PART H.

HEARING OF SUITS, ADJOURNMENTS, EXAMINATION OF WITNESSES, ETC.

1. **List of witnesses:-** Notice of the day of trial, reasonably sufficient to enable the parties to attend with their witnesses, should be given before hand. It is the business of the parties to take all reasonable steps to have their witnesses present in Court on the day fixed. The Court should, on application and deposit of process-fees and other necessary expenses, issue the requisite summonses as soon as possible so as to secure their attendance on the date fixed for hearing.

   A list of witnesses must be filed by a party in Court before the actual commencement of the hearing of evidence on his behalf, and no party who has begun to call his witnesses shall be entitled to obtain processes to enforce the attendance of any witness against whom process has not been previously issued or to produce any witness not named in the list without an order of the Court made in writing and stating the reasons therefore (Order 16, rule 1, as amended by the High Court).

2. **Statement of case:-** The trial should begin by the party having the right to begin (Order XVIII, Rule 2, of the Code) stating his case, and giving the substance of the facts which he proposes to establish by his evidence. The case thus stated ought to be reasonably in accord with the party's pleadings, because no litigant can be allowed to make at the trial a case materially and substantially different from that which he has placed on record, and which his adversary is prepared to meet. The procedure laid down in the aforesaid rule is often neglected by Courts, but it is highly useful and should be invariably followed.

3. **Examination in-chief:-** In the examination of witnesses questions ought not to be put in a leading form, nor in such a form as to induce a witness, other than an expert, to state a conclusion of his reasoning, an impression of fact, or a matter of belief. The question should be directed to elicit from him facts which he actually saw, heard or perceived within the meaning of Section 60 of the Indian Evidence Act. The questions should be simple, should be put one by one and should be framed so as to elicit from the witness, as nearly as may be in chronological order, all the material facts to which he can speak of his own personal knowledge. A general request to a witness to tell what he knows or to state the facts of the case, should, as a rule, not be allowed, because it gives an opening for a prepared story. Where the party calling witnesses is not aided by counsel, and is unable himself to properly examine his witnesses he may be asked to suggest questions and the examination may be conducted by the Court.

4. **Cross-examination:-** When the examination-in-chief is concluded the opposite side should be allowed to cross-examine the witness or, if unable to do so, to suggest questions to be put by the Court. In cross-examination leading questions are permissible.

5. **Re-examination:-** Then should follow, if necessary, re- examination for the purpose of enabling the witness to explain answers which he may have imperfectly given on cross-examination, and to add such further facts as may be admissible for the purpose.

6. **(a) How far should Court interfere in the conduct of**

examination:- When the examination, cross-examination and re-examination are conducted by the parties or by their pleader, the Presiding Officer ought not, as a general rule, to interfere, except when necessary, e.g., for the purpose of causing questions to be put in a clear and proper shape, of checking improper questions, and of making the witness give precise answers. At the end, however, if these have been reasonably well-conducted he ought to know fairly well the exact position of the witness with regard to the material facts of the case; and he should then put any questions to the witness that he thinks necessary. The examination, cross-examination, re- examination and examination by the Court (if any) should be indicated by marginal notes on the record.

(b):- Conduct of proceedings by lawyers' clerks. Complaints have been received that the Civil Courts sometimes allow Clerks of lawyers to appear, examine or cross-examine witnesses or to conduct the proceedings in other manners, when the lawyers themselves are otherwise engaged. This is highly irregular and is against law and District Judges should take steps to put a stop to this practice wherever it is known to prevail.

7. **Examination of witnesses called by Court**:- The examination of witnesses called by the Court under the provisions of Order XVI, Rules 7 and 14, of the Code, should always be conducted by the Court itself; and after such examination if the parties to the suit desire it, the witnesses may be cross-examined by the parties. Upon the close of the cross-examination, the re-examination of such witnesses, if necessary, should be conducted by the Court in the manner above stated.

8. **Deposition should be read over:-** The deposition of each witness should be read over to him in open Court and corrected, if necessary, as soon as his evidence has been finished (Order 18, rule 5).

9. **Mode of recording evidence**:- In all appealable cases the evidence shall be taken by or in the presence of the Judge or under his personal directions and supervision. If he does not write the evidence himself he shall (in all cases whether appealable or non-appealable) as the examination of each witness proceeds, make in his own hand a memorandum of the evidence. He shall sign this memorandum and file it with the record. Should he be unable to do so he shall cause the reason of his inability to be recorded, and the memorandum to be taken down in writing from his dictation in open Court.

10. **Arguments**:- When the party having the right to begin has stated his case and the witnesses adduced by him have been examined, cross-examined and re- examined, and all the documents tendered by him have been either received in evidence or refused, it then devolves upon each of the opposing parties, who have distinct cases, to state their respective cases in succession, should they desire to do so. After all of them have done so, or have declined to exercise the right, the evidence, whether oral or documentary, adduced by each in order, should be dealt with precisely as in the case of the first party; and on its termination and after they have, if they so desire, addressed the court generally on the whole case the first party should be allowed to comment in reply upon his opponent's evidence.

