Our Government shall publish in Our Government Gazette, and in such other manner, if any, as may be prescribed, a notification notifying that, with effect from a specified date thereafter, which shall not be earlier than two months from the date of the notification, they have under Section 40-A assumed the collection of Jenmikarams in respect of the whole State.

Jenmikarams to be paid to Government and recoverable as arrears of land revenue.

40-F. (1) The Jenmikarams in respect of the lands covered by the Register of Jenmikarams referred to in the foregoing Section and accruing due from and after the date specified in the notification published under that Section shall be paid to Our Government in such manner and at such times as may be prescribed and may in default of such payment be recovered under the provisions of the Revenue Recovery Regulation (Regulation I of 1068 as amended by Regulations III of 1087, VIII of 1094, X of 1097 and II of 1099) in the same manner as arrears of land revenue,

(2) No such Jenmikaram shall be payable or be allowed to be paid in kind. Jenmikarams due in kind shall be paid at commutation rates fixed under the provisions of Section 46.

Jenmikaram to be paid in money only.

40-G. The Jenmikarams collected by Our Government shall be paid to the Jenmi concerned deducting therefrom a fee, towards the charges incidental to collection and payment, of such amount as may be prescribed from time to time not exceeding in any case two and a half per centum of the amount collected for payment.

Jenmikarams to be paid to Jenmi deducting cost of collection.

Explanation 1.—If interest on any Jenmikaram is collected such interest also shall be paid over to the Jenmi deducting the fee in respect of such interest also.

Explanation 2.—If any costs are recovered on account of any processes taken for the recovery of any Jenmikaram such costs shall not be paid over to the Jenmi.

Explanation 3.—Our Government shall be liable to pay only the Jenmikaram and interest actually collected by them.

40-H. Notwithstanding anything contained in the foregoing provisions of this Regulation no payment of any such Jenmikaram as is referred to in Section 40-F, Sub-section (1), made otherwise than in accordance with the provisions of that Sub-section, shall be deemed to be a valid discharge of the liability to pay such Jenmikarams; and in respect of such Jenmikarams it shall not be lawful for any Jenmi to institute any suit under the provisions of Chapter III or for the Jenmi or the Kudiyan to make any application under the provisions of the same Chapter.

Jenmikaram to be paid only to Government.

40-I. No collection or payment of Jenmikaram shall be stayed by Our Government merely on the ground that any party has any objection to the entries in the Register of Jenmikarams or to the collection or payment in accordance with such entries :

Jenmikarams must be collected according to the Register of Jenmikarams.

Provided that any party aggrieved shall have the right to institute a suit in a Civil Court of competent jurisdiction to establish the right which he claims and Our Government shall abide by the final result of such suit and may, if necessary, correct the Register of Jenmikarams accordingly.

Revision of Register of Jenmikarams.

40-J. (1) Our Government shall, at or after every future general Revenue Settlement, cause the Register of Jenmikarams to be revised. At such revision, Our Government may, if they deem fit, cause the particulars required to be entered in the Register of Jenmikarams to be incorporated in the Register that is prepared in respect of the Land Revenue Settlement.

(2) When any such revision has to be made the procedure prescribed by Sections 40-B to 40-E shall be followed as far as may be; and when the revised Register is completed and notification made under Section 40-E, such revised Register shall be the Register of Jenmikarams and when the particulars required to be entered in the Register of Jenmikarams are incorporated in the Register prepared in respect of any Land Revenue Settlement, such Register shall be deemed to be the Register of Jenmikarams for the purposes of this Regulation.

Subsequent changes *re* Jenmikaram, etc. may be recorded.

40-K. Any changes in respect of the particulars entered in the Register of Jenmikarams, arising by reason of any circumstances, such as the transfer of the right to receive Jenmikaram and the like, occurring after the publication of the notification under Section 40-E, may be caused to be recorded in such manner as may be prescribed, and such record shall be deemed, if so prescribed, as a part of the Register of Jenmikarams.

When suits against Government will lie and when not.

40-L. (1) No suit or other proceedings shall lie against Our Government or their officers for doing, or failing to do, anything in connection with the Settlement of Jenmikarams or the preparation of the Register of Jenmikarams or for having collected or paid any Jenmikaram in accordance with the Register of Jenmikarams.

(2) Nothing in Sub-section (1) shall be deemed to prohibit any person aggrieved by any collection or payment from instituting any suit against any other person in a Civil Court of competent jurisdiction for establishing the right which he claims or for following any money in the hands of any person to whom it was paid or for recovering any money from any person who was bound to pay it; or to prohibit any suit against Our Government for the

recovery of any moneys realised by them on account of any dues already collected by them.

40-M. (1) Our Government shall have power to make Rules for carrying out the purposes of this Chapter.

Power to make Rules.

(2) Without prejudice to the generality of the power aforesaid, Our Government may make Rules not inconsistent with the provisions of this Regulation

(*a*) to provide for the registers or other records or accounts to be kept for facilitating the collection and payment of Jenmikarams and to determine which of these registers or records or accounts shall be deemed a part of the Register of Jenmikarams;

(*b*) to provide for the transfer of the right of the Jenmi or the liability of the Kudiyan by sale, gift, partition, or otherwise being recognised and recorded and the procedure to be followed in recognising and recording such transfers;

(*c*) to provide for the grant of documents to the Jenmi and the Kudiyan evidencing the amount of the Jenmikaram and the manner and time of the payment of the same;

(*d*) to provide for the grant of receipts or vouchers for the payment made by a Kudiyan, or the receipt by a Jenmi of any Jenmikaram;

(*e*) for authorising the Jenmikaram Settlement Officers to exercise all or any of the powers exerciseable under the Departmental Enquiries Regulation, Regulation VI of 1073:

(*f*) for giving notice to the Jenmis or the Kudiyans or both when coercive steps are taken against Jenmam lands for the recovery of the Jenmikaram or the Sirkar tax and for determining the amount of the cost recoverable for the same and the party from whom it may be recovered;

(*g*) to make provision for any incidental matters that may arise in the settlement of the Jenmikaram or the

preparation of the Register of Jenmikarams pursuant to the provisions of this Regulation : and

(*h*) for any matter that has to be prescribed under the provisions of this Regulation.

What land can be sold for Jenmikaram.

40-N. No Jenmikaram shall be recoverable under the provisions of this Chapter by the sale of any land except the land on which the Jenmikaram is a charge."

Insertion of a new heading — Chapter V Miscellaneous.

XX-A. After Chapter IV (inserted by Section XX) and above Section 41 of the said Regulation, the following shall be inserted as a heading, namely :—

" Chapter V—Miscellaneous,"

Amendment of Section 44.

XXI. In Section 44 of the said Regulation, for the words "the provisions of this Regulation shall not apply to" the words " no Jenmikaram shall be recoverable by any Jenmi or by Our Government from" shall be substituted.

Addition of new Sections 45 to 47.

XXII. After Section 44 of the said Regulation, the following Sections shall be added, namely :—

Apportionment of compensation money on land acquisition.

" 45. When the Jenmi and the Kudiyan cannot agree as to the apportionment as between them of the compensation money awarded or awardable on the acquisition, under the Land Acquisition Regulation, of any land or portion of land comprised in any holding, the portion due to each shall be determined in accordance with the following Rules :—

(*a*) so much of the compensation money as is due to any buildings shall belong entirely to the Kudiyan ;

(*b*) the balance left after deducting the portion of compensation money referred to in Rule (*a*) shall belong to the Jenmi and the Kudiyan in the proportion of the Jenmikaram charged or chargeable on the land or portion of land and the average annual net produce of the land or portion of land, as the case may be :

Provided that if the capitalised value of the Jenmikaram is smaller than such share of the Jenmi the capitalised value alone

shall belong to the Jenmi and all the rest shall belong to the Kudiyan.

Explanation.—1. The capitalised value of any Jenmikaram means an amount equal to sixteen and two-third times the amount of the Jenmikaram.

2, 'Net produce' means the surplus remaining after deducting from the gross produce of any land a portion equivalent in value to the cost of cultivation and the Sirkar tax and cesses, if any, and the Jenmikaram chargeable on such land and includes the value of such surplus.

3. 'Average annual net produce' means the net produce ascertained as derivable on an average for one year, by calculation of the net produce for each year during a period of ten years immediately preceding the date of such ascertainment.

4. When a portion alone of a land is acquired the portion of Jenmikaram chargeable on that land shall be ascertained as if the land had been divided: and the Jenmikaram of the portion of land acquired shall cease to be payable to the Jenmi or to Our Government.

Government to fix commutation rates on advice of Committees.

46. (1) Subject to the provisions of this Regulation, Our Government may from time to time fix the rates for the commutation into money or paddy or other commodities for the purposes of this Regulation and notify the same in Our Government Gazette, and the rates so fixed shall be the rates for commutation for the purposes of this Regulation.

Explanation 1.—The rates may be uniform for the whole State or for all purposes or may vary.

Explanation 2.—The power to fix rates includes the power to revise rates already fixed.

(2) In fixing the rates, Our Government shall be guided by such Rules as may be passed by Our Government after previous publication.

(3) Such Rules shall, *inter alia*, provide for the appointment of a Committee to advise Our Government as to the rates to be fixed under this Section. The Committee shall consist of five members, two to represent the Jenmi interests, two to represent the

Kudiyan interests and one, an official, to be the Chairman, and shall follow such procedure as may be prescribed.

Explanation.—The Committee may be a single Committee for the whole State or there may be different Committees for different places.

Limitation period for Jenmikaram.

47. (1) Notwithstanding anything contained in the First Schedule annexed to the Travancore Limitation Regulation, no suit for any arrear of Jenmikaram or the interest due thereon shall be entertained by any Civil Court unless instituted within six years from the date of the Jenmikaram becoming an arrear:

Provided however that suits for Jenmikaram which are barred by reason alone of the above provision on the date of the commencement of the Amendment Regulation may be instituted within two years from that date.

(2) The Explanation to Article 119 of the First Schedule to the Travancore Limitation Regulation shall be deemed to stand repealed."

Amendment of long title.

XXIII. In the long title to the said Regulation, for the words "Michavaram and other proprietary" the words "the Jenmis'" shall be substituted.

Amendment of preamble.

XXIV. In the preamble to the said Regulation,

(*a*) for the words "Michavaram and other customary, proprietary," the word "Jenmis'" shall be substituted, and

(*b*) for the words "Michavaram and other", the word "Jenmis'" shall be substituted.

REGULATION I OF 1109.

A Regulation to amend the Travancore Sea Customs Regulation of 1088 (Regulation V of 1088 as amended by Regulation IV of 1093)

Passed by His Highness the Maha Raja under date the 16th Thulam 1109, corresponding to the 1st November 1933.

Whereas it is expedient further to amend the Travancore Sea Customs Regulation of 1088 (Regulation V of 1088 as amended by Regulation IV of 1093) for the purpose hereinafter appearing; We are pleased hereby to enact as follows:—

1. This Regulation may be called the Travancore Sea Customs (Amendment) Regulation of 1109, and shall come into force at once.

2. In Section 181 of the Travancore Sea Customs Regulation of 1088 (Regulation V of 1088 as amended by Regulation IV of 1093) for clause (*a*) the following clause shall be substituted, namely:—

> "(*a*) the bailment, safe custody and preservation of things seized, and the disposal of things confiscated, under this Regulation; and "

This Regulation was passed direct by His Highness the Maha Raja. It was published in the Gazette dated 7th November 1933.

REGULATION II OF 1109.

THE TRAVANCORE TEA CULTIVATION RESTRICTION REGULATION.

CONTENTS.

Preamble.

Sections.

1. Short title and commencement.
2. Definitions.
3. Cultivation of tea to be under licences.
4. Power of Licensing authority.
5. Applications for licences.
6. Grant of licences.
7. Orders under this Regulation final.
8. (1) Tea estates to furnish returns.
   (2) Tea estates may be inspected.
9. Penalty for failure to furnish returns.
10. Penalty for obstructing inspection.
11. Penalty for cultivating tea without licences.
12. Illicit tea cultivation may be removed.
13. Jurisdiction of Magistrates.
14. Powers of Government to frame Forms and Rules.

A Regulation to restrict the cultivation of tea in Travancore

Passed by His Highness the Maha Raja under date the 23rd Kumbhom 1109, corresponding to the 6th March 1934.

Preamble.

Whereas it is considered expedient, in co-operation with the Government of India in the tea restriction scheme adopted by them, to restrict the cultivation of tea in Travancore; It is hereby enacted as follows:—

Short title and commencement.

1. (i) This Regulation may be called the "Travancore Tea Cultivation Restriction Regulation."

(ii) It extends to the whole of Travancore.

(iii) It shall come into force at once.

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

Definitions.

(i) "Tea" means the plant *Camellia Thea* (Linn.)

(ii) "Licensing authority" means the person or body of persons appointed as such by Our Government for the purposes of this Regulation, by a notification in Our Government Gazette.

(iii) "Prescribed" means prescribed by Rules made by Our Government under this Regulation.

Cultivation of tea to be under licences.

3. From and after the commencement of this Regulation, no one shall plant tea in any land situate within Travancore, except in pursuance of a licence granted by Our Government or the Licensing authority permitting him to do so.

Powers of Licensing authority.

4. The Licensing authority, if any appointed, shall exercise such powers as may be prescribed and the powers shall be exercised in such manner as may be prescribed and subject to the orders of Our Government who may revise any decision of the Licensing authority.

Applications for licences.

5. Applications for licence to plant tea, shall be in such form as may be prescribed and shall contain such particulars as may be prescribed.

Grant of licences.

6. Our Government or the Licensing authority, as the case may be, may grant or refuse the licence or may grant it only subject to such restrictions as may be considered necessary.

Regn: II of 1109: I. This Regulation was passed direct by His Highness the Maha Raja. It was published in ihe Gazette dated 13th March 1934.

II. The Regulation is based on the Indian Tea Control Act XXIV of 1933. That Act provides "for the control of the export of tea from India and for the control of the extension of the cultivation of tea in British India." It consists of four Chapters, the first headed, 'The Indian Tea Licensing Committee,' and defines its constitution and powers, keeping and auditing of accounts, &c. The second Chapter deals with the 'Control over the Export of Tea'; and the third, with the 'Control over the extension of tea cultivation.' The last Chapter provides 'Penalties and Procedure.'

Sec. 2: The definition of Tea is the same as that in the Indian Act.

Secs. 3, 5, 6 & 7: Section 3 corresponds to Section 25 and the other Sections to

Orders under this Regulation final.

7. No order of Our Government or of the Licensing authority made under this Regulation shall be called in question in any Court of law.

Tea estates to furnish returns.

8. (1) Our Government, or the Licensing authority, as the case may be, may serve, by Post or Anchal, a notice upon the owner of any tea estate or upon his agent or manager requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, such returns relating to the cultivation of tea on the estate as may be deemed necessary, to enable Our Government or the Licensing authority, as the case may be, to discharge their functions under this Regulation.

Tea estates may be inspected.

(2) Any person, authorised in that behalf by Our Government or the Licensing authority may, at any reasonable time, enter upon and inspect the lands of any tea estate and may require the owner of the estate or his agent or manager to produce, for inspection, any records of the estate in his control or custody relating to the cultivation of tea on the estate.

Penalty for failure to furnish returns.

9. Any owner of a tea estate or his agent or manager who on being required under the provisions of Section 8, Sub-section (1), furnishes any return containing any particular which is false and which he knew to be false or did not believe to be true, shall be punishable with fine which may extend to one thousand rupees.

Penalty for obstructing inspection.

10. Whoever obstructs any person while such person is entering upon or inspecting the lands of any tea estate under the provisions of Section 8, Sub-section (2), and whoever having control over, or custody of, any records of a tea estate relating to the cultivation of tea on that estate refuses or fails to produce such records when

---

Section 27 (1), (2) and (3) respectively of the Indian Act.

Sec. 8: This corresponds to Section 29 (1) and (2) of the Indian Act. Section 29 contains another Sub-section (3) which runs as follows:—"(3) When any return required under Sub-section (1) in respect of any tea estate is not furnished to the Committee within the period specified in the notice, the Committee may refuse to grant any permission under Section 27 to plant tea on that estate."

Secs. 9-13: These reproduce respectively Sections 31-35 of the Indian Act.

required by the person under the provisions of that Sub-section shall be punishable with fine which may extend to one thousand rupees.

Penalty for cultivating tea without licences.

11. Whoever plants, or causes to be planted tea in any land in contravention of the provisions of Section 3 shall be punishable with fine which may extend to one thousand rupees for the first offence, and with fine which may extend to five thousand rupees for any subsequent offence.

Illicit tea cultivation may be removed.

12. Where any person has been convicted of an offence under Section 11 the convicting Court may direct that the tea in respect of which the offence was committed, shall be removed from the land within a prescribed time, and in the event of the order not being duly complied with, may cause the tea to be removed and recover the cost from the person convicted as if it were arrears of land revenue due on the tea estate on which the offence was committed.

Jurisdiction of Magistrates.

13. No Magistrate other than a Magistrate of the First Class shall take cognisance of any offence under this Regulation; and such Magistrate may take cognisance of such an offence only upon complaint made by any person authorised by Our Government or by the Licensing authority in that behalf or with the previous sanction of Our Government.

Powers of Government to frame Forms and Rules.

14. Our Government may frame Forms for any proceedings under this Regulation and may make Rules with respect to any matter that may be prescribed under this Regulation and generally to carry out the purposes of this Regulation.

Besides control of the extension of tea cultivation, the Indian Act provides for control of the export of tea from British India. For Travancore, this control is exercised through Notification issued under the Sea Customs Regulation, V of 1088.

REGULATION III OF 1109.

THE TRAVANCORE EDAVAGAI REGULATION.

CONTENTS.

Preamble.

Sections.

1. Short title and extent.
2. Definitions.
3. Settlement of Edavagai.
4. Costs of settlement.
5. Rules for settlement.
6. (1) Completion of settlement.
   (2) Settlement final for thirty years.
7. Land-holders given permanency.
8. Assignment of lands.
9. Unauthorised occupation of *thanathu* lands.
10. Rent-roll.
11. Rent, *melvarom*, etc., to be recovered by summary processes.
12. Government to be indemnified for losses.
13. Sale for rent, etc., to be free of encumbrances.
14. Kanapattom lands, Sirkar Devaswom lands and Pandaravagai lands excepted.
15. Powers of Peishkar, etc., to be conferred on Chief's agent.
16. Power to make Rules.
17. Right of suit.
18. Amendment of Regulation IV of 1068.

A Regulation to provide for the Settlement and better Administration of certain Edavagais

Passed by His Highness the Maha Raja of Travancore, under date the 20th June 1934, corresponding to the 6th Mithunam 1109, under Section 23 of Regulation II of 1108.

Preamble.

Whereas it is expedient to provide for the settlement and better administration of certain Edavagais; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Regulation may be called "The Travancore Edavagai Regulation,"

(2) It extends to the whole of Travancore.

(3) This Section applies to the Edavagais of Poonjar and Vanjipuzha and the Estates of Kilimanoor and Edappalli and Sections 2 to 17 apply to the Edavagais of Poonjar and Vanjipuzha and Section 18 to the Estates of Kilimanoor and Edappalli.

Definitions.

2. In this Regulation, unless there is anythig repugnant in the subject or context,—

(i) "Edavagai" means any tract or area recognised as such in Our Government accounts, the whole or any portion of which is exempt from the payment of land revenue to Our Government:

(ii) "Holding" means any land within an Edavagai held under—

(*a*) any title, permanent or temporary, redeemable or irredeemable, derived direct from the Chief or acquired by operation of law as against the Chief, or

---

Regn. III of 1109: I. *Objects and Reasons.* —(1) "Though at one time all holders of Government lands in the State were tenants-at-will the Government thought that, in the larger interests of the State, the tenants should have permanent rights of occupancy heritable and alienable, and the Proclamation of 1040 was the result. The policy of the Government was the same with reference to Jenmom lands and the Proclamation of 1042 was framed to give effect to the above policy. When survey and settlement were introduced in the State by means of appropriate legislation in 1058, the question of the adjustment of the rights of the Jenmies and their tenants was also taken up and a commission for the purpose was appointed in 1060. This resulted in the passing of Regulation V of 1071. In the case of Edavagais, Edapalli and Kilimanur were surveyed and settled and the tenants therein were given permanent rights of occupancy (Rent Recovery Regulation, IV of 1068). There are thus only two Edavagais whose tenants are in a disadvantageous position. Though, on the application of the Vanjipuzha Chief to have his Edavagai surveyed and settled, the Government undertook the survey of the same at his cost, the idea of settling the Edavagai was finally given up. The Chief has all along been agitating to have his Edavagai settled. The Chief has no objection to confer permanent rights of occupancy upon his tenants. The same may be said to be the case with Poonjar. The present legislation is therefore undertaken with a view to confer upon the tenants of Poonjar and Vanjipuzha Edavagais permanent rights of occupancy as in the case of Edapalli and Kilimanur. It is considered desirable to have a single piece of legislation applicable to all Edavagais and the present Bill therefore proposes to repeal the existing Rent Recovery Regulation.

The survey of all Edavagais has been provided for by the Survey and Boundaries Regulation, X of 1094. There is no law now for the settlement of the Edavagais. A legislation of the kind is also necessary for statistical and other purposes of Government. The subjects of the State living in Edavagais have represented that they should be given electoral rights for the Legislature. The principle has been accepted by Government. Unless all the Edavagais are settled, it is not possible for the officers of Government to

(*b*) any such title acquired by transfer or by operation of law :

(iii) "Chief" means the senior male member or other member of the Poonjar Koikal or Vanjipuzha Matom, as the case may be, in whom the management of the family concerned is vested in law for the time being :

(iv) "Land-holder" means the proprietor of a holding as such and includes the Karanavan of a Marumakkathayam Tarwad and the manager of a joint Hindu family where the Tarwad or the family, as the case may be, is the proprietor :

(v) "Prescribed" means prescribed by Rules made by Our Government under this Regulation and published in Our Government Gazette :

(vi) "Registered land-holder" means a land-holder who has been given, on the settlement of the lands in an Edavagai, or thereafter, a permanency of occupancy under the provisions of this Regulation, subject, or not subject, to conditions :

---

know whether a tenant is entitled to be registered as a voter or not. With a view to secure the above objects and views, the present legislation has been undertaken.

When a survey is completed, the Bill proposes to empower the Government to undertake the settlement of Edavagais at the cost of the proprietors of such Edavagais. The conduct of the settlement and the procedure to be followed by the Settlement Officers will, subject to such modifications as may be necessary in individual cases, be the same as those that are to be followed in the case of settlement of Government lands. As soon as a settlement is made, the officer is required to give the particulars of settlement to the parties concerned and they are given a right of appeal. The rent to be fixed shall in no case exceed one-fourth of the gross produce and the settlement will be in force for thirty years. Permanent rights of occupancy, heritable and alienable, are conferred upon the tenants. The assignment of lands not occupied by any tenant is to be made in accordance with the Rules in force applicable to Government lands. The Bill proposes to confer the right of removing unauthorised occupation in accordance with the provisions of the Land Conservancy Regulation. The rent due to the proprietors of a settled estate may be recovered under the provisions of the Revenue Recovery Regulation for the time being in force and it is open to the Government to empower a proprietor or his agent to exercise the powers of a Tahsildar or Peishkar under the said Regulation if they think fit to do so.

THE SCHEDULE.

Number.	*Name of Edavagai.*
1.	Poonjar.
2.	Vanjipuzha."—*S. O & R.*

(2) In introducing the Bill in the Sri Mulam Assembly, the Official Member in charge said :—" An Edavagai means a compact area recognised as such in the Government accounts, the whole or any portion of which area is exempt from payment of revenue to Government. Or, in other words, an Edavagai is a compact area outside the State *ayacut* and Government have no concern over it in the matter of collecting tax. The Edavagai Chief will collect his dues which may be

(vii) "Registered holding" means a holding in which a landholder, as such, has a permanency of occupancy subject, or not subject, to conditions;

(viii) "Poramboke" means a poramboke as defined in the Land Conservancy Regulation of 1091, (Regulation IV of 1091):

(ix) "Jenmom land" means land within an Edavagai held as jenmom (whether demised or not) by any person other than the Chief or by any Devaswom other than any Devaswom owned or managed in trust by the Chief, but shall not include lands belonging to Sirkar Devaswoms: and

(x) "*Thanathu* land" means all land within an Edavagai not being—

(*a*) Pandaravagai land or land belonging to Sirkar Devaswoms,

---

said to be the tax from the tenants in that area. The peculiarity of an Edavagai is this. The Government do not at all interfere, whatever be the extent of the holdings and the nature of the tenure held by the tenants. In the case of the ordinary Jenmom and Pandarapattom lands the Government have to recover the tax due to Government. For this purpose a survey and settlement were effected by Government. But in the case of Edavagais neither the Chief nor the tenants owe tax to Government. Hence, it is not the concern of Government to know anything about the tax collected by the Chiefs or anything connected with that and therefore there is no settlement in Edavagais. And the tenants have not too any permanency of the occupancy right and the rents they have to pay may be excessive. These cause serious hardship to the tenants because they have not got the rights of ordinary tenants under the Sirkar or even of the ordinary Jenmies and there are no published record of the rights of the tenants. The object of this Bill is to give permanent right of occupancy to Edavagai tenants and to enforce fairness of rent. It is also proposed to have a single measure applicable to all Edavagais and to repeal the existing Rent Recovery Regulation (IV of 1068) and incorporate in this Bill provisions relating to Kilimanur and Edappally also.

For the carryiny out of the purpose of the Bill there should be a survey of the Edavagais. Then there must be a settlement of the rents. There is at present no legislation for such settlement. The subjects of the State residing in Edavagais have moreover petitioned for a long time that they should be given electoral rights. The rightness of their claim has been approved by the Government. But till the Edavagais are settled, it is impossible for Government officers to know whether a tenant is entitled to be registered as a voter or not.

When the survey is finished, the Bill empowers Government to take up the settlement at the cost of Chiefs of such Edavagais. The settlement and procedure will, subject to necessary modifications, be the same as those that are adopted in the case of the settlement of Government lands. As soon as the settlement is made, the officer should furnish the details of the settlement to the parties concerned and a right of appeal will also be provided,

(*b*) Jenmom land,

(*c*) registered holding, or

(*d*) poramboke.

Settlement of Edavagai.

3. (1) On the completion of the survey of an Edavagai or of any portion thereof, Our Government may direct, by Notification in Our Government Gazette, that the lands in the Edavagai or the portion of Edavagai so surveyed, as the case may be, be settled by an officer of Our Government.

(2) The direction contained in Sub-section (1) may be made—

(*a*) on the application of the Chief concerned and on his agreeing in writing to defray the whole cost of the settlement, or

---

The rent to be fixed will in no way exceed 25 per cent. of the gross produce.

The Bill provides also for the removal of unauthorised occupations of land in accordance with the procedure permissible under the Land Conservancy Regulation.

This Bill is framed particularly with a view to effect a settlement of the relations between the Chief and his tenants.

* * * *

There are two Edavagais mentioned in the Schedule, the Edavagais of Poonjar and Vanjipuzha. But two more are mentioned in the body of the Bill, *viz.*, the Edavagais of Kilimanur and Edappally. In regard to the Edavagais of Kilimanur and Edappally there is already a Regulation, Regulation IV of 1068, which governs them. That Regulation is proposed to be repealed by this Bill so as to bring a uniformity in the law that is going to govern all the Edavagais. When this Bill becomes law I believe there would be a settlement of the rights of the tenant and the relationship between the chiefs and their tenants."—*Legis. Assembly Pro., dated 20-11-1933.*

II. In moving in the State Council for the consideration of the Bill, the Official Member in charge made observations in elucidation of the measure. Extracts therefrom are also appended :—" * * * In regard to the Poonjar and Vanjipuzha Edavagais, they have not been settled as yet and one of the main purposes of the present Bill is to bring the holdings of these Edavagais and the tenures within these Edavagais to settlement. The main design of this settlement is that the holdings should be settled exactly in the same manner as Sirkar lands were settled, subject to certain exceptions. The main payment which the land-holder owes to the chief is to pay rent in respect of his holdings. In regard to this rent what is proposed in this Bill is to fix such an amount as rent as would be equivalent to Sirkar Pandarapattom on the same kind of land ; that is to say, the amount that the land-holder has to pay to the Chief should be exactly what the tenant would have been obliged to pay if that had been Government land, and it is also proposed that the holders should be given permanent occupancy rights in the same manner as holders of land under Government are given. * * It is the purpose of this Bill to give a permanency of occupancy to the holder and to regulate the rent that he may have to pay and bring it on to a level with the tax payable to Government in respect of Government lands. One important provision

(*b*) without such application for reasons to be recorded by Our Government prior to the issue of such notification.

Costs of settlement.

4. All costs incurred by Our Government on account of a settlement conducted in pursuance of Section 3 shall be recoverable from the Chief in the same manner as arrears of land revenue.

Rules for settlement.

5. (1) Subject to such Rules as may be prescribed consistently with the provisions of this Regulation, the conduct of settlement and the proceedings in connection therewith shall, as far as may be, be regulated by the law and procedure, for the time being in force, relating to the settlement of Sirkar lands.

(2) Such Rules shall, *inter alia*, provide—

(i) for the holdings held on permanent or irredeemable titles being settled as registered holdings without the levy of any *taravila* or *tadivila* or any alteration of the rent payable to the Chief ;

---

of this Bill then is as regards the rules for settlement, which are set out in clause 5 of the Bill. The general scheme is that the lands in the Edavagai should be settled subject to the rules applicable to the settlement of Government lands. Certain exceptions are made and they are laid down in clause 5 of the Bill and I shall briefly explain what those exceptions are. As I said already, the lands are liable to be redeemed by the Edavagai Chief, a fact which must be recognised throughout. It is open to him to go to a Court of law and take the land into his possession and enjoy it as any private proprietor does. By this Bill it is proposed to take away that right from the Chief and to lay down that the land shall be enjoyed by the tenant permanently, that is to say, we are proposing to deprive the Chief of this right to recover the land. Because this Bill proposes to deprive this proprietory right which the Chief today has, *a quid pro quo* is proposed to be given. For that purpose, it is proposed to levy a small tharavila, price of the land, for the conferment of the permanent rights which in no case shall exceed 15 Rs. per acre in the case of dry lands and Rs. 50 in the case of wet lands. The tharavila to be actually levied on the land will be governed by the Rules to be made by the Government having regard to the nature of the land and other conditions then existing. Rs. 15 is only the maximum to be recovered for lands coming under the category of dry lands and Rs. 50 for the wet lands, and the tharavila is to be recovered in not less than 10 yearly instalments. By this arrangement a tenant is called upon to pay but a nominal sum per year. The principles applied in the case of settlement of Government lands will generally apply. But, because the Chief is deprived of a valuable right, there must be some compensation to him and so the question of tharavila comes in. It has however to be remembered that the tharavila, although a price for the land, is not any adequate price at all. In the market these lands may fetch Rs. 50 or Rs. 100 and more; but the tharavila is only Rs. 15. It is not a competition price at all. The Legislature wants to restrict the price that the

(ii) for the holdings (not being those held on permanent or irredeemable titles or on usufructuary mortgages) with a term of more than twelve years to run at the commencement of this Regulation being treated and recorded as the *thanathu* land of the Chief and left to be dealt with by the parties in accordance with the terms of their contract or in such other manner as they may agree;

(iii) for lands held on usufructuary mortgages being settled as registered holdings without the levy of any *taravila* or *tadivila* or the repayment of the mortgage amount, but subject to the assessment of the full *pattom* contemplated in clause (viii) as the rent payable to the Chief;

(iv) (*a*) for the levy, in not less than ten equal yearly instalments, of a *taravila* not exceeding rupees fifteen per acre of dry land and not exceeding rupees fifty per acre of wet land for the settlement, as registered holdings, of holdings without any term or with a term of not more than twelve years to run, at the commencement of this Regulation; and

Chief may demand and that limit is Rs. 15 in the case of dry lands and Rs. 50 in the case of wet lands. Another limitation is that these are to be realised in ten equal yearly instalments from the tenants.

There are however lands given on permanent tenures such as *Adima* or *Thirumoolam* tenure. In such cases, the Chief himself has already parted with permanency right and that for some nominal rent. Those holdings will be respected by the present Bill. No tharavila will be levied on them, because they are not lands that may be recovered from the tenant under any circumstances. The contract must be maintained. And too, in respect of such lands, the rent may be very nominal. By this Bill it is not proposed to alter the rent and change it by bringing it up to the level of Sirkar pattom. On no account will the rent be increased or decreased merely because the lands are to be brought under settlement on the basis of Sirkar lands. Thus the settlement will take cognisance and respect established proprietory rights and contractual rights. * * *

* * * It is further provided in the Bill that the powers of a Tahsildar or Peishkar for the purpose of eviction of trespassers and recovery of rent may be conferred on the agent of the Chief provided that such agent is a Government servant lent to the Chief for service under him. Further, it is also provided that the right of civil suit available to the parties shall remain intact except in regard to the amount of pattom assessed or the amount of rent fixed or hereafter fixed on land. * * *.—*Council Pro., dated 29-5-1934.*

III. In view of the changes made in the Bill by the Select Committee, their Report, as explaining the changes, is given below:—"* * 3. The changes that we have made in the Bill are so numerous and detailed that the usual way of making and exhibiting the amendments, clause by clause, would be tedious and would further be scarcely informing. We have therefore entirely recast the Bill. The

(*b*) (i) for such holdings being treated and recorded as the *thanathu* land of the Chief wherever the land-holder is unwilling to pay the *taravila* and accept registry as registered holding; and

(ii) for such *thanathu* lands being left to be dealt with by the parties in accordance with their contract or in such other manner as they may agree, provision being however made notwithstanding anything in the contract that the rent payable during the currency of any period claimed and available under any covenant for the renewal of the holding shall be the *pattom* assessed on the holding at the settlement as contemplated in clause (viii);

(v) for the levy of any such *taravila* as may be deemed fit by Our Government for the settlement or registry as registered holdings of *thanathu* lands;

(vi) for the non-levy of *tadivila* in the settlement of holdings provided for in clauses (i), (iii) and (iv) (*a*) and for trees (other than royalties so long as they continue to be such) standing on such holdings being left to be appropriated by the land-holder upon the settlement being declared by Our Government to be complete;

---

main changes we have made in the Bill are indicated below.

4. The Bill was designed to cover the four Edavagais of Poonjar, Vanjipuzha, Kilimanoor and Edappalli specifically and to be extended to other Edavagais by Government order. Kilimanoor and Edappalli have already been settled, and the provisions for settlement, which are the main provisions of the Bill and which the other two named Edavagais require, have no application to the former. We are of opinion that Regulation IV of 1068, which governs Kilimanoor and Edappalli and which was proposed, in the Bill, to be repealed, may be left to stand. Those two Edavagais require only a provision to deal with unauthorised entries into unassessed lands within their limits. Such a provision may be added in Regulation IV of 1068 by an amendment of it. This is what we propose in the Revised Bill (see Clause 18 of the Revised Bill).

5. The proposal in the Bill, as referred to extend the provisions of the measure to other Edavagais by an order of Government does not appear to be quite satisfactory, particularly because the conditions of those Edavagais may not be anything like those of the Edavagais dealt with by the Bill. We have therefore deleted that provision.

6. The chief purpose of the Bill is the settlement of the lands in the Edavagai. The proposal in the Bill is to the effect that this should be done mainly in accordance with Rules passed by Government. While many things may, and should, be left to Rules, we think that it is necessary to lay down certain fundamental principles in the Bill itself to be observed in the settlement and, for that purpose, to be incorporated in the Rules. We have made provision for this in the Revised Bill [see Clause 5 (2)]. On the completion of the settlement, holders of lands which

Provision being however made for the payment to the Chief of the *kudivila,* if any, for the trees which are royalties claimable from Our Government wherever the same could have been claimed by the Chief irrespective of this Regulation ;

(vii) for any such *tadivila* as may be deemed fit by Our Government being levied for the settlement or registry of *thanathu* lands as registered holdings ;

(viii) for the *pattom* on holdings being assessed at the amount of *pattom* assessable on such lands if they were Pandarapattom lands and for the *pattom* being fixed as the rent payable to the Chief in respect of registered holdings other than those coming under clause (i) ;

(ix) for the imposition of a *melvarom* for payment (over and above the rent otherwise payable) to the Chief on holdings provided for in clause (i) and on Jenmom lands and for the rates of such

---

have not been declared as *thanathu* lands are given permanency of occupancy (see Clause 7).

7. Assignments of *thanathu* lands may be made by the Chief but they should be done subject to the rules governing the assignment of Government lands (see Clause 8).

8. Unauthorised occupation of *thanathu* lands are dealt with in Clause 9. Such occupants are to be summarily evicted, but they would be given a concession if their occupation began previous to the commencement of this law; such occupants will be allowed to take a registry of the land on payment of a moderate *taravila.*

9. The rent due to the Chief is made a first charge and such rents and such other amounts may be recovered by summary processes (see Clauses 11 and 13). Provision is made also for the conferment of certain powers of Proverthikaran, Tahsildar and Peishkar on the agents and servants of the Edavagai Chief (see Clause 15).

10. Lands coming within the purview of the Jenmi and Kudiyan Regulation and lands belonging to Sirkar Devaswoms and Pandaravagai lands are excepted from the operation of this law (see Clause 14).

11. Right of resort to Civil Courts by aggrieved parties is recognised except in respect of the rate and amount of *pattam* assessed on lands (see Clause 17).

12. A general rule-making power is provided for by Clause 16. * * * ".

IV (A). The Bill was published in the Gazette dated 31-10-1933. It was introduced in the Sri Mulam Assembly and referred to a Select Committee at the meeting held on 20-11-1933 (*Assembly Pro., Vol. II, Pp. 268—318*). The Select Committee's Report was published in the Gazette dated 8-5-1934. The Report was presented to the Assembly and considered at the meetings held on 21, 22 and 23-5-1934. (*Ibid Vol. II. Pp. 576-585, 610-636 and 707-711*). At the last mentioned meeting, the Bill was also passed.

(B) The Bill, as passed by the Assembly, was taken for consideration by the Sri Chitra State Council, considered and passed at the meeting held on 29-5-1934 (*Council Pro., Vol. II. Pp. 293-308*).

(C) The Regulation was published in the Gazette dated 26th June 1934.

melvarom being fixed at one-eighth of the *pattom* assessable on such lands, provision being however made that the total demand on the land for rent and *melvarom* together shall not exceed the amount of the *pattom*;

(x) for holdings held on service tenures being dealt with in the same manner as Pandaravagai service inam lands; and

(xi) for the grant of *pattas* to land-holders, for the *pattas* being signed and sealed by an officer of Our Government authorised in that behalf by Our Government and for the issue of the same with or without the seal of the Chief.

Explanation.—Any period available under a covenant for renewal shall not be taken into account in computing the term contemplated in clauses (*ii*) and (iv).

Completion of settlement.

6. (1) The completion of the settlement of an Edavagai or any portion thereof shall be declared by Our Government by Notification in Our Government Gazette and such settlement shall take effect from the beginning of the Malabar year next after the date of such Notification.

Settlement final for thirty years.

(2) Every settlement made in pursuance of this Regulation shall subject to the provisions thereof be in force for thirty years from the date of its taking effect and shall be liable to be revised thereafter.

Lond-holders given permanency.

7. Land-holders whose holdings have been dealt with but not treated and recorded as *thanathu* land at the settlement carried out in pursuance of this Regulation shall, from and after the date of the settlement being declared complete by Our Government, have subject to any such conditions as may have been lawfully imposed the same rights of permanent occupancy in respect of such holdings alienable and heritable as holders of land under Our Government.

Assignment of lands.

8. It shall be competent to the Chief to make assignments of *thanathu* lands, but such assignments shall be made in accordance with the law and rules for the time being in force for the assignment of Government lands so far as they are applicable and subject to the rights, if any, of third parties. Such assignees shall be deemed to be registered land-holders.

9. All *thanathu* lands on which any person has unauthorisedly entered after the commencement of this Regulation or on which any person having unauthorisedly entered before the commencement of this Regulation continues in occupation thereafter shall be liable to be dealt with as if they were the property of Government within the meaning of the Land Conservancy Regulation of 1091 (IV of 1091) for the purposes of such of the provisions thereof as may be notified by Our Government in that behalf :

Unauthorised occupation of *thanathu* lands.

Provided that, in the case of any person who having unauthorisedly entered the land before the commencement of this Regulation continues in occupation thereafter, he shall be given an option (to be exercised within a time not being less than two months specified and notified by the officer taking steps under the said Regulation) to take a registry of the land as a registered holding on payment, in not less than ten equal yearly instalments, of such *taravila* not exceeding rupees thirty per acre on dry lands and rupees one hundred per acre on wet lands as may be fixed by Our Government from time to time.

10. The rent-roll and other accounts bearing upon the lands in an Edavagai shall be kept in the form in which Our Government accounts are kept and they shall be subject to supervision by officers of Our Government in accordance with such Rules as may be prescribed.

Rent-roll.

11. The rent due to the Chief on registered holdings and the *melvarom* due to him shall be a first charge on the land concerned and shall be paid to the person and in the manner and at the time prescribed. Such rent and *melvarom* as also any other rent or *taravila* or *tadivila* or other amount accruing due to the Chief after the commencement of this Regulation in respect of any holding or other land within an Edavagai by virtue of a registered deed or under the orders passed in pursuance of the provisions of this Regulation or any other Regulation applied to the Edavagai shall be treated as if they were public revenue and in default of payment may be recovered as arrears of public revenue under the Revenue Recovery Regulation, I of 1068, subject to such Rules as may be prescribed.

Rent, *melvarom*, etc., to be recovered by summary processes.

Explanation.—Notwithstanding anything contained in the Travancore Jenmi and Kudiyan Regulation of 1071 (Regulation V of 1071 as amended by Regulation XII of 1108) the *melvarom* due on any land shall have priority over the Jenmikaram.

Government to be indemnified for losses.

12. All charges and losses that may be incurred by Our Government in connection with any proceedings taken under Section 11 shall be paid by the Chief and may be recovered by Our Government from him as arrears of land revenue under the Revenue Recovery Regulation, I of 1068.

Sale for rent, etc., to be free of encumbrances.

13. The sale of any land held in pursuance of this Regulation for the realisation of any *melvarom* or rent which is made a first charge under Section 11 shall be free of encumbrances if such sale is to recover the *melvarom* or rent, as the case may be, due on the land sold.

14. Nothing in this Regulation shall be deemed to apply—

Kanapattom lands, Sirkar Devaswom lands and Pandaravagai lands excepted.

(*a*) to any land in so far as the provisions of the Travancore Jenmi and Kudiyan Regulation of 1071 (Regulation V of 1071 as amended by Regulation XII of 1108) apply thereto except to the extent provided for in the Explanation to Section 11, or

(*b*) to the settlement of lands belonging to Sirkar Devaswoms or to Pandaravagai lands, if any, within an Edavagai.

Powers of Peishkar, etc., to be conferred on Chief's agent.

15. Our Government may, subject to such Rules as may be prescribed, confer the powers of a Proverthikar or Tahsildar under the Revenue Recovery Regulation, I of 1068, or of a Dewan Peishkar under the Land Conservancy Regulation of 1091 (IV of 1091) on any agent or servant of the Chief :

Provided that the powers of a Tahsildar or a Dewan Peishkar shall not be conferred on the agent or servant unless he is a Government servant whose services have been lent to the Chief ; and

Provided also that the appeals and revisions available to the parties under the said Regulations against the orders or actions of a Tahsildar or a Dewan Peishkar shall lie, or shall be provided for

by the Rules to lie, to an officer of Our Government in Our Government service.

Explanation.—Any right of civil suit available in respect of the orders or actions under the Revenue Recovery Regulation, I of 1068, and the Land Conservancy Regulation of 1091 (IV of 1091) shall also be available to the parties.

Power to make Rules.

16. (1) Our Government may make Rules to promote the objects and purposes of this Regulation.

(2) Without prejudice to the generality of the foregoing provisions, Our Government may make Rules,—

(*a*) for any matter that may be prescribed under this Regulation;

(*b*) fixing the rates of *taravila* or *tadivila* or specifying the trees that may be valued for purposes of levying *tadivila*;

(*c*) prescribing the restrictions, limitations and conditions subject to which any assignment of land may be made under the provisions of this Regulation;

(*d*) providing for appeal and revision in respect of the orders of any authority exercising powers under this Regulation;

(*e*) prescribing a time-limit for such appeals and revisions;

(*f*) regulating the powers of the appellate and revisional authorities and the procedure to be followed by them;

(*g*) providing for the publication of notifications and service of notice;

(*h*) prescribing the procedure to be followed in enquiries regarding the claims made by parties and in other enquiries under this Regulation;

(*i*) regulating the issue of *patta* or other title-deed;

(*j*) prescribing forms where forms are necessary;

(*k*) providing for the transfers of land being recognised and recorded, the procedure to be followed in recognising and recording such transfers and apportionment of rent or other dues upon division of holding or lands; and

(*l*) providing for the grant of receipts for payment of rent or other dues.

Right of suit.

17. (1) No Civil Court shall take into consideration or decide any question as to the rate or amount of *pattom* assessed or assessable on any land under the provisions of this Regulation or as to the amount of *pattom* fixed or hereafter fixed on portions of land.

(2) But nothing contained in this Regulation shall be deemed to prevent parties aggrieved by any proceedings under this Regulation except to the extent provided for in Sub-section (1) from seeking redress in the Civil Courts.

Amendment of Regulation IV of 1068.

18. In the Estates Rent Recovery Regulation, IV of 1068, the following amendments shall be made, namely :—

(*a*) For Section 4, the following shall be substituted, namely :—

"4. It shall be competent to the Chief to make assignments of waste lands, but such assignments shall be made in accordance with the law and rules for the time being in force for the assignment of Government lands so far as they are applicable and subject to

---

Sec. 18: I. In the original Bill, the Section (17) stood as follows: —"Our Government may, subject to such rules and conditions as may be prescribed, empower any proprietor or his agent with all or any of the powers of a Tahsildar and a Division Peishkar under Regulation I of 1068 and under Regulation IV of 1091."

II. The Select Committee substituted the following Section for the above:—

18. *Amendment of Regulation IV, 1068.*—In the Estates Rent Recovery Regulation, Regulation IV. of 1068, the following shall be added at the end of Section 10, namely:—"10. *Unassessed lands treated as property of Government.*—All unassessed lands within the limits of the Estates of Kilimanoor and Edappalli shall be deemed to be the property of Government for the purposes of the Land Conservancy Regulation of 1091 (IV of 1091) and such of the provisions of the said Regulation as may be notified by Our Government in that behalf shall apply thereto subject to such Rules as may be prescribed."

III. When the amended Bill was considered by the Assembly, the Section as now found in the Regulation was substituted on the motion of a non-official Member, as "Regulation IV of 1068 is neither clear enough nor sufficient to cover the class of lands contemplated." As explained by another non-official Member :—"In fact, the effect of the amendment would be to bring the condition of the estates of Kilimanur and Edappalli into line with the Estates of Poonjar and Vanjipuzha so far as the system of management as proposed in the Bill is concerned. * * So far as the introduction of the Land Conservancy Regulation is concerned, that is already provided by a clause at the foot. * ".—*Assembly Pro., dated 23-5-1934.*

the right, if any, of third parties. Such assignees shall have in respect of the lands assigned all the rights which similar assignees of Government lands acquire in respect of the Government lands assigned."

(*b*) The following shall be added as Sections 10, 11 and 12 respectively :—

Unassessed lands treated as property of Government.

"10. All unassessed lands within the limits of the Estates of Kilimanoor and Edappalli shall be deemed to be the property of Government for the purposes of the Land Conservancy Regulation of 1091 (IV of 1091) and such of the provisions of the said Regulation as may be notified by Our Government in that behalf shall apply thereto subject to such Rules as may be prescribed.

Powers of Peishkar, etc., to be conferred on Chief's agent.

11. Our Government may, subject to such Rules as may be prescribed, confer the powers of a Proverthikar or a Tahsildar under the Revenue Recovery Regulation, I of 1068, or of a Dewan Peishkar under the Land Conservancy Regulation of 1091 (IV of 1091) on any agent or servant of the Chief :

Provided that the powers of a Tahsildar or a Dewan Peishkar shall not be conferred on the agent or servant unless he is a Government servant whose services have been lent to the Chief ; and

Provided also that the appeals and revisions available to the parties under the said Regulations against the orders or actions of a Tahsildar or a Dewan Peishkar shall lie, or shall be provided for by the Rules to lie, to an officer of Our Government in Our Government service.

Explanation.—Any right of civil suit available in respect of the orders or actions under the Revenue Recovery Regulation, I of 1068, and the Land Conservancy Regulation of 1091 (IV of 1091) shall also be available to the parties.

Definition of Chief.

12. The word "Chief" used in this Regulation means the senior male member or other member of the Kilimanoor Kottaram or the Edappalli Swarupam, as the case may be, in whom the management of the family concerned is vested in law for the time being."

REGULATION IV OF 1109.

TRAVANCORE (MATCHES) EXCISE DUTY REGULATION.

CONTENTS.

Preamble.

Sections.

1. Short title and extent. 1
2. Definitions. 2
3. Imposition of duty on matches. 3
4. Rates of duty. 4
5. Recovery of duty with penalty. 5
6. Issue of matches from manufactory. 6
7. Power of Government to prohibit import of matches. ... 7
8. Power of Government to direct use of banderols. ... 8
9. Prohibition of manufacture of matches and manufacture and import of splints and veneers. 9
10. Penalty for issue of matches from manufactory in contravention of Section 6. 10
11. Penalty for import of matches in contravention of Regulation. 11
12. Penalty for issue or sale of matches without banderol. ... 12
13. Penalty for manufacture of matches and manufacture and import of splints and veneers without licence. ... 13
14. Penalty for evasion of duty or failure to supply information... 14
15. Power of Courts to order forfeiture of matches, splints or veneers. 15
16. Application of Regulation V of 1088 to the importation of matches, splints or veneers. 16
17. Application of the provisions of Regulation V of 1088 to the duty on matches. 17
18. Power of Government to make Rules 18
19. Power of Government to provide for rebate of duty. ... 19

The figures on the right side refer to the corresponding Sections of the Indian Act, No. XVI of 1934.

A Regulation to provide for the imposition and collection of an excise duty on matches

Passed by His Highness the Maha Raja of Travancore under date the 20th June 1934, corresponding to the 6th Mithunam 1109, under Section 23 of Regulation II of 1108.

Preamble.

Whereas it is expedient to impose an excise duty on matches and to provide for the collection thereof; It is hereby enacted as follows:—

Regn. IV of 1109: I. *Objects and Reasons.*—(i) "The main purpose of this Bill is to impose an excise duty on matches made in Travancore. A similar duty has just now been imposed in British India by the Matches (Excise duty) Act, 1934. It is necessary and expedient that Travancore should do likewise.

2. A general power is also taken, by the Bill, to impose excise duties on such articles as Government may find it necessary to do so from time to time."—*S.O & R.*

(2) In introducing the Bill in the Sri Mulam Assembly, the Official Member in charge said:—"The main purpose of the Bill is to levy an excise duty on matches manufactured in Travancore. The rate of duty is specified in Clause 4 of the Bill, and the proposal is to levy a duty per gross of boxes having regard to the contents of each box. As the honourable members may see from Clause 4 of the Bill, Sub-clauses (ii) and (iii) lay down that the duty is Br. Re. 1 per gross of boxes where the average number of matches in a box is 40 or less and that it is Re. 1 as. 8 per gross of boxes where the content of each is more than 40 matches but less than 60 and Rs. 2 per gross of boxes where the number in a box is more than 60 but not more than 80. This rate of duty works out at about 3 cash per match box where a box contains 40 matches and it will be proportionately larger where the content of the box is larger. For instance, if the content is 80 matches, the duty will be about 6 cash per box. The main principle involved in this Bill is the imposition of the duty.

Clauses 7 to 9 provide for the procedure and machinery for the efficient collection of the duty. Clauses 5 and 10 to 16 provide for penalties for the evasion of the payment of duty and for contraventions of the rules of procedure, &c. Clause 18 provides for the rule-making power. In Clause 20, the power is proposed to be taken by Government for the imposition of duty on such other articles as Government may think it necessary to do so from time to time. Honourable members will see that the principle involved in the Bill is very brief and simple.

The immediate occasion for the introduction of this Bill is the imposition of a similar duty in British India by an Act passed there very recently, *viz.*, the Match Duty Act passed by the Indian Legislative Assembly for the whole of British India. The rate of duty proposed by this Bill is exactly the same as that proposed by the British Indian Legislature. And, in fact, the procedure and the machinery for the collection of the duty and the other provisions of the proposed Bill are practically the same as those laid down by the Indian enactment. In fact, the Bill is but an adaptation of that Act. Honourable members who have been following the proceedings of the Indian Legislature would have noticed that the British Government have invited the co-operation of the Indian States in the matter of the efficient collection of this duty and that

1. (1) This Regulation may be called the "Travancore (Matches) Excise Duty Regulation."

Short title and extent.

(2) It extends to the whole of Travancore.

---

for a very good reason. The Indian States and British India lie interspersed and where such matters have to be regulated it is very necessary in some cases that the States should act in union with British India. In this particular case, in regard to the imposition of the match duty, it will be realised that co-operation has become very necessary for some special reasons. If there is no co-operation and if the States do dot impose a like duty for their territories, there will be an unfair competition between the industry in British India on the one hand and the States on the other. More than this, if there is no equivalent duty in the States, there is likely to be undue transference of the match industry from British India to the States, because the machinery required for making matches is very small and light and can be easily moved. Furthermore, there is also the fact that in the nature of the matches it is very easy to smuggle matches from the States into British India and such smuggling will happen if there is no equivalent duty in the States. Therefore the British Government invited the co-operation of the States and requested them to impose similar duty in their States; and as I said before, the honourable members who have been following the Government of India Finance Member's speech must have noticed that most of the States have agreed to co-operate. It is accordingly necessary that Travancore also should agree to co-operate. It is in the light of this important fact that this Bill has been introduced."

The following are extracts from the observations made by the Member in charge in the course of the debate:—"Considerations of revenue need not be left out of account even here. But I may say frankly that the immediate cause is not any such consideration, but it is the necessity for the co-operation of Travancore with British India. We are all members of the same Indian Empire and it is necessary that, when the major partner of British India is trying to regulate matters in their territories, we should not take a hostile attitude or any attitude which in the result is hostile."

* * *

"The arrangement is that the proceeds of the duty levied here and in British India will be pooled together and distributed among the States and British India in proportion to their population; and it is expected that we will get about 4 or 5 lakhs of rupees annually in the division or some such figure. That is why I submitted that revenue need not be kept entirely out of consideration."

* * *

"It will be seen from the British Indian Enactment that no special concession is made in regard to the so-called cottage industry in match-making. Those who have followed the debate on this measure in the British Indian Legislative Assembly will have noticed also the special reason that was urged by the Honourable the Finance Member for not giving any concession for the cottage industry. Perhaps I may read the relevant portion from the speech of the Honourable the Finance Member:—"The Bill will provide for no concession in favour of the so-called cottage industry which really means nothing more than the dipping in chemical mixtures of splints made in factories and the pasting of paper wrappers and of strips carrying other chemical mixtures on boxes made from veneers made in factories. Any such concession would make evasion of the duty and an artificial attack on the position of regular match factories materially easy, and we

are justified in allowing the consideration to prevail by the fact that the Tariff Board, in paragraph 134 of their Report regarding the grant of protection to the match industry, definitely advised against any special measures which would have the effect of encouraging match-making as a cottage industry, because it was not suitable for such operations both on economic grounds and because of the dangerously inflammable nature of the materials used." In this view, this Bill too does not make provision for any special concession to the cottage industry.

(3) Extracts from the speech of the Chief Secretary to the Government are also appended in further explanation of the proposed measure:—"In considering this Bill, the House has to make up its mind on two questions, *viz.*, whether it is advantageous or not to follow the example of the Government of India and introduce an excise duty on matches; and if it is advantageous, whether or not the Travancore Government should agree to join the pool as suggested by the Government of India and get a share of the revenue on the population basis. Regarding the first question, Sir, to me it seems that the proper thing to do is that we should follow the example of the Government of India and impose an excise duty on matches. The reasons I have in my mind are various. * * The main object of the Government of India was to increase their revenue and they have decided upon the imposition of these excise duties. And the Honourable the Finance Member also said in his speech that the Government of India would look up to the States to cooperate with them to enable them to realise the revenue which they hoped to realise; and he also said that if any State did not agree to the imposition of the duty on matches manufactured within its borders, he would prohibit the import of such matches into British India. Sir, when the Government of India have introduced this duty with a view to raise revenue to get over their financial difficulties, is it not desirable that Travancore, which looks up to the Government of India for various concessions in important matters, should agree to co-operate with them? By doing so, do we not also stand to gain? Have we not been promised a share of this revenue? Further, if any State did not agree to levy duty, the chances are that some of the match manufacturing companies in British India will shift their scene of operations to the State * * The Finance Member hopes to collect three and a half crores of revenue; and if the States refuse to join in this business, most of the match manufacturing companies will transfer their activities to the various States and the Finance Member can never hope to get the revenue he has estimated. Apart from the revenue that we may get, is it not advisable for us to extend our hand of co-operation to the Government of India * * *

"From the consumer's point of view, it has been pointed out by some member that once you levy this duty the consumer has likely to pay a considerably higher price for matches than what he now pays. That may be so. Even if we do not levy the duty and if the rest of India does it, I am afraid, the consumer here will have to pay the same price which the consumer outside Travancore pays. * When persons beyond the frontiers of Travancore have to pay, say, eight cash for a box of matches, is it likely that manufacturers and merchants within the State will sell their matches at a lower price? The merchants and manufacturers would certainly try to make as much profit as they can unless the Government interfere and prohibit the raising of the price. They will charge the same price in Travancore as that prevailing outside, so that the consumer is not going to be benefited by our refusing to levy duty on our matches. After all, there are only two match manufacturing concerns in this State, of which one, I am

afraid, is in a moribund condition, I mean the one at Tenmalai which is having a precarious existence. At present, there is only one factory working satisfactorily.** Even if you do not pass this Bill, their (producers') condition is not going to improve. Well, Sir, those who have used matches and especially those who are smokers know the superiority of the imported matches. Nobody here cares to buy the matches made in Travancore. In this humid climate, they do not keep for more than a day or two. It may be due to the defect in the process of manufacture. The people here generally buy only the imported matches. * * * We are talking of Federation and other constitutional changes. There exist our Interportal Trade Convention and our commitments in the Cochin Harbour Scheme. We should certainly retain the good will and sympathy of the Government of India; and from this point of view, it is very essential that we should follow the example of that Government. * *

Regarding the revenue, * * If we ourselves keep all the duty we may collect, our revenue will depend on the production here, and that varies from year to year. In 1106, we would have got probably about Rs. 4,90,000, in 1107 about 7 lakhs, and in 1108 only Rs. 2,93,000. Revenue varies according to production, and production is in proportion to demand. In 1106, 1107 and 1108, there have been wide variations in production. If we take our share from the common pool, we may get about 2·8 lakhs; if we do not join the pool, we may probably get 2·9 lakhs on the output of matches in Travancore in 1108. But, in British India, the match industry may develop considerably and their receipts from duty may increase. There is not much chance for the development of the industry here because we have no big capitalists. Even the two factories we now have have been financed mostly by British Indian capitalists. The industry is likely to develop more rapidly in British India than here and, in that case, it is more advantageous for us to join the pool. * * * ."

Legis. Assembly Pro., dated 21-5-1934.

(4) The Official Member in charge moved in the State Council that the Bill, as passed by the Assembly, be taken into consideration, and spoke in support of the acceptance of the motion. A non-official member moved that the Bill be referred to a Select Committee. In putting the motion, (which was lost), to the vote of the House, the Dewan-President made the following observations "for elucidating the matter so that the House may know what it is really voting for." He said:—

"It seems to me that there are only three parties to be kept in mind before we decide whether this particular measure before the House is good or bad. The three parties are the consumers, the manufacturers and the Government. It has been tried to be shown that the consumer will be hit hard if this excise duty is levied. On the side of Government it was tried to be shown that the consumer will, on no circumstances, be benefited even if we do not levy any excise duty on the matches manufactured in Travancore. The manufacturers know how to regulate their prices according to the prices ruling in other markets. It is rather difficult to believe that the manufacturers in Travancore will be guided merely by a spirit of patriotism to sell matches to the people within Travancore at prices far less than the prices that may be ruling outside Travancore. * So, with every sympathy for the consumer, the position is that he cannot escape an increase in price whether we levy this duty or whether we do not levy it.

Then there is the *manufacturer* to be kept in mind. I heard some observations that by the levy of the excise duty this industry will be killed. On the other hand it seems to me that the industry will thrive better. If the excise duty is levied, it will induce the manufacturer to pull

himself up to the level of efficiency and perfection in British India and that will enable him to compete with the manufacturers outside. Honourable members who have watched the working of the match factories in Travancore do know that even those that exist are struggling for existence. Assuming that they are exempted from the payment of the duty will they again, as I said, issue a self-denying ordinance on themselves and keep the price low compared with the prices outside Travancore? We will be putting more money into the pockets of the manufacturer although the quality may not improve and the Government will get nothing.

Then there is the question of the *Government*. If all other Governments outside British India, including Indian States, have decided to levy this excise duty, should Travancore, of all States, stand aside? It seems to me, at any rate, that it would be a fiscal policy which the whole of India has to adopt, for, although we, Native States, might manage our own affairs, all the same, we form part and parcel of the whole federation of India. We are a unit fiscally, politically and otherwise as well. If that is so, why should we stand aloof in this matter alone; and for whose benefit? That is the question that we have to ask to ourselves. We do not benefit the manufacturer; we do not benefit the consumer. Is the Government benefited? No.

Then, another aspect which I want the honourable members to bear in mind is that, assuming that we do not levy the duty, assuming we give the freedom to the manufacturers here to continue on their old lines and not to pay any duty, will not others engaged in similar trade find Travancore a heaven on earth, into which they can transfer their business. And, what would be the result? The result will be that they will come and settle themselves down in Travancore, foreigners, of course; outside manufacturers. They will come and settle themselves for cut-throat competition. What will practically begin and go on is that people from outside Travancore will come into Travancore for the reason that there is no excise duty here while there is excise duty everywhere else outside the barrier. Will our manufacturers be able to stand such a warfare? Inevitably the result will be that even the one good match factory which exists in the country at present may be killed, prices may go on increasing and others, who do not belong to Travancore, may come and settle down here. I do not think that that is the intention of the House." ".—*State Council Pro., dated 29-5-1934.*

II. (A) The Bill was published in the Gazette dated 8-5-1934. It was introduced in the Sri Mulam Assembly at the meeting held on 21-5-1934. At the same meeting, the Bill was taken for consideration, and the Bill as amended was passed.—*Assembly Pro., Vol. II, Pp. 539-576.*

(B) The Bill as passed by the Assembly was taken up for consideration by the Sri Chitra State Council at the meeting held on 29-5-1934, considered and passed.—*Council Pro., Vol, II, Pp. 276-293.*

(C) The Regulation was published in the Gazette dated 26th June 1934.

Preamble: In the original Bill, the Preamble read as follows:—"Whereas it is expedient to impose an excise duty on matches *and other articles* and to provide for the collection thereof;". The words 'and other articles' were put in the title of the Bill, so that the "Government may take, under this Bill, power to impose similar excise duty on other articles also." These words occurred in several other Sections of the Bill. There was also a separate Section 20 empowering Government to impose excise duty on other

Definitions.

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

(*a*) "Manufactory" means any premises wherein matches are manufactured or which are declared by Our Government by Notification in Our Government Gazette to be a manufactory for the purposes of this Regulation:

(*b*) "Match" includes a firework in the form of a match; and, where a match-stick contains more heads than one capable of being ignited by striking, each such head shall be deemed to be a match:

(*c*) "Owner" includes any person expressly or impliedly authorised by an owner of a manufactory to be his agent in respect of the manufactory:

(*d*) "Splints" means undipped splints, such as are ordinarily used for making matches:

(*e*) "Veneers" means veneers such as are ordinarily used for making match-boxes: and

(*f*) "Prescribed" means prescribed by Rules made by Our Government under this Regulation.

Imposition of duty on matches.

3. A duty of excise at the rates specified in Section 4 shall be levied on all matches manufactured in any manufactory in Travancoré and issued out of such manufactory on or after the 1st day of April, 1934, and shall be payable by the owner of the manufactory.

Rates of duty.

4. The duty payable under Section 3 shall be levied at the following rates, namely:—

(*a*) on matches in boxes or booklets containing on an average not more than eighty—

(i) if the average number is forty or less, at the rate of one British rupee per gross of boxes or booklets,

(ii) if the average number is more than forty, but not more than sixty, at the rate of one British rupee and eight annas per gross of boxes or booklets, and

---

articles. They were all deleted when the Bill was considered by the Sri Mulam Assembly, as several members did not favour the retention.

Sec. 2: *Clause* (*a*).—The definition of "manufactory" in the Indian Act does not contain the words "or which are declared.....for the purposes of this Regulation."

(iii) if the average number is more than sixty, at the rate of two British rupees per gross of boxes or booklets; and

(*b*) on all other matches, at such rate as Our Government may prescribe.

Recovery of duty with penalty.

5. (1) If any duty payable under the provisions of this Regulation or any Rules made thereunder is not paid within the time fixed by Rules made in that behalf under this Regulation, it shall be deemed to be an arrear, and the authority to which such duty is payable may, in lieu thereof, recover any sum not exceeding four times the amount of duty unpaid which such authority may in its discretion think it reasonable to require.

(2) An arrear of duty, or any sum recoverable in lieu thereof under this Section, shall be recoverable as an arrear of land revenue and shall be recoverable in addition to, and not in substitution for, any other penalty incurred under this Regulation.

Issue of matches from manufactory.

6. No person shall issue any matches out of a manufactory, except in accordance with the provisions of Rules made in that behalf under this Regulation; or, until such Rules are made, in accordance with the general or special orders of such authority as Our Government may appoint in that behalf.

Power of Government to prohibit import of matches.

7. Our Government may, by Notification in Our Government Gazette, prohibit absolutely, or with such exceptions as they think fit, the bringing of matches into Travancore from the territory of any specified Prince or Chief in India.

Power of Government to direct use of banderols.

8. (1) Our Government may, by Notification in Our Government Gazette, direct that after a date to be specified in the Notification no matches manufactured after the date of the issue of the Notification shall be issued from a manufactory in Travancore except

---

Sec. 5: *Sub-Section* (*1*).—The wording in the Indian Act is:—"(1) If any duty payable under Section 3 is not paid.....".

Sec. 6: The wording in the Indian Act at the end of the Section is:—"6. No person.....with the general or special orders of the Local Government."

Secs. 8 & 9: After the word "prescribed" at the end of Sub-section (1) of Section 8 and of Clause (*c*) of Section 9, the Indian Act has the words "by rules made under this Act."

in packets, boxes or booklets bearing a banderol or stamp of such nature and affixed in such manner as may be prescribed.

(2) Our Government may, by a like Notification direct, that, after a date to be specified in the Notification, no matches shall be sold or offered or kept for sale in Travancore except in packets, boxes or booklets bearing such a banderol or stamp so affixed.

(3) Our Government may exempt from the operation of any Notification made under Sub-section (1) matches intended for export from Travancore.

(4) Our Government may exempt from the operation of any Notification made under Sub-section (2) matches of a particular kind or packed in a particular manner.

Prohibition of manufacture of matches and manufacture and import of splints and veneers.

9. From such date as may be fixed by Our Government by Notification in Our Government Gazette in this behalf,

(*a*) no person shall manufacture matches or splints or veneers in Travancore except under and in accordance with a licence to manufacture issued under this Regulation;

(*b*) no person shall import splints or veneers into Travancore except under and in accordance with a licence to import; and

(*c*) no person shall supply splints or veneers to any person who does not possess a licence to manufacture matches issued under this Regulation, or otherwise than in such manner as may be prescribed.

Penalty for issue of matches from manufactory in contravention of Section 6.

10. Whoever contravenes the provisions of Section 6 shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for import of matches in contravention of Regulation.

11. (1) Whoever, in contravention of any Notification made under Section 7, imports or attempts to import, matches into Travancore shall be punishable with imprisonment which may extend to six months, or with fine which may extend to four times the amount of the duty which would be payable on the matches if they

were liable to excise duty in Travancore or to one thousand rupees, whichever is greater or with both imprisonment and fine.

(2) Whoever abets an offence punishable under Sub-section (1) shall, whether such offence is or is not committed in consequence of such abetment, and notwithstanding anything contained in Section 106 of the Travancore Penal Code, be punishable with the punishment provided for the offence.

Penalty for issue or sale of matches without banderol.

12. (1) Whoever, in contravention of any direction made under Sub-section (1) of Section 8, issues any matches from any manufactory shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or to one rupee for every packet, box or booklet of matches in respect of which an offence has been committed, whichever is greater, or with both imprisonment and fine.

(2) Whoever, in contravention of any direction made under Sub-section (2) of Section 8, sells or offers or keeps for sale any matches shall be punishable with fine which may extend to one thousand rupees or to one rupee for every packet, box or booklet of matches in respect of which an offence has been committed, whichever is greater.

Penaly for manufacture of matches and manufacture and import of splints and veneers without licence.

13. Whoever, in contravention of the provisions of Section 9, manufactures matches, splints or veneers or imports splints or veneers into Travancore or supplies splints or veneers to any person shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for evasion of duty or failure to supply information.

14. Whoever evades, or attempts to evade, the payment of any duty payable by him under this Regulation, or fails to supply any information which he is required under this Regulation or any Rules made thereunder to supply, or knowingly supplies false information, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both,

15. Any Court trying an offence under this Regulation may order that any matches, splints or veneers together with the boxes, packing or wrappings thereof, in respect of which the Court is satisfied that an offence under this Regulation has been committed, shall be forfeited to Our Government.

Power of Courts to order forfeiture of matches, splints or veneers.

16. The law for the time being in force relating to Sea Customs and to goods, the importation of which is prohibited by Section 17 of the Travancore Sea Customs Regulation of 1088, shall apply in respect of matches, splints or veneers, the importation of which is prohibited by or under this Regulation, and the officers of Customs and the officers empowered under the Travancore Sea Customs Regulation of 1088 to perform the duties imposed by that Regulation on a Customs Inspector and other officers of Customs shall have the same powers in respect of such matches, splints or veneers, as they have for the time being in respect of goods the importation of which is prohibited by Section 17 of the Travancore Sea Customs Regulation of 1088:

Application of Regulation V of 1088 to the importation of matches, splints or veneers.

Provided that the penalty for the offence specified in Section 149, No. 8, of the Travancore Sea Customs Regulation of 1088 shall, where the offence is committed in relation to matches, splints or veneers, the importation of which is prohibited by, or under this Regulation, be a penalty of confiscation only, and such penalty of confiscation shall not be inflicted under Section 149, No. 8, of the Travancore Sea Customs Regulation of 1088, in any case where the person concerned in the offence is sent for trial under Section 11 or Section 13 of this Regulation.

17. Our Government may, by Notification in Our Government Gazette, declare that any of the provisions of the Travancore Sea Customs Regulation of 1088, relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as they may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of

Application of the provisions of Regulation V of 1088 to the duty on matches.

the duty on matches imposed under the provisions of this Regulation.

Power of Government to make Rules.

18. (1) Our Government may, by Notification in Our Government Gazette, make Rules to carry into effect the purposes and objects of this Regulation.

(2) In particular, and without prejudice to the generality of the foregoing power, such Rules may—

(*a*) prescribe the rate of duty referred to in clause (*b*) of Section 4;

(*b*) provide for the assessment and collection of the duty and the authorities by whom functions under this Regulation are to be discharged, the issue of notices requiring payment, the manner in which the duty shall be payable, and the recovery of arrears;

(*c*) provide for the distinguishing of matches, splints or veneers, which have been manufactured under licence, of splints or veneers which have been imported under licence and of matches on which duty has been paid, or which are exempt from duty under this Regulation;

(*d*) regulate the issue of matches out of any manufactory; and limit the number of matches which may be contained in a box or booklet;

(*e*) impose on the owners of manufactories and on persons engaged in the sale of matches the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and manner in which they shall be verified;

(*f*) provide for the issuing of licences. the form and the conditions of licences and the fees to be charged therefor;

(*g*) regulate the sale of splints and veneers;

Sec. 18: Clauses (*l*) and (*m*) of Sub-section (2) are not found in the Indian Act.

(*h*) provide for the detention of matches for the purpose of exacting the duty, the confiscation, otherwise than under Section 15, of matches, splints and veneers in respect of which breaches of the Regulation or the Rules thereunder have been committed, and the disposal of matches, splints or veneers so detained or confiscated;

(*i*) authorise and regulate the inspection or search of any place or conveyance used for the manufacture, storage or carriage of matches, splints or veneers;

(*j*) authorise and regulate the composition of offences against, or liabilities incurred under, the Regulation and the Rules thereunder including composite payments in lieu of duty;

(*k*) prescribe the nature of and the manner of affixing banderols or stamps;

(*l*) provide for anything that may be prescribed under this Regulation; and

(*m*) prescribe the procedure for the collection of any duty (leviable under this Regulation) in such respects as are not expressly provided for by this Regulation.

(3) In making any Rule under this Section, Our Government may provide that a breach of the Rules shall, where no other penalty is provided by this Regulation, be punishable with imprisonment for any term not exceeding six months, or with fine not exceeding one thousand rupees, or with both imprisonment and fine.

Power of Government to provide for rebate of duty.

19. Our Government may, by Notification in Our Government Gazette, make Rules to provide for the grant of a rebate of the duty payable under the provisions of the Regulation on matches manufactured in any manufactory whose daily output does not exceed one hundred gross of boxes to the following extent, namely:—

(i) where the average number of matches in a box or booklet is forty or less, a rebate of ten pies per gross of boxes or booklets;

(ii) where the average number of matches in a box or booklet is more than forty but not more than sixty, a rebate of one anna and three pies per gross of boxes or booklets; and

(iii) where the average number of matches in a box or booklet is more than sixty, a rebate of one anna and eight pies por gross of boxes or booklets.

RULES AND NOTIFICATIONS.

I. RULES.

(A)

TRAVANCORE MATCHES (EXCISE DUTY) ORDER, 1109.

(R. O. C. No. 1068-3/32/Dcvp., dated 2nd July 1934). *

In exercise of the powers conferred by Sections 17 and 18 of the Travancore (Matches) Excise Duty Regulation IV of 1109, the Government of His Highness the Maha Raja are pleased to apply in the adapted form set out below certain provisions of the Travancore Sea Customs Regulation V of 1088, and to make certain Rules for the purpose of providing for the assessment and collection of the duty imposed by the first mentioned Regulation and for control over the manufacture, importation and supply of veneers and splints.

CHAPTER I.

Short title and definitions.

1. This Order may be called "The Travancore Matches (Excise Duty) Order, 1109."

2. In this Order unless there is anything repugnant in the subject or context :—

(i) "The Regulation" means the Travancore (Matches) Excise Duty Regulation;

(ii) "Excise Commissioner" includes any officer specially authorised to exercise throughout Travancore or any specified area therein all or any of the powers of the Excise Commissioner under this Order;

(iii) "Inspecting Officer" means any officer of Government authorised by the Excise Commissioner to inspect any premises in which

---

* *T. G. G., dated 3-7-1934, Pt. I, P. 1063.*

matches liable to duty or splints or veneers are possessed or manufactured; and includes any officer permanently stationed at any such premises;

(iv) "Duty" means the duty payable under the Regulation;

(v) "India" means India as defined in the Act X of 1897 of the Indian Legislature, entitled the General Clauses Act, 1897.

CHAPTER II.

Special appointments and delegations.

3. The power of specially authorising any officer to exercise throughout Travancore or any specified area therein all or any of the powers of the Excise Commissioner under this Order shall be exercisable by Government.

CHAPTER III.

Manufacture of Matches.

4. The Excise Commissioner may issue to any person, firm or company, being the owner of a manufactory, a licence in Form A appended to this Order to manufacture matches:

Provided that the holder of such a licence shall not, without the sanction of Government, be given a licence in respect of any other manufactory within Travancore.

5. The holder of a licence in Form A may manufacture matches subject to the conditions of his licence.

6. The position of the premises covered by a licence to manufacture matches shall be clearly described in the licence and the licensee shall manufacture matches within the premises therein described and not elsewhere.

7. Every holder of a licence in Form A shall keep a correct daily account in the form prescribed in the licence.

8. Within five days after the close of each month, every holder of a licence in Form A shall submit to the Excise Commissioner a monthly return in Form B appended to this Order showing the number of boxes of matches removed from the manufactory during that month.

9. On receipt of the return referred to in clause 8, the Excise Commissioner shall, after verification of the return of exports, if any, to places outside India, and such other enquiry as he may deem fit, assess the duty payable on matches removed from the manufactory. If the licensee fails to submit a return the Excise Commissioner may make a summary assessment on such information as may be available. The amount assessed shall

be communicated to the licensee who shall pay it into the Treasury by the end of the month following that for which the return was required to be made.

10. The Excise Commissioner or Inspecting Officer may enter the premises of any holder of a licence in Form A and inspect the licence, the building, the machinery, the stocks of matches and of materials for use in manufacturing matches and the accounts.

11. A licensee shall not transfer his licence or sublet the licensed premises to any other person without the permission in writing of the Excise Commissioner.

12. Any licensee who fails to keep a correct daily account or refuses to permit any authorised officer to enter the licensed premises and inspect the licence, building, machinery, stocks and accounts or transfers the licence or sublets the licensed premises to any other person without the permission of the Excise Commissioner shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

CHAPTER IV.

Refunds and Remissions.

13. Any person who exports from Travancore to any place outside India matches on which duty has been paid under the Regulation, shall, on production of satisfactory evidence before the Excise Commissioner that the matches have been so exported and that the duty has been paid in respect of these matches, receive a refund of that duty. If the exporter is the owner of the manufactory in which the matches were made, such refund may be paid, at the discretion of the Excise Commissioner, either in cash or by set off against duty due from such exporter.

14. Government may, by Notification in the Government Gazette, exempt any matches from the whole or any part of the duty leviable thereon.

CHAPTER V.

Manufacture and Importation of splints and veneers.

15. A licence in Form A shall be deemed to authorize the holder thereof to manufacture splints and veneers to be used in the manufacture within his own manufactory of matches and match boxes.

16. The Excise Commissioner may issue to any holder of a licence in Form A a licence in Form C appended to these Rules to manufacture splints and veneers for use in the manufacture of matches in another manufactory

and may likewise issue to any other person, firm or company a licence in the same Form to manufacture splints and veneers.

17. Any holder of a licence in Form C may manufacture splints and veneers subject to the conditions of his licence.

18. The position of the premises covered by a licence to manufacture splints and veneers shall be clearly described in the licence and the holder of the licence shall manufacture splints and veneers within the premises described therein and not elsewhere.

19. Every holder of a licence in Form C shall keep a correct daily account in the form prescribed in the licence.

20. The Excise Commissioner or Inspecting Officer may enter the premises of any holder of a licence in Form C and inspect the licence, the building, the machinery, the stocks and the accounts.

21. The holder of a licence in Form C shall not transfer his licence or sublet the licensed premises to any other person without the permission in writing of the Excise Commissioner.

22. Any holder of a licence in Form C who fails to keep a correct daily account or refuses to permit any authorized officer to enter the licensed premises and inspect the licence, building, machinery, stocks and accounts or transfers the licence or sublets the licensed premises to any other person without the permission of the Excise Commissioner shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both.

23. The Excise Commissioner may issue to any person, firm or company a licence in Form D appended to these Rules to import splints and veneers through any Customs port.

CHAPTER VI.

Miscellaneous.

24. The duty on matches to which Clause (*b*) of Section 4 of the Regulation applies shall be at the rate of four annas for every 1,440 matches or fraction thereof.

25. Every holder of a licence in Form A or Form C shall furnish such security as may be demanded by the Excise Commissioner for the observance of the conditions of his licence and for the payment of duty.

26. The period of a licence to manufacture matches or to manufacture splints and veneers or to import splints and veneers shall be from 1st April in any year or any later date on which the licence may be issued to the 31st March following.

27. There shall be a counterpart for each licence and the counterpart shall be in the same form as the licence itself. The licensee shall, at the time his licence is delivered to him, be required to sign the counterpart of his licence in token of his acceptance of the conditions specified in the licence.

28. A fee of British Rupees one hundred shall be payable for every licence to manufacture matches or to manufacture splints and veneers or to import splints and veneers for each year or part of a year :

Provided that (1) a licence to manufacture splints and veneers shall be issued free on application to any holder of a licence in Form A, and

(2) a licence to import splints and veneers at a Customs port shall be issued free to any holder of a similar licence available at any other Customs port.

29. The Excise Commissioner who grants a licence under this Order may cancel it in case of a breach of any of the conditions therein or of the Regulation or of the provisions of this Order.

30. The Excise Commissioner may permit the surrender of a licence issued under this Order on one month's written notice ; and shall grant such refund, if any, of part of the fee paid for the year during which the licence is surrendered as Government may in each case determine.

31. Every holder of a licence in Form A shall, before the expiry, cancellation or surrender of his licence, pay all the duty payable by him under the Regulation :

Provided that if the licence is renewed on expiry the date on which payment is due shall be determined under Clause 9.

32. An appeal shall lie from any order of the Excise Commissioner to Government and any order of the Excise Commissioner may be revised by Government :

Provided that no order in revision shall be passed having an effect more prejudicial to the person concerned than the order under revision without such person being given an opportunity of stating his case.

33. No appeal under clause 32 shall be admitted unless received by Government within three months of the date of the Excise Commissioner's order.

34. Government may empower any officers of any Department to search any place, vessel, cart or means of conveyance for matches liable to duty and to seize and remove or detain any matches which may appear to them to have been illegally imported or manufactured.

35. The Excise Commissioner may accept from any person whose property is liable to confiscation under the Regulation or who is reasonably suspected of having committed an offence under the Regulation or under the provisions of this Order a sum of money not exceeding one thousand rupees in lieu of confiscation of goods or of punishment for breach of any provision of this Order.

36. If there is any doubt as to the average number of matches per box, the Excise Commissioner may, after giving notice of his intention to the owner of the manufactory, determine this number by causing samples to be taken, of at least one box in every ten gross of boxes and causing the number in each sample so taken to be counted and the duty payable shall be assessed on the results of this sampling.

37. When duty has been short-levied through inadvertence, error, or misconstruction on the part of the Excise Commissioner, or through misstatement as to quantity on the part of the owner of the manufactory,

or, when any such duty after having been levied has been, owing to any such cause, erroneously refunded,

the person chargeable with the duty so short-levied or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within three months from the close of the month in respect of which the duty shall have been levied or from the date of making the refund :

Provided that a person chargeable with duty short-levied as the result of an offence under the Regulation of which he has been convicted in Court shall pay the deficiency on demand being made at any time.

38. No duty which has been paid and of which repayment wholly or in part is claimed in consequence of the same having been paid through inadvertence, error or misconstruction shall be returned unless such claim is made within three months from the date of such payment.

FORM A,

LICENCE FOR THE MANUFACTURE OF MATCHES.

(Vide Clause 4).

Serial No. of Licence.....

Name of Licensee.....

Be it known that.....resident of.....is hereby authorised by the undersigned, Excise Commissioner, to manufacture matches on the premises described in the Schedule attached.....from the date of this licence to the 31st day of March 19 ; after which this licence will cease to have effect.

It is required of the holder of this licence, as a condition of its remaining in force, that he duly and faithfully perform and abide by the following conditions;—

I. That he produce this licence on demand by any Excise Officer not below the rank of Inspector or by any Revenue Officer duly authorised by the Government in this behalf.

II. That he permit inspection of the licensed premises, the machinery, the stocks and the accounts by any Excise Officer not below the rank of Inspector, or by any Revenue Officer duly authorised by the Government in this behalf.

III. That he do not transfer, or purport to transfer, this licence, or sublet the licensed premises to any other person without the permission in writing of the Excise Commissioner.

IV. That he keep correct daily accounts in the following form, separate accounts being maintained for

(1) matches to which item (i) of Clause (*a*) of Section 4 of the Travancore (Matches) Excise Duty Regulation applies,

(2) matches to which item (ii) of the Clause applies,

(3) matches to which item (iii) of the said Clause applies, and

(4) matches to which Clause (*b*) of the said Section applies :—

Matches Manufacture Account.

Date,	Opening Balance.	Quantity manufactured.	Quantity removed from factory for consumption in India.	Quantity removed for export out of India,	Quantity destroyed by accident	Closing Balance
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total...						

V. That he furnish to the Excise Commissioner within five days after the end of each month a monthly return in Form B appended to the Travancore Matches (Excise Duty) Order, 1109. showing the quantity of matches removed from the licensed premises, during the month.

VI. That he make payment into the Treasury by the due date of the amount of duty to which he is assessed by the Excise Commissioner.

VII. That he observe all the provisions of the Travancore (Matches) Excise Duty Regulation and of the Travancore Matches (Excise Duty) Order, 1109, made thereunder.

This licence may be cancelled by the Excise Commissioner if any breach of the Travancore (Matches) Excise Duty Regulation or of the Travancore Matches (Excise Duty) Order, 1109, made thereunder, or of any of the above-mentioned conditions is committed by the licensee or his partner or agent or any other person employed in the premises for which this licence is granted.

Excise Commissioner.

.....*Licensee.*

Dated the.....

The Schedule above referred to.

Taluk.....
Pakuthy.....
Muri.....
Boundaries of Manufactory—
North.....
South.....
East.....
West.....

FORM B.

MONTHLY RETURN TO BE SUBMITTED BY HOLDER OF LICENCE TO MANUFACTURE MATCHES.

(*Vide Clause 8.*)

Month.....

(All figures to be in gross of boxes or booklets (if matches so packed).*

Opening Balance. (1)	Matches manufactured during the month. (2)	Quantity removed from Factory for consumption in India. (3)	Quantity removed from Factory for export. † (4)	Quantity destroyed in Factory. (5)	Closing Balance. (6)

*Separate entries to be made for each class of matches specified in items (i), (ii) and (iii) of Clause (*a*) and in Clause (*b*) of Section 4 of the Travancore (Matches) Excise Duty Regulation.

†Details regarding exports shown in column 4.

1.....gross of boxes exported to.....per.....on.....
2.....gross of boxes exported to.....per.....on.....
3.....gross of boxes exported to.....per.....on.....
4.....gross of boxes exported to.....per.....on.....

Signature.....
Licensee.....

Dated the.....

Orders of Excise Commissioner.

Duty of Rs.....on.....gross of boxes, is hereby assessed, and must be paid on or before.....Inform assessee and enter in the Registers.

Signature.....
Excise Commissioner.

Dated the.....

FORM C.

(Vide Clause 16.)

LICENCE FOR THE MANUFACTURE OF SPLINTS AND VENEERS.

Serial No. of Licence.....

Name of Licence-holder.....

Be it known that.....resident of.....is hereby authorized by the undersigned, Excise Commissioner, to manufacture splints and veneers on the premises described in the Schedule attached.....from the date of this licence to the 31st day of March , after which the licence will cease to have effect.

It is required of the holder of this licence, as a condition of its remaining in force, that he duly and faithfully perform and abide by the following conditions :—

I. That he produce this licence on demand by any Excise Officer not below the rank of Inspector, or by any Revenue Officer duly authorized by the Government in this behalf.

II. That he permit inspection of the licensed premises, the machinery, the stocks and the accounts by any Excise Officer not below the rank of Inspector or by any Revenue Officer duly authorized by the Government in this behalf.

III. That he do not transfer, or purport to transfer, this licence or sublet the licensed premises to any other person without the permission in writing of the Excise Commissioner.

IV. That he keep correct daily accounts in the following forms, the entries in all columns except column (1) being in hundredweights, quarters and pounds avoirdupois:—

Splints Manufacture Account.

Date. (1)	Opening Balance. (2)	Quantity manufactured. (3)	Quantity supplied to licensed match manufacturers. (4)	Closing Balance. (5)

Veneers Manufacture Account.

Date. (1)	Opening Balance. (2)	Quantity manufactured. (3)	Quantity supplied to licensed match manufacturers. (4)	Closing Balance. (5)

V. That he issue no splints or veneers out of the licensed premises except to the holder of a licence to manufacture matches.

VI. That he observe all the provisions of the Travancore (Matches) Excise Duty Regulation, and of the Travancore Matches (Excise Duty) Order, 1109, made thereunder.

This licence may be cancelled by the Excise Commissioner if any breach of the Travancore (Matches) Excise Duty Regulation or of the Travancore Matches (Excise Duty) Order, 1109, made thereunder, or of any of the above-mentioned conditions is committed by the holder of the licence or his partner or agent or any other person employed in the premises for which the licence is granted.

Excise Commissioner.

.....*Licence-holder.*

Dated the.....

The Schedule above referred to.

Taluk.....

Pakuthy.....

Muri..... .....

Boundaries of Factory—

North.....

South.....

East.....

West.....

FORM D.

(*Vide Clause 23.*)

LICENCE FOR THE IMPORTATION OF SPLINTS AND VENEERS.

Customs-port.....

Serial No. of Licence.....

Name of Licence-holder.....

Be it known that.....of.....is hereby authorized by the undersigned, Excise Commissioner, to import matches by sea into Travancore at the above-mentioned port from the date of this licence to the 31st day of March 19 , after which this licence will cease to have effect.

It is required of the holder of this licence as a condition of its remaining in force that he duly and faithfully perform and abide by the following conditions :—

I. That he produce this licence when presenting any bill-of-entry for splints or veneers.

II. That he do not transfer, or purport to transfer this licence.

III. That he keep all splints and veneers imported under this licence within his own custody or control until they are supplied to a licensed manufacturer of matches.

IV. That he observe all the provisions of the Travancore (Matches) Excise Duty Regulation and of the Travancore Matches (Excise Duty) Order, 1109, made therounder

This licence may be cancelled by the Excise Commissioner if any breach of the Travancore (Matches) Excise Duty Regulation or of the Travancore Matches (Excise Duty) Order, 1109, made thereunder or of any of the above-mentioned conditions is committed by the holder of the licence or his agent.

.....

Excise Commissioner.

.....*Licence-holder.*

Dated the.....

(B)

*(R. O C. No. 1068-6/32/Devpt., dated 21st July 1934.)**

In exercise of the powers conferred by Section 18 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to direct that the following amendment shall be made in the Travancore Matches (Excise Duty) Order 1109, namely :—

1. In Clause 9 of the said Order after the word 'matches' the brackets and words '(other than matches in boxes or booklets bearing a banderol)' shall be inserted.

2. In Clause 13 of the said Order the last sentence shall be omitted.

3. After Chapter VI of the said Order, the following Chapter shall be inserted namely :—

CHAPTER VII.

39. The provisions of this Chapter apply to matches (other than matches intended for export by sea to foreign countries from Travancore) manufactured after the 30th June 1934 and issued out of a manufactory after the 1st August 1934.

40. (1) All matches issued from a manufactory shall be contained in boxes or booklets and the number of matches coutained in a box or booklet shall not exceed eighty.

(2) Any owner of a manufactory who issues matches in contravention of this Rule shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

41. The duty on matches shall be collected through the sale to owners of manufactories of the banderols required to be affixed to boxes or booklets of matches by Government Notification R. O. C. No. 1068-4/32/Devpt., dated the 21st July 1934.

42. (1) The banderols to be affixed to boxes or booklets of matches shall be banderols manufactured in and issued from the Government Security Press, Nasik.

(2) Such banderols shall be of the following classes and shall be on sale at Government treasuries at the following rates, namely :—

Class of banderol.	*Price of banderol.*
1. Banderols for boxes or booklets containing on an average not more than 40 matches.	Per gross of banderols one rupee.

* *T. G. G., dated 24-7-1934, Pt. I, P. 1995.*

Class of banderol.	*Price of banderol.*
2. Banderols for boxes or booklets containing on an average more than 40 but not more than 60 matches.	Per gross of banderols, one rupee and eight annas.
3. Banderols for boxes or booklets containing on an average more than 60 but not more than 80 matches.	Per gross of banderols, two rupees.

(3) Special banderols of the above classes but of distinctive colour shall be provided for use exclusively on boxes or booklets of matches in respect of which a rebate of duty has been granted by Rules made under Section 19 of the Act.

43. (1) Every box or booklet of matches, and where such boxes or booklets are issued in packets, each box or booklet of a packet, shall bear a banderol of Class 1, Class 2 or Class 3, according as the average number of matches contained in the box or booklets is 40 or less, more than 40 but not more than 60, or more than 60.

(2) The special banderols referred to in Sub-clause (3) of Clause 42 shall not be affixed to boxes or booklets of matches other than those in respect of which a rebate of duty has been granted by Rules made under Section 19 of the Regulation.

44. Every banderol shall be so affixed to the box or booklet that :—

(*a*) the words and figures on the banderol specifying the maximum number of matches covered by the banderol are legible ;

(*b*) the box or booklet cannot be opened without tearing the banderol ; and

(*c*) in the case of a box, the ends of the banderol are covered by the manufactory's label.

45. (1) An owner of a manufactory shall receive a refund of the purchase price of any banderol not employed by him on a box or booklet issued from his manufactory on returning the banderol to the Excise Commissioner.

(2) An owner of a manufactory shall receive a refund of the purchase price of any banderol accidently rendered unfit for use on a box or booklet on returning the damaged banderol to the Excise Commissioner and satisfying the Excise Commissioner that the banderol has not been used on a box or booklet issued from a manufactory.

46. The Excise Commissioner may, subject to any conditions he may see fit to impose, authorize the supply without payment to any owner of a

manufactory of banderols for use on boxes or booklets of matches in the manufactory, on such owners executing a bond or furnishing adequate security to the satisfaction of the Excise Commissioner for the price of the banderols so supplied; but no boxes or booklets bearing banderols so supplied shall be issued from the manufactory until payment has actually been made to the treasury for the banderols affixed to such boxes or booklets.

(C)

(R. O. C. No. 1068—7/32/Devpt., dated 21st July 1934.) *

In exercise of the powers conferred by Sections 17 and 18 of the Travancore (Matches) Excise Duty Regulation IV of 1109, the Government of His Highness the Maha Raja are pleased to direct that the following amendment shall be made in the Matches (Excise Duty) Order, 1109, namely :—

In Form D of the Forms appended to the said Order, for the words "to import matches by sea", the words "to import splints and veneers by sea" shall be substituted.

(D)

(R. O. C. No. 1068—8/32/Devpt., dated 21st July 1934). *

In exercise of the powers conferred by Sections 17 and 18 of the Travancore (Matches) Excise Duty Regulation IV of 1109, the Government of His Highness the Maha Raja are pleased to direct that the following amendments shall be made in the Travancore Matches (Excise Duty) Order, 1109.

I. In Rule 23 of the said Order, the existing Rule shall be numbered as Rule 23 (*a*) and the following added as Clause (*b*).

"(*b*) The Excise Commissioner may likewise issue a licence in Form E (appended) to the holders of licences in Form A for the import of splints and veneers through any Land Customs House".

II. In Rule 28 of the said Order the following shall be added as Clause (iii) under the proviso :—

"(iii) A license to import splints and veneers in Form E shall be issued free of any fee."

---

* *T. G. G. dated 24-7-1934, Pt. I, P. 1396.*

FORM E.

(Vide Clause 23).

LICENSE FOR THE IMPORTATION OF SPLINTS AND VENEERS.

Land Customs House.....

Serial No. of Licence.....

Name of Licence-holder.....

Be it known that.....of.....is hereby authorised by the undersigned, Excise Commissioner, to import splints and veneers into Travancore at the above-mentioned Land Customs House from the date of this licence to the 31st day of March 19 , after which this licence will cease to have effect.

It is required of the holder of this licence as a condition of its remaining in force that he duly and faithfully perform and abide by the following conditions:—

I. That he produce this license before the officer in charge of the Land Customs House, at the time of import.

II. That he do not transfer, or purport to transfer this licence.

III. That he keep all splints and veneers imported under this licence within his own custody or control until they are supplied to a licensed manufacturer of matches.

IV. That he observe all the provisions of the Travancore (Matches) Excise Duty Regulation and of the Travancore Matches (Excise Duty) Order, 1109, made thereunder.

This licence may be cancelled by the Excise Commissioner if any breach of the Travancore (Matches) Excise Duty Regulation or of the Travancore Matches (Excise Duty) Order, 1109, made thereunder or of any of the above-mentioned conditions is committed by the holder of the licence or his agent.

.....
Excise Commissioner.
.....*Licence-holder.*

Date.....

II. NOTIFICATIONS.

---

(1)

(R. O. C. No. 1068—1/32/Devpt., dated 2nd July 1934.)

In pursuance of Section 9 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to appoint the 2nd day of July 1934 as the date on and after which the prohibitions set forth in the said Section of the said Regulation shall have effect.—*T. G. G., dated 3-7-1934, Pt. I, P. 1262.*

---

(2)

(R. O. C. No. 1068—2/32/Devpt., dated 2nd July 1934.)

In pursuance of Clause 14 of the Travancore Matches (Excise Duty) Order, 1109, the Government of His Highness the Maha Raja are pleased

to exempt from the payment of the duty leviable under the Travancore (Matches) Excise Duty Regulation, IV of 1109, matches exported after the 1st April 1934 by sea to any country outside India.

Explanation :—The term "India" means India as defined in the Act X of 1897 of the Indian Legislature, entitled the General Clauses Act 1897.—*T. G. G., dated 3-7-1934, Pt. I, P. 1262.*

---

(3)

(R. O. C. No. 1068—4/32/Devpt., dated 21st July 1934).

In exercise of the powers conferred by Sub-sections (1) and (3) of Section 8 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased

(1) to direct that after August 1st, 1934, no matches manufactured after June 30th, 1934, shall be issued from a manufactory in Travancore except in boxes or booklets bearing a banderol of the nature and affixed in the manner prescribed in Chapter VII of the Matches (Excise Duty) Order, 1109.

(2) to exempt from the operation of this Notification any matches intended for export from Travancore by sea to foreign countries.

T. G. G., dated 24-7-1934, Pt. I, P. 1394.

---

(4)

(R. O. C. No. 1068—5/32/Devpt., dated 21st July 1934.)

In exercise of the powers conferred by Sub-section (2) of Section 8 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to direct that, after October 1st, 1934, no matches shall be sold or offered or kept for sale in Travancore, except in packets, boxes or booklets, bearing a banderol of the nature and affixed in the manner prescribed in Chapter VII of the Travancore Matches (Excise Duty) Order, 1109.—*T. G. G., dated 24-7-1934, Pt. I, P. 1394.*

REGULATION V OF 1109.

The Travancore Importation of Live-Stock Regulation.

Passed by His Highness the Maha Raja of Travancore under date the 20th June 1934, corresponding to the 6th Mithunam 1109, under Section 23 of Regulation II of 1108.

Preamble.

Whereas it is expedient to provide for the regulation of the importation of live-stock affected or suspected or liable to be affected by infectious or contagious diseases; It is hereby enacted as follows—

Short title, extent and commencement.

1. (i) This Regulation may be called "The Travancore Importation of Live-stock Regulation."

(ii) It extends to the whole of Travancore.

Regn. V of 1109: I. *Objects and Reasons.*—"Contagious and infectious diseases such as rinderpest and foot and mouth disease, which often break out among cattle in this country can invariably be traced to the importation of cattle suffering from such diseases from outside the State. The most effective method of preventing the outbreak of these diseases is not to allow infected cattle to come into this country. With this object in view the Bill has been drafted.

Section 3 which is the most important Section in the Bill is divided into two sub-divisions. Under Sub-section (1) Government take power to regulate, restrict or prohibit the importation of livestock affected or suspected or liable to be affected by contagious or infectious diseases, and of fodder, dung, etc., appertaining to such livestock. Sub-section (2) describes the method by which Sub-section (1) is to be brought into operation.

Section 4 gives Government power to make Rules. Such Rules will have *inter alia* to provide for posting veterinary officers at the frontier stations through which cattle are ordinarily imported, *viz.*, Aramboly, Puliyara, Kumili and Karukutti for the inspection of imported cattle by such officers, for the detention of such of them as may be affected or liable to be affected by contagious or infectious diseases, for making necessary arrangements to take care of the cattle detained and for doing such other things as may be necessary to enforce the Regulation.

The Bill is drawn on the lines of the British Indian enactment, the Livestock Importation Act, 1898 (IX of 1898).—*S. O & R.*

II. (A) The Bill was published in the Gazette dated 24-5-1932. It was introduced in the Sri Mulam Assembly and referred to a Select Committee at the meeting held on 20-11-1933. (*Assembly Pro., Vol. II, P. 319*). The Committee's Report was published in the Gazette dated 24-4-1934. The Report was presented to the Assembly and considered, and the Bill was passed at the meeting held on 23-5-1934 (*Ibid Vol. II, 705*).

(B) The Bill, as passed by the Assembly was taken up for consideration by the Sri Chitra State Council, considered and passed at the meeting held on 29-5-1934 (*Council Pro., Vol. II, Pp. 308-309*).

(iii) It shall come into force at once,

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

Definitions.

(*a*) the expression "infectious or contagious diseases" includes anthrax, rinderpest, foot and mouth disease, glanders and farcy and any other disease or diseases which may, as occasion arises, be specified as such by Our Government by a Notification published in Our Government Gazette; and

(*b*) "live-stock" includes horses, cows, bulls, bullocks, buffaloes, sheep and any other animal or animals which may, as occasion arises, be specified as such by Our Government by a Notification published in Our Government Gazette.

Power to regulate importation of live-stock.

3. (1) Our Government may, by a Notification published in Our Government Gazette, regulate, restrict or prohibit in such manner and to such extent as they may think fit, the bringing or taking by sea, backwater or land or in any other manner into Travancore or any specified place therein, of any live-stock affected or suspected or liable to be affected by infectious or contagious diseases and of any fodder, dung, stable-litter, clothing, harness or fittings appertaining to such live-stock or that may have been in contact therewith.

(2) A Notification published under Sub-section (1) shall operate as if it had been issued under Section 18 of the Travancore Sea Customs Regulation of 1088 (V of 1088) and the officers of Sea

---

(C) The Regulation was published in the Gazette dated 26th June 1934.

The five Sections of the Regulation correspond respectively to the five Sections of the British Indian Act IX of 1898 (The Live-stock Importation Act) to regulate the importation of live-stock which is liable to be affected by infectious or contagious disorders.

The expression defined in the Indian Act, Section 2 (*a*), is "infectious or contagious disorders."

The corresponding Clause (2) of Section 3, of the Indian Act does not contain the words "or other officers appointed by Our Government in this behalf."

Under Section 4 (2) of the Indian Act, the fine may extend to one thousand rupees.

Customs or other officers appointed by Our Government in this behalf shall have the same powers in respect of any live-stock or thing, with regard to the importation of which such a Notification has been issued, and the vessel containing the same, as they have for the time being in respect of any article the importation of which is regulated, restricted or prohibited by law relating to the Sea Customs and the vessel containing the same and the enactments for the time being in force relating to Sea Customs or any such article or vessel shall apply accordingly.

Power to make Rules.

4. (1) Our Government may make Rules for the detention, inspection, disinfection or destruction of imported live-stock, and of fodder, dung, stable-litter, clothing, harness or fittings appertaining to imported live-stock, or that may have been in contact therewith, and for regulating the powers and duties of the officers who may be appointed in this behalf.

(2) In making any Rule under this Section, Our Government may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees.

Protection to persons acting under this Regulation.

5. No suit, prosecution or other legal proceeding shall lie against any person for anything done or intended to be done in good faith under this Regulation.

REGULATION VI OF 1109.

The Travancore Markets (Amendment) Regulation, 1109.

Passed by His Highness the Maha Raja of Travancore, under date the 21st June 1934, corresponding to the 7th Mithunam 1109, under Section 23 of Regulation II of 1108.

Preamble.

Whereas it is expedient to amend the Travancore Markets Regulation of 1092 (VII of 1092) for the purpose hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Regulation may be called the Travancore Markets (Amendment) Regulation, 1109.

(2) It shall come into force at once.

2. In the Travancore Markets Regulation of 1092 (VII of 1092) hereinafter referred to as the said Regulation, in Section 3, after clause (3), the following clause shall be added, namely :—

Addition of a clause to Section 3.

"(4) 'Market' means any place set apart, or ordinarily or periodically used, for the assembling of persons for the sale or purchase of grain, fruit, vegetables, meat, fish or other perishable articles of food or for the sale or purchase of live-stock or poultry, or of any agricultural or industrial produce or any raw or manufactured products or any other articles or commodity necessary for the convenience of life ;

Provided that a single shop or a group of shops not being more than six in number shall not be deemed a market.

Explanation.—A declaration by Our Government that any place used for the sale of any articles is a market shall be conclusive proof of the place being a market for the purposes of this Regulation :

Provided that no such declaration shall be made in respect of any single shop or of any group of shops not being more than six in number and that any such declaration may at any time be cancelled by Our Government."

Deletion of Section.

3. Section 4 of the said Regulation shall be deleted.

Regn. VI of 1109: I. *Objects and Reasons.* —"The Travancore Markets Regulation, as it stands, has no definition of the term "market." Further, Section 4 of the Regulation which enables Government to declare a place to be a market has been interpreted to mean that there can be no "markets" unless there be such a Government declaration relating thereto. These have given rise to practical difficulties in the working of the Regulation. It is proposed by this Bill, therefore, to enact a definition of the term "market" and also to provide that a declaration by the Government that a place is a market shall be conclusive of the fact that the place is a market."—*S. O & R.*

II. (A) The Bill was published in the Gazette dated 31-5-1932. It was introduced in the Sri Mulam Assembly and referred to a Select Committee at the meeting held on 20-11-1933 (*Assembly Pro., Vol. II, P. 321*). The Committee's Report was published in the Gazette dated 24-4-1934. It was presented to the Assembly and considered, and the Bill was passed at the meeting held on 23-5-1934 (*Ibid Vol. II, Pp. 705-707*).

(B) The Bill, as passed by the Assembly, was taken up for consideration by the State Council, considered and passed at the meeting held on 29-5-1934 (*Council Pro; Vol. II, Pp. 309-310*).

(C) The Regulation was published in the Gazette dated 26th June 1934.

REGULATION VIII OF 1100.

THE CIVIL PROCEDURE CODE.

AMENDMENT

OF

Order IX, Rule 5 (1).

In exercise of the powers vested under Section 95 (2) of the Civil Procedure Code, Regulation VIII of 1100, Rule 5 (1) of Order No. IX in the First Schedule thereto is amended as follows :—

Regn. VIII of 1100: I. Section 91 of the Civil Procedure Code gives power to the High Court to make, after previous publication, Rules regulating its own procedure and the procedure of the Civil Courts subject to its superintendence, and may by such Rules annul, alter or add to all or any of the Rules in the First Schedule. Sections 92 and 93 provide for the constitution of a Rule Committee and for reference to it proposals to annul, alter or add to the Rules in the First Schedule or to make new Rules. Under Section 94, the Rules made have to be laid before the Legislative Council which shall consider and deal with the Rules in the same manner as a Bill presented with the Report of a Select Committee. Section 95 provides for the previous sanction of the Government to the Rules so made and for the publication in the Government Gazette of the Rules so made and sanctioned.

Order IX, Rule 5 (1): I. In exercise of the powers vested in the High Court, as above stated, Rule 5 (1) of Order IX was proposed to be amended, and the proposed Rule was published in the Gazette, inviting objections or suggestions to the same. *—T. G, G., dated 15-7-1930, Pt. IV, Judl. Dept.*

II. Under Standing Order No. 35 of the Legislative Council, the Rule as amended by the High Court was published for general information, and it was also stated that the amended Rule was to be laid before the Legislative Council under Section 94 of the Civil Procedure Code.

III. At the meeting of the Council held on 16-12-1930, the amended Rule was laid before the Council, considered and approved. At the meeting held on 15-4-1931, the Rule was passed by the Council (*L.C.P., Vol. XVIII, Pp. 68 & 373*).

IV. The Rule was published in the Gazette dated 8-11-1932, Pt. IV, Judicial Dept.

V. The Rule as amended reproduces the corresponding Rule of the British Indian Code—See Note on page 509 of Volume VI.

"5. (1) Where, after a summons has been issued to the defendant or to one of the several defendants and returned unserved, the plaintiff fails, for a period of three months from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons, the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that—

(*a*) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or

(*b*) such defendant is avoiding service of process or

(*c*) there is any other sufficient cause for extending the time,

in which case the Court may extend the time for making such application for such period as it thinks fit."

APPENDIX A.

REGULATION V OF 1071
AS AMENDED BY REGULATION XII OF 1108.

THE JENMI AND KUDIYAN REGULATION.

CONTENTS.

Preamble.

CHAPTER I.

Preliminary.

Section.

1. (1) Short title.
   (2) Commencement.
2. No right between Jenmi and Kudiyan unless expressly provided for.
3. Interpretation clause.
   (1) "Jenmom land."
   (2) "Jenmi."
   (3) "Kudiyan."
   (4) "Kanapattom."
   (5) "Kanom."
   (6) "To hold land."
   (7) "Holding."
   (8) "Sub-tenant."
   (9) "Pattom."
   (10) "Michavaram."
   (11) "Renewal fees. Fractional fee."
   (12) "Customary dues. Commuted cess."
   (13) "Duly registered."
   (14) "Jenmivaram."
   (15) "Settlement Pattom."
   (16) "Settlement Pattamicham."
   (17) "Jenmikaram."
   (18) "Prescribed."
   (19) "Amending Regulation."

Sections.

CHAPTER II.

Of the rights and liabilities of Jenmis and Kudiyans.

4. Tax on Jenmom lands transferred by sale, &c., to be borne by transferee.
5. Kudiyan owner of land subject only to payment of Jenmikaram.
6. Apportionment of Jenmikaram as amongst various lands.
7. Jenmikaram how fixed on land being divided.
8. Renewal fees not to exceed 30 per cent. of Kanom.
9. Jenmikaram first charge on land.
10. Kudiyan's liability on Jenmi's right being transferred.
11. Kudiyan's liability on holding being transferred.
12. Kudiyan's liability on Jenmi's right in land being divided.
13. Renewals not obligatory.
14. Revision of Jenmikaram.

CHAPTER III.

Part A.—Jenmikaram and its recovery.

15. Particulars of Kanapattom contract.
16. When summary suit will not lie.
17. Jenmikaram alone payable to Jenmi with interest, if in arrears. Renewal fees for expired period, how payable.
18. Jenmikaram payable only in money.
19. Contents of receipt for Jenmikaram.

Part B.—Summary recovery and deposit of Jenmikaram.

26-A. Jenmi may apply to Tahsildar to recover Jenmikaram under Revenue Recovery processes.
27. Jenmikaram may be deposited by Kudiyan.
28. Contents of the application.
29. Jenmikaram due up to date of application to be paid into Court.
30. Procedure on deposit of Jenmikaram.
31. Further procedure on deposit.
32. Application under Part B to be exempt from Court fees.

Part C.—Of the Jurisdiction of Courts over petty claims for Jenmikaram.

33. Summary jurisdiction of Courts.
34. Procedure for trial of non-appealable cases to be followed in summary suits under this Regulation.
35. Where cause of action arises.

Sections.
36. Plaint when exempt from Court fees.
37. Agent of Jenmi.
38. Power of Court to decide question of title to immovable property or status.
39. Procedure where Kudiyan admits the money due but pleads title of third person.
40. Decision of Munsiffs and Zillah Judges to be final.

CHAPTER IV.

Collection and Payment of Jenmikaram by Government.

40-A. Power of Government to assume collection of Jenmikarams.
40-B. Settlement of Jenmikaram and Register of Jenmikarams.
40-C. Jenmikaram Settlement Officer.
40-D. Preliminary Notification for settlement of Jenmikaram.
40-E. Final Notification notifying completion of Register of Jenmikarams.
40-F. (1) Jenmikaram to be paid to Government and recoverable as arrears of land revenue.
(2) Jenmikaram to be paid in money only.
40-G. Jenmikaram to be paid to Jenmi deducting cost of collection.
40-H. Jenmikaram to be paid only to Government.
40-I. Jenmikaram must be collected according to the Register of Jenmikarams.
40-J. Revision of Register of Jenmikarams.
40-K. Subsequent changes *re* Jenmikaram, &c., may be recorded.
40-L. When suits against Government will lie and when not.
40-M. Power to make Rules.
40-N. What land can be sold for Jenmikaram.

CHAPTER V.

Miscellaneous.

41. Power of High Court to make Rules.
42. Saving of Kanapattoms executed since 25th Karkatakom 1042.
43. Terminable nature of tenancy to be determined from terms of contract.
44. Saving of rights of Kudiyans of more than fifty years' standing: And of established rights.
45. Apportionment of compensation money on land acquisition.
46. Government to fix commutation rates on advice of Committees.
47. Limitation period for Jenmikaram.

A Regulation to define clearly the relative rights of Jenmis and Kudiyans and to make provision for the speedy realisation of [the Jenmis'] dues from the Tenants.

Preamble.

Whereas it is expedient for better carrying out the intention of the Royal Proclamation of the 25th Karkatakom 1042, to define clearly the relative rights of Jenmis and Kudiyans in Travancore, to make further provision for the speedy realisation of [Jenmis'] dues, and to invest the District Munsiffs and Zillah Judges with summary jurisdiction in petty claims for [Jenmis'] dues;

Regn. XII of 1108: I. *Objects and Reasons.* (1)—"The question of amending the Jenmi and Kudiyan Regulation of 1071 (V of 1071) has been engaging the consideration of Government for some considerable time, and an Amending Bill was in fact published in the Gazette dated the 25th March 1924 with a view to its introduction in the Legislative Council. But it was soon noticed that the Bill did not satisfy either the Jenmies or the Kudiyans and that at all events sharp differences existed between the two parties. The Government therefore took time to devise means to compose the differences if possible. A free and informal discussion at a Round Table Conference in which all interests would be represented was considered the most expedient course to adopt and such a conference was accordingly decided upon, and it was held under the presidency of the Dewan. Government are glad to say that it has been possible to reach unanimous conclusions at the Conference. With a view to give effect to those conclusions this Amending Bill has been prepared. The substantial changes proposed by the Bill are noted below :—

(1) The right which in certain circumstances a Jenmi has to evict a Kudiyan from the Kanom holding and the right of a Kudiyan to surrender the holding to the Jenmi are proposed to be taken away, and there is to be no eviction and no surrender hereafter for any reason or in any circumstances. (See new Section 5 proposed by Clause IV of the Bill).

(2) The Jenmi's right to evict is however one weapon to enforce payment of his dues. As that is now taken away, the Jenmi is proposed to be given, as a *quid pro quo*, the right to claim, besides the lawful interest, a penalty also if any of his dues is left in arrears for more than three years. The penalty proposed is a payment of 12½ per cent. of the arrears to the Jenmi for each year that they remain unpaid after the first three years, (See new Section 17 (7) (*b*) proposed by Clause VII). The maximum penalty that a Kudiyan may have to pay is 37½ per cent. as it is proposed to reduce the period of limitation to six years as regards suits for Jenmi dues.

(3) The Kudiyan's right to use the Kanom holding, and whatever is on the holding in any manner that pleases him is expressly laid down, and, as part of this right,he is given also the right to cut down and appropriate all trees (including timber trees) standing or growing on the holdings. This is made subject only to one exception, namely, in the case of timber trees of not less than 36 inches' girth standing on holdings at the commencement ot this proposed Amendment Regulation. In regard to such trees, it is provided that though the Kudiyan may cut them, he has to do so with the consent of the Jenmi or after

giving him notice and that when the trees are cut down the Jenmi must be given three-fourths of their value the Kudiyan taking the balance one-fourth. (See new Sections 7 and 8 proposed by Clause IV). As the right of the Jenmi in regard to other timber trees is entirely taken away, it is proposed to give him, as *quid pro quo*, a right to impose a fixed Pattom assessment on each of such tress if and when they attain a girth of not less than 36 inches, in the same manner as fruit bearing trees are assessed to Pattom. (See new Section 22 (2) (*b*) proposed by Clause IX).

(4) It is proposed that, on the Jenmi's interests or the Kudiyan's interests in any Kanom holding becoming split up by partition, alienation or otherwise, it should be the right of the Jenmi or the Kudiyan to apportion his rights or liabilities in a fair and equitable manner. (See new Section 12 proposed by Clause IV).

(5) The periodical renewal (ordinarily once in 12 years) which every Kanom holding is subject to is proposed to be abolished (New Section 13 proposed by Clause IV), and the renewal fees which are payable, in a lump, at the renewal are proposed to be spread over and converted into annual payments at their present worth. The same is proposed also in regard to the customary dues payable by a Kudiyan. (See new Section 17 (3) proposed by Clause VII).

(6) It is also proposed to enact that renewal fees shall on no account be liable to enhancement and that wherever it is at present more than 25 per cent of the Kanom money it should be reduced to 25 per cent. of the Kanom money. (See new Section 17 (2) proposed by Clause VII).

(7) As regards the payment of the Jenmi dues payable in paddy, it is proposed to enact that the Jenmi should provide a place of payment in the Pakuthi in which the holding is situated. In the absence of that, the value of the paddy may be remitted by money order, and so may other dues in every case. (See new Section 18 proposed by Clause VII).

(8) The revision of the terms of a Kanapattom, by enhancing or reducing the Michavaram payable is permitted every twelve years by the existing Regulation, (See Sections 11, 14, 20 and 24). It is proposed to lay down that such revisions should be allowed hereafter only once in twenty years. (See new Section 20 proposed by Clause IX).

(9) Detailed rules for enhancement and reduction of the Michavaram are laid down in the new Sections 21, 22, 23, 26 and 26-A proposed by Clauses IX and X. Some of the important changes effected by these rules are that the Jenmipattom is limited to one-third of the net produce in the case of paddy lands and one-fourth of the net produce in the case of other lands and that, as noted above, Jenmipattom is allowed to be charged in respect of timber trees that hereafter attain a girth of 36 inches. Also, no enhancement of Michavaram will be allowed if the productive powers of any land comprised in a holding increased by reason alone of the Kudiyan's labour or improvements or on the ground that the rate of the current Pattom is below the prevailing rate for similar lands in the same locality or, in any case, in such a manner as to reduce the Kudiyan's margin of profit (New Section 25), the Kudiyans' margin of profit being fixed at 55 per cent. of the average annual net produce in the case of paddy lands and 60 per cent. of such produce in the case of other lands. (See the definition of "margin of profit" proposed by Clause III).

(10) Tea and rubber lands are not now assessable to Jenmipattom, because tea plants and rubber trees are not assessable trees. It is therefore proposed to charge a special Michavaram of Bh. Rs. 2 per acre of such lands payable by the Kudiyan to the Jenmi. (See new Section 24 proposed by Clause X).

(11) As an expeditious method of recovering Jenmi dues, it is proposed to allow such dues to be recovered through the Tahsildar by Revenue Recovery processes if such dues are not more than a year old. (See new Section 25-C proposed by Clause XII).

(12) Revised rules are proposed for allowing a Kudiyan to deposit Jenmi dues in the Munsiff's Court to the credit of the Jenmi. If such deposit is *prima facie* justifiable, the deposit will be accepted and the Kudiyan given a full acquittance. (See new Section 27 proposed by Clause XIII and new Sections 30 and 31 proposed by Clause XVI).

(13) Rules for apportioning, as between the Jenmi and the Kudiyan, the compensation money awarded on the acquisition of any land comprised in a holding by Government under the Land Acquisition Regulation, are laid down by the new Section 45 proposed by Clause XXII. According to these rules, the value due to any buildings or improvements not liable to be assessed to Jenmipattom will go entirely to the Kudiyan. From the balance, the Jenmi will be given the capitalised value of his dues chargeable on the land and the Kudiyan the amount of the Kanom money charged on the land. If any is still left that also will go to the Kudiyan. If however the balance referred to is not sufficient to meet the payment of the capitalised value of the Jenmi dues and the Kanom money, it will be divided between the Jenmi and the Kudiyan in the proportion of the benefit derivable by each from the land. The capitalised value is fixed at twenty five times the dues to be capitalised.

(14) It is provided that when the interest of a Jenmi or Kudiyan is transferred to, or otherwise devolves on, the Government, the Government may, on paying compensation, acquire the interest of the other party or may, without prejudice to the rights of that party, convert the land into Pandaravaka tenure. (See new Section 46 proposed by Clause XXII).

(15) Power is proposed to be taken for Government to fix the commutation price of paddy, etc., payable by any Kudiyan to the Jenmi. (See new Section 47 proposed by Clause XXII).

(16) And lastly, the period of limitation for Jenmi suits, which at present is 12 years, is proposed to be reduced to 6 years. (See new Section 48 proposed by Clause XXII).— *S. O & R.*

(2) In introducing the Bill, the Official Member in charge said :—"* * The Regulation which is more than a quarter of a century old was standing in need of some amendments and the Government had the matter under consideration for some time. As a matter of fact an amending Bill was prepared and published in the Gazette in 1924 with a view to its introduction in the Council. But it was soon noticed that both the Jenmis and the Kudiyans had complaints against that Bill and the Government were taking some time to consider whether it was not possible to arrive at an agreement. For the Government feel that it is very imperative that they should proceed with the co-operation of both the parties. Consequently Government thought of holding a Round Table Conference to settle the matter at which all interests will be represented. * *

The constitution of the conference was finally settled upon and the non-official members of this House were asked to elect two members to the conference. The Jenmi constituency was also asked to elect two members to the conference. The conference was held and sat for long hours over a period of seven days and has reached certain unanimous conclusions, copies of which, I believe, are in the hands of the members to-day. My attempt in preparing this Bill and placing it before the House has been to faithfully carry out the decision of the conference and I have introduced nothing in this Bill

which is not borne out by the decisions unless it be for giving effect to certain consequential changes or some verbal amendments. This Bill, although it is an amending Bill, introduces various changes." After some discussion as to the constitution of the conference, the Official member in charge continued :—"One of the most important changes introduced by the Bill is this. Under the existing law, it is open to a Jenmi to evict a Kudiyan for certain reasons and it is open to the Kudiyan to surrender his holding in certain circumstances. These two rights, the right of eviction by the Jenmi and the right of surrender by the Kudiyan, are taken away entirely. This is one of the chief changes introduced by the Bill. But it has been felt that the right of the Jenmi to evict a Kudiyan has been a strong weapon to enforce sure payment of his dues. As a *quid pro quo*, therefore, the Jenmi has been given the right to claim as damages a small percentage of the arrears of his dues as penalty.

Another important change which has been introduced by this Bill is that the tenant is given absolute freedom in the user of his land. He can convert garden land into paddy land and paddy land into garden land and do anything that may please him on the land. As part of this absolute freedom to use the land, he is also given the right to cut the trees. In regard to the existing trees, the Kudiyans are allowed the right to cut the trees, but in regard to the value of the timber, which under the existing law belong to the Jenmies, the Jenmies are to be given ¾ of the timber value and the Kudiyan ¼, which will represent the cost of rearing and looking after the trees.

In regard to the trees that may grow on the land in future, the Kudiyan is given the right to cut them and appropriate them unconditionally. But as, under the existing law, the Jenmis have got the right over the trees, it is proposed by this Bill to impose a small assessment on each timber tree in the same way as assessment is imposed on fruit bearing trees.

These are the most important changes that have been proposed to be introduced by this Bill in regard to the user of the land. In regard to the Jenmi dues, *i. e.*, the dues that are payable to the Jenmi, the most important change that has been introduced is in respect of the payment of the renewal fees and the customary dues. Under the existing law, renewal fees are payable in a lump, once in 12 years. It is now proposed to spread out that payment into annual payments, and to apportion the renewal fees to each year payable along with the Michavaram. Equally so with the customary fees which are proposed to be commuted into annual payments to be paid along with the Michavaram in the future. The Kudiyan need pay only a fixed portion of his dues every year and he will not be called upon to make any lump payments either at the end of twelve years or at the end of any fixed periods.

Almost as a consequence of this, it has been necessary to consider the question of the period after which a revision of the terms of the tenant's holding may be allowed. It used to be the rule and in fact, it is the law at present that the revision of the Michavaram either by enhancing it or by reducing it may be permitted once in twelve years. It is proposed by this Bill to extend the period and to enact that it shall be allowed only once in 20 years; so that the Jenmi can claim an enhancement and the Kudiyan a reduction only after a period of 20 years.

Another material change that has been introduced is in respect of tea and rubber lands. The tea plant and the rubber trees are not subject to any assessment under the existing law. But as considerable portion of the land are now under tea and rubber, it has been proposed by this measure to give the Jenmi a small assessment in respect of each acre of such

lands. In regard to the method of collection, for facilitating speedy and prompt means of recovering dues, it has been proposed to allow the dues to be collected under the Revenue Recovery process, if the dues are not more than one year old, *i. e.*, to say practically, if the dues are current arrears. In case of arrears, more than a year old, the Jenmi has to recover them by a suit in a Court of Law. It has also been proposed to reduce the period of limitation which has been till now 12 years to 6 years, so that there may be an incentive to the Jenmi to recover them soon and not allow them to accumulate.

There are two points of procedure on which, again, some changes are proposed by this Bill. When any holding is partitioned, as it often happens after the Nayar and Ezhava Regulations, the question arises how the Michavaram and the Kana Arthom chargeable on the property has to be divided. Under the existing law, it is not possible to compel the Jenmi or the Kudiyan to divide the Jenmi dues or the Kana Arthom. It is proposed by the new measure that it should be possible, if necessary by a suit in a Court of Law, to compel a division or apportionment of the Michavaram as well as the Kana Arthom due on the holdings.

In regard to compensation money payable on the acquisition of land by the Government under the Land Acquisition Regulation, there is already some provision in a ruling of the High Court as to how the money should be apportioned. The principle of that has been given a statutory basis in this amending Bill * *—

L. C. P., dated 21-1-1930,

II. The Bill was referred to a Select Committee, and when the Committee's Report was presented to the Council, it was decided to recommit the Bill to another Select Committee. In view of the importance of the Second Committee's Report as explaining several provisions of the Bill, extracts therefrom are appended below.

"We the undersigned, members of the Select Committee to which the Jenmi and Kudiyan (Amendment) Bill was recommitted for further consideration, beg to report as follows.

II. The reference made to the Committee by the Council is the following :—

'Whether in respect of Kanapattom lands, an arrangement can reasonably be made that the pattom of such lands be taken to be the same as the pattom fixed for Land Revenue purposes and out of that pattom, whatever is left after deducting the Sirkar tax, be taken to be the Jenmis' due in lieu of all and every one of their claims, and if any such arrangement can reasonably be made, to draft and submit the necessary legislative provisions for the same.'

III. The pattom fixed for Land Revenue purposes is the Settlement pattom which may be seen from the Settlement Registers of the last general Revenue Settlement. The amount arrived at by deducting the Sirkar tax from the Settlement pattom may be designated the "Settlement pattamicham" and it is by this name that we refer to it hereinafter. The annual michavaram payable to the Jenmi *plus* the fractional fee (*i. e.* the annual payment proposed by the Bill to be made in substitution of the renewal fees payable periodically) *plus* the commuted cess (*i. e.* the commuted money value payable yearly in substitution of the customary dues) may for convenience sake be designated the "Jenmivaram", and what is fixed by law for actual yearly payment to the Jenmi may be designated the "Jenmikaram". When the "Jenmivaram" referred to is also the annual payment fixed by law to be made to the Jenmi, that would be the Jenmikaram also. (Under the Bill, both the original Bill and the Bill as revised by the previous Select Committee, the Jenmivaram and the Jenmikaram would be the same.) The

meaning of the terms, Settlement Pattamicham, Jenmivaram and Jenmikaram being understood as above indicated, the reference made to the Select Committee is in brief whether the Settlement pattamicham can be fixed as the Jenmikaram, or some such arrangement made, in lieu of all and every one of the Jenmi's dues.

IV. The Committee felt that, in order to come to any satisfactory opinion on the point it was necessary to get some evidence of the variation, if any, as also of the extent of the variation, between the Jenmivaram and the Settlement pattamicham. The members of the Committee therefore decided to examine as many kanom documents relating to kanapattom lands in different parts of the State as could conveniently be done and ascertain the Jenmivaram and compare it with the Settlement pattamicham. For this purpose, the members of the Committee divided themselves into three parties, to tour round each of the three Revenue Divisions of Trivandrum, Quilon and Kottayam. Each party camped at convenient centres and met the Jenmis and Kudiyans who appeared before them and examined the documents produced and compared the Jenmivaram with the Settlement pattamicham. Statements made to the Committee by the three parties as to the result of their investigations are appended hereto, the statement of the Trivandrum party as Appendix A, that of the Quilon party as Appendix B and that of the Kottayam party as Appendix C.

V. In all, 1273 Kanom documents were examined and the Jenmivaram ascertained and the Settlement pattamicham as also certain other particulars in respect of the lands comprised in the documents noted. It has been found that the Jenmivaram and the Settlement pattamicham vary in every case. Taking it that a variation, either way, to the extent of ten per cent. of the Jenmivaram or less is only an insignificant or negligible variation, and that larger variations are substantial variations, it has been found that only in a comparatively small number of cases, the variation is negligible and that in other cases (*i, e.* in the bulk of the cases examined) the variation has been substantial. As may be seen from Appendix B, only 12½ per cent of the documents examined in the Quilon Division exhibited negligible variations, and as may be seen from Appendix C, only 21 per cent of the documents examined in the Kottayam Division exhibited negligible variations. Thus, if the Settlement pattamicham is fixed as the Jenmikaram, it would be seen that in most cases, either the Kudiyans would have to pay much more than what they have to pay now or the Jenmis would get only much less than what they get now. In some cases the Kudiyan would have to pay more than double and in some cases the Jenmi would get only less than half, and in some even *nil*. In the majority of the cases of substantial variations, as indeed in the majority of all the cases of variations, the Settlement pattamicham has been found to be larger than the Jenmivaram. It would appear therefore that though the fixing of the Jenmikaram at the amount of Settlement pattamicham may be an easy solution in theory, such an arrangement would cause hardship to a very large number of individuals, in fact to the bulk of the individuals of the community of Jenmis and Kudiyans and that, as between the Jenmis and Kudiyans, the Kudiyans would suffer more. The Committee, therefore, have come to the conclusion that it is not right to fix the Settlement pattamicham as the Jenmikaram uniformly in all cases; and they feel that it is not advisable to make any large departures from the amount of the Jenmivaram or the Jenmikaram under the Amendment Bill. After anxious consideration, they have arrived at the following formula as a rule of workable arrangement, namely:—

(*a*) That wherever the amount of the difference between the Jenmivaram

and the Settlement pattamicham is not larger than ten per cent of the Jenmivaram the Settlement pattamicham be fixed as the Jenmikaram.

(*b*) That when the amount of the Settlement pattamicham is larger than the amount of the Jenmivaram by more than ten per cent of the latter, the Jenmivaram *plus* ten per cent thereof be fixed as the Jenmikaram ; and

(*c*) That when the amount of the Settlement pattamicham is less than the amount of the Jenmivaram by more than ten per cent of the latter, the Jenmivaram *minus* ten per cent thereof be fixed as the Jenmikaram.

(*d*) That the Jenmikaram so fixed should of course be, in every case, in lieu of all and every one of the rights of the Jenmi in respect of the land ; and

(*e*) That the Jenmikaram so fixed should not be liable to any variation until a general Revenue Settlement by Government after which, however, the Jenmikaram may be enhanced or reduced in proportion as the Settlement pattamicham becomes larger or smaller by the fresh Revenue Settlement.

It will be noticed that the characteristic feature of this formula is that in no case will the amount of the Jenmikaram arrived at be larger or smaller than the amount of the Jenmivaram, or the Jenmikaram under the Amendment Bill, by more than ten per cent and that, as in the majority of cases the Settlement pattamicham is larger in amount than the Jenmivaram, or the Jenmikaram under the Amendment Bill, the Jenmis' dues will straightway be enhanced in the majority of cases.

VI. In regard to the immediate acceptance and carrying out of the formula there has been a difference of opinion. The minority (the Jenmi members) are of opinion that this formula can be accepted and carried out only if the Government would undertake to collect the Jenmikaram just like, and along with, the Sirkar tax and pay it to the Jenmi without any application being made by the Jenmi for the purpose in each and every case as is provided for in the Bill before the Council. What they want is that the Government should undertake full responsibility for collecting the Jenmikaram and paying it over to the Jenmi. In fact their position is that the formula itself can be deemed reasonable only if the Government would undertake the responsibility as indicated above. The majority of the Committee are agreeable to the demand of the Jenmi members being accepted, and the Committee hereby make a recommendation to Government to accept the request of the Jenmi members and they entertain the hope that it will be acceptable to Government. But the majority cannot make it a condition precedent of the formula arrived at being accepted or carried out. For one thing, to tack on a condition relating to the *collection* of the Jenmikaram to the formula relating to the fixing of the Jenmikaram is, the majority feel, beyond the scope of the reference to the Committee. They feel also that it is primarily for the Government to say whether they could and would accept the responsibility involved in the collection of the Jenmikaram as desired by the Jenmi members. The majority are therefore of opinion that the formula referred to above may be accepted, and implemented at once, and that, as required by the reference made to the committee, the necessary legislative provisions may be drafted and submitted to the Council.

VII. The Committee feel that it is expedient to draft the legislative provisions as amendments to the Bill as introduced in the Council. In the formula as well as in the legislative provisions, what the amount of the Jenmivaram should be is a material factor. The Committee have accepted the provisions of the Government

We are, in supersession of the Royal Proclamation above referred to hereby pleased to enact as follows:—

CHAPTER I.

Preliminary.

Short title.

1. (1) This Regulation may be called the "Travancore Jenmi and Kudiyan Regulation of 1071."

Commencement.

(2) It shall come into force throughout Travancore on the first day of Makarom 1072:

Provided that [* *] the 1st para of Section 44 shall come into force on the first day of Chingom 1074.

Bill, and not of the Bill as revised by the previous Select Committee, for arriving at the amount of the Jenmivaram. The former would yield a slightly larger amount than the latter.

* * * *

* * *

III. The Bill was published in the Gazette dated 14-1-1930. It was introduced into the Council at the meetings held on 21 and 22-1-1930 (*L.C.P. Vol. XVI. Pp. 23-86 and 107-153*). At the latter meeting, the Bill was referred to a Select Committee. The Committee's Report was published in the Gazette dated 14-4-1931. It was presented to the Council, and when it was moved that the Bill be taken up for consideration, discussion followed and the Bill was recommitted to a Select Committee, at the meetings held on 16 and 17-12-1931 (*L. C. P., Vol. XX, Pp. 59-81 and 100-130*). The Second Committee's Report was published in the Gazette dated 12-4-1932. The Report was presented to the Council and it was moved that the Bill be taken up for consideration; and after discussion the debate was adjourned at the meeting held on 21-4-1932 (*L. C. P., Vol. XX, Pp. 351-395*). The Bill was considered at the meetings held on 27 to 30-7-1932, 13-8-1932 (*L. C. P. Vol. XXI, Pp. 23-42, 107-182, 203-268, 322-357, 1419-1450*), 9, 15 and 16-12-1932 (*L. C. P., Vol. XXII, Pp. 5-32, 389-450, and 471-525*). The Bill was finally read and passed at the meeting held on 20-12-1932 (*L. C. P., Vol. XXII, Pp. 692-707*). The Regulation was published in the Gazette dated 3-1-1933.

Title: I. The words within square brackets were substituted, by Section XXIII of Regulation XII of 1108, for the words "Michavaram and other proprietary" which occurred in the Title to Regulation V of 1071.

II. The above substitution was made at the final reading of the Bill, on the motion of the Official Member in charge.—*L. C. P., dated 20-12-1932.*

Preamble: I. The word "Jenmis'" was substituted for the words "Michavarom and other customary proprietary" which occurred after the words "realisation of;" and the word "Jenmis'" was substituted for the words "Michavaram and other" which occurred between the words "for" and "dues."

II. These substitutions were made by Clauses (*a*) and (*b*) of Section XXIV of Regulation XII of 1108.

The Official Member in charge moved the above amendments, at the final reading of the Bill.—*L. C. P., dated 20-12-1932.*

Sec. 1: 1. Section II of Regulation XII of 1108 omitted the words and figures—"para 2 of Section 5 and" which occurred in the Proviso.

[2. No custom or customary right as between the Jenmi and the Kudiyan shall prevail unless provided for in this Regulation expressly or by necessary implication.]

No right between Jenmi and Kudiyan unless expressly provided for.

3. The following expressions shall have the meanings hereby assigned to them unless there is something repugnant in the subject or context :—

Interpretation clause.

(1) "Jenmom land" means land (other than Pandaravagay, Sreepandaravagay, Kandukrishi or Sirkar Devaswom land, recognised as such in the Sirkar accounts) which is either entirely exempt from Government tax or, if assessed to public revenue, is subject to Rajabhogam only, and the occupancy right in which is created for a money consideration (Kanom) and is also subject to the payment of Michavaram or customary dues and the [* * *] payment of renewal fees.

"Jenmom land".

Explanation [(*1*)].—Rajabhogam includes Rajabhogam paid to a Chief within whose free-hold estate the land is situate.

[*Explanation* (*2*).—For the purposes of this definition, the payment of Jenmikaram shall be deemed to be the payment of Michavaram or customary dues and the payment of renewal fees.]

(2) "Jenmi" means a person in whom the [Jenmom] right over Jenmom lands is vested and includes, in the case of Devaswoms owning Jenmom [right], the managing Trustee or Trustees of the Institution for the time being.

"Jenmi."

(3) "Kudiyan" means a person who holds lands on Kanapattom tenure.

"Kudiyan."

(4) "Kanapattom" means a demise of Jenmom land made or renewed by the Jenmi by whatever name such demise is designated.

"Kanapattom."

---

2. For the paras of Sections 5 and 44 referred to, see Notes under these Sections *Infra.*

Sec. 2: I. The new Section was substituted by Section II-A of Regulation XII of 1108.

II. Section 2 of Regulation V of 1071 was as follows :—"2. *Saving of custom and customary rights.*—Nothing in this Regulation shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication, modified or abolished by its provisions."

III. The Second Select Committee who made the amendment said :—"Under the proposed scheme of things, the Jenmi is to get the Jenmikaram in lieu of all and every one of his rights. It should follow, therefore, that no right other than what is expressly provided for by this Regulation could enure in favour of the Jenmi or the Kudiyan.—*S. C. R., Para VIII, I.*

(5) "Kanom" means the Arthom or consideration (in money or in kind) paid for the Kanapattom and shall also include the value of improvements made by Kudiyans and treated as Arthom or consideration.

"Kanom."

(6) A person is said "to hold land" whether he retains it in his actual possession or whether he mortgages or sublets it; and a person shall be deemed to have held land if it has been held by himself or by a predecessor in interest or title through whom he claims.

"To hold land."

(7) "Holding" means a parcel of land or parcels of land held under one Kanapattom instrument and one set of conditions.

"Holding."

(8) "Sub-tenant" means any person who holds land under a Kudiyan.

"Sub-tenant."

(9) "Pattom" means the assessed [annual] rent of the holding prior to the deduction of interest due to the Kudiyan on the Kanom in order to determine the Michavaram due to the Jenmi.

Pattom."

(10) "Michavaram" means the [annual] residual rent which is payable or deliverable [*] under a Kanapattom by the Kudiyan to the Jenmi, whether in money or in kind, and includes services due in lieu of rent.

"Michavaram."

Sec. 3: The amendments made in the several clauses of this Section were all made by Section III of Regulation XII of 1108.

Clause (1) *Jenmom land.*—1. The words "periodical renewal of the right on" which occurred before the words "payment of renewal fees" have been omitted. The original Bill made the omission.

2. The existing Explanation was numbered as (1) and another Explanation added by the Second Select Committee. They said:—"Under the proposed scheme of things, there will be no payment of Michavaram or customary dues or renewal fees as such, but there will be only the payment of Jenmikaram. In order that the definition of Jenmom land may be operative even when Jenmikaram alone is paid, the Explanation referred to is proposed to be added."—

S. C. R., Para VIII, 3.

Clause (2) *Jenmi.*—The word "Jenmom" was substituted for the word "proprietary" and the word "right" for "lands".

The Second Select Committee who made the substitutions said:—"Again, in the new scheme of things, the ownership of the land practically vests in the Kudiyan and what the Jenmi has is only the right to Jenmikaram, which we propose to call the Jenmom right. To bring about this idea in the definition of the word "Jenmi" the amendment is proposed".—

S. C. R., Para VIII, 3.

Clause (9) *Pattom.*—The word "annual" was inserted between the words "assessed" and "rent". The original Bill made the insertion.

["(11) 'Renewal fees,' means such fees as Atukkuvatu, Sakshi, Opputusi or the like agreed to be paid by the Kudiyan to the Jenmi periodically on occasions when the Kanapattom is renewable, and includes the 'fractional fee':

Renewal fees. Fractional fee.

and 'Fractional fee' means the fee fixed as claimable (in substitution of the renewal fees) in annual instalments at the rate of seven per cent. of the aggregate value or amount of the renewal fees due on the expiry of twelve years, or in annual instalments proportionately lower in percentage when renewal on the expiry of any longer period is provided for by the Kanapattom.

Clause (10) *Michavaram.*—The First Select Committee inserted the word "annual" before the word "residual",—a verbal change intended to make the meaning clear.—*S. C. R., Paras 4 & 5.*

The original Bill omitted the word "annually" which occurred after the word "deliverable".

Clause (11) *Renewal fees.*—I. The definition stood as follows in Regulation V of 1071.

"(11) "Renewal fees" means the fee or fees payable on renewal of Kanapattom, under such denominations as Adukuvathu, Avakasom, Sakshi, Opputusi, Olappanom, Thirunal-kalcha, and the like."

II. 1. In the original Bill, the definition stood as follows:—

"(11) "Renewal fees" means such fees as Adukkuvathu, Sakshi, Opputhusi or the like agreed to be paid by the Kudiyan to the Jenmi periodically on occasions when the Kanapattom is renewable and includes the "fractional fee" payable in annual instalments after the commencement of the Amendment Regulation at the rate of seven per cent of the aggregate value or amount of the renewal fees due on the expiry of every twelve years, or in annual instalments proportionately lower in percentage when renewal on the expiry of any longer period is provided for by the Kanapattom, such "fractional fee" being always deemed to be a substitute for the renewal fees payable on the expiry of every twelve years, or at longer interval, as the case may be.

Explanation:—When a Kanapattom provides for Purushantra Polichezhutu (renewal on the death of the Jenmi or Kudiyan) or for renewal when a temple may be renovated, or when the language of the instrument raises a reasonable doubt as to the length of the period on the expiry of which renewal is enforceable, it shall be deemed that renewal on the expiry of every thirty-six years was intended and agreed upon by the parties."

2. The First Select Committee substituted the word "five" for the word "seven" before the words "per cent." The Committee said:—

"The fractional fee is arrived at by distributing the total amount of the renewal fees into 12 annual equal instalments. The Renewal fees will fall due only at the end of 12 years. When fractional payments are made every year, interest has to be calculated thereon. If interest is calculated at the rate of 3½ per cent. per annum, the fractional fee will be 7 per cent. of the Renewal fees. If interest is calculated at the rate of 12 per cent., the fractional fee will be 5 per cent. of the Renewal fees. The majority of us are of opinion that 5 per cent. of the Renewal

Explanation.—When a Kanapattom provides for Purushantra Polichezhuttu (renewal on the death of the Jenmi or Kudiyan) or for renewal when a temple may be renovated, or when the language of the instrument raises a reasonable doubt as to the length of the period on the expiry of which renewal is enforceable, it shall be deemed that renewal on the expiry of every thirty-six years was intended and agreed upon by the parties."]

Customary dues. Commuted cess.

["(12) 'Customary dues' means cesses or perquisites consisting of (i) Onakkazhcha, Panchaphalam, Utsavakoppu or the like due annually or periodically on specific dates, and (ii) Arukazhcha, Kalasavari or the like due at periodical intervals, which though specific, are not previously ascertainable, whenever such cesses or perquisites are payable by the Kudiyan to the Jenmi in accordance with the terms of a Kanapattom; and

---

fees should meet the requirements of the situation and that there is no justification for capitalising the fractional fee at such a low rate as 3½ per cent. per annum. Simple interest is adopted in both the calculations. Hence the proposed change."

S. C. R., Paras 6 & 7.

3. The Second Select Committee further amended the Clause as follows:—

(11) "'Renewal fees' means such fees as Atukkuvatu, Sakshi, Opputusi or the like agreed to be paid by the Kudiyan to the Jenmi periodically on occasions when the Kanapattom is renewable, and includes the fractional fee:

and, 'fractional fee' means the fee fixed as claimable (in substitution of the renewal fees) in annual instalments at the rate of *seven* per cent. of the aggregate value or amount of the renewal fees due on the expiry of twelve years, or in annual instalments proportionately lower in percentage when renewal on the expiry of any longer period is provided for by the Kanapattom.

Explanation:—When a Kanapattom provides for Purushantra Polichezhuttu (renewal on the death of the Jenmi or Kudiyan) or for renewal when a temple may be renovated, or when the language of the instrument raises a reasonable doubt as to the length of the period on the expiry of which renewal is enforceable, it shall be deemed that renewal on the expiry of every thirty-six years was intended and agreed upon by the parties,"

4. When the Bill was considered by the Council, the words "five per cent" were substituted for the words "seven per cent." on the motion of a Non-official member who, in accepting the view of the first Select Committee, said that "the fractional fee would amount to only 3¾ per cent. * In the majority of cases, the Kanapattom provides for renewals at the expiry of twelve years and therefore the Kudiyan cannot be said to have been benefited in any way by this. In the interests of the Kudiyans therefore it is necessary that the fractional fee should be as moderate as possible."—*L. C. P., dated 28-7-1932.*

5. At the final reading of the Bill, the word "seven" was substituted for the word "five" in the definition of the term "fractional fee," on the motion of the Official Member in charge who said in explanation of the amendment—"This percentage refers to the yearly value for

'Commuted cess' means the commuted money value of customary dues, if any, ascertained as claimable by the Jenmi every year after the commencement of the Amendment Regulation according to the calculation made in the manner specified hereunder; that is to say :—

(i) when Kalasavari is claimable by a Jenmi, it shall be assumed that he is entitled to five per cent. of one Kalasavari cess every year;

(ii) when Arukazhcha is claimable by a Jenmi, it shall be assumed that he is entitled to sixteen per cent. of one Arukazhcha cess every year;

(iii) when other customary dues are claimable by a Jenmi, the annual value of such shall be ascertained by calculation;

---

the renewal fees which according to the Bill as revised by the Select Committee was put at 7 per cent. In the second reading of the Bill, this House reduced it to 5 per cent., but afterwards the Jenmis and the Non-jenmis came to an agreement and it was agreed amongst all the parties that the provision, which was reduced by the House at the second reading, may be restored at the third reading."—

L. C. P., dated 20-12-1932.

Clause (12) *Customary dues.*—

I. The definition stood as follows in Regulation V of 1071 :—

"(12) "Customary dues" means the cesses or contributions such as Onakalcha, Allakkada, Thirunal-chumadu, Puranna1-chumadu, Vara-koppu, Oolsava-koppu and the like which are payable to the Jenmi by the Kudiyan on account of his holding according to contract or custom."

II. 1. The original Bill contained the following definition :—

"(12) "Customary dues" means cesses or perquisites consisting of (i) Onakkazhcha, Panchaphalam, Utsavakoppu or the like due annually or periodically on specific dates, and (ii) "Arukazhcha, Kalasavari or the like due at periodical intervals, which, though specific, are not previously ascertainable, whenever such cesses or perquisites are payable by the Kudiyan to the Jenmi in accordance with the terms of a Kanapattom; and

"Commuted cess" means the commuted money value of customary dues, if any, ascertained as claimable by the Jenmi every year after the commencement of the Amendment Regulation according to the calculation made in the manner specified hereunder; that is to say :—

(i) when Kalasavari is claimable by a Jenmi, it shall be assumed that he is entitled to five per cent. of one Kalasavari cess every year;

(ii) when Arukazhcha is claimable by a Jenmi, it shall be assumed that he is entitled to sixteen per cent. of one Arukazhcha cess every year;

(iii) when other dues or cesses are claimable by a Jenmi, the annual value of such shall be ascertained by calculation;

(iv) in valuing any due or cess payable in kind, the commutation price specified in the contract of Kanapattom or understood to be the one conformable to the local customary rate, whichever is the lower, shall be the guide;

(v) the sum total of the value or amounts of the dues or cesses ascertained as annually payable to the Jenmi in

(iv) in valuing any customary dues payable in kind, the commutation price specified in the contract of Kanapattom or understood to be the one conformable to the local customary rate, whichever is the lower, shall be the guide;

(v) the sum total of the value or amounts of the customary dues ascertained as annually payable to the Jenmi in accordance with the calculation made under clauses (i) to (iv) shall be deemed to be the 'commuted cess' in any given case."]

Duly registered.

(13) "Duly registered" means registered in accordance with the law for the time being in force relating to the Registration of Assurances.

Jenmivaram.

[" 14. Jenmivaram in respect of a Jenmom land or holding means the total of the amounts of the annual Michavaram, the fractional fee and the commuted cess in respect thereof.

---

accordance with the calculation made under Clauses (i) to (iv) shall be deemed to be the "commuted cess" in any given case."

2. The First Select Committee inserted in the definition of "Commuted cess," the words "the sum total of" after the word "means," substituted "twelve" for "sixteen" in Clause (ii), and omitted Clause (v).

3. The Second Committee restored the definition as it stood in the original Bill.

4. When the Bill was considered by the Council, "12 per cent" was substituted for "16 per cent." in the case of the apportionment of the Arukazcha dues in Sub-clause (ii) on the motion of a Non-official member.—*L. C. P., dated 28-7-1932.*

5. At the final reading of the Bill, the word "sixteen" was substituted for the word "twelve" on the motion of the Official member in charge who said :—"This also arises out of the agreement which has been arrived at between the parties. It was agreed that the figure, sixteen, that was reduced to twelve by the House at the second reading may be restored at the third reading.— *L. C. P., dated 20-12-1932.*

Clause (14) *Jenmivaram.*—I. Regulation V of 1071 had, as the last of the definitions, that of "Improvements." The original Bill retained the definition, and it was as follows:—

"(14) "Improvement" means, with reference to a holding, any work including its product which is suitable to the holding and consistent with the conditions on which it is based. by which the value of the holding has been and continues to be increased, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Explanation I.—It includes among other things—

(*a*) the construction of wells and other works for the storage or supply of water for agricultural or domestic purposes;

(*b*) the construction of works for drainage and for protection against floods;

(*c*) the planting of trees;

(*d*) the reclaiming, enclosing, levelling and terracing of land for agricultural purposes and other works of a like nature;

(*e*) the erection in Purayadoms or plantations of farm buildings and of dwelling-houses, cattle-sheds or other structures, permanent walls

"(15) Settlement pattom in respect of a Jenmom land means the pattom fixed by Our Government for the Land Revenue purposes at a general Revenue Settlement and includes also the proportionate pattom chargeable on each portion of a land wherever the land is divided for any reason.

Settlement pattom.

(16) Settlement pattamicham in respect of a Jenmom land means its Settlement pattom *minus* the tax due thereon to Our Government.

Settlement pattamicham.

Explanation.—Wherever the Settlement pattom is fixed in kind, 'tax' means the tax in kind fixed with reference to the Settlement pattom although the tax may be payable to Our Government in money.

(17) Jenmikaram in respect of a Jenmom land or holding means the amount payable in respect of that land or holding under the provisions of this Regulation by the Kudiyan to the Jenmi every year in lieu of all

Jenmikaram.

---

or strong fences which are not of a temporary nature; and

(*f*) the renewal or reconstruction of any of the foregoing works or such alterations or additions thereto as are not of the nature of mere repair and as durably increase their value.

But it does not include such clearances, embankments, levellings, enclosures, temporary wells and water channels as are made by tenants in the ordinary course of cultivation and without any special expenditure or any other benefit accruing to land from the ordinary operations of husbandry.

Explanation II.—A work executed by a Kudiyan is not an "improvement" if it substantially diminishes the value of any other part of his Jenmi's property."

II. The Second Select Committee omitted the definition, as "a definition of the word "improvement" in the manner in which it appears in the existing Regulation does not appear necessary."

The Committee substituted as Clause (14), the definition of Jenmivaram now found in the Regulation.—

S. C. R. Para VIII, 6.

Clauses *15—19*: I. The original Bill added the following Clauses after Clause (14):—

"(15) "Jenmikaram" means and includes all or any of the following items claimable by a Jenmi, namely, the fractional fee, the commuted cess and the Michavaram.

(16) "Net produce" means the surplus remaining after deducting from the gross produce of any land a portion equivalent in value to the cost of cultivation and the Sirkar assessment and cesses, if any, chargeable on such land, and includes the value of such surplus.

(17) "Average annual net produce" means the net produce ascertained as derivable on an average for one year, by calculation of the net produce for each year during a period of not less than ten

and every one of the Jenmi's claims in respect of the land or holding, such Jenmikaram being fixed as follows :—

(*a*) so long as the last general Land Revenue Settlement made by Our Government remains in force, the Jenmivaram shall, except iu the case of cherikkal lands, be the Jenmikaram, and, in the case of cherikkal lands, the Settlement pattamicham with reference to the said last Revenue Settlement *minus* the interest on the kanom amount shall be the Jenmikaram ; and

(*b*) if the Jenmikaram as under clause (*a*) is altered or revised at or after any future general Land Revenue Settlement under the provisions of this Regulation, such altered or revised Jenmikaram shall thenceforward be the Jenmikaram and, if it is not so altered or revised, the then existing Jenmikaram shall continue to be the Jenmikaram.

---

years immediately preceding the date of such ascertainment.

(18) "Margin of profit" when used with reference to a Kudiyan and his holding means the minimum net gain claimable by the Kudiyan out of the average annual net produce of his holding, such gain being fifty five per cent. of such average annual net produce, when the holding is paddy land, or sixty per cent. of such average annual net produce, when the holding is land of any other description.

(19) "Timber trees" means trees declared to be such from time to time by Our Government, by Notification in Our Government Gazette.

(20) "Prescribed" means prescribed from time to time by Our Government by Notification in Our Government Gazette

(21) "The Amendment Regulation" means the Travancore Jenmi and Kudiyan (Amendment) Regulation, 110 ,"

II. The First Select Committee made the following amendments :—(1) In Clause (16), the word "tax" was substituted for the word "assessment"; (2) in Clause (18) the words "garden land" were substituted for the words "land of any other description" occurring at the end ; and (3) the following definition of timber trees was substituted for Clause (19).—"Timber trees" means and includes the trees specified in the Schedule to this Regulation."

The Schedule appended was as follows ; —

"Schedule of timber trees.

1. Teak	11. Venthekku
2, Black-wood	12. Red Cedar or Mathahari Vempu
3. Ebony	
4. Sandal-wood	13. Mayila
5. Angil	14. Manjakadampu
6. Thumbagom	15. Manimaruthu
7. Vengai	16. Mulvengai
8. Thempavu	17. Vengaetta
9. Akil	18. Poovarasu
10. Erupool	19. Mahogony."

The Committee said :—"We consider that it would be better to specify the timber trees in the Regulation itself than to leave it to be prescribed by Government. The Committee are of opinion that the trees described in the Schedule shall be regarded as timber trees for the purpose of this Regulation ; and the majority are of opinion that no other tress should be classed as timber trees."—

S. C. R., Paras 15-18,

Explanation 1.—Payment of or the liability to pay the Jenmikaram is equivalent to paying or the liability to pay the Michavaram, renewal fees and customary dues.

Explanation 2,—When any Jenmom land or holding is divided for any reason the Jenmivaram and the Jenmikaram chargeable proportionately on each part shall respectively be the Jenmivaram and the Jenmikaram due on that part.

III. The Second Select Committee put in the following Clauses in the place of those given above They said ;—"The new definitions, those of 'Jenmivaram ', 'Settlement pattam,' 'Settlement pattamicham' and 'Jenmikaram,' are inserted with a view to give effect to the formula proposed by the Committee. A definition of the expressions "net produce" "average annual net produce" "margin of profit" and "timber trees" does not appear to be necessary in the proposed scheme of things. Those definitions are therefore omitted."—

S. C. R., Para VIII, 6.

The Clauses added were :—

"(15) Settlement pattom in respect of a jenmom land means the pattom fixed by Our Government for the Land Revenue purposes at a general Revenue Settlement and includes also the proportionate pattom chargeable on each portion of a land wherever the land is divided for any reason."

"(16) Settlement pattamicham in respect of a jenmom land means its Settlement pattom *minus* the tax due thereon to Our Government."

Explanation.—Wherever the Settlement Pattom is fixed in kind, 'tax' means the tax in kind fixed with reference to the Settlement Pattom although the tax may be payable to Our Government in money.

"(17) Jenmikaram in respect of a jenmom land or holding means the amount payable in respect of that land or holding under the provisions of this Regulation by the Kudiyan to the Jenmi every year in lieu of all and every one of the Jenmi's claims in respect of the land or holding, such Jenmikaram being fixed as follows :-

(*a*) When the Settlement pattamicham with reference to the last general Revenue Settlement and the Jenmikaram in respect of any jenmom land or holding are the same in amount or (if they differ) when the amount of the difference between the two is not larger than ten per cent. of the Jenmivaram, the Settlement pattamicham shall be the Jenmikaram.

(*b*) When the amount of the Settlement pattamicham with reference to the last general Revenue Settlement is larger than the amount of the Jenmivaram by more than ten per cent. of the latter, the Jenmivaram *plus* ten per cent. thereof shall be the Jenmikaram.

(*c*) When the amount of the Settlement pattamicham with reference to the last general Revenue Settlement is less than the amount of the Jenmivaram by more than ten per cent. of the latter, the Jenmivaram *minus* ten per cent. thereof shall be the Jenmikaram.

Explanation 1.—Payment of or the liability to pay the Jenmikaram is equivalent to paying or the liability to pay the michavaram, renewal fees and customary dues.

Explanation 2.—When any jenmom land or holding is divided for any reason, the Jenmivaram and the Jenmikaram chargeable proportionately on each part shall

Explanation 3.—The term 'cherikkal land' means all land recognised as such in the Sirkar accounts in which paddy or other cultivation is or has been carried on in recurring periods and on which, until the last Revenue Settlement, *malavaram* or *vilameladi* tax alone has either been levied or was leviable by Our Government when such land was cultivated,

Prescribed.

(18) 'Prescribed' means prescribed from time to time by Our Government by Rules or by Notification in Our Government Gazette.

Amendment Regulation.

(19) 'The Amendment Regulation' means the Travancore Jenmi and Kudiyan (Amendment) Regulation, 1108'"]

---

respectively be the Jenmivaram and the Jenmikaram due on that part.

(18) 'Prescribed' means prescribed from time to time by Our Government by Notification in Our Government Gazette.

(19) 'The Amendment Regulation' means the Travancore Jenmi and Kudiyan (Amendment) Regulation, 110 ."

IV. *Clause (17).*—When the Bill was considered by the Council, a Non-official Member moved to substitute the following for sub-clauses (*a*), (*b*) and (*c*):—

"(*a*) so long as the last general Revenue Settlement remains in force, the *Jenmivaram* shall be the *Jenmikaram*, and

(*b*) if the *Jenmikaram* as under clause (*a*) is altered or revised at or after the next general Revenue Settlement under the provisions of this Regulation, such altered or revised *Jenmikaram* shall be the *Jenmikaram*." The amendment was carried *nem con.*—

L. C. P., dated 30-7-1932.

V. At the final reading of the Bill, for sub-clauses (*a*) and (*b*) as given above, the sub-clauses now found in the Regulation were substituted and also another Explanation—(3)—was inserted, on the motion of the Official Member in charge who said:—"This amendment makes a change specially applicable to the cherikkal lands. At the second reading, there was no special provision relating to cherikkal lands, and in regard to *all* lands Jenmivaram was fixed to be the Jenmikaram, but when the parties came to an agreement in regard to the enhancement or reduction of Jenmikaram, one of the terms of the agreement was that special provision should be made in regard to cherikkal lands, as regards the present Jenmikaram, and it was agreed that, in regard to cherikkal lands, the Settlement pattamicham *minus* the interest on the kanom amount should be the Jenmikaram. In view of that agreement arrived at when the proposed Section 14 was passed, I bring forward this amendment."—

L. C. P., dated20-12-1932

Clause (18) *Prescribed.*—At the final reading of the Bill, the words "by Rules or" were inserted after the word "Government" on the motion of the Official member in charge.—

L. C. P., dated 20-12-1932.

CHAPTER II.

Of the Rights and Liabilities of Jenmis and Kudiyans.

Tax on Jenmom lands transferred by sale, &c., to be borne by transferee.

4. When a Jenmi transfers by sale, gift or otherwise, the Jenmom right in the whole or any part of [*] Jenmom lands and the Sirkar imposes or enhances the tax on the Jenmom lands transferred, such tax shall be borne by the transferee.

Sec. 4: The word "his" which occurred before the words "Jenmom lands" in Section 4 of Regulation V of 1071, was omitted by Section III-A of Regulation XII of 1108.

The Second Select Committee made this verbal change.— *S. C. R., Para VIII, 7.*

Secs. 5-14: I. These Sections were substituted for Sections 5-14 of Regulation V of 1071, by Sections IV of Regulation XII of 1108.

II. The old Sections were as follow :—

"5. *Right of Kudiyan to permanent occupancy*.—Subject to the provisions of this Regulation, every Kudiyan shall have a right of permanent occupancy in his holding and shall be exempt from liability to eviction save as laid down in Section 7.

In the absence of an express contract, nothing in this Section shall be taken to confer the right of permanent occupancy on the Kudiyan of a non-Malayalee-Brahmin Jenmi, unless he or his predecessors in interest or both have uninterruptedly held the holding for a period of not less than twenty-five years.

The provisions of para 2 do not apply to assignees of Malayalee-Brahmin Jenmis.

6. *Right of Kudiyan heritable and transferable.*—The right of a Kudiyan in his holding shall be heritable and transferable; but every transfer shall be in writing, and no transfer of a portion of the holding, without the consent, in writing, of the Jenmi, shall affect the liability of the entire holding for Michavaram and other dues leviable by the Jenmi.

7. *Eviction of Kudiyan.* (1) No Kudiyan shall be evicted from his holding or any portion of his holding except in execution of a decree of Court; and no Court shall make a decree for such eviction except for—

(*a*) non-payment of Michavaram for 12 years consecutively, notwithstanding an express demand in writing made at any time after the first year's arrears shall have accrued:

(*b*) neglect or refusal to pay renewal fees and take a renewal within one year from the date on which such fees fall due and six months after the service upon him of a notice of demand in writing:

Provided that, when such neglect or refusal has taken place before this Regulation comes into force, it shall not confer on the Jenmi the right of eviction unless he proves that such neglect or refusal has been continued for a period of one year after this Regulation comes into force and six months after the service upon him of a notice of demand in writing under this Regulation.

Explanation.—Failure to pay renewal fees or take a renewal, due to *bona fide* differences between the Jenmi and the Kudiyan as to the amount of the renewal fees or as to the terms of the renewal, shall not be deemed to be neglect or refusal within the meaning of Clause (*b*);

(*c*) wilful denial of Jenmi's title and persistence in such denial even at the time of the first hearing of a suit for eviction:

Explanation.—A denial of the Jenmi's title under a mistake of fact or of law is not wilful within the meaning of Clause(*c*).

(*d*) intentional and wilful commission of such acts of waste as are calculated to materially and permanently impair the value and utility of the holding so as to injure the interests of the Jenmi.

(2) The written demand or notice mentioned in this Section shall be presented to the Court of the District Munsiff in whose local jurisdiction the holding is situated, and it shall be served by such Court on payment by the Jenmi of the prescribed process fees in the manner provided for the service of summons in the Code of Civil Procedure. But no Court fees shall be levied on the application presented to the Court by the Jenmi requesting the service of such demand or notice.

(3) A suit for ejectment on the ground stated in Clause (*d*) shall not be entertained unless the Jenmi has served a notice on the Kudiyan specifying the particular act of waste complained of, and, when the waste is capable of remedy, requiring the Kudiyan to remedy the same and in any case to pay reasonable compensation for the waste, and the Tenant has failed to comply within a reasonable time with that request.

(4) In case of eviction, the Kudiyan shall, in addition to a refund of the Kanom money, be entitled to be compensated for improvements made by him or by his predecessors in interest for which compensation has not already been paid; and his sub-tenants, if any, shall also be entitled to such compensation in respect of improvements made by them.

Explanation.—Nothing in this Section shall be construed to bar the right of the Jenmi to recover the arrears of Michavaram and customary dues at the date of eviction.

8. *Compensation for improvements how estimated.*—(1) The compensation to be awarded for items of improvement (*a*), (*b*), (*d*), (*e*) and (*f*) in Clause 14 of Section 3 shall be the estimated full cost of such improvements *minus* any deduction for wear and tear; and the compensation for item (*e*) shall be three-fourths of the capitalized value of the product of the trees other than wild trees of spontaneous growth, unless the Jenmi proves that, by local usage in respect of Jenmom lands, the compensation to be awarded to the Tenant for trees is less than three-fourths.

(2) In awarding compensation for improvements, any reduction or remission of rent or any other advantage given by the Jenmi to the Kudiyan in consideration of the improvement shall be taken into consideration; and no compensation for an improvement shall be claimable when the Kudiyan has made the improvement in pursuance of a contract in writing binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

9. *Court to cancel forfeiture on payment of arrears into Court.*—When the Kudiyan has incurred forfeiture for non-payment of Michavaram or renewal fees and the Jenmi sues to eject the Kudiyan—if, at the first hearing of the suit, which shall not take place within three months from the date of the service of the original summons in the suit, the Kudiyan pays into the Court the Michavaram and other dues in arrears together with the interest thereon and the Jenmi's cost of the suit, the Court shall pass an order relieving the Kudiyan against forfeiture; and thereupon the Kudiyan shall hold the land as if the forfeiture had not occurred.

10. *Decree to declare amount of compensation in suit for ejectment of Kudiyan for waste.*—A decree passed in favour of the Jenmi in any suit for ejectment of a Kudiyan on the ground that he has committed intentional and wilful acts of waste, shall declare the amount of compensation which would reasonably be

["5. From and after the commencement of the Amendment Regulation, the Jenmi shall not have any right, claim or interest in any land in a holding except the right to receive the Jenmikaram thereon and the Kudiyan shall be deemed to be the owner of the land subject only to the payment of the Jenmikaram.

Kudiyan owner of land subject only to payment of Jenmikaram.

---

payable to the Jenmi for the waste, and whether in the opinion of the Court the waste is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay the amount to the plaintiff and, where the waste is declared to be capable of remedy, to remedy the same.

If the Defendant, within the period fixed by the Court under this Section, pays the compensation mentioned in the decree and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

11. *Renewal of Kanapattom every twelve years.*—In the absence of an express written contract to the contrary, on the expiry of a period of twelve years from the date of every Kanapattom, and thenceforward at the end of every successive period of twelve years, it shall be obligatory on the Jenmi to give and on the Kudiyan to accept a renewal of the Kanapattom, save and except in the cases mentioned in the next following Section.

12. *Kudiyan may surrender his holding at the end of twelve years.*—A Kudiyan may, at the end of twelve years from date of a Kanapattom or of its last renewal, surrender in writing his holding to the Jenmi after six months' notice in writing, and claim refund of the Kanom. In such cases, the Jenmi shall not be liable to pay to the Kudiyan the value of the improvements and he shall not be bound to accept the surrender, unless the whole of the arrears of Michavaram and other dues, if any, are also tendered at the time of surrender.

Notice under this Section shall be served through the Munsiff's Court in the manner provided in Section 7.

13. *Arrears of Michavaram and renewal fees to have priority over other charges.*—Arrears of Michavaram and renewal fees due to the Jenmi shall be a charge on the holding of a Kudiyan and shall have priority over all other charges on the same, save arrears of tax due to Government.

14. *Enhancement of Michavaram.*—Subject to the limitations and conditions prescribed in Chapter III, every Jenmi may, at the time of periodical renewals of Kanapattom, enhance the Michavaram payable by a Kudiyan,

(1) (*a*) by increasing the Pattom assessment on the land,

(*b*) by reducing the rate of interest allowed to the Kudiyan on the Kanom money, if such rate is in excess of the rate usually allowed to Kudiyans holding on Kanapattom in the same Proverthi,

(*c*) by both the modes (*a*) and (*b*); or

(2) Where the Jenmi has hitherto been levying additional Kanom (or Ettartham) in lieu of enhancing the Michavaram, he may continue to do so at the customary period.

Provided that no Jenmi shall without the consent of the Kudiyan be entitled to enhance the Michavaram and levy Ettartham at one and the same time."

Sec. 5: I. In the original Bill, the Section stood as follows:—

"5. Notwithstanding any usage or contract to the contrary, no Kudiyan shall have the right to relinquish or apply for permission to relinquish his holding or a

Explanation 1.—The Jenmi's right as well as the Kudiyan's right is heritable as well as transferable by sale, gift or otherwise.

Explanation 2.—Notwithstanding any usage or contract to the contrary, no Kudiyan has the right to relinquish or apply for permission to relinquish his holding or any portion thereof and no Jenmi has the right to evict or sue for the eviction of a Kudiyan from his holding or any portion thereof. This prohibition shall apply also in the case of all applications made and suits instituted even before the commencement of the Amendment Regulation if such applications or suits are pending disposal on the date of commencement of the Amendment Regulation and were made or instituted, as the case may be, after the 19th Meenom 1105. The term 'suit' herein includes also applications for the execution of decrees passed in suits.

---

portion thereof and no Jenmi shall have the right to evict or sue for the eviction of a Kudiyan from his holding or a portion thereof :

Provided that this prohibition shall not affect any order made or decree passed on an application presented, or in a suit instituted, under the provisions of Regulation V of 1071 prior to the commencement of the Amendment Regulation."

See *S. O & R.* (*1*).

II. For the Proviso in the original Bill, the First Select Committee substituted the following:—"Provided that this prohibition shall not affect any order made or decree passed on an application presented or in a suit instituted under the provisions of Regulation V of 1071 prior to 1st April 1930/19th Meenam 1105 even though the order or decree be made or passed after the commencement of the Amendment Regulation." They said :—

"The majority were of opinion that in the absence of the proposed change the Jenmis would rush to Courts for enforcing their right of eviction and the Kudiyans may be equally disposed to file suits for relinquishing their holdings, for neutralising the effect of the proposed Section 5, The date mentioned is the date on which the Select Committee held its first sitting for considering this Bill."—*Paras 19 and 20.*

III. The Second Select Committee recast the Section and substituted the following as Section 5 ; and in so doing, they said :—

"The proposed Section 5 carries out the decision of the Committee. When the Jenmi has only the right to receive the Jenmikaram and no other right in respect of the land, it must *ipso facto* follow that the Kudiyan becomes the virtual owner of the land subject only to the payment of the Jenmikaram. And when he becomes the owner, he has the right to cultivate the land in any manner he chooses or to improve it or to make any use of the land, and the Kudiyan has no right to surrender the land and the Jenmi no right to evict the Kudiyan."—*Para VIII, 8.*

"5. From and after the commencement of the Amendment Regulation, the Jenmi shall not have any right, claim or interest in any land in a holding except the right to receive the Jenmikaram thereon, and the Kudiyan shall be deemed to be the owner of the land subject only to the payment of the Jenmikaram.

Explanation 1.—The Jenmi's right as well as the Kudiyan's right is heritable as

Explanation 3.—Notwithstanding any usage or contract to the contrary, every Kudiyan has the right to make any use of the land in his holding, to change its character either by converting wet land into garden land or by converting garden land into cultivable wet land, or in any other manner, to cut down and appropriate any trees standing thereon, to alter the course of cultivation in respect thereof and, in short, to do or suffer any thing to be done on the land without reference to, or interference from, the Jenmi.

Explanation 4.—Notwithstanding any usage or contract to the contrary, every Kudiyan has the right to make any improvement in respect of his holding without reference to, or interference from, the Jenmi, and no Kudiyan shall thereby become liable to pay any higher Jenmikaram on account of any increase of production or any change in the nature of the crop raised in consequence of such improvement.

Explanation 5.—The Jenmi's right to the Jenmikaram shall be deemed to be immovable property.

---

well as transferable by sale, gift or otherwise.

Explanation 2.—Notwithstanding any usage or contract to the contrary, no Kudiyan has the right to relinquish or apply for permission to relinquish his holding or any portion thereof and no Jenmi has the right to evict or sue for the eviction of a Kudiyan from his holding or any portion thereof:

Provided that this prohibition shall not affect any order made or decree passed on an application presented or in a suit instituted under the provisions of Regulation V of 1071 prior to 1st April 1930/19th Meenam 1105, even though the order or decree be made or passed after the commencement of the Amendment Regulation.

Explanation 3.—Notwithstanding any usage or contract to the contrary, every Kudiyan has the right to make any use of the land in his holding, to change its character either by converting wet land into garden land or by converting garden land into cultivable wet land, or in any other manner, to cut down and appropriate any trees standing thereon, to alter the course of cultivation in respect thereof, and, in short, to do or suffer anything to be done on the land without reference to, or interference from, the Jenmi.

Explanation 4.—Notwithstanding any usage or contract to the contrary, every Kudiyan has the right to make any improvement in respect of his holding without reference to, or interference from, the Jenmi, and no Kudiyan shall thereby become liable to pay any higher Jenmikaram on account of any increase of production or any change in the nature of the crop raised in consequence of such improvement.

Explanation 5.—The Jenmi's right to the Jenmikaram shall be deemed to be immovable property."

IV. When the Committee's Bill was considered by the Council, a Non-official Member moved the following amendment in substitution of the Proviso to Explanation 2 of Section 5. "This prohibition

6. (1) If in a holding there are more parcels of land than one, each having Settlement pattom assessed separately, the Jenmikaram of the entire holding shall be ascertained in accordance with the provisions of this Regulation and distributed in respect of each parcel of land in the proportion of the Settlement pattamicham bearing on such parcel of land.

Apportionment of Jenmikaram as amongst various lands.

(2) The Jenmikaram so distributed in respect of each parcel of land shall be the Jenmikaram due thereon.

---

shall also apply to all applications or suits pending on the date this Amendment Regulation comes into force if such application was made or suit was instituted since 1st April 1930/19th Meenom 1105. Suits referred to herein shall include applications for execution of decrees specified in this paragraph and also all those passed before the 19th Meenom 1105." This amendment was carried.—

L. C. P., dated 19-8-1932.

V. At the final reading of the Bill, on the motion of the Official Member in charge, the above was amended in view to make the meaning clear.—

L. C. P. dated 20-12-1932.

Secs. 6, 7 & 8: I. In the original Bill, these Sections stood as follow :—

"6. The Jenmi's interest in all land in a holding as well as the Kudiyan's interest therein shall each be deemed to be immovable property, which is not only heritable, but also transferable by sale, gift or otherwise.

7. Notwithstanding any usage or contract to the contrary, every Kudiyan shall have the right to make any use of the land in his holding, to change its character either by converting wet land into garden land or by converting garden land into cultivable wet land or in any other manner, to cut down and appropriate, subject to the proviso next following, any trees standing thereon, to alter the course of cultivation in respect thereof, and, in short to do or suffer anything to be done on the land, without reference to, or interference from, the Jenmi:

Provided that timber trees of not less than thirtysix inches girth standing on holdings on the date of the commencement of the Amendment Regulation shall not be cut down by the Kudiyan without the consent of the Jenmi or, in the absence of such consent, without giving fifteen days' notice to the Jenmi by registered Anchal, and when any such tree is cut down by the Kudiyan the value thereof deducting the cost of cutting shall belong to the Jenmi and the Kudiyan in the proportion of three-fourths to the Jenmi and one-fourth to the Kudiyan.

Explanation 1.—The Jenmi shall not hereafter have the right to cut down any trees standing on holdings.

Explanation 2.—If, when any timber tree as contemplated in the above proviso is cut down, the Jenmi and the Kudiyan are not able to agree as to the appropriation of the timber or as to the value thereof for purposes of apportionment the timber shall be appropriated by the party, the Jenmi or Kudiyan, who offers the higher value as between themselves and the other party shall be given his share of that value in money.

8. Notwithstanding any usage or contract to the contrary, every Kudiyan shall have the right to make any improvement in respect of his holding without reference to, or interference from, the Jenmi, and no Kudiyan shall, except as otherwise

7. If any Jenmom land is divided for any reason, the Jenmikaram on each portion of the land shall be fixed in the proportion of the Sirkar tax that will be fixed on such portion of land and the Jenmikaram so fixed shall be the Jenmikaram due thereon.

Jenmikaram how fixed on land being divided.

8. Notwithstanding any usage or contract to the contrary, it shall not be lawful hereafter to take into account in any case as renewal fees any amount exceeding thirty per cent. of the kanom.

Renewal fees not to exceed 30 per cent. of Kanom.

---

expressly provided by this Regulation become liable to pay a higher Michavaram on account of any increase of production or of any change in the nature of the crop raised in consequence of such improvement:

Provided that if waste land or land subject only to Payattupattom as Pattom is converted into paddy land, that shall be a ground for increasing the Pattom in the same manner as if there had been an excess in the area of the holding actually under cultivation."

See *S. O & R*, (3).

II. For the above Sections, the Second Select Committee substituted the following:—

"6. (1) If in a holding there are more parcels of land than one, each having Settlement Pattom assessed separately, the Jenmikaram of the entire holding shall be ascertained in accordance with the provisions of this Regulation and distributed in respect of each parcel of land in the proportion of the Settlement Pattamicham bearing on such parcel of land.

(2) The Jenmikaram so distributed in respect of each parcel of land shall be the Jenmikaram due thereon.

7. If any Jenmom land is divided for any reason, the Jenmikaram on each portion of the land shall be fixed in the proportion of the Sirkar tax that will be fixed on such portion of land; and the Jenmikaram so fixed shall be the Jenmikaram due thereon.

8. Notwithstanding any usage or contract to the contrary, it shall not be lawful hereafter to take into account in any case as renewal fees any amount exceeding twenty-five per cent. of the Kanom."

The Committee said;—"The Sections 6, 7 and 8 proposed by Clause IV of the Bill have now been drafted as Explanations, as we are of opinion that when the Kudiyan's right as an owner is declared, these provisions would come more appropriately as Explanations rather than as direct enactments conferring a right or imposing an obligation.

The proposed Sections 6 and 7 lay down Rules for the apportionment of the Jenmikaram having regard to the Settlement Pattamicham or the Sirkar tax charged or chargeable on a land. The proposed Section 8 is only the proposed Section 17 (2) of the Bill transferred to this place and adapted to the scheme of things now proposed."—*Para VIII, 8.*

Section 17 (2) of the Original Bill referred to above, as transferred here, was as follows:—"(2) Notwithstanding any usage or contract to the contrary, it shall not be lawful hereafter to enhance the existing rate of renewal fees or to claim in any case, as renewal fees, any amount exceeding twenty-five per cent. of the Kanom.

III. At the final reading of the Bill, the word "thirty" was substituted for the word "twenty-five" on the motion of a Non-official member.—

L. C. P., dated 13-8-1932.

Jenmikaram, first charge on land.

9. The Jenmikaram of a holding together with the interest, if any, due thereon, when it becomes an arrear, shall be claimable by the Jenmi and shall, subject to the priority of the rights of Our Government, be a first charge on the holding.

Kudiyan's liability on Jenmi's right being transferred.

10. No Kudiyan shall, when, without his consent, the Jenmi's right in any Jenmom land is transferred by sale, gift or otherwise, be liable to the transferee for the Jenmikaram which became due after the transfer and was paid to the Jenmi whose right was so transferred unless the transferor or transferee has, before the payment, given notice of the transfer to the Kudiyan by registered Anchal or Post.

Kudiyan's liability on holding being transferred.

11. When a Jenmom land or holding is divided or is transferred by sale, gift or otherwise by the Kudiyan without the consent of the Jenmi, the Kudiyan shall continue liable for the Jenmikaram accruing due after such division or transfer unless and until notice by registered Anchal or Post of the division or transfer is given to the Jenmi by any sharer or by the transferor or transferee, as the case may be, and until pokkuvaravu is effected in the Land Revenue records in accordance with the division or transfer.

Explanation.—This provision does not affect any liability of any sharer or transferee as between such person and other sharers or the transferor, as the case may be, to pay the Jenmikaram.

Sec. 9: In the original Bill, the words "and the penalty" occurred after the word "interest." The First Select Committee omitted them, "in view of the decision of the majority that no penalty shall be payable by the Kudiyans as proposed in the Bill.—*Para 22.*

Sec. 10: I. In the original Bill, there was also a Sub-section—(2):—"(2) When there are more Kudiyans than one paying Jenmikaram to the Jenmi whose interest is transferred, a general notice from the transferor or transferee to the Kudiyan, published in the prescribed manner shall be a sufficient notice for the purposes of this Section."

II. The First Select Committee omitted this Sub-section, and added the words "by registered Anchal or Post" at the end of the main Section.—*Para 23.*

III. The Second Select Committee redrafted the Section "to suit the proposed scheme of things."—*Para VIII, 10.*

Sec. 11: I. This Section was, in the original Bill, as follows:—"11. When a Kudiyan's holding is transferred by sale, gift or otherwise, without the consent of the Jenmi, the Kudiyan shall continue liable for all Jenmikaram accruing due after the transfer unless and until notice of the transfer is given to the Jenmi by the transferor or transferee."

12. No division of the Jenmi's right in any Jenmom land shall be binding on the Kudiyan thereof, unless it is made with the consent of the Kudiyan or notice thereof is given to the Kudiyan by registered Anchal or Post informing him of the prescribed particulars of the division, and the Jenmikaram which may become due subsequent to such division made without such consent may until the receipt of the notice be paid to the Jenmi entitled thereto before such division.

Kudiyan's liability on Jenmi's right in land being divided.

II. The above Section was re-drafted by the Second Select Committee with some change. See under next Section.

Sec. 12. I. The Section was as follows in the original Bill :—"12. (1) No division of a holding or distribution of the Kanom or Jenmikaram charged thereon shall be binding on the Jenmi unless it is made with his consent and all Jenmikaram which may become due subsequent to such division or distribution made without such consent shall continue to be a charge on each and every portion of the holding, and may be recovered from the Kudiyan bound to pay Jenmikaram prior to such division or distribution as the case may be.

Explanation.—If any Kudiyan gives notice to the Jenmi by registered Anchal informing him of the particulars of the division or distribution and the Jenmi does not within twenty-one days of that notice notify in reply by registered Anchal that, for reasons stated, he considers the distribution unfair and inequitable to his interest and therefore withholds his consent, he shall be deemed to have consented to the division and distribution given notice of.

(2) No division of the Jenmi's interest in any holding or the distribution thereon of the Jenmikaram due to him shall be binding on the Kudiyan thereof, unless it is made with the consent of the Kudiyan, and all Jenmikaram which may become due subsequent to such division made without such consent may be paid to the Jenmi entitled thereto before such division.

Explanation.—If any Jenmi gives notice to the Kudiyan by registered Anchal informing him of the particulars of the division or distribution and the Kudiyan does not within twenty-one days of that notice notify in reply that, for reasons stated, he considers the distribution unfair and inequitable to his interests and therefore withholds his consent, he shall be deemed to have consented to the division and distribution given notice of.

(3) When the Jenmi or the Kudiyan as the case may be withholds his consent the aggrieved party may institute a regular suit in a Civil Court of competent jurisdiction for the recognition of the division and for the distribution of the Kanom and Jenmikaram in a fair and equitable manner.

Explanation.—"In a fair and equitable manner" means without prejudice to the interests of the Kudiyan or of the Jenmi."

See *S. O & R.*, (*4*).

II. The First Select Committee omitted the Explanations to Sub-sections (1) and (2) and made some changes in the three Sub-sections. They said :—

"As regards the division of a holding or the distribution of Kanom or the Jenmikaram or the division of the Jenmi's interest, it is felt desirable that both the Jenmis and Kudiyans should have the right to do so without necessarily securing the consent of the other party. An intimation of the proposed change is certainly desirable. The jurisdiction of the Courts to grant relief against any inequitable

13. Notwithstanding any usage or contract to the contrary, it shall not be obligatory on the Jenmi to renew, or on the Kudiyan to accept the renewal of, a contract of Kanapattom.

Renewals not obligatory.

14. (1) Notwithstanding any usage or contract to the contrary, the Jenmikaram of any land shall not be liable to alteration or revision at any time except after any future general Land Revenue Settlement by Our Government.

Revision of Jenmikaram.

(2) Whenever Our Government make any general Land Revenue Settlement in the future and the amount of the Settlement pattamicham at that Settlement and the amount of the then existing Jenmikaram in respect of any Jenmom land are found to differ, the Jenmikaram shall be liable to be enhanced or reduced as the case may be in the proportion that the Settlement pattamicham bears to the Jenmikaram :

---

division or distribution is affirmed. Hence the change in the proposed Section 12."— *Paras 25-29.*

III. The Second Select Committee substituted the following as Section 12 :—

"12. No division of the Jenmi's right in any Jenmom land shall be binding on the Kudiyan thereof, unless it is made with the consent of the Kudiyan or notice thereof is given to the Kudiyan by registered Anchal or Post informing him of the prescribed particulars of the division ; and the Jenmikaram which may become due subsequent to such division made without such consent or notice may be paid to the Jenmi entitled thereto before such division," They said :—

"This is only Section 12 (2) of the Bill, as revised by the Committee, re-drafted for the present purposes. Section 12 (1) has been incorporated in the Section 11 proposed by us."— *S. C. R., VIII, 12.*

IV. At the final reading of the Bill, on the motion of the Official Member in charge, the words "or notice" were omitted before the word "may" and the words "until the receipt of the notice" inserted after that word.—

L. C. P., dated 20-12-1932.

Sec. 13 : I. The original Bill had after the word "Kanapattom" at the end, the following :—

"at any time after three years from the commencement of the Amendment Regulation except in execution of a decree passed by a competent Civil Court in a suit instituted before, or within three years from, the commencement of the Amendment Regulation."

See *S. O & R.*, (*3*) and (*5*)

II. The Second Select Committee omitted all the above words, "as the Jenmikaram is proposed to be paid in lieu of all the rights of the Jenmi, there is no real scope for any renewal thereafter."—

S. C. R., VIII, 13.

Sec. 14 : I. In the original Bill, this Section was as follows :—"14. (1) Subject to the limitations and conditions laid down in Chapter III, every Jenmi may enhance the Michavaram payable by a Kudiyan,

(*a*) by increasing the Pattom assessment on the holding, or

Provided that in no case shall any Jenmikaram be enhanced by more than ten per cent. thereof :

Provided also that in the case of the Land Revenue Settlement next following that now in force no Jenmikaram of any land shall be enhanced if within twelve years preceding the date of the commencement of the operations for such Settlement there has been an enhancement of Michavaram in respect of that land.

