

the cause of action. It may be noted that a plaintiff who has obtained a foreign judgment, may instead of suing on the foreign judgment, bring a fresh suit on the original cause of action. But, if the foreign judgment is conclusive as defined in Section 13, the Indian court cannot give a judgment conflicting with the foreign judgment.

Conclusiveness of Foreign Judgments (Res judicata Effect)

The effect of a foreign judgment for the purpose of recognition and enforcement is given in Section 13.

Section 13. "A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except:—

- (a) where it has not been pronounced by a court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of (India) in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in (India).

Conclusiveness:

A foreign judgment involves no merger of the original cause of action. Therefore, a plaintiff who has obtained a foreign judgment may either bring an action on the original cause of action or sue on the foreign judgment. The rule as to the conclusiveness of foreign judgments means only that the matter thereby decided cannot be decided in a different manner¹. A foreign judgment,

1. *Setabani Sugar Mills V. Benozir Ahmed*, 1952 Cal. 116.

which is conclusive, is a complete answer to an identical action brought in the Indian courts by unsuccessful party to the foreign proceedings².

Courts of competent jurisdiction:

The competency of the foreign court will be determined not according to the law of the foreign State, but according to the rules of private international law of the forum. The Indian courts have mostly followed the rules observed by English courts in determining the competence of the foreign court. In personal actions the grounds of jurisdiction are³:

- (1) that the defendant was a subject of the foreign country.
- (2) that he was a resident of the foreign State when the action began.
- (3) that the defendant had sued as plaintiff in the foreign court on the same cause of action.
- (4) that the defendant voluntarily appeared in the foreign court or submitted to its jurisdiction.
- (5) that the defendant had contracted to submit to the foreign court in which the judgment was obtained.

The above jurisdictional rules are subject to a *caveat* that a judgment of a foreign court which has jurisdiction in a personal action according to the above rules, if it creates a charge on immovable property situated in India, it will not be enforced by the Indian courts.

Ex Parte Decree:

An *ex parte* judgment against a non-resident foreigner, who has not submitted to the jurisdiction of the foreign court, is a nullity.

2. *Chockalings V. Duraiswami*, 51 Mad 720.

3. *Per Mitter J. in Chor Mal Bal Chand V. Kasturi Chand Seraogi*, I.L.R. 63 Cal. 1033; 63 C.L.J. 175. See also *Sirdar Gur Dayal Singh V. Raja of Faridkote* 21 I.A. 171 P.C.

4. The Indian courts have held that filing of written statement though attacking jurisdiction is submission of jurisdiction. (*Subramania V. Aannswami*, A.I.R. 1948 Mad. 203.) But submission to jurisdiction in order to save property has been held to be not voluntary submission even if the defendant filed a statement on the merits as well. (*Veeraraghava Iyer V. Muga Sait*, 27 M.L.J. 535.)

But if the defendant is within the territorial jurisdiction of the foreign court, an *ex parte* decree passed against him after duly serving the summons is valid in the eyes of the Indian courts and it does not come within the exception stated in clause (b) of Section 13.

Judgment Opposed to Natural Justice:

Under this class come judgments such as obtained without notice to the defendant or obtained against minor etc.

Presumption concerning Foreign Judgments:

Section 14 of the Civil Procedure Code dealing with this matter is clear enough.

Section 14: "The court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction."

Judgments of the courts of reciprocating territories:

In certain cases the successful party to the foreign judgment may directly commence proceedings for the execution of the foreign decree in the Indian courts. These are judgments of courts of reciprocating territories. Section 44-A of the Civil Procedure Code deals with these cases.

Section 44-A : "(1) Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in (India) as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 475 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1: 'Reciprocating territory' means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purpose of this section; and 'superior courts', with reference to any such territory, means such courts as may be specified in the said notification.

Explanation 2: 'Decree' with reference to a superior court means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree of judgment."

II SERVICE OF PROCESS

Service in India of summonses issued by foreign courts

Summonses issued by certain foreign courts can be served in India through the assistance of Indian courts. The foreign courts

5. Section 47 is as follows :

"(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

(2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of any section, be determined by the court.

