

T H E
A S S A M
C I V I L
S U I T
R U L E S

CIVIL SUIT RULES (ASSAM)

CHAPTER I

General Instructions

1. (1) It is the duty of the Legal Remembrancer to superintend and advise on the conduct of all litigation, civil or criminal, in which Government or Government officers or the Court of Wards are concerned in accordance with the rules prescribed in this behalf.

(2) The Legal Remembrancer is bound to advise Government on all legal questions in connection with administration of public affairs, or arising out of the acts of the Government officers or public servants which may be referred to him by Government.

2. All Governments pleaders and Public Prosecutors throughout the State are under his direct control and supervision. All communications, relating to the appointment, removal, remuneration, leave, duties or conduct of these officers and other matters affecting them should be addressed to him.

- 3.** Reference to the Legal Remembrancer for opinion may be made by the following officers only:

 - (a) The Secretaries of the State Government;
 - (b) Commissioner of Divisions and District Officers;
 - (c) Heads of Departments; and
 - (d) Local Authorities.

- 4.** Municipalities should, as a general rule, be left to defend the legality of their own proceedings, and are not entitled to the advise of the Government Law Officers. In cases of special importance or difficulty, however, a deference may be made to Government to obtain the opinion or advice of Legal Remembrancer for the guidance of Municipalities in their proceedings, or in the defence of actions which have been brought against them, or with which they are threatened.

- 5.** The following rules apply primarily to the conduct by a District Officer of all suits to which Government is a party. Heads of Departments are, however, authorised to perform the functions of Commissioner or District Officer, as the case may be, in any matter which is of departmental interest and does not affect the general administration of the district or

any other department; provided that shall consult the Legal Remembrancer in any matter concerning his own administrative office, and shall follow his advice.

CHAPTER II

Rules for the conduct of civil instituted by Government

6. District Officer to consult Government pleader.

Whenever a District Officer desires to file a suit on behalf of the Government, he shall prepare a statement of the facts of the case and the evidence available, and shall transmit it, with all material documents, to the Government pleader of the district. It must be remembered that it is not the business of the Government pleader to ascertain the facts of the case. It will not be necessary at this stage to collect the witnesses who can give oral testimony, but the more important witnesses whose testimony is essential to the case should be questioned by a trustworthy officer and notes of their statements taken. A vague statement that oral evidence is obtainable is of no value. The notes should be attached to the statement of facts.

COMMENTS

At the headquarters of the districts of Kamrup, Sibsagar, Goalpara, Cachar, Lakhimpur, Darrang, Nowgong and United Khasi and Jaintia Hills, there are Government

pleaders. Government pleaders are allowed a monthly retaining fee at the rate of Rs. 150 at Shillong and Rs. 100 at Gauhati, Jorhat, Dhubri, Silchar, Dibrugarh, Tezpur and Nowgong. Government pleaders stationed at places other than the district headquarters are allowed a monthly retaining fee of Rs. 50. When the work of the Sub-divisional Public Prosecutor will be entrusted to a Government pleader of the sub-division, he shall, however, be entitled to a retaining fee of Rs. 100 per month.

7. Further assistance to Government pleader.

The District officer shall also give the government pleader any further assistance, information, or documents that he may require.

8. Government pleader to return papers.

The Government pleader shall then return the paper with his opinion to the District Officer. If he is of opinion that the suit should be filed, he shall also forward with the papers a draft plaint with the list of documents required by R. 14, Order VII, Civil Procedure Code, in the form prescribed by R. 22 on page 87 of the General Rules and Circular Orders of the High Court, Appellate Side (Civil), Volume I. The plaint must be in half-margin and drawn up in strict accordance with Rr. 1,

2, 4, 5 and 6 of Order VII and R. 3 of Order XLVIII of the Civil Procedure Code.

COMMENTS

Under Order VII, R. 14 of the Code of Civil Procedure where a plaintiff files a suit based on a document in his possession or power, he shall produce it in Court when the plain is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint. Under Order VII, R. 1 thereof, the plaint shall contain the particulars as detailed therein; R. 2 prescribes that where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed; R. 3 prescribes that where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify the same and the case the property cannot be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers; R. 4 prescribes the procedure when the plaintiff sues representative; R. 5 prescribes the defendant's interest and liability to be shown; and R. 6 required the grounds to be stated of exemption from the limitation law. Order XLVIII., R. 3 of the Civil Procedure Code prescribes that the Form given in the Appendices with such variation as the circumstances of each case may require, shall be used for the purpose therein mentioned.

9. Government pleader to draft plaint.

The district Officer may, if he thinks fit, require the Government pleader to prepare a draft and list in case in which the Government pleader is of opinion that no suit should be brought, and the Government pleader shall comply with such requisition.

10. Reference to Legal Remembrancer.

On receiving the draft plaint from the Government pleader, the District Officer shall make a reference to the Legal Remembrancer; provided that Small Cause cases less than Rs. 500 in value. Which involve no substantial question of law, not being cases of the local Authorities brought may be with the sanction of the Commissioner and conducted under his instructions without reference to the Legal Remembrancer.

11. Papers to be sent.

In making reference to the Legal Remembrancer or in seeking the sanction of the Commissioner of division under R. 10 the District Officer shall submit the following papers or copies thereof :

- (1) the Statement of Facts;
- (2) the plaint as drawn by the Government pleader, together with a map of the locality, if necessary;
- (3) the list required by R. 14, Order VII, Civil Procedure Code, with copies or translations of such of the documents as are necessary to enable the Legal Remembrancer or the Commissioner to understand the case.
- (4) notes of the statements of such witnesses as have been examined;
- (5) the opinion of the Government pleader.

12. Arrangement of papers.

The papers shall be fastened together in the ordinary brief form and must be properly paged and indexed. The index will be the first page of the brief and will be in the Form A attached to these Rules. It will show also the dates on which the papers were sent to the Government pleader, returned by him to the District Officer, and submitted to the Commissioner, or the Legal Remembrancer, as the case may be.

13. Submission of brief to Commissioner or Legal Remembrancer.

The brief shall be submitted to the Commissioner or the Legal Remembrancer, as the case may be, with any further remarks or suggestion which the District Officer may think proper to offer. If the district Officer considers that the plaint drafted by the Government pleader is capable of improvement, he will insert his suggestions in the Government pleader's draft or submit a separate draft, but the Government pleader's draft always be submitted.

14. Submission of report with brief to Government in special cases.

(1) In cases where it appears to the District Officer that the suit raises a question of general interest or administrative importance upon which no authoritative decision has been pronounced, or if the suit seems likely to involve heavy expenditure, or if the amount at stake is considerable, or if for any other reason he thinks it advisable that the government should have an opportunity of considering that matter before litigations is begun, he shall report the case to the Government in the Department concerned, and shall with report forward a copy of the brief.

