CHAPTER X TRIAL OF SUITS

BY

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**250.** Attention of the Presiding Officers is invited to the provisions of rule 1 to 3 of Order XIX of Code of Civil Procedure. 1908, empowering the Courts to order any point of formal nature to be proved by affidavit instead of by oral evidence subject to the conditions contained in the said Rules.

**251.** (1) The Court should enforce the rule as to "opening" a case. When the parties have their oral evidence ready, the law directs (Order XVIII, rule 2) that the party having the right to begin should state his case, and produce his evidence in support of the issues which he is bound to prove. The other party has then to state his case, and produce his evidence, if any, and may then address the Court generally on the whole case, the party beginning being permitted to reply generally. (2) It is absolutely necessary that the case should be opened in order that time may be saved. It is essential that the evidence of each side should be preceded by a brief and clear statements of the case to be made out, showing the exact nature of the claim, the facts to be established by the evidence which will be adduced, the general character and bearing of that evidence, the names of witnesses to be examined and a clear statement of any proposition of law involved. The case stated in the opening must be in accordance with the party's pleadings for no litigant can be allowed to make at the trial a case different from that which he has pleaded and of which only his adversary has notice. (3) In complicated suits, the Judge should make brief notes of the case stated in the opening and keep them on the record.

::2::

*Examination of Witnesses*

**252.** (i) According to rule 2 of Order XVIII, Civil Procedure Code, the parties shall produce their evidence, if any, on the day fixed for hearing of the suit. The Court may, for the reasons to be recorded, direct or permit any party to examine any witness at any stage. (ii) While issuing commissions for the examination of witnesses, the Courts should see that a direction is given to ensure that the work of recording and certifying evidence of the parties concerned is done within the time which should be fixed or prescribed by the Court according to requirements. (iii) The attention of the Civil Courts is invited to rule 3­A of Order XVIII of the Civil Procedure Code, according to which, where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for the reasons to be recorded permits him to appear as him own witness at a later stage. (iv) All witnesses should give their evidence from the witness­ box. A witness should normally stand when giving evidence, but a chair should be provided in the witness ­box, upon which may witness may sit on receiving permission of the Presiding Judge. The permission should be given on valid grounds, such as the witness's health or the likelihood that his evidence will occupy a long time etc.

**253.** The attention of Courts is drawn to the provisions of Order XVIII, rule 4, that witnesses are to be examined in open Court. The power under section 30(c) (and see Order XIX, rule 1) to order any particular fact or facts to be proved by affidavit or the reading of an affidavit of any witness at the hearing, should be exercised only in special circumstances or, as that rule declares "for sufficient reason". Which should always be specified in the order ; there can be no general order for the admission of affidavits in suits or appeals.

**254.** (1) The standard forms provided should be used for recording depositions as it is important to record the name, description and residence of the witness sufficiently to prevent any subsequent mistake as to his identity. (2) The deposition of each witness should be recorded on a separate sheet and in the manner prescribed in Order XVIII of the Civil Procedure Code.

::3::

It is illegal and improper to record the deposition of one witness at length and to enter against the names of other witnesses " stated as above ". Deposition should be recorded in the first person. (3) The evidence of witnesses shall be recorded in the language of the Court, i.e. in Marathi beyond the limits of Greater Bombay and in English within the limits of Greater Bombay. The notes of evidence recorded by the Presiding Officers shall be in English where evidence is not given in English. Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English. (4) In deposition recorded in English, the use of words or phrase in regional language (not being technical, revenue or law terms) should be avoided if there is a satisfactory and corresponding English equivalent. If a word in the origional language is used, its nearest English equivalent should be added in brackets. It is often necessary to know in what sense a Court is using a tern in the regional language, Similarly, Indian dates should be followed in brackets by their equivalents according to the Gregorian Calendar.

While recording the evidence the number of the exhibit of document should invariably be mentioned against the documents referred to in the body of the deposition itself. (5) Each deposition should be signed (not merely initialed) by the Presiding Officer, who should add to his signature at least the initials indicating his official designation, so that the deposition may be complete in itself. He shall also sign a certificate at the foot of each deposition to the effect that it has been 'Recorded in my presence.' Every correction in the deposition should be initialed by the Judge. (6) All Judges should record memorandum of evidence in English in all cases and proceedings. If the evidence is recorded in the language different from the one in which it is given by the witness and the witness does not understand the language in which it is recorded, it shall be read over and interpreted to the witnesses in the language in which it is given by the witness. (7) The Judge should compare the memorandum of substance of the deposition made by him under Order XVIII, rule 8 of the Civil Procedure Code with the deposition recorded in the regional language when it is read out in open Court and see that none of the statements contained in the memorandum are omitted from the record of the deposition made in the regional language. (8) It is important that the whole of the evidence given by each witness should appear in one place, and not scattered at intervals through the record. Therefore, when a witness is for any reason, recalled and further examined, after the close of his original deposition, such further examination should appear as a continuation of the original deposition, being headed as follows, for the sake of distinction : Recalled for further examination on this (here enter the date) after the (here show the stage of the proceedings immediately preceding the recall of the witness, e.g., if the first witness for the plaintiff is recalled after the tenth, the entry would be)" 10th witness for the plaintiff". (9) Care should be taken to make deposition clear and precise. Vagueness should be avoided. In particular, different words or phrases should not be used in different parts of the deposition to describe the same objects and documents. A person should be referred to in a consistent manner, e.g., he should not be referred to by his family name at one place and by his personal name at another.