Explanation: For the purposes of this Section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

whose summonses can thus be served within India are those courts who are so specified, by notification, by the Government of India. The relevant provisions are contained in Sections 29 and 31 of the Indian Civil Procedure Code, 1908 which are as follows:—

Section 29:—Summonses and other processes issued by:—

- (a) (not applicable)
- (b) (not applicable)
- (c) Any other civil or revenue court outside India to which the Central Government has, by notification in the Official Gazettee, declared the provisions of this Section to apply, may be sent to the courts in the territories to which this Code extends and may be served as if they were summonses issued by such courts.

Section 31: The provisions of Sections.....29 shall apply to summonses to give evidence or to produce documents or other material objects.

Service of Indian summonses in foreign countries

The Indian Civil Procedure Code does not speak of taking the assistance of foreign court to serve process on parties within the jurisdiction of such foreign court. If the defendant, against whom a suit is brought in an Indian court, resides out of India, the procedure for service of summons on him is to send the document by post. The procedure is given in Order V, rule 25.

Order V, rule 25: "Where the defendant resides out of India and has no agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the court is situated.

Provided that where any such defendant resides in Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant, to any court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that where any such defendant is a public officer in Pakistan (not belonging to the Pakistan military,

naval or air forces) or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf."

III. TAKING OF EVIDENCE

A. When the evidence of a person not within India is required in proceedings before the Indian courts :

Though ordinarily the witness must appear before the court to be examined on oath in the open court, there are circumstances in which a court may exempt the witness from attending the court and authorise some person or persons to examine him. One such case is when the witness is residing outside India. The procedure which the court may follow in such a case is given in Section 77 of the Civil Procedure Code, 1908, and Order XXVI, rule 5 thereof.

Section 77: "In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within (India)."

Order XXVI, Rule 5: "Where any Court, to which application is made for the issue of a commission for the examination of a person residing at any place not within (India), is satisfied that the evidence of such person is necessary, the court may issue such commission or a letter of request."

B. Judicial assistance available to foreign courts for examining witnesses residing within India :

The Indian Civil Procedure Code empowers the Indian courts to extend judicial assistance to foreign courts (if so requested), by providing for the issue of commission, at the instance of the foreign court, to examine witnesses residing within the Indian territory, but whose testimony is required in the proceedings before the foreign court. The relevant provisions are in Section 78.

Section 78: "Subject to such conditions and limitations as may be prescribed, the provisions as to the execution and

return of commissions for the examination of witnesses shall apply to commissions issued by or at the instanced—

- (a) (omitted as inapplicable)
- (b) (omitted as inapplicable)
- (c) Courts of any State or country outside India.”

Section 78 refers to “conditions and limitations as may be prescribed.” These conditions and limitations are given in Order XXVI, rules 19, 20, 21 and 22.

Order XXVI, Rule 19: (1) If a High Court is satisfied—

- (a) that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,
- (b) that the proceeding is of a civil nature, and
- (c) that the witness is residing within the limits of the High Court's appellate jurisdiction,

it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matter specified in clauses (a), (b) and (c) of sub-rule (1)—

- (a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the Central Government, or
- (b) by a letter of request issued by the foreign court and transmitted to the High Court through the Central Government, or
- (c) by a letter of request issued by a foreign court and produced before the High Court by a party to the proceeding.

Order XXVI, Rule 20: The High Court may issue a commission under rule 19—

- (a) upon application by a party to the proceeding before the foreign court, or

- (b) upon an application by a law officer of the State Government acting under instructions from the State Government.

Order XXVI, Rule 21: A commission under rule 19 may be issued to any court within the local limits of whose jurisdiction the witness resides, or where the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court, to any person whom the court thinks fit to execute the commission.”

Order XXVI, Rule 22: The provisions of rules 6, 15, 16, 17 and 18 of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions and when such commission has been duly executed, it shall be returned together with the evidence taken under it, to the High Court, which shall forward it to the Central Government, alongwith the letter of request for transmission to the foreign court.

