

PART C.—APPLICATIONS UNDER ORDER XXII, CODE OF
CIVIL PROCEDURE(i) *Legal representatives of deceased parties and
appeals by persons who were not parties
to the decree or Order*

1. Whenever a party to a decree or order, which is appealable to the High Court, desires to appeal therefrom and to make as a respondent to his appeal the legal representative of a person who, having been a party to such decree or order, has died after the date of such decree or order, and who, if alive, would be a necessary party as a respondent to such appeal, and whose legal representative has not as such been made a party to the decree or order, or to subsequent proceedings there under or thereon the party so desiring to appeal may present to the High Court for admission a memorandum of appeal with the name of such legal representative mentioned therein as such as that of a respondent if at the time when he presents such memorandum of appeal for admission, he along with such memorandum of appeal, presents an application for leave to make such legal representative as such a party as a respondent to his appeal, and, except as hereinafter provided, an affidavit stating such facts as may be necessary in support of his application :

Provided always that a Judge of the High Court may, by an order, allow in his discretion a reasonable time in that behalf for the presentation of such affidavit, if it appears to him that the applicant could not by the exercise of due diligence have procured such affidavit in time for presentation along with the memorandum of appeal.

2. Whenever by a decree or order which appealable to the High Court the interest of-

- (a) a beneficiary in property which at the date of such decree or order was vested in or in the possession of a trustee, an executor, an administrator, or a receiver or manager appointed by a court who as such was a party to such decree or order; or

Procedure to make respondent the legal representative of a deceased party who died after the decree or order appealed from.

Appeals by persons other than parties to the decree or order appealed from.

- (b) a legal representative as such of a deceased party to such decree or order; or
- (c) an assignee of a party to such decree or order by assignment subsequent to the date of such decree or order; or
- (d) a person whose interest arose after the date of such decree or order by reason of any creation or devolution of interest, by, through, or from any party to such decree or order is affected;

and such beneficiary, legal representative, assignee, or person was not or has not been made a party to such decree or order or to proceedings thereunder or thereon and desires to present to the High Court for admission a memorandum of appeal from such decree or order, he may name himself therein as an appellant if at the time when he presents such memorandum of appeal for admission he along with such memorandum of appeal presents an application for leave to make himself an appellant, and, except as hereinafter provided, an affidavit stating such facts as may be necessary in support of his application : Provided always, that a Judge of the High Court may, by an order allow in his discretion a reasonable time in that behalf for the presentation of such an affidavit, if it appears to him that the applicant could not by the exercise of due diligence have procured such affidavit in time for presentation along with the memorandum of appeal.

Procedure to make respondent the legal representative of a party who died before the decree or order appealed from but whose legal representative has not been brought on record.

3. Whenever in any suit or appeal from the decree or order, in which an appeal may be preferred to the High court, a party has, before the appealable decree or order in such suit or appeal has been made, died, and the name of such deceased party appears in such decree or order as that of a party thereto, and his representative has not been brought upon the record and such deceased party would, if alive, be a necessary party to an appeal to the High court from such decree or order, and any party to such decree or

order, or the legal representative of any such party, having a right of appeal from such decree or order, desires to appeal from such decree or order, and to make the legal representative of such deceased party to the appeal, he may present to the High Court for admission a memorandum or appeal with the name of such legal representative mentioned therein as a party to the appeal, if at the time when he presents such memorandum of appeal for admission he along-with such memorandum of appeal presents an application for leave to make such legal representative a party to the appeal, and, except as hereinafter provided, an affidavit showing that he did not know, before the decree or order from which he desires to appeal was made, that such deceased party had died, or that he had no reasonable opportunity of informing the Court which made the decree or order, before such decree or order was made, that such deceased party was dead, and stating such other facts as may be necessary in support of his application: provided that a Judge of the High Court may, by an order allow in his discretion a reasonable time in that behalf for the presentation of such affidavit, if it appears to him that the applicant could not by the exercise of due diligence have procured such affidavit in time for presentation along with the memorandum of appeal.

4. Whenever after a memorandum of appeal has been presented to the High Court, any appellant or any party interested in the maintenance of any objection filed in the appeal under Order XLI, Rule.- 22 or 26 of the Code of Civil Procedure first ascertains that a person, whose name appears in the memorandum of appeal as that of a party to the appeal, and who, if alive, would be a necessary party to such appeal or objection, had died before the memorandum of appeal was presented to the High Court or admitted, such appellant or party so interested as aforesaid may, but subject to the law of limitation, apply for an order that the memorandum of appeal be amended by substituting for the person, who has so died as aforesaid, his legal representative, if at the time when he presents such application, he along with such

Amendment of memo. of appeal when a deceased person made a party in ignorance of death.

application, except as hereinafter provided, presents for filing an affidavit showing that such application is made with all reasonable diligence after the fact of the death of such person first came to the knowledge of such applicant or the agent, if any, acting on his behalf in the litigation; provided that a Judge of the High Court may, by an order, allow in his discretion a reasonable time in that behalf for the presentation of such affidavit, if it appears to him that the applicant could not by the exercise of due diligence have procured such affidavit in time for presentation along with the application.

