

## CHAPTER XXIX

### OFFICE OF THE COMMISSIONER FOR TAKING ACCOUNTS

**487. Copy of decree or order to be filed** – Where a party to a suit or matter desires to take proceedings under any decree or order in the office of the Commissioner for Taking Accounts ( hereinafter referred to as “the Commissioner”), he shall file in the office of the Commissioner a certified copy of the decree or order; provided that when the Court Receiver files his accounts in the office of the Commissioner for being passed, he may file a copy of the decree or order duly authenticated by him as a true copy.

**488. Party filing copy of decree or order to apply for issue of notice** – When a copy of any decree or order is filed in the office of the Commissioner, the party filing the same shall, unless otherwise directed by the Commissioner, apply for the issue of a notice for the purpose of taking into consideration the matter of the said decree or order and shall serve the notice on all necessary parties or on their Advocates on record.

**489. Service of notice etc., on party concerned** - Service of notice, Summons, order or other process upon any party concerned in such matter who is not represented by an Advocate shall be made in the manner provided by the Code of Civil Procedure for the Service of writ of summons in a suit, unless otherwise provided by these rules or unless the Commissioner otherwise directs.

**490. Length of service.** – Unless the Commissioner otherwise directs, every notice, summons or other process shall be served four clear days before the return thereof.

**491. Manner of proceeding with the matter** - At the time appointed for considering the matter of the said decree or order, the Commissioner shall proceed to regulate, as far as may be, the manner in which the matter is to be proceeded with and shall give such directions as may be necessary.

**492. Directions for filing statements of accounts, objections and surcharges.** - When a suit or matter is referred to the Commissioner for the purpose of taking an account the Commissioner shall give directions as to the party who shall file the statement of account and the period of time

within which he shall do so. He shall also direct the opposite parties to file their statements of objections and surcharges, if any, within a specified time.

Statements of accounts and of objections and surcharges shall be on oath or on solemn affirmation.

**493. Procedure in default of filing statement of account** – Where a party who has been directed to file a statement of account has made default in filing such account, the Commissioner may debar him from taking any further part in the proceedings before him and may proceed with the hearing of the reference or he may direct any other party to file a statement of account or he may remove the reference from his file or make such other order as he thinks fit.

Where the Commissioner has directed any other party to file a statement of account, he may debar the party in default from being heard on the statement of account filed by such other party.

**494. Just allowance to be made** – In taking an account directed by a decree or order, all just allowance shall be made without any direction to that effect in such decree or order.

**495. Commissioner may remove matter from the file on default of appearance** – If the party who gets a notice or other process issued does not appear on the day fixed for the hearing of the reference or matter or on any other day to which the hearing may be adjourned, the Commissioner may adjourn the hearing or remove the reference or matter from his file or pass such other order as he may in the circumstances deem fit. When the Commissioner makes an order for removal, he shall certify the Prothonotary and Senior Master that the reference or matter has not been prosecuted and that it has been removed from his file.

**496. Commissioner may proceed *ex-parte*** - If any party Concerned in any reference or matter who shall have been duly served with notice does not appear on the day fixed for the hearing of the notice or on any other day to which the hearing may be adjourned, the Commissioner shall be at liberty to proceed *ex-parte* as regards such party.

**497. Commissioner may award costs of adjournment or costs of removal of matter.** – When the Commissioner grant an adjournment or

makes an order for removal of a reference or matter from the file, he may make such order as to costs as he may deem just. The costs shall be quantified by the Commissioner. The order for costs shall be executed as if it were an order of the Court. The party desiring to enforce the order for costs shall file a certified copy thereof in the Office of the Prothonotary and Senior Master and apply for execution. Execution shall then issue as in the case of an order of the Court.

**498. When reference or matter not prosecuted, Commissioner may remove same from file** – In any case in which no effective proceedings have been taken in the office of the Commissioner for a period of three months in any reference or matter pending before him, the Commissioner may, after giving notice to the parties who have appeared before him, remove the reference or matter from his file and certify to the Prothonotary and Senior Master that the reference or matter has not been prosecuted and that it has been removed from his file. Notice to a party who has appeared in person shall be given by sending the notice to him by post under certificate of posting

**499. Reference or matter not to be restored without order** – When a reference or matter is removed from the file of the Commissioner it shall not be restored to his file without an order of the Court or the Judge in Chambers.

**500. Procedure on refusal or neglect of a party to do some act required to be done.** – (i) Where a party to a suit or proceeding has refused or neglected to do any act which he has been directed by the Commissioner to do, the Commissioner may refuse to hear him and may debar him from taking any further part in the proceedings before him. Where it is not expedient or practicable for the Commissioner to precede with the reference or matter by reason of such refusal or neglect, the Commissioner may remove the reference or matter from his file and certify the fact to the Prothonotary and Senior Master, giving reasons for the removal.

(ii) Any party concerned may then apply by Chamber Summons for an order that the party in default do the required act within a specified time. The Judge may thereupon make such order as to him may deem just.

(iii) If the Judge directs the party in default to do the required act within a specified time and if the said party fails to do the act within such

time, any party concerned may apply by Chamber Summons that action be taken against the party in default for disobedience of the Court's Order. On the hearing of such summons, the Judge may order that the property of the person guilty of such disobedience be attached and may also order such person to be detained in civil prison for a term not exceeding six month (unless in the meantime the Judge directs his release), or may make such order relating to the suit or proceeding as the Judge may think fit.

(iv) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience continues, the property attached may be sold and if the proceeds of the sale are insufficient to satisfy the debt, the Judge may order such compensation to be paid to any party affected as he thinks fit and as to the balance, if any, the Judge shall pass an order that it be paid to the party entitled thereto.

**501. Commissioner may obtain process for attendance or for production of documents** – The Commissioner shall be at liberty in all matters referred to him to obtain the process of the Court to compel the attendance of witness or the production of any document which he may desire to inspect, and to examine such witnesses, on oath or solemn affirmation touching the matters referred to him as he may think proper.