(2) In such case the Government Department concerned shall consult the Legal Remembrancer and upon receipt of his opinion shall issue such instructions to the District Officer as it thinks fit.

(3) In the case of any suit which is likely to involve unusually heavy expenditure the finance Department shall be consulted before instructions are issued.

15. [* * * * *]

16. Brief to be submitted in time.

The District Officer shall take special care that the papers are forwarded with such dispatch that they may reach the Legal Remembrancer in sufficient time to enable him to consider throughout all the points on which his opinion is desired.

17. Urgent cases.

In the cases of urgent necessity where delay might be very prejudicial, the District Officer may file a suit on his own responsibility, but in such cases he must report to the Legal Remembrancer having done so, and forward the brief with the least possible delay.

18. [* * * * *]

19. Return of brief.

Except in cases dealt with under R. 14 (1) the Legal Remembrancer, after revising the pleadings will return the brief with his opinion to the District Officer.

20. Submission of report to Government by the Remembrancer in certain cases.

Notwithstanding the fact that no action has been taken by the District Officer under R. 14, if in the opinion of the Legal Remembrancer any questions are involved in the suit which the Government should have an opportunity of considering he shall refer the case, with his opinion, to the administration department concerned. The Legal Remembrancer shall be responsible for bringing to the notice of the Finance Department through the administrative department concerned, any case which is likely to involve unusually heavy expenditure.

21. Filling of plaint.

The brief, with the legal Remembrancer's opinion and any further instructions which the District Officer may think proper to give, shall then be made over to Government pleader, who shall engross the plaint as approved by the legal Remembrancer on stamped and file it in Court.

22. Arrest or attachment before judgment.

When a suit is instituted by Government, the District Officer shall cause an enquiry to be made as to whether there are there are grounds for proceedings against the defendant under R.1 or R.5 of Order XXXVIII, Civil Procedure Code, and, if necessary, shall direct the Government pleader to take action under either of these sections.

COMMENTS

Order XXXVIII, R. 1 deals with arrest of the defendants before judgment. Under R. 1, the defendant may be called upon to furnish security for appearance in the Court; provided the Court is satisfied by an affidavit submitted by the plaintiff or otherwise on the grounds specified in the said rule. Under R. 5 thereof the defendant may be asked to furnish security for production of the property on the ground and circumstances specified therein. Order

XXXVIII, R. 5 of the Code of Civil Procedure deals with attachment before judgment of the properties of defendant.

23. Filing of written statement.

When a written statement has been filed a suit instituted by government, the Government pleader shall send a copy of it to the District Officer with an abstract of any evidence by which it is supported and his own opinion as its legal bearing.

24. Issues.

When the issues have been framed, the Government pleader shall send a copy of them to the District Officer and shall attach another copy to the brief. In transmitting the copy to the District Officer the Government pleader shall state the document to be proved and the facts to be established.

25. Collection of evidence.

The District Officer shall then depute a trustworthy officer to collect evidence unless the evidence has already been collected. The Officer shall reduce the statement of the witnesses to writing and forward them, with any remarks he may think proper, to the District Officer.

26. District Officer to consult Government pleader.

The District Officer shall then consult the Government pleader in the sufficiency of the evidence and whether any further evidence, documentary or oral, should be given.

27. Process of witnesses.

When the day for the trial has been fixed, the Government pleader should apply the summonses on the witnesses he proposes to call, the District Officer shall advanced him a sum sufficient to defray the expenses of the witnesses and any other incidental expenses which it may be necessary to incur. The Government pleader shall also take any action that may be necessary in the course of the suit under Rr. 10 to 13, 17 and 18 of Order XVI, Civil Procedure Code. At the end of the trial Government pleader shall submit an account of the expenditure, which will then be entered as costs in the suit.

COMMENTS

Order XVI, Rr. 10 to 13 deal with the procedure where the witness fails to comply with the summons issued either to attend the Court to give evidence or to produce document. Rules 18 thereof prescribed the procedure where the witness apprehended cannot give evidence or produce document.

28. Defendant's witnesses.

When the defendant files his list of witnesses, the Government pleader shall send a copy of it to the District Officer, and the Officer entrusted with the collection of the evidence shall enquire into the circumstances of those witnesses and furnish the Government pleader with materials for their cross-examination.

29. Report result of suit.

When judgment has been delivered, the Government pleader shall at once report the result to the District Officer.

30. Submission of report to Government.

If at any stage of a suit any development occurs which, in the opinion of the District Officer, should be considered by Government he shall report the facts to the Legal Remembrancer who shall forward the report with his opinion thereon to the Secretary of the Government Department concerned, and shall forward to the District Officer any orders which may be passed by the Government.

31. Compromise.

If at any stage the District Officer is of opinion that a suit should be compromised, he should report the case, stating all the facts, for the orders of the Legal Remembrancer of the Commissioner, in case of a suit which has been instituted with his sanction under R. 10. A copy of the Government pleader's opinion shall also be forwarded. The commissioner may either sanction the compromises of a case so referred to him or, if he thinks it expedient to obtain the opinion of the Legal Remembrancer, shall forward the papers with his recommendation to the Legal Remembrancer. The Legal Remembrancer may sanction the compromises in any other case.

32. [Omitted by C. S. 62]

33. [Omitted by C. S. No. 62]

CHAPTER III

Rules for the conduct of civil suit against Government

34. Receipt of notice.

When a notice under S. 80, Civil Procedure Code is derived on a District Officer and relates to a suit threatened against a department not under his control, he shall the same day forward it in original to the Head of the Department concerned.

COMMENTS

In this rule a notice to the Central Government shall be contrasted as a notice to the State Government where the subject matter of the suit concerns Assam and it shall be dealt with the same manner as a suit against the Government of Assam subject to the provisions of R. 48-B in Chapter III-A.

Section 80 of the Code of civil Procedure prescribed that no suit shall be instituted against the Government or against a Public officer in respect of any act purporting to be done by such public officer in his official capacity until the

expiry of 2 months next after notice in writing has been delivered to, or left at the office of –

- (a) in the case of a suit against the Central Government except where it relates to a Railway, a Secretary to that government;
- (b) in the case of a suit against the Central Government where it relates to a Railway, the General Manager of that Railway;
- (bb) in the case of a suit against a Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other Officer authorised by that Government in this behalf;
- (c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the District; and in the case of a public action, the name, description and place of residence of the plaintiff and the relief which he claims ; and the plaint shall contain a statement that such notice ahs been so delivered,

35. Preliminary enquiry.

If the notice relates to a department under his control, the District Officer shall at once have a through enquiry made by a trustworthy officer into the circumstances of the case, and shall obtain the opinion of the Government pleader thereon. Here also it must be remembered that it is not the business of the Government pleader to ascertain the facts of the case. The District Officer must consider carefully whether the matter is one which should be settled out of court. If he considered that the matter should be settled, he shall endeavor to arrange with the notice giver without prejudice to the terms of settlement, explaining carefully that he does so subject to the sanction of the superior authorities.