Explanation 1.—If there is no difference between the amount of the Settlement pattamicham at any future Revenue Settlement and the amount of the then existing Jenmikaram, such Jenmikaram shall continue to be the Jenmikaram during the currency of such Settlement also.

(*b*) by reducing the rate of interest allowed to the Kudiyan on the Kanam if such rate is in excess of the rate usually allowed to Kudiyans holding on Kanappattom in the same Pakuthi, or

(*c*) by both the modes (*a*) and (*b*) :

Provided that the modes (*b*) and (*c*) mentioned above shall be available to a Jenmi only once and that within twelve years from the commencement of the Amendment Regulation.

Explanation.—No Ettartham shall be levied by any Jenmi after the commencement of the Amendment Regulation.

(2) Subject to the limitations and conditions laid down in Chapter III, every Kudiyan may reduce the Michavaram by decreasing the Pattom assessment on the holding."

II. The First Select Committee deleted in Sub-section (1) the heading "(*a*)" in the proposed sub-clause (*a*) and also sub-clauses (*b*) and (*c*) and the Proviso.

They said :—"The majority of us are of opinion that the Jenmi should not be allowed to enhance the Michavaram on the ground of a fall in the rate of interest usually allowed to Kudiyans in the same Pakuthy. TheKudiyan is not allowed under the existing law to seek for a reduction of the Michavaram on the ground that the rate of interest allowed in the Kanom deed is below the rate prevailing in the same Pakuthy. It was also suggested that the prevailing tendency is for a rise in the rate of interest and not a fall throughout the country and that therefore there was no justification for allowing the Jenmi to move for a further reduction of interest for the purpose of enhancing the Michavaram. Hence the proposed change."—

S. C. R., para 30.

III. The Second Select Committee substituted the following Section :

"14. For the proposed Section 14, the following shall be substituted, namely :—

"14. (1) Notwithstanding any usage or contract to the contrary, the Jenmikaram of any land shall not be liable to alteration or revision at any time except after any future general Land Revenue Settlement by Our Government.

(2) Whenever Our Government make any general Land Revenue Settlement in the future and the Settlement pattamicham at that Settlement is found to differ from the amount of the Settlement pattamicham with reference to which any Jenmikaram has been fixed, that Jenmikaram shall be enhanced or reduced in proportion as the Settlement pattamicham at the later Settlement is larger or smaller than the Settlement pattamicham at the previous Settlement.

Explanation 2.—When the Settlement pattamicham or the Jenmikaram or both consist of paddy or other commodity and money such commodity portion shall, for the purposes of comparison, be commuted into money at the average commutation rate, the average being taken on the rates of the three years immediately preceding the date of such comparison. This average rate is intended only for the purposes of comparison, and when the Jenmikaram has to be enhanced or reduced in any proportion the commodity portion and the money portion shall each be enhanced or reduced, as the case may be, in that proportion.

(3) Except under the provisions of this Section, the Jenmi shall not be entitled to claim any enhanced Jenmikaram and the Kudiyan shall not be entitled to reduce the Jenmikaram.

(4) The enhanced Jenmikaram or the reduced Jenmikaram due on a land, as the case may be, shall be payable from the 1st day of Chingom in the year next following that in which the Revenue Settlement comes into operation in respect of that land, and with effect from that day the enhanced Jenmikaram or the reduced Jenmikaram, as the case may be, shall be the Jenmikaram due thereon."

They said :—

"According to the proposed scheme of things, the Jenmikaram is expected to be permanent and, in any event, not liable to alteration by the mere act of the parties. When a further Revenue Settlement takes place and the Settlement pattom is increased or reduced, it is fair to presume that the productivity or yield of the land has also correspondingly increased or reduced. On that basis, the Jenmi would be entitled to enhance the Jenmikaram and the Kudiyan to reduce the Jenmikaram, as the case may be, in like manner as the Settlement pattom has increased or gone down. It is, therefore, provided that any alteration of Jenmikaram can take place only after a general Revenue Settlement and having regard to the result of that general Revenue Settlement."—

S. C. R., VIII, 14,

IV. (A) When the Select Committee's Report was considered by the Council, a Non-official Member moved to substitute the following for Sub-section (2) of Section 14, and it was passed :

"*Section 14.* (2). Whenever Our Government make any general Land Revenue Settlement in the future, and the amount of the Settlement pattamicham at that Settlement and the amount of the then existing Jenmikaram in respect of any Jenmom land are found to differ, the Jenmikaram shall be liable to be enhanced or reduced as the case may be in the proportion that the Settlement pattamicham bears to the Jenmikaram :

"Provided that in no case shall any Jenmikaram be enhanced by more than ten per cent. thereof :

"Provided also that in the case of the Land Revenue Settlement next following that now in force no Jenmikaram of any land shall be enhanced if within twelve years preceding the date of the commencement of the operations for such settlement there has been an enhancement of Michavaram in respect of that land.

"*Explanation I.*—If there is no difference between the amount of the Settlement pattamicham at any Revenue Settlement and the amount of the then existing Jenmikaram, that Jenmikaram shall continue to be the Jenmikaram during the currency of that Settlement also."

"*Explanation 2.*—When the Settlement pattamicham or the existing Jenmikaram

(3) From and after the 1st day of Chingom 1108 no enhancement or reduction of the Jenmi's dues, whether Jenmikaram or Michavaram, shall be made otherwise than in accordance with the provisions of this Regulation; and even if a Court has decreed contrariwise on or after the said 1st day of Chingom 1108, the Court shall review that decision and pass a decision in accordance with the provisions of this Regulation on application being made for the purpose by any aggrieved party within six months of the commencement of the Amendment Regulation.

---

or both consist of paddy and money, the paddy portion shall, for the purposes of comparison, be commuted into money at the average commutation rate, the average being taken on the rates of the three years immediately preceding. This average rate is intended only for the purposes of comparison and when the Jenmikaram has to be enhanced or reduced by any percentage, the paddy portion and the money portion shall each be enhanced or reduced, as the case may be, by that percentage."

In moving the above amendment, the Member said :—"This amendment is now being moved as a result of an agreement arrived at in the conference.... The Jenmi members have also agreed to this amendment. * * *

"At present, the Jenmies have the right to enhance the michavaram due to them, under Regulation V of 1071. There have been loud complaints against the difficulties and hardships experienced by the Kudiyans, on account of a number of litigations started by the Jenmies to get the michavarom enhanced. The Jenmies also had to undergo many difficulties to get the michavaram enhanced. To avoid such litigation and hardship, the members came to the understanding that the enhancement or reduction could be made only when the Government tax on such lands are revised at the times of future Settlements. It is stated here that the Jenmikaram should be enhanced in the proportion which the Settlement pattamicham bears to the present Jenmikaram."

"There are two exceptions to this Rule in the amendment. One is that the enhancement should not be by more than 10 per cent. Even in the present Regulation, there is a provision that the enhancement should not be unfair or inequitable. The application of that provision has not been giving satisfaction to any of the parties. It was therefore thought that restriction must be imposed with regard to the extent to which the Jenmikaram can be enhanced.

The other exception contained in the amendment is that if the michavaram had been enhanced within the last 12 years preceding the next general Land Revenue Settlement, it could not be enhanced at the next Settlement, since, at the revision within the 12 years preceding the Settlement, the increase in the yield of the property must have been taken into consideration. There should therefore be no further revision of the michavaram so soon after revision once."

The Member further said :— "This amendment relates only to enhancement; reduction is not usual because usually cultivation improves, larger area is brought under cultivation and yield is larger. That is why while it is provided that enhancement should not be by more than 10 per cent, there is no restriction as regards reduction. If the yield, in exceptional cases, goes down owing to causes which could not have been prevented by the Kudiyan, then the necessary reduction is effected without any restriction."

The Official Member in charge, in supporting the amendment, said :—"It is the

Explanation.—Nothing in the Travancore Limitation Regulation (VI of 1100) or the Code of Civil Procedure, 1100, shall be deemed to bar such applications for review.

(4) The enhanced Jenmikaram or the reduced Jenmikaram due on a land, as the case may be, shall be payable from the 1st day of Chingom in the year next following that in which the Revenue Settlement comes into operation in respect of that land, and with effect from that day the enhanced Jenmikaram or the reduced Jenmikaram, as the case may be, shall (in case there be enhancement or reduction) be the Jenmikaram due thereon."]

---

result of a long discussion, but a unanimous conclusion. * *. In the discussion at the conference, the integral parts of the agreement arrived at were, *. (1) that this amendment, the text of which was itself approved by the conference should be moved * and accepted by the Jenmies, and (2) that the non-Jenmi members should agree to give effect to certain special provision relating to cherikkal lands—the text of that amendment bas itself not been accepted by the conference, but I have now worded it tentatively and may move it in its final form at the third reading of the Bill. In regard to the cherikkal lands, the Jenmies want a special provision to last until the next Revenue Settlement. That has been agreed to by practically all the members, and that also is an integral part of the agreement arrived at. *."—

L. C. P., dated 9-12-1932.

(B) The same Non-official member moved the substitution of the following for Sub-section (3) and the amendment was carried: —"(3) From and after the 1st day of Chingom 1108, no enhancement or reduction of the Jenmi's dues whether Jenmikaram or Michavaram shall be made otherwise than in accordance with the provisions of this Regulation; and even if a Court has decreed contrariwise on or after the said 1st day of Chingom 1108, the Court shall review that decision and pass a decision in accordance with the provisions of this Regulation on application being made for the purpose by any aggrieved party within six months of the passing of the Amendment Regulation.

Explanation.—Nothing in the Travancore Limitation Regulation, VI of 1100, or the Code of Civil Procedure, 1100, shall be deemed to bar such application for review."

In moving the amendment, the Member said:—"This amendment is also the result of an agreement arrived at. The only object of the amendment is to prevent the Jenmies or the Kudiyans, who, fully knowing that there is every probability of this Bill becoming law in the near future and having rushed to the Court from frustrating the object of this measure. * * "— *L. C. P., dated 9-12-1932.*

(C) At the final reading of the Bill, the Official member in charge, moved a few amendments which were passed and which made the Section read as it stands in the Regulation.— *L. C. P., dated 20-12-1932.*

Case Law.

1. The suit was by a Jenmi for renewal of a kanom with enhancement of michavarom. The Court of first instance gave a decree in terms of the plaint on 10-12-1102. The lower appellate Court confirmed the decree of the trial Court on 30-12-1106. The defendant preferred the special appeal on 6-5-1107.

It was contended for the defendant in special appeal that, under Section 14, Clause (3), of the new Jenmi and Kudiyan Regulation the decree passed by the lower

Court in respect of the enhancement of the Michavaram had to be modified.

Held (accepting the contention of the defendant).—The High Court was bound to take notice of Section 14, Clause (3), of the new Regulation and pass a decree in accordance with the provisions thereof. The decree of the lower Court had, therefore, to be modified by holding that the plaintiff was not entitled to an enhancement of the Michavaram until a future settlement took place.

Under Section 14, it is clear that, after the first day of Chingom 1108, no decree can be passed otherwise than in accordance with the provisions of this Regulation which, by Section 14, Clause (1), enacts that no such enhancement as is in question in the suit can be effected except at a future settlement. No such new settlement having taken place, if the Court in second appeal passed a decree confirming the decree of the lower Court, that would be frustrating the object the Legislature had in view in enacting Section 14 (3). The earlier portion of the Clause clearly implies that no Court can from and after 1-1-1108 decree enhancement of Michavaram except in accordance with the Regulation. This is made clear from the provision that even if a Court has decreed contrariwise, the Court shall review, &c. If after the first day of Chingom 1108, no Court can pass such a decree, it must naturally include the Court (Appellate Court) which finally passes the only effective decree in the suit capable of execution and in whose decree the decrees of the lower Court become merged. Section 14 itself is manifestly on the face of it to some extent retrospective, as it alters the rights of the parties under the law existing at the time of the passing of the new Regulation. The High Court is bound to take notice of Section 14 and pass a decree in accordance with its provisions.—

49 T. L. R., *399* **(= 23 T. L. J.,** *784***)**

2. The special appeal was by the first plaintiff's legal representative and the second plaintiff in a suit for renewal of Kanom and recovery of Michavaram and other dues and also for enhancement of Michavaram by reduction of the rate of interest on the Kanom amount. The suit was instituted on 10-10-1092 and decreed on 24-6-1098. The District Court reversed the decree in appeal on 10-6-1103. The special appeal was heard after the enactment of Section 14 (3). On reference to a Full Bench the question whether in view of Section 14 (3) a decree for enhancement could be passed :

Held.—Per Venkita Rao and Gopala Menon, JJ.—The position that there is a merger of the original Court's decree in the decree of the appellate Court where the latter merely dismisses the appeal cannot be regarded as being entirely free from doubt. This difficult point however does not arise in the case inasmuch as the Munsiff's decree has been reversed in appeal and the plaintiff in this special appeal prays for a decree for enhanced Michavaram. It is quite clear that if we were to allow that claim we should be acting against the first part of Clause (3) of Section 14 of the Jenmi and Kudiyan (Amendment) Regulation which prohibits enhancement except as provided in this Regulation. The reason is that in decreeing the special appeal in such circumstances we shall be passing a decree which we are competent to pass and not merely restoring the first Court's decree which had been reversed by the District Court. The Court of appeal would not be merely declaring what should have been decided by the trial Court but passing its own decree with due regard to the facts and circumstances as they exist at the date of its decision.

Per Raman Tampi, J.—There can be only one decree in a case and that is the final decree. The decree of the High Court whether it affirms or reverses the decree of the lower Court is the final one and in passing such a decree, the law as it stands now has to govern the decree,

CHAPTER III.

Part A.—[Jenmikaram and its recovery.]

15. [(1) Every contract of Kanapattom made or renewed after the commencement of the Amendment Regulation shall, in addition to other particulars, specify—

Particulars of Kanapattom contract.

(*a*) the name, if any, the description and the extent of the holding, and

(*b*) the Settlement pattom, the Settlement pattamicham, the Jenmivaram and the Jenmikaram in respect of the land or each of the several parcels of land comprised in the holding.]

Explanation (3) of Section 14 is clear in its wording and imperative in its import. It enjoins that "from and after the first day of Chingom 1108 no enhancement or reduction of the Jenmi's dues whether Jenmikaram or Michavaram shall be made otherwise than in accordance with the provisions of this Regulation." The method of such reduction or enhancement provided is by a general Revenue Settlement undertaken by the Sirkar. It implies that Courts cannot decree either enhancement or reduction. So far it is clear that the question does not turn on the correct view as to whether the expression "Court" in the Explanation refers to the trial Court only or to the appellate Court (F. B.)— **24 T. L. J.**, *320*.

Chapter III.—Part A: I The heading to this Part, in Regulation V of 1071, was—"Of Michavaram and customary dues." For this, the orginal Bill substituted—"Of Jenmikaram and the Enhancement and Reduction of Michavaram."

II. The Second Select Committee put in the heading now found in the Regulation.—*Vide* Section V of Regulation XII, of 1108.

Sec. 15: *Vide* Sections VI and VI-A of Regulation XII of 1108.

II. In the original Bill, Sub-section (1) of Section 15 stood as follows:—

"(1) Every contract of Kanapattom made or renewed after the commencement of the Amendment Regulation shall, in addition to other particulars, specify:—

(*a*) the name, if any, the description and the extent of the holding;

(*b*) the Pattom assessed on the several parcels of wet land and dry land comprised in the holding, and in the case of garden land, the number of assessable trees thereon, if any;

(*c*) the amount of the Kanom and the interest thereon;

(*d*) the Michavaram;

(*e*) the amounts of the customary dues, if any, or the value thereof, and the cess payable annually, in lieu of such customary dues; and

(*f*) the amount or value of the renewal fees agreed upon and the percentage thereof payable annually as fractional fee in lieu of such renewal fees."

III. The first Select Committee made some changes in Clauses (*a*) and (*b*) in view to avoid dispute in future; and also substituted for Clause (*c*) the following:—

"(*c*) The amount of Kanom apportioned for the several parcels of wet lands and dry lands and garden lands if any comprised in the holding and the interest thereon".

(2) (*a*) If the [Jenmikaram or any portion thereof is] made payable in kind, it shall be specified according to the standard measure or Parah prescribed by Our Government or which may be agreed upon between the parties.

(*b*) If any local Parah or measure is used by the parties, the difference between it and the Government standard Parah must be set forth in the Kanapattom.

(3) Registering officers shall refuse to accept for registration any Kanapattom instrument unless it shall contain the particulars above set forth. The order of the Registrar shall be subject to appeal according to the provisions of the Registration Regulation for the time being in force.

They said :—"Some of us were of opinion that to facilitate apportionment or division in future, the particulars of Kanom and the interest apportioned over the several plots comprised in the Kanom deed should be inserted in the document. Hence the change."—*S. C. R.. Paras 31-33.*

IV. The Second Select Committee retained Clause (*a*) of the original Bill with slight changes, and for the other Clauses, substituted Clause (*b*) as it now stands in the Amendment Regulation.

They also added a new Section (VI-A) to the Amendment Regulation which substituted the words "Jenmikaram or any portion thereof is" for the words "Michavaram or other dues are" in Sub-section 2 of Regulation V of 1071.

V. Sub-sections (1) and (2) of Section 15 of the old Regulation were as follow : —

15. *Particulars of Kanapattom contract.*—(1) In every contract of Kanapattom granted or renewed after this Regulation comes into force,

(*a*) the name, description and extent of the holding,

(*b*) the Pattom assessed on the holding,

(*c*) the deductions therefrom on account of interest on the Kanom money,

(*d*) the amount of Michavaram agreed upon,

(*e*) the renewal fees and customary dues intended to be levied from the Kudiyan, and the rate at which and the occasions on which they are to be levied, and

(*f*) if customary dues are commuted under Section 26, the amount so commuted,

shall be distinctly specified.

(2) (*a*) If the Michavaram or other dues are made payable in kind, it shall be specified according to the standard measure or Parah prescribed by Our Government or which may be agreed upon between the parties.

(*b*) If any local Parah or measure is used by the parties, the difference between it and the Govetnment standard Parah must be set forth in the Kanapattom.

Secs. 16 –18 : These Sections were substituted by Section VII of Regulation XII of 1108, for Sections 16 to 18 of Regulation V of 1071, which were as follow :—

"16. *When suit or claim for renewal fees or customary dues to be entertained.*—No summary suit or claim for enforcing payment of renewal fees or customary dues

["16. No summary suit or claim for enforcing payment of any Jenmikaram shall be entertained by the Courts under this Regulation unless either the Jenmikaram or the renewal fees and customary dues, with reference to which the Jenmikaram has to be ascertained, are specified in the Kanapattom or its counterpart duly registered or in a decree of a Civil Court obtained in a regular suit between the Jenmi and the Kudiyan.

When summary suit will not lie.

---

shall be entertained by the Courts under this Regulation, unless such fees or dues, as the case may be, are specified in the Kanapattom or its counterpart duly registered.

Exception,—Nothing in this Section shall affect the Jenmi's right to recover summarily the renewal fees or customary dues under the existing Kanapattom though not expressly specified in the instrument of Kanapattom.

"17. *Payment of Michavaram, renewal fees, &c.*—Every Kudiyan shall pay his Jenmi the Michavaram, renewal fees and customary dues at such time and place as may be agreed upon between them in writing, and, in the absence of such written agreement, in the manner following, namely:—

(*a*) the annual Michavaram shall be paid on or before the thirtieth day of Audi of each Malabar year at the residence or at the granary (Sekarippoo) of the Jenmi, provided that such residence or Sekarippoo is within the Proverthi in which the holding is situated;

(*b*) customary dues, after demand—except in cases where they become due on recognised dates, such as Onakaloha;

(*c*) renewal fees, on or before the last day of the year following the period when the renewal of the Kanapattom ought to take place under Section 11.

Rate of interest in default of payment.—In default of such payment, interest shall be charged on the arrears from the date they become due, at the rate of 12 per cent. per annum when the arrears are payable in money, and of 18 per cent. per annum when the arrears are payable in kind.

"18. *Jenmi to renew Kanapattom on payment of renewal fees.*—On payment by the Kudiyan of the renewal fees, together with any arrears of Michavaram which may remain unpaid for the whole or any portion of the expired period of 12 years, the Jenmi shall renew the Kanapattom and the Kudiyan shall thereupon execute a counterpart of such Kanapattom:

Provided that when a Kanapattom and its counterpart containing the particulars specified in Section 15 and duly registered shall have been once before exchanged between a Jenmi and his Kudiyan, the parties may, by mutual agreement, dispense with the execution of a fresh Kanapattom and counterpart. In such cases, a receipt for payment of renewal fees shall, if duly registered, be deemed to operate to all intents and purposes as a renewal of the Kanapattom."

Sec. 16: I. This Section stood in the original Bill as follows:—

"16. No summary suit or claim for enforcing payment of any fractional fee or commuted cess shall be entertained by the Courts under this Regulation unless the renewal fees or customary dues, on which the fractional fee or customary dues, as the case may be, are based or specified in the Kanapattom or its counterpart duly registered or in a decree of

17. (1) Subject to the provisions of this Regulation every Jenmi shall be entitled to receive and every Kudiyan shall be bound to pay in respect of all land in the latter's holding the Jenmikaram due thereon, and notwithstanding any contract or usage to the contrary the Jenmi shall not be entitled to receive and the Kudiyan shall not be bound to pay anything else in respect of the land.

Jenmikaram alone payable to Jenmi with interest if in arrears.

(2) The Jenmikaram shall be payable in such instalments and on such dates as Our Government may, by Rules made under this Regulation, prescribe, or, in the absence of such Rules, at or before the close of each Malabar year.

Civil Court obtained in a regular suit between the Jenmi and the Kudiyan."

II. The first Select Committee made a drafting amendment by substituting, for the words "customary dues" before the words "as the case may be", the words "commuted cess."—*S. C. R., Para 84.*

III. The Second Select Committee substituted the Section as it now stands in the Regulation.

Sec. 17: I. In the original Bill, the Section was as follows;—

"17. (1) Subject to the provisions of this Regulation, every Jenmi shall be entitled to receive, and every Kudiyan shall be bound to pay, in respect of all land in the latter's holding, the several items of Jenmikaram due thereon and no dues or cesses other than those specified in a contract of Kanapattom or in a decree of Court passed in modification or on the basis of such contract shall be claimable by a Jenmi or payable by a Kudiyan.

(2) Notwithstanding any usage or contract to the contrary, it shall not be lawful hereafter to enhance the existing rate of renewal fees or to claim in any case, as renewal fees, any amount exceeding twenty-five per cent of the Kanom.

(3) Notwithstanding any usage or contract to the contrary, when renewal fees or customary dues are payable according to the terms of a contract of Kanapattom made or renewed before or after the commencement of the Amendment Regulation, the Kudiyan shall be bound and entitled to pay such fees or dues in annual instalments of fractional fee or commuted cess, as the case may be, before the close of each year, except with regard to such renewal fees or customary dues as have become arrears before the commencement of the Amendment Regulation:

Provided that, when according to the terms of any contract of Kanapattom, renewal fees are payable on the expiry of a specified period and part only of such period has expired before the commencement of the Amendment Regulation an amount which bears to the aggregate amount or value of such renewal fees the same proportion as the expired part of the period bears to the whole period specified in the contract, shall be payable by the Kudiyan to the Jenmi without interest within three years from the commencement of the Amendment Regulation or with interest at six per cent per annum thereafter within a further period of three years, and the remaining portion of such renewal fees shall be payable in annual instalments of fractional fee.

(4) Michavaram shall be payable in instalments according to agreement, or when there is no agreement, in such instalments and on such dates as Our Government may, by Rules made under

(3) The Jenmikaram or any instalment of Jenmikaram payable on any date, if it is not paid on or before that date, shall become an arrear on the first day after that date.

(4) An arrear shall bear simple interest at the rate of nine per cent. per annum when it is payable in money or in paddy, and at the rate of six per cent. per annum if it is collected or recovered by Our Government under the provisions of Chapter IV.

---

this Regulation, prescribe, or in the absence of such Rules or agreement, in two equal half-yearly instalments before the close of the month of Vrischikom and the month of Edavom respectively.

(5) An instalment of fractional fee or commuted cess payable before the close of any year becomes, if not paid accordingly, an arrear on the first day of the ensuing year.

(6) An instalment of Michavaram not paid on the day on which it falls due becomes an arrear on the following day.

(7) (*a*) An arrear shall bear simple interest at the rate of twelve per cent. per annum when it is payable in money and of eighteen per cent. per annum when it is payable in paddy.

(*b*) In case any arrear remains unpaid for a period of three years consecutively, the Kudiyan shall be liable to pay, besides the interest, a penalty also of a sum equivalent to twelve and a half per cent. of that arrear for the fourth year that it remains unpaid, another sum of twelve and a half per cent of the arrear for the fifth year that it remains unpaid and yet another sum of twelve and a half per cent of the arrear for the sixth year that it remains unpaid :

Provided that no such penalty shall be payable in respect of any existing arrears if they are paid up before the expiry of two years from the commencement of the Amendment Regulation."—

See *S. O & R., Paras 6, 5 and 2.*

II. The First Select Committee substituted the following for Sub-section (4) :—

"(4) In the absence of any agreement to the contrary Michavaram shall be payable by the Kudiyan to the Jenmi at or before the close of each Malabar year." The majority of the Committee were "of opinion that there was no necessity for providing for payment by instalment."—

S. C. R., Para 35.

The Committee also substituted the word "The" for the words "An instalment of" in Sub-section 5, and in Sub-section (7) deleted Sub-clause (*b*) and the proviso and in Sub-clause (*a*) substituted "nine" for "twelve" and the word "or" for the words "and of eighteen per cent. per annum when it is payable."

They said :—"The majority are of opinion that the existing rates of interest are very high and that they should be reduced to a uniform rate of nine per cent. both for money and for paddy. They are also of opinion that no penalty should be allowed as the interest allowed must be a sufficient compensation to the Jenmi for the delay in the payment of the dues by the Kudiyans. Hence the above alterations."— *S. C. R., Paras 36-38.*

III. The Second Select Committee substituted the following for the proposed Section :—

"17. (1) Subject to the provisions of this Regulation every Jenmi shall be entitled to receive and every Kudiyan shall be bound to pay in respect of all land in the latter's holding the Jenmikaram due thereon and notwithstanding any contract or usage to the contrary the Jenmi shall not be entitled to receive and the Kudiyan shall not be bound to pay anything else in respect of the land.

Renewal fees for expired period how payable.

(5) When according to the terms of any contract of Kanapattom renewal fees are payable on the expiry of a specified period and part only of such period has expired before the commencement of the Amendment Regulation, an amount which bears to the aggregate amount or value of such renewal fees the same proportion as the expired part of the period bears to the whole period specified in the contract shall be payable by the Kudiyan to the Jenmi without interest within three years from the commencement of the Amendment Regulation or with interest at six per cent. per annum thereafter within a further period of three years.

Jenmikaram payable only in money.

18. Where the Jenmikaram or any portion of it consists of paddy or other commodity the Kudiyan shall be entitled to pay in money the value of such paddy

---

(2) The Jenmikaram shall be payable in such instalments and on such dates as Our Government may, by rules made under this Regulation, prescribe, or in the absence of such rules, at or before the close of each Malabar year.

(3) The Jenmikaram or any instalment of Jenmikaram payable on any date if it is not paid on or before that date, shall become an arrear on the first day after that date.

(4) An arrear shall bear simple interest at the rate of nine per cent. per annum when it is payable in money or in paddy.

(5) When according to the terms of any contract of Kanapattom, renewal fees are payable on the expiry of a specified period and part only of such period has expired before the commencement of the Amendment Regulation an amount which bears to the aggregate amount or value of such renewal fees the same proportion as the expired part of the period bears to the whole period specified in the contract shall be payable by the Kudiyan to the Jenmi without interest within three years from the commencement of the Amendment Regulation or with interest at six per cent. per annum thereafter within a further period of three years."

They said :—"This amendment is proposed to suit the proposed arrangement of paying the Jenmikaram to the Jenmi in lieu of all his rights. The dates for payment and the interest for arrears have been fixed as in the Bill revised by the previous Select Committee."—

S. C. R., VIII, Para 19,

IV. When the Bill was considered by the Council, a Non-official member moved an amendment (which was carried) to add, at the end of Sub-section (4), the words "and at the rate.....Chapter IV." He said :—"Government have undertaken to collect the dues of Jenmis under the Revenue Recovery Regulation. Chapter IV is drafted for the purpose. The Jenmi is at a very great advantage with regard to that matter and when he is assured of speedy realisation and when the machinery of Government is available to him for collecting it, it is only proper that he should not be given more than six per cent. interest on the arrears realised."—

L. C. P., dated 9-12-1932.

Sec. 18: I. This Section stood as follws in the original Bill :—"18. (1) The Jenmikaram payable in paddy shall be paid at the Jenmi's residence or granary, if any,

or other commodity at the commutation rates fixed under the provisions of Section 46."]

19. Every Kudiyan paying [any Jenmikaram] shall be entitled to a receipt specifying—

Contents of receipt for Jenmikaram.

(*a*) the date of payment,

(*b*) the amount paid,

(*c*) the period for which it is paid,

(*d*) the holding in respect of which it is paid, and

(*e*) such other particulars as may be necessary to elucidate the transaction.

Sections 20-26: [Omitted.]

---

within the Pakuthi in which the holding is situated.

(2) Where the Jenmi has no residence or granary within that pakuthi, he may notify the Kudiyans of the holdings in that pakuthi that they may produce the paddy for payment at some specified place within that pakuthi at specified hours on specified dates in which case the Kudiyan shall make the payment there; in the absence of any such notification or in case there is none to receive any paddy tendered at the place and time notified, the Kudiyan shall not be bound to make the payment in paddy.

(3) When the Kudiyan is not bound to make payment of any Jenmikaram in paddy he may make the payment of the amount of the Jenmikaram in mouey including the money value at the then current market rate of any portion of the Jenmikaram payable in kind either personally to the Jenmi or to his agent or remit the same, to the Jenmi by Anchal Hundi or Postal Money Order,"

See *S. O & R.*. (7).

II. The Select Committees passed the above provision. When the Bill was considered by the Council, the Section now found in the Regulation was put in, on the motion of a Non-official Member.—

L. C. P., dated 9-12-1932.

Sec. 19: Section VIII of Regulation XII of 1108 substituted the words within brackets for the words "Michavaram or customary dues."

Secs. 20-26: I. Section IX of Regulation XII of 1108 omitted these Sections of Regulation V of 1071.

II. **1.** The original Bill contained Sections 20 to 26, which were modifications of the corresponding ones in Regulation V of 1071. To these, the Bill added two more Sections—26-A and 26-B.—

See *S. O & R., Paras 3, 8, 9, 10 and 11.*

2. The First Select Committee adopted these provisions with changes.—

S. C. R., Paras 39-56.

3. The Second Select Committee, however, omitted all of them, "as there is no enhancement or reduction of Michavaram or of Jenmikaram hereafter except in the manner already provided.—

S. C. R. VIII, 20.

III. Sections 20 to 26 of Regulation V of 1071 were as follow:—

"20. *Revision of terms on renewal of Kanapattom.*—(1) Every revision or re-adjustment of the terms of a Kanapattom at the end of 12 years shall be made by a contract in writing duly registered.

(2) If the parties cannot agree as to the terms of such revision or re-adjustment

or as to the amount of additional Kanom or Ettarthom, the Jenmi or the Kudiyan, as the case may be, may institute a regular suit in a Civil Court of competent jurisdiction for the purpose of compelling the other party to accept the terms proposed by him, or such other terms as to the Court may seem fit.

(3) Notwithstanding anything contained in the Stamp Regulation, no such contract of Kanapattom executed in renewal of a prior contract of Kanapattom shall be subject to stamp duty when the annual Michavaram reserved in such renewed Kanapattom does not exceed Rs. 50 in value.

(4) In the absence of an express contract to the contrary, the cost of stamp and registration of Kanom deeds shall be borne by the Kudiyan, and the cost of stamp and registration of counterparts or Kychits by the Jenmi.

"21. *When Jenmi entitled to claim enhancement of Pattom.*—The Jenmi of a holding shall not be entitled to claim an enhancement of the Pattom assessment fixed under any existing Kanapattom except on one or more of the following grounds, *viz* :—

(*a*) In the case of paddy lands,

(1) that the area of the holding actually under cultivation is in excess of the area on which the Pattom was previously fixed,

(2) that the rate of current Pattom is below the prevailing rate for lands of a similar description and quality, with similar advantages in the same Elai or Muri, and that there is no reason for the holding being assessed at so low a rate,

(3) that the productive powers of the land comprised in the holding, as compared with those powers at the time when the current Pattom was fixed, have increased from causes not merely temporary or casual.

(*b*) In the case of other lands, in addition to the foregoing grounds,

(4) that the number of trees in the holding on which Pattom is assessable has increased,

(5) that there has been a substantial rise in the average local prices of the produce of those trees during the currency of the previous Kanapattom.

(*c*) In the case of either description of land,

(6) that, after this Regulation comes into force, the Kudiyan erects factories, shops or other buildings, not being erections referred to in (*e*) of Explanation I to Clause 14 of Section 3, and the annual rental value of the holding has thereby increased.

When the excess to the area under cultivation or the increase in the productive powers of the land is due to reclamation or other works of permanent improvement effected at the expense of the Kudiyan, the cost of such reclamation or other works of improvement shall be estimated and interest on the capital outlay so estimated shall be deducted from the difference between the old and new assessment and allowed to the Kudiyan at the same rate at which the interest on the Kanom money is allowed to the Kudiyan under the Kanapattom.

Where an enhancement is allowed on garden lands, Nadavukoor or deduction on account of the cost of planting and rearing the trees sought to be assessed with the Pattom, shall be allowed to the Kudiyan at such rate as may have been agreed upon between him and the Jenmi, and, in the absence of such agreement, at the usual rate prevailing in the Proverthi in which the land is situated.

Where enhancement is allowed on the ground mentioned in Clause (6), the rental value shall be the annual rental of the building according to the rates prevailing in the neighbourhood less interest at 6 per

cent per annum on the value of such building and the cost of maintenance.

"22. *Rate of assessment of pattom.*—

(*a*) The Pattom on paddy lands shall not exceed one-fourth of the gross produce.

(*b*) The Pattom on other lands shall, in like manner, not exceed one-fourth of the estimated average annual yield of the trees growing thereon, commuted into money at the average market rate, the average being based upon the market price of the different kinds of staple produce for 12 years preceding. If no such trees exist, the Pattom shall be taken to be equal to the Payattupattom prevailing in the Proverthi.

(*c*) The Pattom on buildings shall be one-half of the rental value fixed under the last para of the preceding Section,

(*d*) The Pattom so assessed shall be subject to deduction on account of interest on the Kanom money, but not on account of existing Sirkar tax or customary dues and renewal fees which shall be paid by the Kudiyan out of his share of the produce.

Provided that the existing Pattom shall not be disturbed for the reason only of its being above or below the proportion fixed under this Section.

"23. *Amount of Ettartham leviable on renewal of Kanapattom.*—The amount of additional Kanom or Ettarthom leviable by the Jenmi at the time of renewal of Kanapattom, when such is leviable under the provisions of this Regulation, shall not, without the consent of the Kudiyan, exceed six times the amount of the enhanced Michavaram which would have been payable by the Kudiyan, had the Jenmi claimed such enhancement under the provisions of Sections 20 and 21.

"24. *Kudiyan may claim reduction of Pattom in certain cases.*—A Kudiyan may, at the time of renewal, claim reduction of Pattom on the grounds,—

(*a*) that the area of his holding has been diminished, not by his neglect, but by the action of sea, river or lake, or like causes,

(*b*) that the soil of the holding has, without the fault or neglect of the Kudiyan, become permanently deteriorated,

(*c*) that, in the case of gardens, there has been a fall in the average local prices of the produce of the trees in the holding during the currency of the current Kanapattom,

(*d*) that the number of assessable trees in the holding has substantially diminished by causes not preventable by the Kudiyan,

(*e*) that the rate of the current Pattom of his holding is above the prevailing rate for similar lands in the village in which it is situated.

"25. *Courts not to decree unfair enhancement or abatement.*—Notwithstanding anything in the foregoing Sections, the Court shall not in any case decree any enhancement or abatement which is, under the circumstances of the case, unfair or inequitable.

"26. *On transfer of Jenmom right, Kudiyan entitled to have customary dues commuted into fixed annual payment.*—In the case of a transfer of Jenmom right, it shall be competent to the Kudiyan to call upon the transferee to commute customary dues into fixed annual payment. The transferee shall comply with such demand. If they disagree as to the rate of commutation, the Court shall decide what shall be the fair and equitable rate."

Part B.—[Summary recovery and deposit of Jenmikaram.]

[26-A. (1) It shall be competent to the Jenmi of any holding, without prejudice to any other right of action that he may have, to make an application to the Tahsildar of the Taluk in which the holding is situated to recover the arrears of any Jenmikaram in respect of that holding :

Jenmi may apply to Tahsildar to recover Jenmikaram under Revenue Recovery processes.

Provided that the arrears are not more than one year old on the date of the application.

(2) The application shall be in such form and shall contain such particulars as may be prescribed by Our Government and shall be signed and verified by the Jenmi in the manner prescribed by the Code of Civil Procedure, 1100, for the signing and verification of plaints.

(3) The applicant shall from time to time pay to the Tahsildar such fees as may be prescribed by Our Government for the several processes that may be necessary for realising the arrears. The applicant shall be entitled to a refund of any portion of such fees that may remain unexpended at the termination of the proceedings.

(4) If the Tahsildar is satisfied that the application has been duly presented, that the arrears are due from the Kudiyan, that the applicant is entitled to recover them and that they are not more than one year old on the date of the application, he shall proceed to recover the amount of the arrears and interest and the fees paid under Sub-section (3) by the applicant as if they were an arrear of public revenue due to Our Government and the provisions of the Revenue Recovery Regulation, I of 1068, (as amended by Regulations III of 1087, VIII of 1094, X of 1097 and II of 1099) shall *mutatis mutandis*, apply to all the proceedings.

(5) (*a*) The amount that is recovered shall be paid by the Tahsildar to the applicant on taking a receipt from him in a form as near as may be to that contemplated by Section 19.

Part B : The Heading of Part B was, in Regulation V of 1071, "Deposit of rent and customary dues in Court." The present heading was substituted by Section X of Regulation XII of 1108.

Sec. 26-A. 1. This Section was inserted by Section XI of Regulation XII of 1108.

2. The original Bill contained this Section and was adopted as such without modification.

(*b*) A copy of the receipt with the attestation of the Tahsildar shall be given free of cost to the Kudiyan if he applies for it.

Explanation.—Nothing in this Section shall be deemed to bar the right of civil suit which any aggrieved party may have in law.]

Jenmikaram may be deposited by Kudiyan.

[27. (*a*) When a Jenmi refuses to accept Jenmikaram tendered by the Kudiyan, or

(*b*) when the Kudiyan in any case is doubtful as to the person entitled to receive the Jenmikaram,

the Kudiyan may make an application to the Court of the District Munsiff having jurisdiction over the place where the holding or any part of it is situated for permission to deposit in such Court the entire amount of the Jenmikaram due in respect of the holding till then together with the interest due thereon under this Regulation.]

Contents of the application.

28. The application shall specify, as far as possible,—

(*a*) the name of the Jenmi and his description when known, and, in case of doubt, the name and description of all the rival claimants,

(*b*) the local name, description and extent of the holding,

(*c*) the particulars of the tenure on which the holding is held by the Kudiyan,

---

Sec. 27: I. This Section was substituted for Section 27 of Regulation V of 1071, by Section XII of Regulation XII of 1108.

II. 1. The original Bill contained the Section.—See *S. O & R.* (*12*).

2. The First Select Committee adopted the proposed Section with slight changes. —*S. C. R., Paras 59 & 60.*

III. The old Section was as follows:—

"27. *Kudiyan may apply to Munsiff's Court for leave to deposit Michavaram on Jenmi's failure to accept tender.*—If any Kudiyan tenders to the Jenmi full payment of Michavaram or renewal fees or other dues as they fall due, and if the Jenmi is not ready or willing to accept the tender and grant a receipt forthwith, or if the Kudiyan entertain a *bona fide* doubt as to the party entitled to receive the Michavaram and other dues, the Kudiyan may apply to the Munsiff's Court within whose jurisdiction the holding is situated, for leave to deposit such amount in Court to the credit of the Jenmi."

Sec. 28: I. Section XIII of Regulation XII of 1108 substituted Clause (*d*) for the old Clause (*d*) which was—"(*d*) the full amount of Michavaram or customary dues due up to date and."

[(*d*) the entire amount of the Jenmikaram and the interest due thereon up to date and the value, at the commutation rates, of such portion of it as is in kind,]

(*e*) the circumstances under which the application is made, and shall be verified in the manner prescribed by the Code of Civil Procedure for the verification of plaints.

Jenmikaram due up to date of application to be paid into Court.

29. The amount of [Jenmikaram] [* *] specified in Clause (*d*) of Section 28 shall be paid into Court at the time of the application, the price of grain or other commodities payable as [Jenmikaram] [and the interest, if any, due thereon] being commuted into money. [* *]

Procedure on deposit of Jenmikaram.

["30. (1) When such application as is aforesaid is made the Court shall grant the permission applied for and accept the deposit unless it appears on an examination of the applicant that the application has been made without justifying grounds or unless he has failed to pay the fee, if any, chargeable for the issue of the notice hereinafter referred to.

(2) The applicant shall be entitled to a receipt from the Court accepting the deposit, and the deposit, shall be deemed to be a payment made by the Kudiyan to the Jenmi in respect of the Jenmikaram or arrear due.

Further procedure on deposit.

31. (1) The Court accepting the deposit shall give notice of the same to every person who is reasonably believed to claim or to be entitled to the deposit, and may, after hearing such of them as may appear in Court, pay the amount thereof or remit the same less the

---

Sec. 29: I. Section XIV of Regulation XII of 1108 made amendments in the old Section, and these are shown in square brackets.

II. To facilitate reference, the old Section is reproduced below:—"29. The amount of Michavaram or other dues specified in Clause (*d*) of Section 28 shall be paid into Court at the time of the application, the price of grain or other commodities payable as Michavarom or dues being commuted into money at market rates."

Secs. 30 and 31: I. 1. These Sections were substituted by Section XV of Regulation XII of 1108.

2. They were in the original Bill.
See *S. O & R., Para 12.*

II. Sections 30 and 31 of Regulation V of 1071 were as follow :—

"30. *Munsiff to issue notice to Jenmi.*—The Munsiff shall, upon such payment as aforesaid, issue a notice to the Jenmi or other persons named in the application

Hundi or Money Order commission by Anchal Hundi or Postal Money Order to any person appearing to the Court to be entitled to the same or may, if it thinks fit, retain the deposit pending the decision of a competent Civil Court as to the person so entitled.

(2) Nothing in this Section shall affect the right of any party to institute a regular suit in a competent Civil Court to contest the payment, remittance or order made under Sub-section (1) or to recover the amount from the party, if any, to whom it has been paid or remitted under Sub-section (1) but, so far as the Kudiyan is concerned, the receipt granted under Sub-section (2) of Section 30 shall be deemed a full acquittance in respect of the amount covered by the receipt and shall have the same force and effect as a receipt granted by the person rightfully entitled to receive the amount."]

Applications under Part B to be exempt from Court fees.

32. Every application made under this Part B shall be exempt from payment of Court fees.

Part C.—[Of the Jurisdiction of Courts over petty claims for Jenmikaram]

Summary jurisdiction of Courts.

33. Claims by Jenmis for recovery of arrears of [Jenmikaram] shall, when the amount or value of such claim does not exceed Rs. 100, be taken cognizance of and disposed of summarily by the Courts hereinafter mentioned.

(1) District Munsiffs shall have jurisdiction in respect of all such claims where the amount or value of the claim does not exceed Rs. 30.

---

mentioned in Section 28, calling upon him or them to show cause why the payment should not be accepted and a receipt granted to the Kudiyan.

31. *Further procedure.*—(1) On the day fixed for the appearance of the parties, or on any other day to which the hearing of the application may be adjourned, the Munsiff shall hear the objections, if any, of the Jenmi or other parties claiming the right to receive the Michavaram and dues, and on being satisfied that the full amount due up to date has been paid into Court by the Kudiyan and that the Kudiyan is entitled to make the application, shall grant a receipt in the Form prescribed by Section 19.

(2) If the amount paid into Court be less than what is justly due to the Jenmi at the date of the application, the Munsiff shall reject the application and return the deposit, unless the Kudiyan offers to make good, and does make good, the deficiency within six weeks from the date of the order by the Munsiff to make good the same.

(3) In all cases where a receipt is granted by the Court, the deposit shall be paid over to the Jenmi or other party appearing on a summary investigation to be

(2) Zillah Judges shall have similar jurisdiction where the amount or value of the claim exceeds Rs. 30 but does not exceed Rs. 100.

Procedure for trial of non-appealable cases to be followed in summary suits under this Regulation.

34. Except as otherwise provided by this Regulation, the procedure prescribed by an law for the time being in force for the trial of non-appealable cases shall be the procedure to be followed by the District Munsiffs and Zillah Judges in all suits and proceedings summarily cognizable by them under this Regulation.

Where cause of action arises.

35. The cause of action for recovery of such claims shall be deemed to have arisen at the place where the holding, in respect of which the claim accrued, is situated, and the suit shall, subject to the provisions of Section 33, Clauses 1 and 2, be preferred to the Court within the local limits of whose territorial jurisdiction the cause of action shall have arisen as aforesaid.

Plaint when exempt from Court fees.

36. The plaint in such suit shall be exempt from payment of Court fees, if the claim be for recovery of arrears which accrued due within 12 months next preceding its institution; if otherwise, the regular Court fee which would have been levied, had the claim been instituted as a regular suit in a competent Court, shall be levied on the plaint.

Agent of Jenmi.

37. Any agent or Vicharippukaran of a Jenmi empowered in this behalf by a written authority under the hand of the Jenmi shall, for the purposes of a summary suit or application under this Regulation, be deemed to be

---

entitled to the deposit. In cases of dispute as to the person entitled to receive the deposit, the Munsiff may take security from the person in whose favour he adjudges in the summary investigation before making the payment.

(4) Nothing in this Section shall affect the right of any party to contest by a regular suit the decision passed under Clause (1) or to recover the amount paid from the party receiving the deposit under the summary order of the Court.

(5) A receipt granted by a Court under Clause (1) shall operate as a full acquittance for the amount paid into Court and shall have the same force and effect as a receipt granted by the Jenmi himself."

Part C: Section XVI of Regulation XII of 1108 substituted the present heading for the one in Regulation V of 1071, which was:—"Part C.—Of the Jurisdiction of Courts over petty claims for Michavaram and Customary dues."

a recognised agent of the Jenmi within the meaning of the Code of Civil Procedure, notwithstanding that the Jenmi may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending or in which the application is made.

Power of Court to decide question of title to immovable property or status.

38. If, in the decision of a suit cognizable summarily by a Munsiff or a Zillah Judge under Section 33, it becomes necessary to decide incidentally any matter in dispute between the parties to the suit, concerning title to immovable property or the status of either of them or of those under whom they claim, which, if it had been the immediate subject-matter of the claim, would not be cognizable by the Munsiff or the Zillah Judge under the procedure applicable to non-appealable cases, it shall be competent to the District Munsiff or the Zillah Judge, as the case may be, to decide such question of title to immovable property or status, so far as it may be necessary to do for the determination of the summary suit; but such decision shall not be conclusive evidence of such title or status in any other action between the same parties or their representatives.

Procedure when Kudiyan admits the money due but pleads title of third person.

39. (1) When a Kudiyan-Defendant admits that money is due from him on account of [Jenmikaram], but pleads that it is due not to the Plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea, unless the Defendant pays into Court the amount so admitted to be due.

(2) When such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months of the notice institutes a regular suit against the Plaintiff and therein obtains an order restraining payment of the money, it shall be paid over to the Plaintiff on his application.

Sec. 33: For the words "Michavaram, renewal fees or customary dues" which occurred in Section 33 of Regulation V of 1071, the word "Jenmikaram" was substituted by Section XVII of Regulation XII of 1108.

Sec. 39: Section XVIII of Regulation XII of 1108 substituted the word "Jenmikaram" for the words "Michavaram or renewal fees or customary dues" which occurred in Section 39 of Regulation V of 1071.

(4) Nothing in this Section shall affect the right of any person to recover from the Plaintiff the money paid to him under Clause (3) of this Section.

Decision of Munsiffs and Zillah Judges to be final.

40. The decision of Munsiffs and Zillah Judges passed in summary suits under this Part shall be final, but shall be subject to revision by the High Court in the manner provided for by Section [89 of the Code of Civil Procedure, 1100 :]

Provided that, no judgment, decree or order, in supersession of the decision or order of the subordinate Court, shall be passed by the High Court without giving the parties an opportunity of stating their case either in person or by Vakils.

["CHAPTER IV.

Collection and payment of Jenmikaram by Government.

Power of Government to assume collection of Jenmikarams.

40-A. It shall be lawful for Our Government to assume the collection of Jenmikarams for payment over to the Jenmi concerned.

Sec. 40: Section XIX of Regulation XII of 1108 substituted—"89 of the Code of Civil Procedure 1100" for "568 of the Civil Procedure Regulation (II of 1065)."

Chapter IV: I. This Chapter with Sections 40-A to 40-N was inserted by Section XX of Regulation XII of 1108.

II. 1. This Chapter was not in the Bill. At the second reading of the Bill, the Official Member in charge said:—"My amendment with regard to Clause XX is that two other Clauses may be substituted, namely, Clauses XX and XX-A. The substituted Clause XX proposes to incorporate certain Sections in the Regulation for the purpose of enabling the Government to collect the Jenmikaram for payment over to the Jenmis. The House will remember that the obligation on the part of the Government to take over the collection of Jenmikaram and pay to the Jenmis was undertaken as a result of the agreement between Jenmies and non-Jenmies and as a result of their joint recommendation that the Government should undertake the collection. Government, therefore, have undertaken the obligation and I have accordingly drafted the necessary Sections for that purpose and I propose to introduce it by the proposed Clause XX. By the Sections 40-A to 40-L, I propose to introduce the requisite procedure for the purpose of settling Jenmikaram before their collection is taken over by Government, because before the Jenmikaram is settled, Government cannot take over the collection of Jenmikaram." The member then explained the scheme of these Sections and said:—"These provisions were drafted in their final form as a result of the understanding arrived at in an informal conference between the Jenmis and the non-Jenmis during the last session of the Council. These Sections have therefore got the full approval of the informal conference * *."

2. *Sec. 40-A.* A Non-official member moved an amendment to the Explanation

Explanation.—Our Government shall assume the collection in respect of all the Jenmom lands in the State at the same time although the proceedings towards such assumption may be made in respect of all the Jenmom lands in the State together or of such lands in any local area or in such other convenient groups as may be determined by Our Government.

Settlement of Jenmikaram and Register of Jenmikarams.

40-B. (1) For carrying out the purposes of the foregoing Section, Our Government shall as soon as may be, cause a Register of Jenmikarams to be prepared, after settling the Jenmikarams, showing in respect of each Jenmom land the Survey Number and such other particulars of description as may be prescribed, the names of the Jenmi and the Kudiyan, the Settlement pattamicham, the Jenmivaram, the Jenmikaram, the date and nature of the document, if any, on the basis of which the Jenmikaram was fixed and such other particulars as may be prescribed.

(2) The Register may be prepared for the whole State or for each Pakuthi or other local area or for such groups of lands as may be determined by Our Government.

Explanation.—The 'Register of Jenmikarams' shall for the purposes of this Regulation mean the Register in respect of the whole State or in respect of the Pakuthi or other local area or the group concerned.

Jenmikaram Settlement Officer.

40-C. Our Government may appoint any person or persons that they may deem fit for the Settlement of the Jenmikarams and the preparation of the Register of Jenmikarams and such person or persons (referred to hereinafter as the Jenmikaram Settlement Officers) may, for such settlement and such preparation, make such investigation and follow such procedure as may be prescribed.

---

as proposed by the Official member, in view to ensure that the Government should take over the collection of Jenmikaram only in respect of all lands in the State together and at the same time. The Explanation as it now stands in the Regulation was the result of the amendment which was carried.

3. *Sec. 40-B.*—Consequential amendments were made, on the motion of the same Non-official member, to Sub-section (2) of this Section and the Explanation.

4. *Secs. 40-E & 40-F.*—On the motion of the same Non-official member, the Sections as they now stand in the Regulation were substituted for the ones proposed by the Official member.—*L. C. P., dated 15-12-1982,*

Preliminary Notification for Settlement of Jenmikaram.

40-D. Not less than one month before the work of the Settlement of Jenmikarams and the preparation of the Register of Jenmikarams is proposed to be begun, Our Government shall publish in Our Government Gazette, and in such other manner, if any, as may be prescribed, a Notification giving notice of the appointment of the Jenmikaram Settlement Officer for the Pakuthi, local area or group concerned and calling upon the Jenmis and Kudiyans and all persons interested to supply all necessary information and render all assistance in the matter.

Final Notification notifying completion of Register of Jenmikarams.

40-E. When the preparation of the Register of Jenmikarams has been completed in the prescribed manner in respect of the whole State and such Register has received the approval of Our Government, Our Government shall publish in Our Government Gazette, and in such other manner, if any, as may be prescribed, a Notification notifying that, with effect from a specified date thereafter, which shall not be earlier than two months from the date of the Notification, they have under Section 40-A assumed the collection of Jenmikarams in respect of the whole State.

Jenmikarams to be paid to Government and recoverable as arrears of land revenue.

40-F. (1) The Jenmikarams in respect of the lands covered by the Register of Jenmikarams referred to in the foregoing Section and accruing due from and after the date specified in the Notification published under that Section shall be paid to Our Government in such manner and at such times as may be prescribed and may in default of such payment be recovered under the provisions of the Revenue Recovery Regulation (Regulation I of 1068 as amended by Regulations III of 1087, VIII of 1094, X of 1097 and II of 1099) in the same manner as arrears of Land Revenue.

Jenmikaram to be paid in money only.

(2) No such Jenmikaram shall be payable or be allowed to be paid in kind. Jenmikarams due in kind shall be paid at commutation rates fixed under the provisions of Section 46.

Jenmikaram to be paid to Jenmi deducting cost of collection.

40-G. The Jenmikarams collected by Our Government shall be paid to the Jenmi concerned deducting therefrom a fee, towards the charges incidental to collection and payment, of such amount as may

be prescribed from time to time not exceeding in any case two and a half per centum of the amount collected for payment.

Explanation 1.—If interest on any Jenmikaram is collected such interest also shall be paid over to the Jenmi deducting the fee in respect of such interest also.

Explanation 2.—If any costs are recovered on account of any processes taken for the recovery of any Jenmikaram such costs shall not be paid over to the Jenmi.

Explanation 3.—Our Government shall be liable to pay only the Jenmikaram and interest actually collected by them.

Jenmikaram to be paid only to Government.

40-H. Notwithstanding anything contained in the foregoing provisions of this Regulation no payment of any such Jenmikaram as is referred to in Section 40-F, Sub-section (1), made otherwise than in accordance with the provisions of that Sub-section, shall be deemed to be a valid discharge of the liability to pay such Jenmikarams; and in respect of such Jenmikarams it shall not be lawful for any Jenmi to institute any suit under the provisions of Chapter III or for the Jenmi or the Kudiyan to make any application under the provisions of the same Chapter.

Jenmikarams must be collected according to the Register of Jenmikarams.

40-I. No collection or payment of Jenmikaram shall be stayed by Our Government merely on the ground that any party has any objection to the entries in the Register of Jenmikarams or to the collection or payment in accordance with such entries:

Provided that any party aggrieved shall have the right to institute a suit in a Civil Court of competent jurisdiction to establish the right which he claims and Our Government shall abide by the final result of such suit and may, if necessary, correct the Register of Jenmikarams accordingly.

Revision of Register of Jenmikarams.

40-J. (1) Our Government shall, at or after every future general Revenue Settlement, cause the Register of Jenmikarams to be revised. At such revision, Our Government may, if they deem fit, cause the particulars required to be entered in the Register of Jenmi-

karams to be incorporated in the Register that is prepared in respect of the Land Revenue Settlement.

(2) When any such revision has to be made the procedure prescribed by Sections 40-B to 40-E shall be followed as far as may be; and when the revised Register is completed and notification made under Section 40-E, such revised Register shall be the Register of Jenmikarams and when the particulars required to be entered in the Register of Jenmikarams are incorporated in the Register prepared in respect of any Land Revenue Settlement, such Register shall be deemed to be the Register of Jenmikarams for the purposes of this Regulation.

Subsequent changes *re* Jenmikaram, etc. may be recorded.

40-K. Any changes in respect of the particulars entered in the Register of Jenmikarams, arising by reason of any circumstances, such as the transfer of the right to receive Jenmikaram and the like, occurring after the publication of the notification under Section 40-E, may be caused to be recorded in such manner as may be prescribed, and such record shall be deemed, if so prescribed, as a part of the Register of Jenmikarams.

When suits against Government will lie and when not.

40-L. (1) No suit or other proceedings shall lie against Our Government or their officers for doing, or failing to do, anything in connection with the settlement of Jenmikarams or the preparation of the Register of Jenmikarams or for having collected or paid any Jenmikaram in accordance with the Register of Jenmikarams.

(2) Nothing in Sub-section (1) shall be deemed to prohibit any person aggrieved by any collection or payment from instituting any suit against any other person in a Civil Court of competent jurisdiction for establishing the right which he claims or for following any money in the hands of any person to whom it was paid or for recovering any money from any person who was bound to pay it; or to prohibit any suit against Our Government for the recovery of any moneys realised by them on account of any dues already collected by them,

Power to make Rules.

40-M. (1) Our Government shall have power to make Rules for carrying out the purposes of this Chapter.

(2) Without prejudice to the generality of the power aforesaid, Our Government may make Rules not inconsistent with the provisions of this Regulation—

(*a*) to provide for the registers or other records or accounts to be kept for facilitating the collection and payment of Jenmikarams and to determine which of these registers or records or accounts shall be deemed a part of the Register of Jenmikarams;

(*b*) to provide for the transfer of the right of the Jenmi or the liability of the Kudiyan by sale, gift, partition, or otherwise being recognised and recorded and the procedure to be followed in recognising and recording such transfers;

(*c*) to provide for the grant of documents to the Jenmi and the Kudiyan evidencing the amount of the Jenmikaram and the manner and time of the payment of the same;

(*d*) to provide for the grant of receipts or vouchers for the payment made by a Kudiyan, or the receipt by a Jenmi of any Jenmikaram;

(*e*) for authorising the Jenmikaram Settlement Officers to exercise all or any of the powers exerciseable under the Departmental Enquiries Regulation, Regulation VI of 1073;

(*f*) for giving notice to the Jenmis or the Kudiyans or both when coercive steps are taken against Jenmom lands for the recovery of the Jenmikaram or the Sirkar tax and for determining the amount of the cost recoverable for the same and the party from whom it may be recovered;

(*g*) to make provision for any incidental matters that may arise in the settlement of the Jenmikaram or the preparation of the Register of Jenmikarams pursuant to the provisions of this Regulation; and

(*h*) for any matter that has to be prescribed under the provisions of this Regulation.

40-N. No Jenmikaram shall be recoverable under the provisions of this Chapter by the sale of any land except the land on which the Jenmikaram is a charge."]

What land can be sold for Jenmikaram.

[CHAPTER V.

Miscellaneous.]

41. The High Court may, from time to time, make Rules consistent with this Regulation for regulating the practice and procedure of Courts acting under this Regulation. The Rules so made shall be published in the Gazette.

Power of High Court to make Rules.

42. Notwithstanding anything contained in the foregoing, the provisions of this Regulation shall not apply to any Kanapattoms executed since the twenty-fifth day of Karkatakom 1042, which expressly provide for redemption.

Saving of Kanapattoms executed since 25th Karkatakom 1042.

43. In contracts relating to Jenmom lands entered into for the first time after this Regulation comes into force, the question whether the tenancy is terminable or otherwise shall be determined according to the intention of the parties as gathered from the terms of the contract.

Terminable nature of tenancy to be determined from terms of contract.

44. Notwithstanding anything contained in the foregoing [no Jenmikaram shall be recoverable by any Jenmi or by Our Government from] any Kudiyan who or whose predecessor in interest has held his holding for more than fifty years preceding the date of this

Saving of rights of Kudiyans of more than fifty years' standing.

III. *Sec. 40-N.*—This Section was inserted on the motion of a Non-official member who said, in support, that "the Jenmis have always been getting only a very small fraction of the yield as Jenmikaram; and now, very extraordinary remedies are being given to them to realise their dues. Government have agreed to collect the Jenmis' dues. It is therefore only fair and just that, for the realisation of the Jenmis' *dues*, the Government proceed only against the property on which the Jenmikaram is a charge".—

L. C. P., dated 15-12-1932.

Chap. V: The Heading was inserted by Section XX-A of Regulation XII of 1108.

Sec. 44: I. This Section was amended by Section XXI of Regulation XII of 1108.

II. Section 44 of Regulation V of 1071 was as follows:—.

Regulation, without paying Michavaram and other dues or without taking any renewal within the said period of fifty years.

And of established rights.

The provisions of this Regulation shall not apply to any right declared, established, or already acquired by Jenmis or Kudiyans at the date this Regulation comes into force.

Explanation.—If any time for redemption has been specially provided for, the fifty years shall be calculated from the date on which the stipulated time expires.

Apportionment of compensation money on land acquisition.

[45. When the Jenmi and the Kudiyan cannot agree as to the apportionment as between them of the compensation money awarded or awardable on the acquisition, under the Land Acquisition Regulation, of any land or portion of land comprised in any holding, the portion due to each shall be determined in accordance with the following Rules :—

(*a*) So much of the compensation money as is due to any buildings shall belong entirely to the Kudiyan;

"44. *Saving of rights of Kudiyans of more them fifty years' standing.*—Notwithstanding anything contained in the foregoing, the provisions of this Regulation shall not apply to any Kudiyan who or whose predecessor in interest has held his holding for more than fifty years preceding the date of this Regulation, without paying michavaram and other dues or without taking any renewal within the said period of fifty years.

And of established rights.—The provisions of this Regulation shall not apply to any right declared, established or already acquired by Jenmis or Kudiyans at the date this Regulation comes into force.

Explanation.—If any time for redemption has been specially provided for, the fifty years shall be calculated from the date on which the stipulated time expires."

III. The Second Select Committee substituted the words—" no Jenmikaram shall be recoverable by any Jenmi from " for the words—" the provisions of this Regulation shall not apply to ". They said :—

"As the Jenmikaram is the only right of the Jenmi hereafter, Section 44 is proposed to be altered as above,—

S. C. R., Para VIII, 27.

IV. When the Bill was considered by the Council, the words " or by Our Government " were inserted after the words " any Jenmi " on the motion of the Official member in charge who said :—" It is practically only a drafting amendment which is necessitated by the introduction of the proposed Chapter IV. "—

L. C. P., dated 15-12-1932.

Secs. 45, 46 & 47: I. These Sections were added, by Section XXII of Regulation XII of 1108, to Regulation V of 1071.

II. *Sec. 45.*—**1.** As proposed in the original Bill, this Section stood as follows :—

"45. When the Jenmi and the Kudiyan cannot agree as to the apportionment as between them of the compensation money awarded or awardable on the acquisition, under the Land Acquisition Regulation, of

(*b*) the balance left after deducting the portion of compensation money referred to in Rule (*a*) shall belong to the Jenmi and the Kudiyan in the proportion of the Jenmikaram charged or chargeable on the land or portion of land and the average annual net produce of the land or portion of land, as the case may be :

Provided that if the capitalised value of the Jenmikaram is smaller than such share of the Jenmi the capitalised value alone shall belong to the Jenmi and all the rest shall belong to the Kudiyan.

Explanation.—

1. The capitalised value of any Jenmikaram means an amount equal to sixteen and two-third times the amount of the Jenmikaram.

---

any land or portion of land comprised in any holding, the portion due to each shall be determined in accordance with the following Rules :—

(*a*) So much of the compensation money as is due to any buildings or to any improvements not liable to be assessed to Pattom shall belong entirely to the Kudiyan ;

(*b*) if the balance left after deducting the portion of compensation money referred to in Rule (*a*) is sufficient to cover the Kanom money charged or chargeable on the land or portion of land as well as the capitalised value of the Jenmikaram charged or chargeable on the land or portion of land an amount equal to the said capitalised value shall belong to the Jenmi and all the rest to the Kudiyan ;

(*c*) if the balance referred to is not so sufficient, it shall belong to both of them (the Jenmi and the Kudiyan) in the proportion of the benefit derivable by each from the land or portion of land, the benefit derivable by the Jenmi being the Jenmikaram charged or chargeable on, and the benefit derivable by the Kudiyan being the average annual net produce of the land or portion of land as the case may be less such Jenmikaram ;

(*d*) if a portion alone of any land comprised in a holding is the subject of the acquisition the Kanom and the Jenmikaram chargeable in respect of that portion shall be what are fairly and equitably apportionable in respect of that portion in the same manner as if there had been an alienation of that portion by the Kudiyan to Our Government.

Explanation 1.—The capitalised value of any Jenmikaram means an amount equal to twenty-five times the amount of the Jenmikaram.

2. "Jenmikaram" shall not, for the purpose of this Section, include any michavaram charged on account of buildings."— See *S. O & R.*, (*13*)

2. The First Select Committee added at the end of Clause (*b*) the following :— "but a Kudiyan who wants apportionment to be made only according to the provisions of Clause (c) shall have the right to seek apportionment in accordance therewith." The Committee also inserted

2. 'Net produce' means the surplus remaining after deducting from the gross produce of any land a portion equivalent in value to the cost of cultivation and the Sirkar tax and cesses, if any, and the Jenmikaram chargeable on such land and includes the value of such surplus.

3. 'Average annual net produce' means the net produce ascertained as derivable on an average for one year, by calculation of the net produce for each year during a period of ten years immediately preceding the date of such ascertainment.

after the word "sufficient" in Clause (*c*), the words "or in the event of the Kudiyan electing to proceed under this Clause.". They said:—"It was felt desirable that the apportionment of the compensation money should be made on some definite and equitable basis and that the Kudiyan should have the option for electing to proceed under Clause (*b*) or Clause (*c*)." The Committee further substituted "twenty" for "twenty-five," as in the opinion of the majority, twenty times the annual Jenmikaram should be sufficient compensation for the Jenmi's share in the holding."—

S. C. R., Paras 63-66,

3. The Second Select Committee substituted the following as Section 45, stating that the "change is made to suit the proposed scheme of things."

"45. When the Jenmi and Kudiyan cannot agree as to the apportionment as between them of the compensation money awarded or awardable on the acquisition, under the Land Acquisition Regulation, of any land or portion of land comprised in any holding, the portion due to each shall be determined in accordance with the following Rules:—

(*a*) So much of the compensation money as due to any buildings shall belong entirely to the Kudiyan;

(*b*) the balance left after deducting the portion of compensation money referred to in Rule (*a*) shall belong to the Jenmi and the Kudiyan in the proportion of the Jenmikaram charged or chargeable on the land or portion of land and the average annual net produce of the land or portion of land, as the case may be:

Provided that if the capitalised value of the Jenmikaram is smaller than such share of the Jenmi the capitalised value alone shall belong to the Jenmi and all the rest shall belong to the Kudiyan,

Explanation:—1. The capitalised value of any Jenmikaram means an amount equal to twenty-five times the amount of the Jenmikaram.

2. 'Net produce' means the surplus remaining after deducting from the gross produce of any land a portion equivalent in value to the cost of cultivation and the Sirkar tax and cesses, if any, and the Jenmikaram chargeable on such land, and includes the value of such surplus.

3. 'Average annual net produce' means the net produce ascertained as derivable on an average for one year, by calculation of the net produce for each year during a period of not less than ten years immediately preceding the date of such ascertainment.

4. When a portion alone of a land is acquired, the portion of Jenmikaram chargeable on that land shall be ascertained as if the land had been divided, and the Jenmikaram of the portion of land acquired shall cease to be payable to the Jenmi." —*S. C. R., Para, VIII, 28.*

4. When the Bill was considered by the Council, on the motion of a Non-official

4. When a portion alone of a land is acquired the portion of Jenmikaram chargeable on that land shall be ascertained as if the land had been divided; and the Jenmikaram of the portion of land acquired shall cease to be payable to the Jenmi or to Our Government.

Government to fix commutation rates on advice of committees.

46. (1) Subject to the provisions of this Regulation, Our Government may from time to time fix the rates for the commutation into money or paddy or other commodities for the purposes of this Regulation and notify the same in Our Government Gazette, and the rates so fixed shall be the rates for commutation for the purposes of this Regulation.

Explanation 1.—The rates may be uniform for the whole State or for all purposes or may vary.

---

member, the words "16 2/3 times" were substituted for "twenty-five times" in Para 1 of the Explanation.

In Para 4 of the Explanation, the words "or to Our Government" were added at the end, on the motion of the Official member in charge.—

L. C. P., dated 15-12-1932.

Sec. 46: 1. In the original Bill, the Section stood as follows:—

"(1) Our Government may, for the purposes of this Regulation and after following the procedure prescribed, fix the commutation rate for paddy or other commodities payable by the Kudiyan and publish the same in Our Government Gazette.

(2) Such rates shall be fixed at the average price for three years preceding the date of the publication and shall be in force for three years from the date of the publication.

(3) The rates fixed under Sub-section (1) may be uniform for the whole of Travancore or may be different for different local areas."— See *S. O & R. (15).*

2. The First Select Committee inserted the words "in accordance with the Rules passed by Government after previous publication" between "prescribed" and "fix" and deleted Sub-sections (2) and (3). They said:—"It was felt desirable that the Rules issued by Government shall be published in the form of draft Rules before they are finally adopted by Government. The proposed Rules should, among other matters, deal with the question mentioned in Sub-sections (2) and (3)."—

S. C. R, Paras 69 to 71.

3. When the Bill was considered by Council, a Non-official Member moved an amendment fixing the commutation rate of paddy at 13 chuckrams for standard parah. A long discussion followed, and in the course of the debate, the Official Member in charge moved to substitute, for the proposed Section, another Section which is the same as that now found in the Regulation excepting explanation (2) for which see below. In moving the amendment the member said:—"I find that it is not possible to reach an agreement as to any figure that may be embodied in the statute itself. **. But it is absolutely necessary that when this measure is passed we must find a way out of the difficulty because when the collection of Jenmikaram is taken by Government, it has to be paid and collected in money. Therefore, it is absolutely essential to devise a

Explanation 2.—The power to fix rates includes the power to revise rates already fixed.

(2) In fixing the rates, Our Government shall be guided by such Rules as may be passed by Our Government after previous publication.

(3) Such Rules shall, *inter alia*, provide for the appointment of a Committee to advise Our Government as to the rates to be fixed under this Section. The Committee shall consist of five members, two to represent the Jenmi interests, two to represent the Kudiyan interests and one, an Official, to be the Chairman, and shall follow such procedure as may be prescribed,

Explanation.—The Committee may be a single Committee for the whole State or there may be different Committees for different places,

Limitation period for Jenmikaram.

47. (1) Notwithstanding anything contained in the First Schedule annexed to the Travancore Limitation Regulation, no suit for any arrear of Jenmikaram or the interest due thereon shall be entertained by any Civil Court unless instituted within six years from the date of the Jenmikaram becoming an arrear :

---

machinery which would fix what the money payment should be. * *. The commutation rates must be settled by the Government on their responsibility but with the advice of a Committee in which the Jenmi and the Kudiyan interests will be represented."

There was further discussion on the amendment proposed, and finally, it was passed.— *L. C. P., dated 15 & 16-12-1932.*

(4) At the final reading of the Bill, Explanation (2) to Sub-section (1) was inserted on the motion of the Official Member in charge.—

L. C. P., dated 20-12-1932.

Sec. 47: This Section adopted the provision contained in the original Bill.—

See S. O & R., 16.

It may be noted here that, as per the original Bill, Regulation V of 1071, as amended, was to consist of 48 Sections. One of these Sections, namely, 46, was omitted by the Second Select Committee, and the remaining Sections renumbered. The omitted Section is noted below.

1. In the original Bill, this Section was as follows :—"46. Whenever the interest of either the Jenmi or the Kudiyan in any land comprised in a holding is transferred to, or otherwise devolves on, Our Government, the transfer or devolution shall not as such affect the interest of the other person, the Kudiyan or Jenmi as the case may be, in such land :

Provided that Our Goverment shall have the right in any such case to compulsorily acquire, under the provisions of the Land Acquisition Regulation, the interest of such person or to make any permanent arrangement which may have the effect of converting the Jenmom

Provided however that suits for Jenmikaram which are barred by reason alone of the above provision on the date of the commencement of the Amendment Regulation may be instituted within two years from that date,

(2) The Explanation to Article 119 of the First Schedule to the Travancore Limitation Regulation shall be deemed to stand repealed."]

---

tenure of the land into Pandaravaka tenure and securing and protecting, however, as far as practicable, the rights of such person in respect of the said land."—

See *S. O & R.*, (14).

2. The First Select Committee deleted the word "compulsorily" and also the words "or to make any permanent...of the said land." They said that "it was undesirable that any permanent arrangement should be made without the consent of the party concerned."—

S. C. R., Paras 67 & 68.

3. The Second Select Committee omitted the Section as they did not think "that, in the proposed scheme of things, there is necessity for the provisions contained in the proposed Section 46.—

S. C. R., Para VIII, 29.

RULES AND NOTIFICATIONS.

I. RULES.

(1)

(R. O. C. No. 1105/33/Rev., dated 4th March 1933). (a)

Under sanction of His Highness the Maha Raja, it is hereby notified that the Rules noted below are framed under Section 40-M of the Jenmi-Kudiyan Regulation, XII of 1108, for the Settlement of the Jenmikaram.

1. (i) The Taluk Jenmikaram Settlement Officer (the Tahsildar) shall keep a pakuthiwar list of all Jenmom lands in his Taluk in accordance with the Settlement Register.

(ii) If any person applies that any land is Jenmom land and therefore available for the Settlement of Jenmikaram, he should include that also in the list.

2. A case may be taken for each Survey No. or for a convenient group of Survey numbers (convenient group means for example contiguous Survey numbers in one pakuthi belonging to one Jenmi and held by one Kudiyan).

3. Notice should be given to the Jenmi and the Kudiyan to appear with all available records and to give a statement of Jenmikaram as per form appended (a form may be supplied free to any *bona fide* applicant).

4. The decision shall in every case be notified to the parties in writing. It should be in the following form :—

Survey No.	Name of the Jenmi.	Name of the Kudiyan.	Amount of Jenmikaram.

5. The Jenmi as well as the Kudiyan shall be allowed to appear and produce documents through their agents.

6. In the absence of deeds and of the parties the Tahsildar (the Taluk Jenmikaram Settlement Officer) shall make an enquiry and pass decision if he can come to a satisfactory conclusion as to the Jenmikaram, the names of the Jenmi and the Kudiyan. If not he may write "Nil" as Jenmikaram.

7. When one party alone appears and the other does not, he may proceed *ex parte*.

(a) *T. G. G., dated 11-4-1933, Pt. I, P. 957.*

8. On enquiry if the Tahsildar finds that the land is not Jenmom land he may strike off the case noting that it is not Jenmom land.

9. The procedure laid down in Section 3 of the Regulation shall be followed in ascertaining the Jenmikaram.

10. After ascertaining the Jenmikaram the Tahsildar shall proceed to make the necessary entries in the draft Jenmikaram Register.

11. Jenmikaram Register may be prepared for each pakuthi Survey number war in the following form :

1	2	3	4	5	6	7	8
Sl. No.	S. No. & Sub-Dn:	Extent A. C.	Lekkom.	Inam.	Whether wet or dry.	Settlement pattom.	Sirkar tax.

9	10	11	12	13
Settlement pattamicham.	The No. & date of Kanom deed.	Kanom amount.	Name of Jenmi.	Name of Kudiyan.

14		15	16	17
Jenmivaram.		Total of	Jenmikaram.	Remarks.
i	ii			
Michavaram.	Fractional fees.	i to iii.		
iii				
Commuted cess.				

NOTE.—When a sub-division has to be made in Jenmom properties the sub-divisions should be numbered as in the case of Pokkuvaravu Sub-divisions following the same principles.

[*Rule 12.* The Dewan Peishkars of Trivandrum, Quilon and Kottayam who are also Jenmikaram Settlement Officers of their respective Divisions shall have power to supervise the work of the Taluk Jenmikaram Settlement Officers within their Divisions and to correct and rectify the mistakes in the Settlement of Jenmikaram and the preparation of the Register of Jenmikaram. Appeals from the decisions or orders passed by the Taluk Jenmikaram Settlement Officers shall lie to the Division Jenmikaram Settlement Officers (Dewan Peishkars).

Rule 13. The State Jenmikaram Settlement Officer (Land Revenue Commissioner) may, on his own motion or on the application of the parties, revise any order, original or appellate, if he thinks fit.

Rule 14. (i) Appeals shall be presented within two months from the date of the decision appealed against or the date of communication thereof as the case may be. In computing the period, the day on which the decision appealed against was pronounced or communicated and the time required for obtaining a copy of it shall be excluded. On all copies issued, shall be entered the date of the decision, the date of the application for copy, the date fixed for receiving the copy and the date on which the copy was ready for delivery.

(ii) The appellate authority may admit an appeal after the expiry of the period of limitation, provided he is satisfied that the appellant had good and sufficient cause for not presenting the appeal within such period.

(iii) The appellate authority may confirm or cancel or modify the decision or order appealed against.

(iv) No appeal shall be admitted unless accompanied by a certified copy of the decision or order appealed against. No officer shall decide a case in appeal or revision without giving all the interested parties notice to appear and an opportunity to be heard.

(v) All decisions or orders, original or appellate, shall be incorporated with the records of the case. They should be communicated to the parties in writing free of charge.

NOTE:—The Revision cases already filed in the State Jenmikaram Settlement Office shall be treated as appeals as contemplated in Rule 12 above and may be disposed of by Division Jenmikaram Settlement Officers (Dewan Peishkars),] *

---

(2)

(R. O. C. No. 739/33/Rev., dated 21st April 1934.) (a)

In exercise of the powers conferred by Sections 17 and 46 of the Travancore Jenmi and Kudiyan Regulation of 1071 (Regulation V of 1071, as amended by Regulation XII of 1108), the Government of His Highness the Maha Raja are pleased to make the following Rules :—

1. These Rules may be called the Jenmikaram Payment and Commutation Rules and shall come into force at once.

2. In these Rules unless there be anything repugnant in the subject or context :

(a) "Commutation rates" means rates at which paddy or other commodities forming part of Jenmikaram are to be commuted into money for purposes of payment and recovery of the Jenmikaram.

(b) "Gazette" means the Travancore Government Gazette.

(c) "Regulation" means the Travancore Jenmi and Kudiyan Regulation of 1071, V of 1071, as amended by Regulation XII of 1108.

3. The Jenmikaram shall be payable in two instalments of one-half each in accordance with the particulars shown in the subjoined table.

---

* Rules 12 to 14 modified by Notification R. O. C. No. 445/34/Rev., dated 2nd April 1934.—*T. G. G., dated 3-4-1934, Pt. I. P. 347.*

(a) *T. G. G., dated 24-4-1934, Pt. I, P. 972, and T, G. G., dated 15-5-1934, Pt. I, P. 1093.*

Provided that if a one-half of the Jenmikaram can be paid only by paying also a fraction of one cash, that fraction shall, for purposes of payment, be deducted from the first instalment and added to the second.

Table

Name of Revenue Division, Taluk or other locality in which the land in respect of which Jenmikaram is payable is situated.	Garden land.		Paddy land.	
	Date for payment of first instalment.	Date for payment of second instalment.	Date for payment of first instalment.	Date for payment of second instalment.
Trivandrum Division	15th Vrischigom	15th Meenam	15th Vrischigom	15th Medom
Quilon Division	Do.	Do.	Do.	Do.
Kottayam Division	Do.	Do.	Do.	Do.
For Punja lands in all the Divisions.			15th Edavom	15th Mithunam

4. The provisions for commutation in these Rules shall apply in respect of the commutation into money of paddy and other commodities for the purposes of payment and recovery of Jenmikarams payable under the Regulation.

5. Government may fix different commutation rates for different instalments or a uniform rate for all the instalments according as they may determine from time to time.

6. The commutation rates once fixed shall ordinarily remain in force for two years but may be revised at any time and shall remain in force until rates are fixed in their place afresh.

7. The commutation rates shall be fixed with reference to the places or locality where the lands liable to payment of Jenmikaram are situate. Government may fix a uniform rate for the whole State or different rates for different places or localities such as, *e. g.*, Revenue Divisions, Taluks, or pakuthies or parts of Revenue Division, Taluk, or pakuthy or groups of Revenue Divisions, Taluks or pakuthies.

8. Government shall appoint a Committee as required by Section 46 (3) of the Regulation.

9. The members of the Committee (including the Chairman) shall be nominated by Government from time to time.

10. The members (including the Chairman) shall ordinarily hold office for two years and shall, unless Government otherwise direct, continue in office until their successors are appointed. Any member may be removed

by Government at any time within two years. Vacancies in the Committee arising by death, resignation or removal will be filled by Government.

11. Government may appoint a single Committee for the whole State or different Committees for different portions of the State according as Government may determine from time to time.

12. The Chairman shall be the convener of the meetings of the Committee.

13. The Committee shall meet whenever the Chairman calls a meeting of the Committee. Ordinarily, the Chairman shall give the members not less than seven days' notice in writing of the time and place fixed for the meeting.

14. No business shall be transacted at any meeting of the Committee unless the Chairman and at least two members are present.

15. All matters excepting matters of procedure relating to the meetings and work of the Committee shall be decided by the vote of a majority of the members present.

16. In case of equality of votes, the Chairman shall have a second or casting vote.

17. Subject to the provisions of these Rules, all matters of procedure relating to meetings and work of the Committee shall be determined by the Chairman. The Committee may however propose rules of procedure for the consideration of Government. Government may on such proposals, or otherwise, pass rules for procedure. Whenever such rules are passed by Government, the procedure shall be in accordance therewith; provided that in all cases not provided for by such rules, the procedure shall be determined by the Chairman. Any doubt arising in regard to procedure shall be referred to Government whose decision shall be final.

18. For the purpose of advising Government on commutation rates, Committee may call for reports or information and may take such evidence as is considered relevant. The Chairman shall decide whether any evidence is relevant or not, as also the manner in which evidence is to be taken. The Committee may also take expert evidence and hear the representatives of any interests and may for the purpose of obtaining information invite any person to be present at its sittings. Any member dissatisfied with any decision of the Chairman passed under this Rule may refer the matter to Government whose orders shall be final and shall be carried out.

19. The minutes of the proceedings of each meeting of the Committee shall be recorded in a book kept for the purpose and shall be signed by the

Chairman. The book may at any time be called for and inspected by Government.

20. Government shall call upon the Committee through the Chairman to advise them as to the commutation rates to be fixed. They may call upon the Committee to recommend a uniform rate or different rates for the various instalments as well as to recommend a uniform rate or different rates for various places or localities, such as *e. g.*, Revenue Divisions, Taluks, or pakuthies or parts of Revenue Divisions, Taluks, or pakuthies or groups of Revenue Divisions, Taluks, or pakuthies.

21, The Committee shall, through the Chairman, report to Government, in accordance with the reference made by Government, the commutation rates that they advise. If the Committee are of opinion that the commutation rates should be fixed in some manner other than that indicated by the reference, the Committee may, in their report, advise Government of that also.

22. On receipt of the report of the Committee—

(*a*) the Government may finally fix the commutation rates; or

(*b*) they may provisionally fix rates and publish them in the Gazette for public criticism; and if any criticism is received within fifteen days of the publication, the Government shall consider such criticism also and then finally fix the rates.

23. When commutation rates are finally fixed by Government they shall notify the same in the Gazette, and the commutation rates so notified shall come into force on the date of the Gazette in which the notification is published unless some specific date is mentioned in the notification for the coming into force of the rates, in which case the rates shall come into force on such date.

24. Government may call for any reports or information from the Committee on any matter connected with their functions and such reports and information shall be supplied through the Chairman.

25. In fixing the commutation rates, the Committee as well as Government shall have regard, *inter alia*, to the following, namely :—

(i) The price at which the Kudiyan can sell the commodity in a convenient market in or near the Taluk in which the land liable to the payment of Jenmikaram is situate.

(ii) The price at which the Jenmi can buy the commodity in a convenient market in or near the Taluk where the commodity is likely to be spent by him.

(iii) The fact that within the period of the instalment of payment the prices may vary from time to time.

(iv) The cost of the remittance of the Jenmikaram by the Kudiyan to the Jenmi.

(v) That a percentage variation may be necessary for equalising prices.

---

(3)

THE JENMIKARAM RECOVERY RULES.

(Dated—May 1934.)

In exercise of the powers conferred by Section 26-A of the Travancore Jenmi and Kudiyan Regulation of 1071 (Regulation V of 1071 as amended by Regulation XII of 1108) the Government of His Highness the Maha Raja are pleased to make the following Rules :—

1. These Rules may be called the Jenmikaram Recovery Rules and shall come into force at once.

2. In these Rules unless there be anything repugnant in the subject or context :

(*a*) "Commutation rates" means the rates fixed by Government under Section 46 of the Regulation ;

(*b*) "Regulation" means the Travancore Jenmi and Kudiyan Regulation of 1071, V of 1071 as amended by Regulation XII of 1108.

3. (*a*) Applications to the Tahsildar under Section 26-A of the Regulation for recovery of arrears of Jenmikaram shall be made in the Form appended to these Rules.

(*b*) There shall be a separate application in respect of each holding.

(*c*) Every application shall be accompanied by a copy of the same certified by the applicant to be a true copy.

4. (*a*) In respect of the several processes consequent on the application, fees shall be levied at the same rates as are leviable for similar processes under the Revenue Recovery Regulation I of 1068.

(*b*) The fees shall be paid by the applicant within such time as may be fixed by the Tahsildar.

FORM.

APPLICATION FOR RECOVERY OF JENMIKARAM.

To

The Tahsildar of.....

Name and address in full of the applicant.	Name and address in full of the respondent *i. e.*, the person against whom the application is made.	The Survey No. name (if any) and other description of each parcel of land in respect of which Jenmikaram is claimed.	Particulars of the transaction under which the Jenmikaram is due, such as *e, g.* whether under a kanom document or a court decree etc.	Particulars of the Jenmikaram due in respect of each parcel of land, *1	Particulars of the right of the applicant to get the Jenmikaram.
1	2	3	4	5	6

*1 NOTE :—Commodity portions of the Jenmikaram must be shown as commodities and money portions as money separately.

Particulars as to how the respondent is sought to be made liable for the Jenmikaram.	Particulars of the arrears of Jenmikaram claimed under this application. * 2	The amount in money of the arrears of Jenmikaram claimed with particulars as to the commutation into money of the portion in commodity, if any. * 3.	The amount of interest, if any, that is claimed. * 4	The total amount sought to be recovered.	Remarks if any.
7	8	9	10	11	12

*2 NOTE.—In this column the period in respect of which the arrear of Jenmikaram is claimed, particulars as to the receipt of amounts, if any, towards the Jenmikaram for that period, and such other particulars must be shown.

*3 NOTE.—(i) The commutation rates prevailing on the date on which the Jenmikaram became an arrear should be adopted. (ii) The Commutation of each commodity should be separately shown.

*4 NOTE.—In regard to rate of interest, see Section 17 (4) of the Regulation.

REGULATION V OF 1071.

INSTRUCTIONS *re* RECOVERY OF JENMIKARAM BY TAHSILDARS.

In view of the provisions of Section 26-A, Sub-section (4), of the Travancore Jenmi and Kudiyan Regulation of 1071, the Government of His Highness the Maha Raja are pleased to issue the following instructions for the guidance of Tahsildars :—

1. On receipt of an application for recovery of arrears of Jenmikaram under the provisions of Section 26-A of the Regulation and the Rules thereunder, the Tahsildar shall examine the application for the purpose of ascertaining whether it is *prima facie* sustainable under the said provisions.

2. If the Tahsildar finds that it is not *prima facie* sustainable, he may reject the application or allow it to be amended by the applicant. The Tahsildar shall, as far as possible, hear the applicant before any such order is passed.

3. If the Tahsildar finds that the application is *prima facie* sustainable, he shall issue a notice to the respondent together with copy of the application presented under Rule 3 of the Jenmikaram Recovery Rules calling upon him to show cause, within a time specified in the notice, why the application should not be granted. A fee shall be levied from the applicant for the issue of this notice as for a demand notice under the Revenue Recovery Regulation. The notice shall be served in the same way as the demand notice and the copy of the application shall also be delivered to the respondent on service of the notice.

4. On the day fixed for the appearance of the respondent, or on such other day as may be fixed by the Tahsildar from time to time for the disposal of the application, the Tahsildar shall make a brief and summary inquiry in the presence of the parties if they appear and pass written orders as to whether any amount is recoverable and if so what amount, and notify the parties if they are present.

—T. G. G, dated 12-6-1934, Pt. I, P. 1134

II. NOTIFICATIONS.

(1)

(R. O. C. No. 80 of 33/Legis., dated 14th February 1933.)

It is hereby notified that, in exercise of the powers conferred by Section 40-C of the Travancore Jenmi and Kudiyan Regulation of 1071, V of 1071, as amended by Regulation XII of 1108, the Government of His Highness the Maha Raja have been pleased to appoint.....the Tahsildars of the Taluks as the Jenmikaram Settlement Officers for their respective Taluks for the settlement of Jenmikaram and the preparation of the Register of Jenmikarams in respect of Jenmom lands.—*T. G. G., dated 3-7-1108, Pt. I, P. 734.*

---

(2)

(R. O. C. No. 5942/33/Rev., dated 27th November 1933.)

It is hereby notified that in exercise of the powers conferred by Section 40-C of the Travancore Jenmi and Kudiyan Regulation of 1071, V of

1071, as amended by Regulation XII of 1108, the Government of His Highness the Maha Raja have been pleased to appoint the Land Revenue and Income Tax Commissioner, Travancore, as Jenmikaram Settlement Officer for Travancore in addition to his own duties.—*T. G. G., dated 28-11-1933, Pt. I, P. 287.*

---

(3)

(R. O. C. No. 5689/33/Rev., dated 27th February 1934.)

It is hereby notified that in exercise of the powers conferred by Section 40-C of the Travancore Jenmi and Kudiyan Regulation of 1071, V of 1071, as amended by Regulation XII of 1108, the Government of His Highness the Maha Raja have been pleased to appoint the Dewan Peishkars of Trivandrum, Quilon and Kottayam, as Jenmikaram Settlement Officers for the respective divisions in addition to their own duties.—*T. G. G., dated 27-2-1934, Pt. I, P. 662.*

---

(4)

(Dis. 582/34/Revenue, dated 21st May 1934.)

In exercise of the powers conferred by Section 40-M (2) of the Travancore Jenmi and Kudiyan Regulation of 1071 (Regulation V of 1071 as amended by Regulation XII of 1108) the Government of His Highness the Maha Raja are pleased hereby to authorise the Jenmikaram-Settlement Officers noted at foot to exercise, in connection with the settlement of Jenmikarams all the powers under Section 4 of the Departmental Enquiries Regulation, Regulation VI of 1073.

1. All the Tahsildar Jenmikaram Settlement Officers.
2. All the Additional Taluk Jenmikaram Settlement Officers.

T. G. G., dated 22-5-1934, Pt. I, P. 1099.

APPENDIX B.

CASE LAW.

REGULATION I OF 1010.

(Powers and Jurisdiction of Munsiffs.)

1. On a construction of Section 17, Clause 5, of Regulation I of 1010 read with Section 21 of Regulation IV of 1010, the plaintiff is entitled to recover interest on the principal money not exceeding a moiety of the principal from the date of suit up to the date of decree. He is also entitled to recover interest from the date of decree up to the date of realisation not exceeding a moiety of the principal.

The date of the decree found in Section 21 of Regulation IV of 1010 is the date of the original decree.—

22 T. L. J., *1166.*

2. In the case of money, whatever be the rate of interest agreed upon by the parties, when it comes to a matter of decree in a Court, nothing more than twelve per cent. per annum could be awarded. In the case of paddy, the only restriction was that interest could be awarded in case of accumulation as much as the principal, bnt not more. As regards the rate of interest, no restriction was prescribed.

The current of decisions is against the interference by Court with contract rates in so far as paddy transactions are concerned. The interference with the agreements between parties should be made only in the case of palpably hard or unconscionable transactions and not otherwise. If any freedom has been allowed, it should be left unfettered as far as possible. This is the case of suits for paddy.—

49 T. L. R., *130*(=**23 T. L. J.**, *145*).

3. In cases where there is a written contract between the creditor and the debtor to carry interest on interest allowed to fall in arrears there is nothing unjust or contrary to public policy to give effect to the terms of the agreement. The result of this view would be in one sense to allow interest on interest. But the point to be noted is that the interest so allowed is not allowed on interest as such; but on an amount which both parties have agreed to treat as a principal debt by itself. The difference may be considered to be fine, but it is a real and substantial one. This view has also the merit of binding parties to carry out obligations lawfully entered into by them. If the terms of the agreement are very harsh or unconscionable, the Courts have the power and will not hesitate to intervene (F. B.)—

24 T. L. J., *442.*

REGULATION IV OF 1010.

(Zillah Jurisdiction.)

See under Regulation I of 1010.

REVENUE SETTLEMENT PROCLAMATION, 1061.

1. The commutation rates specified in Section 19 of the Settlement Proclamation

relate to the 'Government demand' mentioned in it which is referred to again and defined with precision in Section 20. The latter Section shows how such net demand is arrived at and one among the deductions which have to be made is the payment of Thiruppuvarom.—

46 T. L. R., *276.*

2. The commutation rates allowed by Section 19 of the Settlement Proclamation and the Government Notification of 1081 relate only to Government demand, that is, the amount directly payable to Government. Government demand in Section 19 means the residue due to Government after deducting the share diverted in favour of third parties. The Settlement Proclamation should not be so construed as to effect any assignment of land-tax or any part thereof in favour of third parties effected before the promulgation of that Proclamation.— **20 T. L. J.,** *572*

3. Thiruppuvarom is a part of the tax or net Government demand. In respect of that also, the pattadar is entitled to the benefit of the commutation rate as per Proceedings of Government of 1081. His burden cannot be enhanced by the diversion (Thiruppuvarom).

Per Joseph Thaliath, J.—A pattadar by accepting a patta, in which he is asked to pay a certain quantity of paddy annually to a third person, is not precluded from taking advantage of the concessions granted by the Government in the matter of paying the paddy portion of the revenue. No question of estoppel arises in the matter.— **20 T. L. J.,** *819.*

4. The Government assess the tax upon a property at the Settlement which assessment cannot be altered until a fresh Settlement is made at the end of 30 years. The assessment may be subject to certain deductions or additions in the case of lands belonging to particular tenures but apart from these deductions or additions incident to tenure, the assessment is also the Government demand and under Section 19, half the Government demand is payable in money at the commutation price of 6 chuckrams per parah. The Thiruppuvarom is not a deduction to be made in arriving at the Government demand but a part of the Government demand and therefore irrespective of any direction in the patta as regards the payment of Thiruppuvarom, the Pattadar is entitled to pay half of the amount payable as per his patta at commutation rate. Hence the benefit of Clause 19 of the Settlement Proclamation, 1061, could be claimed by holders of lands charged with liability of paying Thiruppuvarom under the patta issued with respect thereto.

On the footing that the Thiruppuvarom is only a diversion out of the tax payable to Government, the tenant cannot be liable to the Thiruppuvarom holder save to the extent to which he is liable to the Government. In this view such holders can claim the benefit of the Government notification dated 20-6-1081 relating to commutation rates with respect to Thiruppuvarom payable in kind provided for under pattas issued before the date of the above notification. (F. B.).—

47 T. L. R., *301* **(=21 T. L. J.,** *669*).

5. See also—

Regn. V of 1071, (Other Cases) } — **21 T. L. J.,** *528*. **21 T. L. J.,** *598*.
Regn. VI of 1100, Art. 109. —**21 T. L. J.,** *913*.
Regn. VIII of 1100, Sec. 8.—**21 T. L. J.,** *968*.

VIRUTHI PROCLAMATION, 1061.

1. Holders of Viruthi lands are merely tenants-at-will and the Sirkar has an absolute right of disposal in respect of such lands. It may be that the occupancy right of the tenant-at-will is capable of acquisition by adverse possession. But what is acquired being only a tenancy-at-will may be terminated by the Sirkar at their pleasure.— **23 T. L. J.,** *24*.

2. The Sirkar has the absolute right to register Viruthi lands in the name of any one they choose. Any party aggrieved by the action of the Revenue authorities has only the right of appeal to the Government. The only condition under which the Courts could interfere is where a registry was obtained on a false representation by either party.— **23 T. L. J.,** *902.*

REGULATION V OF 1067.

(The Criminal Procedure Code.)

Section 10.

See Sec. 307.—

47 T. L. R., *326*(=**21 T. L. J.,** *780*).

Section 20.

1. The accused, a Proverthikaran, received a sum of Rs. 15-11 ch. 2 cash from P. W. 1 on account of the land tax due from him and committed criminal breach of trust in respect of the said sum. He omitted to enter it in the revenue account wilfully and with intent to defraud. He was tried on a charge framed under Sections 410 and 480 of the T. P. C. and sentenced to undergo rigorous imprisonment for one year (six months for each of the offences).

Held (On appeal).—Where the facts constituting the offences charged are so closely interrelated as to loose their distinctive perceptibility in the light of the criminal intent, the offences are not distinct for the purposes of Section 20 of the Criminal Procedure Code.

The omission to make the entry in the account books appears to be a sequel of the misappropriation committed by the accused. Therefore the falsification forms part of the same transaction as the criminal breach of trust and the offences, therefore, are not distinct offences for purposes of Section 20.

In awarding punishment under Section 60 of the Penal Code, the Court should pass one sentence for either of the offences and not a separate sentence for each, though, if separate sentences are passed for each, it would only be an irregularity and not an illegality so long as the aggregate sentence does not exceed the maximum provided for any one of the offences or the jurisdiction of the Court.

Thus viewed it is open to the Appellate Court to give an aggregate sentence for one offence, provided however that it does not exceed the maximum provided for that offence or the jurisdiction of the Court. In so doing the Court does not offend the provisions of Section 318 (*b*) of the Criminal Procedure Code.

According to the amended Criminal Procedure Code of British India, even if the offences are not distinct, consecutive sentences subject to the provisions of the Penal Code can be passed in British India.—

46 T. L. R., *105*(=**20 T. L. J.,** *985*).

2. Section 20 of the Code, corresponding to Section 35 of the Indian Criminal Procedure Code, does not vest the Courts with power to give concurrent sentences. Various cases may arise in which the Magistrates and Sessions Judges would find it desirable to pass separate sentences, but to give effect to them concurrently. It has to be seen whether an amendment to Section 20, on the lines of Section 35, is or is not desirable.— **23 T. L. J.,** *756.*

3. See also Regulation I of 1074, Sections 469 & 473.—

47 T. L. R., *81*(=**21 T. L. J.,** *899*).

Section 85.

A search conducted in the presence of Police men alone is illegal. Noncompliance with the provisions of Section 85 would compel the High Court to consider the search as not having taken place. The object of the Section presumably is to secure as reliable evidence as possible of the search excluding the possibility of

concoction or manipulation, and it is incumbent on the Police to try to comply with its provisions. The Officer who conducts the search cannot be deemed to be an entirely satisfactory witness to prove the search. It is not enough if the witnesses are kept outside the house while the search goes on within, but they should accompany the Officer throughout and should actually witness the recovery of the articles searched for. No doubt, the observance of the Section may be variable in the circumstances of each case, but such circumstances should be established to justify the deviation from the Section.

Where the house breaking and the breaking open of the boxes were for the purpose of committing the theft, separate sentences are not permissible.—

21 T. L. J., *809.*

Section 89.

It is open to an Appellate or Revisional Court to pass an order under Section 89, in view of the amendment of the Section by the addition of the last paragraph.

According to Section 103, the period for which security is to be given shall commence on the date of the Judge's order. The last paragraph of the Section is quite inelastic and does not give any option to the Court to fix a later date for the commencement of the period for which security should be given.

[The corresponding Section 120 of the British Indian Act has been amended and the Court there in its discretion is empowered to fix a convenient date on which security may be given.]— **20 T. L. J.,** *85.*

Section 90.

1. The revision petitions arose out of proceedings taken by the Additional District Magistrate, Padmanabhapuram, against six persons under Section 90, for prevention of breach of the peace apprehended to arise out of an attempt to effect entry by non-caste Hindus and other depressed classes into the streets within the Sanketham limits of the Suchindram Devaswom. As it was deemed emergent, warrant for the immediate arrest of the first counter-petitioner was issued even at the time of the preliminary order.

Held (in revision by the counter-petitioners).—(1) The Magistrate was entitled to initiate proceedings against the counter-petitioners even if they were at the time illegally detained in jail.

(2) Before an order can be passed under Section 101 in proceedings under Section 90, it must be shown that the counter-petitioners before the lower Court intended to commit a breach of the peace or to do some unlawful act which might probably occasion a breach of the peace.

(3) In order to be wrongful, the act threatened by the persons who are proceeded against must be shown to violate some provision of law or the right of some other person or persons.

(4) The roads of the State belonging to Government are divided into public highways open to all persons for all lawful purposes and private ways which can only be used for purposes not repugnant to the bulk of the residents in the properties adjacent to them. In the case of the former class of roads it is extremely doubtful whether any usage or custom however ancient and continuous could restrict the usage of any class of His Highness' subjects. As regards the second class of roads, an entirely different state of affairs would exist and from the language used by the learned Judges it would seem that they considered that the burden of proof would rather be on the persons who claimed the use of such roads that the use claimed was in accordance with custom.

It is one of the signs of the road being public that it leads to public offices.

(5) The existence of a custom is not a mere question of fact, but is also a question of law. It is, therefore possible in revision to see whether its existence as a

custom can be inferred from the evidence. The evidence in the case was not sufficient to find a custom, and in the absence of an allegation or a finding by the lower Court as to the roads in question being village roads and not King's highways it was extremely doubtful whether any amount of evidence could establish a custom by which a section of the community should be excluded from the use of the roads.

(6) It is not necessary in all cases for the Court to hear arguments in cases the Criminal Procedure Code does not lay down any such rule. It has however been held by this Court that it is usual and desirable to hear arguments and though the failure to hear them may not be enough to induce interference, the High Court will interfere when as the result the judgment of the lower Court shows that it has failed to understand the case.—

46 T. L. R., *454* **(=21 T. L. J.,** *365*).

Ref.—50 T. L. R., 1.

2. Section 90 presupposes that the person sought to be proceeded against is likely (*not was likely*) to commit a breach of the peace, and it cannot be presumed from the fact that the person has done a wrongful act in the past he is likely to do the same again. There must be evidence of specific conduct on the part of the accused from which a reasonable immediate inference could be drawn. The mere *ipse dixits* of witnesses are not enough. In the absence of a finding either express or by clear implication that the accused is likely to commit a breach of the peace or a wrongful act that may probably occasion a breach of the peace the Magistrate has no jurisdiction to order the accused to execute a bond for keeping the peace.

The omission to use the language as employed in Section 90 in the order of the Magistrate does not vitiate the order if from the language used by him it is reasonably clear that he meant to record a finding to that effect. Nevertheless Magistrates who take action under Section 90 would do well if they conformed strictly to the words of Section 90 in view of the fact that, in exercising their powers under that Section they are interfering with the liberty of the subject and no amount of care and vigilance on the part of the Magistrate in such matters will be deemed to be excessive.—

47 T. L. R. *455* **(=21 T. L. J.,** *794*).

3. See also—Secs. 128 and 130 *Infra.*

Section 93.

See Sec. 307.—

47 T. L. R., *326* **(=21 T. L. J.,** *780*).

Section 97.

The revision petition was preferred against the order of the lower Court cancelling the bail bond executed on behalf of the petitioner against whom proceedings were pending before the First Class Magistrate and remanding him to custody.

It was contended in revision that the lower Court had no jurisdiction to order the petitioner to be detained in custody. The question for decision was whether, under the provisions of Section 97, the Magistrate could pass an order for detention pending enquiry.

Held.—Section 97 only lays down the procedure that should ordinarily be followed in cases where proceedings are started under Section 90 with a view to securing the attendance of the person proceeded against. It provides that in the first instance a summons should issue, and it authorises the Court to order immediate arrest under certain circumstances. It is not reasonable to construe this provision for immediate arrest as implying also the authority to detain the person arrested till the termination of the enquiry. In the case the Magistrate's order for detention in custody was wrong. The petitioner had the right to be enlarged on bail pending the enquiry against him.—

20 T. L. J., *764*.

Section 101.

The trial Magistrate ordered the revision petitioner to furnish security for Rs. 500 for being of good behaviour during the period of one year. On his failure to produce security, order was passed against the petitioner under Section 101 of the Code to undergo simple imprisonment for one year. The petitionor without appealing against the order to the District Magistrate, filed the revision petition.

Held.—The High Court will not ordinarily entertain an application for revision unless the lower Court has been moved. This is not an inflexible rule and the High Court might interfere if it is required in the ends of justice.—

22 T. L. J., *742*.

Section 103.

See, Sec. 89.— 20 T. L. J., *85*.

Section 107.

See, Sec. 307.—

47 T. L. R., *326* (=21 T. L. J., *780*).

Section 116.

Once it is found that there is a *bona fide* dispute as to the existence of the public right of way (alleged to be unlawfully obstructed) the Magistrate has no jurisdiction to go on with the proceedings under Section 116. Even assuming that he has such jurisdiction, it is not desirable to go on with the proceedings without referring the parties to a Civil Court. The jurisdiction of the Magistrate will not of course be ousted, if the dispute is not real and *bona fide* but only a mere pretended claim.— 22 T. L. J., *1266*.

Section 127.

1. Where an order has generally been passed by the Magistrate under Section 127, the High Court will not interfere in revision. The High Court may, however, call for the records of the case in order to ascertain whether there has been any defect in procedure. As regards Section 127 there is practically no procedure to be adopted as the Section authorises the Magistrate, if necessary, to act without giving notice to the parties concerned. It might be possible for the High Court to interfere when the Magistrate had no jurisdiction to pass an order under the Section or when he attempts to give his order greater effect than is permitted by the Section.

Section 127 is purely an emergency Section and has nothing to do with the determination of any right to possession of property or to the use of property. There is nothing to prevent proceedings being taken both under Section 127 and either under Section 128 or 130 at the same time.

Section 127 gives a very wide discretion to the Magistrate to pass orders seriously interfering with the rights of individuals which take effect for two months or for a longer period if confirmed by a Gazette Notification. This jurisdiction is not under the effective control of the High Court. The High Court cannot question the reality of the emergency. An amendment of the Travancore Regulation similar to the one in British India might be beneficial. *Per Venkita Rao, J.*—The view expressed in 20 T. L. J., 940, as to the High Court's power to revise orders under Section 127 by virtue of Section 7 of the High Court's Regulation, requires further consideration.— 47 T. L. R., 88 (=21 T. L. J. *533*.)

2. See also Sec. 326.—

46 T. L. R., *203* (=20 T. L. J., *940*).

Section 128.

1. The 'dispute' contemplated in Section 128 would necessarily be deemed to *relate* to that which existed at the time of the preliminary order. If in the course

of the proceedings, the breach of the peace apprehended originally was made out to be unlikely to the satisfaction of the Court, it has to proceed under paragraph 5 of the Section and drop the proceedings initiated with respect thereto. It would not be proper to continue the enquiry with respect to disputes between other parties which are brought to light during the enquiry, as it is not unlikely that the parties would be embarrassed thereby. The proper procedure in such cases would be for the Court to drop the proceedings already initiated by it and start fresh proceedings if considered necessary and expedient in its opinion and pass a fresh preliminary order with respect thereto.— **20 T. L. J.,** *82.*

2. Where a person who is entitled to complain under Section 128 of forcible dispossession, goes before a Magistrate and complains of forcible dispossession, if, for no reason or any fault of his, the Magistrate does not pass a preliminary order within two months, the complainant should not be made to suffer by reason of the delay caused in the Magistrate's Court.

It is impossible to lay down any hard and fast rule which may be applicable to all cases as to the exact point of time to which an enquiry under Section 128 must be directed, and the time at which possession must be found in one party or the other, must be governed by the fact of each particular case. To hold that the Magistrate is precluded from enquiring into anything before the date when he actually commenced his own proceedings might, in some cases, lead to a person who had been acting in an unwarrantable manner misusing the process of the law to enable him to carry out a high-handed and improper scheme which could never have been the intention of the Legislature. A Magistrate does not act without jurisdiction if he takes action under Section 128 even when the dispossession had taken place more than two months prior to the initiation of proceedings.— **20 T. L. J.,** *758.*

3. When once proceedings under Section 128 have been started, there is no compulsion on the Magistrate to complete the enquiry in any event. But when a preliminary order under Clause 1 of Section 128, is passed on the ground that there is a likelihood of a breach of the peace, the Magistrate cannot afterwards say that there is no likelihood of such breach, without an enquiry and without taking the evidence which the parties are willing to offer.— **20 T. L. J.,** *947.*

4. Where a preliminary order passed under Section 128 of the Criminal Procedure Code, was assailed on the ground that it was indefinite and insufficient:

Held.—The question whether a preliminary order is sufficiently definite or not is one that has to be determined with reference to the facts of each case. If the parties had clearly understood to what the order related, and filed the written statement called for by the Court relating to such property, and adduced evidence in support of their possession whereupon the Court upheld on the evidence possession with one of the parties, it is not open to the party aggrieved by such final order to invoke the revisional powers of High Court to vacate the whole proceedings on the ground that the preliminary order is defective in regard to the description of the property. The foundation for invoking such interference is the inability of the aggrieved party to know precisely what the subject matter of dispute was. If he had full knowledge of the same despite the defect in the preliminary order, if it was a defect at all, the order of the lower Court could with propriety be interfered with. It could not be laid down as an inflexible rule that the preliminary order should be self-contained.

In a case where the parties were fully cognisant of the matter in dispute, they

could not be heard to impeach the preliminary order on the ground of indefiniteness.

Held also.—The final order under Section 128 could relate only to the property specified in the preliminary order, the Magistrate having no jurisdiction to deal with a property of larger area than that included in such order.— 21 T. L. J., *106.*

5. Where there was a dispute about possession of lands which threatened to end in a serious breach of the peace, the Magistrate's obvious duty was to take steps to avert a breach of the peace by timely action under Section 128 or Section 90. In exceptional cases where the possession was absolutely free from doubt, *e. g.*, where a Civil Court had declared one party to be in possession, he might properly refuse to take action under Section 128. Even in cases where the Magistrate is of the view that the dispute is not a *bona fide* one, he may take action under Section 128 as under that Section the matter to be determined is the actual possession of the properties in dispute. — 21 T. L. J., *337.*

6. The First Class Magistrate, Kottayam, attached the disputed property and placed it in the hands of a Receiver pending the disposal of a petition under Section 128, Criminal Procedure Code, filed by the revision petitioners. Previous to the starting of these proceedings, O.S. No. 86 of 1089 had been filed in the Kottayam District Court for the recovery of the whole cherikkal of which the disputed property formed a part on the basis of a lease to one who was the senior member in the Tarwad of the revision petitioners. The other members of the Tarwad were not parties to the suit. A decree was passed in this suit for recovery of the property on payment of a large sum of money for improvements. This decree was upheld with certain modifications by the High Court on appeal. In execution of the decree an application was made to the District Court to obtain delivery of possession and an order was passed permitting this. The District Judge accordingly wrote to the First Class Magistrate informing him of the fact. The First Class Magistrate thereupon, without giving notice to the parties, directed the Receiver who was in possession of the property to permit the effecting of delivery. The delivery was effected accordingly by the Amin from the District Court. The revision petition was filed against this order of the Magistrate.

The parties to the proceedings under Section 128, Criminal Procedure Code, were not parties to the Civil Suit O. S. No. 86 of 1099 and so could not *prima facie* be evicted from the land in dispute in that suit assuming them to be in possession of it. If the Criminal Court had decided that the petitioners were in possession and subsequently an attempt had been made to deliver possession to the decree-holder, it would have been open to the revision petitioners to obstruct the delivery of possession. Of course, a decision of the Civil Court subsequent to such obstruction might terminate the possession of the petitioners as effectively as a decision in a civil suit against them. No final orders have been passed in proceedings under Section 128, Criminal Procedure Code. The order of attachment under this Section takes effect pending the decision of the Magistrate. Therefore the attachment is unaffected by an order passed by any other Court unless the effect of it is to put an end to the proceedings under Section 128 altogether, but to have this effect it would appear necessary that the order must be of such a nature as to indicate that there could be no *bona fide* dispute as regards the land in question. (*Vide* Clause 5 of Section 128.) This result could not be attained by an order in proceedings in which the parties in the proceedings before the Magistrate were not impleaded. Pending an order of such a nature, it is the duty of the Magistrate to maintain possession of the Court over the property in dispute.

Though the District Court may be regarded in some respects as a Court superior to that of the First Class Magistrate, each Court has its own jurisdiction which it has the right and duty to exercise without any interference, save as provided by law. The order of the Magistrate effecting the attachment has a definite legal consequence which cannot be avoided save in certain definite ways. The Magistrate was in error therefore in passing the order under revision.

Apart from some special power or provision, a prior legal possession or custody obtained by the one Court must be respected by the other.

For a conditional order passed by the Civil Court to take effect on the Magistrate withdrawing the attachment, the parties to the proceedings under the Criminal Procedure Code should also be parties to the suit.—

47 T. L. R., *148* **(=21 T. L. J.**, *736*).

7. The foundation of the proceedings under Section 128 is the existence of the likelihood of a breach of the peace. The jurisdiction to attach the subject of dispute is further limited in asmuch as the Court can resort to that step only in cases of emergency; Proviso 2 to Clause 4, Section 128. An attachment necessitated by the emergency of the situation is removable if the Magistrate thinks that the emergency no longer exists though such a course may no doubt be beset with many practical difficulties. But so soon as the Magistrate is satisfied that the likelihood of a breach of the peace has passed away or has not existed, his authority to carry on the proceedings comes to a stop (Section 128, Clause 5).

Where, therefore, with the passing of a preliminary order under Section 128, the properties forming the subject of dispute were also ordered to be attached, but before the attachment was effected the Magistrate after hearing both parties passed orders staying the attachment "until further orders" on the reasoning that there was no likelihood of breach of the peace:

Held (on reference).—In the light of his reasoning the Magistrate's authority to continue the proceedings seemed to be at an end. The procedure to be followed was to quash the whole proceedings if the Magistrate was not satisfied as to the evidence of the likelihood of a breach of the peace. If he thought otherwise, he could continue the proceedings with or without attachment according as he considered the situation emergent or not.—

21 T. L. J., *1228*.

8. During the course of proceedings under Section 128, pending before the Magistrate the petitioner contended that in the light of the evidence already on record, the counter-petitioners had not even a shadow of title or possession in regard to the land in dispute and that they were merely keeping up a show of struggle without good faith and prayed for immediate disposal of the case. The Magistrate, however, ordered recording of further evidence. In revision against this order by the petitioner:

Held.—Good faith or no good faith, the Magistrate cannot avoid deciding the issues in the case. In coming to a finding as to which side was in actual possession, it was not desirable for the High Court to fetter the discretion of the lower Court in any way. In any case the Court should see that a petition of the kind was not long kept pending on the file. If at any time the Court was satisfied as to the possession of a particular party the Court could record a finding to that effect and proceed if necessary under Section 90, against the party who still gave trouble.

Per Narayana Pillai, J.—In the interests of peace the Magistrate may move under Section 90 or 128. The rulings of this Court favour action under Section 128 when the apprehended breach of peace has relation to a dispute regarding the possession of immovable property. It is a

matter for consideration why only the mild measures provided by Section 128 should be deemed applicable to one who is bent on a disturbance of the public peace because he draws a thin veil over his threatening activities by raising an unfounded dispute about a bit of land and why such a person should escape the disgrace of an order under Section 90.—

21 T. L. J., *1292.*

9. A land-lord, who has let his land on Pathivaram, is in joint possession of the standing crop with the lessee and can take action under Section 128 of the Code.—

22 T. L. J., *22.*

10. Proceedings under Section 128 constitute a criminal case and the Sessions Court is a Court of superior criminal jurisdiction to the First Class Magistrate's Court, within the meaning of Section 404 of the Code. The High Court has therefore power to transfer proceedings under Section 128, pending before a Magistrate to the Sessions Judge.

Section 128 (4) does not in itself impose a duty on the Magistrate to summon witnesses but only to hear the evidence adduced by the parties. It is usual however for a Court to give its assistance and it has been held that the Magistrate should record his reasons for refusing to summon witnesses cited by the parties. In any event, it is open to the Court before issuing summons to require the reasonable expenses of the witnesses to be deposited in Court by the party. It is not the duty of the Sirkar to pay the travelling expenses of witnesses in such cases.—

22 T. L. J., *475.*

11. *Per Chakko, J.*—Under 128 the only point the Magistrate has to consider is as to who is in actual possession of the property and not as to who has the title to the property or the title to possession though, no doubt, under certain circumstances the Court may consider the question of title in so far as the evidence as to title may throw light on the question of actual possession. A bare right or more strictly a licence to go on the land at the time of the harvesting, does not give the lessors a right to the possession of the property much less actual possession within the meaning of Section 128. The principle of constructive possession cannot be applied to a case where the dispute is between the lessor and the lessee who is actually in possession under the lease.

There is however nothing in the Criminal Procedure Code or any other law to prevent the High Court from interfering with an order under Section 128 at any stage of the case when the Court is satisfied that an obvious injustice has been done by the Magistrate's order.

Per Raman Tampi, J.—Standing crops not cut and severed fall within the definition of immovable and rival claims in respect to collection of the same should be deemed to be disputes regarding the actual possession of immovable property and action may be taken under Section 128. The fact that the crops have been harvested subsequent to the filing of the petition does not oust the jurisdiction of the Magistrate.— 22 T. L. J. *759.*

12. On 5-4-1104 the High Court passed an order transferring Miscellaneous case No. 1 of 1104 on the file of the Peermade First Class Magistrate's Court and Miscellaneous cases Nos. 11 and 18 of 1104 of the Division First Class Magistrate's Court, Kottayam, to the file of the Sessions Judge, Kottayam, for disposal. The array of parties was different in these cases. The properties involved in them were the estates belonging to the Tropical Plantations Ltd. No specific order for joint trial was passed by the High Court. The parties and the Court took this order of transfer to be tantamount to an order for joint enquiry in respect of all these cases. The point arising for decision was identical in the three cases. The Sessions Judge finally passed orders in Summary Case No. 18 of 1104 in favour of the first

counter-petitioner and this decision was confirmed by the High Court on revision. The Sessions Judge, Kottayam, passed a subsequent order directing the interim receivers to hand over the properties in their possession to the 1st counter-petitioner. This revision petition is preferred against this order.

The contention was raised on behalf of the revision petitioner that since the case-heading related to Miscellaneous Case No. 18 of 1104, Summary Case No. 1 of 1104 transferred from the file of the Peermade First Class Magistrate's Court should be deemed to be undisposed of.

It was held that the case which is referred to as Case No. 18 of 1104 of the Kottayam Sessions Court was manifestly understood by the parties to relate to the consolidated proceedings arising out of the three cases pending in that Court which had been received from the two Magistrates' Courts. The petitioner was fully aware and was willing that those cases were to be tried together and that the enquiry was to be jointly held in respect of these properties. The cases appear in fact to have been consolidated and tried together as the points arising for decision were identical though the properties involved were different.

The omission to pass an order for joint trial can at best amount only to an irregularity which can be regarded as material only if it has resulted in substantial prejudice to the petitioner.

Though there is some difference in the array of parties it does not debar a joint trial because of the existence of two parties which are represented by them and of a common interest *inter se*.

It was also contended that the order under revision is *ultra vires* inasmuch as with the passing of a final order disposing of a summary case there was nothing else to be done by the Court.

Held.—The properties being in the possession of receivers under the control of the Court such possession could be determined only by an order of the Court releasing the receivers from their responsibility and withdrawing the Courts' control over those properties. The final order of the Court cannot be regarded as having put an end to the receiver's possession *ipso facto*. In the nature of the case a final order was necessary.—

48 T. L. R., *211* (=**22 T. L. J.**, *804*).

13. Where, pending proceedings under Section 128 in respect of a tile factory, the Magistrate conducting the enquiry appointed a "receiver" with plenary powers, over the subject in dispute;

Held (Setting aside the order for the "receiver").—The Magistrate may appoint an agent whose function was to be merely to keep the property in custody, pending the disposal of the proceedings under Section 128, or until further orders, for the purpose of preventing loss and detriment to the property.

Per Chakko, J.—The order of the lower Court appeared to be passed under Section 129, but it had no jurisdiction to do so. A receiver can be appointed under Section 129, only after the completion of the enquiry under Section 128. The question whether proceedings under Section 128 could at all be started in respect of the tile factory was left open.

Per Narayana Pillai, J.—Undeniably Section 128 empowered the Magistrate to attach properties in case of emergency and the usual practice, whether supported by law or not was to appoint a receiver to the properties attached. There was ample authority however for the proposition that no receiver of the same status as the one contemplated by the Civil Procedure Code could be appointed when the proceedings were exclusively under Section 128.

The contention that attachment under Section 128 stood only on the same footing

as an attachment by a Civil Court was hardly sustainable. So the Court should be held to be in possession of the property attached and it was open to it to take necessary action to prevent loss to the parties. It was also open to the Court to appoint some one else to take care of and to manage the property under attachment.

Desirability of including attachment in Section 75, Criminal Procedure Code, with summons and warrant in view of the need of the general applicability of attachment as a process throughout the Code—pointed out.—

22 T. L. J., *995.*

14. Under Clause (2) of Section 128, the expression 'land' in clause (1) includes crops and other produce of land also. A dispute regarding the right to gather standing crops from a property falls, therefore, within the scope of Section 128, clause (1).

Where under the terms of a lease, the lessee is bound to give previous intimation to the lessor before the crops are harvested and the lessor has the right to be present and to see that the produce is harvested and a division is duly and properly made:

Held.—It is reasonable to view the lessor's right, in the circumstances, as a right to collect the crops jointly with the lessee. This involves a right to joint possession of the crops when they are in a fit condition to be gathered and any dispute in regard to such right falls within the scope of Section 128, clause (1).—

22 T. L. J., *1151.*

15. The material date on which posession should be found is the date at which possession is disturbed and not the date on which the preliminary order is passed. If the Magistrate takes his own time to pass the preliminary order or for some reason or other, the order is delayed, the parties ought not to suffer.

Where a person who is entitled to complain of forcible dispossession goes before a Magistrate and complains of forcible disposession, if for no reason or any fault of his, the Magistrate does not pass a preliminary order at once, but delays the passing of the order though it may be *bona fide* the person who complained to him of forcible dispossession should not be deprived of the benefit of the Section by reason of the delay caused in the Magistrate's Court.— **23 T. L. J.,** *208.*

16. Section 128 does not render it obligatory on the Magistrate to summon witnesses at the instance of the parties or to compel their attendance after they have been summoned but failed to appear.

The omission to cite the witness again could not be regarded as irregularity in procedure which would justify interference in revision with the order of the Magistrate.—

49 T. L. R., *93* **(=23 T. L. J.,** *264***).**

17. A Magistrate before taking action under Section 128 is not bound to satisfy himself and find that the dispute stated to be likely to lead to a breach of the peace is a *bona fide* dispute.

As laid down in so many decisions of the High Court, where there is a dispute relating to immovable property which is likely to cause a breach of the peace, ordinarily the Magistrate should start proceedings under Section 128. But in exceptional cases, where clearly there could not be a dispute that merits an enquiry under the Section, the proper procedure will be to take action under Section 90 of the same Code. Perhaps, certain Judges have used the expression '*bona fide* dispute' and 'reasonable dispute' in the sense of a dispute that requires or merits some investigation at least, and not mere brawls caused by a worsted, but turbulent antagonist or quarrels of a similar nature. At any rate, the Courts have no concern whatever to see, when they proceed under Section 128, how just or equitable are the

claims put forward by the parties to substantiate the *factum* of actual possession (F. B.)—

49 T. L. R., *237* (= **23 T. L. J.**, *1225*).

18. See also Sec. 255.—

30 T. L. J., *1042*.

Section 130.

1. The scope of the expression 'land' in Section 130 is co-extensive with that relating to that word in Section 128. Sections 128 to 131 occur in the Chapter with the heading—'Disputes as to immovable property'. In view of the definition of immovable property in the General Clauses Regulation, buildings and other fixtures attached to land could not for the purpose of user properly be dissociated and treated independently of the land. To hold that the expression 'land' occurring in the Section refers only to the surface of the land and not to permanent structures would result in the deprivation of the remedies contemplated in this Section, so far as disputes relating to use of the buildings or other structures on land are concerned. The occurrence of the expression 'whenever any Magistrate is satisfied' would indicate that the intention of the Legislature is to provide for an additional remedy over and above what had been already laid down in Section 128 with respect to immovable properties dealt with therein. The restriction of this additional remedy to user of the surface of the land alone in the nature of the scheme of the Code seems to be doubtful. Further, it cannot be said that the omission of an explanation like that contained in Section 128 (2), in Section 130 would not *per se* justify such a limited construction in the absence of a specific provision to that effect. The expression 'land' used in Section 130 includes building also.

The management of the mosque and the collection of the dues on festive occasions could therefore be deemed to be a mode of user of the mosque and would therefore fall within the purview of the Section.

In cases where the grounds for the inauguration of the proceedings have been recorded in unambiguous terms, a repetition of the same in the final order is not necessary.

The passing of a preliminary order before issue of process in proceedings under Section 130 is not essential.—

20 T. L. J., *304*.

2. Section 130 of the Criminal Procedure Code deals with cases different to those within the scope of Section 128, and the procedure laid down in the latter class of cases has not been expressly made applicable. Indeed, no particular procedure has been provided in cases falling under Section 130. As Section 130 stands at present, it does not appear that the Magistrate has been given authority to pass any order restraining the parties to the proceedings before him until he has made up his mind as to the rights of the parties. Until that time he may only inquire into the matter. It would, in any event, not be permissible to the hands of one of the parties pending enquiry into the merits of the respective claims.

Rights which may be exercised in buildings, such as Churches, Temples and Mosques fall within the scope of Section 130.

A right exercisable whenever one deems fit and, therefore, at all times of the year, but is also such that it will be exercised only when an occasion necessitates it, cannot be deemed to fall within Section 130.

Where therefore, the Malankara Metropolitan was sought to be restrained, under Section 130, from exercising his rights of supervision over Churches within the jurisdiction of his spiritual authority on the ground of an apprehension of breach of the peace, as a result of disputes regarding such rights:

Held.—The right did not fall within the scope of Section 130. In any event he alone could not be restrained till the result of the enquiry and if deemed necessary it was open to the Courts to preserve peace under Section 90 of the Code.— **20 T. L. J.,** *333.*

3. No special procedure is laid down under Section 130 of the Code as has been done under Section 128, though under the amended British Code the procedure under Section 145 has been prescribed as far as practicable for cases falling within the scope of Section 147 of that Code (corresponding to Section 130). It follows that even after proceedings have been started under Section 90, it may be open to the Court in certain circumstances to pass orders under Section 130 if the requirements of the Section are fulfilled and the Court thinks it advisable to do so.—

21 T. L. J., *800.*

4. The words 'the right of use of any land or water including any right of way or easement over the same' in Section 130 includes also a right to resort to a place of religious worship.—

22 T. L. J., *581.*

Section 135-A.

See Regulation I of 1074, Section 176.—

24 T. L. J., *97.*

Section 144.

The accused in P. E. No. 11 of 1106 of the Thodupuzha First Class Magistrate's Court applied for copies of the statements of prosecution witnesses recorded by the Police under Section 144. This application was rejected on the ground that no statements were recorded by the Police. The accused again applied for copies of the statements alleging that the notes of statements were incorporated by the Police in the case diaries prepared under Section 154, Criminal Procedure Code. The Magistrate rejected the second application on the ground that the Court had no power to revise its own order.

Held.—The accused has a right to obtain copies of statements recorded by the Police under Section 144 for purposes of cross-examination when any witness examined by the Police is called for the prosecution, subject, of course, to the discretion of the Court.

There is nothing like *res judicata* in the matter of applications in criminal trials. In fact the application itself did not seek revision of a prior order. The orders on an application for copies of statements under Section 144 cannot bar an application of this kind. A Court might allow copies to be furnished to the accused if found expedient and necessary for the ends of justice. No doubt a discretion is vested in the Court to allow or disallow the prayer for copies after scrutiny of the statements. *Semble.*—The proper stage for the accused to apply for copies is after the examination-in-chief and before the cross-examination.—

48 T. L. R., *207* **(=22 T. L. J.,** *1203*).

Section 146.

1. The statement of a witness recorded under Section 146 cannot be used as substantive evidence, but can be relied upon only for purposes of corroboration. If such statements are recorded *de bene esse* on the ground that the witness may not live till a later stage owing to serious illness or that they were going to a foreign place and may be not available for examination at a later stage, the statements may not be open to suspicion. But a different consideration attaches to statements that are recorded owing to fear that the witnesses may be tampered with later on.—

22 T. L. J., *890.*

2. *Per Raman Tampi, J.*—The law keeps a jealous and watchful eye on the

confessional statements of accused persons in criminal cases. In British India, Clause (3), Section 164, Criminal Procedure Code, has been amended so as to cast on the Magistrates the duty of explaining to the accused person that he is not bound to make a confession and that if he does so, it may be used against him as evidence in the later stages. Though our Section has not been amended to this effect, there is no doubt that this precautionary step may well be taken by our Magistrates also. The Magistrate should question the person to find out whether he is making the statement voluntarily, and such questions must be directed towards eliciting facts which will enable him to judge of the character of the confession and not merely to repeat some formulae which the accused person can scarcely appreciate.—

23 T. L. J., *1067.*

3. Section 27 of the evidence Act embodies an exception to the general rule which makes confessions to Police Officers inadmissible. For the exception to be relied on, the confession should be (1) by an accused person, (2) in Police custody, and (3) which directly leads to the discovery of a fact. As regards the question whether the confession has led to the discovery of a fact, in the first place, the confession should be *antecedent* to the discovery. Another important condition is that the discovery must be an original one resulting from the confession. The confession will not be admissible if the fact discovered was already known to another Police Officer. The discovery should be of a *material fact* or *physical fact* as distinguished from a mental condition of which any person is conscious.

A confessional statement by an accused person has to be recorded under Section 146. In doing so, the Magistrate is bound to ascertain whether the accused is making the statement voluntarily without any sort of inducement or threat by others. If he is so satisfied, he may record the statement and shall certify in his own hand that he believes the statement to have been made by the accused person voluntarily. If in the mind of the Judge, the circumstances of the case raise even a faint or feeble doubt of the voluntary nature of the confession, it should be rejected.

In recording a confessional statement, it is, no doubt, open to the Magistrate to put questions. In fact, he ought to put such questions. But such questions are only meant to ascertain the voluntary nature of the statement which the accused person proposed to make. The recording should begin only after the Magistrate is convinced that the man is making the statement voluntarily. When once that is done, there is no more scope for questions except such as would enable a clear narrative being taken down.

The words 'ഞാൻ മജിസ്ട്രേട്ടാണ്, പോലീസുകാരനല്ലാത്തതുകൊണ്ട് പറയാം' told by the Magistrate to the accused before recording his confessional statement, hold out an inducement to the accused as contemplated in Section 27 of the Evidence Act and are therefore sufficient to invalidate the confession.—

50 T. L. R., *149*(=**23 T. L. J.,** *1207*).

Section 147.

On the contention that the search for articles stolen having been made in places outside the jurisdiction was illegal and that the evidence in regard to the alleged discovery of the articles should be discarded on that ground:

Held.—Even though the search was illegal, it would not follow that the evidence relating to the recovery of the property at the search would be inadmissible. All that could be said in such circumstances is that the evidence in regard to a search of this nature should be accepted with care and caution.—

49 T. L. R., *954*(=**23 T. L. J.,** *675*).

Section 161.

The 'consequences' referred to in Section 161 mean the ultimate loss sustained by the complainant.

Where a complaint for cheating, by means of a cheque which was drawn at Alleppey, was filed before the Kottayam Magistrate on the ground that there was a previous misrepresentation at Kottayam to prepare the ground for deceit and that some consequences ensued at Kottayam ;

Held (Directing the Alleppey Magistrate to try the case).—There was nothing in the case to deviate from the general rule laid down in Section 161, *viz.*, that every offence *shall* ordinarily be enquired into by a Court within whose local limits it was committed.—

22 T. L. J., *699.*

Section 173.

A sanction to prosecute should not generally be accorded where it would enable the applicant to wreak his private vengeance on his opponent. It is the Court that should feel more aggrieved than a private party by the commission of an offence like the one for which sanction is prayed for (perjury). That is why the Legislature has thought fit to hedge about the prosecution for such offences with the discretion of the Court. The Court representing as it does the body politic in the administration of justice, has to see whether in the wider interests of public justice, the prosecution sought to be launched is necessary before sanction is granted.—

20 T. L. J., *295.*

Section 175.

1. By virtue of G. O. R. Dis No. 1981/ Judicial, dated 16/26 th July 1927, revising the powers of the Police Commissioner, a Police Inspector of the 3rd Grade is not a Public Servant not removable without the sanction of Government within the meaning of Section 175, Criminal Procedure Code. No sanction of Government is therefore necessary for prosecution of a complaint against such Inspector.—

46 T. L. R., *238*(=**20 T. L. J.,** *945*).

2. The complainant was in enjoyment of property under a mortgage from the second accused and subsequently obtained title under a Court sale held in execution of decree against the second accused. The second accused in the meantime had been adjudicated insolvent, and the first accused, the Official Receiver, prayed for the annulment of the sale and had it set aside. The complainant applied for cancellation of the order of annulment. While the application was pending, the accused entered on the property and cropped nuts. On being charged of the offences under Sections 379 and 449, of the Penal Code, the first accused contended that sanction of Government was necessary for taking cognisance of the complaint.

Held.—The offences imputed to the first accused were not offences of which his being a public servant was a necessary element, *i.e.*, were not offences which could be committed only by a public servant. Therefore Government sanction was not necessary.—

22 T. L. J., *690.*

3. The privilege of immunity of officials from prosecution without Government sanction only extends to acts which can be shown to be in discharge of office duties or fairly purporting to be in such discharge. It is not enough for him merely to be in an official position which he may abuse. He must act in his official capacity. Acting refers to the specific action which comprises the offence.

Though the person accused is a public servant if the act complained aginst cannot be deemed to be one which has to be done in his official capacity, no sanction for his prosecution is necessary. But if the act is one which can be done in the discharge of official duty though it be unnecessary for the purpose of that duty, it

must be taken to be an act purporting to have been done in the discharge of that duty. A Police Officer investigating a case which is cognisable by him may arrest a person and keep him in custody and it may afterwards be found that that arrest and detention were uncalled for. Even then the Police Officer is protected under Section 175, Criminal Procedure Code, and under Section 70 of the Police Regulation. But if such Officer while acting as such inflicts grievous hurt on the person arrested or takes away any valuable property from him or, if the person arrested is a woman, behaves indecently towards her, the Officer will not be protected in asmuch as these offending acts cannot be treated as official acts.

Sanction for prosecution can be insisted upon only in respect of official acts or acts which could be done only by an officer acting officially. If the act is such as could be done by any one, that is, even one that is not an Officer, sanction is unnecessary. It is not enough if the person who does the act complained against pretends that he is an Officer acting as such.

Whether the act of a Police Officer was done or purported to have been done in the discharge of official duties is always a question of fact and where a complaint is filed making allegations against a Police Officer the Magistrate is bound to make an enquiry into the facts of the case.

Merely because the counter-petitioner is a Public Servant, it cannot be presumed that all his acts are protected. An enquiry should be held and if it is proved that the acts complained against were as a fact committed in the discharge of official duties then it will be time to say that sanction is necessary for the prosecution.

The complaint in the case was for wrongful restraint against a Police Officer.—

48 T. L. R., *431* **(=23 T. L. J.** *43*).

Section 176.

The junior members of a Malabar Tarwad are co-parceners with the Karanavan and have equal right in the *corpus* of the joint property of the Tarwad. A junior member is therefore a person aggrieved by a trespass on Tarwad property as contemplated by Section 176 of the Code. This is especially so, after the passing of the Nair Regulation by which individual members have been invested with the right to claim partition though certain limitations have been placed on that right. **—20 T. L. J.,** *384*.

Section 178.

Reference by District Magistrate moving for setting aside the order of dismissal of a complaint by Stationary Second Class Magistrate on the ground of an earlier order passed by him accepting a referred charge sheet filed by the Police upon the same set of facts. The Stationary Magistrate had not complied with the provisions of Section 178 of the Code by examining the complainant. On behalf of the accused, it was argued that while the omission to record the statement is a violation of the statutory provisions on the subject, the same was only an irregularity curable by Section 413 of the Code.

Held.—The fact that a referred charge sheet filed by the Police with reference to the same set of facts had been accepted by the Magistrate before, was no justification for summarily rejecting the complaint, especially where the complainant stated in unambiguous terms in his complaint that he had no notice of the charge sheet in question had been served on him. **—20 T. L. J.,** *706*.

Section 180.

1. The preliminary enquiry contemplated in Section 180 is for the purpose of ascertaining the truth or falsehood of the complaint. Evidence in rebuttal of the

possible pleas of the accused does not form an item for consideration under that Section. A consideration of the question of *bona fides* does not arise at the stage of preliminary investigation, and the dismissal of a complaint on the possible *bona fides* of the accused is not warranted in law.

Even an opinion of the Court below that there is no chance of a conviction and that the prosecution would not serve any useful purpose, is not enough to dismiss the complaint.

When a complaint is dismissed under Section 181 before the issue of the process to the accused and such order of dismissal is sought to be revised, it is not necessary to issue notice to the accused on the revision petition.—

20 T. L. J., *197.*

2. A local inspection shall be made only for the purpose of *properly appreciating* the evidence given at the enquiry or trial; and not for obtaining evidence in regard to the facts in issue as this course is not open to him under the law. A local inspection is permitted only for appreciating evidence adduced in the case and cannot take the place of evidence itself.

The result of such inspection should be placed on record so that the parties may have an opportunity of seeing what the facts are which the judicial officer considered to be established by the local investigation and he should never deliver his judgment relying upon that evidence without giving an opportunity to the parties to rebut his opinion.—

20 T. L. J., *652.*

3. Criminal Circulars No. 6 of 1075 and 3 of 1099 direct that Magistrates should make liberal use of their powers under Section 180. The Ruling reported in 9 T. L. J., 319 only lays down, that there ought to be more than a formal examination of the complainant in such cases before the complaint is dismissed and also that the Magistrate should give a reasonably full statement of the grounds on which the order of dismissal is based. It is not possible to hold that either the Circulars or the ruling referred to absolutely prohibit the dismissal of a complaint if the Magistrate finds after an examination of the complainant that it is false or unbelievable.

The provisions of the Code give a wide discretion to the Magistrate in respect of refusal of process, as it is essential in the interests of the community generally, though such discretion is not unfettered "Discretion means, when it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion, according to law, not honor. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself."

Thus, in determining whether process ought to issue, a Magistrate must proceed according to the provisions of the Code, and if after carrying out the instructions therein contained, he is of opinion upon the materials before him that a *prima facie* case has been made out he ought to issue process; and in such circumstances he is not entitled to refuse to issue process merely because he thinks that it is unlikely that the proceedings will result in a conviction. If the Magistrate were to refuse to grant a summons on that ground, it would mean either that he was trying out the merits of the case at a preliminary stage in the proceedings or was following a process of guess work and speculation; and neither of these things is he permitted to do. If upon the facts alleged by the complainant, and upon the assumption that the statement by the complainant is true, no offence is disclosed, it is of course the duty of the Magistrate to dismiss the complaint. Again, the Magistrate would

not be justified in issuing process unless he could place reliance upon the statement which the complainant has made—and this is the ordinary case—than, *if he distrusts the statement made by the complainant*, or if he distrusts the complainant's statement and the distrust—though not sufficiently strong to warrant him in acting upon it without further enquiry—is confirmed as the result of an enquiry or investigation, in either case also it is his duty to dismiss the complaint.—

20 T. L. J., *768.*

Section 181.

1. On the contention that dismissal under Section 181 was only an executive order and not revisable:

Held.—The order was a judicial one and was revisable.— **23 T. L. J.,** *960.*

2. See Section 180.— **20 T. L. J.,** *197.*

„ 230.—

46 T. L. R., *366* **(=21 T. L. J.,** *81*).

„ Regn. VI of 1087, Section 24,—

49 T. L. R., *223* **(=23 T. L. J.,** *178*).

Section 187.

1. It has been laid down in certain decisions of this Court that if the evidence is of such a nature that no reasonable person would hold the accused guilty upon the evidence placed before him, the Committing Magistrate may discharge the accused.

Held.—In a case which depends entirely on oral evidence it cannot be said that the Magistrate is bound to commit merely because there is some evidence, however weak and flimsy in support of the complaint. The Committing Magistrate has jurisdiction, however limited, to decide as to the credibility of witnesses examined before him.—

22 T. L. J., *734.*

2. When a Magistrate holding a preliminary enquiry in the case triable exclusively by the Sessions Court, takes it into his head to discuss and weigh the evidence as regards the credibility of the prosecution witnesses with meticulous care and discharge the accused, he runs a considerable risk of having his order set aside by the High Court since it is just possible that the Sessions Court may take a different view as regards the credibility of the witnesses to the one taken by the Committing Magistrate.—

22 T. L. J., *767.*

3. If there is no probability of a conviction being recorded on the strength of the evidence adduced before him, the Magistrate ought not to subject the accused to the hardship of a trial in the Sessions Court, but should discharge him taking care, however, to state judicially and in detail his reasons for taking that course.—

49 T. L. R., *146*, **(=23 T. L. J.,** *462*).

Affirmed.—24 T. L. J., 183.

Section 188.

It is not the duty of a Committing Magistrate to act merely as a machine for the purpose of recording evidence in the case and at the end committing automatically the accused to the Sessions. It is his duty to sift the evidence and see whether it is reasonably clear that upon the evidence the accused stand a chance of being convicted if committed to the Sessions Court. The Committing Magistrate in his preliminary enquiry has to determine whether there is a case for trial.— **23 T. L. J.,** *670.*

Affirmed.—24 T. L. J., 183.

Section 199.

The revision was from an order of the lower Court rejecting the application of the accused to modify the charge so as to make it conform to the provisions of Section 199.

In the circumstances of the case, the order was set aside and the lower Court

directed to dispose of the application afresh.

There can be no doubt that the High Court does not ordinarily interfere with an order passed by a subordinate Court in the course of pending proceedings. But it has always been held that it may do so in a case of an exceptional nature, and one test of its being of such a nature is the fact that the bare statements of the facts of the case without any elaborate argument should be sufficient to convince the High Court that the case is one fit for interference at an intermediate stage.—

22 T. L. J., *1295*.

Section 210.

Two forged cheques were both presented simultaneously before the same Bank by the first accused with the aid of the second accused. It was contended that, under Section 210 of the Code, all the offences charged against both the accused could not be validly tried together.

Held.—Section 210 is subject to Section 212 of the Code. So the question of multifariousness has to be decided by the application of the test whether the acts are so connected together as to form the same transaction. "A comprehensive formula of universal application cannot be framed regarding the question whether two or more acts constitute the *same transaction*; the circumstances which must bear on its determination in each individual case are proximity of time, unity or proximity of place, continuity of action and community of purpose or design." The word "transaction" in Section 212 suggests not necessarily proximity of time so much as continuity of action and purpose. A mere interval of time between the commission of one offence and another does not necessarily import want of continuity; continuity of action and purpose common to all the accused throughout is sufficient to make the transaction one and the same.

Comparison of signatures is often hazardous and inconclusive, and is a method that should be adopted by the Courts only with great caution, in the absence of express evidence as to the forgery. But even then comparison is a well recognised mode of proof, and under proper safeguards should be resorted to in appropriate cases.

When the accused is charged with a crime the fact that, after the commission of the alleged crime, he absconded is relevant. Though absconding is a matter equally consistent with innocence as with guilt, it could be considered in connection with the rest of the evidence.

The possession of property connected with a crime is often a highly incriminatory fact.

One specific illustration of the presumption from such possession is that relating to the possession of recently stolen property, which presumption is only an example of the manner in which inferences can be drawn from the common course of human conduct, &c.

The possession of the forged cheques means that either the accused forged them or abetted their forgery and in the absence of direct evidence that he actually forged the false signatures he is liable to be convicted of the offence of abetment of forgery.

It is not necessary that the deception contemplated by Section 416 of the Penal Code should be by verbal misrepresentation only. A dishonest concealment of facts is a deception within the meaning of that Section.—

24 T. L. J., *43*.

Section 212.

1. Whether a series of acts in a particular case formed part of the same transaction has to be decided with reference to the facts of each case. It may not be possible to lay down a comprehensive

formula regarding the question whether two or more acts constitute the same transaction. What has to be considered is whether they are connected together by proximity of time, unity or proximity of the place, continuity of action and community of purpose or design. Continuity of action and purpose is one of the essentials to determine whether the acts form part of the same transaction.

The question whether acts form parts of same transaction is a question of fact which cannot be interfered with in revision.

Omission to set forth the common object necessary under Section 135, of the Penal Code in the charge is not a defect which vitiates the trial.

Omission to question accused under Section 253, Criminal Procedure Code, does not vitiate trial.—

46 T. L. R., *94.* (=**20 T. L. J.**, *391*).

2. If there is only one transaction, more offences than one can be charged against the same person under Section 212 of the Criminal Procedure Code. The question in such cases is whether there is a complete unity of project and the whole series of acts are so linked together by one motive and design as to constitute one transaction.—

21 T. L. J., *1188,*

3. See also Sec. 210.—

24 T. L. J., *43.*

Section 213.

A 20 seater bus, in sound mechanical condition, running on a road 15 feet wide, dashed against the rafters of a ricketty old kalithattu rest house situated on the roadside, as a result of which the kalithattu fell down and killed a child and injured a few people who were resting in it. The accident took place in broad daylight and there was no suggestion that there was traffic on the road or any other obstruction or danger. The evidence showed that the driver who was in general a careful and cautious driver was driving at a moderate speed and on the correct side of the road.

Per Chakko J.—Rashness or negligence cannot be presumed even in a civil case, except where the doctrine of *res ipsa loquitur* applies. In criminal cases, it is obvious that no such presumption can be raised as the prosecution has to prove affirmatively beyond doubt that the accused is guilty of rashness or negligence. In the circumstances of the case under consideration, rashness or negligence on the part of a driver of a bus cannot be presumed from the mere fact of an accident having happened. The lower Court was in error in having charged the first accused with having himself driven the bus or, in the alternative, allowed the second accused to drive it. Section 213 which allows the framing of alternative charges, does not apply where there is any doubt as to the facts, but applies where there is a doubt as to the law applicable to a certain set of facts which have been proved. The illustrations to the Section also indicate that the Section does not contemplate cases where it is doubtful as to which of the accused committed the offence or offences.

Per Venkita Rao. J.—There are acts which are *per se* negligent and when a driver, even though he be skilful and cautious ordinarily, is found steering a bus along an open road in broad daylight in such a manner as to make it hit against a building situated beyond the limits of the road, he must be regarded as being guilty of negligence or rashness unless he is able to prove that it happened in spite of his efforts to prevent it. It is unnecessary also to prove in such cases that before the accident the accused was driving at a dangerous speed or in a negligent manner. The evidence as to the circumstances in which the accident happened proves clearly that without rashness or negligence on the part of the accused the

accident could not have happened. The ricketty condition of the building or any other allied fact has no bearing at all on the question of the accused's guilt. (F. B.).

22 T. L. J., *109*.

Sections 213, 214 & 219.

See Section 304.— 20 T. L. J., *177*.

Section 215.

The accused in the case was tried for an offence under Section 421 of the Penal Code. It was found that on the circumstances proved in the case a conviction under the Section cannot stand, but facts were proved which rendered the accused guilty of a minor offence under Section 416.

Held.—Under Section 215 of the Procedure Code, when a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence although he is not charged with it.

Held further.—The dictum in 38 T. L. R, 135 is far too general. There is no distinction in the Code between the right of appeal against a conviction and the right of appeal against an acquittal, both being governed by the same rules and subject to the same limitations. To hold otherwise would be to practically ignore the well-marked distinction between the High Court's power in revision and appeals. To limit the power of Government to appeal from an acquittal in those cases where through the incompetence or perversity of a subordinate tribunal such unreasonable or distorted conclusions have been drawn from the evidence as to cause a positive miscarriage of justice is hardly warranted by the language of Section 313 of the Procedure Code.—

24 T. L. J., *711*.

Sections 221 & 222.

The accused were acquitted in the course of the trial under Section 222, Criminal Procedure Code. It was contended that the order acquitting the accused under Section 222 could be passed only after taking evidence under Section 221, which enjoined that the Court should take all the evidence produced by the prosecution. The provision under Section 221 was mandatory. Hence the acquittal was incompetent.

Held.—If the contention of the petitioner were accepted, and if the provision were construed as a mandatory provision it would follow that even in the case of an obviously frivolous or false complaint the trial would have to be carried on until it is finally decided even in respect of accused against whom no credible evidence or any evidence at all has been adduced. This could not have been in the contemplation of the Legislature.

Further, assuming that the provisions were mandatory it did not follow that any infringement of these provisions would afford ground for interference in revision in all cases. The passage beginning with "unless such error" in Section 413, Criminal Procedure Code, qualifies each of the clauses that preceded it and not clause (*d*) only. It must be shown that the omission did lead or even with probability might have led to some material error and that the bare fact of such omission or irregularity unaccompanied by any probable failure of justice having been thereby occasioned is not enough to warrant interference in revision.—

21 T. L. J., *791*.

Section 224.

1. Under Section 224 of the Code, a Magistrate has jurisdiction to acquit a person charged by the Police with the commission of a non-cognisable offence.—

21 T. L. J., *1223*.

2. Under Section 224 the Code, the adoption of the line of action prescribed therein except in cases covered by the Proviso is made obligatory upon the Magistrate. No doubt where a summons case is instituted by a public servant acting as such and no appearance is made on behalf of the prosecutor, the presiding Magistrate should use his discretion as to whether such a case should be dismissed or adjourned, and when the discretion is improperly exercised, it is open for the High Court to interfere.—

24 T. L. J., *30.*

Section 225.

See Sec. 304.— **20 T. L. J.,** *177.*

Section 227.

Under Section 227 of the Code, a Court proposing to direct payment of compensation shall record and consider the objection, if any, urged by the complainant against the proposed step. The reasons for awarding the compensation should also be stated in the order. An order passed without affording an opportunity to the complainant to show cause is illegal.—

21 T. L. J., *334.*

Section 229.

1. Section 229 provides that the Magistrate shall take all such evidence as may be offered by the complainant and also imposes on him further the duty of ascertaining the names of persons likely to be in a position to give evidence. These provisions are mandatory. Before the Magistrate proceeds to exercise the discretion allowed to him under the second paragraph of Section 230 he must be satisfied that the case is "groundless" and to say that "no case was made out" would not amount to saying that it was "groundless" as the Section evidently uses the two phrases as meaning two different things.

"Where a complaint *prima facie* disclosed an offence a Magistrate cannot hold the charge to be groundless unless he knows what is the sort of evidence that is going to be adduced to prove it, and he cannot for example examine one or two witnesses or, for the matter of that, no witnesses at all and then without knowing what the other witnesses are going to say, hold that the charge is groundless."—

21 T. L. J., *103.*

2. There is no provision in the Criminal Procedure Code, which empowers a Magistrate to compel a prosecutor to file a schedule of witnesses, in a warrant case. When the complainant mentions the names of the witnesses who would swear in support of the prosecution the Magistrate's duty is obviously to summon the witnesses and examine them before any order of discharge is passed. Even if the names of witnesses were not stated in the complaint, it would be the plain duty of the Magistrate to ascertain the names from the complainant and summon them to give evidence before him.—

21. T. L. J., *876.*

3. During the course of an enquiry under Section 379 T. P. C., for theft of a motor lorry by the accused, the complainant petitioned the Sub-Magistrate that his witnesses were won over by the accused and that he had no further evidence to offer. The accused also put in a petition that the thondi might be returned to the complainant. The Magistrate therefore ordered the restoration of the thondi article *status quo ante* and discharged the accused. On revision, the District Magistrate was of opinion that the order of the Sub-Magistrate discharging the accused and disposing the thondi was illegal. He was of opinion that a retrial was necessary and therefore referred the matter for orders of the High Court.

Held.—It is manifest that where there are reasonable grounds for believing that an offence triable under Chapter XXI of

the Code has been committed, the mere statement of the complainant that he is unable to give evidence would not justify the termination of the enquiry, and the Magistrate would still have to discharge the duty of ascertaining whether evidence is available and if it should appear that there is such evidence, of taking steps for securing it. In a case where there is nothing in the circumstances to indicate *prima facie* that an offence has been committed, it would be unnecessary to go on with the case if it appears that any further steps would be futile. It depends therefore entirely on the circumstances of each case whether the procedure under Section 229 should be followed.

Though the Magistrate's procedure was not strictly justified, it was found that there was no necessity to order a retrial.

The disposal of the thondi articles being a matter within the discretion of the Magistrate, interference by the High Court would not be justified unless such discretion was wrongly exercised.—

49 T. L. R., *468*.

4. Under Section 229 of the Code, the duty imposed on the Magistrate is to summon and examine persons able to give evidence for the prosecution if he thinks that such persons are likely to give evidence for the proper decision of the case. This duty has to be discharged only if there are witnesses who, the Magistrate believes, would be in a position to give evidence necessary for the prosecution and with a view to find out whether as alleged by the complainant an offence triable under Chapter XXI of the Code had in fact been committed by the accused. "The principle underlying the provisions dealing with the trial of non-compoundable or cognisable warrant cases is that whether instituted on complaint or otherwise the final responsibility for the conduct of such cases rests with the State and where there is reasonable ground for believing that an offence has been committed, once the machinery of law has been set in motion the right of arresting its progress rests with the State alone, and not with a private individual." Where, therefore, there are reasonable grounds for believing that an offence triable under Chapter XXI has been committed, the mere statement of the complainant that he is unable to give evidence would not justify the termination of the enquiry and the Magistrate would still have to discharge the duty of ascertaining whether evidence is available, and if it should appear that there is such evidence, of taking steps for securing it. It depends entirely on the circumstances of each case whether the procedure under Section 229 should be followed.—

24 T. L. J., *177*.

5. See also Sec. 304.—

20 T. L. J., *177*.

Section 230.

1. Petition against an order issuing summons to the petitioner upon a complaint, the petitioner having been discharged on a previous complaint with respect to the same matter. In the prior case the charge was for an offence under Section 324 T. P. C., compoundable under Section 256, Criminal Procedure Code with the permission of the Court. The offence was compounded without permission of the Court and the accused (complainant) was discharged. It was urged that the prior order of discharge should be taken to be one under Section 230 of the Procedure Code, and not one under Section 256, the latter Section having reference only to cases compoundable without intervention of Court; and consequently a subsequent complaint with respect to the same matter would not lie.

Held.—The argument that the expression 'compoundable offence' occurring in Section 256 has application only to offences under the Schedule contained in Section 256 does not appear to be acceptable, for

paragraph 4 of the Section dealing with the abetment of compoundable offences lays down that 'when any offence is compoundable under this Section the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compoundable in like manner.' It could not be said that the expression compoundable occurring here would relate only to offences liable to be so settled without the intervention of the Court under the Section and not to cases where such settlement is provided for laying down the permission of the Court as a condition precedent thereto. It may also be noticed here that in the Schedule attached to the Code, offences like the one under consideration have been described as compoundable in Column 6 thereof. It is clear therefore that in spite of the provisions requiring the permission of the Court as a condition precedent to the validity of the compromise, the offences specified in paragraphs 1 and 2 of the Section have to be held to be compoundable. The order in the prior case passed in the absence of the complainant must therefore be deemed to be one under Section 236 of the Procedure Code.

The general rule is that every complaint had to be enquired into and disposed of according to law unless there is any bar thereto by any express provision of the statute or other considerations having statutory force. One of the provisions in the Code creating such a bar is that relating to *autrefois convict* and *autrefois acquit* contained in Section 304 of the Procedure Code. Such order of discharge would not amount to an acquittal, whether it be under Section 236 or 234 or under Section 181 of the Procedure Code.—

46 T. L. R., *366* (=**21 T. L. J.**, *31*).

2. The revision petition was preferred against the order of discharge passed by the Magistrate.

It was contended for the petitioner that the Magistrate disposed of the case without hearing the prosecution arguments and that thereby he committed a substantial irregularity.

Held.—There was no provision in the Criminal Procedure Code which made it imperative on the Magistrate to hear arguments. The Code permitted a Magistrate to discharge the accused at any stage or to frame a charge even after the examination of the complainant, and a Magistrate intelligently following the evidence let in, should resort to such provisions of the Code and thus avoid unnecessary delay in disposing of cases.—

23 T. L. J., *1065*.

3. Under Section 230 of the Code, a discharge is contemplated after all the prosecution evidence is recorded and the examination of the accused, if necessary, has been had. In a trial of a warrant case regarding a compoundable offence (and the offence under Section 503 T. P. C., defamation, is compoundable), if the complainant is not present, the Court has to proceed under Section 236 of the Code.—

24 T. L. J., *305*.

4. See also Sec. 229.— **21 T. L. J.**, *103*.

Section 233.

1. It is clear law that absolute privilege can be claimed in respect of statements in writing made by a Vakil in the course of judicial proceedings. The privilege can be claimed by any one lawfully exercising the functions of advocacy. The scope of the Full Bench decision in 44 T. L. R. 375 (=18 T. L. J., 1028) cannot be said to have been limited to declaring such absolute privilege in respect only of words spoken in office by counsel in a case. The decision is applicable to words spoken and written.

A judicial officer has power to accept a plaint which is presented to him outside the court-house and after office hours. Though a judicial officer may receive plaints in this manner it would not follow that he must do so. It is in his discretion

to accept it or to refuse it as he chooses; when the plaint is so presented, the suit is properly instituted within the meaning of Order IV, Rule 1, of the Civil Procedure Code.

When a plaint is presented by a party before a judicial officer for acceptance outside Court and out of office hours and the party in conformity with this direction, presents the plaint in Court the next day, the plaint must be deemed to have been accepted on the first day of presentation.

An accused may file written statements after final arguments in the case, as the last paragraph of Section 233 does not expressly limit the time within which written statements may be filed.—

46 T. L. R., *127* **(=20 T. L. J.,** *247*).

2. The accused in the case was charged with theft of cocoanuts and in answer to the question put by the Magistrate said "your humble servant did it unwittingly". The lower Court treating this as a plea of guilty, convicted the accused.

Held (in revision against the order).—The statement given by the accused was not an unequivocal admission of guilt. The act would only be a crime if done with a particular intention. It is doubtful whether the words used were not intended to deny the existence of such an intention.— **20 T. L. J.,** *1064*.

Section 234.

See Sec. 230.—

46 T. L. R., *366* **(=21 T. L. J.,** *31*).

Section 236.

1. The discharge of an accused on account of the absence of the complainant, though a matter of discretion, should be ordered only after considering all the facts and circumstances as the record stands at the time of the proposed order. The order should not be merely mechanical. The discretion itself is exercisable only before the charge is framed. As the evidence approaches nearer and nearer to the framing of a charge, the chances for the accused's discharge should be viewed as becoming slenderer and slenderer. A Magistrate in exercising his discretion under the Section is bound to regard the evidence and to consider whether there is a *prima facie* case against the accused. The presumption arising from the absence of the complainant, that he does not wish to prosecute the case, would be greatly counteracted by the earnestness displayed by him and the evidence he has succeeded to adduce in the case.

21 T. L. J., *239*.

2. See also—
Sec. 230.—**46 T. L. R.,** *366* **(=21 T. L. J.,** *31*).
24 T. L. J., *305*.
„ 261.— **22 T. L. J.,** *498*.

Section 237.

The provision in Section 237 of the Code that every trial in a Court of Session shall be conducted by a Public Prosecutor, who, as defined in Section 4, Clause (*g*), of the Code, is the Head or other Sirkar Vakil or any person appointed under Section 369, would indicate that the intention of the Legislature is to ensure the case for the prosecution being conducted fairly and impartially by a disinterested person without allowing private malice or vindictive spirit being imported into the same. The imperative provisions of Section 237 would clearly and unambiguously show that, so far as trial of Sessions Cases is concerned, private prosecutors have no *locus standi*. The practice of allowing this to be done, whatever may be the nature of the considerations that prompt the Courts to resort thereto, cannot but be characterised as unwarranted and unjustifiable, resulting as it would in denying the safe-guards for conserving

the interests of the accused provided for under the Code. However fair the Counsel or Vakil appearing for a private party may be, the fact that such appearance by him is for a private person who could be expected to act under his own client's instructions, would *per se* be a sufficient ground for his not being allowed to conduct the prosecution in the interests of an accused in a Sessions trial, for it may lead to the importation of other matters which may prejudice the accused otherwise and benefit the person who engages the Counsel or Vakil concerned in other proceedings or shape the evidence in such way as could not, taking all the facts into consideration, be fair. Such a contingency will assuredly result where there are cases and counter-cases with respect to the same incidents. It is with a view to avoid this that the Code insists upon a special Officer of the Crown to be in charge of the prosecution and conduct the case fairly and impartially. A retirement of such Officer leaving the case to be conducted by a private prosecutor on the face of the peremptory provision of Section 237 would be a gross dereliction of duty.

In a capital case, the duty of the Crown is to place before the Court all the materials irrespective of the question as to whether they exculpate the accused or incriminate him. The Court shall be allowed to have the whole of the material evidence, whether in favour of or hostile to the prosecution, so as to have an opinion on the entire evidence. This Rule is not one of procedure but one based on common sense dictated by humanity.

The rule is that the decision of a case should be upon the evidence on record in that case, and it would be improper to refer to the evidence in the connected counter-case for the purpose even though the two cases related to the same incident.— **20 T. L. J.,** *26.*

Not fol,—

49 T. L. R., 307 (=23 T. L. J., 603).

Section 242.

1. The use of the statements recorded during enquiry as evidence at the trial under Section 242 is within the discretion of the Judge.

The right of private defence is a valuable right and it cannot be discounted by sentimental considerations on account of the loss of life on the aggressor's part.—

20 T. L. J., *277.*

2. The Sessions Court convicted the accused of murder and sentenced him to rigorous imprisonment for life. The accused preferred the appeal against the conviction and sentence, while the Sirkar moved for enhancement of sentence in the Revision petition.

At the time of argument, the Sirkar Vakil complained that the principal witnesses for the prosecution had gone back upon their earlier statements and invited the High Court to ignore their evidence before the Sessions Judge and to uphold the conviction upon their evidence before the Committing Magistrate. The Court declined to adopt the course suggested.

Per Gopala Menon, J.—In view of Section 242 of the Code, there is nothing illegal in admitting the statement of a witness before the Committing Court as substantive evidence at the Sessions trial. But the admission of such evidence is within the discretion of the Sessions Judge. So long as the Sessions Judge has not invoked Section 242, the High Court could not do so, except in the case of such statements on which the witnesses have been examined and marked in the case.

To have some understanding as to the direction, distance of range, and nature of the shot in gunshot wounds, the one point to be carefully noted is, as to whether or not the region of injury was charred, and if so, to what extent.

Per Nokes, J.—There are serious objections to the procedure suggested by the Head Sirkar Vakil. In the first place,

upon the strictly technical grounds mentioned by Gopala Menon, J., it is more than doubtful if an Appellate Court has any jurisdiction to take such a course. In the second place, it appears almost equally doubtful if it is properly open to the prosecution, even though they have filed a revision petition against sentence, to attempt to support a conviction on grounds not relied upon in the Court below. Such a proceeding as this should not be treated as a Civil Suit in which a respondent employs every possible means to support the judgment appealed against. To attempt to do so in a Criminal Proceeding may work the greatest injustice to the accused; in this case, for instance, many of the witnesses were not cross-examined by the defence before the Committing Magistrate, and considerably modified their evidence under cross-examination before the Sessions Judge. Thus the attitude of the Sirkar involves reliance upon evidence which has not been tested by cross-examination, because subsequent cross-exanation of the witnesses proves unfavourable to the prosecution. Further, this attitude appears to be a complete negation of the spirit in which prosecutions are now conducted in all countries which are influenced by English practice. If the judgment of the trial Court cannot be supported on the evidence before it, this fact should be frankly admitted by the prosecution before the Appellate Court. In Criminal Cases, neither the trial nor proceedings in appeal or revision should develop into a blood-thirsty feud between the prosecution and the accused; but the prosecution should content itself with a restrained and almost impartial presentation of every circumstance of the case which may enable the Court to arrive at a just decision.—

24 T. L. J., *658.*

Section 247.

1. It is not perhaps easy to keep the mind entirely free from prejudice when the record and the police papers show that the prisoner in the dock is an ex-convict. But the provisions of Section 247 indicate the importance of the complete exclusion of all knowledge of previous convictions when weighing the evidence as to the truth or otherwise of the main charge. The provisions of the Section are mandatory and their contravention vitiates the trial and could not be brought within the scope of Section 413 which provides that merely by reason of certain irregularities in the trial a sentence passed by a competent Court shall not be reversed unless such error or irregularity has occasioned failure of justice.—

21 T. L. J., *820.*

Fol.—49 T. L. R., 142 (=23 T. L. J., 227).

2. The provisions of Section 247 are mandatory and their contravention is not a mere irregularity that could be cured under Section 413 of the Code but an illegality which vitiates the trial altogether.

There should be no occasion for the presiding Judge to become prejudiced against the accused by a knowledge about his criminal antecedents which cannot fail to exert a subtle and unconscious influence in the mind, however sincere the effort to resist it. The plain object of the Legislature is to avoid such a possibility. The disobedience of an express provision as to a mode of trial cannot be regarded as a mere irregularity. The remedying of mere irregularity is familiar in most systems of jurisprudence, but it would be an extraordinary extension of such a branch of administering the criminal law to say that, when the Code positively enacts that such a trial as that which has taken place shall not be permitted, that this contravention of the Code comes within the description of error, omission or irregularity. If once it is found that the trial in the case was illegally conducted, it is not proper to act upon such evidence that might be on record as would

have sufficed to support a conviction, if the appellant had been properly tried.—
49 T. L. R., *142* (=23 T. L. J., *227*).

Section 253.

1. No doubt, the accused is not bound to explain anything. Yet where a set of circumstances is proved, from which having regard to human experience only one reasonable inference can be drawn, the accused would do well if he wishes to escape the consequences of that inference, to offer an alternative inference which can compete in probability with that suggested to an ordinary mind by the evidence.— 22 T. L. J., *1145*.

2. See also—
Sec. 212:— 46 T. L. R., *94* (=20 T. L. J., *391*).

Section 255.

1. By orders of the High Court (Proceedings No. 36 reported in 18 T.L.J., 940), an enquiry was directed under Section 128 of the Code in regard to the disputes between the respective managers of the two rival Boards of directors that purported to function simultaneously, on behalf of the Tropical Plantations Co., Ltd, Kottayam. Pending such enquiry, certain share-holders of the Company, who were not parties to the said proceedings filed a Civil Suit O. S. No. 22 of 1104, disputing the rights of both sets of directors to represent the Company and praying for ascertainment in meeting convened by Court of the wishes of the general body of share-holders as regards the management of the Company or in the alternative for winding up the Company. One of the parties in the summary enquiry moved the lower Court for stay of the proceedings under Section 128 in view of the Civil Suit O. S. 22 and stay was accordingly granted. The revision petition herein, was directed against the order of the lower Court granting stay. It was contended *inter alia* by the revision petitioner that the lower Court wrongly exercised its discretion inasmuch as (1) the civil suit was filed after the initiation of the proceedings under the Criminal Procedure Code, (2) there was no guarantee that the civil suit will not be unduly prolonged and (3) the plaintiffs in the civil suit had not moved in the matter.

Held.—(1) Though proceedings under Section 128 have not the same object in view as the proceedings in the civil suit, the present case differed greatly from an ordinary case under Section 128.

(2) On the facts it did not appear that the lower Court has acted perversely or that the interest of the Company have been unduly prejudiced.

(3) The discretion of the lower Court to decide under Section 255, whether the Criminal case should proceed or not is one which should not be lightly interfered with.

(4) Therefore the revision petition was not maintainable.—
20 T. L. J., *1042*.

2. In the matter of staying criminal proceedings during the pendency of a civil suit in regard to the same subject-matter, there is no hard and fast rule. Each case must be considered on its merits and the only general rule that can be adumbrated is that every Court should be left as far as possible to dispose of the case on its file with the utmost expedition.

The Courts where such cases are pending have to exercise their discretion (as to staying the same). Only when such discretion is not properly exercised will the High Court interfere.— 24 T. L. J., *33*.

Section 256.

See Sec. 230.—
46 T. L. R., *366* (=21 T. L. J., *31*).

Section 259.

Three accuseds stood charged for certain offences, and the Magistrate who tried the case entered conviction and awarded sentence as against the first two accuseds, but committed the third accused to the Sessions, after finding him guilty, because he was liable to enhanced punishment as an old offender.

Held.—The Magistrate had no jurisdiction to find the third accused guilty and then commit him to the Sessions Court. It is only the Sessions Court which has jurisdiction to say whether the man is guilty or not. All that a Magistrate is empowered to do is to say whether a *prima facie* case is made out against the accused so as to warrant his committal to the Sessions Court.

In the case, the Magistrate would have exercised a better discretion if instead of convicting the first two accused himself he had committed them to the Sessions Court for trial along with the third accused. No doubt there is no rule of law or procedure which makes it obligatory on the Magistrate in such cases to commit all the accused to the Sessions Court. But the practice generally followed in such cases is to commit all the accused to the Sessions Court unless any one of the accused is discharged under Section 187.—

49 T. L. R., *425* **(= 24 T. L. J.,** *201*).

Section 261.

1. The recommencement of an enquiry or trial under Section 261 of the Criminal Procedure Code has not got the effect of wiping out all the proceedings before the Magistrate who was transferred.—

20 T. L. J., *748*.

Fol.—48 T. L. R., 327 (=22 T. L. J., 645).

Ref.—23 T. L. J., 156.

2. A Stationary Magistrate committed the accused to the Sessions on the evidence which had been recorded not by himself but by the Additional District Magistrate, refusing the prayer of the accused for a re-examination of the witnesses already examined.

Held.—The order of the commitment by the Stationary Magistrate was proper inasmuch as the proceedings before the Stationary Magistrate were only in the nature of a preliminary enquiry and the trial of the case had not begun. In such cases a preliminary enquiry started by one Magistrate may be continued by a succeeding Magistrate from the point where he had left it.—

20 T. L. J., *953*.

Ref.—48 T. L. R., 327 (=22 T. L. J., 645).
24 T. L. J., 161.

3. The words 'in any trial' in Proviso (*a*) to Section 261, according to the definition in Section 2 of the Code, relates to the proceedings after the charge.

Where the offence mentioned in the complaint was a compoundable offence (mischief) but the Magistrate after hearing evidence had framed a charge against the accused for a non-compoundable offence (theft) and the case was transferred to the file of another Magistrate:

Held.—The proceedings up to the framing of the charge by the first Magistrate were not wiped out and the subsequent proceedings were a continuation of the former proceedings. The succeeding Magistrate had at the request of the accused, to resummon and re-examine such witnesses as the accused required to be re-called and had no jurisdiction to discharge the accused under Section 236 on the ground of absence of the complainant as if the case were one regarding a compoundable offence.— **22 T. L. J.,** *438*.

4. The recommencement of an enquiry or trial under Section 261 has not the effect of wiping out all the proceedings before the Magistrate who was transferred. The Section empowers the succeeding

Magistrate to act on the evidence recorded by his predecessor. The scope of Proviso I is restricted only to trials and does not include proceedings up to the framing of the charge. It has also to be noted that the right of the accused is to demand that all or any of the witnesses be recalled and re-examined. The use of the expression 'or any of them' is a clear indication that the intention of the Legislature was not to regard the whole of the previous proceedings as having been wiped out by the order for retrial but that it was intended merely to confer on the accussd the right to have material witnesses examined by the Magistrate who would ultimately decide the case. It appears clearly to be an enabling provision and the exact significance of it can be gathered from these considerations as well as the policy which clearly underlies this Section, *viz.*, that the accused shall have the right to see that all the material witnesses in the case are examined by the trying Magistrate himself, but that in the absence of such a demand the latter shall have the power to act upon the evidence recorded by his predecessor.—

48 T. L. R., *327* **(=22 T. L. J.,** *645***).**

5. The proceedings before a charge is framed in a warrant case are only an enquiry and a Magistrate succeeding another may continue the enquiry if the proceedings have not reached the stage of framing a charge. The accused therefore has no right in law to apply for the re-summoning and re-examination of the prosecution witnesses as the 'trial' of the case has not commenced within the meaning of Section 261 of the Code.

It is clear from Proviso (*a*) that the accused's right to re-summon the prosecution witnesses is restricted to a *trial* as distinguished from an *inquiry* because the Section speaks generally of an inquiry or a trial, but when it comes to the Proviso (*a*) the word used is only trial and the word 'inquiry' is deliberately omitted. It is therefore necessary to consider what precisely is the meaning or scope of the word 'trial' as used in the Code. Although the word 'trial' is not defined in the British Criminal Procedure Code and consequently there has been some conflict of decisions in British India with regard to the exact meaning and scope of the word trial, the Travancore Code has clearly defined the word 'trial' in Section 4 as meaning 'proceedings taken in Court *after a charge has been drawn up*'. The word used in Proviso (*a*) of Section 261 and in Section 4 (*d*) is the same, *viz.*, 'trial.' It is reasonable to presume that the same meaning is implied by the same expression in every part of an Act. Accordingly, in ascertaining the meaning to be attached to a particular word in a Section of an Act though the proper course would seem to be to ascertain that meaning if possible from a consideration of the Section itself, yet if the meaning cannot be so ascertained, other Sections may be looked at to fix the sense in which the word is there used.—

24 T. L. J., *161***.**

6. See also Sec. 273.— **23 T. L. J.,** *156***.**

Section 272

A judgment in a civil suit pronounced several months after the arguments in the case were heard is on that ground alone liable to be set aside. This salutary principle applies to Criminal Cases also.—

20 T. L. J., 73.

Section 273.

The judgment of a Criminal Court should contain the points for determination, the decision thereon and the reasons for the same (Section 273). If it is a judgment of acquittal, it shall state the offence of which the accused is acquitted.

Section 261 no doubt vests a discretion in a succeeding Magistrate to recommence the enquiry or trial. If a charge has already been framed, he can re-commence only the trial; for he cannot quash the charge already framed without acquitting

the accused. The recommencement of a trial has not got the effect of wiping out all the proceedings before the Magistrate who leaves the trial incomplete.—

23 T. L. J., *156*.

Section 298.

Section 298 is a very beneficial provision of law which the Courts are bound to give effect to. The words used in the Section "it shall be lawful" are mandatory and not merely directory. Generally in public statutes where the thing to be done is for the public benefit or in advancement of public justice, enacting words must be taken to have a compulsory force. The Section was obviously enacted for the public benefit and in advancement of public justice.

The expression "Court of Appeal or Court of Revision" in Section 298 is merely descriptive of the Court which can exercise the power of allowing deduction of the period of imprisonment and does not mean that the Court can deal with the matter only at the time of dealing with the appeal or revision. The power to allow the deduction subsists even after the Court has finally disposed of the appeal or revision petition.—

20 T. L. J., *827*.

Section 304.

1. The rule of *autrefois acquit* embodied in Section 304, Criminal Procedure Code, does not rest on any doctrine of estoppel, but is based rather on grounds of public policy for no man could be put twice in peril for the same offence. It has to be remembered that this provision bars the second trial itself of the accused on the same facts and does not amount to a direction to acquit him therein.

A reading of Section 304 indicates that to attract its provisions, it is essential to make out the following matters :—

(1) That the accused indicted a second time was charged before a Court of *competent jurisdiction*.

(2) That he was *tried* by that Court before;

(3) That he has been acquitted or convicted by that Court;

(4) That such conviction or acquittal remains in force;

(5) That the second trial had been for the *same offence* or on the same facts for any other offence for which a different charge from the one made against him under Section 213 or a conviction entered under Section 214.

To the above rule, the Section lays down that there are three exceptions, *viz.*,

(1) Where a separate charge is possible to be framed for another distinct offence under Section 212 of the Code;

(2) Where consequences of this act which, with the act itself would constitute a different offence, had happened after the previous trial, as were not known to the Court during such trial.

(3) Where the Court which previously tried the suit was not competent to do the same.

The principle underlying the first exception is that if the crimes are so distinct that the evidence necessary to prove one will not prove the other, it could not properly be stated that they are so far the same that the acquittal of one is a bar to the prosecution of the other. What should be considered in this matter is whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first.

The second exception is based on the allegation and proof of additional facts not dealt with in the previous trial.

A liberal construction has to be placed upon the expression 'competency' occurring in paragraph 4 of Section 304. The expression 'Court of competent jurisdiction'

in paragraph 1 of the Section indicates that it is essential that the previous trial should be conducted by a Court which had jurisdiction to try the case. Such trial could be conducted only after the Court takes cognisance of the case. Without taking cognisance, it would not be possible to try it. The provisions of Chapter XV of the Code lay down the conditions precedent that have to be satisfied to enable the Court to take cognisance of the case. By using the expression "Court of competent jurisdiction" the Legislature should have intended the same to relate not only to the enabling provisions contained in Section 15 of the Code, but also to the various provisions contained in Chapter XV specifying the conditions necessary in the matter of enquiries or trials. The provisions contained in Sections 173 to 177 insisting upon sanctions or complaints in the cases specified therein are as essential as the power to try the case under Column 8 of Schedule II in determining whether the Court which tried the case before was one of competent jurisdiction for the purpose of this Section. Where a complaint or sanction as required in Sections 173 to 177 of the Code is not *had* at the previous trial or where the Court had not the power to try the cases consistently with the provisions relating to local jurisdiction above referred to except in cases under the latter category the same had been transferred to its file by an appropriate proceeding by a Court of competent jurisdiction, an order of acquittal passed in an earlier case even if it be on the same facts and not covered by exceptions in paras 2 and 3 of Section 304, would not operate as a bar to a second trial.

It is essential for the purpose of the Section that the persons charged in the second case must have been tried and acquitted in the previous one. The fact that they were charged with others who were tried in the other case upon the identical facts and convicted or acquitted as the case may be therein would not make this plea available to the accused if as a matter of fact the accused charged in the second trial had not been tried or convicted or acquitted in the prior case.

The *trial* contemplated in the Section necessarily relates to the proceedings detailed out in Chapters XX, XXI, XXI-A and XXII. It cannot be taken to relate only to the proceedings defined as such in Section 4 (*d*) of the Code. With reference to summons cases, all proceedings after the appearance of the accused as contemplated in Section 219 would be parts of the trial within the meaning of Section 304. Similarly, the trial of warrant cases could commence from the stage at which the accused appears or is brought before the Court under Section 229. If the order of acquittal has been passed after the inauguration of the proceedings before a Court, the trial should be deemed to have been commenced and the provisions in the Section taken to have been complied with.

As regards the requisite of an acquittal in the former case, if an acquittal has as a matter of fact been entered in the prior trial, the second trial upon the same set of facts is not permissible. It is not open to the Court before which the second case has been brought to impeach the order of acquittal on any ground for "it would be a dangerous principle to adopt to regard a judgment of not guilty as not fully establishing the innocence of the person to whom it relates."

In considering whether there has been an order of acquittal or not it is the substance of the decision and not the wording that has to be looked into. If a case which could not have been acquitted under the Code has by inadvertence been disposed of by an order of acquittal, the provisions of the Section are not applicable. If similarly an order of discharge is entered by inadvertence the provisions of the Section would nevertheless be applicable;

An acquittal contemplated under Section 304 need not necessarily be a decision on the merits. What is essential is that the proceedings in which the same has been passed should be in the nature of a trial.

Where the order of acquittal has been set aside by a superior Court in appeal or revision, the provisions of the Section are inapplicable.

Whether a case would fall within the condition enumerated as (4) of Section 304, *supra*, would depend on the facts of each case. Section 213 of the Code deals with a case where a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute. In such a case the accused is allowed to be charged with all or any of such offences or in the alternative of one of such offences, he being liable to be tried for all such offences in one trial. Section 214 provides for cases where a conviction could be entered for an offence different from that under the charge. If the same set of facts form the basis of the charge in both the cases, the rule of *autrefois acquit* applies. The circumstance that the same is indictable under two different statutes would not affect the question.

What has to be considered in cases of this kind seems to be whether the Court which tried the first case, can, upon the evidence deal with the offence for which the charge has been laid for the second trial. If the facts constituting the charge and the persons who are indicted are identical the offence would be one for which the accused might have been charged at the previous trial within the meaning of the Section and the rule embodied therein would be applicable. The test in such cases is to determine whether the charge under which the accused was previously charged and acquitted is different from that on which he was subsequently tried and whether the evidence is the same in both cases.—

45 T. L. R., *384*
(=20 T. L. J., *177*).

Ref.—24 T. L. J., 161.

2. The accuseds 1 to 4 in the case were charged for offences under Sections 380, 459, 463 and 64., T, P. C., and Section 17 of the Telegraph Regulation for having entered a Post Office and committing theft of a telegraph table after cutting off the telegraph wires attached thereto. The Magistrate who tried the case convicted the accused for the offences under the Penal Code, but discharged them for the offence under the Telegraph Regulation on the ground that the cutting off of the wires was only to commit theft of the table. On reference by the Sessions Judge suggesting retrial for the offence under Section 17 of the Telegrah Regulation :—

Held.—In view of the fact that the cutting off of the wires was one of the necessary ingredients constituting the offence of theft of the telegraph table a trial for the offence under the Telegraph Regulation on the same fact was not permissible, while the convictions and sentence entered against the accused were in force. The rule of *autrefois convict* laid down in Section 304, Criminal Procedure Code, would clearly operate as a bar.

If the same set of facts would form the basis of the charge in the former and latter cases, the prohibition contained in Section 304 would be clearly applicable. What should be considered is, whether the Court which tried the first case can upon the evidence deal with the offence for which the charge has been laid at the second trial, *i. e.*, whether the facts are the same in both trials and whether the conviction for the theft charge necessarily involves a conviction under the second charge.— **21 T. L. J.,** *187*.

3. The revision petitioner filed a complaint for obstruction of way, but withdrew the same at a later stage and the

accused was acquitted. Subsequently a similar complaint was lodged by the same complainant against the same accused for the same act. This also resulted in the acquittal of the accused under Section 222. In revision, it was contended that the order of acquittal in the prior case was not an order in a case which was tried and it could not be construed as a bar to the present proceedings.—

Held.—In a summons case where the accused is summoned and he appears under the process, the trial is deemed to have begun. The prosecution in the case was barred under Section 304.—

49 T. L. R., *340*(=**24 T. L. J.**, *194*).

See Vol. VI, P. 1459.—

45 T. L. R., *384*(=**20 T. L. J.**, *177*).

Section 307.

Under Section 307 an appeal lies to the District Magistrate against an order of the Additional District Magistrate demanding security for good behaviour. The words "A Magistrate other than a District Magistrate" in Section 307 includes an Additional District Magistrate.

Where therefore a person was ordered to furnish security for good behaviour by the Additional District Magistrate and for failure to do so was sentenced to a term of imprisonment, it was not open to him to invoke the Revisional jurisdiction of the High Court instead of seeking his remedies by way of appeal to the District Magistrate.

The High Court may, however, interfere in revision if the Additional District Magistrate improperly rejected the security furnished before him. The provision for the exercise of discretion under Section 107 by the District Magistrate to order the release of the person imprisoned for failure to give security cannot be regarded as depriving the right of the person aggrieved to move the High Court in revision.

Under Section 10, Clause (ii), the Government is empowered to appoint Additional District Magistrates with all or any of the powers of a District Magistrate and such powers are those defined in Schedule III, Clause (iv). Nevertheless it is clear from Section 10 itself that in a District there can be only one Magistrate who shall be the District Magistrate.

An appeal lies to the District Magistrate against the order of the Additional District Magistrate demanding security for good behaviour.—

47 T. L. R., *326*. (=**21 T. L. J.**, *780*).

Section 313.

1. The powers of the High Court of interfering with an order of acquittal are limited and will be justified only if the finding of the lower Court is perverse and palpably erroneous and has been the result of gross misappreciation of evidence and had led to a miscarrige of justice.—

49 T. L. R., *430*. (=**24 T. L. J.**, *486*).

2. See also Sec. 215.—

24 T. L. J., *711*.

Section 318.

1. The High Court has no power to convert a finding of acquittal into one of conviction under Section 330, where the matter comes up before the High Court for the purpose of revising the conviction and sentence without an appeal by the accused. But under Section 318, the Court of appeal may, in an appeal from a conviction, alter the finding maintaining the sentence. This power of enhancement of the sentence is conferred on the High Court in its revisional jurisdication by Section 330. Thus reading Sections 318 and 330 together, the High Court has, in an appeal from a conviction, the power to alter the finding and to enhance the sentence provided of course opportunity is given to the accused to be heard either personally or by pleader in his defence.

The High Court alone has this power and no other Court of appeal has it.—
20 T. L. J., *491*.

Ref.—23 T. L. J., 253.

2. The law does not require the Appellate Court to see whether there is evidence to warrant a conviction before it remands a case under Section 318 B. of the Code. The Appellate Court may quash the conviction and order a retrial in a proper case. Though in a case where no evidence of a reliable character has been adduced, a Court should not by its order subject the accused to the protracted vexation of a re-trial, still, if there is evidence which if believed would establish the commission of an offence of a graver nature than the offence found by the trying Magistrate, the Appellate Court would be acting properly in ordering retrial on a proper charge.—
21 T. L. J., *877*.

3. Section 318 states that before disposing an appeal in any of the ways provided by that Section the Court must peruse the records and hear the appellant or pleader if he appears and the Public Prosecutor if he appears. The duty of perusing the records is not obviated by the failure of the appellant to appear.
21 T. L. J., *1244*.

4. Under Section 318, the Appellate Court is bound to peruse the records and to decide the appeal on the merits whether the appellant appears or not. It cannot dismiss the appeal for default of appearance.— **22 T. L. J.**, *1270*.

5. When the appeal is against an order of acquittal, it has been held that interference with it would be justified only if the finding of the lower Court is perverse and palpably erroneous and has resulted from gross misappreciation of the evidence and led to a miscarriage of justice. But it is also true that where the balance of evidence is distinctly against the accused or where material evidence has been misappreciated, overlooked or ignored, the High Court is bound to step in as much as in the interests of the administration of justice as of the public generally.