**502. Unofficial translation of exhibit may be furnished to Commissioner** – An Advocate on record shall be at liberty to furnish to the Commissioner an unofficial translation of any exhibit put in before him. Should the correctness of such unofficial translation be challenged, the Commissioner may, on reference to the interpreter in attendance, decide the point and amend the translation if necessary, or may require the document or any portion of it to be officially translated.

**503. Registered Clerks of Advocates on written authority may be permitted to appear before Commissioner** – Registered Clerks of Advocates may, on the written authority of their employers, appear and act for their employers in any suit or matter before the Commissioner for which such authority is given, but the Commissioner may require the attendance of the Advocate on record whenever he thinks fit. The Commissioner shall have power, subject to an appeal to the Judge in Chambers, to exclude from the aforesaid privilege any clerk whom he may consider incompetent or to have abused such privilege.

**504. Appearance on a claim made against the estate of a deceased person** – In any suit or matter for the administration of the estate of a deceased person, where a claim is made against the estate of the deceased by a person not a party to the suit or matter, no party other than the executor or administrator shall, unless by leave of the Commissioner, be entitled to appear, except at his own risk as to his costs and the costs, occasioned by his appearance, of other parties entitled to appear and appearing, unless the Commissioner otherwise directs.

**505. Commissioner may make interim report** – The Commissioner may, *suo motu* or upon the application of a party, make an interim report concerning any matter or thing arising in or about the matter referred to him in order that the directions of the Court may be obtained thereon. Such interim report shall be brought before the court by such party as the Commissioner shall direct. The party so directed shall apply by Chamber Summons for the necessary directions and shall serve the summons on all parties concerned. The Judge may give such directions or pass such orders on the report as to him may seem just

**506. Commissioner to report if unable to make report in time** – If the Commissioner is unable to make his final report within the period fixed by the decree or order or where no time is fixed, within one year from the filing of the certified copy of the decree or order in the Commissioner's Office, he shall make a report setting out the reasons why the matter could not be completed within such period. The Prothonotary and Senior Master shall place such report before the Judge in Chambers for such orders as the Judge may deem fit. The Prothonotary and Senior Master shall notify on his notice board the date on which the report is to be placed before the Judge in Chambers and he shall do so at least eight days before such date. If a party has appeared in person, the Prothonotary and Senior Master shall give notice of the date to such party by sending a letter to him by post under certificate of posting.

**507. Report of Commissioner binding on parties unless discharged or varied** – When the Commissioner has made his final report pursuant to any decree or order of the Court, he shall inform the parties who have appeared before him of the same and shall then forward it to the Prothonotary and Senior Master for being filed. The report shall be binding on all parties to the proceedings, unless the same is discharged or varied as hereinafter provided.

**508. Exceptions to Commissioner's report and their hearing** – Any party desiring such report to be discharged or varied shall within twenty days from the filing thereof in the office of the Prothonotary and Senior Master file his exceptions thereto and serves a copy of the same on the other parties to the suit or matter. After the exceptions have been filed as aforesaid, the suit or matter shall be set down for hearing on such exceptions. If any party after having filed exceptions abandons or does not proceed with them, any other party in the same interest shall be at liberty to proceed with such exceptions.

The Judge in Chambers may for sufficient cause allow exceptions to be filed within such time after the expiry of twenty days as he may think fit.

**509. Setting down of suit for hearing on exceptions to Commissioner's report** - Unless otherwise ordered, the suit or matter shall be set down on board for hearing on exceptions to the Commissioner's report and for further directions fourteen days after the exceptions are filed. The Prothonotary and Senior Master shall notify on his notice board the date on which the suit or matter is to be so set down and he shall do so at least eight days before such date. If a party has appeared in person, the Prothonotary and Senior Master shall give notice of the date to such party by sending a letter to him by post under certificate of posting.

The suit or matter shall be set down for hearing on the exceptions before the Judge who made the order or reference if he is available and sitting on the Original Side, and if not, before any other Judge sitting on the Original Side. The suit or matter shall be placed high on the daily board.

**510. Confirmation of Commissioner's report, when exceptions not filed** – When no exceptions have been filed to vary or discharge a report within the prescribed time the Prothonotary and Senior Master shall, at the request of any party to the proceedings, certify such fact on the report; and such certificate shall appear on such report before the suit or matter is placed on board for confirmation of the Commissioner's Report and for further directions.

**511. Procedure when no application made for confirmation.** – If in a suit or matter referred to the Commissioner, no application is made for confirmation of the Commissioner's report within two months from the date on which the same is filed in the office of the Prothonotary and Senior

Master, the suit or matter shall be set down on board for directions. The Prothonotary and Senior Master shall notify on his notice board the date on which the suit or matter is to be so set down and he shall do so at least eight days before such date. If a party has appeared in person, the Prothonotary and Senior Master shall give notice of the date to such party by sending a letter to him by post under certificate of posting.

The suit or matter shall be set down for directions before the Judge who made the order of reference if he is available and sitting on the Original Side, and if no, before any other Judge sitting on the Original Side. The suit or matter shall be placed high on the daily board.

**512. Procedure when Receiver fails to file account, etc.** – Where a receiver neglects to file his account as provided in rule 594 or to get it passed, the Commissioner may require the receiver and the parties or any of them to attend the office of the Commissioner to show cause why such account has not been filed or if filed, why the passing thereof has not been proceeded with and thereupon the Commissioner may give such directions as to him may seem proper.

If the Commissioner does not see fit to require the receiver or the parties to attend as aforesaid, or if he shall not be satisfied with the explanations offered to him, the Commissioner shall make a report in the matter and after informing the receiver and the parties transmit it to the Prothonotary and Senior Master. The Prothonotary and Senior Master shall place such report before the Judge in Chambers. The Prothonotary and Senior Master shall notify on his notice board the date on which the report is to be placed before the Judge in Chambers and he shall do so at least eight days before such date. If a party has appeared in person, the Prothonotary and Senior Master shall give notice of posting. The Judge may pass such order on the report as to him may seem just.