ANNEXURE IV
INDONESIAN LAW

Generally, judgments of foreign courts are not enforceable in Indonesia. The cases themselves, however, may be submitted for retrial by Indonesian courts. The Indonesian judge has the discretion to treat the foreign decree as evidence and the decree made by him will be enforced as a judgment of the Indonesian court.

There are, however, exceptions to this general rule:

1. In the case of general average which has been determined by the competent judicial authority in a foreign country, Article 436 of the Indonesian Rules of Civil Procedure provides that the decisions of foreign court as to the amount of the costs and damages which constitute the general average as well as the stipulation as to how the costs will be charged on the ship, the costs of transportation, and on the cargoes, may be enforced in Indonesia, subject to the obtaining of leave to that effect from the competent judge in whose territorial jurisdiction the decision is to be enforced. In applying for or in granting the leave, the case itself will, however, not be re-tried.
2. Article 436 of the Indonesian Rules of Civil Procedure further provides that foreign judgment may be enforced in Indonesia if such enforcement is authorised by an Act of Parliament. So far, however, the Parliament has not passed any such Act.

There is no rule in Indonesian legislation with regard to "service of summons" and "recording of evidence" required in foreign judicial proceedings.

ANNEXURE V
LAW OF IRAQ

I. LAW FOR THE EXECUTION OF FOREIGN JUDGMENTS
LAW NO. 30 OF 1928

We, KING OF IRAQ

With the consent of the Senate and the Chamber of Deputies,
do hereby order the enactment of the following law:—

1. In this law the expression

"Foreign Judgment" shall mean a judgment issued by a court constituted outside 'Iraq'.

"Foreign Courts" shall mean the court which issued the foreign judgment.

"Foreign Country" shall mean the country in which the foreign judgment is issued.

2. A foreign judgment may, in accordance with the provisions of this law, be executed in Iraq by the order of an Iraq court, which order is to be called an order for execution.

3. (a) A person desiring to execute a foreign judgment shall bring action in the Court of First Instance claiming the issue of an order for execution.
- (b) The action shall be brought in the court having jurisdiction in the place in which the judgment debtor resides or, if he shall have no fixed residence in Iraq, in the place in which any property which it is proposed to attach is situated.
- (c) The application shall be accompanied by a copy, authenticated in the usual manner of the foreign judgment and the reasons therefor.

4. On action being brought, the court shall fix a date for hearing and shall summon the judgment debtor whether he be in 'Iraq or abroad, in the usual manner.

5. After hearing the case, the court will issue or refuse the order for execution in accordance with the provisions of this law.

6. Every judgment in respect of which an order for execution is claimed must fulfil all the following conditions. The court shall examine the fulfilment of these conditions of its own accord whether the judgment debtor has in this respect raised the question in his defence or not.

- (a) That the judgment debtor had reasonable and sufficient notice of the action in the foreign court.
- (b) That the foreign court was competent within the meaning of Article 7 hereof.
- (c) That the object of judgment is for a debt or definite sum of money and if pronounced in a penal action, is by way of civil compensation only.
- (d) That the cause of action was not such as would be considered under "Iraq Law as contrary to public policy".
- (e) That the judgment is executory in the foreign country.

7. The foreign court shall be deemed to be competent if one of the following conditions be fulfilled:

- (a) That the action related to property, movable or immovable situated in the foreign country.
- (b) That the cause of action arose from a contract entered into in the foreign country or intended to be there executed wholly or in the part, to which the judgment related.
- (c) That the cause of action arose from acts which wholly or in part were done in the foreign country.
- (d) That the judgment debtor is ordinarily resident in the foreign country or was carrying on commercial business in that country at the date on which the action was instituted.
- (e) That the judgment debtor voluntarily appeared in the action or,
- (f) That the judgment debtor agreed to submit to the jurisdiction of the foreign court in the case.