36. Submission of report to Commissioner or legal Remembrancer.

He shall then submit at to the Legal Remembrancer, or in small Cause Court cases of less than Rs. 500 in value. To the Commissioner, a copy of the notice with a full report of the case and copies of such document as are necessary to its comprehension. This report must be submitted within a month of the receipt of the notice.

37. Action by Commissioner.

If the notice relates to a claim valued at less than Rs. 1,000 and the District Officer reports that he has arranged a settlement of the dispute, the Commissioner may sanction the settlement arrived at, Otherwise or when in any case the commissioner thinks it expedient to obtain the opinion of the Legal Remembrancer, the Commissioner shall, within ten days, forward the papers to the Legal Remembrancer with such remarks or suggestions as he thinks proper.

38. Suits without notice.

When a suit is brought against Government without the notice required by S.80, Civil Procedure Code, having been served, the government pleader should at once apply to the Court to dismiss the suit, on the ground that it has been instituted contrary to the provisions of the section.

COMMENTS

The notice under S. 80 of the Code of Civil Procedure is mandatory and a condition precedent for instituting the suit against the Government.

In the case of *United of India v. M/s. Kuthari Trading* [reported in AIR 1969 Assam and Nagaland 172], it was held

that where there was identity of the person who issued a notice with the person, who brought the suit and that the notice fulfilled the requirements of S. 80, there was no defect in compliance with the provisions thereof. In the Supreme Court case reported in AIR 1961 SC 1449 [*S N Dutta v. Union of India*], the decision reported in AIR 1958 SC 274 [*Dhian Singh Sobha Singh v. Union of India*], being followed, it was observed that the terms of S. 80 should be strictly complied with but that does not however mean that the terms of the notice should be scrutinized in a pedantic manner or in a manner completely divorced from commonsense. One must construe S. 80 with some regard to common sense and to the object with which it appears to have been passed. The Supreme Court also considered another decision [*State of Madras v. C. P. Agencies*, AIR 1960 SC 1309], which held that it must however be remembered that the defect with which the Court deals in such cases was in the matter of course of action and relief; and the Supreme Court pointed out that it was necessary to use a little common sense in such circumstances. Where the matter, for example, concerned the relief or the course of action it may necessary to use common sense to find out whether S. 80 has been complied with. But where it is a question of the name of the plaintiff, there is, in the opinion of the Supreme Court, little scope for the use of common sense for it either the name of the person suing is there in the notice or it is not. No omission of common sense will punt the name of the plaintiff there, if it is not there.

Their Lordship in Supreme Court further held that S. 80 is express, explicit and mandatory and admits of no implication or exceptions.

It was held in the case of *Sawkat Ali v. S. P. Sibsagar* [AIR 1971] Assam and Nagaland 74], that it is true that S. 80 of the Code of Civil Procedure is imperative and mandatory, but since it is for the benefit of the Procedure is imperative and mandatory, but since it is for the benefit of the Government or the Public Officer concerned, the matter can, if they choose, waive their right which is given to them by this provision. There is legal bar against of the right under this section, and since the service of such notice in condition precedent for the institution of the suit it will include the factum of service of such notice and the plaint shall state that fact. Absence of the service of notice under this section, without a plea or waiver would merit the rejection of the plaint but if, however, the waiver is pleaded the court will have to give an opportunity to the plaintiff to establish such facts of waiver is not attracted and no notice under R.80 of the Code of Civil Procedure is served, then on this count the suit would be liable to be dismissed.

39. Receipt of summons.

Whenever the Government pleader shall receive a summons to answer in an action brought against the Government he

shall note the date of receipt on the back of summons and shall at once forward it, with a copy of the plaint, to the District Officer, if in a suit against the Government or a Ward or Court, the description of the defendant in the summons is not in conformity with the provisions of defendant in the summons is not in conformity with the provisions of Order XXVII, Civil Procedure Code, or the requirements of Part VII of the Court of Wards Act, 1879 (Bengal Act IX of 1879) the Government pleader shall at once, in his own name, file a petition stating that he has been wrongly served. The filing of such petition does not require the sanction of the legal Remembrancer, but if it be rejected a copy of the petition and of the order rejecting it, together with a copy of the petition and of the order rejecting it, together with a copy of the summons and a statement of how it was served, shall be forwarded to the District Officer, who shall forward them to the Legal Remembrancer with the copies required by R.44

40. Documents to be sent to District Officer.

The Government pleader shall also forward to the District Officer a copy of the list filed in accordance with R. 18, Order VII, Civil Procedure Code and copies, when procurable, of the material documents, which are filed with the plaint. When documents filed are voluminous, the Government pleader shall not delay the transmission of the copy plaint till

copies of such of the documents as may be made, but are made, but shall at once forward the plaint and list.

41. District Officer to ascertain facts of the case.

Upon receiving the copy of the plaint and summons from the Government pleader, the District Officer shall note the date of such receipt, and shall at once proceed to ascertain the facts of the case unless the facts have already been sufficiently ascertained

42. Defence.

If the District Officer is of opinion that the suit should be defended, he shall return to the copies of the plaint and list, with a statement of the facts of the case and the evidence available to support the facts and with all material documents, to the Government pleader to draft the written statement. In cases of difficulty the District Officer shall arrange that the case be explained to the Government pleader by an officer acquainted with the facts.

43. Written statements.

The Government pleader shall then return papers to the District Officer with his opinion, and if he considered that

there is a good defence to the action, he shall draft necessary written statement, and prepare a list of the documents which the district Officer will be required to produce in court to support his case in the form prescribed by R. 472 at page 206 of the Civil Rules and Orders of the High Court. Appellate Side, Volume 1. These papers he will send to the District Officer, with such observations on the case as he may consider necessary.

44. Reference to Legal Remembrancer.

Upon receiving the draft written statement from the Government pleader, the District Officer shall make a reference to the Legal Remembrancer or in Small Cause Court cases or less than Rs.500 in value to the Commissioner forwarding at the same time copies of the following papers.