**513. Upon Account being filed notice to proceed, etc., to issue.** - Upon a receiver's account being filed in the office of the Commissioner for being passed, a notice to proceed thereon and other necessary notices shall be got issued by the receiver.

**514. Commissioner's certificate to be binding on parties unless discharge or varied.** – When the Commissioner has completed the examination of an account filed by a receiver, he shall issue a certificate

stating the result of such examination. He shall inform the parties who have appeared before him of the issue of the certificate and shall then forward it to the Prothonotary and Senior Master for being filed. The certificate shall be binding on all parties to the proceedings unless the same is discharged or varied as hereinafter provided.

**515. Party dissatisfied with certificate to apply by chamber summons.** – Any party desiring such certificate to be discharged or varied shall within twenty days from the filling thereof in the office of the Prothonotary and Senior Master apply by Chamber Summons for such order.

The Judge in Chambers may for sufficient cause allow such application to be made within such time after the expiry of twenty days as he may think fit.

### **Sale of Property**

**516. Copy of decree or order for sale to be filed.** – A certified copy of every decree or order for the sale of property by the Commissioner shall be filed in the office of the Commissioner.

**517. Sale to be conducted by the Commissioner** – Unless otherwise ordered, every such sale shall be conducted by the commissioner or under his direction by his representative, and shall be made by public auction; except that if the property to be sold shall consist of negotiable securities; or of share in any public company or corporation, the Commissioner shall be at liberty to sell the same through a broker at the market rate of the day.

**518. Sale to be to the highest bidder offering a sufficient sum.** – Every such sale shall be to the highest bidder, provided that if the Commissioner is of opinion that a sufficient sum has not been offered, he may postpone the sale.

**519. Carriage of proceedings.** – When mortgaged property is to be sold, the mortgagees or the first mortgagee, and in other cases the plaintiff or the party having the carriage of the general proceedings, shall have the carriage of the proceedings relating to the sale; but the Court or the Judge in Chambers may, when necessary, commit the carriage of such proceedings to any other party.

**520. Document of title to be left with the Commissioner and to be subject to his directions** - All documents of title relating to the property to be sold in the possession or power of any of the parties shall be produced before and left with the Commissioner, and shall be subject to his directions both as to their custody pending the sale and their ultimate destination, such directions being subject to appeal to the Judge in Chambers.

**521. Conditions of Sale** – Every such sale shall be regulated by conditions in writing. The conditions of sale shall as few and simple as may be compatible with the nature of the property to be sold. If a reserved bid is fixed, the fact of a reserved bid having been fixed, but not the amount, shall be stated in the conditions.

When immovable property is to be sold, the conditions shall be adapted to the state of the title to such property. When immovable property is to be sold in lot, and the same monuments of title relate to more than one lot, or when the same monuments of title relate to several properties, provision shall be made in the conditions of sale for the destination of the original monuments and for the production and furnishing of copies thereof.

The conditions of sale shall be in Form No. 68 or Form No. 69 as the case may be, with such variations as the circumstances of each case may require.

**522. Proclamation, notification and conditions of sale and abstract of title by whom to be prepared.** – The proclamation, notification and conditions of sale and an abstract of title when immovable property is to be sold shall be prepared by the Advocate on record for the party having the carriage of the proceedings.

**523. Settlement of proclamation, notification, etc.,** - Draft of the proclamation, notification, conditions of sale and abstract of title shall be lodged with the Commissioner, and he shall be requested to fix a date for settling the same. Notice of such date shall be served on all parties entitled to appear. On the said date or on any other date or on any other date to which the matter may be adjourned, the proclamation, notification, conditions of sale and abstract of title shall be settled. The Commissioner

shall then fix the date, time and place of the sale, and the time for delivery of the abstract of title and of objections to and requisitions on the title.

**524. Copies of proclamation, notification, etc., to be filed.** – On the proclamation, notification, conditions of sale and abstract of title being settled, fair copies thereof shall be filed in the office of the Commissioner.

**525. Notification of the sale.** – The notification shall specify the time and place of sale and shall contain a description and particulars of the property, together with a statement that the property is to be sold pursuant to a decree or order of the Court by the Commissioner, who shall have the right to postpone the sale if an adequate price is not offered. If the property is to be sold by lot, the notification shall also contain a statement of the manner in which it is proposed to divide the property into lots for the purpose of the sale. When the property or any portion of it is to be sold subject to an encumbrance, the nature and the amount of such encumbrance shall as far as practicable, be also stated.

**526. Proclamation of sale and mode of notifying sale** – (1) The Commissioner shall cause a proclamation to be made of every intended sale by public auction under this Chapter.

(2) The proclamation of sale shall contain the particulars specified in Order XXI, rule 66(2) of the Code of Civil Procedure, so far as they may be application. The proclamation shall contain every fact which the Commissioner considers material for a purchaser to know in order to judge the nature and value of the property.

(3) The proclamation of sale together with a copy of the particulars and conditions of sale shall be affixed on a conspicuous part of the Court house and on the notice board of the office of the Commissioner. Where immovable property is to be sold, the proclamation of sale together with a copy of the particulars and conditions of sale shall also be affixed on a conspicuous part of the property to be sold and on the notice board of the office of the Collector of the district in which the property may be situate and where the property is situate within cantonment limits, on the notice board of the Local Cantonment. Board and the Military Estates Officer concerned.

(4) A notification of every sale shall be published in such newspapers and as often as the Commissioner may direct, having regard to the nature and value of the property to be sold. The notification shall be as concise as possible, taking into account all the circumstances of the cases.