Even delay in the execution of the death sentence caused by the pendency of an appeal against it might justify the imposition of a lesser penalty.— **23 T. L. J.**, *995*

Fol.—49 T. L. R., 430
(=24 T. L. J., 486).
Ref.—50 T. L. R., 1.

See also Sec. 20— **46 T. L. R.**, *105*
(=**20 T. L. J.**, *985*).

Section 319.

The judgment of the Court in a criminal appeal should show on the face of it that the Appellate Court has applied its mind to the consideration of the evidence on the record, and the pleas raised by the appellant both in the Court below and in his memorandum of appeal. The judgment of the Court of appeal should be such that the High Court as a Court of revision might on looking into the judgment be in a position to judge for itself what the case was and how the Court of appeal considered the evidence as bearing on the guilt or innocence of the individual accused before the latter affirmed the judgment of the trial Court. A judgment of the Appellate Court which does not set out or discuss the evidence on which the conclusions are based is not a proper judgment and is liable to be set aside.—
23 T. L. J., *206*.

Section 326.

1. The High Court has jurisdiction to revise orders passed by the Magistracy under Section 127 of the Code. Under Section 326, such orders are not revisable. But as far as the High Court is concerned the High Court Regulation passed in 1099 (Section 7) gives very wide powers to the High Court.—
46 T. L. R., *203* (=**20 T. L. J.**, *940*).
Ref.—48 T. L. R., 88 (= 21 T. L. J., 533).

2. As the law now stands, there is no means to make a Revision petitioner pay the costs of the opposite side. In the case of frivolous and vexatious transfer applications, the amendment of the Procedure Code in British India provides for payment of the reasonable expenses incurred by the party opposing such applications. It is well worth considering whether it is not necessary to arm the High Court with the power to award costs generally in Revision Proceedings to check the inflow of frivolous petitions.—

21 T. L. J., *1087*.

3. To make the punishment suit the crime is often a difficult task. No Court should indulge in flightiness in so important a matter. For instance, if a Court sentences one to rigorous imprisonment for six months for grievous hurt one day and another to imprisonment till the rising of the Court for the same offence on another day, the differential treatment will not fail to attract attention and to undermine faith in the incidence of punishment which should fall on all offenders alike. But occasions would arise to draw distinctions and to vary punishments. In such instances the subordinate Courts will do well to assign reasons in support of the variations deemed necessary.

There is no reason to delimit the revisional jurisdiction of the High Court to enhance the sentence by fostering any practice on inelastic lines. The fact that the accused has been discharged from prison on the expiry of the sentence is in itself no justification to withhold the revisional discretion. Were it otherwise, justice may be defeated by delaying the submission of calendars.—

22. T. L. J., *23*.

4. The accused in P. E. No. 2 of 1108 before the Division First Class Magistrate of Kottayam was committed to stand his trial before the Sessions Court. Even after his commitment to the Sessions Court, he was kept in the Police lock-up at Kottayam, the reason given being that he had to be examined as a witness for the prosecution in P. E. No. 4 of 1108 before the same Magistrate. Thereupon the accused in P. E. No. 4 put in a petition before the Magistrate who was enquiring into that case alleging that the Police were tutoring the accused to give evidence against him, that they were forcing him to deny averments of facts sworn to by him in previous records and praying that the accused should therefore be taken away from Police influence and lodged in the Kottayam District Jail. The Magistrate, without making any enquiry of the accused or the Police Officers, rejected the petition.

Held (in revision overruling the preliminary objection raised by the Sirkar).—The order of the Magistrate was one passed by him in his judicial capacity and as such was open to revision by the High Court.— 23 T. L. J., *565*.

Section 330.

1. Though the charge was under Sections 301 and 324, T. P. C., the accused was convicted under Sections 326 and 324 T. P. C., and the Sirkar had not appealed from the acquittal under Section 301. The accused appealed against the conviction and sentence. Notice was also issued to the accused in Calendar Revision to show cause why the conviction should not be altered into one under Section 301.

Held.—The conviction could not be altered in revision. Section 330 does not authorise the High Court to convert a finding of acquittal into one of conviction. The Section applies not only to a case of complete acquittal but also to a case of acquittal of any of the offences charged.

It is by virtue of the notice in revision that the superior Court can interfere with acquittal. It is really a revisional jurisdiction. Section 330 peremptorily ousts the jurisdiction of the revisional Court

to convert an acquittal into a conviction. In an appeal from a conviction on any charge, acquittal on any accoompanying charge is not within the ambit of the case before the Appellate Court.—

49 T. L. R., *249*
(=23 T. L. J., *253*).

2. *Held* (*Per Venkata Rao, J. concurring with Sivasankara Pillai, J*).—The jurisdiction to interfere in revision with an acquittal should ordinarily be exercised sparingly, and only where it is urgently demanded in the interests of public justice.

Though the High Court has power, it would refuse to exercise it at the instance of a private party or perhaps any one other than the Government, unless there is an error of law apparent on the face of the record or interference is required in the interests of public justice.

In regard to revisional powers there is no distinction between cases of defamation and cases regarding other offences.

So long as there is no breach of a mandatory provision, the mere omission to hear arguments again cannot be held to amount to a material irregularity which vitiates the order of the Magistrate.

The Court's duty does not stop with the disposal of the plea actually put forward; it is bound to decide whether the exceptions though not specifically pleaded are applicable if the case is found from the facts proved to fall within their scope. The burden which rests on the accused may be discharged by either adducing specific evidence on his own behalf or by making out the said plea from the evidence adduced by the prosecution and the proved facts or probabilities of the case.

The High Court's power to interfere in revision is undeniably more restricted and narrow than in an appeal, and so far as questions of fact are concerned, the High Court seldom examines the evidence in order to find out whether the findings are reasonable and as such require interference in the ends of justice in the exercise of its revisional powers.

Per Sivasankara Pillai, J.—It cannot be denied that acquittal orders stand upon a unique footing and are favoured by law, in that interference with them is permitted only in exceptional cases. The Government alone has the power to appeal from an original or appellate order of acquittal (under Section 313 of the Code), and even in the matter of such appeals, the law is jealous. The appeal is permissible only under certain circumstances and the right is to be most sparingly exercised. Where the decision of the subordinate Court is an honest and not an unreasonable one of which the facts are susceptible the High Court will not interfere. It goes without saying that the rights of private parties who could not appeal in cases of acquittal must be very narrowly circumscribed when the application is one for revision.

The powers of the Court to interfere in cases of acquittal are very limited. Where the Government could appeal and had not appealed, the powers will be rarely used. As a general rule, there should be only a sparing exercise of revisional jurisdiction. For such exercise there should be some error of law or gross miscarriage of justice. The mere misappreciation of evidence by the Magistrate is not sufficient. If two views are possible and the High Court is inclined to take one view in preference to what had been adopted by the Magistrate, even then interference will not be justified.

Though it is not necessary in all cases for the Court to hear arguments, the Criminal Procedure Code not laying down any such rule, it is usual and desirable to do so. The failure to hear them may not be enough to induce interference, but the High Court will interfere when as a result, the judgment of the lower Court shows that it has failed to understand the case.

In private prosecutions, the question whether the offender should be convicted and brought to punishment is a matter solely resting on the discretion of Government who is interested in Criminal administration and the maintenance of law and order—a discretion on which the Court should be chary of encroaching—and the proper course for the aggrieved individual is to have resort to the Civil Court for recovery of compensation.

The pendency of the Civil suit is one of the reasons why interference in revision should not be made in the case.

Per Joseph Thaliath, Acting Chief Justice (Dissenting).—When the High Court is satisfied that there has been a serious miscarriage of justice, it is bound to step in as much in the interest of the administration of justice as of the public generally. No one can deny that with all the restrictions and limitations imposed by precedents there is still some discretion left with the High Court to interfere in revision with orders of acquittal. For the purpose of revision, acquittals in defamation cases should be looked at from a slightly different stand-point from acquittals in other cases.

A finding arrived at without taking into consideration the most relevant facts bearing on the question, is no finding at all.

In prosecutions for defamation it is not always necessary for the prosecution to establish *actual malice*. If a statement is proved to be false and defamatory, the presumption of malice naturally arises and it is for the accused to make out that the case is covered by any one of the exceptions. To prove malice extrinsic evidence of malice is not necessary. The words of the libel and the circumstances attending its publication may themselves afford evidence of malice.

As long as the accused has not attempted to prove the truth of the assertion and as the imputation relates to a question of fact and not an expression of opinion, the only exception on which the accused can rely is Exception 9. To take advantage of this Exception the accused should show that he published the imputation in good faith. Nothing is to be done or believed in 'good faith' which is done without due care and attention. 'Due care and attention' imply a genuine effort to reach the truth and not the ready acceptance of an ill-natured belief.

'When construing newspaper articles or correspondence we have to look at the writing and determine what is its true meaning and also what is the innuendo it conveys, what is the correct meaning, if any, it has and we must decide in our minds what is the probable or natural effect of the words.'

The Magistrate need not have depended entirely on the testimony of witnesses in construing the article.

'The distinction cannot be too clearly borne in mind between comment or criticism and allegations of fact, such as that disgraceful acts have been committed or discreditable language used. It is one thing to comment upon or criticise, even with severity, the acknowledged or proved acts of a public man and quite another to assert that he has been guilty of particular acts of misconduct.'—

50 T. L. R., *1.*

3. See also Sec. 318.—

20 T. L. J., *491.*

Regn. I of 1074, Sec. 326.—

47 T. L. R., *330*
(=21 T. L. J., *785).*

„ Other cases.— **47 T. L. R.,** *100*
(=21 T. L. J., *1340).*

Section 345.

The procedure to be adopted in cases against lunatics is contained in Chapter XXXIII of the Code. That does not recognise a guardian for the accused or a Vakil appointed by the guardian to represent the accused. Section 345 is a mandatory provision of law. In an enquiry as

to the lunacy of the accused, the Prosecution should begin the evidence. No doubt, it is open to the Magistrate to resume the enquiry if he is satisfied that the accused is sane enough to make his defence (*Vide* Sections 348 and 349), but the Magistrate should be satisfied as to the capacity of the accused to defend himself as laid down in those Sections. The mere word of the accused that he is sane is not enough, for no mad man had been known to speak of himself as a mad man. Further, when the enquiry is resumed, it should be commenced *de novo*.— **21 T. L J.**, *644*.

Section 352.

The prisoner was charged before the Sessions Court under Sections 301, 307 and 427 of the Penal Code. The Sessions Judge found on the evidence that as a matter of fact the prisoner was guilty of the offence under Section 301, but acquitted him on the ground that he was insane at the time when he committed the offence.

Held.—It was clearly the duty of the Sessions Court to pass orders for the detention in custody of a prisoner who had been acquitted by reason of unsoundness of mind, and to report the matter to Government. The lower Court in acquitting the prisoner failed to observe the provisions of Section 352 of the Criminal Procedure Code.

The High Court sitting as a Revisional Court has the power to pass orders under Section 352 when the lower Court has omitted to do so.— **46 T. L. R.**, *460* (=**21 T. L. J.**, *848*).

Section 366.

1. In petitions for maintenance under Section 366 a finding as to the income of the counter-petitioner as accurate as possible has to be made. In the past it had been held that the fact that a Hindu had taken a second wife is not itself justifying cause for his wife to refuse to live with him. But the sentiments prevailing in a particular community should be considered. In a case where a Nayar husband had taken a second wife after the passing of the Nayar Regulation which prohibited a second marriage but before it came into force, it was held that the sentiments of the community at the time of the second marriage were against such conduct. There was, no reason, therefore, why this should not be regarded as falling under the words "just grounds for so doing" in para 4 of Section 366.— **46 T. L. R.**, *370*.

2. The petitioner who was the wife of the counter-petitioner resided in Cochin territory. She filed a petition under Section 366, Criminal Procedure Code, to get maintenance from the counter-petitioner for herself and two of her minor children born to the counter-petitioner. The counter-petitioner lived within the jurisdiction of the Alwaye First Class Magistrate. The question arose whether the the Alwaye First Class Magistrate had jurisdiction to entertain the petition.

Held.—The Travancore Courts can entertain petitions under Section 366, from foreigners. The Alwaye First Class Magistrate had jurisdiction to start proceedings under Section 366, at the instance of the petitionor. The Section was not solely meant to prevent vagrancy. It was enacted to enforce also the natural obligation of the father to maintain his children and the husband, his wife. The jurisdiction is on ground of claim being *ex debito naturali*.— **46 T. L. R.**, *168* (=**20 T. L. J.**, *936*).

3. The ordinary presumption of law that where a man and a woman have lived together as man and wife, they were living together by virtue of a legal marriage and not in concubinage does not hold good under all circumstances. For instance, in criminal matters as on a charge of *bigamy* or suits for dissolution of marriage, judicial separation and restitution of

conjugal rights and the like, the fact of the marriage must be strictly proved.

"In a criminal or quasi-criminal matter where the petitioner claims maintenance from the counter-petitioner on the alleged ground of a valid marriage between them, the *onus* of proving the *factum* of the marriage lies heavily on the party setting up the marriage as the basis of her claim".— **20 T. L. J.**, *688.*

4. The petition was for maintenance under Section 366 of the Criminal Procedure Code by a Nayar wife against her husband who took a second wife just before the Nair Regulation of 1100, which prohibited such second marriage, came into force.

Held.—The petition was competent. It was true that at the time the second marriage was contracted, it was perfectly legal. But the sentiments of the community at the time of the second marriage were against such conduct. There were, therefore, no reason why this should not be regarded as falling under the words "just grounds for so doing" in para 4 of Section 366.— **20 T. I. J.**, *690.*

5. Criminal Courts have no jurisdiction to pass orders under Section 366 except in cases where the husband or father has neglected or refused to maintain the wife and children. Neglect or refusal may be by words or by conduct. It may be express or implied. Implied or express denial of paternity may safely be construed as neglect to maintain.

The words 'unable to maintain itself' refer merely to physical and mental incapacity and have nothing to do with the independent means of the child. There is nothing on principle to distinguish the cases of children belonging to Makkathayam or Marumakkathayam families in regard to the question of their right to maintenance under Section 366. The object of the Section is to provide a speedy remedy for maintenance of children in a summary way and an elaborate enquiry into the property qualifications of the child would in most cases, frustrate the very object of the Section and the intention of the Legislature.

Although as a matter of practice the income of the husband or father is taken into consideration in fixing what would be a reasonable sum to be awarded as maintenance, it appears that no hard and fast rule can be laid down in regard to this matter. Each case has to be decided on its own merits. In the case of an able-bodied man, not affected by any infirmity, the presumption is that he has sufficient means to maintain himself and the child and that the burden of proving insufficient means lies on him and mere denial of sufficiency of means is not conclusive proof of it.— **47 T. L. R.**, *132* (=**21 T. L. J.**, *539*).

6. Where the differences between a husband and wife were referred to arbitrators and by their award they decided that the husband must take the wife back to his house after her confinement, in default of which he should pay her maintenance at a certain rate and the wife was accordingly taken to the husband's house, but subsequently sent away and refused maintenance:

Held.—The contingency (failure on the part of the the counter-petitioner to take back his wife after confinement) referred to in the award did not happen and that, therefore, the wife was entitled to apply under Section 366 for maintenance on the ground of neglect to maintain. Apart from this aspect of the case, the parties cannot in the circumstances, be considered to be living apart by mutual consent within the meaning of Section 366 so as to bar the wife's application. The award was no more than a direction to pay maintenance, and it could not be a bar to the petitioner's application under Section 366.— **21 T L J.**, *1215.*

7. An order for maintenance under Section 366 in terms of the agreement or

compromise entered into by the parties is valid in law.— 22 T. L. J., 755.

8. In a suit for declaration that the plaintiff was not the legally wedded husband of the first defendant and that the second defendant was not born for the plaintiff to first defendant, the plaintiff contended the correctness of an order for maintenance already passed against him by the Magistrate in proceedings under Section 366 of the Cede (which order had been upheld in revision by the High Court) and pending suit, the plaintiff applied to restrain the defendants from executing the order for maintenance they had obtained. The primary Court dismissed the application *in limine* relying on 18 T. L. J., 694.

Held.—Though it was possible to accept the contention of the plaintiff that the existence of the order for maintenance was not a bar to restrain the execution of the same, on a civil suit being filed and that therefore the Court below would have done well to consider the plaintiff's application on the merits, still, inasmuch as it was clear that the equities were in favour of the defendants and that the plaintiff had not made out a *prima facie* case, the order of the lower Court could not be interfered with.— 24 T. L. J., 527.

Section 370.

The duty of a public prosecutor is not to support a theory but to help the Court in determining the guilt or innocence of the accused. He is bound to conduct all Sessions Cases himself and not delegate the conduct of such cases to a Vakil engaged by a private party, his retirement from the case by so doing having to be considered as a dereliction of duty and a shirking of the responsibilities devolving upon him by virtue of his office. He could allow a Vakil so engaged to instruct him in such cases as provided for in Section 370.

All the material witnesses who can speak to the subject-matter of the charge will have to be placed before the Court by the prosecutor in trials of grave charges like murder, especially when they have been examined during the preliminary enquiry. It would be safe for the Public Prosecutor to examine such witnesses irrespective of the nature of the story given by them whether it fits in with the charge or not. He may, when he believes a particular witness to be untruthful, dispense with his examination or withhold such examination by reason of the statement of the witness given during the preliminary enquiry being irrelevent for the purpose of the charge or unnecessary in his estimate by the other evidence on record upon the matter he had been called upon to speak to. In doing this, he may either give up the witnesses leaving it to the defence to examine them on its behalf or tender them for cross-examination by the defence. In either case it would amount to his dispensing with their examination and he is in such cases bound to assign reasons for so doing and satisfy the Court as to the propriety of the course taken by him. If the Court is not so satisfied, it could draw an inference favourable to the accused from the omission to examine the witnesses concerned on its finding that their evidence was material. It has to be remembered that the Court cannot play the role of the Prosecutor in the trial of criminal cases and it would be improper on its part to fill up the gap in the prosecution evidence by examining persons whose evidence is considered by it to be material but who have been deliberately given up by the prosecution.

The duty cast upon the Court for the exercise of its extraordinary powers to take any evidence considered by it to be material has to be discharged consistently with the above position. In this view, it is for the Public Prosecutor with reference to the facts of each case to decide whether he could take the responsibility upon himself and risk the possibility

of a verdict in favour of the accused by the exercise of this discretion in which matter the Court may probably not agree with him. It would be safe for him to examine all the witnesses in the Preliminary Enquiry and leave the Court to form its opinion upon the entire evidence placed before it.— **46 T. L. R.**, *75*.

Ref.—47 T. L. R., 462 (=22 T. L. J., 347).

Section 371.

Recording of the reasons in cases where withdrawal of prosecution is allowed, is not imperative, as the High Court in examining the propriety of the order passed allowing or refusing the withdrawal could call for explanations from the subordinate Court concerned setting forth the reasons in support of the orders sought to be revised.

The order tantamounted only to one of discharge under Clause (*a*) of Section 371, and would not preclude reagitation of the matter by a fresh complaint as the rule of *autrefois acquit* would be inapplicable.— **20 T. L. J.**, *1277*.

Section 373.

The accuseds were first granted bail by the Magistrate, but as some of them failed to attend Court at a subsequent stage, he called upon them to make a deposit of Rs. 500 as a condition for the continuance of their bail. As the order calling for deposit was passed without notice to the accuseds, they moved the Magistrate for a reconsideration of the condition and as a result he dispensed with the deposit and substituted sureties instead. The Sirkar called in question the final order of the Magistrate.

Held.—(1) There is a distinction between a right to bail and the terms on which bail is to be granted. Circular No. 2 of 1099 requires the Police or Sirkar to be consulted only in deciding the question of the right to bail, the settling of the terms as to grant being within the discretion of the Magistrate under Criminal Circular No. 1 of 1083.

(2) The order of the Magistrate calling for deposit in variation of his prior order was itself irregular since no reasons were recorded, as required by law.

(3) Though the Criminal Procedure Code does not provide for review, the Magistrate was entitled to modify the conditions of a bail order with reference to the development of the case from stage to stage.— **21 T. L. J.**, *178*.

Sections 374 and 375.

1. Under exceptional circumstances the Court of Sessions or the High Court may grant bail under Section 375 of the Code. But before exercising the wide discretion conferred on the superior Courts under the Section, the Court will have to take into consideration, among other matters, the character and status of the accused, the nature of the alleged offence, the *prima facie* strength of the accusation in the light of the evidence available, the likelihood of the accused absconding or tampering with the prosecution evidence, the apprehension of the perpetration of other offences on account of the charge having been made and other undesirable consequences.— **20 T. L. J.**, *933*.

2. Under Section 374 the grant of bail is discretionary in non-bailable offences; and there is no room for the discretion itself when there are reasonable grounds to presume the guilt of the accused. No doubt a Court of Sessions or the High Court is not fettered by Section 374. But what Section 375 enacts is that the High Court or the Court of Sessions *may* direct that any person be admitted to bail. There again it is a question of discretion. It is not mere whim, but a matter of sound judicial discretion to be exercised according to well established principles.

The gravity of charge and the degree of probability of the accused's guilt in the

light of the available materials are important factors in considering an application for bail.— 20 T. L. J., *1125*.

3. While under Section 374, Criminal Procedure Code, the jurisdiction of the Magistrate in granting bail is limited, the powers of the High Court under Section 375 are wider and not controlled by Section 374. Under Section 375 the Sessions Court has concurrent jurisdiction with the High Court regarding this matter. Such jurisdiction is "not arbitrary but judicial and is governed by established principles."

The primary consideration for grant of bail in capital cases is whether there are grounds for believing the accused to be guilty of the offence charged. There might also be other facts to be considered as for instance the position in life of the accused, his state of health, the likelihood of the accused absconding or committing acts of violence and so forth, but the paramount consideration in capital cases must always be the probability of the guilt of the accused persons being established at the trial.

The High Court would be reluctant to interfere with the Sessions Court's exercise of discretion ordinarily where on the grounds stated it may not be unjustifiable. And though the reasons for granting or refusing bail need not or perhaps ought not to be set forth in detail in such cases, still some indication of the reasons which weighed with the Sessions Court must appear in its order so that the High Court might be in a position to judge whether its discretion has been properly exercised.— 21 T. L. J., *235*.

4. Where an application for bail is made before a Magistrate in a serious case in which the charge is one for murder, the Magistrate should realise the restraints on his jurisdiction to grant bail, imposed by Section 374. He has to see whether there are grounds to grant bail. If, therefore, the grounds that exist on the record do not permit that course, but the Magistrate relying on fanciful grounds does grant bail, his order granting bail cannot but be set aside.

Per Narayana Pillai, J.—As long as the Prosecution holds itself ready to satisfy the Court of the guilt of the accused and the Court finds nothing to discount the weight of the evidence held in roadiness, how can it be said that there is no reason to think that the accused is guilty?

Per Venkita Rao, J.—It is in the highest degree inexpedient for a Magistrate to release persons charged with murder as soon as they are arrested and thereby incur the risk of hampering the work of the investigating authority.

49 T. L. R., *87*
(=22 T. L. J., *1289*).

Section 389.

Whatever the proper view might be under Section 33 of the Evidence Act, the rule applicable here is clearly set forth in Section 389 of the Code, and under its provisions mere delay or inconvenience in procuring the attendance of witnesses cannot be a ground for admitting their prior depositions given before the committing Magistrate in evidence at the subsequent trial, as the Section requires that the Court should be satisfied that "for any sufficient cause the witness's attendance cannot be procured."— 21 T. L. J., *1014*.

Section 395.

1. Ordinarily, no doubt, the proper order to be passed under Section 395, in regard to the property produced before the Court is to restore the property to the accused, if it was taken from his possession. But this is not an invariable rule, and circumstances would justify an order for the disposal of the thondy in favour of the party who is seen to be the rightful owner.— 20 T. L. J., *353*.

2. The complaint was that the accused committed theft of certain items of movable properties which belong to the father of the complainant from Parampil Veedu where the deceased father of the complainant lived and died. The Magistrate ordered the Chilakkoor Police to enquire and report about the matter. The Police sent up a report alleging that no theft was committed by the accused. Thereupon, the Magistrate struck off the case from his file and ordered to place the Thondy articles in *status quo ante*. A few days later, the mother of the complainant and the widow of the deceased petitioned to the Magistrate that the Thondi articles should be returned to her on taking security from her. Accordingly the Magistrate granted her prayer. The fifth accused appealed to the District Magistrate, Trivandrum, who confirmed the order of the Subordinate Magistrate. It is this order that is now sought to be revised :

Held.—The procedure adopted by the Magistrate was irregular. The second order passed by him was behind the back of the accuseds to whom no notice was served on the petition presented by the mother of the complainant.—

22 T. L. J., *793.*

3. Ordinarily when an accused is acquitted, the article, in respect of which the prosecution was taken, would be ordered to be restored to *status quo ante*. But under Section 395, it is open to a Magistrate or Sessions Judge to conduct an enquiry for disposal of the Thondy. Though such enquiry is of a summary nature, if there are materials on record for arriving at a satisfactory conclusion, the Court is competent to make such order as it thinks fit.

Where, therefore, the Police seized a motor car from the accused and charged him for causing death by rash and negligent driving of the car, but the accused was ultimately acquitted and there were materials on record to show that the accused was only a hirer of the car at the time of seizure and that the contract of hiring was terminated and the ownership had passed to a stranger during the course of the prosecution :

Held.—The order as to the return of the car should be made in favour of the stranger and not the accused.—

24 T. L. J., *581.*

Section 400.

A petition was presented before a Magistrate for delivery of possession under Section 400 of the Code. The Magistrate without issuing notice to the other side ordered delivery of possession *ex parte* :

Held.—Such an order *ex parte* without notice to the other side was erroneous.—

24 T. L. J., *262.*

Section 404.

1. The District Magistrate, Kottayam, moved the High Court for orders under Section 404 of the Code transferring a case on his file to that of the Sessions Judge at that station as the prosecution in the case had been sanctioned by the Government at his instance as Dewan Peishkar :

Held.—The provisions relating to transfer contained in Section 404 have to be construed in the light of the other provisions of the Code, and transfers of cases to Sessions Courts could be ordered only where a commitment has already been made as contemplated in Chapter XVIII of the Code. Hence the transfer recommended by the District Magistrate could not be allowed.

Section 431 lays down that no Judge or Magistrate shall try or commit for trial any case to or in which he is a party or personally interested. The principle underlying the above provision is that it is important to clear away everything which may engender suspicion and distrust of the tribunal, and so promote the

feeling of confidence in the administration of justice which is so essential to social order and security. The word 'personally' occurring in the Section has a wider significance than its mere literal sense. It includes every kind of interest, however small. It does not imply mere intellectual interest, but something of the nature of an expectation of an advantage to be gained or of a loss or some disadvantage to be avoided by the person who is said to be interested in the case. An official connection with the initiation of proceedings would constitute interest within the above Section (F. B.).—

20 T. L. J., *337*.

2. See also—

Sec. 128.— **22 T. L. J.**, *475*.

Section 405.

Section 404 deals with applications for transfer before the High Court. Section 405 expressly requires the provisions relating to postponement or adjournment contained in Section 255 to be exercised where the intention to move the High Court is notified to the Court. As the Section stands, therefore, it could not be said that the Magistrate had acted illegally in refusing the adjournment when he had only been informed of an intention to move the District Magistrate for a transfer. Of course, the Magistrate could have exercised his discretion in allowing adjournments in such cases, especially when a party represents to him that he entertains a reasonable apprehension of not having a fair or impartial trial before him so that reasonable facilities may be afforded him to move the superior Courts to decide whether such apprehensions are reasonable and to secure orders of transfer if his plea in this behalf is upheld ; but where the Code expressly casts a duty on him only in cases where the motion is proposed to be made before the High Court, it is doubtful whether the Magistrate could be held to be guilty of a breach of such duty when he had been informed by the parties of their intention to move the District Magistrate in the matter. The stage at which such a statement is made cannot be considered to be immaterial in this matter, for applications for transfer have to be made at the earliest opportunity after the occurrence of whatever facts and circumstances which are alleged or supposed as affording a reasonable cause for the same.

The pronouncement of judgment on a date prior to the date on which it is posted for the purpose only amounts to an irregularity. This would be insufficient to warrant interference with the order of acquittal passed by the trying Magistrate.

Interference with orders of acquittal has to be refused unless there has been a defective trial or public interests are shown to be otherwise jeopardised.—

20 T. L. J., *75*.

Section 426.

A complainant in a Criminal case is entitled to get a copy of the progress diary, so far as it goes, at any stage of the case. Criminal Circular No. 3 of 1068 contemplates the case of an application for progress diary on the close of an enquiry or trial in Court. In other words, it refers to a complete progress diary. If that can be supplied to a party as the Circular distinctly directs, there cannot be any conceivable objection to give a copy of the progress diary so far as it goes.— **20 T. L. J.**, *127*.

Other Cases.

1. An order of discharge by the Magistrate was impugned on the ground of the pendency of a counter-case in the Sessions Court. The contention that the lower Court was bound in law to order the commitment of the accused in the case also could not be upheld as sound, though it

is desirable that where there is a case and counter-case, commitments are made in both the cases if practicable so that the Sessions Judge trying them may have the whole evidence before him. An order of discharge in one of the cases where in the opinion of the Magistrate conducting the preliminary enquiry, the evidence does not warrant a commitment, cannot be considered to be illegal or so improper as to justify its cancellation of an order of commitment. No hard and fast rule can be laid down in the matter. The question whether an order of discharge deserves an interference has to be decided with reference to the facts of each case. The existence of a counter-case which has been committed to the Sessions Court would not *per se* warrant such an interference. What has to be considered in a Sessions trial is whether the prosecution case is proved beyond reasonable doubt. This rule is applied even where there is a case and a counter-case. Even in cases where the prosecution case in one is the defence case in the counter-case, the Criminal Court is not, unlike in Civil Cases, to decide which of the versions is true, but to determine whether in the light of the evidence on record in the case, the prosecution can be held to have established beyond reasonable doubt the several acts set out in the charge. In this view, the commitment of both the case and the counter case cannot be laid down as an inflexible rule irrespective of other considerations.—

20 T. L. J., *302.*

2. The petition was for the expunction of certain passages from the judgment of one of the five Judges who participated in the contempt proceedings case reported in 47 T. L. R., 176 (=21 T. L. J., 424). The petition was heard by the same Judge sitting as a single Bench. At the hearing it was argued on behalf of the petitioner that the petition had to be dealt with by a Division Bench under the High Court Regulation.

Held.—The inherent jurisdiction in Criminal Cases was not provided for in the Criminal Procedure Code, though the British Code provides for the same in Section 561-A of that Code. So much so, it was difficult to construe the High Court Regulation as applying to something left unprovided for by the Statute. On the other hand, if the petition was viewed as for revising the proceedings of the High Court itself as a Criminal Court, a single Judge may deal with it within the limits laid down in Section 7 (4) vi of the High Court Regulation.

The principle that should guide the Court in expunging passages from a judgment is that if an unjustifiable attack be made on a person who had no opportunity of being heard in his own defence and the remark against him is irrelevant and separable, it can be expunged, especially if he is neither a party nor a witness.—

21 T. L. J., *1398.*

3. The remedy by way of review in a Criminal Case by the exercise of the inherent powers of the High Court is a very extraordinary remedy to be used only in extreme cases like the one reported in 15 T. L. J., 85, where the refusal to exercise the inherent powers would have brought about a deadlock.—

22 T. L. J., *378.*

4. It is not open to the Police Officer in charge of the case before the Committing Magistrate to give up witnesses cited in the charge sheet on the sole ground that to his knowledge or belief such witnesses had gone over to the side of the accused and would not speak the truth. 'Unless it is shown by facts and circumstances in the case that the witnesses were withheld because they would not tell the truth, the prosecution should not be left the option to choose. To allow such an option is to create embarrassment.' The Court should have the whole of the material evidence and of all the eye witnesses

whether in favour of or hostile to the prosecution so as to form its own opinion upon the entire evidence.'

Where, therefore, as in the case, there was nothing on the record to enable the Court to decide whether such a witness's testimony was withheld on proper grounds and when the other evidence was highly unsatisfactory it was open to the Court to draw an inference adverse to the prosecution.

A dying declaration stands upon a widely different footing from the testimony of a witness given in Court. In the case of the latter it is permissible and at times necessary under certain circumstances to accept a part which is unimpeachable and reject that which is obviously untrue, though to found a criminal conviction on such appraisement of evidence is very often unsafe. As regards a dying declaration, to accept a portion and reject the rest is entirely out of the question; there must be absolute guarantee of the accuracy of the records and the truth of the entire statement before it can be acted upon. Where there is hardly any other evidence in regard to the details of the occurrence it would be quite unsafe to act on the dying declaration especially when a material part of it was found to be untrue and untrustworthy by the investigating Officer.—

47 T. L. R., *462*
(=22 T. L. J., *347*).

5. The procedings in contempt of Court in the case was initiated by the communication of the District Magistrate addressed to the High Court and was in reference to certain violent attacks directed against a Second Class Magistrate and published in the Malayalam Newspaper 'Rajyabhimani.':

Held.—Any act done or writing published, calculated to bring a Court or Judge into contempt or to lower his authority is a contempt of Court and the High Court has jurisdiction to take action in cases of such contempts against subordinate Courts.

The sole purpose of the sentence for contempt of Court is to serve the interests of the administration of justice and not meant to be vindictive.

(In the circumstances of the case, the apology tendered was not accepted as sufficient satisfaction and a fine of Rs 25 was imposed).— **22 T. L. J.,** *661*.

6. The High Court, in the exercise of its powers of superintendence over subordinate Courts, has inherent powers to order expunction from judgments and orders of subordinate Courts of passages reflecting on the character of individuals which, in the opinion of the High Court, ought not to be allowed to disfigure solemn judicial proceedings.—

22 T. L. J., *730*,

7. Roads leading from one part of the country to another and through which traffic is ordinarily carried on, are to be presumed to be Rajapathas.

The Sirkar is the proper authority to determine whether a particular road belonging to it and maintained by it is a Rajapatha or Gramaveethi.

If they are Rajapathas, there is no doubt that they are open to all classes of His Highness' subjects without distinction of caste or creed for all lawful purposes. Taking a procession along a public road with music cannot be said to be a use of the public road forbidden by law in Travancore.— **22 T. L. J.,** *1371*.

8. An order of a superior Court as to stay of proceedings in a subordinate Court takes effect only when the subordinate Court was duly informed of it.

There appear to be no good grounds for holding that the principle enunciated in 40 T. L. R., 237 (=15 T. L. J.,52) is applicable only to civil cases. **49 T. L. R.,** *220*
(=23 T. L. J., *83*).

9. On the question whether in a criminal trial, the evidence in a case may be

made use of in a connected counter-case relating to the same transaction :

Held.—No hard and fast rule could be laid down in these matters. The chief point to consider is whether the method adopted in a particular case has resulted in a miscarriage of justice. Rules of procedure are meant only for the guidance of Courts in the administration of justice, and in cases where no specific procedure is laid down by the statute, Courts have got inherent jurisdiction to do all that is required to meet the ends of justice. In such cases the duty of the Court is to sift the evidence before it to find out the truth and to deal out to the parties the treatment they deserve. The Courts ought not to shut its eyes to the evidence recorded in one of the cases merely because the whole of that evidence is not incorporated in the other case. But if, however, the reading of the evidence in one case for the purpose of the other will lead to a miscarriage of justice, it ought not to be done. Within these limits, the evidence in one case may be made use of for the decision of the other case :

Held further.—If the charge as definitely framed is not proved, it could not be said that the accused is entitled to acquittal. The charge is generally framed on the facts alleged by the prosecution. In many cases neither the prosecution nor the defence put forward events as they occurred. Each party would shape its case according to its own requirement. It is the duty of the Court to sift the evidence and find out how the events actually happened. If on such scrutiny of evidence, it is found that the accused have been guilty of penal acts, the Court would be justified in punishing them,—

49 T. L. R., *307*
(=23 T. L. J., *603*).

10. A case and counter-case arising out of the same affair should be tried by the same Magistrate and disposed of side by side. They are, for practical purposes, one, and it is an accepted practice and recogised rule that such cases should be tried by the same Judge in quick succession, and the Judge should not pronounce judgment till the hearing of both cases is finished.—

49 T. L. R., *337*
(=23 T. L. J., *957*).

11. A confession is always admissible in evidence against the person who makes it, and if it is of a voluntary character, even without corroboration sufficient to support a conviction. Even when a confession is retracted, there is no legal impediment to its being acted upon, but it is not ordinarily safe to do so in the absence of corroborating evidence.

A misconception which is not unusual in an accused person that a disclosure would result in some advantage to him is not such as would invalidate his confession : for this he must make out that it was the result of inducement, threat or promise from a person in authority as specified in Section 24 of the Indian Evidence Act.

If the accused's own statement is to be relied upon, it must be taken as a whole and nothing can be read into it which is not within the four walls of the statement.— **24 T. L. J.,** *33*.

12. The complaint was that the accused who were defendants in a Civil case from whom property was delivered over to the complainant by the order of the Civil Court trespassed into the property and committed theft. Sanad and Kychit were produced to prove complainant's title to property and two witnesses swore to the alleged occurrence. The Magistrate discharged the accused stating in his order that no patta had been issued to the complainant :

Held.—It was certainly the duty of Criminal Courts to respect the proceedings of Civil Courts and in the absence of strong circumstances to the contrary, to attach due weight to documents like delivery kychits. In law, it had to be

presumed, in the absence of strong evidence to the contrary, that the proceedings in execution including delivery, had been conducted properly and in strict compliance with law, the burden of proving the contrary lying heavily on the party impeaching the proceedings.—

49 T. L. R., *461*
(=24 T. L. J., *197*).

13. "In law a man's motives are irrelevant. As a general rule, no act otherwise lawful becomes unlawful because done with a bad motive; and *contra*, no act otherwise unlawful is excused or justified because of the motives of the doer however good. The law will judge a man by what he does, and not by the reason for which he does it."—

24 T. L. J., *140*.

14. On a careful consideration of the case-law, it is clear that the Magistrates who enquire into a case triable by the Sessions Court cannot be treated as a conduit pipe for letting out the evidence collected by the complainant or investigating officer on to the Sessions Court but that they have the right to determine whether the evidence on record makes out a case to be tried before a Court of Session. No doubt this power has to be judicially exercised and with great care. Otherwise an unfettered exercise of this power would enable the enquiring Magistrates to scotch every case enquired into by them at its very inception. The golden mean between these two positions has to be accepted. But the difficulty is to draw the line. It is always a question of fact whether, in a particular case, the Magistrate has exercised his discretion properly and whether all that he has done is attempting to find out whether there is a case in which, judged by ordinary standards, a conviction is probable on the evidence recorded.— **24 T. L. J.,** *183*.

15. In a case triable by a Court of Sessions it is not for the Magistrate to decline to order a commitment unless there is no evidence to prove the charge or the evidence is such that no reasonable person and no tribunal would ever on such evidence find the accused guilty. It would be well if the subordinate Courts in such cases are guided by the Rules formulated in 18 T. L. J., 1104. **24 T. L. J.,** *578*.

REGULATION I OF 1068.

(Revenue Recovery.)

Section 1 (*c*).

The definition of "land-holder" in Section 1 (*c*) of the Revenue Recovery Regulation would include not only the registered holder but also his "legal representative." This latter expression obviously cannot refer to heirs of the registered holder only. Transferees in whose name transfer of registry has not been effected must also be considered to be within the ambit of that definition.—

20 T. L. J., *943*.

Section 34.

The Rules published on the 5th October 1924 under the Revenue Recovery Regulation I of 1068 extending the powers of the Dewan Peishkars to confirm sales of lands for arrears of land revenue, includes also the power to set aside such sales.

A Division Assistant to whom a revenue sale was reported for confirmation can exercise a discretion under the proviso to Section 34 (4) of the Revenue Recovery Regulation so as to set aside the sale. It was not correct to say that the Dewan Peishkar alone could exercise such discretion.— **22 T. L. J.,** *802*.

Section 39.

For recovery of arrears of rent due from a Venpattom tenant in respect of property belonging to a private Devaswom, the Sirkar which had taken the

Devaswom under its management, sold certain properties of the tenant under the provisions of the Revenue Recovery Regulation:

Held.—The sale did not convey title free from all encumbrances. Though under Section 39, a sale held under the provisions of the Regulation is declared to be a sale free from all encumbrances it did not follow that all sales held under it would be of that character. In other words, property would be conveyed free from all encumbrances only in cases of sale held for realisation of arrears of revenue and not in the case of sales held under other circumstances.—

23 T. L. J., *1051.*

Section 51.

The suit was for a declaration that the plaintiff was the owner and possessor of the plaint schedule property which had been sold in revenue auction for arrears of tax due from a stranger in whose name its patta stood and for auxiliary reliefs. The suit was filed more than a year after the date of confirmation of the sale but within 6 years of plaintiff's knowledge of the sale. It was found as a fact that the property belonged to the plaintiff and not the registered holder and that no arrears were due or alleged to be due from the plaintiff and not the registered holder and that no arrears were due or alleged to be due from the plaintiff or the property in question. On the plea of limitation and non-maintainability of the suit set up by the Sirkar:

Held.—(1) Section 51 of the Revenue Recovery Regulation did not apply, as according to its wording, it applied only to suits by parties feeling themselves aggrieved by any decision or order passed or proceeding taken or purporting to be taken under the Regulation for arrears due or alleged to be due from such parties and in the case no arrears were alleged to be due from the plaintiff or were due from the plaint land.

(2) The rights of the plaintiff were not affected by the sale. For, the properties which the Sirkar could proceed against under Section 5 of the Regulation were only those of the registered holder but the mere fact that they were registered in his name was not conclusive.

(3) Article 9 of the Limitation Regulation was also no bar to the suit inasmuch as the plaintiff, though not perhaps entitled to have the sale set aside, may treat it as a cloud on his title and also as a threat by the defendants to enter on his property and may, therefore, have a right to sue within six years from his coming to know of the sale.— **22 T. L. J.,** *508.*

Section 52.

The plaintiffs, land-owners, were prevented, by action of Government, from cultivating their lands for a particular period but nevertheless were compelled to pay land tax for such period. The plaintiffs filed the suit against Government for re-imbursement:

Held.—*Prima facie*, it is highly inequitable for the Government to realise the land revenue from any land after Government themselves have prevented the owners from cultivating the land. On principle too, the Government is not entitled to realise the revenue under the circumstances of the case.

Section 52 of the Regulation is no bar to the suit because the question involved is not as to the rate of land revenue or the amount of assessment, but only the right to levy an assessment for a particular period. The Civil Courts have jurisdiction to try questions of liability to the public revenue. It is also a well-established principle of interpretation of statutes that provisions that oust the jurisdiction of the Civil Courts should be very strictly construed. **24 T. L. J.,** *469.*

Section 54.

1. The term "movable property" in Section 54 of the Revenue Recovery Regulation comprises also "standing crops", and hence a harvesting of standing crops would fall within the scope of the Section. But to constitute an offence under the Section, the harvesting must have been done with knowledge of the distraint.

A Magistrate of the Second Class has jurisdiction to try an offence under Section 54 even though it is punishable with a more severe form of sentence by way of fine than what the Magistrate could inflict. Where the ends of justice required the imposition of such severer punishment, action could be taken under Section 260 of the Criminal Procedure Code.—

23 T. L. J., *868.*

2. See also Regn. V of 1095, Sec. 138.—

46 T. L. R., *396*

(=21 T. L. J., *122*).

REGULATION II OF 1068.

(Forest.)

Section 2 (*c*).

Sawn pieces of teak timber are clearly forest produce as defined in Section 2 (*c*) of the Regulation, especially Clause (*a*) read with the explanation appended to that Section as well as the definition of 'timber' contained in Sub-section (*e*) of that Section.— **46 T. L. R.,** *368.*

Section 31.

1. Under Section 31 of the Forest Regulation, the Royal trees will become in effect the property of the Government subject to certain rights in favour of the owner of the land on which they stand. Such owner under the Statute itself is entitled to certain advantages, not as owner of the trees, but as owner of the land. He may disentitle himself by a special undertaking from making a claim for the value of the royal trees removed by Government from the property. But in the absence of such undertaking there is nothing to prevent him from claiming the rights given to him by the Section.—

20 T. L. J., *1146.*

2. Under Section 31 of the Forest Regulation, when *any* Royal tree is removed from land belonging to another the owner of the land at the date of the removal of the trees, shall be entitled to a payment at rates which the Government may from time to time determine.

According to the Rules framed by Government under Sections 31, 32, 33 and 60 of the Forest Regulation, when any Royal tree is removed on account of the Government, the owner of the land shall be entitled to one half of the net profit accruing from the disposal of the trees thereon. Therefore, till the trees are disposed of and the net profits are ascertained the owner of the land on which the trees stood cannot put forward any claim for his share in the net profits. The appropriate Article under the circumstances seems to be the residuary Article, *viz*, 109 of the present Limitation Regulation.

Per Joseph Thaliath, J.—In a case like this there is some difficulty in determining the date from which the cause of action arises. The proprietor of the land can claim only a share of the net profits; in other words, he cannot claim anything before the tree or log, as the case may be, is disposed of by the Government. There is no Rule which provides for intimating the result of the sale to the owner of the land or even for publishing such information in the Government Gazette. In the absence of such Rules the cause of action can be taken to arise only from the date the owner of the land comes to know of the sale. Otherwise there would be great hardship.— **21 T. L. J.,** *168.*

3. The plaintiff brought the suit against the Sirkar for a declaration that he was

entitled to fell and remove certain Royal trees standing on his registered holding on payment of one-half of the tariff value to the Sirkar and to compel the Sirkar to grant him permission to do so.

Held (*By the Full Bench Chatfield, C. J., and Chakko, J., Raman Tampi, J., dissenting*).—The plaintiff could not be given the declaration asked for. Under Section 31 of the Forest Regulation, the written permission of the Conservator of Forests or such other officer as may be authorised by him in writing is a condition precedent on which the right to cut down the trees is to come into existence.

It is an unfortunate consequence of this view that it would reduce the concession granted by Section 31 of the Regulation and the Rules under it to something shadowy and unsubstantial. Where, however, the words of a Section are clear and distinct, it is the duty of the Court to give effect to them leaving the consequences to be dealt with by the Legislature.

Per Chatfield, C. J.—Section 31 of the Forest Regulation does not impose any duty on the Conservator of Forests. It merely lays down as a condition precedent for the felling of a Royal tree standing on private property that the written permission of the Conservator of Forests should be obtained. It in fact indicates that the Conservator is the Officer who should represent Government in giving consent for the felling of the tree. If there is no written permission of this Officer or of another Officer authorised by him, then the tree could not be felled.

Per Chakko, J.—Section 31 of the Forest Regulation makes it obligatory on the part of the owner of the land to get the previous written permission of the Conservator of Forests or such other Officer as may be authorised by him in writing before he is entitled to cut down the trees. Under the Forest Regulation, the Conservator of Forests has an absolutely unfettered discretion in the matter of granting or refusing a private landholder's prayer for cutting down Royal trees. The discretion of the Conservator is not subject to revision by the Civil Courts.

Per Raman Tampi, J.—The plaintiff must be allowed the declaration asked for.

Under Section 31 of the Forest Regulation, the owner of a registered land has the legal right to fell and remove for his private use Royal trees standing thereon on payment of one-half of the tariff value to the Sirkar. This right can be enjoyed by him only if the Conservator of Forests grants him permission in writing and arranges the work of felling to be carried out under the supervision of a Forest Officer not below the rank of a forester. If the Conservator refuses, without reasonable grounds, to grant such permission, the Civil Court has the power to grant relief to the owner of the land (F. B).— **49 T. L. R.**, *258* (=**23 T. L. J.**, *526*).

SERVICE INAMS PROCLAMATION, 1068.

1. There is a distinction between grants burdened with services and those made in consideration of the continued performance of services. In the former class of grants the cessation of the need for the services will not entitle the grantor to resume the grant, for, at the most, the performance of the service is only a portion of the consideration of the grant; and therefore in the absence of express words declaring that the service ceasing the tenure shall determine, the grant does not become void merely for the reason that the service ceases to be performed.— **20 T. L. J.**, *1180*.

2. An "Anubhogam" grant of land was revoked by the Sirkar, grantor, under the provisions of the Service Inams Proclamation by reason of the alienation of

the land by the grantee and in a suit for declaration, the alienee questioned the forfeiture and resumption on the grounds among others(1) that the term "Anubhogm" connoted a personal Inam and therefore an irrevocable grant, and (2) that the non-specification of the services to be rendered by the grantee, in the Inam Patta, rendered the Service Inams Proclamation inapplicable. But it was distinctly found on the evidence that the grant had been made for services to be rendered by the members of the grantee's family and that the nature of such services were proved by evidence rather than the Inam Patta.

Held.—(1) The employment of the word "Anubhogam" did not connote a Personal Inam exclusively. On the other hand, Anubhogam grants may be either for past services (Personal Inam) or for services to be rendered (Service Inam). And as the land in question had been proved to have been granted for services to be rendered, the Sirkar was competent to take action by virtue of Section 2 of the Service Inams Proclamation, whereby all alienations of Service Inam lands were declared null and void, and the Sirkar was empowered to resume the lands so alienated.

(2) The Revenue Settlement Proclamation did not require a specification of the services in the Inam Patta. All that was needed to attract the provisions of Section 2 of the Service Inams Proclamation was that there should have been alienation, contrary to past usage, of Service Inam lands, attached to specific services of any description. The nature of the services could be proved by evidence other than the Inam Patta.

[There are two classes of Inams, *viz.*, Service Inams, lands granted for service to be rendered and Personal Inams, those given as personal grants. These have particular incidents attached to them. Service Inams were inalienable, but were left in the undisturbed possession of the holders so long the prescribed service was duly rendered. In the event of non-performance of service, the lands were liable to resumption by Government. Personal Inams comprised lands granted for the support of individuals and families. These two classes of Service Inams were dealt with in the Revenue Settlement Proclamation in which provision was made for their settlement. Service Inams were left to be enjoyed without interference so long as the service continued to be fulfilled; but when from any cause the service had ceased or had ceased to be performed, the Inam was to be resumed and assessed with Pattom. In regard to Personal Inams, the settlement was to be effected with the family of the original grantee or with the alienee, but there was to be no resumption. In order to remove some misconception created in regard to Service Inams by this Proclamation, the Service Inams Proclamation had to be issued whereby all alienations of Service Inam lands were declared to be null and void and the Government was empowered to resume the lands so alienated and by Section 3, any civil suit against the Government in respect of anything done in pursuance of this provision was interdicted. It is worthy of note that Clause 2 of this Proclamation is retroactive in its operation, since it contemplated the case of alienations both prior and subsequent to the date of the Proclamation].—

24 T. L. J., *568*.

REGULATION V OF 1071.

(Jenmi and Kudiyan.)

Sections 11 & 20.

Revisions and readjustments of the terms of a Kanom deed, at the instance of an assignee of a portion of the Kanom holding are permissible under Sections 11 and 20 of the Regulation V of 1071, but only at the stage of renewals. If no such attempt is made, at such time, for separate renewals, it is not open to the

assignee subsequently to claim separate credit on account of the payments made by him. The Jenmi is entitled to credit the payments towards the general account but having done so, the Jenmi cannot ask that the assignee should be made liable for a ratable portion of the rent personally. For, apart from the question whether an assignee of a part of the holding can be personally liable for the ratable portion, the Jenmi is not then ready to recognise any privity of estate with the assignee, or release his claim under the privity of contract with the original tenant.— **21 T. L. J.**, *880.*

Sections 14 & 25.

Enhancement of Michavaram by reducing the rate of interest is allowable if it is shown that the rate of enhancement is in excess of the rate usually allowed to other Kudiyans holding on Kanapattom in the same Proverthi. The limits of such reduction are further subject to Section 25 which prohibits any enhancement appearing unfair or inequitable in the circumstances of the case. The rate of interest is a term in the contract of Kanapattom and as such is not liable to variation except to the extent allowed by the law. The prevailing rate of interest on ordinary money transactions is not the guide afforded by the law. The test is the rate usually allowed to Kanapattom tenants in the same Proverthi.—

21 T. L. J., *325.*

Section 44.

1. Much importance could not be attached to the fact that other owners whose property have been acquired under the same notification as the complainants, had acquiesced in the awards made by the Land Acquisition Officer.

On the question whether the rights of the Jenmi had been lost owing to no Michavaram being paid or renewal taken for fifty years prior to the Jenmi and Kudiyan Regulation:

Held.—The rights of the Jenmi were lost. The Legislature intended Section 44 of the Jenmi and Kudiyan Regulation to provide merely a period of limitation. There was an obvious confusion of thought as, if the property was held under an express stipulation for redemption, it would not come under the definition of Jenmom land given in Section 3 (1), *i. e.*, it would not be held subject to periodical renewals. At any rate, if any right remains with the Jenmi after the coming into force of Section 44 it must be a right of a shadowy nature and it is difficult to give it any value (F. B.)— **21 T. L. J.**, *517.*

2. The suit was for the renewal of Kanom. The defendants contended adverse possession on the strength of an assertion they made more than 12 years ago in a suit for patta that the plaintiffs had lost title on account of the non-payment of rent by defendants for more than 50 years. The defendants did not deny the Kanom in the earlier suit.

Held.—It could not be affirmed as a general proposition of law that a person who was, in fact, in possession of land under a tenancy or occupancy title could by a mere assertion in a judicial proceeding and the lapse of 6 or 12 years without that assertion being successfully challenged obtain a title as a proprietor to the lands.

Mere non-payment of rent would not enable the tenant to plead adverse possession.

To satisfy the requirements of Section 44 of he Jenmi and Kudiyan Regulation it must be shown that the Kudiyan was in possession of the holding for more than 50 years preceding the date of the Regulation and that there was no payment of Michavaram or other dues during the said period.— **48 T. L. R.**, *959* (=**22 T. L. J.**, *1193*).

3. Where a description of the plaint item No. 1 as 'Matom Vaka' in a partition deed relating to the family properties of the defendant was relied on by the plaintiff's Matom to evidence a Kanom demise thereof in favour of the defendant's family, but there was neither renewal nor payment of Michavaram for 50 years prior to the enactment of the Jenmi and Kudiyan Regulation:

Held.—The reference to the disputed property as 'Matom Vaka' was merely descriptive and cannot be viewed as amounting to an acknowledgment of a subsisting liability. Even otherwise, under Section 44 of the Regulation, the provisions of the Regulation were inapplicable to properties which had been held by the defendants without either renewal or payment of Michavaram.—

49 T. L. R., *109*
(=23 T. L. J., *128*).

Other Cases.

1. The stipulation "I shall either grant renewal of the deed or redeem the property of the Kanom" gave an option of either renewing the Kanom or redeeming it—an option to be exercised by the land-lord and not the tenant. If the land-lord chose to redeem, the Court had no right to refuse to grant his prayer.—

20 T. L. J., *873*.

2. Under the Royal Proclamation of 1042, Clause 1, the only condition prescribed for securing to the tenant permanent occupancy right is that he should hold lands of Jenmies for a *consideration* by whatever name the deed may be called. And so long as the stipulated rent and the customary dues are paid he shall not be liable to action for ouster by the Jenmi.— **20 T. L. J.,** *883*.

Fol.—22 T. L. J., 883.
Ref.—24 T. L. J., 621.

3. The Jenmi sued for 72 parahs of paddy being arrears of Michavaram at 6 parahs per year at Nirak rate. The Sirkar contended that the plaintiff could claim only at 4 parahs per year (being the provision made in the patta) at the commutation rate fixed by the Sirkar.

Held.—The Sirkar would be liable for the whole of 72 parahs and interest at the Nirak rate. In this the 1st defendant (Kanom-holder) was only liable for 48 parahs (*i.e.*, at 4 parahs per year) and interest thereon at the commutation rates.

There was no restriction that remedies against the holding must be exhausted before the 1st defendant (Kanom-holder) can be proceeded against.—

21 T. L. J., *528*.

4. Aravakasoms are not payable for the Pindam and Masam ceremonies of the wife of the senior male member of a Nambudiri Jenmi's family.

Oppusuchi and Olappanam cannot both be awarded in the absence of a special custom; but one of them may, it being an ordinary incident to a renewal, being the cost of preparing and attesting the Kanom deed.— **21. T. L. J.,** *574*.

5. Under Section 17 of the Jenmi and Kudiyan Regulation, interest on arrears of Michavaram payable in kind can be claimed at 18 per cent, and the same rate of interest may be justly adopted in respect of arrears of Thirippuvaram also.-

21 T. L. J., *598*.

6. In the case of Jenmom lands it has been held in several cases that when the Jenmom rights pass into the hands of non-Brahmin owners the latter are not entitled to Aradiyanthiram fees.

It is immaterial whether the documents which fix the payment of Adiyanthiram fees is a Kanom lease or otherwise. These payments would be compulsory and could be enforced by any transferee of the Jenmi's rights if a fixed sum is payable on account of Adiyanthiram fees—*Vide* 16 T. L. J., 354.

As has been held by a Full Bench of the Court in 1 T. L. J., 3, the usual rule

is that the tenant's share of the value of the improvements is three-fourths. This rule has not been varied till now. If a different custom prevails in any particular locality it will have to be established by evidence, to be recognised and enforced by Courts of law.— 22 T. L. J., *824*.

7. In a suit for redemption by a Royal Proclamation Jenmi, of a property outstanding on a lease for improvements (Ozhavupattom) of 1053, the defendant raised the question of the irredeemability of the tenure, but there was a distinct provision in the lease deed that the property was to be enjoyed for 12 years from its date and the deed itself was not granted after the Royal Proclamation of 1042, but was only in renewal of an earlier lease and there was also no provision in it for *Adukkuvathu* nor was the rent fixed small in comparison with the extent of the property:

Held.—It cannot be said that the transaction evidenced by the lease deed in question amounted to an irredeemable tenure. By a series of decisions of the High Court, it has been consistently held that the chief characteristic of an irredeemable Kanom was the payment of Adukkuvathu and nothing had happened in the meanwhile to depart from this rule. Another test of a Kanom laid down by this Court in some cases was that the smallness of the rent generally indicates a Kanom tenure.— 22 T. L. J., *883*.

Ref.—24 T. L. J., 621.

8. The suit properties were demised on Otti by the plaintiff-Devaswom in 1056 to the predecessor-in-interest of the defendants. No right of redemption or revocation was expressly reserved in the document nor were renewal fees stipulated for therein. An attempt by the defendants to prove payment of renewal fees proved unsuccessful. On the question whether the document evidenced an irredeemable Kanom by virtue of Clause (8) of the Royal Proclamation of 1042:

Held.—Clause (8) of the Proclamation had no reference to lands other than Jenmom lands held on payment of renewal fees and customary dues to the Jenmi; and, therefore, the document represented a redeemable mortgage, and not an irredeemable Kanom.

No doubt if the matter were not so concluded, there might be much to be said for the argument put forward on behalf of the special appellant, that the restricted interpretation placed on Clause (8) of the Proclamation practically renders it nugatory. It would only apply to cases where the tenants had already acquired a right of permanent occupancy under the previous transactions. Clause (8), therefore, would only be a means by which tenants might surrender the rights which they already possessed by accepting a document providing for redemption and not the means for giving tenants rights which they would not otherwise possess.—
23 T. L. J., *429*.

9. Thiruppuvaram and Jenmibhogam cannot be treated alike. Hence, the principle laid down by the High Court in the matter of commutation of Thirippuvaram cannot be extended to Jenmibhogam also.— 23 T. L. J., *719*.

10. The suit was for redemption of property demised under a document, "Panayam", and executed in 1073 after the Jenmi and Kudiyan Regulation had come into operation. The document contained a provision for renewal at the end of 12 years on payment of Avakasam, &c., or for surrender if that course was not agreeable, on receipt of the Panayam amount, but there was no proof that at any time since its execution there was a payment of Adukkuvathu. The property was previously outstanding on an usufructuary mortgage, to redeem which provision was made in the document and the property had accordingly been recovered by the defendants. It was also in evidence that in relation to the extent

of property covered by the document, the Michavaram reserved was very high. On the question of construction whether the document evidenced an irredeemable Kanom or otherwise:

Held—The document did not amount to and was not intended to be a Kanapattom demise, but was only a terminable lease.

Whether the terms of any particular document have the effect of creating an irredeemable demise is purely a question of interpretation. But though the Court has a large discretion in the matter of construction of deeds, it is not absolutely unfettered inasmuch as the Court is not at liberty to ignore the meaning which long currents of decisions have attached to particular expressions.—

23 T. L. J., *940.*

11. The question is whether Exhibit A represents a redeemable or an irredeemable alienation of the properties comprised therein. Exhibit A styled a Kanapattom, makes provision for renewal on expiry of 12 years on payment of Adukkuvathu and for continuance of the possession with the mortgagee for ever.

Held.—The instrument effectuates a permanent alienation subject to periodical renewals on payment of Adukkuvathu. The rule of equity relating to clog has been declared to be unfit for adoption in this State. Also it cannot be maintained that it is not permitted by law to create an interest in property providing for periodical renewals coupled with irredeemability. The Jenmi and Kudiyan Regulation merely makes provision in respect of Kanapattom documents and does not interfere with the rights of individuals relating to their dealings with properties which they had irrespective of that Regulation. Subject to certain limitations, the owners are competent to enter into contracts as they like regarding their properties, which, in the absence of invalidating circumstances such as fraud, undue influence and the like, must be recognised by Courts, and if an outright alienation could be allowed, there is nothing in principle so as to prevent a person from executing a lease or mortgage with the provision for renewal every 12 years on certain terms and for the tenure to continue for ever.

A creditor is entitled to appropriate payments in liquidation of barred debts in the absence of any direction by the debtor regarding their application. The law gives considerable latitude to the creditor in making appropriations. He has the right of election up to the very last moment. He may exercise the right of appropriation at any time before verdict or judgment whilst the position of the debtor remains unaltered.—

24 T. L. J., *349.*

12. The Kanom tenant of the plaint property mortgaged his rights to the predecessor in interest of the 2nd defendant. The Jenmi obtained a decree against the Kanom tenant and his mortgagee for arrears of Michavaram due and in execution purchased in Court auction the rights of the Kanom tenant on 2-11-1089, but did not get actual delivery of the property, which continued to be in the possession of the mortgagee. The plaintiffs having got a sale of the rights of the Kanom tenant on 3-11-1103, has brought the suit to redeem the mortgage.

Held.—The suit has to be dismissed as the 2nd defendant had acquired a prescriptive title to the property by adverse possession for the statutory period both as against the plaintiff and the Jenmi.

There is no substance in the contention of the plaintiff that the mortgagee having come in under the Kanomdar was estopped from denying his mortgagor's title. Although as a general rule a mortgagee was estopped from denying the title of his mortgagor, the law did not say that under no circumstances could the mortgagee set up an adverse title as against the mortgagor. The rule which prevented a mortgagee from disputing the title of the

mortgagor did not preclude him from showing that the title of the mortgagor had determined.

The Kanomdar having lost his rights by the auction sale and the 2nd defendant having continued in possession it is quite open to him (2nd defendant) to contend that the Kanomdar's title had determined. The Jenmi having obtained the sale sannad and not getting actual possession of the property, the 2nd defendant's possession at least from the date of the sale sannad must be held to have been adverse to the Jenmi. The Jenmi had a right to get possession. After the sale in execution of the decree to which the Jenmi, the Kanomdar and the 2nd defendant were all parties, it cannot be presumed that the mortgagee continued to be in possession under the Jenmi. There is no evidence that the 2nd defendant attorned to the Jenmi. The 2nd defendant's possession must therefore be held to have been adverse to the Jenmi and his possession having continued for more than 12 years from the date of the auction sale, he has acquired an indefeasible title to the property by prescription both as against the plaintiff and the Jenmi.—

24 T. L. J., *411.*

13. See also Regn. VI of 1100, Sec. 20—

24 T. L. J., *621.*

„ Art. 104.— **22 T. L. J.,** *653.*

„ Regn. VIII of 1100, Sec. 10.—

47 T. L. R., *282*
(=**21 T. L. J.,** *271*).

REGULATION II OF 1072.

(General Clauses.)

Section 2.

See Regn., II of 1087, Sec. 10.—

47 T. L. R., *231*
(= **21 T. L. J.,** *559*).

Section 7.

See Regn. VI of 1100, Sec. 29.—

20 T. L. J., *1238.*

„ VIII of 1100, Or. XXI, R. 90.—

21 T. L. J., *1360.*

Section 10.

See Regn., VIII of 1100, Or. XXI, R. 1.—

20 T. L. J., *15.*

REGULATION IV OF 1073.

(Abkari.)

Where an Abkari contractor, subsequent to the issue of the licence by the Excise Authorities, entered into a partnership with a stranger regarding the conduct of the trade but the terms of the licence prohibited a sale or other transference of the subject-matter of the licence except under certain conditions:

Held.—Even assuming that there was no sale of the subject matter of the contract, it is impossible in the circumstances of the case to hold that there was not at least a transfer of part of the subject matter of the contract or the privilege conferred by the licence. "If one person carrying on a trade and possessing stock and capital admits another into partnership with himself making the stock and the capital the joint property of both, it is impossible to contend that there is no transfer in such a case." The contract of partnership is therefore illegal and unenforceable.—

21 T. L. J., *768.*

Dist.—23 T. L. J., 490.

REGULATION I OF 1074

(The Penal Code.)

Section 15.

The plaintiff advanced moneys to the defendant under the suit promissory note,

with the object of bringing about the resignation of the defendant from her appointment as a menial servant attached to the Palace and procuring the appointment for another :

Held.—The contract was unlawful as against public policy and could not be enforced. The definition of the expression "Public servant" in the Penal Code is wide enough to include the menial servants attached to the Palace within it. Even otherwise, the appointment of such servants is a matter in which the public could not be said to have no interest at all. The salutary lines on which such appointments are made should not be defeated by trickeries and corrupt practices. At any rate a Court of Law could not encourage any nefarious dealing in relation to such appointments. It is enough that the public have an interest in the appointment concerned, in order to render the agreement obnoxious to public policy.— **49 T. L. R.**, *27* (=**23 T. L. J.**, *13*).

Section 28.

1. In a case of joint trial of several accused, who are indicted for different acts, the evidence as against each accused should be discussed separately. The disposal of the evidence generally is not proper.

Normally every person can be held liable criminally for the acts committed by him. A vicarious liability is, however, provided for under Sections 28, 104 and 141, under certain conditions. Sections 28 and 141 deal with cases of joint action.

The provisions of Section 28 are stricter than those of Section 141. The former merely lay down a rule of law; they do not deal with a distinct offence. A criminal act is done within the meaning of Section 28 when there is more than one person who has contributed to the result. Such criminal act would also include a series of acts, what has to be considered in such cases is whether there has been a unity of criminal behaviour which results in something for which an individual would be punishable if it were all done by himself alone, that is, in a criminal offence, and where the various acts were done in furtherance of a common intention, each of the persons responsible for such acts will be guilty of the resultant offence, even if his particular act would not by itself be an offence, or would only amount to a minor offence. Of course, a distinct act of the accused will have to be found to make Section 28 applicable. It is, however, essential that a common intention in furtherance of which the act is committed is made out. The best evidence hereof would be with respect to the existence of a conspiracy. In the absence of the same we will have to look at what actually took place and consider what must have been in the minds of the parties as the natural consequence of their conduct.

Section 141 deals with a specific offence and prescribes a punishment therefor. The use of expression (common) 'object' in this Section is noteworthy, for there is a difference between object and intention for though the object of the joint participators in a crime may be common, their intention may differ being similar only in respect of their being unlawful. Both this and Section 28 may perhaps overlap in some cases. But greater stress is laid in this Section upon the presence of the person on whom the vicarious liability is sought to be imposed while the same is not imperative under Section 28.

Section 104 deals with cases where there has been an abetment, the offence abetted having been actually committed and the abettor himself is present at the time of such commission. Under certain circumstances, the crime of abetment becomes the very crime abetted. The Section is evidentiary and not punitory. Because participation *de facto* may sometimes be

obscure in detail, it is established by the presumption *juris et de jure* that actual presence plus prior abetment can mean nothing else but participation. This Section also lays special stress on the presence of the accused for making the same applicable.

Quaere.—Whether when Section 28 is applicable a conviction under Section 303, Part II, T. P. C. is permissible.—

20 T. L. J., *1302.*

2. In the absence of a definite finding that five or more persons were actuated by a common object there cannot be a conviction for an offence involving an unlawful assembly. For a charge under Section 140, there should be the minimum number of persons without which there cannot be an unlawful assembly.

The fact that prompt or better treatment might have saved an injured person cannot exonerate his assailant from the consequences of his own act.

Section 28 of the Penal Code deals with the doing of separate acts similar or diverse by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself. The gist is the common intention.

To attract the operation of Section 28, and to fix constructive guilt on each of the several accuseds, there must be participation in action with a common intention although the different accuseds might have taken different parts and before any of them can be convicted of an offence read with Section 28, the Court must arrive at a finding as to which of the accuseds took what part if any, in furtherance of the common intention. A conviction without such finding is illegal.

Intention may also be gathered from the nature of the injuries. It is impossible to prove by direct evidence the intention of a particular individual. The intention can only be inferred from the reasonable and probable result of his act or conduct. The meaning of the term intention is not to be confused with desire.

On there being reliable evidence only about sticks, one or two sword canes and knives which equipment did not necessarily raise a presumption of intention or preparation to commit murder, but was quite as much consistent with an intention to cause grievous hurt or hurt, and the injuries all put together, though serious, were not said to be likely to cause death:

Held.—It was safe to rate the injury intended as grievous hurt and not anything higher.

The consummation of the offence, murder, when prevented by something unforeseen amounts to the offence (attempt to murder).— **48 T. L. R.,** *245* (=**22 T. L. J.,** *917*).

3. Accuseds 1 to 5 assaulted one A and caused his death. The Sessions Court not finding that when they assaulted A, had any common object in view so as to constitute their assembly an unlawful assembly:

Held.—Each of the accused-appellants could be convicted only of the offence or offences that he is individually guilty. Section 28 could be applied only if a common object was proved.

Per Chakko. J.—It is not always necessary that there should be a common object prior to the commencement of the fight. Some Judges fail to recognise the fact that the existence of a common object before the commencement of the fight is not necessary and that it is enough if it is adopted by all the accused.— **24 T. L. J.,** *193.*

Section 60.

See Regn. V of 1067, Sec. 20,—

46 T. L. R., *105* (=**20 T. L. J.,** *385*).

Section 64.

1. For the purpose of punishment under Section 64 of the Penal Code, proof of previous conviction may, under Section 247 of the Criminal Procedure Code, consist of the admission of the accused and nothing else.— **21 T. L. J.,** *1384.*

2. The Second Class Magistrate convicted the accused of theft and sentenced him to rigorous imprisonment for one month and fifteen days. The accused, however, was an old offender liable to enhanced punishment under Section 64 of the Penal Code. But the Police neither pressed the charge nor adduced evidence with regard to previous convictions, and no conviction was therefore entered under Section 64.

The Police, not being satisfied with the conviction under Section 379 of the Code alone, the Commissioner of Police addressed the High Court direct through the Registrar regarding the inadequacy of the conviction :

Held.—The purity of the administration of justice in any country depends upon the integrity and independence of its judicial tribunals and it would be a most disastrous thing if the notion gains currency that the Police are directly or indirectly allowed to control the actions of the subordinate Magistracy and thereby tamper with the even course of justice.

The procedure adopted by the Police Commissioner in addressing the letter direct to the High Court (Registrar) was not quite in proper form. If the Police really thought that the order of the Magistrate was wrong and called for interference by the High Court, there were legal and constitutional methods open to them which they could have pursued. To be more explicit, the Police could have moved the Head Sirkar Vakil to take the necessary and proper steps to get the order of the Magistrate rectified or revised. It is desirable that the Police should be disabused of the notion that they can sit in judgment over the pronouncements of judicial tribunals or control the actions of the subordinate Magistracy.— **50 T. L. R.,** *85* (= **24 T. L. J.,** *639*).

Sections 65 & 68.

It is not every order given by a superior (Police) officer which protects the subordinate who obeys it. The order must appear on the face of it to be a legal order.

Before a Court could allow a person accused of an offence, to claim the advantage of any exception to the liability created by the Travancore Penal Code or any other Statute, it should refer to the particular exception under which, it considers the person's conduct could be excused whether it be Section 65 or 68 of the Travancore Penal Code or Section 67 of the Police Regulation, and show exactly how such Section applies to the facts of the case.—

20 T. L. J., *949*.

Section 73.

It is not every form of insanity that would form sufficient excuse. Section 73 enacts the rule laid down by the Judges in Mcnaughten's case. Every man is presumed to be sane and to possess sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction, that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that he was doing what was wrong.

To ascertain the answer to these questions it is necessary to enquire into the following.—

1. The family history of the accused.

2. His personal history at the time of and previous to the offence, and

3. The surroundings of the offence itself.

One of the legal tests of insanity is to see whether, in the circumstances of the case, the person accused would have committed the offence if a Police-man had been at his elbow.

Section 105 of the Evidence Act places the onus of proof on the accused to make out the facts which would bring him within the exception. Probably no inference in favour of insanity would *per se* arise from the existence of the same in the ancestors of the accused. But when testimony indicative of the insanity of the accused is given, such evidence would be admitted in corroboration of that testimony.

Normally, the mere absence of a motive is insufficient to exculpate a crime but when insanity is alleged or suspected, want of motive is regarded as one of the *indicia* of the act being done by some kind of insane impulse.

The rule that when the facts are clear, absence of proof of motive is immaterial and that motive cannot be considered a *sine qua non* for bringing the offence home to the accused, is inapplicable in such cases. The inference will all the more hold good where several innocent persons had been attacked by the accused unprovoked without any motive. And a series of attacks would justify an inference that at the time of the commission of the offence the accused was incapable of understanding the general nature of the act he was committing.—

46 T. L. R., *285*
(=**21 T. L. J.,** *293*).

Sections 74 & 75.

Even though Sections 74 and 75 of the Penal Code do not permit a culprit to plead voluntary intoxication in justification of an offence, drunkenness is not an irrelevant consideration when the question of intention comes in.

When an offence requires that an act shall be done with a particular intention, voluntary drunkenness is an excuse, though it is no excuse where the degree of mentality necessary for the completion of an offence is limited by 'knowledge' as distinguished from an 'intention'.—

49 T. L. R., *445*
(=**23 T. L. J.,** *841*).

Section 86.

1. As the right of private defence arises from necessity the onus of proving it rests heavily on the person who pleads such necessity in the extenuation of his offence,

When a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage in a fight with men who on the other hand are equally determined to vindicate by unlawful force their rights or supposed rights, no question of self defence arises. Neither side is trying to protect itself, but each side is trying to get the better of the other.— **21 T. L. J.,** *340*.

Ref.—23 T. L. J., 1082.

2. The practice of weighing the right of private defence in golden scales and imposing restrictions on that right further than the requirements of the law has to be discouraged. An apprehension of grievous hurt is, no doubt, disproportionate to the infliction of death. Yet the law allows it. It is not for the Court to discount the right of private defence on a delicate balancing of the reciprocal injuries.— **23 T. L. J.,** *111*.

Ref.—24 T. L. J., 221.

3. In an occurrence where both the parties go prepared, realising the consequences that would ensue, the question of private defence does not arise.—

23 T. L. J., *1082*.

4. The exercise of the right of private defence is not an offence in return. A man

cannot be expected to judge very nicely as to what he should do when he is being assaulted. Under threatening circumstances, a person is justified even in shooting another to death. There is, of course, an oft-quoted maxim that 'the right of private defence cannot be weighed in golden scales'. What one has to consider under such circumstances is whether there was a reasonable apprehension in the accused that he would be seriously assaulted and not the actual continuing danger.— **24 T. L. J.,** *221.*

Section 87.

Under Section 80, an act committed in the exercise of the right of self-defence does not give a right of self-defence to the person from whom the danger is anticipated.

Where, therefore, the accused was pursuing P. W. 1 with a drawn knife and the deceased caught him with a view to preventing his attacking P. W. 1, and tried to overcome and disarm him and then the accused stabbed the deceased :

Held.—The deceased had every justification to interfere under Section 87 T. P. C., and this right continued so long as the accused was rendered harmless. No case for self-defence on the part of the accused could arise in the circumstances.-
20 T. L. J., *1262.*

Section 117.

A letter signed by the Chief Secretary to Government and addressed to the Commissioner of Police is sufficient authority of Government necessary under Section 174, Criminal Procedure Code, for launching a prosecution under Section 117 T. P. C. The words "Our Government" occurring in Section 174 do not refer to Her Highness the Maha Rani Regent.

The trial of a Criminal Case in a wrong Sessions Division, District or local area is not a ground for setting aside the finding, sentence or order of the Court unless it appears that the error occasioned a failure of justice.

It can be no excuse for one man to break the law that others have done so before with impunity nor can any special license be allowed to journalists above what is given to the ordinary citzen.

Even if certain evidence had been adduced in the lower Court, which was not necessary or which was inadmissible, that will not justify the reversal of the decision of the lower Court.

The intention to excite the feelings mentioned in Section 117, T. P. C., must be gathered primarily from the language used, in the article complained of, when read as a whole in a fair, free and liberal spirit. In the first instance the words of the article which is the subject of the charge should be considered, and if the intention or lack of intention is perfectly clear from that article, there is no necessity for considering other articles. But if the meaning of the article in question is ambiguous, it may no doubt be open to the prosecution and the defence to prove other articles published about the same time. This comes under Section 14 of the Evidence Act. Section 14 does not also differentiate between articles published before and after the article in question. Illustration (*e*) to Section 14 does not necessarily curtail the effect of the Section nor indeed can it be allowed to curtail the plain meaning of the Section. And such articles need not be shown to have been written by the accused if it is made clear they were published by him.

If from the plain words of the Section a particular meaning can be extracted, the illustrations cannot be allowed to curtail that meaning. Hence there is no reason on principle for rejecting the subsequent issues of the offending newspaper if it should be found necessary to examine them to ascertain the intention of the

publisher. The subsequent issues would not be excluded from consideration on the ground that they have not been shown to be written by the accused. The intention of the writer is deduced from the articles he writes but the intention of the publisher from those which he publishes.

Speeches made in support of any Statute cannot be given any weight as authorities for construing the Section in the Statute.

Section 117 consists of two parts (1) stating what constitutes sedition, *viz.*, the main part of the Section and the first Explanation and (2) the other stating what does not constitute sedition, *viz.*, Explanations 2 and 3. There is no inconsistency between the two parts and it is practically impossible for any person who by his words or writing has brought himself within the scope of the first part to obtain exemption under the second. There is a distinction between disaffection which it is criminal for any one to excite and disapprobation which might be freely expressed if it could be done without exciting, disaffection. 'Disaffection' is the contrary of affection; it means hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government.

In construing the documents a broad and liberal interpretation may be put on the language used. Particular expressions of an offensive nature should not be dwelt upon but the thing should be construed as a whole in a manner most favourable to the writer. If there are any ambiguities in the document, extraneous evidence may be admissible to clear them up and also in case where there are doubts otherwise as to the exact intention of the writer.

If the tendency of the article was to create disaffection among the inhabitants in British India, it would seem that the article would fall within the Section although no question of intentional nature might be raised.

An editor or joint-editor may be presumed to be responsible for the articles appearing in his paper, particularly the editorials, though he may rebut the presumption. The nature of the evidence required to rebut it might differ in the case of the different parts of the paper. On the question of punishment, it should in each case be commensurate with the offence. A good deal must be left to the discretion of the trial Court. A consideration to be borne in mind is the danger created by the action of the accused.—

47 T. L. R., *373*
(=21 T. L. J., *691*).

Section 135.

See Regn. V of 1067, Sec. 212.—

46 T. L. R., *94*.
(=20 T. L. J., *391*).

Section 139.

Where, of 16 persons charged by the Police for constituting an unlawful assembly and resorting to force, only 4 were found guilty of taking part in the occurrence and convicted under Sections 139 and 324, the rest having been discharged at close of the prosecution evidence because their complicity could not be believed:

Held in revision.—The conviction under Section 139 cannot be sustained. The finding of guilt under Section 139 requires that the Court should be satisfied that five or more were present and that they came along with these accused or did various acts in furtherance of the common object. That matter cannot be left to be conjectured and the prosecution must prove definitely that those unknown or unidentified persons were actuated by the common object recited in the charge.—

21 T. L. J., *907*.

Section 140.

See Sec. 28.—**48 T. L. R.,** *245*
(=22 T. L. J., *917*).

Section 173.

Refusal by the accused to sign a statement is clearly not an offence. Nor is a refusal to sign a receipt for the summons indictable.—20 T. L. J., 196.

Section 176 & 179.

Under Section 135-A (2) of the Code of Criminal Procedure, a person authorised to inspect weights, measures or instruments for weighing, has no right of seizure unless on inspection, the articles are found to be 'false'. The simple meaning of 'false' is untrue or unjust (the latter is the word employed in some English statutes on weights and measures) and the mere fact that the articles were unauthorised (for want of stamping or because the stamping had expired) is of itself no evidence that they were untrue or unjust. The words of the Sub-section with reference to both time and place seem clearly to negative a right to remove the articles from the place of inspection for the purpose of demonstrating subsequently that they are false:

Held.—A resistance or obstruction caused to a Police Officer in his removal from the accused's shop of certain weights and measures which were not false but only unauthorised, did not constitute any offence under Section 176 or 179 of the Penal Code.— **24 T. L. J.,** *97.*

Section 185.

Where the accused was charged for giving false evidence in a judicial proceeding on the ground that as a defendant in a suit on a pro-note alleged to have been executed by him and another, he filed written statement denying the genuineness but the pro-note was found to be genuine and the suit decreed:

Held—There was *prima facie* evidence upon which the accused might be convicted though it was open to the Committing Magistrate to come to a different conclusion on the evidence. If the Magistrate thought it was a doubtful matter and two views were possible as to the genuineness of the pro-note, his duty was to commit the accused for trial to the Sessions Court.

The fact that the written statement was not verified strictly according to Order VI, Rule 15 (2), Civil Procedure Code, respectively specifying the matters based on knowledge and information believed to be true, could not be urged as a defence to the prosecution, for in verifying the written statement as he had done, the accused must be taken to have verified that fact of his own knowledge.—

22 T. L. J., *19.*

Section 224.

According to Section 224, while intention has to be proved in the case of resistance or obstruction to lawful apprehension, no such intention is required to be proved in the case of escaping from lawful custody. Even assuming that an intention has to be proved, a man who escapes from lawful custody must be presumed to intend the doing of it.— **21 T. L. J.,** *1215.*

Section 229.

Materials and instruments for counterfeiting Sirkar coins were recovered, on information supplied by the fourth accused, from where they were hidden by the fourth accused in first accused's compound after the arrest of the first accused. There was evidence in the case from which it might be safely presumed that in a general way the fourth accused was even more than a clerk or servant of the first accused:

Held.—(1) The question whether the presence of the articles there and the recovery of them could affect prejudicially the first accused was a mixed question of law and fact. Under Section 27 of the Evidence Act, the discovery of the

articles and the statement that led up to such discovery will be evidence against the fourth accused, but according to the law in this State, the confessional statement made by the fourth accused which led up to the discovery was not relevant evidence against any but himself. Still, in the special facts of the case, the first accused could not escape criminal responsibility on account of the proved custody of the criminating objects by the fourth accused. Under Section 21 of the Penal Code, property in the possession of a person's clerk or servant on account of that person is deemed to be in that person's possession within the meaning of the Code. Living with the appellant in the same house it was incredible that the articles that were recovered on information given by the fourth accused, were kept in the premises of the appellant's house without his knowledge. As the purpose of such possession was obvious, the first accused was liable to be convicted under Section 232.

(2) For a conviction under Section 229, it is seldom possible and never necessary to show that the accused had been caught in the act of counterfeiting. The act would generally have to be inferred from such evidence as the possession of tools, dies, or metal necessary for the purpose, or from finding some coins finished and others unfinished or different coins in a different state of completion.

(3) It is the policy of the law to visit the offence of coining and allied offences with exemplary punishment. The safety of business demands that the coinage should be pure, and purity of coinage could be secured and maintained only by guarding by rigorous penalties. Counterfeiters are veritable pests of society and covert enemies to the State who deserve to be mercilessly exterminated.—

49 T. L. R., *198*
(=**23 T. L. J.**, *335*).

Section 277.

To fix criminal liability under Section 277 or 304 something more is needed than a mere mistake of judgment. There should be some wilful default or violation of the Traffic Regulation. It must be possible to say that the person charged was acting wickedly.—

46 T. L. R., *298*
(=**21 T. L. J.**, *288*).

Section 299

Exception 4 to Section 299 is meant to apply to cases wherein, in whatsoever way the quarrel originated, the subsequent conduct of both the parties put them on an equal footing.—

21 T. L. J., *817*.

Section 301.

1. The Sessions Judge convicted the prisoner of murder, but refrained from imposing the extreme penalty of the law on him on the only ground that he was a boy of 18.

Held.—Youth alone is not an extenuating circumstance, although, if there are other extenuating circumstances in the case, the youth of the prisoner may also be thrown into the scales to determine the punishment.— **22 T. L. J.**, *152*.

Ref.—24 T. L. J., 228.

2. The accused in the case was found to have deliberately thrown his wife, a young girl, into a well and then in order to cause her death, to have gone down the well and kept her under water by repeatedly kicking on the head till she was drowned. The circumstances urged in mitigation of the offence, were the persistent refusal of the deceased, from even a week back to the crime, to leave the house of P. W. 1, where she had been left by the accused and accompany him to his home, and also the entertainment by the accused of jealous suspicions about the conduct of

his wife, particularly in regard to her relations with P. W. 2 who happened to be in the house of P. W. 1 at the time of the last refusal and immediately before the incident. It was probable that the accused attributed his wife's refusal to accompany him to the influence of P. W. 2.

The Sessions Judge had convicted the accused of the offence of murder under Section 301, and sentenced him to rigorous imprisonment for life.

On appeal, by the accused, against the conviction and sentence and Revision by the Sirkar for enhancement of sentence: *Held per curiam.*—There was no question of grave and sudden provocation which could bring the case within any of the exceptions to Section 299, and the accused was guilty of the offence of murder under Section 301.

On the question of sentence:

Held, (*Per Chatfield. C. J., with whom Narayana Pillai, J. agreed in reference*).—Though the circumstances proved in mitigation of the crime might justify the lesser sentence of imprisonment for life, if the appellant had killed his wife by one blow or possibly if he had contented himself with merely throwing her into the well, his conduct in descending and completing the work by kicking his wife on the head differentiated the case from ordinary cases of murder. The sentence should therefore be enhanced to one of death.

Per Narayana Pillai, J.—It will be dangerous to lay down as a general proposition that in cases of wife-murder, the offending husband is entitled to a more lenient treatment than a stranger offender. If there is legitimate ground for provocation afforded by the assailed wife, that shall not be omitted to be taken into account. But where the provocation is self-generated or where husbands give rein to their blind fury against wives, it does not seem how the element of provocation could be introduced to view the offence in a subdued light:

Per Venkita Rao, J. (*contra*).—The question whether the accused had just or reasonable grounds for suspicion regarding the conduct of his wife was not of much importance. What was more important was that the conduct of the deceased might have given some provocation which, though entirely insufficient to mitigate the offence, might be regarded as sufficient to justify the infliction of the lesser punishment. The events in the case had occurred in such quick succession that they might be regarded as one transaction and even if there was an interval of time it could not be held that the subsequent act was premeditated. In the circumstances, the extreme penalty need not be imposed on the prisoner in the case (F. B).—
22 T. L. J., *189*.

3. Where the accused was found to have deliberately intended to cause the death of the deceased by burning him alive by pouring petrol on the body and setting fire to it and death ensued as a result and the accused neither pleaded nor was it found that the act came within any of the exceptions to Section 299 of the Penal Code:

Held.—The accused was guilty of culpable homicide amounting to murder under Section 301.— **22 T L. J.,** *796*.

4. In a sudden quarrel, and apparently in the heat of the moment, the accused appellant struck a fatal blow on the deceased. There was also some suspicion as to the exact circumstances under which the blow was struck. There must have been a more violent passage of words between the parties than what exactly appeared from the prosecution evidence. Any way, there could be no doubt that the whole thing rose out of a sudden quarrel quite unpremeditated and without malice aforethought. It was also quite sufficient that the appellant only struck one blow:

Held.—Under the circumstances of the case, it was not necessary to inflict the extreme penalty of the law. Where fatal injuries are inflicted in a sudden quarrel without premeditation, the extreme penalty of the law, was not necessary, though the offender was guilty of murder. The enormity of the offence, the particular circumstances of the case and other matters should be the guiding factors in determining the quantum of punishment under Section 301.

In the case, the ends of justice would be adequately met by confirming the sentence of life imprisonment awarded by the Court below :— **23 T. L. J,** *117.*

5. If suppuration is the result of the injury, then certainly the injury was the direct and proximate cause of death ; and the possibility that the suppuration could have been prevented by skilful treatment would not prevent the prisoner's act from being murder.

The High Court should not enhance the sentence unless it is satisfied that the sentence of death was the only possible sentence which could have been passed by the Sessions Judge.

Although the High Court in cases of conviction for murder where the Sessions Judge has passed only the lesser sentence, has power in revision to issue notice to the accused to show cause why sentence of death should not be imposed, as a rule it would be more desirable to leave it to the Government to apply in revision for an enhancement if so advised.—

23 T. L. J., *1161.*

6. Ordinarily in the case of retracted confessions, corroboration is looked for. But when ample corroboration in material particulars is forthcoming, the confession, though retracted, may be acted on. Further, a confession, in itself reasonable and probable, must, if repeated more than once, have greater weight attached to it than a confession made once only and retracted after a short interval.

A plea that the accused was of unsound mind and was therefore not answerable for his acts, may be urged in his behalf even though not raised in the trial Court, if the records support it. A mere doubt as to the sanity is not sufficient. When the facts of the case did not afford any material upon which to base the accused's plea of insanity, impulsive or otherwise, but showed that his cognitive faculties remained unimpaired and his motive was to kill the deceased and to commit suicide and this was deliberately planned and all but his self-immolation callously executed, the accused could not claim exemption under Section 73 T. P. C.

Whatever be the *a priori* theory and the speculation of modern publicists as to the propriety of capital punishment, so long as the law remains as it is, the Courts are bound to apply it in fit cases without shrinking, though instances are not rare where misplaced considerations of humanity have been allowed to stand in the way of the award of death sentence.

Where the accused had with deliberation killed three persons and attempted to kill three others when they were sleeping near him unsuspectingly and believing themselves to be under his protection, but no previous enmity was alleged or proved as against the six persons, and perhaps it was because the accused was brooding over his hard fate and his mind had lost its balance in consequence, that he was impelled to perpetrate the horrible deeds :

Held.—This was one extenuating circumstance of which the benefit must go to the appellant.

In the circumstances, the High Court refused to enhance the sentence of imprisonment for life awarded by the lower Court to one of capital sentence.—

23 T. L. J., *1260.*

Ref.—24 T. L. J., 228.

7. It is only in very rare instances that the High Court would interfere with the order of the Sessions Judge sentencing

a man convicted of murder to transportation for life because the circumstances of the case appeared to him not to demand the sentence of death.

The evidence being only circumstantial is not a reason for awarding the lesser sentence. No doubt there are some old decisions of the Travancore as well as of the British Indian High Courts in which the evidence being circumstantial. death sentence was not passed. But these decisions have not been followed in later decisions and it is obvious that the position taken up in the old cases is not logical.—
24 T. L. J., *85.*

8. *Per Venkita Rao and Sivasankara Pillai, JJ.*—The punishment fixed under the law for murder ordinarily being the extreme penalty of the law, the Court is in each case bound to record its reasons for not imposing it.

Per Venkita Rao, J.—A person aged 20 is certainly not of such tender years that it can be asserted with any show of reason that his judgment might have been immature or otherwise defective, and that he could not have understood the enormity of his offence.

Per Sivasankara Pillai, J.—When two Judges forming a Division Bench agree in convicting the accused of murder but disagree on the question of sentence and the case is heard by a third Judge, the latter is not competent to differ from the conclusion of the Division Bench on the question of conviction.

A Court ought not to be influenced by its own views on the academical question whether a sentence of death is at all a proper punishment in any case. We could not interpose our ideas as to the fitness of things and altered popular opinions and circumstances in interpreting statutes whose meaning is absolutely clear.

"It is not absolutely necessary that the provocation should have immediately preceded the homicide in point of time, for a person may by repeated or continuous provocation inflame another to a state of mind when the provocation immediately preceding the act is only the last straw, the gravity of which should be measured not by what it amounted to, but rather by what it implied."

Provocation, though insufficient to reduce the offence to one of culpable homicide not amounting to murder, will nevertheless constitute one circumstance in extenuation. Serious provocation, though not sudden, is held to be one of the grounds for not inflicting the death penalty. It is impossible to lay down a hard and fast rule as to, what would constitute serious provocation, but each case must be decided on its own facts. However, in determining the character of the provocation, certain fundamental facts going to the very roots of human nature and of criminal jurisprudence should not be lost sight of. As Sir James Stephen remarks—"The moral character of homicide must be judged of principally by the extent to which the circumstances of the case show on the one hand brutal ferocity whether called into action suddenly or otherwise, or on the other, inability to control natural anger excited by serious cause.— **24 T. L. J.,** *228.*

Section 326

1. Section 326 enjoins the infliction of a term of imprisonment and to make it a real penalty it must be for some reasonable period. There can be no doubt that a sentence of imprisonment till the rising of the Court is legal but it is equally clear that such a sentence must be reserved for extraordinary cases where the circumstances call for special consideration.

It would be harsh ordinarily to impose in revision a fresh sentence of imprisonment long after the disposal of the case and after the sentence imposed had been suffered. But this consideration cannot

be of much weight in a case in which the sentence passed is so grossly inadequate and interference is clearly required in the ends of justice. It is competent to the High Court in such case to impose an additional sentence of imprisonment on revision, even where the accused has served out the sentence of imprisonment inflicted on him by the lower Court.—

47 T. L. R., *330*
(=21 T. L. J., *785*).

2. Where the second accused was convicted for an offence under Section 326, for causing grievous hurt with a dangerous weapon and sentenced only to simple imprisonment till the rising of the Court and a fine, but there was nothing in the case to extenuate or mitigate the offence:

Held (*In Calendar Revision*).—The sentence of imprisonment being obligatory under Section 326, the Magistrate had conformed to the requirements of law not in substance, but only nominally. Punishment by imprisonment under the Penal Code means that the offender shall go to Jail and imprisonment till the rising of the Court was merely evading the Statute. A sentence of imprisonment for a term ought, therefore, to have been imposed on the second accused.

21 T. L. J., *1237*.

Section 332.

To apply the Section, it should be established that, when the hurt was caused, the public servant concerned was discharging his duty as such or that the hurt was caused with intent to prevent or deter him or any other public servant to discharge his duty as such, or that it was caused in consequence of anything done or attempted to be done by the public servant or another public servant in the lawful discharge of his duty.

The acts done by a public servant in good faith under colour of his office are not enough for the application of Section 332. The action of the public servant should be shown to be lawful in itself.—

23 T. L. J., *92*.

Section 339.

To constitute an offence under Section 339, it is essential that the obstruction caused is so complete and successful as to prevent the person obstructed from proceeding in any direction in which he has a right to proceed.

20 T. L. J., *201*.

Section 353.

Where the Accountant of a Pakuthy was deputed by the Taluk authorities to measure and determine the shares of some petitioners in a certain piece of land, it was held that the Accountant was not acting in ihe discharge of his duty as such public servant.

The expression in Rule (6) of the Rules passed by Government under the Survey and Boundaries Regulation—"who shall themselves attend to work"—clearly shows that the Government did not wish to entrust the business to any officer subordinate in rank to a Revenue Supervisor, as the demarcation and delimitation of boundaries is a responsible piece of business not to be lightly left to the tender mercies of the underlings of the Revenue Department. Rule 6 prohibits the delegation of measuring and demarcation of boundaries to any officer below the rank of Revenue Supervisor. Public functions contemplated by Section 353 of the Penal Code means legal or legitimately authorised public functions and are not intended to cover any act that a public functionary might choose to take upon himself to perform.— 48 T. L. R., *240*
(=22 T. L. J., *1222*).

App.,—23 T, L. J., 92.

Section 363.

1. It is no defence to a charge under the Section that the girl looked over 16 or told the accused that she was over 16 or the accused *bona fide* and reasonably believed her to be over 16 or had no means of ascertaining her age. He is bound at his peril to find out her age.

The taking need not be by force, actual or constructive, physical or moral, and it is immaterial whether or not the girl consents, or whether the proposal that she should go away emanates from the accused or from the girl.— **46 T. L. R.,** *171.*

2. The accused could not plead that he had no criminal knowledge or intention when he took the girl out of lawful guardianship as he believed in good faith that she was speaking the truth when she told him that she was eighteen. The knowledge or belief of the accused is of no consequence and a person who takes a minor out of lawful guardianship when in fact such person is below sixteen in the belief that the minor was over that age acts at his peril. "It is no defence to an indictment under this Section that the girl looked over sixteen or told the defendant that she was over sixteen, that he *bona fide* and reasonably believed her to be over sixteen, or had no means of ascertaining her age. He is bound at his peril to find out her age."

The plea that the proposal came from the girl herself and that he had acted throughout only under her directions and with a desire to carry out her wishes could not avail the accused. "The taking need not be by force, actual or constructive, physical or moral, and it is immaterial whether or not the girl consents, or whether the proposal that she should go away emanates from the defendant or from the girl."— **20 T. L. J.,** *310.*

Section 366.

In a charge under Section 366, it is not necessary for the prosecution to establish that afer the woman was compelled by force to leave the house, she was compelled by force to go to various places. The requisite intent or knowledge is a matter of inference from the proved facts and circumstances. The conduct of the accused would also throw light on that question. The circumstances though incriminating to outward appearances may yet be properly capable of good and reasonable explanation. In such cases it would be for the accused to explain away the incriminating circumstances and prove that he had no improper or sinister view.

Generally speaking, it is unsafe to convict a person of rape on the testimony of the woman alone without substantial corroboration. But the proved facts and circumstances may be taken into account to corroborate the prosecutrix.

Though rape and abduction are distinct offences and may be separately punished, when a girl is raped after abduction, the abduction is only an aggravating circumstance and no separate sentence need be inflicted. Wrongful confinement also need not be separately taken into account in this case.— **20 T. L. J.,** *1268.*

Section 378.

The accused, the conductor of a motor bus, wrested the umbrella of the complainant,a passenger in the bus,from the latter's hands with the intention of enforcing payment of the additional fare which the conductor demanded and the accused refused to pay.

It was contended that the accused was not guilty of theft, as he had no dishonest intention in wresting the umbrella from the complainant's hands, since the accused's object was merely to enforce payment of the extra fare:

Held.—The accused was guilty of the the offence of theft. The argument confused intention with 'motive'. 'Wrongful gain' is not necessarily 'dishonest gain'

for a person may acquire property by wrongful means without *intending* to be dishonest. The Indian Legislature in enacting Section 378 of the Penal Code has deliberately departed from the English law under which *animus furandi* or an intention to appropriate permanently is the gist of the offence, temporary deprivation being no theft whether the taker takes the property under colour of right or as a creditor to put the screw on the debtor.— **20 T. L. J.**, *656.*

Section 403.

The very gist of the offence of trespass under Section 459 of the Penal Code is dispossession, and if the trespasser has never been ejected since the date of his conviction, a charge for trespass cannot be successfully maintained against him. Under Section 128, Criminal Procedure Code, such possession for two months is sufficient to entitle the party in possession to be retained in such possession till evicted in due course of law. That being so, it is difficult to see how the commission of acts consistent with such possession can be made ground for a criminal complaint against the party in possession.

But it did not follow from this that the accused could not be convicted of criminal misappropriation punishable under Section 403 as a person may be guilty of that offence even though he may be in wrongful possession of property belonging to another.— **23 T. L. J.**, *89.*

Sections 403 & 425.

Agricultural produce was attached by an Amin who affixed a copy of the warrant of attachment to a stick and planted the same in the field where the crops in question were standing. He omitted to affix another copy of the same to the outer door of the house of the judgment-debtor or at some other conspicuous place thereof. The services of the next adjoining owners were not secured as Thadastars though some neighbours were present as Thadastars.

The judgment-debtor removed the crops. In a prosecution against him, the judgment-debtor contended that the omission to affix the copy of the warrant and to secure the services of the next adjoining owners as Thadastars rendered the attachment invalid. He further contended that even if the attachment had been validly made, he still continued to be in possession of the growing crops and his removal of the crops would not therefore be indictable:

Held.—The omission to affix a copy of the warrant of attachment to the outer door of the house of the judgment-debtor and to secure the services of the next adjoining owners as Thadasters would amount only to an irregularity.

Agricultural produce is intended by the Legislature to be treated as movable property for purposes of attachment. The provisions of the Civil Procedure Code make it clear that such crops are required to be placed in *custodia legis*, interference wherewith being made permissible only with the permission of the Court. The right given to the judgment-debtor to collect the growing crops and store up the same, contained in Clause (2) of Rule 43 of Order XXI is made exercisable only with the sanction of the Court, such sanction being made a condition precedent to the exercise of the said right.

The right to claim the attached property as available for the decree-debt is a legal right and an infringement thereof would be clearly actionable. If such infringement has been made with the knowledge of the attachment and with a view to cause wrongful gain to himself or wrongful loss to the decree-holder, such action would be clearly indictable under Section 403 or 425, T. P. C.

46 T. L. R., *945*
(=**20 T. L. J.**, *1131*).

Section 416.

1. Where the accused falsely represented his name and address and so got the Police to accept him as a surety in a bail bond :

Held.—The conduct on the part of the accused satisfied the definition of cheating given in Section 416, inasmuch as the bail bond would be extremely difficult if not impossible to enforce and the Police Officer concerned might be suspected by Government of misconduct and would suffer in mind and reputation.—

21 T. L. J., *825.*

2. See also Regn. V of 1067, Sec. 210.—

24 T. L. J., *43.*

Section 426.

1. Possession has nothing to do with the offence of mischief. It is on that principle that a mortgagee cutting trees though planted by himself on the mortgaged property is deemed guilty of the offence of mischief.

It is now well-settled that a decree obtained by or against the benamidar is as effective as if it were obtained by or against the real owner himself.

Delivery of possession being generally preceded by notice to the judgment-debtor, an order of the Court directing delivery is effective to determine the possession of the parties to the suit.—

20 T. L. J., *514.*

Ref.—22 T. L. J., 603.

2. Mischief is not merely an offence against possession. The owner of a property may not always be in actual possession, nevertheless the acts which constitute the offence might cause the owner wrongful loss or damage, and if the acts are done with the intention of causing such wrongful loss or damage, they will constitute the offence of mischief. According to Explanation 1 to Section 426, it is not essential to the offence of mischief that the offender should intend even to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause wrongful loss or damage to any person by injuring any property whether it belongs to that person or not.— **22 T. L. J.,** *603.*

3. Though certain decisions of the High Court and of the Courts in British India have hold that the word 'property' as used in Section 426 means some tangible property capable of being destroyed, it is somewhat doubtful whether the word is used in so restricted a sense.

Where, at any rate, a change in tangible property is necessary for the destruction of an easement, and the accused in bringing about such change must have known that his act would be likely to cause loss or damage to the complainant to whom the easement right belongs, the loss so caused to the complainant would be wrongful loss within the meaning of Section 17, T. P. C, and all the necessary requirements of Section 426 would be satisfied.

Held.—The act of the accused in filling up an irrigation channel existing on his land, thus preventing the conducting of water to the complainant's land constituted an offence under Section 426.—(F. B).—

49 T. L. R., *57*
(=23 T. L. J., *171*).

Dist.—23 T. L. J., 1170.

Section 442.

A mere knowledge that the trespass is likely to cause insult or annoyance to the owner of the property does not amount to an intent to insult or annoy within the meaning of Section 442. But where the trespasser knows that his trespess is practically certain in the natural course of events to cause insult or annoyance to the owner of the property, it is open to the Court to infer an intention to insult or annoy. It is a question of fact whether

this presumption of intent is displaced by proof of any independent object of the trespass.— 23 T. L. J., *893*.

Section 449.

1. The expression 'interest' occurring in Section 449 of the Penal Code has to be construed in its ordinary sense as being synonymous with 'concern'. It need not necessarily be taken to refer to legal interest alone. The circumstance that the accused was conducting the suit on behalf of one of the parties would constitute him a person interested in the party within the meaning of the above Section.—
20 T. L. J., *381*.

2. The landlord can prefer a complaint against a trespasser, as he is really one of the persons in virtual possession within the definition of trespass in the Penal Code.— 20 T. L J., *645*.

Sections 469 and 473.

All that Section 473 lays down is that the sentence that can be imposed for the offence of using a forged document as genuine is the same as the sentence that can be imposed for the offence of forgery. They are separate offences and separate sentences may be passed on an accused person who has been convicted at the same trial of both.

The absence of a provision in the Code of Criminal Procedure enabling a Judge to pass concurrent sentences appears to be a *casus omissus* by the Legislature, as such a provision is obviously necessary under certain circumstances. As Section 20 of the Regulation stands, a direction that two sentences should run concurrently appears to be illegal. Section 20 of the Regulation, however, does not render it obligatory on the Court to pass separate sentences as the Section only says that the Court may do so, although in the generality of cases it would be the more proper course to pass separate sentences for each of the offences of which an accused is found gnilty at one and the same trial.— 47 T. L. R., *81*
(=21 T. L. J., *899*).

Section 473.

The presentation of a forged document before a Sub-Registrar for registration is sufficient evidence of its user as a genuine document for the purposes of Section 473.
21 T. L. J., *1102*.

Section 480.

Where the accusedwas charged with having fraudulently omitted to make necessary entries in the Nalvazhy accounts as regards certain tax collections and convicted therefor under Section 480, but it was found on the evidence that the accounts had been defaulted to be regularly kept from long before the date of the receipt of the amounts and also that the duty of writing the accounts lay with the accountant who happened to be at loggerheads with the accused :

Held.—The question of intention to defraud was one of fact and as there was no pretence that the accounts were regularly kept, the omission of the particular entry was not such as any body would have been taken in by it, and would not therefore give rise to an intention to defraud.

Moreover for the accused to be charged for the omission of entry he must have had something to do with the accounts. The fact that he might have omitted to inform the accountant of the amount received, knowing that the accounts will be accordingly rendered incorrect, cannot amount to a wilful omission of an entry in the account books. The conviction of the accused under Section 480, was therefore not proper.— 21 T. L. J., *829*.

Section 497.

Where a Roman Catholic Christian during the life-time of his wife or her husband and during the subsistence of the first marriage goes through a form of marriage with another Roman Catholic not according to Christian rites and ceremonies but according to the rites and ceremonies of the Hindu Religion :

Held.—He or she is not guilty of bigamy within the meaning of Section 497. Viewed from the stand-point of either the Hindu or Christian community, the union in question could not be regarded as anything better than a mere concubinage or adulterous union. The second marriage between the first and second accused was void not merely on account of the subsistence of the first marriage but on the ground of other reasons also. In fact there was no second marriage at all the parties having merely gone through a farce of a ceremony. The going through this farce of a ceremony which cannot have any binding force either in the eyes of the Hindus or the Christians cannot make the accused guilty or constitute the offence of bigamy within the meaning of Section 497 (F. B.).—

24 T. L. J., *405.*

Section 500.

One of the essential ingredients of the offence under Section 500 is sexual intercourse. For making out the same with reference to the offence of rape, it has been laid down that penetration has to be clearly proved. In determining whether this has been had or not, the stand point from which the evidence has to be examined with reference to the offence of adultery and rape cannot be considered to be the same, for in the case of rape, it is essential that the intercourse is had without the consent of the woman except where she is by virtue of incapacity, age or mental condition incapable to accord such consent. A consent given as a result of misrepresentation or fraud may be ineffectual for the purpose. In the case of adultery, however, the law presupposes the existence of consent. As such, it cannot be said that a person cannot be convicted of this offence unless he is surprised *flagrante delicto*. This is neither necessary nor possible, the more so in view of the fact that the offence is by its nature committed in secrecy, and the woman is not likely to make a disclosure disadvantageous to herself. The question has consequently to be inferred from the surrounding circumstances, of co-habitation or the like. "It is said that familiarity, even culpable familiarity does not constitute adultery, and that, even if the full credence be given to the witnesses, they do not establish conclusively the fact of sexual intercourse. It is contended that actual sexual intercourse must be proved, and cannot be presumed, and that penetration ought to be proved. I have already said that this must be proved, but I know of no law in this country which requires any particular kind of proof of adultery, or which recognises any different degrees of proof in different cases. Differences in the proof required of the same fact in different cases very often arise out of the circumstances of the case. You can hardly presume sexual intercourse in a charge of rape, because by the hypothesis, one of the parties is doing her best to prevent the act. The hypothesis in adultery is precisely the reverse, and the evidence differs accordingly. I know of no authority for saying that the evidence of sexual intercourse must be stronger in a charge of adultery than in a suit for a divorce. The best proof available must always be produced, but in both cases evidence of opportunities sought for and obtained, and of familiarities which point strongly to an inference of guilt, are sufficient to establish the fact of sexual intercourse". (21 W.R. 13).

Each case will have to be decided with special reference to the facts therein.

The fact that the accused was found in a room with a married woman would not be sufficient to convict him of this offence. The circumstances must be such as to justify a legitimate inference that the necessary ingredients of the offence exist in the case.— **20 T. L. J.,** *754.*

Section 502.

1. The point for consideration was as to the scope of privilege available to Vakils under Exception 9 to Section 502 in respect of defamatory questions addressed by them to witnesses, though under instructions:

Held.—The points to be considered are firstly whether the questions put to the witness were the result of private malice on the part of the person who gave the instructions, and secondly, whether the Vakil lent himself as an instrument to gratify that malice either consciously or by recklessness. That is to say, assuming the first question is answered in the affirmative and assuming that there is nothing to show that the Vakil voluntarily intended to assist the malicious objects of his client except the fact that he put the questions to the witness, were they such questions as a legal practitioner of ordinary intelligence and prudence could have thought to be proper questions to be asked in the circumstances of the particular case.

Of course it would be unwise to fetter the discretion of the members of the legal profession as to the question they could put or render them liable to prosecution except in the clearest cases. The Legislature might indeed have granted the natural privileges such as are enjoyed by legal practitioners in England but this has not been done. The question whether a statement has been made in good faith depends on the person who makes it and the occasion in which it is made.—

21 T. L. J., *854.*

2. Defamatory statements made by parties in the course of judicial proceedings are absolutely privileged and no suit for damages will therefore lie in respect of them.

Quare. Per Narayana Pillai, J.—As it is, the Courts in Travancore have to administer the law in this respect according to justice, equity and good conscience. How far the indiscriminate application of the doctrine of absolute privilege will chime in with justice, equity and good conscience is a matter worthy of further consideration (F. B.),— **46 T. L. R.,** *110* **(=20 T. L. J.,** *258*).

Under Exception 9 to Section 502, it is not défamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it or of any other person or for the public good. The true mode of judging upon the question of interest is to put oneself as much as possible in the position of a defendant. It is not enough for the accused honestly to believe that he was discharging a duty. There must be facts upon which the Court could hold that he had reason to possess that interest under which he shields his libel and he did so in good faith. It is the duty of the Judge to see whether it constitutes the privileged occasion.— **24 T. L. J.,** *646.*

Other Cases.

Per Narayana Pillai, J.,—A charge of conspiracy may be established on the strength of the surrounding circumstances and the conduct of the accused. "Direct evidence of conspiracy is hardly ever adduced but unlawful conspiracy is to be inferred from the conduct of the parties."

Where a free fight resolves into single combats, the acts of one of the combatants cannot be applied to his partisans in the

fight. As a rule, the High Court does not interfere in revision with acquittals. But it does so when it is satisfied that there has been an error of law committed by the acquitting Court, or, where there has been a gross miscarriage of justice or in public interest.— **47 T. L. R.**, *100*.
(=**21 T. L. J.**, *1340*).

Ref.—50 T. L. R., 1.

REGULATION VI OF 1074.

(Wills).

1. A Will executed by a Nair in favour of a male member (the second defendant in the case) and two female members of the Tarwad provided that the beneficiaries and their Santhanams should enjoy the properties after the testator's death:

Held.—The bequest was in favour of the second defendant and his Soshakars, *i. e.*, in favour of the second defendant's branch.— **22 T. L. J.**, *585*.

2. Though it has been held that the *onus probandi* lies on the party propounding a Will and he must satisfy the conscience of the Court that the instrument propounded is the last Will of a free and capable testator, in the case of a Will that is registered the burden is on those who impugn the capacity of the testator to make out their case. The evidence as to the competency of a testator is not displaced by mere proof of his serious illness. In order to set it aside there must be clear evidence that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his property.—

22 T. L. J., *595*.

REGULATION II OF 1075.

(Negotiable Instruments.)

Section 4.

Exhibit A, which styles itself as a Bill and which is referred to in the plaint as a Bill of Exchange, contained an unconditional undertaking to pay the amount mentioned thereunder to a certain person or his order after 89 days from the date thereof. It was contended that it was a Bill of Exchange:

Held.—In the light of the definitions of Bills of Exchange in Section 4 of the Negotiable Instruments Regulation, Exhibit A is only a promissory note and not a Bill of Exchange. In interpreting an instrument, what matters is not its designation but its provisions.—

21 T. L. J., *115*.

Section 7.

Where a person takes an endorsement of a promissory note after notice of demand to the maker had been made, he is not a holder in due course. But he would be entitled to sue on the promissory note, as such an endorsee would be holder within the meaning of Section 7 and have the rights defined in Section 61 of the Regulation.—

20 T. L. J., *1050*.

Section 8.

The plaint promissory note was executed by the 1st defendant in favour of the 2nd defendant who endorsed it over to plaintiff. The 1st defendant contended *inter alia* that there was no consideration for the note and that the plaintiff was not a holder in due course. The lower Courts while holding that the note was executed under coercion and that it was not supported by consideration gave the plaintiff a decree on the ground that there was consideration for the endorsement and that the plaintiff was a holder in due course.

Per Joseph Thaliath, J.—To establish that he is a holder in due course, the plaintiff should show that for his endorsement there was consideration and that when he took the endorsement he did so

without sufficient cause to believe that any defect existed in the title of the endorser.

From the provisions of Section 8 and 121 (*q*) of the Negotiable Instruments Regulation it is clear that, in the case, since it has been found that the plaint promissory note came into existence as a result of coercion practised upon the 1st defendant, the burden is on the plaintiff to show that he is a holder in due course.

When negotiable instruments exchange hands, the persons who accept them are not expected to make a more elaborate enquiry as to the title of the transferors than to use reasonable precaution with due regard to the circumstances of the particular case. If, on the other hand, it is laid down that when an instrument is to be negotiated, there should be a more detailed investigation regarding the title of the person who negotiates it, the very object of the negotiable instruments will be defeated; also commercial transactions will be seriously impeded. It cannot be denied that Section 121 casts the burden on the plaintiff to prove a certain fact. That fact is a negative fact and the plaintiff can easily shift his burden. Ultimately it would be for the person who impeaches the document to show by direct or circumstantial evidence that the holder of the instrument is not a *bona fide* holder.

Ordinarily every person has the benefit of presumptions allowed by the Regulation. When the plaint promissory note was negotiated, the plaintiff was within his rights if he presumed that at that time the 2nd defendant was a holder in due course.

The payment of adequate consideration will, in itself, be an item of evidence in support of the *bona fides* of the transaction. Whether the holder is a holder in due course is always a question of fact.

Per Chakko. J.—One of the essential things to be proved under Section 8 of the Negotiable Instruments Regulation is that the endorsee took the instrument without sufficient cause to believe that any defect existed in the title of the endorser.

When it is proved that the promissory note in question was obtained from the maker by coercion practised on him, the onus both of proving that he paid value for the instrument and that the payment was *bona fide* was shifted on to the plaintiff. In other words he had to prove not only payment of consideration but also, in the language of Section 8 of the Regulation, that he had not sufficient cause to believe that any defect existed in the title of his transferor. What the nature of the enquiry should be or what particular degree of care is necessary in any given case would depend on the circumstances in each case.

After remand, on the concurrent findings of the Courts below, it was held by the High Court that the plaintiff was a holder in due course and the second appeal preferred by the first defendant was dismissed.— **48 T. L. R.**, *392* (= **23 T. L. J.**, *649*).

Section 27.

(1) The Negotiable Instruments Regulation does not apply to promissory notes expressed to be payable only to a specified person and not to his order or to the order of a specified person or to the bearer thereof; but to promissory notes which are negotiable. The pro-note in the suit was not a negotiable instrument. Though the defendants did not limit their liability on the pro-note (there was no indication in the pro-note that the defendants did not contract out of personal liability), they were still not liable under Section 27 of the Negotiable Instruments Regulation, as the Section is applicable only to *negotiable* pro-notes.

(2) Nevertheless, the defendants were liable on general principles of contract,

inasmuch as their principal, though disclosed, could not be sued.

Section 230, Contract Act, says that in the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal nor is personally bound by them and that such contracts shall be presumed to exist where the principal, though disclosed cannot be sued.—

47 T. L. R., *94*
(=21 T. L. J., *228*).

Dist.—22 T. L. J., 1017.

Section 80.

A Small Cause suit was instituted for the recovery of the amount due under a promissory note executed to the plaintiff for passarom due to the Church. The lower Court finding that no money consideration passed under the promissory note and that the plaintiff is not entitled to the amount, dismissed the suit as not maintainable:

Held (In revision).—Whether it was for money actually paid or for passarom dues of the Church that the promissory note was executed, the note is fully supported by consideration.

Section 80 of the Negotiable Instruments Regulation says that the payment of the amount due on a promissory note, bill of exchange, or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument. The holder of the instrument is therefore the person properly entitled to sue on the note. A benamidar or trustee who takes a note in his own name is the person entitled in his own name to the possession thereof and not the *cestiu que trust* or person for whom he holds the note. He is therefore the proper person to sue upon it.—

47 T. L. R., *97*.

Section 82.

Where a promissory note payable on demand did not specify any rate of interest, the question arose as to the date from which interest on the note was to be calculated, whether it was to be from the date of the execution of the note or from the date of demand:

Held.—The promissory note matured and fell due within the meaning of Section 82 on the date of its execution and interest was chargeable from that date.—

46 T. L. R., *41*.

Section 121.

1. The presumption contemplated in Section 121 (*g*) would arise only in the case of a holder as defined in Section 7 of the Regulation. In the case of instruments not payable to bearer it cannot be said that the mere fact that the person claiming thereunder has the custody of the same would not constitute him a holder as defined in the above Section. The presumption contemplated in the above Section could not be construed as arising in favour of the custodian of a promissory note. There is no presumption in favour of the genuineness of an endorsement found on a promissory note. The burden of proving that the endorsement is genuine is upon the person claiming under the same.

Even if such presumption arises, the same could be rebutted by circumstantial evidence.

Events subsequent to the institution of the suit could be taken into consideration in granting appropriate reliefs.—

20 T. L. J., *970*.

2, See also Sec. 8.—

48 T. L. R., *892*
(=23 T. L. J., *649*).

Other Cases.

1. In the case of a promissory note alleged to be executed by two persons

jointly, but found to have been executed only by one, the contract evidenced by it would be unenforceable against the executant only where the intention of the parties is clearly made out that the instrument should become operative only after both the parties described as the executants therein affixed their signature to it. If however such an intention is not made out, the several liability arising out of a joint contract under Section 43, Indian Contract Act, has to be recognised, and the contract will be enforced as against the person proved to have executed it.—

20 T. L. J., *50.*

Ref.—21 T. L. J., 1388.
22 T. L. J., 1227.

2. The compounding of a compoundable offence may be a lawful consideration for a promissory note.— **21 T. L. J.,** *1247.*

3. The suit is on a promissory note said to have been jointly executed by defendants 1 and 2. The first defendant denied execution. His plea was upheld by both the lower Courts. It was pressed in special appeal that the suit ought to have been decreed at least against the non-contesting party, *viz*, the second defendant:

Held.—The test in cases in which a contract purports to be made by two persons jointly with another but is really made only by one of the joint promisors, is one of intention. If the completion of the agreement depended upon the concurrrence of the joint promisors, one of them, even if he has signed the agreement, would be absolved from liability if the other has not become a party to it.—

21 T. L. J., *1388.*

4. In a suit for recovery of principal and interest due on a promissory note, the defence was raised that there was no money consideration.

Held.—Love and affection is sufficient consideration to support a document between near relations.—

48 T. L. R., *865*
(=22 T. L. J., *907*),

5. Where in a suit on a promissory note alleged to have been executed by defendants 1 to 3 in favour of a stranger and endorsed successively to the 4th defendant and the plaintiff, it was found that the promissory note was fraudulent and unsupported by consideration and that the subsequent endorsements were made with a view to create confirmatory evidence, but defendants 2 and 3 were *ex parte* and second defendant admitted execution;

Held.—The suit was unsustainable even as against defendants 2 and 3, as the primary, if not the sole, object of the entire transaction clearly was to defraud the first defendant. The cause of action arose *ex turpi causa* and therefore the plaintiff did not deserve to be assisted. Also the intention of the parties was that there should be joint execution by defendants 1 to 3 and as this was found against, the instrument could not be enforced even as against the persons who did in fact execute it.— **22 T. L. J.,** *1227.*

6. The plaintiff sued on a promissory note executed by the first defendant in his favour for which the second defendant had given a letter of guarantee to the plaintiff. The trial Court passed a decree in favour of the plaintiff as against both the defendants. The District Judge on appeal dismissed the suit as against the second defendant. The question for decision was whether the suit as against the second defendant was maintainable:

Held.—As a general rule and in the absence of any express or implied stipulation to the contrary, the creditor need not, before suing the surety, sue the principal debtor even though such principal debtor be quite solvent. If the intention of the parties was that the plaintiff should sue the principal debtor (first defendant) in the first instance before proceeding against the surety (second defendant), the intention could and should have been made clear by using appropriate language.

A creditor is not bound to exhaust his remedy against the principal before suing the surety and therefore a suit may be maintained against a surety even though the principal has not been sued. The liability of the surety is co-extensive with that of the principal debtor under Section 128 of the Indian Contract Act.—

50 T. L. R., *100*.

7. See also—

Regn. VI of 1100, Art. 105.—

48 T. L. R., *230*
(=22 T. L. J., *689*).

REGULATION III OF 1075.
(Vakils).

Section 10.

Per Chalkko, J.—Section 10 of the Vakils Regulation is a Section peculiar to our Vakils Regulation. There is no provision corresponding to Section 10 of our Regulation in the Legal Practitioners Act of British India. As far as I am aware such a provision is not found in any of the Codes relating to legal practitioners in any other Native State. It is not quite clear what necessity there was for enacting a Section like Section 10 of the Vakils Regulation. If a Vakil deliberately absents himself from Court when his client's case is taken up or is otherwise negligent, the client has certain obvious remedies open to him which he may pursue, and it is quite certain that if a litigant is really aggrieved by the conduct of his Vakil, he will have recourse to the remedies provided by law. There is no reported case in which action has been taken under Section 10 of the Vakils Regulation which, so far as it goes, testifies to the good sense of the presiding Officers of our Courts. Whatever might have been its utility in the past, it appears that Section 10 of the Vakils Regulation has outlived its usefulness and the Section cannot be regarded as anything except an anachronism which ought not to be allowed any longer to disfigure the Statute Book.—

21 T. L. J., *648*.

Other Cases.

1. An admission, erroneous in law, made by the Vakil, would not conclude the party.

It is within the competence of a Vakil to make an abandonment of a pleading of fact.— 20 T. L. J., *589*.

2. It is clearly part of the Vakil's duty to file the Vakil's fee certificate and safeguard the interests of his client, and this certainly falls within the terms of his engagement, though there was no undertaking express or implied in the Vakalath to file a certificate.

The plaintiff's (Vakil's) claim for remuneration and the defendant's claim to recover damages by the plaintiff's omission to fulfil one of the implied terms of his engagement,namely, to file a Vakil's fee certificate in time, arose out of the same contract. The two claims are as intimately connected with one another that it would be unjust and inequitable to drive the defendant to a separate suit. An equitable set-off was therefore allowed in repect of the two claims which arose under the same transaction.—

49 T. L. R., *11*
(23 T. L. J., *86*).

3. See also Regn. II of 1100,
Other cases.— 24 T. L. J., *362*.

REGULATION II OF 1077.
(Guardian and Wards.)

Section 10.

Though an application will not lie under the Guardian and Wards Regulation for the appointment of a guardian of the property of the minor; if he is a member

of a joint Hindu family it does not necessarily follow that the Court is powerless to make any order affecting the joint family property in the case of an application for the appointment of a guardian for the person of the minor. A Court sitting to administer the law of Guardian and Wards has got every power to pass interim orders if need be, to carry out the declared object of the Regulation. If no order can be passed by the Court for the support of the minor affecting the portion of the property to which the minor may be legitimately entitled, one fails to see how the Court could award any relief to the minor at all pending final disposal of the petition.

The allowance to be allowed to the minor should be in keeping with the social status and affluence of the family.—

22 T. L. J., *1008.*

Section 38.

The respondent applied to the lower Court for an order calling upon the appellant to provide the funds necessary for celebrating the marriage of the female ward. The lower Court after enquiry ordered the appellant to deposit in Court within ten days Rs 2300 out of the minor's estate in his hands, if necessary after hypothecating his properties. Against that order, the appeal was filed.

A preliminary objection was raised that the order was not appealable:

Held (Overruling the preliminary objection).—The order in question could be brought within the scope of Section 38 of the Guardian and Wards Regulation and such an order was declared to be appealable in clause (*i*) of Section 43. It might also be contended with force that the order, being in the alternative one granting permission to mortgage the minor's property, foll within Section 24 of the Regulation and was accordingly appealable under clause (*e*) of Section 43.—

21 T. L. J., *1305.*

Sections 43 & 44.

1. The Civil Miscellaneous Appeal was against an order of the lower Court granting a review of an order passed under the Guardian and Wards Regulation. The respondent contended, (i) that no appeal lay against the order as no appeal is provided against it under Section 43 of the Regulation. (ii) the application for review before the lower Court was incompetent as the Regulation did not provide for a review,

Held,—(i) In granting the review, the District Court was not exercising any of the powers vested in it under the provisions of the Guardian and Wards Regulation as that Regulation does not provide for a review of any order passed by the Court under that Regulation. The Court in exercising its jurisdiction, under the Guardian and Wards Regulation acts as a Court of civil jurisdiction and, therefore, the Civil Procedure Code, as far as it can be made applicable, is applicable to proceedings under the Guardian and Wards Regulation.—*Vide* Section 105, C. P. C.

(ii) There is no provision in the Guardian and Wards Regulation inconsistent with the Civil Procedure Code as regards the entertainment of a review. Section 44 of the Guardian and Wards Regulation does not, by implication, prohibit the entertainment of a review. The application for review before the Court below was therefore maintainable.—

21 T. L. J., *182.*

2. See also—

Regn. VI of 1100, Sec. 12.—

24 T. L. J., *750.*

Other Cases.

1, Where a guardian *ad litem* is appointed, the appointment holds good for the whole *lis*, till the guardian dies, retires or is removed and the guardian so appointed is the only person who can represent the minor. The guardian on

record is the only person competent to prefer an appeal on behalf of the minor.

The plaintiff named the first defendant as guardian *ad litem*, of her son the second defendant minor, and the Court accepted her as such. As the guardian, however, did not defend the suit, a decree was passed *ex parte* in favour of the plaintiff. The second defendant's brother-in-law subsequently applied to get himself appointed as the guardian of the second defendant and to set aside the decree against that defendant. The application was in due course dismissed by the order under appeal. On preliminary objection raised by the plaintiff-respondent as to the maintainability of the appeal:

Held.—So long as the order appointing the first defendant as guardian of the second defendant was in force no one else shall represent the minor in any proceeding relative to the same suit and the appeal was therefore unsustainable.—

22 T. L. J., *598.*

Ref.—22 T. L. J., 958.

2. The questions for decision were:—.

(1) The quantum of maintenance to be awarded to a Hindu minor out of the income of joint family properties in proceedings under the Guardian and Wards Regulation, and (2) the propriety of the lower Court granting permission to the guardian to take a suit for partition of the family properties on behalf of the minor.

(1) No doubt the income of the family to which the minor belongs is an element for consideration in fixing the rate of maintenance. But the amount which the Court would allow or a guardian would safely expend depends upon the age, the rank, the fortune and the expectations of the minor. It must be sufficient to give the minor maintenance and education suitable to the position which he would occupy on coming of age. There ought not however to be practically a division of the income.

(2) In the absence of any satisfactory materials in the case, the sanction for instituting a suit for partition should not have been granted. For even assuming that it was competent to the Court to give sanction at all, the power should be exercised with proper care. Besides, the question whether the suit is maintainable or not is one that should be left for decision by the Court trying it and it is inexpedient that the tribunal should be embarrassed by the expression of opinion implied in the sanction.

49 T. L. R., *442*
(=23 T. L. J., *759*).

3. Suit on a hypothecation bond executed *bona fide* by a *de facto* guardian, in the interests of a Nayar minor:

Held.—There appear to be no good grounds for holding that a *de facto* guardian cannot in cases of necessity, raise money for the use or benefit of the minor on the security of his property. This rule is applicable to all cases of proved necessity, unless it can be held to be repugnant to anything in the personal law by which the minor is governed, as for instance, in the case of Mohamedans.—

48 T. L. R., *183*
(=22 T. L. J., *94*).

4. See also—

Regn. II of 1100, Other Cases.—

21 T. L. J., *474.*

Regn. VIII of 1100, Or. IX, Rule 13.—

47 T. L. R., *155*
(=21 T. L. J., *208*).

REGULATION III OF 1079.

(Hindu Religious Endowments.)

Section 18.

The suit was by the Samudayam of a Devaswom on behalf of the Devaswom, for recovery of leased property with arrears of rent.

It was first held on special appeal, following the Full Bench ruling in 18 T. L. R., 129, that the Samudayam could not maintain the suit without consulting the Ooralers when such power had not been vested in him by the usage of the Devaswom and the judgment was reported in 8 T. L. J., 214.

But on a review of the special appeal judgment, it was held that, under the express provision of Section 18 of the Regulation passed subsequent to the ruling in 18 T. L. R., 129, the Samudayam was competent to maintain the suit.—

23 T. L. J., *126.*

REGULATION IV OF 1080.

(Stamp.)

Section 38.

1. The document, Exhibit A, on which the plaintiff relied runs as follows.—"I promise to pay you Rs. 500 being the amount due to you on account of your house sold by my father":

Held.—Exhibit A comes clearly within the definition of a promissory note as defined in Section 3 of the Negotiable Instruments Regulation. There is nothing in the Regulation or in the Law Merchant preventing parties making a promissory note payable solely to one person and not also to his order or bearer.

The appellant was precluded under Section 38 of the Stamp Regulation from taking the objection that the document has not been stamped.

A document having once been admitted in evidence is not to be called in question at any stage of the same suit. Under Section 38 it matters nothing whatever whether a document was wrongly admitted or rightly admitted or admitted without objection or after hearing or without hearing such objection.—

22 T. L. J., *1400.*

2. The trial Court admitted in evidence an insufficiently stamped pro-note construing it as a bond. Objections were taken in special appeal as to its admissibility.

Held.—The appeal was groundless as the lower Court's view was right. The requirements of Section 38 are satisfied if the document has in fact been admitted. The grounds on which the document was admitted can have no significance whatever in view of the express wording of the Section, and there appears no justification for placing a restricted construction on the word used. The erroneous admission of a document not duly stamped is an error, defect, or irregularity not affecting the merits of the case or the jurisdiction of the Court. Once the document has been admitted, such admission even if it was by mistake or otherwise could not be called in question in subsequent proceedings in that Court or in superior Courts. It matters nothing whether a document was wrongly admitted or rightly admitted or admitted without objection or after hearing or without hearing such objection. The proposition that Section 38 would be applicable even where there has been an erroneous admission of an insufficiently stamped document seems to be well established. It matters little whether the document was admitted in the erroneous belief that it was an instrument of another description.—

50 T. L. R., *90*
(=23 T. L. J., *889*).

REGULATION II OF 1084.

(Civil Courts.)

Section 16.

From the decree in a suit of the value over Rs. 1000, an appeal was filed in the District Court, and the appellate Court passed an order of remand under Order XL, Rule 22, of the C. P. C. It was contended in appeal against the order of remand

that the appellate Court acted without jurisdiction and that its proceedings were mere nullities and had to be vacated :

Held.—Under Section 16 of the Civil Courts' Regulation II of 1084, appeals against orders passed by the trial Court in the case lay direct to the High Court, the District Court having no jurisdiction to entertain the same. The omission on the part of the appellant to raise the question could not operate as a waiver to such cases, for jurisdiction could not be conferred on a tribunal by consent of parties or by their waiver. If a Court had no jurisdiction over the subject-matter, such jurisdiction could not be conferred upon it by consent of parties, and any waiver on their part could not make up for the lack or defect of jurisdiction. Where no jurisdiction exists, no action on the part of the plaintiff, no inaction on the part of the defendant, could invest the Court with any of the elements of power or vitality so as to convert the proceedings before it into a proper judicial process.—

23 T. L. J., *501.*

Section 18.

1. On the question whether the members of the Sri Bandara community commonly follow the Marumakkathayam Rules of inheritance :

Held.—Sri Bandara Chetties are really Kalachettiés and in point of succession and inheritance, the ordinary Rules of Hindu Law should be applied to them.

The word 'Hindu' occurring in Section 18 of the Civil Courts Regulation has to be construed as ordinarily understood. It would not be proper to give it a wider or more restricted meaning than what it conveyed in common parlance, Normally the Courts will have to apply the principles of Hindu Law, so long as the parties are Hindus understood in common parlance, and such principles will not be applicable only with respect to matters relating to which any custom having the force of law and governing the parties or properties concerned as contemplated in clause (*b*) of the above Section is made out either by admission contained in the pleadings of the parties or proved by the evidence on record. Neither the admission in the pleadings nor the evidence on record warrants the upholding of any custom that the principles of Marumakkathayam Law have to be applied in cases of this kind.—

47 T. L. R., *51*
(=**20 T. L. J.**, *1170*).

2. See also Regn. VIII of 1100, Sec. 31.— **49 T. L. R.**, *158*
(=**22 T. L. J.**, *1381*).

Section 19.

Though under Section 19 of the Civil Courts' Regulation, District Judges are prohibited only from trying an appeal from decrees or orders passed by themselves in any other capacity, it would not be proper to allow the hearing of appeals by presiding Officers who had disposed of the case, the case itself dealing with the same evidence in the original Court, even though the appeal to be heard is not against such decision. This has to be rigorously enforced, as it is imperative that the purity and integrity of the judiciary should be rigorously maintained and placed above cavil.—

20 T. L. J., *103.*

SCHEDULE II (14).

The suit was for recovery of a cow entrusted to the defendant with a calf it gave birth to, after such entrustment :

Held.—The suit was not one for specific performance of a contract and was not, therefore, excepted from the jurisdiction of a Small Cause Court by virtue of Clause 14 of Schedule II of the Civil Courts' Regulation.

With respect to the remedy available by way of specific performance of contract, a distinction has to be kept in view between *executory contracts* or agreements not intended between the parties to be the final instrument regulating their mutual relations under the contract and *executed contracts* which are those in which everything has been done already to settle finally the relative position of the parties. In the former case, a remedy by way of specific performance would be available, while in the latter the same is not had. Actions for recovery of specific chattels could not be treated as partaking the character of an action for specific performance, if the right to delivery flowed from the contract itself, for it is based on an allegation that the contract has been performed, but the chattel is the property of the plaintiff and is being wrongfully detained by the defendant.—

20 T. L. J., *204.*

SCHEDULE II (33-J).

The suit was for recovery of damages on account of loss of earnings from a sewing machine attached in execution of a decree:

Held.—The trial of the suit by the lower Court as a Small Cause Suit was irregular. The decree under revision was therefore set aside.

The action was clearly one for damages by way of compensation, and the wrong directly attributed to the defendant was the attachment. The expression 'compensation' has to be construed as covering all claims for damages resulting from the attachment. The object of the provision in the Regulation in excluding suits of this kind from the jurisdiction of Small Cause Courts seems to be that the allegations regarding the improper or illegal invocation of the process of Court relating to attachment required a fuller and a more satisfactory investigation than a summary trial as has been provided for, for Small Cause Suits.— **46 T. L. R.,** *26* **(=20 T. L. J.,** *143*).

REGULATION I OF 1087.

(*Tobacco.*)

1. The Petty Officer who arrested the accused and effected seizure of the article found in his possession made only an oral report to the Excise Inspector. There was no report to the Magistrate. On the question whether the conviction of the accused was liable to be set aside on account of the defect of procedure under Section 10 of the Tobacco Regulation I of 1087:

Held.—Section 10 directs the procedure to be adopted after an arrest and does not lay down any formality necessary to give jurisdiction to the Excise Officer to take action. The failure to comply with Section 10 would be an irregularity of which the accused could only take advantage if he had been prejudiced.—

20 T. L. J., *831.*

2. The plaintiff, a Mel-labhom tobacco licensee, sued to recover the enhanced duty charged on his tobacco bonded at the Quilon Bankshall before the imposition of such enhanced duty by the publication of the Notification, dated 25th February 1926 in the Government Gazette. He questioned the legality of such enhancement. The lower Court allowed the suit but the appeal by the Sirkar thereon was allowed by the majority of the Judges and it was held as follows:—

By the Full Bench—The Government have the power of enhancing the duty on tobacco already bonded.

Parameswaran Pillai and Chakko, J. J., Chatfield, C, J. dissenting.—The Government intended by the Notification that the duty on tobacco was to be raised. The enhancement of the duty fell not only within the spirit of the Notification but also within its letter.

The Government in readjusting the weights for the purpose of levying duty have only done indirectly what admittedly they were entitled directly to do.

All Rules made by Government, whether made before or after the bonding of the tobacco, will apply also to bonded tobacco.

Per Parameswaran Pillai, J.—The weight and not the duty payable is ascertained at the time the tobacco is bonded. If the duty was ascertained at the time of the bonding there is no reason why the duty should not be entered in the weighment register or on the ticket attached to each bale. Rule 33, Clauses 7 and 8, provide for the time of levying the duty and that time is the removal of the tobacco from the bankshall.

Per Chakko, J.—The duty does not attach *ipso facto* to the goods or become payable on the mere ascertainment of the weight. There is nothing in the Tobacco Regulation or the Rules framed under it, which in any way restricts or curtails the power of Government to say when the duty on a particular class of goods arises or may be levied. Although the duty is an 'import' duty, it does not in all cases necessarily follow that the duty should attach itself the moment the goods are brought into the country. In the absence of any binding rule or provision of law to the contrary, it is open to the Government to say that the duty on any particular class of goods shall attach or be payable only on a particular date or at a particular period of time or that for the purpose of levying or collecting duty. the importation shall be deemed to be complete only, on a particular date or period even though the goods may have been already introduced into the soil of Travancore. There is no necessity in the case to determine the precise moment of importation but if it is, it may be held that in the case of bonded tobacco, the importation for the purpose of levying duty was complete only at the time of removing the tobacco from the warehouse or bankshall and in the case of tobacco directly removed by the merchant from the Customs House at the time of its removal from the Customs House.

Per Chatfield, C. J.—The liability to duty attaches to tobacco on arrival in Travancore or in the alternative on passing through a Customs House when the weight for the purpose of duty is ascertained at the Customs House in the case of tobacco immediately removed and after the second weighing in the bankshall in the case of tobacco, which is bonded and nothing further remains to be done after that except for the Mel-labhom merchant to pay on ascertained weight of any bale received at the rate fixed in the Rules.

Interpreting the Notification as imposing an enhancement in the rate of duty on tobacco, it would not render tobacco in bond liable under the enhanced rate unless it can be construed as having retrospective effect. This construction should be avoided, if possible.

The Notification does not in terms bring about an increase in the rate however much that may be the effect of it. In terms it only provides for a new method of calculating the weight and this method should ordinarily be employed in all future calculations whether at the Customs House or bankshall. The method adopted by the customs officials, *viz.*, of making a recalculation on the basis of the Proclamation seems to be unauthorised and the levy of additional duty improper.— **47 T. L. R.**, *412.*

3. Where the Rules framed by the Government under the Tobacco Regulation I of 1087 prohibited all monetary transactions between Officers of the Excise Department and licensed vendors in absolute terms, though not expressly declaring them void and provided for the prosecution of offenders for infraction of the Rules:

Held.—A suit will not lie to enforce a loan made by a peon in the service of the Excise Department in favour of a licensed vendor of tobacco. The case had, of course, to be distinguished from that class of revenue cases where the prohibition by law was merely meant for the protection of the revenue and not to prohibit or invalidate the contracts.

It did not matter that the objection as to the illegality was not raised by the defendant, for, when the illegality was patent on the face of the agreement, as in the case, it was the duty of the Court to take note of it. The principle of public policy is this, *ex dolo malo non oritur actio.* No Court will lend its aid to a man who founds his cause of action upon an immoral or illegal act.—

22 T. L. J. *397.*

REGULATION II OF 1087.

(Registration.)

Section 10.

1. An Official Receiver sold certain immovable properties of an insolvent. One Devaswom claimed the amount realised by the Official Receiver on the ground that the properties were included in a security bond executed to the Court by the insolvent for the satisfaction of a decree obtained by the Devaswom. The security bond was not, however, a registered one. The Court below held that the security bond did not operate to create a charge on the properties. The Devaswom preferred the appeal :

Held.—The appeal was unsustainable and had to be dismissed.

The provisions of Section 15 of the Regstration Regulation do not find a place in the Indian Act. The Regulation, however, does not mention the effect of non-compliance with the mandatory directions given in Section 15. Section 42 deals with the effect of non-registration of documents required to be registered under Section 10. Still, from Section 15 one can gather the importance our Legislature has given to the usefulness of maintaining a registry of landed properties which are affected by judicial proceedings. Those who rely on any decree or order made by a Court should have also complied with Section 15, if it is to affect any immovable property.

By Exception (*V*) of Sub-section (2) of Section 10, decrees, orders of Courts and awards are not made compulsorily registrable. Perhaps, a literal and strict interpretation of the Exception might bring within its purview the present order of the Court, namely 'Security accepted' passed on the security bond. If that is so, the appellant should have complied with the provisions in Section 15 before he could enforce the security. This need not mean that a security does not require registration. The better view to hold is that security bonds are to be registered if they deal with immovable properties. Civil Circular No. 5 of 1062 strictly enjoins that such security bonds should be registered.—

20 T. L. J., *47.*

2. A hypothecation right may be an interest in immovable property though it might not be immovable property as defined in the General Clauses Regulation and the assignment deed requires registration for conveying any interest to the assignee.

The expression used in Section 10 of the Registration Regulation is "interest in immovable property" and the definition of the term "immovable property" in the General Clauses Regulation cannot be regarded as defining the scope and significance of the former expression.—

47 T. L. R., *231*
(=21 T. L. J., *559*),

Section 14.

No document purporting to create right or title to or in immovable property can be registered without a schedule being attached thereto containing the particulars mentioned in Clause (2) of Section 14. Unless the provisions of Section 14 of the Registration Regulation are complied with, the document cannot be registered in Book No. 1 as an instrument relating to immovable property. Mere description of property sufficient to identify the same without giving particulars under Section 14 (2) is not compliance with the Section.—

46 T. L. R., *212*
(=**20 T. L. J.,** *544*).

Section 15.

1. The appeal was from an order rejecting an application to execute a decree as time-barred. The decree was not registered although it created a charge on immovable property. If the decree had been registered, the execution application would have been within time:

Held.—It was the duty of the Court under Section 15 of the Registration Regulation to have sent the decree for registration. Rule 790 (Second Proviso) of the Civil Courts Guide cast the duty of levying the fee of 5¼ fanams on the Court and where the Court was neglectful of its duty the party should not suffer.

[The High Court, accordingly set aside the order of the lower Court and sent back the execution application for fresh disposal after giving the decree-holder an opportunity to pay the requisite fee under the Rule,] **22 T. L. J.,** *1056.*

Not fol,—23 T. L, J., 823.
Ref—50 T. L. R., 96.

2. See also Sec. 10— **20 T. L. J.,** *47.*

Section 41.

From Section 41 of the Registration Regulation, it is clear that a registered instrument (of sale of immovable property) takes effect against an oral agreement even though the oral agreement was accompanied by delivery of possession.—

22 T. L. J., *1341.*

REGULATION VI OF 1087.

(Court Fees.)

Section 4

The plaint property is a plot of cardamom land. The dispute is in regard to the method of its valuation for the computation of court fees it being contended that since cardamom plants are rather shortlived when compared to trees like coconut trees, the annual yield should not be multiplied by ten for purposes of court fees:

Held.—Court Fees Regulation Section 4 (V) is applicable to the present case. According to that Section in cases of dispute the basis for the computation of court fees is ten times the annual gross yield where the land is capable of yielding annual profits *minus* the assessment, if any.— **22 T. L. J.,** *619.*

Section 5.

In an appeal to the High Court under the Land Acquisition Regulation, the court fee payable under Section 5 of the Court Fees Regulation is not merely on the amount of additional compensation claimed in the appeal but also on the 15 per centum on the market value which in the event of his success in appeal, the appellant will be entitled to.—

46 T. L. R., *151*
(=**21 T. L. J.,** *285*).

Section 9.

The concession allowed in Paragraph 3 of Section 9 of the Regulation is peculiar

to the Travancore Regulation as the corresponding Section 11 of the British Indian Court Fees Act does not contain the same. By this, the Legislature has simply extended the concession allowed to plaintiff in what are technically known as suits for accounts to defendants also where the rules with reference to the plaints in suits for accounts are applicable to written statements where a counter-claim is made. In such cases, the defendants will have to state approximately what would be due to them on a settlement of accounts and pay institution fees thereon.

An order of the lower Court relating to court-fee is open to revision where the ends of justice require the same.—

20 T. L. J., *38.*

Section 10.

The High Court can revise orders passed under Section 10 of the Court Fees Regulation where the ends of justice require it to be done.

For purposes of valuation of Cherikkal lands, it is not necessary that the property should be cultivated every year in order that it should yield annual profit. It is enough that an average yield can be arrived at.

Buildings should be valued according to their actual value, the cost of putting up the structures less any deductions that may have to be made on account of wear and tear.— **23 T. L. J.,** *851.*

Section 24.

After a prior order of discharge under Section 181 of the Criminal Procedure Code, the complainant put in a fresh complaint for offences under Sections 379 and 428 T. P. C., but unaccompanied by a court-fee stamp of half a rupee. The Magistrate rejected the complaint on the grounds that the petition was not stamped, that it came too late and that the papers had already been recorded:

Held (dismissing the revision petition filed by the complainant).—Though the previous discharge under Section 181 of the Criminal Procedure Code, did not bar fresh proceedings, and the complainant was not guilty of laches in preferring the fresh complaint, still, the non-affixture of the court-fee stamp, as required by Schedule II, No. I, Clause (*b*), precluded the recognition of the petition as a valid complaint. For there was no provision in the Court Fees Regulation that would justify the exemption from the payment of court fee where in a complaint there is a combination of a non-cognizable with a cognizable offence. It could not also be said that the Magistrate had wrongly exercised his discretion under Section 24 of the Court Fees Regulation in not permitting the unstamped complaint to be filed inasmuch as there was no failure of justice which necessitated the reception of the complaint without the proper court fee. There was besides, no duty cast upon the Magistrate, either under the Court Fees Regulation or under the Criminal Procedure Code, enjoining him to call upon the complainant to pay the necessary court fee.—

49 T. L. R., *223*
(=23 T. L. J., *178*).

SCHEDULE II.

1. The amount of court fee payable on a petition to the High Court is Rs. 2 under Schedule II. Article I, Clause (*d*), of the Court Fees Regulation and not chs. 2. under Clause (*a*), para 4, of the same Article.

It is one of the cardinal principles of interpretation of Statutes that where there are two provisions, one specific and the other general, the specific provision ought to be applied in preference to the general one. "Wherever there is a particular enactment and a general enactment in the same Statute and the latter taken in its most comprehensive sense would overrule the former,

the particular enactment must be operative and the general enactment must be taken to affect only the other parts of the Statute to which it may properly apply.—
21 T. L. J., *788*.

2. The court fee leviable on a claim in a plaint has to be determined with reference to the finding as to what the subject matter of the suit is. The expression 'subject matter' in the suit does not mean the property involved, but only the right claimed over such property.

Where a suit is for declaration that certain persons have only rights of enjoyment over certain properties and that they have no right to deal with them in excess of those rights, the declaration sought for clearly relates to the balance of rights in the property over and above the partial rights admitted and the value of the right cannot be estimated in money value. The declaration has to be valued under Schedule II, Article 8, Clause 7, of the Court Fees Rgulation.—
20 T. L. J., *40*.

3. If the relief sought in a plaint is properly valued but the institution fee prescribed by law is not paid in part or in whole the Court ought to have required the plaintiffs to pay the Court fee within a specified time and the suit could be dismissed only if within that time the Court fee was not paid.

Under Article 8, Clause 7, of Schedule II. of the Court Fees Regulation, a consolidated fee of Rs. 10 is the proper fee to be paid on a plaint where the primary relief claimed is a prayer for settlement of a scheme for the management of a trust. The prayer for an account in such a suit is merely ancillary to the main prayer for the settlement of a scheme and no separate fee is chargeable on that prayer.
48 T. L. R., *30*
(=21 T. L. J., *1335*).

4. The principle for determining the market value of property under the Court Fees Act as under the Land Acquisition Act is that things have to be taken as they stand at the time and as there can be no market for a temple as such there can be no market value for it, and the principle of valuation based on the value of the materials composing it is erroneous.—
22 T. L. J., *739*.

Other Cases.

1. It is clear law that for the determination of the value of the suit for purposes of jurisdiction, Courts have only to look to the reliefs claimed in the plaint. They have to examine what they are, and not what they should be. They should not import into such reliefs, something which they think should have been claimed. If it is considered that the reliefs actually claimed by the plaintiffs could not be allowed them, unless another distinct and independent relief is prayed and granted, the Courts should either allow the plaintiffs to amend their plaint by the insertion of such a relief which is considered a condition precedent to their getting the others claimed by them, if such an amendment is allowable under the circumstances of the case, or non-suit them for their omission to pray specifically for such a relief. They cannot force the plaintiff to insist upon such a relief being claimed. The plaintiffs as the *dominus litus*, the masters of the litigation, have the right in law to place their case and seek the reliefs in the best way they choose.—
20 T. L. J., *293*.

2. Where an excess amount of Court fee has been paid under a *bona fide* mistake of the party, the Court has inherent jurisdiction to order refund of the excess Court fee. The proper order to be made by the Court in the matter of such refund would be the one contemplated by Rule 5 read with Rule 5 B (*c*) and 5.c of the Rules framed by the Government under the Court Fees Regulation (F. B.)—
22 T. L. J., *387*.

3. The plaintiff filed the suit for declaration of possession and for an injunction to issue to the first defendant restraining him from further executing his decree against the schedule properties. The plaintiff paid Rs. 10 Court fees on the prayer for declaration because it was incapable of valuation and valued the prayer for injunction at Rs. 200 :

Held.—The plaintiff should pay *ad valorem* Court fee on the amount of the decree sought to be restrained.—

23 T. L. J., *807.*

4. In a suit to set aside an order dismissing a claim to attached property, the fact that the plaintiffs prayed also for a declaration of title and a permanent injunction to restrain execution against the property, would not alter the scope and object of the suit. In such cases, though unnecessary prayers are included in the plaint, the substance of the suit should be looked at, to determine what the Court fee payable is.—

23 T. L. J., *1048.*

REGULATION III OF 1088.

(Salt.)

1. The petitioner in the case purchased salt from a merchant from Perava who in his turn purchased it from the Depot on payment of duty and price and removed the salt from the Perava market to Thalayolaparambu, which is beyond the Alwaye and Piravom Divisions. He was arrested, convicted and fined and the salt, carts, &c., were ordered to be confiscated. The petitioner's case was that the transportation of salt in the course of which he was caught did not constitute an offence :

Held.—The petitioner was not guilty under Section 67 of the Salt Regulation. The said Section provides punishment for the contravention of any Rules framed by Government under Clauses (*c*), (*d*) and (*f*) of Section 77. On the basis of Rule 127 of the Rules made under Section 77 (*c*) the Excise Commissioner published a Notification dated 7-7-1923 prohibiting removal of salt beyond the limits defined. But the Section empowers Government to frame Rules for regulating manufacture, storage, removal, &c., of salt in and from salt factories. The case was one of removal, but not from a salt factory but from the Perava market. Salt factory is defined in the Regulation. A market place where salt is sold to the public could not be deemed a salt factory and Government have no power to enact Rules for the removal of salt from market place under Section 77 (*c*).

The words 'import and export' have been defined as taking into or out of Travancore from the sea or to it or from a foreign territory or to it. Transport is defined as removal from place to place within Travancore. Section 77 (*c*) authorises Government to frame Rules about import and export, but not about transport. Rule 127, if intended to regulate the transport of salt, is therefore *ultra vires* of the authority of Government, as also the Commissioner's Notification issued under the Rule.— **49 T. L. R.,** *334* **(=23 T. L. J.,** *260*).

1. See Regn. VIII of 1100, Sec. 31.— **49 T. L. R.,** *451* **(=23 T. L. J.,** *490*).

REGULATION X OF 1089.

(Co-operative Societies.)

Section 42.

The Rules passed under Section 42 of the Co-operative Societies Regulation do not expressly make the provisions of the Civil Procedure Code applicable to proceedings before the arbitrator ; but even so, the contention that he cannot decide the case *ex parte* cannot prevail as it would result in the anomaly that the

jurisdiction vested in the arbitrator could be defeated by the party wilfully refraining from taking part in the proceedings. If the jurisdiction of the arbitrator is granted, the further question would be whether the claim could be decided merely on the ground that it was not resisted. This the Civil Procedure Code enables the Civil Court to do. But the arbitrator not being empowered under the Rule to act similarly, his decision can be upheld only if it was passed on the merits of the claim.

A decree passed aginst the personal representative personally is not illegal or void under Section 248 (old) of the Civil Procedure Code. That Section is directory in its nature and provides that, after a deeree is passed against a person as the legal representative of the deceased person, it can be executed against the legal representative personally only on proof of certain circumstances. This does not mean that if a personal decree is passed, it can be treated as null and void, and that it can be validly questioned in execution. The decree passed is final as between the parties and could be set aside only by appeal to the superior Court.

The jurisdiction of the Court under Section 115 of the Civil Procedure Code can be exercised in all cases to further the ends of justice, if there is no express statutory provision enabling the Court to grant relief and prevent avoidable hardship and if there is no provision prohibiting the granting of such relief.—

20 T. L. J., *105.*

REGULATION XI OF 1089.

(Land Acquisition.)

Section 18.

1. Where notice of the award under the Regulation had not been given to the parties within six months of the date of the award, the second part of Clause (*b*) of Sub-section (2) of Section 18 had no application and the party concerned would be entitled to ask for a reference within two months of the receipt of notice.

46 T. L. R., *260*
(=20 T. L. J., *1221*).

2. Section 18 (2) of the Land Acquisition Regulation insists on specific grounds of objection to the award in the application for reference. A strict compliance with this provision is necessary and the Court has no power to consider anything beyond the grounds specified.

Where land with tress standing thereon is acquired by the Sirkar, the claimant may at his option demand payment either on the basis of the ground value or on the basis of the value of trees deducting the standing room therefor whichever is more advantageous to him. In the former case the cost in rearing the tree on the land should also be added to the ground value.-

48 T. L. R., *202*
(= 22 T. L. J., *669*).

Sections 18—21.

Per Venkitarama Iyer, J.—Section 21 of the Land Acquisition Regulation clearly indicates that the jurisdiction of the District Courts created hereunder is a special one, and that it is strictly limited by the terms of Sections 18, 19 and 21. The objections taken to the award in the application under Section 18 would be the 'matter' referred, the Court having no power to determine or consider anything beyond it.

All proceedings from the date of presentation of the application for reference are judicial in their nature and it would be open to the High Court in revision to examine the orders passed by the Land Acquisition officers on such applications. It would also be open to the District Court after having become seized of the

matter, to examine the validity or propriety of the orders of the Land Acquisition Officer and pass appropriate orders thereon, the exercise of such powers being always to be consistent with the peremtory provisions contained in Section 21 of the Land Acquisition Regulation.

The Court of appeal or revision is ordinarily constituted for the correction of an error by a subordinate Court. In the case of reference under the Land Acquisition Regulation, the errors relating to the amount of compensation and other matters are similarly intended to be corrected by the District Court. In the nature of the duties involving on the District Court in this matter, it is clear that the District Court is, in dealing with the Land Acquisition references, exercising the same powers as those of the ordinary appellate and revisional Courts. The Land Acquisition Officer should be considered to be an inferior Court to the District Court so far as the matters covered by the reference go. It is open to the District Court, as a superior Court, to examine the validity of the reference itself with respect to matters covered by the same and deal appropriately with them, examining whether the action of the Land Acquisition Officer in that behalf has been proper and justifiable or not. It would, therefore, be perfectly within the powers of the District Court to deal with questions of limitation regarding the reference.

The Land Acquisition Regulation should be deemed so far as the Limitation Regulation of 1062 is concerned to be a special law as contemplated in Section 6 of the latter Regulation. But, in applying the provisions prescribing the period of limitation under special laws, the Courts have to consider whether the exercise of the right conferred by the Statute on a party is beyond human possibility by reason of want of timely knowledge of the infraction with respect to which such right is created in his favour.

Knowledge of the award with respect to which the right of reference is created is an essential requirement for the applicability of the period of limitation prescribed under Section 18 of the Land Acquisition Regulaion 'Date of the Division Peishkar's award' has been construed to be the date on which such award has been filed in the Division Peishkar's office under Section 12 of the Regulation.

No presumption in favour of pronouncements of orders or decisions by officers of the Revenue and other Departments in discharge of the statutory duties imposed on them openly and in the presence of the parties interested therein would arise as in the the case of judicial tribunals. Hence no notice either actual or constructive could be presumed and the insistence of a notice of the decision has been based upon the above principle. In the case of such decisions or orders, the date of the decision for purposes of limitation has been construed as referring to the date of service of notice.

The effect of the provisos would be that the right of seeking for a reference could not be recognised if the application is presented—

(1) after the expiry of two months from the date the award bears; if it is clearly made out that it had been pronounced in the presence of the parties or their duly constituted attorneys to represent them; or

(2) after the expiry of two months from the date of the service of notice on the party as required by Section 12, Sub-section (2); or

(3) after the expiry of six months from the date of filing of the award in the Division Peishkar's Office as required in Section 11, Sub-section (1), when such award will be available for inspection by the parties.

Even in reference under the Land Acquisition Regulation it is essential that

the Rule relating to pleadings is strictly adhered to.

Per Narayana Pillai, J.—The proceedings before the Land Acquisition Officer are not homogeneous in character. They are ambiguous, and lend themselves to be viewed as judicial or departmental according to the phase that turns up to view.

The Judge (District Judge) has no general revisional jurisdiction. The decision of a question of limitation is left entirely to the Land Acquisition Officer. It seems to be no concern of the Judge to go behind the reference and see whether the reference is based on an application within time. If the Legislature thought that the Judge should reject references made on time-barred application the terms of reference should include particulars as to the presence or absence of the claimant before the officer at the time of the award, the date of the award, and other details necessary to determine a question of of limitation. But Section 19 insists on no such particulars. On the other hand, the specification of the matters for reference in Section 19 and the restriction of the scope of enquiry in Section 21, would seem to preclude the consideration of other questions by the Judge on the well-known principle of construction *expressio unis est exclusio alterius.*—

47 T. L. R., *1*
(=20 T. L. J., *1083*).

Section 22.

1. The principle upon which the valuation of property compulsorily acquired should be measured is that it should be *the value to the seller of the property* in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired.

It is also well settled law that the value should be estimated with reference to the most lucrative and advantageous manner in which the land might be used and its special suitability could not be ignored.

The importance of the test that the operative effect of special adaptability of future utility must be estimated not by idle speculation and impractical imagination, but by prudent business considerations, such as would weigh with an intending purchaser at the imaginary market which would have ruled, had the land been exposed for sale when it was subjected to compulsory acquisition, must not however be lost sight of. Even the fact that a parcel of land is bought by a speculator in land with the object of reselling it at a profit is no ground for disregarding the sale in cases under the Land Acquisition Act.—

46 T. L. R., *280*
(=20 T. L. J., *623*).

2. By the acquisition of a portion of the plaintiff's property, the frontage of the property along the side of the lane which led to the main road was substantially reduced, making ingress into and egress out of the property left to the plaintiff very difficult:

Held.—The expression 'injuriously affecting his other property, movable or immovable, in any other manner' occurring in para 4 of Clause (1) of Section 22 of the Regulation was sufficiently wide to take in within its meaning a prejudicial effect of the kind specified and the plaintiff was entitled to compensation.—

49 T. L. R., *242*
(=23 T. L. J., *1253*).

Section 27.

The Land Acquisition Regulation is more or less of an expropriatary character. In consideration of the summary way in which a party is divested of his property, against his will, the Legislature

has conferred upon him the privilege to have all his rights relating to such property adjudicated upon without his paying the usual institution fee for the purpose. It was considered inequitable after forcibly taking possession of his land to drive him to another suit for getting the value of such land due to him. When rights and liabilities are created by a Statute and jurisdiction conferred upon a special Court for the investigation of matters which may possibly arise in controversy, such jurisdiction is exclusive and cannot be concurrently exercised by the ordinary Municipal Courts of the land. Exproprietory Statutes have to be strictly construed.

The Reference Court is bound to adjudicate upon the questions relating to apportionment when the same is sought for, and not refer the matter to another suit. It would not be proper for him to postpone such adjudication where the same is sought for by way of express relief in a duly framed suit, the plaintiff having taken care to pay the necessary institution fee. In view of the statutory exemption from paying such court fee, references, in which apportionment is claimed by way of a distinct relief, have to be dealt with on the same basis as suits of the nature indicated above. The direction of the Reference Court requiring the parties to have the rights between rival claimants to the compensation amount adjudicated in another suit when an application under Section 27 of the Land Acquisition Regulation is put in, would therefore be clearly improper.—

21 T. L. J., *808.*

Section 28.

The Land Acquisition Officer had paid compensation amount to the contending parties in pursuance of his award; but as under the appeal decision, a larger amount was due to the plaintiff, he applied for execution against the Sirkar for realisation of the sum remaining unpaid, but his prayer was resisted on the ground that there was no liability for the Sirkar, that the plaintiff must move the District Court for restitution of the amount wrongfully received by the second defendant, and that when once the Dewan Peishkar disbursed the amount under the statutory powers, there was no justification for calling upon the Sirkar to produce the money over again by means of an execution application. These contentions were overruled by the District Judge :

Held.—The Dewan Peishkar had clearly followed the wrong procedure in disbursing the money. Under Section 28, Clause (2), of the Regulation, he was bound to deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted, if there was any dispute as to the title to receive the compensation or as to the apportionment of it. The first Proviso to this Section enables any person admitted to be interested to receive payment to do so under protest as to the sufficiency of the amount When that Clause is peremptory, the existence of the Proviso referred to does not relax the obligation as to deposit or at least as to the sound exercise of the discretion.

The matter is made clear by No. 21 of the Rules passed on 1-5-1090 under Section 41 relating to deposit. These Rules have the force of law. There is no conflict between the Rule and any Section of the Regulation under which it derives its binding force. The disobedience of the express provision of law by the acquiring Officer had led to this *impasse*, for if the amount had been deposited in the District Court, it would have been available for distribution in accordance with the decree in appeal. The plaintiff should not be made to suffer for the irregularity in procedure on the part of the Land Acquisition Officer.

The award by the District Court did tantamount to a clear direction that the Government shall pay to each party the

amount awarded to him and that the Government was bound *prima facie* to supply the amount of compensation. The Government could not throw on the party whose property had been compulsorily acquired, the risk and burden of recovering the compensation from some one else to whom the Government had wrongfully paid it. It was open to the Government to recover the excess from those to whom it was paid. The Sirkar was bound to submit to an order being passed on the plaintiff's execution application for bringing into Court the amount necessary for payment to him in full the compensation according to the decree in appeal.—

23 T. L. J., *1131.*

Section 31.

Where a person who was dispossessed without compensation under the Land Acquisition Regulation, failed to press his right to interest under Section 31 of the Regulation, either before the Court of Reference (District Court) or the High Court in appeal:

Held.—It was not open to him to claim such interest in proceedings in execution for enforcing the award, The award has the force of a decree and the Court in enforcing the 'award' is functioning merely as an executing Court and cannot go behind the 'award'.—

21 T. L. J., *910*

Section 35.

The Dewan Peishkar acts as a Court subordinate to the High Court in making or refusing to make a reference to the District Court under Section 35 of the Regulation and its orders can be interfered with in revision in the High Court.

It is for the District Court and not for the Dewan Peishkar to dispose of the case on the merits, and it is not necessary for the owner to apply for any reference under Section. 35 (F. B.).—

46 T. L. R., *351.*
(**21 T. L. J.,** *149*).

Other Cases.

1. A Thiruppuvarom-holder is not entitled to any share of the compensation awarded under the land acquisition proceedings in respect of the land charged with the Thiruppuvarom, for he is, strictly speaking, interested if at all, only in the land revenue and not in the land and land revenue which already belongs to Government cannot be deemed to be compulsorily acquired by them under the Land Acquisition Regulation, Apportionment of compensation for Jenmom land held on Kanapatton should be made in accordance with the principles enunciated in 11 T. L. J., 369 (=37 T. L. R., 292).—

22 T. L. J., *402.*

2. Sale of small bits afford no criterion for the valuation of larger plots. It is a well-known fact that a purchaser may be willing to pay a price far in excess of the real value for a small plot of land when that plot of land is needed by him in order to round off his own property or for some other such reason.— **22 T. L. J.,** *1133.*

3. See also Regn. V of 1071, Sec. 44.—
21 T. L. J., *517.*

REGULATION I OF 1090.
(Village Panchayat Courts.)

---

1. The Village Panchayat Court, Parur, issued a prohibitory order to keep under attachment Rs. 10 out of Rs. 20, the pay of a clerk, Parur District Court, in execution of the decree in Case No. 289 of 1104 on its file. In execution of a decree of the Parur Munsiff's Court, Rs. 6 per mensem out of the pay of the clerk was

already under attachment, leaving a balance of Rs. 14. Under Section 52 of the Civil Procedure Code of 1100, the balance of Rs. 14 available is exempt from attachment. But under Section 53 of the Village Panchayat Courts Regulation, only Rs. 10 is exempt from attachment, leaving a balance of Rs, 4 which can be attached in execution of the Panchayat Court's decree. On the question whether the provisions of Section 52 C. P. C. which was passed subsequently, under which the salary of a public officer is wholly exempt if not exceeding Rs. 14 and to the extent of Rs. 14 per mensem if exceeding that amount, do not supersede Section 53 of the Village Panchayat Courts Regulation:

Held.—The Village Panchayat Courts Regulation was not among the enactments referred to in the Second Schedule to the Civil Procedure Code (1100) nor was there anything in the latter Regulation to show that it was intended to alter the law as laid down by the old schedule. The Regulation was a special law which conferred a special jurisdiction of a limited nature on the Courts created by the Regulation and provided for a special procedure to be followed. In executing the decree of a Village Panchayat Court against movable property within its jurisdiction, the provisions of Section 53 of the Regulation must be applied and the salary of a public officer would be exempt from attachment to the extent only therein indicated.— **47 T. L. R.**, *114*.
(=**21 T. L. J.**, *317*).

2. In execution of a decree passed by the Village Panchayat Court, Parur, the same Court attached a cow as if it belonged to the decree-debtor. The revision petitioner claimed the cow as his own and presented a petition to the Panchayat Court to release the cow from attachment The claim petition was dismissed for default of appearance on the part of the claimant who then moved the Court by what was deemed to be a review petition to readmit his claim petition.

This was granted by the Panchayat Court after notice to the decree-holder. The question arose whether the Panchayat Court has jurisdiction to grant the prayer:

Held.—Regulation I of 1090 does not recognise a review. But the order restoring the claim petition is supportable under Section 105 C. P. C. or at any rate under the inherent power of the Village Panchayat Court.

All final Courts including Revenue Courts have an inherent jurisdiction to make such orders as may be necessary for the ends of justice,—

46 T. L. R., *208*.
(=**20 T. L. J.**, *1022*).

Ref.—21 T. L. J., 1219.

3. The Panchayat Court has no jurisdiction to review its own judgment passed on the merits. The Regulation does not expressly confer any such power on the Panchayat Court.—

21 T. L. J., *1219*.

REGULATION VIII 1090.

(Insolvency.)

Section 6.

1. Whatever may be the legal position on the point under the English Bankruptcy Laws, under the Indian and Travancore Statutes, the Courts have no inherent power to dismiss a debtor's petition for adjudication on the simple ground that the petition is an abuse of the process of Court if the debtor is otherwise entitled to present his petition under Section 6, clause 3. Of course it would be open to the creditor when the debtor after adjudication comes up for final discharge, to allege and prove that the debtor had been guilty of bad faith, etc, and on proof of bad faith, misconduct and kindred matters the Court may refuse to order his final discharge.

(In the case, it was alleged that the petitioner-debtor had executed a fraudulent document in favour of the first counter-petitioner some time before his petition and that the petition was in consequence, an abuse of process of Court).--

21 T. L. J., *1390*.

2. See also Sec. 9.—22 T. L. J., *688*.

Section 9.

1. It is settled law that the claim of the petitioning creditor should have been in existence when the alleged act of insolvency was committed.

Section 9 of the Insolvency Regulation contains no words to restrict the authority of the Court to substitute another creditor in the place of a negligent petitioner—creditor. Such substitution can be made even though the prescribed period had expired after the alleged act of insolvency. "The object of the Section is to prevent other creditors from being injured by the action of one creditor who by reason of collusion or otherwise may not diligently prosecute the petition. If it is to be regarded as a new petition, this object is frustrated and there is no purpose in having a Section of the kind. If the original petition had proceeded up to adjudication or if another creditor whose debt is not barred by the date of substitution is substituted, and obtained an order of adjudication, the appellant's debt which was not barred by the date of the petition could be proved. If so, there is no reason why he cannot be substituted. The words 'as petitioner' in the Section show that, on substitution, the petition becomes his petition with the original date and it is enough if the debt was an enforceable debt on the original date."

An assignment for the benefit of creditors generally cannot be relied upon as an act of bankruptcy by any one who is a party or privy to it. But the assent of the creditor to the deed must be obtained without fraud or misrepresentation on the part of the debtor and the deed must not contain any unexplained provision giving an advantage to an individual creditor over the others, otherwise an assenting creditor will not be debarred from presenting a petition based upon its execution.

The burden of proof of assent is on the person who alleges it. If the deed is void, assent to it by the petitioning creditor will not prevent him from petitioning.—

20 T. L. J., *218*.

2. Section 9 of the Insolvency Regulation allows the substitution of parties in cases where a petitioner (creditor) does not proceed with his petition with due diligence. But Section 9 and the allied Sections presuppose that the person or persons who apply for substitution are creditors who are entitled to apply for adjudication under Section 6 (iv) (*a*) and (*b*). *i. e.*, they should be persons to whom a debt exceeding Rs. 500 is due *and* the debt should be an *ascertained sum* payable immediately or at some future period,

The plaintiff in a suit, pending against the debtor, for rendition of accounts in respect of a trust of which the debtor was a trustee, was not a 'creditor' entitled to apply for substitution.—

22 T. L. J., *683*.

Section 12.

1. The progress diary shows that on 2-8-1103 notice was issued to the counter-petitioner-appellant and also the notice was sent to the Gazette for publication. But it does not show that any notice was served upon the counter-petitioner. The records also do not contain any such notice. The lower Court does not find that a notice was served upon the counter-petitioner. All that the lower Court says is:'—'It is difficult to believe that the counter-petitioner was not aware of the insolvency proceedings as the petition

was disposed of after publishing the fact of the petition in the Government Gazette:"

Held.—No such inference can be made from the mere fact of publication in the Government Gazette. Secondly the publication in the Gazette is not sufficient in the case of the debtor, because Section 12, Clause (3), of the Insolvency Regulation requires that where the debtor is not the petitioner, notice of the order under Sub-section (1) shall be served on him in the manner provided for the service of summons. This is an imperative provision of law. Section 14 of the Insolvency Regulation says that on the day fixed for the hearing of the petition or on any subsequent day to which the hearing may be adjourned, the Court shall require proof that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order fixing a date for the hearing of the petition under Section 12, Sub-section (1), and Section 15, Clause (1), provides that where the Court is not satisfied with the proof of the right to present the petition or of the service of the notice on the debtor as required by Section 12, Sub-section (3), or of the alleged act of insolvency or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition. Reading these provisions of law together, it is clear that the notice of the date of hearing should be served upon the debtor if he is not the petitioner. Before an order of adjudication is made, the Court must be satisfied that such notice was served upon the debtor and if the Court is not satisfied with the proof of service of notice on the debtor, the petition should be dismissed. These are mandatory provisions noncompliance with which will vitiate the proceedings.— **21 T. L. J.**, *948*.

2. Under Section 12 (3) of the Insolvency Regulation, the notice of the order fixing the date for hearing the insolvency petition has to be served on the debtor in the manner prescribed for the service of summons as laid down in Order V, Rule 9 *etc.*, of the Civil Procedure Code through an Officer of the Court. Service of notice by registered Anchal, as in the present case, is insufficient. Rule 20 (3) framed by the High Court seems to diverge from the provisions of the parent Regulation and should give way to what the Regulation provides in this respect.

Notice to the debtor is an essential requisite and not a mere formality.—

22 T. L. J., *1256*.

Section 15.

1. Under Section 15, so far as the petition of the debtor is concerned, the Court has to be satisfied only that he has a right to present the petition and if that is proved the petition cannot be dismissed. The words "for any other sufficient cause no order ought to be made" applies only to petitions by creditors and not to petitions by debtors.

The decision in *J. F. Watkins* v, *Raja Roheenee Bullab*, 10 B. L. R. App. 11 (on which were based 13 T. L. J., 339 and 11 T. L. J., 402) did not relate to adjudication, but to discharge of the debtor.—

20 T. L. J., *875*.

Section 16.

1. A plaintiff who has been adjudicated an insolvent can maintain the suit.

In spite of adjudication in insolvency and the vesting of the properties in the Official Receiver, the insolvent has still subsisting rights in the properties. Section 16 of the Regulation prohibits only suits and proceedings against the insolvent without the leave of the Court and there is no specific prohibition of suits or proceedings by the insolvent. Statutes which restrict the liberty of the subject have as a rule to be construed strictly

and no prohibition which is not expressly mentioned in the statutes could be imported into them.—

23 T. L. J., *879.*

2. See also Sec. 30.—**46 T. L. R.,** *99* (=**20 T. L. J.,** *641*).

Section 21.

Section 21 of the Regulation enables the insolvent to make an application to the Court against any act or decision of the Receiver 'if he is aggrieved' by such act or decision. But the insolvent cannot be aggrieved in the legal sense of the word by the sale of property in which he has no interest. 'A bankrupt can do nothing to embarass the administration of the estate. The mischief would be enormous.'— **23 T. L. J.,** *750.*

Sections 23 and 25.

The appeals were from an order of the Insolvency Court striking out the names of the appellants (alleged creditors who had filed affidavits verifying their debts in accordance with Section 24 of the Regulation) from out of a list of the insolvent's creditors, the Court presumably purporting to exercise jurisdiction under Section 25. The proceedings for striking out had been initiated by a creditor, by two petitions—one petition presented to the Official Receiver and apparently filed by him with the Court. another petition presented to the Court, which the Official Receiver supported rather than declined to consider. The Insolvency Court had however failed to frame the schedule of creditors under Section 23 (1), the only attempt to comply with the Section consisting of a list of creditors produced by the Official Receiver under orders of the Court, the list being the same as that supplied by the insolvent. It was argued on behalf of the appellants that the Court below had acted without jurisdiction in that (1) no schedule had been prepared under Section 23 (1) as preliminary to procedure under Section 25, (2) the Court should have been moved under Section 25 by the Official Receiver in the first instance and only on his declining to do so, by any creditor. On behalf of the Official Receiver-respondent it was contended that there was only a defect in procedure, that the appellants did not raise the question of jurisdiction before the lower Court, that the matter had been decided against them in the lower Court on the ground of default to produce evidence in support of the genuineness of their debts:

Held.—(1) Sections 45 (2) and 46 (2) of the Insolvency Regulation made applicable to the appeals herein the Civil Procedure Code and the Appellate Court, in any event, would probably be erring on the side of caution, if the Rule in Section 78 of the Civil Procedure Code that no decree shall be reversed in appeal on account of any error, defect or irregularity not affecting the jurisdiction of the Court, be adopted.

(2) In the absence of express authority it seemed that if the failure to comply with Section 25 did not affect the jurisdiction, the failure to comply with Section 23 might do so.

(3) The well-settled rule was that jurisdiction could not be given by consent where none existed; but if the Court was competent to try the subject-matter of the dispute, consent might waive irregularities in the exercise of that jurisdiction.

(4) The original failure of the Court to perform its statutory function of framing a schedule produced the result that there was no schedule in respect of which the Court could exercise jurisdiction under Section 25, in other words, there was no subject-matter in respect of which an order could be made; and therefore, the Court, in purporting to strike names out of a non-existent schedule could not be

said to have been exercising any jurisdiction.

In the result, the appeals were allowed.

24 T. L. J., *277.*

Section 26.

On an application of a creditor under Section 26 (8) of the Insolvency Regulation for annulment of a composition and for re-adjudging the debtor insolvent, the Judge, 'in exercise of his discretion' ordered notice to all the creditors of the insolvent and as the applicant did not pay the requisite process fees within the time fixed, the Judge subsequently rejected the application:

Held.—The plain intention of Section 26, Clause (8), clearly was that the Court's jurisdiction to grant relief to the petitioner was subject to the condition that the exercise of it shall not affect any act done in pursuance of the scheme sanctioned by the Court. The lower Court was therefore wrong in ordering the issue of notice to the large body of creditors whose claims have with very few exceptions been satisfied in pursuance of the composition scheme. It was not to be understood, however, that if at a later stage of the case it was necessary to hear all or any of the creditors, it would not be open to the Court to order notice to them.—

21 T. L. J., *1933.*

Section 29.

The insolvent and another were the joint foremen of a chitty to which the appellant was a subscriber. Money was due to the appellant from the insolvent on account of the chitty transaction. The appellant sought to set off against this debt another debt due by him to the insolvent under a hypothecation bond executed by him to the insolvent;

Held.—The two transactions were mutual dealings which actually ended in a debt, and therefore the appellant was entitled to the set-off claimed by him.

Observed further.—The appellant could not set off a debt due by him alone along with others against the chitty subscriptions due to him alone.—

23 T. L. J., *54.*

Section 30.

1. Section 30 of the Insolvency Regulation deals only with the proof of claims by secured creditors and does not provide for realisation of their security, but merely lays down the procedure to be followed by a secured creditor who seeks to realise anything more than the value of his security.

There is nothing in the Section by which the Official Receiver can sell the property of the insolvent to any one secured creditor without regard to the rights of other secured creditors over the same property.

In respect of properties which are subject to a mortgage or charge, under Section 16 (2), the equity of redemption over those properties alone vests in the Official Receiver on the passing of an order of adjudication and he can only transfer that right and no more. The Official Receiver has no power to alienate encumbered properties without the express consent of the mortgagees.

A transfer of property by the Official Receiver is not affected by the rule of *lis pendens* unless the party seeking to bind him applied to have him joined as a party to the suit.—

46 T. L. R., *99*
(=20 T. L. J., *641*).

Ref.—20 T. L, J., 858.

2. The rights of a secured creditor will remain unaffected by the adjudication of the debtor or his heir. It may be that in enforcing his rights, the secured creditor will have to bring the Official Receiver in whom the equity of redemption would

have become vested by operation of law on the date of adjudication. Except to this extent, the rights of a secured creditor could not be held to be affected. A secured creditor may ignore the Insolvency Court altogether, in which case he will have to rest satisfied with his security and forego all claims to a dividend from the realisation from sale of other properties, if his security is eventually found insufficient for his debt,

It is open to a secured creditor to relinguish his security and allow himself to be treated as an unsecured creditor and claim a dividend on that basis. Such relinquishment must be clear. A relinquishment may be presumed if it is clearly made out that the creditor has not elected to enforce his claim independently of the insolvency proceedings.—

20 T. L. J., *858.*

Section 35.

1. The expression 'void' in Section 35 of the Regulation (VIII of 1090) means 'voidable'. Under the Section, the transfer is liable to be avoided at the instance of the Official Receiver, unless the transferee can uphold the transaction. The *onus* of proving that the transfer was made in good faith and for valuable consideration is on the transferee.—

20 T. L. J., *43.*

Not fol.—21 T. L. J., 1255.

23 T. L. J., 620.

2. Where a creditor of an insolvent, within two years prior to the commencement of the insolvency proceedings, got a compromise decree against his debtor, specifically charging certain moneys belonging to the latter, and there was no case that the compromise decree was false or fraudulent:

Held.—The creditor was a "secured creditor" within the meaning of Section 2 of the Insolvency Regulation and was entitled to realise the moneys in satisfaction of his claim in priority to other creditors who had placed attachment thereon in execution of their decrees obtained only subsequent to the decree on compromise.

Section 35 of the Insolvency Regulation was not applicable to the case as there was no question that the claim under the compromise decree was not a true and valid one and any transaction under Section 35 was good until it was set aside. The word "void" in Section 35 means only voidable.— **21 T. L. J.,** *1240.*

3. In deciding the question of the validity of assignments by an insolvent, under Sections 35 and 36 of the Insolvency Regulation, the distinction between the two Sections should be borne in mind, *viz*, that if the assignment be found to be real and supported by consideration and good faith, the question whether there was fraudulent preference could be satisfactorily decided only after considering the several points set forth in 8 T. L. J., 309; if on the other hand, the assignment be found to be unsupported by consideration or good faith, it would be void under Section 35 and no question of fraudulent preference would arise at all.

The *onus probandi* under Section 35, is not on the transferee but on the Official Receiver to establish that the transaction was not *bona fide* or for value.

Ordinarily the question of burden of proof is of little consequence where both sides have adduced evidence, But a case might occur where the trial Judge's mind was coloured by his erroneous view of the law in regard to the *onus* and he had thereby been disabled from evenly weighing the evidence. In such a case a remand for retrial might be necessary.—

21 T. L. J., *1255.*

4. In cases under Section 35 of the Insolvency Regulation the burden of proving that the transfer in question would fall within the exceptions enumerated in the above Section is upon the transferee; for the policy of the Insolvency

Law is to presume that transactions entered into within 2 years preceding the order of adjudiction are invalid until the contrary is shown.

It is incumbent on the Court however to allow the transferee an opportunity to make out that his transfer falls within the exceptions set forth in Section 35.—

22 T. L. J., *772.*

5. Under Section 35 of the Regulation, the burden of proving that the transfer was without valuable consideration and not made in good faith is on the Official Receiver, and not on the transferee. Reason and policy are against holding that under Section 35 the burden of proving the good faith of the transaction is on the transferee and not on the Official Receiver. There is nothing in the Regulation itself to suggest that, in enacting Section 35, the Legislature intended a deliberate departure from the general principle of law which is clear that he who seeks to avoid a document or transaction has to set up and prove affirmatively the necessary circumstances which would invalidate it (F. B).—

49 T. L. R., *18*
(= **23 T. L. J.,** *620*).

REGULATION IX OF 1090.

(Succession Certificate.)

1. The counter-petitioners obtained an order from the Munsiff for the issue of a succession certificate. The petitioner applied to the Court for the cancellation of the order on the ground that it was passed without notice to him. The Munsiff rejected the application and the appeal to the District Court against that order was also rejected on the ground that no appeal lay :

Held (In revision).—The order of the District Court was right. The contention that as the order for the issue of the certificate was passed *ex parte*, the petition for cancellation of it should be regarded as a petition under Order IX, Rule 13. of the Civil Procedure Code and that, under Section 105 of the Code. the provisions of the Code were applicable to the case under consideration could not prevail. The Succession Certificate Regulation contained no provision to the effect that the provisions of the Civil Procedure Code were generally applicable to proceedings under it. Except in so far as it was expressly provided by the Regulation itself, the general provisions of the Code could not apply by virtue of Section 105 of the Code to a Court administering the Regulation. Further, there was a specific provision in the Regulation, namely, Section 16, Clause (*a*), under which the petitioner could move for revocation of the certificate on the ground that the proceedings to obtain it were defective in substance. The petitioner's application to the Munsiff had to be treated as one under this Section and if it was so treated no appeal lay as no appeal was provided under Section 17 against an order refusing to revoke a certificate granted.

The contention that Section 16 (*a*) of the Succession Certificate Regulation applies only to applications for revoking a certificate granted and not to an application as in the case where no certificate was actually granted but only an order for granting a certificate was passed, must be repelled, When an order is passed for granting a certificate it is equivalent to granting a certificate because nothing more remains to be done under the Regulation except to draw up the certificate with the particulars as contained in Section 7. and the law regards that as done which ought to be done.—

22 T. L. J., *490.*

2 Where a party fails to produce the necessary succession certificate in the Court of first instance, he should be given an opportunity to produce it, by the Appellate Court on payment of costs.—

21 T. L. J., *330.*

REGULATION IV OF 1091.

(Land Conservancy.)

1. Plaintiff sued for declaration of the title and possession of a certain land which he claimed as his registered holding. The Sirkar contended that the land was Poramboke. Proceedings were started against the plaintiff for alleged encroachment and he was fined. Being threatened with immediate eviction, plaintiff took on lease under protest the trees on the disputed property on Kuthagapattom. It was proved in the case that the plaintiff was in possession before the lease for over 50 years :

Held.—Possession is evidence of title and primarily exclusive. It is for him who impugns this exclusive title, to show that the possession arose in some way which has reserved his own right. *Prima facie* possession is adverse.

Adverse possession should be adequate in publicity, continuity and extent, but a burden cannot be cast on the party in possession to prove notice of such possession on the part of the real owner.

As the Rules framed under the Land Conservancy Regulation make it the primary duty of the Officers in the Land Revenue Department to take prompt action in cases of unauthorised occupations of Government land, it is idle on the part of Government to profess ignorance of the plaintiffs' possession.

The operation of the Limitation Regulation remains unaffected by the Land Conservancy Regulation. Adverse possession will destroy the title of Government as of any other person. Even granting for argument's sake that Section 3 of the Land Conservancy Regulation serves the purpose of raising a presumtion in favour of Government, plaintiff's possession in the present case not only counteracts any presumption in Government's favour but also gives rise to a presumption in plaintiff's favour.