- (1) the Statement of Facts;
- (2) the plaint;
- (3) the list filed under R. 22 on page 87 of the General Rule and Circular Orders of the High Court, Appellate Side (Civil) Vol. 1, with such of the documents as are necessary to enable the Legal Remembrancer to understand the case.

- (4) the draft written statement as drawn by the Government pleader in half-margin, and the list prescribed by R. 43;
- (5) the opinion of the Government pleader;
- (6) so much of the documentary evidence as is relevant to the case, and is available on behalf of Government.

So many of the papers forwarded under R. 37 as are not included in the above list should also be re-submitted.

45. Papers.

The papers shall be properly fastened, paged and indexed. The index shall be in the Form B attaches to these Rules and shall show the dates on which the papers were dealt with.

46. Rules applicable.

The provision of Rr. 13 to 21 and 24 to 31, shall, *mutatis mutandis*, apply to the conduct of civil suit against Government.

47. Proceeding against plaintiff.

Whenever the District Officer receives a summons to written statement in an action brought against Government, he shall cause an enquiry to be made as to whether there are grounds for proceedings against the plaintiff under Order XXV, Civil Procedure Code, 1903, and, if necessary, shall direct the Government pleader to take action under that section.

48. Defence of formal character.

When the defence to a suit brought against Government recovery of surplus sale proceeds of an estate sold for arrears of land revenue is of a formal character, amounting to an admission of the claim, subject to proof of title, no report to the Legal Remembrancer is necessary on receipt of an notice under S. 80, civil Procedure Code, and the defence to the suit may be filed without reference to the Legal Remembrancer.

CHAPTER III-A

Suits by or against the Central Government

48-A. Under Cl. (a) of R. 8-B of order XXVII of the First Schedule to the Civil Procedure Code, 1908 (Act V of 1908) all government leaders in Assam have been appointed by the Central Government to be their Governments pleaders for the purpose of the said Order in relation to any suit in any court in the State of Assam by or against the Central Government or against a public officer in the service of that Government. In relation to such suits all Government pleaders should perform the same functions as they do in suits against the State Government or against a public officer in the service of the Government of Assam and they will be remunerated in the same way as in the case of suits of this State. They shall give advice free of charge to any public officer of the Central Government serving in Assam.

48-B. Whenever a Secretary to the State Government shall receive notice of a suit against the Central Government under S. 80 of the Civil Procedure Code, 1908 (Act V of 1908), he shall, as soon as possible after the receipt of the notice, take steps to forward a copy of the notice to the Central Government communicating therewith to that Government the views of

the State Government as to whether the subject-matter of the suit falls within the executive authority of the Central Government of the State Government, and as to the arrangement, that should be made for defending the suit.

COMMENTS

If the subject-matter of the suit falls within the executive authority of the Central Government, the State Government will await instructions from those authorities and on receipt of their instructions shall deal with it in the manner laid down in R. 48-A. If the subject-matter of the suit falls within the executive authority of the Government of Assam it shall be dealt with in the manner laid down in the Notes to R. 34 in chapter III.

CHAPTER IV

Rules for the conduct of Civil Appeals on behalf of Government

A — APPEALS TO THE DISTRICT COURT

(1) *When government is appellant*

49. Appeal on behalf of Government.

Where the decision in a case is adverse to the Government, the Government pleader shall, with the least practicable delay, obtain a copy of the decision and forward it to the District Officer. If he considers that an appeal should be preferred, he shall obtain certified copies of the judgment or order and of the decree, draft the grounds of appeal, and forward these papers to the District Officer, together with his opinion on the case.

50. Government pleader to obtain copies of evidence, etc.,

In all cases in which the Government pleader considers an appeal advisable, he shall obtain a copy of the order

sheet and copies of the evidence of the witnesses and of any document filed, which were not included in the original brief.

51. And of additional statement, etc.

In any additional statement or important application is made to the Court in the course of the trial, copies of such statement or application and of the orders passed on it by the Court shall also be obtained.

52. Arrangement of papers.

The papers mentioned in the last two paragraphs shall properly fastened together, paged and indexed, the index being in the Form 'C' attached to these Rules, and showing the dates specified therein.

53. Submission of papers to District Officers.

If the Government pleader is unable to procure the copies mentioned in Rr. 50 and 51 within such times as will enable the district Officer or the Legal Remembrancer to consider them before the period for appealing expires, he shall not delay the submission of the papers enumerated in R. 49, but

in all such cases he shall explain the cause of his inability to procure the copies in time.

54. Reference to Legal Remembrancer.

Upon receiving the papers with the grounds of appeal from the Government pleader, the District Officer shall record his opinion, and forward them to the Legal Remembrancer.

COMMENTS

If the district Officer considers it desirable, he may retain the certified copies of the judgment and decree and may forward copies of them to the Legal Remembrancer.

55. Filing of appeal before receipt of Legal Remembrancer's instruction.

If the period of appeal has almost expired before instructions are received from the Legal Remembrancer, the District Officer shall act on his own responsibility and file an appeal, if he thinks an appeal should be referred. When this is done, the fact should at once be reported to the Legal Remembrancer, and the Appellate Court should be asked to postpone the issue of notice to the respondent until opinion of the Legal Remembrancer is received.

56. Submission of papers to the Government in special cases.

- (1) If the District officer thinks it desirable that Government should have an opportunity of considering whether an appeal should be preferred, he shall report the facts to the Legal Remembrancer who shall forward the report with his opinion thereon to the Secretary of the Government Department concerned and shall forward to the District Officer any orders which may be passed by the Government. The District Officer shall see that the report is sent in sufficient time to enable the Legal Remembrancer to obtain and communicate the order of Government before the expiry of the period of limitation.
- (2) In other cases upon receiving the papers mentioned in R. 54, the Legal Remembrancer shall decide whether an appeal should be filed, and return the papers to the District Officer.

57. Service of notice on respondent.

Whenever the District Officer receives notice of the date fixed for the hearing of any appeal in which Government is appellant, he shall direct a competent officer to cause notice of appeal to be served on the respondent, and the

Government pleader shall see, on referring to the return, whether the service has duly been effected.

(2) *When Government has not appealed, but an appeal has been filed by one of the parties.*

58. Receipt of notice of appeal.

Whenever notice of any appeal against any order in any case in which government has not appealed is served on the Government pleader, he shall enter on the back of the notice the date of its receipt, and obtain a copy of the judgment appealed against, if not already in his possession, and shall transmit them to the District Officer, with a copy of the memorandum of appeal, and with his opinion upon the case and upon the validity of grounds taken in appeal.

59. Deposition of witnesses, etc.

The Government pleader shall obtain and submit to the District Officer copies of the order sheet, of the depositions of the witnesses, and of any documents filed, which were not included in the original brief, as also of any additional statement or important application made to the Court in the course of the trial, and of the orders passed on it by the

Court. These copies shall be made in the form of a brief as described in r. 52, properly paged and indexed.

