

PART C.—RECIPROCAL ARRANGEMENTS WITH JAMMU AND  
KASHMIR STATE FOR EXECUTION OF COMMISSIONS  
AND LETTERS OF REQUEST FOR EXAMINATION OF  
WITNESSES.

1. Subject to such conditions and limitations as may be prescribed, the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of courts situate in any part of India to which the provisions of the said Code do not extend. [Section 78, clause (a) of the Code].

References.

2. The State of Jammu and Kashmir is a part of India (Vide, Article 1 of the Constitution of India) to which the provisions of the Code do not extend. [Section 1 (3) of the Code, as amended by Act II of 1951]. In this connection it may also be pointed out that the definition of 'India' given in section 2 (7B), as inserted in the Code by Act II of 1951, does not apply to section 78 of the Code. Section 78 therefore makes provision for the execution and return of commissions for examination of witnesses issued by Civil Courts in Jammu and Kashmir State by the Civil Courts in those parts of India where the Code extends.

Whether Jammu and Kashmir State is a part of India.

3. Arrangements exist under which commissions or interrogatories can be issued by civil courts in India to civil courts in Jammu and Kashmir and *vice versa*. Such commissions are to be and should be exchanged through the District Judge concerned of the two administrations. [High Court of Jammu and Kashmir letter No. 6053, dated the 6th January, 1956 and Punjab High Court endorsement No. 1227-Genl/X. B. 10 (c), dated 30th January, 1956, to all District and Sessions Judges in Punjab and District and Sessions Judge, Delhi].

Reciprocal arrangements with Jammu & Kashmir State.

4. Certain Rules and Orders of the Jammu and Kashmir High Court are reproduced below for the information of the Civil Courts in Punjab:-

Certain rules of the High Court of Jammu and Kashmir.

"172. *Persons to whom commission for examination of witness shall be addressed.*—Ordinarily a commission for the examination of a witness, wherever he may reside, shall be addressed to the pleader, but such commission may, if it appears desirable, be addressed to a court.

174. *Remuneration of Pleaders for executing Commission.*—For the remuneration of a pleader to whom a commission to examine witnesses is issued, the court

should require the party applying to pay a fee ordinarily not exceeding five rupees for the first witness, and two rupees eight annas for each subsequent witness to be examined if the court be that of a Munsiff; or not exceeding ten rupees for the first witness and five rupees for each subsequent witness in the case of any higher court. If payment of higher fees than the above be required, the reasons shall be recorded by the Judge with his own hand.

175. *The Same.*—*The* commission together with the amount of the fee, should be sent to the court in which the commissioner is a practising pleader, and the commission should be immediately delivered to him (unless he refuses to act). If the witness or witnesses are examined, so that the commissioner can make a return within the time limited, on his returning the commission duly executed the fee should be paid over to him otherwise the commission, together with such evidence as may have been taken, shall be returned to the court from which it originally issued and such court may by order allow such fee as it thinks reasonable to the commissioner for the work done.

177. *The same.*—A court receiving a commission for the examination of a witness shall not return such commission unexecuted until the expiry of one month from the date on which the commission was received and otherwise than with a letter in English or Urdu explaining the reason why the commission has not been executed.

178. *When a letter of request to be issued.*—Order XXVI, Rule 5, of the Code of Civil Procedure lays down that a court may issue a letter of request if it is satisfied that the evidence of a person residing at any place not within <sup>[39]</sup> [India] is necessary.

179. *Letter of request under Section 77 of Civil Procedure Code.*—When a court issues a letter of request under section 77 of the Code of Civil Procedure, to examine a witness or witnesses residing at any place outside <sup>[39]</sup> [India], it shall send therewith a list of the questions to be asked the witness or witnesses and a translation of the letter of request and of questions into English and where possible into the language of the court to which the letter of request is sent. In cases where both the parties are to be represented at the examination the court may, if so desired by the parties ask in the letter of request that the agents of the parties be permitted to put such further questions in examination and cross examination as they may be advised. The party on whose application the

letter of request is issued shall give an undertaking to be responsible for the expenses incurred in its execution. Nothing in this rule prohibits a court issuing a commission from enlarging from time to time the period within which the return may be made."

5. In view of section 77 of our Code the courts may, in lieu of issuing a commission, issue a letter of request to examine a witness at any place 'not within India'. For the purposes of this section the definition of 'India' in section 2 (7B) of the Code would hold good and Jammu and Kashmir would be a place 'not within India'.

Letters of request.

6. Following is a list of civil courts in the two provinces of Jammu and Kashmir which also indicates the limits of their territorial jurisdiction:—

List of Civil Courts in Jammu & Kashmir State.

#### JAMMU PROVINCE.

- |     |                               |   |
|-----|-------------------------------|---|
| 1.  | District Judge,<br>Jammu      | Jammu excluding Tehsil<br>Samba, R. S. Pura and<br>Akhnoor      |
| 2.  | Munsiff, Ranbir Singh<br>Pura | Tehsil R. S. Pura.  |
| 3.  | Munsiff, Samba                | Tehsil Samba  |
| 4.  | Munsiff, Akhnoor              | Tehsil Akhnoor  |
| 5.  | Sub Judge, Udhampur           | Udhampur District ex-<br>cluding Ramnagar and Reasi<br>Tahsils. |
| 6.  | Sub-Judge, Reasi              | Reasi   |
| 7.  | Sub-Judge, Ramnagar           | Ramnagar  |
| 8.  | Sub Judge, Bhandarwah         | Doda District excluding<br>Kishtwar and Ramban.                 |
| 9.  | Munsiff, Kishtwar             | Kishtwar  |
| 10. | Munsiff, Ramban               | Ramban  |
| 11. | Sub Judge, Poonch             | Poonch District excluding<br>Rajori                             |
| 12. | Sub Judge, Rajouri            | Rajouri   |
| 13. | Sub Judge, Kathua             | Kathua District   |

## KASHMIR PROVINCE

14. District Judge, Srinagar Srinagar District.
15. Sub-Judge, Anantnag Anantnag District and excluding Shopian and Pulwama Tehsils.
16. Munsiff, Shopian Shopian and Phulwama Tehsils
17. Sub-Judge, Baramulla Baramulla District excluding Sopore and Handwara
18. Munsiff, Sopore Sopore
19. Munsiff, Handwara Handwara
20. Deputy Commissioner, Leh. Ladakh District