Section 110 of the Evidence Act throws the onus of proof in cases of disputed ownership on the party out of possession. The use of the present tense in the Section is due to the recognised mode of legislative expression and does not justify the inference on the discontinuance of possession, that the possession so long as it continued was without title. The attempt on the part of the Sirkar to exclude the operation of the Section relying on the Kuthagapattom transaction cannot succeed. If the plaintiffs' possession can be presumed to have been with title, then it is for the person who, without acquiring the title of the person ousted, admittedly disturbed the possession, to prove his title. Where a party rests his case solely on adverse possession he cannot succeed unless he proves such possession for the statutory period, but where the case is put on the basis of title, possession may be of service as evidence of title. Possession plays a twofold part inasmuch as it is evidence of title and source of title. The presumption of an origin in some lawful title which the Courts have so often made in order to support possessory rights, long and quietly enjoyed where no actual proof of title is forthcoming is one which is not a mere branch of the law of Evidence. It is resorted to because of the failure of actual evidence. At the same time it is not a presumption to be capriciously made, nor is it one which a certain class of possessors is entitled to *de jure*. When it is necessary to indicate what particular kind of lawful title is being presumed, the Court must be satisfied, that such a title was in its nature practicable and reasonably capable of being presumed without doing violence to the probabilities of the case.—

46 T. L. R., *334*
(=20 T. L. J., *772*),

Ref.—23 T. L. J., 167.

2. The suit was for declaration of title and possession of plaint property on the allegation that it formed part of the plaintiff's registered holding. The Sirkar contended that the property was Poramboke because there was entry in the Settlement records to that effect and that the suit was barred by limitation. The suit would have been within time if the three month's time of notice to Sirkar were excluded :

Held.—A mere entry in the Settlement records that the land was Poramboke was not evidence which could support the claim of the Sirkar. Section 18 of the Land Conservancy Regulation prescribed a period of limitation within the meaning of Section 30 of the Limitation Regulation. The Section fixes a period of one year for such suits and under Section 15 (2), the plaintiff had a year and three months (the period of notice to the Sirkar) from the date of the receipt of notice of the Poramboke decision to file his suit.—

49 T. L. R., *150*
(=**23 T. L. J.**, *196*).

REGULATION I OF 1092.

(Companies Regulation.)

1. There is no express provision in the Companies Regulation for the Court to review an order already passed. The wording of Section 204 does not seem to contemplate reviews. However it is open to the Court in the exercise of its inherent powers to prevent injustice to modify an order already passed on sufficient grounds being shown.—

46 T. L. R., *154*
(=**20 T. L. J.**, *236*).

Ref.—46 T. L. R., 208 (=20 T. L. J., 1022).

2. The plaintiffs, five of the shareholders of the Tropical Plantations Ltd., filed the suit, *inter alia*, for convening, by direction of the Court, of a general meeting of the share-holders for ascertaining the sense of the majority regarding the management of the affairs of the Company on the allegation that a deadlock had come about in the affairs of the Company by the simultaneous activities of two rival sets of directors. The Company was made the first defendant, and the rival sets of directors were also represented on the defendant array. It was prayed alternatively, that if the reliefs asked for could not be granted, the suit might be treated as a winding and orders passed thereon accordingly. By interlocutory applications, the plaintiffs applied for (1) transposing the first defendant-company to the plaintiff array, (2) the calling of a general body meeting for the purpose of ascertaining the will of the shareholders in the matter of the conduct of the suit on behalf of the company, &c., (3) arranging the agenda of the proposed meeting under certain heads for purpose of enabling the company to carry on its business properly. The lower Court dismissed the third application, granted the second and postponed decision on the first till the result of the general meeting could be ascertained.

In revision before the High Court by both the parties :

Held.—The law on the subject of Companies does not appear to contemplate the interventien of the Court in order to enable Companies to be carried on. A distinction must be drawn between Companies and charities. As regards the latter the Court may have to frame schemes and take other steps which may be necessary to see that the charitable objects are carried out, but Companies are expected to be run by their share holders.

Ordinarily the proper persons to file a suit on behalf of the Company are the Directors ; and individual share-holders cannot sue except for some relief claimed by themselves individually or to restrain the Company from doing something beyond its powers. If the Directors are acting improperly and proposing to do

something against the wishes of the share holders or which is *ultra vires*—the Directors and not the Company—it is for the shareholders to restrain them but in certain cases shareholders have been allowed to sue on behalf of the Company against the Directors without previous authorisation and when their right to do so has been questioned, the Court has ascertained the wishes of the shareholders as regards the suit by directing the holding of a general meeting. It cannot be said to be very clear as to the limits within which such suits may be brought. Usually however this procedure has been adopted where some emergency has arisen necessitating prompt action to meet a danger threatening the Company's interests, where the ordinary method of calling a general meeting would take too much time. In such cases the Court besides directing that a general meeting should be called to ascertain the wishes of the shareholders, may pass interim orders to preserve the *status quo* in the meantime. Any other prayer should not be granted.

The Court has jurisdiction under Order I, Rule 10 (i), to add the name of the company as plaintiff under certain conditions, as *e.g.*, if it appears that some of the reliefs asked in the plaint could only be asked for in a suit in which the company is a plaintiff or at least there is a strong doubt on this matter, the Company may be made a plaintiff if willing and if the Court thinks fit. Such jurisdiction could be exercised where according to the plaintiff the company had been made a defendant by a *bona fide* mistake. The fact that the mistake was one regarding appreciation of the law on the subject did not prevent the operation of the Section.

The circumstance that the plaintiffs themselves could have called a general meeting may be taken into consideration for appreciating the emergency, but the objection on this score does not go to the root of the matter.

The relief by winding up prayed for in the plaint was not inconsistent with the company being the plaintiff since Section 168 of the Companies Regulation permits a petition for winding up to be made either by a Company or a creditor or a contributory. In the result the order of the lower Court was confirmed (F. B.)—

47 T. L. R., *268*.
(=**21 T. L. J.**, *1314*).

Ref.--22 T. L. J., 1331.

3. An appeal will lie against an order made in the matter of winding up of a company provided it finally decides a dispute between the parties or deprives the appellant of a substantial and important right and is not a mere formal or interlocutory order.

In fit and proper cases, the Court may stay winding up proceedings on the ground that they are abuses of the processes of the Court.

Where the managing director of a limited company moved for stay of proceedings in connection with certain winding up petitions on the ground that they were in abuse of process of the Court, but the Court ordered the admission of the petition and the advertisement thereof, proposing to consider the question of abuse of process only after issuing the necessary notice, and the managing director appealed:

Held.—The appeal was competent.—

49 T. L. R., *121*
(=**23 T. L. J.**, *211*).

REGULATION II OF 1092.

(Christian Succession.)

Among Syrian Christians, the husband's right in his deceased wife's property is only a life interest terminable at death or re-marriage.— **22 T. L. J.**, *721*.

REGULATION III OF 1094.

(Chitties.)

Section 3 (1).

Where a chitty scheme provided that there would be drawings for some months and the prize winners paid and thenceforward be absolved from liability for subsequent instalments and that eventually all those who had not been prize winners would be given back the amounts they had actually subscribed and the plaintiff, subscriber, who had been duped into joining the scheme by the foreman, filed the suit for paid-up subscriptions, on collapse of the chitty by the default of the foreman:

Held (On contentions set up by defendant-foreman).—(1) It could not be stated that the chitty partook of the character of a wagering transaction and was for that reason illegal.

(2) The suit chitty was a transaction partaking of the nature of a chitty though not coming inside the definition of Sub-section (1) of Section 3 of the Regulation. Such transaction was not illegal but void only, and there was a clear distinction between an agreement forbidden by law and one merely void.

(3) By virtue of Sectiun 65 of the Indian Contract Act which has been held wide enough to give relief in case of contracts void in their inception and also the fact that the chitty must have been subsequently discovered to be void, the plaintiff was entitled to compensation amounting to the value of the paid-up subscriptions.

(4) The principle that restitution cannot be allowed if the illegal object had been carried out did not apply because the plaintiff was not equally at fault with the defendant.— **24 T. L. J.,** *333.*

Section 5.

1. In a suit filed in the Parur Munsiff's Court for recovery of subscriptions due from the defendant to a chitty conducted at Cochin, it was contended that, as the plaint chitty was an unregistered one, it contravened the terms of Section 5 of the Travancore Chitties Regulation. It was therefore urged that the chitty did not create obligations or rights enforceable in a Court of law in Travancore:

Held.—The plaint chitty was one which could create rights and obligations enforceable in Travancore. It would appear contrary to ordinary principles of International law to construe Section 5 as prohibiting the conduct of chitties in other countries unless registered in Travancore. As regards the validity of a contract made abroad, the *lex locus contractus* has to be followed.—

46 T. L. R., *164.*
(=20 T. L. J., *325).*

2. The suit was to recover money as arrears of subscription with the penalties prescribed for default, on the basis of a chitty security bond executed by a prized subscriber. The chitty was unregistered and therefore offended against the provisions of Section 5 of the Regulation:

Held.—The suit as framed was not maintainable. The chitty not being registered was *prima facie* illegal.

Per Venkata Rao, J.—If the suit had been framed as upon the bond and for recovery of the advance made under it, the suit may not be maintainable. The plaintiff would then be simply suing for money belonging to him which has been taken and is being retained by a person who has no right to it. There is no *turpis causa* in the matter.—

49 T. L. R., *280*
(=23 T. L. J., *550).*

Dist.—24 T. L. J., 333.

Section 17.

According to the security bond executed by a prized subscriber to a chitty, the

prize money was reserved with the foreman for payment to a creditor of the subscriber. The payment was not made:

Held.—The undertaking in the security deed by the foreman to pay the prize money to the creditor of the subscriber was not a payment of the prize money to the subscriber within the meaning of Section 17 of the Chitties Regulation. The agreement between the foreman and the subscriber to pay off the creditor of the latter was merely the substitution of one simple contract by another similar executory contract. It is a general rule of law that one simple contract cannot be satisfied by any similar executory contract unless founded on a new consideration or it be such as to give an immediate right of action upon breach thereof, for that is merely substituting one cause of action for another.— **23 T. L. J.,** *67.*

Sections 21 & 23.

Where the Munsiff recorded a finding on an issue to which no objection was filed in time before the lower Appellate Court, and that Court took the view that a point could be taken without a formal objection:

Held.—An objection was necessary under Rule 301 of the Civil Courts' Guide, which Rule has been held to be consistent with the Civil Procedure Code.

Although under Sections 21 and 23 of the Chitties Regulation, it might appear that the terms of the Variola would be construed strictly against a subscriber to a Chitty governed by the Chitties Regulation, yet under Section 49 of the Regulation, power is given to give relief against them, if they are unconscionable or contrary to law.

The provision in the Variola that the defaulting non-prized subscriber should forego the Veethapalisa has not been usually regarded as penalty.—

22 T. L. J., *1810.*

Section 27.

The onus of proving default of subscriptions lies on the plaintiff. In suits on chitty bonds, evidence *aliunde* is required to prove that plaintiff's claim to the particular relief arose on the date mentioned by him and it is manifest that he ought to lead evidence as to that fact. Under Section 27 of the Chitties Regulation and under Article 120 of the Limitation Regulation, the plaintiff's claim to this relief arises only on demand being made in writing. In cases governed by these Statutes, therefore, the plaintiff would have to prove not only that default occurred on the date stated by him but also that he issued a written demand to the subscriber for payment of the future instalments in a lump.—

50 T. L. R., *126.*

Section 28.

Though, in a case, where the chitty had collapsed and the foreman had become an insolvent, the law was clear that the non-prized subscribers should be impleaded in a suit as against a prized subscriber by the assignee of a chitty security bond for realisation of unpaid subscriptions, the question still remained to be settled whether such impleading would be imperative where a security bond had been assigned after the collapse of the chitty, but at a time when the foreman was in a solvent condition and his insolvency had happened afterwards. This must depend upon several considerations, such as, whether at the time of the assignment the foreman had no apprehension of impending insolvency, whether the assignment was in favour of a non-prized subscriber for chitty money due to him or to an utter stranger unconnected with the concern, whether it was a *bona fide* transfer of a chose in action or one in fraud of creditors particularly non-prized subscribers and whether it was an instance of fraudulent preference. If Section 28

of the Chitties Regulation be applicable, the matter would be free from doubt since it would apparently apply to assignments made either before or after the foreman's insolvency. The Section cannot, however, control a chitty started before the Regulation came into force and the question depends on what the pre-existing law was and whether the Regulation merely gave expression to the law as it stood at the time of its promulgation.

Where an assignee from a foreman of a chitty security bond filed suit against the executant prized subscriber for realisation of unpaid subscriptions on the ground of default and the defendant contended that the assignment was fraudulent as having been made at a time when the foreman was in insolvent circumstances though this was denied by the plaintiff and hence the non-prized subscribers whose claims remained unsatisfied should also be impleaded in the suit and it was in evidence that some of the non-prized subscribers had laid attachments on the bond amount while others had obtained decrees against the Chitty assets:

Held (Without deciding the broad question as to whether Section 28 of the Chitties Regulation enacted the pre-existing law).—Even assuming that the foreman was not in embarrassed situation when he made the assignment, the Court has ample powers under Order I, Rule 10. of the C. P. C., to join additional parties if it finds it necessary to do so, in order to enable it to effectually and completely adjudicate upon and settle all the questions involved in the suit. The avoidance of multiplicity of litigation is one of the main considerations that should weigh with Courts when a question of impleading comes to be settled.

In the circumstances of the case, therefore, the impleading of the non-prized subscribers, even those who had not obtained decrees or placed attachment, was a course which would conduce to the benefit of all the parties concerned.—
23 T. L. J., *1231.*

Section 46.

1. An offence under Section 46 could be said to have been committed if the minute filed before the Registrar was not a true copy of the original minute maintained by the foreman, and the other essentials set forth in the Section are also proved to exist in the case. A prosecution under the Section could also be validly maintained, if it is made out that the facts that the entries in the minute have been proved not to be a correct record as to what transpired on the date of the drawing in question and such false and inaccurate entries have been made with the intention and knowledge referred to in the Section. In the latter case, it is essential that the entries impugned as false are clearly specified in the charge, and inasmuch as the falsity of the entries is one of the essential ingredients constituting the offence, there should be a specific finding as to whether the averments in the entries in dispute are false or not.

If the falsity had been intended, the statement could be taken as having been *wilfully* made within the meaning of the Section. Intention is a state of the mind which has to be gathered from the attendant circumstances. In the absence of an explanation showing good faith on the part of the accused, the conditions laid down in the Section must be considered to have been satisfied.— **46 T. L. R.**, *45.*

2. With the reference to the copy of the minutes of proceedings filed before the Registrar as required by Section 14 of the Regulation, an offence under Section 46 could be said to have been committed, if the same was not a true copy of the original minute maintained by the foreman and the other essentials set forth in the Section are also proved to exist in the

case. A prosecution under Section 46 would also be validly maintained, if it is made out that the facts that the entries in the minute have been proved not to be a correct record as to what transpired on the date of the drawing in question, and such false and inaccurate entries have been made with the intention and knowledge referred to in Section 46. In the latter case, it is essential that the entries impugned as false are clearly specified in the charge, and inasmuch as the falsity of the entries is one of the essential ingredients constituting the offence, there should be a specific finding as to whether the averments in the entries in dispute are false or not.

The expression "wilfully" has not been defined in the Code. In determining the exact import of the word, the definition of the word by the Commissioners on the Criminal Law of England may be referred to. It has been interpreted as "a hurt, damage or other evil consequence of an act shall be deemed to have been caused wilfully where the doer of the act intended such consequence to result or knew or believed that it was likely to result from his act or where knowing or apprehending that such consequence would probably result from his act, he wilfully incurred the risk of causing it." If the falsity had been intended, the statement could be taken as having been *wilfully* made within the meaning of the Section.— **20 T. L. J.,** *709.*

Section 49.

See Secs. 21 & 23.— **22 T. L. J.,** *1910.*

Other Cases.

1. A restriction on the assignment of the subscriber's rights in the chitty rules to the effect that the consent of one of the foremen should be obtained for the assignment if it is to be recognised by the foremen is valid and binding on the subscribers.— **20 T. L. J.,** *978.*

Fol.—23 T. L. J., 478.

2. In the absence of any circumstances to indicate that the Karanavan may have joined the chitty and drawn the prize money for his own necessities, it would be unfair to deprive the foremen of the right to realise their dues from the Tarwad properties, when it is admitted that he was the Karanavan of the Tarwad who was in active management and against whom no allegation deserving of notice has been made.— **20 T. L. J.,** *481*

Ref.—48 T. L. R., 1.
21 T. L. J., 859.
21 T. L. J , 1195.

3. The suit was by the foreman of a chitty against a defaulting prized subscriber to recover the future subscriptions in a lump with interest from the date of default.

The lower Court held that the plaintiff was not entitled to interest on the lump sum from the date of default to the date of plaint, but could get interest only on such instalments as had fallen due till date of suit and on the lump sum after the date of suit :

Held.—The view of the lower Court was wrong. In the case of an unregistered instalment bond like the one in suit, the alternative claim to recover the lump amount with interest thereon came into play, no doubt, only on a notice in writing. But when it once came into play, it superseded the claim to recover the instalments in default one by one. In the case in suit, the plaintiff had elected to claim the amount in a lump sum and had extinguished his claim to each separate instalment. To uphold his claim to the lump amount, but to allow interest only on the basis of the extinct claim to each instalment was incongruous. The notice in writing, whatever its effect on the law of limitation, operated to start the claim as it stood at the date of the first default and not as it stood on the date of the notice. The claim to interest came into

existence along with the claim to the principal, be the date of the notice what it may.— **20 T. L. J.,** *575.*

4. The suit was for recovery of defaulted subscriptions in a lump with interest from date of default. The defendant contended *inter alia* that interest was allowable only from date of demand though under the chitty hypothecation bond executed by him, interest was to be paid on the whole of the unpaid subscriptions from date of default. The defendant also pleaded payment of subscriptions till the 17th instalment and not the 11th as alleged in the plaint and also a set-off of the amount due to him under a promissory note in his favour, Exhibit III, so that on a settlement of accounts Rs. 126¼ was due to him. The Court below found against the defence contentions. The defendant in appeal objected to the findings in respect of the genuineness of Exhibit III and the payment of subscriptions till the 17th but he paid court fees on the appeal memorandam only on the amount decreed in the suit. On preliminary objection as to the sufficiency of court fees on the appeal memorandam :

Held.—The appellant is bound to pay institution fees only upon the value of the relief claimed by him, *viz*, the dismissal of the plaint claim. The circumstance that the genuineness of Exhibit III or the payment of subscriptions from the 11th to the 17th drawings have to be considered in connection with the relief claimed, could not justify the appellants being required to pay anything in excess.

On the contention as to interest :

Held.—The liability for interest has to be determined with reference to the terms of the contract entered into by the parties. The necessity of a demand in writing for the accrual of cause of action for recovery of unpaid subscriptions in a lump has no reference to chitty hopothecation bonds. Even otherwise, it is doubtful whether the rule as to the accrual of the right to sue can be taken to affect the express terms of a contract providing for payment of interest from date of default.— **20 T. L. J.,** *965.*

Fol.—23 T. L. J., 966.

5. The retention in the hands of the foreman on account of the omission of the subscriber not furnishing security would be justifiable only with respect to the amount of future subscriptions. If there is any excess out of the prize amount over and above this sum, this should be expected to be handed over to the subscriber on the date of the prizing or on the date when the prize amount is declared payable under the Chattavariola unless the parties had entered into a contract otherwise. In the absence of such a contract, the retention of such excess amount should necessarily entail the imposition of a liability on the foreman for interest on the same towards damages on account of the latter having had the use of the same,— **20 T. L. J.,** *1250.*

6. The appellant. a prized subscriber, purchased in Court auction the rights of the foreman in a chitty hypothecation bond executed in his (foreman's) favour and brought a suit for the recovery of the amount due under the bond. It was contended *inter alia* that all the other non-prized subscribers are necessary parties to the suit.

Held.—The appellant so to speak has stepped into the shoes of the foreman by his purchase of the foreman's rights in auction. His position is in no way better or worse than that of the foreman. Unless there is proof at least *prima facie* that the foreman is in a state of bankruptcy or insolvency there is no necessity for impleading the non-prized subscribers as parties to a suit brought either by the foreman or by the purchaser of the foreman's rights in auction.— **21 T. L. J.,** *557.*

Ref.— 23 T. L. J., 1231.

7. Where a Karanavan prizes a ticket subscribed to on behalf of the Tarwad, in order that the Tarwad should be liable for the payment of future subscriptions the money should have been received for some Tarwad purpose. But the foreman starts with the presumption in his favour and a more favourable view should be taken of his case considering the fact that he is to some extent in the position of a debtor discharging a debt due to the Tarwad.— **48 T. L. R.,** *1* **(=21 T. L. J.,** *859*).

8. It is not incumbent on a foreman, for purpose of settling the claims of a prized subscriber to pay the chitty amount only less the discount. Payment of that amount less the future subscriptions or adjustment of such claim is sufficient 'payment' within the meaning of the Chitty Regulation inasmuch as a prized subscriber who is unable to furnish security may claim and be paid by the foreman, the prize amount less the future subscriptions.

Where therefore the foreman did not pay the full prize amount in cash to a particular prized subscriber but settled the claim by sale to him of a piece of land:

Held.—The chitty cannot be deemed to have collapsed on the ground that the foreman did not pay the prize money in the manner required by the Regulation.— **21 T. L. J.,** *1189.*

9. It would be casting a most irksome and onerous duty on the foreman of a chitty in every case where he is called upon to pay the prize to a prized subscriber, to insist upon his embarking on an elaborate enquiry as to whether the Karanavan has subscribed to the chitty in his capacity as Karanavan or whether after receipt of the amount he is going to utilise the money for the benefit of the Tarwad. It is not quite sure whether the foreman of a chitty would be justified in refusing to pay a prized subscriber whom he has allowed to join in the chitty and also to bid for the prize before the subscriber produces his credentials as Karanavan.— **21 T. L. J.,** *1195.*

10. In the absence of any allegation of insolvency or bankruptcy on his part, the foreman of a chitty is the *prima facie* owner of any subscriptions due from defaulting prized subscribers and any such moneys or decrees for moneys in his hands may be attached for his debts without any reference to the claim of any non-prized subscriber. No question of trust or trusteeship can arise between a foreman and subscriber except in cases where the solvency of the foreman is seriously in question.— **22 T. L. J.,** *518.*

11. The suit was by a prized subscriber in a chitty, who had not been paid the prize-money, for recovery of the paid-up subscriptions.

Held,—The suit was not maintainable as the plaintiff's right to claim the paid-up subscriptions has been superseded by a right to claim the prize-money. The plaintiff could not waive the right to claim the prize-money and go back to the possible right to claim the paid-up subscriptions which he could have made, had the chitty not been bid, especially as he had sent a notice claiming the prize-money.— **22 T. L. J.,** *1274.*

12. If in an agreement for the payment of an existing debt by instalments, it is provided that on default of payment of any instalment, the whole debt should be recoverable, the statute runs as to the whole debt from the time of the first default in payment of an instalment. When the subscriber makes default in the punctual payment of an instalment, the primary contract is broken and in its place there arises by virtue of the contract a new obligation which is to pay the future instalments in a lump. The foreman's cause of action arose on the date of default. The simple question to be considered in such cases is when the money

becomes due which in other words means as soon as the money becomes payable and can be legally recovered by the foreman,

The question whether the foreman chooses to sue or does not sue is wholly immaterial. In spite of the option given the money would nevertheless become 'payable' on the date of the first default.

The Article of the Limitation Regulation which applies to the case is Article 95 of the old Regulation.—

22 T. L. J., *1277.*

13. The suit was by a defaulting non-prized subscriber in a chitty against the foreman for recovery of the paid-up subscriptions inclusive of Veethapalisa. The question for decision was about the sustainability of the claim for Veethapalisa, the plaintiff having been a defaulter.

The chitty was conducted without any articles of association or rules to regulate the rights and liabilities of the subscribers or other relations with the foreman:

Held.—The plaintiff was entitled to Veethapalisa. Veethapalisa is the share of the discount distributed among subscribers, the discount itself being the result of the bid at which the prize is knocked down to the successful bidder. The discount is the margin left for distribution among subscribers from their collective contributions. It is not the foreman's money. The Veethapalisa for the drawings subscribed for by the plaintiff was credited in favour of the plaintiff not merely on the agreement of the foreman but also of the other subscribers, The foreman could not claim it back without the concurrence of the other subscribers. The accounts for the drawings should be taken as closed between the plaintiff on the one hand and the remaining subscribers on the other. The amount standing to the credit of the plaintiff on accounts so settled is payable to him. It is not liable to be reopened at the instance of the foreman alone who dose not suffer in his pocket, since funds have been placed at his disposal by others for payment to plaintiff.—

23 T. L. J., *20.*

14. A chitty hypothecation bond provided that the future subscriptions should be paid at the precise hour of the day on which the chitty took place and that if it was not so paid, it may be paid during the course of the day without a claim for Veethapalisa or within 90 days thereafter along with Kalvasi. After the instalment date but within 90 days thereafter, an amount covering the entire subscription but unaccompanied by Kalvasi was sent to the foreman by money order with a request in the coupon for the return of the Veethapalisa by the foreman. The foreman refused the money order and filed the suit to enforce the bond, as if the subscriber became a defaulter:

Held.—The provision for the payment of Kalvasi was in the nature of a penalty, and therefore the failure to tender Kalvasi along with the subscription did not occasion a default:

Held further.—The request in the money order coupon for return of Veethapalisa did not constitute the tender in any way invalid or conditional. By making a request which the foreman was at liberty to ignore and which he did actually ignore, the debtor was not imposing a condition. The tender was not a conditional tender. There was therefore no default on this ground also,—

49 T. L. R., *52*
(=**23 T. L. J.,** *105*).

15. Where the Thalavariola contained provision that no assignment by a subscriber of his chitty right would be valid without it being agreed to in writing by the foreman, an assignment in contravention of the provision would be invalid. Such provision could not be viewed as absolute restraint on alienation.—

23 T. L. J., *478.*

16. It is not every chitty started by the Karanavan either solely or with the co-operation of a junior member that could be considered as a Tarwad business. To hold so, there should be positive evidence that it was begun with the professed idea of its being an undertaking by the Tarwad, that it was agreed to by the other members who had assenting capacity, that it really benefited the Tarwad In the sense that the money that came into the hands of the Karanavan was utilised for Tarwad purposes or that the Tarwad members held out to the public that it was something that was run on behalf of the Tarwad, and on the faith of that representation, persons had been induced to take tickets,— **23 T. L. J.,** *964.*

Ref.—24 T. L. J., 206.

17. In a chitty started before the Chitty Regulation came into force, the necessity for sending a notice of demand is not a condition precedent to the accrual of the right in a foreman to claim a consolidated payment of all future subscriptions from a defaulting prized subscriber.

Where in a suit for recovery of future subscriptions in a lump, on breach of the condition in the chitty security bond, as to regularity of payment, the defaulting subscriber sought to uphold a plea of waiver by proof that subscriptions were paid and accepted even after breach :

Held.—The mere fact of receipt of some payments after default did not constitute waiver. The existence or otherwise of a contract, express or implied, by which the parties agreed to restore the defaulting subscriber to the position of a non-defaulter, is the crucial factor for determining the question of waiver,—

23 T. L. J., *966.*

18. In suits on chitty bonds, evidence *aliunde* is required to prove that the plaintiff's claim to the particular relief arose on the date mentioned by him, and it is manifest that he ought to lead evidence as to that fact. It may be stated that under Section 27 of the Chitties Regulation and under Article 120 of the Limitation Regulation, the plaintiff's claim to this relief arises only on demand being made in writing. In cases governed by these statutes, therefore, the plaintiff would have to prove not only that default occurred on the date stated by him, but also that he issued a written demand to the subscriber for payment of the future instalments in a lump (F. B.).—

23 T. L. J., *1040.*

19. The suit was by the foreman of a chitty against a defaulting prized subscriber for recovery of all the future subscriptions in a lump. The defendant pleaded that he had paid regularly 11 instalments and tendered the 12th instalment, which was improperly rejected, and deposted in Court the instalments from the 12th onwards that had accrued due then.

The primary Court accepted the defendants' plea, permitted the plaintiff to draw the amount deposited and to realise the subsequent instalments that had fallen due at the time of the decree and affirmed the rights of the parties *inter se* as if no default had happened.

Held.—The plaintiff by drawing the money deposited in Court, had made himself incompetent to sustain his appeal from the decree. It was a well known rule of law that a party who had taken the advantage of the order of a Court could not turn round and say that for another purpose it would not bind him. He could not approbate at one time and reprobate at another the identical order which had to be taken as a whole, and that was founded on general principles of estoppel.— **24 T. L. J.,** *158.*

20. See also Regn. II of 1100,

Other cases.— **24 T. L. J.,** *206.*

REGULATION VI OF 1094.

(Motor Vehicles.)

Section 5.

The word report in Section 5, clause (2), of the Motor Vehicles Regulation can be regarded as meaning only 'bringing to the knowledge of' the officer in charge of the nearest Police Station the facts of the accident and that even if such information is conveyed in writing or through some messenger, the requirements of the Section would be satisfied.—

22 T. L. J., *276.*

Section 11.

The appeal was by the Sirkar against the acquittal of the respondent for an offence under Section 11 (1) of the Motor Vehicles Regulation, *viz.*, for keeping his car for five or six days without causing it to be registered:

Held.—(*Per Joseph Thaliath and Narayana Pillai J. J., Chatfield C. J. dissenting*). —No rules have been prescribed under the Regulation for the registration of cars which are kept without use. The respondent was not therefore guilty of any offence under Section 11 (1) of the Regulation.

Chatfield C. J.—Rules 2 and 9 of the Rules passed under the Regulation relating to the use of motor vehicles in public places are not alone to be considered in this connection. Form A for application for registration of motor vehicles which is also part of the rules, should be taken into consideration. It is not unreasonable to regard this as setting out the prescribed manner of registering cars. Registration is thus made compulsory in all cases. As the delay in obtaining registration in the present case was however very small, the appeal may be dismissed.

Per Narayana Pillai, J.—Rule 2, which stands at the head of the *catena* of rules relating to registration deems registration necessary only where the vehicle is used in a public place. As it stands a vehicle used in a private place or not used as a vehicle in a public place need not be registered. Form A is an adjunct to Rule 3 which says that every application for registration shall contain the particulars mentioned in the said Form. Rule 3 and Form A do not enlarge the scope of Rule 2, but are controlled by it.—

21 T. L. J., *243.*

Section 17.

1. In the case of a bus with a seating capacity of ten or more persons, the driver is not responsible for the duties of the conductor and he could not be charged or convicted under Section 17 of the Motor Vehicles Regulation for over loading.—

20 T. L. J., *124.*

2. The accused, a motor bus driver, was convicted under Section 17 of the Regulation and sentenced to pay a fine of Rs. 10 for violation of a Notification issued by the Commissioner of Police, in exercise of the powers vested in him as the registering authority, under Rule 15 passed under Section 12 of the Regulation. Infringement of the Notification consequent on the deviation from the beaten track was the offence charged against the accused. He pleaded immunity on the ground that the Notification was *ultra vires* the authority of the Commissioner of Police:

Held.—(1) Unless a person contravenes any provision of the Regulation or any Rule made thereunder and such contravention is not made punishable any where else in the Regulation, he cannot be convicted under Section 17.

(2) The only authority to whom the rule-making power has been delegated by the Regulation is the Government of Travancore. On the date of the alleged

offence in this case it did not appear that there was any rule made by the Government prohibiting or regulating the driving of motor vehicles in any public place or authority or manner to give notice of any such rule prescribed by Government.

The accused is therefore immune from punishment.

Where powers and duties are conferred by a Statute affecting the rights and interests of the public, these powers and duties could be exercised only by the persons or bodies on whom they are specifically conferred. It is of course open to persons and bodies deriving powers under a Statute to arrange for the performance of ministerial acts by some other agency. If in virtue of its power under Rule 15 to "prescribe" the route to be followed "in respect of each pubiic passenger motor vehicle", the registering authority had incorporated the condition in regard to the route to be followed by the accused's bus, in its certificate of registration in the permit issued under Rule 31, it would have given rise to considerations of a different kind.—

21 T. L. J., *182.*

REGULATION IV OF 1095.

(Police.)

Sec. 67—See Regn. I of 1074, Sec. 65.—

20 T. L. J., *949.*

Sec. 70—See Regn. V of 1067, Sec. 175.—

48 T. L. R., *431*

(=23 T. L. J., *43*).

REGULATION V OF 1095.

(Municipal.)

Section 15.

On the failure of a Municipal Council to elect a President within two months of the direction therefor by the Government, the Government appointed the senior Official Member of the Council as a temporary President pending election and issued a second direction for election. The defendant was elected President in due course. The suit was by a voter of the Municipality to declare the election void as contravening Section 15 (v) of the Municipal Regulation :

Held.—The provisions of Section 15 (v) must be regarded as enabling provisions. The ordinary rule is that the Government appoints the President. An exception is created by Section 15 permitting the Government to direct the Municipal Councillors to elect the President. But if that direction is not carried out within two months, the right to appoint returns to Government. This may not prevent however a fresh direction. There is nothing in the Section itself which prohibits such a direction. If, on the other hand, it be regarded as a binding duty of the Government to appoint a President in such a case, there is no reason why a President may not be appointed by virtue of his office for such time as the Government may direct. See Section 17 (1) of the Regulation. The term of appointment need not be for a fixed term. It may be until the happening of an event as in the case.

Semble.—It is difficult to see what legal right of the plaintiff had been infringed. His right was to vote for the members of the Municipality, and that right had not been interfered with, He was not a Municipal Councillor himself and so was not a voter in an election of a President,—

49 T. L. R., *154*

(=23 T. L. J., *231*).

Section 48.

1. The power conferred by a special Act on a Local Authority to impose a particular tax for a particular purpose in a special manner does not oust the jurisdiction of the Civil Courts to give relief

against an illegality committed by that body under cover of Statutory powers and a Civil Court has jurisdiction to determine the question whether the imposition of a tax is illegal and *ultra vires*.

Section 65, Civil Procedure Code, comprises suits both against the Dewan of Travancore and against Public Officers. As regards suits against the Dewan notice is obligatory, whatever be their nature. But as regards suits against a Public Officer notice is necessary only in respect of any act purporting to be done by such Public Officer in his official capacity. The construction put upon the words 'act purporting to be done' in the Civil Procedure Code need not necessarily be the construction to be put on the same words in the Municipal Regulation, Section 48, Clause (3). Section 48, Clause (3), says that where it is proved that before the suit was instituted tender of sufficient amends has been made to the plaintiffs, the suit should be dismissed with costs so far as the amends go. This shows that the suit contemplated in Clause (1) is a suit in which amends are possible. Naturally 'act purporting to be done' in the said Clause (1) should refer to a past act and therefore a suit for injunction does not require a previous notice for its institution.— **48 T. L. R.**, *37* (=**22 T. L. J.**, *122*).

Ref.—23 T. L. J., 1108.

2. See also Sec. 61.— **23 T. L. J.**, *1108*.

Section 61.

The plaintiff, the Malabar Commercial Corporation Co.. had an office and garage at Nagercoil for which house-tax was being paid to the Municipality and its buses left and came to Nagercoil at stated hours of the day. The plaintiff duly applied for a licence under Section 61 (3) of the Municipal Regulation, from the beginning of 1098, on payment of half-yearly tax on its vehicles. The Municipality delayed granting the licence applied for till 22-1-1099, and so plaintiff was compelled to pay tolls on the vehicles instead, under Section 61 (5). The plaintiff, in the suit, claimed refund of the tolls collected, as damages arising from breach of statutory duty imposed on the defendant Municipality under Section 81. The Court below decreed ths suit and the defendant Municipality appealed :

Held.— (1) The plaintiff having 'kept' his vehicles inside the Municipal limits within the meaning of Section 81 of the Regulation, was entitled to issue of a licence on payment of the half-yearly tax prescribed by Section 61 (3) and imposable under Section 81.

(2) As, under the provisions of the Municipal Regulation, provision was made for suits against the Council, and Sections 95 and 96 did not exclude a suit for damages of the kind in question, the suit based on neglect to perform a statutory duty was maintainable.

(3) The plaintiff's cause of action being the damage caused by the non-issue of the licence, his right of suit originated every time the collection of toll was made and there was no cessation of the right of suit until the issue of the licence in Chingom 1099. There being a special law, the Article of the Limitation Regulation was inapplicable, The suit was governed by Section 48, Clause (2), of the Municipal Regulation which prescribed a period of 8 months from the accrual of the cause of action. The claim of the plaintiff as regards collections made beyond 8 months was therefore barred.

Per Sivasankara Pillai, J.—A Municipal Corporation cannot exercise the power vested in it by statute in a capricious, wanton and oppressive manner. Even when acting within the defined limits of its powers, it must not conduct itself arbitrarily or tyrannically. It is sometimes said that for mere non-feasance, no action for damages will lie against a public body ; but it has been recently held that

the Corporation is liable in damages for injury caused by non-performance of its statutory duty.

The general rule is that where a right and an infringement thereof are alleged, a cause of action is disclosed, and unless there is a bar to the entertainment of such a suit, the ordinary Civil Courts are bound to entertain the claim. If a special remedy is provided by statute for the enforcement of a right or duty which is entirely the creation of such statute, then that remedy must be pursued unless the remedy does not cover the entire right. Where a question of illegality or *ultra vires* is raised by the plaintiff as regards the demand by a Municipality of any tax, then Sections 95 and 96 of the Municipal Regulation do not constitute a bar to the exercise of the jurisdiction by the Courts,

Per Venkata Rao, J.—Section 51 of the Municipal Regulation is intended to protect the Council against suits for damages consequent on acts done lawfully and in good faith. Where the foundation for the claim is that the acts complained of is the illegal exaction or realisation of the tolls, the first requisite, *i. e.*, legality of the action is absent, and the Council cannot invoke the aid of the provision.

The plaintiff's right of suit did not depend on actual payment of tax under Section 61 (3) as distinguished from his making out that his liability to taxation arose under Section 61 (3) and that he ought to have been taxed accordingly. Such a distinction was too narrow. In either case, he could claim exemption from payment of tolls and therefore had a right of suit against the levy thereof. 'Errors in assessment which constitute irregularities merely and do not go to the ground work of the tax and render the assessment void, can be corrected only in the manner provided by the statute which creates the authority and the remedy so provided must be treated as exclusive. On the other hand, where the defects in assessment are jurisdictional rendering them void and the persons aggrieved thereby are entitled to invoke the ordinary judicial remedies, and all clear violations of law give rise to jurisdictional questions'. Section 96 was, therefore, no bar to the maintainability of the suit (F. B.)— **23 T. L. J.,** *1108.*

Section 65.

The penalty provided under Section 65, Sub-section 2, of the Municipal Regulation will be applicable to persons who do not comply with the requirements made under Section 83 (1).— **46 T. L. R.,** *364* **(=20 T. L. J.,** *1138*).

Section 81.

See Sec. 61.— **23 T. L. J.,** *1108.*

Section 83.

See Sec. 65.— **46 T. L. R.,** *364* **(=20 T. L. J.,** *1138*).

Section 95.

1. The petitioners were owners of buses plying for hire between Kottayam and Trivandrum. The Municipality of Trivandrum took steps against them for recovery of vehicle tax. The petitioners contended that vehicle tax could not be recovered on the ground that whenever they entered the Municipal limits, they have paid tolls. This contention was overruled. The Dewan Peishkar was then requested to state a case for reference to the High Court. This request was also refused :

Held.—For purposes of Sectioa 95, the Dewan Peishkar must be deemed to be an appellate authority and subordinate to the High Court's jurisdiction. The High Court had jurisdiction to compel a Dewan Peishkar purporting to act under Section 95, Clause (5), of the Regulation to make a reference,

Though vehicles for which half-yearly tax was paid were not subject to payment of tolls it did not follow that those vehicles for which tolls were paid could not be subjected to the half-yearly tax. The half-yearly tax was compulsory in respect of any vehicle garraged in Municipal areas.— **49 T. L. R.,** *294* **(=23 T. L. J.,** *629*).

2. The Parur Municipality attached and thereby realised a tax imposed on the defendant's motor boat for plying it for trade within the Municipal limits. Subsequently on appeal to the Dewan Peishkar, the amount realised was ordered to be refunded on the ground that the attachment was invalid. The suit by the Municipality to recover the amount so refunded was dismissed by the Munsiff and the Judge (in appeal) on the ground that the suit was not maintainable and that Sirkar was a necessary party thereto:

Held..—(1) For the recovery of the amount refunded to the defendant which is the substance of the plaint claim the Sirkar is not a necessary party.

When a statute creates a right or power and at the same time prescribes a particular method by which that right or power is to be exercised then it may be presumed in the absence of words to the contrary that the right cannot be enforced by means of a civil suit.

(2) The Municipality is not a mere Department of Government. It has its own property and it may bring and defend suits. The money paid by the defendant formed part of the Municipal fund and was therefore Municipal property which the Municipality had the right and duty to protect. This fund has become liable to a repayment to the defendant as the result of an order passed by the Dewan Peishkar. If the order was one passed under Section 95, then it is difficult to see how it could be questioned on behalf of the Municipality even if it could be shown that a wrong view of the law or facts was taken. If on the other hand the order could not be regarded as one passed under Section 95, it is not clear why a suit should not lie. **47 T. L. R.,** *217* **(=21 T. L. J.,** *198*).

Ref.— **47 T. L. R.,** *294* **(=23 T. L. J.,** *629*).

3. See also—

Sec. 61.— **23 T. L. J.,** *1108*.

„ 48.— **48 T. L. R.,** *37* **(=22 T. L. J.,** *122*).

Section 96.

See Sec. 48,— **48 T. L. R.,** *37* **(=22 T, L. J.,** *122*).

„ 61.— **23 T. L. J.,** *1108*.

Section 98.

See Sec. 138—**46 T. L. R.,** *306* **(=21 T. L. J.,** *122*).

Section 110.

The complaint preferred was to the effect that the accused put up a masonary wall to the north of his house and along side the main southern road without sanction of the Municipality and that when a notice was issued to him to stop further construction he disobeyed that notice and proceeded to complete the construction of the wall. The Magistrate was of opinion that there was no lawful disobedience of any valid notice issued by the Municipal Council inasmuch as the notices, Exhibits B, C and G, prohibited him from proceeding with the further construction of the wall of a building and not a compound wall. It was contended that the Magistrate has not noticed the definition of the expression "building" contained in Section 3, clause (2), of the Municipal Regulation which expressly includes a "wall":

Held.—The definitions in Section 3 of the Regulation, indicate that the terms "means" and "includes" are not of the

same significance, and the compound wall in question was a "building" within the meaning of Section 110.

Section 241 of the Regulation, should not be construed with the strictness of an enabling Section, but must be read simply as requiring specific authority for the prosecution and nothing more. If the authorisation indicates the concrete acts in respect of which the prosecution is intended, the form in which such intention was indicated is not of much importance.— **20 T. L. J.,** *959.*

Section 138.

The petitioner used a place within a Municipality as a brick kiln without obtaining a licence therefor under Section 138 Clause (*g*) of the Municipal Regulation. The Municipality levied the licence fee from him and for recovery of the same, the Municipality attached the kiln. While the attachment was in force, the petitioner removed some bricks from the kiln. For thus removing bricks while the property was under attachment, the Municipality prosecuted him for the offence under Section 54 of the Revenue Recovery Regulation as Section 98 of the Municipalities Regulation enabled the Municipalities to treat all monies other than fines and penalties recoverable under that Regulation as arrears of public revenue within the meaning of Regulation I of 1068 and to recover the same as such.

It was contended that (1) offences under the Revenue Recovery Regulation do not come within the scope of Section 241 of the Municipalities Regulation, and (2) that the proceedings of the Municipal Council in attaching the kiln for licence fee is illegal and void *ab initio* as that is not contemplated by Section 138 of the Municipalities Regulation.

Held.—Per Parameswaran Pillai, J.— There is no provision in the Municipal Regulation enabling the Municipality to levy the licence fee on a person who uses a place as a kiln in contravention of Section 138 Clause (*g*). If the Legislature intended to make the person violating any of the provisions of Section 138 liable to pay the licence fee also, in addition to the conviction and sentence, it would have said so expressly. The licence fee claimed by the Municipality is, therefore, not recoverable under this Regulation and therefore it cannot be treated as arrears of public revenue within the meaning of Regulation I of 1068 and recovered as such under Section 98 of the Municipalities Regulation.

Per Venkita Rao, J.—A license fee should not be regarded as a tax and would not ordinarily be recoverable as such. The sub-heading under Section 98 of the Municipal Regulation inserted in the Regulation is "collection of taxes" and unless licence fee can be regarded as tax leviable by the Municipality the procedure prescribed under the Section would not be applicable. There can be little doubt that it is not a tax and nothing in Section 138 or Section 94 (2) makes it recoverable otherwise.

Held.—The attachment placed on the kiln for non-payment of the licence fee is illegal and therefore the conviction of the petitioner for the offence under Section 54 of the Revenue Recovery Regulation cannot be sustained.

46 T. L. R., *396*
(=21 T. L. J., *122*).

Section 139.

Section 139 of the Municipal Regulation is imperative that as a condition precedent to the holding of any show a licence from the Municipality must be obtained. The Section does not provide a time limit within which the Municipality has to grant or reject the petition as, for instance in Section 112. It does not provide any provision that if the Municipal Council neglect or omit to give an order of sanction or refusal to a person applying for

licence to hold a picture or cinematograph show within a prescribed period the Council should be deemed to have granted the licence or permitted the performance. In other words the Section appears to insist on the applicant obtaining a previous licence from the Municipal Council before he can exhibit any picture or cinematograph or anything of that kind. The Magistrate had therefore erred in acquitting the accused on the charge under the Section on the strength of a mere application for licence.

The object of a notice under Section 140 is to apprise the party that theatrical performances are prohibited for a certain period and if a communication sent by the Municipality, to a party gives him a clear indication that theatrical performances are prohibited, that is all that is required by the Section,—

50 T. L. R., *130*
(=24 T. L. J., *26*).

Section 241.

See Sec. 110.—**20 T. L. J.,** *959*.
„ 138.—**46 T. L. R.,** *396*
(=21 T. L. J., *122*).

Other Cases.

What Rule 36 *re* Election wants is a finding that the petition was made without satisfactory reasons or was frivolous or vexatious. It is one thing to say that a petition was made without satisfactory reasons and quite a different thing to say that some of the allegations in it are without satisfactory reasons. Frivolity is not the same thing as absence of satisfactory reasons. As Rule 36 stands, it would not justify a forfeiture, where a petition is in part found to be frivolous or without satisfactory reasons. A provision like Rule 36, both penal and fiscal, should be strictly construed, that is to say, as far in favour of the subject as the language would permit.

Where a special tribunal is constituted to deal with any particular matter, there is an ouster of the jurisdiction of the Civil Court *pro tanto* and the exercise of any discretion vested in the special tribunal cannot be called in question before the ordinary Courts. This is subject to certain important provisos one of them being that the party affected adversely should be heard or afforded an opportunity to show cause, before the special tribunal pronounces against him. This is a matter of natural justice which no tribunal, special or ordinary, is at liberty to disregard in the absence of very clear legislative provisions to the contrary.

Where, therefore, the Dewan Peishkar, as an officer designate to conduct election enquiries, ordered the forfeiture of deposit on the ground that the allegation as to corrupt practice and fraud made in the objection petition was 'frivolous or without satisfactory reasons' but no opportunity had been given to the petitioner to show cause against the proposed forfeiture:

Held.—The order did not conform to the principles of natural justice and that the ordinary Civil Courts had a right to interfere.— **20 T. L. J.,** *1069*.

Ref.—48 T. L. R., 37 (=22 T. L. J., 122).
49 T. L. R., 294 (=23 T. L. J., 629).

REGULATION VI OF 1096.

(Public Canals and Public Ferries.)

Section 52.

The ordinary principle of law is that in a criminal offence *mens rea* must be shown unless the doctrine is excluded by express enactment. But it may be dispensed with by statute. The true test for determination of the question whether or not the rule of *mens rea* is excluded by the Statute under consideration in each case is to consider the scope and nature of the

Statute and the various circumstances which make the application of the doctrine reasonable or unreasonable as well as the language of the particular Statute under consideration.

Applying this test, it is not necessary to prove any *mens rea* or guilty knowledge in a prosecution under Section 52 of the Regulation.

Section 52 is obviously intended for the purpose of preventing overloading of vessels and the evils which may result from overloading. The Section contains an absolute prohibition. The gist of the offence appears to be in the vessel being found to have a greater number of passengers than the number allowed by the licence.

The words 'shall be liable' in the Section must be deemed to prescribe a punishment for the act referred to therein, and the same has to be dealt with by the Court which could take cognizance thereof under Section 5 of the Criminal Procedure Code.—

46 T. L. R., *70*
(=20 T. L. J., *647*).

REGULATION VII OF 1096.

(Registration of Births and Deaths.)

Section 17.

Under Section 17 of the Regulation certified copies of entries in the register of births and deaths may be produced in proof of the entries of which they purport to be copies. Such entries are admissible in evidence under Section 35 of the Evidence Act, whatever be their probative value.—

48 T. L. R., *46*
(=22 T. L. J., *26*).

REGULATION VIII OF 1096.

(Income-Tax.)

Section 2.

1. The question referred related to the liability to income tax of the rent derived from the right to fish in the paddy lands granted by Government to Dewan Nanjappaier as per the *Danasasanam* granted dated 17-12-995 the concluding portion of which ran as follows:— "ആകെ നിലവും .....ഇന്നാമ മുതൽക്ക് അർത്ഥമാനമാ ( ) ആചന്ദ്രതാരമെ സന്തതിപ്രവേശമെ ദാനം ദിവി...അനുഭവിച്ചു കൊള്ളുമാറും നാം കൊള്ളും കോമുരെ എഴുത്തും കഴിഞ്ഞു തന്നേയ്ക്കയും ചെയ്തു." The assessee contended *inter alia* that under the provisions of the grant the lands were freed from liability to all taxes present and future and were therefore outside the ambit of the Income Tax Regulation and secondly that the income in question was "agricultural income" within the meaning of Section 2 (1) (a) or 2 (1) (b) (i) of the Income Tax Regulation and therefore exempt from taxation:

Held.—(1) On a proper construction, the terms of the grant did not indicate that grant was free from taxation of any kind and therefore any exemption which could be claimed reasonably must be traced to the principles of ancient Hindu Law regarding Danams or gifts of land by Kings to Brahmins. Such exemption could relate only to land assessments leviable on the lands comprised in the grant, but not to tax levied on incomes generally under the Income Tax Regulation. The income from the fisheries in question was therefore taxable under the residuary Clause (vi) of Section 4 of the Regulation.

(2) It cannot be contended in the case that the income from the fisheries fell within the scope of Section 2 (1) (a) as the lands in question were Karamozhivu and

were therefore not assessed to land tax or subject to a local rate within the meaning of that Section or that it was income "derived from agriculture" within the meaning of Section 2 (1) (*b*) (i). (F. B.).—

21 T. L. J., *1158*.

2. The following questions were referred by the Chief Revenue Authority for the orders of the High Court.

(1) Does the annual subsidy of Rs. 1082-16-0 paid by the Edappalli Chief for Police protection and credited in the State accounts under 'Land Revenue' render the Chief's Edavakai lands and Desavazhies in Travancore 'assessed to land revenue' within the meaning of Section 2 (1) (*a*) of the Income-Tax Regulation?

(2) Does the payment of an annual subsidy of Rs. 1082-16-0 by the Edappalli Chief to the Government for Police protection render Edappalli a separate State to which the Income-tax Regulation cannot apply?

The first question was answered in the negative.

The entry of the amount (Rs, 1082-16-0) in the Sirkar accounts under the 'Land Revenue' does not estop the Sirkar from contending that the income realised by the Chief from his Edavagai and Desavazhi lands was assessable to income-tax. The mere fact that the Sirkar has entered the payment under the head 'Land Revenue' is not conclusive of the question in issue and it is significant that the amount of subsidy had not been fixed with reference to the Chief's lands or with reference to the yields from the lands as is done in the case of ordinary lands paying land revenue to the Government. The Chief has nothing to do with the entry. It is quite open to the Sirkar to enter the amount under any other head than 'Land Revenue'. The annual subsidy of Rs. 1082-16-0 paid by the Edappalli Chief for Police protection and credited in the State Accounts under "Land Revenue" therefore does not render the Chief's Edavagai and Desavazhi lands in Travancore assessed to Land Revenue within the meaning of Section 2 (1) (*a*) of the Income-tax Regulation.

All income is *prima facie* subject to the payment of tax unless otherwise exempted from payment of tax and the onus of proving that a particular income from land is exempt from tax on the ground that it is assessed to land revenue lies on the person claiming the exemption.

The second question was not answered as it was not pressed (F. B.).—

48 T. L. R., *219*
(=**22 T. L. J.**, *861*).

Section 3.

1. An association styled the Aroor Sree Moolam Kerala Pattariya Samajam was formed for the general improvement of the social, economic and material prosperity of the Pattariya Community. For its proper working it was endowed with various sources of income among which were interest derived from the loan of Samajam funds to members and outsiders and also subscriptions paid by its members. The question arose whether the Samajam was liable to pay income-tax or whether it could claim the benefit of the exemption under Section 3 (2) (1) of the Regulation on the ground that its income was derived solely from property held under a trust or legal obligation wholly for religious or charitable purposes within the meaning of that Section:

Held.—There is no warrant for saying that in construing the meaning of the expression "legal obligation" it is necessary to put on it a meaning *ejusdem generis* with the word trust in the phrase "trust or legal obligation." It appears that by the use of the words "legal obligation" in the phrase "trust or legal obligation" the Legislature deliberately intended to draw a distinction between

trusts properly so called and certain kinds of obligation which although they may not come strictly under the definition of trust still would create legal obligations on the part of the holders of the property.

All that is necessary to secure exemption from income-tax is a "legal obligation" to apply the income to charitable or religious purposes.

The property or the funds of the Samajam are held under a legal obligation for the benefit of the Samajam and the members thereof.

It seems to be fairly clear that the word "property" in Section 3 (2) (1) in the Income-Tax Regulation must be construed in the widest sense, namely, as the generic term for all that a person has dominion over.

There are very many transactions which the English Law would not regard as charities or "charitable" which under the Indian Law would undoubtedly fall under the definition of "charity" or "charitable".

In cases where the question to be decided is whether the income of a particular Samajam or Association is taxable, the supreme test is to see whether the object of the Association is to benefit the community in general as opposed to the individual members of the Association. But from this it is not to be understood that anything which in some way or other directly or indirectly benefits the public must be deemed to be a charity or charitable within the meaning of the Income-Tax Regulation.

The fact that the benefit was confined to one community is immaterial as the words 'general public utility' in the Subsection would cover cases of utility to a community as distinguished from the general public. It would be quite sufficient if the benefit went to a section of the community.

It is a recognised principle of law that a subject is entitled, if he can, in any legal manner to circumvent the incidents of a particular taxing or financing Act.

All the properties of the Samajam, immovable and movable, including the moneys lent out except the subscriptions paid by the members are property held by the Samajam under a legal obligation and any income derived out of these properties is entitled to exemption from the payment of income-tax under Section 3 (2) (1) of the Income-tax Regulation (F. B.).

48 T. L. R., *49*
(=23 T. L. J., *680*).

2. An assessee who resides in Travancore and has admitted income from outside the State which he merely says he has not received in Travancore and which he has omitted to enter in the accounts along with his other income is bound to prove that he received the income outside the State in order to claim exemption from assessment on it. In other words the burden of proof in such a case is on the assessee and not on the Collector.

To hold that in every case the Collector should strictly prove the amount of income received by an assessee as if the Collector was the plaintiff in an ordinary civil action would be productive of considerable mischief and inconvenience and may even defeat the object of the Legislature in enacting the Income-Tax Regulation.

In the Income-Tax Act itself there is no warrant for the assumption that as a matter of course the law of evidence as laid down in the Indian Evidence Act applies to the Income-Tax Act, though it would be desirable to follow the principles of the law of evidence as laid down in the Indian Evidence Act in deciding questions of income-tax between the Crown and the subject. The state of his income is a matter peculiarly within the knowledge of the assessee so that even if the principle of the law of evidence applies to the

Income-Tax Act the burden of proving the income lies on the assessee (F. B).—

48 T. L. R., *413*
(=23 T. L. J., *72*).

Section 4

See Sec. 2.— 21 T. L. J., *1158*.

Section 8.

1. In assessing business profits under the Income-Tax Regulation, it is not correct to debit the gross earnings of any year with the working charges incurred in previous years and already debited against the gross earnings of the respective years (F. B.).—

50 T. L. R., *113*
(=23 T. L. J., *1138*).

2. A mining Company with Head-office in London was carrying on business in Travancore. In assessing the company for Income-tax the company is allowed to deduct certain expenses called 'Head office charges'—being expenses incurred by the company for supervising the work of the company both in England and in Travancore. The expenses incurred in England are for the supervision of the company's work in England and in Travancore,and consequently it does not appear to be quite fair or equitable that the company should be allowed to deduct the whole of the Head Office charges from the income derived and assessable in Travancore. It is not possible to say with mathematical precision what proportion of the charges should be deducted in respect of the income in Travancore and what proportion in respect of the income in England. All that the Court can say is that in each year according to the circumstances the Commissioner may fix a reasonable sum as the amount deductible in respect of the incomes in Travancore and in England regard being always had to the amount of labour involved in the earning of the profits or gains.

If, by the publication of a notification in the Gazette under Section 16 of the Travancore Mines and Minerals Regulation, it was made obligatory on the part of the assessee to provide medicine, medical attendance and appliances for the employees, then the company would be entitled as a matter of right to claim the expenditure incurred on that head as an allowable item of deduction.

In re the expenses incurred by the company for medicine, medical attendance and appliances for their employees, it is a matter of very great difficulty to say with precision what exactly is meant by the expression "incurred solely for earning the profits." Each case has to be decided on its own merits. It would be for the tribunal deciding the case to consider the particular circumstances in each case and come to a conclusion whether as a matter of fact the particular expenditure was incurred for the sole purpose of earning the profits or not. At first sight one may naturally be inclined to say how any money expended for providing medicine and medical attendance for the employees of the company can be regarded as moneys expended for the sole purposes of earning profits. But the tendency of the Courts at the present day is to put a liberal construction on the words "incurred solely for the purpose of earning profits." "A sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade but voluntarily and on the grounds of commercial expediency and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade." "In many cases the question whether the money was wholly or exclusively laid out or expended for the purposes of the trade must depend upon a knowledge of the facts of the trade, of the way in which it is carried on, of the effects of payments made in that trade. all of which are questions of fact.

In the circumstances of the case, the expenditure incurred for medicine and medical attendance must be regarded as expenditure incurred solely for the purpose of earning profits in the year and as such the company is entitled to a deduction in respect of the amount expended for the purpose during the year.

It is for the Court in each particular case to say whether a particular journal or map is necessary for the purpose of earning profits or gains in a particular year.

Retaining fee paid to a Solicitor may be allowed as a deductible item (F. B.)—

50 T. L. R., *117*
(=24 T. L. J., *629*).

Section 10.

In settlement of a long-standing dispute between the Poonjar Chief and the Travancore Sirkar, as to the existence or otherwise of Royal Prerogative (Rajavakasom) in the former in certain tracts of land, it was agreed that 'all the rights of the Poonjar family over the properties were to be assigned once for all to the Travancore Sirkar with effect from 1-1-1075 in return for a perpetual yearly grant of Sirkar rupees 14,000 to be paid in monthly instalments from Chingom 1075.' The question before the Court was whether the amount so paid annually could be assessed to income-tax. It was contended for the Poonjar Chief, that it should be regarded as either premium paid by Government for one year's enjoyment of the assessee's property or part payment of price for property alienated, and therefore not assessable:

Held (Rejecting the contentions of the assessee).—Unless exempted under some provision of the Income-Tax Regulation all income from whatever source if it accrues or is deemed to accrue in Travancore comes under the operation of the Regulation (Section 3). If such income does not fall under either of Sections 6 to 9, it must be included under Section 10, as income derived from other sources.

The theory of payments by instalments is that each cash instalment reduces the amount remaining to be paid; whereas in the case, however, many instalments have been paid, the liability of Government remained exactly the same.

The annual payment made by Government to the Poonjar Chief is not a premium for one year's enjoyment of property as the amounts paid annually would have to be paid whatever be the yield derived from the lands which were dealt with.

The annual payment is not in the nature of an instalment towards the payment of the purchase money for the land,

The annual payment is income falling under the definition of income from other sources under Section 10 of the Income-Tax Regulation (F. B.).—

47 T. L. R., *294*
(=21 T. L. J., *1297*).

Section 17.

A notice issued under Section 17, Clause (2), requiring an assessee to furnish a return within less than 30 days is not valid in law. This defect cannot be cured without issuing a fresh notice in the prescribed form.

Where, therefore, the D Form issued to an assessee gave only ten days' time, but on his protest, a reply was sent to him through Anchal, by the Income-Tax Collector allowing 30 days and on the assessee's default to submit a return within 30 days allowed, the Income-Tax Collector made assessment to the best of his judgment:

Held.—The assessee was entitled to ignore the D notice. The subsequent communication through Anchal could not take the place of the notice required by law. The assessee's failure to file the

return in pursuance to the letter could not be penalised (F. B.).—

49 T. L. R., *229*
(= 23 T. L. J., *521*).

Sections 22 & 23.

See under Sec. 50.—

46 T. L. R., *160*
(=20 T. L. J., *806*).
47 T. L. R., *233*
(=21 T. L. J., *371*).

Section 32.

1. The assessee, a non-resident foreigner was assessed by the Commissioner and Collector, Devicolom, for profits derived by him from contracts for the supply of rice to the K. D. H. P. Company Ltd., Munnar. On appeal, the Income-Tax Commissioner found on the facts that the contracts were concluded within Travancore even though the goods were delivered and payment received in British India and that the assessment was proper. However on the assessee's application, the Revenue Commissioner has referred the following questions for the opinion of the High Court.

(i) Is Section 32 merely a machinery Section ? Does it enlarge the liabilities of the tax-payer beyond the limits of the charging Section 3 ?

(ii) In view of the findings in the case, should not the applicant's profits from the rice supplied by him to the K. D. H. P. Co. Ltd, be considered liable to Travancore income tax under Section 32 (1) of the Regulation although the rice was delivered and payment received outside Travancore ?

Held.—What is meant merely by a machinery Section is a Section which provides a method of carrying out the charge imposed by some other Section.

The first part of Section 32 is not merely a machinery Section but a charging Section, but it imposes no liability on a non-resident, which is not already imposed by the charging Section 3, inasmuch as the expression 'business' used in Section 3 and "business connection" used in Section 32 (i) mean the same thing, though the expression "business connection" was substituted in Section 32 to make it more comprehensive.

The jurisdiction of the High Court in the matter of interfering with the finding of fact in exercise of its revisional jurisdiction is restricted by the provisions of Section 50 of the Regulation, according to which it can only decide the question of law raised by the reference or if an application for reference to the Chief Revenue Authority is refused by him, the High Court might require the Chief Revenue Authority to state a case and to refer it. The Regulation does not authorise the High Court to interfere with the finding of fact recorded by the Revenue Authority.

The contract having been made in Travancore a business connection as contemplated by Section 32 (1) has been established and all profits or gains accruing to the non-resident foreigner from such business connection is chargeable to income-tax (F. B.)— 47 T. L. R., *253*
(=21 T. L. J., *485*).

Fol.—21 T. L. J., 889.

Ref.—48 T. L. R., 10
(=21 T. L. J., 1403).

2. The interest on the surplus funds which the Trivandrum Branch of the Imperial Bank of India Ltd., transfers to its Head Office outside the State is liable to assessment under Section 32 (1) of the Regulation if such interest represents the amount of profit or gain deemed as accruing or arising to the Bank through or from its business connection in Travancore, calculated in accordance with Section 8 of the Regulation or Rule 37 framed thereunder.

The decision as to assessability to income-tax in any year has not the force of

res judicata in regard to the question of assessability in a subsequent year so far as the proceedings before the Commissioner of Income-Tax himself is concerned. Much less so is it in regard to proceedings before the High Court.

From the mere fact that profits in a particular case were not actually received in Travancore, it would not follow that they are not assessable.

Profits derived from the investment of a portion of the deposits collected in Travancore but transferred to British India to be profitably employed are assessable to income-tax in Travancore.

Per Joseph Thaliath, J. — Instead of taxing the Imperial Bank of India in this roundabout way, the better course would be to treat the Travancore Branches as a separate entity for the purposes of the Income-Tax Regulation. Interest paid by the branches to the Head Office should be deducted from profits and interests received from the Head Office taxed. The case reported in '16 T. L. J., 611 which stands against such a reasonable and equitable procedure requires reconsideration (F. B.).— **48 T. L R.,** *10* (=**21 T. L. J.,** *1403*).

3. A business connection in Travancore within the meaning of Section 32 (1) of the Income-Tax Regulation is established by purchasing goods in Travancore though for sale outside.

The question whether the whole of the profits can be assessed to Income-tax in Travancore when only a portion of the transaction which resulted in the profits was done in Travancore is a question of law which the Chief Revenue Authority ought to refer to the High Court under Section 50 (2) of the Income-Tax Regulation.— **21 T. L. J.,** *889*.

Section 35.

Section 35, Clause (1), of the Regulation enables the Collector of Income-Tax to recover from the assessee the tax due from the latter *as if it were an arrear of land revenue*. In the marginal note to that Section, the expression used is "mode and time of recovery." Therefore, in the Income-Tax Regulation also, the provisions of the Revenue Recovery Regulation are invoked only for the method of recovery of the income-tax.

Therefore a purchaser in a revenue sale under the Income-Tax Regulation cannot have a first charge on the land ; he can have no precedence over every kind of encumbrance or alienation either voluntary or involuntary traceable to the land owner.— **23 T. L. J.,** *577*.

Section 36—A.

See Vol. VI, P. 1506.—

45 T. L. R., *408* (=**20 T. L. J.,** *555*).

Section 50.

1. The assessee in the case who was a paddy merchant and commission agent of Madura was assessed to income-tax, under Section 32, on the profits derived by him from supply of rice to certain estates in Travancore. The Commissioner of Income-Tax found on the facts that the contracts relating to supply of rice were concluded and that the amounts were received in Travancore. On a reference to the High Court by the Income-Tax Commissioner :

Held.—If the non-resident foreigner enters into contracts with the residents in this State for the supply of goods to them, the profits on such contracts would be assessable to income-tax if the contracts are made in this State. If the contracts are not so made but are entered into in foreign countries, the non-resident foreigner will still be liable if the purchase money is received in Travancore, under the plain words of Section 3 of the Income-Tax Regulation. If however the contracts are made in a foreign country

and the purchase money is received there then there is no liability for income-tax.

The reference which can be asked for under Section 50 (2) of the Income-Tax Regulation must be a question of law arising out of an order passed in appeal by the Commissioner under Section 22 of the Regulation. Presumably if the point of law is one which can be decided on the facts as set out in the order itself, the assessee will not be debarred from asking for a reference by the fact that he has not raised the point at an earlier stage. But if any fresh fact has to be established he will not be entitled to claim a reference.

Quaere.—Whether Section 32 is a mere piece of machinery to enable the profits accruing in Travancore to a non-resident foreigner to be assessed and recovered through an agent in Travancore (F. B.).—

46 T. L. R., *160*
(=20 T. L. J., *806*).

Appr.— 47 T. L. R., 253
(=21 T. L. J., 485).

Ref.— 48 T. L. R., 10
(=21 T. L, J., 1403).

2. The amount paid under Section 50 (2) is not a deposit but a fee which could be returned as such only on the withdrawal of the application, under the proviso to Section 50 (2), by the party consequent on the decision of the question to be referred, by the Chief Revenue Authority himself.

It is not open to the High Court to award the amount by way of costs (F. B.).—

20 T. L. J., *842*.

3. The High Court, if it chooses, can interfere and compel the Chief Revenue Authority to state a case on a point arising out of an order under Section 23 of the Income-Tax Regulation. But it required to be stated that this jurisdiction will be very sparingly exercised, and only in exceptional circumstances.

No inference can be drawn from Section 50 that the power of the High Court was meant to be confined to cases arising under Section 22. The result will be that the Commissioner would be in a position to burke any further enquiry whatever (F. B.).—

47 T. L. R., *233*
(=21 T. L. J., *871*).

Ref.— 49 T. L. R., 258
(=23 T. L. J., 526).

4. Until payment to the partners the amount payable as profits would continue as profits of the firm unless a specific amount is expressly advanced to the firm by the partners concerned on the distinct understanding that it should be treated as such. There is no reason why partners of a firm should not agree to pay a definite sum by way of salary to one of their members which he should be entitled to draw not out of profits but irrespective of the existence of profits. If the arrangements were made *bona fide* for enabling the partnership to earn an income and the amount was considered reasonable, the same even if paid to a partner could be held to be admissible as a valid charge. If upon an examination of accounts they were found to be genuine and entries relating to payments of salary were held to have been made long before the accounts were settled and profits of the firm computed an understanding relating to payment of salary may be presumed, such presumption being liable to be rebutted by other evidence on record.

Section 50, Sub-section 2, of the Income-Tax Regulation shows that the provisions relating to the making of the reference are of a mandatory nature, the Chief Revenue Authority being allowed no discretion in the matter. The assessee is bound to specify the questions of law he desires the Chief Revenue Authority to refer to the High Court. But it is not every question that is so formulated by him that the Chief Revenue Authority is bound to refer to the High Court, for it is within the powers of that Authority to refuse a reference on

any such question, if in its opinion the same does not arise on the findings of fact arrived at therein. If, however, the question of law really arose in the case on the facts found, but the Chief Revenue Authority had however failed to "appreciate" that there was such a point, the High Court could in such cases exercise its power of control and direct the said Authority to make a reference.

Grant of an application for directing a reference is purely discretionary with the High Court.

Per Chatfield, C. J. and Venkitarama Aiyar, J.—Interest on the prize amount taken by the Bankers as foremen in a chitty conducted by them is not admissible as a charge (F. B.)—

21 T. L. J., *388*.

5. See also Sec. 32.—

47 T. L. R., *253*
(=21 T. L, J., *485*).
21 T. L. J., *889*.

REGULATION III OF 1097.

(Government Land Assignment.)

---

1. The plaint plot was recorded as Chira Poramboke during the settlement. In 1098, plaintiff applied for registry of the land and sanction was accorded for such registry on 29-9-1098 under the Rules passed by the Government under Section 7 of the Land Assignment Regulation. Levy of Vilayartham was ordered. Objections were raised by certain inhabitants of the locality against the registry on the ground that the land in question was necessary for public purposes and these were rejected by the Tahsildar after due enquiry. The Dewan Peishkar after local inspection, recommended the cancellation of the registry, which was set aside finally by the Dewan. The suit was for declaration of plaintiff's title to the property and for cancellation of the Dewan's orders setting aside the registry:

Held.—A reference to the various clauses in Section 7 of the Land Assignment Regulation would indicate that interference with orders relating to assignment of land made by a competent authority prescribed under the Regulation and the Rules thereunder could be made in appeal or revision only in conformity with the Rules framed by virtue of the powers reserved in Government under this Section. No powers are exercisable in this behalf independently of the Rules, for the same would have exproprietory results. The Rules framed under the power created under the statute have to be treated as a part thereof and it is a well recognised canon of interpretation of statutes that they are exhaustive so far as they go.

The purpose of codified statute is that, on any point specifically dealt with by it, the law shall be ascertained by interpreting the language used. If any remedy is given for the infraction of the provisions of any statute, it is not open to the Court to hold that another remedy not specifically provided for therein is available to the party aggrieved thereby.

The powers under Rule 59 are, as is gatherable from the wording thereof, exercisable independently of the filing of an appeal and interference thereunder appears to be permissible even *suo moto* The two essential conditions necessary for enabling interference under this Rule seem to be (1) the decision must be due to a mistake of fact or the result of fraud or misrepresentation or passed in excess of the authority of the deciding officer, and (2) the interests of the Government or of the public are affected thereby.

The mistakes of fact which would not include those relating to opinion or impression should be mutual for the exercise of the powers of revision under this Rule in asmuch as the fact that the interests of the Government or of the public are affected thereby, is alone insufficient to

justify such interference in the absence of informative circumstances set forth in Clause (i) of the Rule.

The power of Civil Courts to interfere with orders passed under the Land Assignment Regulation and the Rules passed thereunder can be exercised only when the order is in breach of any completed agreement or where the land in respect of which the order is passed, is not a Government land as defined in Section 2 of the Regulation. This would indicate that it is not open to the Court to sit in judgment over the authorities competent to pass any decision and examine the propriety of the order on its merits. Thus a declaration by the Dewan that the interests of the Government or the public require the reversal of the decision, would be conclusive in the matter, the Civil Courts not being competent to go behind the same:

Held (on the facts).—The interference of the Dewan in exercise of his powers of revision under Rule 59 with the original order for registry was not justified, as the mistake of fact relied on for the purpose was clearly one of opinion or impression and not mutual and not therefore 'a mistake of fact' within the meaning of the said Rule.— **46 T. L. R.**, *385*.

(=**20 T. L. J.**, *844*).

Fol.—24 T. L. J., 100.

2. Under Rule 58, Clause (1), of the Rules passed under Regulation III of 1097 *any person interested in the matter may appeal.*

It is not perhaps easy in all cases to say with precision as to who is a person interested in the matter. The expression *any person interested in the matter* is very general and was made designedly wide so as to cover all sorts of interests. A neighbouring land-holder who had only a leasehold interest and used the plaint *thodu* for irrigating his lands is one *interested in the matter*.

Under Rule 58 (1) limitation runs from the date of communication in the case of one who was no party to the original proceedings before the Thasildar, and in the absence of clear statutory provisions to the contrary, it would be monstrous to hold that an injured party was bound to appeal from a decision of which he had no notice.

It has been held in several decisions in British India that where an appeal which is time-barred is heard and there are circumstances to justify the inference that the Court acting under Section 5 of the Limitation Regulation enlarged the time, it may be assumed that the Court did so act even though Section 5 is not referred to by the Court and there is no finding by it that sufficient cause existed.

Rule 58 (ii) says that the appellate authority may admit an appeal after the expiry of the period of limitation *provided he is satisfied* that the appellant had good and sufficient cause for not presenting the appeal within such period. Whether in adopting the phraseology slightly different from that of Section 5 of the Limitation Regulation, the framers of the Rule had any particular object in view, it is not possible to ascertain. The distinction however exists.

Where the appellant before the Division Peishkar admitted in his appeal memorandum that he had come up in appeal beyond 60 days from the date of the decision and the Division Peishkar proceeded to hear the appeal and eventually passed orders in favour of the appellant, it is not an unreasonable inference to draw that the Division Peishkar really excused the delay, if any.

A party who pays Thadivila and Tharavila and gets a registry from the Thasildar knows or is presumed to know that the orders passed by the Thasildar are open to cancellation or modification by the superior revenue authority and if by virtue of the rules subsisting the superior revenue authority upsets the order of the Thasildar the party

cannot justly complain. As long as the Statute and Rules make provision for appeals and revisions to the superior revenue authorities from the decisions of Thasildars, it cannot be said that there is a completed contract between the party and the Sirkar merely because, in pursuance of the Thasildar's order, Thadivila and Tharavila has been paid by the party.—

48 T. L. R., *223* (=**22 T. L. J.,** *706*).

3. The rule of *caveat emptor* does not apply to the case of a Puduval registry. The person in whose favour the registry is made is justified in acting upon the assumption that the Sirkar is competent to give him a good title, and seeing that he is not bound to make his own enquiry, he may have a right to insist that his title should be made good by the Sirkar when assailed by a third party and in case any deprivation happens, he should be compensated for the loss.—

23 T. L. J., *793*.

4. The plaintiff applied for registry of a poramboke adjoining his land. The defendant claimed registry in his favour on the ground of earlier occupation and earlier application for registry. The Tahsildar ordered registry in the name of plaintiff. On appeal, the Division Assistant set aside the order of the Tahsildar and directed registry in the name of the defendant. The suit was for a declaration of title to the property and for cancellation of the registry :

Held.—Interference by the Courts with the orders passed under the Land Acquisition Regulation should be strictly based on statutory provisions and the Rules framed thereunder. The scope for such interference is defined by Section 6 of the Regulation. Under the Land Assignment Regulation, the powers of a Civil Court to interfere with orders passed under the Regulation and the Rules passed thereunder arise only where the order is in breach of a completed agreement or where the land in respect of which the order is passed is not a Government land as defined in Section 2. This would indicate that it is not open to the Court to sit in judgment over the authority competent to pass any decision and examine the propriety of the order on its merits.

Where there is no violation of the Rules and the Division Assistant bases his order on the Rule, a meticulous consideration of the reasons by which he arrived at his decision is not contemplated by the Legislature. Declining to interfere in such a case is virtually giving effect to the provisions of the Regulation.—

24 T. L. J., *100*.

5. The plaintiffs obtained a registry of Puduval land on payment of Tharavila, etc., by order of Tahsildar ; but on appeal, the Dewan Peishkar set aside the Tahsildar's order and ordered registry in defendant's name. In revision the Peishkar's order was upheld by the Dewan :

Held.—There was no "completed agreement to assign" in favour of the plaintiffs within the meaning of Section 6 (*a*) of the Regulation, so as to enable them to question the registry in favour of defendants by way of suit. The Tahsildar's order was not final and was subject to a right of appeal to the Dewan Peishkar and a revision to the Dewan. The plaintiffs must be presumed to have known the fact that the Tahsildar's order was subject to modification or reversal by the higher authorities and in taking the registry from the Tahsildar, the plaintiffs necessarily took it at their own risk.

Per Chakko, J.—Even if the Dewan Peishkar's order in appeal was the result of misrepresentation made by the defendants, it was a matter of grave doubt whether the Civil Courts could interfere, since Section 6 of the Regulation strictly circumscribed the jurisdiction of the Civil Courts.— **24 T. L. J.,** *480*.

REGULATION IV OF 1099.

(High Court.)

1. The Head Sirkar Vakil presented a petition to the High Court invoking its inherent powers to take proceedings against the Editor and Publisher of a Newspaper called 'Probodhakan' for having published a scurrilous article in his paper tending to bring the Additional District Magistrate, Padmanabhapuram who disposed of certain summary cases arising out of the Suchindram Satyagraha movement into contempt as a Judicial Officer and also against the writer of the said article.

The respondents to whom notice on the petition was issued by a Judge of the High Court sitting as a single Judge questioned the validity of such a notice by a separate petition and according to their prayer the case was heard by a special Bench of five Judges. They challenged mainly the jurisdiction of the High Court to deal with contempts of the subordinate judiciary:

Held.—The law has among others recognised two principal forms of contempts of Court. One is, 'any act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority.' This belongs to the category known as "scandalising a Court or a Judge." The other is 'any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Court.'

There is no specific definition of fair comment anywhere and it is in the nature of things impossible to define 'fair comment' in so many words. In each individual case the Court has to say whether a particular article or writing is or is not fair comment. In order that a comment may be fair the following conditions must be satisfied :—

(*a*) It must be based on facts truly stated.

(*b*) It must not contain imputations of corrupt or dishonourable motives on the person whose conduct of work is criticised, save in so far as such imputations are warranted by the facts.

(*c*) It must be the honest expression of the writer's real opinion.

The action (for the scurrilous and unwarranted attack on the Magistrate) is taken not for redressing any private wrong done to the Magistrate but for the protection of the public who are subject to the jurisdiction of the Court from the mischief they will incur if the authority of the Court be undermined or impaired.

The jurisdiction to punish for contempt stands on a peculiar footing, is somewhat anomalous and is not in all cases regulated by the Criminal Procedure Code.

The High Court as a superior Court of Record has, apart from the provisions of the Penal Code or any other Regulation, inherent jurisdiction to punish contempts against itself committed outside the High Court and also has, in the exercise of its powers of superintendence and control over the subordinate Courts, Civil and Criminal, inherent powers to punish contempts of subordinate Civil and Criminal Courts committed outside those Courts. There is nothing in the High Court Regulation, the Penal Code, or the Criminal Procedure Code, which militates against this view. To hold otherwise would obviously lead to most inconvenient results and would frustrate the very object for which Courts exist and ought to exist.

Newspapers have no greater or lesser rights than private individuals in the matter of criticising the acts or conduct of public men in their public capacity. As long as the criticism is fair, honest and made in the furtherance of public interests the critics are safe but once criticism oversteps its bounds and takes the

form of vile and scurrilous abuse the law will step in and demand satisfaction of the offending individual.

It is not necessary that in the first instance the rule should be issued by a Division Bench especially in cases where the Court is exercising its inherent powers in the matter of dealing with contempts of Court. To hold that a single Judge has no power would obviously lead to inconvenience.

In law the disclaimer of any deliberate intention of ridiculing the Magistrate or exposing him or the administration of justice to contempt is held to be immaterial if the result of publishing the writing or article is to expose the Judge or Magistrate to ridicule and contempt *qua* Judge or Magistrate.

Chakko, J.—Quaere: Whether in the matter of punishment, Section 359 of the Criminal Procedure Code may be taken as a guide.— **47 T. L. R.**, *176* (=**21 T. L. J.**, *434*).

2. See also Regn. V of 1067,

Sec. 326.— **46 T. L. R.**, *203* (=**20 T. L. J.**, *940*).

„ „ Other Cases.—**21 T. L. J.**, *1398*.

REGULATION VI 1099.

(Reformatory Schools.)

The First Class Bench Magistrate's Court, Nagercoil, directed the detention in the Reformatory School of two youthful offenders, convicted before it. The District Magistrate, Trivandrum, was of opinion that a Bench of First Class Magistrates was not a Court contemplated under Section 6 (2) of the Reformatory Schools Regulation and as such the order of the First Class Bench Magistrate's Court was *ultra vires*:

Held.—A duly constituted Bench of Magistrates including a First Class Magistrate was competent to direct the detention in the Reformatory School of youthful offenders convicted by it under Section 6 of the Reformatory Schools Regulation.

But before making such direction, it is incumbent on the Court to make a preliminary enquiry and enter a finding as to the age of the youthful offender as required by Section 9 of the Regulation.

48. T. L. R., *338* (=**22 T. L. J.**, *1001*).

REGULATION II OF 1100.

(The Nayar.)

Section 2.

1. *Per Parameswaran Pillai, J.*—The 'Veluthedathu Nayars' are known and recognised as Nayars and they are governed by the Nayar Regulation II of 1100.

The enumeration of the different classes of Nayars in Section 2 of the Nayar Regulation is not exhaustive. According to the definition in Section 2, besides the different classes of Nayars enumerated therein, "others known and recognised as such" are also included within the term Nayar as used in the Regulation.

A valid marriage under the Nayar Regulation is one which must have been "openly solemnised by the presentation of cloth to the female by the male."

Per Narayana Pillai, J.—For the purposes of the Nayar Regulation any person is a Nayar who is known *or* (not *and*) recognised as such, if there is nothing repuguant in the subject or context.—

47 T. L. R., *409* (=**21 T. L. J.**, *851*).

2. There is clear authority for the position that the barbers come under the category of "Nayar" as defined by the Nayar Regulation. Barbers are Nayars within the definition of Section 2 of the Nayar Regulation.— **22 T. L. J.**, *1200*.

Section 3.

For a valid marriage in accordance with the provisions of Section 3 of the Nayar Regulation of 1100, the presentation of cloth to the female by the male must be made with some publicity, though apparently the Regulation does not require, as a part of the solemnisation, those ceremonies and festivities which are customary.

Although Section 3 is silent upon the point, it is still the law that in the case of a marriage between Nayars the presentation of cloth to the female by the male must be done with the intention to solemnise a marriage. Such intention, may be freely inferred from surrounding circumstances. But in a case where there is absolutely no evidence of an alleged marriage beyond the presentation of cloth, it may be that the intention to solemnise a marriage could be inferred from evidence of subsequent cohabitation (which does not necessarily mean, nor invariably imply, coition) or, since the western practice of husband and wife living together is not universal in Malabar, visits by the husband to the wife.—

24 T. L. J., *521.*

Section 5.

In an enquiry on a motion for divorce by a Nayar wife against her husband, the delegates erroneously thought that they were called upon to decide matters which could not be grounds for dissolution, *e. g.*, invalidity of marriage and incitement of the petitioner to adultery by the husband, and returned verdict accordingly. But there was nothing in the charge to indicate that their opinion was invited on those matters and it was perfectly clear that the delegates know the nature of the questions relating to cruelty and incompatibility of temperament (the real issues in the case) on which their opinion was invited. Their verdict clearly was that those allegations had been proved to be true:

Held.—Though the verdict returned by the delegates was one and comprised matters relevant and irrelevant, it must be construed as one containing separable findings of fact on the four distinct matters and as the verdict amounted to a finding that either or both the grounds of habitual cruelty and incompatibility of temperament were established, it would sustain a decree for dissolution of marriage. 'Where a verdict has been given upon several distinct issues and the Court on motion for new trial is of opinion that the verdict cannot be disturbed as regards some of them and was incorrect on certain others, a prayer for a new trial could not be granted.'

The charge delivered by the Munsiff in an enquiry in a matrimonial cause under the Nayar Regulation, should, as far as possible, be confined to the grounds actually alleged and on which relevant and admissible evidence was adduced. The introduction of extraneous matter, either as regards the law on the question or the facts of the case or the evidence which may not be strictly relevant and admissible should be avoided, as the object of summing up is to place the clear issues of fact before the delegates with an enunciation of the principles of law governing the matter under enquiry, such as might help them to decide the issues of fact placed before them.

It would be advisable so long as trained translators are not attached to our Courts, in cases in which the delegates empanelled are not conversant with English to frame the charge itself in Malayalam. This course would have the additional advantage of enabling the Appellate Court to see exactly in what manner the facts of the case were presented to them and their verdict was sought for and obtained..—

23 T. L. J, *659.*

Section 7.

1. The Munsiff in charging the delegates in an enquiry for dissolution of marriage did not use such language as was intelligible to the ordinary layman and the questions for decision were not categorically put to them and this ultimately served more to obscure the issue than to enlighten the delegates as to the points on which they had to express an opinion. Their verdict was also highly unsatisfactory for want of clear expression of opinion on the question of incompatibility of temperament:

Held.—The Rules 35 to 46 framed under Section 7 of the Regulation prescribe the functions of the Munsiff and the delegates and also the scope of interference in appeal. Such kind of enquiry with the help of delegates, analogous to trial by jury elsewhere, is a novelty in procedure so far as this State is concerned, and that is the greater reason why the subordinate Courts should grasp thoroughly and apply with care the provisions regulating such enquiries particularly because they relate to domestic matters, a right decision of which will be essential for the welfare of the community concerned. Such a caution appears to be necessary, if the case is taken as an illustrative example, for, the course adopted by the lower Court on account of the failure to conform to the law had, in the case, culminated in a failure of justice.

On an enquiry in matrimonial causes, with the help of delegates under Chapter II of the Regulation, the Court, in a proper summing up, must formulate and specify simple issues for consideration and collate the evidence *pro* and *con* bearing upon the issues in order to assist the jury to arrive at the correct decision thereon. A Judge in charging the jury should endeavour to speak in a manner simple and direct. The charge must not be involved and in extravagant language.

Where the verdict obtained from the delegates is incomplete and wanting in clearness, the Court should ask the delegates questions necessary to ascertain what their verdict is and record the answers and questions. Where, therefore, in an enquiry on a petition for dissolution of marriage by a Nayar husband, on the ground of incompatibility of temperament, the charge as delivered served more to obscure the issue than to enlighten the delegates and the verdict obtained, simply said that it would be dangerous if the marriage was not dissolved:

Held.—The charge was defective and the verdict unsatisfactory. These constituted substantial error or defect in the procedure or investigation of the case rendering it necessary for the appellate Court, in the ends of justice, to set aside ths verdict and order a re-trial.

Semble—Per Sivasankara Pillai, J.—No doubt the law does not prescribe any particular form in which the jury ought to return the verdict and they are at liberty to deliver it in any form which they think fit. But instead of being satisfied with what is called "a general verdict", it may perhaps be better if the opinion of the delegates is taken about the principal facts in respect of the grounds for dissolution.—

49 T. L. R., *349*.
(= **23 T. L. J.**, *512*).

2. The appeal was by a Nayar husband from the order passed by the Munsiff dissolving his marriage. The order was based on the verdict of a majority of the delegates.

The parties had agreed to the number of the delegates being 5. On some occasions the trial was conducted in the presence of 6 delegates, but throughout there were 5 of the same delegates present and when the verdict was given those 5 took part:

Held.—Merely because one additional delegate was present on some occasions

the verdict given by 5 of them who had been uniformly present throughout should not be rejected as unacceptable in law. This is not a matter that would justify interference in appeal. The decisions under the British Indian Code of Civil Procedure will be misleading since under Section 282 there should be a new trial if any juror be prevented from attending throughout the trial or absents himself, and his attendance could not be enforced. The same difficulty would not arise if it was an assessor who was absent. (See Section 285).

The powers of the Court of appeal are narrow indeed as is evident from the proviso to Section 7, Sub-section (4), as well as Rules 46 and 47 passed under the Regulation.

Section 7, Sub-section (8) (a), has to be interpreted as contemplating the majority of those delegates who were present at the time when the verdict was delivered and not the majority of the number of the delegates selected by the Munsiff, some out of whom failed to make their appearance and participate in the enquiry. This cannot constitute an illegality or such irregularity as had materially prejudiced either party and occasioned a failure of justice.— **24 T. L. J.,** *451.*

3. The District Munsiff trying a petition for dissolution of marriage under the Regulation is not competent to dispense with delegates wholly. Enquiry and trial with delegates is a mandatory provision and no option is left to the Courts. Dispensing with them offends the spirit and principle of the special law.—

24 T. L. J., *545.*

Section 9.

Both under the Nayar Regulation I of 1088 and II of 1100, a Nayar wife is entitled to claim maintenance from her husband but subject only to the proviso that she shall not be entitled to separate maintenance, *inter alia,* if she refuses to live with her husband without just cause.

Where, therefore, a Nayar wife claimed separate maintenance from her Nambudiri husband on the allegations, not of any ill-treatment to her but only of danger and annoyance from, the defendant's caste wife, which, however, were found not to be made out:

Held.—Though it was not improbable that there could be no cordiality among the two wives living in the same house, this by itself was not a just cause to live apart and claim separate maintenance. It could not also have been contrary to the sentiment of the community to which the plaintiff belonged, for a husband to have two wives, as the plaintiff voluntarily went to the defendant's Illom knowing there was already a wife there.—

21 T. L. J., *894.*

Section 22.

See Regn. VIII of 1100. Or. XLII, R. 1.—

21 T. L. J., *562.*

Section 25.

See Regn. VIII of 1100, Sec. 10.—

20 T. L. J., *1158.*

Section 27.

Where in a suit for enforcement of a hypothecation bond executed by the Karanavan and other adult members of the Tarwad (consisting of minors as well), it was found that the bond was fully supported by consideration but there existed no Tarwad necessity as regards a portion of the consideration:

Held.—Even though all the adult members of the Tarwad joined in the document, still the plaintiff, dealing as he was with a family containing minors, should have been particularly careful to have obtained satisfactory recitals in it. Plaintiff was in the circumstances not

absolved from making *bona fide* enquiries. No presumption of necessity could therefore be raised in his favour as regards the balance consideration.

The question of presumption as to Tarwad necessity is one not free from difficulty. In a number of cases an attempt has been made to define the exact position of a creditor lending money to the Karanavan of a Tarwad. (The previous cases have been referred to and the conclusion arrived at in 19 T. L. J., 134).—

21 T. L. J., *1070.*

Section 39.

1. *Per Narayana Pillai, J.*—In interpreting the Nayar Regulation, a resort to the analogies of the Hindu Law does not appear justifiable.

A right to partition is a statutory graft on the Marumakkathayom law. The main guidance has to be sought for from the words of the Statute. What Section 39 creates is a tenancy in common among the children and the wife. The filing of a plaint for partition by one of them will not alter their rights *inter se* as they existed before the suit. So, the word partition is used there in the sense of actual division. The word used is "partition" and not separation or division and would seem to denote the crystallization of an inchoate, indefinite right into definite tangible shares.

Under the Nayar Regulation, the break-up of corporate property rests with the Court, when the shares due to any one member is out of his reach due to the disagreement of other members. The member desiring to separate may move the Court to do what he cannot himself do, and till the break-up is effected by the Court no member can extricate himself from the trammels of corporate holding peculiar to the Marumakkathayam system. Till then his creditors cannot reach his share; he cannot alienate it, and his rights on his death would relapse to the Tarwad without being inherited by his wife and children. This is the purport of Section 39. The view of the law on this subject taken in 18 T. L. J., 747 requires re-consideration.—

20 T. L. J., *736.*

Ref.—48 T. L. R., 73 (=22 T. L. J., 227).

2. Proceedings of the Legislative Council cannot be referred to for interpreting the Sections of a Statute.

Per Chatfield C. J., Joseph Thaliath, J., Parameswaran Pillai, J., and Venkata Rao. J.—The expression "partition" is used in law not only to indicate the physical or *de-facto* partition or division of the estate by metes and bounds but also separation which means the severance of jointness.

Per Chatfied C. J., Thaliath, J and Parameswaran Pillai, J.—"Until partition" in Section 39 can only mean until division of status which puts an end to survivorship, which is effected by a claim for partition being made as provided in Section 33.

As the constitution of a Nayar Tarwad especially after the Nayar Regulation is similar to that of a joint Hindu family under the Mitakshara form no reason is seen why the rulings of the Privy Council that partition in a Mitakshara family is effected by the institution of a suit should not be applied to the Nayar Tarwads.

The filing of a plaint for partition effects a severance between the plaintiff and other members of the family and the share of the plaintiff in such a case is determined at the time of the institution of the suit.

Venkata Rao and Narayana Pillai, J. J., dissenting.—Partition or division meaning separation in status is peculiar to Hindu Law. There is no reason why (one of the two-fold) the meanings of the word 'partition' current in Hindu Law alone in preference to the universal, legal and common

meaning of the word should be imported to construe the word partition in the Nayar Regulation.

The words 'until partition' in Section 39 do not mean a separation in status by any unilateral declaration, including the presentation of the plaint. The words must be construed as meaning a preliminary decree for partition or a division on the agreement of parties.—

48 T. L. R., *73*
(=22 T. L. J., *227*).

Fol.—48 T. L. R., 195
(=22 T. L. J., 274).

3. The plaintiff, a junior member of the Tarwad of first defendant brought a suit for setting aside a lease deed executed by the latter in favour of a stranger. Before his death, the defendant executed a release in favour of his wife and son alleging that he had effected a partition of the properties and that he had taken the plaint properties for his share. The wife and son claimed that by his declaration of intention to divide the properties, the first defendant had attained the status of division and that they were entitled to be brought on record. The District Judge rejected their prayer.

In the case, it was proved that there was an actual agreement come to between the parties that the properties should be divided and that the only thing which remained to be done was to actually carry out the partition by metes and bounds.

Held.—The agreement of partition solemnly entered into between all the parties is a more cogent piece of evidence to prove the intention of the parties to divide than the filing of a plaint. The wife and son were therefore entitled to come in as legal representatives.

Per Chakko, J.—No principle of law could be found which says that a plaint in a suit may evidence a declaration of intention to divide but not an actual agreement between the parties to the same effect. It is now too late in the day to contend that a declaration of intention to divide on the part of one or more members even in a Marumakkathayam family does not effect a severance of interest.—

48 T. L. R., *452*
(=22 T. L. J., *1177*).

Other Cases.

1. *Per Parameswaran Pillai, J.*—Where no necessity is mentioned in the document sought to be set aside by a junior member of a Marumakkathayam Tarwad, it is incumbent on the alienee to state in his written statement for what necessity the debt was incurred. It is only then that the junior member can disprove necessity.

Per Joseph Thaliath, J.—It is the duty of the junior members to rebut the presumption of necessity in cases where consideration has been proved by the alienee, and it is their interest to see that specific issues are raised as to the particular necessities for which the debts were incurred. As long as there are no issues raised with respect to particular necessities, they could not be disproved. The matter would be different where the alienees failed to state the particular necessity after they have been required so to do. "The benefit which the creditor derives from the presumption as to passing of consideration is that he need not in the first instance identify or prove which particular or concrete need of the Tarwad out of its many possible needs the loan was to meet, provided he had dealt with the Karanavan as such within the general scope of purposes of Tarwad management."

Per Narayana Pillai, J.—When a junior member impeaches an alienation, he alleges absence of consideration and necessity. In defence, the creditor pleads consideration and necessity. If he says —'I paid consideration; as to necessity I know nothing', the dictum in 19 T. L. J., 134 applies, and the alienation has to be set aside. So, the need for pleading necessity is on the part of the creditor. The duty to specify it is also his. The simple

question is whether in the interests of pleadings and trial, he should not do so, before the issues are framed and the case is set down for evidence. The answer is he should.

Presumptions as a category form a branch of the law of evidence and come into play only if there is nothing to be proved. Proof and the thing to be proved will not become identical. When it is said that the creditor has a presumption of necessity in his favour, logically it means that he bears the burden to prove necessity, but by virtue of other facts established by him, he discharges such burden. So the burden of proving consideration and necessity is really on the creditor under Marumakkathayam law as under Hindu law. The difference is that the Murumakkathayam law supplies a presumption as a method of proof. This should not bewilder us as to the quarter where the burden lies. Therefore the creditor bearing as he does the burden should specify the necessity (F, B.).—

20 T. L. J., *461.*

Not ref.—49 T. L. R,, 409
(=23 T. L. J., 977).

2. The suit was for maintenance by the members of a Marumakkathayam Tarwad against the Karanavan. The questions which arose for decision were:

(1) whether the whole of the net yield without reserving any portion of the same towards allowance to the Karanavan for management, could be distributed to all the members towards maintenance,

(2) what is the method to be adopted for fixing the rate of maintenance to adults and minors and

(3) whether the rights to maintenance of the first plaintiff were heritable on her death pending the suit.

Held.—(1) The earlier decisions of this Court, though recognising the right of the junior member of a Marumakkathayam family to be maintained according to the wealth and income of the Tarwad and the position of the member who claims it, held that he could not claim to have the whole surplus of the family income equally distributed among the members for their expenses. But in view of the change in the consciousness of the community which has culminated in the passing of the latest Nayar Regulation and Ezhava Regulation recognising the right of members to individual partition in our State, the right of maintenance seems to have been more or less recognised on the basis of a proprietary right in the Tarwad properties. In determining what amount is available for distribution as maintenance, the cost of management, the amount necessary for keeping up the dignity and social status of the Karanavan of the Tarwad in the eyes of the public, and also the social obligations that the Karanavan, as the head of the family, has to discharge, will have to be taken into account. A margin will have to be allowed for such contingencies as the irrecoverability of the rent from lessees, the expenses in connection with the recovery of rent through Court, contributions made by the Tarwad to other Tarwads in accordance with its status and dignity, etc. What has to be set apart for this purpose will depend upon the circumstances of each case. Considering the changes introduced in the community by the recognition of the right to individual partition, the social obligation attached to the Tarwad cannot be considered to be so numerous and so imperative as those devolving on them when the Tarwads were impartible.

The ends of justice in the case would be met by allowing the Karanavan two shares over and above what he would be legitimately entitled to, on a distribution of the net yield for the purpose of fixing the rate of maintenance.

(2) In fixing the rate of maintenance, the method of making the allowance to an adult member equivalent to those of

two minors, as an ordinary rule of guidance cannot be deemed to be improper or unreasonable. Of course in special cases, by reason of the heavy cost of education in these days and the necessity in some case to bestow greater attention on minors entailing a large expenditure, a differential treatment in apportionment may be considered necessary. But such cases have to be dealt with as a departure from the general rule, the facts justifying which will have to be made out by the party claiming such special treatment.

(3) The rights to maintenance up to the date of death of a deceased member are heritable; a suit with respect to the same cannot be considered to have abated on the death of the claimant. His or her heirs as the case may be have the right to continue the litigation so far as the right to recover the amount that accrued due on this account up to the date of such claimant's death.

Held further.—A warrant of commission issued under Section 377 of the Civil Procedure Code of 1065 to assess the yield of the suit properties requires the commissioner to record what he saw and his inference therefrom and not to conduct a roving enquiry. Even if it is considered that the commissioner has been authorised to record evidence on the matters covered by the warrant, it is incumbent on him to reduce the enquiries made by him to writing and incorporate it among the records submitted to the Court. He is naturally expected to call Thadastars on either side and take statements from them or to have prepared a Mahazar reducing to writing what transpired at the time of his visit and what he actually noticed, and have the same attested by the parties.— **47 T. L. R.,** *117* (=**20 T. L. J.,** *1200*).

3. Ordinarily three fourths of the gross produce multiplied by 8 1/3 might be taken to be the value of improvements. The gross produce must itself be arrived at after deducting one-fourth for Jenmikoor.

The levelling of the land is mainly valuable in so far as it renders possible the subsequent planting with trees, but a greater benefit is obviously conferred by the man who renders the land suitable for planting trees and plants there than the man who merely plants a suitable garden with trees; as in the first instance the benefit conferred extends beyond the life of the trees then planted. There seems to be no basis on which to exactly value this advantage and one-third of the cost of levelling may be allowed as a rough rule.— **47 T. L. R.,** *138* (=**20 T. L. J.,** *1295*).

4. The right of a *bona fide* encumbrancer who has taken from a *de facto* manager a charge on lands created honestly, for the purpose of saving the estate or for the benefit of the estate is not (provided the circumstances would support the charge had it emanated from a *de facto* and *de jure* manager) affected by the want of union of the *de facto* and *de jure* title.

A *de facto* guardian is competent to charge the estate of the minors provided the debt is supported by consideration and adequate necessity.

An honest creditor who makes a *bona fide* enquiry as to the existence of necessity and acts upon representation made to him by the *de facto* guardian cannot be defeated simply because he is not able to prove that the money he lent was applied by the guardian for the particular necessity for which it was borrowed.— **21 T. L. J.,** *474.*

5. The right of junior members to a salvage lien in respect of Tarwad properties which they have saved from loss has been recognised.— **21 T. L. J.,** *526.*

6. When the provisions of an agreement are clear, the subsequent conduct of the parties cannot be looked at in aid of its interpretation.

A permanent arrangement in a Tarwad to regulate the enjoyment of the properties may be modified on the agreement of all the members in the different branches.

Per Parameswaran Pillai, J.—The characteristic feature of an allotment of family properties for maintenance is that it is liable to redistribution in accordance with the altered circumstances of the family. Such allotment of family properties may be made by the Karanavan himself or as the result of a family compact. When such allotments of properties are made the properties cannot be resumed by the Karanavan without making other suitable arrangements for the members for whom such allotment has been made and such property is not liable to be seized in execution of a decree against the Karanavan.

In the case of an allotment of properties for a branch or an individual member, the allotment is by its very nature temporary and the properties are liable to redistribution in accordance with altered circumstances of the family. The Karanavan might resume the properties at any time, provided he makes other suitable arrangements for the maintenance of the allottees. The length of time during which the allotment has been in existence does not affect this right of the Karanavan. The allottees have no such interest in the properties allotted as may be alienated by them and if any improper alienation is made by the allotees, the Karanavan or any other member of the Tarwad may maintain a suit for setting aside the alienation and recovering the properties on behalf of the Tarwad. If after an allotment for maintenance the Karanavan incurs debts for proper Tarwad necessity and the properties in his possession are not sufficient for discharging them, the creditors have a right to proceed against the properties in the hands of the allotees, though they are entitled to do so only after the properties in the hands of the Karanavan are exhausted. Any family arrangement which fulfils these conditions, must be treated merely as an allotment for maintenance. But, if by such arrangement, properties are assigned to Thavazhies or branches permanently and the only right which the Tarwad has over those properties is that they may be returned to the Tarwad if any of the branches or Thavazhies become extinct, it can, by no stretch of language, be called a maintenance arrangement.

The preponderance of authorities seems to be in favour of the view that all deeds by which permanent allotments of properties are made and intended to endure for all time should be treated as partition deeds even though there may be clauses in the deed inconsistent with that view such as, restraints on separate alienation by branches, or a provision that pattah should be taken jointly, or that renewals of Kanom properties should be taken in the name of common Karanavan and so on. The principal feature of a partition deed is that the allotment of properties is made for all time to come, without any liability to readjustment to suit the altered circumstances of the family in future.—

47 T. L. R., *437*
(=21 T. L. J., *652*).

Appl.—22 T. L. J., 1272.
Ref.—22 T. L. J., 40.
23 T. L. J., 1031.

7. A Karanavan of a Marumakkathayam Tarwad is incompetent to enter into any speculative transaction beyond the scope of his ordinary duties. This is particularly so when the Karanavan enters into a partnership regarding the conduct of the speculative business.

Where therefore the Tarwad properties were sought to be made liable for money due from the Karanavan in respect of a motor service business conducted by him in partnership with the plaintiff :

Held.—The conduct of a motor business did not fall within the ordinary duties

of a Karanavan and was a highly speculative transaction and the plaintiff, if he should succeed, must alloge and prove that the motor business was a Tarwad concern and that the other members of the Tarwad had consented to it.

21 T. L. J., *1109.*

8. While in the case of property belonging to a Marumakkathayam main Tarwad the presumption is against division and therefore, when it is alleged in respect of a particular property that it belongs exclusively to one branch of the main Tarwad the burden of proving such exclusive right is on him who alleges division, still when it is admitted that the Tarwad is divided the burden of proving that any particular item was not divided, but left in common, will be upon the party who sets it up.

A recital in a document stating that an adjacent piece of land forming one of the boundaries of the property dealt with, belonged to a certain person other than the executant, is a statement against the proprietary interest of the person making it and is admissible in evidence against the executant as an admission. Though such admission does not amount to an estoppel still, it will, unless explained, be a very valuable piece of evidence against him.—

21 T. L. J., *1122.*

9. It is a well estalished rule of Marumakkathayam Law that the Karanavan alone is not competent to execute a deed of mortgage with a term. It is not correct to say that he has power to do so if it is manifestly advantageous to the Tarwad and the Anandaravars refuse to give their consent. For if this proposition is carried to its logical consequences it would follow that a Karanavan alone might sell Tarwad property provided it is advantageous to the Tarwad even though the Anandravars object to such alienation. But comment on this is unnecessary.

Where however the mortgage with term though executed by the Karanavan alone is found to be supported by consideration and Tarwad necessity, it is competent to the Court, while declaring the term void, to give in favour of the mortgagee a charge on the property for the consideration proved and found binding (F. B.).—

21 T. L. J., *1177.*

Fol.—22 T. L. J., 361.

10. Under the Marumakkathayam Law the consent, express or implied, of all the adult members of the Tarwad is necessary to validate a written agreement to sell immovable property. The Nayar Regulation does not affect this because, in the absence of an express provision in regard to it in the Regulation, the ordinary Marumakkathayam law prevails.—

22 T. L. J., *20.*

11. If the arrangement is one intended to last for ever it must *prima facie* be construed to be a partition deed and any further provision contained in the deed which might militate against this conclusion has to be regarded as being controlled by these provisions and if any such condition or provision is opposed to public policy the Court must disregard it and refuse to give effect to it. If, on the other hand, the provisions indicate that the allotment of properties is to continue only for an indefinite length of time and there is nothing to indicate that it is intended to be permanent, such a deed cannot be regarded as anything more than an allotment for maintenance.

The fact that the devolution of properties allotted to one branch in the event of its extinction is specifically provided for does not by itself make the arrangement one which was intended permanent and to last for ever.

Unless there are expressions which clearly or by necessary implication indicate that the parties intended the arrangement to continue for ever, it would not be reasonable to conclude that the right to re-adjust the said allotment was surrendored or extinguished. In

other words the use of definite expressions precluding the possibility of a re-adjustment must be regarded as a safe test for determining whether a document is a mere allotment for maintenance or a deed of partition.

No definite and certain rule can be laid down for the construction of deeds of this nature. A document is not to be construed with reference to authorities as to how a similar document was construed in other cases. "Any ruling as to interpretation of a document can only be applied in its entirety to a document absolutely identical in language and in a case the several circumstances of which are substantially the same. Where these conditions are not satisfied, an appellant or respondent relying upon previous rulings of the Court and putting them forward as guides to the correct interpretation of the particular document in which the case under appeal actually turns can do nothing more than ask the Court to take into consideration the general principles which have been applied in similar cases and to derive from them whatever assistance it can towards arriving at a correct conclusion."— **22 T. L. J.,** *40.*

Ref.—23 T. L. J., 1031.

12. The sale deed was set aside as it contravened the provisions of Section 19 of the Nayar Regulation of 1088 but it was found that the sale deed was fully supported by consideration and Tarwad necessity.

Held.—The consideration money should be made a charge upon the plaint property and the plaintiffs should be allowed to recover the property only upon payment of that amount.—

22 T. L. J., *361.*

13. The question for decision was whether Exhibit A, Udampady of 12-10-1087, executed among the plaintiffs and defendants constituting two branches of a Nayar Tarwad amounted to a partition and not merely an allotment for maintenance. The document was styled a "Bhagaudampady". Its terms did not indicate that the parties intended or contemplated that the arrangement given effect to by it should at any future date be rescinded or altered in any manner. It contained a provision however that each branch should celebrate its ceremonies separately and if it should be found difficult to conduct them with funds at their disposal the branches could alienate the properties allotted to them for such purposes as also for sudden emergencies, but such power of alienations would not extend to the execution of sale deeds. It provided further that the sales as well as the receipt of compensation from Government for lands assumed can be effected jointly by the senior members of the two branches only and that the properties, if any, purchased with the proceeds should be enjoyed by the branch which owned the properties sold or assumed. The shares allotted to the branches had been ascertained *per stirpes* and not *per capita.*

The lower Court held that Exhibit A was only an allotment for maintenance. In appeal by the defendants:

Held.—Exhibit A was a deed of outright partition. A careful consideration of the case law shows in the first place that this Court has considered that the style of the deed is of primary importance in such cases and that even if the deed is not styled a "Bhagapatrom" if the word "Bhagom" division is used in the deed the use of the expression should be regarded as of great significance. Secondly, if the operative provisions of the deed and the expressions used therein clearly point to such intention the addition of a restraint on alienation cannot be regarded as important and if the restraint is of a general and comprehensive character it may be held to be opposed to public policy and may accordingly be treated as invalid and inoperative.—

22 T. L. J., *453.*

Ref.—23 T. L. J., 1031.

14. A course of conduct clearly indicating a *settled intention* to be divided in interest will effect division. In the case of individuals, such an intention can be presumed more readily and easily by a course of conduct, even two or three instances *totally inconsistent with a state of union* being quite sufficient. The instances evincing a course of conduct on the part of the members of a Tarwad are but indications of their intention and when such intention is made obvious even in a short period of course of conduct it will be sufficient to infer division.

There cannot be a clearer indication of the intention of the branches of a Tarwad to sever common interests and to remain separate than that afforded by each branch claiming and getting its own share of mortgage debts and value of improvements when they are received in respect of properties enjoyed by the Tarwad on mortgage.

22 T. L. J., *624.*

15. The preponderance of authorities seems to be in favour of the view that all deeds by which permanent allotments of properties are made and intended to endure for all time should be treated as partition deeds even though there may be clauses in the deed inconsistent with that view, such as restraints on separate alienation by branches, or a provision that Patta should be taken jointly, or that renewals of Kanom properties should be taken in the name of the common Karanavan and so on. The principal feature of a partition deed is that the allotment of properties is made for all time to come, without any liability to readjustment to suit the altered circumstances of the family in future.—

22 T. L. J., *1272.*

16. Defendants 1 and 2 and one R. were divided members of a Nayar Tarwad. They inherited the property allotted as shares of their deceased mother and sister. The plaintiff purchased second defendants' share of the inherited property and sued for partition. The defence of the contesting defendants was that the property inherited by defendants 1 and 2 was taken by them as members of a Marumakkathayam Tarwad with all the incidents of Marumakkathayam law attaching thereto, and until partition the undivided share of a member in such property was not liable to be sold:

Held.—According to the ordinary principles of Marumakkathayam Law, the brothers being divided, they would take not as joint tenants, but as tenants in common.—

22 T. L. J., *1357.*

17. Though it is a well recognised principle of Marumakkathayam law that a gift to or purchase in the name of the eldest son by a father is presumed to have been a Makkathayam for the benefit of the children, any presumption as regards an acquisition in the name of a younger son must in any event be much weaker than the case of an acquisition in the name of the eldest son. Each case must be regarded in the light of the circumstances of that case.

Where it was found, among other circumstances, that (1) the document in question in the name of the younger son was in terms a sale deed, (2) that he was in possession during the life-time of his eldest brother, and (3) an acquisition was also made in the name of another son:

Held.—The acquisition under the document in question in the name of the younger son was only for his exclusive benefit.—

23 T. L. J., *223.*

18. Admissions are not conclusive proof of the matters admitted but they may operate as estoppels (Section 31 of the Evidence Act).

The express admission of a party or an admission implied from his conduct is evidence and strong evidence against him; but he is at liberty to show that any such admission was misunderstood or untrue

and he is not estopped or concluded by it, unless it has had the effect of altering the condition of some third person. Similarly the admission in the answer of a party in a previous suit did not preclude him in a later suit, from pleading that the statement in such answer was false and intended as a fraud on a third party. Not only the persons making the admissions, but also those who claim under such persons are free to go behind admissions in order to prove the true state of affairs,

Where the question was as to division or non-division as between two Sakhas of a common Tarwad and the admission of one Sakha Karanavan as to non-division appeared artificial and did not reflect the real facts which were clearly established otherwise by unimpeachable evidence, and, besides, did not affect the possession of the properties or the management of the two Sakhas:

Held.—The admissions as to non-division could not be relied on for deciding the question in controversy.—

49 T. L. R., *207*
(**23 T. L. J.**, *279*).

19. A gift by a Marumakkathayee to his wife or children is, no doubt, presumed to be for the benefit of all of them. But if he makes separate gifts in favour of the children of his wife through a former husband and through himself respectively, either set of donees will not be entitled to the properties gifted to the other.

Quaere.—Whether a follower of Marumakkathayam law makes a gift of property to his wife and children by him, she having already children by a former husband living, the donees do not take the property as a Tarwad or Thavazhi property, but take it as ordinary shares, that is to say, as tenants in common.

Where the plaintiffs laid claim to the acquisitions in the name of the first defendant on the basis of his membership in their sub-Tarwad, as the eldest son of their father and his management of the sub-Tarwad, but it was found that first defendant was only their step-brother, had resources of his own and his management was but vague and indefinite. and there was no proof connecting the first defendant's acquistions with the management:

Held.—The principle of Section 88 of the Trusts Act, *i. e.*, that advantages gained by an agent using his position as such may be claimed by the principal, did not apply in the circumstances of the case.— **23 T. L. J.**, *344*.

20. In a partition deed in the Tarwad of plaintiffs and first defendant, it was provided that certain debt should be discharged by first defendant, and that, if on account of his default, the properties allotted to plaintiffs were proceeded against and they should be compelled to discharge them, such loss would be realisable from the first defendant and the properties allotted to him. On the first defendant failing to discharge one of the said debts, the properties allotted to plaintiffs were attached and they were compelled to discharge the debt. They, therefore, brought the suit for recovery of the amount paid by them, from the first defendant and the properties allotted to him:

Held (by majority).—The partition deed created a charge in favour of the plaintiffs over the properties allotted to the first defendant, and the plaintiffs were entitled to recover the amount due from them.

The contention that a contingent charge was not known to the law could not stand. A present charge might be validly created so as to operate in future even if it was made to depend on a liability which might be future and was contingent.

In the case, it could be assumed safely that the intention of the parties was that the loss accruing to one co-sharer should be recovered from the properties allotted to the defaulting co-sharer. Whatever

may be the correct view in regard to deeds of another nature, the provisions in a partition deed should be regarded as giving effect and expression to the dominant intention of the parties which was to effect perfect equality of division.

The further contention that a charge could not be recognised as the properties said to have been charged with the liability were not specified also could not stand. The properties charged under the partition deed could be identified with reasonable certainty. They were the properties allotted to the first defendant's share and manifestly intended to be charged with the liability.

Narayana Pillai, J.—A charge on immovable property amounts to an interest in immovable property and is enforceable against a *bona fide* purchaser without notice of the charge (F. B.).—

49 T. L. R., *318*
(=23 T. L. J., *466*).

21. *Held* (by a Full Bench).—Sankaran Karthavu's case (40 T. L. R., 151) was not correctly decided.

Ordinarily speaking, the term property includes both movable and immovable property. But, if movable property were included in the term "property" used in Section 19 of the Nayar Regulation of 1088, the management of Nair Tarwads would practically come to standstill. It is therefore difficult to believe that the Legislature meant to include movable properties also to be subject to the restriction imposed by Section 19.

One of the fundamental principles of construction of documents as well as statutes is:—'The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnancy or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further.' 'An argument drawn from an inconvenience, it has been said, is forcible in law; and no less, but rather more, force is due to any drawn from an absurdity or injustice. When the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpollating other words, under the influence, no doubt of an irresistible conviction that the Legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. The rules of grammar yield readily in such cases to those of common sense.'

Seeing the great inconvenience, nay, the absurdity of interpreting Section 19 as restricting the sale, &c., of movable properties belonging to a Tarwad, it has to be held that the Legislature never meant to include them. Also the fact that the subsequent Nayar Regulation of 1100 did not include movable properties in the restrictions imposed might be taken as an indication of the intention of the Legislature in enacting Section 19 in the prior Regulation (F. B.).— **49 T. L. R.,** *176*
(=23 T. L. J., *504*).

22. In the case of Marumakkathayam Tarwads, if it is once admitted that certain members had community of interest

at one time, but lost it subsequently by separation of interest, the burden of proof that they had had community of interest always lies on those that set up separation. If it can be proved that either by actual division or by consistent course of conduct of the members of the Tarwad in the matter of separate living, enjoyment of properties, execution of documents and separate performance of ceremonies, the members of the different Thavazhis clearly intended to remain separate, it has to be inferred that the Thavazhis are divided from one another :

Held (on the evidence).—The plaintiffs belonging to one Thavazhi had not become separated from the main Tarwad.—

23 T. L. J., *767.*

23. The acquisitions in question of comparatively large value were made in the first defendant's name at a time when he was the Karanavan of his Sakha Tarwad though only a junior member in the main Tarwad. There was no conflict involved in the case between the first defendant and the Tarwad as a whole, and it was not shown that the first defendant had any independent source of income at that time :

Held.—The acquisition must be presumed to be Makkathayam property common to the sub-Tarwad of the first defendant and the other children. But this was only a presumption and could be rebutted.

In the case, it was held on the evidence in the case of the subsequent conduct of the first defendant and the probability of the funds for the acquisitions having been advanced by the father of the first defendant, that the presumption had not been rebutted.— **23 T. L. J.,** *854.*

24. On proof of the advance of consideration, a presumption of necessity arises in favour of a *bona fide* creditor who deals with the Karanavan as such. The mere inability of the creditor to state the specific or concrete necessity for the alienation, much less the omission to set it forth in the pleadings or specify it when examined as a witness, ought not to deprive him of the benefit of such presumption.

Where, therefore, the evidence in the case clearly established that the plaintiff-creditor advanced money to the first defendant who was the manager of the family fully believing that money was needed for the necessities of the first defendant's Illom and there was absolutely no reason to suspect that the first detendant was acting against the interests of the family and there was also evidence that the family income was just sufficient for its ordinary needs and that it would become necessary for the family to borrow money if unusual or extraordinary necessities were to arise :

Held.—In the circumstances, it was not just or reasonable to hold that the plaintiff's omission to state and prove the specific necessity for each of the several documents in his favour, was evidence of bad faith or that his claim to realise the money advanced from the Illom properties was unsustanable on that ground.

The views stated by Venkitarama Iyer., in 19 T. L, J., 134 and Narayana Pillai. J., 19 T. L. J., 1044 following a passage in Pandalai Justice's judgment in 4 T. L. J., 289—that it would not be enough if the creditor was aware of the necessitous condition of the Tarwad and had advanced consideration to the Karanavan 'acting as such', but he should when asked, be prepared to state the specific or concrete necessity for the alienation in his favour, and on failure to do so, he is bound to fail—Discussed and disapproved (F. B).—

49 T. L. R., *409*
(=23 T. L. J., *977*).

25. The deed styled an 'Udampady' and registered as such while conveying the properties in the schedule appended thereto in favour of the executees contained provisions to the following effect (i) that the properties should be enjoyed by the executant till his death, (ii) that all

properties then under his control and not included in the deed and also those which might belong to him thereafter should go exclusively to the persons specified in the deed, and (iii) that the right of revocation was reserved with the executant. The question arose whether the instrument was a deed of settlement or a Will:

Held.—The deed construed as a whole embodied as conveyance *in presenti* and therefore a settlement.

In coming to this conclusion, the Court observed that the absence or presence of a power of revocation could not by itself indicate the nature of the document. And simply because the power of revocation was reserved, the instrument could not be called a Will; that the settlement of after-acquired properties could not be really regarded as conclusive of the matter whether the deed was a settlement or a Will; that the document as a whole must be read and in doing so, the name though not conclusive, by which the document was called must also be borne in mind (F. B.).— **23 T. L. J.,** *1015.*

26. Under a document styled Nischayapatrom, properties were allotted to the different branches of an undivided Tarwad separately, such allotments being more or less of an enduring character. Limited powers of alienation were conferred on some of the members; but at the same time care was taken to see that the properties were not frittered away by independent dealings, and the hold of each branch over the properties given to the other two was maintained intact in order to prevent them from being lost to the Tarwad, Provision was also made for averting revenue sales of the properties from negligence of the branches in possession. All alienations not expressly authorised by the document were declared invalid. Rules were also laid down for the maintenance of a common Kalary and performance of the ceremonies connected therewith by all the branches and also for conducting Thalikettu in the Tarwad.

On a question of construction:

Held (per curiam).—The document read as a whole constituted only a maintenance allotment and not a deed of partition.

Per Sivasankara Pillai, J.—In construing the document it may not be profitable to rely upon other documents which, themselves ambiguous in their nature, had become the subject-matter of judicial decisions, though the legal principles enunciated in such pronouncements may be of utility for purpose of guidance, However that be, the intention of the parties to a document must be gathered from the words, and when such words are definite and unambiguous, the Courts should not travel outside the words.

The employment of the nomenclature 'Nischayapatrom' is a consideration in favour of the view that the document is a maintenance allotment and not a division.

Unless there be decisive provisions in family Udampadis pointing to division, the indivisibility of the Tarwad will be maintained wherever it is possible. The decision of the question depends in each case according to its own circumstances.

It is possible in a deed of allotment to give properties to several branches, but at the same time impose restrictions on the right of aliention, for the benefit of the Tarwad as a whole. Such restrictions cannot be considered to be repugnant to the interests created in favour of the branches.

Quaere.—Whether the permanency of the allotments in a family Udampady is a test conclusive of partition (F. B.).—

23 L. T. J., *1031.*

Ref.—24 T. L. J., 295.

27. In some old decisions, it was laid down that separate residence, performance of ceremonies, enjoyment of properties, payment of tax and independent execution of documents extending over many years would be indicia of division,

but as the law developed the length of the period during which such state of things should have continued, became contracted so much so that a culmination was reached in *Easwaran V. Narayanan* (24 T. L. R., 187) wherein Sadasiva Iyer, C. J., observed that as regards the question whether two persons or two branches were or were not divided in interest, a course of conduct *clearly* indicating a *settled* intention to be divided in interest would effect division. "There is no magic in any particular number of years and provided the intention to remain thereafter in a state of division without joint ownership is indicated by even a single very clear transaction in which the branches or the recognised heads of the branches have taken part, and if that transaction can be taken as approved by all the adult members of both branches by the surrounding circumstances and by their not having tried to set it aside for a reasonably long time, a state of division might safely be found."—

24 T. L. J., *74.*

28. According to the principles of Hindu law, where the co-parceners in a joint Hindu family come to partition and divide the joint property, with the exception of a portion of it, they are, in the absence of indication to the contrary, tenants-in-common with reference to the excepted property. As regards property left out by mistake in division, the rule of the Hindu law has been applied to Marumakkathayam Tarwads and the application of divided status in relation to a property purposely left in common has also been recognised.—

24 T. L. J., *80.*

29. The question as to the liability of Tarwad properties in respect of debts arising from a chit transaction started by the Karanavan of the Tarwad with the co-operation of some junior members. There was evidence that the adult members of the Tarwad had admitted that the chitty was started for and on behalf of the Tarwad and that the money received by the foreman either as prize money or as chitty subscriptions had passed into the hands of the Karanavan and had been utilised for Tarwad purposes. There was also no allegation that the statements of the adult members had been brought about by fraud or collusion or other invalidating circumstances. It was argued, however, on behalf of the minor members of the Tarwad, that they had a right of questioning the liability for the debts and reliance was placed on the principle of Hindu law that so far as the minor members of a joint Hindu family are concerned the managing member and all the adult members together could not start a new business so as to make the entire family liable for debts arising out of it:

Held,—Though there is no doubt that there is great deal of risk involved in carrying on a chitty, unless the foremen act unwisely or without due care, the risk or probability of loss is inconsiderable. In this view, it is very doubtful whether a chitty can be called a speculative transaction or placed on the same footing as a commercial or bussiness venture. Further it may be to the benefit of the Tarwad to start a chitty and save the Tarwad properties from being sold. Also alienations by the Karanavan and adult members have been upheld if they are to the benefit of the family as distinguished from mere defensive purposes.

In the circumstances, therefore, the adult members of the Tarwad validly represented it and their statements were binding on the minor members so that the liability of the Tarwad could not be questioned.— **24 T. L. J.,** *206.*

30. Under a document styled Nischayapatrom, properties were allotted to the two branches of a Nayar Tarwad separately. The reason for the execution of the deed is said to be the physical

incapacity of the first and second executants to manage the whole Tarwad. A portion of the main house and the properties in item 1 are set apart for common purposes. Provision is made for the separate maintenance of the several executants. Limited powers of alienation were conferred on some of the members but care is taken to see that when alienations are necessitated to obtain more money than is necessary to pay off debts all the adult members should join in such documents. Renewals are to be taken in the joint names of the senior male members of both the branches. If it is found that any of the properties have been left out by mistake, when they are found they should be taken by the members of each branch in equal shares and held by them subject to the conditions regarding enjoyment and the performance of religious ceremonies imposed in the Udampady. There are two significant omissions in the deed, namely, absence of provision to effect mutation of names in respect of the properties in favour of the allotees and there is also no provision that the allotment under the deed is to endure for ever.

Held.—The document construed as a whole constituted only an allotment for maintenance which while giving independence within limits restricted the activities of members towards the doing of acts which would effect a permanent severance of community of interest and not a deed of partition.

In interpreting a document an inference should not be drawn from isolated passages of the document but the document as a whole should be looked into. There is an equally important principle and that is when the document has bearing on the intentions of the parties, the customs, habits and sentiments usually current among the classes or communities to which the parties belong should be taken into consideration. In interpreting a document words and expressions should as far as possible be given the natural meaning they ordinarily bear and no interpretation ought to be accepted which reduces the purport of the document to an absurdity.

In construing a document it may not be profitable to rely upon other documents which themselves ambiguous in their nature, had become the subject-matter of judicial decisions, though the legal principles eunciated in such pronouncements may be of utility for purposes of guidance. The intention of the parties to a document must be gathered from the words and when such words are definite and unambiguous the Courts should not travel outside the words. Unless there be decisive provisions in family Udampadies pointing to division, the indivisibility of the Tarwad will be maintained wherever it is possible. **24 T. L. J.,** *295.*

31. The right of a Tarwad to impeach an alienation by the Karanavan or a debt incurred by him or a decree obtained against him has been recognised as vesting in the junior members of the Tarwad subject to this limitation that if the Tarwad had been once allowed a reasonable opportunity of showing their non-efficacious character, then after the *bona fide* exercise of such opportunity, the Tarwad would thereafter be precluded by the law of *res judicata* from re-agitating the same matter once again. Such opportunity may be utilised in a suit either as plaintiff or as defendant or in execution proceedings.

Where in a suit by some junior members for declaration that their Tarwad was not liable on a hypothecation bond executed by the Karanavan and a decree and execution proceedings on basis thereof, it was found that certain junior members of the Tarwad had been parties to the decree, that they were not guilty of any fraud, collusion or misconduct in the obtaining of the decree but that the hypothecation bond was not supported by consideration or necessity :

Held.—The suit was barred by *res judicata.* Even the finding that the bond was

unsupported by consideration and necessity could not help, for, the obtaining of the decree in the previous suit on the ground of perjured evidence will not, standing alone, afford a cause of action for a suit to set it aside.

For the decree to be vacated on the ground of fraud there should be a fraud extrinsic or collateral to everything that had been adjudicated upon, but not one that had been and must be deemed to have been dealt with by the Courts. The test is whether there is a fraud practised in relation to the proceedings by which the defendant in the original action was prevented from placing his case before the tribunal. Until this is found the Court has not arrived at the stage when it can investigate the question whether the original suit was a false suit or not.

The jurisdiction to impugn a previous decree on the ground of fraud must be exercised with care and reserve and strict proof must be insisted on in regard to those facts which the law requires a plaintiff to make out before he will be entitled to relief. Vague and general allegations are insufficient by whatever procedure it is sought to overthrow a judgment on the ground of fraud.

A Vakil's general powers in the conduct of a suit include the abandonment of an issue which in his discretion he thinks it inadvisable to press. Where the Vakil in the primary Court for the appellant refrained from pressing an issue though vital, the appellant could not be permitted to re-open it, as if the finding on such issue did not exist.— **24 T. L. J.,** *362.*

32. The provision of Section 25 of Regulation I of 1088 were applicable only to such suits which could be brought against the Karanavan of Tarwad not only as such but otherwise also, i. e., independent of and without reference to his position as Karanavan and were not intended to govern those suits which cannot be brought against a Karanavan except as such or which could be brought against him only as such. The Section no doubt requires proof of the fact that the Karanavan was sued in his representative capacity but that does not mean that he ought to have been described as such in the plaint. It must be a question of fact in each case and if the facts of the case indicate beyond doubt that the Karanavan was in reality sued in that capacity that would be sufficient to indicate that the decree was obtained "in a suit against the Karanavan as such" within the meaning of Section 25.— **24 T. L. J.,** *825.*

33. See also—

Regn. II of 1077—Other cases.—
48 T. L. R., *183*
(=**22 T. L. J.,** *94*).

„ III of 1094—Other cases.—
20 T. L. J., *481.*
48 T. L. R., *1.*
21 T. L. J., *859.*
21 T. L. J., *1195.*

„ VI of 1100, Art 9.—
47 T. L. R., *229*
(=**21 T. L. J.,** *308*).

„ VIII of 1100, Sec. 10—
23 T. L. J., *274.*

„ Sec. 40.—
47 T. L. R., *77*
(=**20 T. L. J.,** *1196*).

„ Or. XXI, R. 13.—
20 T. L. J., *497.*

„ Or. XXII, R. 9.—
48 T L.. R., *441*
(=**23 T. L. J.,** *1*).

„ Or. XLV, R. 1.—
46 T. L. R., *205*
(=**20 T. L. J.,** *1027*).

REGULATION III OF 1100.

(The Eazhava.)

Sections 28—31.

Sections 28 to 31 of the Eazhava Regulation deals with Tarwad properties which include all the properties that possessed

the incidents of Tarwad property on the date the Regulation came into force. The scheme of the Regulation is to render all property owned by Eazhava families partible except in the cases of families and individuals exempted by the Notification under Section 33 of the Regulation. Properties, though acquired by a Makkathayam gift or inherited as such before the date of the Regulation had all the incidents of Tarwad property attached thereto, so far as the members of the sub-Tarwad to which they belonged are concerned. As such they constituted Tarwad property within the meaning of Sections 28 to 31 of the Regulation.—

20 T. L. J., *551.*

Section 30.

The expression "claim an out-right partition of the property" in Section 30 of the Eazhava Regulation can only mean "claim to have that share determined." The only interpretation that can be put upon Section 30 is that, on the coming into existence of the conditions mentioned in Sections 29 and 30, an individual member becomes entitled to a definite share in the Tarwad property which he might claim from the other members. But until he claimed it, his interest will not become separated from the rest of the family and when he claimed it, his interests became separated and his share became heritable.

Reading Sections 29 to 31 together, there can be no doubt that when outright partition is claimed, the person claiming it becomes divided in status from the rest of the family and entitled to his individual share. In this view, it must be held that, by the filing of a plaint which is the best mode of claiming a partition, the plaintiff becomes entitled to his separate share, and on his death it passes to his legal representatives. The analogy of he Full Bench ruling in 18 T. L. J., 747 under the Nayar Regulation is applicable to the Eazhava Regulation.—

20 T. L. J., *173.*

Other Cases.

1. So far as the rule of law applicable to the Misravazhi Eazhavas is concerned, there could be no doubt that the principles relating to the Marumakkathayam system of inheritance are wholly applicable to them except with reference to the variations therefrom recognised by the judicial pronouncements of the High Court.

The right of the children to a moiety of all the self-acquisitions of the deceased has been recognised irrespective of the time of acquisitions.

The widow and children are also entitled to a moiety in his separate properties which cannot be technically said to be his self-acquisitions (F. B.).—

46 T. L. R., *140*
(=20 T. L. J., *266*).

2. The suit was for partition in an Eazhava Tarwad. Two children being born within less than 7 months after the filing of the plaint, it must be presumed that the mothers of the children were *enceinte* at the time of the filing of the plaint. For various purposes of the law an infant *en ventre sa mere* is considered and treated as a person in existence. The children impleaded must *prima facie* be deemed to have been persons in existence at the time of the filing of the suit and their impleading is necessary for a proper disposal of the suit.— **47. T. L. R.,** *196*
(=21. T. L. J., *544*).

3. Where, in an Eazhava Tarwad, following the misradayam system of inheritance, the paternal uncle conveyed certain properties in gift, to the children of his deceased elder brother, directing the Karanavan of the sub-Tarwad constituting the donees to take out patta for the properties and further specifically referred in the deed of gift, to instructions

left by the brother, as the reason for the gift :

Held.—The donees held the property as sub-Tarwad property and had no separable interest therein as tenants-in-common, which could be attached in execution at the instance of the creditor of any one of them.— **21 T. L. J.,** *958.*

4. In a suit for partition of properties comprised in a deed of gift executed by two Eazhava brothers in favour of their children by a common wife, expressly providing that the donees shall enjoy jointly (കൂടി കൈവശം അനുഭവിക്കേണ്ടതാണ്) it was contended that on the analogy of the principle of Pathni Bhagom, applicable to the parties under their customary law, by virtue of which the children by one wife would take a share equal to that of children of another wife, it should be assumed that the intention of the donors was to gift the properties separately to each group of children as virtually constituting two sub-Tarwads :

Held.—It was not possible to hold that in construing the gift in question, the analogy. even it be valid, can be of much use, in the face of the express provision in it for joint enjoyment. As the donees were members of the same family, it was perfectly clear that the desire of the donors was to gift the properties to the whole body of donees as members of, or as constituting a joint family. Such deeds should be construed with due regard to the customary law of the parties and the intention and desire which would ordinarily be entertained by them in making the gift. It had to be inferred therefore, in the circumstances, that the donors intended that the donees should take the properties as members of the sub-Tarwad and for the benefit of the whole sub-Tarwad.— **24 T. L. J.,** *561.*

5. See also—

Regn. VIII of 1100, Or. XXI, R. 86.— **21 T. L. J.,** *1101.*

REGULATION VI OF 1100.

(Limitation.)

Section 5.

1. There is no rule or enactment extending the operation of Section 5 of the Regulation to an application to set aside the dismissal of a suit for non-compliance with the order to furnish security for the costs of the suit. The Court has, therefore, no power to admit the application when it is presented after the expiry of the period of limitation prescribed.— **20 T. L. J.,** *89.*

2. Wrong advice given by a Vakil's clerk would be effective in combating delay under Section 5 provided the party had not been negligent and had acted in good faith. Resort to Vakil's clerk and faith in his advice may be an error of judgment. But an error of judgment is not the same thing as absence of good faith.— **46 T. L. R.,** *117.*

3 The appeal was first filed in the District Court within 29 days of the date of the decree and it was pending in the District Court till 27-12-1105 when it was discovered that it should have been filed in the High Court and it was returned for presentation to the High Court, on that date. The appeal was presented to the High Court 29 days later. An application to excuse delay was also put in. It was contended that Sections 5 and 14 (3) of the Limitation Regulation would apply to the case.

Held.—If Section 5 alone applied, it would have been incumbent on the appellant to have filed his appeal in the High Court without avoidable delay after it had been returned by the District Court. This was not done. Section 14 (3) could not help the appellant as the Section did not apply to appeals. Paragraph (1) of the Section deals with saving of time as regards suits and paragraph (3) as regards

applications. There is no confusion in the Limitation Regulation between applications and appeals.— 23 T. L. J., *366*.

4. See also Art. 166.—48 T. L. R., *67*.
(=22 T. L. J., *316*).

Section 6.

A decree (Exhibit D) was obtained by first defendant on 27-1-1087 against a minor with the second defendant on record as his guardian. The minor became a major in Makaram 1095 and died in Edavom of the same year. This suit was filed on 2-1-1098 by the mother of the minor as his legal representative to set aside Exhibit D and for other reliefs on the ground that the second defendant was not the guardian in fact. On the plea of limitation set up by the defendant, it was argued for the plaintiff that as the minor could have filed his suit within three years of the date of his attaining majority if he had lived, the plaintiff as his legal representative should have under Section 6 (1) of the Regulation the same period in which to sue. The question was whether a suit brought by the legal representative of a deceased minor within the time allowed for such a minor if alive by Section 6 (1) would be barred:

Held.—The suit was not barred.

The term 'he' in 'he may institute the suit' in Section 6 (1) corresponding to Section 7 (1) of the Regulation of 1062 includes not only the person under disability but his legal representative as well.

Per Chatfield, C. J.—Totally different considerations may prevail as regards an assignee from the minor though even here there is much to be said for the extension of the rule in his favour also.

Per Parameswaran Pillai, J.—The contention that the expression "a person entitled to institute a suit", in Section 6 Clause (1) includes also his legal representative, has much force, for according to general principles of law the personality of the deceased is continued in his legal representative and so whatever rights a person may have including a right of suit will survive to his legal representative (F. B.).—

47 T. L. R., *310*
(=21 T. L. J., *505*).

Section 8.

See Art. 9— 20 T. L. J., *907*.

„ Regn. VIII of 1100, Sec. 58—
46 T. L. R., *415*
(=20 T. L. J., *1053*).

Section 10.

1. The plaintiff and her husband's brother executed a sale deed on 25-12-1079 for Rs. 980 in favour of the defendant. Out of the consideration for the sale deed Rs. 800 was reserved with the defendant for payment to the plaintiff for her maintenance. Till Kanni 1094, the defendant maintained the plaintiff with the interest on the amount reserved. In 1098 the defendant endorsed a promissory note in favour of the plaintiff. The plaintiff filed the suit within 3 years of the endorsement of the promissory note for amounts due to her minus the amount covered by the promissory note. The defendant contended that the suit was barred by limitation:

Held.—Meeting the plaintiff's expenses out of the money entrusted to the defendant was a continuous discharge and a consequent acknowledgment of the debt due to the plaintiff. On the date of the endorsement of the promissory note there was a settlement of accounts and the endorsement evidences a written acknowledgment of the liability. The suit is brought within 3 years of it. Even otherwise the entrustment of the money to the

defendant for a distinct purpose earmarked, constitutes an express trust to which Section 10 of the Regulation applies.— **24 T. L. J.,** *390.*

2. See Art. 97.— **22 T. L. J.,** *1181.*

Section 12.

1. Though the copy of a decree in a case was obtained by one of the parties therein, another person on the party array can file that copy for the purpose of an appeal. In such a case, the person who prefers the appeal can get credit for the time usually allowed for obtaining a copy of the decree. **48 T. L. R.,** *71* (=**21 T. L. J.,** *1356*).

2. The only remedy open to an aggrieved party under Section 44 of the Guardian and Wards Regulation is an application by way of revision. An order made under this Regulation is final and shall not be liable to be contested either by suit or otherwise. It excludes every remedy by suit or any other proceeding except the remedy under Section 568, Civil Procedure Code of 1065.

Under Section 12, Clause (5), of the Limitation Regulation, time can be deducted only if the proceedings relied upon for the purpose of obtaining exemption were carried on in good faith. Good faith is a question of fact which has to be decided with reference to the facts of each case. In this case the appellant cannot be said to have any *bona fides* in applying for a review, since no review lay against any order passed under the Regulation.

The expression "defect of jurisdiction" as laid down in Section 12 of the Limitation Regulation does not cover such mistakes as the prosecution of an appeal which does not lie at all in any Court. "Defect of jurisdiction" means a defect in the particular Court where the former proceedings were instituted and not an inability shared by the Court in common with all other Courts to entertain the proceedings. The Section applies if the proceedings are capable of being sustained in the sense of being granted in conformity with law by some Court. In this case the review being not maintainable in law it cannot be said that it was dismissed for defect of jurisdiction within the meaning of Section 12, clause (5)— **24 T. L. J.,** *750.*

Section 14.

1. Where a suit is instituted in a Court which is found to have no jurisdiction, and it is found necessary to raise a second suit in a Court of proper jurisdiction, the second suit cannot be regarded as a continuation of the first.

The omission of the definition of 'good faith' in the Limitation Regulation of 1100 does not alter the meaning of 'good faith', as the effect of the omission is to render the definition of 'good faith' mentioned in the General Clauses Regulation applicable to the provisions of the Limitation Regulation.

Good faith is more or less a question of fact. It is gatherable from the facts and circumstances of each case. The motive of the party whose good faith is impeached is regarded as a factor in the determination of questions arising under Section 14 of the Limitation Regulation.— **20 T. L. J.,** *129.*

2. The defendant had with him some chitty money due to D, and this was purchased in Court sale by the plaintiff in execution of a decree obtained by him against the said D's heirs. In that suit the defendant was impleaded simply because he had money belonging to D, and the suit as against the present defendant was dismissed on the ground that it was premature and that he was an unnecessary party. The present suit for enforcing the Court sale was dismissed as being time barred.

Held.—In prosecuting the prior suit the plaintiff cannot be said to have been prosecuting with due diligence another civil proceeding founded on the same cause of action as the present within the meaning of Section 14 of the Limitation Regulation.

Cases like the failure of a suit on the ground that it is not maintainable or that it discloses no cause of action or is premature are not covered by Section 14 as the suit fails not for defect of jurisdiction or other cause of a like nature but because the suit is misconceived.—

47 T. L. R., *370*
(=21 T. L. J., *635*).

3. Where the decree in question was sought to be set aside in regular suit filed in the Munsiff's Court and the suit was allowed by the Munsiff, but dismissed by the High Court and there was no injunction passed by the Munsiff at any time restraining the execution of the decree:

Held.—The period during which the suit to set aside the decree was pending in the Munsiff's Court cannot be excluded for purpose of computing the period of limitation for the execution of the decree. Section 14 (3) of the Limitation Regulation could not be relied on by the decree-holder as it was in terms inapplicable.—

22 T. L. J., *666.*

4. The plaintiffs sued for cancellation of a mortgage deed on the ground *inter alia* that it was unsupported by consideration and Tarwad necessity. The date of the document is 4-10-1091 and the suit was filed in the Shertallai Munsiff's Court on 8-10-1103, on the date of the re-opening. On account of the Court recess the action could not be commenced just on the day when the 12 years from the date of the alienation expired. On 29-1-1104 the Munsiff passed an order for return of the plaint for presentation to the proper Court as the subject-matter of the suit exceeded in value the pecuniary jurisdiction of his Court and the plaint was actually returned on 19-1-1105 and it was presented to the Alleppey District Court on 25-1-1105. At the instance of the first defendant the question of limitation was tried as a preliminary issue and decided against him. This order is sought to be revised.

On a preliminary objection that the revision petition is not sustainable:

Held.—Interlocutory orders might form the subject of revision if the matter they relate to stands by itself and in which the ends of justice would be defeated if the power of revision were not exercised. "The word 'case' in Section 89 of the Civil Procedure Code is wide enough to include an interlocutory order and the words 'records of any case' used in the Section includes so much of the proceedings in any suit as relate to interlocutory order." The function of the High Court when it exercises its revisionary powers is essentially to act in aid of justice and the question in each case will be whether in the interests of justice the High Court should disturb the order of the subordinate Court that is brought up in revision. Applying this test this is a fit case where the Court should not refuse to exercise the powers of revision since the question of limitation has been tried and decided and if the High Court determines that the suit is time-barred then that will be sufficient to put an end to the whole litigation thereby saving much trouble and expense to both parties and in that way subserving the ends of justice.

Held also.—Under Section 14 of the Limitation Regulation VI of 1100, the time during which the suit was pending in the Munsiff's Court has to be excluded and in doing so under Explanation 1, the day on which the proceedings therein ended shall also be counted. The question is whether time began to run against the plaintiffs from 29-11-1104 when the order was passed or from 19-1-1105 when the plaintiffs got back the plaint. The time that elapses between

the order for returning the plaint and the actual return thereof can be excluded under Section 14 unless it is specifically pleaded and proved that the delay in taking back the plaint was due to the default of the plaintiff. If such contention is raised and substantiated, the Court is bound to consider the propriety of the exclusion of the interval between the date of the order for presentation and of the actual return of the plaint.

In considering what is a reasonable time under Section 14, Clause 2, that may be requisite for going from the Court in which the suit was first instituted to the Court in which it is re-instituted, each case must be decided on its particular circumstances. It would be inappropriate to adopt the period fixed in an ancient precedent as an inflexible standard for each and every subsequent case without regard to the variation in the facilities for locomotion.—

24 T. L. J., *818.*

5. Section 14 of the old Limitation Regulation (which is applicable to the case) clearly mentions applications as well as suits. (*Vide* Proviso 3 and Explantion 1 to Section 14). Section 14 applies only to cases where a Court itself decides that it is unable to entertain a suit for want of jurisdiction or other cause of a like nature and has no application to a case where the plaintiff himself withdraws the suit on discovery of some technical defect which would involve a failure.—

24 T. L. J., *823.*

6. See also Sec. 5.— **23 T. L. J.,** *366.*

Art. 166.— **20 T. L. J.,** *855.*

Section 15.

1. In the case of an attachment of a decree before judgment it is manifest that the decree attached ceases to be executable and in effect the attachment amounts to an injunction staying execution for the time being. The period during which the attachment was in force should be excluded under Section 15 of the Regulation.— **47 T. L. R.,** *407* (=**21 T. L. J.,** *722*).

Ref.—24 T. L. J., 584.

2. An application for execution was presented on 15-6-1099 praying for arrest of the judgment-debtor and attachment of his properties. The judgment-debtor was arrested and produced in Court but was released by the Court on his application for stay pending decision of his appeal against the *ex-parte* decree. For failure to apply for further steps, the execution form was struck off on 30-6-1099. On 25-1-1105, the decree-holder applied for further steps in continuation of the application of 15-6-1099. The question was whether the application of 15-6-1099 could be deemed to have remained undisposed of:

Held.—The order striking off the application of 15-6-1099 cannot be held to be a judicial order disposing of the application. The release of the judgment-debtor was ordered not on account of any default of the decree-holder but because the Court thought fit to stay execution pending decision of the judgment-debtor's appeal. All further proceedings prayed for in the application were in effect stayed by the order of the Court. The principle of Section 15 of the Limitation Regulation is not confined to cases of direct stay but also applies to orders which indirectly but very proximately and effectually cause a stay, and in determining whether the execution has in effect been stayed by an order of the Court its substance, not merely the form, should be looked at:

Held further.—Since the execution of the decree had been suspended through no act or default of the decree-holder, he had a right to ask the Court to revive and carry through the execution proceedings which had been suspended. This right could be exercised by means of a proper application to that effect made within three years from the date when

the right to make it accrued, that is to say, from the date on which the obstacle to the progress of execution proceedings was withdrawn :

Held further.—Even assuming that the latter application was filed more than three years after the obstruction was removed, it could not be deemed to be time-barred. For if an execution application is pending, a subsequent application is not an application under Article 165, but an application asking the Court to continue the proceedings on a pending application. Further, Article 165 governs only applications for the exercise of powers or doing of acts which the Court is not bound to do *suo moto*.—

21 T. L. J., *743*.

Section 16.

1. Four years after confirmation of sale in Court-auction, an application was made for delivery of possession of the property purchased. *Prima facie*, the application was barred under Article 164 of the Limitation Regulation, which provides only a period of three years from the date the sale becomes absolute, for an application for delivery of possession. But it was contended that the time during which an application to set aside the attachment of the property prior to the sale and the appeal against the order thereon was pending should be excluded in computing the period of limitation for the application and the provisions of Section 16 of the Regulation were invoked in support of the contention :

Held.—There was no proceeding to set aside the sale, but only an application to have the attachment cancelled. The latter proceeding can by no stretch of language be called a proceeding to set aside the sale. After the sale was confirmed there was nothing to prevent the respondent from applying for delivery of the property.— **20 T. L. J.**, *686*.

2. Appellant, who was the assignee of a hypothecation deed dated 4-11-1088 in respect of 3 Survey Numbers obtained a decree thereon and purchased the properties for 14.000 fanams and odd at a Court sale in execution of his decree on 11-12-1099. The sale was confirmed on 11-1-1100. On 12-1-1101 he applied for delivery of possession of the property purchased by him. This application was rejected eventually for non-payment of process fees. He renewed his application on 24-1-1105. The question arose whether the application was not barred by limitation. The appellant contended that his application must be held to be within time by reason of the pendency of another suit filed on 2-1-1101 by a subsequent hypothecatee on a deed dated 22-4-1090 in respect of 13 items of property including the three Survey Numbers covered by the deed of 11-11-1088. The appellant was impleaded as a defendant in this suit but there was no reference to the decree obtained by the appellant or the execution sale in his favour. The suit was decreed on 14-12-1102 under which the appellant was declared entitled to a priority over the 3 items, to the extent of 11945 fanams and a further declaration was made that the plaintiff in the suit would be entitled to recover such balance of the decretal amount therein from these items as might remain due after sale of the other items under the decree. The other properties were sold in auction on 22-10-1104.

Under these circumstances it was argued that the suit filed by the later hypothecatee, would amount to a proceeding to set aside a sale, within the meaning of Section 16 of the Limitation Regulation :

Held.—Though as a subsequent mortgagee, the plaintiff in the latter suit had a right in law to redeem the appellant, this right could not in any way be considered to affect the claim for exclusion of the period during which the latter suit was pending by reason of the fact that the prayer in

the suit to which the present appellant was a party, was not for such redemption.

In the nature of the later decree which allowed the appellant a priority only for a lesser amount than his sale price, it cannot be said that he was not justified in waiting till the sale of the other properties in execution of the latter decree on 22-10-1104.

The proceedings till the date of such sale must therefore be considered to fall within the purview of Section 16 and the period between 2-1-1101 and 22-10-1104 has to be excluded under the Section. The application of the appellant was therefore within time.— **46 T. L. R.,** *310.*

Section 19.

1. The appellant first applied for execution on 14-11-1096, which was dismissed for non-payment of the full process fee on 2-12-1097. A second application for execution was filed on 13-11-1105 which was *prima facie* barred. But on 13-11-1099 the plaintiff-respondent filed an application for execution in which the decree sought to be executed by the appellant is admitted. It was contended that admission in the execution application amounts to an acknowledgment under Section 19:

Held.—Where the existence of the decree is admitted and an application is made for execution of that decree so far as it is in favour of the plaintiff, it is tantamount to an acknowledgment of liability in respect of such decree under Section 19 of the Limitation Regulation read with Explanation 4, as well as Article 53, clause (9), of the old Limitation Regulation.— **22 T. L. J.,** *297.*

2. In a suit for recovery of the amounts due under four promissory notes, the statement in the last of the promissory notes in order of time that it was executed "ഇതൊന്നുകൊണ്ടും ഒപ്പ് ഞാ" amounted to a valid acknowledgment which saved the three prior promissory notes from the bar of limitation.—

22 T. L. J., *320.*

3. The suit was to redeem a mortgage of 1002. The plaintiff alleged that a reference to a sub-mortgage of 1029 contained in Exhibit C, under which the first defendant's father redeemed the said sub-mortgage amounted to a valid acknowledgment of liability sufficient to save limitation:

Held.—Section 19 of the Limitation Regulation requires that an acknowledgment of liability in respect of such property or right must be made in writing signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability or by some person who is either by operation of law or contract entrusted with the general management of the affairs of the family.

No inference can be drawn from the expression "കാലൻമുതകൻറെപക്കൽ ഹാവൽ-ം തുണ്ട് തൈമാസം വന്നാ- വെള്ളാല ക്ക ചിരാരാരിതേട്ട" nor can this reference be treated as descriptive of the contents of the sub-mortgage of 1029. Neither primary nor secondary evidence of the sub-mortgage of 1029 has been given.

It is not unusual, in this country for a mortgagee to execute what is in effect a sub-mortgage without acknowledging his liability as a mortgagee. But the sub-mortgagee may treat the document as a sub-mortgage as his mortgagor held only mortgage right.— **22 T. L. J.,** *373.*

4. The suit was by a prized subscriber against a foreman to recover the prize amount with interest after deducting the subsequent instalments. As the suit was filed more than three years after the termination of the chitty, it was sought to save limitation by relying on two entries in the chitty Kykanakku which are as follows.—

Amount paid on 17-3-1098 is Rs. 10-18-8.

Amount paid on 21-3-1099 is Rs. 6-8-0.

Held.—The requisites of a valid acknowledgment are laid down in 15 T. L. J., 361.

'There are various rulings to show what constitute a valid acknowledgment. The writing said to contain the acknowledgment must import the existence of liability. The existence of the jural relationship of the creditor and debtor must be clear in its face. The legal consequences or the ordinary and natural result of the writing in question should be to attach to it the liability to pay. But it must be clear from the acknowledgment that the debtor admitted that the debt was still subsisting. The person making the acknowledgment must consciously admit either by express words or by necessary implication that there is an existing liability in respect of the identical right which is afterwards claimed by the plaintiff.'

The entries in the present instance do not fulfil these conditions. The Kykanakku does not show what amount remains due to the plaintiff even if the whole of it is read. That depends on the fact that the chitty had been prized which is not shown in the Kykanakku. It is clear therefore, that limitation is not saved by Section 19.

On the contention that Section 21 of the Regulation would apply:

Held.—In the present case all we have is an acknowledgment for payment of certain amount of money. There is nothing to show that it is intended to be a payment towards interest on payment of a part or whole of the principal except by reason of extraneous evidence. For this reason, the disputed entries referred to, do not save limitation under Section 21. The British Indian decisions cannot be relied on as Section 20 of the Act of 1908 differs in important particulars.—

22 T. L. J., *393.*

5. The suit which was filed in 1099 was for redemption of a sub-mortgage of 1036 executed by R. For saving limitation, the plaintiff relied on an acknowledgment contained in Exhibit A (25-12-1049) executed by the sub-mortgagee in favour of a stranger mortgaging his rights under the sub-mortgage. Exhibit A contained the following words: "The properties which have been obtained by me on *Adavu Otti* from R. and are being enjoyed by me." Among the documents handed over at the time of Exhibit A as title deeds there was an *Adavu Otti* of 1036:

Held.—Exhibit A contained a sufficient acknowledgment. The recital in Exhibit A that the property was obtained under an *Adavu Otti* and that such a document dated 1036 was being handed over obviously as the title deed amounted to an admission that the executant held the property under an Adavu Otti of 1036 and therefore it was liable to be redeemed.— **22 T. L. J.,** *1095.*

Ref.—23 T. L. J., 947.

6. The endorsement on a sale deed to the effect that the vendee under it presented it for registration does not amount to an acknowledgment of the mortgage recited in the sale deed, under Section 19.—

23 T. L. J., *290.*

7. The ground of exemption from limitation must be clearly set out in the plaint. The plaintiff could not take advantage of any ground of exemption from the law of limitation which has not been set up in the plaint. The plaintiff could not be allowed to rely on a statement in the written statement of the defendant to get over the bar of limitation.

Under Section 19 of the Limitation Regulation, the only operative acknowledgment is one that admits or imports any liability in respect of the right or property claimed in the suit.

The expression 'ചാർത്തിയിരിക്കുന്ന തുക' is merely descriptive of the land dealt with

and does not *per se* import any liability to be redeemed. The other clause "ഞാൻ പലിശരീയാട്ട എഴുതി വാങ്ങിയ്യ ത്തരവിപ്പുവരുന്ന നിലക്കുകിന്ന" &c. also does not import an acknowledgment of an existing liability to be redeemed.

Admission of a document in evidence in the Appellate Court is illegal, where no reasons are recorded for the same. It is the duty of the Appellate Court where additional evidence is admitted to allow the opposite party an opportunity to adduce rebutting evidence.—

23 T. L. J., *446.*

8. The plaintiff relied upon Exhibit J as a valid acknowledgment. The wording in Exhibit J. was—"ഉടൻ കുടിച്ചു തീർത്തു വല്ല വാഖ്യയും വരുവാനുണ്ടെങ്കിൽ വാങ്ങിയും കൊടുക്കുവാനുണ്ടെങ്കിൽ കൊടുക്കയും പ്രമാണം വാങ്ങികൊള്ളണം":

Held.—Exhibit J amounted to an acknowledgment of liability. An unconditional acknowledgment implies a promise to pay, and the same meaning attaches where there is an acknowledgment of a right to have the accounts settled, and no qualification of the natural inference that whoever is the creditor shall be paid when the condition is performed by the ascertainment of the balance in favour of the claimant.

An acknowledgment of liability, should the balance turn out to be against the person making it, is a sufficient acknowledgment. **23 T. L. J.,** *784.*

9. The judgment-debtor applied to be adjudicated insolvent. The petition was dismissed for default. Thereupon the judgment-debtor applied for restoration of the dismissed petition. It was contended for the decree-holder that execution of the decree was saved from the bar of limitation by the acknowledgment contained in the restoration petition of the judgment-debtor :

Held.—An application for restoration of a petition dismissed for default was merely an application that a certain petition dismissed for default might be restored. It could not be deemed to be a repetition or acknowledgment of everything contained in the prior application. The appellant had to stand or fall by the restoration application quite independently of the original petition in insolvency. If so, unless the restoration application itself contained a sufficient acknowledgment within the meaning of Section 19 of the Limitation Regulation the appellant was out of Court. The restoration application itself contained no such acknowledgment. It followed therefore that the appellant's application for execution was barred.— **23 T. L. J.,** *872.*

10. A co-mortgagor sued another co-mortgagor who had obtained a release of the entire mortgage right, for redemption of his share of the property after 50 years of the mortgage but within 50 years of the release. The release deed clearly stated that the executant who was in possession had acquired the mortgage interest in the property by taking an assignment of the original mortgage and was surrendering the mortgage right and handing over the title deeds, *viz.*, the mortgage and assignment deeds:

Held.—Though the period for redemption available to the plaintiff began from the date on which the original mortgage became redeemable and not from the date of its redemption by the defendant co-mortgagor, and the relief claimed was on that account out of time, still in view of the acknowledgment contained in the release deed, the suit was not barred. As the person in possession under the mortgage, the executant of the release was fully competent to acknowledge liability to be redeemed and the redeeming co-mortgagor put himself into the position of the mortgagee as regards that portion of the mortgaged property which represented the interest of the other co-mortgagor.

The statement in the release (relied on as acknowledgment) was not merely descriptive but amounted to an admission of liability as required by Section 19 of the Limitation Regulation.

Held further.—The failure of the plaintiff to set forth the acknowledgment as a ground in the plaint for exemption from limitation did not preclude him from relying on the acknowledgment, inasmuch as the facts that formed the basis of the claim had been referred to in the plaint and the cause of action for the suit had been stated to arise on the date of the release. The plaintiff had thus substantially complied with the provisions of Order VII, Rule 6.— **23 T. L. J.,** *947.*

11. The defendant's father executed in favour of the father of the plaintiff a registered debt bond (Exhibit A) on 26-1-1094, the debt being payable after the expiry of five years. The suit was for the recovery of the amount due and it was filed on 30-10-1106. To save limitation a letter dated 30-10-1095 was relied upon in the plaint as an acknowledgment but this being obviously after the expiry of the period of the limitation, proved unavailing and so the District Munsiff dismissed the suit as barred by time. The correctness of this decision is not challenged. The plaintiff appealed and then produced certain documents and the District Judge being satisfied that there existed sufficient materials by which the plaintiff could be saved from the bar of limitation, allowed the plaint to be amended so as to put forward payment of interests as a ground of exemption and accordingly set aside the lower Court's decree and remanded the case for trial and decision afresh. From this order the defendant has filed this special appeal.

Held.—The only ground of exemption from limitation bar alleged in the plaint is the acknowledgment contained in the letter. Under Order VII, Rule 6, Civil Procedure Code, the plaint must show the ground upon which exemption from limitation bar is claimed and according to decided cases a plaintiff cannot take advantage of any ground of exemption which had not been set up in the plaint. It is however open to the Court in appropriate cases to allow amendment of the plaint by setting out an acknowledgment in writing signed by the defendant within the period of limitation even though it was not mentioned in the plaint as originally drafted and the power of amendment may even be exercised by the Appellate Court.

There is no warrant for the view that for an acknowledgment to be valid, it should be made after the maturity of the bond in respect of which the acknowledgment was made. Section 19 of the Limitation Regulation is not capable of such a restrictive interpretation. What it requires is that the acknowledgment of liability should be made before the *expiration of the prescribed period of limitation.* Hence even though the right of suit under the bond arose only after the date of the letter relied upon as acknowledgment, it would have sufficed to satisfy the provisions of Section 19, and enabled the plaintiff to succeed in case the suit was filed before the expiration of the period of limitation.

Under Section 21 of the Limitation Regulation, the interest on the debt should be paid by the person liable to pay the debt, whereas in this case, the *receipts show payment to the debtor by the creditor.* This does not satisfy the provisions of the Regulation. In British India, the payment of interest need not be evidenced by writing. (See Section 20 of Act IX of 1908). The decisions of this Court are clearly to the effect, that mere appropriation by the creditor of a portion of the Michavaram on account of interest due on a debt does not amount to payment of interest evidenced by writing, so as to give a fresh starting point for limitation. If there be a writing of some kind by the

debtor, though it does not specify that the payment was on account of interest, evidence *aliunde* is allowable to establish for what purpose such payment had been made. Section 21 therefore is imperative that the fact of payment should appear in the handwriting of the judgment-debtor, with his signature affixed, though it is not necessary that there should be mention in the writing itself that the payment was on account of the interest. Giving the most liberal construction to the receipts now before Court, it is difficult to see in them any mention of payment of interest by the debtor to the creditor on account of the plaint bond. The receipts on the contrary disclose transactions of quite a different kind, namely, payment by the creditor to the debtor. In such circumstances it is obvious that the plaintiff cannot succeed if he be allowed to take his stand upon these receipts.— **24 T. L. J.,** *759.*

12. See also.—

Art. 53.— **24 T. L. J.,** *1.*

Regn. VIII of 1100,

Or. VI, R. 4.— **24 T. L. J.,** *509.*

Section 20.

1. The suit was for redemption of property held on mortgage. The defendant pleaded limitation. A Purakkadom was proved in the case in which there was an express reference to a prior mortgage and an undertaking to redeem the property on payment of the mortgage amount and the amount received under the Purakkadom :

Held.—The Purakkadom gave a fresh starting point of limitation. It afforded evidence that the parties treated the mortgage as being alive and in force. The expression "before the expiration of the period prescribed" in Section 20, clause (1), could not necessarily imply that evidence to prove affirmatively what the period available was should be given.— **22 T. L. J.,** *435.*

2. The defendants' Tarwad enjoyed the suit properties under a deed executed by the plaintiff Devaswom. In suit for renewal it was contended by the defendant that the deed was not a kanom but a redeemable mortgage, and that the suit was barred by limitation :

Held.—Inasmuch as the deed contained no provision for renewal or payment of renewal fees and it was not proved that renewal fees were ever paid and received, the deed was only a redeemable mortgage.

The period for redemption of the suit mortgage was 50 years from the date of the mortgage. Limitation was not saved by certain receipts for michavaram filed by the plaintiff because the receipts were unregistered and therefore insufficient under Section 20 (2).— **24 T. L. J.,** *621.*

Section 21.

See Sec. 19.— **22 T. L. J.,** *393.*
24 T. L. J., *759.*

Section 22.

No express authority was conferred on a partner to acknowledge debts on behalf of the partnership ; but it was not contended that the acknowledgment was not made in the course of and for the purposes of the business :

Held.—Clause (2) of Section 22 of the Limitation Regulation (1062) does not provide that in order to make an acknowledgment effective for the purpose of saving limitation, it is necessary that the partner making it should have had express authority to make such acknowledgment. It would be sufficient if there is evidence to prove that the acknowledgment was made by the parties concerned in the conduct of such business.

What is required to render such an acknowledgment valid and effective is evidence not merely that the person who made the acknowledgment was a partner,

but also that the acknowledgment was made in the course of and for the purpose of the business. There would in such cases be implied authority to acknowledge debts.— **47 T. L. R.,** *60* (=**21 T. L. J.,** *65*).

Section 24.

1. The suit was against the Sirkar for declaration of the plaintiff's title to, and recovery of, the plaint property on the allegation that the Sirkar, instead of issuing pattah in favour of the plaintiff, wrongly included the property as Poramboke.

Held.—Under Article 109 of the Regulation, which was the Article applicable, the suit had to be brought within 6 years of the date when the plaintiff obtained knowledge of the 'wrongful' act. There was no 'continuing wrong' within the meaning of Section 24 which gave the plaintiff any cause of action *de die in diem.*— **21 T. L. J.,** *1085.*

2. See also Art. 109.— **21 T. L. J.,** *913.*

Section 27.

It was found that the plaintiffs have been enjoying a right of way from a date long anterior to 1053 till up to 1072, but that since 1072 the defendants have been disputing the right of way and the plaintiffs have been enjoying it ignoring such dispute. Upon this finding it was urged in special appeal that the plaintiffs could not be given a decree, as under the last Clause of Section 27 (1) of the Limitation Regulation the period of 20 years prescribed therein should be taken to be "a period ending with 2 years next before the institution of the suit wherein the claim to which such period relates is contested."

Held.—Section 27 had no application to the facts of the case, and the plaintiffs had to be held to have acquired the right by prescription.

Section 27 would not bar a suit based upon prescription resulting from long and ancient enjoyment of an easement. The provisions of the Limitation Regulation are neither prohibitory nor exhaustive but only remedial and they do not exclude or interfere with the acquisition of rights otherwise than under them.— **46 T. L. R.,** *119* (=**20 T. L. J.,** *150*).

Ref.—23 T. L. J., 714

Section 29.

Suit to recover the amount of paddy due under a hypothecation bond. Under the law in force at the time of the execution of the bond, the period of limitation for the enforcement of the claim was 6 years. Under the Limitation Regulation of 1100 the period, however, was extended to 12 years. Though the new Regulation was in force at the time of filing of the plaint, the right to recover the debt had become barred under the law of limitation in force, before the new statute came into force.

The question was, whether the law of limitation being only one affecting the procedure and practice in Courts the law at the time of the institution of the suit alone was applicable:

Held.—The remedy would clearly be covered by Section 7, Clause (*b*), of the General Clauses Regulation which laid down that where any Regulation repealed any other, such repeal would not revive *anything* not in force, or existing at the time at which the repeal took effect. The remedy by way of suit to enforce a debt was clearly not existing on the date the Limitation Regulation of 1100 came into force. The expression *thing* occurring in the above Section would include the remedy referred to above. After such remedy had become extinguished by virtue of a repealed statute during the period it was in force, it would not be open to a party to resort to the identical remedy on the strength of

the repealing statute on the ground that the period of limitation had been extended thereby.

Held also.—Section 28 of the Limitation Regulation of 1062 would apply to a right for damages on account of breach of contract also. That the effect of Section 28 of the Limitation Regulation of 1062 corresponding to Section 29 of that of 1100 was, that so far as the right to recover possession of *the property* was concerned the same would become extinguished on the expiry of the period prescribed under the statute. The use of expression *any property* would indicate that it may be either movable or immovable. The possession contemplated under the Section may be either actual, or physical, or legal or juridical. In cases such as an action for enforcement of debts or other personal actions, the remedy would be extinguished but not the right. The creditor had the right to enforce his claim by any means other than filing of a suit.—

20 T. L. J., *1288.*

Article 9.

1. The plaintiffs had been brought on record in O. S. No. 825 of 1092 as the legal representatives of their father who was the defendant in that case. As they were minors, a guardian had been appointed to represent them but the guardian took no part in the suit or the execution proceedings which followed it. As a result a decree was passed in O. S. No. 825 not only against the hypotheca but also against the plaintiffs personally. The present suit O. S. No. 435 of 1099, was to set aside the decree in O. S. No. 825 and the sales in execution of the said decree, held in 1094 and 1095.

At date of the present suit, the plaintiffs had not all attained majority but more than a year had elapsed since the first plaintiff became major. It was contended on behalf of the defendant, that the suit was barred by limitation under Article 8 of the Limitation Regulation II of 1062, which provided for one year from date of sale:

Held.—Gross negligence of a guardian *ad litem* is a good ground enabling the minor to seek to have the decree set aside but it would not make the decree nullity. If a decree is thus *prima facie* valid until set aside, the same applies to sales in execution of that decree which would be valid subject to the right of the plaintiffs to sue for their being cancelled.

Per Chatfield, C. J. (*Joseph Thaliath, J. dubitante*).—Since the right set up on behalf of the plaintiffs was a joint right and the first plaintiff could not by himself surrender that right before his brothers attained majority, Section 9 of the Limitation Regulation II of 1062 would apply so as to prevent time from running against any of the plaintiffs until all attained majority.

The High Court, however, upheld the execution sales but set aside the decree in O. S No. 825 so far as it imposed a personal liability on the minors.—

20 T. L. J., *907.*

2. In a suit to set aside a sale deed as wanting in consideration and Tarwad necessity, defendants 1 to 3 pleaded *inter alia* the bar of limitation on the ground that they had obtained title to the property in question under a Court sale in execution of the decree in O. S. No. 661 of 1084 against the plaintiffs' Karanavan which had been confirmed more than a year before date of suit. The plaintiffs in replication alleged that the decree in O. S. No. 661 did not bind the Tarwad and that the execution proceedings therein were tainted by fraud:

Held.—(1) The replication amounted to a prayer that the Court sale should be set aside.

(2) The suit was barred under Article 8 (*a*) of the Limitation Regulation of 1062, inasmuch as it was brought more than a

year after the confirmation of the Court sale.

Under Article 8 (*a*) of the Regulation of 1062, a period of one year is allowed from the date of confirmation for a suit to set aside a sale in execution of a court decree brought on any ground whatever other than that the judgment-debtor, his family or his Tarwad, had no right, title or interest in the property sold. Article 8 has been held to be applicable even in cases where the judgment-debtor is only a junior member of the Tarwad.

The terms of Article 8 (*a*) would appear at first sight to preclude the application of Article 78 [=Article 83]. It would seem that Article 8 (*a*) contains the more specific directions and Article 78, the more general ones so that according to the accepted canons of construction Article 8 (*a*) should be applied rather than Article 78.

(3) Even assuming that Article 78 applied, the necessary allegation of fraud was neither made nor found in the case.

(4) The plaintiff cannot ignore the Court sale and succeed in their suit in respect of the other reliefs claimed.

Under Section 313 [=Order XXI, Rule 91] of the Civil Procedure Code, the certificate of sale granted by the Court has, as regards the parties to the suit and persons claiming through or under him, the effect of vesting the title to the property sold in the purchaser from that date. The sale of Tarwad property in execution of a decree in which the Tarwad has been insufficiently represented is not void but only voidable at the instance of the members of the Tarwad. A judicial sale is not a nullity merely because it is vitiated by some irregularity but should have been set aside within the time allowed by law.— **47 T. L. R.**, *222* (=**21 T. L. J.**, *308*).

Fol.—24 T. L. J., 734.

3. The suit was by a junior member of a Marumakkathayam family to set aside a sale of Tarwad property in execution of a decree obtained by the first defendant against the second defendant on a hypothecation bond. The hypothecation was concurrently found to be supported by consideration and necessity. In second appeal it was argued that though the suit was brought within one year of the Court sale it was barred as the Court sale could not be set aside without setting aside the decree in execution of which the sale was held, and as six years have elapsed since the decree was passed :

Held.—The suit was not barred. A fresh cause of action arose when the plaintiff's right was invaded by the sale. The fact that the first cause of action was barred by limitation did not affect his right to bring a suit on a subsequent cause of action.

The expression 'any ground' in Article 8 (*a*) of the Limitation Regulation (old) was wide enough to include the ground of the decree itself being invalid.—

22 T. L. J., *1343*.

4. The suit was for cancellation of a decree obtained against the Tarwad of the plaintiff and the Court sale had in pursuance of it on the ground that the decree was obtained without impleading the proper representatives of the Tarwad as required by Section 25 of the Nayar Regulation of 1088.

It was contended for the defence that the suit was barred by limitation under Article 9 of the Regulation as it was brought more that one year after confirmation of the Court sale :

Held,—The wording of Article 9 of the Regulation was different from that of the corresponding Article of the British Indian Act. All suits to set aside a Court sale on any ground other than the grounds stated in Article 9 of the Regulation had to be brought within one year. The plaintiff was bound, under the circumstances of the case, to sue for the cancellation

of the Court sale whatever other reliefs he might have prayed for.—

24 T. L. J., *734*.

Article 10.

See Regn. VIII of 1100, Or. XXI, R. 61— 48 T. L. R., *409* (=22 T. L. J., *1314*).

Article 49.

The plaintiff based his cause of action on "account stated" and relied on an alleged entry which recited "that the amount claimed was due to the plaintiff as per account settled in respect of deposit made by him towards my trade on several dates and taken by me for the purpose of securing him interest on such investments," but the entry was neither signed nor written by the person sought to be made liable .

Held.—The volume of authority was in favour of the view that a transaction of the nature in question gave rise to an action in law. The limitation for the suit commenced from the date of entry as to accounts stated and not on the respective dates of the several deposits which contributed to the final adjustment and that Article 49 would apply.—

24 T. L. J., *188*.

Article 50.

See Art. 95.— 49 T. L. R., *74* (= 22 T. L. J., *1360*).

Article 53.

When money is payable on demand and nothing further said, it is payable at once and without demand, and limitation begins to run at once. In the case of a debt as soon as the day of payment arrives the default of the principal debtor is complete and the surety apart from special stipulation, is immediately liable to the full extent of the obligation without being entitled to notice and the reason of the rule is that it is the surety's duty to see that the principal debtor pays his debt. Although *prima facie* a sum payable 'on demand' is payable forthwith and the words 'on demand' are superfluous in each case, the question whether or not the parties intended that the words should be treated as an integral and operative part of the agreement depends upon the true construction of the agreement into which the parties entered.

There is a direct authority of this Court on the question of limitation in the case of contract of guarantee and indemnity. There may be varying periods of limitation as regards the principal debtor and surety. Even if the creditor had allowed his claim against the debtor to become barred the surety does not become discharged from liability.

The statement of accounts signed by the principal debtor which amounts to an acknwledgment of the debt by him and serves to keep the debt alive as against him does not keep the remedy alive as against the surety.

It has always been the law that unless a contrary intention appears a guarantee to or for a given person or number of persons will *prima facie* not cover debts incurred to or by such person or persons and others. Any variation made without the surety's consent in the terms of the contract between the principal debtor and the creditor discharges the surety as to transactions subsequent to the variance. When a contract is varied in a substantial particular it is not for the Court to say that the surety who undertook the burden of original contract must or ought to have undertaken the burden of the contract as subsequently varied.

In the case where a surety gives a continuing guarantee limited in amount to secure the floating balance from time to time due from the principal debtor to

the creditor and the floating balance exceeds the limited amount, the guarantee is as between the surety and the creditor to be construed as applicable to such part only of the debt as may be co-extensive with the amount of the guarantee.

If a bond or guarantee is given by a surety to secure the re-payment of advances of money to the principal debtor provided such advances do not exceed in the whole, at any one time a certain limited amount the proviso protects the surety from being answerable beyond the amount named but will not avoid the obligation if the advances go beyond it, unless that result clearly appears to have been contemplated by the parties.—

24 T. L. J., *1.*

Article 56.

See Sec. 19.— **22 T. L. J.,** *297.*

Article 70.

The decree-holder brought the judgment-debtor's properties to sale in execution for the whole decree amount without giving credit to a payment out of Court. The properties were delivered over to the auction-purchaser :

Held.—The cause of action for damages for breach of the implied contract of indemnity arose on the date of dispossession by delivery and not on date of Court sale.

The aggrieved judgment-debtor has in these cases two courses open. He may either sue on the breach of the contract to certify the payment, in which case, his cause of action would arise on the presentation of every new application for execution, or he may wait until he is actually damnified and then sue for damages for the breach of the implied contract of indemnity (as in the suit).

Article 68 of the Limitation Regulation applied to the latter case and under that Article, the plaintiff cannot be said to be actually damnified by the mere fact of the Court sale, because even though the title in the property passed by the Court sale, the purchaser might not further execute the decree and divest the plaintiff of possession in which case the plaintiff would not be damnified.—

22 T. L. J., *1404.*

Article 72.

1. The test to be applied to find out whether an account is mutual, open and current under Article 72 is, that the nature of the transaction should be such that there is a possibility of the balance being shifted from one side to another. If the nature of the dealing shows that the liability has been on one side only, the payment made by the party being always in discharge of that liability, there could be no mutuality as contemplated in this Article even though there has been an excess payment on some occasions resulting in the shifting of a balance in his favour.

The expression "reciprocal demand" occurring in the Article has reference only to the possibilities of occasions for demand. It is only in the nature of a definition, not intended to postulate that there should be reciprocal demands in fact.— **46 T. L. R.,** *223*

2. To attract the provisions of Article 72, it is essential that (1) there should be accounts between the parties, (2) such accounts should be open, current and mutual, and (3) there should have been reciprocal demands between the parties.

An open account is one which is continuous or current, uninterrupted or unclosed by settlement or otherwise consisting of a series of transactions. When there has been no formal settlement and no balanee struck, the account will be open within the meaning of the Article.

A current account is an open account between two or more parties or an account

which contains items between the parties from which the balance due to one of them is or can be ascertained.

Mutual accounts are such as consist of reciprocity of dealings between the parties and do not embrace those of items on one side only though made up of debit and credit. "Mutual account means not merely where one of the two parties has received money and paid it on account of the other, but where each of two parties has received and paid on the other's account. I take the reason of that distinction to be that, in the case of proceedings at law, where each of two parties has received and paid on account of the other, what would have to be recovered would be the balance of the two accounts, and the party plaintiff would be required to prove, not merely that the other party had received money on his account, but also to enter into evidence of his own receipts and payments, a position of the case which to say the least, would be difficult to be dealt with at law. Where one party has merely received and paid moneys on account of the other, it becomes a simple case. The party plaintiff has to prove that the moneys have been received, and the other party has to prove his payments, The question is only as to the receipts on one side and the payments on the other, and it is a mere question of set off; but it is otherwise where each party has received and paid". (I. L. R. 55 Cal. 575).

Whether there has been mutuality or not has to be determined with reference to the particular facts of each case. It will have to be decided whether the nature of the dealings shows that each party to the account has extended credit to the other on the faith of an admitted indebtedness and has intended to enforce the liability of the other to himself. Of course, the shifting of balance may ordinarily be taken to be the test, but the same cannot however be treated as conclusive. Its absence by itself cannot warrant an inference of the accounts not being mutual. Even where the balance has occasionally shifted to the other side when it has generally been in favour of one cannot warrant the transaction being held to be mutual within the meaning of the Article, if from its nature there is not a possibility of the balance so shifted. The test to be applied is that the nature of the transaction should be such that there is a possibility of the balance being shifted from one side to another. If the nature of the dealings shows that the liability has been on one side only, the payments made by the party being always in discharge of that liability, there could be no mutuality as contemplated in this Article, even though there has been an excess payment on some occasions resulting in the shifting of a balance in his favour.

It is not necessary for the purpose of the Article that there should be an actual demand by either party. The expression 'reciprocal demand' occurring therein has reference only to the possibilities of occasions for demand. It is only in the nature of the definition not intended to postulate that there should be reciprocal demands in fact.— **20 T. L. J.,** *731.*

Com.—22 T. L. J., 431.

3. Article 72 of the Limitation Regulation applies only in cases of mutual, open and current accounts with reciprocal demands.

An account is "open" when the balance is not struck or though struck is not accepted or acknowledged to be correct by the parties concerned. It is "current" when it has been going on as a continuous account between the parties. And for "reciprocal demands" to exist there should be transactions which create obligation on one side, those on the other being merely complete or partial discharges of such obligations.—

22 T. L. J., *431.*

4. Article 70 of the old Limitation Regulation applied only to mutual

accounts between merchants and traders. Although the word 'trader or merchant' is not defined anywhere in the Regulation, the expression "merchants and traders" was always construed liberally. The expression could not have been used in the restricted sense in which it is used in popular language.

There is nothing in law to prevent the parties from treating the accounts as open and current, even after the striking off of a balance. Whether the parties really intended to treat the accounts as mutual, open and current after striking a balance or signing the accounts settled, would be a question of fact to be determined in each case.

In every case, the Court has to see whether it is only a case of debtor and creditor or a case of mutual obligations which will in the ordinary way result in enforceable liabilities on either side.—

23 T. L. J, *1127.*

Article 88.

See Article 9.— **47 T. L. R.,** *222* (=**21 T. L. J.,** *308*).

Article 92.

See Article 95.— **49 T. L. R.,** *74* (**22 T. L. J.,** *1360*).

Article 95.

The plaintiff, as superior mortgagee of Michavaram periodically due from certain land, obtained a decree for redemption in O. S. No. 1247 of 1095 against the prior mortgagee, the 14th defendant. The Munsiff's decree in the suit, O. S. 1247 was in favour of the plaintiff and dated 26-6-1099. The 14th defendant preferred appeal and special appeal to the District and High Courts respectively against the said decree but without success. The suit was filed by the plaintiff on 17-12-1102 after the decision in special appeal, *inter alia*, for recovering from the 14th defendant Michavaram for the period 1096-1098 wrongly collected by him. In answer to the plea of bar by limitation, the plaintiff contended that Article 109, the residuary Article, applied to the case and he had six years' time from the date of the special appeal decision in O. S. 1247. The lower Court dismissed the suit holding that either Article 50 or 92 was applicable:

Held.—(*Per curiam*) (1) Neither Article 50 nor Article 92 was applicable. Article 50 related to suits for *money* only while the rent in question was presumably paid in kind and so received.

(2) Article 92 was inapplicable since the plaintiff was not the mortgagor nor was there any re-entry on the mortgaged property.

(3) Article 95 governed the case and the suit against the 14th defendant was accordingly barred. Though Article 95 was commonly applied to suits for mesne profits as against trespassers, it could not be gainsaid that it would be applicable for recovery of profits wrongly received by another, to which other more specific Articles were clearly inapplicable. Suits by mortgagees or lessees fell within its scope and the words 'wrongly received' in the Article meant only that the profits should have been received under a claim or title that cannot be legally substantiated.

Per Venkata Rao, J, (*Chatfield, C. J.,* leaving the question open).—There was nothing to prevent the Courts in this State from recognising and applying established equitable principles under which a cause of action may be suspended during the pendency of a litigation instituted for establishing the right or title on which it is based. The plaintiff's cause of action must accordingly be deemed to have been suspended during the pendency of the litigation which established his right to redemption.

The starting point for limitation, however, must be the date of the decree of the first Court, which decreed the plaintiff's right. For the mere fact that the defendant unsuccessfully appealed to superior Courts would not postpone his right or prevent the running of time against him.—
49 T. L. R, *74*
(=22 T. L, J., *1360*).

Article 97.

1. The plaintiff obtained a decree against E. on a promissory note, and in execution of that decree, purchased the right of E. to recover the amount reserved with defendant under a sale deed executed by E. to the latter for discharge of the debt under the said promissory note:

Held.—The suit was in effect one for unpaid purchase money and under Article 91 of the old Limitation Regulation, had to be brought within three years from the time fixed for completing the sale or the date of its acceptance.

Even if Article 96 should be held to be applicable there was nothing unreasonable in holding that the breach of contract occurred and the cause of action arose on the date of the sale deed as no time was fixed in it for performance of the contract.— 21 T. L. J., *724*.

Not Fol.—21 T. L. J., 1118.

2. The first defendant vendee, from whom money was due to the plaintiff vendor as balance sale consideration, executed a further sale of the property in favour of the second defendant with a direction to pay off the plaintiff, the amount due to him. On the failure of the second defendant to do so, the plaintiff filed this suit for recovery of the money after the lapse of the period prescribed under Article 91 of the old Limitation Regulation (which governed the case):

Held.—The plaintiff could not claim exemption from the operatin of the Limitation Regulation by virtue of Section 10 inasmuch as there was no express trust as required by the Section. It would be a dangerous doctrine to hold that every purchaser of property into whose possession the property may pass by a subsequent sale is a trustee for the vendor merely because the purchase money or a portion of it remains unpaid by the original purchaser.— 22 T. L. J., *1181*.

3. See Art. 104.— 21 T. L. J., *1118*.

Article 103.

See Art. 53.— 24 T. L. J., *1*.

„ Regn. III of 1094, Other Cases....
22 T. L. J., *1277*.

Article 104.

1, The suit was by a vendor of immovable property for recovery of balance of purchase money reserved with the vendee under a registered sale deed. of 28-8-1094 to be paid to the vendor himself. On the contention of the vendee that Article 91 of the old Regulation applied even as regards personal liability and the suit was in consequence barred:

Held.—As regards the liability of the purchaser personally, the Article applicable was Article 96 and not Article 91 in that the suit was one not for the enforcement of the vendor's lien, but for damages for breach of contract in writing registered. There is no difference at all between the case of reservation for payment to a stranger and that to the vendor himself.—
21 T. L. J., *1118*

2. The rule, in the case of a sale, that the vendor cannot be presumed to give a warranty of title in respect of the properties sold by him does not apply to the case of a Kanom. In the latter case the analogy is more to that of a mortgage and the Jenmi like the mortgagor, is bound to secure to the Kanomdar possession of the properties demised and there is an implied

covenant that the Jenmi has a title to convey,

A Kanomdar is therefore entitled to recover the entire Kanom amount, if by reason of a defect of title in the Jenmi, he is unable to get possession of some of the properties demised and consequently incurs a substantial diminution of his security.

A suit of this kind can be brought within six years from the date of the arising of the cause of action.