**527. Reserved bid.** – Unless otherwise ordered or agreed to by the parties, the Commissioner may, on notice to the parties, direct a valuation, or a survey and valuation, to be made of the property to be sold. The same shall be made by an architect or a surveyor or other competent person to be appointed by the Commissioner in rotation as far as possible, having regard to the nature and value of the property to be sold out of the list of architects and surveyors or competent persons approved by the Chief Justice and such architect or surveyor or other competent person shall certify the result under his signature, and shall deliver to transmit such certificate to the Commissioner under a sealed cover with the words on the cover “Private and to be opened only by the Commissioner”. The Commissioner may, if he shall think fit, require the certificate to be varied by an affidavit of the valuer. In that case the certificate shall be referred to in the affidavit without being annexed thereto or filed therewith. The affidavit shall be so prepared as not to disclose the contents of the certificate. On the reserved bid being fixed, the certificate shall be put in a sealed cover and kept in a safe by the Commissioner.

**529. Reserved bid not be divulged.** - Unless otherwise ordered, the reserved bid shall not be divulged to any person either before, at or after the sale.

**530. Copy of proclamation, notification and conditions of sale with translation to be posted up** – A Copy of the proclamation, notification and conditions of sale, with such transitions thereof as the Commissioner may direct, shall be posted upon the notice board of the Commissioner’s office on the day of the sale and for one week previous thereto.

**531. When conditions of sale to be published and hand bills distributed.** – In any case in which it may be deemed desirable, and the value of the property to be sold shall admit of it, the Commissioner may cause the conditions of sale or any part thereof to be published with the notification mentioned in Rule 526 and may also, with a view to give greater publicity to the sale, cause hand-bills to be prepared and distributed.

**532. Postponement of sale** – The Commissioner may postpone a sale, if he is unable to attend on the day appointed for the sale, or if the offices of the Court are closed on the day of the sale under the order of the Chief Justice, or with the consent of the parties, or for other sufficient cause. The costs of a postponement rendered necessary by the Commissioner's absence or by the offices of the Court being closed shall be costs in the sale. The costs of a postponement on any other ground shall be in the discretion of the Commissioner.

When a sale is postponed the proceedings down to the certificate of sale shall be similar to those on an original sale, save as provided in the next succeeding rule.

**533. Notice of postponement of sale to be given in newspapers** - When a sale has been advertised in newspapers and is postponed for any reason, the Commissioner shall give a short notice of such postponement in the said newspapers and shall dispense with fresh notification of the sale.

**534. When sale postponed, a new day to be fixed** - When a sale is postponed, the commissioner shall be at liberty to appoint a new day for the sale of the property, and, on the notice to the parties, to make any necessary alterations in the notification and conditions of sale.

**535. Advocate of party having carriage of proceedings to be present at the sale.** – The Advocate on record for the party having the carriage of the proceedings, or the Advocate's registered clerks, shall be present at the sale.

**536. Proclamation, notification and conditions of sale to be read out before sale.** - At the time and place appointed for the sale, the proclamation, notification and conditions of sale, and the translations thereof, shall be read out preparatory to the property being put up for sale.

**537. Bids to be entered in the Commissioner's note-book** – The Account of each bid shall be entered in the Commissioner's note-book

**538. Postponement of sale for want of sufficient bid** – If there be no bid or the highest bid be below the reserved bid (if any) or be deemed insufficient by the Commissioner, he shall postpone the sale and record the reason for such postponement in his note-book

**539. When property sold, from of entry to be made in the Commissioner's note-book** – If the highest bid be equal to or higher than the reserved bid ( if any ) and be deemed sufficient by the Commissioner, he shall, subject to the provisions of rule 546(i) and rule 547 (i) (a) and (i)(c) make an entry in his note-book to the following effect:-

“I declare; A.B.to be the purchaser of the property comprised I lot  
..... for the sum of Rs. ....”

**540. Result of sale to be entered in bidding paper** – The result of the sale shall also be set forth in a paper to be called “the Binding Paper”, with particulars showing the lots which have been sold, and for what price, and the lots which have not been sold, and stating the names of the purchaser, and what sums have been received as deposits and the balance remaining due in respect of each purchase. If there be no bid for any lot, the words “no binding” shall be written in the bidding paper opposite the number of the lot. If the highest bid be deemed insufficient, the words “not sold” shall be written opposite the number of the lot. If the property be sold, the highest bid shall be inserted opposite the number of the lot, and the purchaser shall write his full name and subscribe his signature opposite such entry, and shall add his address and occupation. All notice thereafter served at the address so given shall be deemed to have been duly served. The bidding paper shall be in Form No. 70.

**541. Agent of purchaser to sign Bidding paper as such** – A person purchasing as agent for another shall sign the bidding paper as such, giving the full name, address and occupation both of himself and his principal. All notices thereafter served at either of the addresses so given shall be deemed to have been duly served.

**542. Proceedings on a re-sale** - When a re-sale is directed, unless otherwise ordered, a fresh notification shall be issued and published and the proceedings down to the certificate of sale shall be similar to those on an original sale.

**543. Leave to bid and to set-off** – No party to a suit shall, without the leave of the Court or the Judge in Chamber, bid for or purchase any property directed to be sold by the Commissioner under a decree or order in the suit. Such leave if not contained in the decree or order directing the sale may be obtained on an application by Chamber Summons. The costs of a separate

application, unless otherwise ordered, shall be borne and paid by the applicant.

At the time of granting leave to any party to bid for and purchase the property the Court shall grant him leave to set off his claim in the suit against the purchase-money.

**544. Leave to mortgagee to bid and set-off** – (i) Where leave to bid and to set-off is granted to a mortgagee of the property, the Court may order that he shall not bid at the sale for an amount less than what he is entitled to set-off; and where the property is to be sold in separate lots, the bid shall not be less in respect of each lot than such figure shall appear to the properly attributable to it in relation to the said amount.