(ii) *General Rules as to Suits and Appeals*

Application to bring on record legal representative of a party to show date of death.

5. Every application-

- (a) under Order XXII, Rules 3(1) and 11 of the Code of Civil Procedure, by a person claiming, to be legal representative of deceased plaintiff or appellant to enter his name on the record in place of the deceased party;
- (b) under Order XXII, Rules 4 and 11 of the Code of Civil Procedure, to make the legal representative of a deceased defendant or respondent a party in place of the deceased; and
- (c) under the second clause of Order XXII. Rule 3 of the Code of Civil Procedure, by a defendant or respondent;

shall, in addition to any particulars required by law, state approximately the date of the death of the deceased party.

Application to set aside order of abatement or dismissal.

6. Every application under Order XXII, Rule 9 (read with Rule 11) of the Code of Civil Procedure, by a person claiming to be the legal representative of a deceased or the assignee or the receiver of an insolvent plaintiff or appellant, for an order to set aside an order of abatement or dismissal, shall state the cause

which prevented him from continuing the suit or appeal.

7. Every application of the kind specified in Rules 5 and 6 of these rules and every application under Order XXII. Rule 10 of the Code of Civil Procedure, to make the petitioner or some other person an additional or substituted party in a suit or appeal, shall, as to the allegations of fact contained in such application, be verified by affidavit.

Affidavit to accompany application made under Rules 5 and 6 and application to add or substitute a party.

8. Every application under Order XXII of the Code of Civil Procedure shall ordinarily be presented to the Deputy Registrar, who shall cause the date of presentation to be entered thereon.

Mode of presentation .

9. The Deputy Registrar shall examine the application, and, if it does not satisfy the requirement of the Code or of these rules in that behalf, may return it to the Person presenting it, for amendment and representation within a time to be noted on such application under his signature, or may refer the application to a Judge for orders.

Return for amendment.

10. Any such application may be presented to a Judge or to a Bench (as the case may be) on the date fixed for the hearing of the case; but unless sufficient cause be shown for the application not having been presented in the ordinary course to the Deputy Registrar, before such hearing, the applicant will become liable to pay the costs of any adjournment or postponement caused by the omission to present the application to the Deputy Registrar.

Effect of not presenting application before the date of hearing.

11. When an application to have the name of the legal representative of a deceased party, or the name of an additional or substituted party, brought on the record, or to have the name of a party struck off the record, is granted by order of a Judge or Bench (as the case may be), the Deputy Registrar shall cause the record of the proceedings in the High Court to be amended in conformity with such order.

12. Every person admitted on the record as the legal representative of a deceased plaintiff, defendant,

Form of amendment.

appellant or respondent, shall be described as “the legal representative of A.B., deceased plaintiff” (or defendant appellant or respondent, as the case may be); and, similarly in the case of an insolvent plaintiff, defendant appellant, or respondent.

(iii) *Special Rule as to Suits*

Application in original suits to be granted by the trial Judge.

13. Applications under Order XXII of the Code of Civil Procedure in original suits, when presented to the Deputy Registrar, shall subject to Rule 9 of these rules, be laid by him for orders before a Judge who shall ordinarily be the Judge before whom the suit to which it relates is pending.

(iii) *Special Rules as to Appeals*

14. When an application of the kind specified in rule 5 of these rules is presented to the Deputy Registrar in relation to an appeal pending before the Court and is deemed by him sufficient, without or after amendment, and the Deputy Registrar does not deem it necessary to refer the application for the order of a Judge, he is authorised to make an order granting the application “Subject to all just exceptions” and to cause the necessary amendments to be made in the memorandum of parties’ names and notices to be issued to the parties concerned to show cause on the date fixed for hearing the appeal. Where however the application is time-barred or affects a minor the Deputy Registrar shall refer it for the order of a Judge.

Orders to be granted by Judge.

15. Every application under Order XXII of the Code of Civil Procedure, not falling within Rule 14 of these rules or not granted under that rule, shall be laid before a Judge for orders.

(v) *Rules as to proceedings other than Suits and Appeals*

Rules to apply to other proceedings.

16. The foregoing rules shall apply to all proceedings of a civil nature, other than suits or appeals, to which Order XXII of the Code of Civil Procedure is applicable.