11. **Rebuttal evidence**:- If, however, the case of an opposing party is such as to introduce into the trial, matter which is foreign to and outside the case of the first party and the evidence adduced by him, then the latter

must be allowed, if he so desires, to rebut this by additional evidence, and his opponent must be allowed to speak upon it by way of reply before the first party himself makes his own reply. But this is not to be understood as entitling the first party to ask for an adjournment for that purpose. He is bound to be prepared with such rebutting evidence, and an adjournment should only be allowed by the Court for good and sufficient reasons, costs being, if necessary, allowed to the opposite party.

12. **Examination of parties as witnesses**:- The vicious practice of each party summoning his opponent as a witness merely with the design that counsel for each party gets a chance of cross- examining his client, obtains in many of the Muffasil Courts. This practice has been strongly condemned by their Lordships of the Privy Council and must cease (see I. L. R. XXXI, All 116 at page 122). On the other hand, when the parties are personally acquainted with any facts which they have to prove, they are expected to go into the witness-box and stand the test of cross-examination by the opposite party. The failure of a party to go into the witness-box in such circumstances may, in the absence of a satisfactory explanation, justify the court in drawing an inference which is unfavourable to that party. Attention may here be drawn to two explanations added in Punjab to Order XVIII, Rule 2, of the Code of Civil Procedure, 1908. In view of these amendments a Civil Court in Punjab can of its own accord or on the application of any party, for reasons to be recorded, direct any party to examine any witness at any stage. The expression 'witness' here includes a party as his own witness.

13. **Note about closing of evidence:-** It is frequently urged in appeals that a party has had witnesses in attendance whom the lower Court has omitted to examine. It is often impossible to ascertain from the record whether this is the case, and it would be equally impossible to ascertain it by a remand. When the examination of the last witness produced in Court by a party is closed, he should be distinctly asked if he has any more witnesses to produce; and the question and reply should be noted on the record. If more witnesses are named, the Court should either examine them or record its reasons for not doing so. If either party states that he desires additional witnesses to be summoned the Court should record the fact of the application and pass an order thereupon.

14. **Continuous hearing of evidence:-** Judges should always endeavour to hear the evidence on the date fixed, as much expense and inconvenience is caused by postponements ordered on insufficient grounds before the witnesses in attendance have been heard. Under Order XVII, Rule (1) of the Code when the hearing of the evidence has once begun the hearing of the suit should be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

It should be noted that Rule (1) of Order XVII as amended by this Court requires that when sufficient cause is not shown for an adjournment, the Court shall proceed with the suit forthwith.

15. **Adjournments for evidence:-** It has been observed that a number of Courts grant an adjournment merely because the party at fault is prepared to pay the costs of adjournment. Subordinate Courts should bear in mind that the offer of payment of the costs of adjournment is not in itself a sufficient ground for adjournment. The provisions of Order XVII, Rule (3) also deserve notice in this connection. If a party to a suit to whom time has been granted for a specific purpose as contemplated by Order

XVII, Rule (3), Civil Procedure Code, fails to perform the act or acts for which time was granted without any good cause the rule gives the Court discretion to proceed to decide the suit "forthwith" i.e., without granting any adjournment. In such cases a further adjournment should not ordinarily be granted, merely because offer is made for payment of costs. In some courts, it is apparently assumed that if such an adjournment is not granted the case will be remanded by an Appellate Court. There are, however, no valid grounds for this assumption. If the record makes it clear that a further adjournment has been refused because of the negligence of the party concerned, such refusal would not in itself justify an Appellate Court in remanding the case. An adjournment granted otherwise than on full and sufficient grounds is a favour and in Civil suits favour can be shown to one party only at the expense of the other.

No hard and fast rule can, however, be laid down. Each case must be judged on its own merits.

16. **Adjournments for arguments:-** The practice of adjourning a case for arguments after all the evidence has been given should, as a rule, not be followed except in long and complicated cases. But this observation does not extend to an adjournment, when reasonably necessary, for a reply on the whole case by the party who is entitled to such reply nor to an adjournment for argument on a question of law which may have arisen during the trial and may have been, for convenience sake, reserved for argument until after the taking of the evidence. Whenever a case has to be adjourned for arguments it should be adjourned to the next day, or, if this is not possible, to a very near date.

17. **Memo of evidence should be legible**:- The Judge's memoranda of evidence should always be written in a legible manner; and if from any cause they have been illegibly or indistinctly recorded, copies should be made and placed with the record.

18. **Interlocutory orders and notes:-** All orders made by the Court relative to change of parties, or adjournments, or bearing upon the course of the hearing of the suit other than depositions, orders deciding any issue and the final judgment, and notes of all material facts and occurrences which may have happened during the hearing of the suit, such as the presence of witnesses, etc., must be carefully recorded from time to time by the Presiding Officer in his own handwriting and be dated and appended to the record. Each "order" or "note" should be clearly marked as such.

The practice prevails in the subordinate Courts of writing orders on the back of applications made by the parties during the trial of a case. Such orders may sometimes escape notice during the hearing of appeals. It is, therefore, desirable that the summary of all interlocutory orders should be recorded separately by the reader at one place in chronological order and kept at the beginning of the English record of evidence.