(ii) Where leave is granted to such mortgagee to set-off his claim against the purchase-money, he shall be entitled to set-off the amount payable under the decree for principal. Interest and costs of the suit and such costs, charges and expenses in respect of the mortgage security as have been properly incurred by him subsequent to the preliminary decree. The costs of the suit and the costs, charges and expenses incurred subsequent to the preliminary decree, if not taxed, shall be estimated and ascertained in a summary manner by the Commissioner for the purpose of giving effect to the set-off.

**545. Application of encumbrance to be made a party to the suit or to join in the sale** – An encumbrance, not a party to the suit, may, at any time before the sale, apply by Notice of Motion to be made a party or for leave to join in the sale; and such order shall be made thereon, and in protection of his rights and as to costs as to the Court may seem fit.

**546. Sale of movable property** -(i) When movable property is sold, unless otherwise ordered by the Commissioner or agreed to by the parties, the whole of the purchase-money, or so much thereof as may be payable after giving credit for any set-off to which the purchaser may be entitled, shall be paid to the Commissioner at the time of the sale. Upon such payment being made, the sale shall become absolute and the purchaser shall be entitled to obtain delivery of the property in like manner as the purchaser of movable property sold in execution under the provision of the Code of Civil Procedure.

(ii) A mortgagee who has obtained leave to bid and to set-off shall, four days before the date of the sale, file with the Commissioner a statement giving particulars of the amount he would claim by way of set-off against the purchase-money in case he is declared the purchaser.

(iii) The Commissioner shall estimate in a summary manner the amount which such mortgagee is entitled to set-off, taking into account the principal amount, interest, costs of the suit, further interest up to the date of the sale and further costs. Charges and expenses in respect of the property, as may have been ordered by the Court or the Judge in Chambers.

(iv) The mortgagee who is allowed a set-off shall give an undertaking to the Commissioner that if the amount he is entitled to set-off is found, after the taxation of all his costs, to be less than the amount estimated by the Commissioner, he would, if called upon by the Commissioner, fourth with deposit with the Commissioner such amount as the Commissioner may require him to deposit, having regard to the facts of the particular case.

(v) In cases where the amount of the purchase money exceeds the estimated amount of set-off, and where the amount claimed by the mortgagee as set-off, and where the amount claimed by the mortgagee as set-off is more than the amount estimated by the Commissioner, the Commissioner may retain with him for a period of six months, out of the purchase-money, such amount as he, in his discretion, considers necessary to provide for the excess amount claimed by the mortgagee as set-off over the estimated amount of set-off.

If within the said period of six months the costs of the mortgagee have been taxed and the amount which the mortgagee is entitled to set-off has been ascertained and is found to be more than the amount which has been allowed by the Commissioner to be set-off, the Commissioner shall pay to the mortgagee the difference between the said two amounts upto the extent of the amount retained by him and the balance, if any, shall be paid by the Commissioner to the parties entitled thereto. If the mortgagee's costs have not been taxed for a period of six months from the date of the sale, the Commissioner shall pay the amount retained by him to the parties, entitled thereto, unless otherwise ordered by the Judge in chambers.

(vi) In default of payment of the purchase-money as provided for in sub-rule (i), the property shall forthwith be resold and the defaulting

purchaser shall forfeit claim to the property, and except where the defaulting purchaser is the mortgagee, he shall also forfeit all claim to any part of the sum for which it may subsequently be sold.

(vii) Any deficiency of price which may arise on re-sale by reason of the purchaser's default and all costs and expenses occasioned by such re-sale shall, at the instance of any party concerned, be recoverable from the defaulting purchaser under an order to be obtained on a Chamber Summons, which shall be served on the defaulting purchaser and the parties to the suit. The Judge may direct the defaulting purchaser to pay interest at such rate from the date of default and on such amount as to the Judge may seem just.

(viii) Where there are more mortgagees than one and leave to bid and to set-off has been granted to all the mortgagees and one of the puisne mortgagees becomes the purchaser, the Commissioner shall follow such directions regarding the sale and the purchase money as may have been given by the Court or the Judge in Chambers at the time of granting the leave to bid and to set-off.

**R.547. Sale of immovable property.**-(i) (a) When immovable property is sold, unless otherwise ordered by the Court or the Judge in Chambers or unless the case falls within clause (b) or clause (c) of this sub-rule, twenty-five per cent of the purchase money shall be deposited with the Commissioner at the time of the sale by the person who is declared the purchaser.

(b) Where the mortgagee of an immovable property which is sold has obtained leave to bid and to set-off his claim against the purchase money and has been declared the purchaser, he shall not be required to make any deposit if the amount of the purchase-money is equal to or less than the amount he is entitled to set-off.

(c) Where the amount of the purchase-money is more than the amount which the purchaser is entitled to set-off, he shall deposit twenty-five per cent of the excess of the purchase money over the amount he is entitled to set-off.

(ii) The balance of the purchase-money, or so much thereof as may be payable after giving credit for any set-off to which the purchaser may be entitled, and the amount of stamp-duty payable on the conveyance to be

executed or on the sale certificate to be issued, shall, unless otherwise ordered by the Court or the Judge in Chambers, be paid by the purchaser to the Commissioner within thirty days from the date of the sale.

The Judge in Chambers may, for sufficient cause, extend the time for payment on such conditions as to payment of interest or otherwise as the Judge may think fit.

(iii) A mortgagee who has obtained leave to bid and to set-off shall, four days before the date of the sale, file with the Commissioner a statement giving particulars of the amount he would claim by way of set-off against the purchase-money in case he is declared the purchaser.

(iv) The Commissioner shall estimate in a summary manner the amount which the mortgagee is entitled to set-off, taking into account the principal amount, interest, costs of the suit, further interest upto the date of the sale and further costs, charges and expenses in respect of the mortgage security as may have been properly incurred by the mortgagee subsequent to the preliminary decree.