60. Defence of case in Appellate Court.

The District Officer, on receipt of these papers shall take such measures as in his judgment may be necessary for defending the case in the Appellate Court. He need not refer the case to the Legal Remembrancer, except in case of doubt or difficulty unless he desired to present an objection under Order XLI, R. 22, Civil Procedure Code.

COMMENTS

Under Order XLI, R. 22 of the Code of Civil procedure, if the Government has not appealed from any part of the decree it may take any cross-objection to the decree which it would have taken by way of appeal; provided it has filed such objection in the Appellate Court within one month from the date of service of notice of the day fixed for hearing the appeal or within such further time as the appellate Court may see fit to allow.

61. Procedure when the district Officer objection should be taken to the decree.

If the District Officer considers that under Order XLI, R. 22, Civil Procedure Code, any objection should be taken to the decree, He shall cause the Government pleader to prepare the necessary memorandum and shall forward it with a copy of the judgment in sufficient time to the Legal Remembrancer. If the opinion of the Legal Remembrancer be not received in time to allow if filling the memorandum before the expiry of the period prescribed by the above section the District Officer shall file the memorandum without awaiting it and report to the Legal Remembrancer the fact of his having done so.

62. Security for costs from appellant.

If it appears to the District Officer that there is reasonable ground for an application under Order XLI, R. 10 of the Civil Procedure Code, he shall instruct the Government pleader to move the Appellate Court to demand security for costs from the appellant. If the appeal is frivolous, or if it is doubtful whether the appellant has sufficient means to pay costs, in the event if failure an application under this section should always be presented.

COMMENTS

Under Order XLI, R. 10 of the code Procedure, the Appellate Court may in its discretion call upon the appellant to furnish security for the cost of the appeal, or of the original suit, or of both and the Court would be entitled to reject the appeal if such security is not furnished within such time as the Court may order.

- 63.** Rule 31 shall apply, *mutates mutandis*, to appeals.

B — APPEALS TO THE HIGH COURT

(1) *When Government is appellant*

- 64. Applicability of rules.**

Rules 49 to 54 shall, as far as they can be made applicable, be observed in cases in which Government desires to prefer an appeal to the High Court, except that the District Government pleader need not draft the rounds of appeal. To save limitation it is essential that the papers shall reach the Legal Remembrancer within one month from the date on which the decree was signed.

65. Opinion of Legal Remembrancer.

If the Legal Remembrancer be of opinion that a appeal should be preferred in the High Court, he shall dispatch the papers to the Senior Government Advocate, who will draw up the grounds of appeal and submit them to the Legal Remembrancer.

66. Papers to be printed.

Upon receiving an intimation of an appeal having been filed in the High Court on behalf of Government, the District Officer shall send to the Senior Government Advocate a list of the papers which he considers necessary to be printed for conducting the appeal.

(2) *When Government is respondent*

67. Procedure.

(1) When the District Officer receives notice of an appeal to the High Court against Government, he shall send to the senior Government Advocate a list of the papers to be printed on behalf of Government, together with a

copy of the memorandum of appeal, if any, received by him and a reply to the grounds of appeal.

- (2) In case of an appeal being preferred against Government from an original decree or order a copy on plain paper of the Lower Court's judgment appealed against should be sent to the senior Government Advocate.
- (3) In case of an appeal from appellate decree, not exceeding Rs. 50 in value, filed against Government, copies of plain paper of the plaint, the written, statement, and the judgment of the lower courts should be sent to the Senior Government Advocate.
- (4) In case of an appeal from an appellate decree, exceeding Rs.50 in value, filed against Government, no paper other than those mentioned in Cl. (1) need be sent to the Senior Government Advocate.

68. Papers to be printed.

When the District Officer receives a list of the paper to be printed on behalf of the appellant, he shall send to the Senior Government Advocate a list showing the papers which he thinks should be printed in addition to those mentioned in the appellants.

69. Objection in appeal.

In the District Officer considers that an objection should be filed under R.22, Order XLI, civil Procedure Code in an appeal, he shall forward a brief of the case to the Senior Government Advocate to enable him to draw up the ground of cross-objection.

COMMENTS

Under Order XLI, R.22 of the code of Civil Procedure, the respondent though he may not have preferred any appeal from any part of the decree may take cross-objection to the decree which he would have taken by way of appeal. The form of such objection and provisions applicable thereto are detailed in sub-R. 2 of R. 22 of Order XLI.

70. Application on behalf of, and issue if rule against, Government.

In case of an application to be made to the High Court on behalf of Government, and in case of a civil rule issued by the High Court against Government, the District Officer shall forward to the Senior Government Advocate, the necessary instructions and copies of papers in the case.

71. Submission of original paper.

In no case shall any original paper or document be sent to the Senior Government Advocate unless specially called for. But if any original document tendered by Government in the lower Court was rejected, it should be sent to the Senior Government Advocate under sealed cover.

C — APPEALS TO THE SUPREME COURT

72. Appeal.

When the senior Government Advocate is of opinion that an appeal should be filed in behalf of Government in the Supreme Court, he shall submit his opinion to the Legal Remembrancer.

73. Application for leave to appeal by a party other than Government.

When an application for leave to appeal to the Supreme Court is filed by a party other than the Government, the District Officer shall, after obtaining the Government pleader's opinion, send a note to the Senior Government

Advocate stating whether the application should be opposed, and if so, on what grounds.

74. Defence in appeal against Government.

When the District Officer thinks that an appeal to the Supreme Court should be defended by Government he shall communicate his opinion to the Senior Government Advocate when he receives notice of the admission by the high Court of such appeal.

CHAPTER IV - A

Pauper suits and appeals

74-A. When an application to sue to appeal in *forma pauperis* is filed in Court, notice is given under R. 6 of Order XXXIII; of R. 1 of Order XLIV of the First Schedule to the Code of Civil Procedure to the Government pleader, and an interval of at least 10 days is allowed for the production of evidence to disprove the applicant's pauperism

COMMENTS

Order XXXIII of the Code of Civil Procedure prescribes the procedure regarding suits by pauper. Rule 2 prescribes the documents of application; R. 4 prescribes for examination of the applicant, under R. 5 the Court shall reject an application for permission to sue as a pauper on the ground detailed therein. And under R.6 if the Court sees no reason to reject such an application, then notice shall be given to the opposite party and the Government pleader fixing a date for receiving such evidence as the applicant may adduce any proof thereof. Under this rule, at least 10 days clear notice requires to be given. Under Order XXXIV, R. 1 any person who is entitled to prefer an appeal, but is unable to pay the fee required for the Memorandum of Appeal may present an application accompanied by a Memorandum of Appeal and may be allowed to appeal as a pauper subject to the provisions relating to suit by paupers in no so far as those provisions are applicable.