8.(1) The court shall dismiss the claim for the order for execution, if the judgment debtor proves to the court that the judgment was obtained fraudulently or that the proceedings in the foreign court were contrary to justice, equity or if the court finds that the judgment does not fulfil all the conditions of Article 6.

(2) The Court shall, if the judgment debtor proves that he has right of recourse to a higher court and that he has taken or intends to take such recourse, dismiss the case until completion of proceedings in such higher court, and it may, in case of necessity, direct that provisional seizure be made subject to the taking of security from the judgment creditor, provided that no objection to the judgment is established in accordance with para. (1) of this Article.

9. Decisions of the Court of First Instance under this law, given in default of appearance, shall be subject to the usual rules in regard to opposition. They shall not be appealable but shall be subject to revision by the Court of Cassation.

10. There shall be paid, in respect of action instituted under this law, one half of the fees prescribed for civil suits.

11. This law shall apply to the judgments issued by foreign courts to be specified by regulations from time to time issued under this law. Such regulations may be issued in any case in which the judgment of the Iraq courts may be executed in a foreign country whether by virtue of special agreement made with the Iraq State or by virtue of the ordinary law of such country and whether by the issue of an order for execution or by other procedure similar in effect.

12. The Minister of Justice is charged with the execution of this law.

Made at Baghdad this 26th day of June, 1928, and the 8th day of Muharram 1347.

FAISAL

ABDUL MUHSIN AL SA'DUN

Prime Minister

DAUD AL HAIDARI,

Minister of Justice.

(Published in the Waqay' al Iraqiya No. 666 dated 4.7.28.)

II. REGULATION NO. 29 OF 1932 FOR THE APPLICATION OF ARTICLE 11 OF THE LAW FOR THE EXECUTION OF FOREIGN JUDGMENTS IN IRAQ NO. 30 OF 1928

After perusal of Article 11 of the Law for the Execution of Foreign Judgments in Iraq (No. 30 of 1928) and with the approval of the Council of Ministers do hereby order the enactment of the following Regulation:—

Article 1.

The Law for the Execution of Foreign Judgments in Iraq (No. 30 of 1928) shall include the judgments issued by the courts of Canada, Jamaica, Hongkong, Malta, Nyasaland and Cyprus in cases where the laws of the said countries make provision for the execution of the Iraq judgments in accordance with Article 11 of the said Law.

Article 2.

Regulation No. 6 of 1929 is hereby replaced.

Article 3.

This Regulation shall come into force from the date of its publication in the Official Gazette.

Article 4.

The Minister of Justice is charged with the execution of this Regulation.

Made at Baghdad this 26th day of June, 1932, and the 22nd day of Safar, 1351.

JA' FAR AL' ASKARI
Acting Prime Minister,
Minister for Foreign Affairs and
Acting Minister of Defence.

NAJI SHAWAKAT,
Minister of Interior.

RUSTAM HAIDAR,
Minister of Finance

JAMAL BABAN
Minister of Justice

MUHAMMAD AMIN ZAKI
Minister of Economics and
Communications.

'ABDUL HUSAIN,
Minister of Education.

(Published in the Waqayi' al 'Iraqiya, No. 1152 of 7.7.32).

III. REGULATION NO. 5 OF 1929 FOR THE APPLICATION OF ARTICLE 11 OF THE LAW FOR THE EXECUTION OF FOREIGN JUDGMENTS IN IRAQ (NO. 30 OF 1928).

After perusal of Article 11 of the Law for the Execution of Foreign Judgments in Iraq No. 30 of 1928 and with the approval of the Council of Ministers, do hereby order the enactment of the following Regulation:—

Article 1.

The Law for the Execution of Foreign Judgments in Iraq No. 30 of 1928 shall include the judgments issued by the courts of Syria and Lebanon in cases where Syrian laws make provisions for the execution of the Iraq judgments in accordance with Article 11 of the said Law.

Article 2.

This Regulation shall come into force from the date of its publication in the Government Gazette.

Article 3.

The Minister of Justice is charged with the execution of this Regulation.