(v) The mortgagee who is allowed a set –off shall give an undertaking to the Commissioner that if the amount he is entitled to set-off is found, after the taxation of all his costs, to be less than the amount estimated by the Commissioner, he would, if called upon by the Commissioner, forthwith deposit with the Commissioner such amount as the Commissioner may require him to deposit, having regard to the facts of the particular case.

(vi) In cases where the amount of the purchase money exceeds the estimated amount of set-off, and where the amount claimed by the mortgagee as set-off is more than the amount estimated by the Commissioner, the Commissioner may retain with him for a period of six months, out of the purchase money, such amount as he, in his discretion, considers necessary to provide for the excess amount claimed by the mortgagee as set-off over the estimated amount of set-off.

If within the said period of six months the costs of the mortgagee have been taxed and the amount which the mortgagee is entitled to set-off has been ascertained and is found to be more than the amount which has been allowed by the Commissioner to be set-off, the Commissioner shall pay to the mortgagee the difference between the said two amounts upto the extent

of the amount retained by him and the balance, if any, shall be paid by the Commissioner to the parties entitled thereto. If the mortgagee's costs have not been taxed for a period of six months from the date of the sale, the Commissioner shall pay the amount retained by him to the parties, entitled thereto, unless otherwise ordered by the Judge in Chambers.

(vii) In default of payment of the deposit required to be made under sub-rule (i), the property shall forthwith be resold.

(viii) In default of payment of the amounts required to be paid under sub-rule (ii) within the time provided therein, the deposit made by the purchaser under sub-rule (i) or any part thereof may, if the Judge in Chambers thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property, and except where the defaulting purchaser is the mortgagee, he shall also forfeit all claim to any part of the sum for which the property may subsequently be sold.

Where the amount of the purchase money is more the amount which the defaulting purchaser was allowed to set-off, the Judge in Chambers may, if he thinks fit, order such defaulting purchaser to pay to the Government an amount not exceeding twenty-five percent of the amount allowed to be set-off, and in cases where the amount of the purchase money is less than or equal to the amount which the defaulting purchaser was allowed to set-off, the Judge may, if he thinks fit, order such purchaser to pay to the Government an amount not exceeding twenty-five per cent of the purchase money.

The Prothonotary and Senior Master shall forward a copy of any order made under this sub-rule to the Government Pleader (Original Side)

Government shall be entitled to execute an order made under this sub-rule in the same manner as a decree for payment of money.

(ix) Any deficiency of price which may arise on a resale by reason of the purchaser's default and all costs and expenses occasioned by such re-sale shall, at the instance of any party concerned, be recoverable from the defaulting purchaser under an order to be obtained on a Chamber Summons which shall be served on the defaulting purchaser and the parties to the suit. The Judge may direct the defaulting purchaser and the parties to the suit.

The Judge may direct the defaulting purchaser to pay interest at such rate from the date of default and on such amount as to the Judge may seem just.

(x) Where there are more mortgagees than one and leave to bid and to set-off has been granted to all the mortgagees and one of the puisne mortgagees becomes the purchaser, the Commissioner shall follow such directions regarding the sale and the purchase money as may have been given by the Court or the Judge in Chambers at the time of granting the leave to bid and to set-off.

**548. Application to compel delivery of abstract** – If the abstract of title be not delivered to the purchaser within the time specified in the conditions of sale, the purchaser may apply by Chamber Summons for an order requiring the party having the carriage of the proceedings to deliver the abstract within a specified time. The Judge in Chambers may make such order thereon as to him may seem just.

**549. Questions arising out of objections or requisitions** – Any disputed questions arising out of objections or requisitions by a purchaser may be brought by either party before the Commissioner, who shall certify his opinion, and shall also certify by whom the costs ought to be paid.

**550. Determination of the question whether a good title has been made out** - When important question of title are in dispute, either party may apply by Chamber Summons to the Judge in Chambers for determination of the question, whether a good title has been made out. The Judge may, before deciding the question, refer the matter to the Commissioner for inquiring into any question of fact.

**551. Costs of inquiry** – If the title be found to be good on grounds not appearing on the abstract the purchaser, unless otherwise ordered, shall be entitled to his costs of the inquiry. If the title be found to be good on grounds appearing on the abstract, the purchaser, unless his objections have been frivolous or vexatious or unless otherwise ordered, shall not be liable to pay more than his own costs of the inquiry.

**552. Application by purchaser for leave to pay purchase-money into Court** – After a sale has been made the purchaser may, if prepared to accept the title, at once pay the balance of the purchase money and the amount of stamp duty into Court to the credit of the suit, or he may, if not

prepared to accept the title, apply for leave to pay the purchase money and the amount of stamp duty into Court, without prejudice to any question as to the title to the property. Such application shall be made by Chamber summons addressed to the party having the carriage of the proceedings and also to the party whose property has been sold. The Judge may impose on the purchaser such terms as he may deem just as to the purchaser paying interest upon the purchase money or waiving his right to the rents upto the time when the question as to the title is determined, in the event of a good title being made to the property.

**553. Application by any other party against defaulting purchaser -** Any party interested may apply by Chamber summons for such order as it may be necessary to obtain for the purpose of compelling a purchaser, who has neglected to pay the purchase-money or the amount of stamp duty or both in due time, to comply with the conditions of sale. Such order may be made subject to the right (if any) of the purchaser to obtain an inquiry as to whether a good title has been made out.

**554. Direction for investment of purchase-money –** When an application is made to confirm the sale or when an application is made under either of the last two preceding rules for payment of the purchase-money of the amount of stamp duty or both into Court, the purchaser or the party having the carriage of the proceedings may at the same time obtain direction for investment of the purchase-money.

Any subsequent application for that purpose shall be by Chamber Summons, and, unless otherwise ordered, at the expense of the applicant.