74-B. ON the receipt of the notice the Government pleader shall at once submit a report to the Deputy Commissioner setting forth –

- (a) the name, description and place of residence of the applicant;

- (b) the brief claimed;
- (c) the schedule of property belonging to the applicant;
and
- (d) the date fixed for hearing.

74-C. The Government pleader shall examine the applications and ascertain that the procedure enjoined by Rr. 2 and 3 of Order XXXIII of the First Schedule to the Code of civil Procedure has been followed and that none on the objections mentioned in R. 5 of Order XXXIII of the Code can be taken to the petition. If he discovers any error or objection, he shall take the first opportunity of bringing it to the notice of the Court in a written petition.

COMMENTS

Under this rule Government pleader is required to examine as to whether the provisions contained in Rr. 2 and 3 of Order XXXIII of the Code of Civil Procedure have been complied with or not. He is further required to see if any of the objections as contained in R. 5 thereof can be taken so as to warrant rejection of application for permission to sue as a pauper. If the Government pleader discovers that any such ground can be taken, then he shall take the first opportunity of bringing it to the notice of the Court by way of a written petition.

74-D. On receipt of the Government pleader's report the Deputy Commissioner will cause an enquiry to be made into the plea of pauperism, and on the result of the enquiry, will instruct the Government pleader whether he should appear or not to oppose the application.

74-E. The Government pleader should not appear to oppose an application to sue *in forma pauperis* unless directed to do so by the Deputy Commissioner. He should, however, appear to oppose all applications for leave to appeal *in forma pauperis*.

74-F. Applications for leave to appeal *in forma pauperis* are often admitted when they might be successfully opposed under R.1 of Order XLIV of the First Schedule of the Code of civil Procedure. Such application can only be admitted when the Court, "upon a perusal of the application and of the judgment and decree against which the appeal is made, sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or in just." The point must, whenever possible, be taken by the Government pleader and strongly passed upon the notice of the Court.

74-G. In some cases persons who cannot decide their disputes without the intervention of a civil court collude to bring a suit *in forma pauperis*. In other cases person who would ordinarily all appear as plaintiff put forward one of their number, who is a pauper, as the sole plaintiff and the rest are arrayed as *pro forma* co-defendants. Before deciding not to oppose an application to sue in forma pauperis. Deputy Commissioners must satisfy themselves that there is no ground for suspecting collusion of any kind..

74-H. When an application to sue or to appeal *in forma pauperis* is opposed by the Government pleader, he should invariably ask the Court to award him his costs in case the application be refused, and in such case he should obtain a copy of the order passed and submit it to the Deputy Commissioner.

74-I. When the application to sue or to appeal *in forma pauperis* has been allowed, and an order is made under R. 10, R. 11 or R. 12 of Order XXXIII of the First Schedule to the Code of civil Procedure, the Court is required by R. 14 forthwith to cause a copy of the decree to be forwarded to the Deputy Commissioner. The Government pleader should examine this decree carefully and see that all Government claims have been definitely included and charged by the Court to one of the parties to the suit. If this has not been done he should immediately apply for amendment of the decree.

COMMENTS

Under Order XXXIII, R. 10 of the Code of Civil Procedure if the plaintiff filing the suit as a pauper succeeds then the state Government shall be entitled to recover from the decree that might have been passed in his favour, the amount of court fee which the plaintiff would have been entitled to pay had he not been permitted to sue as a pauper. Under R. 11-A, if the plaintiff fails in the suit or dispaupered, or where the suit is withdrawn or dismissed on the ground stated in this rule, then he plaintiff would be liable to pay the amount of court-fees which he would have been paid had he not been permitted to sue as a pauper. Under R. 11-A, it would be similarly acted upon if the suit abates by reason of the death of the plaintiff or any person added as a co=plaintiff. Under R.12, the State Government have the right to apply to the Court to pass such necessary orders for requiring the plaintiff to make the payments of the amounts of the court-fee as required under Rr. 10, 11, and 11-A.

CHAPTER V

Execution of decree

75. Copy of decree to be sent to District Officer.

When a decree has been passed in favour of Government, the Government pleader shall at once apply for a copy of the same and forward it to the District Officer. A decree dismissing a suit against Government is a decree in favour of Government.

76. Entry of decree in execution.

Upon receiving a copy of the decree, the District Officer shall enter the same in his Register E. The District Officer shall keep up two execution registers in Form E, one for cases in which decrees have been given in favour of Government, and the other for cases in which stamp fees have to be realised in pauper suits. A separate page should be reserved for each decree.

77. Entry in register for pauper suits.

The second register shall be written up as soon as a copy of a decree showing the stamp fees which are due to Government is received from the Civil Court.

78. Enquiry about debtor's property.

Before application is made for the execution of a decree, the district Officer shall ascertain what property, movable or immovable, the debtor possesses. Inquiries of this nature can be made through such trustworthy agency as the District Officer may think proper to employ. *Bona fide* traveling expenses; incurred by the Officer deputed by the District Officer to make the enquiry should be allowed.

79. List of debtor's property.

The officer to whom the enquiry has been entrusted shall, after completing his investigation, furnish the District Officer with a list of the debtor's property, giving in the case of both movable or immovable property a complete description of the same sufficient for its identification by the Officer deputed to attach it,, and the evidence for its identification by the Officer deputed to attach it, and the evidence available to show that the property in question belongs to the evidence

available to show that the property in question belongs to the debtor.

80. Further instruction for execution.

After receiving the above report, the District Officer shall furnish the Government pleader with a copy of the list of the debtor's property and such further instructions and papers as may be necessary to enable the government pleader to apply for the execution of the decree.

81. Attachment of debtor's property.

Upon the Court issuing orders for the attachment of the debtor's property, the District Officer shall depute some one to accompany the attaching Officer, and to point out the property.

82. Claims by third parties.

In case claims are made by third parties or to the property attached, the officer on whose report the property was attached shall be directed to collect the evidence, by which it is proposed to show that the property belongs to the debtor,

and he shall be present in Court and instruct the Government pleader when the case comes on for trial.

83. Execution of decrees.

Execution should not be delayed till the period of appeal has passed, or while an appeal is pending. All applications to stay execution pending appeal should strenuously resisted unless good and sufficient security has been given. Delay for an appeal so often fatal to the recovery of the sum decreed and many judgment debtors resort to an appeal simply to gain time to alienate their property. If the decree be reserved in appeal, Government is always in a position to refund the money.