Made at Baghdad this 13th day of May, 1929, and 4th day of Dhil Hujja, 1347.

TAWFIQ AL SUWAIDI, ABDUL AZIZ, YUSUF GHANIMA,
Prime Minister Minister of Interior Minister of Finance

DAUD AL HAIDARI,
Minister of Justice

MUHD. AMIN ZAKI
Minister of Defence.

SALMAN AL BARAK
Minister of Irrigation and Agriculture.

ABDUL MUHSIN SHALASH KHALID SULAIMAN
Minister of Communications and Works Minister of Education.

(Published in the Waqayi' al 'Iraqiya, No. 759, dated 20th May, 1929).

IV. REGULATION NO. 21 OF 1928 FOR THE APPLICATION OF ARTICLE 11 OF THE LAW FOR THE EXECUTION OF FOREIGN JUDGMENTS (NO. 30 OF 1928).

After the perusal of Paragraph 1 of Article 26 of the Constitution and Article 11 of the Law for the Execution of Foreign Judgments No. 30 of 1928, and pursuant to the proposal of the Minister of Justice and with the concurrence of the Council of Ministers, order the enactment of the following regulation:—

Article 1.

The Law for the Execution of the Foreign Judgments, No. 30 of 1928, shall apply to the judgments of the courts of the United Kingdom.

Article 2.

This Regulation will come into force from the date of its publication in the Government Gazette.

Article 3.

The Minister of Justice is charged with the execution of the Regulation.

Made at Baghdad this 30th day of October, 1928, and the 16th day of Jamadi-al-Awwal, 1347.

ABDUL MUHSIN AL SA' DUN,
Prime Minister and
Minister of Foreign Affairs.

NAJI SHAWKAT,
Minister of Interior

YUSUF GHANIMA
Minister of Finance

DAUD AL-HAIDARI
Minister of Justice.

HURI AL SA'ID
Minister of Defence

SALMAN AL BARRAK,
Minister of Irrig. and Agr.

ABDUL MUHSIN SHELAH,
Minister of Communications and Works.

TAWFIQ AL SUWAIDI
Minister of Education.

SAYID AHMED AL DAUD,
Minister of Awqaf.

(Published in the Waqayi' al 'Iraqiya No. 704 dated 8-11-28).

ANNEXURE VI

LAW OF PAKISTAN

Section 44-A of the Code of Civil Procedure, 1908, provides for execution in Pakistan of decrees of the superior courts of the United Kingdom or any reciprocating territory which means any country, or territory situated in any part of Her Majesty's Dominions, which may, from time to time, be notified as such by the Central Government. Pakistan has reached agreements for execution of decrees on reciprocal basis with the governments of several countries.

Besides, the Central Government, by virtue of section 3 of the Maintenance Orders Enforcement Act, 1921 have also made arrangements on reciprocal basis for enforcement of maintenance orders with some countries.

Section 77 of the Code of Civil Procedure, 1908, provides that a court in Pakistan may issue a Letter of Request for examination of witness residing at any place outside Pakistan. Similarly rules 19 to 22 of Order XXVI of the Code Civil Procedure, 1908, empower the courts in Pakistan to receive a Letter of Request from foreign tribunals for examination of witnesses residing in Pakistan.

As regards commission for examination of witnesses in criminal cases, the provision contained in sub-section (2B) of section 503 read with section 508A of the Code of Criminal Procedure, 1898, provides that when the witness resides in the United Kingdom or any other country of the Commonwealth other than Pakistan, or in the Union of Burma, a commission may be issued to such courts or judge having authority in this behalf in that country as may be specified by the Central Government by notification in the official Gazette. So far arrangements have been made by exchange of letters with the Governments of some countries for examination of witnesses in criminal cases residing in those countries.

Section 29 of the Code of Civil Procedure provides that summonses and other processes issued by any civil court or revenue court situated outside Pakistan may be sent to the courts in Pakistan and served as if they were summonses issued by such courts. The

Central Government have by exchange of letters reached agreements on reciprocal basis with many countries regarding service of summonses and other processes.