Where the Jenmi, first defendant, filed a suit against a stranger to establish his title in respect of certain properties he had demised on Kanom in favour of the plaintiff and was unsuccessful and a suit was brought by the plaintiff Kanomdar against the Jenmi for recovery of the Kanom amount within six years of the decision of the primary Court in the suit filed by the Jenmi:

Held.—Article 96 of the old Regulation is applicable to the facts of the case because an implied warranty of title can be inferred, The plaintiff's suit was within time. **22 T. L. J.,** *653.*

3. K executed a debt bond in favour of P stating in the first part of the bond that he had agreed to purchase a journal and two printing machines and accessories and that he was executing the bond for the amount of the sale consideration therefor. K brought the suit for recovery of compensation for the breach of the agreement of sale.

It was contended for the defence that the suit was time-barred. The argument was that Article 104 of the Limitation Regulation was applicable only to a case where the registered instrument evidenced the contract which formed the foundation of the claim, and not to a case of the kind in question in which the instrument was not intended to be or regarded as primary evidence of the contractual relation between the parties. The mere reference in the instrument to the agreement would not suffice to attract the operation of the Article inasmuch as the obligation could not be regarded as arising out of the terms of the instrument itself or under the law, by force of the provision of a statute:

Held (Overruling the defence contention).—It was clear from the terms of the bond that the agreement of sale and purchase was referred to as the basis of the liability created under the bond and that was sufficient to make Article 104 applicable to the suit. The following observation in 25 Madras 55 might be cited in support of a liberal construction of the Article. "If the oral agreement or contract of sale which immediately preceeded the actual sale be also reduced to writing, as is very often the case, in the deed of sale itself which is registered, the case might be different and Article 116 would govern it."

Held further.—Though the words "express or implied" found in Article 103 were not found in Article 104, they might be read with that Article also:

Held further.—Article 104 was applicable to cases where the instrument was signed by only one party:

Held further.—Where the deed did not itself evidence the registered agreement between the parties as in the case of sales mortgages and leases, a suit to enforce implied agreements arising out of it under the Transfer of Property Act would be governed by the Article:

Held further.—The rule with regard to the measure of damages in a case of the kind in question was as follows:—Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be either such as may fairly and reasonably be considered as arising naturally, *i. e.*, according to the usual course of things, from such breach of contract itself or such as may reasonably be supposed to have been in the contemplation

of both parties at the time they made the contract, as the probable result of the breach of it (F. B.)— 23 T. L. J., *995.*

4. A sale deed in favour of the defendants reserved a portion of the money with them to be paid to the plaintiffs, vendors, after the encumbrances were cleared, and at the same time imposed a personal liability on the defendants to pay interest on the amount in the meanwhile. In a suit for recovery of the interest defaulted for a period of more than six years, the defendants-vendees contended (1) that the failure of the vendors to discharge the encumbrances within a reasonable time, disentitled them to sue for interest, (2) that interest beyond six years of suit was not recoverable as being barred by limitation, and (3) that personal liability could not be imposed on some of the vendees who were minors. It was found as a fact that there had been no avoidable delay on the part of the vendors, seeing that only one of the encumbrances still remained to be cleared and the vendors had been making *bona fide* efforts to satisfy the vendees by offering to furnish security. Also, the vendees had not made ready or set apart the principal amount due:

Held.—(1) The principle that if one of the contending parties causes the other to commit a breach of one of the conditions of the contract, the party at fault could not take advantage and exact the penalty for the breach, did not apply to the facts of the case. Besides, no equitable considerations came into operation so as to give relief to the vendees on account of loss to them from keeping the purchase money in their hands as dead capital. The vendees were therefore bound to pay interest on the money reserved.

(2) The interest sought to be recovered stood on a footing different from the unpaid purchase money and did not constitute a charge on the property, because under the terms of the sale deed, the vendees had only a personal liability for the arrears The Article of the Limitation Regulation applicable is therefore 104, and the plaintiff would be entitled to recover only the arrears of the interest that had accrued within six years previous to the suit.

Though there was no distinction between unpaid purchase money and the interest thereon with regard to the period of limitation governing suits for their recovery, there was nothing to prevent the separation of the interest from the principal and constitute it the object of personal liability only.

Quaere.—Whether a suit to enforce payment of unpaid purchase money as against the property was governed by Article 119 or 109.

(3) No personal liability could be imposed on the minor vendees who remained minors even at date of suit because a guardian could not contract in the name of a ward so as to impose on him a personal liability.— 23 T. L. J., *1151.*

5. Defendants 2 to 6 executed a mortgage deed in favour of the first defendant on 8-8-1099 wherein the amount due from the former to the Karanavan of the 7th defendant under a promissory note was reserved with the first defendant. The latter failed to pay this amount and as the 7th and 8th defendants who had the right from the payee of the promissory note were about to file a suit for that amount, defendants 2 to 6 paid up the amount. On 16-8-1102 these defendants assigned their right to plaintiff who sued to enforce the vendor's lien and to recover the amount and also to recover damages from the first defendant. The first defendant *inter alia* contended that the suit was barred :

Held.—Since the breach was of a contract embodied in a registered document the period of limitation was 6 years under Article 104.— 24 T. L. J., *708.*

6. See also Art. 97.—
21 T. L. J., *724*.

Article 105.

Where a promissory note was executed which was payable on demand, after six months, it was held that the note was an 'on demand promissory note' with the restriction that the note could not be sued upon until the expiration of six months from the date of the note and that after that date no demand was necessary to give the plaintiff a cause of action.

The expression 'on demand' has received a technical meaning in relation to Negotiable Instruments as distinguished from other instruments so much so that the law is that in the case of a promissory note payable on demand no demand is necessary before an action is brought for the recovery of the amount due and limitation runs not from the date of the demand but from the date of the note.

When once the intention to postpone the right of suit is made clear, the question to what date the right has been postponed must be decided with reference to the language of the instrument. It is now well-recognised that in transactions connected with the law merchant, e. g, in the case of bills of exchange and promissory notes, etc., the expression 'on demand' has acquired a technical meaning and that no demand is necessary before action. If the parties really wish to make it as part of their bargain that in a promissory note or other negotiable instrument a demand should be made as a condition precedent to constituting a cause of action they can perhaps do so by clear explicit terms. The circumstances connected with the transaction may also in some cases make it clear. In the absence of such express words or circumstances clearly indicating that the parties intended that an express demand should be made by the creditor before action is brought no demand is necessary to maintain an action on a promissory note made payable on demand.
48 T. L. R., *230* (=22 T. L. J., *689*).

Article 109.

1. The suit for non-liability for Nervarom and Melpathy is for a declaration of non-liability of a recurring demand. Under Article 109, the period of limitation for a declaratory suit is 6 years from the date on which the right to sue accrues. The right to sue in the case of a recurring demand arises at each point of recurrence. At each threat or demand by the Sirkar the plaintiff would have a cause of action to sue.

The suit may also be viewed as one to establish a periodically recurring right to remission under the Settlement Proclamation or as a suit for relief in respect of a continuing wrong, in which case Article 118 or Section 24 would apply. Melpathy is a charge on land, while Nervarom is no such charge, Nervarom being purely a personal cess should be viewed as abolished.—
21 T. L. J., *913*.

2. A Syrian Christian wife sued her husband for arrears of maintenance for 12 years and for future maintenance but it was found that for 30 years before the suit she had lived separate without justification and her refusal to accept the present offer of the husband to live with him was based only on a simulated apprehension of danger:

Held.—The rules of Hindu Law as to maintenance to a wife, consonant as they are with the general principles of jurisprudence, may with propriety be applied to Christians, for, differences in religion and caste are immaterial in a matter of this kind. Among Hindus as well as Christians, marriage creates a special status from which springs the rights and duties of married people as such, one of which being the duty of the husband to maintain the wife provided she in her

turn, discharges her marital obligations. Nothing will justify a Hindu wife in leaving her home except such violence as renders it unsafe for her to continue there or such ill-usage as would be termed cruelty in an English Matrimonial Court. It is not suggested that the customary law of the Syrian Christians is different. Applying the rule of Hindu Law as to grant of separate maintenance, nothing could be decreed to the plaintiff either on account of past or future maintenance.

The Article of the Regulation applicable to a case of recovery of arrears of maintenance by a Syrian Christian lady is the residuary Article 109 and not Article 116 which refers only to a Hindu or a member of a Malabar Tarwad.— **24 T. L. J.,** *281.*

3. The plaintiff is the daughter of one deceased C by his wife, the deceased A. Since her death, he married 4th defendant and the defendants 1 to 3 are their children. The deceased C had possession of the Stridhanam amount (800 Rasis or 2000 Fs.) due to the said A. Besides, he was also in possession of Br. Rs. 100 given by the father of A in lieu of utensils and ornaments. He has been retaining possession of the same as a trustee for the said A and the plaintiff. He died in Vrischikom 1099 and till his death, he was willing to give over the above amounts to the plaintiff. The defendants were asked to pay it, but they have not complied with the demand. The 1st defendant contends that the suit is barred by limitation.

The trial Court decreed the suit in favour of the plaintiff. But on appeal the District Judge reversed the decree of the trial Court and dismissed plaintiff's suit on the ground that the suit was barred by limitation :

Held.—The question for decision is which is the Article of the Limitation Regulation applicable to the present case. In *Mathulla Louis V. Eapen Rosa* (6 T. L. J., 464) it was held that in a suit for the recovery of Stridhanam brought by a Syrian Christian woman the Article applicable would be either Article 122 or Article 100 (old Regulation) corresponding to Articles 133 and 109 of the new Regulation. It was not, however, definitely decided as to which of the Articles applied. Article 122 (133 of the new Regulation) is not applicable as the application of that Article to the case of Stridhanams like the present would lead to evident anomalies and inconveniences. For instance a case may be imagined of a woman marrying paying Stridhanam and living with her husband, say for a period of 40 or 50 years. In that case if Article 133 of the Regulation applies, the woman or her heirs lose all their rights to the Stridhanam amount since under that Article the period of limitation prescribed for a suit to recover the deposit is thirty years from the date of deposit. In enacting Article 133 of the Regulation the Legislature could not have intended to bring about such an anomalous result although a literal reading of the Article may lead to such a result. Of course for the purposes of this case it has to be assumed that the deceased C. was a "depository" within the meaning of Article 133 since opinion is divided on the question whether money is movable property for the purposes of Article 133 of the Limitation Regulation or whether a person with whom "money" is deposited can be said to be a "depository." Article 133 of the Regulation was not intended to cover cases like the present and the result of applying the Articles to cases of Stridhanam like the present would lead to manifest injustice and anomaly.

In the absence of any specific Article, the residuary Article (Article 109) must apply.

There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.— **24 T. L. J.,** *754.*

4. See also.—
Sec. 24.— 21 T. L. J., *1035*.
Art. 95.— 49 T. L. R., *74* (=22 T. L. J., *1360*).
„ 104.— 23 T. L. J., *1151*.
„ Regn. VIII of 1100.
Or. XXI, R. 90.— 21 T. L. J., *1360*.

Article 114.

An after-born son may impeach an unauthorised alienation by his father; he can do so till the period for a suit by the then existing sons to set it aside expires and not afterwards.

Rights which have become vested at birth could not be taken away by a subsequent enactment of the Christian Succession Regulation (F. B).—
49 T. L. R., *180* (=23 T. L. J., *808*).

Article 116.

See Article 109.— 24 T. L. J., *281*.

Article 118.

See Article 109.— 21 T. L. J., *913*.

Article 119.

1. A suit by an usufructuary mortgagee who fails to obtain possession of the mortgaged property is governed by Article 109 of the Regulation of 1062 corresponding to Article 119 of the Regulation of 1100.

When neither the assignor nor the assignee of a mortgage had possession of the property mortgaged, they have only a charge and suit by either of them for the mortgage amount is governed by 12 years' limitation and not by the 50 years' rule.—
48 T. L. R., *854* (=22 T. L. J., *1127*).

2 See also Art. 104.—23 T. L. J., *1151*.
„ Regn. VIII of 1100, Or. 2, R. 2.—
24 T. L. J., *17*.

Article 120.

See Regn. III of 1094, Other Cases.—
23 T. L. J., *1040*.

Article 122.

Even the true owner has to surrender possession of property if he finds himself in the trap of estoppel mutually available to the mortgagor and mortgagee but it is open to the mortgagee to show that the mortgagor's title was extinguished subsequent to the creation of the mortgage.

Adverse possession by the mortgagee against the mortgagor during the currency of the mortgage is a thing unheard of in law and for this matter the mortgagee's transferees are not in a better position since ordinarily the transferee takes only the place of the transferor and does not modify his position by the mere transfer. The possession of the transferee is not in itself hostile to the mortgagor till the latter had notice of the nature of the possession asserted by the transferee.

Where a mortgagee has transferred the property mortgaged as if he was the absolute owner a suit by the mortgagor against the transferee should, under Article 111 of the repealed Limitation Regulation, be brought within 12 years of the transfer only if the transferee had no notice of the limited rights of his transferor.

Quaere.—Whether under the corresponding Article 122 of the new Limitation Regulation absence of notice as above is essential.— 22 T. L. J., *1154*.

Article 123.

See Regn. VIII of 1100, Or. II. R. 2.—
24 T. L. J., *17*.

Articles 130 and 132.

1. Where the plaintiff sued for the recovery of the plaint property with arrears of rent on the basis of a Kanom deed

obtained from the Jenmi, and the defendants were the original Uralers of the Devaswom and were enjoying the plaint property under a Kanom from 1071, and asserted permanent rights of occupancy:

Held.—A denial of the right to recover possession on the ground of the property being held under a permanent occupancy right is a sufficient disclaimer under Article 132 of the Limitation Regulation.

Held also.—Adverse possession can be operative even with respect to limited interests.— **20 T. L. J.**, *923.*

2. The suit was for redemption of a mortgage which was found to include the disputed properties also. The 6th defendant was in possession thereof and he set up adverse possession.

Held.—If Article 119 is applicable to the facts of the case, the burden of proof is undoubtedly upon the plaintiff to make out possession within 12 years. If, on the other hand Article 121 applies to the facts of the case, the 6th defendant has to make out when his possession became adverse to the plaintiff and that he has been in such adverse possession for more than 12 years. Article 119 applies to cases where, the plaintiff, while in possession of the property, has been dispossessed and sues for recovery of the lost possession. The suit is not of that character. The suit is for redemption of a mortgage which has been found to include the disputed properties also. The 6th defendant is now found to be in possession and he sets up adverse possession. That is not a case of dispossession of the plaintiff and therefore Article 119 cannot apply to the case.

If in addition to the digging of pits watering and fencing the tenant has to incur extraordinary expense in raising the level of the land in order to make it fit for plantation, there is no reason why he should be denied compensation for it. The question whether the work done is what is ordinarily expected of a planter of cocoanut trees like digging of pits, watering and fencing or whether it is an extraordinary one which has been necessitated by the peculiar nature of the soil, is a question of fact which must be decided according to the circumstances of each case.—

21 T. L. J., *20.*

Fol.—24 T. L. J., 801.

3. In a suit by a co-sharer for partition and recovery of his share but framed as one in ejectment, the defendant pleaded adverse possession on the ground only, of the plaintiff's non-participation in the enjoyment of the property:

Held.—Though the suit was framed as if it were one for ejectment, Article 132 applied and accordingly the burden lay on the defendant to prove that his possession was adverse at a certain date before suit. And till a co-sharer had definite knowledge of an actual, visible, exclusive, open and hostile possession, set up by another co-owner, adverse possession will not run in favour of the latter.—

22 T. L. J., *208.*

4. The plaintiff in the case based his suit for recovery of possession from defendants 1 and 2 on two grounds—(1) an oral lease and (2) his mortgagor's title. The defendants denied both these grounds, and in addition pleaded acquisition of title by adverse possession. The plaintiff proved his title but not the oral lease. The lower Court, applying Article 130 dismissed the suit on the ground that the plaintiff had not proved possession within 12 years of the suit. The plaintiff appealed:

Held (By majority).—The falsehood, if any, in respect of the lease should have no repercussion on the truth of the plaintiff's case in other respects. The title set up by the plaintiff was found, and the original title pleaded by the defence was not found. The suit should fail, if at all on the ground of limitation or adverse possession according as Article 130 or 132 applies. Article 130 has no application in the absence of the dispossession of the

party in possession, and it does not apply because the defence did not admit the possession of the opposite party at any time. The burden lay on the defendants under Article 132 to make out the plea of adverse possession put forward by them.

Per Chatfield, C. J., (*contra*)—Where, as in the case, the plaintiff did not allege that while he was in possession of the land he was dispossessed or discontinued his possession but contended that he had given permissive possession to the defendant, *e. g.*, by granting him a lease. if the lease was accepted then no question of limitation would arise. But the lease might be found to be untrue. In fact if any advantage was to be gained by making such allegations, it may be taken as granted that a false lease would always be alleged in every case in which the plaintiff seeks to recover immovable property in the possession of another. Such a result is not desirable. The position, therefore, must be the same as if the plaint contained no allegation of the lease. In some cases it might be that the plaintiff might succeed on the strength of his title alone. But where the defendant was in possession of the plaintiff's land, such possession should be accounted for and where the only way in which it could be accounted for was that the defendant had dispossessed the plaintiff or the plaintiff's predecessor-in-title or had occupied the land after the discontinuance of possession by one of them, then there was no reason why the plaintiff's suit should not be governed by Article 130 (F. B.),— **23 T. L. J.,** *412.*

5. Among co-sharers there can be an extinguishment of right by adverse possession but it is clear law that till a co-sharer has definite knowledge of an actual, visible, exclusive, open and hostile possession set up by another co-sharer, adverse possession will not run in favour of the latter. Mere silent possession of properties by one co-sharer, however exclusive or long continued, cannot be treated as adverse to the other co-sharers. In order that it may have the effect, there must be a repudiation by the person in possession of the title of the co-sharer or some notorious act amounting to an ouster or exclusion of the co-sharer brought home to the latter. But a violent expulsion of a co-sharer is however not necessary to constitute adverse possession.

On the question in issue as to whether according to the customary law governing the community of Malayali Velans (potters), sons and daughters inherit as equal shares, it was held that the decision in *Padmanabhan V. Narayanan and others* (18 T. L. R., 106) was relevant as an instance of the "assertion and exercise of a right" under Section 13 of the Evidence Act and could be referred to as evidence of a weighty character as to the consciousness of the parties concerned regarding the existence of the rule in question.— **24 T. L. J.,** *147.*

Article 133.

See Article 109.— **24 T. L. J.,** *754.*

Article 137.

Article 137 is very wide and its operation is by its wording not restricted to any particular class of suits by the Sirkar and this is so for very proper reasons for, the Sirkar is charged with a very important trust for the benefit of the community of which it is the representative and its right should be fully protected.

Where, therefore, the rights of the debtor become vested in the Sirkar whether by assignment or operation of law, the Sirkar has a period of 50 years under Article 137 within which to sue for the enforcement of such rights. But a debt which is already statute barred on the date the Sirkar derived the right, will not be revived inasmuch as the claim of

the Sirkar being only a derivative right must stand in the same situation as its principal.— **21 T. L. J.,** *972.*

Article 149.

Under Article 149 of the Regulation of 1100 (Article 136 of Regulation of 1062), the period of limitation is thirty days from the date of decree or where the summons was not personally served on the defendant, when the applicant has knowledge of the decree. The service in the case was a substituted one on the appellant's refusal to accept service as required by Order V, Rule 17 of the Code of 1100 (Section 76 of the Code of 1065). Such service could not be treated as a personal service within the meaning of Article 149.— **20 T. L. J.,** *355.*

Article 151.

1. The grant of leave by the Court to institute legal proceedings against a Receiver need not necessarily be in express terms. It may also be implied. If there appears an intention on the part of the Court that its Officer should be made a party to a suit or other proceedings, such intention will suffice. The cause in which a Receiver is appointed is the cause wherein the application for obtaining leave should be filed.

A sale of property in the possession of a Receiver conducted without the leave of the appointing Court, is not void but only voidable.

Where property in the possession of a Receiver appointed in a case was sold in execution of a decree in another case on 14-8-1105 and duly delivered to the auction purchaser and the Receiver by application filed on 12-11-1105 called in question the validity of the execution sale and applied for redelivery ;

Held.—The application of the Receiver filed after 30 days of the sale was barred by limitation under Article 151. Article 165 was not applicable to the case (F. B.).— **23 T. L. J.,** *714.*

Ref.—24 T. L. J., 654.

2. See also Regulation VIII of 1100, Order XXI, Rule 87.—
47 T. L. R., *403*
(=20 T. L. J., *1284*).

Article 159.

See Regn. VIII of 1100, Sec. 115.—
21 T. L. J., *159.*

Article 162.

See Regn. VIII of 1100, Or. I, R. 10.—
20 T. L. J., *1242.*

Article 164

1. In the course of the execution proceedings in the case, a general order for delivery of items 1 to 8 was passed on 18-3-1104. Item 6 was not however delivered since strangers were in possession but the warrant for delivery was directed only against the defendants in the case. A fresh application for delivery was filed by the auction-purchaser on 4-6-1104. The Court ordered notice to the correct address of the persons in possession on 15-10-1104. As this order was not obeyed, the application for delivery was dismissed on 26-12-1104. On 8-1-1105, the auction-purchaser once again petitioned for delivery but the lower Court rejected the petition as being out of time. In appeal by the auction-purchaser before the High Court :

Held.—(1) The order for delivery dated 18-3-1104 was not effective in law inasmuch as it was not directed against the persons in possession.

Delivery in execution has to be directed by a judicial order. A general order for delivery, without specifying the persons in whose occupancy the property is and from whom the delivery of the property has to be effected is not one passed in

strict compliance with the requirements of Order XXI, Rule 92.

(2) The order of dismissal on 26-12-1104 cannot be deemed to be a purely ministerial order inasmuch as it had been occasioned by the default of the auction-purchaser to produce process fees for issue of notice.

The crucial test for determining whether a later application is a continuation of an earlier one is to see whether the interruption in the decree-holder's proceedings was not occasioned by any fault of his own but either by the successful objection of a judgment-debtor or by third parties or by some obstacles interposed by the Court.

(3) Even though the sale became absolute under the old Limitation Regulation it is the law in force on the date of the application for delivery, *i. e.*, the new Limitation Regulation that has to be applied. The right to present an application within a particular period after the happening of a future event which in the present case will be an order passed upon a prior application constituting a step-in-aid of execution in the eye of the law cannot be deemed to be a vested right in law.

(4) Therefore, the appeal was incompetent.— **20 T. L. J.,** *1116.*

2. See also Or. XXI, R. 89.—
24 T. L. J., *388.*

Article 165.

See Sec. 15.— **21 T. L. J.,** *743.*
„ Art. 151.— **23 T. L. J.,** *714.*
„ Regn. VIII of 1100, Sec. 40—
21 T. L. J., *1048.*

Article 166.

1. A decree was passed against two defendants, one of whom appealed and filed also a petition for stay of execution pending the decision of the appeal. Stay being ordered, a surety executing a security bond declaring that he would be fully liable for any decree that may be passed against the 1st defendant and would not claim that the 1st defendant should be proceeded against in the first instance. Ultimately the appeal was dismissed on 11-12-1098. On 9-4-1102, an application was made under Section 109 of the Civil Procedure Code, to execute the decree against the surety. An objection was raised by the surety that the application was barred under Article 166 of the Limitation Regulation. No steps had been taken against the surety prior to the present application. Steps had however been taken against the 1st defendant and if this were taken into consideration as the starting point for limitation, then there is no defence open to the surety. The surety contended that the previous applications would only save time against first defendant and not against himself and that the application was barred under Article 166 of the Limitation Regulation:

Held.—The application against the surety is not barred by limitation.

Per Venkata Rao, J.,—Explanation (1) to Article 166 is not exhaustive and the subsequent application against the surety in a suit of this nature would be governed by Clause 5 of Article 166 though it may not fall within the ambit of the latter part of that Explanation as the decree sought to be executed against the surety is the decree in the suit which under the provisions of Section 109 of the Civil Procedure Code may be "executed against the surety in the same manner as against the judgment-debtor."—

46 T. L. R., *122*
(=20 T. L. J., *230)*

2. The decree in the case was passed on 14-2-1095. An application for succession certificate to establish the petitioner's right to execute the decree was dismissed on 9-8-1096. His suit therefor was decreed on 17-3-1098 and the appeal against it was dismissed on 24-2-1099. The first application for execution was filed on 23-2 1102;

Held.—The application for execution was barred, since it was competent for the decree-holder to have made an application within time, for execution of the decree, even though no relief could have been granted to him as he could not file a succession certificate.—**20 T. L. J.,** *855.*

3. The decree was passed on 15-6-1090. On 2-4-1098 the decree-holder filed an application for execution praying that notice under Section 244 (=Order XXI, Rule 20), C. P. C., be issued to the defendants and after such notice, for attachment and sale of properties mentioned in the schedule attached to the application. On 30-4-1098 the Court ordered notice under Section 244. Process fee was not paid by the decree-holder for issuing the notice and therefore the execution application was struck off the file on 21-5-1098. The present application was filed on 8-12-1101 for execution.

On the question whether it could be treated as a revival of the prior application:

Held.—(1) Inasmuch as the first prayer in the prior application was for notice under Section 244 and without such notice the other prayers in the application could not be granted the Court could not proceed owing to the default of the plaintiff in the payment of the process fee, there was no reason why the order of rejection dated 21-5-1098 should not be treated as a judicial order.

The law does not require that when a process is ordered by the Court a special order should be passed for payment of the process fee. When an order is passed by the Court, it is the duty of the decree-holder to see that every thing necessary for carrying out the order is done by him.

(2) The present appplication was, therefore, a substantive application and cannot be treated as a revival or continuation of the prior application.— **21 T. L. J.,** *411.*

4. An application to execute the decree was filed along with which process fee was deposited. Subsequently however the application was rejected on the ground of non-payment of process fee. The next application was more than three years after the rejection. On the question whether the order of rejection is a judicial order or only a ministerial one;

Held.—The order was only a ministerial order as there was no default on the part of the decree-holder nor was it shown that he had notice and was given an opportunity of being heard before the application was rejected.

The order would be a judicial one either if it was due to the default of the decree-holder or if though not due to such default he had had notice and had been heard before it was passed.—

22 T. L. J., *900.*

5. The period of six years provided by Article 166 cannot apply to a decree or order which is *not actually registered.* Article 166 speaks of a decree actually registered and not of a decree which ought to have been registered but was not actually registered either owing to the fault of the Court or of the decree-holder. The words in the second column of the Article are 'where a certified copy of the decree or order has been registered.' To apply the Article to a decree which has not in fact been registered but which ought to have been registered is in effect to add to Article 166 words which are not found in the Article. To apply the Article to a decree or order not in fact registered but which in the opinion of the Court ought to have been registered but was not actually registered owing to the fault or neglect of the Court or any one else is in effect not to interpret the law but to legislate.

Held.—A decree, though in respect of immovable property, could not be deemed to be a registered decree within the meaning Article 166, if as a matter of fact it was not registered on account of non-payment of the registration fee (See Rule 790

of the Civil Courts Guide). The time prescribed for an application to execute such decree is only three years as in the ordinary case.— **23 T. L. J.,** *823.*

6 The order of a District Court, to which an appeal was wrongly presented, returning the appeal to the appellant, for presentation to the proper Court cannot be said to be 'a final order or decree' within the meaning of Article 166, clause (2), of the Limitation Regulation.

The order contemplated in the Clause is one which disposes of the appeal on the merits in some form and not simply one which intimates to the party that the appeal should be filed elsewhere.

The time during which such an appeal was pending in the District Court cannot be deducted under Section 5 of the Regulation for computing the period of limitation.— **48 T. L. R.,** *67.*
(=22 T. L. J., *316*).

7. Where an appeal against several respondents had abated as against one of them by reason of his death before the institution of the appeal and the legal representatives of the deceased respondent sought to execute the decree of the lower Court, which had in the circumstances become final, against the appellant, after three years of its date but within three years of the appellate decree:

Held.—Execution was not barred. Article 166 (2) of the Limitation Regulation should be construed literally or grammatically. It would apply even if the decree sought to be executed was in no manner imperilled by the institution of the appeal.— **22 T. L. J.,** *577.*

8. Though a portion of the decree has alone been reviewed, the period of limitation for execution of the other portions runs nevertheless from the date of disposal of the review application and not from the date of the decree.—

20 T. L. J., *1076.*

9. Both under Clause (5) of Article 166 of the Limitation Regulation of 1100 and Clause (4) of the old Regulation of 1062, the date of the order passed on the application has to be treated as the starting point for computing the period of limitation allowed for the purpose.

The expression "in accordance with law" in Article 166 (5) should be taken to mean that the application, though defective in some particulars, was one upon which execution could lawfully be ordered. If the omissions were such as to make it impossible for the Court to issue execution of the decree, it should be held that such application was not in accordance with law.

What the law requires is a substantial compliance with the requirements of the Code, the Court having in each case to determine whether there has been such a compliance or not. When the Court does not reject an application on account of any defect, and proceeds to deal with the application duly, it should be taken that this discretion has been exercised in favour of the decree-holder. When once an application is accepted, it must be treated as one presented in accordance with law, whatever may be the defect.—

20 T. L. J., *1.*

10. The expression "at a certain date" in Clause 7 of Article 166 would include a case where the direction is for payment within a particular period, for, a date capable of being made certain by the computation of time provided for payment is as certain for the purpose of the Article as a specific date entered in or provided for in the decree itself.—

21 T. L. J., *1368.*

11. Plaintiffs 1 and 2 obtained a decree for redemption on 12-2-1093. To cancel this decree a suit was instituted on 9-8-1093 and it resulted in a decree on 28-5-1097 under which the right of redemption was restricted to one-half of the property. Application for execution having been made on 21-6-1101, the question arose whether the application was not barred.

Held.—The application was barred. The second decree could not be construed as an amendment of the original decree. Clauses 1, 2, 3 and 4 of Article 166 make reference to the date of the decree or order, the date of the final decree or order of the appellate Court, and the date of the decision passed on review respectively, so that the frame of the Regulation would make it appear that the amendment contemplated by clause (4) should be the result of a proceeding taken in the suit itself and not in a regular suit. In regard to a suit there is specific provision in the Regulation, namely, Section 15, Clause (1), which allows exclusion of the time during which the institution of a suit or the making of an application was stayed by injunction or order. The mere pendency of the suit would be insufficient. The word "amendment" in Article 166, Clause (4), must be taken in its technical sense, namely, the amendment of a decree as provided by the Civil Procedure Code. The argument that when a variation is made of the decree in consequence of another suit, there would be "amendment" of the decree for the purposes of this provision is far-fetched,—

24 T. L. J., *359*.

12. An application for execution was filed on 10-1-1104 praying for attachment of decree and of property for which schedule was filed. The Court passed an order for attachment but since the process fee was not paid the application was dismissed. Another application was made for issue of notice to second defendant and for attachment and sale of properties the particulars of which were to be intimated later on. It was contended that the second application was a revivor of the earlier application:

Held.—Where the application has been granted by the Court and is subsequently dismissed for default of the decree holder the order finally disposes of the application.

When the Court orders payment of process fee it is not necessary that the Court should fix a time limit within which the process fee should be paid. If there is a general rule of law defining the period within which the payment has to be made to save the application from dismissal the non-payment within that period clearly constituted default, justifying the dismissal of the application. In such cases, a subsequent application for further steps must be by a fresh application which cannot be regarded as an application to revive a pending one or to continue steps already taken.

Two conditions will have to be satisfied to make out that a later application is a continuation of an earlier one, *viz.*, (*a*) that the previous application should have been dismissed for no fault or default on the part of the decree-holder. (*b*) that the subsequent application must be similar in scope and character to the previous one. None of the applications in the case except the seventh which had been disposed of once for all, gave descriptions of the properties intended to be attached and the specification of the judgment debtor's interest therein as required by Order XXI, Rule 11 of the Code. The application therefore was materially defective and incapable of execution.

Unless it is made clear in a pending application of a prior date that the decree-holder applied for attachment of specified

properties and the present application was simply to enforce the steps in respect of those identical properties, there is no occasion for revivor.—

24 T. L. J., *313*.

13. An application for execution by an assignee of a decree is a step in aid of execution even though the assignee is refused recognition by the Court ultimately. At the time the application was made he was the proper person to execute the decree.— 24 T. L. J., *370*.

14. See also Article 109.—

24 T. L. J., *281*.

Other Cases.

1. There was no dispute as to plaintiff's title to plaint property. The defendant's case was that the property was being used for cutting manure for wet lands and was thus used by himself and his ancestors :

Held.—Such stray acts of user could not amount to an act of enjoyment or taking possession of land constituting adverse possession. The acts of enjoyment alleged could be regarded only as evidencing a fugitive and intermittent if not permissive enjoyment and would not support a plea of possession adverse to the true owner. The rule applicable to ordinary cases of ejectment (*viz*., proof of possession of plaintiff within twelve years prior to the institution of the suit) could not be regarded as applicable in such a case.—

21 T. L. J., *55*.

2. The suit of 1097 was filed for discharging the mortgage liability of the first defendant under his mortgage, document of 998. The defence set up the plea of limitation. In answer thereto. the plaintiff relied on an acknowledgment contained in Exhibit B, a sub-mortgage deed of 1043 and on the judgments Exhibits A and D in an earlier suit O. S. No. 502 of 1081, on the basis of Exhibit B, in which a contention that Exhibit B was not a valid acknowledgment was repelled by the Courts :

Held.—There was nothing in Exhibit A or D which could save the suit from limitation. Strictly speaking there could be no acknowledgment signed by the party in Exhibit A or D. It cannot also be said that they had the same effect as an acknowledgment. The ruling in 22 T. L. R., 157 was inapplicable, as no case of adverse possession was set up by the defence. And indeed a mortgagee cannot plead adverse possession as against his mortgagor, how notoriously and to the knowledge of the mortgagor he may set up title adverse to the mortgagor. A mortgagee may however plead that a suit for redemption is barred by limitation. Assuming for the purpose of argument that Exhibit B was a valid acknowledgment, still, the suit having been filed more than fifty years thereafter, must be held to be barred.— 21 T. L. J., *1068*.

3. It is impossible to regard the order dismissing the application for execution as a judicial order since it does not appear from the diary that the Court did even pass an order for proclamation on the decree-holder's application. If the Court did not pass an order for proclamation it was not possible for the decree-holder to pay any process fee. Hence the order striking off the application for execution is merely a ministerial one and therefore the application must be deemed to have been pending.— 22 T. L. J., *858*.

4. In execution of a money decree the properties of the judgment-debtor were sold subject to the condition attached to the sale certificate that on the judgment-debtor or his heirs depositing the amount in Court the properties were to be surrendered by the auction-purchaser.

Held.—A reasonable interpretation had to be put upon the condition. It could not mean that the judgment-debtor or his heirs were at liberty to come in and claim the properties at any time disregarding

the law of limitation. The auction purchaser's possession was adverse to the judgment-debtor and where the auction purchaser had been in possession for the statutory period of 12 years the judgment-debtor's rights became barred.—

22 T. L. J., *1120.*

5. It cannot be affirmed as a general proposition of law that a person in possession of land under a tenancy or occupancy title can by a mere assertion of proprietary right in a judicial proceeding and the lapse of 6 or 12 years without that assertion having been successfully challenged, obtain a title as an under-proprietor of the lands.

All that was maintained in the former suit was the non-payment of the dues under the kanom from its inception and as a consequence the loss of the Jenmi's right to the property in question. There was nothing like an overt repudiation of the Jenmi's title. Mere non-payment of rent will not enable a tenant to plead adverse possession.—**48 T L.. R.,** *359* (=**22 T. L. J.,** *1193*).

6. The suit for redemption of a mortgage of 972 was brought after 50 years of the mortgage. But in 1043 a suit was instituted by the plaintiff for renewal fees and a decree was obtained by him:

Held.—The effect of the decree was the same as an actual renewal of the mortgage because equity treated that as done which ought to have been done, and this renewal brought the suit within time.—

22 T. L. J., *1376.*

7. The question was whether the plaintiff was estopped from contending that the suit property was a registered holding inasmuch as he agreed to pay and did pay Thanathu Chitta tax. The Sirkar relied on two petitions presented by the plaintiff before the Revenue authorities admitting his having paid the tax and offering to pay tharavila for the land. The said petitions did not admit that he came into possession for the first time that he offered to pay the tax; on the other hand, they showed that he made the offer because he was threatened with loss of the land. The plaintiff had proved possession for over 12 years and from long before the tax was levied on him:

Held.—In the circumstances, the burden lay heavily on the Sirkar to prove that the plaintiff was not in adverse possession. The fact that the plaintiff offered to pay Thanathu Chitta tax, when he was threatened with eviction did not debar the plaintiff from setting up independent possession. It was also no evidence on the side of the Sirkar that the plaintiff was in permissive possession.—

23 T. L. J., *167.*

8. The father of the first plaintiff in the suit had executed a sale deed to the third defendant and another in which provision was made for payment of some money to the first plaintiff for her Streedhanom. The question arose whether the first plaintiff who was not a party to the sale deed had the right to sue:

Held.—The ordinary rule is that a person who is not a party to a contract cannot enforce it in a Court of law. But this has its exceptions, one of which is where, under a contract, a benefit is conferred on a person and one of the parties to the contract constitutes himself a trustee thereunder in respect of the benefit so conferred, the person on whom the benefit is conferred may sue upon that contract though he is not a party to it.

On the question of limitation it was held that such suits were governed either by Article 122 or 100.— **23 T. L. J.,** *376.*

9. Where a vendee undertook to pay the vendor's creditors, but defaulted and a suit was brought to recover the amount:

Held.—The period of limitation began to run from the date when the agreement to pay part of the purchase money to the vendor's creditors became impossible of performance.

The *terminus a quo* was not the date of the execution of the sale deed but the date on which the contract was deemed to have been broken, *viz.*, the date when either there was a repudiation of the liability under it or when the contract had become impossible of performance on account of the vendor's debt having been satisfied.—

23 T. L. J., *487.*

10. The decree-holder could not execute the decree or sell any of the properties independently of the receiver appointed by the Court and who was in possession. A court-sale by a decree-holder of a property in the hands of a receiver appointed by the Court is invalid. The period during which the receiver was in possession of the property should be excluded.—

49 T. L. R., *436*
(=**23 T. L. J.,** *700*).

11. The question was whether an amendment of the plaint after expiry of the period of limitation could be allowed:

Held.—Where the plaint is amended with the permission of the Court, the suit must be taken to have been instituted on the date of the original plaint and not on the date of the filing of the amended plaint.— **23 T. L. J.,** *788.*

12. Where the dispute is between the owner of the equity of redemption and persons in possession who derive title under the mortgage sought to be redeemed, the question at issue is exclusively one between mortgagor and mortgagee. As between them neither exclusive possession by the mortgagee for any length of time short of the statutory period of sixty years, nor any acquiescence by the mortgagor not amounting to a release of the equity of redemption will be a bar or defence to a suit for redemption, if the parties are otherwise entitled to redeem.—

23 T. L. J., *1045.*

REGULATION VIII OF 1100.

(The Civil Procedure Code.)

Section 2 (2).

1. An order merely refusing to stay execution does not come within the scope of the definition of the word 'decree' in Section 2, Clause 2, of the C. P. C. and is not, therefore appealable. To be considerd to be a 'decree' under the said Clause, the order in question, though within the scope of Section 40, should also conclusively determine some matter in controversy between the parties to the suit.—

20 T. L. J., *502.*

Fol.—23 T. L. J., 508.

2. In the Civil Revision Petition against an order dismissing an appeal for the appellant's failure to deposit the respondent's costs, a preliminary objection to the maintainability of the petition was taken on the ground that the order of dismissal was a decree, as conclusively determining the rights of the parties:

Held.—The order dismissing the appeal was neither a decree nor an appealable order. The order did not fall within the definition of "decree" in Section 2 which provided that decree meant the formal expression of an adjudication which so far as regards the Court expressing it conclusively determined the rights of the parties with regard to all or any of the matters in controversy in the suit. The order in this case did not determine the rights of the parties with regard to all or any of the matters in controversy in the suit inasmuch as the Court rejected the appeal and did not deal with the merits of the controversy between the parties.—

21 T. L. J., *998.*

3. Where two decrees are in conflict, the rights under the later should prevail.—

21 T. L. J., *1106.*

4. See also Section 40.—

21 T. L. J., *1175.*

Section 2 (12)

1. Where a decree allowed two years' mesne profits and said nothing about interest thereon :

Held.—The true effect of a decree which grants mesne profits and says nothing about interest is that such a decree carries interest on such mesne profits. Under Section 2 (12) of the new Civil Procedure Code, even when a decree merely awards mesne profits, interest on those profits can be claimed by the decree-holder.

When the decree grants mesne profits and is silent about interest, the usual rate of interest awardable is 6 per cent and interest may be calculated at that rate.—

47 T. L. R., *69*
(=20 T. L. J., *1155).*

2. A junior member of a Tarwad obtained a decree setting aside certain alienations and directing recovery of possession of the properties with mesne-profits. He then assigned away the decree as regards mesne profits.

Held.—The decree relating to mesne profits enured for the benefit of the Tarwad, and the junior member was not competent to assign it away. From Order XX, Rule 12, and the definition of mesne profits in Section 2, it was clear that a decree for mesne profits was only part of a decree for possession, and as such only the person entitled to recover possession of the property could, in law, be entitled to recover the mesne profits. The decree for recovery of possession was obviously one given on behalf of the Tarwad. If so, the decree relating to mesne profits also must be deemed to have been given for and on behalf of the Tarwad.—

23 T. L. J., *362.*

3. The final decree in a case passed while the old Civil Procedure Code was in force, provided for the recovery by the plaintiff, of immovable property in defendant's possession with past and future mesne profits and directed the executing Court to assess the value of defendant's improvements and the mesne profits payable by him. The lower Appellate Court acting on the definition of mesne profits in the new Civil Procedure Code which had come into force at the time of its order, held that the defendant was not liable for the excess profits which arose from the improvements made by him :

Held.—(1) The provisions of the new Code could not be applicable, because the question involved was not a mere matter of procedure but a right vested in the decree-holder under the decree.

The definition of mesne profits in the British Indian Civil Procedure Code excludes from the calculation any increased rents and profits due to improvements made by the person in wrongful possession because he could not claim compensation from the rightful owner either by way of mitigation of damages or otherwise. This consideration might not arise in Travancore where compensation is allowed to a person in wrongful possession and even trespassers are granted such relief. Nevertheless our Legislature has adopted the definition in the British Code and embodied it in the new Code. This however would not justify its application in cases which arose while the old Code was in force.

(2) The measure of mesne profits is not what the plaintiff had lost but what the defendant got out of the property or might with reasonable diligence have made by his wrongul possession.

(3) The plaintiff, under the decree in the case, obtained the right to recover mesne profits as it was at the date of recovery, irrespective of the fact that a part of it arose from improvements made by the defendant while in wrongful possession.—

24 T. L. J., *851.*

Section 8.

1. Etymologically Kudumbaporuthy means the provision for the support of a

family. Such a grant may be for past services, or for future services or for both. Huzur Order No. 595 of 14-10-1014 published on page 470 of Land Revenue Manual, Vol. V, shows that alienations of Kudumbaporuthy lands on receipt of consideration were recognised by Government and the lands thus alienated were registered in the name of the alienee after subjecting the same to what is known as Otti-Vilakkam process. The registry of such lands in the hands of an alienee raises the presumption that the grant in that instance was for past services.

There are two distinct varieties of Kudumbaporuthy grants— (1) Those granted for meritorious past services and dignity and (2) those granted for future services.

The bar in regard to the cognizance of a suit when it relates to Service Inams, does not apply where the Inam was granted for past services. That is what Section 7-A of ths old Civil Procedure Code says, now enacted as Section 8 in the new Code.

The defence plea being in ouster of the jurisdiction of the Court, the burden to make it out is on the defence.—

47 T. L. R., *40*
(=20 T. L. J., *1255*).

2. The suit was to recover arrears of Thiruppuvarom charged on certain Erayili lands, from the first defendant—Sirkar, who had collected the same from the Pattadars, defendants 2 and 3, The Sirkar contended (i) that the suit was not maintainable without Government sanction under Section 8 and (ii) that the Thiruppuvarom had been set off by them towards Acheet Palisa Melpathi cess owed by the Pattadars. The Chitta for the properties did not show that the cess was charged thereon:

Held.—(1) Inasmuch as the suit related only to a part of the assessment on the land which had been directed by Government to be paid to the Jenmi and therefore, not to any benefit arising directly out of the land, Section 8 did not apply. The Government having impliedly given sanction to recover the dues, if they fell into arrears by suit in Civil Courts, were further debarred from raising the plea of want of sanction. (2) There was nothing to show that the cess in the case was charged on property. Nor was the cess by its very nature a charge upon land. It must therefore be deemed to be a personal cess, within the meaning of Section 26 of the Settlement Proclamation and so abolished under the provisions of that Section.— **21 T. L. J.,** *968*.

3. The defendant's father obtained an invalid sale in his favour of the plaintiff's rights over Kandukrishi lands from a person purporting to act as his guardian when in fact he was not. Without being induced by suppression of facts or misrepresentation the vendee produced it before the Government and on the strength of it Government chose to grant him pattah. Though the plaintiff's prayer to set aside the sale and registry and for recovery of the plaint properties, was rejected, he was allowed the alternative relief for recovery of the sale consideration:

Held.—Though there was fraud perhaps on the plaintiff, it would not follow that the registry from Government was obtained by fraud. It is open to the Sirkar to grant registry to whomsoever it pleased.

It cannot be contended that by merely proving fraud as against himself the plaintiff can seek to set aside the registry which the Sirkar was competent absolutely to grant or withhold from any one whether or not his claims were just and proper.

The fact of the purchase having been duly brought to the knowledge of the authorities, it was for them to make enquiries and satisfy themselves as to the facts connected with the transaction.

The granting of sanction by Government can be deemed only to have the

effect of removing the prohibition contained in Section 8. It is open to Government to rectify errors and grant redress whenever necessary and possible and it is open to it to take away such properties from any person if it deems fit to do so without assigning reasons therefor and more especially when justice can be done as between two rival claimants. But it is a very different thing to say that a Civil Court can compel the Government to recognise the rights of one or other of such claimants.

Possession having been obtained under the sale deed it is not open to the defendants to deprive the plaintiff of the sale consideration merely by contending that the sale was invalid (F. B.).—

48 T. L. R., *262*
(=22 T. L. J., *813*).

4. Section 8 does not prohibit execution proceedings being taken against Kandukrishi properties. There is no express or implied prohibition in the Civil Procedure Code itself which can be deemed to be applicable to execution proceedings in respect of such lands.

It has been ruled repeatedly that the Kandukrishi tenant is only a tenant-at-will under the Crown. But even so it cannot be held that it is not an estate unknown to law or that it creates no right or interest at all. A tenant-at-will has a right which is recognised by the law and is available against all the world except the landlord and even as against him his position is not like that of a mere tenant by sufferance, for, while the former has its origin in a contract of letting (express or implied) the latter cannot arise by contract and is in fact only 'a mere fiction of the law to prevent what would otherwise be an act of trespass'. A tenancy-at-will thus clearly gives rise to reciprocal rights and liabilities.

The above being the correct position in regard to tenancies-at-will generally, the position is stronger in respect of Kandukrishi tenants, for such tenants are, according to the traditional policy of the Crown of not capriciously disturbing possession, left to enjoy Kandukrishi lands for generations and their rights have except so far as regards the liability to eviction at the will of the Sirkar been always regarded as valuable property.

In the absence of any statutory provision to the contrary, it must be held that the Kandukrishi tenant has an interest in the lands which is saleable within the meaning of Section 52, C. P. C.

The above view would be quite correct and proper even under the latter part of Section 52 (1) inasmuch as the Kandukrishi tenant is not one without any right of disposal over such lands. Under the present Civil Procedure Code the only restriction regarding the enforcement of rights arising under leases and mortgages of Kandukrishi Pattom lands had been removed and there is at present nothing to prevent such transferees from enforcing deeds executed in their favour by the holder of Kandukrishi lands. It is therefore impossible to hold that the Kandukrishi tenant holds the lands as a mere tenant-at-will with no power of disposal at all over them (F. B.).—

48 T. L. R., *383*
(22 T. L. J., *968*).

5. The sanction of Government is necessary for a suit for recovery of Kandukrishi land.— **23 T. L. J.,** *355*.

Section 9.

1. The jurisdiction of the High Court to pass an order staying proceedings in suits pending in subordinate Courts in which the same matter is in issue as in the appeal before it, cannot be questioned. It may be deemed to be a direction to the lower Court to carry out the provisions of Section 9 of the Code, made in the exercise of its inherent power to prevent an abuse of process or a multiplicity of trials.—

20 T. L. J., *680*.

2, "The mere fact that one issue is common in two suits would not necessitate the stay of subsequent suit. The words "matter in suit" occurring in Section 9, mean the entire matter in controversy in the case."— 21 T. L. J., *687.*

3. Section 9 of the Code of 1100 is slightly different in language from the corresponding Section 8 of the old Code and is, if at all, wider in scope. While the matter in issue and the relief in the previous and subsequent suits should be identical for the operation of Section 8 of the old Code, identity of relief is no longer a condition for the stay of proceedings. But even under the new Code, the existence of some issues common to two suits is not enough to suspend proceedings in the subsequent suit. The words "matter in issue" have reference to the entire subject matter in controversy.—

21 T. L. J., *996.*

4. See also Sec. 115.— 21 T. L. J., *422.*

Section 10.

1. The suit is for arrears of Michavaram and renewal fees. The defendant contends that as the plaintiff is not a Jenmi, the tenure under which he holds the property is not a Kanapattom demise but a redeemable mortgage. Therefore, the plaintiff is not entitled to claim renewal fees.

The plaint properties are held on Karaima by the plaintiff's family from the Navayikulam Devaswom. They were demised by the plaintiff's family in 1048 on Marayam Otti to a third party whose rights have been acquired by the defendant. In 1086 the plaintiff's family sued the defendant and obtained a decree for arrears of Michavaram and renewal fees relating to a prior period. The first issue in that suit was "whether the plaintiff is entitled to obtain renewal fees? Whether he has obtained the Jenmom right over the plaint properties from the Devaswom?" This was decided in favour of the plaintiff.

The contention for the plaintiff is that the decree in the prior suit operates as *res judicata* against the defendant as in that suit it was decided that a Karaima-holder is a Jenmi and that the plaintiff was entitled to enforce a renewal. It is answered for the defendant that the prior suit was decided upon a pure question of law which has been over-ruled by subsequent decisions and that, therefore, the decision in that suit, though binding upon the parties so far as the actual subject matter of that suit was concerned, cannot operate as *res judicata* in the present suit in which the subject matter is different.

Held (By the Full Bench Joseph Thaliath and Narayana Pillai, JJ., Parameswaran Pillai, J. dissenting).—The decree in the prior suit operated as *res judicata* in the present suit and therefore, the plaintiff's claim for renewal fees had to be allowed. *Per Joseph Thaliath, J.*—In any case in which it is found that the matter directly and substantially in issue in the former suit and has been heard and finally decided by such Court, the principle of *res judicata* is not to be ignored merely on the ground that the reasoning, whether in law or otherwise, of the previous decision can be attacked on a particular point.

Per Parameswaran Pillai, J.—An erroneous decision on a question of law cannot operate as *res judicata* in a subsequent suit unless the subject matter in the two suits is the same.

The question whether a Karaima-holder has or has not all the rights of a Jenmi is a pure question of law.

Per Parameswaran Pillai and Narayana Pillai. JJ.,—The construction of a document is not a pure question of law, but a mixed question of law and fact, and therefore, even though a wrong construction was put upon a document in a previous

suit, that will operate as *res judicata* in a subsequent suit.

Per Narayana Pillai, J.—The question whether the expression "Karaima" ought to be interpreted as equivalent to a sale or not is a pure question of fact. (F. B.)—

46 T. L. R., *183*
(=**20 T. L. J.,** *397*).

Ref.—47 T. L. R., 282.
(=21 T. L. J., 271).
20 T. L. J., 1158.

2. According to plaintiff, the suit property formed part of his registered holding, the first defendant denying it. The plaintiff obtained a decree in O. S. No. 250 of 1089 for recovery of the lease-hold with arrears of rent against the first defendant and got delivery of plaint property through Court under a Kychit. The first defendant was alleged to have trespassed on the plaint property. In O. S. No. 250 of 1089 the said defendant denied the lease and contended that a canal to the east of plaintiff's admitted holding was wrongly included in the claim and that he was not bound to surrender the same. An issue was framed on it, and the finding was to the effect that the canal formed a portion of the registered holding of the plaintiff and that the same was included in the plaint lease. The question was whether the finding would operate as *res judicata*. It was contended on behalf of the defendant that the finding as regards the inclusion of the canal in the plaintiff's holding and that it formed a part of the lease-hold could not operate as *res judicata* as the prior suit was bassed on lease while the present suit was based on title:

Per Venkitarama Iyer, J.—Held.—The question of the extent of the property comprised in the lease was directly and substantially in issue, a decision whereof having been essential for the disposal of the claim of the plaintiff. The fact that the previous suit was one based upon lease and that the present suit was one on title could not affect the binding nature of the findings in this question in the prior suit. The decree of the prior suit was clearly based upon the finding on this question. As such it would clearly operate as *res judicata*. **20 T L. J.,** *797*.

3. Where the Court expressly stated that a consideration of a particular matter was unnecessary, the rule pointed out in *Mahammed Ismail* v, *Sherfutullah* (I. L. R. 57 Cal. 872) that if the parties proceeded to trial on several issues, and the Court, at their invitation, decided them, the determination of one of which would have been sufficient for the disposal of the suit, and the Court did not expressly state upon the decision of which of the matters so dealt with, its decision was based, the decision on all the points would operate as *res judicata*, would have no application.

A decision in a prior suit that the issue between the parties was barred by *res judicata* is in itself one which operates as such in a later suit.

The matters in issue dealt in Section 10 may be either issues of fact, issues of law, or mixed questions of fact and law. In the nature of the wording of Section 10, a distinction cannot be drawn between questions of law and questions of fact. And previous decisions thereon cannot be declared as not operating as *res judicata* even if erroneously decided.

One of the tests to be applied is whether the matter in question was directly and substantially in issue in a prior case. The matter decided may have been in issue between the parties, even though the cause of action, the subject matter, and the reliefs claimed are different in both the suits. The matter should have been alleged by one party and denied either expressly or by necessary implication by the other. Even if it was not distinctly raised the provisions would apply if, *in substance* the matter was in issue between the parties.

Only the Karanavan and the senior Anandaravan of each of the branches

together can represent the Tarwad in suits, and decisions without all of them on record cannot validly bind the Tarwad.

The question whether a course of conduct, so far as two branches in a Tarwad are concerned, makes out division or not has to be decided with reference to the intention of the parties.—

20 T. L. J., *1158.*

4. Aravakasom dues cannot be claimed by a non-Malayala Brahmin Jenmi. Aravakasom being dues payable on the occasions of six important religious ceremonies in a Namboodiri Jenmi's house and are payable if and only the ceremonies take place, they could not be claimed by non-Malayala Brahmin transferee of the land.

An erroneous adjudication on a point of law would operate as *res judicata* in a subsequent suit only if the matter was directly and substantially in issue in the prior suit and not otherwise. The decision in the prior suit must be regarded as conclusive only in regard to the subject matter of that suit. In the case of suits for rent and other recurring liability, the causes of action for suits for successive periods are different. In the case of such suits, for the doctrine of *res judicata* to apply, it will have to be shown that the question of right or liability not merely for the period in the previous suit but that for all times or once for all was directly and substantially in issue and was tried and determined. If a direct issue was raised on the point and decided, the decision would be *res judicata* in respect of any suit for a subsequent period. If the decision falls short of that requisite and if the general question was gone into and decided merely for the purpose of deciding that the right or liability for the period involved in the suit, then the issue was raised not directly and substantially, but collaterally and incidentally.

In regard to the reduction of Michavaram by reason of the enhancement of Sirkar tax, the lower Court's order that the Jenmi and the tenant should be liable for such enhancement in equal shares is held just and reasonable —

47 T. L. R., *282*
(=21 T. L. J., *271*).

5. The plaintiffs in the suit alleging that the plaint properties were outstanding on mortgage, from their Tarwad, sought to recover an one-fourth share to which they were entitled. The contesting defendants, resisted the suit on the ground that the mortgages relied on by the plaintiffs are fraudulent and not proved to exist. The plaintiff sought to establish the truth of the mortgages by means of a decree in a prior suit, instituted by the defendants for redemption of the same mortgages and recovery of their one-fourth share. It was contended that, the rule of *res judicata* would apply and that the defendants were concluded by the prior decree:

Held.—The finding as to the reality of the mortgages relied on should be deemed to have been decided between the parties thereto; but it is not possible to go further and to hold that this rule of *res judicata* would be applicable as between the defendants in that suit also. The test to be applied in such cases is mutuality.—

21 T. L. J., *278.*

6. In the absence of a definite issue and a clear finding on a question *inter se* the co-defendants which the Court considers indispensable to grant the relief claimed by the plaintiff, the decision in a previous suit (wherein the plaintiff and defendant were co-defendants) will not operate as *res judicata.*

The general rule that there is no contribution between joint tort-feasors is not an inflexible rule. This rule has been held to be confined to cases where the person seeking redress, must be presumed to have known that he was doing an unlawful act. It has also been held that the rule

does not apply to a case where the party seeking contribution was a tort-feasor only by inference of law.—

46 T. L. R., *451*
(=21 T. L. J., *401*).

7. Courts of Law may by legislative or other action of the civil power, be given particular powers or duties in reference to any questions arising in relation to particular churches, and save in so far as such powers and duties extend, all religious bodies are regarded by the Courts of law as in the same position in respect of the protection of their rights and the sanction given to their respective organisations. Any rules they may adopt for enforcing discipline within their body will be binding on those who expressly or by implication have assented to them. But the law does not blindly exclude the jurisdiction of Courts on that account. Where a religious or other lawful association has not agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequence of such violation, the decision of such tribunal shall be binding when it has acted within the scope of its authority, has observed such forms as the rules require, if any forms be prescribed, and if not has proceeded in a manner consonant with the principles of justice. The maintainability of a suit in such cases, therefore, depends on the question whether the special tribunal or association has acted within its authority, or in conformity with natural justice.

[In the case, the Metropolitan was made the special tribunal under Exhibit A (an Udampady). But the defendants (appellants) made a decided attempt to throw off the yoke of the Metropolitan and denied his authority to decide. Further the dispute between the parties became complicated by a Magisterial pronouncement which could be set aside only by a Court of Law. Therefore the contention by the appellant that the plaintiff should apply to the Metropolitan and not to a Civil Court was rejected, and the jurisdiction of the Court was held not to be ousted.]

A. S. 126 of 1100 related to the disallowance of a part of the claim, that is to say, the portion which the plaintiff claimed on account of services which he could have rendered to the parishioners, had he not been prevented from doing so by the action of the defendants. It was found that the plaintiff in spite of the action of the defendants continued his duties till he was prevented by the Magistrate. Further the items claimed were in the nature of voluntary contributions varying in amount according to the capacity of the party contributing :

Held.—The plaintiff was not entitled to compel others to contribute funds for his support so that he may continue on such contributions.

Where it appears to an appellate Court that there are two decrees arising out of the two suits heard together or raising the same question between the same parties, or arising out of two appeals to a subordinate Appellate Court, and only one of such decrees is brought before it in appeal and there is nothing prejudicial to the appellant in the decree from which no appeal has been brought which is not raised and cannot be set right if the appeal which he has brought succeeds, the right of appeal is not barred either by the rule of *res judicata*, or at all, by reason of his failure to appeal from the decree which does not prejudice him.—

21 T. L. J., *1200*.

8. A gave the schedule property on mortgage first to B, then to C and then to D. C sued to redeem B, making A also a party—defendant, but withdrew the suit admitting that the mortgage sued on was barred by limitation. D then brought the suit to redeem B. It was

contended for the defence that the judgment in the prior suit operated as *res judicata* so far as the present suit was concerned :

Held.—The admission made by the prior Melottidar (C) could not bind the mortgagor (A) who did not claim under him and therefore could not bind the subsequent Melottidar (D).— **21 T. L. J.**, *1308.*

9. Where a portion of the plaint survey number had formed the subject matter of a prior Land Acquisition Reference and the Court of Reference decided that the title rested in the Devaswom represented by defendants 2 and 3 and not in the first defendant and the decision had not been appealed against :

Held.—The first defendant was barred by *res judicata* from re-opening in a subsequent suit, the question of title to the whole survey number. The fact that only a particular portion of the plaint property was involved in the Land Acquisition proceedings did not matter inasmuch as the real question for determination before the Court of Reference, was whether the first defendant had title to the plaint survey number of which the land acquired formed a part.— **22 T. L. J.**, *66.*

10. The suit was filed by the plaintiff's Tarwad to redeem 61 items of properties said to be held by the first defendant, the Thuravoor Devaswom, under a mortgage of 1038 evidenced by Exhibit B, copy or counter-part of a mortgage deed of that year. The first defendant impugned the genuineness of Exhibit B. In a prior suit by the second plaintiff, a junior member of the plaintiffs' Tarwad, for redemption from the first defendant of one of the plaint items on the basis of his separate ownership thereof, the Courts had held that Exhibit B was genuine. The plaintiffs contended that this prior decision was *res judicata* in the suit on the question of the genuineness of Exhibit B :

Held (Repelling the plea of *res judicata*).— In the prior case the plaintiffs' Tarwad was not a party to the suit nor did the Tarwad now claim under the second plaintiff who instituted that suit. The second plaintiff who was the plaintiff in the former suit was not now litigating under the same title as in the former suit. The subject matter of the two suits was not also the same. Under the circumstances, two of the important conditions laid down in Section 10, in order that the former suit may operate as *res judicata*, had not been satisfied.

Though the former judgment did not operate as *res judicata* it was admissible in evidence under Section 13 of the Evidence Act. But it could not be treated as conclusive evidence.— **22 T. L. J.**, *909.*

11. "A decision liable to appeal may be final within the meaning of Section 10 until the appeal is perferred. But once the appeal is filed the decision loses the character of finality and what was once *res judicata* becomes *res sub judice*, *i.e.*, matter under judicial enquiry. The appeal destroys the finality of the decision and it is the latter decree that should be looked to, to determine the question of *res judicata.*"

Where, therefore, in answer to the plaintiff's allegation that Exhibit IV, sale deed, was executed without consideration and in fraud of creditors, the defendants *inter alia* pleaded *res judicata* by reason of Exhibit XII judgment of the District Court in a prior suit to which both were parties, holding that Exhibit IV was valid, but the High Court in appeal from Exhibit XII decree had proceeded to decide Exhibit XII suit irrespective of the fraudulent nature of Exhibit IV :

Held.—The plea of *res judicata* was not available to the defendants in this suit.

The provisions of the Code of Civil Procedure as regards the granting of leave to amend the plaint are very wide and can always be used if the ends of justice require it and unless the application is found

to have been made in bad faith or is unsustainable on certain well-recognised grounds a Court would be acting properly in allowing amendment. That this power could be allowed in appeal or even in second appeal is also well established. Where, therefore, a plaintiff has framed his suit, *bona fide* believing that consequential relief is not open to him and that he is entitled to a declaration the Court would be justified in allowing him to amend the plaint even in appeal so as to include a prayer for recovery of possession also.

A suit to set aside a summary order passed by the Execution Court does not require additional court fees merely because the plaintiff also prays for recovery of possession.

The Proviso to Section 53 of the Transfer of Property Act can be pleaded only by *bona fide* transferees for consideration.

S. V. and M. to whom the suit properties originally belonged executed a sale thereof Exhibit IV, in favour of K. without consideration and in fraud of their creditors. K. gave a hypothecation bond Exhibit N. N. in favour of P. P. assigned his right to S. by Exhibit O. O. In execution of the decree which S. obtained against K. the properties were sold and purchased by the first defendant. The second defendant was a purchaser *pendente lite* from the first defendant. The plaintiffs in the suit who claimed under a court sale in execution of a decree obtained by a creditor of S. V. and M. impugned the first defendant's title as obtained in pursuance to a scheme devised with the object of saving the properties from the creditors of S. V. and M. It was found as a fact that Exhibit O. O. and the execution proceedings though ostensibly taken by S. were in fact taken without *bona fides* at the instance of the first defendant and that though Exhibit N. N. was executed for consideration it was taken by P. with knowledge of the real character of Exhibit IV.

Held.—Though as a matter of law the Proviso to Section 53 was not restricted in its application to the first transferee, the second defendant could not, in the circumstances, plead protection under the Proviso.

(2) It could not be contended that the first defendant's purchase in court sale should be declared to be void only as against the present plaintiffs. The question was which of the two conflicting titles should be recognised and this had to be answered in favour of the plaintiffs.—

22 T. L. J., *1027.*

12. The plaintiff's Tarwad sued for redemption of 61 items of property said to be acquired by the first defendant, the Thuravoor Devaswom, under a mortgage of 1038, Exhibit B being a copy or counterpart of the mortgage deed. One of the items comprised in the mortgage was brought to sale under another decree and was purchased by the second plaintiff, a junior member of the plaintiff's Tarwad. He instituted a suit in his individual capacity against the first defendant for redemption of the properties on the basis of the mortgage evidenced by Exhibit B which was held to be genuine. The first defendant impugned the genuineness of Exhibit B. The plaintiffs contended that the question of the genuineness of Exhibit B had become *res judicata* by virtue of the original decision:

Held.—The plea of *res judicata* was unsustainable and was therefore repelled.

In the prior case, the plaintiff's Tarwad was not a party to the suit nor does the Tarwad now claim under the second plaintiff. The second plaintiff who was the plaintiff in the former suit is not now litigating under the same title as in the former suit. The subject-matter in the two suits was not the same. Under the circumstances, two of the conditions laid down in Section 10, C. P. C., in order that the former suit may operate as *res judicata* have not been satisfied.—

48 T. L. R., *272*

13. It was contended that the 3rd defendant was debarred from raising objections to the execution of the decree in the suit on the ground of omission to appear and object when steps were taken by the decree-holder on former occasions. But the 3rd defendant disclaimed all knowledge of the decree-holder's prior applications.

Held.—Unless it is proved satisfactorily that the 3rd defendant had notice of the prior applications of the decree-holder and was made aware of the nature of the steps applied for, her objections cannot be rejected on the ground that they were barred by *res judicata*.

The rule of *res judicata* when applied to adjudications in execution proceedings must be qualified in the following manner, namely, "if it is to serve as a rule of justice, equity and good conscience."—

23 T. L. J., *36.*

Ref.—24 T. L. J., 770.

14. The defendants executed a promissory note to and received a certain sum from the plaintiffs. Deducting from this amount certain payments made by them, the plaintiffs sued for the balance due. The defendants contended that the suit was barred by *res judicata* as the plaintiffs' prior suit upon current account was dismissed as being barred by limitation. The lower Court dismissed the suit. The plaintiffs' prayer that the plaint in the suit might be treated as an application for review of the judgment in the prior suit was also rejected by that Court. Hence, the plaintiffs' Revision petition.

The question resolved itself ultimately into this. Was the promissory note the sale transaction between the parties, *i. e.*, was the note intended to embody the agreement between the parties? That would be the case if when the advance was made, the promissory note was passed by the borrower to the lender, or if for a pre-existing debt the promissory note was passed on the undertaking that the previous obligation was put an end to or regarded as having been discharged. If however the circumstances are different, the original obligation must be regarded as in abeyance and if the promissory note becomes unenforceable, there is no reason why the creditor should not sue on the original liability.— **49 T. L. R.,** *329* **(=23 T. L. J.,** *135*).

15. In cases of alienations of Tarwad properties made by the Karanavan, singly or with the junction of the other members of the Tarwad, the law has all along recognised the right of the junior members to impeach them, but when such opportunity has been once utilised in a suit either as plaintiffs or as defendants, the Tarwad would be barred by such adjudication unless it be shown that it was the result of fraud or collusion between the alienees and the junior members concerned. This, however, implies a decision on the merits, but a mere dismissal of a suit for default in appearance so far as could be seen, has not been given similar efficacy in its operation on a subsequent suit. It will be an undue restriction of the rights of the Tarwad as recognised at present, if it be laid down that if one of the members sued to set aside an alienation, and allowed the case to fail for default which very often may be the result of fraud or collusion, then the other members would ever after be precluded from instituting another suit for the same relief.

Where a prior suit by a junior member to set aside an alienation by the Karanavan was dismissed on the merits even though his Vakil had retired from the case for want of instructions and the decision was relied on as *res judicata* in a subsequent suit by another junior member in respect of the same subject-matter:

Held,—Inasmuch as it was the duty of the Court in the prior case to deal with the case under the provisions of the law

relating to default of appearance the decision has to be treated as dismissing not on the merits but for default of appearance. It is the substance that must be looked into and not the words of the judgment.— **23 T. L. J.,** *274.*

16. The properties in dispute which had been hypothecated under a bond of 1088, were sold in court-auction in execution of a decree in O. S. No. 2022 of 1094, passed on foot of the hypothecation bond and purchased by the plaintiff, a stranger. In the suit by the plaintiff for declaration of title to and possession, the defendants, in support of their rival claim, contended *inter alia*, that the plaintiff's claim was barred by *res judicata* by reason of the decision as regards the title of the hypothecator in a suit O. S. No. 562 of 1089 filed against the hypothecator and others and was besides affected by the rule of *lis pendens* by reason of the litigation in the said suit (O. S. No. 562). Neither the hypothecator of 1088 nor the plaintiff was party to the suit O. S. No. 562.

Held (Rejecting the defence contentions).—

(1) (*a*) The hypothecatee was not bound by the decision in O. S. 562 relating to the properties hypothecated to him. since the suit was instituted after his hypothecation and he was no party thereto.

(*b*) The plaintiff got by the auction sale the right, title and interest of the hypothecator and hypothecatee as it stood at the date of the hypothecation, and not merely as it stood at the time of the Court sale. There is a difference in this respect between a sale in execution of a money decree and sale under a mortgage decree.

(*c*) The plaintiff's claim, therefore, was not barred by *res judicata*.

(2) Inasmuch as the hypothecation on which the decree in O. S. No. 2022 of 1094 was obtained was of a date prior to the plaint in O. S. No. 562 of 1089 and the hypothecatee was not implicated in the latter suit, *lis pendens* could not affect the hypothecatee. The plaintiff's auction purchase in O. S. No. 2022 was not therefore affected by *lis pendens* by reason of the litigation in O. S. No. 562.

"The doctrine of *lis pendens*, which has been applied in this country to sales *in invitum* as well as voluntary alienations, might have application, if the equity of redemption of the mortgagor was capable of being separately dealt with by a mortgagee, under a decree for sale on the mortgage. But in this country, the mortgagee's right to the property and the equity of redemption of the mortgagor are not to be separated as if they are distinct entities in law with reference to the same property."— **23 T. L. J.,** *828.*

17. The plaintiff in the case originally filed a joint suit O. S. No. 78 of 1095 for setting aside the decree in O. S. No. 215 of 1084 and for consequential reliefs against different sets of individuals based on distinct causes of action. On the contention of the defendants that the suit was bad for multifariousness, the Court ordered the suit being split up regarding the separate reliefs sought for. The main prayer for setting aside the decree in O. S. No. 215 was retained as O. S. No. 78 of 1095, and the separate prayers against the different persons were re-numbered separately with a common issue as to the validity of the decree in O. S. No. 215. This suit O. S. No. 164 of 1102 was one so re-numbered. O. S. No. 78 of 1095 was decided against the plaintiff, and the finding therein as to the validity of the decree was incorporated as part of the decree in O. S. 164. Plaintiff did not file an appeal from the decree in O. S. No. 78 but attacked the finding in this appeal from O. S. No. 164 of 1102. On the contention of *res judicata* raised by the respondent :

Held.—It could not be argued that in spite of the splitting up of the original suit, O. S. 164 should be regarded only as a sub-suit and that the decree in the two suits must be deemed to be a joint one so that the failure to appeal from the decree in O. S. No. 78 of 1095 could not bar the present appeal. After the splitting up of the original suit, the several suits must be regarded as independent suits. No doubt they might be termed connected suits inasmuch as at least one issue was common to all the suits. And as no appeal was preferred against one of the decrees, the appeal against the other decree so far as the common issue was concerned was barred by *res judicata.*

Where a petition to set aside an *ex parte* decree on the ground that summons on the defendant (minor) was not properly served, was rejected with the observation that the service of the summons was proper and that if the minor was prejudiced by fraud or misconduct on the part of the guardian he might have his remedy by a separate suit, and in the separate suit so filed, the question of proper service of summons was *also* sought to be re-opened:

Held.—As the particular ground had been ruled out by the prior order, a fresh suit on the same ground was not competent.— 23 T. L. J., *896.*

18. A suit was filed as against trespassers and was dismissed on the defendants' proving possession as mortgagees. A subsequent suit for redemption on the basis of the mortgage is not barred either under the provisions of Order II, Rule 2, or under Section 10 of the Code.

Order II, Rule 2, applies only when the cause of action in the subsequent suit is the same as in the previous suit. It is immaterial that it might have been open to the plaintiff to unite the two causes of action in the same suit.

Unless it is established that the claim made in the subsequent suit was such as could have been put forward along with the claim in the prior suit as a ground of attack, it cannot be held that it was such as 'might' and 'ought' to have been put forward in the prior suit within the meaning of Explanation 4 in Section 10. Where the two claims are, as in the case, mutually destructive so that they could not have been joined together or put forward in the alternative in the prior suit, the Explanation to Section 10 does not apply and the subsequent suit is not barred.—
23 T. L. J., *1092.*

19. In a suit for redemption of a lease, the defendant set up a Kanom right and also a claim for compensation for improvements. The Munsiff allowed redemption and awarded certain amounts as value of improvements. The plaintiff and the defendant both filed appeals to the District Court, the plaintiff for reduction of the value of improvements, the defendant for upholding the Kanom right. As it happened, the appeals were not heard together but the plaintiff's appeal was first taken up and allowed. On the defendant's appeal being taken up later on, it was argued for plaintiff that it was barred by constructive *res judicata* and accordingly the appeal was dismissed. The defendant filed this special appeal:

Held.—The rule of constructive *res judicata* was inapplicable to the case and the defendant's appeal was wrongly dismissed on that ground.

There is a difference between the procedure in a suit and in an appeal, for while in a suit the defendant is bound to put forward all pleas in his written statement, the respondent in an appeal has under the Code firstly the right of regular appeal against the decree of the lower Court so far as it is against him and secondly the right to object to that part of the decree by filing a memorandum of objections under Order XL, Rule 21. The Code does not make it obligatory that such a memorandum should be filed in

the opponent's appeal itself. The reasonable view, therefore, seems to be that if, in ignorance of the fact that he had filed an appeal against the decree, the Court disposed of his opponent's appeal, that decision could be regarded only as a disposal of the matter arising in that appeal and not as a decision correcting and incorporating the decision of the lower Court and thus amounting to a decision finally disposing of the entire suit.—

24 T. L. J., *288*.

20. The father and mother of the plaintiff filed a prior suit, O. S. No. 526 of 1092 for the recovery of rent for 1091 and 1092 from 21st defendant in the present case on the allegation that he was a lessee in possession. The latter contended that lands had been reserved for certain religious purposes and that the plaintiffs could claim only their share of the balance remaining after meeting the expenses required for those purposes.

In the present suit, the plaintiffs prayed for the cancellation of the decree in O. S. 526 of 1092 and partition of plaint lands and recovery of possession with mesne profits.

It was argued that the suit was barred by *res judicata*:

Held.—The finding in the prior suit (O. S. No. 526 of 1092) cannot be regarded as *res judicata* as it was not a conclusive adjudication on the main question for decision in the present suit. All that the Court had to decide and did decide was whether the defendant was liable for the entire rent or part of the rent.

If the question of title was in issue in its entirety it would be a matter that was directly and substantially in issue in that suit. But if the issue in the former suit did not cover the entire question, in other words, it fell short of going to the very root of the title and was confined only to some of the incidents of it, the question of title would be only collaterally or incidentally in issue.— **24 T. L. J.. *941*.**

21. The order of a competent Court on an application for execution has the effect of *res judicata* even though that decision was passed upon an *ex parte* application, provided that the opposite party was given an opportunity to appear; but a mere *ex parte* order in favour of one party without an opportunity being offered to the opposite party to put forward his objection if any on the particular point involved in the subsequent order, does not operate as *res judicata*. To conclude the parties, the previous order must have been passed on contest. Two conditions therefore are essential. There must be notice and it must be sufficient to give information of the nature of the relief sought in the execution application.

The appellant, as the assignee of the decree in the case applied for recognition of assignment and after notice to the judgment debtor was recognised as such. The judgment-debtor subsequently filed application stating that the decree had not only been satisfied but that he had overpaid the decree-holder even antecedent to assignment, that the excess amount should be ordered to be restored and that in the circumstances the order recognising the assignment should be vacated. On the appellant's plea of *res judicata*, it was found on the facts, that though the decree-holder had filed several execution applications miscalculating the amount due under the decree and the judgment-debtor had remained quiet without questioning the correctness of the calculation, still no express notice of the amount claimed had been served on the judgment-debtor and no specific order had been made adversely to him. The document of assignment was silent as to the amount that still remained due; the execution application by the assignee—decree-holder to recognise the assignment did not state any particular amount as being due and the notice to judgment-debtor regarding the recognition concerned itself only with the question of the assignment of the decree:

Held (In the circumstances).—The judgment-debtor was not prohibited by the order recognising the assignment from claiming the excess amount received by the decree-holder. Even if there was miscalculation in the execution applications and this was left unquestioned by the judgment-debtor, because no express order had been passed determining the amount as still remaining unsatisfied under the decree, there was no estoppel as against the judgment-debtor. And except that the decision could affect the assignee in the manner that it implies an adjudication that his assignment was waste paper and that he could make no pie out of it, it could not be said that he would be damnified if the original decree-holder was called upon to make the reimbursement.—

24 T. L. J., *770.*

22. See also Regn. II of 1100,

Other Cases.— **24 T. L. J.,** *362.*

Section 12.

1 A decree was passed by the Anjikaimal Court against Thirumanasery Illom which had properties both in Cochin and Travancore. Defendants 1 to 8 were members of Thirumanasery living in Cochin while defendants 9 to 14 though Thirumanasery were residents in Thodupuzha and formed a separate branch, and the properties in Thodupuzha were ear-marked for the Travancore branch. The decree was sought to be executed against defendants 9 to 14 and properties in Thodupuzha. The 10th defendant while admitting his membership of Thirumanasery Illom objected that so far as the decree extended to the members of that Illom resident in Travancore, and to properties in Thodupuzha, the decree was passed without jurisdiction and therefore was unexecutable:

Held.—The jurisdiction of a foreign Court is territorial and attaches upon all persons either permanently or temporarily resident within the territory while they are within it but it does not follow them after they have withdrawn from it.

Foreign decrees may be attacked in execution on any of the grounds mentioned in Section 12 C. P. C.

A judgment-debtor proceeded against in execution of a foreign decree need not resort to the foreign tribunal to get rid of the decree but may object to it in the domestic Court that proceeds to execute it.— **48 T. L. R.,** *424* (=**23 T. L. J.,** *27*).

2. The suit was to set aside the alienations by a widow, of plaint property which was reserved to plaintiffs by a compromise petition in a suit between the plaintiffs and defendants in a foreign Court. The suit was dismissed on the ground that the title to the Travancore properties could not pass under the compromise petition since it was not a registered instrument.

Held.—The compromise petition formed part of the foreign decree, and the defendants had failed to show that the foreign decree could not be relied on for the reasons mentioned in Section 12 of the C. P. C. So, taking Sections 12 and 13 of the C. P. C., together, it has to be held that the decree of the foreign Court was conclusive as to any matter thereby directly adjudicated between the parties.—

49 T. L. R., *46* (=**23 T. L. J.,** *200*).

Section 15.

See Sec. 19.— **48 T. L. R.,** *176* (=**20 T. L. J.,** *1084*).

Section 19.

1. The plaintiffs sued the Dewan of Travancore in the Trivandrum District Court for recovery of monies alleged to have been illegally levied from them in respect of some properties held by them in the Ranni Pakuthy. The defendant, the

Dewan of Travancore, raised among others the plea that the District Court of Trivandrum had no jurisdiction to entertain the plaint. This preliminary issue was heard by the District Judge and decided againt the defendant. In revision it was held :

The claim in the present case would not fall under Clause (*e*) or (*d*) of Section 15, inasmch as the plaintiffs do not complain of any wrong to or pray for a declaration of right in respect of any immovable property.

The Dewan is an officer of the Government of Travancore and certainly resides at Trivandrum. Under Section 64, C. P. C., a suit instituted against the Dewan of Travancore is as effective as one instituted directly against the Government of Travancore. The said Section directs that such suits should be instituted not against the Government but against the Dewan. Under Or. VII, Rule 1., the plaint shall contain the name, description and place of residence of the plaintiff as well as of the defendant, so far as particulars can be ascertained as regards the latter. The Code, therefore, contemplates a place of residence for all plaintiffs and defendants. Under Or. XXVII. Rule 3., in the case of a suit by or against the Dewan, the name, description and place of residence of the plaintiff or defendant need not be inserted since it shall be sufficient to inssert the words "The Dewan of Travancore." But there cannot be any objection to describe the Dewan of Travancore as residing at Bhaktivilas in Trivandrum. The suit can therefore be instituted in Trivandrum though the cause of action arose elsewhere.— **46 T. L. R.**, *176* (=**20 T. L. J.**, *1034*).

2. Under Section 19 of the Code, leave for instituting the suit might be obtained even after the institution of the suit.— **23 T. L. J.**, *956*.

Section 31.

1. In contribution suits, interest at the rate of twelve per cent. could not be decreed inasmuch as the claim was not for money lent or wrongfully withdrawn, but an equitable claim to recover money paid by the plaintiff to protect his own interets also. The reasonable rate of interest claimable is six per cent.— **21 T. L. J.**, *584*.

2. Where the decree in the case (passed before the new Civil Procedure Code came into force) provided for future interest at a certain rate without mentioning a limit :

Held.—The decree-holder cannot realise in execution, as future interest, an amount exceeding half the principal.

At the time the decree was passed the Court had, by virtue of Section 21 of Regulation IV of 1010, no jurisdiction to award any higher amount as interest and though the decree was silent as regards this it must be construed as containing that provision. Now the Court has such a jurisdiction but the Court which has to exercise that jurisdiction is the Court which passes the decree, the execution Court having no power to alter it.— **21 T. L. J.**, *1033*.

Ref.—24 T. L. J., 338.

3. Apart from the question whether Section 31, C. P. C., is applicable to mortgage suits, the usual rule is to adopt the contract rate, except where it is excessive, inequitable or illegal in regard to interest awarded from the date of suit to the date of decree.— **22 T. L. J.**, *342*.

4. An application in a Court in British India to transfer a decree for execution to a Court in Travancore has to be regarded as an application for execution or for some step-in-aid of execution even though the transfer when made might not have all the consequences of a transfer under Section 39 of the Civil Procedure Code of

1908. No doubt, the Court which transfers the decree to the Court in Travancore should not have become *functus officio* by reason of the decree having ceased to operate owing to the effect of the Law of Limitation in British India, but this is a matter in which the Courts in Travancore have to come to their own conclusion.

A Court which passed the decree has power even after transferring the decree for execution to one Court, to transfer it subsequently to another, even though the first (transferee) Court has not forwarded a certificate of non-execution.

A Court in Travancore executing a decree of a British Indian Court transferred to it for execution, cannot by virtue of Section 31 (3) of the Civil Procedure Code allow the decree-holder to recover more than the principal amount adjudged, by way of future interest. Though Rule 197 (4) of the Civil Courts' Guide requires that full effect should be given to the terms of the decrees received from British India, in respect of interest, the rule-making power of the High Court, so far as this question is concerned, is that conferred by Section 2 of Regulation IV of 1061 re-enacted as Section 38 (*a*) (2) of the present Code of Civil Procedure and it is expressly stated in this enactment that part IX of the Code does not relate to such rules. It is doubtful, therefore, whether they have statutory effect in so far as they are inconsistent with any express provision of the Code.

(The question as to the effect of a provision in the foreign decree for more than 9 per cent future interest was left open).—

48 T. L. R., *331*
(= 22 T. L. J., *981*).

5. The defendant obstructed the plaintiffs from withdrawing from Court certain amounts to which the plaintiffs were entitled, by setting up contentions which, in the event, were found untenable, and the plaintiffs claimed interest on the amount as damages for the delay caused by the defendant's obstruction:

Held.—*Per Narayana Pillai, J.,* (*with whom Chatfield, C. J., concurred on reference*).—The plaintiff was not entitled to interest as damages.

Per Narayana Pillai, J.—The unqualified proposition in its wide range that interest may be recovered as damages in any case in equity is not entertainable. Interest depends on contract express or implied or on some rule of law allowing it. If there is no contract, allowance of interest can be made only as matter of law.

Per Chatfield, C. J.—There is no doubt a great deal to be said for making a person responsible for interest, on amounts which he has prevented another from drawing by raising untenable contentions. But this is a matter more for the Legislature than for the Courts.

Per Joseph Thaliath, J. (*contra*).—In cases eminently deserving of compensation the Court can award interest as damages acting on the principle of equity, justice and good conscience, by virtue of Section 18, Sub-section (c), of the Civil Courts' Regulation. In cases of this kind interest is not awarded as such but allowed as damages. The loss of interest sustained would be the proper measure of damages.—

49 T. L. R., *158*
(=22 T. L. J., *1381*).

6. The suit was for recovery of money due on a bond (Exhibit A) hypothecating certain land in Thamarakulam Pakuthy which had been demised by the Travancore Government in 1907 to the Avadhani family for the purpose of establishing a factory for manufacturing salt. The bond was executed in favour of the plaintiff's assignor, the Imperial Bank, by the first defendant and his deceased brother, the father of defendants 2 to 7. In the agreement of demise between the Government and the first defendant's father, there was a condition to the effect that no alienation or transfer of the right of manufacturing salt on the lands specified in

the schedule shall be valid unless ratified by the Government and that if the party making the alienation or transfer failed to report the same within one month, such alienation or transfer shall be null and void.

On the contention of defendants 2 to 7 that the plaint bond was null and void as being an alienation in contravention of the terms of the agreement:

Held.—Though it was possible that difficulties might be created in the event of Government refusing to accept or register Exhibit A, such difficulties need not be anticipated. At any rate it was not open to the transferor to claim that the transfer could have no effect until recognised. Apart from this, the words in Exhibit I that unless reported within one month an alienation or transfer should be null and void meant that it should be null and void against the Government and not as against the transferor. The object of the clause was to protect the proprietory interest of the Government and not for any other public purpose. In this it differed from alienations or transfers of licences under the Abkari Regulation. It is not also possible to apply those provisions of law which prohibit the alienation of rights in property in the interests of a particular class of land owners.

Where under the suit bond the principal amount was to be paid in four three-monthly instalments, and there was a further provision that interest on the bond amount for the first three months was due at the rate of 10½ per cent, and that thereafter, as default was made in paying the first instalment, at the rate of 12 per cent., and interest due at the end of each period of three months should be added to the principal and thereafter would carry interest in that capacity and it was contended that the provisions were penal and offended against the Rules relating to the rate of interest awardable under Section 31 C. P. C:

Held.—The contention was unsustainable. There was no reason for treating the provision as to interest as a penalty and even if it were so treated, it would be open to the Court to award the full amount under the agreement (F. B.).—

49 T. L. R., *451*
(=**23 T. L. J.**, *490*).

7. If a legal liability for the payment of the amount is upheld, it is but proper that interest should also be allowed from the date on which the amount accrued due.— **23 T. L. J.**, *1055*.

8. Interest at the contract rate should be allowed for the period between the date of suit and date of decree unless there are equitable grounds for holding otherwise.— **24 T. L. J.**, *218*.

9. The decree-holder in the case sought to recover in execution, an amount in excess of the sum due under the decree on the ground that the decree had been varied by the undertaking given by the judgment-debtor that future interest at 12 per cent. might be recovered from him. The decree was passed when the old Code was in force and the agreement was entered into after the new Code came into force. It was contended that such an agreement was enforceable:

Held.—Under the new Code such an agreement is not enforceable in execution. Agreements entered into when the old Code was in force between the parties in the course of execution proceedings could be enforced by the execution Court in virtue of para 2 of Section 254 of the Code. But that provision has however been omitted in the new Code.

The decree must be construed as having been passed in accordance with the law then in force and the executing Court has no power to alter it. Hence the decree-holder is entitled to realise as "future interest" *i. e.*, interest from date of suit to date of realisation only a moiety of the principal amount as allowed by the old Code and not anything in excess of that

amount as provided by Section 31 (3) of the new Code. - **24 T. L. J.,** *338.*

10. See also.—

Section 2 (12).— **47 T. L. R.,** *69* (=**20 T. L. J.,** *1155*).

Order XXI, Rule 61.—

48 T. L. R., *409* (=**22 T. L. J.,** *1314*).

Section 32.

1. In execution of the decree in O. S. No. 54 of 1100 of the Quilon District Court, certain properties were attached and the petitioner before the High Court put in a claim which, after due investigation, was rejected by the lower Court. In the course of the claim proceedings, the petitioner-claimant applied for a commission for examination of certain witnesses residing in Jaffna in Ceylon. The costs of that commission amounting to Rs. 350 alleged to have been spent by the counter-petitioner towards Vakils' fees, etc, were awarded to him by the lower Court as costs:

Held.—The costs of a commission are incidental to the suit or application within the meaning of Section 32 and the Court has therefore jurisdiction to make such order as it thinks fit in regard to the costs of that commission.

Rule 440 of the Civil Courts' Guide refers to the conduct of the petition in the Court in which it was presented. It cannot include cases where witnesses have to be examined on commission in a foreign Court where the Vakil cannot appear and the Vakalat does not contemplate his appearance. In such a case, if a party has necessarily to engage a Vakil to examine witnesses on commission, there is no reason why he should not be allowed the fee paid to the Vakil as costs of the application.

The scale of fees due to the Vakil must be determined on the same principles as will be adopted in Jaffna and in the absence of any such principle, a reasonable fee commensurate with the amount of work done, must be fixed by the Court.

Quaere.—Whether a separate Vakil's fee would be allowable if the commission was issued to any other Court in Travancore (F. B).— **46 T. L. R.,** *53* (=**20 T. L. J.,** *157*).

2. Although the Section relating to costs vests a great deal of discretion in the Court in the matter of granting or refusing costs to a party, it has to be remembered that the discretion is a judicial discretion to be exercised on legal principles, not by chance medley, nor by caprice, nor in temper. It is worth repeating the general rule—that costs shall follow the event, unless the Court, for good reasons, otherwise orders. This rule means that a successful party is entitled to costs unless he is guilty of misconduct or unless there is some good cause for not awarding costs to him.— **22 T. L. J.,** *311.*

3. In a suit for redemption of a mortgage, the lower Court deprived defendants 5 and 6 of costs on the sole ground that there was a dispute as to the title to the mortgage money between defendants 1 to 4 and defendants 5 and 6:

Held.—There was no sufficient ground for depriving the mortgagee of his costs.

As a general rule, a mortgagee is entitled to costs in the absence of any misconduct or any other conduct which, in the opinion of the Court, disentitles him to the expenses. It is difficult to define the kind of misconduct which would disentitle a mortgagee of his costs in a redemption of suit as the whole thing would depend on the circumstances of each case. There may be misconduct of many sorts; for instance, there may be misconduct in commencing the proceedings or some miscarriage in the procedure or vexatious mode of conducting the proceedings or other misconduct which would induce the Court to refuse costs;

but where there is nothing of the kind, the rule is plain and well settled. The misconduct which would disentitle a mortgagee of his costs must be exceptional in its circumstance.— 23 T. L. J., *380*.

4. Costs are always a matter of discretion with the Court trying the suit. and unless the appellate Court is satisfied that the lower Court has exercised its discretion perversely, arbitrarily or unjustly, the Appellate Court would be loth to interfere. Further, an Appellate Court will not and ought not to interfere with an order of costs passed by a subordinate tribunal in the exercise of its judicial discretion unless a question of principle is involved.—

49 T. L. R., *43*
(= 23 T. L. J., *615*).

5. The plaintiff purchased some lands and sold a portion out of it to the defendant under a sale-deed in which the defendant was directed to pay off a debt owed by the plaintiff. On the defendant's default to pay, the creditors to whom the money was due obtained a decree against the plaintiff. The suit was by the plaintiff for recovery of the decree amount in the aforesaid suit with interest and costs of that suit. It was contended that even if the defendant were liable to pay the amount recited in the sale-deed, he should not be made liable for the costs of the suit:

Held.—Even in the absence of an indemnity clause, a plaintiff in such circumstances could recover the costs of the suit where the suit was occasioned by the failure of the defendant to pay.

23 T. L. J., *706*.

Section 33.

1. It cannot be doubted that when a suit is instituted on the basis of a mortgage a right to immovable property is directly and specifically in question and that the *lis pendens* continues up to the date of sale and delivery of possession.

Where during the pendency of a suit or execution proceeding based on a mortgage, the holder of a money decree brings to sale the mortgaged property and the same property is resold in execution of the mortgagee's decree, the earlier sale does not avail against the subsequent sale but is affected by the doctrine of *lis pendens*.— 22 T. L. J., *745*.

2. Where, subsequent to a decree in favour of the plaintiffs, certain junior members, for future maintenance charged on *all* Tarwad properties, the third defendant filed a suit for partition and obtained orders dividing his share in *some* of the properties and for possession thereof, and the plaintiffs applied for execution of the maintenance decree as against the properties allotted to the third defendant as above and also the properties as regards which the partition suit was still pending:—

Held.—Inasmuch as there had been a final adjustment of rights as regards the properties in third defendant's possession, they were not liable under the maintenance decree, but the other properties continued to be liable for maintenance due until final orders were passed with regard to them.— 23 T. L. J., *332*.

Section 38.

See Sec. 31.— 48 T. L. R., *931*
(= 22 T. L. J., *981*).

Section 38-A.

1. It is a well established rule that in a personal action against the subject of one State, a decree passed by a foreign Court *in absentem*, he not having submitted or contracted to submit to its authority, either expressly or impliedly, is by international law a nullity. Not to the Courts of the State in which the cause of action has arisen, nor in case of contract to those of the *locus solutionis*, should resort be had by the plaintiff, but to the

Courts of the State in which the defendant resides, the Courts of the latter State having jurisdiction in all personal actions.— 23 T. L. J., *1184.*

2. See Sec. 12.— 48 T. L. R., *424* (=23 T. L. J., *27*).
„ 40.— 20 T. L. J., *743.*

Section 40.

1. The properties in dispute were purchased in Court auction on 30-3-102 by the appellant in execution of a hypothecation decree in O. S. No. 926 of 1099 of the Principal Munsiff's Court, Kottayam. The properties, however, were involved in O. S. No. 78 of 1096, Kottayam District Court. That Court had appointed a receiver on 6-12-1100, who was in possession of the properties. The receiver however resigned his office on 31-12-1100 and another receiver was appointed some months after the Court sale of 30-3-1102. The lower Court set aside the sale on the short ground that at the time of the sale, there was a receiver appointed by the District Court of Kottayam in regard to the properties purchased by the appellant:

Held.—It is well-settled that property in the hands of a receiver is exempt from judicial process except, of course to the extent permitted by the appointing Court. Therefore such property, though subject to a paramount judgment, cannot be sold under execution without the leave of the Court; and a purchaser of such property at an execution sale buys at his peril, for the sale may be cancelled upon an appropriate application to the execution Court.

On the resignation of the receiver, the possession of the properties cannot be held to have reverted to the parties to the suit. Such properties as the receiver was in possession of should be presumed to have continued in *custodia legis.*

Strictly speaking, Order XXI, Rule 87, was not applicable to the facts of the case. This Rule is only one of the many provisions for setting aside a Court sale. Apart from that, valid grounds may be available for setting aside a Court sale, and such cases would fall under Section 40. The absence of a finding on the question of substantial loss could not affect the validity of the order under appeal.—

46 T. L. R., *49* (=20 T. L. J., *153*).

Ref.—23 T. L. J., 700.

2. No words occur in Section 40 of the Civil Procedure Code which would warrant the restrictions to its applicability as regards questions between representatives only to disputes between parties arrayed on opposite sides. The determination of the right to execute would palpably relate to the execution, discharge or satisfaction of the decree and it would therefore be repugnant to all canons of interpretation of statutes to import into clause (3) expressions which would tend to limit, restrict or enlarge the scope of its applicability. The provisions of the Code of 1100 have not effected a change in the law as it existed under the Code of 1065.

The Civil Procedure Code does not require a notice to the decree-holder for attachment of a decree. An order to attach without specifically directing that the amount under the attached decree would be available for the satisfaction of the decree in the case in which the attachment is ordered is sufficient to effect a valid attachment.—

46 T. L. R., *860* (=20 T. L. J., *718*).

3. Proceedings were taken in a foreign Court on the strength of a decree transmitted from Travancore for purpose of execution. On an application for stay of execution in the foreigh Court, pending appeal from the decree:

Held.—The application was incompetent. The stay of execution contemplated in Order XL, C. P. C., is clearly with reference to the proceedings in the Courts in

Travancore. Of course, the execution Court in Travancore could withdraw decrees transmitted to foreign Courts for execution in appropriate cases, on the strength of orders issued by the appellate Court, to them.— **20 T. L. J.,** *743.*

4. The appellant who was admittedly not a party to the decree and who had not been impleaded in execution as a legal representative of any of the judgment-debtors contended to be deemed to be a constructive party under Section 40 to the suit competent to intervene in execution:

Held.—In determining the question as to whether any person is a representative under Section 40, two tests seem to be applicable, *viz.*, whether any portion of the interest of the decree-holder or the judgment-debtor, which was originally vested in one of the parties, has by the act of parties or by the operation of law vested in the person who is sought to be treated as representative and secondly if there has been a devolution of interest, whether so far as such interest is concerned, that person is bound by the decree.

The consistent view taken in this matter by the High Court would indicate that the Court has not been in favour of the applicability of the principle enunciated in 40 T. L. R. 151 to the class of cases other than those in which the particular question that arose from the facts in that case is involved.

Junior members of a Marumakkathayam Tarwad can intervene in execution and object to the same by applications under Section 40 only in cases where they are parties to the decree or they have been impleaded as legal representatives of parties on record after their death. In other cases their rights are co-extensive with those of strangers. They cannot be deemed to be either parties or representatives as contemplated in Section 40 C. P. C.

It is a well recognised rule that a judicial decision could be taken to be an authority for the proposition actually decided in the case. In understanding the express questions that were decided in a case, it must be remembered that the generality of an expression made should not be intended to be an exposition of the whole law but as governed and qualified by the particular facts in which the expressions are found. The pronouncements made in a case could not be quoted for a proposition that may seem logically to follow from it or by having recourse to rules of analogy or logic.

47 T. L. R., *77*
(=20 T. L. J., *1106*).

5. When the Court has passed an order calling upon a decree-holder to do an act which is essential for taking further proceedings and he refuses or omits to do that act, the Court is empowered to dismiss the application on the ground of such default. Such power is vested in all Courts as they are not bound to wait indefinitely till the person who has moved it for redress, chooses to take action.

When the decree-holder fails to pay process fees for the issue of a warrant for the arrest of the judgment-debtor within eight days, the Court is empowered to strike off the application for execution and a subsequent application for further steps must be made by a fresh application which cannot in such circumstances be regarded as an application to revive a pending application or to continue steps already taken on such application.

Civil Circular No. 20 of 1079 provides that when a warrant for the judgment-debtor's arrest has been returned unexecuted the matter should be intimated to the decree-holder or his Vakil and a time should be fixed for the taking of further steps. The rule in Article 250 of the Civil Courts' Guide is clearly an enabling provision and the right conferred on the decree-holder is that of moving the Court for issuing the warrant again without payment of Court fee and the intention

obviously was only to take away the right after the expiry of the short period fixed.

Civil Circular No. 20 of 1079 cannot be regarded as having been repealed in *toto* by Article 250. Article 250 does not provide specifically for rejection of the petition in case the decree-holder does not apply within the period enumerated therein and it is only reasonable to conclude therefore that the decree-holder may move the Court later on by a separate application and the Court would then have a discretion to grant or refuse the prayer.—

46 T. L. R., *473*
(=21 T. L. J., *35*).

Ref.—24 T. L. J., 313.

6. In execution of the decree in O. S. No. 76 of 1087, the plaintiff, who was the 3rd defendant in that case raised objection to the attachment of certain properties on the ground that the properties belonged to the Tarwad. The present defendant who was the plaintiff in that case contended that the objection to the attachment was a claim petition under Section 275 of the old Code (=Or. XXI, R. 56) and was barred by limitation as it was preferred beyond 45 days and the Execution Court accordingly dismissed the so-called claim petition. The suit was to set aside that order and to establish the title of the Tarwad. The defendant contended *inter alia* that the suit was not maintainable since the plaintiff was a party to the decree in O. S. No. 76 and that the question of attachment should have been dealt with under Section 238 old (=Sec. 40):

Held.—By the principle of estoppel by pleading the defendant was not at liberty to defeat the plaintiff by starting inconsistent pleas at successive stages.—

21 T. L. J., *165*.

7. The appeal was against the order of the lower Court by which it confirmed the election of the respondents as trustees under the provisions of the scheme framed in the suit regarding the management of certain trust properties. The scheme contemplated a reference to the Court for a decision in regard to objections to nominations and so on and conferred a power on the Court to confirm the elections but did not provide for an appeal. On preliminary objection as to the competency of the appeal:

Held.—(*Per Venkata Rao, J., Thaliath, J. not expressing any opinion*):

(1) The question of appealability turned on the decision whether the order related to an executable direction in the decree.

Merely because the Court is invested with certain powers regarding the carrying out of the scheme, an order passed by it in the exercise of such powers would not necessarily become appealable.

(2) The order relating to the election of trustees, though in the exercise of the power vested in the lower Court under the scheme, cannot be regarded as a matter arising in execution under Section 40, and therefore, no appeal lay.

Per curiam.—Inasmuch as the proceedings of the lower Court were, in any event, judicial proceedings the High Court had power to interfere in revision but in the circumstances of the case such interference was not called for.—

Though as a general rule, a trustee cannot acquire an interest on trust properties, a person already in possession of trust property as lessee is not on that ground alone ineligible for appointment as trustee.

21 T. L. J., *546*.

Affir.— 48 T. L. R., 185
(=22 T. L. J., 1).

8. The maintainability in execution of applications for cancellation of sales on the ground of fraud has been consistently upheld here as well as in British India.

The old Code maintained a three-fold distinction between cases of material irregularity and those of fraud for purposes of cancellation of sale, *viz.*, (i) when fraud was established no question of substantial injury arose, (ii) the period of limitation governing an application for cancellation of a sale on the ground of fraud was three years whereas, the period governing and application based on the ground of irregularity was 30 days and (iii) the decision on an application for cancellation of sale on the ground of fraud operated as a decree subject to a first appeal and second appeal, while the adjudication on an application founded on allegation of irregularity operated as an order subject to a first appeal only. So far as the High Court is concerned applications under Section 308 (old) have been all along treated as one under Section 238. Under the recent amendment in the Code of 1100 the only category of cases that could come under Order XXI, Rule 87, consists of those where the same is sought to be set aside on the ground of fraud in the matter of publishing or conducting the sale. All applications for the cancellation of sale on the ground of fraud in other matters will have to be dealt with under Section 40 (=Section 238 old).

'Fraud' in the contemplation of a Civil Court of Justice, may be said to include properly all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed and are injurious to another, or by which an undue or unconscientious advantage is taken of another. There are some other elements which must necessarily exist before a party can be said to be defrauded. In the first place, it is essential that the means used should be successful in deceiving. If the other knows the truth and sees through the artifices and devices used, there could be no fraud. Secondly, there could be no fraud without an intention to deceive, the motive being quite immaterial. Thirdly there must be damage to the party deceived. Fraud is a conclusion of law and as such it is essential that the things done constituting the fraud, must be distinctly and accurately stated. The fraud alleged must be set forth specifically, in particular and in every detail, so that the person who is charged therewith may have the opportunity of knowing the case he has to meet and to shape his defence accordingly. It is an acknowledged rule of pleading that where fraud is alleged against a defendant, the plaintiff must set forth the particulars of the fraud he alleges and cannot be allowed to go beyond his own statement of his case.

Inadequacy of price (in proclamation) by itself cannot amount to fraud. Such inadequate price could have been given in the proclamation innocently. Unless it is clearly shown that the under-statement of value prevented or scared away intending bidders, no plea of fraud could be sustainable in such matters.

Application for the reliefs of this kind could not be treated as being intended for setting aside the sale under Section 308, but as matters falling under Section 238 relating to execution, discharge or satisfaction of the decree contemplated therein. Article 152 of the Limitation Regulation (old) governs such cases.—

21 T. L. J., *1048.*

9. The appeal is against an order passed in the execution proceedings in O. S. No. 38 of 1101 of the Quilon District Court, dismissing the application put in by the appellants for stay of the court sale of the properties proclaimed for sale, on the ground that they had already filed an application on the insolvency side of the same Court to adjudge the judgment-debtor in the case an insolvent :

Held.—The order appealed against is clearly not one falling under Section 40 nor is it an order under Section 108, relating to restitution. It is not a decree as defined in Section 2 (2) of the Code. The

right of appeal is a creation of the Statute and the same could not therefore be invoked unless the decision sought to be vacated can be brought under any one of the categories of cases in which such a right has been expressly conferred by the Statute.

The order in the present case does not fall within the purview of Sections 76,79 and 82 of the Code. No appeal therefore lies against the order.—

21 T. L. J., *1175.*

10. In a suit on behalf of a Village Trust, a scheme was settled under Section 72 of the C. P. C. The appeal is against an order passed by the District Judge on the respondent's petition directing the old Trustees to produce in Court all the accounts, moneys and other village properties in their hands for being handed over to the new trustees. The scheme decree contained provisions for the rendering of accounts by the trustees but did not provide for the interference of the Court in the matter of election of trustees.

On a preliminary objection being raised that a scheme having been framed by the Court there is no executable decree and hence no appeal lies from the order;

Held (*Per Chakko, J., Joseph Thaliath J. agreeing*).—The part of the decree relating to the production of the accounts was executable and therefore the appeal was maintainable under Section 40 C. P. C. Even if the appeal was not competent, the appeal may be treated as a revision petition and disposed of by way of revision.

Although, no doubt, the decree in a scheme suit is in general declaratory in its nature cases are easily imaginable in which in a scheme as finally framed there may be inserted a provision or provisions which may be capable of execution and which are intended to be executed. Whether a particular provision is so enforceable in execution is always a question of fact depending on the interpretation of the decree.

Per Venkita Rao, J.—The maintainability of the appeal depends on the question whether or not the order related to an executable direction in the decree. The order relating to the election of trustees though passed in the exercise of the power vested in the Court could not be considered to be a matter arising in execution and the appeal was therefore incompetent.

There was also no jurisdiction to interfere in revision with ths order of the lower Court in the case on its merits the reason beiug that under the scheme decree no power was reserved in the Court to accord sanction to, or withhold sanction from the election of trustees by the general body of villagers.

The order of the lower Court was passed without jurisdiction and interference in revision must be only in order to point out the error (F. B.)—

48 T. L. R., *185*
(=**22 T. L. J.,** *1*).

11. In the case of a decree against some members of a Marumakkathayam Tarwad who have executed a document the other members of the Tarwad must have one opportunity of questioning the consideration and necessity for the document.

The junior members of a Marumakkathayam Tarwad are not, as such, entitled to intervene in execution and contest the validity of a decree based on a hypothecation of Tarwad properties unless they have been brought on the record as the representatives of the deceased Karanavan, the judgment-debtor.

The junior members must be regarded as either constructive parties to the decree or they must be strangers to it. If they are parties to the decree they have the right to attack it by means of an appeal or possibly other methods but should not be allowed to challenge its validity in execution. If they are strangers

to the decree they can challenge its validity but only in one of the methods recognised by the Civil Procedure Code.

Strictly speaking no contention as to the validity of the decree should be raised in execution under Section 40 C. P. C., but it is not possible to return to this strict position without disturbing a current of decisions by which the Courts of this State have built up a system of procedure allowing the junior members impleaded in execution as legal representatives to raise such a contention. Hence no occasion arises for extending the breach in the rule (F. B.).— **48 T. L. R.**, *137* (=**22 T. L. J.**, *215*).

12. If the decree-holder takes in execution land not included in the decree or in excess of the decree, the judgment-debtor's remedy is only to apply under Section 40 and a separate suit for that purpose will not lie,— **22 T. L. J.**, *313*.

13. Where property has been wrongly delivered in execution of a decree, the remedy of the aggrieved party is to move the Execution Court, and a separate suit does not lie.— **22 T. L. J.**, *323*.

14. The defendant undertook by a compromise petition dated 7-12-1104 to pay to the plaintiff through Court, a sum of Br. Rs. 140, within six months from that date in complete satisfaction of the plaint claim. In the event of default the plaintiff was at liberty to realise the entire plaint amount in execution. The petition was presented in Court on 8-12-1104. The decree was passed in terms of that petition on 10-12-1104. On 10-6-1105 the defendant deposited Br. Rs. 140 in Court for payment to the plaintiff.

The plaintiff drew this amount and contended that the deposit was beyond time and so he was entitled to claim the full plaint amount:

Held.—The defendant had substantially complied with the compromise decree and nothing more was due to the plaintiff in the light of its provisions.

The question whether the stipulation for the payment of the whole amount without heed to the remission allowed, is a penalty and as such should be relieved against in execution was left open.— **48 T. L. R.**, *154* (=**22 T. L. J.**, *410*).

15. The respondent who is the auction-purchaser is a stranger to the decree. The decree is based upon a hypothecation bond executed by the defendants 1 and 2 to the plaintiff in 1091. Item No. 3 in the schedule attached to the decree was purchased in Court auction by the respondent on 3-4-1095 at 6500 fanams. He deposited the whole of that amount in Court on 12-4-1095. The third defendant who had no right over the said item No. 3 deposited the said amount and commission in Court and applied to have the sale set aside. The High Court eventually ruled that the third defendant had no right to deposit the said amount and commission in Court and to have the sale set aside. While the appeal was pending in the High Court, the High Court ordered the third defendant to offer security for 6 per cent on the amount deposited by the respondent in Court for one year. Accordingly the third defendant produced a surety who executed a security bond as per the order of the High Court. The surety is therefore liable for one year's interest. Owing to the third defendant's obstruction the property was not delivered to the respondent. The respondent got delivery of the property only on 26-1-1099. The defendants 1 and 2 and the third defendant are therefore liable for the loss caused to the respondent in the shape of mesne profits or interest for the period between 12-4-1095 and 26-1-1099. He therefore prayed for interest at 12 per cent on the said amount for the said period. The third defendant opposed his prayer on the ground that the respondent (auction-purchaser) could not seek and obtain any relief in the execution Court.

The Court below allowed the respondent 6 per cent interest by way of damages.

The Judge held that no appeal lay from the order of the Munsiff, as the parties to it were not parties to the decree:

Held.—The third defendant not being a surety though there was one who had become a surety for him, Section 109 of the Code, did not apply, The money claimed by the decree-holder was not payable under the decree. For that reason also this was not a question arising under Section 40. The special appeal as such must therefore fail, but for that very reason it was clear that the Execution Court had no jurisdiction to grant this relief to the auction-purchaser.—

22 T. L. J., *425.*

16. Where the principal and interest accrued due under a hypothecation bond Exhibit C. was hypothecated under Exhibit A and the holder of Exhibit A. got decree thereon and purchased all the rights under Exhibit C. in Court auction:

Held.—The further interest which accrued under Exhibit C. subsequent to the date of Exhibit A, also passed to the purchaser in execution.

A hypothecation is a simple mortgage and a mortgage involves the transfer of an interest in immovable property. In the absence of a different intention expressed or necessarily implied on the transfer of a debt the securities therefor and the interest accruing due thereon are to be taken as also transferred under Section 8 of the Transfer of Property Act.—

22 T. L. J., *841.*

17. When the respondents prayed the Execution Court to re-examine the decree itself on the allegation that the decree was liable to be set aside and the case re-opened on the ground of fraud and collusion:

Held.—The attempt to re-open the decree did not fall within the scope of Section 40, and unless the application was one of that description the Court would have no jurisdiction to direct the petitions to be treated as suits under Clause 2 of that Section.

The Execution Court could not go behind the decree. It must take the decree at its face value. It could enquire whether the Court, as evidenced on the face of the decree by seal and signature, was a properly constituted Court competent to pass the decree, but it need not enquire, having satisfied itself of the competence, whether it was a decree which the Court ought to have passed. For such an enquiry it would obviously be necessary to go behind the decree.— **22 T. L. J.,** *1005.*

18. In the face of Section 40 (2) it is not permissible to a Court to dismiss a suit merely on the ground that the remedy of a plaintiff is by way of execution. Ordinarily such irregular suits should be converted into execution proceedings by the original Courts and if this is omitted to be done, it is open to the Appellate Court by virtue of Section 85 to make good the omission.— **22 T. L. J.,** *1014.*

19. A dispute between rival decree-holders is not a matter within the purview of Section 40.

Where an assignee—decree-holder appealed against an order for rateable distribution in favour of holders of decrees against the original decree-holder, who had placed attachments on the decree after the assignment:

Held.—The appeal was incompetent.—

22 T. L. J., *1264.*

20. An order staying execution of a decree pending the disposal of an application to certify satisfaction of the decree debt, is not appealable, as it does not determine any question relating to the rights and liabilities of the parties with reference to the relief granted by the decree.

It cannot be laid down that merely because an application has been made to certify satisfaction of a decree, execution

should necessarily be stayed. The Court has a discretion in the matter and should exercise that discretion on proper grounds. It should examine carefully the petition for recording satisfaction and see whether a probable case is stated in the petition. In doubtful cases, it would do well to examine the petitioner before passing the order.— **23 T. L. J.**, *508*.

21. Before properties sold in Court auction were delivered over to the auction purchaser (plaintiff), an agreement was come to whereby plaintiff agreed to give the judgment-debtor time till 30-7-1101 to pay up the sale consideration and get back the property failing which the plaintiff was at liberty to recover the property in execution of his decree. The judgment-debtor (first defendant) in the action, having failed to carry out the terms of the agreement, plaintiff brought the suit for recovery of plaint items. The first defendant among other pleas contended that the suit was not maintainable and that the plaintiff's proper remedy was by way of execution proceedings:

Held.—The Limitation Regulation only provided the period of time during which a suit must be brought and did not confer a right of suit where none existed. Merely because Article 126 provided for a period of limitation for a suit 'by a purchaser in execution of a decree,' it did not follow that every purchaser in execution of a decree obtained a right to maintain a separate suit. There were cases in which it was clear that an auction-purchaser could maintain a separate suit for recovery of possession and Article 126 of the Limitation Regulation was intended only to provide for such cases:

Held also.—The decree-holder did not cease to be a party to the suit within the meaning of Section 40 C. P. C., merely because he had become the purchaser of the property in auction. The question relating to delivery of possession was one relating to the satisfaction of a decree, since a decree could not be said to be *satisfied* until the decree-holder had either obtained the sale proceeds or possession of the property which represented the money for which he obtained his decree.—

49 T. L. R., *380*
(=**23 T. L. J.**, *585*).

22. The plaint property was subject to three hypothecations on different dates. The respondent plaintiff was the second hypothecatee while the appellant, 3rd defendant, was the third hypothecatee. The third defendant first filed a suit on the third hypothecation without impleading the two other hypothecatees and in execution purchased the property and obtained delivery. The first hypothecatee then filed a suit on his first hypothecation without impleading either plaintiff or third defendant and had the Court sale conducted on the basis of his decree; but the third defendant, in possession, discharged the decree by deposit in Court of the decree amount and commission. While the first hypothecatee's decree was being executed, the plaintiff filed a suit on his second hypothecation impleading both the first and third hypothecatees, obtained decree, purchased the property himself in Court auction and sought delivery from the third defendant. At the instance of the third defendant, however, the proclamation schedule in the plaintiff's execution proceedings was amended and the auction sale took place subject only to the charge created by the first hypothecation deed and the decree based thereon. The third defendant therefore objected to delivery in favour of the plaintiff without discharge of the first hypothecatee's rights to which he had been subrogated. The Court below held that the third defendant could not resist delivery on the basis of the claim urged by him. The third defendant appealed:

Held (on preliminary objection as to maintainability of the appeal).—The appeal was maintainable inasmuch as the

third defendant's application to the Court below was made before actual delivery and therefore the matter fell clearly within the competence of the Court in execution and all questions arising between the decree-holder—auction-purchaser and the judgment-debtor or his representative till possession was delivered over to the auction-purchaser would fall within Section 40 of the Code.

Held further on the merits, allowing the third defendant's appeal.—In the matter of adjustment of the rights of rival mortgagees in execution proceedings, the Courts in this State, as Courts of equity, should take into consideration the equities of the parties before them and mete out substantial justice by passing appropriate orders. The one important fact to be borne in mind in these matters, is that by adopting the principles of equity, the decree-holder should not be substantially prejudiced. In the case, the application of the respondent to be put in possession was really an attempt to redeem the property. He was justly bound to discharge the prior encumbrance more particularly as he had sold the property subject to the prior charge. If the appellant was directed to file a fresh suit, it was not unlikely that he would be met with the plea of limitation. In the circumstances, therefore, a direction that the respondent should deposit the amount mentioned in the proclamation schedule, as due on the first encumbrance, for payment over to the third defendant was only just. —

23 T. L. J., *741.*

23. The hypothecatee of the decree in O. S. No. 494 of 1089 applied to be impleaded in execution proceedings in the place of the original decree-holders but was opposed by the decree-holders in two suits who had attached this decree. Their objection *inter alia* was that the hypothecation of the decree was unsupported by consideration. The lower Court upheld the rights of the hypothecatee but made them subject to the claims of the other decree-holders. In appeal filed against this order by the hypothecatee, a preliminary objection was raised that the appeal was incompetent.

Held.—The order appealed against does not fall within the purview of Section 40 of the Code, and is not, therefore, appealable.— **24 T. L. J.,** *114.*

24. The power conferred by the proviso to Section 40 of the Code, to convert a suit into an application in execution, is subject to one important condition, *viz*, that the suit must be filed within the period of limitation allowed for applications under Section 40. A suit could not therefore be treated as an execution application where the effect of doing so would be to prejudice the defendant in his plea of limitation.— **24 T. L. J.,** *475.*

25. The suit was to avoid an attachment placed on Tarwad properties, in execution of a decree obtained against two junior members only of the Tarwad and was filed by another junior member who had been impleaded in the execution proceedings as legal representative of one of the judgment-debtors. On the defence contention that the question should be agitated in execution and not by separate suit :

Held.—There being no decree against the Tarwad nor any impleading of the Karanavan, either in the suit which give rise to the decree or in the execution proceedings, this fresh suit to protect the Tarwad interests was not incompetent. If there is a decree against the Karanavan of a Tarwad and the junior members are impleaded in execution as legal representatives, they ought to object in execution proceedings if they want to raise an objection to the execution against the Tarwad. The test in such cases is in what capacity is the representative impleaded.— **24 T. L. J.,** *555.*

26. The suit is for cancellation of the execution proceedings in O. S. No. 581 of 1094 and the sale in which they culminated and in the alternative for recovery of damages. The decree in O. S. No. 581 of 1094 was passed against the Karanavan of the plaintiff and the plaintiff was impleaded in execution as the legal representative of his deceased Karanavan.

Held.—The suit so far as it is concerned with the claim for the cancellation of the sale has to fail. The permissible course for the plaintiff is to agitate the question of the validity of the sale in the execution Court itself and not by a regular suit. A suit will lie to set aside a decree and a sale held in execution of such decree when both the sale and the decree are impeached on the ground of fraud, but no remedy is open by a separate suit to the judgment-debtor even though by fraud he may have been kept from knowledge of the execution proceedings until after the confirmation of a sale improperly obtained.

In the case of non-payment of money undertaken by the defendant on behalf of the plaintiff, no matter what amount of inconvenience was sustained by the plaintiff, the measure of damages is the interest on the money only; and all other damage sustained by him as the result of the breach is remote.— **24 T. L. J.**, *777.*

27. See also—

Sec. 2 (2).—	**20 T. L. J.**, *502.*
„ 48.—	**23 T. L. J.**, *709.*
„ 109.—	**23 T. L. J.**, *391.*
Or. XXI, R. 13.—	**20 T. L. J.**, *497.*
„ R. 64.—	**22 T. L. J.**, *888.*
	48 T. L. R., *350* (=**22 T. L. J.**, *1058*).
	22 T. L. J., *1317.*
	49 T. L. R., *406* (=**23 T. L. J.**, *702*).
„ R. 87.—	**48 T. L. R.**, *287* (=**22 T. L. J.**, *632*).
„ R. 99.—	**21 T. L. J.**, *1329.*

Section 41.

1. Where an execution application was barred by limitation but execution had been ordered to proceed after notice to the judgment-debtor, it is not open to him in a subsequent application for execution to contend that the former application was barred by limitation. Such contention must be considered to have been waived.

Per Narayana Pillai J.,—The time limit in Section 41 is capable of extension on the ground of the force and fraud of the judgment-debtor. If therefore, the judgment-debtor keeps quiet on the receipt of a notice to take steps on an execution application beyond 12 years and the Court passes an order in favour of the decree-holder, the judgment-debtor cannot be permitted to go behind that order at a later stage, for the objection, if any, raised at the proper stage might have been met by the decree-holder on the ground of his opponent's force or fraud.—

21 T. L. J., *321.*

2. On 4-7-1101 the decree-holder presented an execution petition in the Munsiff's Court in which he asked for permission to bring on record the legal representatives of the deceased first defendant, for the appointment of a guardian to the legal representatives of the first defendant, for the issue of a warrant to the third defendant and for proclamation and sale of the attached property. This application is execution petition No. 1317 of 1101. On this application notice was issued to the proposed guardian. The guardian accepted the notice on 16-7-1101. Nothing further appears to have been done in connection with application No. 1317. While this application was pending, for some reason or other which is not apparent, the decree-holder on 9-12-1101 presented another fresh application (No. 2124) containing the same identical prayers as were contained in application No. 1317. This application was however dismissed

on 23-3-1102 for the default of the decree-holder in the payment of process fee. The decree-holder therefore on 24-4-1102 put in an application (No. 492) praying that the application No. 2124 of 9-12-1101 might be revived. The third defendant objected on the ground that the apppli-cation was barred as 12 years had already elapsed after the passing of the decree:

Held.—(1) The contontion that at the moment when the decree-holder put in his application of 9-12-1101 (No. 2124) containing the identical prayer contained in prior application (1317) of 4-7-1101, he must bs deemed to have waived his right to proceed with the application of 4-7-1101, cannot be accepted. The decree-holder had done every thing he was obliged to do in connection with the appli-cation of 4-7-1101. It remained for the Court to issue futher ordors. If the Court had issued further orders as it ought to have done probably the application of 9-12-1101 would not have been made. A party cannot be penalised for the acts or omissions of the Court.

(2) There was no estoppel of the decree-holder in the circumstances. The conten-tion that the order on the application of 24-4-1102 (No. 492) precluded the decree-holder from applying for further execu-tion on the ground of *res judicata*, cannot be given effect to. The application of 24-4-1102 was merely an application to revive the application of 9-12-1101 and all that the Court was bound to do was to decide whether it could be so revived. The Court rightly or wrongly decided that it could not be so revived as the prior application was dismissed for the default of the decree-holder in the payment of the process fee. There was no obligation on the part of the decree-holder to set up the ground of the pendency of application No. 1317 in support of his application No. 492. No doubt the principles of construc-tive *res judicata* is very often applied by way of analogy to cases of execution but it would be pushing the doctrine to absurd lengths to apply the principle to circumstances like the present.

(3) The application of 4-7-1101 must be deemed to be still pending and, therefore, there was no bar of limitation.—

21 T. L. J., *759*.

3. The decree was passed on 19-3-1095. An application for sale of the property of the judgment-debtor was filed on 12-1-1105 but it was stayed by order of Court on 19-1-1105. Subsequently an application for the arrest of the judgment-debtor was filed and that was rejected on 22-12-1107. The last application for execution was filed on 10-1-1108, for steps against other properties and not against the property proclaimed for sale in 1105. It was con-tended that so long as the application dated 12-1-1105 remained undisposed of, any similar application for the same relief must be regarded as a continuation of that application, and not as a fresh one:

Held.—The question whether the subse-quent application is only ancillary to the previous application or is a fresh one within the meaning of Section 41 of the Code depends on the circumstances of each case and though formerly there was a conflict of opinion among the British Indian High Courts regarding this matter, it has been authoritatively ruled that where during the pendency of an applica-tion for execution against one pro-perty, a subsequent application for execution against other properties is filed, the second application will be deemed to be a fresh application and if it is filed more than 12 years after the decree, it will be time-barred under Section 41. The application of 10-1-1108 was therefore a fresh application within the meaning of Section 41 and as it was filed more than 12 years after the date of the decree, it was time-barred.— **24 T. L. J.**, *66*.

4. A judgment-debtor who had not objected to an execution application of

which he had notice, though it was made after the statutory period of 12 years from the date of the decree and had allowed the Court to pass an order to the effect that it was within time, cannot at a subsequent stage turn round and say that execution is barred, without vacating the order previously passed adversely to him.— **24 T. L. J.,** *656.*

5. In O. S. No. 13 of 1091, the 3rd defendant was given a decree for costs against the 3rd plaintiff, the present appellant. The decree was passed on 19-6-1093. The last application in execution within 12 years of the decree was made on 10-6-1105 in the Trivandrum District Court and in it the 3rd defendant prayed that the decree might be transferred to the District Court of Quilon for execution. That application was allowed. The papers were received in the Quilon Court on 9-11-1105 and on the same day the 3rd defendant (respondent) applied for execution of his decree. The 3rd plaintiff put in an objection alleging that the application for execution was barred under Section 41 of the Code. The lower Court allowed execution to proceed:

Held.—The application of 9-11-1105 cannot be deemed to be a revival or continuation of the former application of 10-6-1105. The former application was merely for a transfer of the decree although it was incidentally mentioned in that application that the applicant intended to execute the decree. When the application for transfer was granted that application spent itself and there was nothing further to be done. The two applications are quite different in their scope and character and the later application can in no sense be regarded as a revival or continuation of the earlier application. The application of 9-11-1105 is barred by the 12 years rule under Section 41 of the Code.— **24 T. L. J.,** *764.*

6. See also Or. XXI, Rule 55.— **20 T. L. J.,** *898.*

Regn. VI of 1100, Art. 166. } **21 T. L. J.,** *411.*

Section 43.

The question arose whether an alienee of the judgment-debtor was his legal representative:

Held.—He could not be regarded as the legal representative of the deceased as he was not entitled to represent the estate of the deceased.

The term "legal representative" has been used to meet the circumstances of a certain event, namely, the passing of the property the subject of the litigation on the death of the deceased judgment-debtor to his successor and to include such successor either to his estate or to the property in suit. The legal representative must be one to whom property passes on death.— **23 T. L. J.,** *301.*

Section 44.

Section 44 enables the Court to allow execution of its decree by attachment and sale of any property. Order XXI, Rule 62 lays down that a Court executing a decree *may* order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree shall be sold and that the proceeds of such sale, or a sufficient portion thereof shall be paid to the party entitled under the decree to receive the same. The word *may* in the Section has to be construed to be of a mandatory character. If the conditions set forth in the above Rule, *viz.*, the placing of an attachment on the properties by the Court before which a motion for sale is made, and the validity of the property in question to sale are held to be satisfied the application for sale of the same cannot be refused on some whimsical grounds by the Court, it being obligatory on the Court to order the sale in such cases.

If after publication in the manner prescribed in Order XXI, Rule 65 (1) read along with Rule 52 (2) bidders are seen to be not forthcoming means to secure a larger publicity should have been directed to be adopted. The drastic method of exonerating the attached properties from liability for the decretal amount is clearly unjustifiable.— **20 T. L. J.,** *894.*

Section 45.

The impleading of a legal representative of a deceased defendant would indicate that he is placed on record as the custodian of the assets of such deceased person or a person interested in such assets which may have to be proceeded against in execution of the decree that may be passed in the case. The extent of the liability of the legal representative will have to be determined by the application of the principles underlying Section 45 of the Code, corresponding to Section 248 of the Code of 1065, whether his impleading is made before decree or only in execution. The imposition of a personal liability in a decree on legal representatives of defendants originally on record impleaded during suit in such capacity is clearly unjustifiable.— **20 T. L. J.,** *1101.*

Section 47.

1. The judgment-debtor in the case was granted mohsul on the strength of a bond executed by the third respondent as surety by which he undertook to produce the judgment-debtor on all days fixed for appearance while on mohsul and in default, to pay the decree amount. While out on mohsul, the judgment-debtor escaped from custody. On the decree-holder applying for execution against the surety ;

Held.—(1) The security bond cannot be deemed to be one executed or taken under the provisions of Section 47, clause (5), since the taking of security before ordering that the judgment-debtor should remain in the custody of an officer of the Court was not contemplated by the Section.

(2) The bond in question was unenforceable inasmuch as the judgment-debtor received no real benefit under the order of the Court, as a person on mohsul was to all intents and purposes as much under the control of the Court as one detained in the Civil jail and also because the surety was called upon to give an undertaking which he could not fulfil.—
22 T. L. J., *383.*

2. In the case of a breach of the conditions of a surety-bond executed under Section 47, Clause (4), the Court has power either to direct execution to proceed against the surety or to commit the debtor to the civil prison. The Court can do only either of this but cannot do both. If in exercise of its power, the Court directs the debtor to be committed to the civil prison, it becomes *functus officio* and cannot thereafter turn against the surety. All that the Court has got to do is to indicate by its order which course of action it proposed to take. When a Court has passed an order committing the debtor to prison it has done all it has to do. The payment of the subsistence allowance is a step depending entirely on the decree-holder and when he has paid it, it does not require a further order of the Court to take the debtor to the jail. The committing of the debtor to the civil prison does not mean actual incarceration in the civil jail, for however short a period. Hence the surety ceases to be liable even though the debtor happens to be released because of the non-payment of the subsistence allowance by the decree-holder.—
23 T. L. J., *518.*

3. Where a surety-bond executed for purposes of enabling a judgment-debtor under arrest to file an insolvency application contained an undertaking merely

for the production of the judgment-debtor *simpliciter* if he failed to apply for a declaration of insolvency within a month and on the judgment-debtor's failure to apply accordingly, the surety produced him before Court:

Held.—The surety was entitled to be released from any further liability under the surety-bond. In the absence of an absolute undertaking of the wider obligation contemplated in Section 47, Clause (4), the surety could not be charged beyond the precise terms of his engagement.

Per Chakko, J.—Even if a security bond was one strictly within the letter and spirit of Section 47, Clause (4), there was nothing in the provisions of the Code to prevent a surety from coming forward at any time within the period specified in the bond and asking the Court to relieve him of any further liability, under the bond. A security bond under Section 47 is in the nature of continuing guarantee and the surety is entitled to produce the judgment-debtor before the Court and request it to absolve him from further liability under the bond. But the production of a judgment-debtor at a time when it is impossible for the Court or the decree-holder to take any steps to have the judgment-debtor taken into custody does not amount to his appearance when called upon to appear and the surety will not be discharged thereby.—

49 T. L. R., *438*
(=23 T. L. J., *773*).

Fol. 24 T. L. J., 792.

4. A process server executing a warrant of arrest, has merely to take the judgment-debtor into custody and produce him before Court if he finds that the judgment-debtor could not or would not pay the entire decree amount. He can release the judgment-debtor if the whole decree debt is paid to him but when only a portion of the decree-debt is paid, it is for the Court to exercise its discretion whether it would give the judgment-debtor further time to pay the balance. The process server has no discretion to release the judgment-debtor in such a case even if the decree-holder agrees to such a course.—

24 T. L. J., *111.*

5. A surety bond under Section 47, Clause 4, of the Code contained the usual undertaking that the judgment-debtor would file the insolvency petition within one month and for his production whenever the Court called upon the surety to produce the judgment-debtor. Within a month the surety produced the judgment-debtor in Court and applied to be discharged from any further liability under the bond, the judgment-debtor having meanwhile filed the insolvency petition and there was no difficulty for the Court to arrange for taking the judgment-debtor into custody when or immediately after he was so produced:

Held.—The eventual dismissal of the insolvency petition owing to the default of the judgment-debtor did not fix any liability on the surety under the bond, because there was no duty on his part to see that the judgment-debtor pressed his petition in insolvency to a successful termination.

The security bond under Section 47 is in the nature of continuing guarantee and the surety is entitled to produce the judgment-debtor before the Court and request it to absolve him from further liability under the bond unless the production of the judgment-debtor was at a time when it was impossible for the Court or the decree-holder to take any steps to have the judgment-debtor taken into custody. If the decree-holder was not present when the judgment-debtor was produced in Court, notice could have been sent to him to appear on a certain day. The Court could have adjourned the matter pending the appearance of the decree-holder and meanwhile if necessary asked the sureties to produce the judgment-debtor on the day

fixed for the appearance of the decree holder.— **24 T. L. J.,** *792.*

Section 48.

A judgment-debtor arrested in execution and let out on mohsul to enable him to pay the judgment debt may, even after expiry of the mohsul period, apply under Section 48, Clause (4), of the Code, to be released from arrest for applying to be declared an insolvent. The Section does not say that the judgment-debtor should express his intention to apply to be declared an insolvent as soon as he is brought to Court under arrest. Looking to the spirit of the provisions, it does not seem that a judgment-debtor should be made to forego the right given to him, under the Section because of an endeavour, perhaps quite honest, made by him to settle the claims of the decree-holder.

An order directing the arrest or detention of a judgment-debtor made in execution of a decree, is to be treated as an order under Section 40 ; and therefore, is appealable. Section 82, Clause (*g*) does not conclude the matter.—

23 T. L. J., *709.*

Section 52.

1. In the case of a sale where the vendee has not paid the price, the vendor has a property in the price, which can be attached under Section 52, clause (*c*). It is not a mere right to sue but is an ascertained sum of money.

In general, whenever a contract is such as to give one of the parties a right to receive a certain and liquidated sum of money from the other a debt is said to exist between the parties. If on the other hand, the demand be of uncertain amount, it is not a debt but a claim for damages.—

20 T. L. J., *904.*

2. The plaintiff and 2nd defendant were members of an undivided Variyar family and the plaint property which belonged to the Manampoor Devaswom had been demised to the plaintiff's family as Karaima for the performance of certain services to be rendered to the Devaswom. The 1st defendant obtained a decree for money against the defendant in O. S. No. 706 of 1083 on the file of the Attingal Munsiff's Court and in execution thereof he attached the plaint property, brought it to sale and purchased it himself on 17-8-1097. The suit was to set aside the decree and execution proceedings. The Courts below held that the plaint property was held as Karaima for services rendered to the Devaswom, that it was therefore inalienable and could not be sold in execution of the decree obtained by the 1st defendant.

Held.—In the case of Service Inam Tenures, they are, by their very nature, inalienable and the holders for the time being, have therefore, no disposing power over them as is contemplated by Section 52 of the C. P. C. They can, therefore, neither be alienated voluntarily nor by operation of law such as by Court sale.—

46 T. L. R., *59.*

3. It was contended by the defendant that Pushpanjali dues were gratuitous payment in the nature of honoraria and thus non-attachable.

Held.—The question is whether the amount in question has become due to the defendant, apart from the theory on which the payment is founded and fictions disguising the motives for the payment. If the amount is not due to the defendant, there is nothing to attach and the defendant cannot complain of the attachment. In such a case the party who proposes to make the payment can withhold it on the ground that such party is under no obligation to discharge the debt due from the defendant.. If on the other hand the money has become due to the defendant, there is no provision of law which exempts the amount in question from attachment.— **21 T. L. J.,** *20.*

4. See also.—

Sec. 8.— 48 T. L. R., *383* (=22 T. L. J., 968).

Regn. I of 1090.— 46 T. L. R., *208* (=20 T. L. J., *1022*).
47 T. L. R., *114* (=21 T. L. J., *317*).

Section 55.

Under Section 55 of the Code, it is the Court of the superior grade that has to conduct the proceedings where more than one Court has placed an attachment upon properties belonging to the same judgment-debtor. The right of the attaching creditors under the decrees of the other Court is for moving for a rateable distribution of the assets realised by sale, by virtue of the provisions of Section 59 of the Code. Section 59 enables a party aggrieved by an order allowing rateable distribution to be paid to a person not entitled to the same to sue such person to compel the refund of such assets. The scheme of this provision is rather to enable the Judge as a matter of administration to distribute the prize according to what seems at the time to be the rights of parties without importing a conclusive adjudication on those rights which may be subsequently readjusted by a suit.

The question of fraud with respect to the decree of one of the attaching creditors could not appropriately, be gone into by the executing Court.

The according of leave to the attaching decree-holder of the Superior Court to bid at the auction and to credit his decretal amount towards the purchase money contravenes Order XXI, Rule 69 and Rule 185 of the Civil Courts' Guide and consequently could not be allowed. It is incumbent on the Court to insist upon the production in Court of the purchase money except with reference to those relating to the items of properties over which a charge had been created under the decree. The sale amounts with respect to those items could be given credit to towards the amount under the decree.

20 T. L. J., *438*.

Section 57.

It was contended in appeal for the defendant-appellant that since the title of the respondent-auction purchaser would arise only on the confirmation of the Court sale, the lower Court was not justified in appointing a receiver on the application of the auction-purchaser at that stage (*i. e.*, before the confirmation of the sale):

Held (*Per Narayana Pillai, J.*).—The contention evidently overlooks Section 57 of the Code of 1100 which says that where immovable property is sold in execution of a decree and such sale has become absolute the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute. In this respect the present Code has modified the law as it existed before its enactment. Now a Court sale passes title subject to defeasance on certain specified grounds. The result of an execution sale is that the judgment-debtor ceases to have any interest in the property and the same passes to the purchaser. An auction purchaser is entitled to claim profits and accretions and has to put up with any loss or deterioration from the date of the sale.

21 T. L. J., *1289*.

Ref.—22 T. L. J., 750.

Section 58.

1. The prohibition regarding the maintainability of suits contained in Section 58 would probably not apply to a defence that the certified purchase in Court auction has been made *benami* on behalf of the person setting up the same or his predecessor in interest.

For the purpose whether the evidence supports the plea of *benami* set up in a

case the source of the funds for getting the sale may be a material factor, though this cannot be considered to be the sole determining criterion, the question being always one of intention. This intention has to be gathered from a consideration of the whole evidence in the case.

When property is standing in the name of a person, the burden of proof is on him, who contests that person's title to make out that the transaction on which such title is based, is *benami*.

The circumstances that a former owner of properties continued to pay the tax for those properties even after their delivery in pursuance of a Court sale in execution of a decree against such owner cannot *per se* militate against the transfer of possession expressly referred to in the delivery list, for such payment will not by itself create title. Such payment cannot also be held sufficient to conclusively make out the continuance of possession with the former owner.

Under Section 7 of the Limitation Regulation of 1100 the time during which the period of minority continues has to be excluded for purpose of limitation. In this respect the law here is different from that in British India, for under the Limitation Act (in force there), exemption is allowed only where the disability existed at the time when a right of action first accrued. There is no provision in British India corresponding to Section 7 suspending the period of limitation even after it had begun to run by reason of the disability of the plaintiff or the applicant.

A Proverthicar's report does not belong to the class of documents, which could be admitted in evidence without proof *aliunde* as it could not be deemed to be a public document as contemplated in Section 74 of the Evidence Act.—

46 T. L. R., *415*
(=**20 T. L. J.**, *1053*).

2. The plaintiff and defendant obtained different decrees against the same Company. The defendant entered into a contract with the plaintiff, that he would purchase in Court auction building, etc., of the Company and that the proceeds thereof would be distributed between them in proportion to their decree-amounts, with a view to avoid other decree-holders coming in for ratable distribution. The plaintiff brought a suit based on the contract. The defendant contended that the suit was barred by Section 314 old C. P. C. (new C. P. C. Section 58) and that the contract on which the suit was based was unenforceable and illegal as being opposed to public policy :

Held.—There is very weighty authority for the view that a suit based on a prior agreement to purchase and reconvey is not a suit of the nature contemplated by Section 314. As the Section is aimed at secret purchase, it can relate only to *benami* purchases as such. When the plaintiff sues for conveyance to him of the property on the strength of a contract antecedent to the Court sale, he does not dispute the title obtained under the purchase but admits it and prays for transfer to himself. Unless the plaintiff's claim is based on an alleged *benami* purchase his suit would not fall within the scope of Section 314. The plaintiff's prayer in the suit is only for a proportionate discharge of his claim against the common debtor, out of the assets, which had passed to the defendant under the Court sale.

So long as the validity of the claim of the parties was indisputable their desire to take steps to prevent avoidable loss was justifiable and any agreement which they entered into with that desire and for that purpose cannot be regarded as mischievous or opposed to public policy. The suit is therefore maintainable and is not obnoxious to Section 314.—

48 T. L. R., *909*
(=**22 T. L. J.**, *868*).

Section 59.

1. The order requisitioning the transfer of the amount by the attaching Court could not constitute receipt of the amount within the meaning of Section 59. In the case, the Court in custody of the amount and the Court which had to pay the amount in execution were not the same. The amount could be said to have been received by the executing Court only when a cheque had been actually received there from the Court in whose custody the amount originally was. The provisions of Order XXI, Rule 50, with respect to attachment of property in the custody of another Court could not apply in determining the date on which such property might be deemed to have been received by the Court executing the decree. Under the Section, the assets have to be actually received in Court, and only those who make applications for ratable distribution after that date could be refused reliefs in that behalf.— **46 T. L. R.,** *4* (=**20 T. L. J.,** *628*).

2. The decree-holder in O. S. No. 39 of 1102 on the file of the District Court, Nagercoil, obtained a decree for money against the defendants 1 to 4 in the suit as the representatives of their deceased father. Money was due to the decree-holder in that suit from the father and after his death, a suit was brought against his sons, the defendants 1 to 4, and a decree was obtained against the assets of the father. Subsequent to this, the revision petitioner obtained a money decree in O. S. No. 2068 of 1102 in the Additional Munsiff's Court of Nagercoil against the second defendant personally in his individual capacity. On the strength of this decree the present petitioner applied for ratable distribution of the money realised in execution of the decree in O. S. No. 39.:

Held—It cannot be said that the decree obtained against defendants 1 to 4 as legal representatives of their father and the decree obtained against second defendant alone personally,in his individual capacity are decrees against the same judgment-debtor within the meaning of Section 59.

It cannot be laid down as a hard and fast rule that in no case will the High Court interfere in revision merely because a separate remedy is provided by law. Cases are easily imaginable in which it would obviously be for the advantages of both parties that the High Court should interfere in revision instead of driving the parties to the expense and trouble of an original suit. In certain cases to refuse the remedy by way of revision would work considerable hardship and even injustice. In such cases unless there is something in the Statute which either expressly or by necessary implication prohibits the party from applying in revision to the High Court, the High Court will and ought to interfere.

Whether the case is a fit and proper one for interference in revision is always a question depending on the circumstances of each case.— **22 T. L. J.,** *61*.

3. Certain movables belonging to the defendant in O. S. No. 262 of 1105 were attached before judgment and sold by the Court to avoid loss and waste. On the suit being decreed the plaintiff applied for payment out of the sale proceeds, towards his decree but as the movables had been attached before judgment in another suit O. S. No. 386 of 1105 against the same defendant, the plaintiff was allowed to draw the same only on the strength of a security bond providing for refund into Court. The suit O. S. 386 was subsequently decreed and the decree-holder in O. S. No. 386 applied for ratable distribution of the sale proceeds.

Held.—The amount in question could not be said to be 'assets realised' within the meaning of Section 59, either on the date of the sale of the movables because the sale was not in execution or on the date of the payment to the

decree-holder in O. S. No. 262, since such payment was only pursuant to his security bond and not on the strength of any execution application. And as no order had been passed transferring the fund in Court to the credit of the decree in O. S. No. 262, the rival decree-holder was entitled to apply for ratable distribution and for that purpose to compel the bringing back of the amount into Court.—

22 T. L. J., *356*.

4. It is no doubt true that ratable distribution can be allowed under Section 59 only where the decrees under execution are against the 'same judgment-debtor'. In the case the applicants for ratable distribution have, all of them, obtained decrees against the same judgment-debtor. The origin of the debt which culminated in the decree cannot make any difference. Neither would the assets made liable under the decree, provided they belong to the judgment-debtor, make any difference. There was no case of the bankruptcy of the foreman. The money due from the subscribers belongs to the foreman in such circumstances. The foreman does not represent the subscribers in the normal nature of the chitty scheme.—

22 T. L. J., *788*.

5. Where property subject to two encumbrances, is sold in Court auction to satisfy the first encumbrancer, two courses are open to the subsequent encumbrancer not impleaded in the suit on the prior encumbrance. He could ignore the sale and seek to sell the property subject to the first charge or he could accept the sale as proper and apply under Section 59 (1), Clause (*c*). On such application under Section 59 and acceptance of the proceeds of the sale, the subsequent encumbrancer must be deemed to have admitted the propriety of the sale and his claim over the property being satisfied *pro tanto*, he cannot have any right to sell the property over again subject to the first charge. The fact that, instead of applying under Section 59, he attaches the surplus proceeds and gets the same paid to him by the Court does not make any difference. For in such cases the amount received by him must be regarded as having been paid to him under the provisions of Section 59 (1), Clause (*c*).— 49 T. L. R., *303* (=23 T. L. J., *59*).

6. The revision petitioner decree-holder obtained decree for money against the first defendant who was a Proverthikaran, and in execution, applied for attachment of his security deposit in the Pathanamthitta Taluk Treasury. A certain amount was accordingly attached. There were two other attachments of the amount in execution of the decrees in O. S. No. 1669 of 1102 and O. S. No. 374 of 1103 of the Quilon Munsiff's Court about which some correspondence ensued and eventually on 12-7-1107, Rs. 250 odd was transferred to the credit of the Court that issued the attachment order, and communication to that effect was received in that Court on 14-7-1107. On 20-7-1107 certificates arrived from the Quilon Court in connection with the above two cases and on 30-9-1107 the two decree-holders applied for ratable distribution. The lower Court allowed the money to be ratably distributed.

Held (in revision).—It has been held more than once that five conditions should be fulfilled so as to enable a decree-holder to participate in the assets under Section 292 of the Code of 1065, one of the conditions being that the decree-holder's application for execution of his decree to the Court which held the assets should have been made prior to their realisation. Though in some respects there is variation between the Section of the old Code and Section 59, the corresponding provision of Regulation VIII of 1100, these conditions are even now applicable so that unless all those conditions are fulfilled, no ratable distribution can be permitted. The receipt of the assets by the Court virtually took

place when the adjustment was made in the account.

Money in the custody of a public officer attached under Order XXI, Rule 50 of the Code and paid into Court are assets available for ratable distribution.—

24 T. L. J., *107*.

7. See also Sec. 55.— 20 T. L. J., *188*.

Section 65.

1. The Judge cannot modify the language of a Statute or add to or take away from its terms to bring it in consonance with his own views as to what is right or reasonable. If the language in a Statute is clear, Courts have not to look to the consequences however inconvenient or even mischievous they may be. In such cases, the suffering citizen has to appeal to the law giver, the Courts having only to expound the law as it is. The argument of *ab inconvenienti* could be availed of by the Courts only where the meaning of a Statute is obscure.

Tested in the light of the above principles, it is clear that the Legislature has laid down the service of a notice of the kind indicated in Section 65 before the period prescribed therein, as a condition precedent to the institution of a suit against the Dewan of Travancore. The necessity of such a notice is not restricted to any particular class of suits, or to those wherein certain kinds of reliefs only are claimed. A restrictive construction of the kind cannot be made in view of the unambiguous wording of the Section.

The intention of the Legislature is that in the case of suits against the Dewan of Travancore a notice is imperative whatever may be the nature of the act upon which the action is founded. The expression "purporting to be done" has no reference to such suits. In the case of public officers, a notice can be insisted on only if the act on which the suit is based is one purporting to have been done by them in that capacity.

The power of striking off a party on record conferred on the Court by Order I, Rule 10, Sub-rule (2), should not be exercised arbitrarily but only judicially, *i. e.*, only in cases where the presence of such party on record is considered unnecessary by the Court with due reference to the facts alleged and the reliefs claimed in the suit. The exercise of this power with a view to defeat an express provision of the Statute as required now is clearly not permissible.— 46 T. L. R., *404* (=20 T. L. J., *1104*).

Ref.—48 T. L. R., 37 (=22 T. L J., 122)

2. Where in a suit against the Sirkar by the three plaintiffs having distinct interests in the suit property, it was found that the notice of suit was sent only by the first plaintiff's husband along with the plaintiffs 2 and 3 :

Held.—The notice of suit was inadequate as regards first plaintiff but adequate as regards plaintiffs 2 and 3. The fact that a reference was made in the notice to a claim by the first plaintiff's husband who had not joined in the suit would not invalidate the notice as regards the second and third plaintiffs.—

22 T. L. J., *1077*.

3. Notice of suit issued to the Sirkar did not give the names of the plaintiff or plaintiffs, their residences or descriptions but simply mentioned that it was issued on behalf of the villagers or Oorukars of a particular street :

Held.—There was no sufficient compliance with the requirements of Section 65 of the Code. The object of the Section is to give the Government an opportunity of settling the claims, if so advised, without litigation, but this object could not be achieved since the names of the plaintiffs, their residences and descriptions had been withheld. The result of holding the notice to be sufficient would be to compel

the Government or the Dewan to speculate or ascertain by enquiry perhaps of a laborious kind who the possible plaintiff or plaintiffs might be.— 24 T. L. J., *787*.

4. See also Regn. V of 1095, Sec. 48.—
48 T. L. R., *37*
(=22 T. L. J., *122*).

Section 68.

Originally, in England, a very strict view was taken as to the conditions in which an interpleader suit might be brought. But since the passing of the Common Law Procedure Act 1860, greater latitude has been allowed so that it is now possible in England for a party to sue even though he does not admit that the full amount claimed by the defendants or some of them is due, and even though the rights claimed by the defendants may not be co-extensive. The principles underlying that Statute may be followed here in so far as they are not inconsistent with our Statute law.

Where the plaintiff, in an interpleader suit has made a calculation as to what is due to one or other of the defendants and has brought it into Court, the mere fact that he may have, by a miscalculation, deposited an amount somewhat less than what was actually due will not prevent him from maintaining the interpleader suit. Section 68 does not seem by the words thereof to render it necessary that the parties should be agreed as to the exact amount due in respect of the debt, provided that there is no doubt as to the identity of the debt. To hold otherwise would be to permit a defendant in an interpleader suit to defeat the suit by pleading that he was entitled to a few annas more than what was admitted by the plaintiff. Having placed the object of the suit before the Court, the proper course for the plaintiff to adopt is to leave it to the defendants to fight out their claims without himself taking part in the controversy. He ought not to give the impression of siding with any one of the claimants as against the other.—
22 T. L. J., *468*.

Sections 72 & 73.

1. When reliefs like the removal of trustees, appointment of new trustees, and settlement of a scheme are prayed for by two or more persons acting on behalf of the public, the sanction of the Dewan is indispensable.

If the suit is not a representative one, as where one trustee sues a co-trustee for accounts, no sanction may be necessary.—
20 T. L. J., *722*.

2. If the Court's aid is sought for to make the allocation the provisions of Section 72, clause (*e*), must be deemed to be applicable irrespective of the question as to whether the allocation has to be decided for the first time by the Court or whether such allocation has been already decided upon by the parties concerned.

"Further or other relief" in Section 72, clause (*h*), must be read with the previous clauses, and prayers which are more or less *ejusdem generis* with the reliefs set forth in the preceding seven clauses alone, could be brought within the purview thereof.

Government sanction under Section 72 was mandatory for, in the Code of 1100, a specific provision has been made in Section 73, whereby, suits claiming any of the reliefs specified in Section 72 were declared not liable to be instituted in respect of any trust, as is referred to in that Section except in conformity with the provisions of that Section save as provided by the Religious Endowments Regulation III of 1079.

(The rule in 30 T. L. R., 91 is no longer applicable, as the same was decided under the Civil Procedure Code of 1065, and as the statutory prohibition considered necessary for creating a bar to such suits, in

that decision, has been expressly provided for under the new Code).—

20 T. L. J., *1186.*

3. The suit was filed by a villager of Kalkulam for rendition of accounts and for recovery of money and movables alleged to have been misappropriated by the defendants while the latter were trustees of the Pillayar Temple. The 1st defendant contended *inter alia* that the suit was not maintainable without the sanction of the Dewan under Section 72. C. P. C. The lower Court overruled this contention. On revision by the 1st defendant:

Held.—In deciding a matter relating to the jurisdiction of the Court to entertain a suit, the Court should base its conclusions on the allegations contained in the plaint and unless it is clearly proved that the facts alleged bring it within any of the restrictive provisions of the Code, the Court should ordinarily adopt the view that the suit is maintainable. Each case has to be decided on a construction of the pleadings and a careful consideration of the facts of that case.

In dealing with the scope of Section 72, the question mainly to be considered is the nature of the reliefs sought. A suit instituted under Section 72, must be one in which it is sought to obtain a direction of the Court for the further and better administration of the trust. The character of the plaintiff's suit is the deciding factor and it must be determined by considering the allegations in the plaint.—

21 T. L. J., *85.*

4. The suit was brought by certain villagers to remove the members of the Managing Committee who were looking after the affairs of the village and was filed before the new Civil Procedure Code came into force. On objection raised by the defence, that the suit was not maintainable without the Dewan's previous sanction as required by Sections 72 and 73 of the new Code:

Held.—The old Code applied, and the Dewan's sanction was not essential. Before the enactment of the new Code, parties had a right to bring suit of the present nature without previously getting the Dewan's sanction. Such vested rights could be taken away only by express provisions in the Statute subsequently passed. The general presumption that rules of procedure have retrospective effect is not applicable to cases of this kind.—

22 T. L. J., *727.*

5. The defendant founded a trust which partook of the characteristics of both a Mutt and a religious and charitable institution under a deed of declaration executed by him. Provision was made for the worship of Iswara and Ganapathy and for the feeding of Sadhus from out of the properties set apart. The plaintiff who was already a Sanyasin was to be the head and Karmakartha of the institution, but the defendant reserved during his life-time the right of supervision and carrying out things necessary for the advancement of the institution and in this behalf to frame rules as may be found necessary in furtherance of the trust. Subsequent to the effectuation of the trust, however, the defendant purported by another deed to nullify the original deed of trust, not only as regards the power of the plaintiff but also the very object of the trust. The present suit was for cancellation of the subsequent deed and for declaration of title to and possession of the properties dedicated and for incidental reliefs:

Held.—Sanction of the Government under Section 72 of the Code is unnecessary for the institution of the suit, for even if it were a public charity to necessitate such sanction, the suit must be for one of the reliefs specified in Clauses (*a*) to (*h*) of that Section. The Section governs only suits for vindication of the rights of the public in public charitable trusts, and has no application to suits for vindication

of plaintiff's rights of management and getting possession for management of the trust properties.

The composite character of the institution founded, did not make the endowment invalid. The trust cannot also fail on the ground of uncertainty.

The trust constituted under the deed of endowment was of a public character. For ordinarily a Mutt is a public endowment and one spiritually developed as the plaintiff could be expected to benefit the public that may chance to come under his influence. The provision for feeding the Sadhus which may mean Sanyasins and the poor was another test of the public character of the endowment.

The subsequent deed executed by defendant which had the effect of nullifying the original deed of trust was without authority. The defendant could not have anything more than the rights of a founder of a religious and charitable institution, the plaintiff being the accredited trustee. In such cases the defendant had no power of revocation for in the absence of fraud, undue influence and misrepresentation, if a valid dedication has once been completed there would be no power in the donor to revoke it. The relieving of the plaintiff of his functions was even by itself, beyond the authority of the defendant. The proper course then was to bring a suit for the removal of the trustee and for other appropriate reliefs and not to take the law into his own hands.—

24 T. L. J., *166*.

Section 74.

1. An attachment is not operative against the whole world. The transfer of a property under attachment is voidable only against claims enforceable under the attachment. The expression 'claims enforceable under the attachment' has been judicially interpreted as meaning 'claims legally enforceable under the attachment', and to see what was so legally enforceable, recourse may be had to the decree. An attachment is a restraint placed on alienations by the decree-debtor. If the property attached does not belong to the decree-debtor the judgment-creditor can have no claim enforceable against it pursuant to the attachment, and the rightful owner can certainly alienate it,—

46 T. L. R, *256*.

2. On the question of the jurisdiction of the Court to appoint a receiver in a suit brought on a hypothecation bond:

Held.—The preponderance of authority appears to be that, where there are arrears of interest or where the hypotheca has fallen in value, a receiver may be appointed by the Court to take possession and manage the hypotheca.—

23 T. L. J., *220*.

3. The issue of an interim attachment is a very extraordinary remedy to be sparingly used in exceptional cases. It is a very unwholesome practice to grant interim attachment as a matter of course merely for the asking without seriously considering the question whether the circumstance of the case do justify the granting of such an extraordinary remedy as an order of interim attachment. **23 T. L. J.**, *460*.

4. In a suit for declaration that the plaintiff was not the legally wedded husband of the first defendant and that the second defendant was not born for the plaintiff to first defendant, the plaintiff contested the correctness of an order for maintenance already passed against him, by the Magistrate in proceedings under Section 366 of the Criminal Procedure Code (which order had been upheld in revision by the High Court). Pending suit the plaintiff applied to restrain the defendants from executing the order for maintenance they had obtained but the primary Court dismissed the application, *in limine*, relying in 18 T. L. J., 694:

Held.—Though it was possible to accept the contention of the plaintiff that the

existence of the order for maintenance was not a bar to restrain the execution of the same, on a civil suit being filed and that therefore the Court below would have done well to consider the plaintiff's application on the merits, still, inasmuch as it was clear that the equities were in favour of the defendants and that the plaintiff had not made out a *prima facie* case, the order of the lower Court could not be interfered with.— **24 T. L. J.,** *527.*

5. Once the appointment of a Receiver is perfected, though it does not affect the title of strangers with paramount rights, unless they are in possession or have those rights expressly protected by the order, they must obtain leave of the Court before dealing with the property and in the case of other strangers leave is even more necessary. Such leave must be the leave of the Court which made the appointment.

Where the lower Court passed an order for delivery in favour of a purchaser in Court auction, but a Receiver had been appointed over the property by another Court, prior to the order for delivery though subsequent to the Court auction:

Held (in revision by the Receiver).—The lower Court committed an irregularity which the High Court in its discretion ought to correct.— **24 T. L. J.,** *654.*

6. The plaintiff was appointed receiver *pendente lite* of property sought to be recovered by him in the suit, but on his failure to carry out the conditions imposed by the Court, he was removed from office and thereupon he appealed:

Held.—The appointment as well as the dismissal of a receiver is a matter which rests entirely in the discretion of the Court. But a person chosen thus, should as a general rule be wholly disinterested in the subject matter of the suit. One of the parties to a cause shall not be appointed receiver, without the consent of the other party unless a very special case is made out.— **24 T. L. J.,** *705.*

Section 76.

1. The correct position in respect of the question in what cases an application to set aside an *ex parte* decree is competent notwithstanding the fact that an appeal was preferred and had been disposed of is this:—

(1) Where a defendant against whom an *ex parte* decree is passed, applies to set it aside and at the same time prefers an appeal from the decree, the original Court ceases to have any jurisdiction in the matter.

(2) Where the *ex parte* decree has been confirmed or otherwise disposed of in appeal, the original Court has no jurisdiction to deal with such applications even though they were made before the appeal was filed.

(3) The same principles will hold good even though another party to the suit it is that has filed the appeal, if the decree is an indivisible one.

(4) If, however, the decree can be treated as composed of different parts, and the portion appealed against can be said to be quite independent of those likely to be in controversy, by reason of the re-opening of the *exparte* decree so far as the defendant was concerned, the original Court will have jurisdiction to deal with the matter.— **20 T. L. J.,** *495.*

2. Costs of witnesses summoned but not examined cannot be charged against any party.

The competency of an appeal to treat the lower Court decision as wrong for the purpose of costs, while allowing the decision on the main point of dispute to stand, is doubted.— **21 T. L. J.,** *269.*

3. *Per Narayana Pillai, J.*—Generally speaking, it is undesirable for an Appellate Court to interfere with a finding of

fact especially where the issue is straight and simple or to differ from the trial Court which sees and hears the witnesses and the view of the trial Judge as to the credibility of the witnesses should not be put aside on a mere calculation of probabilities by the Appellate Court. No doubt the doctrine should not be made a fetish of and where the question does not depend upon witnesses' demeanour, but upon inference from facts the Appellate Court is as good a judge of facts as the trial Court. If all that the appellant can show amounts only to nicely balanced calculations which lead to nothing more than an equal possibility of the judgment on either the one side or the other, being right, he cannot succeed.—

21 T. L. J., *1082.*

4. At the present day, it is almost a truism to say that in all cases in which the evidence is conflicting, it is the duty of a Court of appeal to have great regard to the opinion formed by the Judge in whose presence the witnesses gave their evidence as to the degree of credit to be given to it,

If all that the appellant could show is a nicely balanced calculation which leads to the equal possibility of the judgment on either the one side or the other being right, the appellate Court should not interfere with the verdict of the trial Court.—

23 T. L. J., *790.*

5. In a civil case as opposed to a criminal trial, the appellate Court must be convinced before reversing a finding of fact by a lower Court that the finding is wrong, The burden of showing that the judgment appealed from is wrong lies upon the appellant. If all he can show is nicely balanced considerations which lead to the equal possibility of the judgment on either the one side or the other being right, the appellant does not succeed.— **24 T. L. J.,** *518.*

6. When an appeal attacks the exercise of discretion by the original Court in the matter of either allowing or withholding an injunction, before the appellate Court will interfere in favour of the appellant, he must satisfy such Court that this discretion has been improperly exercised,— **24 T. L. J.,** *696.*

7. See also Sec. 40.— **21 T. L. J.,** *1175.*

Section 77.

In a suit for partition the Court below first passed a preliminary decree reserving consideration of some items to a future stage. Subsequently, it passed a second preliminary decree also incomplete as it provided for supplemental proceedings for the determination of the rights of the parties in the items left over for future consideration. Finally it entered judgment containing such determination. In appeal against this judgment which constituted a supplemental preliminary decree, it was contended by the respondent that the appeal was not maintainable, on the ground that it was neither a preliminary nor a final decree :

Held.—The appeal was maintainable since in appropriate cases more preliminary decrees than one may be passed by a Court and the Civil Procedure Code did not prohibit such a course.—

22 T. L. J., *504.*

Section 78.

In redemption suits, none except the parties to the mortgage or their representatives in interest should be impleaded ordinarily, and as a rule no question of the title of a third party should be allowed to be raised. There is no distinction between suits for redemption and suits for sale as regards joinder of parties.

In the case, in the appeal preferred to the lower Appellate Court by a defendant, question of misjoinder raised by the first issue in the trial Court was dropped and

the Appellate Court was invited to consider the question of title irregularly raised.

The lower Appellate Court *suo motu* raised the question of misjoinder after it was purposely dropped by the party against whom it was decided by the original Court, set aside the decree of the trial Court and remanded the suit for decision *de novo*.

Under Section 78 of the Code, no decree shall be reversed and the case remanded for appeal on the ground of misjoinder, error or defect not affecting the merits of the case or the jurisdiction of the Court.

Where a party to a redemption suit joins issues on the question of title which does not legitimately arise for consideration and takes the chance of a decree in his favour, he cannot be permitted to veer round and nullify the effect of the pronouncement against him by a belated resort to the irregular way in which the issue was brought up for decision.—

20 T. L. J., *423.*

Ref.—20 T. L. J., 601.

Section 79.

1. *Per Narayana Pillai, J.*—A second appeal on a question of fact will not be precluded where the finding of fact is based on a misconception of what the evidence is or on evidence materially misread and misunderstood.—

20 T. L. J., *133.*

2. An inference from facts admitted or proved may under certain circumstances be a question of law, but is not necessarily a question of law, and where the conclusions arrived at by the Court below is one which hinges upon a balance of evidence produced in a case, the said conclusion is one of fact and not of law.—

20 T. L. J., *524.*

3. A point not raised in appeal, cannot be permitted to be raised in special appeal. New points even of law cannot be raised in second appeal, when they were not taken in appeal unless good grounds are shown for their omission.—

21 T. L. J., *255.*

4. In general, the High Court will not interfere with the concurrent findings of fact unless there has been a miscarriage of justice or that any principles of law or of procedure have been violated in the Courts below. The expression 'miscarriage of justice' means such departure from the rules which permeate all judicial procedure as to make that which happened not in the proper use of the word judicial procedure at all. An inadequate appreciation of the evidence in a case does not amount to a miscarriage of justice.

"The rule is a rule as to concurrent findings and not a rule as to concurrent reasons."

It has been the uniform and long standing practice of the High Court not to interfere with findings of fact arrived at concurrently by two Courts and this uniform and long standing practice cannot be interfered with unless it can be shown that the practice is manifestly unjust or contrary to law.— **21 T. L. J.,** *576.*

5. To uphold a concurrent finding of fact all that is necessary is that the Courts below should concurrently find on the question of fact and not that the reasonings of the Courts below should be concurrent. The Courts below might come to the same conclusion on a question of fact but by a different process of reasoning. None the less the conclusion is a concurrent finding of fact. In other words "the rule is a rule as to concurrent findings and not a rule as to concurrent reasons".— **22 T. L. J.,** *537.*

6. Granting that there was room for a different view were the case heard as a first appeal, it by no means followed that the course was so free as that in second appeal. Section 80 precluded a second

appeal except on the grounds specified in Section 79. An erroneous finding of fact was a different thing from an error or defect in procedure and there was no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact however gross or inexcusable the error may seem to be, provided the Appellate Court had before it evidence proper for its consideration in support of its finding.— **22 T. L. J.,** *898.*

7. See also Sec. 40.— **21 T. L. J.,** *1175.*

Section 82.

1. No appeal lies from an order dismissing on the objection of the defendant, the application of a person to be brought on record as a legal representative of the deceased plaintiff even when there is no rival claimant to be brought on the record as the legal representative.—

21 T. L. J., *1134.*

2. On an application to set aside a Court sale, the Court passed the following order. "The auction sale will be set aside provided the amount due to the decree-holder is deposited in Court within two weeks; failure whereof will cause the dismissal of the petition with costs to the decree-holder." Failing to satisfy the condition imposed by the lower Court, the appellant preferred the appeal against the order:

Held.—The order was not appealable as it was only a conditional order. The test in determining whether an order is final or conditional is whether on failure of the condition prescribed the rejection of the petition follows automatically or whether any further order has to be passed. In the former case it is final; in the latter it is conditional. In the case the petition did not stand dismissed automatically. A fresh order had to be passed.—

21 T. L. J., *1173.*

3. The decree in the case comprised 4 items of properties. When execution was commenced by the decree-holder, the second defendant petitioned to the Execution Court that defendants 1 to 3 had executed a sale deed to fourth defendant in respect of item No. 4 reciting payment of a portion of the decree amount and that item No. 4 should first be sold and only for the balance could the other items be proceeded against. This petition was allowed. However, at the time of the sale, either by a mistake or owing to ignorance of the prior order, items 1 to 3 were sold. The second defendant instead of applying to set aside the sale on the ground of irregularity preferred an appeal to the District Court against 'the order implied in allowing the bid of the properties' and filed along with the memorandum of appeal a copy of the auction list and the appeal was allowed and the sale set aside:

Held.—Under the provisions of Section 82 and Order XLII, which provide for appeals against orders, an Appellate Court will have jurisdiction to question an auction sale in execution proceedings only when an appeal is preferred against an order passed by the Court executing the decree either under Order XXI, Rule 86 or Rule 87. Of course any order falling under Section 40 has the force of a decree and is appealable in spite of the provisions of Section 82 or Order 42, but the act of accepting the bid by an auction purchaser (as complained against in the case) did not involve any of the questions contemplated by Section 40. The appeal before the District Court was not therefore competent and should have been dismissed.

On the contention that the appeal memorandum filed in the District Court might be treated as an application for cancellation of the sale:

Held.—Though a plaint filed in a Court may be treated as an application for execution in certain circumstances and *vice versa*, there was absolutely no rule of law empowering the Court to treat an appeal

memorandum presented before one Court as an original application made to a subordinate Court.— 22 T. L. J., *695*.

4. No appeal lies from an order deciding the question of the jurisdiction of the Court to entertain a suit.

The order of the District Judge dismissing the appeal would not fall under any of the appealable orders enumerated in Clauses (*a*) to (*h*) of Section 82. Even if it did under Clause (2), second appeals against orders of the first Appellate Court are not allowed. Order XLII enumerates 27 cases where appeals are permitted. The order in question did not fall under any one of them. There also, no provision is made for second appeals,— 23 T. L. J., *875*.

5. See also.—

Sec. 40.— 21 T. L. J., *1175*.
„ 48.— 23 T. L. J., *709*.
Or. XXXIX.— 46 T. L. R., *30* (=20 T. L. J., *667*).
Or. XLII R. 1.— 21 T. L. J., *562*.

Section 85.

See also Sec. 40.— 22 T. L. J., *1014*.
Or. I, R. 10.— 20 T. L. J., *117*.

Section 88.

When a suit was dismissed for want of succession certificate, but the plaintiff had failed to obtain it in the form that he wanted until after the dismissal of the suit :

Held.—The Court had jurisdiction to entertain an application in review on the ground of 'discovery of new and important evidence'. 21 T. L. J., *600*.

Section 89.

1. The revision petition was preferred from an order of the lower Court allowing the transposition of the revision petitioner who was originally the 6th defendant in the case and thereafter made the third plaintiff therein, back to his position in the array of defendants. After the passing of the above order and before the filing of the revision petition, the suit had been disposed of by the lower Court :

Held.—The order of the lower Court had become merged in the decree and could not be interfered with in revision. The matter would have been different in case the decree had been passed after the filing of the revision petition.— 20 T. L. J., *163*.

2. Where discretion is vested in subordinate Courts, the revisional powers of the High Court could be invoked only where the discretion is exercised capriciously or arbitrarily, or in a judicially unsound manner, or where the Judge concerned does not address himself to the facts set out in the affidavits and decides the matter independently of the same. The fact that the High Court would have arrived at a different conclusion in the matter would not justify interference. The test in such cases is 'has discretion been exercised after appreciation and consideration of such facts as are relevant and after application of the right principles to those facts.' If a discretion is exercised under these conditions and a certain conclusion is arrived at, that conclusion will be an exercise of discretion judicially sound.— 20 T. L. J., *171*.

3. In a suit for accounts a prior order had been passed directing the trial of certain issues only for purpose of passing a preliminary decree. Subsequently the Court directed the trial of certain other issues also as necessary for the purpose. But the trial of the latter case was really unnecessary for the purpose :

Held.—The subsequent order was revisable by the High Court, though the matter concerned was of an interlocutory nature.— 23 T. L. J., *969*.

4. See also Sec. 59.— 22 T. L. J., *13*.
Or. VI, R. 17.— 21 T. L. J., 994.
23 T. L. J., *1193*.
Or. XLV, R. 4.— 24 T. L. J., *606*.
Regn. VI of 1100, Sec. 14.— 24 T. L. J., *818*.

Section 97.

No doubt, the Court can permit the examination of witnesses on commission only in compliance with the provisions of the Civil Procedure Code. But the contention that examination on commission is the exclusive privilege of purdah ladies seems to be over restrictive.

Where the lower Court, with knowledge of the prevailing social practice, allowed the examination on commission of an old Hindu lady obviously belonging to a well-to-do family but with no pretensions to culture:

Held.—The High Court would not interfere in revision.— 23 T. L. J., *426*.

Section 100.

1. The conditions of exemption from arrest under Section 100 may be enumerated as follows:—"The party must first satisfy the Court, ordinarily by statements made on affidavit, that his attendance in the Court or tribunal is *bona fide* in relation to the matter pending before that Court or tribunal; secondly, that the Court or tribunal which he attends has jurisdiction in the matter pending before it, or the party believes in good faith that it has such jurisdiction; and thirdly, that he should be exempt from arrest during such period as is reasonably required in going to the tribunal from his ordinary place of residence in attending that tribunal and in returning from it to the ordinary place of residence whence he came."

Where there is no case or matter pending before the Court, Section 100 cannot be invoked to claim immunity from arrest.— 22 T. L. J., *724*.

2. The judgment-debtor was arrested in execution of the decree when he went to Court for producing stamp-sheets for getting a copy of the decree to enable him to file an appeal from the decree:

Held.—The arrest was illegal as it offended the provisions of Section 100, Clause (2), of the Code.

The judgment-debtor had not waived his objection to the legality of the arrest by applying for and getting mohsul to enable him to raise funds to meet the decree-debt, as there could be no waiver in the case of an illegal act.

Section 100, Clause (2), of the Code did not contemplate that any *judicial* matter should be pending before the tribunal but only *any* matter. The application for copy of the decree was a matter pending before a *tribunal* within the meaning of Section 100, Clause (2), of the Code and was not a matter in which the office alone was concerned.— 24 T. L. J., *564*.

Section 105.

1. The Court has no power under Order IX, Rule 9, to restore an execution application dismissed for default. The Rule applies only to suits and not to execution proceedings.

Section 105 of the Code does not make the procedure prescribed in Order IX, Rule 9, applicable to execution proceedings. The proceedings spoken of in Section 105 include original matters in the nature of suits, such as proceedings in probates, guardianships and do not include execution.— 20 T. L. J., *621*.

2. Where on the dismissal for default of an application to set aside an *ex parte* decree, the defendant filed a petition to restore the prior application and that petition also was likewise dismissed and the defendant appealed:

Held.—In the light of the provisions of Order IX and Section 105 of the Code, no appeal lay.— **24 T. L. J.**, *698*.

3. See also—

Regn. I of 1090.—**46 T. L. R.**, *208* (=**20 T. L. J.**, *1022*).

„ IX of 1090.— **22 T. L. J.**, *490*.

Section 108.

1. Where a party to the suit has drawn an amount from Court, in excess to what he was entitled to under the decree in the suit, he should not be allowed to retain a benefit which under the decree he could not claim.

Section 108 of the Civil Procedure Code does not exhaust the powers of the Court regarding restitution of benefits wrongfully obtained by parties to the suit. Even though an application for restitution does not strictly come within the purview of Section 108, the High Court may entertain an application under its inherent powers.— **20 T. L. J.**, *927*.

2. The Court cannot be powerless to give effect to its decrees. Under Section 108, the Court has the power to order such restitution to be made as is necessary to place the parties in the position they were in before the wrong decree or order was passed.

Such a power is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all the parties involved.

One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors, and when the expression *the act of the Court* is used, it does not mean merely the act of the primary Court or of any intermediate Court of appeal, but the act of the Court as a whole from the lower Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case.—

23 T. L. J., *848*.

3. In execution of the decree in the case, the property of the judgment-debtor was sold in Court auction and purchased by a stranger. The appellant who obtained a private sale of the property from the judgment-debtor subsequent to the Court auction, paid the decree-holder out of Court and applied under Order XXI, Rule 86 (1), to set aside the sale on deposit of 5 % commission only. The lower Court dismissed this application. It also allowed ratable distribution out of the sale amount in Court in favour of another decree-holder who had made due application therefor. The order refusing to set aside the sale was however reversed in appeal, and thereupon the appellant applied, by these proceedings for restitution of property from the auction purchaser. On the contention of the auction-purchaser, that before restitution was ordered, he should be refunded also the amount paid out to the applicant for ratable distribution:

Held.—The appellant occupied the same position as that of the judgment-debtor and was liable to all the equities in favour of the auction-purchaser because he had purchased the property after it was sold by Court, and after application for ratable distribution had been made and also paid the purchase money directly to the decree-holder, and not to the Court. He was therefore bound to make good to the auction-purchaser the money applied to the benefit of the judgment-debtor, in so far as another decree against the latter had been satisfied.— **24 T. L. J.**, *575*.

4. By the decree in O. S. No. 76 of 1091, the 15th defendant mortgagor's title was declared and the decree obtained by the plaintiff in this suit was set aside. The 15th defendant applied for re-delivery of the properties of which he had been dispossessed in the course of the execution proceedings in the case. The lower Court dismissed the application:

Held.—It may be that the provisions of Section 108 of the Code are not applicable

to the application in question inasmuch as the decree in the case has not been varied or reversed in appeal. But the powers of the Court to order restitution are not restricted to the cases contemplated by Section 108. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to circumstances towards all parties in the case. The Court has inherent power to see that its process is not abused. As it is perfectly clear that the 15th defendant was unjustly deprived of his property, the Court had inherent power to order restitution with due regard to the circumstances of the case in order to avoid hardship to him.— **24 T. L. J.,** *357.*

5. See also Sec. 40.— **21 T. L. J.,** *1175.*

Section 109.

1. It is not necessary to issue notice to the surety before ordering execution to proceed against him in a case where the surety has undertaken in the surety bond executed by him to produce the judgment-debtor before the Court on a particular date and has committed breach of that provision.— **20 T. L. J.,** *227.*

Ref.—22 T. L. J., 614.

2. A surety executed a bond undertaking to discharge the decree amount in case the defendant judgment-debtor's appeal in the District Court failed. The District Court allowed the appeal but the High Court reversed that decision. The point for decision is whether the surety is liable under the bond for the decree-amount as per High Court decree:

Held.—Though the bond in the case no doubt refers to the appeal filed in the District Court by the defendant, it does not specifically provide for the discharge of any liability by virtue of a decision passed by *that* Court but states generally that in the event of that appeal going against him the surety undertakes to satisfy that decree. The proceedings in second appeal being only a continuation of the proceedings of the first appellate Court there seems to be nothing unreasonable in holding that as there was no specific reference to a decision of the first defendant's appeal by that Court itself, the liability could not be determined with reference to that decision alone but would depend on the ultimate decision of the case. Hence the surety continues to be liable under the provisions of the bond inasmuch as the case was ultimately decided against him.—

48 T. L. R., *120*
(=21 T. L. J., *1024*).

3. The defendants in the suit who were ordered to furnish security failed to produce the same, and the lower Court thereupon ordered warrant to the surety. The surety in appeal contended that as no valid notice had been issued against him, he had not been guilty of any default.

Held.—The proviso to Section 109 requires that before ordering execution to proceed against the surety the Court shall give notice to the surety as it deems sufficient. The notice referred to in this proviso is not a notice requiring him to act in conformity with the surety bond but notice to show cause why execution should not proceed against him.

Sufficient opportunity should be given to the surety to comply with the terms of the bond before execution is ordered to proceed against the surety. The Court ought to have issued fresh notice to the surety before ordering execution to proceed against him.— **22 T. L. J.,** *331.*

4. Where during the pendency of a claim petition, in respect of certain buffaloes which had been attached in execution as belonging to the first defendant, one of the judgment-debtors, the respondent, was entrusted with the custody of the animals, on his executing a surety bond by which he undertook to produce them before Court, after the termination of the enquiry,

according to the directions of the Court, and in the event of failure to be liable for the entire decree amount, but he failed to produce them accordingly and steps were therefore ordered against him for realisation of the decree amount and the surety claimed exoneration on account of the contract becoming incapable of performance owing to the death of the buffaloes subsequently :

Held.—The surety having defaulted to produce the animals in Court either after the termination of the claim enquiry or after notice by Court to do so, he was responsible as a bailee in default, under Section 161 of the Indian Contract Act for the subsequent loss of the animals.

Though the surety bond provided for liability for the entire decree amount on forfeiture, the surety was liable only for the portion of the decree for which the first defendant was liable because the buffaloes had been attached as belonging to the first defendant and for the realisation of the amount due from the first defendant under the decree.—

22 T. L. J., *614.*

5. The surety, appellant in the suit, had undertaken to pay the decree amount in the event of the suit being decreed. The primary Court dismissed the suit, but in appeal the suit was allowed. On execution being directed against the surety, he contended that with the dismissal of the suit in the primary Court, his liability had ceased and that the subsequent reversal by the Appellate Court will not revive the surety's liability :

Held.—The proceedings in the Appellate Court are but a continuation of the proceedings in the trial Court; and the Court of appeal or revision when it comes to a finding of its own really finds what the trial Court should have found if it was acting correctly and legally as observed by the Madras High Court in 1917 Madras Weekly Notes at p. 321. The terms of security bond in the case are not limited in their operation to the decree of the trial Court.— **22 T. L. J.,** *770.*

6. The first defendant sued the plaintiff-Sirkar for cancellation of the order of confiscation of his cart and bulls passed by the Customs Officer. He also applied for and obtained an injunction restraining the Sirkar from disposing of the cart and bulls till disposal of the suit. In pursuance of this order, the second defendant executed a security bond in favour of the Court and took charge of the cart and bulls. The suit was eventually dismissed, but the second defendant did not produce the cart and bulls before the Court. Thereupon, the Court assigned the security bond to the plaintiff Sirkar, and the latter sued for recovering from the second defendant the amount of damages fixed in the security bond.

It was contended for the second defendant that the decree in the prior suit could have been executed against him without the necessity for a suit which was therefore excluded under the terms of the Civil Procedure Code :

Held.—Though under Section 109, it might be possible to recover the amount in the surety bond, this would at most be an enabling provision, and there was no bar against a suit on the bond under Section 40 of the Code.— **23 T. L. J.,** *391.*

7. Where a surety made himself liable for mesne profits in the event of the appellate decision being unfavourable to defendant but the Appellate Court passed judgment remanding the case for trial *de novo* and disposal according to law and ultimately the original Court decided against the defendant :

Held.—The surety was discharged by virtue of the appellate judgment. The decision of the subordinate Court after the order of remand cannot be said to be a continuation of the proceedings in the Appellate Court. Nor can it be said that the ultimate decision of the primary

Court was a decision passed under the direction of the superior Court.—

24 T. L. J., *273*.

8. See also—

Sec 40.— 22 T. L. J., *425*.

Or. XXI, R. 2.—48 T. L. R., *495* (= 22 T. L. J., *1252*).

Regn. VI of 1100. Art. 166. } 46 T. L. R., *122* (=20 T. L. J., *230*).

Vol. VI, P. 1522.— 45 T. L. R., *477* (=20 T. L. J., *505*).

Section 112.

1. The Court has no jurisdiction to extend time when it has ordered that the petition will stand dismissed, if the petitioner fails to deposit money in Court within a fixed period.— 23 T. L. J., *923*.

2. When a Court by its decree orders a party to make a payment or take certain action within a specified time and provides that certain detrimental consequences shall follow in the event of non-compliance, the Court itself has no jurisdiction to extend the time save on an application for review. Such a decree is a final decree and cannot be deemed to be an interlocutory or preliminary decree, as the Court has no judicial function to perform in respect of the complete disposal of the suit.

Section 112 of the Procedure Code does not apply to a period of time fixed by the decree itself.— 20 T. L, J., *419*.

Section 115.

1. The powers under Section 115 are uncontrolled by the other provisions of the Code. Irrespective of such provisions, the Court has to decide with reference to the facts of the case whether the exercise of such powers is necessary in the interests of justice and whether an omission to do so would result in an abuse of legal process. These powers have to be exercised sparingly and could not with propriety be invoked to do anything which would be contrary to law or to help any party to evade the performance of anything required of him by law. "It is certainly desirable that the provisions of the Section which gives inherent powers to the Court should be applied with the greatest caution. If a party is absent from the Court when he ought to have been present and cannot give any satisfactory reason for his absence, then there can be no particular ground for the Court to exercise its inherent powers in his favour so as to interfere with the rights of third parties, such as an auction-purchaser, which have come into existence owing to his default." No order *ex debito justitiae* can be held to be permissible in cases where the party is clearly guilty of laches. The power under Section 115 being of an exceptional and discretionary nature, no one can as of right claim the exercise of such powers. The Court has to decide whether the facts in a particular case are such as to justify the exercise of such powers. Of course, the party can move the Court for a reconsideration of the question. But to say that the party is entitled as of right to seek such powers being exercised does not appear to be competent in the nature of the powers themselves.

Where a plaint is rejected under Order VII, Rule 11, it cannot be restored to the file by an application for restoration. The appropriate remedy is an application for review (under Order XLV, Rule 1,) of the Order under Rule 11 which is a decree.—

20 T. L. J., *59*.

2. The decree in the case directed recovery of properties from the *defendants* with mesne profits. The plaint relief was only for recovery of mesne profits in regard to items 1 to 3 from such of the defendants as were in possession of the same. The 9th defendant had been impleaded as in possession of item 4. The decree was passed on 16-12-1102. On application for review, filed by the 9th defendant on 12-1-1104, the Court below

rectified the decree so far as it made the 9th defendant liable for mesne profits from items 1 to 3. On the contention of the plaintiff-appellant that the review application of the 9th defendant was not maintainable as having been presented out of time:

Held.—Though as one for review the application of the 9th defendant was out of time in view of the express provisions of Article 159 of the Limitation Regulation of 1100, the order appealed against was supportable as proper, treated as one passed in exercise of the inherent jurisdiction of the Court. The lower Court acted rightly in rectifying the mistake it had committed.

The inherent powers under Section 115, C. P. C. are exercisable in appropriate cases irrespective of the existence or otherwise of other remedies under the Code.— **21 T. L. J.,** *159.*

3. The junior member may claim to be representative of the party inasmuch as the property proceeded against had passed to her by operation of law and by partition among the members of the family,

On the contention that as no specific provision of the Code provided for refund the jurisdiction that was invoked was the inherent jurisdiction of the Court, and that orders passed on that inherent jurisdiction were not appealable:

Held.—An appeal would not lie as an appeal from an order, but where the order passed fulfilled the definition of a decree under the Civil Procedure Code, there was no reason why an appeal should not lie as an appeal from a decree.—

21 T. L. J., *193.*

4. The Court has inherent powers to consolidate suits in appropriate cases. The power to consolidate is inherent in the Court where the suits are pending—a power which even the High Court cannot ask that Court to call into play.

Similarly it is imperative that no Court shall proceed with the trial of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties. (See Section 9).— **21 T. L. J.,** *122.*

5. Appeals wherein the petitions to implead the representatives of a deceased respondent were dismissed must fail as being improperly constituted. In such cases there would be a danger if the appeals were heard as against the surviving decree-holders in that there would be two contradictory decisions in the same suit and it would be difficult to give effect to both.