84. Execution of decrees in pauper suits.

Execution of decrees for court fees in pauper suits should invariably be taken out within a very few days so as to prevent the money decreed being realised and spent by the pauper decree holder. In suits in which the pauper has wholly or partly succeeded, Government has a first charge on the subject-matter of suit under R. 10, Order XXXIII of the Civil Procedure Code and this charge can be realised by Government in execution in accordance with the decision in *Ram Das v. Secretary of state* [18 All 419]. In such suits, therefore the subject-matter of the suit whether it be money

or other property, movable or immovable, should invariably be proceeded against without any avoidable delay. No enquiry under R.78 is necessary to ascertain the property which is the subject matter of the suit.

COMMENTS

Under Order XXXIII, R. 10 of the Code of civil Procedure, where the plaintiff succeeds in the suit being filed as a pauper, then the State Government shall be entitled to recover the amount of such court fee which would have been paid by the plaintiff if he had not been permitted to sue as a pauper and State Government shall have first charge on the subject matter of the suit.

85. Quarterly statement of cases for realization of decrees.

The Government pleader shall furnish the District Officers with a quarterly statement of cases, both civil and pauper, in which any steps have been taken for the realisation of a decree during the quarter. The statement will show the name of the case, the steps taken and the result.

86. Entry in register from the statement.

Upon receiving this statement, the District Officer shall make the necessary entries in his register and shall call for explanation is, if required, in those cases in which nothing has been done. If the explanation is unsatisfactory, the matter shall be reported to the Legal Remembrancer.

87. Inspector of execution register.

In the execution registers sufficient space should be left to enter all the successive steps which are taken by the District Officers for the execution of a decree. When inspecting the District Officer's office, the Commissioner should scrutinize the entrees in this register and notice in his inspection report nay irregularity which he may find in regard to the execution of the decree.

88. Payment of decretal money to District Officer.

When money has been paid into Court in satisfaction of decree, the Government pleader shall at once obtain an application for a payment order duly singed by the District Officer and request the Court to grant him a payment order for the amount in favour of the District Officer, and forward the same, when received, to the District Officer.

COMMENTS

This rule is similar to R. 38.

89. Government pleader not to receive money direct or to give receipts.

A Government pleader has no authority and a District Officer cannot authorize him, to receive money direct from the Court or from any person indebted to the State, or to give receipts or valid discharged for any sum due to Government on any account whatsoever.

90. Special reward for the realisation of the amount of a decree.

When the realization of the amount of decree is due to the special exertions of any officer the district Officer should represent the matter to the Head of the Department concerned, who may, subject to the control of the member of Government in charge of the Department, sanction to the disbursement of a sum not exceeding 20 percent recovered as a special reward for such officer. Any officer who considers that he has a claim for this special reward may make an application to the District Officer, stating the grounds upon which the application is based.

91. Reward for realization of decretal debt not exceeding Rs. 50.

When the decretal debt does not exceed Rs. 50, the District Officer should direct the peons of his office to make enquiries as to the debtor's property when visiting his village for service of processes, and stimulate them and the village chaukidars by the grant of reward up to 20 percent on all sums realised by their exertions.

92. Decretal amount not recoverable by ordinary means.

When the District Officer considers a decretal amount to be not recoverable by ordinary means, he shall apply to the Legal Remembrancer for sanction to the transference of the amount to the last column of the Register (Form 'E' in the Appendix), stating in his application the steps taken by him for the realisation of the amount and the reasons for their failure. In particular, the application should state whether the action prescribed by R. 84 has been taken in cases to which that rule applies. On receipt of such sanction and after the amount is entered in red ink in the last column of the Register, the District Officer shall take any steps he considers justifiable to realise the amount, including the offer of a percentage, but not the sale of the decree.

93. Officer-in-charge of execution Department.

In every District in which there is at headquarters an Assistant Commissioner of sufficient experience, he should be placed in charge of the Execution Department. When there is no Assistant Commissioner of sufficient experience, a Senior Extra Assistant Commissioner should be placed in charge on the work.

94. Definitions of “District Officer”.

In this Chapter the words “District Officer” include any Assistant Commissioner, or Extra Assistant Commissioner who may be immediate charge of this Department under the general control of the district Officer.

95. Decrees in favour of Court of Wards.

The rules in this Chapter shall apply to the execution of decrees in favour of the court of Wards, but the duties therein assigned to the district Officer, shall be performed by the manager under the control of the District Officers, except the Register E shall be kept by the manager in duplicate, and one copy shall be submitted in the 15th of each month of the inspection of district Officer.

96. Inquiries in Court of Wards.

Inquiries in court of wards' cases shall be made by such officers as the Manager, under the general control of the District Officer, may appoint.

CHAPTER VI

Suits by or against government Officers

97. Report before bringing suits.

A Government Officer considering that a suit should be instituted to obtain redress for some wrong which he has suffered in connection with the discharge of his official functions should, whether he proposes to institute the suit on his own responsibilities. And at his own cost, or whether he desires that the suit should be instituted in his name under the orders and at the cost of the Government, submit, through his official superiors, a full report on the whole case to the Legal Remembrancer before taking any steps on the matter.

98. Suit without notice.

A Government Officer against whom a suit is instituted in respect to anything purporting to have been done by him in his official capacity without the notice required by S. 80, Civil Procedure Code, having been duly served on him, should as a rule, move the Court to dismiss the suit, on the

ground that it has been instituted contrary to the provisions of that section.

99. Procedure on receipt of notice.

When notice of an intention to institute such a suit is received by a Government Officer under S. 80, Civil Procedure code, he should, whether he proposes to deal with the matter on his responsibility and at his own cost, or whether he desires that it should be taken up in this name under the orders and at the cost of Government, submit a full report of the case, with a statement of the action he proposes to take, for the orders of Government, through the Legal Remembrance and before the receipt of such orders he shall, if possible, avoid taking any steps in the matter. Nothing in this rule, however, shall prevent him from entering into an arrangement for the amicable settlement of the case; provided that such arrangements is made subject to the sanction of the Government.

100. Assistant of Government pleader.

An officer preparing a report under R. 97 or R. 99, or presentation an application under R. 98 shall be entitled to the assistance of the Government pleader.

101. Procedure.

When Government undertakes the conduct of a case instituted by or against a Government Officer, the district Officer may deal with the suit in consultation with the Officer concerned in accordance with the rules for conduct of suits by or against Government, or he may, with the sanction of the Legal Remembrancer, delegate his duties to the officer concerned, on condition that the said rules are strictly observed.