CODE OF CIVIL PROCEDURE, 1908.

Section 44-A

- 44A. (1) Where a certified copy of a decree of any of the superior courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in Pakistan as if it had been passed by the District Court.
- (2) Together with the certified copy of the decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.
- (3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1. "Superior Courts", with reference to the United Kingdom, means the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster and the Court of Chancery of the County Palatine of Durham.

Explanation 2. "Reciprocating territory" means any country or territory, situated in any part of His Majesty's Dominions which the (Central Government) may, from time to time, by notification in the (Official Gazette), declare to be reciprocating territory for the purposes of this section; and "superior courts", with reference to

any such territory, means such courts as may be specified in the said notification.

Explanation 3. "Decree", with reference to a superior court, means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and

- (a) with reference to superior courts in the United Kingdom, includes judgments given and decrees made in any court in appeals against such decrees or judgments, but
- (b) in no case includes an arbitration award, even if such award is enforceable as a decree or judgment.

MAINTENANCE ORDERS ENFORCEMENT ACT, 1921.

Section 3.

3. —(1) If the Central Government is satisfied that provisions have been made by the Legislature of any part of His Majesty's Dominions for the enforcement within that part of maintenance orders made by courts in Pakistan the (Central Government) may, by notification in the (Official Gazette), declare that this Act applies in respect of that part of His Majesty's Dominions and thereupon it shall apply accordingly.

(2) The (Central Government) may, by like notification, declare that this Act applies in respect of any (Acceding State or non-Acceding State), and where such a declaration has been made, this Act shall apply as if such protectorate or State were a reciprocating territory.

CODE OF CIVIL PROCEDURE, 1908.

Section 77

77. In lieu of issuing a commission, the court may issue a Letter of Request to examine a witness residing at any place not within Pakistan.

CODE OF CIVIL PROCEDURE, 1908

Order XXVI

(Rules 19 to 22)

Rule 19. (1) If a High Court is satisfied—

- (a) that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it;
- (b) that the proceeding is of a civil nature, and
- (c) that the witness is residing within the limits of the High Court's appellate jurisdiction,

it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)—

- (a) by a certificate signed by the consular officer of the foreign country of the highest rank in Pakistan and transmitted to the High Court through the Central Government, or
- (b) by a Letter of Request issued by the foreign court and transmitted to the High Court through the Central Government, or
- (c) by a Letter of Request issued by the foreign court and produced before the High Court by a party to the proceeding.

Rule 20. The High Court may issue a commission under rule 19—

- (a) upon application by a party to the proceeding before the foreign court, or
- (b) upon an application by a law officer of the Provincial Government acting under instructions from the Provincial Government.

Rule 21.—A commission under rule 19 may be issued to any court within the local limits of whose jurisdiction the witness resides,

or, where the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court, to any person whom the court thinks fit to execute the commission.

Rule 22.—The provisions of rules 6, 15, 16, 17 and 18 of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed, it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the Central Government, along with the Letter of Request for transmission to the foreign court.

CRIMINAL PROCEDURE CODE, 1898.

Section 503 (2B)

503.—(2B) When the witness resides in the United Kingdom or any other country of the Commonwealth other than Pakistan, or in the Union of Burma, the commission may be issued to such court or judge having authority in this behalf in that country as may be specified by the Central Government by notification in the official Gazette.

Section 508A

508A. The provisions of sub-section (3) of section 503, and so much of sections 505 and 507 as relates to the execution of a commission and its return by the Magistrate or officer to whom the commission is directed shall apply in respect of commissions issued (by any court or judge having authority in this behalf in the United Kingdom or in any other country of the Commonwealth other than Pakistan or in the Union of Burma under the law in force in that country) relating to commissions for the examination of witnesses, as they apply to commissions issued under section 503 or section 506.

CODE OF CIVIL PROCEDURE, 1908.

Section 29

29. Summonses (and other processes) issued by the civil or revenue court situate (outside Pakistan) may be sent to the courts