::4::  
 **255.** (1) The imperative language used in sections 5, 60, 64, 136 and 165, Indian Evidence Act, indicates that a Court should, whether objection to evidence is or is not raised by any party, compel observance of the law. (2) When a witness is being cross­ examined, the Judge should guide himself by the provisions of sections 146, 148, 151 and 152 of the Evidence Act, and disallow any question which appears to him to be improper. He should see that such is not made of trifling discrepancies, that the examination is not protracted beyond reasonable limits even if the questions put be relevant, and that the witness is not subjected to questions, which merely invite repetition of the story, which he has already given in his examination ­in ­chief, in the hope that he will change it in the process. In this connection section 136 of the Evidence Act, should be borne in mind, as it empowers the Judge to ask a party proposing to give evidence in what manner the alleged fact, if proved, will be relevant. The Cross­examiner must not be allowed to bully or take unfair advantage of the witness. (3) While it is necessary for the Judge to check random and pointless questioning, he should be careful not to frustrate a skilful cross examination by interposing when the drift of the questions is not immediately apparent and some questions are repeated. He should endeavour to follow the line and purpose of the cross examination closely and should only ask the examiner to explain relevancy of a line of enquiry when it apparently has no bearing upon the case. (4) A witness may be questioned in cross­ examination not only on the subject of enquiry but upon any other subject, however remote for the purpose of testing the credibility, his memory, his means of knowledge, or his accuracy. The moment it appears that a question is being asked which does not bear upon the issue or give promise or helping the Court to estimate the value of the witness 'testimony' it is the duty of the Court to interfere as well to protect the witness from what then becomes an injustice or insult as to prevent the time of the Court from being wasted. The Court should also prevent any evidence being given to contradict a witness in contravention of section 153 of the Evidence Act.

**256.** It is essential that the Presiding Officers should not play an altogether passive role, but must take great interest and elicit such information as may be helpful in finding truth. Particularly, the should control the examination ­in ­chief, cross examination and examination of witnesses and try to check the tendency to rove and over prove unessential allegations, so as to prevent much time being taken up in eliciting and recording unessential particulars to which no references can usefully be made in argument. They should also exercise control when questions, that are uncalled for, harassing or slanderous, are put in cross­examination.

**257.** (1) When remarks as to the demeanour of a witness are made, it is convenient to enter them at the foot of his deposition or of the Judges memorandum of his evidence . (2) When any question is objected to, and the Court disallows it, or allows it to be put, the objection and the Court's decision and the other particulars required by rule 11 of Order XVIII of the Civil Procedure Code may be noted in the body of the deposition or memorandum of evidence.

**258.** Typewriter may be used by a Judge for recording depositions and memoranda of evidence, but every sheet of any depositions or memoranda of evidence so recorded shall be signed by the Judge recording it.

::5::  
 **259.** Form No. 5 of Appendix H of Schedule I may be used for listing documents produced by a witness. A witness may apply orally for the return of documents produced by him. After returning a document which has been entered on the record, a receipt should be taken (see paragraph 527), and where it is returned at any time earlier than that prescribed by rule 9 of Order XIII, a certified copy or extract thereof should also be taken as required by that rule.

**260.** Where a witness gives evidence in a language not understood by the Court, the presiding Judge is authorised to employ a interpreter to interpret the evidence and pay him for his services any reasonable sum not exceeding Rs. 30 per diem the cost being borne by the party calling the witness in the first instance and being charged as cost in the suit.  
*Local Inspection*

**261.** Local inspections should be rarely undertaken by Courts and particularly by appellate Courts. It is the duty of the parties to put forward in evidence lucid plans of such detail and accuracy as to render inspection unnecessary and it is for the trial Judge to see that the parties discharge this duty and do not seek to escape by suggesting inspection.  
**262.** Where inspection is found necessary, the proper rule should be as follows : When the inspection is undertaken at the instance o the parties and is at a place which is within easy distance of headquarters, the party desiring it must arrange for the conveyance of the Judge, who, before he accedes to the suggestion, should ordinarily arrange to hold the inspection outside Court hours.  
**263.** Where such inspection involves absence from Court or from headquarters, the Civil Judge should inform the District Judge of the circumstances, which render inspection necessary and obtain the previous sanction of the District Judge to his absence from his Headquarters on the particular date. The lawyer, at whose instance the inspection is undertaken, should be responsible for arranging for the conveyance of the Civil Judge. Ordinarily, the District Judge should not interfere with the judicial discretion of the Civil Judge regarding the necessity for inspection.  
 **264.** (i) The costs of an inspection which requires a Civil Judge to leave his headquarters must be deposited by the party in Court and cannot be received by the Civil Judge direct from the party. He can, however, reimburse himself in respect of the expenses incurred by him by submitting a T.A. Bill to the District Judge as permitted by the Rules. The amount deposited shall be first credited in the Register of Deposit Receipts in Form 'C' and after the inspection is over, the amount incurred for the inspection shall be debited in the said account and credited to Government under the head 'XVIIAdministration of Justice' and the balance of the amount of deposit, if any, shall be refunded to the party depositing the amount. (ii) The expenses incurred by the party for this purpose shall be included in the bill of costs.  
 **265.** Where the Judge considers it necessary to make a local inspection even though the parties do not move him and are not willing to arrange for it, it is open to the Judge (if a Civil Judge, with the previous sanction of the District Judge) to make the inspection at Government expense.  
 **266.** It is necessary for the Judge to make notes of local inspection so that the parties as well as the Appellate Court may know what facts were noticed, by the Judge and what impressions were formed by him.