**555. Investment of purchase-money –** The purchase-money, when paid into Court, shall be invested by the Commissioner in fixed deposit with any one of the banks specified in column 2 of the first Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, for a period of thirty-one days and the Commissioner shall thereafter renew the said deposit for similar periods of thirty-one days until the purchase money is ordered by the Court or the Judge in Chambers to be paid out. Any interest that may have accrued shall be paid to such parties as the Court or the Judge in Chambers may direct.

**556. Purchaser when deemed to have accepted the title –** A purchase of immovable property or of any right, title and interest in such

property, who pays the purchase-money and the amount of stamp-duty into Court without reserving his right to object to the title, or who enters into possession, shall be deemed to have accepted the title.

**557. Purchase-money not to be paid out without an order** – The purchase-money paid into Court shall not be paid out or otherwise disposed of without an order of the Court or the Judge in Chambers, except in the case of ground rent and municipal taxes due in respect of the property sold.

**558. If sale set aside, purchaser entitled to receive back his deposit, purchase-money and amount of stamp-duty with costs** – When a sale of immovable property is set aside, the purchaser, unless precluded by the conditions of sale or unless otherwise ordered, shall be entitled to receive back his deposit or purchase-money and the amount paid for stamp-duty and to be paid his costs, charges and expenses occasioned by his bidding for an being declared the purchaser of the property and of and incidental of the application to set aside the sale. If there be a fund in Court standing to the Credit of the cause, the purchaser's taxed costs, charges and expenses may be ordered to be paid out of it, but if there be no such fund, the costs, charges and expenses may be ordered to be paid by the party having the carriage of the proceedings or otherwise as the Judge may be think fit, without prejudice to the question by whom such costs, charges and expenses shall be ultimately born and paid.

**559. Bidding not to be re-opened** – No bidding shall be re-opened, unless sit be shown that there has been fraud or misconduct or material irregularity in the management of the sale or that the purchaser, by reason of being in a fiduciary position, was disqualified from purchasing.

**560. Result of sale to be certified** – The Commissioner shall as soon as possible after the sale issue a certificate certifying the result of the sale. In the said certificate he shall state whether the purchaser has paid into his office the full amount of the purchase-money and the amount of stamp-duty payable on the conveyance to be executed or on the sale certificate to be issued. The party having the carriage of the proceedings shall file the certificate and apply for an order confirming the sale. In case of his not doing so, the purchaser of the property shall be at liberty to apply for such order, and shall be entitled to recover the costs of the application out of the purchase-money.

**561. Sale to be confirmed by the Court** – No sale of immovable property made under this Chapter shall become absolute, until it has been confirmed by the Court.

**562. Certificate of Commissioner and of Prothonotary and Senior Master to be produced for confirmation of sale** - On every application for confirmation of sale, there shall be produced a certificate of sale from the Commissioner and also a certificate of the Prothonotary and Senior Master certifying that no application has been made to set aside the said sale. The application for confirmation shall be made *ex-parte* to the Judge in Chambers; but the Judge may direct notice of the application to be given to any party.

**563. Possession of immovable property** – Unless otherwise ordered, the purchaser shall not be entitled to possession of the property purchased by him until the sale is confirmed. On confirmation of the sale, the purchaser shall be entitled to obtain possession of the property in like manner as the purchaser of immovable property sold in execution under the provision of the Code of Civil Procedure

**564. Possession of movable property. Transfer of securities and shares** - On the purchase money of movable property being paid, the purchaser unless otherwise provided for in the condition of sale, shall be entitled to obtain immediate possession thereof, and if such property shall consist of negotiable securities or of any shares in any public company or corporation, to have the same duly transferred to him.

**565. Conveyance** – On the purchase-money of immovable property and the amount of stamp-duty being paid and the sale confirmed, the purchaser shall be entitled to a proper conveyance, in which all necessary parties shall join as the Commissioner shall direct.

**566. Purchaser to prepare conveyance** – Unless otherwise ordered, the conveyance shall be prepared by and at the expense of the purchaser and shall be sent for approval to the Advocate on record for the party having the carriage of the proceedings, who shall return it within two weeks with his remarks, if any.

**567. Failure to return draft conveyance** – If the draft conveyance is not returned within two weeks, the purchaser shall lodge a copy of the same in the office of the Commissioner for being settled by the Commissioner.

**568. Conveyance to be settled by the Commissioner.** – Subject to appeal to the Judge in Chambers, every conveyance shall be settled by the Commissioner if the parties differ about the same or if any of them be under any legal disability or if the Advocate on record for the party having the carriage of the proceedings fails to return it to the purchaser within two weeks.

**569. Certificate of Approval** – When a conveyance is settled by the Commissioner a certificate of approval shall be issue by him or endorsed by him upon such conveyance.

**570. Proceedings to procure execution of conveyance** – If any person certified by the Commissioner to be a necessary party to a conveyance be a minor or otherwise under disability, or being sui juris shall neglect or refuse to execute the conveyance, an application may be made to the Judge in Chambers for an order appointing the Commissioner, in the case of a person under disability, to convey the property and to execute the conveyance for him and in his name, and in other cases directing the person in default to execute the conveyance within a time to be fixed by the order and in default thereof appointing the Commissioner to convey the property and execute the conveyance for him and in his name. The application shall be by Chamber Summons and shall be supported by affidavit and it shall be shown that the person required to execute the conveyance was certified by the Commissioner to be a necessary party and that the conveyance had been approved by such party or by the Commissioner. Unless otherwise ordered, the costs of such application, in the case of a person under disability shall be part of the costs of the sale, and in other cases shall be borne and paid by the defaulting party.

**571. Substitution of name** – The name of a principal or sub-purchaser shall not be substituted for that of the person certified to be the purchaser without an order to be applied for on Chamber Summons. The application shall be supported by affidavit, stating the facts; and when it is sought to substitute the name of a sub-purchaser for that of an original purchaser, the affidavit shall also show that there was no collusion or under-bargain between the purchaser and sub-purchaser and sub-purchaser before

the sale was confirmed, or shall disclose the terms of the under-bargain, if any.