The inherent powers of the High Court should not be used to save parties from the result of their own laches. The extraordinary powers of the Court should be exercised with the greatest care and only in cases where otherwise justice would not be done or where there would be an abuse of the process of the Court.—

48 T. L. R., *128*
(=22 T. L. J., *1061).*

6. In spite of the prayer in the plaint that the decree in the case should be passed in favour of the second plaintiff, the Court by oversight gave a decree in favour of the first plaintiff, the second plaintiff did not seek to rectify the mistake when the case went up to the first and second Appellate Court, but adopted the decree as correct. On the basis of that final decree in first plaintiff's name, the creditors of the first plaintiff placed an attachment on the decree. Thereafter, the second plaintiff moved the High Court to alter the decree as one in second plaintiff's favour:

Held.—Though under Sections 115 and 116, errors that have crept into the judgment by oversight could be rectified in exercise of the inherent powers of the Court, still the amendment sought for in the case did not fall within the provisions of the above Sections. Even assuming

that the Sections did apply, the amendment could not be allowed inasmuch as the vested interests of third parties would be affected thereby.—

49 T. L. R., *478*
(=23 T. L. J., *814*).

7. The plaint in O. S. No. 126 of 1105 was rejected on 21-2-1105 for non-payment of the deficit Court fee. The plaintiff-revision-petitioner applied for restoration of the suit and the Court on 7-7-1105 ordered the petitioner to pay the deficit Court fee as a condition of restoring the suit to file. The plaintiff paid the Court fee and the suit was restored to file. The High Court in revision held that the trial Court had no jurisdiction to restore the suit. The plaintiff petitioner therefore applied for refund of the deficit amount paid by him. The lower Court rejected the application.

Held.—One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors. In exceptional cases where it is necessary for the ends of justice or to prevent the abuse of process of the Court, the High Court should apply the inherent powers of the Court under Section 115 of the Code. Court fees paid under the orders of a Court which had no jurisdiction to order the payment ought to be refunded. The result of holding to the contrary would be to permit the act of the Court to injure the plaintiff.—

24 T. L. J., *499*.

8. See also.—

Sec. 9.— 20 T. L. J., *680*.
„ 108.— 20 T. L. J., *927*.
24 T. L. J., *357*.
Or. VI, R. 17.— 20 T. L. J., *137*.
Or. IX, R. 13.— 20 T. L. J., *725*.
21 T. L. J., *331*.
47 T. L. R., *155*
(= 21 T. L. J., *208*).
47 T. L. R., *321*
(=21 T. L. J., *754*).

Section 116.

1. On the question whether amendment can be ordered where the errors in the judgment or decree has been caused by an accidental slip or omission made not by the presiding Officer who wrote the judgment or the Court Officer who prepared the decree but by the person who drafted the plaint for presentation to the Court :

Held.—Such a jurisdiction existed and amendment could be ordered under Section 116 if it was made out that the error to be rectified was in the nature contemplated under that Section.—

21 T. L. J., *261*.

2. In execution of a decree for recovery of leased property, the plaintiff applied to amend the description of the property by inserting the correct survey number and extent, alleging that owing to an oversight the survey number and extent were wrongly entered in the plaint and that the mistake was continued in the decree. The defendants did not object to the amendment, but some others who were not parties to the decree, did :

Hetd.—The executing Court had the power to make the amendment. Persons who were not parties to the suit, had no right to be heard on the question of the amendment.— 23 T. L. J., *739*.

3. See also.—

Or. I, R. 10.— 20 T. L. J., *117*.
„ VI, R. 17.— 20 T. L. J., *137*.

Section 117.

If an appeal is presented against a person who is dead at the time of presentation, the Court may permit the cause-title to be amended and the legal representative substituted, if it is satisfied that there was reason to excuse the delay in making the application.—

23 T. L. J., *973*.

Order I, Rule 1.

1. Two debtors jointly liable under a chitty transaction, applied on a single petition to be adjudicated insolvent:

Held.—The provisions of Order I, Rule 1, were applicable and the only test in such cases is to see whether the right to relief arises out of the same transaction or not. In the present case, the right to relief arises out of the same transaction or at any rate out of the same series of transaction.— **20 T. L. J.,** *921.*

2. One of two joint promisees can institute a suit on the contract making his co-promisee a defendant only if the latter, after notice, refuses to become a plaintiff.

A joint decree may be passed in favour of two joint promisees even though one of them is a defendant.— **21 T. L. J.,** *1128.*

Order I, Rule 9.

The language of Order I, Rule 9, is imperative and forbids the dismissal of the suit even where the non-joinder is deliberate.

The powers of the Court to implead parties are very wide under Order I, Rule 10, and such powers may be exercised even in revision in appropriate cases.—

22 T. L. J., *571.*

Order I, Rule 10.

1. In execution of a decree for partition, disputes arose between the parties, and one of the parties appealed against an order passed therein by the Munsiff, and in the appeal memorandum the appellant entered the names of the original plaintiffs 1 and 2 alone who were both dead on that day as parties-respondents. On discovery of the mistake at a later date he applied for amending the cause-title of the appeal memorandum by inserting the names of the heirs of the plaintiffs as respondents by way of substitution, by invoking the aid of the provisions of the Civil Procedure Code, Order I, Rule 10, read with Sections 85 (2) and 116 :

Held.—It is not proper for the Appellate Court to direct a substitution of parties or the impleading of additional parties on record, in cases like the present. The view taken in 36 T. L. R., 117 does not call for reconsideration.

To the contention that the appeal was but a continuation of the proceedings in the original Court and that the necessary corrections could be made in the cause-title under the provisions of the Civil Procedure Code :

Held.—This right appears to be fallacious, as unless the proceedings in appeal have been initiated by an appropriate petition or appeal memorandum, the Appellate Court cannot be considered to have *seisin* in the matter and unless such *seisin* is had, the Appellate Court cannot exercise any of the powers conferred upon it as such under law.

In cases where the real party intended to be impleaded was the person whose name is now sought to be entered in the appeal memorandum, the description in the original appeal memorandum being a mistaken one, it is open to the appellant to seek the aid of the Court to rectify such slip or error and to amend the cause-title under Section 116 of the Code. The same also applies to cases where the Court on presentation of the appeal found out on a comparison of the cause-title in the appeal memorandum with that in the decree appealed against, that a deceased man alone had been impleaded as a respondent at the time of presentation and returned the appeal memorandum for the curing of the defect.

Held further.—The right of substitution or addition of parties could be exercised only when the plaint standing as such, could be treated as a valid one. A plaint with a deceased man alone entered as the defendant would be virtually one without

any defendant. In such a case, the provisions relating to substitution or addition of parties are not applicable.—

20 T. L. J., *118.*

Not. fol.—23 T. L. J., 973.

2. Order I, Rule 10, sets out considerations that should weigh with the Court in the matter of joinder of parties. The admissibility or otherwise of an application by an intervenor to be brought on record has to be determined with respect to the provisions of the Code on the subject. The Court is enabled, under Order I, Rule 10, sub-rule 2, that the name of any person whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit to be added. In such cases, the Court has to examine whether there is anything which cannot be determined owing to the absence of the applicant or whether such applicant will be prejudiced by his not being brought on the record.

Normally the plaintiff as the master of the litigation has the right to choose whom to litigate and the matters upon which an adjudication has to be made. Of course, if in the nature of the pleadings, the presence of any person on record is necessary, for a complete and effectual decision of the matters involved, the Court has the right to order such person being brought on the record, even though the plaintiff does not agree thereto. The introduction of parties into a suit in cases where their presence is not essential for the determination of the questions arising on the pleadings is not permissible. This is all the more not allowable in cases where the plaintiff objects to such introduction. The principles set forth above have to be taken to control the observations made in 9 T. L. R., 60, as these considerations are made imperative by the statutory provisions on the subject.—

20 T. L. J., *520.*

Ref.—48 T. L. R., 34
(=22 T. L. J., 649).

3. In a mortgage suit where the relief claimed is the sale of the porperties mortgaged, none but the parties to the transaction and those claiming under them should as a rule be impleaded, It is irregular and confusing to join as parties in a suit to enforce a mortgage persons who set up adverse claim to the mortgaged properties. This ruling of the Privy Council has been followed in Travancore as settling the law on the question of impleading in mortgage suit except in exceptional circumstances.—

20 T. L. J., *601.*

4. The plaintiff claimed plaint property as having come to him in a family partition. The first defendant, another member of the family, also got properties at the same time. Subsequently it was discovered that there was an excess in the measurements of the registry in favour of the family, and the plaintiff applied to have this registered in his name. The Sirkar registered the excess land as Puduval in the name of the defendant who also had applied. In a suit to recover the excess from the first defendant, plaintiff contended that the suit amounted to one for cancellation of patta and the Sirkar was a necessary party:

Held.—The Sirkar is only a desirable party and not a necessary party.

It may be desirable to make the Sirkar a party in the interests of the defendants as the latter may then expect that the Sirkar as their vendor will undertake to prove its title to deal with the land or they may at least have the advantage that, in the event of its being found that the Sirkar had no title, this finding would be binding on the Sirkar in a suit filed to recover the purchase-money paid by the first defendant. But it is not the duty of the Court to intervene in order to secure this advantage to the defendants.

[The Sirkar has the same rights in disposing of its lands as other owners and the Courts will not consider the propriety of its actions in selling or giving a particular plot to one of several persons who wish to buy it, though in certain situations of trust it may be held that the registry of land to A may enure to the benefit of B. Where however the Sirkar sells land which in fact has already been alienated, such a sale can have no more legal effect than a similar sale by a private party, and it is not necessary for the previous purchaser to seek to set the subsequent registry aside.]—
20 T. L. J., *609*.

5. Ordinarily in the case of suits on mortgages, leases, &c., only the parties to the transaction need be on the record. In a mortgage suit, the subject of controversy is only the jural relation between the mortgagor and the mortgagee. The title to the property mortgaged is generally outside the ambit of such controversy, since it is implied by virtue of the reciprocal estoppel binding on the parties to the transaction. Neither of them is free to dispute the title of the other. Even the true owner will be compelled to surrender in a redemption suit if he has got entrapped in such estoppel.

It is irregular and confusing to join as parties to a suit to enforce a mortgage persons who set up adverse claims to the mortgaged properties. One exception to the general rule is where a stranger to the mortgage transaction when impleaded in a mortgage suit raises no objection or drops his objections to being entangled in such a concern and takes the chance of a decree in his favour, but on finding the verdict is against him asks the Court to remove him from the party array so as to render the pronouncement against him nugatory. The question of irregular impleading does not affect the jurisdiction of the Court, but only constitutes a breach of the rules regarding the frame of the suit.

The expression "questions involved in the suit" (Order I, Rule 10) does not include any claim which can possibly be put forward by any body to the property involved in the suit. It was never intended to apply where the person to be added as defendant is a person against whom the plaintiff has no claim and does not wish to prosecute any. A plaintiff should not be compelled to fight a case which he did not bring before the Court.

The wide discretion conferred on Courts by Order I, Rule 10, is subject to well-recognised principles. In the first place, parties cannot be added so as to alter the nature of the suit. Secondly, no person can be added as a party unless he sought to have been joined and has not been so joined or without his presence the suit cannot be completely decided. Thirdly, parties should not be added in a suit for rent or other reliefs based on a contract so as to transform it into a complex title suit, though questions of title may arise incidentally for investigation. Fourthly, it is an elementary proposition that, if the plaintiff relies upon a transaction in support of his title, the defendant is entitled to impeach its validity by way of defence. The defendant in such circumstances need not be allowed to bring in a a new ally to fight the plaintiff.

'Proper parties' are those whose presence renders the decree more effectual.

In limine observed: Issue as to whether a party should be impleaded is irregular, since the question of non-joinder or misjoinder should be disposed of before the issues are framed.—Rule 66 of the Civil Courts' Guide.— 20 T. L. J., *612*.

Ref.—48 T. L. R., 34
(=22 T. L. J., 649).
22 T. L. J., 1154.

6. In a case where the senior member of a Tarwad has been impleaded (merely) because his presence was necessary *as such* in a suit on behalf of the Tarwad, and it could not be said that any relief was

claimed against him, upon his death nothing could be deemed to have passed on to his legal representatives. The presence of the next senior members of the Tarwad was, if at all, necessary for enabling the Court effectively and completely adjudicate upon and settle the questions involved in the suit.

The provision for abatement contained in Section 352 of the Code of 1065 and Order XXII, Rule 4, of the Code of 1100 have to be applied only in cases where any relief is sought for against a particular defendant.

If a party is placed on record purely as a *pro forma* party the rules relating to abatement contained in the Code could not with propriety be applied.

The proper course would be to direct the impleading of the representative under the provision of Section 28 of the Code of 1065, corresponding to Order I, Rule 10, of the Code of 1100. The time limit prescribed for impleading the legal representative of a deceased defendant under Article 147 of the Limitation Regulation of 1062, corresponding to Article 162 of the Regulation of 1100, would not apply. —

20 T. L. J., *1242.*

7. Jurisdiction is given to the Court under Order I, Rule 10, to transpose a defendant as plaintiff. But such a course would not be permitted if the result would be to change the nature of the suit. If the defendant, whom it is proposed to make a plaintiff claim under title adverse to the plaintiff already on the record then a suit with him as plaintiff would be a suit of a different nature.

Where therefore the second plaintiff and second defendant who were impleaded as legal representatives on the death of the first plaintiff claimed under the same Udampadi, but the only difference between them was that neither trusted the other:

Held.—The transportation of the second defendant as an additional plaintiff could not be objected to as improper.—

21 T. L. J., *1094.*

8. In a suit by the plaintiff, vendor, for recovery of balance sale consideration reserved with the defendant, vendee, to be paid to the plaintiff by a certain date, the defendant pleaded a set off of the amount due under a decree on a prior hypothecation bond not mentioned in the sale deed and applied to implead the hypothecatee, decree-holder, as an additional party to the suit. The sale deed contained a covenant against encumbrances and set apart certain properties as security therefor and it was not the defendant's case that the security so provided was insufficient. The defendant had not also sought to implead the plaintiff in the prior suit on the hypothecation bond. The plaintiff denied the hypothecatee's claim and resisted his impleading:

Held.—(1) The prior hypothecatee is not a necessary party to the suit for purchase money wherein the plaintiff does not seek any relief against him and he need not therefore be impleaded.

(2) It is a well known principle that no plaintiff shall be forced to fight a party with whom he does not want to enter into a conflict.

No doubt, the powers of the Court under Order I, Rule 10, though wide are not limitless.

(3) According to Section 55 (5) (*b*) of the Transfer of Property Act a vendee may retain out of the purchase money the amount of any incumbrance on the property existing at the date of sale only in the absence of a contract to the contrary. A covenant in a sale deed whereby the vendor agrees to answer for all incumbrances known and unknown is such a contract.— **48 T. L. R.,** *84* (=**22 T. L. J.,** *649*).

9. Normally no plaintiff should be forced to fight a person with whom he

wishes to be at peace. Order I, Rule 10, is intended to apply only where either one or other of the parties makes an application to the Court or the Court itself is of opinion that some other persons ought to be brought into the proceedings, in order to enable the Court effectively and completely to adjudicate upon and settle all questions involved in the suit.

(The decision of the case depended, a good deal, on the construction of a document of 1070 and it was found that the addition of other persons as parties to the suit would not facilitate the interpretation of that document.).—

22 T. L. J., *791.*

10. The plaintiff, revision petitioner prayed for revision of the lower Court's order impleading the third defendant as additional plaintiff in the suit. On a preliminary objection being raised to the effect that the lower Court's order being one appealable under Order XLII, Rule 1. (1), the revision petition is incompetent and that the remedy of the petitioner is by way of appeal to the District Court :

Held.—There is no express provision regarding the transpositions of parties from one side to another, but this power has always been exercised by Courts under Order I, Rule 10 (2). If, therefore, the order must be regarded as one passed under Order I, Rule 10 (2), an appeal against it lay under Order XLII, Rule 1 (1).

Interference in revision would not be justified in these circumstances.—

22 T. L. J., *905.*

11. The provisions of Order I, Rule 10, do not warrant the impleading of third parties claiming adversely to the parties to the suit as instituted. Under Order I, Rule 10, only such persons can be impleaded whose presence on the record is necessary to enable the Court to decide questions arising between the parties to the suit and not all questions that may arise in future.— **22 T. L. J.,** *1898.*

12. If one of several defendants is proved to have died before the institution of the suit, no question of abatement arises. In such circumstances, the Court may proceed against the other defendant or defendants alone if the suit is maintainable in that form and if the Court thinks that the legal representatives of the deceased defendant are necessary parties, it may proceed under Order I, Rule 10, to implead them after giving leave to the plaintiff to amend the plaint if such leave be applied for.— **23 T. L. J.,** *410.*

13. See also.—

Sec. 65.— **46 T. L. R.,** *404* (=**20 T. L. J.,** *1104*).
Or. I, R. 9.— **22 T. L. J.,** *571.*
„ VI, R. 17.— **20 T. L. J.,** *187.*
Regn. I of 1092.—**47 T. L. R.,** *368* (=**21 T. L. J.,** *1314*),
„ III of 1094 Sec. 28 —**23 T. L. J.,** *1231.*

Order I, Rule 13.

Where, in a suit for renewal and arrears of Michavarom in respect of an alleged kanom demise, the defendant denied the jenmom rights of the plaintiff but the written statement did not take any objections as to the non-joinder of the Sirkar nor was the point taken in the appeal memorandum filed by the defendants before the lower Appellate Court :

Held.—The objection as to non-joinder was not taken at the earliest opportunity and must therefore be deemed to have been waived. The fact that on the date of the written statement and on the presentation of the appeal before the District Court there was the ruling in 11 T. L. J., 87 which decided that in cases like the present the Sirkar was neither a necessary nor a desirable party and the fact that at the time of the argument in the District Court a later ruling in C. R. P. 468 of 1101 (3 T. L. T., 828=19 T. L. J., 153) held that in the particular circumstances of that case the Sirkar was a desirable party, cannot

make any difference inasmuch as the provisions of Order I, Rule 13, appear to be mandatory. In the circumstances, the objection as to non-joinder was not one which arose subsequently within the meaning of Order I, Rule 13.

Of course the Court could *suo moto* or on the application of a party at any stage of the suit add any person as a party to the suit whose presence the Court thought necessary for the proper disposal of the suit. But this did not appear to be such a case.— 22 T. L. J., *776.*

Order II, Rule 2.

1. The plaintiff in the case filed O. S. No. 1002 of 1092, in effect, for declaration that he was the real beneficiary under a mortgage executed by first defendant in favour of second defendant and with a prayer in the nature of a claim for damages. He obtained the declaration prayed for and then instituted this suit O. S. No. 591 of 1103, for recovery of the properties with mesne profits or in the alternative, of the mortgage amount with interest on the allegation (accepted by the Court) that there was an understanding to pay the mortgage amount or give possession after the first defendant got delivery of the properties in execution. This suit was filed after 12 years of the mortgage but within 12 years of the date of first defendant's getting possession. On the pleas raised by the defence that the suit was barred (1) under Order II Rule 2 of the Code and (2) by limitation:

Held.—The present suit being founded on the declaration granted in the former suit, was quite different from the former one, and the causes of action in both cases were essentially different. Order II, Rule 2 of the Code merely required that every suit should include the whole of the claim arising from the same cause of action and not that every suit shall include every cause of action or every claim which the plaintiff had against the defendant. There was therefore no bar under Order II, Rule 2.

Seeing that the plaintiff did not get possession ordinarily there will be only 12 years' period for the plaintiff to sue for the mortgage amount. In the case the plaintiff's case is (and that has been accepted by the Court) that the understanding was that the assignment was to be executed and the properties given to the plaintiff on first defendant getting possession of them through the execution Court. That being so the Article of the Limitation Regulation applicable for recovering possession of the properties is 123 which provides a period of 12 years from the time when the mortgagor's right to possession determines. It it is significant that the starting point is not specified as the date of the mortgage deed and this circumstance is indicative of the intention of the Legislature. The Article has been so interpreted as to mean that a mortgagee is entitled to possession as against the mortgagor immediately upon the execution of the mortgage, *in the absence of agreement to the contrary.* If therefore the mortgagor has contracted to hold possession till a particular date or the happening of a specified contingency, then the time will begin to run only from that date or time of the contingency happening. And since the first defendant was out of possession at the date of the mortgage and contracted to give possession to the plaintiff when he recovered the property in execution, the suit filed within 12 years of the date of recovery was not barred by limitation.

The plaintiff not having got possession of the mortgaged property, the time within which he should sue for the money is 12 years. The relevant Article of the Limitation Regulation applicable is 119 which says that 12 years' period starts from the time when the money sued for becomes due. The first defendant within the reasonable time of the recovery of the properties should have surrendered them

to the plaintiff and as he failed to do so, he rendered himself liable to pay the plaintiff the mortgage amount, on failure to do which the cause of action arose. Looked at from this standpoint, the plaintiff having come in within the statutory period, his claim for the mortgage money is within time.— **24 T. L. J.,** *17.*

2. A relief, claimed in the alternative in the plaint was beyond the pecuniary jurisdiction of the trial Court on the basis only of the erroneous valuation given therefor by the plaintiff. The plaintiff subsequently withdrew the relief with permission of Court. It was contended in appeal from the decree ultimately passed allowing the suit that the Court was not competent to allow the withdrawal inasmuch as to start with, it had no jurisdiction over the suit:

Held.—The contention as to competency was not sustainable. The plaintiff was in the circumstances entitled to amend the plaint and if an amendment of the kind was made, the suit would be within the jurisdiction of the Court. The powers of a Court in the matter of amendment of pleadings are wide so long as the nature of the suit is not altered. And all that had been substantially done in the case was an amendment of the plaint by relinquishment of one of the reliefs.

Per Raman Tampi, J.—Even if the relief was beyond the pecuniary jurisdiction of the Court so that the Court had no jurisdiction to try the suit, still under Sub-clause 2 of Order II, Rule 2, it is open to the plaintiff to relinquish any portion of the relief so as to bring the suit within the jurisdiction of the Court, but in a future suit this relinquished claim cannot be agitated. There is nothing in Order II, Rule 2, which should hinder any person in abandoning any portion of his claim. It says the plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. The language of the Rule is clear and reading into it what is not obviously contemplated by it (*viz.*, that the relinquishment ought to be made before the filing of the plaint and not after the filing of it in Court) is unwarranted. The proper view to take is that the Court is not entertaining the suit with the abandoned claim, but that the effect of an amendment of the plaint by abandoning a portion of the claim, is in substance, as if the suit had never been commenced in respect of such claim.

Where an instrument of transfer provided for payment out by the transferee of the maintenance expenses of the transferor during his life-time and it could be inferred from its terms that the payment was to be from the income of the property:

Held.—The transferor was entitled to a charge on the property for the maintenance amount provided for and that any one claiming under the transferor was bound by such charge.—

24 T. L. J., *395.*

3. See also Sec. 10— **23 T. L. J.,** *1092.*

Order III, Rule 1.

The Civil Procedure Code itself provides that in certain matters the party himself has to apply personally. The most familiar example is an application *in forma pauperis.* The law says that in such matters the party has to appear in person. Except in such matters where express provision is made for a personal application by the party himself, Order III, Rule 1, gives ample powers to the Vakil to make applications to the Court on behalf of the party. An application to set aside an *exparte* decree need be signed by the Vakil alone, duly authorised to act. There is no rule which enjoins the application to be signed by the party as well.— **20 T. L. J.,** *298.*

Order IV, Rule 1.

See Regn. V of 1067,
Sec. 233.— **46 T. L. R.,** *127*
(=20 T. L. J., *247*).

Order V, Rule 15.

1. The conditions laid down in Order V, Rule 15, have to be fulfilled before a service is deemed effective under the said Rule. In the first place, the Rule is applicable only where the defendant cannot be found. A perfunctory enquiry on the part of the serving officer will not do. An honest endeavour should be made to effect a personal service of the summons. Secondly, the Rule can be resorted to only in the absence of an agent empowered to accept service of summons. Thirdly, a service would be futile unless made on an adult male member of the defendant's family. Fourthly, such member of the family should be one residing with the defendant. These requirements should be strictly carried out.— **20 T. L. J.,** *509*.

2. Under Order V, Rule 15, when the defendant cannot be found and has no agent empowered to accept service of summons on his behalf, service may be made on any *adult* male member of the family of the defendant who is residing with him, excepting a servant. The Court in the matter of service of a summons does not take into account the female members of a defendant's family, and does not rely upon the presumption that they will take steps to inform the defendant of what takes place in his absence. So the provision in the Section limiting the nature of the persons empowered to accept summons vicariously to adult males, is based upon reasons of policy and has to be respected.—

23 T. L. J., *877*.

Order V, Rule 19.

The summons in the case was served by affixture. The process peon swore an affidavit stating the circumstances under which the service by affixture was substituted for personal service but the Court before proceeding to judgment *ex parte* did not make a declaration that the summons had been properly served as required by Order V, Rule 19:

Held.—It would have been better if the Court had complied with the provisions of the Rule completely and the omission was only an irregularity which did not vitiate the judgment.

(As the irregularity had not in any way prejudiced the defendant, the *ex parte* decree was not set aside.).—

22 T. L. J., *640*.

Order V, Rule 24.

In enacting Rule 24, Order V, the Legislature has effected a remarkable change in that the new Rule deliberately omitted the words—"or service may be effected in such other manner as the Court may determine"—which found a place in Section 84 of the old Procedure Code. The Rule as it stands leaves the Court no discretion in the matter. Under the Rule, the Court is bound to send the summons by the post.— **20 T. L. J.,** *300*.

Order VI, Rule 4.

When a party desires to press a claim to relief upon the ground of fraud; the fraud must be pleaded and particulars of fraud alleged must be specifically set out. This rule is made obligatory by Order VI, Rule 4 of the Code. The Court is then bound to pin down the party to the particular aspect of fraud he has presented because it is a well known rule of law that a charge of fraud must be substantially proved as laid and that when one kind of fraud is charged another kind cannot, on failure of proof, be substituted for it.

In order to sustain a promise to pay a barred debt it is *not* essential that the party making the promise *should know full*

well that he was entering into an agreement to pay a debt which he was not legally bound to pay and that he was renouncing the benefit of a provision of law made for his protection. For under Section 25 of the Indian Contract Act, it is the debt and not a sum of money in consideration of the barred debt that the promisor should refer to and there is nothing whatever in the Section to indicate that the promisor should do more than promise to pay a debt of which the creditor might have enforced payment but for the law of limitation of suits. The words are not "a promise to pay a sum of money in consideration of a debt" nor does the Section refer to the knowledge of the promisor.

Though it has been held that if a debtor signed an acknowledgment through inadvertence, that did not amount to an unconditional acknowledgment from which a promise to pay could be inferred, still it should be noted that there is a distinction between an acknowledgment and an express promise. It is one thing whether an acknowledgment made within the period of limitation is sufficient and quite another whether an acknowledgment made even after the period of limitation had expired is sufficient to form the basis for an action on the ground that it implied a promise to pay.— **24 T. L. J.,** *509.*

Order VI, Rule 5.

1. It was contended for the appellant that the lower Court did not exercise its discretion properly when it rejected the appellant's prayer for permission to file an additional written statement.

In overruling the appellant's contention, it was held that the following observations in 5 Moore's Indian Appeals, P. 290, were applicable to the case.—"The leave to file a supplemental answer is stated to have been given under Section 5, Regulation IV of 1793, which is certainly in very general terms; but it is much to be regretted if the practice of the Court be such as to warrant what has here taken place; if a defendant, after having put in an answer stating facts which are within his own knowledge, or which he has the full means of ascertaining, may afterwards, on finding that he has no defence as the case stands, do what the defendant here has been permitted to do; if he is at liberty, without any affidavit of the circumstances, without any explanation of the nature of the error which has been committed, or in what it has originated, or what is the correction to be made, or what the omission to be supplied, to make a totally new case, and state facts at direct variance with the statement in the first answer, and of course completely change the issue in the cause".—

49 T. L. R., *256*
(=**23 T. L. J.,** *1250*).

2. See also Or. VII, R. 11.—
21 T. L. J., *250.*

Order VI, Rule 7.

The provisions of Order VI, Rule 7, have to be liberally construed and applied by Courts. An amendment of the pleadings can be allowed at any stage of the proceedings when the sole result of the refusal would be to drive the plaintiff to a separate suit, to avoid which is one of the principal objects of the much wider rule as to amendment which has been introduced in the new Civil Procedure Code.—
20 T. L. J., *91.*

Order VI, Rule 15.

See Regn. I of 1074, Sec. 185.—
22 T. L. J., *19.*

Order VI, Rule 16.

See Or. VI, Rule 17.— **20 T. L. J.,** *137.*

Order VI, Rule 17.

1. A plaint in a suit for redemption of a mortgage was allowed to be amended so as to include an alternative prayer for compelling the defendant to accept a renewal in case the mortgage sued on was found to be irredeemable. The question arose whether such amendment could be properly allowed :

Held.—Such amendment was allowable. The frame of the suit after amendment would only amount to the claim of alternative relief upon the same cause of action. It is a well-recognised rule that the Courts ought to be very liberal in granting amendments, though it has to be remembered that no party can without leave of Court be allowed to amend his pleadings. Wide and comprehensive powers have been allowed under this rule to the Court, empowering it to grant leave to amend the pleadings at any stage, whenever it is considered necessary. It is worthy of note that the wording of Section 49 of the Code of 1065 has been amended by the omission of the Proviso that amendments should not be allowed to convert a suit of one character into one of another and inconsistent character, At present, the Court is empowered to allow either party to alter or amend his pleadings in such manner and as it thinks just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

Where the lower Court has exercised a discretion vested in it, the High Court would not interefere in revision unless the exercise of such discretion has been perverse or palpably unsupportable.

The amendments of pleadings are either voluntary, that is, where a party seeks to amend his pleadings as contemplated in Order VI, Rule 17, or compulsory where the Court *suo motu* or upon the application of the parties directs it to be made as in the case of Orders under Order I, Rule 10 and Order VI, Rule 16. There may be amendments of pleadings also as contemplated in Sections 115 and 116 of the Code.— **20 T. L. J.,** *187.*

2. (1) Where the original admission is due to negligence, carelessness or accidental error, amendments of pleadings will always be allowed, unless allowing the amendment will place the other party at a disadvantage for which he cannot be adequately compensated by costs.

(2) Amendment should not be allowed when a claim or relief was deliberately omitted.

(3) An amendment of pleadings must be allowed where it is necessary for the purpose of determining the real questions in controversy between the parties.

(4) Amendments should be refused when the application for amendment is not made in good faith and the application is made at such a late stage of the case that if granted the plaintiff may be injured, because the defendant would without notice raise a totally different and inconsistent case which the plaintiff has not sufficient opportunity to meet.

(5) An amendment should be refused, where it is such as will materially alter or transform the nature of the suit.

(6) Leave to amend pleadings should be refused where the amendment is merely technical or is immaterial.

However late the application to amend the plaint may be, unless the Court has reason to believe that it is made in bad faith and with a view to over-reach or gain some unfair advantage over the opposite party, leave ought to be granted as sufficient compensation can always be granted by ordering the petitioner to pay the costs of the suit to the opposite party. Therefore delay would not by itself be a sufficient ground for rejecting such petition.

The circumstance that defendants may be deprived of the right to plead limitation cannot by itself be considered a good ground for refusing leave to amend the plaint.

Though the restriction that the amendment sought for should not change the character of the suit was recognised in Section 49 of the old Code, the provisions of Order VI, Rule 17, of the present Code have removed it and the power of the Court to allow amendment is no longer controlled by any such express rule. Nevertheless even under the present Code it has been recognised as a salutary rule of practice that amendments should not be allowed which would entirely change the nature and scope of the suit.

47 T. L. R., *288*
(=21 T. L. J., *48*).

3. Where the plaintiff after applying for amendment of plaint more than once, applied once again for the amendment and the lower Court rejected the same:

Held.—Inasmuch as the amendment sought for related to the identity of the property in dispute, which was not quite clear, the plaintiff should in the interests of justice, be allowed one more opportunity to amend the plaint.

Circumstances are easily imaginable in which the High Court has to interfere even in cases where the remedy by way of appeal may be open to a party.—

21 T. L. J., *994.*

Reld.—23 T. L. J., 1193.

4. As a general rule, leave to amend will be granted so as to enable the real question in issue between the parties to be raised on the pleadings where the amendment will occasion no injury to the opposite party, except such as can be sufficiently compensated for by costs or other terms to be imposed by the order.

Mesne profits are in the nature of damages which the Court may mould according to the justice of the case.—

22 T. L. J., *876.*

5. It was contended for the counter-petitioner that the revision petition (against order of the Munsiff refusing amendment of pleadings) was not maintainable, as the petitioner might object to the lower Court's order which was purely interlocutory in character in appeal against the final decision:

Held.—The powers of the High Court in revision being very wide and intended to be exercised whenever the ends of justice required it, there seemed to be no good ground for holding that an order of this nature was not open to revision. Where unnecessary hardship and multiplicity of proceedings might be avoided thereby, interference in revision would be justified.

Amendment might be allowed unless the Court thought that the application was not made in good faith or after unusual delay. If by allowing the amendment in the case, the scope of the enquiry might be restricted and time saved, the Court by granting leave to amend would certainly be furthering the ends of justice.—

23 T. L. J., *1193.*

Order VII, Rule 6.

1. Where the ground of exemption from limitation required to be specifically mentioned as required by Order VII, Rule 6, was the Court recess intervening, the Court is entitled under Section 57 of the Evidence Act to take judicial notice of the vacation.

The mere failure of the plaintiff to state the ground of exemption would not necessarily entail a dismissal of the suit, as the Court of first instance is in such case bound to allow an amendment of the plaint save in exceptional circumstances.—

20 T. L. J., *446.*

2. See also Regn. VI of 1100, Sec. 19.—

23 T. L. J., *446.*
23 T. L. J., *947.*
24 T. L. J., *759.*

Order VII, Rule 11.

1. The rejection of a plaint is made mandatory under Rule 11 of Order VII only if the plaint does not disclose a cause of action. It does not require the extreme measure to be adopted in a case where the other essentials as to the statement as to when the cause of action arose is not contained in the plaint. If it is found defective in this respect, the procedure prescribed in Order VI, Rule 5, of the Code will have to be followed. It is only when a cause of action is clearly made out not to exist that there will be justification for resorting to an extreme penalty referred to in Order VII, Rule 11 (*a*). For determining this the whole of the plaint will have to be examined.

The expression "Cause of action" has not been defined in the Code. It means "every fact which is necessary for the plaintiff to prove in order to succeed in his suit; and everything which if not proved gives the defendant an immediate right to judgment must be part of the cause of action." It does not comprise every piece of evidence which is necessary to prove such facts, but every fact which is necessary to be proved to entitle him to a decree. It refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

The import of the expression "disclosing a cause of action" should be the same as that of allegation not showing a cause of action occurring in Order XXXIII, Rule 5, of the Code, explained in the order in C. R. P. No. 306 of 1100 (19 T. L. J., 684.)

It has been held that a cause of action means a good subsisting cause of action capable of enforcement in Court and calling for an answer and not barred by limitation or any other Law.—

21 T. L. J., *250,*

2. See also Sec. 115.— **20 T. L. J.** *59.*

Order VII, Rule 18.

The rejection of the copies of Court records, on account of their belated production, cannot be considered justifiable, as the Court has to use its discretion in matters of this kind, in spite of the provisions of Order VII, Rules 14, 15 and 18, and Order XIII, Rules 1 and 2 of the Civil Procedure Code. "Even where the Rules of exclusion apply and the documents cannot be filed without the leave of the Court, that leave should not ordinarily be refused where the documents are official records of undoubted authonticity which may assist the Court to decide rightly the issues before it."—

20 T. L. J., *581.*

Order VIII, Rule 2.

As a general rule, a person by taking or acquiring security of a higher nature in legal operation than one he already possesses, merges and extinguishes his legal remedies upon the inferior security or cause of action. But for this purpose, the superior security must be co-extensive with the inferior security and between the same parties.

The sub-mortgagee, like any other transferee of the mortgagee, takes subject to the accounts between the mortgagor and the mortgagee at the date of the sub-mortgage; and he will be affected by dealings between the mortgagor and mortgagee until the mortgagor has had notice, actual or constructive, of the sub-mortgage. Any payment made by the mortgagor to the mortgagee, to be good against the sub-mortgagee need not be made in money; it may be made in any manner which is equivalent to payment, for instance, by delivery of goods, or by a release founded on a fair and *bona fide* arrangement. In any event, the mere crediting of an earlier mortgage debt as part of the consideration for a subsequent mortgage would not amount to a discharge or settlement of the first claim either by payment

or valid adjustment so as to affect the interest of the sub-mortgagee.

There is no rule that a defendant impleaded in a mortgage suit, as a subsequent encumbrancer or the purchaser of the equity of redemption, is bound to set up as a defence that he has also a paramount title. If, in such suit his priority was not sought to be displaced, he will not be precluded from raising the question of his priority in a subsequent suit of his own.

A sub-mortgagee cannot be deemed to be bound by a decision in a suit to which he was not a party, if his claim has arisen long before the institution of the suit.—

46 T. L. R., *239.*

Ref.—22 T. L. J., 163.

Order VIII, Rule 6.

1. The suit was for recovery of principal and interest under a hypothecation bond. In respect of one of the plaint items the 5th defendant had obtained a decree. That decree had allowed him to recover that property on deposit of Rs. 704 and it had also allowed him to recover mesne profits and costs. The plaintiff sought to enforce the claim against the said amount. The 5th defendant contended that under the above-mentionod decree he had the right to set off the amount ordered to be deposited against the amount of mesne profits and costs due to him under that decree, and as the latter exceeded the former there was no amount at all to be deposited and plaintiff could not obtain any relief at all in respect of that amount:

Held.—In equity he was entitled to such a set off.— **20 T. L. J.**, *886.*

2. On account of mutual dealings a balance of Rs. 40 and odd with interest was claimed by the plaintiff from the defendant. The defendant contended *inter alia* that nothing was due from him to the plaintiff and that Rs. 130¾ would be due to him from plaintiff. On this amount the defendant paid the necessary Court fees. An application filed by the defendant to convert the Small Cause Suit into a regular Civil Suit in view of the counter claim set up in defence was rejected by the lower Court:

Held (In revision).—Plaintiff's claim ought to have been tried as a Small Cause, and the defendant's cross claim as a regular suit. There is nothing objectionable in such split procedure since a written statement urging a cross-demand has the same effect as a plaint in a cross suit. A Court exercising Small Cause jurisdiction in addition to its regular jurisdiction is not the same as a Court exercising nothing but Small Cause jurisdiction.

There is nothing to forbid Civil Courts invested with Small Cause jurisdiction, the trial of a counter-demand exceeding Small Cause jurisdiction.—

20 T. L. J., *1190.*

3. In the plaint, the value of improvements had been set off towards arrears of rent due for the years 1089 to 1095 which were obviously time-barred:

Held.—Such a right was available for the land-lord. The right of the land-lord who sued for recovery of property with arrears of rent to set off such of the arrears as were time barred against the value of improvements has been recognised by the Court.— **20 T. L. J.**, *1238.*

4. The first defendant committed breach by omitting to discharge the encumbrances on the property sold by him to the plaintiff. Similarly the plaintiff failed to pay up the debt due to a stranger though undertaken by him and the first defendant had to discharge the said debt with interest. In the plaintiff's suit to recover damages the defendant pleaded that the rents and profits from the land received by the plaintiff should be debited and that the plaintiff was answerable to him for the interest on the debt which should be set off against the damages;

Held.—A right of set off exists where there are cross demands arising out of one and the same transaction or where they are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross suit, in a case to recover money due under a contract made between the plaintiff and the defendant.

The distinction between recoupment and set off is as follows:—

In recoupment the defendant's claim must arise out of the same transaction as the plaintiff's and no balance can be certified for the defendant but the defendant's claim may be for liquidated or unliquidated damages. In set off the claims are independent; the cross claim should be for liquidated damages and the defendant can have a balance certified in his favour.

Only a set-off provided for in the Civil Procedure Code need be taxed for the purposes of Court fees.—

47 T. L. R., *248*
(=21 T. L. J., *592*).

5. Under Order VIII, Rule 6, the defendant may claim to set off all amounts which were not barred at the date of suit. This rule is applicable only to legal or statutory set off under the Code.

A counter-claim can be decreed only if it was not time-barred at the time that it was put forward.

"The distinction between set off and counter-claim has an important bearing on the question of limitation, for if the Statute of Limitation is pleaded to a defence of set off, the plaintiff, in order to establish his plea. must prove that the set off was barred when the plaintiff commenced his action; it is not enough to prove that it was barred at the time when it was pleaded. In the case, however, of a countor-claim it is enough for the plaintiff to prove that the counter-claim was barred when it was pleaded."

No hard and fast rule can be laid down in regard to the applicability of the rule as to the equitable set off. The validity of the claim will depend on and have to be decided with due regard to the equities of each case.— **21 T. L. J.,** *639*.

Ref,—22 T. L. J., 781.

6. No set off can be pleaded under the Civil Procedure Code in respect of an amount due to the first defendant not from the plaintiff but from his assignor.

It does not appear from the rulings in 15 T. L. R., 133 at 142 and 18 T. L. J., 671 at 682 that the High Court held that a charge was created over the chitty assets in favour of non-prized subscribers.

In the light of general principles governing transfer of actionable claims it would be open to the first defendant to set up equities in his favour if they were in existence at the time of assignment.

22 T. L. J., *674*.

Ref.—23 T. L. J., 1231.

7. The suit was for recovery of an amount due under a hypothecation bond, Exhibit A, executed by the first defendant in favour of the first plaintiff for the balance consideration for an assignment of a mortgage right. The first plaintiff was himself an assignee of the said mortgage right and had executed a hypothecation bond, Exhibit I, in favour of his assignor, for almost the identical amount due under Exhibit A. The first defendant was not made aware of the liability under Exhibit I, at the time she got her assignment but still discharged the same, on subsequent requisition by the first plaintiff. On the date of the present suit the claim under Exhibit I was barred and so the first defendant claimed an equitable set-off of the amount she paid for getting discharge of Exhibit I as against the plaint claim. It came in evidence that the first plaintiff was the first defendant's legal adviser and that the first defendant had acted according to his advice right through.

Held.—No hard and fast rule can be laid down as to the applicability of the rules of equitable set-off and the validity of the claim will depend upon and have to be decided with due regard to the equities of each case, and judged in every way the first defendant had a very good case for the equitable set-off she claimed.—

22 T. L. J., *781.*

8. No barred claim could be pleaded as a legal or equitable set-off on the principle that the amount was not a legally recoverable one. There is an exception to the rule in cases where accounts have to be taken between the parties, such as mortgage suits, suits by trustees, and suits where there is a fiduciary relationship between the parties in which a counter-claim though barred could be pleaded as set-off, A lessee could not set up a counter-claim barred by limitation by way of set-off against the lessor.— 49 T. L. R., *376*

(= 23 T. L. J., *919*).

9. The claim to set-off must be in respect of an "ascertained sum of money" as provided in Order VIII., Rule 6, of the Code. What may be found due after settlement of accounts cannot be held to be an ascertained sum within the meaning of the above cited provision. The question whether it is proper to compel the defendant in a case to resort to a separate suit cannot be determined by any general rule, but depends upon the facts of each case. The power of the Court in regard to this matter is of a discretionary character, and has to be exercised on general principles of equity.

Whether the set-off pleaded be legal or equitable, Court fee has to be paid.

There is no absolute prohibition of the alienation of the corpus of endowed property, but only a discretion is vested in the Court for appointment of a receiver for paying up the debt from the rents and profits, and if such a course be an impracticable one, then the properties themselves could be proceeded against.—

24 T. L. J., *436.*

Order IX.

1. The provisions relating to dismissal of suits for default do not apply to execution proceedings.— 20 T. L. J., *727.*

2. When the decree-holder applied for proclamation, notice was issued to the second defendant. On the date of hearing, the second defendant did not file objection but applied for time. The decree-holder's prayer for issue of proclamation was allowed. Thereon, the second defendant applied for cancellation of that order alleging that he was prevented by illness from filing objections in time. But the Court rejected this petition also. Hence the appeal :

Held.—No appeal lay because Order IX of the Code did not apply to proceedings in execution.

The second defendant advanced his claim to priority in the suit itself and the Court negatived his claim. The contention was raised that the matter being one of adjustment of equities between the parties, it was not within the competence of the trial Court to decide it. It should have been left for decision to the executing Court :

Held.—The trial Court was competent to decide that matter as the claim was not for adjustment of equities, but for the recognition and enforcement of an interest in property which the second defendant desired the Court to declare.—

23 T. L. J., *886.*

3. See also Or. XVII, R. 3.—

46 T. L. R., *139.*

Sec. 105.— 24 T. L. J., *698.*

Order IX, Rule 7.

1 The only classes of orders passed under Order IX made appealable under Order XLII of the Code are those rejecting applications for restoration of suits

already decreed *ex parte* under Order IX, Rule 13 (*vide* Sub-rule 5 of Rule 1 of Order XLII). The right of appeal is one created by statute. In the absence of express provision conferring a right of appeal, the same could not be validly sought to be exercised. Section 82 expressly declares that appeals shall be only against orders expressly enumerated in the Code or those declared specifically appealable under any other law for the time being in force.

Order IX, Rule, 7, enables a defendant against whom an order under Rule 6 to proceed *ex parte* by reason of his non-appearance on the date of the hearing has been passed to apply for being heard in answer to the suit on showing good cause for his previous non-appearance. A defendant against whom an order under Rule 6 has been passed has the right to ask for leave to file written statement and examine witnesses. The stage to which the case has proceeded is a material factor to be considered in deciding the sustainability or otherwise of the prayer for restoration. It is not desirable that he should be shut out altogether on the ground that he was once declared *ex parte*. **20 T. L. J.,** *370.*

2. Under Order IX, Rule 7, a party who has been made *ex parte* and who desires to take part in the proceedings from the stage at which he appears need not have the *ex parte* order passed against him, set aside. The Order and Rule applies to a party who wishes to be relegated back to the position in which he would have been if he had appeared at a previous hearing at which he was absent and who wishes the proceedings taken in his absence to be taken over again in his presence so that he may regain the opportunities of cross-examination, &c., which he lost by his absence. Its operation cannot be extended to the subsequent hearings of the suit, so that the defendant can conduct his case from the day of his appearance.—

23 T. L. J., *298.*

Order IX, Rule 9.

1. The provisions of Order IX are not applicable to execution proceedings. When an application under Order XXI, Rule 87, is dismissed for default, no restoration application under Order IX, Rule 9, is competent. Such an order is not, therefore, appealable under Order XLII, Rule 1, Clause 13, of the C. P. C.—

20 T. L. J., *285.*

2. The rejection of an application for restoring a suit dismissed for default is an order under Order IX, Rule 9, and Order XLII, Rule 1, clause 5, provides for an appeal against an order under Rule 9 of Order IX, rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit. This right of appeal does not seem to be restricted to cases where the application is rejected on its merits, but it is wide enough to apply to all cases of rejection of applications under Order IX, Rule 9 without reference to the grounds upon which the application is rejected.—

21 T. L. J., *415.*

3. Where a suit for recovery of money was at first dismissed owing to default of appearance of the plaintiff, but was subsequently restored on his application, and a decree passed against the defendant:

The lower Court had no jurisdiction to set aside the order of dismissal of plaintiff's suit as a matter of grace in view of the finding that the plaintiff has no sufficient explanation for his absence.—

49 T. L. R., *301*
(=**23 T. L. J.,** *704*).

4. See also Sec. 105.— **20 T. L. J.,** *621.*

Order IX, Rule 13.

1. The discretion given to a Court of law under Order IX, Rule 13, of the Code for putting a party on terms as a condition of setting aside the *ex parte* decree against him cannot be exercised arbitrarily. It

would be inequitable to impose conditions in a case where there has been no default on the part of the party asking for a re-hearing.

The practice of the Courts of passing orders imposing conditions under Order IX, Rule 13, without satisfying themselves as to whether there was due service or not has no warrant in law. If, in any particular case, the party is able to prove that there was no 'due service' of summons on him he is entitled as a matter of right to get the *ex parte* decree set aside.

Whether in any particular case a party has been 'duly served' or not is a question of fact. "*Prima facie* the service must be personal service by delivering or tendering a copy as mentiond in Rule 10. Rule 17 provides among other things that where the serving officer, after using all due and reasonable diligence, cannot find the defendant and there is no agent empowered to receive service on his behalf nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides, or carries on business, or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon, or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed. Rule 19 provides that "where the summons is returned under Rule 17, the Court shall, if the return under that Rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer upon oath, or cause him to be so examined by another Court, touching his proceedings and may make such further enquiry in the matter as it thinks fit and shall either declare that the summons has been duly served or order such service as it thinks fit." The order that the summons has been duly served in circumstances like the preent ought to be obtained as soon as reasonably possible after the returu is made by the serving officer. It is obvious that it is most inconvenient to postpone making the order adjudicating on the sufficiency of the service until the day of hearing. The plaintiff may have had all the expense of bringing his witnesses and paying his pleader only to find that the case cannot go on and the Court may have a case in its list for hearing which cannot be proceeded with." (43 I. C. 632, All.).—

20 T. L. J., *618.*

Ref.—23 T. L. J., 580.
49 T. L. R., 358
(=23 T. L. J., 596).

2. No doubt, there is no specific provision like Order IX, Rule 13, for restoring an application for setting aside an *ex parte* decree which was dismissed for default. But the Court has the jurisdiction under its inherent powers to order a restoration if the circumstances justify it. Otherwise the result would be to deprive the party of any remedy even if he had valid and sufficient reasons for his absence at the timo when his application was taken up.— **20 T. L. J.,** *725.*

3. Where a party instituted a suit for cancellation of the *ex parte* decree obtained against him on the ground of fraud :

Held.—He can succeed only on proving "an actual fraud; a meditated and intentional contrivance to keep the parties and the Court in ignorance of the real facts and obtaining a decree by that contrivance." Mere proof of non-service of summons is not sufficient. There must be proof of fraudulent suppression of summons as "the result of deliberate design".

20 T. L. J., *918.*

4. The suit was first dismissed for default. It was eventually restored on application of the plaintiff which was filed after time and decreed *ex parte*. The

defendant then applied for restoration of the suit and for dismissal thereof on the ground of the plaintiff's application for restoration having been out of time. The suit was again restored but the defendant's prayer for dismissal of the suit was disallowed.

In revision by the defendant, it was contended for the plaintiff, counter-petitioner, that once the restoration has been ordered at the instance of the defendant the whole suit should be deemed to have been re-opened and all defaults on the part of either party before such restoration should be considered to have been condoned by the Court :

Held.—The whole petition should be considered to determine what the defendant wanted. There could be no objection to a defendant against whom an *ex parte* decree had been passed to seek for a re-opening of the case and complain of errors of procedure which should have required the Court to non-suit the plaintiff. After restoration the parties are in *status quo* giving them such rights as they could have had if a decree had not been passed against the defendant.— **20 T. L. J.,** *1030.*

5. When a defendant has entered appearance after setting aside an *ex parte* decree, it is not open to the Court to act upon the *ex parte* evidence taken before the restoration.— **20 T. L. J.,** *1041.*

6. Defendants 1 and 2 were minors on the date of the decree. The plaintiff applied for the appointment of their sister as their guardian for the suit. But the notice issued to her was returned with the endorsement that she refused to accept it. Nevertheless the Court passed an order on 15-10-1100 appointing her guardian of the minors and eventually passed an *ex parte* decree against the defendants as she did not appear to contest the suit. This decree was subsequently set aside on the application of the minors. The plaintiff-decree-holder filed the revision petition against the order of the lower Court setting aside the *ex-parte* decree passed against defendants 1 and 2. The questions that arose for determination were—

(1) Whether the minors were properly represented in the suit ;

(2) If they were not properly represented, whether the decre passed against them is a nullity or whether it is only voidable? and

(3) What is the remedy of the minors in such a case ? Whether it is by way of an application to set aside the *ex parte* decree or by some other proceeding.

Held.—(1) The appointment of the sister who not only did not appear and consent to her appointment as guardian, but openly expressed her unwillingness to act as such by refusing to accept the notice, as guardian for the minors was clearly improper and unjustifiable, as it contravened the express provisions of Section 436 of the Civil Procedure Code of 1065 (Order XXXII, Rule 3 of the Code of 1100) which was in force at the time the appointment was made. The minors were therefore not represented in the suit.

(2) The proposed guardian in this case refused to accept the notice to show cause why she should not be appointed guardian and did not appear in Court to express her consent. She must therefore be taken to have been unwilling to act as guardian. Her appointment as guardian, therefore, was against her consent and it was illegal. The decree passed in such a case is clearly a nullity and the defendants cannot be taken to have been parties to the decree. The Court in such a case has no jurisdiction to pass a decree against the minors and a decree passed by a Court without jurisdiction does not bind the parties and is null and void.

Per Venkitarama Iyer and Joseph Thaliath, J. J.—3. The question whether a decree has been passed against a defendant *ex parte* as contemplated in Order IX, Rule 13, has to be determined irrespective

of its validity against that defendant. The defendant in the case is the minor and not his guardian. Order XXXIII, Rules 3 and 4, only lay down that where the defendant is a minor the Court has to pass an order directing his or her representation through another person. The passing of the order or the omission to do the same cannot affect the circumstance that the minor is the defendant in the suit. By the defendant's non-appearance on the date fixed therefor, the Court has to proceed with the suit *ex parte* so far as that defendant is concerned as contemplated in Order IX, Rule 6 (2). From the wording of Rule 13 of Order IX it could not be said that the proper service of summons through a properly constituted guardian, is a condition precedent to proceeding *ex parte* under Rule 6 (2), for, the defendant is enabled to move the Court for restoration of the suit in cases of non-service of summons properly on him. If the defendant is a minor on the date of the application, necessarily any person interested in him will have to make the application on his behalf. Hence the conditions laid down in Order IX, Rule 13, *viz.*, (1) that the applicant should be a defendant and (2) that the suit must have been decreed *ex parte* against him, exist in the present case and therefore the provisions of Order IX, Rule 13, are applicable to it.

Per Venkitarama Iyer, J.—Even if it is held that the provisions of Order IX Rule 13 are inapplicable to a case like the present, the inherent powers of the Court under Section 115 C. P. C. could be invoked in the peculiar circumstances of the case. The omission on the part of the Court to strictly follow the procedure laid down in Sections 423, 424 and 436 would constitute an abuse of legal process, for, it has resulted in a decree which is virtually a nullity in the eye of the law. When this fact is brought to the notice of the Court it is clearly the duty of the Court to see that this wrong is righted. The wording of Section 115 C. P. C. indicates that irrespective of the other remedies allowed under the Code, the inherent powers of the Court, will have to be invoked in appropriate cases where the ends of justice require the same.

Per Joseph Thaliath. J.—With respect to cases falling under the old Civil Procedure Code the ruling in 36 T. L. R., 371, should be held to be good law.

For the ends of justice and to prevent the abuse of the process of Court, the Court has inherent powers to go beyond Section 103 to set aside an unjust *ex parte* decree or order. But such powers should be very sparingly exercised and only in cases where, in view of all the circumstances in the case, such interference is well-merited.

Per Parameswaran Pillai, J.—A minor defendant against whom an *ex parte* decree has been passed without his being properly represented cannot move the Court under Order IX, Rule 13. In order that this Rule might apply the applicant must be a person who was a *defendant* in the suit and he must show that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing. If a minor who is not represented in the suit by a properly appointed guardian cannot be treated as a party to the suit, he cannot be a defendant who can apply under that Rule. The requisitions of that Rule, *viz.*, that the summons was not duly served or that he was prevented by sufficient cause from appearing presuppose that he was a party to the suit who was bound to appear and defend the suit, if he had any defence, if these circumstances did not exist. If he was therefore not a party to the suit he cannot come under Order IX, Rule 13. Where a minor who was not properly represented in a suit could not be regarded as a party to the suit, the decree could not bind him and therefore an application made by him

under Order IX, Rule 13, was incompetent.

It is not necessary that the extraordinary power vested in the Courts by Section 115 should be exercised in such a case. That power is vested in the Courts to make such order as may be necessary 'for the ends of justice or to prevent the abuse of the process of the Court.' If the decree in the case is a nullity and cannot bind the minors, the ends of justice cannot be defeated by not reopening the case in the exercise of the inherent power of the Court, because other remedies are open to the minors, if in execution of the decree their properties are sold and they are sought to be arrested (F.—B.).—

47 T. L. R., *155*
(=21 T. L. J., *208*).

Ref.—24 T. L. J., 718.
24 T. L. J., 374.
Fol.—23 T. L. J., 1009.
Not Appl.—22 T. L. J., 598.

7. The counter-petitioner, put in an application in the lower Court for setting aside the *ex parte* decree passed against him. The lower Court found that the summons was not shown to be improperly served but however set aside the *ex parte* decree, imposing certain conditions :

Held (In revision).—The Court has no inherent power to set aside an *ex parte* decree. A defendant against whom an *ex parte* decree has been passed has the following remedies :—He can bring a suit to set aside the decree if there has been any fraud in the obtaining of it. He can prefer an appeal against the decree itself. He can file an application as provided by Rule 13 of Order IX to set aside the *ex parte* decree. He can also file an application for review and the grounds of such an application would be wider than those covered by Rule 13.

The Munsiff went wrong in having set aside the *ex parte* decree after expressly finding "Summons not shown to be improperly served" as the Court had no jurisdiction to set aside the *ex parte*.

21 T. L. J., *331*.

Fol.—21 T. L. J., 1011.

8. Cases may be conceivable which may not come under the strict letter of Order IX, Rule 13 or Order XL, Rule 18, but which might therefore require for the ends of justice the exercise of the inherent powers of Court. The view that under such circumstances the Court would be justified in falling back upon those powers cannot be said to be utterly unreasonable, but this does not justify the laying down of the law in such broad terms as in 3 T. L. T., 153.

Where therefore a person aggrieved by a decree might have appealed against it or have applied for review of it or applied under Order IX, Rule 13 but did not avail himself of the first two remedies and only applied, in the event, unsuccessfully under Order IX, Rule 13, it was not open to him subsequently to apply under Section 115 of the Civil Procedure Code to have the decree amended.

(In the circumstances of the case, however, the High Court refused to interfere with the exercise of the inherent powers by the lower Court).

The inherent rights vested in Courts under Section 115 of the Civil Procedure Code for the purpose of preventing the miscarriage of justice or preventing the abuse of processes of Courts is not intended to be resorted to in cases, where the party has got a clear remedy specifically provided by the Code.—

47 T. L. R., *321*
(=21 T. L. J., *754*).

Fol.—21 T. L. J., 1011.

9. In appeal on an order under Order IX, Rule 13, the Judge found that there were not sufficient grounds for interference with the order passed by the Munsiff, and that he was unable to say that the Court (Munsiff's Court) had acted illegally or irregularly in passing the order;

and that the Progress Diary showed, beyond doubt, that the lower Court was fully justified in passing the order. Nevertheless, he set aside the *ex parte* order on the ground that since the appellant had filed several documents which *prima facie* showed that his contentions were not unsubstantial, he might be given another opportunity to prove his case :

Held (In revision).—The Judge had no jurisdiction to set aside the *ex parte* decree on the ground stated by him. It was not a regular appeal that was filed before the Court, in which case, the order made by the appellate Court would not have been improper. But it was an appeal against an order rejecting an application for setting aside an *ex parte* decree. In that case, the Court had no power apart from the provisions of Order IX, Rule 13, to set aside an *ex parte* decree. The ground stated by him was not one of the grounds contemplated under Order IX, Rule 13. According to that Section, in order that an order setting aside the *ex parte* decree may be made, the Court must be satisfied, that the summons was not duly served or that he (the appellant) was prevented for sufficient cause from appearing when the case was called for hearing.— **21 T. L. J.,** *1011.*

10. In execution of an *ex parte* decree the properties of the judgment-debtor were sold in Court auction. A creditor of the judgment-debtor, who had attached the properties, applied under Order XXI, Rule 87, of the Code for setting aside the sale. At the hearing of the application, the Execution Court came to the conclusion that the summons to the defendant had not been served at all, and that, therefore, the decree was a nullity.. The view was taken that the Court which passed the decree had fallen into the mistake of thinking that the summons had been duly served and that the Court had inherent jurisdiction to correct its own mistake. In this view, the *ex parte* decree was set aside, and fresh summons to the defendant was ordered :

Held.—The execution Court was wrong in going into the question of the validity of the decree and treating the decree as a nullity, particularly when the objection was raisod not by the person primarily affected, but by a total stranger to the suit.— **22 T. L. J.,** *102.*

11. An *ex parte* decree was set asido, and after restoration evidence was recorded and a decree was passed on the merits. Against the latter decree the present revision petition was filed. In revision, objection was raised on the ground that application for restoration was barred at the time of the application :

Held.—The petitioner was not entitled to raise any such ground.—

22 T. L. J., *559.*

12. The real basis of the binding character of a decree against a minor is the fact of his having been duly represented by a proper guardian and not the mere existence of a formal order appointing a guardian for him.

Where the Vakkalath was filed in advance but was subsequently ratified by the party :

Held.—It was irregular. But it could not be said to be null and void. The non-filing of a Vakkalath in Court with the appeal was not sufficient in itself to regard the appeal as improper. The question was one of authority to act on behalf of another. Such authority might be made out in the course of the proceedings.

Order IX, Rule 13, says that the Court *shall set aside an ex parte* decree on being satisfied that the summons was not duly served on the defendant or that he was prevented by sufficient cause from appearing. The provision is imperative; so much so it has been held that even if the defendant has knowledge of the suit against him the decree should be set aside where no summons is served on him as required by law.— **22 T. L. J.,** *958,*

13. Where an *ex parte* decree is alleged to have been obtained by a plaintiff by fraud, the defendant is entitled to institute a regular suit to set aside the decree on the ground of fraud. But if the very fraud that is set up in the suit was set up in the application to set aside the *ex parte* decree, and the Court after going into the question of fraud rejected the application, the suit would be barred as *res judicata*, unless the fraud was of such a nature that it could not properly come within the scope of inquiry under Order IX, Rule 13.— **23. T. L. J.,** *132.*

Ref.—23 T. L. J., 896.

14. A defendant applying under Order IX, Rule 13, is not entitled to have the *ex parte* decree set aside unconditionally on the ground that the summons was not duly served on him. It is possible that the knowledge of the suit by the defendant, if proved, might be a circumstance to be taken into consideration in passing the order. The imposition of terms is, however, a matter in which the Court should exercise a judicial discretion and reasons should be given why, in the opinion of the Court, the terms imposed are necessary(F. B.).— **23 T. L. J.,** *580.*

15. An order for payment of costs to the opposite party *irrespective of the final result of the suit* is an order imposing a penalty on the applicant for his negligence or laches and could mean only that, whatever be the final result of the suit, whether the opposite party wins or not, he is entitled to receive the costs incurred up to date. The payment could in no sense be regarded as an advance. If the payment is to be regarded as an advance, the Court would have to say so in express terms.

Where as a condition for setting aside an *ex parte* decision the defendant was asked to deposit the costs of the plaintiff incurred up to that date irrespective of the final result of the suit :

Held.—In passing a decree on the merits, after restoration of suit to file, the Court has jurisdiction to award the plaintiff his costs of the suit over and above the amount deposited in connection with the setting aside of the *ex parte* decree. The taxing of costs over again on retrial applies only to ordinary cases where no provision to pay the costs, irrespective of the final result, has been made. Rule 435 of the Civil Courts' Guide.—

46 T. L. R., *358*
(=23 T. L. J., *596*).

16. Where a decree is passed against a minor represented by a guardian who had not consented to act as such it is open to the minor to apply to set aside the decree under Order IX, Rule 13, of the Code.

Consent of the guardian may be an implied one. "Silence may be indicative of want of consent; the attendant circumstances may, however, be looked into, and consent may be found to have been made out. Under the provisions of the Code what has to be looked into is whether there has been a substantial contest on behalf of the minor as well. If there was such a contest, the decision binds the minor, but not otherwise.".—

24 T. L. J., *718.*

17. See Regn. IX of 1090.—

22 T. L. J., *490*

Order XI, Rule 14.

1. Under Order XI, Rule 14, of the Civil Procedure Code, no order for production of documents can be made unless the party ordered to produce has directly or indirectly admitted the documents to be in his possession or power.—

20 T. L. J., *232.*

2. The plaintiff sued for partition and recovery of her share of the properties left by her deceased husband. Defendants 1 to 4 are his children and 5th defendant is his sister. The 6th defendant was impleaded as he was in management of the

properties of the deceased and was liable to account to the heirs of the deceased. The plaintiff and 6tb defendant filed a razi petition by which the latter was exonerated from liability and the Court passed a preliminary decree against defendants 1 to 5 who were declared *ex parte*.

The 1st defendant subsequently applied to have the *ex parte* decree against him set aside. After notice to the plaintiff the decree was set aside and the suit restored to file. Eventually the Court passed a decree under which the plaintiff and the other defendants were allowed to recover their respective shares in the amount which was alleged to have remained in the hands of 6th defendant. On appeal by the 6th defendant against this decree:

Held.—The retrial of the suit, however, after its restoration to the file without notice to the 6th defendant would be a material irregularity, and the 6th defendant could not be bound by the decision subsequently passed.

The defendants in a partition suit, being co-sharers, are not as in other suits, merely defending themselves, but occupy a position similar to that of the plaintiff and consequently when a decree is eventually passed, they can, on payment of proper Court fee, take out execution in respect of their shares. As a corollary it has been held that in certain circumstances where the plaintiff in a suit for partition wishes to withdraw, a defendant may apply to be transposed as plaintiff and allowed to continue the suit. It is the independent and inherent right of each co-owner or member of a co-parcenery who is impleaded as a party defendant to a suit for a general partition of joint property or joint family or co-parcenery property, to avail himself, if he chooses of the opportunity afforded by such a suit filed at the instance of the other co-owner or co-parcener and seek the necessary relief of separation and partition of his own individual share from that of the plaintiff and of the rest of the co-owners or co-parceners interested in the joint or co-parcenery property sought to be partitioned.

Notice of the application to set aside the *ex parte* decree need be served only on the plaintiff. The expression 'opposite party' in Order IX, Rule 14, of the Code can mean only the plaintiff. The first defendant was concerned with the decree only so far as it enabled plaintiff to recover properties and money from him, and in the circumstances the opposite party to his application can be only the plaintiff who had been granted relief against him. The order setting aside the *ex parte* decree was not irregular merely because notice was not given to the other defendants also. The present case is stronger as the 6th defendant was in no sense a necessary party to the suit and in no way interested in it except as a person who had with him certain moneys for which he was stated to be accountable to the family. Though the other co-sharers who may be said to occupy a position analogous to that of plaintiff, may perhaps be regarded as being entitled to notice, the same cannot be said of the 6th defendant.— **24 T. L. J.,** *610.*

Order XVI, Rule 10.

1. Order XVI, Rule 10, clearly empowers the Court to order warrant and attachment simultaneously to witnesses, if it thinks fit to do so.

The enforcement of payment, under an agreement executed for the purpose of stifling a prosecution would be one contrary to public policy. A mere threat of criminal proceedings apart from an actual agreement to stifle a prosecution does not bar an action for a debt due.—

20 T. L. J., *487.*

2. Courts ought not to behave as if they are impotent in the matter of enforcing the attendance of unwilling witnesses.

Non-attendance after accepting summons or evasion of service of summons amounts really to contempt of Court and if once in a way a substantial fine is imposed and realised, contempt of this sort will greatly diminish. Even if a party does not apply under Order XVI, Rule 10, and the Court believes that the witness is material, it would exercise a sound discretion by itself putting in force the provisions of the said Rule.— **24 T. L. J.** *403.*

Order XVII, Rule 1.

Under Rule 71 of the Civil Courts' Guide, an affidavit is an indispensable appendage to an application for adjournment, but the absence of the affidavit *per se* would not entail a dismissal of the petition. Under Rule 18 of the Guide, the party or Vakil as the case may be shall be called upon to cure the defect, and only in case of failure to cure, within the time specified, should it be dismissed.

The adjournment of a case at the instance of a party is within the discretion of a Court under Order XVII, Rule 1, of the Code. It is not open to the Court to adjourn a case where no cause is shown; but where cause is shown, the sufficiency of such cause has to be considered for the exercise of the discretion of the Court. In matters of this kind, the Court ought not to be too technical as if one is anxious to find excuse for cutting short the work of the Court, especially when the party applying has not been negligent and there is no room for prejudice to the opposite side.

The meaning of the expression 'any other sufficient reason' in Order XLV, Rule 1, of the Code remains to be settled authoritatively so far as Travancore is concerned.

When it is said that the reason to be alleged as sufficient should be analogous to those previously occurring in Order XLV, Rule 1, it means that it should be such as did not form the subject of consideration by the Court, but if considered would materially affect the conclusion arrived at.— **20 T. L. J.,** *165.*

Order XVII, Rules 2 and 3.

1. In the case, there were both default of appearance by the petitioner within the meaning of Order XVII, Rule 2, and also failure to perform an act necessary to the further progress of the suit, *viz.*, failure to pay day-costs, within the meaning of Order XVII, Rule 3. The suit was decreed in favour of the plaintiff and the petitioner put in an application under Order IX, Rule, 13, for setting aside the decree. The question arose whether the application was competent:

Held.—In such a case where both the contingencies contemplated in Order XVII, Rule 2 and Rule 3, occur, the proper view to take would be to regard the disposal as being under Order XVII, Rule 2 and not under Order XVII, Rule 3. The decree passed would therefore be an *ex parte* decree and the application made under Order IX, Rule 13, would be competent.— **46 T. L. R.,** *108.*

2. The primary Court dismissed a suit by a judgment which described itself as one for default. But there was in fact no default of appearance so as to permit the Court to dismiss the suit under Order XVII, Rule 2. The only default was the failure to produce a judgment in the prior case which failure would not dispense with the necessity for a decision on the merits:

Held.—The disposal of the case was one under Order XVII, Rule 3, and therefore an appeal lay from the judgment. The Court must look at the substance and not the form.— **23 T. L. J.,** *805.*

Order XVII, Rule 3.

1. The dismissal of the suit for default of payment of deficit Court fee, is clearly

one under Order XVII, Rule 3. The only remedy open to the party will be by way of a review before the Court which decided it, or an appeal to a competent Court. No application for restoration under Order IX could validly be made in such cases.— **46 T. L. R.,** *139.*

2. The dismissal of a suit for default of payment of additional Court fees and non-production of copy of plaint comes under Order XVII, Rule 3 The remedy of a party whose suit has been dismissed under Order XVII, Rule 3, is by way of appeal or by way of review as the dismissal under that Rule amounts to a decree.— **21 T. L. J.,** *420.*

3. In the suit brought by certain share-holders of the Tropical Plantations Company, Ltd., for the purpose of ending the impasse created by the simultaneous functioning of two rival sets of directors, the plaintiffs prayed by interlocutory application for the transposition of the Company which was impleaded as the first defendant in the case, to the plaintiff array, and the Court ordered as a preliminary to the consideration of the said prayer, the convening of a general meeting to ascertain the will of the share-holders as regards the conduct (*Vide* 21 T. L. J., 1314). The plaintiffs defaulted to pay the commission batta called for by the Court for convening the general meeting and the Court in consequence dismissed the suit. The appeal was filed against the decree dismissing the suit. The plaintiffs did not implead the first defendant in the appeal and their only prayer in appeal was as regards a relief in the plaint which related to a declaration as to the status of one set of directors and their competency to act on behalf of the company:

Held (On preliminary objection as to the maintainability, of the appeal).—The non-joinder of the first defendant was fatal to the appeal. The declaration prayed for could not be given in the absence of the company whose interests would be affected by such declaration. Ordinarily when a defect of this nature is discovered the practice of the Court is to adjourn the case to enable the defect to be remedied, but as in the case the omission of the first defendant from the array of parties appeared to be deliberate and no substantial good could result to the plaintiffs if the first defendant was made a party to the appeal, no adjournment of the case was necessary.

Held further.—(1) Inasmuch as Order XVII, Rule 3, seems to contemplate only that the Court should dispose of a suit on the materials before it, the dismissal of the suit for the default in question was technically wrong of the lower Court. The Court would have been justified in dismissing the petition to make the first defendant a plaintiff, but it should then have expressed an opinion as to the effect of its decision on the merits of the suit. (As this was only a question of law, their Honors did not deem it necessary to remand the case, but decided it themselves.)

(2) The plaintiffs could not succeed in the suit in their individual right as share-holders but could only succeed if they are regarded as suing on behalf of the company, since the present suit was not in respect of acts which were *ultra vires* the company or acts which affected their individual rights only but affected the internal management of the company. And the plaintiffs could not be allowed to sue on behalf of the company unless they could show that the company, *i. e.*, the holders of the majority of the shares approved of the suit. The suit was therefore rightly dismissed by the lower Court.— **22 T. L. J.,** *1331.*

Order XX, Rule 1.

1. The question arose whether the judgment of the lower Appellate Court was a nullity, having been pronounced on a

Sunday, on which day in the week, no judicial act could have been formally done or announced, as laid down under Article 547 of the Civil Courts' Guide. It was also contended that the pronouncement of the judgment in question could not be considered to have been done in open Court, within the meaning of Order XX, Rule 1, of the Civil Procedure Code :

Held.—A judgment pronounced on a Sunday is not a nullity. The provisions of Order XX, Rule 1, are only directory in their nature and do not absolutely prohibit as illegal, the pronouncement of judgments otherwise than in accordance with them. It cannot be said that if the parties have not been prejudiced by the particular rule of procedure not being complied with, a reversal of the proceeding would be proper, expedient or justifiable.

The expression "Open Court" could only connote "a Court to which all the public have access as a matter of right". In appropriate cases, the Judge has the right to exclude the public from the Court for valid grounds when judicial business is transacted. A 'Court' would refer to the place constituted by the Government by virtue of the powers vested in them under Section 5 of the Civil Courts' Regulation for transaction of judicial work. The word 'open' therefore, would only have reference to the non-exclusion of the public when a judgment is pronounced.

Article 547 of the Civil Courts' Guide does not amount to an absolute prohibition of judicial proceedings on holidays. In the absence of an express declaration that the proceedings would be void, the Article could not be treated as justifying the invalidation of the proceedings.—

46 T. L. R., *265*
(=**20 T. L. J.,** *584*).

Ref.—22 T. L. J., 493.

2. Article 547 of the Civil Courts' Guide is intended only for the guidance of subordinate Courts. Any violation of the provisions of the Article cannot render a judgment invalid if the parties had been given notice of the posting as required by Order XX, Rule 1. However in view of the express provisions of the Article, a subordinate Court ought not to ordinarily post cases for pronouncement of judgment to a public holiday without obtaining sanction from the High Court.—

22 T. L. J., *493*.

Order XX, Rule 6.

1. An order rejecting an application for amendment of the decree whether, under the old Section 201 or the new Civil Procedure Code, Order XX, Rule 6, is not appealable.— **20 T. L. J.,** *1062*.

2. It is not necessary to construe a decree by referring to the pleadings or judgment, unless the decree is ambiguous. It is not competent to the executing Court to go behind the decree or read into it words which appear in the judgment, but which have not been incorporated in it. Where the wording of the decree is clear, it cannot be interpreted in the light of the reasoning and phraseology found in the judgment.— **21 T. L. J.,** *749*,

3. A Court cannot look at its judgment to interpret its decree where the language of the decree is plain and unambiguous, and it is only when the terms of the decree is ambiguous that it can be interpreted in the light of the judgment. If the decree were not in conformity with the judgment, it was open to either party to move the Court to bring it into conformity with it. So long as no such step has been taken by the parties, it is the plain duty of the execution Court to execute it as it stands.—

22 T. L. J., *677*.

Order XX, Rule 11.

The plaintiff sued for future subscriptions in a lump on a chitty hypothecation bond executed by the first defendant who

prized his ticket at the second instalment and who subsequently defaulted. The 3rd defendant who purchased some of the items charged, deposited in Court the amount of 3rd to 6th instalments with interest and asked that the decree for future subscriptions should order payment by instalments. The lower Court granted the equitable relief claimed by the 3rd defendant on a consideration of prevailing economic depression in the country:

Held.—It is by no means clear that Order XX, Rule 11 (1), is applicable to decrees on chitty transactions. For in such cases the obligation to pay a lump sum arises for default in paying instalments and it may be doubted whether the Rule should be applied to empower the Court in effect to restore the contractual obligation to pay by instalments after it has been broken. Anyhow full effect must be given to the words "notwithstanding anything contained in the contract under which the money is payable" occurring in the Rule. The provision in the contract for payment by instalments does not affect the power of the Court. The Rule is applicable to decrees on chitty transactions.

The principal reason appearing in the Munsiff's judgment for granting payment by instalments is "the prevailing economic depression in the country." Even if the economic depression ought to be judicially noticed, such a reason is not a sufficient reason within the rule. It is applicable to every case which comes before every Court and in the absence of proof that a party is particularly affected by it, the fact that its effect is common to every case shows that it cannot be the basis of the exercise of a discretion in any particular case.— **24 T. L. J.**, *746.*

Order XX, Rule 12.

1. The suit was for recovery of mesne profits from the first defendant for the period during which he deprived the plaintiff of possession by wrongful process in execution. The first defendant contended that he had sold the property to the additional second defendant who sold it to a third party and that therefore he was not liable for the mesne profits:

Held.—*Prima facie*, the first defendant is the man who is liable to the plaintiff for the mesne profits. He cannot avoid his liability by the simple artifice of transferring his tortious possession to a third party. It may be said that in law the third party who obtains possession from the original purchaser may also be liable to the plaintiff for damages for the wrongful detention of the property. But this fact cannot exonerate the original dispossessor from his liability to the plaintiff. The trespasser (the first defendant in the case) and the subsequent alienees, if any, are jointly and severally liable for the mesne profits.—

20 T. L. J., *665.*

2. Mesne profits may be awarded against a co-sharer if there had been an ouster.— **23 T. L. J.**, *1143.*

3. See also Sec. 2 (12).— **23 T. L. J.**, *362.*

Order XX, Rule 16.

The suit was for recovery of a specific sum of money due from the defendant who was carrying on business as the plaintiff's agent.

It was contended for the defence that the suit was not properly framed, that it ought to have been one for accounts, and that after a preliminary decree for accounts was passed, accounts ought to have been taken and a final decree passed.

Held. (Overruling the defence contention).—Merely because a suit was one brought by a principal against his agent, it did not necessarily follow that the Court should pass a preliminary decree for account. Under Order XX, Rule 16,

the Court had to be satisfied before directing an inquiry into accounts, that taking of accounts was necessary.—

23 T. L. J., *184.*

Order XXI, Rule 1.

1. A compromise was filed by plaintiffs and 1st defendant whereby plaintiffs agreed to assign their rights over plaint property to 1st defendant on his paying a certain sum with interest before 30-8-1102. In case no payment was made or the sale deed was not taken within the above date, the 1st defendant was to surrender plaint property. If plaintiffs failed to accept amount so tendered within the prescribed date or to execute the sale-deed, the 1st defendant was allowed to deposit the amount in Court and have a conveyance to him executed through Court. A decree was passed in terms of the compromise on 21-1-1102. On 30-10-1102, first defendant deposited amount with interest in Court, on the reopening of the Court. The lower Court held that, under the compromise decree, the money had to be paid to the plaintiff and that the deposit in Court was not a compliance with the requirements of the decree.

Held.—The deposit in Court on the reopening day was a compliance with the terms of the compromise decree:

Order XXI, Rule 1, does not lay down that it is applicable only to cases where no particular mode of payment has been prescribed under the decree. On the other hand, an option seems to have been given under the Rule to the judgment-debtor to make the payment in one of the modes set forth in the Rule. The provisions of the Rule have to be construed, giving the language used its plain meaning, without importing into them any words, so as to enlarge or restrict the scope of their application. Applying this well-recognised rule of construction, these provisions allow the judgment-debtor, whatever may be the nature of the directions contained in the decree, as regards the mode of payment, the option, in cases any sum of money is declared payable by him under the decree, to pay the same either by deposit in Court or to the decree-holder direct out of Court, or in such other manner as may be prescribed by the Court which passed the decree. The option is clearly one allowed him by law, as the Rule under consideration enacts, that the payment shall be made in the above manner. The use of the word "shall" would require this provision to be construed as a mandatory one; the right allowed to the judgment-debtor under this provision has consequently to be considered as claimable by him irrespective of the directions under the decree.

If the judgment-debtor is deemed to have a right to make the deposit in Court, the circumstance that the Court was closed on the day fixed for payment would make the payment if made on the next working day thereafter a valid compliance with that requirement, for, the maxim "the act of Court can hurt no body" will clearly apply to such a case.

The principle underlying this maxim has been expressly provided for under Section 4 of the Limitation Regulation with respect to suits, appeals or applications. Section 10 of the General Clauses Regulation extends the application of this principle to Acts or Proceedings directed or allowed to be done or taken in a Court or any Office under any Regulation.

Section 10 has to be liberally construed.-

20 T. L. J., *15.*

2. The suit was originally instituted in the Munsiff's Court, but the plaint was returned by that Court and the case was reinstituted in the District Court subsequently. The decree of the District Court provided for interest from date of suit. In execution of this decree certain remittances were received from time to time by the Court on behalf of the judgment-debtor. The questions for decision

relate to the date from which interest has to be computed and to the cessation of interest on the amounts received from time to time by the execution Court on behalf of the judgment-debtor.

The expression 'date of suit' cannot mean the date of institution of the suit in the Munsiff's Court. When a plaint is returned by the Court in which the suit is first instituted and the suit is re-instituted in another Court, the proceedings after re-institution cannot be regarded as a continuation of the steps previously taken in the Court which returns the plaint.

Under Order XXI, Rule 1, the amounts received from time to time by the execution Court should be viewed as payments into Court on account of the decree. Interest on the decree-amount should cease to run *pro tanto* from the dates of the respective payments. Under Order XXI Rule 1 it is the duty of the Court to give notice of payment to the decree-holder. The judgment-debtor can be blamed only where the Court orders notice and he neglects to comply with it by the non-payment of the process fee.

The provisions of Order XXIV in regard to payment into Court during suit when compared with Order XXI, Rule 1, in regard to payment into Court during execution mark the difference between the two kinds of payment so far as their effectiveness to stop the running of interest on them is concerned. The provisions of Order XXIV are not applicable to payments into Court in execution.—

47 T. L. R., *144*
(=**21 T. L. J.,** *111*).

Ref.—48 T. L, R., 405
(=22 T. L. J., 1252).

Order XXI, Rule 2.

1. When a judgment-debtor comes forward and says that he has entered into an agreement with the decree-holder which precludes the decree-holder from taking out execution proceedings, the agreement is in effect an adjustment of the decree for the time being and is as much within the mischief contemplated by Order XXI, Rule 2, as an out and out adjustment under which the whole obligation under the decree is wiped out.

Hence such an agreement must be certified to the Court within the period of ninety days, and if not so certified cannot be taken cognizance of by the executing Court.

To hold otherwise would certainly lead to difficulties and inconvenience which it was the evident intention of the framers of the Code to obviate by the enactment of Order XXI, Rule 2.— **20 T. L. J.,** *332*.

Ref.—23 T. L. J., 140.

2. The word "decree-holder" in Section 225 of the old Code must be interpreted as meaning the sole decree-holder if there is only one or all the decree-holders, if there are more than one. In this view, it cannot be said that the certificate of one of the decree-holders has the binding effect which would have been given, had it been signed by all.

Under Section 224 (Order XXI, Rule 13) where a decree has been passed jointly in favour of more persons than one, any one or more of such persons or his or their representatives may apply for the execution of the whole decree for the benefit of them all, or where any of them has died, for the benefit of the survivors and the representatives in interest of the deceased. But the right to execute a decree does not necessarily imply a right to surrender the decree without payment.

Per Narayana Pillai, J.—The certificate under Section 255 of the Code does not preclude an enquiry into the truth of the alleged payment.— **20 T. L. J.,** *592*.

3. The adjustment referred to in Order XXI, Rule 2, is a transaction which extinguishes the decree as such in whole or in part and results in a satisfaction of

the whole or a portion of the decree in respect of the particular relief or reliefs granted by the decree.

Where, therefore, one of several judgment-debtors pleaded an oral adjustment whereby he promised to pay a certain portion of the decree amount to the plaintiff by a certain date, and the plaintiff, in return, promised to exonerate him from further liability and the judgment-debtor sought specific performance of such contract, in execution of the decree:

Held.—On a proper construction, the adjustment pleaded was a transaction to vary the terms of the decree leaving the altered terms to stand in the place of the terms of the decree so as to constitute a new executable decree, and could by no means be called an adjustment of the decree in whole or in part to the satisfaction of the decree-holder under Order XXI, Rule 2:

Held further.—Section 92 of the Indian Evidence Act was also a bar to the setting up of such an oral agreement substituting a new executory contract in place of the original decree.— **20 T. L. J.,** *814.*

4. There is no doubt that a suit to enter satisfaction of a decree by virtue of uncertified payments made out of Court and for a perpetual injunction to restrain the decree-holder from executing the decree would not be maintainable, in view of the provisions of Section 255 of the old Civil Procedure Code. Though the plaintiff frames his suit as for a declaration that the decree had been satisfied and for striking it off the file and not for a perpetual injunction, still the claim is in substance the same inasmuch as the result of a decision as prayed for, would be to prevent the executing Court from executing the decree.

There is however no reason why the plaintiff's suit for recovery of damages caused by the decree-holder's conduct by applying for execution should be postponed till the recovery by him of the amount under the decree.

The Law casts a duty on the decree-holder receiving payment out of Court—the duty of certifying such payment in satisfaction of the decree, and if he fails to do so there is a breach of that duty and this necessarily implies that a cause of action accrues against him. And it has been held that with the presentation of every fresh application for execution there would be a recurring cause of action.

Indeed as nothing that the judgment-debtor could do would prevent the execution of the decree, it must follow that consideration failed when the decree-holder applied for execution ignoring the adjustment and a suit for the recovery of the amount paid as damages would lie.

Cause of action accrues to a judgment-debtor who has satisfied a decree by payment out of Court when the judgment-creditor commits breach of the express or implied agreement by applying for execution of the decree ignoring the alleged satisfaction or adjustment.

48 T. L. R., *26*
(=21 T. L. J., *1250*).

Ref.—22 T. L. J., 1404.
23 T. L. J., 63.

5. *Per Chakko, J.*—A mere allegation by a judgment-debtor that he paid or adjusted the debt out of Court is not a sufficient justification for a Court of law to release a judgment-debtor brought under arrest particularly in a case of a decree passed on a compromise.

Per Narayana Pillai, J.—The Execution Court can stay execution in appropriate cases only on a proper application and on safeguarding the interests of all concerned. A petition of adjustment out of Court presented by the judgment-debtor cannot oust the jurisdiction of the Court to proceed with execution —

22 T. L. J., *1012.*

6. Where by an agreement between the plaintiff and the defendants, the first

defendant consented to give plaintiff six months time in which to pay the decree-amount and undertook not to execute the decree before the expiry of that period and the properties were sold in execution in violation of the agreement :

Held.—A suit for damages by the judgment-debtor for breach of an agreement to grant time was maintainable. Section 254 of the old C. P. C. which declared every agreement to give time for satisfaction of a decree-debt to be void unless made with the sanction of the Court, has been repealed by the new C. P. C. and hence such contracts will be tested by the rules as to the validity of contracts in general.— **48 T. L. R.,** *197* **(=22 T. L. J.,** *686*).

7. The decree-holder applied for the execution of the decree against the surety of the judgment-debtor. The surety pleaded a payment to the decree-holder's Vakil by Anchal Money Order and also certain other payments into Court. The decree-holder disputed the payment to his Vakil, but admitted the payments into Court which he was prepared to credit towards the decree, but without interest since no notice of the deposits was given to him as and when they were made. The lower Court found as a fact that a payment was made to the decree-holder's Vakil. On appeal by the decree-holder:

Held.—(1) Order XXI, Rule 2, speaks only of applications by judgment-debtors in order to certify payments out of Court. The expression judgment-debtor as defined in the Code means a person against whom a decree is passed or an order capable of execution is made. A surety in execution is not a person against whom a decree has been passed. Execution against such a surety can be taken only on an order after notice to him under Section 109 C. P. C. As the payment to the decree-holder's Vakil was before the application for execution against the surety, the surety had not become a judgment-debtor at the time of payment and therefore Order XXI, Rule 2, does not stand in his way to plead an uncertified payment.

(2) The liability of the surety to pay arises only on notice to him under Section 109. The payments into Court were made before any such notice to the surety. The surety-bond in the case was a part of the compromise petition between the parties providing for payment into Court as a mode of satisfying the decree. Payments into Court by the surety have been in conformity with the agreement between parties. It is only proper that interest should cease on the amounts paid into Court.— **48 T. L. R.,** *405* **(=22 T. L. J.,** *1252*).

8. A decree-debtor paid out of Court certain amounts in partial satisfaction of the decree without being made aware by the decree-holder, who had knowledge of a subsisting attachment, and on failure to get the amount certified and before paying the amount over again the decree-debtor filed a suit *inter alia* for recovery from the decree-holder of the amounts paid but not certified :

Held.—It is clear that a decree-debtor who had paid part of the decree-debt has a cause of action when the implied contract to certify satisfaction is broken and breach of contract occurs when the time prescribed for it under the law expires. The allegation in the plaint was that the attachment itself was placed fraudulently and collusively, and the decree-holder's receipt of the amount was with the deliberate intention of defrauding the plaintiff. In the circumstances, the plaintiff's right to sue arose as soon as he came to know of the fraud.— **23 T. L. J.,** *69*.

9. A mere agreement between the parties, to the terms of which effect has not been given by the parties in any manner, could not be pleaded in bar of execution. The 'adjustment' contemplated in Order XXI, Rule 2, is one which has actually extinguished the decree in part or in its

entirety and cannot include a mere executory contract by which the terms of the decree are in effect varied or modified. Such a variation is against the policy of the Civil Procedure Code.

Where, therefore, the judgment-debtor pleaded in bar of execution, an agreement with the decree-holder, under which its terms were virtually substituted for the provisions of the decree, but no part of the consideration for the agreement has been paid or received and the agreement itself was to take effect only after the decision of an appeal between the judgment-debtor and a third party :

Held.—The executing Court could not recognise the plea.— **23 T. L. J.,** *140.*

Order XXI, Rule 13.

1. The Court has a discretionary power to allow one of the several joint decree-holders to execute the decree.

A question of conflicting title between two persons holding a joint decree is a proper subject for a fresh suit between them, and it cannot be determined as a question arising in the execution of the decree.

A Karanavan of a Tarwad can sue to recover properties which had been the subject matter of a former suit brought by the members of his Tarwad in which suit the Karanavan had been a defendant and had opposed the claim, and the Karanavan's suit is not barred by *res judicata.* **20 T. L. J.,** *497.*

2. See also—

Or. XXI, R. 2.— **20 T. L. J.,** *592.*

Order XXI, Rule 14.

1. *Benami* assignments have been frequently recognised in cases where it is not shown that the real transaction fell within the second proviso to Order XXI, Rule 14, or that any other provision of law was being infringed.

Gour Sundar Lahiri V. Hem Chander Chowdhuri (I. L. R., 16 Cal. 355) and *Balkishan Das V. Bedmati Koer* (I. L. R., 20. Cal. 338) do not seem to lay down a rule that judgment-debtor can object to the assignment on the mere ground that it is *benami* in favour of some person other than the nominal applicant.—

20 T. L. J., *1248.*

2. The assignment of the decree in question is dated Makarom 13, 1102, but subsequent to it, that is, on Makarom 28, 1102, the decree was attached by a certain creditor of the decree-holder, assignor. The lower Court rejected the application for recognising the assignment on the ground that the decree was attached before the transfer was recognised by the Court:

Held.—Order XXI, Rule 14, states that where a decree is transferred by assignment in writing, the transferee may apply for execution of the decree. From the above Order, it would appear that for the completion of the transfer, the recognition by Court is not necessary. For the words used are "where a decree is transferred by assignment in writing etc., the transferee may apply." It follows, therefore, that where a decree is transferred by an instrument in writing, such transfer takes effect from the date of such instrument, and not from the date of its recoguition by the Court.—

21 T. L. J., *76.*

3. The omission of the words 'if the Courts think fit' occurring in Section 225 of the C. P. C. of 1065 leads to the conclusion that if an application is made by the assignee, the decree may be executed without any permission of the Court in the same manner and subject to the same conditions as if the application has been made by the original decree-holder.

An uncertified adjustment cannot, therefore, be now raised as a ground for asking the Court not to recognise an assignment of the decree.— **21 T. L. J.,** *409.*

4. *Per Venkata Rao, J.—Held.*—The contention that application for execution was not in accordance with law inasmuch as it was not accompanied by a copy of a decree had no force, as there was good authority for the view that the omission to produce a copy of the decree was only a defect which might be cured later and that it did not invalidate the application itself.

The application by a transferee (of a decree) for recognition of the transfer in his favour and to execute the decree was in accordance with law even though the right had been negatived in subsequent proceedings.

On the contention that there was no warrant for the view that in execution proceedings started by one person another person could intervene on the strength of a hostile title and after obtaining a declaration of such title seek to contine such proceedings:

Held.—There appear to be no good grounds for holding that the Court has no jurisdiction to do so. So long as the assignment stood the right to execute the decree was *prima facie* in the assignee but he was nevertheless a person who claimed under the decree-holder and had prayed to be substituted in his place as a person entitled to carry on the execution proceedings. There is nothing opposed to principle in the view that the decree-holder himself (or as in the case a person representing the Tarwad which had obtained the decree) who has successfully assailed the assignment would be entitled to take out execution in pursuance of the application filed by the assignee. Any other view would be based upon mere technicalities and would undoubtedly lead to hardship.— **21 T. L. J.**, *985.*

5. It is competent to the Official Receiver, where the decree-holder has been adjudicated insolvent, to resist in execution proceedings the recognition of the assignment of the decree on the ground that it is fraudulent and collusive. It cannot be said that the Official Receiver's only remedy is to apply to the Insolvency Court for annulment of the assignment.

The order rejecting the assignee decree-holder's application for execution of the decree is appealable.

No formal recognition by Court is necessary to validate an assignment, as under the provisions of Order XXI, Rule 14, the assignee has the right to execute the decree by virtue of the assignment itself, the only restriction placed upon it being that orders to execute the decree can be passed only after giving notice to and hearing the assignor and the judgment-debtor.— **21 T. L. J.**, *1076.*

6. Under the Civil Procedure Code of 1065 it was held that a judgment-debtor, who had satisfied the decree in whole or in part, could raise this satisfaction as an objection to the recognition of an assignment by the Court. But that was because Section 225 of that Code only enabled the decree to be executed by the assignee if the Court thought fit. However, under the present Code, no order of the Court is necessary but the decree may be executed by the assignee in the same manner and subject to the same conditions as if the application had been made by the original decree-holder. Therefore, an objection that the decree has been satisfied will be no more valid against the assignee than it could have been against the original decree-holder.— **21 T. L. J.**, *1091.*

7. In execution, the decree-holder presented an application to the following effect.—

"Among certain properties of mine allotted to my sons S and R and the amount recoverable under the decree in this case has been made over to them and it is therefore prayed that they may be impleaded as additional plaintiffs in this case and that the amount due under the decree herein may be allowed to be realised by them and paid to them:

Held.—The petition amounted to an assignment in writing.— 22 T. L. J., *211.*

8. Where the decree-holder died during the pendency of an execution application, his legal representative could be substituted in his place in the execution petition and be allowed to continue it. No fresh application by the legal representative is necessary.

An execution application may be dismissed for want of effective prosecution. But to make the dismissal a judicial act, it must be for the default of the decree-holder including in that term, the legal representative of the decree-holder.

Where, therefore, without granting sufficient time to the legal representative of a deceased decree-holder to take steps in continuation of a pending execution application, the application had been struck off the file:

Held.—The order for striking off was not a judicial order. 22 T. L. J., *464.*

9. According to the amended provision in the Code, Order XXI, Rule 14, the discretion of the Court in recognising the assignment of a decree and to grant or refuse the application for execution seems to have been taken away. So unless proper reasons are made out by the appellant, the transfer of the decree has to be accepted as a mater of course.

The necessity for leave to sue the receiver rests upon two considerations—(1) that such a suit is incompatible with the dignity and authority of the Court and (2) that it might interfere with the duty of the Court to maintain the receiver's possession. Neither of these considerations affects the jurisdiction of the Court. It is a mere irregularity which can be effectively cured by obtaining sanction subsequently.

Where the receiver was not impleaded in the suit, but the District Judge allowed the receiver to be brought in as a party in execution:

Held.—The subsequent sanction cured the initial defect.

The provision in Rule 451 of the Civil Courts' Guide is intended to guard against possible abuses and does not render void assignments taken by Vakils.—

23 T. L. J., *642.*

Order XXI, Rule 15.

The decree was passed on 15-6-1091. After certain other applications have been filed and disposal of, the decree-holder, on 19-6-1101, applied for sale of a certain Otti right mentioned in a prior execution application. On 10-6-1103 the decree-holder purchased it in auction. This sale was set aside on 4-10-1104, on the ground, *inter alia* that the property had been wrongly attached and sold as movable property. On 14-10-1104, the decree-holder applied for attachment and sale of the said right as immovable property. The judgment-debtor objected to the attachment and sale prayed for on the ground that this last application was a fresh application filed after twelve years from the date of the decree:

Held.—The relief prayed for in the last previous application was the sale of this Otti right, and the same relief is now prayed for and the objection on the ground that the subsequent application was for a different relief is unfounded. It is true that while in the former application sale alone was applied for in the latter the decree-holder prayed for attachment and sale. This makes no difference as the main relief, *viz.*, the sale of the mortgage right, finds a place in both.

Viewing the latter application as one to amend the previous application which was defective for want of inventory, the Execution Court had jurisdiction under Order XXI, Rule 15, Clause 1, to allow an amendment of a defective execution application if it thinks fit, at any time before the disposal and such amendment,

if allowed, would, under Clause 2, act retrospectively.

There was no reason for holding that the discretion vested in the Execution Court was wrongly exercised. And the amendment so rightly allowed dated back to the previous pending application of 1101, which being within time no question of limitation arose.— 22 T. L. J., *87*.

Order XXI, Rule 16.

In order that Order XXI, Rule 16, may apply two conditions must be satisfied, *viz.*, first, the two decrees must have been passed in suits between the same parties and second, the decree-holder in one of the suits in which the decree has been made is the judgment-debtor in the other.

Clause (2) of Rule 16 only means that if the appellant is entitled to a set off against the original decree-holder, he will be entitled to the same remedies against that decree-holder's assignee also on the equitable principle laid down in Section 42 of the C. P. C., namely, every transferee of a decree shall hold the same subject to the equities, if any, which the judgment-debtor might have enforced against the original decree-holder.

Where a decree-debtor resisted the recognition of the assignment of the decree, on the ground that he was the assignee of two other decrees against his decree-holder :

Held.—He had no sustainable claim of set-off under Order 21, Rule 16, Clause (2), and cannot consequently oppose the assignment of the decree against himself, being recognised.— 20 T. L. J., *729*.

Order XXI, Rule 17.

Special appeal against the order allowing the plaintiff's application for delivery of the properties in execution of the decree for partition passed in the case. Under the decree the plaintiff was allowed to recover his share on payment to the first defendant Rs. 430 and odd and the first defendant was directed to pay the plaintiff's costs. The plaintiff applied for delivery and deposited the difference between the amount ordered to be paid to the first defendant and the amount of costs payable by the latter to him. The Munsiff and the intermediate Appellate Court allowed the set off :

Held.—Though the case cannot be brought strictly within the provisions of Order XXI, Rule 17, the plaintiff's prayer can be granted on grounds of equity.

Per Narayana Pillai, J.—Improvements, if any, effected after the commencement of the suit should be viewed with disfavour in the absence of valid justification. A party who is seen to have become busy in improvements, with eyes wide open to the contingency of the property being recovered in a pending action cannot complain of any inequity if he is turned out without any remuneration for his meddlesome activities. The extreme indulgence shown by some decisions of this Court in favour of those who talk of what they call "hard cash" as having been spent on improvements on other people's properties without a particle of *bona fides*, is a matter which merits consideration in the light of the established legal principles to the exclusion of sentimental inclinations.— 20 T. L. J., *890*.

Order XXI, Rule 19.

Order XXI, Rule 19, under which the Court may in its discretion refuse simultaneous execution against the person and property of the judgment-debtor should be read along with Order XXI, Rule 28, which provides for execution both against the person and property of the judgment-debtor. It has therefore been held that the Court has no power to refuse execution against the person of the judgment-debtor

on the ground that the decree-holder should in the first instance proceed against the properties.— 22 T. L. J., *466*.

Order XXI, Rule 20.

1. It has been held that for an order in execution to operate as a bar, it should have been passed after notice sufficient to give information of the nature of the reliefs sought in the execution application.

The only important question that has to be decided in matters of this kind is that the other party should have notice of the fact that the question was fixed for decision on that date. 23 T. L. J., *1242*.

Ref.—24 T. L. J., 770.

2. See also Regn. VI of 1100. Art. 166. } —21 T. L. J., *411*.

Order XXI, Rule 27.

The appellant who was the judgment-debtor under a decree passed by the Quilon Munsiff's Court applied to that Court under Order XXI, Rule 27, to stay execution of the decree on the ground that he had instituted a suit against the decree-holder in the Quilon District Court. The application was not allowed and the appeal was from that order :

Held.—Under Order XXI, Rule 27, the presentation of the application must be to the Court where the suit was pending. Also, the suit by the judgment-debtor against the decree-holder must be one pending in the same Court which passed the decree against the judgment-debtor. Though, no doubt, some decisions have interpreted the expression "such Court" in Order XXI, Rule 27, to include not merely the original Court but also the Appellate Courts and also Courts to which the decrees are transmitted for execution, still these considerations did not apply to the case. The application of the judgment-debtor was therefore misconceived and rightly rejected. The appellant had no case even on the merits.

Per Sivasankara Pillai, J.—An appeal might be maintainable even from an order refusing stay of execution on an application under Order XXI, Rule 27.—
49 T. L. R., *473*
(=23 T. L. J., *862*).

Order XXI, Rules 30 & 31.

Under Order XXI, Rules 30 and 31, the Court has discretion when the imprisonment of a refractory party to a decree for restitution of conjugal rights is applied for. In this respect the law differs from the British Indian Civil Procedure Code, which, following the provisions of the Matrimonial Causes Act of 1884 (47 and 48 Vic. C. 68) omitted imprisonment as a mode of enforcing decrees in such cases. A party seeking the exercise of the discretion in his favour under Order XXI, Rules 30 and 31, should however show good grounds to enable the Court to do so.

Where, therefore, a wife against whom a decree for restitution of conjugal rights was passed set up in answer to the execution petition more or less the same grounds as were raised by her by way of defence to the suit and her objections were overruled by the execution Court in exercise of its discretion :

Held.—It was not open to her to rely upon a fresh ground which had not been pressed by her in the earlier stages of the proceedings.— 21 T. L. J., *1192*.

Order XXI, Rule 31.

Order XXI, Rule 31, empowers the Court to pass an order, either at the time of passing the decree or at any time afterwards, directing that a decree for the restitution of conjugal rights shall not be executed by detention in the Civil prison. Under the old Code of Civil Procedure,

the Court had no discretion in the matter of the execution of a decree for restitution of conjugal rights. Once a decree was passed for restitution of conjugal rights and the decree-holder applied for the execution of the decree, the Court had to grant the application as a matter of course. The Legislature thought that it was desirable to invest the Courts with a certain amount of discretion in the matter. Accordingly the present Rule 33 of the British Code (corresponding to Rule 31) based on the principles of the Matrimonial Causes Act 1884 (47 and 48 Victoria C. 68) was enacted although that Rule does not go to the length to which the Matrimonial Causes Act goes. Under this latter Act in England, this mode of execution by the attachment of the person or property of of a recalcitrant judgment-debtor has been done away with. The British Indian Legislature evidently thought that the time had not arrived for making such a radical chage in the law as was effected by the English Matrimonial Act of 1884 although they thought that some relaxation of the old law in India was necessary. Order 21, Rule 31 appears to be the result of the altered sentiment. Under it, the Court is invested with a certain amount of discretion in the matter of the execution of a decree for restitution of conjugal rights. It may either at the time of the passing of the decree or at any time afterwards pass an order that the decree shall not be executed by the detention of the judgment-debtor in the Civil prison. What the circumstances are under which a Court may pass an order refusing to arrest or detain the judgment-debtor in prison would depend on the facts of each case. No hard and fast rule can be laid down in the matter for the guidance of the Courts. A good deal of latitude has to be allowed to the subordinate Courts in the matter. It is not the practice of the High Court to interfere with the orders passed by subordinate Courts in the exercise of their discretionary powers unless the Court is satisfied that the lower Court has exercised its discretion in a perverse, arbitrary or manifestly unjustifiable manner.

In the case, the judgment-debtor was a young woman of 19. It was also in evidence that a petition for divorce filed by her was pending before the lower Court. On the lower Court refusing to send her to jail, the decree-holder-husband appealed to the High Court.

The tendency of modern legislation is against sending women to jail in civil matters, and except in exceptional circumstances, the Court ought to set its face against sending women to jail in civil matters. Of course there may be cases exceptional in their nature in which the interests of justice would imperatively require that a woman should be incarcerated in jail and in such cases, the Courts would not and ought not to hestitate in the exercise of their discretion to send such recalcitrant woman to jail. But this should be the exception and not the rule:

Held.—The High Court would not interfere. In the case, it could not be said that in refusing to send the judgment-debtor to jail, the lower Court exercised its discretion either arbitrarily, perversely or unjustly so as to justify interference in appeal.— **49 T. L. R.,** *14* (= **23 T. L. J.,** *101*).

Order XXI, Rule 38.

Order XXI, Rule 38, specifically refers to poverty or any other sufficient reason as a good ground for suspending the execution of the decree against the person of the debtor. The burden of proving poverty under the Rule is on the debtor.

When there is an execution application, the primary consideration is the interest of the decree-holder and where his interests are likely to be jeopardised, the Courts have no option but to execute the decree. But where without any detriment

to the decree-holder, the granting of time to the judgment-debtor would not only enable the decree amount to be paid, but would also prevent serious loss or ruin, the Court would do well to stay execution against the person of the debtor for such time as it considers reasonable in the circumstances of the case.—

21 T. L. J., *921*.

Order XXI, Rules 43 & 44.

See Regn. I of 1074, Secs. 403 & 425.—
46 T. L. R., *345*
(=20 T. L. J., *1131*).

Order XXI, Rule 50.

See Sec. 59.— 46 T. L. R., *4*
(=20 T. L. J., *628*).
24 T. L. J., *107*.

Order XXI, Rule 51.

1. A decree is capable of being hypothecated and of being sold in Court auction in execution of a decree for its sale. The provisions of the Civil Procedure Code for the attachment of decrees and the procedure to be followed by those who attach decrees do not preclude the possibility of a sale of a decree by a Court of Law. Decrees may be transferred by act of parties or by operation of law even according to the Civil Procedure Code. A Court sale is certainly a process of law. If a decree may be sold by act of parties, it should equally be saleable by a Court of Law.— 22 T. L. J., *568*.

2. Attachment of a decree for money has not the effect of preventing a valid transfer of the decree.— 23 T. L. J., *411*.

3. The decree in S. C. No. 665 of 1102 of Krishnapuram Munsiff's Court was attached before judgment in O. S. No. 376 of 1102 of the same Court and subsequent to the passing of the decree in the latter case the decree-holder therein applied for execution of the attached decree whereupon the first defendant in the Small Cause opposed on the ground that the decree had been adjusted prior to the application for execution and that he had no knowledge about the attachment since no notice had been issued to him as required by Order XXI, R. 51 (6). The execution Court found that the prohibitory notice was not served upon the first defendant but overruled his objection on the ground that the payment pleaded was not true:

Held (*in revision*),—Order XXI, R. 51, read along with Order XXXVI, R. 10, shows that even for attachment before judgment, the notice contemplated by clause (6) of Order XXI., R. 51, must be issued. This provision appears to be of a peremptory nature and payment or adjustment made by the judgment-debtor under the attached decree would not be liable to be recognised by the Courts, if done after the receipt of the notice referred to in Clause (6). It is significant that under this Rule notice of the order of attachment either through Court *or otherwise* would be sufficient. As this is however, only a special case of the application of the well-known principle of justice and equity intended for the protection of parties to a *bona fide* transaction without notice, the question of notice does not arise with regard to payments made or any adjustment not *bona fide* effected by the judgment-debtor.— 24 T. L. J., *433*.

4. Where a decree is attached before judgment the order issued by the Court attaching the decree absolutely prohibits the execution of the decree by anybody. It clearly amounts to an injunction. The case is stronger when the order in terms prohibits the execution.—

24 T. L. J., *584*.

5. See also Or. XXI, R. 55.—
47 T. L. R., *18*
(=21 T. L. J., *25*).

Order XXI, Rule 52.

A debt secured by an usufructuary mortgage of immovable property should, for the purposes of attachment and sale in execution, be regarded as immovable property. The procedure prescribed by Order XXI, Rule 52, (Section 271 of the old Code) should therefore be followed in effecting attachment of such debts. –

22 T. L. J., *1208.*

Order XXI, Rule 53.

See Order XXI, R. 55.—

47 T. L. R., *18*
(=21 T. L. J., *26*),

Order XXI, Rule 55.

1. The decree in the case was passed in appeal on 23-1-1088. After several obstructions in execution, the decree-holder applied on 4-8-1099 to execute the decree by attachment and sale. Attachment was ordered on 26-3-1100 and the properties came up for sale on 14-4-1102. As no one came forward to bid, the sale was adjourned to 28-4-1102 for further steps. No steps were, however, taken but the Court instead of dismissing the petition adjourned the case *sine die*. On 29-6-1103, without notice to the decree-holder and without hearing him, the execution petition was rejected. On a plea of limitation raised by the judgment-debtor :

Held(Agreeing with the Court below).— The order "rejected" passed on 29-6-1103 was hardly judicial and the attachment already effected cannot be deemed to have been withdrawn by it, and therefore, the application dated 18-8-1103 which was one for proclamation, was but auxiliary to the pre-existing attachment and not a substantive application within the meaning of Section 41.

Whether the disposal of an execution petition is judicial or merely ministerial, would depend upon the intention gatherable from the phraseology and the circumstances. The test to be applied is whether the order under consideration was passed after notice to the decree-holder and whether his default has led up to the order :

Held further.—Inasmuch as there had been attachment before judgment in the case, such attachment remained in force notwithstanding the dismissal of the execution application at a subsequent stage, since Order XXI, Rule 55 was applicable in terms only to attachments after judgment and re-attachment in execution did not mean an abandonment of the attachment before judgment.—

20 T. L. J., *898.*

Ref.—22 T. L. J., 464.
24 T. L. J., 587.
Fol.—23 T. L. J., 753.
22 T. L J., 900.

2. The new Civil Procedure Code has no retrospective effect on attachment existing when it came into force.

An attachment operates *de die in diem* as a process in execution.

Where therefore an attachment in execution was effected on 29-1-1101, but for default of the decree-holder to produce the proclamation schedule, the application for execution was rejected on 8-2-1101 and the decree-holder subsequently applied on 28-5-1104, to sell the properties originally attached :

Held.—The attachment survived and the sale of properties could be held on basis of such attachment. Order XXI, Rule 55, is not applicable.—

20 T. L. J., *1210.*

Ref.—21 T. L. J., 743.
24 T. L. J., 587.

3. The decree-holder attached the properties of the defendants on 14-8-1090. Various other steps were taken subsequently and the execution applications were dismissed. On 14-4-1099, application was

made for the sale of the properties already attached. On 30-7-1099 that application was dismissed. On 25-7-1101 intimation was received that the decree under execution was attached in execution of the decree in O. S. No. 78 of 1092 on the file of the Parur District Court. On 29-7-1101 the attaching creditors applied for proclamation and sale of the properties already attached by the original decree-holder. On 31-11-1102 the proclamation for sale was duly published. When the properties came up for sale on 18-7-1103, the 2nd defendant put in a petition alleging payments to the decree-holder which were not certified. His objections were dismissed by the Munsiff on 19-7-1103 and on the same day items 1 to 6 in the proclamation schedule were purchased in Court auction by the attaching creditors. An appeal was preferred which was also dismissed. The questions for consideration were:

(1) Whether a fresh attachment was necessary inasmuch as the attachment originally effected should be taken to have fallen to the ground with the dismissal of the subsequent execution petitions.

(2) Whether uncertified payments made to the holder of the attached decree could be set up in execution as against an attaching creditor.

Held (In special appeal).—(1). There is difference between the old and the new Civil Procedure Code in regard to the provisions relating to the termination of attachments. Under Order XXI, Rule 55, the attachment would cease on the dismissal of the execution application but under Section 272 of the old Code(=Order XXI, Rule 53), the attachment would continue until it is withdrawn by the Court. In the present case the attachment was made before the new Code came into force. It would persist in spite of the dismissal of execution applications since the new Code came into operation.

(2) A payment not certified within the time limited by law cannot be set up in execution as against an attaching creditor. An attaching creditor is like a parasite on the attached decree and is regarded as the representative of the holder of the attached decree by virtue of Order XXI, Rule 51. The holder of an attached decree remains in a state of suspended animation while the attachment lasts. Were it not so, his rights would not revive on the cesser of the attachment. His ownership is not divested and an uncertified payment being unavailable against the decree-holder is of no effect against the attaching creditor either.—

47 T. L. R., *18*
(=21 T. L. J., *25*).

Ref.—48 T. L. R., 350 (=22 T. L. J., 1058).
24 T. L. J., 69.

4. Where an execution application, presented after the new Civil Procedure Code came into operation, for sale of properties attached when the old C. P. C. was in force, was dismissed for default:

Held.—The attachment ceased under Order XXI, Rule 55, on account of the dismissal of the prior application and a fresh application for sale of the properties was not sustainable. On the date the present Code came into operation, the attachment no doubt subsisted and the decree-holder had a right to bring the property to sale in pursuance of the attachment, but the effect of the dismissal of his application for sale must be governed by the C. P. C. that was then in force.—

48 T. L. R., *200*
(=22 T. L. J., *681*).

5. Order XXI, Rule 55, has no retrospective operation. Under the old Code, the decree-holder was entitled to move for the judgment-debtor's property which had been attached before judgment without a fresh attachment even in cases where his application for execution had been dismissed. Even according to the British Indian decisions, in order that attachment before judgment should come to an end under Order XXI, Rule 57, it is

necessary that the decree-holder should have applied for execution by sale of the attached property and his application been dismissed for default.—

49 T. L. R., *404*
(=23 T. L. J., *753*).

Ref.—24 T. L. J., 587.

6. In execution of the decree in O. S. No. 22 of 1092, an application was made on 20-11-1098 to attach the decree in O. S. No. 56 of 1094. Attachment was accordingly ordered on 1-12-1098 but subsequently on 8-12-1098 the execution application was struck off for alleged default to produce copy of the decree in O. S. 56. No time had however been fixed for the production of the copy of the decree nor had notice been issued to the decree-holder about the passing of such an order. The question arose for decision whether after expiry of the normal period of limitation from 8-12-1098, the attachment ordered on 1-12-1098 did subsist so as to enable the decree-holder in O. S. No. 22 to apply to draw some money that had come to the credit of the decree in O. S. No. 56 of 1094.

Held.—The case is not governed by Order XXI, Rule 55, of the Code of 1100, but by the corresponding provision of the repealed Code, *viz.*, Section 272. Under the decisions based on the wording of the latter, attachment once issued will continue in force until it is withdrawn by the Court even in cases where the application for execution had been dismissed. It therefore follows that the attachment effected is in existence and operates *de die in diem* till date of application to draw the money in question.

The execution application on which attachment was effected cannot be said to have been finally disposed of. No time limit was fixed for production of the copy of the decree and no notice about the passing of such an order had been issued to the decree-holder in O. S. No. 22 of 1092. He got what he then wanted by securing an attachment and it is open to him to wait until an opportunity occurred for making a move forward. The execution application must be considered to be still pending and the petition for issue of the cheque must be viewed as simply a revivor of it.

If and so long as the execution proceedings are pending, the decree-holder's application for their continuance is not subject to any rule of limitation and can be made at any time. All the time the proceedings initiated by him are pending his right to apply for their continuance accrues from day to day. The application for the money which is merely one process for reaping the benefit of the attachment of the decree cannot be ruled out as being out of time.

Per Venkita Rao, J.—The attachment of 29th Audi 1079 still subsists. It was never set aside. The decree-holder's failure to pay the necessary process for the order of proclamation which he had obtained, only affected the order for proclamation. But an order for attachment under the old Code subsists until cancelled under Section 272 of the Code. The effect of attachment being to place the property in the custody of the Court, the Court holds the property as trustee for the judgment-creditor and until released from the custody of the Court, no question of limitation can arise.— **24 T. L. J.,** *69*.

Dist.—24 T. L. J., 587.

7. Where after the dismissal for default of an execution application, the decree-holder remained quiescent for more than the time prescribed for a fresh execution application and the judgment-debtor thereupon moved the Court for an order declaring that the decree was barred so that she may be enabled to realise a debt due to her which had been attached before judgment, and the Courts below refused to accede to the prayer on their view that the mere dismissal of an execution application did not terminate the attachment before judgment:

Held.—The opinion of the lower Courts as to the continuance of an attachment

before judgment after the dismissal of an application for execution of the decree cannot so far as the authorities of this Court go, be said to be unsound. It was noticeable, however, that all the British Indian Courts did not speak with one voice on the matter. It would therefore require careful consideration before disturbing the course of the authorities here and starting a new current, but the determination of the question was unnecessary since the decision could be based on another point.

The attachment before judgment whether it continued or not could not avail the decree-holder in the case because its pendency could not *proprio vigore* keep alive the decree. If the decree had otherwise become barred such attachment would be nugatory. Order XXXVI, Rule 11, of the Code providing for the effect of attachment before judgment did not necessarily mean that attachment before judgment was for all practical purposes possessed of the same legal efficacy as an attachment in execution of the decree. In regard to attachment in execution, it had been settled that it operates *de die in diem* as process in execution of a decree, but it would be an unwarrantable stretch of language that the same could be said of attachment before judgment.

Therefore the Courts below acted wrongly in failing to pass an order at the judgment-debtor's instance that the decree was barred so that the prohibition issued by the Court may be removed and she be enabled to realise the money due to her.— **24 T. L. J.,** *587.*

Order XXI, Rule 56.

1. Rule 56 of Order XXI does not apply to mortgage or hypothecation decrees since properties directed to be sold under a mortgage or hypothecation decree do not require to be attached. The proper remedy of a person claiming rights in or title to properties directed to be sold in execution of a mortgage decree is to proceed by way of a suit.— **22 T. L. J.,** *737.*

2. See also Sec. 40.— **21 T. L. J.,** *165.*

Order XXI, Rule 57.

See Or, 21. R. 55.— **23 T. L. J,,** *753.*

Order XXI, Rule 61.

1. The plaintiff who was in possession of the plaint property under an original mortgage and a subsequent sale of the equity of redemption, mortgaged the same to the defendant. In execution of a money decree obtained by one A, the property was attached. The plaintiff filed a claim petition, but it was dismissed for default on 1-4-1098 and the property was sold in Court auction and purchased by the decree-holder who sold it to the defendant on 24-2-1105. The suit for redemption was instituted on 1-6-1105. It was contended that the suit was barred by limitation as it was not instituted within one year after the claim order :

Held.—In order that Article 9 of the Limitation Regulation of 1062 might apply the order in question must be one coming within the purview of Section 280, C. P. C. (old). The order contemplated by this Section must be one passed under Sections 277, 278 and 279. These Sections relate to orders passed after due investigation. In the case, the order was passed not after investigation, but the claim was merely dismissed for default. To such an order Section 280 does not apply. Therefore Section 278 and Article 9 of the Limitation Regulation do not apply to the case.

In order that the provisions of Order XXI, R. 61, C. P. C. and Section 31 of the Limitation Regulation might apply it should have been incumbent upon the plaintiff to institute the suit within 12

years. The attachment merely threw a cloud at best on the plaintiff's title, but it caused no infringements of his rights. It is merely discretionary with the party on whose title some cloud has been thrown to institute a suit for the declaration of his right and therefore the plaintiff was not bound to bring a suit to set aside the claim order. In fact the plaintiff was not bound to put in any claim petition at all. No question of limitation therefore arises in the case.—**48 T. L. R.**, *409* (=**22 T. L. J.**, *1314*).

2. Certain movables were attached by the defendant in execution of another decree obtained by him. The plaintiff put in a claim petition which was rejected. He therefore instituted the suit, under Order XXI, Rule 61, for the cancellation of the above order rejecting his claim.

On the question of onus of proof, it was held that the onus lies on the defeated claimant who institutes the suit, to make out his title.— **48 T. L. R.**, *428* (=**22 T. L. J.**, *1260*).

3. See also Or. XLV, R. 1.— **20 T. L. J.**, *975*.

Order XXI, Rule 62.

1. The Court has a discretion in the matter of selling properties in execution of decree, either to sell them in several lots or in mass in the absence of something to indicate that, in the particular circumstances, the discretion was exercised wrongly or improperly. It cannot be held that because, on a prior occasion, the Court ordered the properties to be sold in separate lots, it is bound to stick to that order whatever circumstances may arise subsequently.— **23 T. L. J.**, *32*.

2. See also Sec. 44.— **20 T. L. J.**, *894*.

Order XXI, Rule 64.

1. When a judgment-debtor agreed to pay an enhanced rate of interest under the decree in consideration of time allowed by the decree-holder for the discharge of the decree, and the Court, 'recorded' the agreement, and the properties of the judgment-debtor subsequently came on for sale in execution of the decree for the amount calculated at the enhanced rate, the judgment-debtor having raised no objections either at the time of the settlement of proclamation or on the first posting for sale which had been adjourned at his instance:

Held.—It was not open to the judgment-debtor to raise the plea that the agreement for additional interest had only been 'recorded' and not 'sanctioned' by the Court. If a judgment-debtor, after receipt of notice under Order XXI, Rule 64, or of the knowledge of the contents of the sale proclamation before it is issued, neglects to take any objection to the proceedings, he should not, in justice, be allowed to take such objections at the sale or afterwards.— **21 T. L. J.**, *1031*.

2. Where an objection is raised under Order XXI, Rule 64 (2) (c), on the ground of non-disclosure, in the proclamation, of certain encumbrances to which the property is subject, it is necessary for the Court to consider whether such encumbrances in fact exist. The matter comes under Section 40 of the Code and the decision of the Court thereon is appealable.

Questions as to under valuation and as to the factum of possession of the property with particular person are on the other hand not specifically mentioned in Order XXI, Rule 64, though presumably they come under clause 2 (*c*) of the Rule. The remedy of a party sustaining damage on this score by sale in execution, lies by an application under Order XXI, Rule 87.— **22 T. L. J.**, *888*.

3. The appeal is taken by the judgment-debtor against the order of the lower Court rejecting his objection to the proclamation of the property under Order XXI, Rule 64. On a preliminary objection

being taken that no appeal lies against this order it was contended that the said order is one falling under Section 40 of the Code and as such appealable:

Held.—Every order under Section 40 C. P. C. relating to execution is not appealable. It is only such orders as have the effect of decrees as defined in Section 2 (2) of the Code, *i. e.*, such orders as determine the rights of the parties with regard to the matters in controversy in suit that are appealable.

If the judgment-debtor does not object on receipt of notice under Order XXI, Rule 64, he is afterwards estopped from contending that the proclamation was defective. But if the Court without considering the objections settles the proclamation there is no estoppel against him and he has a right to question the validity of the sale under Order XXI, Rule 87, on account of irregularity in conducting and publishing it. In such a case the proper thing for him to do is to allow the sale to proceed and after the sale has taken place, to apply for setting it aside under Order XXI, Rule 87, and not to appeal against the order.— **48 T. L. R.,** *350*
(=22 T. L. J., *1058*).

4. Where an objection to the settlement of a proclamation on the ground of serious mis-statements contained in the schedule to the proposed sale proclamation was rejected by the lower Court with the summary order "that the petitioner has a right to come in even after the Court sale," and no opportunity was given to the objector to substantiate his case by evidence:

Held.—Though an appeal from the order was not maintainable unless it was shown to have come within the ambit of Section 40, still the High Court has power to interfere in revision if the lower Court had not considered the petition on the merits and disposed of the matter judicially. In enacting Order XXI, Rule 64, with its elaborate provisions for giving notice of the proclamation to the judgment-debtor and the decree-holder and the several other particulars the Legislature must have had some purpose in view. The view of the lower Court was obviously erroneous and if pushed to its logical conclusions would in very many cases stultify the provisions of Order XXI, Rule 64.— **22 T. L. J.,** *1317*.

5. All orders passed under Order XXI, Rule 64, could not be treated as falling under Section 40 of the Code, but if however they decided some questions relating to the execution of the decree, the orders would fall within the ambit of Section 40 and be therefore appealable against decrees under Section 2 Clause (2) of the Code. An order settling a proclamation after rejecting objections to it on the ground of under valuation or other defect of form is not appealable except where the said order could be regarded as final.— **49 T. L. R.,** *406*
(=23 T. L. J., *702*).

Order XXI, Rule 65.

See Sec. 44.— **20 T. L. J.,** *894*.

Order XXI, Rule 67.

The adjournment of the Court sale under Order XXI, Rule 67, consequent upon the order staying execution, and the subsequent sale after the order of stay had been cancelled did not affect the validity of the sale. In the case, when the Court proceeded to sale, the stay order had vanished and hence there was no cramp on the jurisdiction of the Court.

The removal of an order staying execution revives the rights of the decree-holder.

A unilateral mistake not induced by the Court is of no moment in considering the validity of a Court sale.—
22 T. L. J., *823*.

Order XXI, Rule 68.

A purchaser in Court auction failed to deposit the 25 per cent of the purchase money under Order XXI, Rule 81. The property was consequently resold at a loss, but the re-sale was conducted only after 5 P. M. on that day. It did not appear that the Presiding Officer or any other Officer in Court intimated to the bidders present that the properties will be re-sold that day itself in case the first purchaser failed to deposit the 25 per cent :

Held.—There was no proper re sale and the judgment-debtor could not therefore take advantage of the provisions of Order XXI, Rule 68, so as to recover the deficiency from the first purchaser. Under Order XXI, Rule 81, the deposit of 25 per cent has to be *immediate* and in default of the deposit the property has to be sold *forthwith*. By adopting the procedure prescribed under the Rule the bidders who are present at the first auction will be aware of the re-sale and if they care they can take part in the second auction also.—

22 T. L. J., *1161.*

Order XXI, Rule 69.

See Sec. 55.— 20 T. L. J., *438.*

Order XXI, Rule 70.

Under Article 451 of the Civil Courts' Guide, paragraph 2, Vakils are declared prohibited from purchasing property at auction sales held by the Courts in which they practice, without the express sanction of the Presiding Officer who will record his reasons for granting the sanction. It could be seen from the above provision that the High Court did not consider Vakils to be Officers having any duty to perform in connection with the sales within the meaning of Section 289 (old Code), for the legalising of such purchase where the previous sanction of the Court is taken could not have been made if the Vakil had been considered to be an Officer of the Court, especially as the prohibition contained in the Section was absolute.

Order XXI, Rule 70 of the Code of 1100 lays down that no Officer or other person having any duty to perform in connection with any sale, shall either directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold. The corresponding Section 289 of the Code of 1065 laid down that no Officer having any duty to perform in connection with any sale under this Chapter (relating to the execution of decrees) should either directly or indirectly, bid for, acquire or attempt to acquire, any interest in any property sold at such sale.

The fact that the Vakil has to prepare the proclamation schedule or other papers in connection with the same or to produce them in Court cannot *per se* amount to the duty to be performed in connection with the same as contemplated in Order XXI, Rule 70. The provisions embodied therein create a restriction on the rights under the general law that the persons referred to therein possess. Being restrictive in their nature, they have to be strictly construed. The duty referred to therein should be construed as relating only to those expressly contained in the Code itself. It could have reference only to the provisions in the Code insisting upon the timely presentation of the petitions and the like by persons interested in or aggrieved by the same. Under the circumstances, the Rule contained in Article 451 of the Civil Courts' Guide cannot be deemed to have been abrogated by virtue of the passing of the Code of 1100.

The fact that the Vakil was the purchaser could not by itself affect the validity of the sale. Whatever its effect may be as regards the rights and obligations of the Vakil to his client by allowing the benefit thereunder to enure in favour of the latter, or the liability of

the Vakil for disciplinary action by the High Court, it could not afford a basis for cancellation of the same unless the conditions laid down in Order XXI, Rule 87, have been made out to exist in the case. The sale could not be set aside for any other reasons.

Quaere.—Whether the non-compliance of the rules in the Code of 1100 would amount to illegalities or only to irregularities.— 20 T. L. J., *318.*

Order XXI, Rule 75.

Money reserved in a document as-payable to a judgment-debtor is movable property for purposes of sale in execution and under Order XXI, Rule 75, no irregularity in publishing or conducting the sale of such property shall vitiate such sale. Order XXI, Rule 75, applies to all kinds of movable property whether recoverable *in specie* or not.— 49 T. L. R., *464* (=23 T. L. J., *747*).

Order XXI, Rule 81.

See Or. XXI. R. 68.— 22 T. L. J., *1161.*

Order XXI, Rule 83.

1. Under Order XXI, Rule 83, a discretion is vested in the Court in the matter of cancelling the sale and ordering forfeiture of the deposit. This discretion has to be exercised judicially and on grounds that ought to appear from the order itself.— 21 T. L. J., *956.*

2. The new Civil Procedure Code has effected an important alteration in the law as regards the forfeiture of the deposit made by a defaulting auction-purchaser. Under the old Code, the Court had no discretion in the matter. The present Rule (Rule 83 of Order XXI) has invested the Court with a wider descretion. The change was found necessary as the Rule in its original form was found to work hardship in several cases. Under the present Code it is not obligatory on the Court to pass an order forfeiting the deposit to Government. The Court can in proper cases order the refund of the amount to the auction-purchaser.—

22 T. L, J., *1174.*

Order XXI, Rule 86.

1. The expression 'immovable property' in Order XXI, Rule 86, could not be construed to be restricted to all the properties comprised in the Court sale and not any individual item included therein. Every item covered by the sale would be immovable property that has been sold. The expression 'such property' occurring in the latter part of the Rule can have reference only to the immovable property falling under the category specified in the previous portion. As such there is no reason to hold that the person who had succeeded to the title over one of the items sold should not be considered to be one who could claim the benefit of Rule 86. To construe the expression 'immovable property' occurring in this Rule as connoting all the properties sold in one lot would virtually require the importing into the Section words which do not as a matter of fact find a place therein. If, however the intention of the Legislature has been to restrict this privilege to persons who acquire title over *all* the properties sold in one lot, such intention would have been made clear by the wording of the Rule. Further, the restricted construction would require a denial of this right not only to holders of title by sale from the judgment-debtor of certain items of properties covered by the sale, but also to holders of interest in specific shares in all the items covered by the Court-sale besides judgment-debtors who have a title only to certain of the properties so sold, that with respect to

the others being vested in their co-defendants. A refusal of this right in such cases would be contrary to the policy of the Legislature providing for the judgment debtor an opportunity to discharge the decree-debt, of course allowing the auction-purchasers 5 per cent. of the purchase amount as a solatium for the non-confirmation of their sales.

20 T. L. J., *428.*

2. The attaching-creditor under a decree obtained against a decree-holder who for purposes of execution has been impleaded as additional plaintiff can have priority only with respect to the expenses incurred by him in execution, and the balance available in the Execution Court could not be claimed by him wholly, ignoring those of the other creditors who have placed an attachment on that decree.

The amount realised by sale and deposited under Rule 86 of Order XXI should be treated as assets of the decree-holder.

The expression "decree-holder" occurring in the Rule would refer only to the person in whose favour a decree is passed or his transferees whether by act of parties or operation of law and not to persons who hold an interest therein. By the mere fact that as such holder of interest an attaching creditor was allowed to execute the decree, he could not be considered to have become the decree-holder in the execution proceedings, within the meaning of the Rule.—

46 T. L. R., *1*
(=20 T. L. J., *632*).

3. In execution of a decree against the first defendant and others (governed by the Eazhava Regulation III of 1100), certain properties belonging to the first defendant were sold in Court auction and purchased by a stranger. Subsequent to the Court sale but within thirty days thereafter, the appellant obtained a private sale from the first defendant, of the said properties, paid off the decree-holder out of Court and made application to Court under Order XXI, Rule 86 (1), for setting aside the Court sale, accompanied by a deposit of five per cent commission due to the auction-purchaser. The decree-holder also certified satisfaction to Court, of the decree. On the objection of the auction-purchaser and applicants for ratable distribution that the application under Order XXI, Rule 86 was incompetent;

Held.—(1) Though the sale deed in favour of the appellant was not binding on the Tarwad of the first defendant because it was executed by him alone, still in the absence of any objection from the junior members of the Tarwad as to its validity, it conferred sufficient interest in the appellant to entitle him to apply under Order XXI, Rule 86.

Section 21 of the Eazhava Regulation III of 1100 does not say that a sale deed executed by the Karanavan or other managing members without the written consent of all the major members shall be void in law. All that the Section can possibly mean is that such sale deeds, etc, as are specified in the Section cannot be valid or operative as against the Tarwad if the junior members choose to question its validity.

(2) It was wrong to contend that after the sale in auction and purchase by a stranger, any adjustment between the decree-holder and the judgment-debtor within the statutory period cannot affect the stranger auction-purchaser's purchase of the property sold in Court auction. Order XXI, Rule 86, differs from the British Indian Code, in one respect, *viz.*, that under the British Indian Code the would-be depositor must be one who had an interest by virtue of an interest acquired *before the sale* whereas under the Travancore Code the interest may be one acquired *before or after the sale*. That a third party and not the decree-holder is the purchaser in Court auction does not make the slightest difference.—

21 T. L. J., *1001.*

4. Section 307-A of Regulation II of 1065 is the provision that corresponds to Order XXI, R. 86. The draft of the new Code did not contain the second proviso to Order XXI, R. 86, but the proviso was subsequently adopted on the motion of a non-official member. When the old Regulation was in force, it was decided that under Section 307-A it was not necessary for a person interested in setting aside the sale of one or more of several lots sold under one proclamation, to ask to have the whole sale set aside, provided that the strict terms of that Section were complied with. It is obvious therefore that the proviso is only a legislative recognition of a right upheld by judiciary law. It has to be seen whether under the new enactment, the obligations imposed on a person who seeks to set aside the sale of all the items, and on one who desires to cancel the sale of only some of them, under Order XXI, Rule 86, are identical or whether there is any variation. Under Clause (1) (*b*) the deposit must be of "the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may since the date of such proclamation of sale, have been *received by the decree-holder*," whereas in proviso 2, the deposit is directed to be of "the balance if any, of the amount specified in the proclamation of sale, as that for the recovery of which the sale was ordered, *still remaining unrealised.*" The difference in the phraseology employed in these two instances is striking, for in the former the reference is to *the amount received by the decree-holder* but in the latter it is to *the amount still remaining unrealised.* There is clearly a distinction between *the amount received by the decree-holder* and *the amount still remaining unrealised.* If the amount specified in the sale proclamation had been realised by the auction sale and no balance remained, then it is enough for one applying for cancellation of the sale of one of the items to deposit the amount of the purchase money and 5 per cent thereof, and if that be done he acquires a statutory right to have the sale cancelled and it is immaterial that on account of claims for ratable distribution the decree-holder was able to get only a fraction of his decree amount.—

24 T. L. J., *428.*

Order XXI, Rule 87.

1. No appeal lies against an order rejecting an application for review.

Under the old Civil Procedure Code an application for setting aside a sale on the ground of fraud is not an application for setting aside a sale on the ground of irregularity in conducting and publishing a sale. Under the new Code, Order XXI, Rule 87, relates to applications for setting aside a sale on the ground of irregularity and fraud in conducting and publishing it.

Article 138 of the old Limitation Regulation which corresponds to Article 151 of the present Limitation Regulation relates to applications for setting aside a sale on the ground of irregularity. The present Article 151 is more general in the wording as it merely says 'under the same Code to set aside a sale in execution of a decree'.

An application for setting aside a sale on grounds of irregularity and fraud whether it is one under Section 40 or Order XXI, Rule 87—All applications under Order XXI Rule 87 are also applications under Section 40—comes under the purview of Article 151 of the Limitation Regulation.

47 T. L. R., *403*
(=20 T. L. J., *1284*).

2. The scaring away of intending bidders by a third party even if true, cannot amount to an irregularity, which would attract the provisions of the Rule in Order XXI, Rule 87.

Nor could it constitute fraud in the eye of the law so far as execution proceedings

are concerned, for it is essential in cases where any proceeding is sought to be avoided on the ground of fraud the acts and omissions relied on whether in the nature of *suppressio veri or suggestio falsi* should be those of the party who is benefited by the proceeding, as the Courts could not in such cases, allow the party who has wronged the other, to enjoy the fruits of his wrong doing. It is not every irregularity that would constitute fraud. A finding of fraud should be reserved for that which is dishonest and morally wrong. Vague and general allegations however strong they may be would be insufficient to amount to an averment of fraud which the Courts could take notice of.— **20 T. L. J.**, *1292.*

3. The value fixed in the proclamation was excessively low and it was held to constitute material irregularity following the dictum of Viraraghava Iyengar, C. J., in 13 T. L. J., 462.

The fact that a Vakil (a party to litigation) was allowed to bid, was calculated to have, and probably did have, the effect of discouraging other bidders. This was deemed to form circumstances required by Rule 451, Civil Courts' Guide, to be shown to exist, and was held to constitute another material irregularity.— **21 T. L. J.**, *257.*

4. A person attaching a property after its sale in execution is not one 'whose interests are affected by the sale' and cannot therefore apply under Order XXI, Rule 87, to set aside the sale for the simple reason he had no interest on the date of sale to be affected by it. The expression means interests existing before the sale.— **22 T. L. J.**, *69.*

5. The sale of the property without attachment would be a mere irregularity. It would not even justify the setting aside of the sale in an application under Order XXI, Rule 87, unless substantial injury was caused thereby.— **22 T. L. J.**, *96.*

6. No second appeal lies against an order in appeal refusing to set aside a sale in execution of a decree where the sale is attacked on the ground of material irregularity under Order XXI, Rule 89. The fact that the decree-holder is the auction-purchaser in the case does not make any difference in the applicability of the above principle.— **48 T. L. R.**, *287* (= **22 T. L. J.**, *683*).

7. A plaintiff who has only effected an *attachment before judgment* is not entitled to apply under Order XXI, Rule 87 of the Civil Procedure Code. But an attaching creditor who attaches property in execution of the decree before the sale is one 'whose interests are affected by the sale' within the meaning of the Rule.— **22 T. L. J.**, *714.*

8. The defendant in the case filed a petition under Order XXI, Rule 87, for setting aside the sale of properties in Court auction. The petition was dismissed, and an appeal against the order of dismissal by the Court in execution was also dismissed. This was on 17-12-1103. The 17th Adi 1106 was a holiday. On 18-12-1106, the decree-holder applied for execution. The defendant contended that the application was barred by time. This objection was overruled by the Court below:

Held.—The application was not barred by limitation. Under the Civil Procedure Code, no Court sale is valid until it is confirmed by the Court. Order XXI, Rule 89, allows a Court to confirm a sale where no application is made under Rules 86, 87 or 88 or where such applications are made and 'disallowed.' The word 'disallowed' would take in the orders passed in appeal, if any, against the order of the Court executing the decree. The sale, therefore, could be taken to be confirmed only after the appellate order. In the case, the application for delivery having been filed within three years of the appellate order dismissing the appeal was not barred.— **23 T. L. J.**, *150.*

9. The property of the judgment-debtor was attached and sold in auction in execution of the decree. After the attachment but in ignorance of it, the judgment-debtor sold the property by private sale undertaking to indemnify the purchaser against any possible loss by reason of any encumbrance or defect of title:

Held.—The judgment-debtor is one whose interests are affected by the sale, and as such he had a right to apply under Order XXI, Rule 87, to set aside the sale.

The Legislature has, in the new Code, substituted the words 'whose interests are affected by the sale' for the expression 'any person whose immovable property has been sold' contained in the old Code. This alteration appears to be a deliberate one intended to set at rest whatever conflict there may have been in regard to the nature and extent of the interest necessary to entitle one to apply under the Section. The words 'whose interests are affected by the sale' are very wide and, *prima facie* cover any kind of interest affected by the sale. It need not be an interest in the property itself or in other words, the interest need not be a proprietary interest in the property. The word used is 'interests' in plural and must include any kind of interest whether proprietary, pecuniary or otherwise that a person may have and if such an interest is affected by the sale, he is entitled to apply.—

48 T. L. R., *336*
(=23 T. L. J., *645*).

10. The second defendant in the case obtained a decree and in execution thereof purchased the right under a hypothecation bond executed in favour of the judgment-debtor by the first defendant. The plaintiff got an assignment of the right from the second defendant and filed the suit to enforce the bond. It was in evidence that subsequent to the second defendant's assignment, his decree was modified in appeal and the execution sale under which he bid the right, was also set aside by the High Court, on appeal, on the ground of material irregularity and that the second defendant had not brought the fact of assignment to the notice of the Court either when the appeal was pending or the dispute continued in execution but had himself contested the appeal and execution proceedings. The first defendant therefore resisted the suit on the ground that the auction sale having been set aside, plaintiff had no interest on which to sue. The plaintiff in answer contended that the property sold in execution being only movable property, an applicaiion to set aside the sale for material irregularity would not lie and the order in execution setting aside the sale was invalid and passed without jurisdiction:

Held.—The plaintiff who got the right, title and interest of the second defendant was bound by all the equities which the assignor was subject to. He took a fluctuating interest the nature and extent of which was determined only by the final decision. The fact that in the case it was not the decree that was assigned but only the rights of the auction purchaser did not make any difference in principle.

In view of the fact that it was the High Court, in appeal, that passed the order setting aside the sale, there was no substance in the contention as to want of jurisdiction in setting aside the sale. Even if an appeal did not lie, the High Court had unlimited powers of passing appropriate orders when unjust orders were brought to its notice.—

24 T. L. J., *691*.

11. The suit was at first decreed *ex parte* against defendant and item 1. Items 2 to 6 were attached in execution. The decree was set aside on the application of the defendant. After re-trial a decree on the same terms was passed again. The properties were proclaimed for sale and sold subsequently without fresh attachment. The defendant judgment-debtor

applied to have the sale set aside. The application was dismissed.

Held (in appeal).—Omission to effect attachment does not render the sale void but only voidable. The executing Court ought to have ordered attachment.

The absence of the attachment must be regarded only as a material irregularity in publishing the sale. Before a judgment-debtor could get the sale set aside under Order XXI, Rule 87, he is bound to prove substantial injury.— **24 T. L. J.,** *723.*

12. See also.—

Sec. 40.— **21 T. L. J.,** *1048.*
46 T. L. R., *49*
(=20 T. L. J., *153*).

Or. IX, R. 9.— **20 T. L. J.,** *285.*

Or. XXI, R. 64.— **22 T. L. J.,** *388.*
48 T. L. R., *350*
(=22 T. L. J., *1058*).

,, R. 70.— **20 T. L. J.,** *318.*

Or. XXIII, R. 5.—**23 T. L. J.,** *441.*

Order XXI, Rule 88.

Order XXI, Rule 88, enacts that the purchaser, at any Court sale in execution of a decree, may apply to the Court to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property. The Section shows that the remedy under it is available to the auction purchasers only in cases where the judgment-debtor had no saleable interest in the property sold. The expression 'no saleable interest' occurring in the Section means nothing to sell. It would apply to cases where the judgment-debtor had no interest at all or the interest was not one that he could sell. The circumstance that the title of the judgment-debtor is defective would not attract the provisions of this Section in his favour. If he has been induced to purchase the property for something more than its real worth by reason of a misrepresentation or concealment, his remedy is only by way of a separate suit.—

20 T. L. J., *147.*

Order XXI, Rule 89.

1. According to the Code of 1100 there is no provision for a Second Appeal from an order under Order XXI, Rule 89. A judgment-debtor not objecting to the price of the properties mentioned in the sale proclamation cannot question it after sale.— **47 T. L. R.,** *471.*

2. Under Order XXI, Rule 89, of the Code the sale becomes absolute on the confirmation of the sale.

Under Article 164 of the Limitation Regulation VI of 1100, the time allowed for a purchaser of immovable property at a sale in execution of the decree, for delivery of possession is three years when the sale becomes absolute. The grant of a sale certificate is not essential for confirmation of the sale and it could not be contended that limitation for an application for delivery of possesion begins to run only from the date of the grant of the sale certificate.— **24 T. L. J.** *388.*

3. See also Or. XXI, R. 87.—
48 T. L. R., *287*
(=22 T. L. J., *632*).

Order XXI, Rule 90.

One of the grounds taken by the appellant was that the purchaser at Court auction should get the sale set aside under Order XXI, Rule 89, and move the execution Court under Order XXI, Rule 90, for the recovery of the purchase money and he had no right to institute a separate suit for recovery of the same.

Under the Civil Procedure Code a purchaser in Court auction has a right to maintain a suit for recovery of the purchase money if the sale has been set aside on the ground that the judgment-debtor had no saleable interest in the property.

Where the purchase in Court auction and the setting aside of the sale on the ground that the judgment-debtor had no saleable interest in the property took

place under the old Code, a right of suit for the recovery of the purchase money became vested in the auction-purchaser and such vested right is not taken away by the new Code (Section 7, Clause (*d*), of Regulation II of 1072).

The Article of the Limitation Regulation which is applicable to the case is Article 109. **21 T. L. J.**, *1360.*

Order XXI, Rule 91.

See Regn. VI of 1100, Art. 9.—
47 T. L. R., *222*
(=**21 T. L. J.**, *308*).

Order XXI, Rule 92.

See Regn. VI of 1100, Art. 164,—
20 T. L. J., *1116.*

Order XXI, Rule 94.

The decree is against the defendant personally and against the Devaswom belonging to defendant's Illom. The decree-holder in execution purchased the Illom properties in Court auction and applied for delivery of possession. The defendant's son, who was not a party to the decree and who did not profess to represent the defendant, resisted delivery on the ground that the decree did not bind the Illom. The decree-holder replied that the decree was valid and binding on the Illom. The Munsiff held that the defendant's son was not entitled to maintain the petition as he was not a party to the decree and dismissed the objection without entering into its merits:

Held.—The petition came under Order XXI, Rule 94, and no appeal lay when one of the parties to the dispute under Order XXI, Rule 94, was not a party to the decree.

The enquiry under Order XXI, Rule 94, had to start on the complaint of the auction-purchaser. There would be such a complaint when the auction-purchaser, as in the case, had put in his objection to the ante-delivery petition, and the Court delivery and the objection had to be decided on the merits, and the dismissal of the ante-objection petition without any decision was unsustainable.—

21 T. L. J., *173.*

Order XXI, Rule 96.

1. The appeal is against the order allowing the application of the auction-purchaser for removing the obstruction caused by the appellants. They were found to be in possession of the properties as tenants-at-will under the first defendant. They contended that such possession was on their own account within the meaning of Order XXI, Rule 96:

Held.—A tenant-at-will is not entitled to obstruct the decree-holder as he cannot claim to be in possession on his own account under Rule 96 of Order XXI.—

46 T. L. R., *137*
(=**20 T. L. J.**, *607*).

Ref.—21 T. L. J., 1329.

2. The application for delivery in the case was by certain puisne mortgagees who had purchased the properties in execution of their mortgage-decree in O. S. No. 276 of 1101. The obstructors were the prior mortgagees who had purchased the property in execution of their decree in O. S. No. 246 of 1102 who had obtained delivery of the same. Neither party had impleaded the other in his suit. On the contention of the puisne mortgagees that the purchase of the property in the subsequent suit by the prior mortgagee was affected by *lis pendens* and that his obstruction in execution was incompetent:

Held.—(1) The decree in the puisne mortgagee's suit or the execution proceedings in pursuance of it, cannot be deemed to have affected the prior mortgagee's paramount rights in any manner.

(2) The prior mortgagee was in possession on his own account within the

meaning of Order XXI, Rule 96, and not in possession on account of the mortgagor.

(3) Order XXI, Rule 99, which refers to transferees *pendente lite* was not applicable to the case of auction purchasers of properties sold in execution of a decree, and

(4) The puisne mortgagees cannot therefore dispossess the obstructor in these execution proceedings.— **20 T. L. J.**, *802.*

Dist.—22 T. L. J., 591.
21 T. L. J., 1329.
Ref.— 49 T. L. R., 32
(=22 T. L. J., 1298).

3. In cases of resistance or obstruction by persons claiming possession on their own account or on account of others besides the judgment-debtors, the Court should either summarily overrule the objection and direct that delivery of possession should be made under Section 319 if it is satisfied of the fact that the obstruction or resistance is made by a third party at the instigation of the judgment-debtor. Otherwise it has to proceed under Section 320 and dispose of the matter treating it as a regular suit. In the suit that could be filed by him againt a summary order under Section 319, it would be open to him to question the view taken by the Court that he was not holding the property on his own account or on account of any other person besides the judgment-debtor. The proceedings under Section 320 must be taken to be virtually a similar remedy granted to the decree-holder in cases where a decision adverse to him on *a priori* grounds is passed. It would be unreasonable to hold that a direction (under Section 320) would conclude the decree-holder on the question whether possession of the obstructor is under the judgment-debtor or not.

The scope of the proceeding under Section 320 is primarily for the adjudication upon the nature of possession set up by the obstructor. Though in the nature of the wording of Section 320, questions of title could also be dealt with, the Court has to treat it as a suit for property and determine all questions between parties relating thereto. The denial of the right to have this question determined in the proceedings under Section 320 would virtually make the proceeding in question unnecessary.— **21 T. L. J.**, *833.*

4. The third defendant, a prior hypothecatee, in enforcement of his hypothecation right obtained decree (without impleading the plaintiff a puisne encumbrancer), and in execution of the decree himself purchased the property and got delivery. The plaintiff subsequently filed suit with the prior encumbrancer also on record and after likewise purchasing the property applied for delivery in execution. On resistance set up by the third defendant:

Held (Ordering removal of the third defendant's obstruction).—"The puisne mortgagee was not bound by the decree and execution proceedings taken by the prior mortgagee. The sale of the hypotheca had no more effect on his rights than if the mortgagor had sold it to a third party. In such a case the puisne mortgagee could sue for the sale of the mortgage property subject only to the right under the prior mortgage, the whole of which would not be necessary for the suit."

On the contention of the third defendant that Order XXI, Rule 96, was applicable to the facts of the case :

Held.—Inasmuch as a decree has been passed against the third defendant he had to be regarded as a judgment-debtor and as such bound by the decree and execution proceedings in the case. Order XXI, Rule 96, was therefore manifestly inapplicable.
22 T. L. J., *591.*

Order XXI, Rule 97.

1. Though the dispossession contemplated in Rule 97 of Order XXI refers to

actual possession, the possession of the tenant will be possession of the landlord for the purposes of this Rule.

The principles relating to investigation of claims under Order XXI, Rule 56, of the Code will apply with equal force to disposal of applications under Rule 97 of the Order. 20 T. L. J., *638*.

2. The point for determination was whether the counter-petitioner who was virtually in the position of a prior hypothecatee who had purchased the property in dispute in execution of a decree, was entitled to get delivery on removal of obstruction, as against a subsequent charge-holder who had, in execution of his own decree, purchased it and obtained possession earlier. The petitioner was not represented in the counter-petitioner's suit nor was the counter-petitioner in the suit by the petitioner:

Held.—(1) The obstructor (petitioner) being a purchaser of the equity of redemption in a sale held in execution of a decree obtained by him against his debtor, was not holding the property on the debtor's behalf or under him in any sense. He was a person claiming to be in possession on his own account.

(2) Where a dispute arises between the prior mortgagee and the subsequent mortgagee who had each purchased the property without obtaining a decree binding on the other, the title to the outstanding equity of redemption is determined by the priority not of the respective mortgages but of the respective sales.

(3) The counter-petitioner was therefore not entitled to recover possession from the petitioner (obstructor) in execution.—
49 T. L. R., *364*
(=23 T. L. J., *763*).

Order XXI, Rule 99.

The plaintiff mortgagee filed suit and obtained decree in O. S. No. 81 of 1103 for recovery of the mortgage properties from the first defendant-mortgagor who had continued in possession as lessee under her. She recovered certain items in execution, but as regards the rest, was met with obstruction at the hands of a prior hypothecatee of the first defendant, who had purchased them in execution of his hypothecation decree in O. S. No. 35 of 1100. The hypothecation decree was passed before the institution of the suit O. S. No. 81 but the execution sale and delivery in O. S. No. 35 took place during the pendency of the suit. Plaintiff was not impleaded in O. S. No. 35 nor was the hypothecatee a party in O. S. No. 81. The lower Court dismissed the plaintiff's application to remove the obstruction. On appeal by the plaintiff, a preliminary objection was raised by the respondent in regard to the maintainability of the appeal:

Held.—The rulings on the matter favoured the view that an auction-purchaser of the judgment-debtor's rights is his representative and questions between such purchaser and decree-holder purchaser, would fall under Section 40 C. P. C., in addition to the Order and Rules relating to obstruction to delivery in execution. (Order XXI, Rule 99). The point need not however be definitely settled as the appeal may be dealt with as a revision petition also.

The contention of the obstructor that the rule of *lis pendens* had no application to involuntary sales was not acceptable. In this view the transfer obtained by the obstructor when the plaintiff's suit was pending could not be recognised in execution of the plaintiff's decree.—
21 T. L. J., *1329*.

Order XXI, Rule 100.

Plaintiff sued to recover property on the allegation that he purchased the same in Court auction and obtained delivery in due course. Defendant objected to the delivery in the former suit and his prayer

was granted by the Executing Court. In appeal it is contended that the order passed by the Executing Court should be deemed to be conclusive only so far as the execution Court is concerned and that in the suit instituted to contest the validity of that order the burden would again shift to the claimant in spite of the order in the latter's favour :

Held.—In a suit filed under Order XXI, Rule 100, to set aside an order passed by the Executing Court directing restoration of possession to a *bona fide* claimant, the burden of proof lies on the plaintiff in the first instance. The order passed by the Executing Court should be regarded as valid and conclusive until the plaintiff succeeds in satisfying the Court which tries the subsequent suit filed by him that that order is wrong. Hence the burden of proof lay on the plaintiff in the first instance.—

48 T. L. R., *402*
(=22 T. L. J., *1285*).

Order XXII, Rule 2.

The fact that the defendant is also one of the legal representatives of a deceased plaintiff is no bar to the impleading of the others in place of the deceased.—

20 T. L. J., *745.*

Order XXII, Rule 3.

Both the special appeal and the revision petition, in the case, were by two of the sons of the first defendant who died during the pendency of the appeal in the District Court. Their applications to be brought in as legal representatives was rejected, and the Court holding that the appeal had abated dismissed it, The special appeal in addition to the revision petition was resorted to as a matter of caution since it was a controversial question whether an appeal from a decision of this kind was competent.

Held.—The words 'Legal representative' cannot be construed to mean all legal representatives. They must include any legal representative to whom the right to sue survives. The Court has some discretion in the matter of allowing applications made by some of the legal representatives of a deceased plaintiff or appellant and is not bound to reject such applications merely on the ground that all the representatives had not associated themselves therein. It is open to the Court to bring in the other representatives as respondents on application duly made or to proceed under Order XL, Rule 4, of the Code. Each case must be decided in the light of its peculiar circumstances.

Per Raman Tampi, J.—There is no warrant for the proposition that unless all the legal heirs came in, the suit should abate. The action is to be continued after the death of the plaintiff, representing the estate of the deceased plaintiff and if some of the heirs do come in they are legal representatives. For the purposes of the Rule, it has only to be considered whether they are heirs and the fact that there are some others also of the same category cannot make them the less legal representatives. If it is brought to the notice of the Court that there are other persons also claiming under the original plaintiff, it is open to the Court *suo moto* to direct their impleading. Matters regarding the impleading of legal heirs of deceased parties without allowing the suit to abate should receive a liberal interpretation.—

50 T. L. R., *133.*

Order XXII, Rule 4.

See Order I, R. 10,—**20 T. L. J.,** *1242.*

Order XXII, Rule 5.

1. *Held, inter alia.*—The enquiry, after all, relates to the question as to who got the *prima facie* title to be impleaded. If the revision petitioner was dissatisfied

with the summary order of the Judge, nothing precluded him from instituting a regular suit claiming appropriate reliefs in regard to the property in question.—

20 T. L. J., *662*.

2. *Per Venkata Rao, J.*—The duty cast upon the Court of deciding who among rival claimants is the proper person to be impleaded as legal representative of a deceased party to the suit is confined to cases of persons claiming to have succeeded to the estate of the deceased as heirs, or perhaps also as executors, and does not arise in the case of persons claiming merely as beneficiaries under a will.

Per Joseph Thaliath, J.—The language of Section 351 (corresponding to Order XXII, Rule 5, of the present Code) does not mean that the Court is bound to select one set only of the rival claimants as the person or persons who shall be admitted to be such legal representatives for the purpose of prosecuting the suit and that in order to prevent objection being raised that the true representative has not been brought in, both the claimants can be made legal representatives for the purpose only of continuing the suit, if that course is not inconvenient.

In many of the Marumakkathayam suits the question of the legal representative will depend upon the nature of the acquisition of the property in dispute. In such suits (the present one is of that kind) the proper procedure to be adopted will be to go on with the suit with the rival claimants on record, unless, of course, such a course is inconvenient or embarrassing.—

21 T. L. J., *566*.

3. The duty cast upon the Court of deciding who among rival claimants is the proper person to be impleaded as legal representatives of a deceased party in a suit is confined to cases of persons claiming to have succeeded to the estate of the deceased as heirs or perhaps also as executants and does not arise in the case of persons claiming merely as beneficiaries under a will.

Even in cases where in ignorance of the will left by a deceased person certain persons are sued as the legal representatives by the creditor and a decree is obtained, the decree would be binding on the estate or on the person who turns out to be heir ultimately.

In the case of a gift by a Marumakkathayee the presumption should be that he intended that the donees should take his properties under the gift as properties acquired by their branch with the usual incidents of Tarwad property in accordance with Marumakkathayam usage which governed the donees.—

24 T. L. J., *308*.

Order XXII, Rule 9.

1. The Civil Procedure Code does not contemplate the passing of an order of abatement and when the period prescribed under Article 162 of the Limitation Regulation expires, the suit or appeal automatically abates. Thereafter the only application provided for under the Code is an application presented within 60 days from the date of such abatement under Order XXII, Rule 9 (2), for setting it aside and such application can be granted only if the petitioner succeeds in proving to the satisfaction of the Court that he was prevented by sufficient cause from continuing the suit.

In an application to 'review' a prior order of abatement, the Court should see that the provisions of the Code are not lightly disregarded especially when there is evidence to show that the party had not acted *bona fide* and had supported his claim by false evidence. "When suit has abated, the setting aside of the abatement deprives the party, in whose favour the abatement operates, of a valuable right."—

46 T. L. R., *373*
(=21 T. L. J., *208*).

2. The plaintiffs and defendants 1 to 3 were members of an undivided Nayar Tarwad to which the suit property belonged. The property was mortgaged to the 1st defendant in the year 1045, by the then Karanavan. To redeem that mortgage the next Karanavan (who was also Karanavan of the 1st defendant) instituted a suit in 1078 against the 1st defendant and others. As the latter Karanavan died during the pendency of the suit and as none came forward to be impleaded an order of abatement was passed by the Court. The 1st defendant who was the mortgagee in possession of the property then became the Karanavan. The 1st plaintiff, the next senior Anandaravan became the manager of the Tarwad on the removal of the 1st defendant from Karanavasthanam on 6-3-1086. The present suit was filed on 25-6-1088 for redemption of the above mortgage. The plaintiffs also prayed that the suit might be regarded as an application to set aside the order of abatement in the prior suit.

It was contended that the present suit was barred under Section 355 C. P. C. (old) on the ground that when once a suit had abated no fresh suit could be brought on the same cause of action and that even if the present suit be regarded as an application to set aside the order of abatement in the previous suit, it was barred under Article 148 of the Limitation Regulation (old). Both the lower Courts upheld these contentions and dismissed the suit:

Held.—Merger extinguishes the right which is merged and it cannot be contended that the mortgage right was extinguished. There could at best have been only a suspension of rights. If there was a devolution of interest at all at the death of the plaintiff it could not be on the junior member but could only be on the succeeding Karanavan, who in law became entitled to take possession of the properties of the Tarwad and in that capacity could alone sue or be sued as the law stood and even if a junior member could bring an action on behalf of the Tarwad, the then Karanavan had also to be impleaded in the suit. The right to represent the Tarwad passed on the death of the plaintiff to his successor in the Karnavanship, *viz.*, the defendant. No junior member could claim to be the legal representative within the meaning of the expression in the C. P. C. and in the case as the 1st defendant was the legal representative in whom the right to represent the Tarwad had vested at the death of the plaintiff, there was none of whom it might be said that he ought to have applied to be impleaded in the suit. There was no abatement within the meaning of Section 355.

The term "legal representative" means something more than persons who may apply to be impleaded and it means one who under the law is bound in the discharge of his duties to take steps to get himself impleaded in the interests of the Tarwad and without whose presence in the suit no other person could claim to continue it as of right. The principle that there may be suspension of rights of action in such cases has been recognised in several cases.

It is clear from the above rulings that when there is no person competent to sue or where the right to sue and be sued vest and unite in one and the same person such rights may be suspended.

The order of abatement is no bar to the plaintiffs continuing the suit inasmuch as the right of action was suspended in the case. When a cause of action has once arisen and a suit has been instituted on the basis of such cause of action, it is against established principles to hold that the suit should be deemed to have terminated though without prejudice to the aggrieved party's right to sue again on the same cause of action. As there has been a suspension of rights and when the intervening cause has been removed, the person

in whom the right of action has vested should move the Court to set aside the order of abatement and permit him to continue the suit.

The suit viewed as an application to set aside the order of abatement should be regarded as one virtually for permission to continue the suit when the right of suit which had been temporarily suspended but had revived by removal of the first defendant from Karnavasthanam and as there is no specific provision in the Limitation Regulation applicable to such an application it must fall under Article 152 of the Limitation Regulation (old).

As the suit was filed within 3 years of the accrual of right which was on the date on which the first defendant ceased to be Karanavan (6-3-1086), the suit is not time-barred.— 48 T. L. R., *441* (=23 T. L. J., *1*).

Order XXII, Rule 10.

While under Order XXII, Rule 5, the Court has to determine whether the person seeking to be impleaded has the right to be brought on record, no such duty is expressly cast upon the Court under Order XXII, Rule 10, and the matter is left to its discretion to be decided with due regard to the circumstances of each case.— 22 T. L. J., *659*.

Order XXIII, Rule 1.

An application was made by the plaintiff for permission to withdraw a suit with liberty to bring a fresh suit. It was granted by the lower Court on the only ground that 'if the plaintiff files a fresh suit, the defendant will have his remedy:'

Held (in revision).—The order of the Court below was not sustainable. Permission to withdraw a suit with liberty to bring a fresh suit is not in the free gift of a Court. The Court's jurisdiction in that respect is limited by the provisions of Order XXIII, Rule 1. Some formal defect or some other sufficient cause should be made out before such permission is granted. "Sufficient ground" mentioned in the Rule need not be analogous to formal defect. The power given by the Code is governed by certain considerations and if it appears that these considerations were not present in any given case, it must be held that the order was passed without jurisdiction, or by a wrong exercise of jurisdiction or at any rate with material irregularity. The order should state grounds for permitting withdrawal with leave to sue afresh. The ground stated by the lower Court is not sufficient for passing the order.—

23 T. L. J., *17*.

Order XXIII, Rule 3.

1. Under Order XXIII, Rule 3, or Section 359 of the old Code (of which the present Rule is a substantial reproduction), the Court has to record the compromise and shall pass a decree in terms of the compromise. Of course, the Court has a responsibility to enquire into certain facts before recording a compromise. It should satisfy itself that the parties who proposed to compromise did really sign in the compromise and that the compromise is *prima facie* legal. The enquiry about the legality of the compromise does not mean an exhaustive trial regarding the merits of the terms of the compromise. If the fact of the compromise is disputed by a party whose name appears on record, that fact may be enquired into. But if a penalty clause, which on proper occasions the Court may relieve against, is entered in a compromise, the Court shall not say 'nay' to the compromise. Within certain limits, the Court to which a compromise is submitted may scrutinise the terms. If there is nothing illegal, the Court is bound to pass a decree on the compromise.

Where, therefore, in a prior suit in which the first defendant was the plaintiff

and the 1st plaintiff and 2nd defendant were co-defendants respectively, the first entered into a compromise with the second defendant ignoring the 1st plaintiff and negativing her contentions in the suit, and the Court passed a decree accordingly, and the first plaintiff did not seek to set aside the decree either by an application under Order IX, Rule 13, or by means of an appeal :

Held.—The plaintiffs' suit based on her former contentions was not barred by *res judicata* by virtue of the prior compromise decree. For there was nothing apparently illegal in the terms of the compromise and in all probability the first plaintiff's objections to recording the compromise in the prior suit would not have been countenanced. The decree based on a compromise has the effect of *res judicata* only against suits brought by parties to the compromise or those claiming under them. To hold otherwise, would result in mischievous consequences.—

49 T. L. R., *113*
(=**23 T. L. J.**, *187*).

2. Order XXIII, Rule 3, is peremptory. The obligation is upon the Court to consider the lawfulness of the agreement or compromise, and if found lawful, to record the same and pass a decree thereon so far as it relates to the suit. Where this has not been done, the dereliction of jurisdiction constitutes a serious error of law that vitiates the decision altogether.—

23 T. L. J., *1248*.

3. See also Or. XXXIX.—

46 T. L. R., *30*
(=**20 T. L. J.**, *667*).

„ Or. XLII, R. 1.—

48 T. L. R., *130*
(=**22 T. L. J.**, *606*).

Order XXIII, Rule 4.

Under Order XXIII, Rule 4, the Court has discretion to allow a party for proper reasons to withdraw from the oath agreement. But the discretion is a judicial discretion and has to be exercised with care and caution.

In the case the reason given by the lower Court for granting permission to the plaintiff to withdraw from the oath agreement is as follows.—"The main ground urged by plaintiff's Vakil is that plaintiff's brother and other relations do not want plaintiff to take oath. Plaintiff is admittedly one in easy circumstances in life. Taking oath, according to notions prevailing in their country does not only affect prejudicially the status of the person taking oath but also that of those connected with him. I am of opinion that the said ground is a lawful excuse entitling plaintiff to withdraw from the oath agreement. I, therefore, allow this application."

Held.—The discretion was not properly exercised :— **22 T. L. J.**, *449*.

Order XXIII, Rule 5.

The provisions of Order XXIII, Rule 5, do not apply to proceedings in execution. If a decree is adjusted by an agreement which provides for conditions different from those in the decree, this may provide a fresh cause of action. But the altered terms cannot be executed as a decree.

An execution Court has no power to vary or alter a decree under execution and to substitute a new decree for it. A mere consent of parties cannot confer such jurisdiction.

It has been frequently held that where a party being aware of the defects in the proclamation offers to waive those defects on condition that time should be given to him to pay off the decree amount and the time asked for is given, the judgment-debtor is then estopped. Most of the cases are cases where the undertaking is made before the sale has taken place and provides that if the money is not paid as agreed, the sale may take place without fresh proclamation. The same reasoning

however, would apply where the undertaking to accept the proclamation is made after the sale and during the pendency of an application under Order XXI, Rule 87. There was no legal impediment in the Court accepting the arrangement under which the defendants agreed to pay the decree amount within a certain time conditionally on the sale being set aside and with a further condition that in case of default, the sale would be confirmed.—

23 T. L. J., *411.*

Order XXV.

1. When a period is fixed for furnishing security, it is not intended that the final order accepting it should be passed within the period, as such acceptance depends on the result of an enquiry into the validity of the objections which may be filed by the opposite side and such enquiries may take more time and that was expected or foreseen by the person moving the Court. If the security is offered within the time fixed, the order must be deemed to have been obeyed.— **20 T. L. J.,** *1021.*

2. There is nothing in law to prevent a party from offering as security any property as long as it is situated in Travancore. To insist on the party offering as security only property situated within the jurisdiction of a particular Munsiff's Court may in some instances conduce to a failure of justice because a party may not have property within a particular jurisdiction but may have valuable property situate elsewhere in Travancore. All that the Court is concerned with is to see whether the property was sufficient security, and, if found sufficient, to accept it as security.— **49 T. L. R.,** *44* **(=23 T. L. J.,** *149*).

Order XXVI, Rule 9.

See Regn. II of 1100, Other cases.—
47 T. L. R., *117* **(=20 T. L. J.,** *1200*).

Order XXVI, Rule 10.

1. Unless it appears from the records that the Court has enquired into objection filed by the parties with regard to the findings of the first commissioner, it would be improper, if not illegal, to issue a second commission or to act on the report of the second commissioner.

Where it was found that, though an express order setting aside the first report was not passed, as ought to have been done, there was an enquiry into the objections to the findings of the commissioner, and that there was no data on which he based his conclusions:

Held.—It was not possible to hold that there has not been substantial compliance of the requirements of Rule 10 (3) of Order XXVI of the Code.—
21 T. L. J., *975.*

2. Order XXVI, Rule 10 (2), simply means that if any formal evidence is taken by the commissioner it must be sent along with the report and not that the commissioner is bound to take evidence in all cases. The rule further says that 'the evidence without the report' shall not be admitted in evidence. It does not however say that the report without the evidence shall be inadmissible. The evidence contemplated in the Rule is the statement of witnesses examined by the commissioner and other evidence in cases where he thinks it necessary to take formal evidence. It does not mean that in every case where a commissioner is sent out for any of the purposes mentioned in Order XXVI, Rule 9, the commissioner is bound to examine witnesses or take evidence.

Although the Court is not bound as a matter of course to accept a commissioner's report in its entirety on the mere ground of absence of objection to the report, the Court is bound to consider the report and if there is nothing in the report to justify its rejection the Court may act upon it (F. B.).— **48 T. L. R.,** *170* **(=22 T. L. J.,** *406*).

Order XXVII, Rule 3.

See Sec. 19.— 46 T. L. R., *176* (=20 T. L. J., *1034*).

Order XXIX, Rule 17.

An application under Section 502 of the Code of 1065 corresponding to Order XXIX, Rule 17, for filing an agreement between the parties to refer certain disputes to arbitration and for other consequential reliefs, does not cease to be maintainable on the ground that the arbitrators are persons resident beyond the limits of the State andthere might be a remote possibility that they might decline to function. A Court having jurisdiction in other respects to admit the application would not be ousted of that jurisdiction merely on account of this circumstance.—

24 T. L. J., *617*.

Order XXX, Rule 4.

In enforcement of a partnership liability, the suit against the partners was filed only against the defendants personally and not against the firm as such, and on death of some of the defendants, the suit was continued without bringing the legal representatives of the deceased defendants on record:

Held.—The suit did not abate as against the surviving defendants. By virtue of Section 43 of the Contract Act, the joint contract of the defendants created a joint and several liability, in the absence of an agreement to the contrary, and where the defendants are jointly and severally liable, the death of one or more of them could not effect an abatement of the suit as against the surviving defendants, even though the legal representatives of the deceased defendant or defendants are not brought on record.

Also, the principle of Order XXX, Rule 4, with reference to all its clauses is to permit a partnership to sue in the firm's name and to provide that if a partner dies pending the suit, the surviving partner or partners may continue the suit which would not abate. This principle equally applies to suits where the partners are defendants.—

23 T. L. J., *886*.

Order XXXII, Rules 3 and 4.

1. A minor defendant sought to reopen a case tried when the old Civil Procedure Code was in force on the grounds that a proper guardian was not appointed for him in the suit, that no defence on his behalf was put forward by his mother who was described to be his guardian, and that the mother's interests were adverse to his. But it was found that the mother had accepted summons and notice of proposal to appoint her as guardian, and appeared and contested the suit actively both in the trial and appellate Courts though not expressly describing her defence as on behalf of her minor son also, and there was really no contention set up by her involving any rivalry or adverseness to the interests of the minor:

Held.—The circumstances indicated were sufficient to conclude that there was a substantial defence of the suit on behalf of the minor as well and that it was unfair, if not unjust, to reopen the decree at the instance of the minor and that long after the decree was passed.

The consent to act as guardian *ad litem* may be either express or implied. 'Silence may be indicative of want of consent: the attendant circumstances may, however, be looked into, and consent may be found to have been made out.' Under the provisions of the Civil Procedure Code (old and new), what has to be looked into is whether there has been a substantial consent on behalf of the minor as well. If there was such a consent, the decision binds the minor, but not otherwise.—

23 T. L. J., *1009*.

Ref.—24 T. L. J., 718.

2. In O. S. No. 118 of 1098, the plaintiff obtained a decree on a hypothecation bond executed by defendants 1 to 5 in his favour. In execution some properties belonging to the Tarwad of the defendants were proclaimed for sale. The 8th and 9th defendants, who were minors at the time of the suit, objected to the sale on the ground that the 3rd defendant who represented them in the suit was not a proper person to represent them as his interests were adverse to their interests inasmuch as he was one of the executants of the hypothecation bond :

Held.—Merely because the 3rd defendant who acted as guardian *ad litem* was one of the parties who executed the document on which the suit was based, his interests could not be held to be so adverse within the meaning of Order XXXII, Rule 4, as to make the decree a nullity. Probably the fact that the third defendant was one of the executants of the document may be a circumstance which would give the 8th and 9th defendants a right to set aside the decree in a properly framed suit brought for the purpose. The decree at worst is not void but only voidable.—

21 T. L. J., *571.*

Ref.—24 T. L. J., 374.

3. When a decree is passed in a suit in which a minor was not properly represented it is a nullity. There is however a distinction between a decree where the minor was wholly unrepresented and where he was represented on the record by a guardian not disqualified from acting. There may be cases where there was irregularity in the appointment of the guardian, such as that his willingness to act was not ascertained before his appointment to that office. This will constitute a serious irregularity but it will not be such an irregularity as would by itself go to vitiate the decree passed in the suit. Even taking a case where there was a possibility of the interest of the guardian being adverse to that of the minor, that circumstance by itself is insufficient to make the decree a nullity. The decree at worst is not void but only voidable. The case will be different where the appointment of the guardian was made in spite of his expression of unwillingness for that would be a contravention of the express provisions of Order 32, Rule 4, of the Code. It is advisable to emphasise the distinction between a case where the decree obtained against a minor is a nullity and where on account of irregularity in the order of appointment of a guardian the decree is only voidable.

"A clear distinction exists between a judgment which is void and a judgment which is voidable. An erroneous judgment is a voidable judgment, for the argument that a judgment is erroneous assumes both the regularity of the procedure and the jurisdiction of the Court to render it. An erroneous judgment is one which, though regularly rendered, is contrary to law or facts, and is, therefore, liable to be reversed by an appellate tribunal. An irregular judgment is also voidable judgment ; but the distinction between an erroneous judgment and an irregular judgment is this, that whereas an erroneous judgment will always be reversed by an appellate Court, an irregular judgment will be reversed in appeal or ignored in a collateral proceeding only when it is shown that the irregularity in the proceeding has affected the merits of the case between the parties. A void judgment on the other hand, is a judgment where there was a total lack of jurisdiction in the Court to render it. Such a judgment is a mere nullity. It is not necessary to set it aside. It can be completely disregarded whenever it is pleaded either in support of a claim or in answer to a claim.

The Court has no jurisdiction to render judgment against one who is not a party to the suit, though it has jurisdiction to render judgment against one who is a party to the suit but who has not been brought

before it, by reason of the failure on the part of the Court to follow the particular procedure laid down in the Code. The one affects the existence of the jurisdiction of the Court; the other affects the exercise of it. To take a simple case, a minor is not a party to the suit, unless he is represented in the record of the suit by a guardian competent to act as such. Where the record of the suit itself shows that the minor is wholly unrepresented, or that he is represented by a guardian disqualified from acting as such a guardian under the express provision of the statute, the result is that the minor is not properly a party to the suit and a judgment rendered against the minor is without jurisdiction and null and void. But where he is properly a party to the suit—and as he is properly a party if he is represented in the record by a guardian not disqualified from acting—the jurisdiction of the Court to try and determine the cause as against the minor is complete and such jurisdiction will not be ousted on proof that the Court did not follow the appropriate procedure for the appointment of the guardian. It is the record of the suit that must decide the question of jurisdiction; and where the record, on the face of it, shows that the minor was properly a party to the suit, the judgment rendered in such a suit, will not be declared a nullity in a collateral proceeding brought to impeach its validity though it may be set aside if it is shown that the defect or the irregularity in the proceedings affected the merits of the case between the parties.

The authorities have laid down the modes by which a decree that is voidable may be vacated by the minor. It may be by appealing against the decree, or by applying for a rehearing under Order IX, Rule 13, or by applying for a review or by instituting a separate suit for setting aside the decree. But it is not open to the minor to impeach the validity of a voidable decree in execution.—

24 T. L. J., 374.

Order XXXII, Rule 15.

Section 443 of the old Code of 1065 laid down that the provisions of Sections 420 to 442 (relating to next friends and guardians *ad litem* of minor plaintiffs and defendants) would apply in the case of persons of unsound mind. The Code of 1100 substantially embodied the above provision in an amplified form adapting the amendment in the British Indian Code of 1908 in this behalf. It extended the provisions to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on enquiry by reason of unsoundness of mind or mental infirmity to be incapable of protecting their interests when suing or being sued. In some of the British Indian High Courts, it was once considered that an adjudication as a lunatic was essential for the above provisions to apply. But this view has been dissented from in later cases.

By the expression 'unsoundness of mind', in Order XXXII, Rule 15, what the law contemplates is that the person should be either suffering from *dementia*, *i. e.*, where the mind which once was normal has subsequently become deranged, or where he is subject to *amentia*, *i. e.*, suffering from weakness of mind which would constitute him either an idiot or a person so deeply defective in mind from birth or from any early age as to be unable to guard himself against common physical dangers, or an imbecile or a person in whose case there exists from birth or from an early age mental defectiveness not amounting to idiocy, and yet so pronounced that he is incapable of managing his affairs or a feeble minded person or one in whose case there exists from birth or from an early age mental defectiveness not amounting to imbecility, yet so pronounced that he requires care, supervision or control for

this own protection. The weakness of intellect by itself is insufficient to constitute "unsoundness of mind' within the meaning of the above provisions.

The amendment in the Code of 1100 has not effected any change in the law. It has only amplified the provisions in this behalf in the older Code and made the same clearer. It is essential that both under the old and the new Codes, a specific statement should be made that the person on whose behalf a suit is proposed to be filed by another or for whom a guardian *ad litem* is sought to be appointed is incapable of managing his affairs or protecting his own interests. This allegation has to be substantiated by cogent and reliable evidence, so that the Court may record a finding in this behalf before the suit or proceeding is so allowed to be conducted by the next friend or a guardian *ad litem* appointed for a person of unsound mind.— **20 T. L. J.**, *54*.

Order XXXIII, Rule 1.

1. There is a difference in the wording of this Rule (Order XXXIII, Rule 1 of the Civil Procedure Code) and that in the British Indian Act. While in the latter, there has been an express exclusion in the case of the subject matter of suit, no such reservation has been allowed by our Legislature. So far as our Court is concerned the question of the propriety of the inclusion of properties admittedly in the possession of the plaintiff in determining the means of the plaintiff for purposes of enquiries in respect of applications under Order XXXIII, Rule 1, does not seem to be doubted.—

46 T. L. R., *307*
(=**20 T. L. J.**, *1232*).

2. After the institution of the suit, some of the defendants objected to the plaintiff's valuation of the suit alleging that the plaint schedule properties were under-valued. On the report of the commissioner the Court ordered payment of additional Court fee. The plaintiff did not pay the additional Court-fee but prayed for continuation of the suit in *forma pauperis*. The lower Court rejected this prayer:

Held.—Under Order XXXIII, a plaintiff is entitled not merely to institute a suit in *forma pauperis*, but also continue it in *forma pauperis*, if at any stage of the suit, the plaintiff finds himself unable to make any further payment which he may be ordered to make. The fact that the plaintiffs applied for and obtained time to make the further payment cannot stand in their way, if as a matter of fact, they are found to be paupers within the meaning of Order XXXIII, Rule 1.—

47 T. L. R., *65*
(=**21 T. L. J.**, *118*).

Ref.—48 T. L. R., 117
(=22 T. L. J., 390).

3. While in the case of suits and appeals provision has been made in the Code for filing them in *forma pauperis* no such provision is made for a review petition. If the Legislature intended that review petitions also should be admitted in *forma pauperis* provision would have been made for it in the Code itself; that not having been done, the Court has no power to admit a review petition in *forma pauperis*.

No Court has the inherent jurisdiction to permit the doing of anything in violation of an express imperative provision of law.

A case is only an authority for what it actually decides and not what may logically follow, from that decision.—

48 T. L. R., *117*
(=**22 T. L. J.**, *390*).

4. The words 'is not possessed of sufficient means' in the Explanation to Order XXXIII, Rule 1, must mean that the applicant 'has no actual control over it.' A debt which is due to the applicant

from a third party cannot therefore be said to be means of which the applicant is possessed.— 22 T. L. J., *428*.

Order XXXIII, Rule 3.

The petitioner was present in Court but did not go near the Head Clerk to hand over the petition to him. The petition was put into Court by the Vakil. The endorsement on the petition by the Head Clerk of the Court is clear that it was presented by the applicant in person. If the petitioner asked another to hand over the petition to the Head Clerk, it was proper presentation.— 21 T. L. J., *78*.

Order XXXIII, Rule 5.

1. Rule 5 of Order XXXIII is imperative. Clause (*a*) of the Rule makes the presentation of a schedule of any movable or immovable property belonging to the applicant, duly signed and verified along with the application as a condition precedent to the grant of leave to sue as a pauper. The schedules of movables and inmovables required to be produced could not by any stretch of argument be considered to be a paper with the columns prescribed in which the necessary entries contemplated in the Section have either not been made or where such entries are incomplete. The use of the word "shall" in Rule 5 indicates that, where the requirements of the Section have not been satisfied, the Court has no other alternative than to dismiss the application.

20 T. L. J., *140*.

2. Although the provisions of Order XXXIII, Rule 2, have to be strictly construed, if the necessary averments are contained in the papers produced before the Court though not in the application for leave itself, these provisions should be considered to have been substantially complied with.

The expression "cause of action" occurring in Rule 5 of this Order has to be taken to mean a good subsisting cause of action capable of enforcement in Court and calling for an answer, and not barred by the Law of Limitation or any other law.

"Interest" in the subject-matter of the suit contemplated in Clause (*c*) of Rule 5 is one *in presenti* and not one contingent on the death of the petitioner.—

20 T. L. J., *636*.

3. When the Court examined the plaint and plaintiff not with a view to decide the merits of the alleged cause of action, but only to decide whether the suit was *prima facie* barred by limitation, it could not be contended that the Court had no authority to consider and decide this question for the purpose of such enquiry. Order XXXIII, Rule 5, enjoins that the Court shall reject such an application where no subsisting valid cause of action is disclosed. Possibly no hard and fast rule could be laid down with regard to the extent to which investigation should proceed at the preliminary stage, but before an application for leave to sue *in forma pauperis* is granted it is the duty of the Court to satisfy itself that the allegations of the petitioner do show a cause of action, and the allegations are not only those made in the plaint but also include those made in the examination of the applicant before the Court.— 21 T. L. J., *417*.

4. The lower Court dismissed an application to sue *in forma pauperis* on the ground that the plaint claim was barred by limitation. But the question of limitation was one which could not be decided off hand :

Held.—The lower Court was wrong in dismissing the application on the ground of limitation. There are certainly cases in which remedy is so obviously barred by limitation and the ground of limitation is clear on the face of the plaint that the matter comes clearly under Clause (*d*), *viz*.,

where the plaintiff's allegations do not show a (subsisting) cause of action. In such cases, Order XXXIII, Rule 5 (*d*), imperatively requires that the permission to sue *in forma pauperis* should be refused. But the Section cannot apply to a case where the ground of limitation is not clear and in which it is necessary to investigate the facts in detail before the Court can come to a definite conclusion whether the suit is barred. The jurisdiction of the Court to dismiss the suit at the preliminary stage is strictly circumscribed by Order XXXIII, and that Order has to be strictly enforced.—

23 T. L. J., *811.*

5. See also Or. VII. R. 11.—

21 T. L. J., *250.*

Order XXXIII, Rule 7.

The provisions of Order XXXIII, Rule 7, Clause (3), clearly empower the Court to give a direction for payment of Court fees. There is nothing in the Section to restrict the discretion of the Court. The corresponding provision in the British Indian Code does not expressly contemplate the passing of such an order.—

20 T. L. J., *664.*

Order XXXVI, Rule 5.

1. An attachment before judgment under Order XXXVI, Rule 5, Clause 3, if not withdrawn, remains in force after the decree is passed so as to make a re-attachment of the property unnecessary upon an application for execution of the decree. Order XXXVI, Rule 11, is wide enough to include also a conditional attachment under Rule 5, Clause 3, if it is not withdrawn before the decree is passed under Rule 6 or 9 of the same Order.—

21 T. L. J., *1039.*

2. On the plaintiffs' prayer for attachment before judgment of crops standing on some paddy fields of the defendant, the Court ordered notice under Section 463 C. P. C. (old) and conditional attachment of the crops and also directed that the attachment would be released if security be given for 1300 and odd fanams, the value of the crops. The respondent thereupon executed a surety bond which, while referring in the preamble to the plaint amount ended with an undertaking 'to pay the amount due under the decree that may be passed in accordance with the plaint.' In enforcement of the surety bond, the plaintiff contended that the respondent was liable under the decree for the amount which had reached a total of 16,000 odd fanams, but the surety replied that his liability was limited to the plaint amount:

Held (accepting the surety's contention).—The event in which under the bond the security was to become enforceable was the failure of the defendant to produce the property sought to be attached and in no event can the surety become liable for the satisfaction of the decree itself and his liability would certainly be limited to the value of the property attached. It is not unreasonable to hold that the later expression in the bond, *viz.*, the amount of the decree that may be passed in accordance with the plaint was intended only to mean a decree for the plaint amount for which alone the plaintiff could at date of suit have been given a decree. The rule as regards interpretation of surety bonds of this nature seems to be that the terms of the bond should be construed in the light of the order calling for security.—

23 T. L. J., *99.*

Order XXXVI, Rule 9.

Where an attachment before judgment, (under Section 467 of the Civil Procedure Code of 1065) had been granted in favour of the plaintiff and the suit was dismissed for default but subsequently restored on the application of the plaintiff and there

was no special order of Court withdrawing the attachment at the time of dismissal of the suit:

Held.—The attachment subsisted and could be availed of by the plaintiff in execution.

Per Thaliath, J.—There is no reason why there should be any difference in the effect of attachment when a claim petition is allowed but reversed in a suit and when a suit is dismissed but restored to the file and decreed.— **21 T. L. J.,** *841.*

Order XXXVI, Rule 10.

See Order XXI, Rule 51.—

24 T. L. J., *433.*

Order XXXVI, Rule 11.

See Order XXI, R. 55,— **24 T. L. J.,** *587.*

Order XXXVII.

1. The act restrained under Order XXXVII must be specific. The direction made by the lower Court prohibiting generally acts which would amount to mischief without expressly specifying them was clearly unsupportable.—

20 T. L. J., *361.*

2. A suit was brought *in forma pauperis* for recovery of a sum of money. Even before the question of pauperism had been decided, the Court, on the motion of the plaintiff, granted a temporary injunction under Order XXXVII, Rule 1, restraining defendant from disposing of certain properties. The order was passed without hearing the opposite side or even issuing notice to the other side:

Held.—The order could not be sustained. It could not be said that in no case like the present the Court could pass an order of temporary injunction or the like, unless the question of pauperism has been decided in favour of the applicant and the suit is registered and numbered. In appropriate cases, the Courts may have to pass prohibitory orders even though technically a suit may not be pending.—

20 T. L. J., *365.*

Fol.—24 T. L. J., 730.

3. When a lessor alleges that the lessee has incurred a forfeiture by violating the covenants in the lease, the lessee's continuance in possession has to be viewed as a trespass. In such cases ejectment is the appropriate remedy and not an injunction. This does not mean that an injunction cannot be granted against a lessee in possession in any case. But before it can be granted the plaintiffs must show that the act complained of, is in fact a violation of his right or is at least an act which if carried out will necessarily result in violation of his right.— **21 T. L. J.,** *376.*

4. In the first place the Judge in granting or refusing a prayer for an injunction has to see whether the plaintiff has made out a *prima facie* case in support of the title asserted by him, and secondly, whether the injury threatened is irreparable. The question of balance of convenience will arise only if these two questions are found in favour of the plaintiff.—

22 T. L. J., *621*

5. The *prima facie* strength of the applicant's case is generally speaking the pre-requisite of the grant of a temporary injunction. It is necessary that the Court should be satisfied that there is a serious question to be tried at the hearing and on the facts before it that there is a probability that the plaintiff is entitled to relief.

Where a foreigner not owning any properties in Travancore, applies to have moneys realised in execution of a decree to be held in deposit by order of injunction:

Held.—He might be called upon to secure against any possible loss of interest on the decree amount while kept in deposit, if and when realised in execution.—

23 T. L. J., *452.*

6. The Civil Procedure Code contemplates no *interim* injunction after the opposite party has received notice of the application and filed his objection. The order granting the injunction at such a stage, in whatever form or words, it might be stated, has to be regarded as falling under Rule 1 or Rule 2 of Order XXXVII, as the case may be and has consequently to be held as appealable under Order XLII, Rule 1, Clause (21).

An order for temporary injunction could not be granted under Rule 2 of Order XXXVII, except in aid of the prospective order for permanent injunction prayed for in the plaint.—

20 T. L. J., *367.*

7. Ordinarily, a co-owner suing for partition is not entitled to an injunction restraining another co-owner from erecting a building on the common property pending the suit. There are however cases in which on the eve of or after the institution of suit for partition a costly building is about to put up by a co-sharer with the evident object of forcing the hands of the Court to allot as his share the land of its site and in such cases injunction may be given.— **46 T. L. R.,** *251* **(=20 T. L. J.,** *596*).

8. The plaintiff alleging herself to be a minor, sued in *forma pauperis* for a declaration that certain decrees obtained against the Tarwad were not binding and for a permanent injunction restraining the execution of the decrees. It was contended that as the application to sue in *forma pauperis* was still pending, no temporary injunction can be granted:

Held.—The provisional remedies allowed under Order XXXVII and allied provisions of law are intended for the benefit of all suitors and there is no reason to rule out suitors whose applications for determination of pauperism for purposes of payment of Court fee are pending. To do so would have the effect of denying to such suitors adequate reliefs interim and substantially frustrating their suits altogether.

The provisions of Order XXXVII can be invoked also in cases where the execution sale has taken place as execution proceedings can be taken to terminate only when the properties are delivered over in execution and till then execution proceedings should be taken to be pending. The literal meaning of the expression "is in danger of being wrongfully sold in execution" ought not to be accepted and the expression may reasonably be taken to include also the actual transfer of possession of the properties sold.—

24 T. L. J., *730.*

Order XXXVIII, Rule 1.

1. The selection of a receiver is a matter in the discretion of the lower Court and its decision would be interfered with only if some overwhelming objection in point of propriety of choice or some objection fatal in principle to the person selected is made out.

It has been further ruled in C. M. A. No. 3 of 1104 that, though as a general rule one of the parties to a suit ought not to be appointed as receiver, such an appointment would not be improper in cases where 'the Court finds for some special reasons that, in spite of the opposition of the other parties such an appointment has to be made as it is impossible to make any other appointment.'— **20 T. L. J.,** *704.*

2. Where a simple creditor, in a suit against the legal representatives of his deceased debtor, attached before judgment certain properties as belonging to the deceased and subsequently applied for the appointment of a receiver of the attached properties:

Held.—An application by a simple creditor for the appointment of a receiver would not ordinarily be competent and it was opposed to principle to hold that the

defendants could be dispossessed at the instance of a simple creditor who complained that unless the profits were accumulated and conserved it would be impossible to obtain satisfaction of his claim. The plaintiff had no right of any kind over the property except such as might arise from the attachment before judgment, which by itself created no interest whatever in his favour much less a right to dispossess those who were in possession and enjoyment as heirs of the deceased.

It would not follow that in a proper case the remedy by way of appointment of receiver could not be granted by Court. Where, for instance, the deceased debtor has left numerous debts which cannot possibly be realised out of the assets left by him the law empowers the Court to take action for conserving these assets for the whole body of creditors. In such cases the creditor may file an administration suit and it would then be competent for the Court to appoint a receiver with a view to facilitate the satisfaction of all the debts of the deceased and in order to prevent a scramble among his creditors.—

21 T. L. J., *924.*

3. The confirmation of sale and delivery of possession in execution were held up on account of an application to set aside the sale under Order XXI, Rule 87, preferred by a junior member of the judgment-debtor's Tarwad. The auction-purchaser applied for security being taken for the mesne profits or for the appointment of a receiver to take the yield of the property purchased. The junior member objected:

Held.—Though there might be difficulty in appointing a receiver where the disputes about title is fairly well-balanced and there is the additional advantage of possession in favour of the party sought to be ousted, the case in question was quite different. By the Court auction the title had passed to the purchaser and there was only an off-chance of the title being defeated in view of the presumption in favour of the legality and regularity of Court sales. Further, the party opposing the Court sale was not the Karanavan in possession, but a junior member and the Karanavan may disclaim liability for mesne profits since he had not opposed. The purchaser is thus left without any interest on the money for which he purchased the property or any clear recourse for mesne profits. In such circumstances it was just and convenient that his interests should be safeguarded. The circumstances as a whole should be considered in granting or refusing a receiver.

(The Court, however, ordered the junior member to furnish security for mesne profits for two years and in default, the appointment of a receiver).—

22 T. L. J., *750.*

4. There is nothing in Order XXXVIII, Rule 1, restricting the powers of the Court with reference to the particular party making the motion, whether he was arrayed as a plaintiff or defendant. According to the English practice, a defendant in an action may, before judgment, apply for a receiver. The law here appears to be in conformity with it.

Where the lower Court, on being satisfied that the appointment of a receiver was expedient, called for the suggestion of a nominee for the receivership, and the order was appealed against:

Held (on preliminary objection being raised that the order being of an interlocutory character, the appeal was incompetent).—The appeal was valid. The matter is, however, only of an academic interest, for it is open to the High Court to treat the appeal as a revision petition.—

23 T. L. J., *457.*

5. Where a receiver, in his capacity as receiver, objected to the proclamation for sale on the ground that the leave of the appointing Court was not obtained, but

he had, on an earlier occasion, in his individual capacity as hypothecatee, raised certain contentions including the want of sanction, and such contentions had been rejected:

Held.—The receiver could not be heard on his objections. The receiver could not get round the prior order by putting in a fresh petition to the same Court. If the receiver was aggrieved, he should have vacated that order by taking appropriate proceedings (F. B.).— **23 T. L. J.,** *711.*

Order XXXIX.

1. Where the award of an arbitration was completed and filed in Court after the time allowed by the Court for the purpose, the award is invalid even though the delay amounted only to a day and was due to a *bona fide* mistake on the part of the arbitrator.

Semble.—Under Order XXXIX, Rules 3, 8 and 15, the validity of an award made under the Court's order depends on the making of it within the period allowed and it is immaterial on what date it is filed in Court.— **22 T. L. J.,** *1164.*

2. It is the Court that has to determine whether a particular reference has been properly made and whether the matters in dispute between the parties have been properly placed before the arbitrators. As the arbitrators get their powers to give an award only by the agreement of the parties to submit to their arbitration, the extent of the powers will have to be specified clearly in such agreements. The ordinary rules of the law of contract will be applicable for determining the validity of the references. If the powers conferred on the arbitrators are not definite, the terms being vague and indefinite, the award could not be allowed to be enforced. But the question whether the terms are clear and definite has to be decided with reference to the facts of each case. If from the attendant circumstances, the import of the terms is definitely gatherable, there is no reason why the award should be allowed to be avoided, especially as the parties are estopped from backing out of a reference after an award has been made unless one of the grounds set forth in Order XXXIX, Rules 14 and 15, is shown to exist.

It is a well-recognised principle that, in construing an award, the Court has to make every reasonable intendment and presumption in favour of the award being a final, certain and sufficient termination of the matter in dispute. The statement of the arbitrators should be taken as *prima facie* representing the true state of affairs as to what took place at the time of enquiry unless there is very strong reason for doubting the accuracy of the same.

Failure to give an opportunity, to parties to lead evidence would be a misconduct which would vitiate the award. In cases where the party does not appear and adduce evidence, the arbitrator may proceed *ex parte*, and the award passed thereon could be validly avoided only when such *ex parte* proceedings had been conducted without any justifiable cause or without giving the party absenting himself notice of the same. The ordinary rules relating to procedural law are not applicable to arbitration proceedings, for an arbitrator is free from the fetters of adjectival law, but the fundamental principles of justice have to be looked into by him. The recording of the evidence behind the back of a party without justifiable grounds would be a valid ground for avoiding it. If no evidence is adduced, the award would be final. If the parties were not heard before giving the award, it would amount to misconduct.

By reference to arbitration, the parties should be taken to have agreed to adjust their differences by the decision of a third party who is declared by the reference to

be acceptable to them for the purpose. Reference to arbitrators in pending suit without sanction of Court cannot be treated as not being lawful agreements contemplated in Order XXIII, Rule 3. The rights of parties to adjust their differences even when they are covered by pending suits should be left unrestrained, the Court having the right to interfere and veto the same only when the act is expressly forbidden by law or is opposed to well recognised rules of public policy. Section 82, clause (*e*), provides for appeal in cases of orders filing or refusing to file an award in an arbitration without the intervention of the Court. This right conferred under the Statute cannot be defeated by the order relating to the filing of the award being embodied in the judgment itself and by the drawing up of the decree, the order for filing the award, which is the foundation therefor, cannot be said to have become merged in it and thereby liable to be deemed to have lost its appealable character.—

46 T. L. R., *30*
(=**20 T. L. J.**, *667*).

Order XL.

1. To enable an effective interference with a joint decree in favour of three plaintiffs in appeal all those plaintiffs must be on the record. If only one of them is on the record the appeal is imperfectly constituted and must fail.—

47 T. L. R., *475*
(=**20 T. L. J.**, *1282*).

2. A party can recover only in his action according to his claim as stated and proved. The plaintiff cannot be permitted to take advantage of the defendant's plea and claim relief on that basis on the evidence on record as that would be springing a surprise on the defendant and would seriously prejudice him as the question of his liability on that basis has not been properly fought out in the Court below.— **49 T. L. R.**, *68*
(=**22 T. L. J.**, *1216*).

3. See also Sec. 40.— **20 T. L. J.**, *743*.
„ 2 (2).— **21 T. L. J.**, *998*.

Order XL, Rule 4.

1. The suit was for arrears of chitty subscription based on a chitty security bond executed by E, the deceased Karanavan of defendants 1 to 14, charging on three sets of properties described in A, B, C, schedules attached to the plaint. Schedule C had been purchased in Court auction by defendants 15 and 16. Defendants 1 to 14 remained *ex parte*. Defendants 15 and 16 contested the suit on the ground that E, the subscriber, was not a defaulter. On evidence it was found that he was not a defaulter and therefore plaintiff had no cause of action. On the question arising whether the plea of no default raised by defendants 15 and 16 would be a common ground so that a reversal of the decree could be made in appeal even in favour of all the defendants:

Held.—It would be a common ground as contemplated in Order XL, Rule 4, and would benefit all the defendants although *ex parte*.

When a suit is brought on an instalment bond claiming the whole amount on the ground that there was a default, the plaintiff should lead evidence as to the default. For only when there is default, the right accrues to the plaintiff to claim the whole amount. The slightest evidence on the part of the plaintiff might shift the burden on to the defendant to prove that there was no default.

It has however to be remembered that on whomsoever the burden of proof may rest, the Court will expect that party who has materials in his possession for arriving at a correct conclusion on a question in issue, to place those materials before the Court.— **22 T. L. J.**, *988*.

Upheld.—23 T. L. J,, 1040.
50 T. L. R., 126.

2. The Court has some discretion in the matter of allowing applications made by

some of the legal representatives of a deceased plaintiff or appellant and it is not bound to reject such applications merely on the ground that all the representatives had not associated themselves therein. It is open to the Court to bring in the other representatives as respondents on application duly made or proceed under Order XL, Rule 4, of the Code. Each case must be decided in the light of its peculiar circumstances.— **23 T. L. J.,** *1097.*

Order XL, Rule 18.

See Or. IX, R. 13.—

47 T. L. R., *321*
(=21 T. L. J., *754*).

Order XL, Rule 19.

Order XL, Rule 19, which enables the Court in its discretion to add a party interested in the appeal can be invoked only where there is a proper appeal and does not empower the Court to animate a dead appeal. A plaintiff in whose favour a decree has been passed if omitted in appeal cannot be added under Order XL, Rule 19.

A suit against a dead man cannot be amended by impleading his legal representative. **22 T. L. J.,** *1189.*

Order XL, Rule 21.

1. The plaintiff under Exhibit C Udampady deposited 26,064 fanams in Court and saved plaint properties from sale. He subsequently sued the defendants who had executed the said Udampady for a declaration that the plaintiff had a first charge on the plaint properties, to the extent of the full consideration of 30,100 fanams under Exhibit C:

Held.—The utmost that the plaintiffs could claim would be for subrogating them to the position of the first mortgagee by reason of the deposit made by them in Court. The extent to which such subrogation could be allowed would depend only upon the amount actually deposited Anything in excess of this amount could amount if at all, to a claim based on the contract between the mortgagors on the one hand and the plaintiffs on the other. The mortgagor cannot, by any act of his, restrict the rights of the prior encumbrancers behind their back. No question of the applicability of any rule of salvage lien arises in the case.

Under the present Code of 1100 the award of compensation under Section 75 of the Code should no longer form part of the decree, but should be embodied in a separate order. Such orders could not be treated as decrees.

Both under the old and new Code the circumstances under which the award of compensation is made permissible are identical, and the change introduced in the new Code relates only to procedure.

From the wording of Rule 21 of Order XL of the Code of 1100 it is clear that it has to relate to reliefs disallowed or granted against the respondent. It may also set forth the objections to the findings recorded by the Court which decided the cause, which the respondent proposes to attack in supporting the decree. If however any relief is proposed to be claimed, it could only be with respect to that which could have been prayed for by means of a cross-appeal, for, an objection memorandum contemplated in this Rule virtually takes the place of a memorandum in a cross-appeal.

It is clear law that the rule that Statutes are *prima facie* prospective and not retrospective, unless a clear intention is expressed to that effect by the Legislature, is not applicable to those relating to procedural law. Of course, if under the earlier Statute, rights had become vested in a party such rights could not be divested by virtue of the provisions of a later Statute repealing the same. No party will have a vested right to insist upon a particular form of procedure prescribed by a repealed Statute to be adopted

by reason of the fact that the same was in force at the time when the proceedings were initiated by him. The provisions requiring the incorporation of the award of compensation is only one of procedure.

Inasmuch as the claim for compensation has not been adjudicated upon in the suit, the decision in the case will not operate as a bar to its being sought for by a regular suit.— 21 T. L. J., *91*.

2. Under the law in this State the vendee cannot seek relief on the basis of any implied covenant for title and in the absence of express covenants he must be presumed to have intended to take what title the vendor had and nothing more. Section 55, Clause 2, of the Transfer of Property Act contemplates an implied covenant against encumbrances in the case of every sale. By analogy it might follow that under the law here there can be no such implied covenant against encumbrances in this State. In any event it seems to be clear that no such covenant can be implied in a sale in which it is found that the covenant (provided for under its terms) if at all, was only in respect of the acts of the vendor and the parties knew or believed that there was no encumbrance which would in fact have to be borne by the property.

A vendee cannot resist a suit for balance of sale consideration or require indemnity from the plaintiff, on the basis of a covenant against encumbrances, when he has not sustained any loss at the date of suit and there is only a risk of loss accruing to him in future.

Under the new Civil Procedure Code, the provisions of Order XL, Rule 21 (3), are slightly different and they give wider powers of interference to the Appellate Court. Instead of the words 'the appellant' which occurred in Section 532 of the old Code are found the words "the party who may be affected by such objection" in Order XL, Rule 21 (3). The result probably is that under Order XL, Rule 21, a respondent may urge cross-objections against other respondents also (conflict of opinion in British Indian High Courts, pointed out). But it should be noted that the rule requires that notice of this claim should be served on the parties to be affected by such objection.—

22 T. L. J., *299*.

3. Where the plaintiff's application for temporary injunction was dismissed by the lower Court but still defendant filed appeal from the order of dismissal on the ground that the reasons stated by the lower Court were unjustifiable and therefore required to be expunged, and the plaintiff filed a memorandum of objections:

Held.—As the plaintiff's application had been dismissed, an appeal by the defendant cannot be entertained merely on the ground that the reasons stated by the lower Court are unjustifiable.

Objections may be filed in C. M. Appeals under Order XL, Rule 21. Where on hearing the appeal the Court decides that the appeal is not competent, the respondent may be heard on his memorandum of objections.— 24 T. L. J., *458*.

4. See also Sec. 10.— 24 T. L. J. *288*.

Order XL, Rule 22.

1. It is only in cases where the disposal by the trial Court has been upon a preliminary ground or where there has been a gross miscarriage of justice and abuse of legal process which justifies the exercise of the extraordinary powers by way of inherent jurisdiction vested in the Court that the decree of the primary Court could with propriety be reversed and a re-trial ordered. If the judgment of the primary Court is unsatisfactory, what the Appellate Court ought to do is to point out the fact in the judgment and not to vacate the decree of the trial Court and thereby indirectly postpone the final disposal of the suit. Nor could such a course be proper or justifiable in cases

where certain witnesses of the appellant had not been examined or findings on material issues had not been recorded. In such cases, the proper course would be for the Appellate Court to retain the appeal on its file and send back the case under the appropriate provisions of the Code in this behalf. There seems to be a tendency on the part of the subordinate Appellate Courts to indulge in the unwholesome practice of remanding suits after reversal of the decrees of the primary Court on flimsy grounds. This practice cannot but be attributed to an over-anxiety to show large disposal.—

20 T. L. J., *329.*

2. In a suit in regard to a partnership concern the plaintiff sued for an account and recovery of the money due on his shares and what would be due from defendants 1, 2, 4 and 5 with damages on account of his exclusion from the profits of the concern. The contentions of the 3rd defendant, the chief contesting defendant, did not prevail. The Munsiff gave a decree for the plaintiff and on that decree the 3rd defendant appealed to the District Court. In appeal, the plaint was amended on the application of the plaintiff and the suit remanded under Order XL Rule 22, setting aside the decree passed against the 3rd defendant. The remand order did not leave the Munsiff free to deal with the whole case, but restricted it to the "reliefs claimed against the 3rd defendant and the partnership assets". After remand, although the 3rd defendant contended that the whole case was reopened after the remand, the Munsiff confining himself within the narrow limits set by the remand order, dissolved the partnership as from the date of the decree and decreed the recovery of Rs. 1260 as profits from the 3rd defendant and the assets of the partnership. On second appeal by the 3rd defendant:

Held.—The amendment of the plaint by the respondent was a strange step since it was allowed behind the back of the other defendants who are admittedly partners.

When the case was not disposed of on a preliminary point by the trial Court and when the Judge did not decide anything in ordering the remand, Order XL, Rule 22, was inapplicable. The remand should be viewed as made for the ends of justice under the inherent powers of the Court.

By such remand the whole case might be reopened even if the appeal is not by all the defendants.

It is an elementary proposition of law that no partnership can be dissolved except in the presence of all the partners. In an action to dissolve and wind up a partnership, it is impossible to say what, if anything, is due to one partner, from his copartners until the accounts are taken and so interest should be allowed only from the date of the final decree on sums, if any, decreed in favour of the plaintiff.—

47 T. L. R., *72*
(=20 T. L. J., *1226*).

3. The question was whether the findings recorded in the order of remand are binding on the successor who hears the appeal from the final decree passed after remand:

Held.—The findings recorded in the order of remand are conclusive and could not be re-opened in such cases.—

23 T. L. J., *915.*

Order XL, Rule 24.

1. An order of remand calling for findings upon the additional issues raised made by the Judge under Order XL, Rule 24, of the Code is clearly not appealable, as the only orders with respect to which appeals are provided for in matters falling within the purview of Order XL are those passed under Rules 10, 18 and 22 of that Order. Section 82, Sub-section (1), of the Code expressly declares that no appeal would lie against orders other than those

specifically enumerated in that Section and those provided for under the other provisions of the Code. There is no provision in the Code making orders under Order XL, Rule 24, like the one in appeal, appealable.— **20 T. L. J.,** *605.*

2. A Court of appeal should exercise the power of remand only very sparingly, and should order a retrial only in cases where the Appellate Court is clearly satisfied that the ends of justice require the same. In cases where the trial Court has omitted to frame an issue or record definite findings upon issues already framed or where such findings have to be recorded after taking additional evidence the remand should be under Order XL, Rule 24. Reversals and remands by subordinate Courts invested with appellate jurisdiction have to be viewed with very great disfavour and the necessity of avoidance of such remands impressed strongly upon them.

The impropriety of the findings and that of the decree are matters which ought to be rectified by the Appellate Court itself for, it is not open to the latter Court to require the primary Court, without exercising its own judicial discretion to record a particular finding upon an issue or pass a decree in the case in a manner indicated by the Appellate Court. If the findings on a particular issue not recorded by the primary Court are considered necessary the Court has to act under Order XL, Rule 24 or Rule 27. No question of the exercise of inherent jurisdiction in such matters would arise.— **20 T. L. J.,** *979.*

3. *Per Chakko, J.* (*Narayana Pillai, J. reluctantly concurring*).—The question whether in the absence of a specific direction by the appellate Court to admit evidence, a Court of first instance has power or discretion to reject the evidence tendered by parties is not free from difficulty. In the absence of a specific direction by the appellate Court directing the lower Court to allow parties to let in further evidence the lower Court has a discretion to assume that the order of remand did not contemplate taking additional evidence. And where the materials on record appear to have been sufficient for coming to a determination on the issue remitted it cannot be said that the lower Court erred in refusing the prayer of a party for adducing further evidence.—

48 T. L. R., *165*
(=22 T. L. J., *168*),

Order XL, Rule 26.

1. Though it is open to a Court of Appeal to admit additional evidence, such power should be exercised with much caution and only in suits where it is satisfied that in the interests of justice it should be exercised.— **20 T. L. J.,** *316.*

2. Under Order XL, Rule 26, the admissibility of additional evidence is made to depend not upon the relevancy or materiality to the issue before the Court of the evidence sought to be admitted or upon the fact whether or not the applicant had an opportunity of adducing evidence at some earlier stage but upon whether or not the Appellate Court requires the evidence to enable it to pronounce judgment or for any other substantial cause. Under the Rule the legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence but "when on examining the evidence as it stands, some inherent *lacuna* or defect becomes apparent." It will be that the defect may be pointed out by a party, or that a party may move the Court to supply the defect, but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands.—

24 T. L. J., *804.*

Order XL, Rule 32.

1. The primary Court's decree in the case allowed the recovery of a portion of

the plaint amount from the fourth defendant and the balance from defendants 1 to 3. In appeal before the District Court, by the fourth defendant alone, the decree against him was set aside, but the District Court omitted to grant equitable relief, as it should have done under Order XL, Rule 32, so as to entitle the plaintiff-respondent before it, to recover the whole plaint amount from defendants 1 to 3. Defendants 1 to 3 alone specially appealed. The plaintiff special respondent claimed before the High Court that the omission of the lower Court should be rectified and contended that the discretion under Order XL, Rule 32, may be exercised even though the special appeal should be dismissed.

Held.—The plaintiff having failed to appeal against either the first or second Court's decision, was responsible for the consequences and no relief could be granted to him as prayed.

The discretion under Order XL, Rule 32, cannot be exercised in favour of a respondent so as to give him a relief which he is equitably entitled to, unless it is found to be necessary as a result of the Appellate Court's interference with the decision of the Court below at the instance of and in favour of the appellant before it, in whole or in part. Much less can such a relief be granted against the special appellant himself while rejecting the special appeal.— **22 T. L. J.,** *636.*

Appl.—23 T. L. J., 1176.

2. In a suit for contribution by the plaintiff against his joint judgment-debtors, the Court first passed an *ex parte* decree apportioning the plaintiff's claim against the several defendants jointly liable. The *ex parte* decree was however set aside as against some defendants only who were the appellants herein. They pleaded that they had discharged more than their share of the joint debt even before the suit and were, therefore, entitled to be absolved. The lower Court directed the appellants to a separate suit for contribution against the plaintiff and other defendants as, in its view, the acceptance of their plea would involve the enhancement of the liability of the other defendants as declared by the *ex parte* decree against them in force:

Held.—The view that the defendants should seek their remedies against plaintiff and other defendants in another suit appeared clearly unsustainable as it did not stand to reason that after the joint debt had been discharged there should be more than one suit for contribution among the latter. In any event there seemed to be nothing opposed to principles in holding that in a suit for contribution to which all the joint debtors are parties, all rights and liabilities *inter se* should be settled once for all. The right to contribution has its foundation in and is controlled by the principles of equity, good conscience and justice. In a suit for contribution the respective liabilities of the parties should be ascertained and determined once for all and nothing should be left undetermined which may lead to further litigation for the ascertainment of such liability between two or more of the parties to the suit. In a suit of this nature, it was therefore open to the Court to recognise and give effect to all equities arising between the parties *inter se* and it might for that purpose even go outside the matter in issue in the case. There was nothing to prevent the Court from adjusting all mutual liabilities among these persons in the suit itself. To hold otherwise would result in the multiplication of suits regarding the same transaction.

(2) The lower Court was not, in the circumstances, incompetent to alter or modify the *ex parte* decree against the other defendants. The granting of any relief to which these defendants were entitled could not be made to depend on a decree passed against the other defendants. The reasonable course would have been to

re-open the decree if it was necessary to give adequate relief to these defendants.

(3) In view of the fact that all the parties were before the High Court, the High Court would itself have the power under Order XL, Rule 32, to pass such decree as the ends of justice might require; but as Order XL, Rule 32, apparently refers to cases of claims which come before the Appellate Court after there has been an enquiry after due notice, the proper course was to send back the case for re-trial. The case was remanded.—

23 T. L. J., *778.*

3. In a suit on a promissory note alleged to have been executed by the first defendant in favour of the second defendant and endorsed over for consideration to the plaintiff, the first defendant denied execution while the second defendant admitted the genuineness and endorsement, but only disclaimed personal liability. The trial Court dismissed the suit as against the first defendant and decreed the suit against the second defendant. The second defendant appealed to the District Court from the decree as against him, but the plaintiff did not appeal against the dismissal of the suit as against the first defendant, but preferred a cross appeal in respect of the direction of the trial Court making him liable for the costs of the first defendant. The District Court dismissed the second defendant's appeal, but gave the plaintiff a decree on the promissory note against the first defendant as well:

Held. (In second appeal by the first defendant).—The first Appellate Court went beyond its jurisdiction in allowing the suit against the first defendant. By the dismissal of the appeal of the second defendant, the plaintiff stood where he was when the trial Court disposed of the suit and there was no call for any interference on equitable grounds.

'The discretion under Order XL, Rule 32, cannot be exercised in favour of a respondent unless it is found necessary as a result of the Appellate Court's interference with the decision of the Court below at the instance of and in favour of the appellant before it. So far as the authorities go, it would appear that, unless this condition is fulfilled and unless the Court decides the appeal in favour of the appellant in whole or in part, it would have no jurisdiction to modify the decree of the Court below in order to give the respondent a relief which he is equitably entitled to.—

23 T. L. J., *1176.*

Order XLII, Rule 1.

1. All orders by which the Court seeks to control or direct the actions of the Receivers are not appealable under Order XLII, Rule 1 (22).— **47 T. L. R.,** *334* **(=21 T. L. J.,** *531*).

2. Neither Section 82 nor Order XLII, Rule 1, made orders granting leave to sue *in forma pauperis* under Order XXXIV, Rule 7, Sub-rule 3, appealable.

On the contention that under Section 22, Sub-section (1) of the Nayar Regulation of 1100 properties acquired under gift or bequest by the wife or widow, child or children from the husband or father as the case may be, have been declared to belong to the donees or legatees in equal shares and as such the plaintiff (a donee) should be deemed to have acquired a definite share in the property gifted and that such share must be held alienable:

Held.—Until the right of individual partition has been actually enforced or at least, sought to be enforced the persons entitled to such properties (properties gifted or bequeathed) constituted a Tarwad by themselves.

Section 22, Sub-section (2), provided that the rules of devolution and distribution of the property of an intestate would apply to property mentioned in Sub-section (1) of Section 22. On the face of

that express provision, Sub-section (1) of Section 22 must be held to be controlled by the provisions of the Regulation relating to partition of Tarwad property.—
21 T. L. J., *562.*

3. The District Judge allowed a petition to record a compromise and by the same order finally disposed of the suit. A decree in terms of the compromise was passed. On Civil Miscellaneous Appeal against such order of recording (and not on the decree), the respondent raised a preliminary objection that the appeal was not maintainable:

Held.—A Civil Miscellaneous appeal will lie from an order *allowing a compromise petition under* Order XXIII, Rule 3.

A Judge who succeeds another should try a case in conformity with the findings recorded therein by his predecessor and not go back on those findings and come to quite opposite conclusions.—
48 T. L. R., *130*
(=22 T. L. J., *606*).

4. Order XLII, Rule 1, Clause (27), which allows an appeal against an order granting a review must be read as controlled by Rule 7 of Order XLV. In this view, before an appeal is admitted the appellant will have to show that it comes within the purview of Order XLV, Rule 7.— **22 T. L. J.,** *964.*

5. The Code does not confer a right of appeal against orders granting reviews except in the three cases specified by Rule 7 of Order XLV. The right of appeal given under Clause 27 of Order XLII of the Code, is restricted by the provisions of Rule 7 of Order XLV, and was not intended to confer an unrestricted right by appeal. Otherwise the provisions of Order XLV, Rule 7, would be superfluous and meaningless.

No second appeal lies from an order which is passed in appeal from an order granting an application for review, whether the appellate Court confirms or sets aside the order of the lower Court granting the review.— **24 T. L. J.,** *701.*

6. See also Or. I, R. 10.—
22 T. L. J., *905.*

Order XLV, Rule 1.

1. The High Court cannot be invited to call upon the Chief Revenue Authority (under the Income-Tax-Regulation) to state a case for the decision of questions not specifically urged before that Authority. The jurisdiction vested in the High Court could be invoked only with respect to matters expressly urged before the Chief Revenue Authority, but wrongly decided or refused to be dealt with by that authority. If the question had never been raised before that authority, the High Court could not legitimately require that Authority to state a case upon matters not urged before it. The fact that certain points not originally urged were required to be considered by a review application presented before the Authority could not justify the High Court to call for a statement of the case inviting that Court to express an opinion upon the points so raised afresh. The ordinary rules relating to the entertainment of a review in civil cases are to be applied to the applications for the purpose made before the Chief Revenue Authority in matters relating to income-tax. Such applications should be confined to matters specifically urged at the earlier proceeding. The provisions of Order XLV, Rule 1, of the Code may also be applied to such applications by way of analogy. In this view, the raising of new grounds in a review application not urged at the earlier stage could not be deemed to be competent, and the petitioner in the case would not be justified in falling back on the contents of an application for review in support of his prayer for the exercise of the extraordinary powers by the High Court.—
20 T. L. J., *511.*

2. Where a Court granted a review of a former order allowing a claim petition, the question whether the new important matter or evidence relied on, is one coming within the category of cases contemplated in Rule 1 of Order XLV, is one that will have to be determined in appeal.

The word "conclusive" occurring in Order XXI, Rule 61, could not be construed as depriving the Court which passes the order or a superior Court of competent jurisdiction to cancel or modify the same in appropriate cases. In spite of the use of the word "conclusively" in the above definition, the right of the party aggrieved to move that Court itself for review of its original decision is undisputed. Such a right could not be denied in cases of the orders referred to in Order XXI, Rule 61.— **20 T. L. J.,** *975.*

3. In a suit by a junior member of a Marumakkathayam Nayar Tarwad to set aside a sale deed executed by the Karanavan—1st defendant—the plaintiff withdrew the suit admitting the plaint properties to be the self-acquisitions of the 1st defendant. The suit was thereupon dismissed. Another junior member of the Tarwad who was not a party to the suit applied for restoration of the suit and for permission to continue the same. From the court fee paid on the application, it was intended to be treated as one for review. The lower Court dismissed the application on the ground of the petitioner not having a *locus standi* to present the same. In revision:

Held.—The plea based on the representative nature of the suit and the petitioner being a constructive party thereto cannot avail as the suit was not then pending.

In cases where suits have been finally disposed of, applications for reopening the same could be allowed to be made only by persons actually on record, those claiming to be constructive parties thereto being left to seek their remedies, if any, on the ground of fraud or collusion by a separate suit.

The expression "any person aggrieved by the decree" occurring in the Rule only restricts the right to such of those who are on record, and who are actually affected by the decree, for the right of review cannot with propriety be held to be available for *pro forma* parties who are not really affected by the decree.—

46 T. L. R., *205*
(=20 T. L. J., *1027*).

4. The expression 'or for any other sufficient reason' occurring in Order XLV Rule (1) has reference to a reason of the same kind or at least analogous to those specifically enumerated in the previous portion of the Rule. The Court has the power in cases where an error has been committed by its previous decision, and its rectification is essential in the ends of justice or to avoid an abuse of its legal process. Its inherent powers would be invoked and the mistake duly corrected (F. B.).— **46 T. L. R.,** *7*
(=21 T. L. J., *130*).

Ref.—22 T. L. J., 642.

5. The right of review is a creature of the Statute and has, therefore, to be confined to the express provisions of the Civil Procedure Code in Order XLV, Rule 1.

It is only when new material is overlooked by excusable misfortune, mistake or error apparent on the face of the record that review can be generally granted.

The discovery of an authoritative precedent on the question involved will not justify an interference in review.

The error or mistake contemplated under the Rule may be one of fact or of law.

A wrong exposition of law cannot *per se* amount to an error as contemplated in the above Rules. The fact that a different conclusion of law could have been arrived at, is not a justifiable ground for

review. Even the omission by a Judge to consider a decision, however regrettable and however wrong, could not warrant an interference in review.

The expression "sufficient cause" has to be construed as being *ejusdem generis* or analogous with the classes of cases dealt with in the preceding portion of the Rule.

The Legislature cannot have contemplated to bring under the above expression reasons entirely different in character from those specifically enumerated in the above Rule. The use of expression '*other*' in the Rule would militate against such construction.— **21 T. L. J.,** *951.*

6. Ignorance of Vakil of the date of posting and his consequent absence at the hearing, leading to the dismissal of the case by Court, does not constitute a ground for review within the meaning of 'or for any other sufficient reason' in Order XLV, Rule 1.

Where a judgment-debtor resists an attempted sale in execution on the ground that the decree is satisfied by a prior sale in execution of the same decree, it is the duty of the Court, before ordering fresh sale, to determine for itself by reference to the papers connected with the prior sale how far the allegation is justified. The fact that the defendant's objection petition was rejected for default does not preclude the Execution Court from doing its duty.— **22 T. L. J.,** *642.*

7. See also—

Sec. 115.— **20 T. L. J.,** *59.*
Or. XVII, R. 1.— **20 T. L. J.,** *165.*

Order XLV, Rule 2.

An application for review was made to a Judge other than the Judge who passed the decree, to bring it into conformity with the real intention of the Judge who delivered the judgment. The application to amend the decree was allowed :

Held.—The lower Court was not competent to review the order. Order XLV, Rule 2, requires that in order that an application for a review may be made to a Judge other than the Judge who passed the decree, one of two conditions must be satisfied, *viz.*, (1) that the application must be made on the ground of the discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or (2) on the ground of the existence of an arithmetical or clerical error or mistake apparent on the face of the decree. Neither of these grounds existed in the case. The application was not based on the discovery of any new and important matter or evidence. There was also no clerical or arithmetical error or mistake apparent on the face of the decree. The mistake referred to was not in the decree but in the reasoning of the Judge in his judgment. That was not mistake or error contemplated by Order XLV, Rule 2.

The test whether a Court can make an amendment of a decree is whether the order as it stands represents the intention of the Judge at the time he made it. In the case, there was no doubt that the Judge intended to pass the decree which he passed. Where a decree is on the face of it in conformity with the judgment upon which it is based, a successor of the Judge who delivered the judgment has no power to amend the decree, in order to bring it into conformity with what he conceives to have been the real intention of the Judge who delivered the judgment. That the intention of the Judge was based on a wrong view of the evidence would not entitle his successor to amend the decree under Section 116 C. P. C.— **23 T. L. J.,** *96.*

Order XLV, Rule 4.

Where the Munsiff originally decreed a Small Cause Suit, but subsequently

reviewed his decision on the application of the defendant and on the rehearing dismissed the suit, and in revision against the final decree the plaintiff challenged the Munsiff's decision to review the case, but it was contended by the defendant that the plaintiff was precluded from doing so by his omission to get the review order immediately revised :

Held.—On a construction of the last part of Order XLV Rule 7 (1) and the last line of Order XLVII, that the question of the validity of the order granting the review may properly be considered in this revision irrespective of any jurisdiction in this Court under Section 89 of the Code.

There is an obvious inconsistency between the two Orders. It is doubtful whether it is proper in construing statutory rules to refer to the debate which preceded the legislation and to do so in this case provides little assistance. There is no clearly applicable rule of construction in such a case as this, but it seems to be reasonable to treat Order XLV as though it were a Section of an Act, and Order XLVII, as a schedule, it being principally a list of Rules and Orders ; and to follow the English rule that, where a passage in the schedule to a Statute repugnant to one in the body of the Statute, the latter prevails :

Held further.—Though under Order XLV, Rule 4 (2) (*b*), no application for review on the ground of new evidence shall be granted without strict proof of previous inability to adduce it, the High Court in revision is not normally prepared to embark on an appreciation of evidence particularly to decide whether it amounts to "strict" as opposed to any other kind of proof and is less inclined to do so in a Small Cause Suit than in some other cases.— **24 T. L. J.**, *606.*

Order XLV, Rule 7.

See Or. XLII, R. 1.— **22 T. L. J.**, *964.*
24 T. L. J., *701.*
„ Or. XLV, R. 4— **24 T. L. J.**, *606.*

Order XLVII.

See Or. XLV, R. 4.— **24 T. L. J.**, *606.*

Other Cases.

1. In a suit on a debt-bond, it was found that the date fixed for payment in the bond was fraudulently altered to escape limitation bar :

Held.—The suit was incompetent. No suit could be brought on a document materially altered ; and tampering with the time for payment constituted material alteration.— **20 T. L. J.**, *110.*

2. A suit was instituted on a bond. The first defendant pleaded that he had not executed the bond, and this plea was upheld by the Courts below. The 2nd defendant admitted the genuineness of the bond and the suit against him was dismissed by the Munsiff. But on appeal, the Judge held that the second defendant was liable on his own admission and decreed the amount as against him. On appeal filed by the second defendant :

Held.—The decision of the Judge was correct. It is only where it has been established that the first defendant's signature to the bond was a forgery brought about by the plaintiff and second defendant acting together, the plaintiff's suit is liable to be dismissed on that ground.

It is only where an instrument intended to be executed by two persons is executed only by one that it cannot be enforced even against the person who has executed it. When the latter, however, admits that the other person has also executed the instrument, the finding that it has not been executed by such other cannot avail him, as a suit could have been filed against

him alone to enforce the joint and several liability arising from its provisions.—

20 T. L. J., *444*.

3. The suit was to recover property leased.

The defendant set up an agreement arrived at after the expiry of the term fixed in the lease deed whereby he was allowed to continue as lessee on payment of Rs. 500 as premium, and alleged that Rs. 200 had already been advanced towards the amount. He contended that the property could not be recovered till the amount of Rs. 200 was returned to him.

The Court of first instance found against the defence and decreed the recovery of the property.

On appeal by the defendant, the lower appellate Court held that there was an executory contract between the parties for the continuance of the lease with a premium of Rs. 500. But since the defendant did not complete the contract by paying up the balance of the premium, he was liable to surrender the property and was entitled to get back Rs. 200 paid towards premium on payment of court fees on that amount.

It was contended in special appeal on behalf of the plaintiff that as the defendant did not pay court fees in the Court of first instance on the amount counterclaimed, the lower appellate Court could not have decreed any sum in his favour:

Held (Overruling the contention).—There was no need to levy any court fees from the defendant. His case was that the suit should be dismissed, as it was premature in view of the executory contract of which there was part performance. He did not claim anything.— 20 T. L. J., *682*.

4. A transferee, *pendente lite*, is entitled to come on record and to conduct all proceedings from the date he is added as a party though he would be bound by all orders passed up to that date and could not raise a defence not open to his transferor. When an alienee has been so added, he gets all the rights of a party to the suit. He cannot be confined to the evidence already adduced by his transferor, and should be permitted to adduce further evidence in the case.— 21 T. L. J., *689*.

5. The principle that in the case of a decree for possession the value of improvements effected after the date of the decree up to the date of the recovery of the property may be awarded, is applicable also to the present case where the plaintiff seeks to recover the mortgage amount and value of improvements by the sale of the mortgaged properties.

There are no valid grounds for holding that the mortgagee who seeks to recover compensation for improvements effected by him, cannot in execution proceedings be made liable for waste committed after the date of the decree. On principle, it seems, such reliefs may be granted in execution proceedings without directing the mortgagor to recover damages by a separate suit.— 21 T. L. J., *989*.

6. Where two decrees are in conflict, the rights under the later should prevail. In cases of judgments *inter parties* the later adjudication should be taken as superseding the earlier whether or not the earlier adjudication was pleaded as a bar to the trial of the suit in which the later adjudication was made.—

21 T. L. J., *1106*.

7. Improvements of which the value had been once assessed and ordered to be paid under the decree cannot be revalued, because the decree has finally settled the matter.

There are, however, no valid grounds for holding that the value of improvements made after the date of the decree should not be given to the person in possession. On the question of good faith it may be pointed out that so far as the Courts in Travancore are concerned it is not the

possible risk to his (i. e., the person in possession) title that is considered, but the question whether the permanent value of the property has been enhanced. The equitable claim for compensation for improvements effected has, therefore, always to be recognised even in the case of trespassers and can be rejected only in very exceptional cases as for instance, where the attempt of the mortgagee is virtually to improve the mortgagor out of his property or where the improvements are inconsistent with the use to which the property would be ordinarily put by the owner.— **21 T. L. J.,** *1366.*

8. Exhibit A (sale deed) stood in the name of four persons. *Prima facie* all the four were entitled to the property. The plaintiff's case being that he alone was entitled, the co-existence of the names of others as co-vendees in the deed was considered to be a cloud on the plaintiff's right to the property.

The Munsiff dismissed the suit saying— 'It is not even so much as suggested, much less averred in the plaint that the other vendees under Exhibit A have asserted a hostile title or possession or even intend to do so and disturb the plaintiff's possession.' The Judge concurred in the finding of the Munsiff saying— 'The plaint does not refer to any act or omission on the part of the defendants which necessitated the institution of a suit asking for the declaration contained in the plaint.'

Held.—It is enough that the defendants are interested in denying the rights of the plaintiff. They need not actually deny them or resort to hostile demonstrations. Section 42 of the Specific Relief Act gives remedy to a person against all persons who not only claim an adverse interest to his own, but against all those who may do so. The existence of a cloud on title furnishes the cause of action.—

22 T. L. J., *57.*

9. Where the plaintiff claimed a hereditary right to sing serpent songs and perform allied ceremonies in the sacred groves within certain specified area and sought by a prayer for declaration and injunction to restrain the defendant from following such occupation inside the area but the plaintiff did not say whether the right he claimed arose under Royal Grant or by custom or by any other lawful means:

Held (Non-suiting the plaintiff).—In matters religious as the singing of serpent songs in question, the citizen had an utmost freedom of choice, and any attempt by the Courts to control the convictions of the individual on such points would be to set up the worst kind of tyranny. The plaintiff had not also set out the exact basis of his claim. His claim therefore, was not sustainable in law:— **22 T. L. J.,** *335.*

10. Two items of property of the indemnifier were outstanding in Panayam in favour of fifth defendant. One item was sold to the fourth defendant who undertook to discharge the Panayam. The other item was sold to the plaintiff with a stipulation to indemnify the plaintiff for whatever damages that would accrue to plaintiff in case the fourth defendant failed to discharge the Panayam, and the property sold to plaintiff was proceeded against. The fourth defendant failed to discharge the Panayam and fifth defendant obtained a decree against the property sold to plaintiff and brought it to Court auction. Hence the suit against the indemnifier for damages. The suit was resisted on the ground that the plaintiff had not sustained any damages and that till the property was actually sold he had no cause of action:

Held.—It was not necessary that the plaintiff should have discharged the decree before he could maintain a suit against the indemnifier. The passing of a decree against the plaintiff was sufficient to sustain his cause of action.—

22 T. L. J., *517.*

Ref.—23 T. L. J., 383.

11. The plaintiff rested his cause of action on the following facts.—In execution of a decree for redemption, the plaintiff deposited the mortgage money in Court. The defendant appealed and obtained a stay of the execution. The appeal by defendant was ultimately dismissed. The mortgage money deposited in Court remained there all along till the disposal of the appeal. Loss of interest on the money deposited having arisen from the stay order obtained by the defendant, the plaintiff sued to recover damages:

Held.—The plaintiff had no cause of action. An action is not maintainable for damages occasioned by a Civil action even though brought maliciously.—

22 T. L. J., *556.*

12. A party can recover only in his action according to his claim as stated and proved. The plaintiff cannot be permitted to take advantage of the defendant's plea and claim relief on that basis on the evidence on record, as that would be springing a surprise on the defendant and would seriously prejudice him, as the question of his liability on that basis has not been properly fought out in the Court below.— 49 T. L. R., *68*

(=22 T. L. J., *1216*).

13. The decree in the case was passed, following an error in the plaint against the 1st defendant instead of against the real hypothecator. Defendants 3 to 5 were impleaded in execution as the legal representatives of the first defendant. On execution taken against the hypotheca, the additional defendants raised objections as regards the executability of the decree obtained against the wrong person, but the lower Court overruled their objection on the ground (1) that they did not object to their addition in execution, and (2) that they had executed a sale of the hypotheca in favour of a stranger directing the discharge of the disputed decree:

Held (admitting the appeal by the 5th defendant).—(1) The omission to sue the real hypothecator could not be cured by an amendment of the decree, inasmuch as that could be done only by correcting the plaint. But the plaint could not be amended after the decree has become final.

(2) The impleading of the additional defendants as heirs of an imaginary person was merely innocuous.

(3) The execution of the sale deed by the additional defendants was at best an admission of liability under the decree; but that was not the same thing as the existence of the decree itself.—

47 T. L. R., *171*

(=23 T. L. J., *268*).

14. Where on the failure of the mortgagee to pay off a debt of the mortgagor recited as part of the mortgage consideration, the creditor of the mortgagor filed a suit and obtained a decree against the mortgagor and mortgagee alike:

Held.—The mortgagor had a cause of action for recovery from the mortgagee of the amount withheld. It was not necessary that the decree obtained by the creditor should have been executed and the mortgagor compelled to pay the money. The passing of the decree against the plaintiff was sufficient in law to give him a cause of action. But inasmuch as the mortgagee also had been liable under the decree obtained by the creditor, provision should be made in the decree to protect against the chance of the mortgagee being compelled to pay the amount twice over.— 23 T. L. J., *383.*

15. At the present day, it is almost a truism to say that in all cases in which the evidence is conflicting, it is the duty of the Court of Appeal to have great regard to the opinion formed by the Judge in whose presence the witnesses gave their evidence as to the degree of credit to be given to it.

If all that an appellant can show is a nicely balanced calculation which leads to the equal possibility of the judgment

on either the one side or the other being right, the Appellate Court should not interfere with the verdict of the trial Court.— **50 T. L. R.,** *94.*

16. The period of six years provided by Article 166 of the Limitation Regulation could not apply to a decree or order which is not actually registered. To apply the Article to a decree or order not in fact registered but which in the opinion of the Court ought to have been registered but was not actually registered owing to the fault or neglect of the Court or any one else is in effect not to interpret the law but to legislate. It is the function of the Court to interpret and not to legislate.— **50 T. L. R.,** *96.*

17. The High Court directed that the decree-holder should get mesne profits from the plaint property from the date of suit to the date of delivery and that the mesne profits should be ascertained in execution. The decree-holder put in an execution petition in the Munsiff's Court on 5-3-1091. The commutation rate given in the petition was 6 fanams per standard parah. The judgment-debtor paid amounts to the decree-holder on 4-4-1091, 18-8-1095, Karkadagom 1096 and Edavom 1097. The Munsiff calculated at the rate of 6 fanams per standard parah for the first payment, and for the subsequent payments Nirak rates prevailing on those dates. The District Judge held in appeal that the whole paddy should be calculated at the Nirak rate that existed at the date of the first execution application :

Held (In special appeal).—When payments have to be made in paddy and on default a suit is brought for their recovery, there are rulings of this Court which lay down that the paddy should ordinarily be valued at the Nirak rate on the date of the suit and not on the dates when they became due.

By analogy it may be held that the paddy due as mesne profits for the past eight years could be valued at the rate prevailing on the date of the first execution application.— **24 T. L. J.,** *292.*

18. The suit was for recovery of land trespassed upon by the defendant. It was contended for the defendant that inasmuch as the plaintiff had stood by and allowed the defendant to spend large sums of money in the construction of a building on the land in question, the plaintiff should be deemed to have acquiesced in the defendant's act and was therefore estopped from claiming recovery of the land :

Held (Overruling the defence contention).—A plea of acquiescence in cases of the kind under consideration could be supported only by proof of good faith on the part of the person whose act is in question and conduct akin to fraud on the part of the other party. The following facts should be established to sustain a plea of acquiescence. "In the first place, the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it, he is in the same position as the plaintiff and the doctrine of acquiescence is founded upon conduct with knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the

Court to restrain the possessor of the legal right from exercising it but nothing short of this will do."— 24 T. L. J., *783.*

REGULATION V OF 1101.

(Travancore News Papers.)

The 'Prabodhakan', a Malayalam Weekly Newspaper, printed and published in Travancore under a license issued by Government in accordance with Section 3 of the Newspapers Regulation, V of 1101, had its license cancelled by Government for publication of certain passages some of which, in the opinion of Government, offended the provisions of Section 5 (1) (*a*) (exciting hatred, contempt and disaffection against Government) and the others, the provisions of Section 5 (iii)—habitually disseminating false information. The Editor then petitioned Government under Section 9 for reconsideration and prayed either for revocation of the order of cancellation or for the referring of the matter to a Full Bench of the High Court. The Government refused to revoke their order, but made the reference. It was argued in the High Court on behalf of the Editor that the passages complained against did not come within the mischief contemplated by Section 5 of the Regulation and that for this purpose the Regulation should be strictly construed and in favour of the alleged offender :

Held (*By Chatfield, C. J. and Chakko, J.*).— It is obvious that Section 5 of the Newspaper Regulation on the face of it is penal in its nature. It is now recognised that the paramount duty of the judicial interpreter is to put upon the language of the Legislature, honestly and faithfully its plain and rational meaning and to promote its object. The tendency of modern decisions, upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. All Statutes are now construed with a more attentive regard to the language and Criminal Statutes with a more rational regard to the aim and intention of the Legislature than formerly. The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself. But it yields to the paramount rule that every Statute is to be expounded according to its expressed or manifest intention and that all cases within the mischiefs aimed at are, if the language permits, to be held to fall within its remedial influence.

The provision in Section 5 of the Newspaper Regulation is quite impersonal whereas Section 117 of the T. P. C. makes motive and intention essential. When the Legislature in one Act makes motive and intention essential and in another Act in *pari materia* deliberately leaves out the question of motive and intention it may fairly be presumed that the object of the Legislature in enacting the later Statute was to do away with the question of intention.

Section 5 of the Travancore Newspaper Regulation does not contain any words importing any intention or motive on the part of the offender.

Intention or guilty knowledge on the part of the offender is absolutely unnecessary under Section 5 clause i (*a*) if the words are likely or have a tendency to create the mischiefs specified in the Section.

The Travancore News Paper Regulation is a Regulation passed with a specific purpose, *viz.*, for the purpose of bringing under better control the Newspapers in Travancore. It is essential therefore that in extreme cases the Government should have prompt and effective means of suppressing the evils which irresponsible

journals and journalists may seek to foster or promote.

The intention of the writer has generally to be gathered from the articles themselves, *viz.*, from the words used. This intention which is a state of mind may be gathered from the surrounding circumstances and from the language and conduct of the accused.

It is a question of fact in each case whether an attack on a certain class of Officers or a certain Department of the Government whether the attack is directed against those officers merely or is intended as a mere cloak for vituperation of the Government. It is quite obvious that in the guise of attacking an Officer or Officers generally the writer may well intend to bring into hatred contempt or disaffection the Government constituted by lawful authority.

Per Joseph Thaliath, J.—For construing the provisions of Section 5, Sub-Section (i), Clause (*a*) of the Regulation, writings are to be divided into two classes; one, those that will excite its readers and the other, those that disclose only attempts to excite. In the first class of writings intention of the publisher need not be looked into. In the second class, intention is material, but the publisher will be deemed to intend that which is the natural result of the words he used. The line that can be drawn between writings that excite its readers and those that disclose attempts to excite is indeed thin; but the distinction is not unintelligible. One class of writings, however, may often overlap the other.

By reason of the expression 'habitually' used in the Section it should be shown that the publisher was repeatedly or persistently disseminating false information. The word 'Habit' means persistency in doing an act. It is difficult to say how many items of false news published in a Newspaper will make its publisher a habitual disseminator of false information. No hard and fast rules can be laid down in this respect. Each case will have to be decided on its own merits.

Knowledge on the publisher's part of the falsity of the news need not be proved for bringing home the offence of false dissemination of news:

Held (*per curiam*).—(1) The extracts complained of against as coming within the mischief of Section 5 (1) (*a*) had a distinct tendency to bring the Sovereign and the Government into hatred, contempt and disaffection within the meaning of the Section. It was also clear from the language of the articles that the intention of the writer was to create such feelings of hatred and contempt.

(2) The articles in question read fairly and as a whole cannot come within the Explanation of Section 117 of the Penal Code. It cannot be said that the object of the writer was honestly to call the attention of Government to existing evils with a view to their removal and redress.

(3) The charge under Section 5 (iii) cannot however be said to have been made out as only two statements of a false nature have been proved. (F. B.).—

47 T. L. R., *336*
(=**21 T. L. J.**, *601*).

REGULATION VI OF 1101.

(Nanjanad Vellala).

---

1. Though Section 3 of the Nanjanad Vellala Regulation invests with legal validity only those marriages between a Nanjanad Vellala female and a Nanjanad Vellala male, still law and custom recognise the validity of the marriage of a Nanjanad Vellala woman following Marumakkathayam Law with a Makkathayee Vellala hailing from British India. The fact that the parties do not belong to a homogeneous class is by itself no ground to regard the marriage as invalid. The

trend of modern decisions is to uphold the validity of mixed marriages. The existence of such marriages does not turn on the facility of divorce either.

Quare.—Whether such marriage is terminable at the will of the wife; whose personal law is to prevail whether that of the wife or husband.— **22 T. L. J.,** *701.*

2. The filing of a suit for partition by a member of a Nanjanad Vellala Tarwad effects a status of division among the members of the Tarwad (Spl. B.).—

48 T. L. R., *195.*

(=22 T. L. J., *274*).

3. The plaintiffs in the case (Nanjanad Vellalas) had obtained a decree for maintenance charged on the Tarwad properties. On their applying to execute the decree against the Tarwad properties, the third defendant, a member of the Tarwad, resisted the application on the ground that, in a suit for partition filed by him, a preliminary decree had been passed declaring and determining his share in some of the properties, though the suit was proceeding as regards other items regarding their divisibility or otherwise. He claimed that the items in respect of which the preliminary decree was passed had been actually divided and delivered over to him and that such properties delivered over were, in any event, not liable:

Held.—The maintenance decree being against the Tarwad as a whole, all the properties of the Tarwad were liable under it, until actual division by metes and bounds in pursuance of the decree in the partition suit. When once the shares of one or more members were determined and delivered over to them, from that moment their shares ceased to be Tarwad properties and the maintenance decree ceased to be executable as against them. For the amount of the plaintiffs' maintenance that fell due up to the date of delivery to the third defendant of his share of the properties, even those properties were liable; but for the claim beyond that period the properties would be exempted.— **23 T. L. J.,** *1103.*

REGULATION II OF 1105.

(Probate and Administration.)

It is well-established that an Administration Court has no jurisdiction to enquire into questions of title. "The only question in controversy in a proceeding in the Probate or Administration Court is that of representation of the estate of the deceased and no question of title thereto, *i. e.* the title of the deceased or of the conflicting titles alleged by the parties to the proceeding can be investigated by the Court. A Hindu widow governed by the Mitakshara Law is entitled to get letters of administration of her husband's estate on the mere allegation that he left separate property; the Court cannot go into the question whether the property left was joint or separate."

In the above view regarding jurisdiction it is also held that the lower Court had no power to appoint interim Administrators to take and hold charge of the estate till the final decision of the case. This conclusion however does not imply that the prior order appointing interim Administrators passed *ex parte* was *ipso facto* irregular. Such orders could undoubtedly be passed for the preservation of the estate and until objections have been put forward which raise questions of title. The preparation of an inventory and the ascertainment of assets which were carried out by the interim administrators must therefore be regarded as acts done under an order which the lower Court had jurisdiction to pass at that stage and must accordingly be declared to be perfectly justified.

The interest of the heir of a deceased partner is a limited interest and does not carry with it a right to interfere in the further conduct of the business. "The representatives of a deceased partner have

a general lien upon the surplus assets of the partnership in respect of their deceased partner's interest in the partnership, but they have no lien on any specific asset, whether personalty or realty, such as would fetter the realisation or conversion into money by the surviving partner."

Where there is no one who is legally entitled to represent or take possession of the deceased's property and it is requisite to bring actions or to make demands for the payment of money due to his estate it is often necessary that an administrator *pendente lite* should be appointed, but where the deceased at the time of his death was in partnership with another person, the case is very different. They were joint tenants of this property and it belonged to them in partnership. The only result of a grant of administration *pendente lite* would be the appointment of some person to wrangle with the surviving partner as to the management of the firm. The Court does not thrust a stranger to the business into the partnership to represent the interests of the deceased partner.—

48 T. L. R., *341*
(=22 T. L. J., *1047*)

REGULATION VIII OF 1108.
(Insolvency.)

Section 23.

The petitioner when arrested in execution of a decree, applied for adjudication as an insolvent. He further applied to be released from arrest. The Court ordered him to furnish sureties. He produced sureties, but on objection by the counter-petitioner-decree-holder, the Court rejected the sureties and ordered security of immovable property:

Held (on appeal).—The order was bad and had to be set aside. The security contemplated by Section 23 of the amended Insolvency Regulation (VIII of 1108) was for the production of the petitioner when called for by the Court. For that purpose solvent sureties were sufficient. If the sureties produced were not proper, the petitioner should be allowed to produce other sureties.— **24 T. L. J.,** *549.*

Section 84.

Insolvency proceedings were instituted under the Regulation of 1090 and application for the appointment of an interim receiver was made after the repealing Regulation of 1108 was passed. The question was raised that the Court had no jurisdiction to appoint an interim receiver excepting by virtue of Section 13 (2) of the Regulation of 1090, and that the provisions of the Regulation of 1108 should not be applied:

Held.—Section 84 of the new Regulation provides that "the provisions of this Regulation shall, as far may be, apply also in all cases of insolvency pending in the Courts on the date of the commencement of this Regulation." This appears to be a contrary intention within Section 3 of the General Clauses Regulation, Section 7 (*c*) and (*f*) of which therefore do not apply. If the petition for the appointment of a receiver was not a step in a case of insolvency pending on 1-7-1108 it must be regarded as proceeding distinct from the proceedings instituted on 14-1-1108. In that case, as it was instituted on 29-7-1108, *i. e.* after the new Regulation came into force, no question of the retrospective operation of the Regulation can arise. But if the petition for the appointment of a receiver was merely a step in the main insolvency proceedings instituted before the Regulation came into force, those proceedings are a case of insolvency pending on the date of the commencement of the Regulation and therefore are clearly within the provision of Section 84. If that be so, the Regulation of 1108 applies to every step in these proceedings and in particular to the petition for the appointment of a receiver. (The question whether a Regulation which enlarges the jurisdiction of the Court is retrospectively operative was left open).—

24 T. L. J., *725.*

LAW
Re:
MALABAR BRAHMINS.

CONTENTS.

I.	ADOPTION.	...	9 T. L. R., 160. 10 T. L. R., 151.
II.	ALIENATION.	...	6 T. L. R., 143. 11 T. L. R., 1. 12 T. L. R., 46. 27 T. L. R., 29 (=2 T. L. J., 131). 13 T. L. J., 266. 40 T. L. R., 294 (=13 T. L. J., 343).
III.	GIFT.	...	9 T. L. R., 148. 12 T. L. R., 157. 16 T. L. R., 68.
IV.	GUARDIANSHIP.	...	10 T. L. R., 151.
V.	JUNIOR MEMBERS.	...	10 T. L. J., 387. 18 T. L. J., 774.
VI.	LAW APPLICABLE.	... ...	25 T. L. R., 196. 19 T. L. J., 441.
VII.	MANAGING MEMBER.	...	7 T. L. R., 33. 14 T. L. J., 68. 18 T. L. J., 241.
VIII.	MARRIAGE.	...	20 T. L. R., 65. 26 T. L. R., 212 (=2 T. L. J., 23).
IX.	MAINTENANCE.	...	4 T. L. J., 257.
X.	STREEDHANOM.	...	25 T. L. R., 196.
XI.	SUCCESSION.	...	19 T. L. R., 241. 34 T. L. R., 262.

I. Adoption.

1. B, a Malabar Brahmin (Potti) adopted his sister's son A, with the consent of the members of his family. After B's death, his paternal uncle, C, adopted D's son and executed an agreement to him confirming that adoption. A brought an action against C and D to have the said agreement cancelled. The Zillah Judge decreed in A's favour. An appeal was preferred against that decree urging (i) that the suit being for a mere declaration is not maintainable; (ii) that the plaintiff having been a minor on the date of suit, the lower Court ought to have dismissed it on that ground; and (iii) that the adoption of sister's son was invalid under Hindu Law:

Held.—The plaintiff's action was maintainable, since limitation would operate, if, within the time prescribed by that Regulation, he did not obtain a decree rescinding the agreement which affected his status in the adoptive family.

Where a suit is instituted by a minor without the intervention of a next friend, and the defendant, without question, allows the case to proceed to decree, he (defendant) cannot be permitted in appeal to question the validity of that decree on the ground of plaintiff's minority.

The ordinary Hindu Law has no application to adoptions made by Malabar Brahmins; and the customary law obtaining in that community, sanctions the adoption of sister's son (F. B.).—

9 T. L. R., *160.*

2. The mother of a minor in a Malabar Brahmin family may sue on his behalf, provided the responsible manager, *i. e.*, the senior male member, is made a party to the suit. The legal guardian of a minor in a Malabar Brahmin family is the senior male member of that family.

There are three kinds of adoption prevalent among Malabar Brahmins, *viz.*, (i) *Patthukayyal Dattu*—adoption with ten hands (the most approved form); (ii) *Chanchamatha Dattu*—adoption in which the essential ceremony, besides the gift and acceptance of the adoptee, consists in putting into the fire or sacrificing a span of sacred grass; and (iii) *Ayatha Vidhi Dattu*—adoption by merely taking into the family and constituting the appointee as heir to the adopter, without any religious ceremony.

The *Chanchamatha* adoption confers the right of sonship on the adoptee, though not as efficacious, from a religious point of view as the *Patthukayyal Dattu*. Such adoptee loses all right in his natural family except to offer *Pindams* to ancestors and to succeed to the property of that family in default of other members therein, and becomes a member of the joint family to which he is adopted. The joint family property in which he may obtain an interest by the adoption would not vest in him as gift, and cannot, on his death issueless, be inherited by members of his natural family. His death without issue would leave the adoptive family in the position it occupied before the adoption.

Under the general principles of Hindu Law which govern the right of adoptees in Malabar Brahmin families, the heirs of an adoptee dying without issue are members of the adoptive family.

The Smritis, (Manu, Parasara, Baudhayana, Jaimini, Harita, Kowshithaka, Ashwalayana and others) are followed by the Malabar Brahmins as the fountain heads of Modern Hindu Law and unless the Malayala Brahmins can be shown to have deviated in any respect from the interpretation put upon old texts by modern Hindu sages and adopted different practices, they must be held bound by the Hindu Law as now understood and acted upon elsewhere.— **10 T. L. R.,** *151.*

Ref.—20 T. L. R., 65.
25 T. L. R., 196.
34 T. L. R., 262.

II. Alienation.

1. A, a Malabar Brahmin, makes a sale of ancestral property to B. C and D who are son and wife, respectively, of A, seek to set aside such sale on the ground that it is void for want of their written assent and for want of adequate family necessity. C was, moreover, a minor at the date of the sale:

Held.—Under the Hindu Law, D (the wife) is not strictly a co-parcener of A (the husband) and it has been ruled that a wife is not at liberty to impeach an alienation made by her husband of ancestral property, for proper family purpose, the wife's right extending only to maintenance; but she may be entitled in equity to seek to set aside alienations made in fraud of her claim for such maintenance.

As to the right of C (the son) who was a minor at the date of sale, the presumption in cases of alienation by a Hindu father, is that it was made for the benefit of the whole family; and a sale in such cases cannot be set aside unless family necessity is disproved. **6 T. L. R.,** *143.*

Ref. —12 T. L. R., 46.

Dist.—27 T. L. R., 143.

2. A junior member of a Namboodiri Illom sought to set aside a mortgage executed by his Karanavan, on the grounds that it was prejudicial to the interests of the family, and that it was not assented to by the plaintiff and other members of the Illom:

Held (on reference to a Full Bench).—The manager of an Illom has no power to alienate permanently, by sale, gift or otherwise, any portion of the common property, without the consent, express or implied, of the other members of his family. Temporary alienations made by him in the shape of leases, mortgages, etc., for short and customary periods, must stand, subject, however, to the right of the junior members to impeach them on the grounds of want of consideration and family necessity.

A mortgage-deed executed by a Jenmi, providing for renewal at the expiration of 12 years, creates a perpetual right, and, as such, requires the assent, express or implied, of all the members of the Illom:

Held (By a Division Bench).—The deed being a registered one and plaintiff having admittedly received the Michavarom due thereunder for 10 years, his assent to the deed should be inferred.— **11 T. L. R., 1.**

3. In the management and enjoyment of property, the customs of Namboodiris do not differ from the customs of the Malayali Sudras, the only difference between the two classes in the matter being that the Namboodiris follow the law of descent through sons. The female members of an Illom have the right to take steps to conserve Illom property and therefore, the widows of the deceased male members of a Namboodiri Illom are competent to sue to set aside alienations of Illom property by the Karanavan. Impartibility of family property is the rule prescribed, and community of interests cannot be severed by partition without the consent of all the members of the Illom. As in a Marumakkathayam Tarwad, the right of the junior members, both male and female, is the right to be supported in the family house out of the income of the property of the family, and the absolute control of the family affairs is vested in the senior male member who represents the family. In a Marumakkathayam Tarwad, the male members possess the right to succeed to the Karanavanship by seniority, and the female members have likewise the right to act as manager or *de facto* Karanavan in the absence of males. In a Namboodiri Illom too, the same rule prevails, and the senior female becomes entitled, as a matter of right, to management in preference to the junior females. (F. B.).— **12 T. L. R.,** *46.*

Ref.—20 T. L. R., 65.
25 T. L. R., 196.
26 T. L. R., 212.
34 T. L. R., 262.

4. The plaintiff, a Namboodiri wife, sued to set aside certain alientions of Illom property made by her husband, the manager of the Illom, and to remove him from management. On behalf of the defence it was contended, *inter alia*, that the wife was not competent to maintain a suit questioning the alienations of her husband.

Held (Over-ruling the contention).—The position of a Namboodiri woman in her Illom was not that of a Hindu female under the Mithakshara law, but resembled that of the female member of a Marumakkathayam Tarwad; and as all members of a Marumakkathayam Tarwad, both male and female, were entitled to impeach improper alienations of Tarwad property, the plaintiff, as a member of her Illom, was competent to impugn the alienation in question, even though made by her husband.

Quaere.—Whether Namboodiri women are entitled to be consulted in respect of all permanent alienations of Illom properties, even when all the male members have assented thereto (F. B).—
27 T. L. R., *29*
(=**2 T. L. J.**, *131*).

Ref.—34 T. L. R., 262.

5. Where the effect of a *venpattom* deed was to create a perpetual lease not resumable at the option of the lessor but determinable according to the pleasure of the lessee, and where it is not made out that the annual rent and the periodical Adukkuvathu secure any distinct advantage to the Illom:

Held.—Even a *de jure* and *de facto* Karanavan is incompetent to make such an alienation, and *a fortiori* a junior member in management under the orders of the *de jure* Karanavan.— **13 T. L. J.**, *266.*

6. If it be held that the female members of an Illom have no right to be consulted before Illom property is permanently alienated and that such permanent alienations are valid without their assent thereto, the consequence would be too tragic to contemplate. The female members of an Illom, who are either widows or wives, are co-owners of the Illom property along with the male members. It is admitted that improper alienations of property are liable to be set aside at the instance of female members. "Improper alienations" must be deemed to include not only dispositions of property made without consideration and family necessity, but such permanent alienations of property as are made without the consent of the junior members of the Illom, male and female. To restrict the expression to alienations of the former class would be anomalous and unreasonable.

No permanent alienation of a Namboodiri Illom property can be valid unless it has been assented to by the female members. Of course, where all the male members or where the Karanavan and the next senior male member take part in such alienation and it is found that such alienation is supported by consideration and family necessity, the Court may justifiably presume that the female members have assented thereto and the burden of proof may be laid on the party who alleges absence of such consent. This however is a matter of procedure and does not affect the principle formulated above.— **40 T. L. R.**, *294*
(=**15 T. L. J.**, *343*).

7. See also—
"Marriage".—**26 T. L. R.**, *212*
(=**2 T. L. J.**, *23*).
"Junior members."—**18 T. L. J.**, *774.*

III. Gift.

A *Sarvaswadanom* donee acquires, under such gift, a life-estate in the subject thereof, and management of the property

till his death, though as trustee for his children. His right thereunder will not be affected by the birth of an issue to him by his *Sarvaswadanam* wife.—

9 T. L. R., *148.*

2. The leading principle of succession among Malabar Brahmins is that the successor must be a member of the Illom; that as a woman of the class takes her Gotram on marriage, unless the marriage is in the *Sarvaswadanam* form, a daughter married otherwise than in the form aforesaid, will not be entitled to succeed her father as his heir; and that a Sapinda with 10 days' pollution—a *Desarathri Gnathi*—succeeds to the exclusion of a daughter so married.

A gift of immovable property made by the father to his daughter accompanied with possession, is valid, natural affection being a good and sufficient consideration for the disposition.— **12 T. L. R.**, *157.*

3. X, a Malayala Brahmin, and two females executed a deed of gift in the name of Y, the son of X's sister, Z. Z's name is expressly mentioned in the second part of the deed as one of the parties for whose benefit the gift was made. T, the husband of Z, and B, who is the son of T by his first wife, Z being his second wife and Y his son by that wife, sued for the cancellation of a mortgage of the gift property executed by Z, the mother of Y. It was contended on behalf of T and B, the plaintiffs, that by the language of the opening clause of the deed of gift, Y was the sole donee of the property:

Held.—Courts of Equity are bound to grant relief on the ground of defective execution of the intent of the parties from ignorance of law as to the proper mode of framing instruments and to give effect to the real intentions of the parties as gathered from the objects of the instrument and the circumstances of the case, although the instrument has been drawn up in a very inartificial and untechnical manner.

Though Z did not appear as a party to the instrument in its opening part, yet as it was clear from the latter part of the deed that she was manifestly intended to participate in the benefit of the gift, her rights over the properties could not be questioned and, therefore, the mortgage executed by herself is valid.

As in a gift of this character, the donees take the properties as tenants in common, Z has an absolute interest in a moiety of the property and a life interest in her son's share and T and B, the plaintiffs, are only reversionary heirs.—

16 T. L. R., *68.*

IV. Guardianship.

See "Adoption".— **10 T. L. R.,** *151.*

V. Junior Members.

1. A junior member of an Illom can resist the enforcement of a decree obtained against the manager and affecting the Illom properties on the ground that it was obtained fraudulently or that the debt which formed the basis of the decree was not supported by consideration or family necessity (F. B.).—

10 T. L. J., *387.*

2. In cases where the interests of the Illom require it, the junior members can create valid alienations of its properties. This power should be allowed to be exercised only when 'the Karanavan is absent and the matter is emergent' or when 'the Karanavan is grossly negligent or acts fraudulently and the preservation of the Tarwad property from forfeiture, destruction or sale requires the junior member to take up the duties of management for that temporary purpose and particular occasion.' A distinction has to be kept in view between an undoubted emergency and a case of advancement of the Illom interests. It is only when the necessity in the particular case is imminent that the exercise of powers of

alienation by junior members could be allowed, for, it would otherwise be sapping the foundation of the Marumakkathayam system and destroying the powers of Karanavan to a considerable extent.

Though under normal circumstances the right of redemption of Illom properties could be exerised by the Karanavan alone, a junior member could be allowed to exercise this right when the interests of the Illom as a whole require such redemption.— **18 T. L. J.,** *774.*

3. See also.—

"Alienation".— **13 T. L. J.,** *266.*

"Manager".— **18 T. L. J.,** *241.*

VI. Law applicable.

1. *Per Sankara Menon and Muthunayagom Pillai, J. J., Sadasiva Iyer, C. J.,* dissenting.—Among the Namboodiri Brahmins money advanced or promised at the time of marriage and called 'Stridhanam' becomes the property of the husband and not of the wife. It is not 'Stridhanam' as defined by Hindu lawyers.

Per Sankara Menon, J.—At the time when the Namboodiris left for Malabar, the personal law that they carried with them was not the Hindu law as expounded by the authors of the Mithakshara, Smrithi Chandrika and Madhavya, but the ancient Hindu law as it was probably understood and followed about the commencement of the Christian era. Under that law, the head of the family was the absolute master of all the family properties whether movable or immovable. The other members of the family were not entitled to own or acquire properties for themselves. This being the law which governs the parties, the woman is not entitled to any property howsoever acquired by her. The money given at the time of the marriage, therefore, belongs to the husband and is not Stridhanam in the modern acceptation of the word.

Per Sadasiva Iyer, C. J.—Stridhanam is property or money belonging to a woman and can never mean money belonging to a man. When a document is executed to the bridegroom for Stridhanam promised at the marriage of his wife, the money should be held to belong to his wife and to be given to him for his wife who is usually a minor and comes under his guardianship. If Stridhanam could be interpreted to mean "*Vara Sulka*", this extortion of breeding-bull price from the bride's family by a bridegroom is not less immoral than the bride-price "*Kanya Sulka*" promised to the father of the girl. If the document is for "*Vara Sulka*", it is void as based on a consideration opposed to morality and public policy.

Per Muthunayagam Pillai, J.—In the matter of Stridhanam gifts, the Namboodiris follow a customary law which dates back to a time when women's independent rights of property were hardly recognised by Hindu law-givers. The law of Stridhanam as developed by the Rishis in consequence of the prevalance of partition among Non-Namboodiris outside Malabar, has no application to Namboodiris who, from time immemorial, have followed the system of impartibility.

There is nothing immoral or contrary to public policy in the custom prevailing among Namboodiris, of stipulating for the payment of "Stridhanam" to a bridegroom as a condition precedent to matrimonial alliance (F. B.).—

25 T. L. R., *196.*

Ref.—34 T. L. R., 262.

2. The Namboodiris are, in the first instance, or *prima facie*, governed by the Hindu Law.

They are bound *prima facie* by the interpretation and exposition of the Hindu Law as given in the authoritative commentaries and as now understood and acted upon elsewhere.

They are allowed to show that they have, in practice, deviated from such

interpretation in any particular instance or respect and their usage has, therefore, modified the ordinary Hindu Law in that instance or respect.

Such usage or custom modifying the ordinary Hindu Law should be specifically pleaded and proved to have acquired the force of law.— **19 T. L. J.,** *441.*

3. See also.—

"Adoption"—	**9 T. L. R.**, *160.*
	10 T. L. R., *151.*
"Alienation"—	**6 T. L. R.**, *143.*
	12 T. L. R., *46.*
"Marriage"—	**20 T. L. R.**, *65.*
"Succession"—	**19 T. L. R.**, *241.*
	34 T. L. R., *262.*

VII. Managing Member.

1. A, a Namboodiri lady, sues B, on behalf of her minor son C, for recovery of land and rent. Her husband (D) is alive, but is alleged to be of unsound mind. B. objects to the right of A to carry on the suit during the life of D (C's father) in C's name:

Held.—D, the father of C (the minor) is, according to the law by which the Namboodiris are governed, the present head of the Tarwad. Suits relating to Tarwad property must, therefore, be instituted in his name by his next friend or guardian; and there is no objection to A (D's wife and C's mother) acting as D's next friend and guardian.— **7 T. L. R.**, *33.*

2. The question whether a creditor should be taken to have had implied notice of an *Udampadi* entered into by the members of a Tarwad curtailing the powers of the Karanavan depends on the circumstances of each case.

There was an Udampadi in an Illom by which for debts over a certain amount all the adult members should join. The creditor was acquainted with the Illom for over 5 years, had dealings with the Karanavan even before the debt in question and made no enquiries whether any money lent to him would bind the Illom:

Held.—Under the circumstances the creditor had implied notice of the *Udampadi*.— **14 T. L. J.**, *68,*

3. A suit by the senior male member of a Namboodiri Illom against a junior member who is the *de facto* Karanavan for recovery of the Illom properties without seeking to remove the defendant from his *de facto* Karanavasthanam is competent.

The senior male member of a Tarwad or Namboodiri Illom is by right of birth the Karanavan. Seniority of birth alone is the test to be applied in this matter. Even if junior members are in management, such management should be presumed to be so by the sufferance of the Karanavan *de facto*, and the management is terminable at will by him. The Karanavan has a right to be in possession of all and every item of Tarwad property. No junior member can hold any property as against the Karanavan.—

18 T. L. J., *241.*

4. See also—

"Alienation"—	**11 T. L. R.**, *1.*
	12 T. L. R., *46.*
	40 T. L. R., *212*
	(=14 T. L. J., *341).*
	(See Vol. III, P. 984).

VIII. Marriage.

1. A junior member of a Malabar Brahmin Illom contracted an alliance known as Sambandham with a Nayar lady and had children by her. In the suit by the lady and the children for maintenance, defendant (the husband) admitted the alliance and the fact that the children were born to him but denied the status of lawful marriage and his liability for maintenance:

Held.—(Per Govinda Pillai, J., and Hunt, J., Padmanabha Iyer, J., dissenting).—The Sambandham in the Podamuri form is a valid union according to custom and usage obtaining amongst the Malabar

Brahmins and Nayars. The children are during minority entitled to maintenance from their father and his self-acquisitions.

Per Padmanabha Iyer, J.—As under the Hindu Law to which the Namboodiri, if not the Sudra also, is subject in regard to marriage, a Brahmin cannot contract a valid marriage with a Sudra woman especially with one who was not a virgin, and Podamuri is not a valid marriage, and as no usage or custom having the force of law has been made out to show that a Sambandham between a Namboodiri and Sudra woman is a legal marriage (there being no evidence in the case on the point), the alliance in question in which it was not even clear that all the Podamuri-ceremonies were gone through, is not a valid and legal marriage, and under the peculiar customary law and usage which governs the parties in the matter of inheritance and maintenance, the woman and children are not entitled to maintenance.— **20 T. L. R.,** *65.*

2. The first defendant was given in Sarvaswadanam marriage to V. N., the brother of first plaintiff. V. N. died in 1053 without issue; and first defendant became, after her mother's death in 1069, the last member of her Illom. After 1069, she made various alienations of the family properties in favour of the contesting defendants. First plaintiff and his son, the second plaintiff, sued to set aside the alienations on the grounds, *inter alia*, that they were reversionary heirs of V. N., the last male member of the first defendant's Illom, and that first defendant's position in respect of her powers of alienation was that of an ordinary Hindu widow:

Held.—(1) The effect of the Sarvaswadanam marriage was that the first defendant continued to remain a member of her Illom and that V. N. was not thereby constituted a member of first defendant's Illom.

(2) The first defendant's powers of alienation were not those of an ordinary Hindu widow, but were more akin to the powers of a senior female of a Nayar Tarwad.

(3) The first defendant as the sole surviving member of her Illom had unrestricted and unlimited powers of alienation in respect of her Illom properties.—

26 T. L. R., *212*
(=2 T. L. J., *28*).

Fol.—27 T. L. R., 29.

3. See also "Gift".— **9 T. L. R.,** *148.*

IX. Maintenance.

1. A Namboodiri widow was, on the husband's death, permitted to live in her father's house. She sued her husband's relations for future maintenance, and the suit was resisted by the latter on the ground that they were willing to maintain the plaintiff if she would take up her residence in their Illom, but that she was unwilling to do so. It was found that the circumstances which necessitated her residence with her father had not changed so as to justify any interference with that arrangement:

Held.—On the application of the principles of the Marumakkathayam law to the case, the plaintiff could not be compelled to take up her residence in her husband's Illom, in the absence of material change in the circumstances that had necessitated her residence with her father.

Quaere.—Whether in the matter of rights to separate maintenance the case of a Namboodiri widow differs from that of an ordinary Hindu Widow.—

4 T. L. J., *257.*

2. See also.—

"Succession"— **19 T. L. R.,** *241.*

X. Streedhanam.

See "Law Applicable".—

25 T. L. R., *196*

XI. Succession.

1. A Potti (Malabar Brahmin) woman was declared an out-caste in a Smartha enquiry for adultery with plaintiff—a junior member of another Illom—who too was expelled from caste without his being heard in defence. The plaintiff sued for maintenance for himself, his wife and son. The defence was that as plaintiff lost his caste and as his father performed his Jiva or Ghata Sradha and Sudha Bhojanam, he was not entitled to maintenance :

Held.—The mere performance of Jiva or Ghata Sradha and Sudha Bhojanam *per se* would not constitute deprivation of caste.

As the plaintiff was condemned unheard he was not bound to take notice of such enquiry or anything said to be done in consequence thereof and that as he did not lose his civil rights, he was entitled to maintenance.

The Namboodiri Brahmins are, according to the law laid down by decided cases, governed by Hindu Law modified by certain special customs, one of them being that the family property is impartible and no member has a right to enforce division. Succession is traced among the Namboodiris through males and property passes from father to son, while among Nayars some of whose customs the Namboodiris seem to have adopted, succession is traced to females and so property passes from mother to daughter. In both cases the senior male member manages the family and the junior members are as a rule entitled to be supported at the family expense unless they become disentitled owing to special causes.—

19 T. L. R., *241.*

2. The self-acquisitions of a Namboodiri Brahmin go, on his death, to his sons and not to his Illom.

Per Sesha Iyer, J.—1. The Namboodiris are, in the first instance, or *prima facie*, governed by the Hindu law.

2. They are bound *prima facie* by the interpretation and exposition of the Hindu law as given in the authoritative commentaries and as now understood and acted upon elsewhere.

3. They are allowed to show that they have, in practice, deviated from such interpretation in any particular instance or respect and that their usage has, therefore, modified the ordinary Hindu law in that instance or respect.

4. Such usage or custom modifying the ordinary Hindu law should be specifically pleaded and proved to have acquired the force of law.

Per Raman Thampi, J.—In respect of intestate succession, as in several other respects, the Namboodiris are governed, not by the Dharma Sastras, but by local usage obtaining among followers of the Marumakkathayam law.—

34 T. L. R., *262.*

Ref.—40 T. L. R., 294.

3. See also.—"Gift".— **12 T. L. R.**, *157.*

APPENDIX C.

THE REGULATIONS AND PROCLAMATIONS TO WHICH THE CASE LAW REFERS.

			PAGE.
1.	Regulation	I of 1010.—Powers and Jurisdiction of Munsiffs...	741
2.	„	IV of 1010.—Zillah Jurisdiction ...	„
3.	Revenue Settlement Proclamation, 1061	...	„
4.	Viruthi Proclamation, 1061	...	742
5.	Regulation	V of 1067.—The Criminal Procedure Code ...	743
6.	„	I of 1068.—Revenue Recovery ...	790
7.	„	II of 1068.—Forest ...	792
8.	Service Inams Proclamation, 1068	...	793
9.	Regulation	V of 1071.—Jenmi and Kudiyan ...	794
10.	„	II of 1072.—General Clauses ...	799
11.	„	IV of 1073.—Abkari ...	„
12.	„	I of 1074.—The Penal Code ...	„
13.	„	VI of 1074.—Wills ...	818
14.	„	II of 1075.—Negotiable Instruments ...	„
15.	„	III of 1075.—Vakils ...	822
16.	„	II of 1077.—Guardian and Wards ...	„
17.	„	III of 1075.—Hindu Religious Endowments ...	824
18.	„	IV of 1080.—Stamp ...	825
19.	„	II of 1084.—Civil Courts ...	„
20.	„	I of 1087.—Tobacco ...	827
21.	„	II of 1087.—Registration ...	829
22.	„	VI of 1087.—Court Fees ...	830
23.	„	III of 1088.—Salt ...	833
24.	„	X of 1089.—Co-operative Societies ...	„
25.	„	XI of 1089.—Land Acquisition ...	834
26.	„	I of 1090.—Village Panchayat Courts ...	838
27.	„	VIII of 1090.—Insolvency ...	839

28.	Regulation	IX of 1090.—Succession Certificate	...	845
29.	,,	IV of 1091.—Land Conservancy	...	846
30.	,,	I of 1092.—Companies	...	847
31.	,,	II of 1092.—Christian Succession	...	848
32.	,,	III of 1094.—Chitties	...	849
33.	,,	VI of 1094.—Motor Vehicles	...	857
34.	,,	IV of 1095.—Police	...	858
35.	,,	V of 1095.—Municipal	...	,,
36.	,,	VI of 1096.—Public Canals and Public Ferries	...	863
37.	,,	VII of 1096.—Registration of Births and Deaths	...	864
38.	,,	VIII of 1096.—Income-Tax	...	,,
39.	,,	III of 1097.—Government Land Assignment	...	872
40.	,,	IV of 1099.—High Court	...	875
41.	,,	VI of 1099.—Reformatory Schools	...	876
42.	,,	II of 1100.—The Nayar	...	,,
43.	,,	III of 1100.—The Eazhava	...	894
44.	,,	VI of 1100.—Limitation	...	896
45.	,,	VIII of 1100.—The Civil Procedure Code	...	929
46.	,,	V of 1101.—Travancore Newspapers	...	1069
47.	,,	VI of 1101.—Nanjanad Vellala	...	1070
48.	,,	II of 1105.—Probate and Administration	...	1071
49.	,,	VIII of 1108.—Insolvency	...	1072
50.	The Law *re* Malayala Brahmins.		...	1073

APPENDIX D.

INDEX OF CASES.

I. THE TRAVANCORE LAW REPORTS.

Vol. XLVI.			Vol. XLVI—*contd.*			Vol. XLVI—*contd.*			Vol. XLVI—*concld.*		
Page		PAGE	**Page**		PAGE	**Page**		PAGE	**Page**		PAGE
1	...	1030	**119**	...	907	**223**	...	911	**360**	...	949
4	...	966	**122**	...	923	**238**	...	756	**864**	...	860
7	...	1062	**127**	...	766	**239**	...	996	**366**	...	765
26	...	827	**137**	...	1035	**251**	...	1051	**368**	...	792
30	...	1054	**139**	...	1008	**256**	...	971	**370**	...	780
41	...	820	**140**	...	895	**260**	...	834	**373**	...	1039
45	...	851	**151**	...	830	**265**	...	1009	**385**	...	873
49	...	949	**154**	...	847	**276**	...	742	**396**	...	862
53	...	947	**160**	...	871	**280**	...	836	**404**	...	968
59	...	963	**164**	...	849	**285**	...	803	**415**	...	965
70	...	864	**168**	...	780	**298**	...	807	**451**	...	936
75	...	783	**171**	...	812	**307**	...	1047	**454**	...	745
94	...	761	**176**	...	944	**310**	...	902	**460**‡	...	780
99	...	843	**183**	...	934	**334**	...	846	**473**	...	951
103	...	1007	**203**	...	776	**345**	...	813	Vol. XLVII.		
105	...	743	**205**	...	1062	**351**	...	838	**Page**		PAGE
110	...	817	**208**	...	839				**1**	...	836
117	...	896	**212**	...	830	**358***	...	1005	**18**	...	1023

* Read 49 R. 358, for 46 R., 358.

‡ Read 47 R. 460. for 46 R. 460,

The Travancore Law Reports.—(*contd.*)

Vol. XLVII—*contd.*			Vol. XLVII—*concld.*			Vol. XLVIII.—			Vol. XLVIII—*contd.*		
Page		PAGE	Page		PAGE	Page		PAGE	Page		PAGE
40	...	931	233	...	871	1	...	854	207	...	754
51	...	826	248	...	997	10	...	870	211	...	751
60	...	907	253	...	869	26	...	1013	219	...	865
65	...	1047	268	...	848	30	...	832	223	...	874
69	...	930	282	...	935	34	...	987	230	...	917
72	...	1057	288	...	994	37	...	859	236	...	1033
77	...	950	294	...	868	46	...	864	240	...	811
81	...	815	301	...	742	49	...	866	245	...	801
88	...	746	310	...	897	67	...	925	262	...	932
94	...	820	321	...	1003	71	...	898	272	...	938
97	...	820	326	...	775	73	...	881	287	...	1032
100	...	818	330	...	811	117	...	1047	309	...	965
114	...	839	334	...	1060	120	...	979	327	...	771
117	...	883	336	...	1070	126	...	982	331	...	945
132	...	781	370	...	899	130	...	1061	338	...	876
136	...	895	373	...	805	137	...	954	341	...	1072
138	...	883	403	...	1031	154	...	954	350	...	1027
144	...	1012	407	...	900	165	...	1058	354	...	919
148	...	749	409	...	876	170	...	1043	359	...	795, 928
155	...	1003	412	...	828	183	...	824	365	...	821
171†	...	1067	437	...	884	185	...	953	383	...	932
176	...	876	455	...	745	195	...	1071	392	...	819
217	...	861	460*	...	780	197	...	1014	402	...	1038
			462	...	788						
222	...	909	471	...	1034	200	...	1023	405	...	1014
231	...	829	475	...	1054	202	...	834	409	...	1026

† Read 49 R. 171. for 47 R. 171,

* Read 47 R. 460. for 46 R. 460.

I. The Travancore Law Reports.—(*concld.*)

Vol. XLVIII—*concld.*

Page		PAGE
413	...	867
424	...	943
428	...	1026
431	...	757
441	...	1041
452	...	881

Vol. XLIX.

Page		PAGE
11	...	822
14	...	1020
18	...	845
27	...	800
43	...	948
44	...	1043
46	...	943
52	...	855
57	...	814
68	...	1054
74	...	914
87	...	784
93	...	752
109	...	796
113	...	1042
121	...	848
130	...	741

Vol. XLIX—*contd.*

Page		PAGE
142	...	769
146	...	759
150	...	847
154	...	858
158	...	945
171†	...	1067
176	...	889
180	...	919
198	...	807
207	...	888
220	...	788
223	...	831
229	...	869
237	...	753
242	...	836
249	...	778
256	...	992
258	...	793
280	...	849
294	...	861
301	...	999
303	...	967
307	...	789
318	...	889
329	...	939

Vol. XLIX. *contd.*

Page		PAGE
334	...	833
337	...	789
340	...	775
349	...	878
354	...	755
358*	...	1005
364	...	1037
376	...	998
380	...	956
399	...	702
404	...	1024
406	...	1027
409	...	890
425	...	770
430	...	775
436	...	929
438	...	962
442	...	824
445	...	803
451	...	946
461	...	790
464	...	1029
468	...	764

Vol. XLIX—*concld.*

Page		PAGE
473	...	1019
478	...	983

Vol. L.

Page		PAGE
1	...	779
85	...	802
90	...	825
94†	...	1068
96	...	1068
100	...	822
113	...	867
117	...	868
126	...	850
130	...	863
133	...	1038
149	...	755

† Read 49 R. 171. for 47 R. 171.

* Read 49 R. 358. for 46 R. 358.

† 50 R., 94. =23 J., 790 for. which see page 973.

II. The Travancore Law Journal.

Vol. XX.		Vol. XX—*contd.*		Vol. XX—*contd.*		Vol. XX—*contd.*	
Page	PAGE	Page	PAGE	Page	PAGE	Page	PAGE
1 ...	925	137 ...	993	293 ...	832	419 ...	981
15 ...	1011	140 ...	1048	295 ...	756	423 ...	974
26 ...	767	143 ...	827	298 ...	990	428 ...	1030
38 ...	831	147 ...	1034	300 ...	991	435 ...	972
40 ...	832	150 ...	907	302 ...	787	438 ...	964
43 ...	844	153 ...	949	304 ...	753	444 ...	1065
47 ...	829	157 ...	947	310 ...	812	446 ...	994
50 ...	821	163 ...	976	316 ...	1058	461 ...	882
54 ...	1047	165 ...	1007	318 ...	1029	481 ...	852
59 ...	981	171 ...	976	325 ...	849	487 ...	1006
63	Vol. VI, 1489 (45 R. 459)	173 ...	895	329 ...	1057	491 ...	776
		177 ...	774	332 ...	1012	497 ...	1015
73 ...	771	196 ...	806	337 ...	786	502 ...	929
75 ...	786	197 ...	758	353 ...	784	505	Vol. VI, 1522 (45 R. 477)
82 ...	747	201 ...	811	355 ...	922		
85 ...	744	204 ...	827	361 ...	1050	509 ...	991
89 ...	896	218 ...	840	365 ...	1050	511 ...	1061
91 ...	992	227 ...	979	367 ...	1051	514 ...	814
103 ...	826	230 ...	923	370 ...	999	520 ...	985
105 ...	834	235 ...	847	373 ...	852	524 ...	974
110 ...	1064	247 ...	766	378* ...	787	544 ...	830
118 ...	985	258 ...	817	381 ...	815	551 ...	895
124 ...	857	266 ...	895	384 ...	757	555	Vol. VI, 1506 (45 R. 408)
127 ...	786	277 ...	767	385 ...	743		
129 ...	898	282 ...	1005	391 ...	761	572 ...	742
133 ...	974	285 ...	999	397 ...	934	575 ...	853

* For 22 J., 378 read 20 J., 378.

II. The Travancore Law Journal.—(*contd.*)

Vol. XX—*contd.*			Vol. XX—*contd.*			Vol. XX—*contd.*			Vol. XX—*contd.*		
Page		PAGE	**Page**		PAGE	**Page**		PAGE	**Page**		PAGE
581	...	995	**682**	...	1065	**827**	...	772	**953**	...	770
584	...	1009	**686**	...	901	**831**	...	827	**959**	...	862
589	...	822	**688**	...	781	**833**	...	754	**965**	...	853
592	...	1012	**690**	...	781	**842**	...	871	**970**	...	820
596	...	1051	**704**	...	1051	**844**	...	873	**975**	...	1062
601	...	985	**706**	...	757	**855**	...	924	**979**	...	1058
605	...	1058	**709**	...	852	**858**	...	844	**1021**	...	1043
607	...	1035	**713**	...	949	**873**	...	796	**1022**	...	839
609	...	986	**722**	...	969	**875**	...	841	**1027**	...	1062
612	...	986	**725**	...	1000	**883**	...	796	**1030**	...	1001
618	...	1000	**727**	...	998	**886**	...	996	**1034**	...	944
621	...	977	**729**	...	1018	**890**	...	1018	**1041**	...	1001
623	...	836	**731**	...	912	**894**	...	961	**1042**	...	769
628	...	966	**736**	...	880	**898**	...	1022	**1050**	...	818
632	...	1030	**743**	...	950	**904**	...	963	**1053**	...	965
636	...	1048	**745**	...	1038	**907**	..	908	**1062**	...	1009
638	...	1037	**748**	...	770	**918**	...	1000	**1064**	...	766
641	...	843	**754**	...	817	**921**	...	984	**1069**	...	863
645	...	815	**758**	...	747	**923**	...	920	**1076**	...	925
647	...	864	**764**	..	745	**927**	...	978	**1083**	...	836
652	...	758	**768**	...	759	**933**	...	783	**1101**	...	961
656	...	813	**772**	...	846	**936**	...	780	**1104**	...	968
662	...	1039	**797**	...	934	**940**	...	776	**1116**	...	923
664	...	1049	**802**	...	1036	**942**	...	790	**1125**	...	784
665	...	1010	**806**	...	871	**945**	...	756	**1131**	...	813
667	...	1054	**814**	...	1013	**947**	...	747	**1138**	...	860
680	...	932	**819**	...	742	**949**	...	802	**1146**	...	792

II. The Travancore Law Journal.—(*contd.*)

Vol. XX—*concld.*			Vol. XXI			Vol. XXI—*contd.*			Vol. XXI—*contd.*		
Page		PAGE	**Page**		PAGE	**Page**		PAGE	**Page**		PAGE
1155	...	930	**20**	...	920	**187**	...	774	**340**	...	803
1158	...	935	**25**	...	1023	**193**	...	982	**355**	...	745
1180	...	793	**29**	...	963	**198**	...	861	**371**	...	871
1186	...	970	**31**	...	765	**203**	...	1039	**376**	...	1050
1170	...	826	**35**	...	951	**208**	...	1003	**388**	...	872
1190	...	996	**48**	...	994	**228**	...	820	**401**	...	936
1196	...	950	**55**	...	927	**235**	...	784	**409**	...	1015
1200	...	883	**65**	...	907	**239**	...	766	**411**	...	924
1219	...	1022	**76**	...	1015	**243**	...	857	**415**	...	999
1221	...	834	**78**	...	1048	**250**	...	995	**417**	...	1048
1226	...	1057	**85**	...	970	**255**	...	974	**420**	...	1008
1232	...	1047	**91**	...	1056	**257**	...	1032	**422**	...	982
1238	...	996	**103**	...	763	**261**	...	983	**424**	...	876
1242	...	987	**106**	...	748	**269**	...	972	**474**	...	883
1248	...	1015	**111**	...	1012	**271**	...	935	**485**	...	869
1250	...	853	**115**	...	818	**278**	...	935	**505**	...	897
1255	...	931	**118**	...	1047	**285**	...	830	**517**	...	795
1262	...	804	**122**	...	862	**288**	...	807	**526**	...	883
1268	...	812	**130**	...	1062	**293**	...	803	**528**	...	796
1277	...	783	**149**	...	838	**308**	...	909	**531**	...	1060
1282	...	1054	**159**	...	982	**317**	...	839	**533**	...	746
1284	...	1031	**162**	...	823	**321**	...	958	**539**	...	781
1288	...	908	**165**	...	951	**325**	...	795	**544**	...	895
1292	...	1032	**168**	...	792	**330**	...	845	**546**	...	951
1295	...	883	**173**	...	1035	**331**	...	1003	**557**	...	853
1302	...	801	**178**	...	783	**334**	...	763	**559**	...	829
			182	...	858	**337**	...	748	**562**	...	1061

II. The Travancore Law Journal.—(*contd.*)

Vol. XXI—*contd.*			Vol. XXI—*contd.*			Vol. XXI—*contd.*			Vol. XXI—*contd.*		
Page		PAGE	**Page**		PAGE	**Page**		PAGE	**Page**		PAGE
566	...	1039	**788**	...	832	**948**	...	841	**1094**	...	987
571	...	1045	**791**	...	762	**951**	...	1063	**1102**	...	815
574	...	796	**794**	...	745	**956**	...	1029	**1106**	...	1065
576	...	974	**800**	...	754	**958**	...	896	**1109**	...	885
584	...	944	**803**	...	837	**968**	...	931	**1118**	...	914
592	...	997	**809**	...	744	**972**	...	922	**1122**	...	885
598	...	796	**817**	...	807	**975**	...	1043	**1128**	...	984
600	...	976	**820**	...	768	**985**	...	1016	**1134**	...	975
601	...	1070	**825**	...	814	**989**	...	1065	**1158**	...	865
635	...	899	**829**	...	815	**994**	...	994	**1173**	...	975
639	...	997	**833**	...	1036	**996**	...	933	**1175**	...	953
644	...	780	**841**	...	1050	**998**	...	929	**1177**	...	885
648	...	822	**848**	...	780	**1001**	...	1030	**1183**	...	761
652	...	884	**851**	...	876	**1011**	...	1004	**1189**	...	854
669	...	742	**854**	...	817	**1014**	...	784	**1192**	...	1019
687	...	933	**859**	...	854	**1024**	...	979	**1195**	...	854
689	...	1065	**876**	...	763	**1031**	...	1026	**1200**	...	936
691	...	805	**877**	...	776	**1033**	...	944	**1215**	...	781
722	...	900	**880**	...	795	**1035**	...	907	**1219**	...	839
724	...	914	**889**	...	870	**1048**	...	952	**1223**	...	762
736	...	749	**894**	...	879	**1063**	...	927	**1228**	...	749
743	...	901	**899**	...	815	**1070**	...	880	**1237**	...	811
749	...	1009	**907**	...	805	**1076**	...	1016	**1240**	...	844
754	...	1003	**910**	...	838	**1082**	...	973	**1244**	...	776
759	...	959	**913**	...	917	**1087**	...	777	**1245**	...	806
768	...	799									
780	...	775	**921**	...	1021	**1089**	...	1049	**1247**	...	821
785	...	811	**924**	...	1052	**1091**	...	1016	**1250**	...	1013

II. The Travancore Law Journal.—(*contd.*)

Vol. XXI—*concld.*			Vol. XXII—*contd.*			Vol. XXII—*contd.*			Vol. XXII—*contd.*		
Page		PAGE	**Page**		PAGE	**Page**		PAGE	**Page**		PAGE
1255	...	844	**23**	...	777	**316**	...	925	**453**	...	886
1289	...	964	**26**	...	864	**320**	...	902	**464**	...	1017
1292	...	750	**29**	...	885	**323**	...	954	**466**	...	1019
1297	...	868	**40**	...	886	**331**	...	979	**468**	...	969
1305	...	823	**57**	...	1066	**335**	...	1066	**475**	...	750
1308	...	937	**66**	...	937	**342**	...	944	**490**	...	845
1314	...	848	**69**	...	1032	**347**	...	788	**493**	...	1009
1329	...	1037	**87**	...	1018	**366**	...	967	**504**	...	973
1333	...	843	**94**	...	824	**361**	...	886	**508**	...	791
1335	...	832	**96**	...	1032	**373**	...	902	**513**	...	854
1340	...	818	**102**	...	1004	**378***	...	787	**517**	...	1066
1356	...	898	**109**	...	762	**376**	...	994	**537**	...	974
1360	...	1035	**122**	...	859	**383**	...	961	**556**	...	1067
1366	...	1066	**152**	...	807	**387**	...	832	**559**	...	1004
1368	...	925	**168**	...	1058	**390**	...	1047	**568**	...	1021
1384	...	802	**189**	...	808	**393**	...	903	**571**	...	984
1388	...	821	**208**	...	920	**397**	...	829	**577**	...	925
1390	...	840	**211**	...	1017	**402**	...	838	**581**	...	754
1398	...	787	**215**	...	954	**406**	...	1043	**585**	...	818
1403	...	870	**227**	...	881	**419**	...	954	**591**	...	1036
Vol. XXII.			**274**	...	1071	**425**	...	955	**595**	...	818
Page		PAGE	**276**	...	857	**428**	...	1048	**598**	...	824
1	...	953	**297**	...	902	**431**	...	912	**603**	...	814
13	...	966	**299**	...	1056	**435**	...	906	**606**	...	1061
19	...	806	**311**	...	947	**438**	...	770	**614**	...	980
22	...	750	**313**	...	954	**449**	...	1042	**619**	...	830

* For 22 J. 378
read 20 J. 378.

II. The Travancore Law Journal.—(*contd.*)

Vol. XXII—*contd.*			Vol. XXII—*contd.*			Vol. XXII—*contd.*			Vol. XXII—*contd.*		
Page		PAGE	**Page**		PAGE	**Page**		PAGE	**Page**		PAGE
621	...	1050	**727**	...	970	**868**	...	965	**1095**	...	903
624	...	887	**730**	...	788	**883**	...	797	**1120**	...	928
630	...	756	**734**	...	759	**888**	...	1026	**1127**	...	919
632	...	1032	**737**	...	1025	**890**	....	754	**1133**	...	838
636	...	1059	**739**	...	832	**898**	...	975	**1145**	...	769
640	...	991	**742**	...	746	**900**	...	924	**1151**	...	752
642	...	1063	**745**	...	948	**905**	...	988	**1154**	...	919
645	...	771	**750**	...	1052	**907**	...	821	**1161**	...	1028
649	...	987	**755**	...	782	**909**	...	937	**1164**	...	1053
653	...	915	**759**	...	750	**917**	...	801	**1166**	...	741
659	...	1041	**767**	...	759	**958**	...	1004	**1174**	...	1029
661	...	788	**770**	...	980	**964**	...	1061	**1177**	...	881
666	...	899	**772**	...	845	**968**	...	932	**1181**	...	914
669	...	834	**776**	...	989	**981**	...	945	**1189**	...	1055
674	...	997	**781**	...	998	**988**	...	1054	**1193**	...	795, 928
677	...	1009	**788**	...	967	**995**	...	752	**1200**	...	876
681	...	1023	**791**	...	988	**1001**	...	876	**1203**	...	754
683	...	840	**793**	...	785	**1005**	...	955	**1208**	...	1022
686	...	1014	**796**	...	808	**1008**	...	823	**1216**	...	1054
689	...	917	**802**	...	799	**1012**	...	1013	**1222**	...	811
695	...	976	**804**	...	751	**1014**	...	955	**1227**	...	821
699	...	756	**813**	...	932	**1027**	...	938	**1252**	...	1014
701	...	1071	**824**	...	797	**1047**	...	1072	**1256**	...	841
706	...	874	**828**	...	1027	**1056**	...	830	**1260**	...	1026
714	...	1032	**841**	...	955	**1058**	...	1027	**1264**	...	955
721	...	848	**858**	...	927	**1077**	...	968	**1266**	...	746
724	...	977	**861**	...	865	**1081**	...	982	**1270**	...	776

II. The Travancore Law Journal.—(*Contd.*)

Vol. XXII—*concld.*

Page		PAGE
1272	...	887
1274	...	854
1277	...	854
1285	...	1038
1289	...	784
1295	...	760
1310	...	850
1314	...	1026
1317	...	1027
1331	...	1008
1341	...	830
1343	...	909
1357	...	887
1360	...	914
1371	...	788
1376	...	928
1381	...	945
1398	...	988
1400	...	825
1404	...	911

Vol. XXIII.

Page		PAGE
1	...	1041
13	...	800
17	...	1041
20	...	855

Vol. XXIII—*contd.*

Page		PAGE
24	...	742
27	...	943
32	...	1026
36	...	939
39	...	1049
43	...	757
54	...	843
59	...	967
63	...	1014
67	...	850
72	...	867
83	...	788
86	...	822
89	...	813
92	...	811
96	...	1063
101	...	1020
105	...	855
111	...	803
117	...	809
126	...	825
128	...	796
132	...	1005
135	...	939
140	...	1015
145	...	741
149	...	1043

Vol. XXIII—*contd.*

Page		PAGE
150	...	1032
156	...	772
167	...	928
171	...	814
178	...	831
184	...	1011
187	...	1042
196	...	847
200	...	943
206	...	776
208	...	752
211	...	848
220	..	971
223	...	887
227	...	769
231	...	858
253	...	778
260	...	833
264	...	752
268	...	1067
274	...	940
279	...	888
290	...	903
298	...	999
301	...	960
308	...	919
332	...	948

Vol. XXIII—*contd.*

Page		PAGE
335	...	807
344	...	888
355	...	932
362	...	930
366	...	897
376	...	928
380	...	948
383	...	1067
386	...	1044
391	...	980
395	...	776
410	...	988
411	...	1021
412	...	921
426	...	977
429	...	797
441	...	1043
446	...	904
452	...	1050
457	...	1052
460	...	971
462	...	759
478	...	855
487	...	929
490	...	946
501	...	826
504	...	889

II. The Travancore Law Journal.—(*contd.*)

Vol. XXIII—*contd.*			Vol. XXIII.—*contd.*			Vol. XXIII—*contd.*			Vol. XXIII—*contd.*		
Page		PAGE	**Page**		PAGE	**Page**		PAGE	**Page**		PAGE
508	...	956	**711**	...	1053	**851**	...	831	**1009**	...	1044
512	...	878	**714**	...	922	**854**	...	890	**1015**	...	891
518	...	961	**719**	...	797	**862**	...	1019	**1031**	...	891
521	...	869	**734**	...	702	**868**	...	792	**1040**	...	856
526	...	793	**739**	...	983	**872**	...	904	**1045**	...	929
550	...	849	**741**	...	957	**875**	...	976	**1048**	...	833
565	...	777	**747**	...	1029	**877**	...	991	**1051**	...	791
577	...	870	**750**	...	842	**879**	...	842	**1055**	...	946
580	...	1005	**753**	...	1024	**886**	...	998	**1065**	...	765
585	...	956	**756**	...	743	**889**	...	825	**1067**	...	755
596	...	1005	**759**	...	824	**893**	...	815	**1082**	...	803
603	...	789	**763**	...	1037	**896**	...	941	**1092**	...	941
615	...	948	**767**	...	890	**902**	...	743	**1097**	...	1055
620	...	845	**773**	...	962	**915**	...	1057	**1103**	...	1071
629	...	861	**778**	...	1060	**919**	...	998	**1108**	...	860
642	...	1017	**784**	...	904	**923**	...	981	**1127**	...	913
645	...	1033	**788**	...	929	**940**	...	798	**1131**	...	838
649	...	819	**790**	...	973	**947**	...	905	**1138**	...	867
659	...	877	**793**	...	874	**956**	...	944	**1151**	...	916
670	...	759	**805**	...	1007	**957**	...	789	**1161**	...	809
675	...	755	**807**	...	833	**960**	...	759	**1176**	...	1060
680	...	866	**811**	...	1049	**964**	...	856	**1184**	...	949
700	...	929	**814**	...	983	**966**	...	856	**1193**	...	994
702	...	1027	**823**	...	925	**969**	...	976	**1207**	...	755
704	...	999	**828**	...	940	**973**	...	983	**1225**	...	753
706	...	948	**841**	...	803	**977**	...	890	**1231**	...	851
709	...	963	**848**	...	978	**995**	...	916	**1242**	...	1019

II. The Travancore Law Journal.—(*contd.*)

Vol. XXIII—*concld.*

Page		PAGE
1248	...	1042
1250	...	992
1253	...	836
1260	...	809

Vol. XXIV.

Page		PAGE
1	...	911
17	...	990
23	...	769
26	...	863
30	...	763
33	...	789
43	...	760
66	...	959
69	...	1024
74	...	892
80	...	892
88	...	810
97	...	806
100	...	874
107	...	968
111	...	962
114	...	957
140	...	790
147	...	921
158	...	856
161	...	771

Vol. XXIV—*contd.*

Page		PAGE
166	...	971
177	...	764
183	...	790
188	...	910
194	...	775
197	...	790
201	...	770
206	...	892
218	...	946
221	...	804
228	...	810
262	...	785
273	...	981
277	...	843
281	...	918
288	...	942
292	...	1068
295	...	893
305	...	765
308	...	1039
313	...	927
320	...	703
333	...	849
338	...	947
341	...	942
357	...	979
359	...	926

Vol. XXIV—*contd.*

Page		PAGE
362	...	894
370	...	927
374	...	1046
388	...	1034
390	...	898
395	...	990
403	...	1007
405	...	816
411	...	799
428	...	1031
433	...	1021
436	...	998
442	...	741
451	...	879
458	...	1056
469	...	791
475	...	957
480	...	874
486	...	775
493	...	801
499	...	983
509	...	992
518	...	973
521	...	877
527	...	972
545	...	879
549	...	1072

Vol. XXIV—*contd.*

Page		PAGE
555	...	957
561	...	896
564	...	977
568	...	794
575	...	978
578	...	790
581	...	785
584	...	1021
587	...	1025
606	...	1064
610	...	1006
617	...	1044
621	...	906
629	...	868
639	...	802
646	...	817
654	...	972
656	...	960
658	...	768
691	...	1033
696	...	973
698	...	978
701	...	1061
705	...	972
708	...	916
711	...	762
718	...	1005

II. The Travancore Law Journal.—(*concld.*)

Vol. XXIV—*contd.*			Vol. XXIV—*contd.*			Vol. XXIV—*contd.*			Vol. XXIV—*concld.*		
Page		PAGE	**Page**		PAGE	**Page**		PAGE	**Page**		PAGE
723	...	1034	**750**	...	898	**777**	...	958	**818**	...	900
725	...	1072	**754**	...	918	**783**	...	1069	**823**	...	900
730	...	1051	**759**	...	906	**787**	...	969	**825**	...	894
734	...	910	**764**	...	960	**792**	...	963	**851**	...	930
746	...	1010	**770**	...	943	**804**	...	1058			

APPENDIX E.*

I

RULES UNDER THE CODE OF CIVIL PROCEDURE.

CONTENTS.

CHAPTER I.

Preliminary.

Rules.

1. Commencement.
2. Forms.
3. Repeal.
4. Definitions.
5. Reckoning of prescribed day.
6. Service of notice.

CHAPTER II.

Transfer of suits, appeals, &c.

7. (1) Application for transfer.
   (2) Affidavit in support.
   (3) Separate application.

CHAPTER III.

General.

Form of Proceedings.

8. Form of plaints, &c.
9. (1) Cause-title of plaint, &c.
   (2) Cause-title of memo of appeal.
   (3) Cause-title of subsequent proceedings.
   (4) Description of contents.
   (5) Names, &c., of parties.
10. (1) Address for service.
    (2) Penalty for default.

Rules.

11. Statement of Regulation or other authority.
12. List of documents.
13. Proceedings in respect of immovable property.
14. (1) Section of Court Fees Regulation to be stated in plaint, &c.
    (2) Valuation of each subject-matter to be shown separately.
    (3) Fixed fees.

Presentation of Proceedings to the Court.

15. Presentation of proceedings and documents.
16. Papers filed in Court to be properly signed.
17. Document or proceeding not to be sent by Anchal, Post or Telegraph.
18. Curing of defects.

Posting.

19. Posting of suits, etc.,
20. Posting of ready cases.

Leave to sue.

21. Leave to sue.

Suits by or against numerous parties.

22. Suits by or against numerous parties.
23. When application is made by defendant.

* The Rules of the Civil Courts' Guide relating to matters dealt with in certain Regulations were incorporated in the previous Volumes, II, III and IV. The omission to include the Rules under Regulation VIII of 1100 is now made good. The amendments made in the original Rules are shown in italics. Occasion is taken to give also the changes, if any, made in the Rules published in the previous Volumes so as to make them up-to-date.

Rules.

Adding Plaintiff.

24. Adding any person as plaintiff or as next friend.
25. Name of additional parties, how entered.

Recognised agents.

26. Party appearing by agent.
27. Signing or verification by agent

Issue of summons.

28. Issue of summons.

Return of service of process.

29. Return of service.
30. Verification of return.
31. Service by affixing to outer door.
32. Endorsement where summons affixed to outer door.

Address for service.

33. (1) Defendant to file his address for service before date fixed for hearing.
(2) Address for service to be within local limits.
(3) Service by affixing to outer door.
(4) Service on pleader.
(5) Change of address for service, how effected.
(6) Service in other manner.
(7) Saving of Section 244 C. P. C. [Or. XXI, R. 21 (1)].
34. Heading of written statements.

Interrogatories.

35. (1) Interrogatories.
(2) Grounds of objection to be stated.

Inspection of documents.

36. Inspection of documents.

Inspection of proceedings by a party.

37. Inspection of proceedings by party.

Inspection of documents by a stranger.

38. Inspection of documents by strangers.
39. Notice of application for inspection.
40. Consent to inspect or obtain copy.
41. Fee.

Search of Records.

42. Search of records.

Rules.

Copies of Proceedings.

43. Copies.
44. Name and address for service to be endorsed on copy.
45. Refusal or neglect to furnish copy.

Certified copies.

46. Certified copies.

Production of Records.

47. (1) Production of records in the custody of a Court.
(2) Grant of certificate.
(3) Letter of request.
48. (1) Records from Palace.
(2) Records in the custody of a Public Officer other than a Court.
49. Receipt to be given when document retained.
50. Instructions to be observed by Courts receiving or transmitting originals.
51. (1) Mode of keeping originals received.
(2) Return of originals.
52. Deposit for postage costs.

Exhibits.

53. Marking Exhibits.
54. Marking series.
55. Consecutive marking and numbering.
56. Marking in subsequent proceeding.
57. Inspection of Exhibits.
58. Admission and proof of documents to be noted.
59. Return of documents.
60. Return of original documents.
61. Register for return of documents.
62. Dismissal of application for return.

The first hearing of suits.

63. Examination of defendant when no written statement filed.
64. Issue paper.
65. Framing of issues.
66. Application for directions.
67. Adjournment in consequence of application for commission, &.
68. Defendant's list of documents.

Rules.

69. Form of list.
70. Order sheet.

Interlocutory proceedings.

71. Form.
72. To state only order prayed for.
73. Notice.
74. Evidence.

Adjournments.

75. Adjournments to be to a day certain.
76. Proceeding not to be adjourned *sine die.*
77. Costs of adjournment.
78. (1) Advancement of hearing.
    (2) Notice of consent.
79. Service of processes on witnesses present.
80. List of witnesses.

Summonses to witnesses.

81. Application for summonses to witnesses.
81-A. Mahomedans not to be required to attend on Fridays.
82. Time for filing list or application.
83. Deposit of subsistence money and milege.
84. Forms of summonses to witnesses.
85. Form of proclamation.
86. Service of processes on public servants.
87. Certificate of attendance.

Affidavits.

88. Before whom may be sworn.
89. Identification of declarant.
90. Filing.
91. Notice of filing.
92. Form.
93. Name, age, etc., of deponent.
94. Alterations and interlineations.
95. Statement of officer before whom affidavit sworn.
96. Blind or illiterate deponent.
97. Endorsement.
98. Matter of opinion.
99. Information and belief.
100. Documents referred to.
101. Cross-examination.

Rules.

Oath and affirmation.

102. (1) Swearing to be on religious books.
    (2) Form of oath to be administered.
    (3) Form of oath to be taken.
    (4) Solemn affirmation.
    (5) Form of solemn affirmation.
    (6) Form of affirmation.
    (7) Form of oath in special cases.
103. Mahomedan witnesses.
104. Forms.
105. Heading of depositions.
106. Signing of depositions.

Original Petitions.

107. Original petitions.

Judgments, decrees and orders.

108. Form of judgment.
109. Decree.
110. Decree left unsigned by Judge.
111. Original decrees.
112. Proportionate Costs.
113. Specification of periodical payments.
114. Statement of particulars as to immovable property.
115. Interest on costs.
116. Decrees for sale of hypotheca.
117. Judgments and orders in matters other than suits.
118. Setting aside *ex parte* decree where money or property recovered.
119. Appellate decrees to state amount of costs in original Court.
120. Several appeals against same decree.
121. What items of costs to be excluded in preparing decrees.
122. Expenses for copies to be included.
123. Statement of costs and expenses to be filed.
    Consequence of default.

Withdrawal of suit or appeal.

124. Notice of application for leave to withdraw.
125. Withdrawal conditional on payment of costs.
126. Production of special vakalat.

Rules.

Commissions.

127. Application for commission.
128. Commissioner's fees to be paid into Court.
129. Return of commission.
130. Local inspection by Judge.
131. Commission orders.
132. Amount of commissioner's fees and milege.
133. Objections to commissioner's report.
134. Delegation in commissions for examination of witnesses.
135. Form of commission.
136. Commission for ascertaing improvements and market value.
137. Commission to translate accounts and other documents.
138. Selection of commissioner.

Minors and persons under disability.

139. Plaint or original petition on behalf of minor.
140. Appointment of guardian *ad litem*.
141. Placing guardian in funds.
142. Court officer as guardian *ad litem*.
143. Decree for compromise.
144. Order appointing guardian necessary.
145. Description of parties in suits by or against persons under disability.
146. Application not to be combined with petition to implead legal representative.
147. Legal guardian to be guardian for suit.

CHAPTER IV.

Taking Accounts.

148. Directions as to taking accounts.
149. Form.
150. Inspection.
151. Determination by Court.
152. Extension of time to file statement of account.
153. Periodical filing.

Rules.

Reference to a commissioner to vouch or take accounts.

154. Appointment of commissioner.
155. Appointment to audit.
156. Declaration by Court.
157. Report of commissioner.
158. Consideration by Court.

CHAPTER V.

Payment into and out of Court.

Payment into Court.

159. Lodgment schedule to be brought in.
160. Delivery to treasury officer.
161. When treasury is closed.
162. Receipt.
163. Transmission of money payable in satisfaction of decree.
164. Payment out.

Payment out of Court.

165. Payment to be made on order of Judge.
166. Order for payment.
167. Payment schedule to be brought in.
168. Presentation of order.
169. Receipt by payee.
170. Delivery of securities, etc, into and out of Court.

Cash deposits.

171. Cases where payment may be made in cash to Court.
172. Presentation of receipt.
173. Repayment.

CHAPTER VI.

Sale of property under order of Court.

174 Conduct of sale under order of Court.
175. Affidavits.
176. Matters to be determined by Court.
177. Appointment of person to sell.
178. Proclamation of sale.
179. Production of title deeds by encumbrancer.
180. Costs of proceedings.
181. Combination and sub-division of lots.

Rules.

182. Publication of proclamation of sale in news-papers.
183. Auction.
184. Commencement and closing of auction.
185. Leave to bid.
186. Conduct of sale.
187. Application to set aside sale.
188. Costs of sale.
189. Payment of costs, etc., when sale set aside.
190. Certificate of sale.
191. Default by applicant.

CHAPTER VII.

Proceedings in execution.

192. Rules applicable.

Application for transmission.

193. Application for transmission of decree for execution.
194. Return of decree by Court.
195. Transmission of papers by District Court.
196. Execution of foreign decree.
197. When Courts in Travancore may execute decrees of Civil Courts in British India and in Cochin State.
198. Execution of Travancore decrees by British Indian Courts.
199. Transmission of decrees to British Indian Courts.
200. Execution of Travancore decrees by Cochin Courts.
201. Transmission of decrees to Cochin Courts.
202. British Indian and Cochin Small Cause decrees.

Application for execution.

203. Application for execution.
204. Certified copy of decrees to be filed.
205. Execution petition to set out in full steps prayed for.
206. Non-compliance with Rules.

Rules.

207. Procedure on and after hearing of petition.
208. Notice of date of delivery.
209. Deposit of cost of seed and labour.
210. Delivery of possession of house or other building locked up.
211. Amin to report to Court when resistance offered.
212. (1) (2) Costs of removal of attached movables and maintenance of life-stock.
(3) Delivery of attached movables other than cash, etc., to Nazir for safe custody.
(4) Rates of maintenance for life-stock.
(5) Custody of attached cash, jewels, etc.
213. (1) & (2) Procedure when removal of attached property to the Court-house inconvenient.
(3) Custody of attached life-stock.
214. Withdrawal of attachment.
215. Recovery of expenses of maintenance.
216. Breaking open door of room where property to be attached is believed to be concealed.
Inventory.
217. Order to appoint day for sale..
218. Determination of questions arising in execution of decree.

Joint decree-holders.

219. Joint decree-holders.

Payment and satisfaction.

220. Payment into Court.
221. Payment into Court in satisfaction.
222. Application for sanction to give time to judgment-debtor or certify payment or adjustment.

Execution of documents by the Judge.

223. Procedure in case of execution of documents by Court.
224. Procedure in case of execution of documents by Courts.

Rules.
225. Form of deed and of endorsement of negotiable instrument.

Execution applications.

226. Oral application for relief.
227. Application in pending petition.
228. Application of Rules.

Attachment of property in Court or in the custody of a public officer.

229. Attachment of property in Court.
230. Attachment of property in Court other than the Court executing decree.
231. Attachment of property in custody of public officer.

Attachment of decrees.

232. Attachment of decrees.
233. Decree not to be sold.
234. Attachment of decree by several decree-holders.

Claims to attached property.

235. Claims to attached property.
236. Procedure when application presented.
237. Hearing of application.

Realisation of attached debts.

238. Realisation of attached debts.
239. Receiver's powers.

Sale of attached property.

240. Applicant to file affidavit.
241. Order for sale.
242. Sale of guns or other arms in Court auction.
243. Execution of decrees altering survey boundary lines.
244. Application of Chapter VI.

Arrest and imprisonment.

245. Palace servants.
246. Other public servants.
247. Subsistence money.
248. Tender of subsistence money.

Rules.
249. Endorsements on warrants returned unexecuted.
250. Issue of fresh warrant of arrest.
251. Sick judgment-debtor.
252. Warrants of commitment to whom to be addressed.
253. Fees for medical examination.
254. Moneys to be deposited before commitment.
255. Subsistence allowance, etc., to be forwarded.
256. Payments of subsistence money into jail, when to be made.
257. Release of judgment-debtor on payment of decree-debt.
258. Return of unexpended subsistence money.
259. Intimation of arrest, etc., to official superior.
260. Release of sick judgment-debtors.
261. Subsistence money when arrest is made in execution of several decrees.
262. Subsistence money disbursed not to be shown in warrant of commitment.
263. Exemption from arrest of persons serving in the British army.
264. Exemption from arrest of persons belonging to the Nayar Brigade.

CHAPTER VIII.

Partnership Suits.

265. Parties.
266. Inspection.
267. Impeachment of settled account.
268. Interim decree where partnership and books admitted.
269. Matters to be determined at hearing.
270. Accounts.
271. Errors in settled accounts.
272. Commissioner to take account.
273. Order for discharge of debt and liabilities.
274. Order for payment of balance. Order for distribution of assets.

Rules.
275. Order for payment of balance into Court and realisation of assets.
276. Appointment of receiver on default of party.
277. Forms.

CHAPTER IX.

Partition Suits.

278. Parties.
279. Plaint.
280. Order for accounts.
281. Matters to be determined at hearing.
282. Account of outstanding liabilities.
283. Interim decree.
284. Discharge of outstanding liabilities.
285. Outstandings due.
286. Order for sale.
287. Taking account by commissioner.
288. Final hearing.
289. Final decree.
290. Forms.

CHAPTER X.

Additional Rules relating to appeals from decrees and orders and to civil revision petitions and reviews.

291. Notice fees, etc., to accompany appeal memo.
292. Appeal by representative.
293. Court fee valuation of appeal.
294. Affidavit explaining delay.
Endorsement returning papers.
295. Appeal or petition to be posted before Court.
296. Special notice to be given as regards offer for oath.
297. Opposite party to file memorandum of appearance.
Penalty for omission. Proviso.
298. Address for service.
299. Service of notice.

Rules.
300. Fees for service of notice.
301. Objection to findings.
302. Application to postpone or advance hearing on notice.
303. Notice of hearing of cases remanded.

Interlocutory applications and matters.

304. Application for amendment of appeal, objection or revision petition.
305. Cases remanded for findings.
306. Time for filing objections. Copy to be served.
307. Power of Appellate Court to deal with findings.
308. Appellate judgments.
309. Appellate decrees to be self-explanatory.
310. Table of costs to be appended to orders under Section 533.
311. Judgments and decrees to be produced with special appeal memorandum.
312. Statement of case.
313. Table of costs.
314. Copies of map, plan, etc., in appeals before High Court.
315. Civil revision petition to be accompanied by particulars for notice.
316. References to High Court.
317. Application for review.

Service of Notice.

318. Procedure when notice returned unserved.
319. Fees to be paid in Court fee labels.
320. Application to Court to be by petition.
321. Rules for the reciprocal service for processes between British India and Travancore.
322. Rules for reciprocal service between Cochin and Travancore.
323. Suit by or against H. H. The Maharaja of Cochin.

CHAPTER I.
Preliminary.

Commencement.

1. The Rules in this Part and in Part II shall apply, as far as may be, to all proceedings pending on the first day of Vrichikom 1099 and to all proceedings thereafter to be instituted.

Forms.

2. The Forms in Appendices II and III hereto shall be used with such variations as circumstances may require.

Repeal.

3. All previous Rules, Orders, Circulars and Forms, so far as they are inconsistent with these Rules, Orders, Circulars and Forms, are hereby repealed.

Definitions.

4. In these Rules, unless there is something repugnant in the subject or context :—

Address for service.

(1) "Address for service" means the place appointed by a party, or his pleader, at which service of summons, notice, or other process may be made on such party ;

Application.

(2) "Application" includes execution application, execution petition, and interlocutory application ;

Code.

(3) "Code" means the Code of Civil Procedure as amended from time to time ;

Execution petition.

(4) "Execution petition" means a petition to the Court for the execution of any decree or order ;

Execution application.

(5) "Execution application" means an application to the Court made in a pending execution petition ;

First hearing.

(6) "First hearing" includes the hearing of a suit for settlement of issues, and any adjournment of such hearing ;

Interim decree.

(7) "Interim decree" means a decree declaring the rights and liabilities of the several parties, and providing for the determination of the particular property or sum of money to be apportioned or paid to any party, or for otherwise giving effect to such declaration ;

Interlocutory application.

(8) "Interlocutory application" means an application to the Court in any suit, appeal or proceeding, already instituted in such Court, other than a proceeding for execution of a decree or order ;

Original petition.

(9) "Original petition" means a petition whereby any proceeding other than a suit, or appeal or a proceeding in execution of a decree or order, is instituted in a Court ;

(10) "Proceeding" includes all documents presented to or filed in Court by any party, or commissioner or other officer of Court, other than documents produced as evidence;

Proceeding.

(11) "Verified" means verified in manner provided by Section 48 of the Code; and

Verified.

(12) All other expressions used herein shall have the respective meanings prescribed by the Code or the General Clauses Regulation, 1072.

Other expressions.

5. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day; unless the last day falls on a Sunday, or other day on which the office of the Court is closed, in which case the time shall be reckoned exclusively of that day also, and of any other following day or days during which the office may continue closed.

Reckoning of prescribed day.

6. Except where otherwise provided by the Code, or these Rules, or any law for the time being in force, any notice directed to be given to any party shall be in writing, and may be served by the party, or his pleader, on the other party, or his pleader, personally, or by sending the same by Anchal or Post, in a registered cover, prepaid for acknowledgment, to the address for service of the party or his pleader.

Service of notice.

CHAPTER II.

Transfer of Suits, Appeals, etc.

7. (1) An application for the transfer of a suit, appeal, etc., from one Court or Bench to another shall be made by original petition entitled in the matter of the pending suit, appeal, etc., as in Appendix III, Form No. 1. Notice of the application, as in Appendix II, Form No. 1, shall be issued and served on the other parties to the suit, appeal, etc.

Application for transfer.

(2) The application shall be supported by affidavit stating the respective residences of the several parties to the suit, appeal, etc., the places in which the several portions of the subject-matter of the suit, appeal, etc., are respectively situate, and the several jurisdictions within which the said residences and places are respectively situate, and any other facts on which the application is based.

Affidavit in support.

(3) A separate application shall be presented in respect of each suit, appeal, etc., of which a transfer is sought, and the Court shall, in each case, record in writing its reasons for its order.

Separate application.

CHAPTER III.

General.

Form of Proceedings.

8. All plaints, written statements, applications, affidavits, memoranda of appeal, and other proceedings presented to the Court, shall be written, typewritten, or printed, fairly and legibly, on stamped paper or on substantial white foolscap folio paper, with an outer margin about one and half inches wide and an inner margin about half an inch wide, and separate sheets shall be attached together bookwise. The printing may be on both sides of the paper, but not the writing or type-writing.

Form of plaints, etc.

9. (1) A plaint, or original petition, shall be headed with a cause-title, as in Appendix III, Form No. 2. The cause-title shall set out the name of the Court, and the names of the parties, separately numbered, and described as plaintiffs and defendants or petitioners and counter-petitioners, as the case may be.

Cause-title of plaint, etc.

(2) A memorandum of appeal shall be headed with a cause-title setting out the names of the Courts to and from which the appeal is brought, the names of the parties, separately numbered, and described as appellants and respondents, and also the full cause-title of the suit or matter in the lower Court, as in Appendix III, Form No. 3.

Cause-title of memo of appeal.

(3) All proceedings, subsequent to a plaint, original petition, or memorandum of appeal, may be headed with a short cause-title, as in Appendix III, Forms Nos. 4 and 5.

Cause-title of subsequent proceedings.

(4) Every proceeding shall also contain, immediately after the cause-title, a short description of its contents, as in Appendix III, Forms Nos. 6 and 7.

Description of contents.

(5) The full name, residence, and description of each party, and if such is the case, the fact that any party sues or is sued in a representative character, shall be set out at the beginning of the plaint, original petition, or memorandum of appeal, as in Appendix III, Form No. 6, and need not be repeated in the subsequent proceedings in the same suit, appeal or matter.

Names etc., of parties.

10. (1) The first proceeding filed by any party shall also state an address for service, which shall be within the local limits of the jurisdiction of the Court in which the same is filed, or of the Munsiff's Court in which the party ordinarily resides.

Address for service.

(2) Where any party fails to file an address for service, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, be liable to have his defence, if any, struck out, and to be placed in the same position as if he had not defended; or the Court may, in its discretion, make such other order as it thinks fit.

Penalty for default.

11. An original petition shall also state the Section of the Regulation, or other authority, under which it is presented, as in Appendix III, Forms Nos. 6 and 7. If it is not intended to serve any person with notice of the petition, it shall be so stated, and the petition shall be headed as in Appendix III, Form No. 7, but if the Court directs any person to be made a party, the cause-title shall be amended, and shall be in Appendix III, Form No. 2.

Statement of Regulation or other authority.

12. Every plaint shall, at the foot thereof, contain a list, to be signed by the plaintiff or his pleader, of the documents, filed therewith, in Appendix III, Form No. 8, or a statement, signed as aforesaid, that no document is filed therewith.

List of documents.

13 Every plaint and original petition in which relief is sought with respect to immovable property, shall give in a tabular form, as part of the description thereof, the registration district or sub-district as well as the Taluk and the Pakuthy in which the property is situate, its survey number and extent and its name, if any, as also its boundaries. In the case of paddy land, the tract, or '*ela*' or '*padom*,' in which the property lies shall also be added. In cases where the value of the property is required to be estimated for the purposes of the Court Fees Regulation, 1087, the market value of each item or its annual gross profits, less the assessment, if any, due thereon to the Sirkar, shall also be stated. Where mesne profits are claimed, the amount claimed in respect of each item shall also be stated. In case of default, the proceeding may be received, but shall not be admitted or filed until the provisions of this Rule have been complied with.

Proceedings in respect of immovable property.

14. (1) The plaint (or memorandum of appeal) shall state under what Section of the Court Fees Regulation it falls for the purpose of taxation.

Section of Court Fees Regulation to be stated in plaint, etc.

(2) When a suit (or appeal) embraces two or more distinct subjects, the value of each subject for the purpose of taxation shall be separately shown in the plaint (or memorandum of appeal).

Valuation of each subject matter to be shown separately.

(3) When a suit (or appeal) has to be charged with fixed fees under the Court Fees Regulation, the fact should be distinctly specified in the plaint (or memorandum of appeal).

Fixed fees.

Presentation of Proceedings to the Court.

15. All plaints, written statements, appeals, applications and other proceedings and documents, may be presented to or filed in Court by the party or his pleader or the pleader's registered Gumastah deliveriug the same personally to the head ministerial officer of the Court, at any time *between the hours of 11 A. M. and 4 P. M., and emergent papers till 5 P. M., on working days.* The said officer shall at once endorse on the document the date of presentation.

Presentation of proceedings and documents.

16. All papers filed in Court by parties to suits or proceedings, and their Vakils—whether they be plaints or statements, petitions or applications, interrogatories or answers to interrogatories, memoranda or copies of exhibits, etc., —shall be signed by the signatories with their full names, e. g., A. B. plaintiff or C. B. plaintiff's Vakil. It is not enough if the mark "oppu" or initials alone of the signatory, without his full name, be affixed, e. g., "oppu" of defendant, or "oppu" of defendant's Vakil. When the signature consists of the name of the signatory, it is not necessary that the name should be repeated; but if the name be not easily decipherable from the signature, the full name should be legibly written before the signature, in the language in which the document is drawn up. Similarly parties and Vakils signing statements, oath agreements or compromises, etc., taken down in Court, should sign with their full names.

Papers filed in Court to be properly signed.

17. No document or proceeding required to be presented to, or filed in Court which is sent by Anchal, Post or Telegraph, shall be admitted or filed in Court.

Document or proceedings not to be sent by Anchal, Post or Telegraph.

18. In the following cases, *viz.*,

(*a*) where any plaint, memorandum of appeal, objection petition or other document, is not accompanied by such papers as are required by the law or the rules in force to be produced therewith,

Curing of defects.

(*b*) where such document is not drawn up in proper form or requires to be amended with reference to any law or order in force or on other grounds,

(*c*) where the relief sought in a document is undervalued or where the note of fees, etc., made by the parties or Vakils is incorrect,

(*d*) where the relief sought is properly valued but the whole of the institution fee prescribed by law is not paid,

(*e*) where the petition, process, registration or other fee or subsistence money, etc., required to be paid in respect of any document is not paid in part or whole,

the party or Vakil who presented the document shall be required to cure the defect within a time to be fixed by the Court and notified to the person concerned by a notice affixed on the notice-board which shall be placed in a conspicuous part of the Court-house. If the defect be not cured within the time fixed or within such further time as may be granted by the Court on special application, the Court shall reject the document.

Posting.

19. (1) On the last working day in every week a list of the suits, petitions, applications, appeals, and other cases, appointed to be heard on each day of the next week but one, shall be posted on a notice-board of the Court. The list shall set out the serial number and short cause-title of each case, and the names of the pleaders appearing therein.

Posting of suits, etc.

(2) Unless the Judge otherwise orders, the cases shall be called on, on the day and in the order in which they stand in the list.

N. B.—This rule does not apply to miscellaneous petitions, or applications of an urgent nature, which should be ordinarily disposed of then and there or on the following day.

20. *Subject to Rule 81-A*, unless the Judge otherwise orders, every case ready for disposal shall be posted according to its order on the file of the Court.

Posting of ready cases.

Leave to sue.

21. (1) If, under Section 14 of the Code, leave to institute a suit is required, the plaint shall be accompained by a petition containing a prayer that leave may be granted, and also by an affidavit stating the residences and occupations of the several defendants, and the reasons for instituting the suit in the Court.

Leave to sue.

(2) If leave to sue is granted, the summons to the defendant shall contain the notice set out in Appendix III, Form No. 9.

(3) The Court may, in its discretion, issue notice of the application to the defendants, before passing an order thereon.

Suits by or against numerous parties.

22. (1) An application under Section 26 of the Code shall be supported by an affidavit stating the number or approximate number of the parties, and the places where they respectively reside; that they have all the same interest in the subject-matter of the suit, and the nature of the said interest; and the best means of giving notice of the institution of the suit to the said parties, and the probable cost thereof. If the application is made by the plaintiff, it may be made in Appendix III, Form No. 10, and the estimated costs of giving notice of the institution of the suit shall at the same time be deposited in Court.

Suits by or against numerous parties.

(2) The plaint shall state that the plaintiff sues on behalf of himself and all other persons interested in the subject-matter of the suit, or sues the defendant as representing all persons so interested; and the summons to the defendant shall contain the notice set forth in Appendix III, Form No. 11.

23. If the application is made by a defendant, notice thereof shall be given to all parties to the suit; and, if permission is granted, the plaint shall be amended by inserting a statement that the defendant is, with the leave of the Court, sued as the representative of all persons interested in the subject-matter of the suit.

When application is made by defendant.

Adding Plaintiff.

24. If an application is made to add any person as plaintiff, or as the next friend of a plaintiff, he shall either appear in person, in which case his consent to be so added shall be recorded by the Judge in writing, or a written consent thereto, signed by him and authenticated by a person authorised to take affidavits, shall be filed in Court.

Adding any person as plaintiff or as next friend.

25. When any person is made a party to a suit or proceeding, either on his own application or otherwise, the name of such person and his position in the suit or proceeding must be entered in the plaint or the principal application, as the case may be, in red ink, also in the decree or final order and in the register of suits. When fresh parties are brought in, they shall be numbered consecutively after the plaintiffs or defendants, as the case may be, already in the suit or proceeding.

Name of additional parties, how entered.

Recognised agents.

Party appearing by agent.

26. (1) When a party appears by an agent, other than a pleader, the agent shall, before making or doing any appearance, application, or act, in or to the Court, file in Court the power-of-attorney or written authority, thereunto authorising him, or a properly authenticated copy thereof; or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf, and the connection of the same with the subject-matter of the suit, and that no other agent is expressly authorised to make or do such appearance, application or act.

(2) The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and, unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognised by the Court.

Signing or verification by agent.

27. If any proceeding, which under any provision of law or these Rules is required to be signed or verified by a party, is signed or verified by any person on his behalf, a written authority in this behalf signed by the party shall be filed in Court, together with an affidavit verifying the signature of the party, and stating the reason of his inability to sign or verify the proceeding, and proving the means of knowledge of the facts set out in the proceeding of the person signing or verifying the same.

Issue of summons.

Issue of summons.

28. A plaint shall be accompanied by a sufficient number of copies or concise statements for service on the person concerned along with the summons to be issued to him. These copies or concise statements shall also mention (1) the name of the party and his pleader, if any, producing the original and (2) the date of presentation of the original.

Return of service of process.

Return of service.

29. (1) The return of the serving officer shall state the manner in which the process was served and the place, and day, and month of service, and also whether he is personally acquainted with the person served, and if not, by whom such person was identified.

(2) If the person to be served refuses to sign the acknowledgement of service, the return shall state that he was informed of the nature and contents of the process, and, in the case of a plaint, that, upon applying to

the Court, he could obtain a copy or concise statement of the contents of the plaint.

Verification of return.

30. (1) The return of service shall be verified by the affidavit of the serving officer or by a sworn statement made by him.

(2) If the process-server is not personally acquainted with the person to be served, the return shall be supported by the attestation of the person identifying him or of a village officer.

Service by affixing to outer door.

31. In every case where a process is affixed to the outer door of a house, in the absence of the person to be served, the serving officer shall make an affidavit as to the following matters :—

(1) The number of times and the dates and hours at which he went to the house ;

(2) the attempts made by him to find the person to be served ;

(3) whether he had any, and what, reason to suppose that such person was within the house or its neighbourhood, or endeavouring to evade service ;

(4) whether any adult male member of the family of the person to be served was residing with him ;

(5) the municipal number or the census number, if any, of the house in question.

Endorsement where summons affixed to outer door.

32. If a summons to a plaint is affixed to the outer door of the house, the serving officer shall endorse on it that the defendant can, upon application to the Court, obtain a copy or a concise statement of the contents of the plaint, and shall in his return state that he has done so and shall return the copy of the plaint or concise statement to the Court. If the summons has been sent by another Court for service and the defendant does not, within fourteen days from the affixing of the summons, apply for the said copy, it shall be returned to the said Court.

Address for service.

Defendant to file his address for service before date fixed for hearing.

33. (1) Every party who intends to appear and defend any suit, appeal or original petition shall, *not later than* the date fixed in the summons or notice served on him as the date of hearing, file in Court a proceeding stating his address for service.

Address for service to be within local limits.

(2) Such address for service shall be within the local limits of the Court in which the suit, appeal or petition is filed, or of the Munsiff's Court in which the party ordinarily resides.

(3) Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house, and such service shall be deemed to be as effectual as if the notice or process had been personally served.

Service by affixing to outer door.

(4) Where a party engages a pleader, notices or processes for service on him shall be served in the manner prescribed by Section 36 of the Code, unless the Court directs service at the address for service given by the party.

Service on pleader.

(5) A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of every such petition shall be given to all the other parties to the suit, appeal or original petition.

Change of address for service, how effected.

(6) Nothing in this Rule shall prevent the Court from directing the service of a notice or process in any other manner, if, for any reasons, it thinks fit to do so.

Service in other manner.

(7) Nothing contained in this Rule shall apply to the notice prescribed by Section 244 of the Code.

Saving of Section 244 C. P. C. [=Or. XXI, R. 20 (1)].

34. The heading of all written statements shall contain the full name of the party, his or her family name or Tarwad name, his or her father's or mother's or uncle's name or her husband's name (if the party be a married woman governed by the Makkathayam Law), the religion, caste, profession, age, and the Pakuthy and the name, if any, of the house in which the party resides. Written statements not containing these particulars may be returned for amendment.

Heading of written statements.

Interrogatories.

35. (1) A party who desires to administer interrogatories to any other party, shall, on presenting or making his application for leave to deliver the same, bring into Court two copies of the proposed interrogatories, and the fees prescribed for service of process. If leave is granted, one of the said copies shall be filed on record, and the other copy shall be served by the Court on the other party.

Interrogatories.

(2) If a party objects to answer any interrogatory he shall state shortly the grounds of his objection in his affidavit in answer to the interrogatories.

Grounds of objection to be stated.

Inspection of documents.

Inspection of documents.

36. A party shall be at liberty to inspect and obtain a copy of any document recited or referred to in a plaint or written statement, and filed in Court therewith.

Inspection of proceedings by a party.

Inspection of proceedings by party.

37. Every party and his pleader desiring to inspect any proceeding filed in Court by him or any other party, or a commissioner or officer of Court, in the suit, appeal or matter, to which he, or his client, is a party, shall present a memorandum specifying the proceeding of which inspection is required.

Inspection of documents by a stranger.

Inspection of documents by strangers.

38. An application for inspection or copies of records or documents of, or in the custody of, a Court, other than records or documents filed in a suit, appeal or matter, to which the applicant is a party, shall be made to the said Court by an application, entitled in the suit, appeal, or matter in which the records or documents are filed, and specifying the particular records or documents, of which inspection is, or copies are, required, by reference as far as possible to the nature, date, and date of filing of, and the parties to, each record or document. The application shall be supported by affidavit stating whether the applicant has any, and what, interest in the subject-matter of the document or of the proceeding in which the record or document is filed, the purpose for which inspection or a copy is required, and, if the same is required for the purpose of an intended or pending proceeding, the nature of the said proceeding and the relevancy of the record or document to the case of the applicant.

Notice of application for inspection.

39. The Court may, in its discretion, cause notice of the application to be given to the parties to the said proceedings; and where such notice is given, the provisions of the Code and of these Rules, with respect to a summons to a defendant, shall apply to the said notice.

Consent to inspect or obtain copy.

40. The Court shall not grant leave to inspect, or to obtain a copy of, any record or document produced by a person not a party to the proceedings in which the same is filed, or to the discovery of which any person is entitled to object, except in either case with the written consent of such person.

Fee.

41. If leave is granted, the following fee shall be deposited in cash :—

Fee for searching the records of any one year, for a single document, or entry, or for all papers forming a single record ... Fs. 3½
And for every additional year ... ... ,, 1¾

Enclosures or annexures to a proceeding or document and the vouchers appertaining to an account shall be reckoned as part of the proceeding or document to which they relate.

If the proceeding or document is not found on the record, the applicant shall be entitled to a certificate to that effect, free of cost.

The search-fee deposited under this Rule will be paid to the record-keeper or other officer of the Court who conducts the search.

The maximum fee collected under this Rule on any one application shall not exceed Rs. 5.

Search of Records.

Search of records.

42. When a person is entitled to inspect a proceeding or document the search therefor shall be made by the officer of the Court; and such person shall be allowed to read the proceeding or document which he is entitled to inspect, or to have it read to him, and to make a short memorandum of the date and nature thereof so as to enable him to describe it sufficiently, in case a copy is required, but, except where otherwise expressly provided by these Rules, he shall not be entitled to take a copy of the proceeding or document, or any part thereof or to make extracts therefrom.

Copies of Proceedings.

Copies.

43. A party or pleader, filing any proceeding, shall, on demand in writing, furnish to any other party a copy of the proceeding, upon payment therefor at the rate of 2½ chuckrams for every one hundred and seventy five words, four figures being calculated as one word. Provided that one copy of a written statement, and a memorandum of appeal or of objections, and, when a concise statement of a claim has been presented for service with a summons, one copy of the plaint, shall, on the like demand, be furnished free of charge to each party appearing by a separate pleader.

Name and address for service to be endorsed on copy.

44. The name and address for service of the party or pleader by whom any copy is furnished shall be endorsed thereon, and the party or pleader shall be answerable for the same being a true copy of the original or of a certified copy of the original, of which it purports to be a copy, as the case may be.

Refusal or neglect to furnish copy.

45. In case any party or pleader, who has been required to furnish any such copy as aforesaid, either refuses, or, for four days from the time when the application for the copy was made, neglects to furnish the same, the person by

whom the application has been made shall be at liberty to procure a certified copy from the Court, and in such case the party in default shall, unless the Judge otherwise orders, be liable for the costs of procuring the same, provided that in the application to the Court for the grant of such certified copy, the applicant makes a verified statement that the copy applied for by him under Rule 43 has not been supplied to him by the party or pleader concerned, as required by that Rule.

Certified copies.

46. Rules relating to certified copies are contained in Part III, Chapter III.

Certified copies.

Production of Records.

47. (1) An application for the production of records in the custody of a Court shall specify the particular documents required to be produced. Unless it is made to appear to the Court that the production of the original documents is necessary, the party shall be required to obtain and file copies thereof and the original shall not be sent for.

Production of records in the custody of a Court.

(2) Whenever it is found that copies of records from other Courts or offices are required for purposes of evidence, the fact should be recorded and a certificate furnished to the parties to enable them to apply for the copies to the proper Court or office.

Grant of Certificate.

(3) When a Court finds it necessary to require the production of the records of another Court, it shall address a letter of request as in Appendix III, Form No. 12, to the presiding Judge of that Court.

Letter of request.

48. (1) Courts shall not call for records from the Palace, except through the Dewan.

Records from Palace.

(2) A summons for the production of records in the custody of a public officer other than a Court shall be in Appendix III, Form No. 13, and shall be addressed to the Head of the department concerned or to the head of the office if he is a Gazetted Officer, and in the case of a summons to a District Registrar or a Sub-Registrar of Assurances, it shall be addressed to the Registrar or Sub-Registrar in whose office or sub-office, as the case may be, the required records are kept. A summons for the production of revenue papers kept in any office in a District shall in all cases be directed to the Division Peishkar of the District.

Records in the custody of a public officer other than a Court.

Provided that, where the summons is for the production of village accounts, including field measurement books, such summons shall be addressed to the Tahsildar.

(3) Every application for such summons shall be made by a verified petition setting out (i) the document or documents the production of which is required, (ii) the relevancy of the document or documents, and (iii) in cases where the production of a certified copy would answer the purpose, whether application was made to the proper officer for a certified copy or copies and the result of such application.

(4) No Court shall issue such a summons unless it considers the production of the original necessary or is satisfied that the application for a certified copy has been duly made and has not been granted. The Court shall, in every case, record its reason in writing and shall require the applicant to deposit in Court, before the summons is issued, to abide the order of the Court, such sum as it may consider necessary to meet the estimated cost of making a copy of the document when produced.

(5) On production of the document in obedience to the summons, the Court shall direct a copy of it to be made at the expense of the applicant and, unless it thinks it necessary to retain the original, shall with all convenient speed return the original retaining the copy.

(6) Unless the Court requires the production of the original, every such summons to a Public officer shall state that he is at liberty to produce, instead of the original, a certified copy thereof.

(7) Nothing in the above Rules shall prevent a Court of its own motion from issuing a summons for the production of public records or other documents in the custody of a Public officer, if it thinks it necessary for the ends of justice to do so. The Court shall, in every such case, record its reasons in writing.

Receipt to be given when document retained.

49. If any such document is retained, a receipt containing a descriptive list of the document shall be given to the officer producing it and a duplicate of the receipt placed with the record or document. Any apparent erasure or alteration in any document shall be noted in the said list which shall be countersigned both by the officer of the Court taking charge of the document and the officer producing the document.

Instructions to be observed by Courts receiving or transmitting originals.

50. When an original document is received from or transmitted to other Courts or public offices, the following instructions shall be observed by the Courts receiving or transmitting the same :—

(*a*) As soon as any original document is received, the officer receiving it shall carefully inspect it, and if he finds any apparent erasure, overwriting or other alteration in it, he shall

make a memorandum thereof over his signature and get it attested by the presiding officer.

(*b*) Transmission of an original document to other Courts or public offices shall be in a sealed packet with a descriptive list of the same and shall be made by Anchal or Post registered or by special messenger as the case may be.

Mode of keeping originals received.

51. (1) Original documents produced by Public officers or received from other Courts or public offices shall, as long as they remain in the custody of the Court which required their production, be kept in a sealed packet properly labelled and the packet shall not be opened except in the presence of the presiding Judge.

Return of originals.

(2) Such documents shall be returned together with a descriptive list as soon as the suit, appeal or matter is disposed of, if the case is not appealable, and in other cases after the expiration of the period limited by law for appeal (due regard being had to the time taken for giving copies), unless in the meantime notice of appeal has been received, in which case the document will be sent up to the appellate Court along with the other records of the case and shall be returned as soon as the records are received back from the Court of appeal or special appeal. The provisions of Regulation III of 1057 and the Rules framed thereunder shall not apply to such a document until it has been returned to the Court or the Public officer by whom it was produced.

Deposit for postage costs.

52. If a record or document is required to be sent by Anchal or Post, the Court may direct the applicant to deposit in Court a sum sufficient to defray the postage of the same to and from the Court. *The amount deposited by the applicant shall directly be credited in the cash book and remitted to the Treasury as judicial revenue and the records transmitted with a note that the necessary Anchal charges have been levied. The Service Anchal Stamps shall be utilised by the Court for transmission and by the other Court for re-transmission. In case, the records have to be re-transmitted to a Court in British India, the necessary postage stamps for transmission and return, and to a Court in Cochin, the postage stamps for re-transmission, shall be purchased from the contingency allotted to the Court.* Unless the Court otherwise orders, the costs of and incidental to an application for production of records, which are material and relevant to the case, or which are sent for by the Court of its own accord, shall be costs in the case.

Exhibits.

53. Exhibits admitted in evidence shall be marked, if put in by the plaintiff or one of several plaintiffs, with capital letters of the alphabet, and if put in by the defendant or one of several defendants, with numerals. If the capital letters of the alphabet are exhausted, double capitals shall be used, such as AA to AZ, BA to BZ and so on.

Marking exhibits.

Note.—In marking the exhibits for plaintiff, the letters 'I,' 'V,' and 'X' shall be avoided.

54. A series of similar exhibits may be marked with the same capital letter and numerals in brackets, when put in by the plaintiff, or with the same numeral and small letters of the alphabet in brackets, when put in by the defendant.

Marking series.

55. The exhibits put in by one of several plaintiffs or defendants shall be marked consecutively with those put in by the other plaintiffs or defendants. (The same procedure shall be followed also in numbering the witnesses examined).

Consecutive marking and numbering.

56. If, in a proceeding subsequent to the trial of the suit or matter, further exhibits are admitted in evidence, they shall be marked with letters or numbers consecutive to the letter or number on the last exhibit previously filed.

Marking in subsequent proceeding.

57. If any party or his pleader desires to inspect any exhibit, he shall do so in open Court, at the hearing of the suit or matter; provided that, with the leave of the Judge, such inspection may be had in the presence of an officer of the Court, to be named by the Judge.

Inspection of exhibits.

58. When the genuineness of documents tendered by one party in evidence is admitted by the other, the latter or his Vakil shall be required to note on such documents the fact of the admission. At the final hearing the Judge should reject all documents neither admitted nor proved and make an endorsement on them to that effect. Documents, to prove which evidence is produced, shall be treated, for the purpose of marking, as proved. The marking of exhibits being a judicial act, parties and their Vakils should not be allowed in the list of documents to assign marks to the documents produced by them. The list should only describe the documents.

Admission and proof of documents to be noted.

59. Applications for the return of documents filed in Court shall be made to the Court in which they were originally filed. If any document has been transmitted to any other

Return of documents.

Court, the former Court shall itself apply to such Court for the re-transmission of the document and shall return it to the applicant.

Return of original documents.

60. *Taxed applications for return of documents are necessary only in the case of documents of which the return is demanded before disposal of suit. After disposal of the suit the parties are entitled to get back without a taxed application, such of the documents as can be returned.*

The following are the exceptions to the rule that all applications for return of documents before disposal of suit should be taxed :—

1. *Shop books or other books of account in current use filed along with the plaint and accompanied by a copy of the entry on which the plaintiff relies. The Court or any Officer as it appoints in this behalf shall forthwith mark the document for the purpose of identification and after examining and verifying the copy with the original shall if it is found correct certify it to be so and return the book to the plaintiff and cause the copy to be filed. The point of time to which this applies is the filing of the suit. If an account book is filed for being exhibited during the trial of the case and if a party requires its return after it is exhibited and before the disposal of the suit, the general rule of a taxed application should be insisted on.*

2. *Any of the following group of documents admitted in evidence may be returned without a taxed application on the filing of copies of necessary entries or passages prepared at the instance of the party on whose behalf it is produced.*

   (a) *Letter books or books of account belonging to a party or a third person.*

   (b) *Documents produced by a Public Officer.*

   (c) *Documents sent for from other Courts or Public Offices.*

   (d) *Documents produced by witnesses.*

3. *Documents rejected and documents produced but not tendered in evidence may be returned before disposal of suit without a taxed application.*

The following are exceptions to the rule that after disposal of suit documents should be returned without a taxed application.

(1) *Documents furnishing more causes of action than one.*

(2) *Documents which though the bases of the suit have to be retained by the party as for example when a suit is brought by the mortgagee on a usufructuary mortgage on the ground that possession is withheld and a decree is given to the plaintiff and he has to retain the document as a title deed during the continuance of the mortgage.*

Register for return of documents.

61. Every Court shall keep a register of applications for the return of documents. (Appendix III, Form No. 14).

Dismissal of application for return.

62. If the applicant does not appear and take back the documents within a week of the order granting his application, the application may be dismissed after putting up a notice in the Court's notice-board calling upon the applicant to take back the document within a month of such notice and after the expiry of the date fixed in such notice.

The first hearing of suits.

Examination of defendant when no written statement filed.

63. If a defendant, who has given his address for service, fails to present a written statement, he shall not on that ground alone be declared *ex parte*, so long as he puts in appearance either in person or by Vakil. The Courts shall, in such cases, ascertain by oral examination, the nature of the defence, if any, and frame issues after reducing such examination to writing.

Issue paper.

64. The following procedure shall ordinarily be followed by the Courts in settling issues in original suits and other proceedings of a similar nature under special enactments :—The several averments of the plaintiff as disclosed by the plaint, the plaintiff's written statement, if any, and other statements, if any, made by him at the time shall be arranged and numbered by the Court on the left hand side of a paper to be headed "the issue paper." The Court shall then note on the right hand side opposite to each such averment whether the same is admitted or denied by the defendant. Where the written statement of the defendant, besides admitting or denying the plaintiff's allegations, contains fresh averments material to the decision of the suit, such averments should be entered on the right hand side below the defendant's averments and the fact of the plaintiff's admission or denial noted on the left hand side. These statements shall be signed by the respective parties or Vakils in token of their correctness. The points upon which the parties are at issue being thus ascertained, the Court shall settle the issues in the case and enter them in continuation of the allegations recorded.

Framing of issues.

65. In framing issues, the Court shall proceed as follows :—

(1) Every material proposition of fact and every proposition of law, which is affirmed by the one side and denied by the other, shall be made the subject of a separate issue.

(2) Every issue of fact shall be so framed as to indicate on whom the burden of proof lies.

(3) Every issue of law shall be so framed as to indicate, either by a statement of admitted or alleged facts, or by reference to the pleadings or some document mentioned therein, the precise question of law to be decided.

(4) No proposition of fact which is not itself a material proposition, but is relevant only as tending to prove a material proposition, shall be made the subject of an issue.

Application for directions.

66. Any party may, at the first hearing, apply to the Court for directions as to any of the following matters :—

(1) The filing of a written statement by any party, stating the pleas raised by him or further and better particulars thereof ;

(2) Adding or striking out parties ;

(3) Discovery of documents and interrogatories ;

(4) Inspection or production of any document or public record ;

(5) Issue of a commission to examine witnesses, or for any other purpose ;

(6) Reference to an arbitrator ;

(7) Settlement by oath ;

(8) Any other matter or proceeding necessary to be considered or taken previously to the trial of the suit.

Unless the Court otherwise orders, not less than three days notice of such application, and of any affidavit filed in support thereof, shall be given by the applicant to the other parties to the suit.

Adjournment in consequence of application for commission, etc.

67. If an application for the issue of a commission to examine a witness, or with respect to any other matter mentioned in Rule 66, is made subsequently to the first hearing, and an adjournment of the further hearing is prayed, the adjournment shall not be allowed unless it is made to appear to the Court that the application could not, or ought not to, have been made at the first hearing.

Nothing in this Section shall prevent the Court from granting an adjournment for reasons to be recorded by it and on such terms as to costs or otherwise, if it thinks it necessary to do so.

Defendant's list of documents.

68. If the Court does not call for the production of the documentary evidence of the parties, under Section 133 of the Code,* it shall direct the defendant to file in Court a list of the documents on which he intends to rely and shall fix a time for the production thereof. The said list shall be in Appendix III,

* Section 133=Or. XIII, R. I (1).

Form No. 8, and shall be signed and verified by the party filing the same or by his pleader.

69. The list of documents produced by the parties or, at their instance, by witnesses or otherwise, shall be filed by the party concerned and shall be in Appendix III, Form No. 8.

Form of list.

70. In every contested original suit or proceeding, the presiding officer shall maintain a record called "order-sheet," wherein he shall in chronological order make a note in his own hand of all material incidents in the course of the trial of the suit or proceeding, such as the reasons for permitting a party to begin against the provisions of Section 174 of the Code, decisions as to questions of the admissibility of evidence, all other questions incidentally raised and decided, any special directions to or undertakings by parties or Vakils regarding the further progress of the suit or proceeding, and also dates to which the suit or proceeding is adjourned from time to time.

Order-sheet.

Notes of argument taken at the final hearing by the presiding officer will be appended to the 'order-sheet'.

Interlocutory proceedings.

71. (*a*) *Interlocutory applications shall be headed with the cause title of the plaint, original petition or appeal as in Appendix III, Form No 15.*

Forms.

(*b*) *The following interlocutory applications shall be supported by affidavits :—*

(*1*) *Application for adjournment :*

(*2*) *Application to implead additional parties or legal representatives of deceased parties :*

(*3*) *Application to set aside a decree or order passed against a party for default or ex parte:*

(*4*) *Application by a claimant or objector under Sections 275, 320, 321 or 324 of the Civil Procedure Code :*

(*5*) *Application for admitting an appeal, review, revision petition or objection memorandum presented out of time :*

(*6*) *Application to stay execution :*

(*7*) *Application to admit fresh document or other evidence in appeal or revision :*

(*8*) *Application to the High Court for transfer of a case from one Bench to another or from one Court to another :*

(*g*) *All applications which according to the provisions of the Civil Procedure Code have to be supported by affidavits*: *and*

(*10*) *Generally all applications containing prayers which a Court cannot grant without certain facts being proved.*

To state only order prayed for.

72. Except where otherwise provided by these Rules, or by any law for the time being in force, an interlocutory application shall state only the order prayed for, and shall not contain any statement of facts or argumentative matter. Every application in contravention of this Rule shall be returned for amendment or rejected.

Notice.

73. Unless the Court otherwise orders, notice of an interlocutory application shall be given to the other parties to the suit or matter or their pleader not less than three days before the day appointed for the hearing of the application.

Evidence.

74. Any facts required to be proved upon an interlocutory proceeding shall, unless otherwise provided by these Rules or ordered by the Court, be proved by affidavit; but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit, and lists of the witnesses and exhibits shall be prepared and annexed to the judgment.

Adjournments.

Adjournment to be to a day certain.

75. All adjournments shall be to a day certain, if possible, and the day shall be fixed with regard to the convenience of the parties and the business of the Court. Upon an application for an adjournment, the Court shall consider the interest of all parties and the particular circumstances of the case. The absence of the pleader of a party, or want of preparation on his part, whether arising from insufficient instructions, or otherwise, shall not of itself be a sufficient ground for an adjournment. Adjournment of cases, being a judicial act, should be made by the presiding officers themselves and not delegated to clerks.

Proceeding not to be adjourned *sine die*.

76. No suit, appeal, matter or proceeding shall, under any circumstances whatever, be adjourned *sine die*. If by inadvertance or owing to the non-sitting of the Court for a number of days, cases are left unadjourned to a day certain, notice, allowing sufficient time for the information of the parties, should be put up fixing the trial thereof to days certain.

77. Except where an adjournment is granted with the consent of all parties, or is necessitated by the business of the Court, or by the act or default of any other party, the party desiring an adjournment shall be ordered to pay the costs thereof, including the expenses of re-summoning the witnesses, if any, and the fee of the pleader of the other party.

Costs of adjournment.

78. (1) Any party, who desires that the hearing may be advanced, may apply therefor by interlocutory application, of which notice shall be given to the other party.

Advancement of hearing.

(2) The party served with notice may give to the other party or his pleader notice in writing that he consents to, or will oppose, such advancement.

Notice of consent.

79. When a case is adjourned by a Court otherwise than on the application of any party, the Court, on its own motion, must issue processes to the witnesses present in Court and serve them free of cost if the party concerned deposits the necessary mileage and subsistence money. In such cases no fresh application for issue of second summonses to the witnesses present in Court is necessary.

Service of processes on witnesses present.

80. A party wishing to examine witnesses shall file a list of such witnesses stating the full name, residence and description of each witness and whether he is to give evidence as an expert or otherwise or to produce any document and, in the latter case, specifying the date, if any, and description of the document so as to identify it (Appendix III, Form No. 16).

List of witnesses.

Summonses to witnesses.

81. Parties wishing to secure the attendance of witnesses through Court shall apply for the issue of processes to them and shall, along with such application, deposit in Court the prescribed fees for service of the processes and the total amount of the allowances to which the said witnesses are entitled as mileage and subsistence money and, in the case of an expert or scientific witness, for qualifying to give evidence. If the Court grants the application, the processes shall issue, provided that, in respect of first applications for summonses, the head ministerial officer may ordinarily direct their issue without obtaining orders from Court.

Application for summonses to witnesses.

81-A. *Mahomedan parties and witnesses shall as far as possible not be required to attend Court on Fridays.*

82. If the list is not filed or the application made, not less than 10 days before the date fixed for trial, processes shall not issue, unless the Court otherwise orders.

Time for filing list or application.

83. (1) Parties applying for summonses to witnesses shall deposit in Court the sums required for their travelling and other expenses according to the following scale :—

Deposit of subsistence money and mileage.

Class.	Subsistence money per diem	Mileage by road or canal	Railway fare.
First Class.	10½ Fanams.	8. Chs. per mile.	First Class.
Second Class.	5¼ ,,	4. Chs. ,,	Second Class.
Third Class.	3½ ,,	2 Chs. ,,	Third Class.

(2) When the whole or part of the journey could be made by railway, only railway fares will ordinarily be allowed for such distance.

(3) When a witness resides within a radius of one mile from the Court-house, he shall be entitled only to subsistence money and not to mileage. When he resides outside this radius, he shall be given mileage for the distance travelled to and from the Court-house and also subsistence money for every day of his attendance in Court.

(4) In the case of expert or scientific witnesses the fees shall be not less than Rs. 5 or not more than Rs. 25 as the Court may fix for qualifying to give evidence and not less than Rs. 2 or not more than Rs. 7 *per diem* as the Court may fix as subsistence money, in addition to the mileage prescribed for ordinary witnesses of his class.

Fees for expert witnesses.

(5) The Judge before whom the witness is required to appear will, in cases of dispute, fix the class, with due regard to the witness's station in life.

84. Appendix II, Forms Nos. 9, 10, and 11 will be used for summoning witnesses.

Forms of summonses to witnesses.

85. Appendix II, Form No. 12 will be used for issuing proclamation for the attendance of witnesses.

Form of proclamation.

86. All processes to public servants as witnesses shall be served either through their official superiors or after obtaining their counter-signature to the processes. The same procedure may be followed in issuing processes to them otherwise than as witnesses.

Service of processes on public servants.

Note.—Processes are, as a general rule, to be served by the Court process-servers. Process-servers entrusted with the service of processes on Government servants shall take them to the official superior of the addressees or, during his absence from his head-quarters, to his deputy, if any, and after obtaining the counter-signature of such officer or his deputy, in token of permission to the addressees to absent themselves from duty for the purpose of complying with the requisition of the Court, serve the processes themselves on the addressees and return them to the Court, unless the officer, to whom the processes are taken for counter-signature, thinks fit to serve them himself. In the latter case, the process-servers may leave the processes with him for service and obtain from the officer concerned an acknowledgment in writing of the delivery of the processes to him. The officer concerned will, after serving the processes, return the originals to the Court to which the process-server is attached. The counter-signature above referred to shall be sufficient authority for the addressees to accept service of the processes and absent themselves from duty to comply with the requisition made by the Courts, without formal orders from their superiors.

87. Whenever public servants appear before a Court in obedience to processes issued, they shall be furnished with a certificate under the hand of the presiding officer of the Court specifying the dates of their attendance and relief and, in the case of those attached to the military service, also with the hours thereof.

Certificate of attendance.

Affidavits.

88. *Affidavits intended for use in judicial proceedings may be sworn before any Court or Magistrate or a Judge of a Village Panchayat Court or any of the following Officers:— The Registrar, the Deputy Registrar and the Manager of the High Court, Sheristadars of the District Courts, Head Clerks of the District and Munsiffs' Courts, District Registrars, Sub-Registrars, Tahsildars, and Proverthicars, or Members of the Travancore Legislative Council, or Members of the Sri Mulam Popular Assembly or Presidents and Members of Municipal Councils or persons residing in Travancore upon whom a title has been conferred by the British Government or retired Officers of Government drawing a pension of not less than Rs. 50 per mensem.*

Before whom may be sworn.

89. Every person making an affidavit, if not personally known to the officer or person before whom the affidavit is taken, shall be identified by some person known to the officer or person, and the officer or person shall specify

Identification of declarant.

at the foot of the affidavit the name and description of him by whom the identification was made.

Filing.

90. Before any affidavit is used it shall be filed in Court, but the Judge may, with the consent of both parties, or in case of urgency, allow any affidavit to be presented to the Court and read on the hearing of an application.

Notice of filing.

91. The party filing an affidavit intended to be read in support of an application shall give not less than two days' notice thereof to the other parties, who shall be entitled to inspect and obtain copies of the same, and to file counter-affidavits, and shall give notice thereof to the applicant, who may inspect and obtain copies of the same, and file affidavits in reply; but, except with the leave of the Court, no further affidavit shall be filed or read. If any party fails to give notice of filing an affidavit, the Court may grant an adjournment of the hearing, and order the party in default to pay the costs thereof.

Form.

92. Every affidavit shall be drawn up in the first person and divided into paragraphs numbered consecutively; and each paragraph, as nearly as may be, shall be confined to a distinct portion of the subject.

Name, age, &c., of deponent.

93. Every affidavit shall state the full name, age, description and place of abode of the deponent and shall be signed or marked by him. Except in the case of a European or Eurasian, the description shall include the father's or Karanavan's (husband's or mother's) name as the case may be, and the religion or caste of the deponent.

Alterations and interlineations.

94. Alterations and interlineations shall, before an affidavit is sworn or affirmed, be authenticated by the initials of the officer before whom the affidavit is taken, and no affidavit having therein any alteration or interlineation not so authenticated, or any erasure, shall, except with the leave of the Court, be filed or made use of in any matter.

Statement of officer before whom affidavit sworn.

95. The officer, before whom an affidavit is taken, shall state the date on which, and the place where, the same is taken and sign his name and description at the end, as in Appendix II, Form No. 13; otherwise the same shall not be filed or read in any matter without the leave of the Court.

Blind or illiterate deponent.

96. When an affidavit is sworn or affirmed by any person who appears to the officer taking the affidavit to be illiterate, blind, or unacquainted with the language in which the affidavit is written, the officer shall certify that the

affidavit was read, translated or explained in his presence to the deponent, that the deponent seemed to understand it and made his signature or mark in the presence of the officer as noted in the form; otherwise the affidavit shall not be used in evidence.

Endorsement.

97. Every affidavit shall bear an endorsement stating on whose behalf it is filed.

Matter of opinion.

98. Every affidavit stating any matter of opinion shall show the qualification of the deponent to express such opinion, by reference to the length of experience, acquaintance with the person or matter as to which the opinion is expressed, or other means of knowledge of the deponent.

Information and belief.

99. Every affidavit containing statements made on the information or belief of the deponent shall state the source or ground of the information or belief.

Documents referred to.

100. Documents referred to by affidavit shall be referred to as exhibits and shall be marked in the same manner as exhibits admitted by the Court, and shall bear the certificate noted in the form aforesaid, which shall be signed by the officer before whom the affidavit is taken.

Cross-examination.

101. The Court may at any time direct that any person shall attend to be cross-examined on his affidavit.

Oath and affirmation.

Swearing to be on religious books.

102. (1) Witnesses shall, as a rule, be sworn on religious books preliminary to giving evidence. Christian witnesses should swear on the Bible, Hindus on the Ramayana or any other religious book which people of the witnesses' class and persuasion hold sacred, Mahomedans on the Koran, and witnesses of other creed or persuasion on their sacred books.

Form of oath to be administered.

(2) The following shall be the form of oath to be administered to witnesses of all creeds :—

"The evidence which you shall give touching the matter now before the Court shall be the truth, the whole truth and nothing but the truth. So help you God."

Form of oath to be taken.

(3) When oath is administered to a witness, he shall be required to take his religious book in his hand and to repeat the words "I swear upon the.....I hold in my hand that the evidence which I shall give touching the matter now before the Court shall be the truth, the whole truth and nothing but the truth. So help me God."

(4) Witnesses, who have religious scruples to making an oath, may be solemnly affirmed.

Solemn affirmation.

(5) The following shall be the form of solemn affirmation :—

Form of solemn affirmation.

"I solemnly affirm in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but the truth."

(6) If a witness objects to making a solemn affirmation or is a child, the following affirmation shall be made by him :—

Form of affirmation.

"I affirm that what I shall state shall be the truth, the whole truth and nothing but the truth."

(7) If any party to, or witnesses in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency and not purporting to affect any third person, the Court may, if it thinks fit, tender such oath or affirmation to him.

Form of oath in special cases.

103. If a witness professing the Mahomedan religion, who is to be sworn on the Koran previous to giving his evidence, desires to be sworn after performing the usual ablutions, he may be allowed to do so, whenever practicable. Where there is a Mahomedan employee attached to the Court in whatsoever capacity, the Koran shall be handed over, and the oath administered, by that employee to the Mahomedan witness. In the absence of such an employee, the Koran which should be kept on the Bench-clerk's table may be taken and opened by the Mahomedan witness himself. If there is no other Mahomedan present in Court who can read the form of oath prescribed and administer the same to the witness, the Bench-clerk may read the form, a sheet containing the form in Malayalam and Tamil being always left on the Bench-clerk's table. The copy of the Koran supplied to the Courts for swearing Mahomedan witnesses on shall be kept covered in a clean cloth case specially made for the purpose.

Mahomedan witnesses.

104. Forms Nos. 1, 2 and 3 of Appendix III, Form No. 17, shall be used in cases where an interpreter, other than an official interpreter of the Courts, is employed.

Forms.

105. In the heading of all depositions of witnesses and statements, should be given the full name of the deponent, his or her family name or Tarwad name, his or her father's or mother's or uncle's name or her husband's name (if the party be a married Makkathayee woman), the religion, caste, if any,

Heading of depositions.

profession, age and the village or Proverthy in which the deponent resides. The heading shall also state the name and the occupation of the person by whom the witness was sworn.

Signing of depositions.

106. All witnesses who are able to write their names should be required to add, in their own hand, their names to the "Oppu" (mark or signature) if any which they affix to their depositions. When the witness is unable to write his name, the Bench-clerk or other officer obtaining his signature shall himself enter the full name of the witness.

Original Petitions.

Original potitions.

107. Original petitions shall be heard and determined in the same manner as original suits.

Judgments, decrees and orders.

Form of judgment.

108. Every judgment shall be headed with the full cause-title of the suit, appeal or matter, the name of the Judge, the day of the week and the date on which it was passed (the Malabar date, month and year and the corresponding English date, month and year being shown), and shall give the names of the parties, or their pleaders, who appeared at the hearing. It shall be drawn up in consecutively numbered paragraphs and shall further state the date or dates on which the case was heard (Appendix II, Forms Nos. 14 and 59). A list of the exhibits filed and witnesses examined shall also be annexed thereto, the nature of the exhibits, the parties thereto, and the dates thereof, being specified in each instance with brevity.

Explanation.—In the case of original suits, original petitions, contested interlocutory applications, execution petitions and execution applications, the expression "the date or dates on which the case was heard" means the date or dates on which evidence was recorded and the date or dates on which final arguments were heard in respect of them.

Decree.

109. Every decree shall be headed with the full cause-title of the suit, appeal or matter, the name of the Judge, the day of the week, and the date on which the suit, appeal or matter was filed and the date on which the decree was passed (the Malabar date, month and year and the corresponding English date, month and year being shown), and shall state the names of the parties, or their pleaders, who appeared at the hearing. It shall be drawn up in consecutively numbered paragraphs (Appendix III, Forms Nos. 18 and 19) and shall bear the seal of the Court.

Decree left unsigned by Judge.

110. If decrees are left unsigned by a Judge who has died, vacated the office or quitted the station after delivering judgments in open Court, such decrees may be signed for him by his successor.

Original decrees.

111. Original decrees should be explicit and not call for reference to any other documents.

Note.—Decrees in suits for ejectment brought by Jenmis under Section 10 of the Jenmi and Kudiyan Regulation shall set out fully the several particulars enumerated in that Section and shall not be defective in any particular.

Decrees in suits under the Jenmi and Kudiyan Regulation

Proportionate costs.

112. (1) When partial or proportionate costs are awarded by the decree, the total costs so awarded and the amount on which the same are calculated shall be specified in the decree.

(2) Whenever proportionate costs are decreed, it is only the Court-fees paid on the plaint or appeal memorandum and the Vakil's fee that shall be apportioned. The other costs shall be borne by the parties who have incurred them, unless the judgment gives distinct instructions as to the apportionment of all or any of them.

Specification of periodical payments.

113. Where periodical payments are directed, the decree or order shall specify the date of the first payment, and the day of each month or year on which the subsequent payments are to be made.

Statement of particulars as to immovable property.

114. Every decree with respect to immovable property shall give in a tabular form a description stating the particulars specified in Rule 13 with such modifications in the description, as may be brought out in the course of the trial.

Interest on costs.

115. In cases in which the judgment provides for the payment of costs of the litigation, the decree shall, in the absence of a provision in the judgment itself as to the rate of interest on such costs, specify that interest at the rate of six per cent per annum will be allowed thereon from the date of the decree up to the date of realization; but the total amount of such interest shall not exceed one-half of the amount of costs allowed by the decree.

Decrees for sale of hypotheca.

116. Decrees for sale of hypothecated property in default of payment shall be in Appendix III, Form No. 20.

117. The judgment and final order in matters other than suits or appeals, including contested interlocutory applications, execution petitions, and execution applications, shall be drawn up in the same manner as the judgment in a suit, and a table of costs shall be appended thereto.

Judgments and orders in matters other than suits.

118. An order, setting aside an *ex parte* decree or order, under which a party has recovered any money or property, shall ordinarily contain a direction that the same be brought into Court or possession thereof be restored to the party from whom it was recovered or be delivered to a receiver, pending the final disposal of the suit or matter.

Setting aside *ex parte* decree where money or property recovered.

If a decree is then passed dismissing the suit or matter, it shall be drawn up in Appendix III, Form No. 21.

119. Decrees passed by the District Courts in appeals decided by them shall also state the amount of the costs incurred by the parties therefo in the Court of first instance.

Appellate decrees to state amount of costs in original Court.

120. If more than one appeal is made against the same decree, the appeals shall, if possible, be heard together and one decree only shall be drawn up which shall be headed with the cause-titles of the several appeals.

Several appeals against same decree.

121. In preparing the table of costs appended to decrees, institution fees for the refund of which provision is made in the judgment, excess fees paid by mistake, unexpended process fees and subsistence money, day's costs imposed for laches and costs of adjournment, etc., incurred for the convenience of either party and not attributable to the fault of the opposite side, should be excluded.

What items of costs to be excluded in preparing decrees.

122. Expenses incurred by the parties in preparing copies of documents produced in Court and in procuring authenticated copies of material records connected with the case, whether from the Court itself or from any other public office, shall be included in the table of costs appended to decrees and dealt with as other costs.

Expenses for copies to be included.

123. Every party shall, within a week from the date of judgment or order or such further period as may be allowed by the Court, bring into Court a statement signed by him and his pleader, if any, of the costs and expenses incurred by him and may include therein the cost of production of any public record

Statement of costs and expenses to be filed.

or copy thereof and of any adjournment or interlocutory application allowed to him. The said statement shall be checked by the decree-writer of the Court, who shall note thereon the sums, if any, disallowed and the total amount allowed by him and shall sign and enter the same in the table of costs appended to the decree. If any party makes default in filing the said statement, the decree-writer shall prepare the table from the records, and the parties shall be bound by the same.

Consequence of default.

Withdrawal of suit or appeal.

124. Notice of an application for leave to withdraw from a suit, matter, or appeal, shall be given to all parties who have appeared at the first hearing; or, if the application is made before the first hearing, then, to all parties who have filed an appointment of a pleader.

Notice of application for leave to withdraw.

125. Unless the Court otherwise orders, an order under Section 357 of the Code permitting a party to withdraw from a suit, matter, or appeal, shall be made conditional upon payment of the costs of the defendant or respondent (Appendix II, Form No. 44).

Withdrawal conditional on payment of costs.

126. To consent to a compromise or settlement by oath, a Vakil should, in the absence of a specific authority to that effect in his original vakalat, produce a special vakalat from his client.

Production of special vakalat.

Commissions.

127. Every application for the issue of a commission shall be supported by an affidavit setting forth the grounds upon which such application is made, and shall, when necessary, also state the particulars to be ascertained by the commissioner. The opposite party may also, when he considers necessary, state in writing the facts which he requires the commissioner to ascertain.

Application for commission.

128. The Court shall thereupon fix the amount of the commissioner's fees, and the estimated other incidental expenses, if any, and subject to the provisions of Rule 171, direct payment thereof into Court, on a day to be fixed by the Court; and the commission shall not be issued unless the sum fixed by the Court for the purposes aforesaid is paid into Court within the period limited therefor: Provided that the Court may, from time to time, on the application of any party, direct that any further sum be brought into Court by any party.

Commissioner's fees to be paid into Court.

Return of commission.

129. Every order for the issue of a commission shall appoint a period within which the return of the commissioner is to be filed in Court. An application by any party for the extension of the said period may be made by interlocutory application, upon notice to the other parties to the suit or matter, and shall be supported by affidavit setting forth the grounds on which the extension is prayed. If the commissioner wants additional time, he should apply to the Court stating the reasons for the same and obtain an extension.

Local inspection by Judge.

130. When a Judge bases his decision of any fact on the results of local inspection made by him, he should place on record a note or memorandum of the facts observed by him at such inspection with a view to enable the Court of Appeal or Revision to form an opinion on the same.

Commission orders.

131. The processes that are to be treated as commission orders and entrusted to commissioners for execution will usually be the following :—

(*a*) For local investigation, such as (1) measurement of area of lands and reporting on the condition, etc., of properties of all kinds ; (2) taking plans ; (3) valuing properties, improvements or wastages ; (4) estimating pattom or mesne profits ;

(*b*) For examination of witnesses out of Court ;

(*c*) For taking accounts and

(*d*) For seeing oath agreements of parties carried out.

Amount of commissioner's fees and mileage.

132. (1) In respect of orders for oath, the fee to be levied from the parties and paid to the commissioner shall not exceed Rs. 2 in a Munsiff's Court and Rs. 4 in a District Court. Where, however, the distance to be travelled each way exceeds two miles from the Court-house, a mileage at the rate of two annas per mile may also be levied from the parties and paid to the commissioner.

(2) In the case of orders coming under heads (*a*) to (*c*) of Rule 131, a fee not exceeding Rs. 25 in a Munsiff's Court and Rs. 50 in a District Court, with a mileage as fixed in the preceding paragraph, may be levied from the parties and paid to the commissioner. If the nature of the work to be done is such that a higher remuneration is considered necessary, the special sanction of the High Court for its levy and payment shall be previously obtained.

Objections to commissioner's report.

133. The payment of commission fees shall be deferred until the report is accepted by the Court which issued it. Objections to the commissioner's report may be filed within a week after the receipt of the report is notified on the notice board of the Court or within such further time as the Court may grant on an interlocutory application by the party desirous of filing objections. Such objections shall be disposed of as early as practicable after hearing the parties.

Delegation in commission for examination of witnesses.

134. When under the provisions of Chapter XXV of the Code for the examination of witnesses, who could not be compelled to appear and give evidence before a Civil Court, a commission is issued to a Judge or Munsiff presiding over another Court, a specific clause, authorizing the delegation of the execution of the commission to any of his subordinates or to any other person whom he considers competent to execute the same, should be added (Appendix II, Form 46).