**572. Substitution of names not allowed after execution of conveyance** - No order shall be made for the substitution of names under the last preceding rule after the execution of the conveyance to the purchaser.

**573. When additional price and additional stamp-duty to be paid into Court** – Unless it shall appear that the purchase by a sub-purchaser was made after the sale had been confirmed or unless otherwise ordered, every order of the substitution of the name of a sub-purchaser for that of an original purchaser shall be made subject to the payment into Court as part of the purchase-money of any additional price obtained by the original purchaser from the sub-purchaser and of the amount of additional stamp duty that may be payable on account of the additional price.

**574. One application may be made for the substitution of names and confirmation of sale** – The application for the substitution of names under rule 571 may be made as part of the application to confirm the sale.

**575. Extra costs of obtaining substitution of names** – Unless otherwise ordered, all extra costs incurred in obtaining the substitution of names under rule 571 beyond those of an ordinary application for confirmation of sale shall be borne by the principal whose name is to be substituted for that of an agent, or by the sub-purchaser whose name is to be substituted for that of an original purchaser.

**576. Mortgagee to include sharer in property which is subject-matter of partition suit, administration suit and partnership suit** - In this chapter,, the expression “mortgagee” shall include a person who is entitled to a share in property which is to be sold and which is the subject matter of a suit for partition, or for administration of an estate or for dissolution of a partnership and who has been allowed leave to bid and to set off his share against the purchase money.

**577. Sale by private contract** – The sale of property ordered to be sold by the Commissioner by private contract shall be regulated by the foregoing rule, so far as they may be applicable.

## Setting Proclamation of Sale in Execution

**578. Copy of warrant of sale of property attached in execution to be lodged in Commissioner's office** – When immovable property has been attached in execution of a decree and the attaching creditor is desirous of having the same sold, he shall lodge a certified copy of the warrant of sale in the Commissioner's office

**579. Commissioner may summon judgment-debtor to attend and produce title-deeds of his property** – The Commissioner shall, when the attendance of the judgment-debtor can conveniently be procured, issue a summons calling upon him to attend upon a day therein named and to produce and lodge with the Commissioner all title-deeds and other documents affecting the property proposed to be sold which may be in his possession or power. Such documents shall ( if produced) be left with the Commissioner and shall be subject to his directions both as to their custody pending the sale and their ultimate destination, such directions being subject to appeal to the Judge in Chambers. The summons shall be in Form No. 76

**580. Inquiry before commissioner as to matters specified in Order XXI, Rule 66, C.P. Code** - If the judgment-debtor attends upon the day named in the summons, the Commissioner shall examine him on any matter affecting his title to the attached property. The judgment creditor may also examine him on any matter relating thereto. If the judgment-debtor fails to attend on the summons or if no summons has been issued, the Commissioner may proceed *ex-prate*. In conducting an inquiry under these rules the Commissioner may also summon any person whom he thinks necessary and examine him in respect of the matters specified in Order XXI, Rule 66, of the Code of Civil Procedure and may require him to produce any documents in his possession or power relating thereto, but such documents shall not, unless the Commissioner for reasons to be recorded otherwise directs, be handed over for perusal to any person other than the Commissioner or the Interpreter, and shall at the end of the particular inquiry to which they relate be restored to the person who has produced them.

**581. Notice to all persons to lodge claims against attached property** – The Commissioner shall also, at the instance of the judgment-creditor, issue a notice to all persons having any right or interest in or any charge or claim on the attached property or any part thereof ( except claims under Order XXI, rule 58, of the Code of Civil Procedure involving an

objection to the attachment or seeking the removal of the same, which claims will be disposed of by the Judge in Chambers) that they should, on or before a day to be named therein, lodge in the office of the Commissioner a statement verified on oath or solemn affirmation of the right, interest, charge or claim set up in each case. The notice shall in Form No. 77 or as near thereto as the circumstances of the case may require, and shall be published in such newspapers as the Commissioner may direct and copies thereof shall be posted upon the attached premises and in conspicuous places in the Collector's office and in the High Court.

**582. Time to be fixed for investigation of claims** – When any such claim has been lodged in the office of the Commissioner, he shall enter the same in a register to be kept for the purpose and shall fix a day for the investigation thereof. The judgment-creditor shall then obtain from the Commissioner a summons calling upon the claimant to appear before the Commissioner upon the day so fixed with such evidence as he may desire to produce in support of his claim.

**583. Inquiry into claims** – Upon the day named in the summons or upon any adjournment thereof, the Commissioner shall proceed to deal with the several claims brought forward relating to the property proposed to be sold, and after a perusal of the document by which such claims are supported and resisted and after taking such oral evidence and hearing such arguments as shall be brought forward, determine summarily, whether such claims or any of them shall be included in the list of claims to be appended to the proclamation of sale.

**584. On completion of inquiry a list of claims to be drawn up** - When the Commissioner shall have investigated the several claims relating to the attached property, he shall draw up a list of all claims for which a reasonable and probable ground exists, and append the same to the proclamation of sale.

**585. Proclamation of sale** – The Commissioner shall immediately after such inquiry prepare the proclamation of sale required by Order XXI, Rule 66 of the Code of Civil Procedure in Form No. 78 with such variations as the circumstances of the particular case may require, and shall forward the same to the Sheriff of Bombay upon the application of the judgment-creditor or Advocate on record.

## Miscellaneous

**586. Appeal from decision of Commissioner** – The decision of the Commissioner on any matters mentioned in the regions rules shall be subject to appeal to the Judge in Chamber

**587. Rules to apply to Special Commissioner** –The rules in this chapter relating to the Commissioner shall, with any necessary modifications, apply to a Special Commissioner, so far as they may be applicable.

**588. Commissioner to include Assistant Commissioner, etc** – The expression “Commissioner” shall include the Assistant Commissioner and any other Officer who may be authorized by the Chief Justice to perform the duties usually performed by the Commissioner.

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