Form of commission.

135. Commission for local investigation and to examine accounts shall be issued in Appendix II, Form No. 47.

Commission for ascertaining improvements and market value.

136. Commissioners deputed for assessing improvements and ascertaining the market value of garden lands should show in their reports the following particulars :—

1. The area of the property ;
2. The lie of the property, *i. e.*, whether it is of uniform level or whether it slopes in any direction, whether it is terraced, etc ;
3. The nature of the soil, *i. e.*, whether lateritic, gravelly, sandy, or clayey, etc.
4. The distance of the property from the nearest cartable road or navigable stream and the means of access from the same to the property ;
5. Average distance between the different trees ; the commissioner should state also whether the garden is too shady or not ;
6. In the case of cocoanut trees, the height and girth, the age of the tree, and the number of *madals* or fronds of each tree, and if the tree is bearing, the number of bunches, number of nuts in each bunch, the annual yield, its value, the capitalised value of the tree, and the time when it began to bear, and the number of years for which a tree of that sort will be bearing in the locality ;

7. In the case of arecanut trees, the height, girth and the number of bunches with the nuts, if any, and also the age as mentioned in paragraph 6, and the capitalised value of the tree; and

8. In the case of other trees, the height, girth and age and, if possible, the annual yield as also the cubic contents of any timber that may be had from the tree.

Wherever possible the particulars referred to in paragraphs 6, 7 and 8 above may be put in a tabular form.

Commission to translate accounts and other documents.

137. The Court may, in any suit, issue a commission to such persons as it thinks fit to translate or transliterate accounts and other documents which are not in English or in the language of the Court. The report of the commissioner shall be evidence in the suit and shall form part of the record.

Selection of commissioner.

138. When commission orders have to be issued, the parties or Vakils on both sides should be requested to make their suggestion as to the person or persons whom they would like to be deputed for the work. In case they do not name any individual, a statement to that effect should be taken from them. When the parties do not agree as to the persons to be deputed or when they fail to suggest any names, the Courts should exercise their discretion in selecting a suitable person or persons from among those whose names are borne on the list of commissioners.

Minors and persons under disability.

Plaint or original petition on behalf of minor.

139. When a plaint or original petition is presented by a person as the next friend of a plaintiff, who is a minor or under disability, he shall at the same time file an affidavit by some disinterested person that he has no interest, direct or indirect, in the subject-matter of the suit or matter, adverse to that of the plaintiff, that he is not a defendant or respondent in the suit or matter, and that he is a fit and proper person to act as next friend.

Appointment of guardian *ad litem*.

140. If the plaintiff applies for the appointment of a guardian *ad litem* of a minor defendant, notice of the application shall be given to the proposed guardian, (Appendix III, Form No. 22).

Placing guardian in funds.

141. When a guardian *ad litem* of a defendant, who is a minor or a person under disability, is appointed, and it is made to appear to the Court that the guardian is not in possession of any, or sufficient funds for the conduct of the suit on behalf of the said defendant, and that the defendant will be

prejudiced in his defence thereby, the Court may, from time to time, order the plaintift to pay, through the Court, moneys to the guardian for the purpose of his defence, and all moneys so paid shall form part of the costs of the plaintiff in the suit. The order may be made conditional upon the guardian filing in Court his account of the money so received by him.

Court officer as guardian *ad litem*.

142. Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be the guardian, and may direct that the costs to be incurred by that officer in the performance of his duties as guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of the costs as justice and the circumstances of the case may require.

Decree for compromise.

143. (1) Where an application is made to the Court for leave to enter into an agreement or compromise on behalf of a minor or other person under disability and such minor or other person under disability is represented by pleader, the pleader shall file in Court with the application a certificate to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of such minor or other person under disability.

(2) A decree or order for the compromise of a suit, appeal or matter, to which a minor or other person under disability is a party, shall recite the sanction of the Court thereto, and shall set out the terms of the compromise.

Order appointing guardian necessary.

144. No person shall be allowed to act as the next friend or guardian *ad litem* of a minor or other person under disability who is a party to a suit unless the Court has made an order recognizing or appointing him as such.

Description of parties in suits by or againt persons under disability.

145. (1) In all suits brought on behalf of, or against, a minor, or other person under disability, his or her name (with full description) should appear in the pleadings and decree, as plaintiff or defendant, as the case may be. The name of the next friend or guardian should not appear as plaintiff or defendant, but an entry may be made to the following effect :—

A. B. (minor), plaintiff, by his next friend C. D. or

E. F. (lunatic), defendant, by his guardian G. H.

(2) If the next friend or guardian happens to have some interest in the litigation *in his own right* (but not otherwise) his name and description should appear *as additional plaintiff or defendant*. In such cases, the entry many be as follows :—

1. A. B. (minor), 1st plaintiff, by his next friend C. D.

2. C. D., 2nd plaintiff,

or

1. E. F. (lunatic), 1st defendant, by his guardian G. H.
2. G. H., 2nd defendant.

146. An application for the appointment of a guardian for the suit, of a minor or other person under disability, shall not be combined with an application for the bringing on record the legal representatives of a deceased plaintiff or defendant (appellant or respondent). The applications shall be by separate petitions.

Application not to be combined with petition to implead legal representative.

147. Where a minor or other person under disability has a guardian appointed or declared by competent authority, no person other than the guardian so appointed or declared shall act as the next friend of such ward or be appointed his guardian for the suit, unless the Court considers, for reasons to be recorded, that it is for the ward's welfare that another person be permitted to act or be appointed, as the case may be.

Legal guardian to be guardian for suit.

CHAPTER IV.

Taking accounts.

148. If, in any suit or matter, it is necessary to take an account, the interim decree shall specify the nature of the account, and the date from which it is to be taken, and, if the account is to be taken by the Court, shall direct by whom a statement of account is to be filed, and limit the periods within which statements of account, objection, and surcharge, shall respectively be filed in Court, as in Appendix III, Form No. 23. The suit or matter shall then be adjourned to a fixed day.

Directions as to taking accounts.

149. (1) A statement of account shall be in the form of a debtor and creditor account and shall be verified by the affidavit of the accounting party or his agent. The items on each side of the account shall be numbered consecutively, and the balance shall be shown.

Form.

(2) A statement of objection to an account, or to the report of the commissioner, shall specify the items to which objection is taken, by reference to their number in the account or report, or the date of the item and page of a particular book of account or otherwise, as in Appendix III, Form No. 24.

(3) A statement of surcharge shall specify the amount with receipt of which it is sought to charge the accounting party, the date when, the person from whom, and the particular account on which, the same was received by him, as in Appendix III, Form No. 24.

(4) A statement of objection or surcharge shall also state shortly and concisely the grounds of the objection or surcharge; and shall also state the balance, if any, admitted or claimed to be due, as in Appendix III, Form No. 24.

Inspection.

150. Every party to the suit or matter shall be at liberty to inspect and take notes of a statement of account, balance sheet, statement of objection and surcharge, or report or proceedings of a commissioner, when filed in Court.

Determination by Court.

151. On the adjourned hearing the Court shall consider the objections and surcharges made, and determine the amount due.

Extension of time to file statement of account.

152. If any party has not filed his statement of account or of objection and surcharge, within the period limited, the Court may from time to time extend such period or direct any other party to file a statement of account, or proceed to decide the suit forthwith on the evidence before it. Evidence shall not be admitted with respect to an objection or surcharge not included in a statement of objection or surcharge.

Periodical filing.

153. When a person is directed to file his accounts periodically, the Court shall fix the dates in each year before which his statement of account and balance sheet are to be filed and on which the same will be considered by the Court.

Reference to a commissioner to vouch or take accounts.

Appointment of commissioner.

154. If a commissioner is appointed, the order appointing him shall specify the several dates before which his report, and the objections of the several parties thereto, shall respectively be filed in Court, and the suit or matter shall be adjourned to a fixed day.

Appointment to audit.

155. If the Court finds that the books of account have been regularly and properly kept, and correctly represent all the dealings and transactions in question, the Court may appoint a commissioner to audit the accounts and vouch the items thereof, and to prepare a statement of account and balance sheet, as in Appendix III, Form No. 25.

156. If the Court finds that any items have been included in the books of account which do not form part of the transactions in question, or are not properly chargeable to any party or that any transactions have not been included in the said books, it shall declare generally the nature of the transactions or items, to be excluded or included in taking the accounts, as in Appendix III, Form No. 26, and the commissioner shall be empowered to state what, in his opinion, should be allowed or disallowed in these respects, as in Appendix III, Form No. 27.

Declaration by Court.

157. The commissioner shall make his report in manner prescribed by Appendix III, Form No. 28, and shall annex thereto a statement of the proceedings had before him, together with lists of the witnesses examined and exhibits marked by him. If he is empowered to state his opinion on the matter referred to him, he shall append to his report schedules setting out the several contested items allowed or disallowed by him, and stating shortly his reasons for so doing, as in the said form.

Report of commissioner.

158. At the adjourned hearing of the suit, the Court shall consider the objections, if any, of the several parties, to the statement of account and balance sheet or to the report of the commissioner, and may, if necessary, direct any party to bring in a fresh account and balance sheet, or refer the report to the commissioner, with fresh directions as to the manner of vouching or taking the accounts.

Consideration by Court.

CHAPTER V.

Payment into and out of Court.

Payment into Court.

159. A person desirous of paying money into Court, hereinafter called the payer, shall bring into Court a lodgment schedule in Appendix III, Form No. 29, headed with the cause-title of the suit, appeal or matter, and the particular account therein, if any, to which the money is to be credited, and stating the decree or order, if any, in pursuance of which the payment is made, or the reason for the payment, and the several sums and the total amount to be paid into Court. A chalan (order for lodgment and counterfoil receipt) stating the date of issue, and bearing a serial number, shall then be filled in, except as to the date of payment and the signature of the receiving officer, by the clerk concerned and issued to the payer.

Lodgment schedule to be brought in.

160. The payer shall deliver the money and the order and counterfoil receipt to the treasury officer mentioned therein, who will retain the order and return the receipt, duly signed and dated, to the payer, who shall return the said receipt to the Court.

Delivery to treasury officer.

161. If the treasury is closed, the money may, with the leave of the Judge, be paid to the head ministerial officer of the Court and the payment shall forthwith be entered in the cash-book. In such case the lodgment schedule shall be endorsed with a receipt to be signed by the Judge, and the amount shall, on the next day on which the treasury is open, be sent, together with an order and counterfoil receipt, by the head ministerial officer of the Court, to the treasury officer, who will return the said receipt to the Court.

When treasury is closed.

In the case of deposits by purchasers in Court auctions when the deposit is made when the treasury is closed, the payment should be made to the officer conducting the sale. The payment shall be entered forthwith in the cash-book and the money left for safe custody with the head ministerial officer until the next day on which the treasury is open. The lodgment schedule shall be endorsed with a receipt to be signed by the Judge, and shall also be signed by the head ministerial officer in token of his having received the money. A chalan (lodgment order and counterfoil receipt) shall also be issued on the same day. On the next day on which the treasury is open, the officer of the Court to whom the money was originally paid shall receive it back from the head ministerial officer, and shall, in token of having done so, sign the lodgment schedule; and he shall with all convenient speed produce the money together with the order and counterfoil receipt before the treasury officer, who will return the said receipt duly signed and dated to the said officer, who shall return the said receipt to the Court. The number of the treasury receipt shall then be forthwith entered in the register of chalans (Appendix III, Form No. 30). The same procedure shall apply, as far as may be, to amounts collected by amins and peons on warrants of attachment or warrants of arrest when the money is brought into Court when the treasury is closed.

162. Upon the return of the said receipt to the Court under the preceding Rules a receipt signed by the Judge shall be issued to the payer.

Receipt.

163. Unless it appears to the Court that the personal attendance of the party is necessary, money payable in satisfaction of a decree or order may be transmitted to the Court by Anchal hundi, Postal money order, or in Government of India currency notes. In such case, the payer shall, before transmitting

Transmission of money payable in satisfaction of decree.

the money, send to the Court in a prepaid registered cover, a lodgment schedule in the Form prescribed by Rule 159, and stating the manner in which the money is to be sent.

Payment out.

164. If the person entitled to immediate receipt of the amount, or his duly authorised agent, is present at the Court with the payer, the money may, with the leave of the Judge, be paid at once to the person so entitled or the said agent. In such case, an order for payment of the money to the person so entitled shall be passed by the Judge on the lodgment schedule and the said amount shall be disbursed to him on his executing a receipt therefor; and satisfaction *pro tanto* of the decree or order, if any, in pursuance of which the money is paid, shall be entered up. A receipt signed by the Judge shall also be issued to the payer and the transaction entered in the cash-book.

Payment out of Court.

Payment to be made on order of Judge.

165. Except as provided by Rules 164 and 173, payment of money out of Court shall be made only upon the order of the Judge, made at the hearing of a suit, appeal, or matter, or upon an interlocutory or execution application, supported by affidavit showing how the applicant is entitled to receive payment.

Order for payment.

166. The order may be for payment to the applicant or his duly authorised agent; provided that payment shall not be directed to be made to the pleader of the applicant, unless his vakalat contains an express authority for this purpose, and if such payment is directed, the full name of the pleader shall be inserted in the order of the Judge.

Payment schedule to be brought in.

167. A person desirous of obtaining payment of money out of Court, hereinafter called the payee, shall bring into Court a payment schedule, in Appendix III, Form No. 31, headed with the cause-title of the suit, appeal or matter, and the particular account, if any, to which the payment is to be debited, and stating the decree or order authorising the payment, and the several sums, and the total amount, to be paid out of Court and also a receipt for the said amount, signed by the payee. If the payee is the agent of the person entitled to receive the money, he shall also file a power-of-attorney, duly stamped, authorising him to receive payment. A cheque (order for payment and counterfoil receipt) stating the date of issue, the amount to be paid, and the account to which the payment is to be debited, shall then be issued to the payee.

168. The order shall be presented for payment within the account month in which it is issued; and, if not presented within the period, shall be returned to the Court; and may then, after being re-dated and initialled by the Judge, be re-issued to the payee.

Presentation of order.

169. On payment of the amount of the order, the payee shall sign a receipt therefor endorsed on the order.

Receipt by payee.

Delivery of securities and other valuables into and out of Court.

170. The foregoing Rules shall apply to the delivery of securities, jewellery or other valuables, into and out of Court, with the following modifications :—

Delivery of securities, etc., into and out of Court.

(i) Debenture bonds issued by the Government of Travancore shall be endorsed to " the Judge of the Court of....." according to the instructions laid down therefor.

(ii) Government of India Promissory Notes and other negotiable securities shall be endorsed to "the Judge of the Court of....."

(iii) When jewellery or other valuables are to be brought into Court, two copies of a descriptive list thereof shall be presented with the lodgment schedule, and shall be checked and signed by the officer of the Court in the presence of the depositor. The jewellery or other valuables shall be placed in a box furnished with a lock and key, to be provided by the depositor. The box shall then be locked and sealed with the seal of the Court, and forwarded by the Court to the treasury officer together with one of the copies of the said list, and the key shall be retained by the officer of the Court. The remaining copy of the said list shall be returned to the depositor; and on the return of the counterfoil receipt by the treasury officer, a receipt signed by the Judge shall be given to the depositor, in exchange for the said descriptive list.

Cash deposits.

171. Notwithstanding anything contained in this Chapter, moneys for any of the purposes hereunder mentioned may be paid in cash to the head ministerial or other officer of the Court authorised by the Judge :—

Cases where payment may be made in cash to Court.

(1) Services of summons in respect of which the fees cannot be paid in stamps;

(2) Allowances to witnesses;

(3) Commission fees;

(4) Money order commission for transmission of commissioners' fees;

(5) Judgment-debtors' subsistence moneys;

(6) Tom-tom charges;

(7) Charges for the conveyance of attached property and for feeding attached cattle;

(8) Postage and other charges for calling for records for reference, etc.:

(9) Search fees, *and*

(*10*) *Printing charges.*

Provided that as regards commission fees in excess of *Rs. 15 in the case of the Kanjirapally Munsiff's Court and of Rs. 7 in the case of the other Courts*, the procedure prescribed by Rules 159 to 169 inclusive, shall be followed.

Presentation of receipt.

172. The person making any such deposit as aforesaid, shall present therewith a receipt, in Appendix III, Form No. 32, headed with the cause-title of the suit, appeal or matter, and specifying the purpose for which the deposit is made; the receipt shall be signed by the said officer and returned forthwith to the depositor.

Repayment.

173. (1) The repayment of any cash, which, has not been expended for the purpose for which the same was deposited, shall be made upon the production of the said receipt, and under the immediate superintendence of the Judge who shall satisfy himself as to the identity of the person to whom such repayment is made, and of his authority to receive it.

(2) If the applicant is unable to produce the said receipt, he shall file an affidavit accounting for its non-production.

CHAPTER VI.

Sale of Property Under Order of Court.

Conduct of sale under order of Court.

174. Subject to the provisions of Rules 240 to 242 with respect to the sale of attached property, a sale by public auction of any property, when directed in any suit or matter, shall be conducted in manner prescribed by this Chapter.

Affidavits.

175. Before an order for the issue of proclamation is passed, the Court shall direct the party applying for the sale, hereinafter called "the applicant", to bring into Court an affidavit or affidavits by himself or some other person acquainted with the property, giving the particulars prescribed by Section 284 of the Code, and

also stating what, in his opinion, is the best time and place of sale and method of advertising the same, the lots, if any, into which the property should be divided, and the approximate value of the property or the several lots, as the case may be.

Matters to be determined by Court.

176. The Court shall determine the lots, if any, in which the property shall be sold; the manner of advertising the sale; and the probable expenses thereof; and shall fix the date and place of sale, and, after giving notice to the judgment-debtor or other party to the suit or matter whose property is to be sold and hearing his objections, if any, settle the proclamation of sale (Appendix II, Forms Nos. 30 and 31).

Appointment of person to sell.

177. The Court may, if it is made to appear by affidavit or otherwise that a more advantageous sale can be had thereby or for other sufficient reason, appoint a fit person, other than an officer of the Court or a pleader, to sell the property; and may fix as his remuneration a sum certain, or a percentage on the net sale proceeds. Such remuneration shall include all personal and travelling expenses but not the expenses of the sale.

Proclamation of sale.

178. The proclamation of sale, when settled by the Judge, shall be signed by him, and an order for sale shall then be made; and the further hearing of the suit or matter shall be adjourned to a day which shall be ordinarily not more than thirty-one days from the day fixed by the Court for the sale.

Production of title deeds by encumbrancer.

179. Where any encumbrance existing on the property shall be discharged from the sale proceeds, the Court shall have power to direct the encumbrancer to produce the title deeds or duly attested copies thereof and to deliver the same to the purchaser.

Costs of proceedings.

180. The costs of the proceedings upon the settlement of the proclamation shall be paid in the first instance by the decree-holder but they shall be allowed as part of costs of execution unless the Court shall otherwise direct.

Combination and sub-division of lots.

181. With the consent of the judgment-debtor or for sufficient reason, the Court may combine or sub-divide lots. The order in which the lots shall be sold shall be determined by the Court.

Publication of proclamation of sale in newspapers.

182. The Court may, of its own motion, or on the application of a party to the suit or proceeding, order the publication, at the cost of the applicant, of the proclamation of sale of immovable property or an abstract thereof

in local newspapers in cases where the value of the property to be sold exceeds Rs. 1000.

Auction.

183. Immovable properties advertised for sale shall ordinarily be auctioned at the spot only on one day and at the Court-house for three days.

Commencement and closing of auction.

184. All auction sales held in the District and Munsifs' Courts shall commence at 12-45 P. M., and the sale of any lots not put up before 2 15 P. M., shall be adjourned to 12-45 P. M., on the next Court day.

Leave to bid.

185. (1) An application for leave to bid at the sale shall be supported by an affidavit setting forth any facts showing that an advantageous sale cannot otherwise be had; and an undertaking shall be given by or on behalf of the applicant that, in the event of his being declared the purchaser of the property, or of any lot or lots, he will give credit or will enter up satisfaction of the decree or order under which the sale is made, for the purchase money. Provided that if there are several decree-holders entitled to rateable distribution the purchase money shall be paid into Court.

(2) Notice of the application shall be given to the other parties to the suit or matter.

(3) In cases in which the Court may consider that the applicant should not be allowed to bid for less than a sum to be fixed, it shall be competent to the Court to give leave to bid at the sale, only on condition that the applicant's bid shall not be less than the amount so fixed by the Court, which amount shall, as far as practicable, be determined with reference to the probable market value of the property, or of the lot or lots into which the property is divided for sale.

(4) In the event of any dispute arising as to the amount bid or as to the bidder, the lot shall, at once, be again put up to auction.

Conduct of sale.

186. (1) The person appointed to sell the property shall conduct the sale in the manner prescribed by the Code for the sale of attached property.

(2) Upon the completion of the sale, the person appointed to sell the property shall file in Court his report of the sale.

Application to set aside sale.

187. In the case of any application under Section 307-A, Section 308 or Section 310 of the Code to set aside a sale, the applicant shall, if the application is under Section 307-A, or Section 308, give to the purchaser and the parties to the suit or matter, or, if the application is under Section 310, give to the

parties to the suit or matter, not less than five days' notice in writing of the application setting forth his objections to the sale or the confirmation thereof. If no such notice or insufficient notice is given, the Court may adjourn the hearing, and order the person in default to pay to the other parties their costs of the adjournment or may dispose of the application forthwith. If no application to set aside the sale is made, or if such application is made and disallowed, the Court shall make an order confirming the sale. An application under Section 307-A of the Code may be as in Appendix III, Form No. 33.

Costs of sale.

188. At the adjourned hearing, the Court may make an order directing the payment to the applicant of the costs and expenses of the sale, and to the person appointed to sell the property of his commission, if any, and providing for the application of the balance of the sale proceeds. If, under Section 300 of the Code, a vesting order is required, the order shall also direct that the property sold shall vest in the purchaser.

Payment of costs, etc., when sale set aside.

189. (1) If the sale is set aside under Section 307-A of the Code, the Court may make an order for payment by the judgment-debtor of costs and interest, if any, not covered by the proclamation of sale.

(2) If the sale is set aside under Section 308 of the Code, the Court shall determine whether any and what party is responsible therefor, and may order such party to pay the costs and expenses of the sale, and may make an order that any other party entitled to have the property sold may have the conduct of the sale, and may make an order for the re-sale of the property.

(3) If the sale is set aside under Section 310 of the Code, the Court may make an order for payment by the execution-creditor of the costs of the sale.

Certificate of sale.

190. A certificate of sale of immovable property shall specify, as part of the description of the property, the survey number, if any, and the registration district or sub-district, in which the same is situate. (Appendix II, Form No. 37).

Default by applicant.

191. If at any time it is made to appear to the Court that the applicant has failed to comply with any order of the Court, or any of the provisions of the Code or these Rules, or is not proceeding with due diligence, the Court may make such order as to the application for sale, or matter, and the costs thereof, as it thinks fit.

CHAPTER VII.

Proceedings in Execution.

192. The following Rules shall apply to all proceedings in execution, as well of decrees as of orders, and in this Chapter the word "decree" includes order.

Rules applicable.

Application for transmission.

193. (1) An application for the transmission of a decree to another Court, whether local or foreign, for execution shall be by a verified petition, headed with the cause-title of the suit and the serial number of the petition for execution (execution form), if any, in the suit, and shall state, in addition to the particulars set out in clauses (*a*) to (*j*) of Section 228 of the Code, any facts relied upon by the applicant to bring the case within the terms of Section 218 of the Code. It shall also specify the Court to which transmission of the decree is sought.

Application for transmission of decree for execution.

(2) Notice of the application shall be given to the judgment-debtor in all cases in which, under Section 244 of the Code, notice of a petition for execution is required.

(3) If the application is admitted the applicant shall, within seven days thereafter, produce court-fee stamps to the value of seven chuckrams to cover the expenses of transmitting the same to the Court specified. If the latter Court is situate in Travancore or Cochin, the said decrees may be sent by Anchal 'on Sirkar service' and in other cases by post. In the latter case the charges for such transmission shall be met from office expenses under contingencies allowed to Courts. The costs of returning decrees received from foreign Courts for execution in Travancore shall also be met from "office expenses" as above mentioned, no separate charges for such purpose being levied from the foreign Courts concerned.

194. If, after a decree has been sent to another Court for execution, the decree-holder does not, within six months from the date of the receipt of the necessary papers in that Court, apply for the execution thereof, the Court to which the decree has been sent shall certify to the Court which passed the decree the fact that no petition for execution has been filed and shall return the decree to that Court.

Return of decree by Court.

195. If the decree is sent to the District Court of another District in Travancore for execution by a Court subordinate thereto, such District Court shall at once transmit the papers to the subordinate Court specified and no application shall be made by the party to the said District Court. No

Transmission of papers by District Court.

charges for transmitting the decree to such subordinate Court shall be levied by the said District Court.

Execution of foreign decrees.

196. Decrees passed by the Civil Courts, *including Village Panchayat Courts*, in British India and in the Native State of Cochin may be executed in Travancore as if they had been made by the Courts in Travancore.*

When Courts in Travancore may execute decrees of Civil Courts in British India and in Cochin State.

197. (1) The decrees passed by the Civil Courts, *including Village Panchayat Courts*, in British India and in the Native State of Cochin may be executed in Travancore on receipt of the following papers :—

(*a*) A copy of the decree ;

(*b*) Certificate, as in Appendix II, Form No. 15, setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtainted and what part of the decree remains unexecuted ;

(*c*) A copy of any order for the execution of the decree and, if no such order has been made, a certificate to that effect.

(2) If the papers received under paragraph 1 are in a language not understood in Travancore, the Court which receives such papers, may ask the Court from which they were received, to supply it with a true and correct translation of the necessary papers, either in Malayalam or English.

(3) The District Judge is competent to transfer the decree, received from Cochin or British Indian Courts, to the Courts of the Munsiffs within his District, when the value of the suit as stated in the decree, does not exceed Rs. 2,000 and the decree is passed by a Court inferior to that of the District Court.

(4) The Courts of Travancore are required to give full effect to the terms of the decrees received from British India and Cochin, in respect of interest and mesne profits.

(5) In executing decrees received from British India or the Cochin, State, the Courts will be guided by the provisions contained in the Code of Civil Procedure, (*Regulation VIII of 1100*).

Execution of Travancore decrees by British Indian Courts.

198. The Governor-General in Council has been pleased to declare that the decrees of the High Court of the State of Travancore, and of the *District* Courts, the Courts of the Munsiffs, *and Village Panchayat Courts* established in

* Government Notification under Section 1 of Regulation IV of 1061 issued under sanction of His Highness the Maharaja dated 1st July 1886.

Travancore may be executed in British India as if they had been made by the Courts of British India ; provided, that, when the decree sent to a Court in British India for execution is a decree of the Court of a Munsift, *or a Village Panchayat Court*, the documents mentioned in *Order XXI Rule 5 of the* (*Order XXI Rule 6, British Indian*), Code of Civil Procedure, bear the counter-signature of the Judge of the *District* Court to which the Court of the Munsift *or Village Panchayat Court* is subordinate. †

Transmission of decrees to British Indian Courts.

199. The following Rules shall be observed by the Civil Courts *including Village Panchayat Courts* of Travancore in sending to Courts in British India their decrees for execution :—

(i) Decrees intended for execution in British India must be sent to the District Courts in British India within whose jurisdiction the judgment-debtor resides or holds property, but not to the Courts of Subordinate Judges or Munsiffs although the debtor may reside or hold property within the local jurisdiction of such Subordinate Judge or Munsift.

(ii) The following papers must be sent to British Courts when decrees are transferred to them for execution :—

(*a*) A copy of the decree ;

(*b*) An English translation of the decree, if in Malayalam, certified as " true translation " under the signature and the seal of the Judge of the *District* Court or through whom such decree is sent to British Courts ;

(*c*) A certificate, with an English translation, duly certified as aforesaid setting forth that satisfaction of the decree has not been obtained by execution within Travancore, or where the decree has been executed in part, the extent to which satisfaction has been obtained, and what part of the decree remains unexecuted ;

(*d*) A copy of any order, with an English translation, for the execution of the decree, and, if no such order has been passed, a certificate to that effect, with an English translation thereof.

(iii) *District* Judges are alone competent to send decrees to District Courts for execution, whether passed by themselves, or by any other Court, either co-ordinate with or subordinate to them.

(iv) Whenever *the President of a Village Panchayat Court*, a Munsiff or Second or Additional Judge of a *District* has to send a

† Notification by His Excellency the Governor-General in Council, No. 4035 dated 10th December 1885 issued under Section 434, Code of Civil Procedure, Act XIV of 1882, and Notification No. 91-1 dated the 29th January 1930.

decree for execution in British India, he shall send the papers mentioned in paragraph (ii) to the *District* Judge who shall, subject to the provisions of paragraph (v), forward them to the *District* Court in British India in whose jurisdiction the judgment-debtor resides or holds property.

(v) In the case of decrees passed by Munsiffs *or Village Panchayat Courts* and proposed to be sent to British India for execution, it shall be the duty of the *District* Judge to countersign such decrees after satisfying himself that they have been properly drawn up. Should the Judge have any reason for suspecting that the decree has been obtained by any fraud or undue influence, he will, at once, report the matter for the orders of the High Court. No decree of a Munsift's Court *or Village Panchayat Court* shall be sent to British India for execution without being counter-signed by the Judge of the *District* to whom the Munsift, *or Village Panchayat Court* who passed the decree, is subordinate.

(vi) In the certificate sent to British Courts under clause (*c*) of paragraph (ii), a full statement of the judgment-debt due, inclusive of interest, according to the law in force in Travancore, shall be stated so that the British Courts may have nothing to do but issue execution for the amount stated in the certificate.

(vii) When a decree sent for execution in British India is silent as to the rate and maximum amount of further interest recoverable under it, the *District* Judge shall append to it, under his signature, the following note in English :—

"According to the Laws of Travancore (*a*) when a decree awards future interest but does not specify the rate of interest such interest shall be calculated at 6 per cent per annum and (*b*) the maximum amount of further interest awardable on the judgment-debt should not exceed the judgment-debt."

(viii) If the amount of the decree is expressed in Travancore currency its equivalent in British currency should be stated in a footnote authenticated by the *District* Judge.

(ix) In these Rules the words "*District* Judge" mean First Judge of a District where there are more than one Judge in a *District* Court; and "*District* Court" include the High Courts *in British India* in respect of decrees to be executed within the ordinary original jurisdiction of those High Courts.

200. (1) The Courts of Cochin shall execute the decrees of the Travancore Courts on receipt of the following papers :—

Execution of Travancore decrees by Cochin Courts.

"(*a*) A copy of the decree.

"(*b*) A certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted.

"(*c*) A copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

"(2) If the papers received under Rule (paragraph) (1) are in a language not understood in Cochin, the Court which receives such papers may ask the Court from which they were received to supply it with a true and correct translation of the necessary papers either in Malayalam or English.

"(3) The Zillah Court is competent to transfer the decrees received from Travancore Courts to the Courts of Munsiffs subordinate to it when the value of the suit as stated in the decree does not exceed Rs. 1000. *The decree of a Village Panchayat Court may be executed by a Village Panchayat Court situated within the jurisdiction of the Court which directs its execution.*

"(4) In executing decrees received from Travancore the Courts will be guided by the provisions contained in the Cochin Civil Procedure Code with respect to execution of decrees.

"(5) On the application of a party holding a decree a Zillah Court in this State whose duty it is to execute the same may send it for execution to a Civil Court in Travancore. *Note.—In this clause the words "Civil Courts" include a Village Panchayat Court.*

"(6) A Zillah Court sending a decree for execution under Rule (paragraph) (5) shall send therewith the papers mentioned in Rule (paragraph) (1).

"(7) On the application of a party holding a decree, a District Munsiff's Court *or a Village Panchayat Court* in this State, whose duty it is to execute the same, shall cause such copies and certificate as are specified in Rule (paragraph) (1) to be prepared and send them to the Zillah Court *within whose jurisdiction it is*, for transmission to the District Court in Travancore, within the limits of whose jurisdiction the decree-holder desires to have the decree executed."

201. The following Rules shall be observed by the Civil Courts *including Village Panchayat Court* in sending to the Cochin Courts their decrees for execution ;

Transmission of Decrees to Cochin Courts.

"(1) On the application of a party holding a decree, the *District* Court in Travancore whose duty it is to execute the same may send it for execution to the Zillah Court in Cochin within whose jurisdiction the decree is to be executed.

(2) A *District* Court sending a decree for execution under paragraph 1 shall send therewith the papers mentioned below :—

(*a*) A copy of the decree in English or Malayalam.

(*b*) A certificate in English or Malayalam setting forth that satisfaction of the decree has not been obtained by execution within Travancore or, where the decree has been executed in part the extent to which satisfaction has been obtained and what part of the decree remains unexecuted.

(*c*) A copy of any order in English or Malayalam for the execution of the decree and if no such order has been passed a certificate to that effect.

(3) On the application of the party holding a decree in a Munsift's Court *or Village Panchayat Court* in Travancore, the Court, whose duty it is to execute the same shall cause such copies and certificates as are specified in paragraph (2) to be prepared and send them to the *District* Court to which it is subordinate for transmission to the Zillah Court in Cochin within the limits of whose jurisdiction the judgment-debtor resides or holds property.

(*4*) *When a decree sent for execution to Cochin is silent as to the rate and maximum amount of further interest recoverable under it, the District Judge shall append to it under his signature the following note in English :—*

"*According to the Laws in Travancore—(a) When a decree awards future interest but does not specify the rate of interest, such interest shall be calculated at six percent per annum and (b) the maximum amount of further interest awardable on the judgment-debt should not exceed the judgment-debt.*"

(*5*) "*If the amount is expressed in Travancore currency, its equivalent in British currency should be stated in a foot-note authenticated by the District Judge.*"

202. Small Cause decrees received from the British Indian or Cochin Courts for execution should be treated as decrees in ordinary suits, the object of the transfer being not simply to obtain execution by attachment of moveable property, but also to proceed, if necessary on immovable property.

British Indian and Cochin Small Cause decrees.

Application for execution.

203. (1) An application for execution of a decree shall be by petition, and, in addition to the particulars set forth in Section 228 of the Code, shall be headed with the cause-title of the suit and separately numbered in each suit.

Application for execution.

(2) The petition shall, if it relates to any property of the judgment-debtor, pray for the realisation thereof, in the manner appropriate to the nature of the property, as in Appendix III, Form No. 34, and shall also set out the whole of the relief which the applicant requires at the time of presenting the same. The Court shall not grant any relief not claimed by the execution petition.

204. The judgment-creditor shall, together with the first petition for execution or transmission of a decree, file in Court a certified copy of the decree sought to be executed, and shall not be required, upon any subsequent application, to file a further copy of the same decree unless the copy already filed has been sent to another Court under Section 219 of the Code and has not been returned and application is made to the Court which passed the decree for concurrent execution. The production of a certified copy of the decree may not, however, in the discretion of the execution Court, be insisted on in cases of applications for immediate execution under Section 252 of the Code.

Certified copy of decree to be filed.

205. Applications for execution of decrees presented to the Courts shall set out fully the nature of the several steps which the decree-holder desires to be taken against the person of the judgment-debtor or his representative and their property, for obtaining the relief or reliefs which the decree has granted him. The Court shall, on receipt of a proper petition, issue one after another or simultaneously as the circumstances of the case demand, all such processes, as the nature of the assistance sought for requires, without waiting for or demanding a fresh application, and no petition presented under Section 228 of the Code shall be treated as disposed of until and unless all the steps, which the nature of the assistance sought for in the last column requires, are exhausted, or the petition is dismissed for default or otherwise. The Court shall, when disposing of the petition, pass such order as to costs as it thinks fit.

Execution petition to set out in full steps prayed for.

206. A petition not complying with the provisions of the Code or these Rules or not claiming any substantial relief shall be returned for amendment or rejected.

Non-compliance with Rules.

207. Upon the hearing of the petition, the Court shall ascertain whether the provisions of the Code and these Rules have been complied with, and shall determine whether notice thereof is to be served on any person. If the petition is admitted, the Court shall pass the appropriate order and the applicant shall, within three days or such other period as may be fixed by the Judge, bring into Court the fees prescribed for issue of process, and, if the application is for arrest of the debtor, the subsistence moneys fixed by the Judge under Section 329 of the Code. In cases of default, the Court may dismiss the petition and shall pass such order as to costs as it thinks fit.

Procedure on and after hearing of petition.

Note.—Where there is an application for execution of a decree against the Sirkar, the Court to which such application is made shall ordinarily issue a notice to Government through the Sirkar Vakil demanding payment of the money or other satisfaction of the decree within a reasonable time; such time being fixed with due regard to the circumstances of each particular case and so as to allow sufficient time for the necessary communication with and for the issue of instructions by Government. If, after the time fixed in the notice, the decree remains unsatisfied, the Court shall report the matter to the High Court.

208. When a warrant for the delivery of possession of immovable property under Sections 260, 261, 315 or 316 of the Code is entrusted to an amin on the application of the decree-holder or auction-purchaser, a notice specifying the date on which the delivery will be made by the amin at the locality shall be given by the Court, at the expense of the applicant, to the judgment-debtor or other person in possession of the property and served as far as practicable upon him in person or on any adult male member of his family residing with him. The expense of the service of such notice shall be included in the costs of execution.

Notice of date of delivery.

209. Parties, when applying for delivery of possession of paddy lands which happen to be at the time under cultivation, shall deposit in Court the cost of seed and labour. Such cost of seed and labour shall ordinarily be taken to be two parahs of paddy per one parah of land. As regards the cost of ploughing alone, each Court may fix its own scale. Notice of such deposit should be given to the opposite party and all objections regarding the same shall be fully considered and settled by the Court, before the issue of warrants for delivery of possession.

Deposit of cost of seed and labour.

210. When an amin, to whom a warrant is entrusted for delivery of possession of a house or other building, finds that the occupants have left the building locked up, he shall at once report the matter to the Court that issued the warrant. The Court will then issue a notice calling upon the person who has locked up the building to open it and remove his property therefrom, if any, within a time to be fixed in the notice. The notice shall be served on such person personally or, if personal service is not possible, by affixing a copy of the notice in some conspicuous part of the building. If such person does not comply with the requisition in the notice within the time fixed and the person to be put in possession of the building offers to deposit the expenses of removing and taking care of the moveable property and live-stock that may be found in the building, the Court may direct the amin to remove the lock, enter the building, prepare an inventory of the things and live-stock, if any, found in the building, in the presence of two respectable *thadasters*, and take possession of and hold them subject to the further orders of the Court. The Rules relating to live-stock and perishable articles attached in execution of decrees, shall apply to property of similar nature taken possession of under this Rule. If the owner of the property does not claim it within three months and pay into Court all the expenses incurred in its carriage, storage and maintenance, etc., it shall be sold in public auction, and the sale proceeds *minus* the expenses incurred as above, held in deposit for the benefit of the owner. The expenses, when recovered, shall be paid to the person who deposited the costs.

Delivery of possession of house or other building locked up.

211. Where resistance is offered by parties claiming a title to possession of the property, the amin should not deliver possession but should report the matter to the Court for orders.

Amin to report to Court when resistance offered.

212. (1) Every person applying to the Court to attach moveable property (other than cash, Government or other securities, jewels or other valuable articles of small bulk, which may conveniently be taken manual possession of by the amins) shall, in addition to the process fee fixed by the Rules, deposit such reasonable sum as the head ministerial officer of each Court may, subject to the control of the presiding Judge, fix for the costs of its removal to the Court-house and of its custody; and if such property is live-stock, for its maintenance for not less than fifteen days, calculated with reference to the rates fixed under paragraph (4). If such deposit, when ordered, be not made within a reasonable time not exceeding five days, to be fixed by the Court, the attchment shall not isssue. Provided that, it shall be competent for the Court to order the execution

Cost of removal of attached moveables and maintenance of live-stock.

of any warrant of attachment, without the previous deposit of the expenses mentioned in this Rule, on the judgment-creditor or his Vakil undertaking to pay the necessary expenses to the attaching officer, on the attachment of the property, and also to authorise the attaching officer in such cases to release the property attached if the expenses be not paid when required. Whenever the attaching officer, under the authority specially conferred upon him under this proviso, releases the property on default of payment of the expenses, he shall produce a statement signed either (*a*) by the judgment-creditor, (*b*) in his absence, by his authorised agent, or (*c*) in cases where the creditor and his agent are either absent, or being present, refuse to sign the statement, by two respectable neighbours and, if possible, by the Proverthicaren or some other Government servant who may be found on the spot, setting forth the circumstances that led to the release of the property.

Note.—'Costs of custody' includes, in the case of machinery, costs necessary for its preservation in good condition.

(2) The Court may, at any time during the pendency of an attachment, direct the decree-holder to pay into Court, within a time to be prescribed, such additional sum as may be necessary to provide for the cost of the removal of the property from one place to another for safe custody and of the maintenance of live-stock.

Delivery of attached moveables other than cash, &c., to Nazir for safe custody.

(3) All attached property except cash, jewellery, Government securities, currency notes, etc., falling within paragraph (5) brought to the Court-house, shall be delivered to the Nazir of the Court, who shall as far as practicable secure them in the property room and shall be responsible for such property, until the same is disposed of by order of Court. No attached moveable shall be kept by the attaching amin or, except as provided for in Rule 213 (1), be entrusted by him to third parties without the express premission of the Court, and such permission shall be given only in exceptional cases where the attached moveables happen to be articles which cannot be easily removed to the Court-house.

Rates of maintenance for live-stock.

(4) A table of rates of maintenance to be charged in the several seasons of the year for every description of live-stock shall be prepared by each Court at the beginning of the year and posted on the notice board of the Court. In the case of Munsifs, such rates shall be subject to the confirmation of the presiding Judge of the District Court to whom a copy of such table is to be submitted and who may, from time to time, alter the rates on sufficient cause being shown.

(5) If the property attached consists of cash, jewels, Government or other securities, or other valuable articles of small bulk which may conveniently be kept in Court, the amin shall, without unnecessary delay, bring the same into Court, deliver the same to the head ministerial officer and obtain a receipt from the latter in acknowledgment of such delivery.

Custody of attached cash, jewels, &c.

213. (1) Whenever it appears that the removal of the attached moveable property into the Court-house would be attended with risk and expense out of all proportion to its estimated value or is otherwise inconvenient, the amin may leave it in the village or place where it has been attached, in the charge of any respectable inhabitant, who enters into a bond, with one or more sufficient sureties, for its production when called for, or in the charge of a peon, if a suitable place for its safe custody be found, and proper arrangements for its up-keep and maintenance (if it consists of live-stock) be made by the parties and if the decree-holder pays in advance the peon's batta at the rate of seven chuckrams per diem. Whenever attached property is kept in the village or place where it is attached, or whenever it is not taken to the Court but left in the charge of third parties, the attaching officer shall forthwith report with full particulars the fact to the Court and forward an accurate list of the property seized and the security bond, if any, and the Court shall pass such order thereon as it thinks fit.

Procedure when removal of attached property to the Court-house inconvenient.

(2) The Court may also direct that any property attached, which cannot conveniently be stored or kept in the Court-house, be left in the charge of a suitable person able and willing to furnish sufficient security for its production when called for.

(3) If the property attached consists of live-stock, the amin may leave them, while under attachment, in the custody of the judgment-debtor, or of any person claiming to be interested therein, provided such debtor or person undertakes to feed and maintain them properly without any extra expense and enters into a bond with two or more sureties for their production when called for and for their safe custody and maintenance. If the judgment-debtor or other person fails to act up to his engagement, the Court shall order the Nazir or other officer of Court to take possession of and manage such live-stock in the same manner as if it had been entrusted to his care on its attachment. In the case of milch-cows, they may be entrusted to the care of a receiver who will duly account for the profits derivable by the sale of the milk and furnish proper security therefor.

Custody of attached live-stock.

214. If owing to any default of the decree-holder or other person at whose instance moveable property is attached, it is not found possible to bring it to sale within such time as the Court considers reasonable, the Court may at once withdraw the attachment and direct the return of the property to the party from whom it was originally seized and charge the defaulting decree-holder with the cost of attachment, etc., including the fee leviable on the process for releasing the property from attachment and on the notice hereinafter mentioned. The Court shall give notice to the party from whom the property was taken in attachment, calling upon him, within the time fixed, to pay any amount that may be due to the Court in respect of the custody and up-keep and release of such property and on account of the notice, and receive possession of the property. On his default to appear and pay the expenses, fees, etc., and receive the property, it shall be lawful for the Court to sell the property, deduct out of the sale proceeds the amount due to the Court for fees, etc., and hold the balance in deposit for the benefit of the judgment-debtor. The judgment-debtor shall be entitled to set off the amount paid to, or collected by, the Court under this Rule against any amount that may be due to the judgment-creditor under the decree, or recover such balance of the amount paid by him, or collected by the sale of the property, as may be in excess of the judgment-debt in the manner provided by law.

Withdrawal of attachment.

215. (1) The Court may direct that any sums, properly expended by the attaching amin with the sanction of the Court for the up-keep and maintenance of attached moveables and which have not been duly deposited, be recovered from the proceeds of the property, if sold, or be paid by the persons, declared entitled to delivery, before receiving the same.

Recovery of expenses of maintenance.

(2) The Court may further order that any sums deposited, paid or collected under these Rules be recovered as costs of execution from any party to the proceedings.

216. The warrant of attachment is a sufficient authority to the amin to break open the door of any room in which he believes the property to be attached is concealed or secured. But he should never break open the room except in the presence of respectable *thadasters*.

Breaking open door of room where property to be attached is believed to be concealed.

He must also prepare an accurate inventory of all articles found in the room and obtain the attestation of *thadasters* thereto.

Inventory.

217. In the case of an application for the attachment, proclamation and sale of any property, the order for proclamation shall appoint a day for the sale of the attached property, which shall be ordinarily not more than six weeks from the date of the order and shall adjourn the hearing of the petition accordingly.

Order to appoint day for sale.

218. If any question arises for the determination of the Court executing a decree, the same shall be heard and determined upon the hearing of the petition, or an application made therein, and, if evidence is taken orally, the Court shall record the evidence of the witnesses, and mark all exhibits admitted in evidence, in accordance with Sections 176 and 180 of the Code. The Court shall, in any case, record its judgment and draw up its order, in the same manner as upon the hearing of a suit.

Determination of questions arising in execution of decree.

Joint decree-holders.

219. When an application is made by one or more of several joint decree-holders, unless a written authority, signed by the other decree-holders, for the applicant to execute the decree and to receive the money or property recovered, is filed in Court, the Court shall give notice of the order, if any, passed for the execution of the decree, to all the decree-holders who have not joined in the application, and may also in its discretion give notice of any application for payment out of Court or delivery to the applicant, of any money or property recovered in execution.

Joint decree-holders.

Payment and satisfaction.

220. Except when payment is made to the decree-holder under Rule 164 all moneys recovered by an officer of the Court, or received by an auctioneer, shall be paid into Court in manner prescribed by Chapter V; and notice of the payment shall be posted on a notice-board of the Court and a certificate thereof shall be endorsed on the lodgment schedule.

Payment into Court.

221. Except when payment is made to the decree-holder under Rule 164 a person paying money or bringing property into Court in satisfaction of a decree shall, when doing so, deposit in Court the process fees necessary for giving notice of such payment or deposit to the judgment-creditor.

Payment into Court in satisfaction.

222. An application under Section 254 or Section 255 of the Code shall be by petition; or if an execution petition is then pending, by an application at the hearing thereof or an execution application made in the said petition. If all parties are present in Court at the hearing of the petition or application, the Court may examine them

Application for sanction to give time to judgment-debtor or certify payment or adjustment.

as to the terms of the agreement and the consideration therefor, and in such cases shall record their evidence in writing; if any of the parties do not appear and the case falls within Section 254 of the Code, the applicant shall file in Court a written agreement signed by the parties, and the execution thereof shall be proved orally, or by affidavit. If the agreement is sanctioned by the Court, an order shall be drawn up stating the terms thereof in Appendix III, Form No. 35.

Execution of documents by the Judge.

223. The procedure prescribed by Section 258 of the Code shall apply to all documents whereof the execution by any party has been directed by the Court.

Procedure in case of execution of documents by Court.

224. The decree-holder shall, together with the draft mentioned in Section 258 of the Code, bring into Court a duplicate thereof and two copies of a notice, in Appendix II, Form No. 18, and the prescribed Court-fee stamps for service thereof. One of the said copies shall be annexed to the draft, and shall be served on the person directed to execute the document in manner prescribed for service of summons on a defendant to a suit.

Procedure in case of execution of documents by Courts.

225. In the case of a deed, the concluding portion shall be in Appendix III, Form No. 36 and in the case of a negotiable instrument, the endorsement shall be in Appendix III, Form No. 37; and the Judge shall sign the name of the party directed to execute the document, and his own name, as in the said forms, and shall affix the seal of his Court thereto.

Form of deed and of endorsement of negotiable instrument.

Execution applications.

226. At the hearing or any adjourned hearing of an execution petition the judgment-creditor may apply orally for any relief prayed for by the petition; and any other party may, upon giving three days' notice in writing to the opposite party, make any application with respect thereto.

Oral application for relief.

227. If it is necessary to make an application in connection with a pending execution petition otherwise than at the hearing or any adjourned hearing thereof the application shall be headed with the cause-title of the suit, and the serial number of the execution petition.

Application in pending petition.

228. Rules 71, 72, 73 and 218 shall apply to all applications by a party to the suit or matter made in or with respect to a pending execution petition.

Application of Rules.

Attachment of property in Court or in the custody of a public officer.

Attachment of property in Court.

229. If the property sought to be attached is deposited in, or is in the custody of, the Court to which the execution petition is presented, and stands to the credit of a suit or matter other than the suit or matter in which the petition is presented, and an order for attachment is made, the decree-holder shall, during the continuance of the attachment, present to the Court an application entitled in the suit or matter to the credit of which the property stands, and praying, if the property is money, that a sufficient part of the amount due to the judgment-debtor may be paid to the credit of the suit in which the order of attachment was made, or in the case of property other than money, that a sufficient part thereof may be realized, and the amount due to the judgment-debtor may be paid as aforesaid. The Court shall then proceed as if the decree-holder was an assignee of the judgment-debtor to the extent of the amount due to the former; provided that notice under Section 225 of the Code shall not be issued to any party, unless the Court thinks fit.

Attachment of property in Court other than the Court executing decree.

230. Where the property sought to be attached is deposited in, or is in the custody of, a Court other than the Court executing the decree, the execution petition shall ask that, after attachment, the decree may be transmitted to the former Court for execution, and if an order for attachment is made the decree shall be transmitted accordingly. The decree-holder shall then apply to the former Court as in Rule 229 mentioned; if such application is not made during the continuance of the attachment, or if the same is refused, the Court shall retransmit the decree to the Court which passed it, with a certificate stating whether any and what proceedings have been taken in the former Court.

Attachment of property in custody of public officer.

231. If the property sought to be attached is in the custody of a public officer, the execution petition shall ask that the property may be brought into Court and realized; and the notice of attachment shall request that the money or property may be brought into Court, or that such officer will state whether he has any and what objection to so doing. If any objection is raised by such officer, notice may be issued, in manner provided by Chapter XXVII of the Code for issue of summons, for the determination of such objection.

Attachment of decrees.

Attachment of decrees.

232. An application for the attachment of a decree shall also pray that the applicant may be at liberty to apply for execution thereof. If an order of attachment is made, it may be as in Appendix II, Form No. 25 or 26 and the application

shall be adjourned to a fixed day for the applicant to apply to the Court, or if the decree of another Court is attached, to that Court, for execution of the attached decree; and notice may, if the Court thinks fit, be given to the holder of the decree. The application shall be made by execution petition entitled in the suit or matter in which the attached decree was made; and shall be accompanied by certified copies of the order of attachment, and of the decree sought to be executed. Provided that, if the attached decree is the decree of another Court other than a decree for money, the applicant shall also pray for the transmission of the decree sought to be executed to that Court, and the Court may transmit the same accordingly, together with a notice, in Appendix III, Form No. 38. The applicant may then apply to the former Court by execution petition entitled in the suit or matter in which the attached decree was made, for execution of its decree.

233. No decree shall be ordered to be sold in execution of another decree.

Decree not to be sold.

234. If a decree is attached by more than one decree-holder, liberty to execute the same shall be given to the decree-holder whose attachment is first in date; and the Court shall direct any money or property recovered by the said decree-holder to be brought into Court for rateable distribution. Provided that, if the decree-holder, to whom liberty is given as aforesaid, does not show due diligence in executing the attached decree, or for any other sufficient reason, the Court may give to any other decree-holder liberty to execute the attached decree in place of the former decree-holder.

Attachment of decree by several decree-holders.

Claims to attached property.

235. An application by a claimant or objector, under Sections 275, 320, 321 or 324 of the Code shall be made by a verified petition entitled in the execution petition under which the property in question has been attached and shall set forth the particulars of the claim in the manner prescribed for the plaint in a suit as in Appendix III, Form No. 39.

Claim to attached property.

236. The claimant or objector shall along with the petition bring into Court the prescribed fee for service of notice on the attaching creditor and the judgment-debtor and the same shall be served in manner prescribed for service of summons on a defendant to a suit; and if the claim or objection relates to immovable property, he shall also bring into Court the necessary registration fees.

Procedure when application presented.

237. At the hearing of the application, the Court shall record the evidence and mark all exhibits admitted in evidence, and shall draw up its order thereon.

Hearing of application.

Realization of attached debts.

238. Unless it is made to appear to the Court that, from the smallness of the amount of the debt attached, or otherwise, the appointment of a receiver to collect, the same would be worthless or vexatious, no debt or right to any periodical payment shall be realised by sale.

Realization of attached debts

239. If a receiver is appointed, he shall be empowered to sue in the name of the judgment-debtor, and to grant receipts for any moneys or property recovered by him.

Receiver's powers.

Sale of attached property.

240. (1) The applicant for sale shall, within seven days after the receipt of the report of attachment or along with his application for issue of proclamation, file in Court an affidavit or affidavits as prescribed by Rule 175 which shall also state the interest of the judgment-debtor in the attached property, and whether any person other than the judgment-debtor has any, and what, interest therein.

Applicant to file affidavit.

(2) The applicant for sale shall, with the said affidavit, also bring into Court the estimated expenses of the sale and the prescribed fees for the proclamation and warrant of sale.

(3) Notice of an application by the judgment-creditor for leave to bid shall be given to the judgment-debtor.

241. If the provisions of the Code and these Rules have been complied with, and the proclamation of sale is approved by the Judge, an order for sale shall be made and a warrant of sale shall issue. In case of default, the Court may adjourn the application to a fixed day or may dismiss the execution petition.

Order for sale.

242. Whenever guns or other arms, in respect of which licenses have to be taken by purchasers under the Travancore Arms Regulation (V of 1084), 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 said Regulation.

Sale of guns or other arms in Court auction.

243. (1) When decrees have been passed by Civil Courts affecting boundaries demarcated by the Survey Department, the Courts shall themselves execute their decrees, and when the decree alters a survey boundary line, the

Execution of decrees altering survey boundary lines.

amin of the Court entrusted with the execution, shall place the new boundary marks where necessary.

(2) The amin will at once prepare a tracing from the survey village map and mark upon it the alteration made by him in execution. The tracing or sketch will then be submitted to the Court along with the warrant of execution by the amin, and it will be attached to the copy of the decree.

(3) Whenever a Civil Court alters a survey boundary, a copy of the decree together with the amin's tracing or sketch of the alteration should be sent immediately after execution to the Superintendent of Survey to enable the Department to make the alteration at once in their maps.

(4) In cases where the demarcation by a skilled surveyor is necessary, the Civil Court executing the decree may have the demarcation made by the Survey Department with the consent of that Department.

Application of Chapter VI.

244. Subject to the foregoing Rules, the provisions of Chapter VI shall apply to all cases in execution of a decree.

Arrest and imprisonment.

Palace servants.

245. Parties applying for warrants of arrest in civil cases shall state in their applications whether the persons whose arrest they apply for are or are not attached to the Palace of His Highness the Maha Rajah or to the Pagoda of Sri Padmanabhaswami at Trivandrum, such persons being governed by the provisions of Section 590 of the Code.

Note.—Communications from the Civil Courts under Section 590 of the Code for sanction to arrest, in execution of civil processes, officers and servants attached to His Higness the Maha Rajah's Palace or to the Pagoda of Sri Padmanabhaswami at Trivandrum, must invariably specify the amounts to be recovered from such officers or servants.

Other public servants.

246. (1) When an application is for the execution of a decree for money by the arrest and imprisonment of a judgment-debtor who is liable to be arrested in pursuance of the application, the decree-holder shall state in his application whether the judgment-debtor to be arrested is a public servant or not, and if a public servant, the office wherein he is employed, his official designation, and the designation of his official superior.

(2) The Court shall, where the judgment-debtor is a public servant, instead of issuing a warrant for his arrest issue a notice under Section 241, clause 1, of the Code calling upon him to appear before the Court, on a day to be specified in the notice, and show cause why he should not be committed

to jail in execution of the decree. But such notice need not be issued whenever the Court considers it unnecessary to do so.

(3) Such notice shall be served upon the judgment-debtor through his official superior either (1) by transmission by Anchal to the said official superior for service and return to the Court by the latter, or (2) by the Court process-server after obtaining the counter-signature of the official superior.

(4) Whenever a Court orders the issue of a warrant for the arrest of the judgment-debtor who is a public servant, a letter regarding the intended arrest shall be sent by the Court issuing the warrant to the official superior of the person to be arrested. The letter shall be delivered to the official superior before the warrant is executed by the process-server to whom the warrant is entrusted for execution; unless it appears to the Court issuing the warrant that the delivery of the letter in this way is likely to delay the execution of the warrant unduly, in which case the letter shall be despatched to the official superior by Anchal or such other means as appear proper to the Court issuing the warrant and sufficient time allowed for the letter reaching its destination before the warrant is handed over to the process-server.

Note.—The Rules regarding the service of processes (including warrants of arrest) on public servants as witnesses are not affected by this Rule.

Subsistence money.

247. Subsistence money to civil debtors shall be calculated at ten chuckrams per diem provided that the Court may, for reasons to be recorded in writing, order a higher rate in particular cases.

Tender of subsistence money.

248. Every application for arrest should be accompanied by the tender of subsistence money for the period provided for in paragraph 1 of Section 329 of the Code. The money shall be received in Court and entrusted to the process-server when the warrant of arrest is issued. The process-server shall take the money with the warrant and tender the same to the debtor as soon as the arrest is made. If he accepts the money an acknowledgment shall be obtained from him on the back of the warrant and produced in Court. If the arrest is not made or the judgment-debtor declines to receive the sum, the process-server shall, *subject to the directions contained in Rule 862 as regards payment to the party or his Vakil*, refund the same to the Court with an endorsement to that effect on the back of the warrant.

Endorsements on warrants returned unexecuted.

249. Endorsements on all warrants of arrest returned unexecuted shall, as a rule, be counter-signed by the party at whose instance the warrant was issued or by his agent or Vakil.

250. When a warrant issued for the arrest of a judgment-debtor is returned unexecuted on the ground that he could not be found, the fact must forthwith be notified in the notice-board of the Court and a fresh warrant may issue in the event of the decree-holder or his Vakil filing a memorandum (no Court fee need be levied) within five days from the date of such notice and on his paying the necessary process fee.

Issue of fresh warrant of arrest.

251. Whenever a person against whom a civil warrant of arrest has been issued appears too ill to be removed from his residence, the process-server shall report the matter to the Court for its orders.

Sick judgment-debtor.

252. (1) The District Court of Trivandrum and the several Munsiffs' Courts subordinate thereto shall direct their warrants of commitment to the officer in charge of the Central Prison at Trivandrum and forward the civil prisoners direct to that offiecr.

Warrants of commitment to whom to be addressed.

(2) All other Courts shall direct their warrants of commitment to the jailor attached to the civil jail at the headquarters of their respective districts.

(3) The presiding Judges of such of the District Courts as have separate civil jails attached thereto shall be deemed to be the officers in charge of such jails, and shall exercise, so far as may be, the functions of the Superintendent as defined in the Prisons Regulation (I of 1071) and the Rules issued thereunder.

253. If the Court thinks it necessary that the judgment-debtor should be medically examined for the purpose of testing his fitness to undergo incarceration, it shall decide in each case whether the necessary medical fees should be deposited by the judgment-debtor or by the decree-holder and then arrange for deposit of such fees beforehand and for payment of the same to the medical officer.

Fees for medical examination.

The fee to be levied shall not exceed the amount of Rs. 3 as fixed by Government in their letter No. 1523/G, 634, dated 6th March 1897.

254. Before committing a judgment-debtor to jail in execution of any decree, whether ordinary or small cause, the Court shall cause the decree-holder *or decree-holders when there are more than one* to make the following payments :—

Moneys to be deposited before commitment.

(1) For escorting the judgment-debtor, process fee at the rate of seven chuckrams when the distance between the Court and

the jail is five miles or less and an additional fee of seven chuckrams for every additional five miles or fraction thereof when the distance is more than five miles.

Note.—If the Court considers it necessary to employ more than one process-server to escort the judgment-debtor, process fee at the above rate shall be levied for each process-server so employed.

(2) Subsistence money for such portion of the current month as remains unexpired after the date of commitment.

(3) Four rupees on account of bedding charges when the judgment-debtor is to undergo incarceration in any of the civil jails in the moffussil and at the rate fixed by the Superintendent when the incarceration is to be in the Central Prison.

(4) Any conveyance or ferry charges which the Court may consider necessary.

Provided that when the same judgment-debtor is being committed to jail in execution of more decrees than one, the Courts, shall cause only one set of the charges provided in this Rule to be paid into Court, the amount being contributed equally by the several decree-holders.

255. The subsistence allowance for the unexpired portion of the month in which the commitment is made as well as the bedding charges paid into Court shall be forwarded to the officer in charge of the jail along with the warrant:

Subsistence allowance, etc., to be forwarded.

Provided that if more than one decree-holder deposit the said charges, the Court shall forward only one set of such charges to the officer in charge of the jail and rateably distribute the balance to the decree-holders.

256. All payments of subsistence money into jail under the third paragraph of Section 329 of the Code shall be made to the officer in charge of the jail as provided in that paragraph between the hours of 11 A. M., and 5 P. M.

Payments of subsistence money into jail, when to be made.

Note.—The officer in charge of the civil jail may receive subsistence money remitted by Anchal or Post by the judgment-creditor.

257. A civil debtor committed to jail is entitled to immediate release on payment of the amount of the decree in execution of which the commitment was made. The officer in charge of the jail is competent to receive payment of the judgment-debt and set the debtor free. He need not wait for the special orders of the Court under whose warrant the debtor was committed to

Release of judgment-debtor on payment of decree-debt.

custody. The amount received must be remitted to the Court as early as practicable. The warrant of commitment shall also be returned to the Court with the fact of payment endorsed thereon.

Return of unexpended subsistence money.

258. Whenever any unexpended portion of the money deposited for subsistence remains in the hands of the officer in charge of a civil jail, he shall, when returning the warrant of commitment, remit the same to the Court, under whose warrant the deposit was made, for eventual repayment to the party entitled.

Intimation of arrest, &c., to official superior.

259. When a public servant is arrested and imprisoned in execution of a decree or order, the dates of arrest and discharge should be intimated to his official superior.

Release of sick judgment-debtor.

260. (1) If on the report of a medical officer or otherwise the officer in charge of a civil jail is satisfied that any civil debtor is in such a bad state of health that he cannot undergo further incarceration without endangering his life or without detriment to the health of the other inmates and that it is necessary to take action before an order under Section 331 (*g*) of the Code can be obtained, he may forthwith order the release of the judgment-debtor.

(2) Such release shall not, however, discharge the judgment-debtor from liability to rearrest in execution of the same decree, but the period of his detention shall not in the aggregate exceed that prescribed by Section 332 or Section 460 of the Code as the case may be.

(3) To enable prompt action being taken in the matter, all medical officers who may have occasion to notice such cases of dangerous illness are requested to give information thereof in writing to the jailor who will at once report the matter to the officer in charge of the jail and to the Court under whose warrant such sick persons are confined.

Subsistence money when arrest is made in execution of several decrees.

261. If a debtor be imprisoned on account of several decrees obtained against him by the same creditor, subsistence money need not be deposited in each case. Where several decree-holders apply for the imprisonment of a judgment-debtor, *all the decree-holders must* provide the monthly allowance for the debtor's subsistence as directed by the Court.

Subsistence money disbursed not to be shown in warrant of commitment.

262. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall not be shown in the warrant of commitment to jail.

263. Under Section 334 of the Civil Procedure Code (Regulation II of 1065) the following persons serving in or with the army of His Majesty the King Emperor of India will not be liable to be arrested for the purposes mentioned in that section :—

Exemption from arrest of persons serving in the British army.

(1) All Commissioned Officers whether European or Native, Sub-Assistant Surgeons, Native Doctors, Warrant Officers, Non-commissioned Officers, Hospital attendants of any class, Trumpeters, Buglers, Drummers, Musicians, Soldiers, Un-attested recruits, Lascars, Mahoots, Drivers, Farriers, Syces, Grass-cutters, Artificers, Labourers, Sutlers, Camp followers and all other persons attached to or serving in any portion of the said army.

(2) Every person attested under Act V of 1869 of the Government of India according to the Regulations of the Government to which they are respectively attached or under any previous articles of war passed for the government of the army of His Majesty the King-Emperor of India, or any articles of war in force for the time being or any statutory modifications or amendments thereof which may be made hereafter. *

264. No person shall, so long as he belongs to the Nayar Brigade, 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.

Exemption from arrest of persons belonging to the Nayar Brigade.

Neither shall the arms, clothes, equipment, accoutrements, regimental accessaries of any such person 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 revenue officer in satisfaction of any decree or order enforceable against him. †

CHAPTER VIII.

Partnership Suits.

265. In a suit for dissolution of partnership, or for an account of partnership dealings, all the partners and all persons entitled to share in the profits of the partnership business shall be made parties. The plaint may be as in Appendix III, Form No. 40.

Parties.

* Government Notification dated 2nd January 1891.

† Rules dated 29th October 1904 passed under sanction of His Highness the Maha Raja under Section 2 of Regulation VI of 1079.

266. If, at any time, it appears to the Court that any party has not had inspection of the books of account or papers of the partnership, either through his own neglect or the default of any other party, the Court may order the same to be produced for his inspection at the Court-house, or other convenient place; and if any party alleges that the books of the partnership do not correctly set forth all the dealings and transactions of the firm, or contain items or transactions not proper to be included therein, the Court shall direct such party to file a written statement giving particulars of the errors or irregularities complained of, as in Appendix III, Form No. 41. The hearing of the suit shall then be adjourned, and the party in default may be ordered to pay the costs of the adjournment.

Inspection.

267. If any party desires to impeach a settled account on the ground of error, he shall in his plaint or written statement set out the specific errors or irregularities alleged by him; if on the ground of fraud, or of a mistake affecting the whole account, he shall in his plaint or written statement set out full particulars of the fraud or mistake alleged by him.

Impeachment of settled account.

268. If, at the first hearing of the suit, the partnership and the terms thereof and the correctness of the books of account are admitted, and it is only necessary to take an account, the Court may at once pass an interim decree specifying the account to be taken and the manner of taking the same.

Interim decree where partnership and books admitted.

269. At the hearing of the suit, the Court shall determine the persons who are partners of the firm and who are entitled to share the profits thereof, and the proportions in which they are entitled to share profits and are liable for losses, and also whether the books of the partnership have been regularly and properly kept and correctly represent the transactions and dealings of the partnership, or, if any allegations have been made in this behalf by any party, whether there are any errors or irregularities therein, or any party has been guilty of fraud in respect thereof. If the Court finds that there are errors or irregularities in the accounts, or that fraud has been committed, it shall declare generally the nature of the said errors, or irregularities, or fraud, or the particular transaction in respect of which the same has been committed as in Appendix III, Form No. 26.

Matters to be determined at hearing.

270. At the hearing of the suit, the Court shall also determine what accounts are to be taken, and from what dates, and give such directions as may be necessary for taking the same, in manner prescribed by Chapter IV, and shall direct what notice,

Accounts.

if any, is to be given, by advertisements in the local newspapers or otherwise, of the dissolution of the partnership. The Court may, if a receiver has not been previously appointed, appoint a receiver of the assets of the partnership. The Court shall then pass an interim decree in Appendix III, Form No. 23 or in Appendix III, Form No. 42 and shall adjourn the further hearing of the suit to a fixed day.

Errors in settled accounts.

271. In the case of a settled account, if errors or irregularities are proved, the Court may either rectify particular items, or give liberty to any party to file a statement of objection or surcharge; if fraud or a mistake affecting the whole account is proved, the Court may direct an account to be taken from the date of the settlement of account, if any, preceding the fraud or mistake.

Commissioner to take account.

272. If a commissioner is appointed to take an account he shall take the same in accordance with the directions and finding of the Court, as contained in the interim decree; and except as aforesaid, none of the matters in Rules 269 and 270 mentioned shall be referred to or dealt with by a commissioner.

Order for discharge of debts and liabilities.

273. When the accounts of the firm have been duly taken, and approved by the Court, it shall pass an order providing for the discharge of the debts and liabilities of the firm, and for the retention in Court of a sum sufficient for payment of any costs, charges and expenses of the suit, properly payable out of assets, and adjourn the suit to a fixed day.

Order for payment of balance. Order for distribution of assets.

274. If the assets exceed the debts and liabilities of the firm, and if the parties agree to retain the assets in their hands respectively on account of their respective shares in the firm, the order in Rule 273 mentioned may also provide for the payment of any balances which may be due by the firm to any of the parties, after debiting them with the estimated value of the assets in their hands. The order may be in Appendix III, Form No. 43 or if a commissioner has been appointed to take the accounts or a receiver has been appointed, in Appendix III, Form No. 44. If the parties apply for the distribution of the assets in any other manner the order may direct the realization of sufficient assets to discharge the debts and liabilities of the firm, and to provide for equality of partition, as in Appendix III, Form No. 45. At the adjourned hearing, the Court may, if the terms of the said order have been complied with, pass a final decree in Appendix III, Form No. 46, 47 or 48 according to the circumstances of the case.

Order for payment of balance into Court and realization of assets.

275. If the debts and liabilities exceed the assets of the partnership, or the parties do not consent to a distribution of the assets, the Court shall direct the balances due from the several partners to be paid into Court, and the assets to be realized, as in Appendix III, Form No. 45 and if, at the adjourned hearing, it appears that the debts and liabilities have been fully discharged, the Court may pass a final decree in Appendix III, Form No. 47 omitting paragraph 4 thereof.

Appointment of receiver on default of party.

276. If any party, ordered to make any payment or to do any other act, fails to comply with the order of the Court, another party may apply that a receiver may be appointed to collect and realize the assets of the firm, and for an injunction to restrain the party in default from retaining or parting or dealing in any manner with the said assets.

Forms.

277. An order for an injunction in a partnership suit, an order on appeal varying the interim decree, and an order on appeal from a final decree reversing the same and appointing a receiver, may be as in Appendix III, Forms Nos. 49, 50 and 51 respectively.

CHAPTER IX.

Partition Suits.

Parties.

278. In every suit for partition of property all persons entitled to share therein, or to maintenance, shall be joined as parties, and if it is alleged that any co-owner has alienated any portion of the joint property or his interest therein, in circumstances rendering the alienation not binding on the co-owners, the alienee shall be made a party to the suit and the plaint shall set out the particulars of the alleged alienation.

Plaint.

279. The plaint shall state the relationship, if any, of the parties and the shares to which they are respectively entitled, and the allowances or residences, if any, which it is proposed to allot to them respectively; and unless a general account is prayed for, the particular items of joint property of which division is sought, the incumbrances, charges, and outgoings if any, to which the same are subject, and the net value of each item; and shall also state whether any debts or liabilities of the co-owners, payable out of the joint property, are outstanding or unsatisfied.

280. If, at the first hearing, it appears to the Court that only the amount of the property to be divided, or of the debts or liabilities of the parties, is in dispute, it may at once pass an order directing the taking of the necessary accounts.

Order for accounts.

281. At the hearing of the suit, the Court shall determine who are the persons interested in the joint property and their respective shares and interests therein; whether there are any outstanding debts and liabilities, which should be satisfied out of the joint property; and, if any allegation has been made in this behalf, whether any person has alienated any portion of the property in circumstances rendering the alienation not binding on the co-owners, or is liable to account for any particular property in his possession, or in any other manner. No such question as aforesaid shall be referred to or dealt with by a commissioner appointed to take an account or divide any property, and if any such question arises before him, he shall reserve the same for the determination of the Court.

Matters to be determined at hearing.

282. If it appears to the Court that there are outstanding debts or liabilities which ought to be satisfied out of the joint property, and that the same cannot then be ascertained, the Court shall direct an account to be taken thereof, and may, in its discretion, direct notice to be given to all persons having claims against the property, or the co-owners, by advertisement in the newspapers or otherwise, to bring their claims into Court before a fixed day.

Account of outstanding liabilities.

283. If it is necessary to take an account, the Court shall pass an interim decree specifying the several accounts; which shall be taken in manner prescribed by Chapter IV, and the further hearing of the suit shall be adjourned.

Interim decree.

284. If any debts or liabilities, other than incumbrances, charges or outgoings, on or out of immovable property, are outstanding, the same shall, unless the Court otherwise directs be ascertained and as far as practicable discharged or provided for before any order or decree is made for the division or distribution of the joint property.

Discharge of outstanding liabilities.

285. If there are any outstandings due to the co-owners, unless the same are accepted by any party in satisfaction or part satisfaction of his share, they shall, unless the Court otherwise directs, be collected and brought into Court, by means of the appointment of a receiver, or otherwise before any order or decree is made for the division or distribution of the joint property.

Outstandings due.

286. If, in a partition suit, the sale of any property is ordered, an order, for sale shall be made, and the subsequent proceedings shall be coducted in manuer prescribed by Chapter VI of these Rules as far as the same are applicable. Provided that Rule 185 shall not apply to the said sale, and the Court may grant leave to any party to bid for and purchase the property, or any part thereof, on such terms as the Court thinks fit.

Order for sale.

287. If a commissioner is appointed to take an account, or to divide any property, the Court shall determine the amounts to be deposited in Court on account of his remuneration, and the expenses of the commission, and shall fix a date for the return of the commission, and adjourn the further hearing of the suit to a fixed day; and the commission shall not be issued until the said sums are deposited accordingly.

Taking account by commissioner.

288. At the final hearing of the suit, the Court shall determine of what the joint property consists, and the manner in which the same is to be divided, and the amount of the allowance, and the residences, to be allotted to any person entitled to maintenance, marriage or residence, and the manner in which the same are to be paid and secured.

Final hearing.

289. The final decree shall in all cases specify the several portions of the joint property assigned to the several parties as their respective shares.

Final decree.

290. The plaint and the decree in a partition suit may be as in Appendix III, Form No. 52 and as in Appendix III, Forms Nos. 53 to 58 respectively so far as the same are applicable. A deed of indemnity may be as in Appendix III, Form No. 59.

Forms.

CHAPTER X.

Additional Rules relating to appeals from decrees and orders and to civil revision petitions and reviews.

291. The memorandum of appeal shall be accompanied by the fees prescribed for service of notice on the respondent and by the particulars for service of the same set out as in Appendix III, Form No. 60.

Notice fees, etc., to accompany appeal memo.

292. The representative of a party dying after decree may present an appeal without previously obtaining permission therefor; and such appeal, when presented before the expiry of the period allowed for appeal, shall be registered and proceeded with, the appellant's competency to represent the

Appeal by representative.

deceased party being open to be objected to by the respondents and to be disposed of by the Court at the hearing of the appeal.

Court fee valuation of appeal.

293. Every memorandum of appeal and of objection shall contain a statement of the value of the appeal or objection for the purposes of the Court Fees Regulation.

Affidavit explaining delay.

294. Every memorandum of appeal or petition which is presented after the expiration of the time limited by law shall be accompanied by an affidavit explaining the delay. If any such memorandum of appeal or petition is presented without such affidavit, it shall, together with all papers presented therewith, be returned to the pleader or party presenting them with an endorsement as follows :—

Endorsement returning papers.

" This memorandum of appeal (or petition) has been presented...days out of time. The pleader (or party) is requested to explain the cause of the delay, in order that the case may be posted before the Court for the consideration of such explanation, and for orders thereon ".

Appeal or petition to be posted before Court.

295. Every memorandum of appeal or petition presented with an affidavit explaining delay shall be posted for orders before the Court.

Special notice to be given as regards offer for oath.

296. When an appellant makes an offer in the memorandum of appeal for the settlement of the case by oath, special notice of such offer shall be given to the respondent in addition to the notice of appeal, and served upon him or his Vakil at least a week before the case comes on for hearing before the Court. Separate process-fees must be levied from the appellant for the issue and service of such notice.

Opposite party to file memorandum of appearance.

297. If the respondent, counter-petitioner, etc., intends to appear and defend the appeal, petition, etc., he shall, not later than the date fixed for hearing in the notice of appeal, petition, etc., enter an appearance by filing in Court a memorandum of appearance.

Penalty for omission.

If a respondent, etc., fails to enter an appearance within the time and in the manner provided above, he shall not be heard in the appeal or matter.

Proviso.

Provided that a respondent, etc., may apply by petition for further time, and the Court may thereupon make such order as it thinks fit.

298. The memorandum of appeal (or petition) and the memorandum of appearance shall state an address for service, at which service of any notice, order or process may be made on the party filing such memorandum.

Address for service.

If a party appears by a pleader his address for service shall be that of his pleader, and such address shall be within the municipal limits of the town where the appellate Court is situate. All notices to the party shall be served on his pleader at that address.

If a party appears in person, the address for service may be within the local limits of the jurisdiction of the Court from whose decree the appeal is preferred or of the Munsiff's Court in which the party ordinarily resides.

Provided that, if such party subsequently appears by a pleader, he shall state in the vakalat an address for service within the municipal limits of the town where the appellate Court is situate and shall give notice thereof to each party who has appeared.

299. (1) All notices and processes, other than a notice of appeal, shall be sufficiently served if delivered by a party or his pleader, or by a person employed by a pleader, or by an officer of the Court, between the hours of 11 A. M. and 5 P. M., at the address for service of the party to be served.

Service of notice.

(2) Notices which may be served by a party or his pleader under this Rule or which are sent from the office of the Registrar may, unless the Court otherwise directs, be sent by registered Anchal or Post; and the time at which the notice, so posted, would be delivered in the ordinary course shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

300. The memorandum of objections shall be accompanied by the fees prescribed for service of notice on the parties affected thereby and by the particulars for service of the same, set out as in Appendix III, Form No. 60.

Fees for service of notice.

301. Whenever a respondent proposes to support the decree appealed against, by taking objection to the findings of the lower Court against him, he shall give notice of his intention to do so, not later than fifteen clear days after the service of notice of hearing of the appeal, by filing in Court a memorandum of the grounds on which the decree is sought to be supported. The appellate Court may, in its discretion, excuse delays in the filing of such memorandum of grounds, if proper reasons are shown.

Objection to findings.

302. An application to postpone or advance the hearing of, or otherwise with respect to, a case shall be made by petition endorsed with the consent of, or on notice to, all parties who have entered an appearance and shall be supported by evidence to be given on affidavit.

Application to postpone or advance hearing on notice.

303. When cases are remanded by appellate Courts, the Court receiving the order of remand shall affix a notice in the Court's notice-board specifying the date fixed for the hearing.

Notice of hearing of cases remanded.

Interlocutory applications and matters.

304. An application for leave to amend a memorandum of appeal or of objection or a petition of revision shall be made by petition upon notice to any party who has entered an appearance, and shall set out the amendment prayed.

Application for amendment of appeal, objection or revision petition.

305. (1) Cases remanded under Section 537 of the Code for submission of findings should be given precedence over all civil work other than that of a specially urgent nature.

Cases remanded for findings.

(2) In no case should an adjournment of the hearing be granted beyond the day fixed by the appellate Court for the submission of the finding without the previous sanction of such Court. If, owing to the neglect of parties, a finding cannot be submitted within the time fixed, extension of time shall not, as a rule, be applied for but an answer shall be returned intimating the fact of such neglect.

(3) The Court to which a remand is made under Section 537 shall, in submitting its finding, certify at the foot thereof the amount of costs (showing the items in detail) incurred by each of the parties to the case at the retrial before that Court, in view to such costs being provided for in the decree that may finally be passed by the appellate Court.

306. When an issue is referred for trial and the finding of the lower Court is returned, notice shall be given on the notice-board of the Court, and any party desirous of objecting to the finding shall, within ten days after such notice, or within such other period as may be allowed by the order of remand, file in Court a memorandum of his objections and serve a copy thereof on the other party.

Time for filing objections. Copy to be served.

307. The Rule that requires parties to file objections to findings within a prescribed time before the date of hearing of an appeal is one of procedure and does not affect the power of the appellate Court to deal with the findings as it deems proper in the interests of justice.

Power of appellate Court to deal with findings.

308. (1) Appellate Judges are bound to record proper judgments even in cases they concur in the conclusions arrived at by the Courts of first instance. The judgment of the appellate Court must on its face show that material points did not escape its attention and that it considered the grounds alleged against the decision of the lower Court, examined the evidence and framed its own independent judgment. The mere endorsement of the opinion of the lower Court is not a judgment within the meaning of Section 545 of the Code. A judgment which does not satisfy the requirements of this Section is legally no judgment.

Appellate judgments.

(2) If more than one appeal is made against the same decree, the appeals shall, as far as possible, be heard together and disposed of by one judgment which shall embrace the several matters put in issue in each of the appeals and one decree only shall be drawn up which shall be headed with the cause-titles of the several appeals.

309. The decrees of the appellate Courts in all cases where the decrees of the lower Courts are modified or reversed must be self-explanatory, *i. e.*, the portion of the decree of the lower Court confirmed must be re-produced in the decree of the appellate Court and the amendments duly entered.

Appellate decrees to be self-explanatory.

310. In appeals remanded for retrial and decision *de novo* under Section 533 of the Code no decrees need be prepared when there is nothing to be executed and the costs are to abide by the fresh decision to be passed in the case. It will be enough if a table of costs is added to the judgments in such cases.

Table of costs to be appended to orders under Section 533.

311. With all special (second) appeal memoranda to the High Court, copies of both the lower Courts' judgments and decrees should be produced.

Judgments and decrees to be produced with special appeal memorandum.

312. In all appeals from orders the appellants are required to file a short statement of the case.

Statement of case.

313. In all civil miscellaneous appeals a table of costs shall be prepared and appended to the judgment.

Table of costs.

314. Where a party or Vakil desires to refer, at the hearing of any appeal before the High Court, to any map, plan or other record, for preparing copies of which skilled labour is required, he shall, if an appellant, along with the appeal memorandum, and if a respondent, within twenty days of the service of the notice of appeal or along with his memorandum of objections, if any, file a list containing the description of all

Copies of map, plan, etc., in appeals before High Court.

kinds of papers referred to above. On receipt of such list and of the records, the Registrar shall fix a fee proportionate to the skill, labour and time required for preparing the copy, and the party or Vakil concerned shall deposit the same in cash in Court within ten days of the service of notice upon the Vakil or the posting thereof in the Court's notice-board if the party has no Vakil. The whole of such fee shall be paid to the person employed in preparing the copy, he supplying his own materials. He shall prepare three copies of the papers in Full Bench cases and two in other appeals. When a copyist or other employee of the Court is appointed to prepare the copy, he shall do the work without prejudice to his legitimate duties.

Civil revision petitions to be accompanied by particulars for notice.

315. Civil revision petitions shall be accompanied by the particulars for service of notice of the same set out as in Appendix III, Form No. 60.

References to High Court.

316. Whenever references are made to the High Court under Section 563 of the Code, the lower Courts shall direct the parties or their pleaders to put in their appearance before the High Court, if they choose to do so, on a specified date and note the fact in the letter of reference.

Application for review.

317. With all applications for review, copy of the judgment, of which the review is applied for, shall be produced.

Service of Notice.

Procedure when notice returned unserved.

318. If any notice is returned unserved an intimation of that fact and of the reason why the notice has not been served shall be given on the notice-board, and within thirty days from the date on which the intimation is so given the appellant or his pleader shall, except when the notice has not been served because the respondent concerned is dead, deposit further fee for the service of a fresh notice and shall give the particulars necessary for serving it, and if the fresh notice or any subsequent notice is returned unserved, the same procedure shall be repeated.

Fees to be paid in Court-fee labels.

319. The fees for the service of notice on respondents, counter petitioners, etc., shall be paid in the form of Court-fee labels or stamps as the case may be, such Court-fee labels or stamps being attached to a memorandum, as in Appendix III, Form No. 60.

Application to Court to be by petition.

320. When any act has not been done within the time lawfully appointed for that purpose by the Registrar, and an application to the Court therefore becomes necessary, such application shall be made by petition.

Rules for the reciprocal service of processes between British India and Travancore.

321. (1) All processes received from the Civil Courts in British India for service in Travancore shall be served by the Courts in this State free of charge.

(2) All processes received from the Civil Courts aforesaid shall be served in Travancore by the District Courts or Munsiffs' Courts within whose jurisdiction the person to whom they are addressed resides, as if such processes had been originally issued by those Courts. Such processes shall be returned by the Courts that served them direct to the British Indian Courts from which they were received and the fact of such return shall be intimated to the District Court in cases where processes have been received through the District Courts and not direct.

(3) When the process received for service within Travancore is in a language other than English, Malayalam or Tamil, the Court issuing it may be requested to forward an English or Malayalam translation of the same.

(4) The Courts of Travancore receiving processes for service from the Civil Courts in British India shall accept the certificate endorsed on the process by the Court issuing the same as sufficient proof that the proper fee for the issue thereof has been paid, and shall deliver such process to the proper officer of the Court for service and shall re-transmit the process to the Court by which such process was transmitted with a return in the Form appended (Appendix II, Form No. 6) and with the endorsement of the process-server showing in what manner service has been effected, and if service has not been effected, the reason for the non-service, and such endorsement shall be verified by the oath or affirmation of the process-server.

(5) All processes received from British Indian Civil Courts shall be returned to the said Courts post paid, the expenses in connection therewith being met from the contingencies allotted for 'postage.'

(6) The Courts in Travancore shall send their processes for service in British India to the District Court *or the Munsiff's Court* within whose local jurisdiction the person to whom the process is addressed resides and no remittance on account of process-service fees need accompany such processes; but a note shall be entered on it that the necessary fee has been levied and attested by the signature of the presiding Judge and, in the High Court, by the Registrar.

Processes intended for service within the limits of the Towns of Calcutta, Madras and Bombay shall be sent to the Court of Small Causes within whose jurisdiction the processes are to be served.

(7) The processes of the Travancore Courts for service in Malabar may be drawn up in Malayalam and those for service in the Tamil

Districts, such as Tinnevelly, Madura, etc., in pure Tamil characters. Processes for service in other Districts shall invariably be accompanied by English translations.

(8) *The processes of the Travancore Courts for service in British India shall not be sent to the persons to whom they are addressed direct by Post.*

(9) On processes to be forwarded to British India for service, the process-fees prescribed by the Rules in force for processes to be served within Travancore shall alone be levied.

(10) When the process issued for service in British India is for the appearance of any person as a witness, the amount of batta and travelling allowance, he is entitled to under the Rules, should be remitted with the process either in postage stamps, or currency notes or by money order.

(11) Travancore processes forwarded for service in British India shall always be sent "Post paid". All expenses in the way of postage, etc., incurred in connection with service of processes shall be met from the contingencies allotted to the Court for postage.*

Rules for reciprocal service between Cochin and Travancore.

322. (1) All processes received from the Civil Courts of Cochin for service in this State shall be served by the local Civil Courts free of charge.

(2) Processes issued by the Chief Court and the District Courts of Cochin shall be served by the local District Courts and processes issued by the Munsiffs' Courts of Cochin by the local District Munsiffs' Courts, within whose jurisdiction the person to whom they are addressed reside, as if such processes had been originally issued by the local Courts.

(3) When any process received for service from Cochin is in a language other than English or Malayalam or Tamil, the Court issuing it may be requested to forward an English translation of the same.

(4) The Civil Courts in Travancore receiving a process for service from a Civil Court of Cochin shall accept the certificate endorsed on the process by the Court issuing it as sufficient proof that the proper fee for the issue thereof has been paid and shall deliver such process to the proper officer of the Court for service and shall re-transmit the same to the Court from which it was received with a return in the Form (Form No. 6, Appendix II) appended to the Rules for the reciprocal service of processes

* Rules for the reciprocal service of processes between British India and Travancore sanctioned by His Highness the Maha Raja under the date the 11th January 1890 as since amended.

between British India and Travancore dated the 11th January 1890/29th Dhanu 1065 and with the endorsement of the process-server showing in what manner service has been effected and if service has not been effected, the reason for the non-service, and such endorsement shall be verified by the oath or affirmation of the process-server.

(5) The return, etc., referred to in the preceding Rule shall be transmitted to the Court, which issued the process, by Anchal on 'Sirkar Service.'

(6) The processes of the local High Court and the District Courts for service in Cochin other than those mentioned in Sections 85 and 86, Civil Procedure Code, shall be sent by Anchal on 'Sirkar Service' to the District Courts and those of the District Munsiffs' Courts to the Munsiffs' Courts in Cochin within whose jurisdiction the persons to whom the processes are addressed reside, and no remittance on account of process-service fees need accompany such processes; but a note shall be entered on every such process that the necessary fee has been levied; and such note shall be attested by the Registrar in the High Court and by the presiding Judge or Munsiff, as the case may be, in the other Courts.

(7) The processes of the local Courts for service in Cochin may be drawn up in Malayalam or English.

(8) On processes to be forwarded to the Cochin Courts for service, the process-fees prescribed by the Rules in force in respect to processes for service within Travancore shall alone be levied.

(9) When the process issued for service in Cochin is for the appearance of any person as a witness, the amount of batta and travelling allowances, he may be entitled to under the local Rules, shall be remitted with the process either in British postage stamps or currency notes or by money order. *

323. His Highness the Maha Raja of Cochin may sue and shall be sued in the Civil Courts of this State in the name of His Dewan. †

Suit by or against H. H. the Maha Raja of Cochin.

---

* Government Notification dated the 29th September 1902.

† Government Notification dated the 10th June 1896.

II
RULES UNDER OTHER REGULATIONS.

AMENDMENTS.

(1). **Regulation VI of 1087** (*Court Fees*).

Rule 344. Rule (1) of this Rule has been amended as follows :—

"(1) Applications made by persons, not being parties to the suit, for the return of documents and other articles produced by them in pursuance of an order of the Court, *and applications made by parties to the suit for return of documents exempted from payment of Court fee under Rule 60.*"

[See Vol. III, Page 448.]

(2). **Regulation IV of 1080** (*Stamp*).

Rule 356. This Rule has been amended as follows :—

356. When an unstamped or insufficiently stamped document is tendered in evidence before any Court, the head ministerial officer or the clerk who keeps the stamp duty and penalty register under the supervision of the above said officer shall, before the document is taken to the presiding officer for orders, duly enter the document in a register (Appendix III, Form No. 61) and note on the back of it the serial number of the entry in the register; and the head ministerial officer as well as the clerk who keeps the register shall affix their signatures below the serial number so noted in token of the entry having been correctly made The presiding officer shall pass orders directing the levy of stamp duty and penalty only after the document is given a serial number in the register and such serial number is entered on the back of the document in question over the head ministerial officer's and the clerk's signatures. As soon as the stamp duty and penalty are realised as ordered by the Court, columns 8 to 11 shall be duly filled up and the initials of the presiding officer obtained in column 12 at once and the fact of the deposit together with the amount deposited shall be noted on the back of the document and the entry attested by the initials of the head ministerial officer and the clerk. The presiding officers shall, at the time of affixing their initials, satisfy themselves as to the correctness of the entries made in the register. The moneys realised under this head shall, as far as possible, be remitted to the treasury that very day or, in exceptional cases, the next Court day and the date of remittance and the number of the chalan and receipt duly noted in column 13. As soon as the money is remitted to the

treasury, the copy of the document on which the stamp duty and penalty have been levied together with the usual certificate shall be sent to the Division Peishkar (Appendix III, Form No. 62) and the date of such despatch duly noted in Column 14. In cases where stamp duty and penalty are not paid as ordered by the Court and also in the case of unstamped or insufficiently stamped promissory notes, bills of exchange or any instrument chargeable with a duty of one anna other than a receipt falling within proviso (*c*) to Section 37 of the Stamp Regulation, the original shall be sent to the Division Peishkar (Appendix III, Form No. 63) *within two weeks from the date of the order or of the production of the instrument which may be extended by the Court on the application of the party who produced the document*, and the date of such despatch noted in Column 14. Whenever the stamp duty and penalty are paid by a person other than the person who produced the document the name of the payer also shall be entered in column 4. When an unstamped or insufficiently stamped document comes before a Civil Court, but is not tendered in evidence such document shall be duly impounded and the necessary entries made in the register before the document is sent in original to the Division Peishkar as required by the Stamp Regulation.

[See Vol. II, Page 1412.]

---

(3) **Regulation II of 1098** (*Destruction of Records*).

Amendments to the Appendices to Rules Nos. 396 to 410 of the Civil Courts' Guide, prescribing the period necessary for the destruction of records in Insolvency Cases :—

(i) Form B (of the Appendix), Part I, insert as the last item in the first column "Insolvency Cases," and in the next column opposite to that, insert

"1. Index.
2. Final judgment and order (original and appellate).
3. Insolvent's application and schedule.
4. Interim orders."

(ii) Form B, Part III. Delete the full stop after "proceedings" in the first column and add "and insolvency cases."

(iii) Form D. Under sub-heading '3' in the first column, insert as last item, "(*c*) In insolvency cases" and in the corresponding portion in the next column, insert "6" under "Part I" and "3" under "Part III."

[See Vol. V, Pages 447-451].

---

(4) Regulation III of 1075 (*Vakils*).

The Rules amended are as follows :—

411. No one shall be eligible for enrolment as a Vakil of the High Court of Travancore unless he is a Barrister-at-Law or a member of the Faculty of Advocates of Scotland *or an enrolled Advocate, Vakil or Attorney of a British Indian High Court or in the Cochin Chief Court or a Doctor or Master of Laws or a Bachelor of Laws or such other degree in Law of any University in British India or of any other University as the High Court may by general or special order accept as equivalent to the said degrees of Law.*

Qualifications for enrolment.

Provided that Bachelors of Laws, other than those already enrolled as Vakils in any of the British Indian High Courts *or in the Cochin Chief Court*, shall not be eligible for enrolment as Vakils of the High Court,

(1) *unless they have presided as a Judge of a Civil Court in Travancore for a period of not less than 3 years ; or*

(2) unless they have practised as First Grade Pleaders in Travancore, *Cochin*, *Mysore* or British India either before or after graduating in law for a period of 5 years ; or

(3) unless they have practised as First Grade Pleaders for a period of not less than one year previous to their application for enrolment and have produced a certificate from the Judges before whom they have practised as to their efficiency and character and have also passed either the British Indian Pleadership Examination of the First Grade or the local examination prescribed for First Grade Pleaders or the Apprentice Examination held by the High Court of Judicature, Madras, or *the* Special Examination *held* under the orders of the High Court in subjects 2, 3 and 7 prescribed for the local Pleadership Examination by the said Rules, *viz.*,

	Maximum marks assigned.
The Code of Civil Procedure ...	60
The Code of Criminal Procedure and Medical Jurisprudence ...	90
The Stamp, Court Fees, Suits Valuation and Limitation Regulations ...	30

To secure a pass in the said special examination, a candidate must obtain not less than one-third of the marks assigned to each subject and not less than one-half of the aggregate marks assigned to the three subjects together.

A fee of British rupees 15 shall be charged on applications for admission to the special examination.

Every applicant for the office of Vakil must, with his application, produce testimonials of good character and must, if required, produce evidence of his having passed the prescribed examinations or of his possessing the requisite qualifications.

No person convicted of any offence implying a defect of character or dismissed from the public service for any act implying a defect of character shall, notwithstanding anything contained in the Rule, be eligible to be enrolled as Vakil in any court of Travancore.

412. (1) All applications for enrolment as Vakils of the High Court shall be made to the High Court direct in person and shall be supported by the necessary certificates.

Application how to be made.

(2) No Application for enrolment as a Vakil of the High Court shall be considered unless the applicant has given at his cost two months' notice in English and Malayalam in the Travancore Government Gazette of his intention to apply for enrolment.

Provided, Advocates, Attorneys and Vakils who have been enrolled in the High Courts in British India, *or in the Chief Court of Cochin* and Barristers-at-law, members of the Faculty of Advocates of Scotland *and persons who have surrendered their sanads on accepting a permanent employment under Government or persons who retired after presiding as a Judge of a Civil Court in Travancore* may apply for enrolment without previously giving the prescribed notice. But they should unless the High Court otherwise direct, produce with their application papers showing that they have been duly enrolled in such Courts.

(3) If the applicant has been in public service he shall, in addition to the particulars mentioned in Rule 411, set forth in full the circumstances under which his connection with the service ceased.

421. (2) Any person who, after passing the Matriculation Examination in any of the British Indian Universities or the Madras Upper Secondary Examination or the Middle School Examination in the First Class or the late General Test Examination or any other public examination which can be accepted as equivalent to these examinations, or after obtaining in the Travancore English School Leaving Certificate Examination, 40 per cent of the marks in English and English Composition together, 33 1/3 per cent in Vernacular Composition and Translation together and 40 per cent in all the subjects taken togther, *except where a candidate has taken three optionals in which case any two of the optionals alone may be considered for calculating the total marks, the percentage being calculated either according to the public examination marks or the final marks or the*

moderated marks, shall have attended *six* consecutive terms in a recognised Law College.

Provided that the High Court shall have power in appropriate cases to relax the Rule requiring that the terms that the student has to undergo should be consecutive.

451. No Vakil shall obtain assignments of decrees passed or which have to be executed by the Courts in which he practises or purchase or otherwise acquire any interest by assignment in any actionable claim falling under the jurisdiction of such Courts, *or stand surety for any party to a suit, appeal or other proceedings in such Courts.*

Execution and authentication of vakalats.

455. (1) Every vakalat must be executed by the party himself and must be signed before, and authenticated by a Tahsildar, *President of a Municipal Council, Member of a Municipal Council or Sri Mulam Popular Assembly* or other officer not inferior in rank to a Proverthicar except in cases where the Vakil, to whom such vakalat is executed, endorses on it that he personally knows the executant and that it was signed in his presence. Every vakalat must be dated at the time of its execution and its acceptance and be attested by two witnesses. No vakalat shall be authenticated by any officer unless the Vakil's name is inserted therein previous to its execution.

Rule 462. [Dropped.]

[See Vol. II, Pages 1126-1127, 1130, 1136 and 1137.]

RULES.

Re:

REGISTRATION YAḌASTS.

788. (1) When a Civil Court shall, by a decree or order, create, declare, transfer, limit or extinguish any right, title or interest of any person to or in any immovable property situate in any part of Travancore, such Court shall cause a memorandum of the said decree or order to be sent to the Sub-Registrar or to every Sub-Registrar within whose Sub-District, the whole or any portion of the property is situate and such memorandum shall, so far as may be practicable, describe the property in the manner required by Rule 13.

Memorandum of decree or order affecting immovable property.

Note.—Decree relating to hereditary right to an office, when it does not involve a right to any real property attached to the office, shall not be considered as decree relating to real property for purposes of Registration of decrees under the Registration Regulation.

(2) Every Court granting a certificate of sale of immovable property under Section 313 of the Civil Procedure Code shall send a copy of such certificate to the Sub-Registrar or to every Sub-Registrar within whose Sub-District the whole or any portion of the immovable property comprised in such certificate is situate.

Certificates under the Civil Procedure Code.

789. The preparation and transmission of the memoranda and copies aforesaid shall be the work of the copyists' establishment.

Preparation and transmission.

790. The Court shall levy a fee of five and one fourth fanams in Court fee stamps, (this fee being levied at the time of the presentation of the plaint, claim petition, application for copy of sale certificate, etc., as the case may be) for every memorandum of decree or order and for every copy of a sale certificate which has to be sent to the Sub-Registrar.

Fee.

Provided that where the decree or order or sale certificate embraces properties situated in more sub-districts than one, separate fees at five and one fourth fanams per sub-district shall be levied and the court concerned shall, in such cases, send to every Sub-Registrar, within whose jurisdiction portion or portions of such property lie, a memorandum of such decree or order or a copy of the sale certificate.

Separate fee for separate sub-district.

Provided also, that when a suit or appeal is restored to file in consequence of an order made by the Court which decided the suit or appeal or in consequence of an order of remand, registration fees, at the rates specified above, shall be levied afresh from the plaintiff or appellant as the case may be.

Out of every five and one fourth fanams levied as above, three and a half fanams shall be deemed to be Registration revenue and one and three fourth fanams copying fees.

Examiner to revise memorandum.

791. As soon as a decree or order in respect of which a memorandum has to be sent to the Registration department is passed by the court or a sale of immovable property is confirmed and the certificate is issued, the examiner of copies or other clerk in charge shall enter the number of the case in the "B" register (Appendix III, Form No 214.) and call for such of the papers as may be necessary for the preparation of the memorandum or copy from the officer of the Court with whom such papers may be. When the papers are received, the examiner or other clerk in charge shall enter the case in "H" register (Appendix III, Form No 220) and entrust it to the copyists who prepare the memorandum or copy. When the same has been prepared, the examiner or other clerk in charge shall carefully revise it and, after attesting it, get it signed by the presiding officer. The memoranda and copies shall then be forwarded to the accountant whose duty it will be to prepare and attach thereto slips certifying that a fee of three and a half fanams has been received on account of registration revenue. The accountant shall intial these slips and get them signed by the head ministerial officer. The memoranda and copies shall then be returned to the examiner of copies or other clerk in charge and he shall after getting the seal of the court affixed thereto send them to the Sub-Registrars.

'J' register.

792. The examiner of copies or other clerk in charge shall keep a register called the 'J' register (Appendix III, Form No. 221) in respect of registration fees.

Examination of registers and records by head ministerial officer and judge.

793. The registers and other records in the copyists' section shall be carefully examined by the head ministerial officer at least once a week and by the presiding Judge, and the fact of such examination shall be noted in the registers.

III
THE RULES REFERRED TO IN CASE LAW.

Rules 18 & 71.—		See Regn. VIII of 1100,	Or. XVII, R. 1.— 20 T. L. J., 165.
,,	66.—	Do.	Or. I, R. 10.— 20 T. L. J., 612.
,,	185.—	Do.	Sec. 55.—20 T. L. J., 438.
,,	197.—	Do.	Sec. 31.—48 T. L. R., 331 (=22 T. L. J., 981).
,,	250.—	Do.	Sec. 40.—46 T. L. R., 413 (=21 T. L. J., 35).
,,	301.—	,, Regn. III of 1094,	Secs. 21 & 23.— 22 T. L. J., 1310.
,,	435.—	,, Regn. VIII of 1100,	Or. IX, R. 13.— 49 T. L. R., 358 (= 23 T. L. J., 596).
,,	440.—	Do.	Sec. 32.—46 T. L. R., 53 (=20 T. L. J., 157).
,,	451.—	Do.	Or. XXI, R. 14.— 23 T. L. J., 642.
			Or. XXI, R 70.— 20 T. L. J. 318.
			Or. XXI, R. 87.— 21 T. L. J., 257.
,,	547.—	Do.	Or. XX, R. 1.— 46 T. L. R. 265 (=20 T. L. J., 584).
,,	790.—	,, Regn. II of 1087,	Sec. 15.—22 T. L. J., 1056.
		,, Regn. VI of 1100,	Art. 166.—23 T. L. J., 823.

APPENDIX F.

I. HIGH COURT CIRCULARS, &c.

A. CIVIL.

(1)

As it is found that in many of the subordinate Courts the B Diaries of suits decided *ex parte* but subsequently restored to file are written up only from the date of the restoration petition, the High Court are of opinion that such a practice is irregular, and therefore direct that in future the B Diaries in such cases should be written up completely and should contain all incidents in the progress of the suit from the date of its institution.

19-2-1107/5-10-1931.

---

(2)

It having come to the notice of the High Court that a suit filed and numbered in one Court but ordered to be presented or transferred to another Court is given a fresh number when it is sent back to the first Court, the High Court hereby direct that such a suit when re-presented or re-transferred to the first Court should bear the number and year given to it originally by the said Court and that whatever vicissitudes through which a suit passes, it should always bear one number and year on the file of one Court.

4-4-1107/20-11-1931.

---

(3)

It having come to the notice of the High Court that witnesses produced before the subordinate Civil Courts under warrants of arrest are not promptly examined, that when the examination of witnesses is not completed on the day they are produced, the cases are adjourned to distant dates and in certain instances, three or four adjournments were made for completing such examination, and that warrants of arrest are issued to witnesses already examined fully on behalf of one party, for examination by the other party, thus causing much inconvenience to persons who are cited as witnesses, the High Court hereby direct that the practice referred to above wherever existing, should be discontinued forthwith and invite the particular attention of the subordinate Courts to the necessity of examining witnesses, appearing in Courts under coercive processes, on the dates

they are produced and if the examination of such witnesses is not completed on those days, the same should be continued from day to day until it is completed. Any laxity on the part of the Presiding Officers in these respects will be taken severe notice of by the High Court.

5-4-1107/21-11-1931.

---

(4)

As it has come to the notice of the High Court that stamp papers produced in Courts by parties for the preparation of certificates of sale have been used for other purposes and stamp papers of the same total value but of different denominations substituted, with the connivance of the Court subordinates and as the High Court have reason to apprehend that in the absence of a Register for entering the number, value etc., of such stamp papers, similar irregularities and malpractices are likely to recur, the High Court hereby direct that a Register called the Sale Certificate Stamp Register in the Form appended shall be opened and maintained in all the Civil Courts of the State. [No. 3 of 1107.]

5-7-1107/18-3-1932.

Serial No.	No. and year of suit or proceeding.	Sale amount.	No. of stamp papers produced.	Value of stamp papers produced.	Date of production.	Date of signature.	Date of delivery.	Signature of applicant or Vakil.	Date of confirmation.	Date of payment of registration fees.	Remarks.

(5)

It having come to the notice of the High Court that there are several instances where the Record-keepers of the lower Courts have failed to duly note the receipt of records from the appellate Court after disposal of the Civil Miscellaneous Appeals in pending cases and to communicate promptly to the Vistharam Clerks the fact of receipt of such records and that consequently cases are adjourned unnecessarily from time to time for want of the records even after they have been really received in the lower Courts, the

High Court direct that the clerks concerned should pay proper attention to such matters in future and that any dereliction of duty on their part will be taken serious notice of.

1-12-1107/16-7-1932.

---

(6)

As it has come to the notice of the High Court that in most of the lower Courts there is much unfairness in the distribution of commission orders and also inordinate delay in the execution thereof, the High Court hereby direct that hereafter the lower Courts should submit to the High Court quarterly statements showing the names of the commissioners, their designation, the amount of the fee in each case, the time allowed for submitting the report and the time taken. [No. 1 of 1108.]

19-9-1932.

---

(7)

It has recently been brought to the notice of the High Court that some of the lower Courts do not pay proper attention to the proviso to Rule 2 of Order XLII of the Civil Procedure Code both in the matter of calling for and in sending up records for purposes of C. M. Appeals. The High Court therefore hereby direct that whenever the appellate Courts call for records for purposes of C. M. Appeals as per Order XLII, only such of the papers as are necessary for purposes of the C. M. Appeal need be called for, and the trial Courts also shall send up only such of the papers as are necessary for purposes of the C. M. Appeal as otherwise the trial Courts will not be able to proceed with the trial of cases even though there is no order for stay by the appellate Court. [No. 2 of 1108.]

19-9-1932.

---

(8)

As the High Court deem it desirable to transfer the execution clerks who have been working in that section for more than three years to some other sections of the same Court or to other Courts, the High Court do hereby direct that all clerks who have been working in the execution section of the lower Courts for more than three years should be transferred to some other sections in those Courts or to other Courts and other clerks appointed in their places.

As soon as an execution clerk completes three years' service in that section, it shall be the duty of the presiding officer to transfer him to some

other section in his Court or to bring it to the notice of the District Judge or the High Court as the case may be, in order that the clerk might be transferred to another Court in pursuance of this Circular. [No. 3 of 1108.]

9-12-1932.

---

(9)

It having come to the notice of the High Court that in some Courts, petition fees are levied when additional stamp sheets are produced in compliance with a requistion by the Court, the High Court hereby direct that the levy of such petition fee is unauthorised and should be discontinued wherever such practice exists. [No. 4 of 1108.]

27-6-1108.

---

(10)

As it has come to the notice of the High Court that the entries in the B Diaries in trial cases are not as full as they should be and do not contain the necessary particulars for finding out whether the case was disposed of on the merits or for default, the High Court do hereby direct the subordinate Courts to make the entries in the B Diary sufficiently clear and comprehensive, especially in cases which have been disposed of after rejecting the applications of the parties for time in which case the entries should definitely state whether the arguments of the Vakils on both sides were heard or whether the case was disposed of without hearing them. [No. 5 of 1108.]

19-7-1108.

---

(11)

As it has been brought to the notice of the High Court that the Sirkar is put to great loss and unnecessary labour on account of the failure of some of the Judges and Munsiffs to order the plaintiffs in pauper suits to pay the requisite court fees, the attention of the Judges and Munsiffs is drawn to the strict observance of the provisions of Order XXXIII Rules 10 and 11 which enjoin that decrees in pauper suits shall provide for realization of the court fees by the Sirkar. [No. 6 of 1108.]

23-11-1108/7-7-1933.

---

(12)

It having come to the notice of the High Court that in some of the Munsiffs' Courts the date of first hearing in original suits is not fixed so as to allow not less than 20 clear days from the date of service of summons and the first hearing of the suit as required by Rule 632 of the Civil Courts

Guide, the High Court do hereby direct that the provisions of the above Rule should be strictly followed and that the Bench Clerks should be directed to note in the day's cause list whether the time required had elapsed so that the case may not be proceeded with contrary to the provisions of the above Rule. [No. 1 of 1109.]

22-1-1109/7-9-1933.

---

(13)

As it has come to the notice of the High Court that in some of the lower Courts suits in which preliminary decrees are passed are wrongly included in the disposal register for the purposes of statistics, the High Court hereby direct that as a preliminary decree is not a complete adjudication of the matters in a suit, it is necessary to keep it on the file of the Court and that it should not be included in the disposal register till the passing of the final decree in the case. [No. 2 of 1109.]

23-1-1109/8-9-1933.

---

(14)

As it has come to the notice of the High Court that in some of the lower Courts there is inordinate delay in the matter of issue of processes to witnesses after the passing of the necessary orders by the Court, and that the hearing dates in warrants once signed by the presiding officers are corrected by the Nazirs without express order of the Court, the High Court do hereby direct that the orders for issue of processes should be promptly carried out and that the objectionable practice of the Nazir changing the dates of hearing in the warrants without express orders should be discontinued. [No. 3 of 1109.]

20-2-1109.

---

(15)

It having come to the notice of the High Court that in framing issues most of the lower Courts do not follow the procedure prescribed in Rule 64 of the Civil Courts' Guide and fail to record the pleadings in the issue paper, the High Court do hereby direct that in framing issues the pleadings should be recorded in complicated cases and that omission to do so will be taken serious notice of. [No. 4 of 1109.]

18-7-1109.

---

(16)

As the work of process servers in most of the Courts has been found to be unsatisfactory and that very few of them reach the prescribed

minimum percentage of personal service fixed by Rule 860 of the Civil Courts' Guide, the High Court do hereby direct that if the process peons fail to reach the minimum or at least three-fourths of it for six months in the year, they will be liable to be transferred to other stations as a punishment. [No. 5 of 1109.]

18-7-1109.

---

(17)

The High Court do hereby direct, that the subordinate Civil Courts should strictly comply with the requirements of Section 15 of the Registration Regulation and promptly communicate to the Sub-Registrars concerned, the memoranda of decrees and orders passed by them affecting immovable property, as required by Rule 788 of the Civil Courts' Guide. [No. 6 of 1109.]

18-7-1109.

---

(18)

It having come to the notice of the High Court that, on account of the great economic distress experienced at present by the people of the State in common with other parts of the world, judgment-debtors find it very difficult to discharge their decree-debts, and that consequently their immovable properties are being sold in Court auction for very inadequate prices, resulting in great loss to them, the High Court deem it necessary to impress upon the lower Courts the desirability of exercising liberally the discretion vested in them by the provisions of Order XXI, Rule 80 of the Civil Procedure Code in the granting of adjournments of Court sales etc., thereby minimising the hardships of the judgment-debtors. They therefore issue the following instructions for the guidance of the lower Courts :—

(i) Adjournments of sales may be granted liberally by the Courts in the exercise of their discretion to prevent hardship to the debtors as far as possible.

(ii) Payment into Court of a reasonable portion of the amount to be realised, should be treated as a sufficient ground for adjourning the sale.

(iii) If the debtor is unable to deposit any amount into Court a receiver may be appointed so as to safeguard the creditor's interest in the property proclaimed for sale.

(iv) The Courts should always see that the property is sold in Court auction for an adequate price even in the absence of the judgment-debtors.

(v) The Courts should more frequently follow the directions contained in Rule 177 of the C. C. Guide in conducting sales.

(vi) When several properties are proclaimed for sale in execution of a decree they should be sold separately, even in the absence of a prayer to that effect from the judgment-debtor, unless the Court has reasons to think that selling them in one lot will fetch a higher price. [No. 7 of 1109.]

3-8-1109.

---

(19)

Whereas a practice obtains in some of the subordinate Courts to accept copying sheets less than the number of sheets called for, on applications made for copies of documents or proceedings in the custody of the Court; and whereas this practice is irregular and is calculated to yield undesirable consequences, the High Court hereby prohibit the said practice and direct that the practice be immediately stopped. If the required number of sheets are not produced in Court, as called for, *in full*, within the time prescribed by Rule 751 of the Civil Courts' Guide, the Court shall forthwith strike off the application, unless, for any sufficient reason to be recorded, the Court deems fit to order otherwise. The stamp sheets ordered to be produced on any application for copies shall not be less nor far more than that required for making the copies, which the Court can grant; and they shall as far as possible approximate to the sheets requisite. [No. 8 of 1109.]

18—11—1109.

(B). CRIMINAL.

(1)

As it is not possible for the High Court at present either from the Sessions Returns or from copies of judgments sent for revision of calendars by the Sessions Judges, to ascertain whether the trial of cases had been conducted promptly from day to day or whether there was an undue prolongation of the trial in them, the High Court hereby direct the Sessions Judges to specifically state in the headings of judgments the dates on which the trial was begun, continued and closed in such cases, besides entering the dates on which they were finally heard and disposed of.

28-1-1106/13-9-1930.

---

(2)

The Sessions Judges are hereby directed that in the case of a sentence of death, they shall immediately on receipt of the judgment of the High Court after approval by the Sovereign and of the usual intimation fixing the date of execution, issue and if the said papers are received during the annual recess, shall make the necessary arrangements to issue, under

their own signatures, a warrant of death in the prescribed form, accompanied by a copy of the judgment to the Superintendent of Central Prison.

6-12-1106.

---

(3)

Courts of Sessions are hereby directed that in all Sessions Cases charged by the Police, a typed copy of the judgment should be sent to the Commissioner of Police, Trivandrum, within three days from the date of the pronouncement of the judgment.

19-12-1106.

---

(4)

In continuation of Criminal Circular No. 4 of 1060, the High Court direct that material objects produced at the trial of Criminal Cases under the Weights and Measures Regulation (Regulation VI of 1089) and condemned thereunder, shall be retained by the Courts concerned till the expiry of the periods prescribed under the Rules, and thereafter be broken up and sold and the proceeds credited to Government. [No. 2 of 1106.]

---

(5)

As it has come to the notice of the High Court that the material objects produced in Courts are disposed of or returned to the parties on the expiry of 60 days from the date of the judgment irrespective of the disposal of appeals or applications for revision, the High Court hereby direct that the period "60 days" fixed in Crl. Cir. No. 7 of 1065 shall be read as "three months". [No. 1 of 1107.]

19-2-1107/5-10-1931.

---

(6)

All Magistrates are prohibited from referring to the Police under Section 180 Criminal Procedure Code, complaints against Police Officers as it is not desirable that the Police should investigate charges against members of the same force. In such cases the Magistrates themselves should prosecute the enquiry. [No. 1 of 1108.]

23-11-1108/7-7-1933.

II. Rules issued for the guidance of Civil Courts of original Jurisdiction.

It having come to the notice of the High Court, that the Rules of the Civil Courts' Guide are not followed in certain matters by many of the

subordinate Courts, the High Court draw the particular attention of all Civil Courts of original jurisdiction to the said Rules and direct that the following instructions be strictly conformed to :—

1. The clerks in charge of the Vistharam and Execution sections shall enter every paper, as and when they are received by them in the index of papers on record as required by Rules 641 and 698, Civil Courts' Guide. The Presiding Officers shall, as often as possible, examine the index of cases and, if they find any omission in entering any of the papers in such index, they shall take severe notice of the conduct of the clerks concerned and see that the same is invariably kept current.

2. When papers are transmitted from the clerk in charge of the General Stamp Register to any other clerk, he shall not hand over the same, unless the clerk receiving it attests the fact of receipt in such register then and there. Similarly, when papers, registers or books are transmitted from one section to another, the attestation of the clerks receiving such papers, registers or books shall be invariably obtained in the receipt book kept for the purpose before they are so handed over to them.

3. The attention of the Presiding Officers is drawn to the necessity of themselves receiving the Anchal covers (except during the recess) and money orders addressed to their Courts. They shall, under no circumstances, delegate the power of receiving money orders and registered covers addressed to the Courts to any of their subordinates.

4. The presiding Officers shall take particular care to see that remittances of money orders and cash received are duly credited and debited in the cash book with detailed particulars, remitted to the Treasury by chalan and entered in the Judicial Deposit Registers after receipt of the advice list or pass book from the Treasury as required by Article 310 (*a*) of the Account Code.

Note.—Any delay on the part of the Treasury in sending the advice or pass book, should be reported to the Dewan Peishkar.

5. The amounts under R. T. Rs., cash order or temporary receipts received to the credit of a particular case shall under no circumstances, be sought to be given credit to for amounts under chalans on account of any other suit. R. T. Rs., cash orders, or temporary receipts should not be cashed but sent to the Treasury for adjustment by transfer credit only, to be credited to the deposit account of the Court.

6. In cases where remittances are made by money orders under Rule 163 of the Civil Courts' Guide towards the satisfaction of a decree or order, the Presiding Officer shall refuse to accept the same, if a lodgment schedule has not been received previously as required under the above Rule

and orders passed thereon. To ensure that all remittances by money order are brought to account, the Presiding Officer shall arrange that the necessary entries are made in the cash book and attested by him before he signs the acknowledgment. When, for any reason this is not possible, and during the Court recess, a note should be kept by him of the amount received, and he should see that they are brought to account in the cash book at the earliest possible time after such receipt. He shall be held personally responsible for all amounts acknowledged by him. The practice of receiving money orders during recess by the subordinate staff, inclusive of the Head ministerial officers, is strictly forbidden. In the case of cash payments, the provisions of Rule 161 of the Civil Courts' Guide should be strictly complied with.

7. A register with printed headings and machine numbered pages shall be maintained in the accompanying form for receipts of moneys in cash, money orders, R. T. Rs., cash orders, temporary receipts etc , and the Presiding Officers shall be held personally responsible for the necessary entries being promptly and correctly made therein.

8. The Presiding Officers shall, every day, before affixing their initials in the cash book and the register referred to in the previous paragraph, verify and see that all amounts received towards decree debts, stamp duty and penalty and other items have been remitted to the Treasury in accordance with the Rules and append a certificate in the arrear statements to be submitted by them, that the books have been examined by them and the provisions herein set forth have been strictly complied with in their Courts.

9. Except where moneys are produced and paid to the decree holders, under the orders of the Court and in the presence of the Presiding Officers, in part or whole satisfaction of decree debts (as contemplated in Rule 164 of the Civil Courts' Guide) on the dates of such actual production, no payment shall be made in cash under any circumstances, the same having to be invariably made by remittance to the treasury and issue of cheques thereafter. The cheques for this purpose should be issued in favour of the parties in each case and not of officers of the Court.

10. When any money is ordered to be paid out of the contingent amount allotted to the Courts to any person for work done, the Presiding Officers shall see that the same is disbursed on the date of the order and that too in their actual presence.

11. The following registers shall be maintained by the Panavagi clerk who will strictly follow the provisions of the Account Code, Sub-Treasury Manual and Civil Courts' Guide and the general instructions issued

by the High Court from time to time in keeping them correctly and up to date.

1. Cash Book.
2. Register of receipts of judicial deposits.
3. Register of repayments of judicial deposits.
4. Register of receipts of petty deposits.
5. Register of repayments of petty deposits.
6. Register of contingent charges.
7. Register of fines.
8. Acquittance roll.
9. Register of undisbursed salaries.
10. Register of applications for refund of judicial revenue.
11. Register of impounded instruments.
12. Daily statement of accounts.
13. Register of receipts of R. T. Rs. etc.

12. Payments to the decree holders and others shall be made by means of cheques signed by the Presiding Officer. The Vistharam and Execution clerks shall, before taking the payment schedules under Rule 167 of the Civil Courts' Guide or other similar applications for orders, obtain a statement in writing from the Panavagai clerk specifying the date of the payment of money in Court or treasury, the amount available for the purpose, the number in the judicial deposit register, if any, duly dated and initialled by him and verified and vouched to be correct by the Head Ministerial Officer. After obtaining the orders of the Court the clerks will transmit the applications and other necessary papers to the Panavagai clerk who after a second verification, will prepare the cheque and obtain the signature of the Officer. The same procedure will be followed in the case of applications for refund. The Presiding Officers shall see that cheques are not prepared by any other clerk than the Panavagai clerk. A separate cheque should be issued for each individual deposit or part thereof and should be noted against the original item of credit in the registers relating thereto.

13. The amounts realised on account of stamp duties and penalties on insufficiently stamped documents shall be entered by the Panavagai clerk in the register prescribed therefor at the time of their receipt under the initials of the Presiding Officer and remitted to the Treasury on the same or the following day. The Presiding Officers should take particular care to see that the sums so realised have been duly remitted to the Treasury and not retained in the hands of the Head Ministerial Officers. A list of items pending realisation for more than 6 months should also be prepared at the

end of every year. The Munsiffs' Courts should send their list to the District Courts and the District and Second Judges Courts should send their list to the High Court, with explanation for their non-realisation.

14. All Courts of original civil jurisdiction shall forward a statement of daily accounts, in the annexed form, to the High Court and file a copy of the same in their respective offices.

15. Courts should prepare the statement of Daily Accounts from the Court Accounts (Deposit Register, Cash Book, Repayment Register, Cheque Books etc.,) independently of the Treasury Accounts and then verify the former with the latter when received, so that errors, if any, either in the accounts of the Courts or in those of the Treasury, may be detected and rectified. If any errors are detected on verification in either of the accounts, steps should be taken for their rectification. If any cheque remains uncashed at the end of the month, the details of the same such as the No. of the cheque, date of issue and the amount should be appended to the above-said statement.

16. When moneys received by the public Officers under warrant of attachment of pay issued in execution of decrees against public servants employed under them are sent, the Courts concerned will receive and remit the same to the Treasury at once. The Presiding Officers of the Courts should see that the amounts are properly accounted for and that acknowledgments of the receipt of such moneys to the Officers concerned are also sent immediately. Any delay over a week in sending acknowledgment of the receipt of such moneys should be reported to the High Court.

17. Persons to whom money is paid from Court should invariably be required to state in words in the receipts or registers the amounts received by them. Presiding Officers should give every facilities to the applicants to complain to them if there is any unnecessary delay in paying out cheques or refund orders or in any other matter relating to money due to them.

18. The Head Ministerial Officer of every Court will be held responsible for checking daily all the entries in the Receipt Books and the cash books. He shall, on no account, retain any money exceeding the amount of his security. If the balance on any day exceeds his security amount, he should obtain special written sanction from the Presiding Officer to retain it.

19. *Register of Valuables and Register of Attached Properties (movables).*

The Presiding Officer should verify these registers periodically. A certificate should be recorded therein quarterly and at every time there is a change of officers to the effect that the articles have been verified and found correct as per the registers, that those disposed of have been done so under proper authority, and that the value of those sold in auction has been

credited in the accounts. A copy of the certificate should also be sent to the High Court.

Note.—Receipts shall be given for all items of receipts such as live-stock, jewels, etc.

20. The Presiding Officers of every Civil Court shall, on the close of every day, sign the cash book, verify the cash balance in hand, and sign the statement to be forwarded to the High Court daily. They should also examine the account registers every now and then and verify with connected records some of the entries made therein which do not come under their daily purview. To ensure that every item of refund has been correctly posted against the original item of deposit, they will also arrange for a list of itemwar details of outstanding deposits being taken at least once a year, when the clearance register is sent and filed after agreement with the running balance of the deposit account, under their initials. These important items of work should be carefully attended to in order to guard against the possibility of any embezzlement or over payment. The liability of Presiding Officers of Courts caused by any laches on their part in this respect will in all cases be strictly enforced.— *22-6 1932—9-11-1107.*

STATEMENT OF DAILY ACCOUNTS OF THE COURT OF.....

FOR.....DAY THE.....110 .

Particulars.	Money at the credit of the Court.								
	As per Judicial Deposit Register.			Petty Deposits.					
				In Nazir's Register.			In Personal Deposit.		
	Rs.	Ch.	c.	Rs.	Ch.	c.	Rs.	Ch.	c.
Opening Balance.									
Receipts during the day.									
Total.									
Payments during the day.									
Closing Balance.									

Certified that the balance agrees with the cash in hand.

Date.....

Presiding Officer.

IN THE COURT OF

GENERAL REGISTER OF MONEYS, CASH ORDERS ETC.

Date.	Sorial No. of deposit.	Year and No. of suit or proceeding.	Name of depositor and position in the suit or proceeding.	Details of deposit.	No. of C. M. Petition or lodgment schedule, if any.	Amount. Rs.	Amount. Ch.	C.	How received.	Remittance to Treasury by challan or otherwise. Nature of remittance.	Remittance to Treasury by challan or otherwise. Date.	Initial of Panavakai clerk.	Initial of Head Ministerial Officer.	Initial of the Presiding Officer.	Remarks.

III. NOTIFICATION.

(R. O. C. No. 3123 of 32 / Judicial, dated 9th November 1932.)

It is hereby notified, with the sanction of His Highness the Maha Raja, that the following ten Gazetted holidays are cancelled, so far as the *Judicial Department* is concerned :—

Chingom	Vinayaka Chathurthi	1	day
Vrischigom	Thrikartigai	1	day
Makaram	Tai Pongal	1	day
	Mattu Pongal	1	day
	Vavu Orikkal	1	day
Meenom	Yugadi Pandigai	1	day
Meenom	Chithirapournimai	1	day
Mithunam	Karkadaka Sankranthi	1	day
Karkadagom	Vavu Orikkal	1	day
	Adi Aruthi	1	day

T. G. G., dated 15-11-1932, Pt. I, P. 382.

APPENDIX G.

RULES AND NOTIFICATIONS.

I

REGULATION V OF 1071 (*The Jenmi and Kudiyan*).

[As Amended].

NOTIFICATIONS.

(1)

(*R. O. C. No. 2441/34/Rev., dated 18th September 1934.*)

Under sanction of His Highness the Maharaja, it is hereby notified that under Section 40 (M) of the Jenmi and Kudiyan Regulation XII of 1108, the following Rules are added to the Rules passed under the same Section in G. O. R. O. C. Nos. 1105/33/Rev., and 445/34/Rev., dated 4th March 1933 and 2nd April 1933 respectively.

Rule 15. (i) Several cases may be included in one appeal or revision petition contemplated in Rules 13 or 14, provided the parties in those cases are the same.

(ii) The Taluk Jenmikaram Settlement Officers shall, when clerical errors in the Jenmikaram cases already disposed of are observed by themselves or when they are brought to their notice by the parties, move the State Jenmikaram Settlement Officer, through the Division Jenmikaram Settlement Officers, for the revision of the orders passed by them. Such revision petitions shall be disposed of only after giving both the parties notice and an opportunity to be heard.—

T. G. G., dated 25-9-1934, Pt. I, P. 97

[*Vide* Page 731 *Supra.*]

(2)

(R. Dis. No. 1644/34/Rev., dated 13th October 1934.)

Under sanction of His Highness the Maha Raja, it is hereby notified that the form of the Jenmikaram Register prescribed n Rule 11 of the Rules dated the 4th March 1933 issued under Section 40 (M) of the Jenmikudiyan Regulation V of 1071 as amended by Regulation XII of 1108 is modified as follows :—

JENMIKARAM REGISTER.

Taluk

Pakuthy

Survey.		Extent.			Settlement Pattom.		Sirkar Tax.		Settlement Pattamicham.		Particulars of the Kanom deed or other records on which the claim is based.	Name of the Jenmi.	Name of the Kudiyan.	Jenmivaram.				Jenmikaram.				Remarks.
Serial No.	No.	Sub Division.	Lekkom.	Acre.	Cent.	Tenure.	Wet or dry.	Paddy.	Money.	Paddy.	Money.	Paddy.	Money.										
														Para.	Edangali.	Other Commodities.	Money.	Para.	Edangali.	Other Commodities.	Money.	
																	Rs. Chs. Cash.				Rs. Chs. Cash.	
1	2	3	4		5	6	7		8		9	10	11	12	13			14				15

T. G. G., dated 16-10-1934, Pt. I, P. 181.

II

REGULATION II OF 1108 (*Legislative Reforms*).

I. NOTIFICATIONS.

(1)

(*D Dis. No. 197 of 33/Legis., dated 3rd April 1933.*)

It is hereby notified that under paragraph 4 of Schedule III to the Sri Chitra State Council Electoral Rules (Notification R. O. C. No. 253 of 33/Legis., dated the 14th March 1933) the Tahsildar of each of the Taluks, mentioned at foot, is appointed the Registration officer for each Taluk, excluding the Municipal area, if any, therein.

1. Kalkulam.
2. Nedumangad.
3. Kartikapalli.

T. G. G., dated 4-4-1933, Pt. II.

(2)

(*D. Dis. No. 197 of 33/Legis., dated 3rd April 1933.*)

It is hereby notified that, under paragraph 5 of Schedule III to the Sri Mulam Assembly Electoral Rules (Notification R. O. C. No. 254 of 33/Legis., dated the 14th March 1933), the Tahsildar of each of the Taluks, mentioned at foot, is appointed the registration officer for each such Taluk, excluding the Municipal area, if any, therein.

1. Neyyattinkara.
2. Agastisvaram.
3. Kalkulam.
4. Chirayinkil.
5. Quilon.
6. Karunagapalli.
7. Karthikapalli.
8. Tiruvalla.
9. Ambalapuzha.
10. Kottayam.
11. Changanacherry.
12. Shertallai.
13. Kunnatnad.
14. Parur.
15. Minachil.
16. Muvattupuzha.

T. G. G., dated 4-4-1933, Pt. II.

(3)

(*D. Dis. No. 251/33/Legis., dated 24th April 1933.*)

Under the second proviso to paragraph 4 of Schedule III of the Sri Mulam Assembly Electoral Rules issued under date the 14th March 1933, the Government have been pleased to approve the appointment of the

persons, named at foot, as Deputy Registration Officers and their exercising the powers and performing the duties of Registration Officers in the Municipalities mentioned against their names, instead of the Presidents of those Municipal Councils, in respect of all classes of constituencies.

Name or Designation.				*Municipal Area.*
Vice President, Municipal Council,		Nagercoil.	...	Nagercoil.
Do.	Do.	Kottayam.	...	Kottayam.
Do.	Do.	Alwaye	...	Alwaye.
[*] Official Councillor and the Medical Officer of the Health Unit, Neyyattinkara			...	Neyyattinkara.

---

(4)

(D. Dis. No. 251/33/ Legis., dated 24th April 1933).

Under the second proviso to paragraph 4 of Schedule III to the Sri Chitra State Council Electoral Rules issued under date the 14th March 1933, the Government have been pleased to approve the appointment of persons, named at foot, as Deputy Registration Officers and their exercising the powers and performing the duties of Registration Officers in the Municipalities mentioned against their names, instead of the Presidents of those Municipal Councils, in respect of all classes of constituencies.

Name or Designation.				*Municipal Area.*
Vice President, Municipal Council,		Nagercoil.	...	Nagercoil.
Do.	Do.	Kottayam.	...	Kottayam.
Do.	Do.	Alwaye.	...	Alwaye.
[*] Official Councillor and the Medical Officer of the Health Unit, Neyyattinkara			...	Neyyattinkara.

T. G. G, dated 25-4-1933, Pt. I, P 430.

---

(5)

(D. Dis. No. 230 of 33/ Legis., dated 19th April 1933.)

In connection with the forthcoming general elections to the Sri Mulam Assembly and the Sri Chitra State Council, the Government of His Highness the Maha Raja wish it to be distinctly understood that although officials as such are not debarred from voting at the election of Members to the Assembly and the Council under the Rules passed under the Legislative

---

[*] The name of the Official Councillor and Medical Officer given in the above two Notifications, Nos. (3) & (4), is omitted.

Reforms Regulation, II of 1108, if they are qualified to vote under the said Rules, their participation in the elections should not extend any further, and that they are strictly prohibited from influencing the elections in any way, either directly or indirectly. Heads of Departments and Offices are requested to issue strict instructions to all their subordinate Officers accordingly. Every case of infringement of these instructions will be visited with condign punishment.— *T. G. G., dated 25-4-1933, Pt. I. P. 429.*

II. PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHA RAJA OF TRAVANCORE.

Order D. Dis. No. 410 of 33/Legis., dated Trivandrum, 25th July 1933.

A Standing Finance Committee of the Legislative Council used to be constituted for every Council under Regulation, II of 1097. Government consider that a similar Committee of the new Legislature under the Legislative Reforms Regulation, II of 1108, may also be constituted.

The Government of His Highness the Maha Raja are accordingly pleased to sanction the formation of a Standing Finance Committee of the Sri Chitra State Council and the Sri Mulam Assembly.

As soon as may be after the commencement of each official year, the Committee shall be constituted.

The functions of the Committee shall be (i) to examine the draft annual budget so far as the same is within the cognisance of the Travancore Sri Mulam Assembly and the Travancore Sri Chitra State Council; (ii) to examine all applications for supplementary grants under votable items of expenditure; and (iii) to examine such matters as may be referred to it by the Government.

The Committee shall be a purely advisory body.

The Committee shall consist of six members, *viz.*,

(i) the President of the Travancore Sri Mulam Assembly and the Travancore Sri Chitra State Council who will be President of the Committee also;

(ii) three non-official members, 2 from the Assembly elected by the non-official members of the Assembly and 1 from the Council, elected by the non-official members of the Council; and

(iii) two official members nominated by the Government.

The Committee shall meet as often as necessary and the dates of such meetings shall ordinarily be intimated at least seven days in advance.

Three members of whom at least two shall be non-officials shall form the quorum of the Committee.

Copies of papers relevant to the discussions at the meetings shall be made available for the use of each member at least two days before the date of the meeting.

A meeting of the Committee shall be held every year to consider the appropriation of the State Revenues for the following year. The following records shall be supplied to each member of the Committee.

(*a*) A schedule of demands showing the preliminary proposals of the Government for the appropriation of the revenues as per existing sanction with a brief explanation of the estimates.

(*b*) A schedule of new items of expenditure proposed to be included in the budget.

T. G. G., dated 25-7-1933, Pt. II, P. 661.

III

REGULATION X OF 1108.

(Amending Regulation V of 1095.)

THE WILLINGDON WATER WORKS RULES.

(1)

FORMS.

[See Page 576, *Supra.*]

FORM NO. 1.

APPLICATION FOR THE SUPPLY OF WATER FROM THE WILLINGDON WATER WORKS.

Account No.....
Application No.....

To The President,
Municipal Council, Trivandrum.

Dear Sir,

I, the owner/occupier of the undernoted house or premises, hereby request that you will arrange to supply me with water in house No.....in.....street/road. I agree to the work of providing the necessary meters and of making the "house connection" to the public water main being estimated for and carried out by the Water Supply Department at my expense. For water taken in excess of the free allowance under Rule 19 of the Willingdon Water Works Rules, I agree to pay the lawful charges in respect of such supply. I further agree to observe the Regulation, Rules and bye-laws in force, from time to time, relating to or affecting the supply of water.

I remit herewith half a rupee being the estimate fee as per Rule 4.

Signature of the applicant (in full).
Address.....

Date.....
Accounts to be sent to.....

Appendix G.

No. Municipal Office,
Trivandrum,.....19.....

Forwarded to the Water Works Engineer, Trivandrum, for favour of necessary action. The sum of Rs. 0-14-0 remitted by the applicant is herewith sent, the receipt of which please acknowledge. Signature.....
President, Municipal Council.

The amount mentioned above has been received and entered in the accounts and official receipt granted. The application is submitted for further action.
Manager and Head Accountant, Water Works Office.
Cashier, Water Works Office.

No.

Forwarded to the Water Works Superintendent for preparation and submission of the estimate for making the connection including therein provision for the supply and erection of a suitable water meter or meters.

Signature.....
Water Works Engineer.

No.

Returned with the necessary estimate for favour of approval and for directing the applicant to make the necessary deposits.
Encl :

Signature.....
Water Works Superintendent.

Submitted to the Water Works Engineer. The estimate has been checked, and may be approved.

Signature.....
Head Draftsman, Water Works Office.

The estimate is approved as No.....of.....Issue Notice to the applicant asking him to deposit the amount of the estimate, namely, Rs..... Signature.....
Water Works Engineer.

FORM NO. 2.

THE WILLINGDON WATER WORKS (*Commercial Section.*)

Water Works Office, Trivandrum.....19.....

No.

Notice to applicant to deposit the estimated cost of providing house connection.

(To be returned and lodged with the Water Works Engineer when paying the deposit, duly signed by the applicant).

Dear Sir/Madam,

With reference to your application dated.....19.....for providing "house connection" from the public water main to your property, House No.....in..... street/road, addressed to the President, Municipal Council, Trivandrum, you are hereby informed that an estimate for Rs.....being the cost of the "house connection" has been prepared in this office and, should you desire to do so, it is open for your perusal in this office during the usual office hours on working days. You are requested, in case you accept the estimate, to deposit Rs.....with the cashier of this office within a week of the receipt of this notice and produce before the undersigned, either in person

or by agent, the official receipt therefor duly signed by the undersigned, on receipt of which the work will be put in hand. Please note that the amount in question represents only the estimated cost and that the actual cost will be charged to you and necessary adjustment will be made on the completion of the work, excess if any over the amount deposited being payable by you, and balance if any from the deposited amount being returnable to you. Please also note that the supply of water to your property can be given only after the deposit account is adjusted as above.

A copy of the Rules is herewith sent for your use.

Yours faithfully,
Water Works Engineer.

Enclosure.

Dear Sir,

I accept the estimate and have this day ( ) paid the amount of deposit and obtained the official receipt which I herewith produce for your perusal and return. I agree to the adjustment of the account as stated in the notice above on the basis of the actual cost of the work on completion and I agree that any excess cost incurred may, if not paid by me on demand, be recovered from me as arrears of public or land revenue.

Signature.....
Applicant.

Date.....

The official receipt is perused and returned to the applicant or his agent.

Signature.....
Water Works Engineer.

Received back the official receipt.

Signature.....
Applicant or his Agent.

(TO BE RETURNED).

No.

Forwarded to the Water Works Superintendent for information. The applicant has made the deposit. Copy of the estimate is herewith sent. The work should be put in hand at once and completed expeditiously. The actual cost of the work should be reported in the subjoined form.

Signature.....
Water Works Engineer.

Enclosure.

Details of actual cost.	House connection to Main.		
	Rs.	Chs.	C.
1. Value of pipes, fittings and ferrules used.			
2. Labour of laying and jointing pipes and fittings.			
3. Cutting and making good.			
4. Masonry works.			
5. Value of Meter and erecting charges.			
6. Fee for preparing estimate.			
7. Centage charges for supervision and Tools and Plant.			
Total			
Deduct credits on disposal of surplus materials.			
Nett Grand total for "house connection."			
Deduct amount already deposited.			
Balance due to or from the applicant.			

Appendix G.

No.

Returned to the Water Works Engineer. The work has been completed on..... and the actual cost is Rs.....For details *vide* supra.

Signature.....
Water Works Superintendent.

Cashier and Head Accountant to note and issue notice to the applicant in Form No. 3 to pay up the balance / to receive the balance in adjustment of the deposit account.

Signature.....
Water Works Engineer.

Submitted to the Water Works Engineer. The deposit account has been adjusted.

Signature.....
Cashier.

Signature.....
Head Accountant.

No.

Forwarded to the Water Works Superintendent. The supply of water may now be given and the date of doing so should be reported.

Signature.....
Water Works Engineer.

No.

Returned to the Water Works Engineer. The supply of water was given on...

Signature.....
Water Works Superintendent.

Head Accountant.

Please note and enter the date in the rate book. After doing so, file this with the application.

Signature.....
Water Works Engineer.

Attended and filed.

Signature.....
Head Accountant.

FORM No. 3.

THE WILLINGDON WATER WORKS (*Commercial Section*).

No.

Water Works Office,
Trivandrum 19

(Notice under Rule 6 of the Willingdon Water Works Rules).

To

.....

Reference :—Account No.....

Vide Deposit Receipt No.....dated.....

Dear Sir / Madam,

With reference to the deposit of Rs. Chs. C. made by you on.....: I write to inform you that the work for which the deposit was made has been completed and the final account made up, *vide* details below. The *actual* cost of the work amounts to Rs. Chs. C. : Thus a sum of Rs. Chs. C. $\frac{\text{is still due from}}{\text{is returnable to}}$ you.

You are requested to pay this amount within a week to the Cashier of this office (to receive the payment order duly passed by the Water Works Engineer for this amount within a week from the Cashier of this office).

Please note that the supply of water to your property will be postponed until you pay the balance amount due from you.

Yours faithfully,
Water Works Engineer.

Details of actual cost.	House connection to Main.		
	Rs.	Chs.	C.
1. Value of pipes, fittings and ferrules used.			
2. Labour for laying and jointing pipes and fittings.			
3. Cutting and making good.			
4. Masonry works.			
5. Value of meter and erecting charges.			
6. Fee for preparing estimate.			
7. Centage charges for supervision and Tools and Plant.			
Total			
Deduct credits on disposal of surplus materials.			
Nett Grand total for house connection.			
Deduct amount already deposited.			
Balance due to or from the owner or occupier.			

To

The Water Works Engineer,
Willingdon Water Works, Trivandrum.

Dear Sir,

I write to inform you that I have this day.....adjusted my deposit account by paying the sum of Rs. Chs. Cash as desired / receiving the payment order for Rs. Chs. Cash . I request that water may be supplied to my property.

Station.....
Date.....

Signature of $\frac{\text{owner.}}{\text{occupier.}}$ .....

Form No. 3 continued.

Accountant's report to the Water Works Engineer.

Sir,

The deposit account above noted has been adjusted by the receipt of Rs. Chs. C. from the owner or occupier / the issue of payment order for Rs. Chs. C.

to the owner and the transaction has been duly recorded in the books, *vide* Folio... .....of.....

Signature.....
Cashier.

Signature.....
Head Accountant.

Issue orders to the Water Works Superintendent to supply water to the property.

Signature.....
Water Works Engineer.

Sir,

Orders were issued on.....as directed.

Signature.....
Head Accountant.

Record and file with Form Nos. 1 and 2.

Signature.....
Water Works Engineer.

FORM NO. 4.

THE WILLINGDON WATER WORKS (*Commercial Section*).

Water Works Office.

No. Trivandrum, 19.....

Notice under Rule 8 of the Willingdon Water Works Rules.

To be returned to the Water Works Engineer when paying the deposit, duly signed by the consumer.

To

.....

Reference :—Account (Consumer) No.....

Dear Sir/Madam,

I write to inform you that the "house connection" to your property House No.....in.....street/road, is reported to stand in need of repairs, *vide* below for details regarding the nature of disrepair. The cost of making the necessary repairs and putting the "house connection" in order is estimated to amount to Rs.....Under Rule 8, the work of repairs has been put in hand and I request that you will be so good as to deposit with the cashier of this office the estimated cost of Rs.....within three days from the date of receipt of this notice, and obtain the official receipt therefor, failing which the supply of water to your property is liable to be cut off with effect from 12 noon on.....Please also note that the deposit account is adjustable as in the case of providing the "house connection" and that notice in Form No. 3 will issue in due course.

Yours faithfully,
Water Works Engineer.

NATURE OF DISREPAIR:

Dear Sir,

I have this day.....paid the amount of deposit and obtained the official receipt. I agree to the adjustment of the account as stated in the notice above on the basis of the actual cost of the repairs and I agree that any excess cost incurred may,

if not paid by me on demand, be recovered from me as arrears of public or land revenue.

Signature.....
Consumer.

Trivandrum.....
Date.....

(TO BE RETURNED).

No.

Forwarded to the Water Works Superintendent for information. The actual cost of the repairs should be reported in the subjoined form.

Signature.....
Water Works Engineer.

Details of actual cost.	Repairs to House connection. Rs. Chs. C.
1. Value of pipes, fittings and ferrules used.	
2. Labour for laying and jointing pipes and fittings.	
3. Cutting and making good.	
4. Masonry works.	
5. Value of Meter and erecting charges.	
6. Fee for preparing estimate.	
7. Centage charges for supervision and Tools and Plant.	
Total	
Deduct credits on disposal of surplus materials.	
Nett grand total for connection (repairs).	
Deduct amount already deposited.	
Balance due from or to the owner or occupier.	

No.

Returned to the Water Works Engineer. The actual cost of the repairs is Rs.....Ch.....C..... For details *vide* supra.

Signature.....
Water Works Superintendent.

Cashier and Head Accountant to note and issue notice to the consumer in Form No. 3 to pay up the balance/ (to receive the balance) in adjustment of the deposit account.

Signature.....
Water Works Engineer.

Submitted to the Water Works Engineer. The deposit account has been adjusted on.....

Signature..... .....
Head Accountant.

Signature.....
Cashier

Record in the consumer's file.

Signature.....
Water Works Engineer.

Attended and filed in the consumer's file.

Signature.....
Head Accountant.

Form No. 5.

WILLINGDON WATER WORKS,
TRIVANDRUM.

Requisition to the President, Municipal Council, Trivandrum. Under Rule 8 (c) for cutting off supply of water.

(Duplicate)

No. *Date.*

To The President,
Municipal Council, Trivandrum.

Sir, I have the honour to inform you that the supply of water has to be cut off from the property noted overleaf for the reasons stated therein. I am enclosing herewith a notice in duplicate for favour of signature and return.

I have the honour to be
Sir,
Your most obedient servant,
Water Works Engineer.

WILLINGDON WATER WORKS,
TRIVANDRUM.

Description of Property.
Account No.....
House No.....
Street/Road.
Name and address of owner or occupier.
Reasons for cutting off supply.

Form No. 5.

WILLINGDON WATER WORKS,
TRIVANDRUM.

Requisition to the President, Municipal Council, Trivandrum. Under Rule 8 (c) for cutting off supply of water.

(Original)

No. *Date.*

To The President,
Municipal Council, Trivandrum.

Sir, I have the honour to inform you that the supply of water has to be cut off from the property noted overleaf for the reasons stated therein. I am enclosing herewith a notice in duplicate for favour of signature and return.

I have the honour to be
Sir,
Your most obedient servant,
Water Works Engineer.

WILLINGDON WATER WORKS,
TRIVANDRUM.

Description of Property.
Account No.....
House No.....
Street/Road.
Name and address of owner or occupier.
Reasons for cutting off supply.

Form No. 5.

WILLINGDON WATER WORKS,
TRIVANDRUM.

Requisition for cutting off supply of water.

(Reply)

No. *Date.*

To The Water Works Engineer,
Trivandrum.

Sir, I have the honour to return herewith the notice in duplicate received with your requisition No.....Dated..... signed as desired. The supply may be cut off from the property referred to on the expiry of the period specified in the notice.

I have the honour to be
Sir,
Your most obedient servant,
President.
Municipal Council, Trivandrum.

WILLINGDON WATER WORKS,
TRIVANDRUM.

Description of Property.
Account No.....
House No.....
Street/Road.
Name and address of owner or occupier.
Reasons for cutting off supply.

Form No. 6.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Triplicate).

Under Section 205 (1) (*a*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas it has been brought to my notice that the aforesaid premises is unoccupied, I do hereby give notice that the supply of water will be cut off at your expense from the said premises after.....days from the date of issue of this notice.

If you require a supply of water again to the said premises you must apply therefor under Section 202.

Water Works Engineer

President, Municipal Council,
Trivandrum.

Form No. 6.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Duplicate).

Under Section 205 (1) (*a*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No, Street / Road

Whereas it has been brought to my notice that the aforesaid premises is unoccupied, I do hereby give notice that the supply of water will be cut off at your expense from the said premises after..... days from the date of issue of this notice.

If you require a supply of water again to the said premises you must apply therefor under Section 202.

President, Municipal Council,
Trivandrum.

Form No. 6.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Original).

Under Section 205 (1) (*a*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas it has been brought to my notice that the aforesaid premises is unoccupied, I do hereby give notice that the supply of water will be cut off at your expense from the said premises after..... days from the date of issue of this notice.

If you require a supply of water again to the said premises you must apply therefor under Section 202.

President, Municipal Council,
Trivandrum.

No. Date.

Forwarded to the Water Works Superintendent for service and return.

Water Works Engineer.

No. Date.

Resubmitted after service

Inspector...Division.

No. Date

Forwarded to the Inspector...Division for service and return. The manner of service should also be noted.

Water Works Superintendent.

No. Date.

Forwarded to the Water Works Engineer.

Water Works Superintendent.

Form No. 7.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Triplicate).

Under Section 205 (1) (*b*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you have not paid bill No..... for Rs.....presented to you on.....by the Water Works Engineer within the 30 days time allowed therefor, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after.....days after service of this notice upon you and that if the amount of the bill together with the expense of cutting off the supply *viz* Rs.....be not paid to me within 15 days of the service of this notice upon you the amount will be collected from you under the provisions of Section.....of the Municipal Regulation.

Water Works Engineer,

President, Municipal Council.

Form No. 7.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Duplicate).

Under Section 205 (1) (*b*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you have not paid bill No..... for Rs.....presented to you on.....by the Water Works Engineer within the 30 days time allowed therefor, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after.....days after service of this notice upon you and that if the amount of the bill together with the expense of cutting off the supply *viz* Rs.....be not paid to me within 15 days of the service of this notice upon you the amount will be collected from you under the provisions of Section.....of the Municipal Regulation.

President, Municipal Council

Form No. 7.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Original).

Under Section 205 (1) (*b*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you have not paid bill No..... for Rs.....presented to you on.....by the Water Works Engineer within the 30 days time allowed therefor, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after.....days after service of this notice upon you and that if the amount of the bill together with the expense of cutting off the supply *viz* Rs.....be not paid to me within 15 days of the service of this notice upon you the amount will be collected from you under the provisions of Section.....of the Municipal Regulation.

President, Municipal Council

No. Date

Forwarded to the Water Works Superintendent for service and return.

Water Works Engineer.

No. Date

Forwarded to the Inspector Division for service and return. The manner of service should also be noted.

Water Works Superintendent

No. Date

Re-submitted after service.

Inspector...Division.

No. Date

Forwarded to the Water Works Engineer.

Water Works Superintendent.

Form No. 8.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Triplicate)

Under Section 205 (1) (*c*) of the Travancore Municipal Regulation, V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you are using the water supplied to you in the said premises or permitting the same to be used in contravention of the Regulations and Rules relating thereto *viz*.....you are hereby required to refrain from so doing and if you continue to so use the water or permit the same to be so used even after the receipt of this notice, the supply of water will be cut off at your expense from the said premises after.....days from the service of this notice upon you.

Note that action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

Water Works Engineer.

President,
Municipal Council, Trivandrum.

Form No. 8.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Duplicate)

Under Section 205 (1) (*c*) of the Travancore Municipal Regulation, V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you are using the water supplied to you in the said premises or permitting the same to be used in contravention of the Regulations and Rules relating thereto *viz*.....you are hereby required to refrain from so doing and if you continue to so use the water or permit the same to be so used even after the receipt of this notice, the supply of water will be cut off at your expense from the said premises after.....days from the service of this notice upon you.

Note that action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

President,
Municipal Council, Trivandrum.

Form No. 8.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Original)

Under Section 205 (1) (*c*) of the Travancore Municipal Regulation, V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you are using the water supplied to you in the said premises or permitting the same to be used in contravention of the Regulations and Rules relating thereto *viz*.....you are hereby required to refrain from so doing and if you continue to so use the water or permit the same to be so used even after the receipt of this notice, the supply of water will be cut off at your expense from the said premises after.....days from the service of this notice upon you.

Note that action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

President,
Municipal Council, Trivandrum.

No. Date

Forwarded to the Water Works Superintendent for service and return.

Water Works Engineer.

No. Date

Forwarded to the Inspector.....Division for service and return. The manner of service should also be noted.

Water Works Superintendent.

No. Date

Re-submitted after service.

Inspector...Division.

No. Date

Forwarded to the Water Works Engineer.

Water Works Superintendent.

Form No. 9.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Triplicate).

Under section 205 (1) (*d*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you have wilfully or negligently damaged the meter or the pipe, or the valve, conveying water to the said premises, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after .....days after the service of this notice upon you.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

Water Works Engineer.

President, Municipal Council,
Trivandrum.

Form No. 9.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Duplicate).

Under Section 205 (1) (*d*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you have wilfully or negligently damaged the meter or the pipe, or the valve, conveying water to the said premises, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after .....days after the service of this notice upon you.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

President, Municipal Council,
Trivandrum.

Form No. 9.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Original).

Under Section 205 (1) (*d*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you have wilfully or negligently damaged the meter or the pipe, or the valve, conveying water to the said premises, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after .....days after the service of this notice upon you.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

President, Municipal Council,
Trivandrum.

No. Date

Forwarded to the Water Works Superintendent for service and return. Water Works Engineer.

No. Date

Forwarded to the Inspector.....Division for service and return. The manner of service should also be noted.

Inspector, Division.

No. Date

Re-submitted after service.

Inspector...Division.

No. Date

Forwarded to the Water Works Engineer.

Water Works Superintendent.

Form No. 10.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Triplicate).

Under Section 205 (1) (*e*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas the occupier of the said premises has refused admission to the Water Works men who proposed to enter on..... for the purpose of executing work, placing or removing.....making examination or enquiry in connection with water supply or prevented them from doing such work placing or removing.....or making examination or enquiry I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after.....days after service of this notice upon you.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

Water Works Engineer. *President,*
Municipal Council, Trivandrum.

Form No. 10.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Duplicate).

Under Section 205 (1) (*e*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas the occupier of the said premises has refused admission to the Water Works men who proposed to enter on..... for the purpose of executing work placing or removing.....making examination or enquiry in connection with water supply or prevented them from doing such work placing or removing.....or making examination or enquiry I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after.....days after the service of this notice upon you.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

President,
Municipal Council, Trivandrum.

Form No. 10.

WILLINGDON WATER WGRKS
TRIVANDRUM.

No. *Dated* *Account No.*

NOTICE (Original).

Under Section 205 (1) (*e*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas the occupier of the said premises has refused admission to the Water Works men who proposed to enter on..... for the purpose of executing work, placing or removing.....making examination or enquiry in connection with water supply or prevented them from doing such work placing or removing.....or making examination or enquiry, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after.....days after the service of this notice upon you.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

President,
Municipal Council, Trivandrum.

No. Date

Forwarded to the Water Works Superintendent for service and return.

Water Works Engineer.

No. Date

Forwarded to the Inspector Division for service and return. The manner of service should also be noted.

Inspector...Division.

No. Date

Re-submitted after service.

Inspector...Division.

No. Date

Forwarded to the Water Works Engineer.

Water Works Superintendent.

Form No. 11.

WILLINGDON WATER WORKS
TRIVANDRUM.

Notice under Section 205 (1) (*f*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

(Triplicate)

No. *Dated* *Account No.*

To.....

House No. ——Street——
Road.

Whereas the pipes, taps, works or fittings connected with the Water Supply to the aforesaid premises are found on examination to be out of repair as detailed on the reverse of this notice to such an extent as to cause waste or contamination of water, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after....days after the service of this notice upon you.

Repairs must be executed only by plumbers licensed by the WaterWorks Engineer.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may otherwise have incurred.

Water works Engineer. *President,*
Municipal Council, Trivandrum.

Details of repairs.

Form No. 11.

WILLINGDON WATER WORKS
TRIVANDRUM.

Notice under Section 205 (1) (*f*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

(Duplicate).

No. *Dated* *Account No.*

To.....

House No. ——Street——
Road.

Whereas the pipes, taps, works or fittings connected with the Water Supply to the aforesaid premises are found on examination to be out of repair as detailed on the reverse of this notice to such an extent as to cause waste or contamination of water, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after.....days after the service of this notice upon you.

Repairs must be executed only by plumbers licensed by the WaterWorks Engineer.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may otherwise have incurred. *President,*
Municipal Council, Trivandrum.

Details of repairs.

No. Date.

Forwarded to the Water Works Superintendent for service and return.

Water Works Engineer.

No. Date.

Forwarded to Inspector Division for service and return. The manner of service should also be noted.

Water Works Engineer.

No. Date. Re-submitted after service. Inspector...Division.

No. Date. Forwarded to the Water Works Engineer.

Water Works Superintendent.

Form No. 11.

WILLINGDON WATER WORKS
TRIVANDRUM.

Notice under Section 205 (1) (*f*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

(Original).

No. *Dated.* *Account No.*

To.....

House No. ——Street——
Road.

Whereas the pipes, taps, works or fittings connected with the Water Supply to the aforesaid premises are found on examination to be out of repair as detailed on the reverse of this notice to such an extent as to cause waste or contamination of water, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after..... days after the service of this notice upon you.

Repairs must be executed only by plumbers licensed by the Water Works Engineer.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may otherwise have incurred. *President.*
Municipal Council, Trivandrum.

Details of repairs.

Form No. 12.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated.* *Account No.*

NOTICE (Triplicate.)

Under Section 205 (1) (*g*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you have caused the pipes, taps, works or fittings connected with the water supply to be placed, removed, repaired or otherwise interfered with in violation of the rules, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after.....days after the service of this notice upon you.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

Water Works Engineer.

President,

Municipal Council, Trivandrum.

Form No. 12.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated.* *Account No.*

NOTICE (Duplicate.)

Under Section 205 (1) (*g*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you have caused the pipes, taps, works or fittings connected with the water supply to be placed, removed, repaired or otherwise interfered with in violation of the rules, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after.....days after the service of this notice upon you.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

President,

Municipal Council, Trivandrum.

Form No. 12.

WILLINGDON WATER WORKS
TRIVANDRUM.

No. *Dated* *Accout No.*

NOTICE (Original.)

Under Section 205 (1) (*g*) of the Travancore Municipal Regulation V of 1095 as amended by Regulation X of 1108.

To.....

House No. Street / Road

Whereas you have caused the pipes, taps, works or fittings connected with the water supply to be placed, removed, repaired or otherwise interfered with in violation of the rules, I do hereby give you notice that the supply of water will be cut off from the said premises at your expense after.....days after the service of this notice upon you.

Note that any action taken under this notice will not relieve you from any penalty or liability which you may have otherwise incurred.

President,

Municipal Council, Trivandrum.

No. Date

Forwarded to the Water Works Superintendent for service and return.

Water Works Engineer.

No. Date

Forwarded to Inspector...Division for service and return. The manner of service should also be noted.

Water Works Superintendent.

No. Date

Re-submitted after service.

Inspector...Division.

No. Date.

Forwarded to the Water Works Engineer.

Water Works Superintendent.

Form No. 13.

WILLINGDON WATER WORKS
TRIVANDRUM.

Advice to licensed plumber of approval of the estimate of water supply installation or extension, alteration or repairs to installation.

(Triplicate.)

No..... Date.....

To.....

Licensed Plumber.

The estimate submitted by you for water supply installation or extension, alteration or repairs to installation to the undermentioned property is approved as No.....of.....

Water Works Engineer.

House No.....

Street
.....

Road

Name of owner.....

Date of submission of estimate.....

Form No. 13.

WILLINGDON WATER WORKS
TRIVANDRUM.

Advice to licensed plumber of approval of the estimate of water supply installation or extension, alteration or repairs to installation.

(Duplicate).

(To be sent to the Water Works Superintendent).

No..... Date.....

To.....

Licensed Plumber.

The estimate submitted by you for water supply installation or extension, alteration or repairs to installation to the undermentioned property is approved as No.....of.....

Water Works Engineer.

House No.....

Street
.....

Road

Name of owner.....

Date of submission of estimate.....

Form No. 13.

WILLINGDON WATER WORKS
TRIVANDRUM.

Advice to licensed plumber of approval of the estimate of water supply installation or extension, alteration or repairs to installation.

(Original.)

(To be sent to the licensed plumber),

No..... Date.....

To.....

Licensed Plumber.

The estimate submitted by you for water supply installation or extension, alteration or repairs to installation to the undermentioned property is approved as No.....of.....

Water Works Engineer.

House No.....

Street
.....

Road

Name of owner.....

Date of submission of estimate.....

FORM No. 14.

Application for supply of water for non-domestic purposes from the Willingdon Water Works, Trivandrum.

To, The President,

Municipal Council, Trivandrum.

Dear Sir,

I/We the owner or occupier or owners or occupiers of House No..... Street/Road.....do hereby request you to furnish me/us with a supply of about.....gallons of water per month for..... ..purpose in house No..... Street/Road.....

I/We agree to the work of the provision of the necessary meter or meters and of making the necessary connection being estimated for and carried out by the Water Supply Department at my or our expense and also to pay the lawful charges for all water consumed. I/We further agree to conform to the Regulation, Rules and bye-laws relating to or affecting the supply of water from time to time in force within the supply area of the Willingdon Water Works, Trivandrum. I/We remit herewith half a Rupee being the estimate fee.

Signature.....

Date..... Address.....

Accounts to be sent to..... .....

NOTE :—It must be understood that this supply may be cut off at any time if the water supply is found insufficient.

No.

Municipal Office, Trivandrum.

Forwarded to the Water Works Engineer for favour of a reply if this supply may be given.

President,

Municipal Council, Trivandrum.

No.

Forwarded to the Water Works Superintendent for report.

Water Works Engineer.

No.

Returned. (1) The supply may be given.

(2) The supply cannot be given for the reasons stated below.

Water Works Superintendent.

Reasons

APPENDIX G.

No.

Forwarded to the President, Municipal Council, Trivandrum.

(1) The supply can be given.

(2) The supply cannot be given for the reasons noted above.

Water Works Engineer.

No.

Forwarded to the Water Works Engineer for favour of further action. The Council has sanctioned the supply in its resolution No.....dated..... The estimate fee of S. Rs. 0-14-0 remitted by the applicant is herewith sent the receipt of which please acknowledge.

President,
Municipal Council, Trivandrum.

The amount mentioned above has been received and entered in accounts and official receipt granted. The application is submitted for further action.

Cashier,
Water Works Office.

Manager and Head Accountant.

No

Forwarded to the Water Works Superintendent for preparation and submission of the estimate for making the connection including therein provision for the supply and erection of a meter or meters

Water Works Engineer.

No.

Returned with the necessary estimates for favour of approval and for directing the applicant to make the necessary deposits.

Water Works Superintendent.

Submitted to the Water Works Engineer. The estimate has been checked and may be approved.

Head Draftsman,
Water Works Office.

The estimate is approved as No.....of..... Issue notice to the applicant asking him to deposit the amount of the estimate namely S. Rs.

Water Works Engineer.

Form No. 15.

WILLINGDON WATER WORKS
TRIVANDRUM.

METER READING NOTICE AND SLIP.

(Provisional)

for the month of.....

Notice No. Division
Meter No. Date Time
Account No.
Owner
Occupier
House No. Street Road
Previous reading
Present reading
Difference
Free allowance
Excess quantity to be charged

Entered in
Accounts ledger folio *Meter Reader.*
Accountant. Occupier or owner.

1. If the owner or the occupier wishes to be present when the meter reading is taken he should do so immediately he is informed that the meter reader is present. The latter has instructions to wait for not more than 5 minutes before reading the meter. He will note the readings in a separate slip and hand it over at the time of the reading. The person who is present when the meter is read is requested to initial the meter reader's book.

2. Information about any change in the tenancy or ownership should be intimated to Water Works office direct.

Form No. 15.

WILLINGDON WATER WORKS
TRIVANDRUM.

METER READING SLIP. (Provisional)

for the month of.....

Meter No. Division.
Water meter reading for the month of
taken on
in pursuance of
Notice No.
Account No.
Owner
Occupier
House No. Street Road
Previous reading
Present reading
Difference
Free allowance
Excess to be charged

Meter Reader.

1. No arrangement should be proposed nor any objection preferred to the inspector or the meter reader. All complaints should be addressed to the Water Works Engineer.

2. Complaint re. incorrect or excess reading or as regards the meter being out of order shall be made by the person concerned within 10 days of the date of the reading which is disputed. Complaints regarding the non-receipt of reading slip should be made before the end of the month. Any owner or occupier of a house or property having water connection who may suspect or dispute the accuracy of the measurements indicated by the meter may apply to the Water Works Engineer to have the meter tested on payment of a fee of Re. one per test. If on actual test the quantity registered by the meter exceeds 10% of the correct quantity the fee will be refunded.

3. Information about any change of ownership should be intimated to the Water Works office direct.

Form No. 15.

WILLINGDON WATER WORKS
TRIVANDRUM.

METER READING NOTICE.

Notice No. Division Date
To
Owner or occupier
House No. Street Road

Sir,

I propose taking the reading of water meter in your premises on
between the hours of and

Meter Reader.

1. Meters will be read generally between the 1st and 5th of every Malabar month.

Form No. 16.

WILLINGDON WATER WORKS
TRIVANDRUM.

NOTICE OF METERS TESTED (Duplicate).

No. *Date* *Account No.*

To

House No.

Street
Road

Ref: Application dated

Sir,

The meter referred to by you has it is reported been tested on and that the error has been found to be $\frac{\text{within}}{\text{excess of}}$ 10 per cent.

Under Rule 25 the deposit is forfeited/will be refunded on your applying for the same.

Water Works Engineer.

Form No. 16.

WILLINGDON WATER WORKS
TRIVANDRUM.

NOTICE OF METERS TESTED (Original).

No. *Date* *Account No.*

To

House No.

Street
Road

Ref: Application dated

Sir,

The meter referred to by you has it is reported been tested on and that the error has been found to be $\frac{\text{within}}{\text{excess of}}$ 10 per cent.

Under Rule 25 the deposit is forfeited/will be refunded on your applying for the same.

Water Works Engineer.

Form No. 17.

WILLINGDON WATER WORKS,
TRIVANDRUM.

Meter Testing Notice and Report.

Report No. Date Account No.
Work order No. Date
Application No. Date
Name of applicant
House No. Street
Road
Notice No. Date
Date and Time fixed for Test
Date and Time of Testing
Name of officer conducting the Test
Whether the applicant witnessed the Test
Name of person witnessing the Test

	Time	Index reading
Test started		
Test completed		

Discharge by Meter reading Gallons
Measured quantity Gallons
Rate of test flow gallons per hour
Correction to be made to Meter reading Gallons
Percentage of error

Inspector...Division.

No. Date

Forwarded to the Water Works Engineer. The error is within the tolerance of 10 per cent allowed by the Rules. The applicant may be informed and deposit forfeited.

The error is in excess of the tolerance. The deposit may be refunded.

Form No. 17.

WILLINGDON WATER WORKS,
TRIVANDRUM.

Meter Testing Report.

No. Date Account No.
Work order No. Date
Name of applicant
House No. Street
Road
Notice No. Date
Date and Time fixed for Test
Date and Time of Testing
Name of Officer conducting the Test
Whether the applicant witnessed the Test
Name of person witnessing the Test

	Time	Index reading
Test started		
Test completed		

Discharge by Meter reading Gallons
Measured quantity Gallons
Rate of test flow gallons per hour
Correction to be made to Meter reading Gallons
Percentage of error

Inspector...Division.

The meter will be taken out for repairs.

Water Works Superintendent.

Issue notice. The deposit is forfeited/may be refunded.

Water Works Engineer.

Form No. 17.

WILLINGDON WATER WORKS,
TRIVANDRUM.

Meter Testing Notice.

No. Date

To.....

House No. Street
Road

Ref: Your application dated

Sir,

Meter No.....fixed to the installation to the above mentioned property and complained of by you will be tested on..... between.....hours. Please arrange to be present so as to witness the test.

Inspector,
Division.

Appendix G.

FORM NO. 18.

THE WILLINGDON WATER WORKS, TRIVANDRUM.

Notice of an estimate of consumption on metered supplies.

No..... Dated..... Account No.....

To

.....

House No..... Street/Road.

Dear Sir/Madam,

The meter fixed to the above service is reported to have gone out of order.

A calculation under Rule 27 will be made.

Yours faithfully,
Superintendent.

Rule 27. If, on examination, any meter be found to be out of order and not registering correctly, the consumption during the period dating from the last reading till the repair of the meter or the putting up of a correct meter shall after notice in Form No. 18 be calculated at the average daily consumption registered for any previous period during which, in the opinion of the Water Works Engineer, the meter was registering correctly and the consumption of water was not abnormal.

Form No. 19.

WILLINGDON WATER WORKS, TRIVANDRUM.

Date.

Please take notice that water will be shut off from your premises during the hours mentioned below to allow of certain works being executed.

Date.	Month and year.	Hours.	
		From	To

To.....

Inspector,
Water Works Division.

Form No. 19.

WILLINGDON WATER WORKS, TRIVANDRUM.

Date.

Please take notice that water will be shut off from your premises during the hours mentioned below to allow of certain works being executed.

Date.	Month and year.	Hours.	
		From	To

To.....

Inspector,
Water Works Division.

FORM NO. 20.

THE WILLINGDON WATER WORKS, TRIVANDRUM.

LICENSE TO PLUMBERS.

No.....of 11 .

(Current for one year only.)

Mr.....having paid the fee of Bh. Rs. 10 (ten only), the Water Works Engineer, Trivandrum, hereby permits him to carry on business as a licensed plumber in connection with the Willingdon Water Works.

2. This license is granted with effect from the.....day of....., 11... and it will cease to have effect on the.....day of.....11.....

3. This license is granted on condition that.....is a competent plumber and will employ only plumbers who have obtained licenses from the Water Works Engineer, and will comply with the terms of the Regulation, Rules, Bye-laws, or orders now in force or that may be passed from time to time, in connection with the water supply. If the licensee is found guilty of any misconduct, neglect of duty or dishonesty, he shall be liable to be fined or his license suspended or cancelled with or without forfeiture of security and, in no circumstances will a refund of the fee paid for the license be allowed.

Water Works Office,
Trivandrum,.....11.....

Water Works Engineer,
Willingdon Water Works.

FORM No. 21.

THE WILLINGDON WATER WORKS, TRIVANDRUM.

LICENSED PLUMBERS.

Agreement.

I.....being desirous of carrying on business as a licensed plumber in connection with the Willingdon Water Works (Private services) hereby declare that I shall during the currency of my license comply with the terms of the Willingdon Water Works Rules and Regulations and any order passed by the Water Works Engineer from time to time, and I hereby further engage to furnish to the Water Works Engineer or any officer authorised by him all information required relative to the said private service.

As security for the due and proper fulfilment of the plumber's duties, I herewith deposit B. Rs. 100 (one hundred) only, and I agree that this sum may be forfeited to the Travancore Government in case I am found guilty of misconduct, neglect of duty or dishonesty.

Dated at Trivandrum this day the.....of.....19.....

Witness.

Plumber.

APPENDIX G.

FORM No. 22.

THE WILLINGDON WATER WORKS, TRIVANDRUM.

Plumber's Journal.

Month & date.	House No. Street & Name of owner.	Description (with details) of work on which engaged.

(2)

NOTICE.

(R. O. C. No. 1288/33/P. W., dated 15th August 1934.)

Erratum to the Notification regarding the Willingdon Water Works Rules and bye-laws published in pages 1339-1375, Part I of the Gazette, dated 24th July 1934.

Rule.	*Line.*	*For*	*Read*
29	2	A	B
30 (*b*)	3	pply	supply

On the reverse side of the meter reading slip Form No. 15, para 2, add "non" between "the" and "receipt" in line 5, read "end" for "15" and add a full stop after "month" in line 6 and read "Any" for "any" in line 7.

Bye-law 8, line 3, read "to" in place of "of".

T. G. G., dated 21-8-1934, Pt. I, P. 5.

IV

REGULATION IV OF 1109 [*The Travancore (Matches) Excise Duty*]

I. RULES.

(R. O. C. No. 1068-14/32/Devpt., dated 7th September 1934.)

In exercise of the powers conferred by Section 19 of the Travancore (Matches) Excise Duty, Regulation IV of 1109, the Government of His Highness the Maha Raja are pleased to make the following Rules to provide for the grant of a rebate of the duty payable under Section 3 of the said Regulation, namely :—

"1. A rebate of the duty payable under Section 3 of the Travancore (Matches) Excise Duty, Regulation IV of 1109, shall be granted on all matches to which the provisions of Chapter VII of the Travancore Matches (Excise Duty) Order 1109, apply, manufactured in any manufactory whose daily output does not exceed 100 gross of boxes at the following rates, namely :—

(i) where the average number of matches in a box or booklet is 40 or less, a rebate of 10 pies per gross of boxes or booklets ;

(ii) where the average number of matches in a box or booklet, is more than 40 but not more than 60, a rebate of one anna and three pies per gross of boxes or booklets; and

(iii) where the average number of matches in a box or booklet is more than 60, a rebate of one anna and eight pies per gross of boxes or booklets.

2. The rebate shall be made by a reduction in the selling price to the owner of such manufactory of the banderols required to be affixed to boxes or booklets of matches by Government Notification R. O. C. 1068-4/32/Devpt. dated the 21st July 1934.

3. An owner of a manufactory claiming a rebate under these Rules shall present to the Treasury Officer at the time of purchasing banderols a certificate from the Excise Commissioner that the daily output of the manufactory does not exceed 100 gross of boxes of matches.

4. The certificate referred to in Rule 3 shall not be valid for more than three months from the date of issue and may be cancelled by the Excise Commissioner at any earlier time if it appears to the Excise Commissioner that the daily output of the manufactory to which it relates exceeds 100 gross of boxes.

5. The Treasury Officer shall on presentation of such certificate, issue to the owner of the manufactory banderols of class 1, 2 or 3 specified in clause 42 of the Travancore Matches (Excise Duty) Order, 1109, of distinctive colour at the following prices, namely :—

Banderols of Class 1.	Per gross of banderols, fifteen annas and two pies.
Banderols of Class 2.	Per gross of banderols, one Rupee, six annas and nine pies.
Banderols of Class 3.	Per gross of banderols, one Rupee, fourteen annas and four pies.

T. G. G., dated 11-9-1934, Pt. I, P. 69.

II. NOTIFICATIONS.

(1)

(R. O. C. No. 1068-9/32/Devpt., dated 20th August 1934.)

In exercise of the powers conferred by Section 18 of the Travancore Sea Customs Regulation, V of 1088, the Government of His Highness the Maha Raja hereby prohibit the bringing into Travancore by sea or land of matches in boxes or booklets containing more than 80 matches.—

T. G. G., dated 21-8-1934, Pt. I, P. 12.

(2)

(R. O. C. No. 1068-10/32/Devpt., dated 27th August 1934.)

In pursuance of Clause 34 of the Travancore Matches (Excise Duty) Order, 1109, the Government of His Highness the Maha Raja are hereby pleased to empower all Officers of the Excise Department not lower in rank than an Inspector to search any place, vessel, cart or means of conveyance for matches liable to duty and to seize and remove or detain any matches which may appear to them to have been illegally imported or manufactured.—

T. G. G., dated 28-8-1934, Pt. I, P. 35.

[See Page 650, *Supra.*]

(3)

(R. O. C. No. 1068-11/32/Devpt., dated 27th August 1934 and

R. O. C. No. 1068-22/32/Devpt., 15th October 1934.)

In exercise of the powers conferred by Section 7 of the Travancore (Matches) Excise duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to prohibit absolutely the bringing of matches into Travancore from the territories of the Indian States mentioned below :—

Junagadh including Mougrol Porbandar Gondal	Western India States Agency.
Sirmoor	(Punjab States.)
Kotah Palanpur	Rajputana States.

T. G. G., dated 28-8-1934, Pt. I, P. 36, and 16-10-1934, Pt. I, P. 180.

(4)

(R. O. C. No. 1068-12/32/Devpt., dated 3rd September 1934.)

In exercise of the powers conferred by Sub-sections (1) and (3) of Section 8 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to direct that the following amendment shall be made in Notification R. O. C. No. 1068-4/32/Devpt, dated the 21st July 1934, namely.—

For the word and figures "August 1st 1934" occurring in line one of clause (1) of the said Notification, the word and figures "September 11th 1934" shall be substituted.

T. G. G., dated 4-9-1934, Pt. I, P. 54.

---

(5)

(R. O. C. No 1068-13/32/Devpt., dated 3rd September 1934.)

It is hereby notified that all Revenue Officers of and above the rank of Tahsildars are authorised to demand the licenses and inspect the licensed premises, the machinery, the stocks and the accounts of the holders of licenses in Form A (for the manufacture of matches) and in Form C (for the manufacture of splints and veneers) issued under the Travancore Matches (Excise Duty) Order, 1109.—

T. G. G., dated 4-9-1934, Pt. I P. 54.

---

(6)

(R. O. C. No. 1068-15/32/Devpt, dated 14th September 1934.)

In exercise of the powers conferred by Sections 9 and 18 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to direct that from the date of publication of this Notification in the Gazette no person shall supply splints or veneers to any person who does not possess a license to manufacture matches issued under the same Regulation: Provided that the owner of a match manufactory may issue veneers to persons other than those who hold licenses for the manufacture of matches, for the manufacture of empty boxes outside the limits of the manufactory and for the supply of the same to the manufactory, on the following conditions:—

(1) A pass showing the number and description of veneers supplied shall be issued by the owner of a manufactory to the person concerned, every time veneers are supplied to such person.

(2) The pass shall be returned to the match manufactory along with the match boxes manufactured out of the veneers specified in the pass.

(3) The passes shall be shown on demand, to all officers of the Excise Department of and above the rank of Sub-Inspectors.

(4) A register of such passes shall be maintained in each factory and shall be open to inspection at any time by any officer of the Excise Department of and above the rank of Sub-Inspectors.—

T. G. G., dated 18-9-1934, Pt I, P. 86.

---

(7)

(R. O. C. No. 1068-16/32/Devpt., dated 19th September 1934)

In exercise of the powers conferred by Section 7 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to prohibit absolutely the bringing of matches into Travancore from the territories of the Indian States or Taluka mentioned below :—

Jasdan Manavadar Thana-Devli Virpur V. S. Naja Manasia (Taluka)	Western Kathiawar Agency.

T. G. G., dated 25-9-1934, Pt. I, P. 99.

---

(8)

(R. O. C. No. 1068-17/32/Devpt., dated 19th September 1934.)

In exercise of the powers conferred by Section 7 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to prohibit absolutely the bringing of matches into Travancore from the territories of the Indian States mentioned below :—

Vadia Malia	Western Kathiawar Agency.

T. G. G., dated 25-9-1934-Pt. I, P. 99.

---

(9)

(R. O. C. No. 1068-18/32/Devpt., dated 24th September 1934.)

In exercise of the powers conferred by Section 18 (2) of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja direct that all manufacturers and dealers who have, in their possession, on the 1st October 1934, any quantity of

unbanderolled matches amounting to or exceeding 50 gross boxes, shall declare that quantity to the Excise Commissioner. All undeclared stocks of unbanderolled matches of 50 gross and over shall be liable to confiscation.—

T. G. G., dated 25-9-1934, Pt. I, P. 116.

---

(10)

(R. O. C. No. 1068-24/32 / Devpt., dated 29th October 1934.)

In exercise of the powers conferred by Section 18 (2) of the Travancore (Matches) Excise Duty Regulation IV of 1109, the Government of His Highness the Maha Raja are pleased to direct that there shall be made the following amendment in Notification R. O. C. No. 1068-18/32/Devpt., dated the 24th September 1934 published at page 116 of Part I of the Government Gazette dated the 25th September 1934/9th Kanni 1110, namely :—

To the said Notification, the following words shall be added at the end, namely :—

" and the Excise Commissioner may cause all confiscated matches to be destroyed".

T. G. G., dated 30-10-1934, Pt. I, P. 237.

---

(11)

(R. O. C. No. 1068-19/32/Devpt., dated 24th September 1934.)

In exercise of the powers conferred by Section 8 (2) of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja, direct that the following be added as a proviso to Notification R. O. C. No. 1068-5/32/Devpt. dated the 21st July 1934 published on page 1934 of Part I of the Travancore Government Gazette dated 24th July 1934.

" Provided that the sale and the offering and keeping for sale of unbanderolled sulphur matches and matches known as " Bengal Lights " shall be permitted up to the 31st December 1934."—

T. G. G., dated 25-9-1934, Pt. I. P. 116.

---

(12)

R. O. C. No. 1068-20/32/Devpt., dated 28th September 1934.)

In exercise of the powers conferred by Section 7 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to prohibit absolutely the bringing of matches into Travancore from Cutch.—

T. G. G., dated 2-10-1934, Pt. I, P. 130.

---

(13)

(R. O. C. No. 1068-21/32/Devpt., dated 15th October 1934.)

In exercise of the powers conferred by Section 18 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to direct that the following further amendment shall be made in the Travancore Matches (Excise Duty) Order 1109, as amended by Notification R. O. C. No. 1068-6/32/Devpt. dated the 21st July 1934, namely :—

In Chapter VII of the said Order—

(*a*) In Clause 41 for the word "sale." the word "issue" shall be substituted and to the said clause the following words shall be added, namely :—

"and payment of the duty shall be made by the owners of manufactories furnishing to the Excise Commissioner the purchase price of the banderols affixed to boxes or booklets of matches issued from their manufactories."

(*b*) For Clause 46, the following Clause shall be substituted namely:—

"46. (1) The Excise Commissioner shall supply to any owner of a manufactory banderols for use on boxes or booklets of matches in the manufactory on such owner executing a bond or furnishing adequate security to the satisfaction of the Excise Commissioner for the price of the banderols so supplied; but no person shall, unless generally or specially so authorised by the Excise Commissioner, issue from a manufactory any box or booklet bearing a banderol so supplied without paying to the treasury the price of the banderol affixed to such box or booklet.

(2) Whoever issues from a manufactory any box or booklet of matches in contravention of the provisions of sub-clause (1) shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both."— *T. G. G., dated 16-10-1934, Pt. I, P. 180.*

---

(14)

(R. O. C. No. 1068-23/32/Devpt., dated 15th October 1934.)

In exercise of the powers conferred by Section 7 of the Travancore (Matches) Excise Duty Regulation, IV of 1109, the Government of His Highness the Maha Raja are pleased to prohibit absolutely the bringing of matches into Travancore from the territory of the Indian State of Nawanagar in the Western India States Agency.—

T. G. G., dated 16-10-1934, Pt I, P. 180.

---

01 Foreword

03 Preface

I Table of Contents

1 Proclamation of Munro Island

36 Regulation 3 of 1105-Travancore Census

42 Regulation 4 of 1105-Revenue Summons(Amendment)

45 Regulation 5 of 1105-Land Conservancy(Amendment)

48 Regulation 1 of 1106-Travancore Registration(Amendment)

50 Regulation 2 of 1106-Travancore Village Panchayat(Amendment)

52 Regulation 3 of 1106-Malayala Brahmin

54 Priliminary-Short Title, Definitions etc

56 Illom and its Management

60 Guardianship of Minors

61 Inheritance and Intestate Succession

64 Supplemental Provision

65 Regulation 4 of 1106-Food Adulteration

81 Food Adulteration Rules

87 Regulation 1 of 1107-Land Customs(Amendment)

88 Regulation 2 of 1107-Extradition(Amendment)

90 Regulation 3 of 1107-Criminal Law(Amendment)

95 Regulation 4 of 1107-State aid to Industries

118 Regulation 1 of 1108-Wrecks

125 Regulation 2 of 1108-Legislative Reforms

153 Regulation 2 of 1108-Legislative Reforms-Rules, Standing Orders and Notifications

396 Regulation 3 of 1108-Provident Insurance Societies

413 Regulation 3 of 1108-Rules and Notifications

445 Regulation 4 of 1108-Travancore Town Planning

451 Town Planning Schemes

484 Regulation 5 of 1108-Travancore Wills (Amendment)

485 Regulation 6 of 1108-Travancore Chitties(Amendment)

490 Regulation 7 of 1108-Travancore Kshatriya

513 Kshatriya Rules and Forms

519 Regulation 8 of 1108-Travancore Insolvency

565 Regulation 9 of 1108-Travancore Police(Amendment)

567 Regulation 10 of 1108-Travancore Municipal(Amendment)

576 Municipal Rules

585 Regulation 11 of 1108-Travancore Muslim Succession(Amendment)

589 Regulation 12 of 1108-Jenmi Kudiyan(Amendment)

613 Regulation 1 of 1109-Sea Customs(Amendment)

614 Regulation 2 of 1109-Tea Cultivation Restriction

618 Regulation 3 of 1109-Edavagai

633 Regulation 4 of 1109-Travancore Matches(Excise Duty)

646 Travancore Matches(Excise Duty)-Rules and Notifications

661 Regulation 5 of 1109-Importation of Live Stock

663 Regulation 6 of 1109-Market(Amendment)

665 Regulation 8 of 1100-Civil Procedure Code(amendment)

667 Appendix A-Regulation 12 of 1108-Jenmi and Kudiyan(Amendment)

741 Appendix B-Case Law

743 Criminal Procedure Code-Case Law

790 Revenue Recovery-Case Law

792 Forest-Case Law

793 Proclamation of 1068-Service Inams-Case Law

794 Jenmi and Kudiyan-Case Law

799 Penal Code-Case Law

818 Negotiable Instruments-Case Law

825 Civil Court-Case Law

827 Tobacco-Case Law

829 Registration-Case Law

830 Court Fees-Case Law

834 Land Acquisition-Case Law

838 Village Panchayat Courts-Case Law

839 Insolvency-Case Law

845 Succession Certificate-Case Law

929 Civil Procedure Code-Case Law

1073 Malabar Brahmins Law

1082 Appendix C-Regulations and Proclamations to which the Case Law refers

1084 Appendix D-Index of Cases

1097 Appendix E-Rules under the code of Civil Procedure

1193 Appendix F-High Court Circulars etc

1207 Appendix G-Rules and Notifications