CHAPTER VII

Rules in regard to the disbursement of the remission of money in cases in which the Government or a Ward is a Party

102. Legal Remembrancer's power to pay sum to carry on suit, etc.

The Legal Remembrancer is empowered to sanction the payment of any sum for the purpose -

- (a) of carrying on any suit of appeal in which the Government is a party, or of which the Government undertakes the defence;
- (b) of satisfying any decree against the Government or against any party whose defence has been undertaken by the Government; and
- (c) of adjusting any suit or claim against the Government which has been compromised.

103. And to remit or write off sum.

The Legal Remembrancer is also empowered to remit or write off any sum due to the Government under the decree of a Court which is found to be recoverable.

104. District Officer, Commissioner or Heads of Departments' power to disburse sums to carry on suit or appeal.

The District Officer in any case in which he is allowed to deal with the approval of the Legal Remembrancer, and Commissioner or Head of Departments in cases where they have power under the preceding rules are authorised to sanction the disbursement of all sums which are necessary to be expended for the carrying on of any suit or appeal in which the Government is a party, If the Legal Remembrancer has directed that such suits shall be instituted or defended; Provided that the fees paid to counsel or pleaders engaged in any such suit or appeal shall not, subject to the provisions of R. 107-A, exceed the fees, which, under the rules of the High Court, are payable by an unsuccessful party in respect of the fees of his adversary's pleader.

105. Government pleader's fees in contested analogous cases.

In contested analogous civil cases (including appeals) tried or heard together, Government pleaders will be paid, on behalf of Government, their fees as awarded in the decree, a full fee, calculated according to the High Court rules, will be allowed for the case of the highest value decided, and a quarter of the full fee allowable of reach of the other cases under the said rules.

106. In uncontested analogous cases.

In uncontested analogous civil cases, Government pleaders' fees will be half of what would be payable under R. 105.

107. And in cases decided on compromise. etc.

In civil cases decided on compromise, or disposed of by consent of both parties, Government pleaders' fees, as payable by Government, will be calculated as in cases decided *ex parte*, unless the Court in its decree assesses the fees payable to the pleader in which the case, the fees so assessed will be paid to the Government pleaders. Where a suit is decreed in part, the fees payable to the Government pleader should be calculated on the full amount of the claim.

107-A. In any case governed by R. 104, 105, 106 or 107, if it appears to the Deputy Commissioner that the fees arrived at on the calculation prescribed or as awarded in the decree and inadequate in view of the labour involved in the particular case, he may with the approval of the Legal Remembrancer, sanction such addition fees as in the circumstances.

108. District Officer, Commissioner or Heads of Departments' power to disburse sums to satisfy decree, etc., against Government.

The District Officer in any case in which he is allowed to deal with the approval of the Legal Remembrancer, and Commissioner or Heads of Departments in cases where they have power under the preceding rules, are also authorized to sanction the disbursement of any sum in order –

- (a) to satisfy any decree against the Government in cases where the law allows of no further appeal from such decree, or in which the Legal Remembrancer has advised that no further appeal shall be made; and
- (b) to adjust or compromise any suit or claim against the Government which the Legal Remembrancer had directed to be compromised.

109. And in suit not reported to Legal Remembrancer.

Commissioner is also authorised to sanction the payment in any suit which, under R. 10, need not be reported to the Legal Remembrancer, or any sum not exceeding Rs. 500 for the purpose of carrying on such suit or for satisfying the decree therein, or for compromising the same.

110. Remission of sums due to Wards' estates under decrees.

The District Officer in any case in which he is allowed to deal with the approval of the Legal Remembrancer, and Commissioner or Heads of Departments in cases where they have power under the preceding rules, are authorised to remit or write off any sums due to Wards' estates under decree of Court, which are found to be irrecoverable.

111. Instruction for satisfaction of decree of adjustment of suit or claim.

Wherever in any suit against the Government or against any person whose defence has been undertaken by the Government, a final decree has been passed, or when any such suit or claim has been compromised, it is the duty of the District Officer to take the necessary steps for satisfying the decree, or for adjusting the suit or claim compromised.

For this purpose he may issue any necessary instructions to the Government pleader, who will be responsible that the satisfaction of any decree or claim is duly recorded by the Court.

112. Assessment of mesne profits under a decree against Government.

The District Officer shall inform the Legal Remembrancer of any enquiry under Order XX, R. 12 of the Civil Procedure Code for the assessment of mesne profits under a decree against Government and shall keep him informed of the progress and result of the proceedings. It will then be the duty of Legal Remembrancer to inform the Finance Department of any proceedings which are likely to result in the award of a substantial sum as mesne profits against Government.

COMMENTS

Order XX, R. 12 prescribes the procedure for decree for possession and mesne profits.

113. Expenses of appeal to High Court in Wards cases.

To meet the expenses of appeals to the High Court, the District Officer shall, from time to time, deposit such sums

as may be required by the Legal Remembrancer, to the credit of the "Litigation Fund", and, in case of each deposit, send to the Legal Remembrancer, the duplicate challan for the amount deposited. No money will be received by the Legal Remembrancer, on this account, except when contributed by any party having the same interest with Government, in which case he shall deposit the amount received by him in the State Bank of India, Gauhati, to the credit of the "Litigation Fund", and report the fact to the Accountant-General, Assam.

114. Fee of Government pleaders.

The fee of Government pleaders payable by Government in contested land acquisition cases whether heard singly or with others before courts other than the High Court is fixed on the basis of the amount allowed by the court as pleaders' fees under the High Court Rates; provided that if the fee so fixed is not in the Deputy Commissioner may recommend to the Legal Remembrancer a higher fee on the basis of daily attendance and the labour involved, both of which shall be clearly explained.

In the case of a compromise in which each party is to bear his own cost, the fee will be fixed by the Deputy Commissioner in consideration of the labour involved.

115. Payment of fee to Government Advocate for appearance before the High Court.

Whenever a fee is due from Government to a Government Advocate for appearance before the High Court or deputed from Calcutta to appear at the Muffassal Court on behalf of Government, it shall be paid by the Government on a bill countersigned by the Legal Remembrancer, and charged against the grant allotted to him for the purpose.

116. Fee allowed to Government pleader of High Court in Ward's etc., cases.

A fee of R. 51, is allowed to the Government Advocate in every case of the Court of Wards or other institution below Rs. 1,000 in value. In cases of greater value, he receives the full legal fee.

116-A. The Senior and Junior Government Advocates, Assam shall be allowed the following fees for their appearance before the Assam High Court in civil cases :

- | | | |
|-------------------|----|----------------|
| (a) First Appeals | -- | Rs. 85 per day |
| (b) Other matters | -- | Rs. 51 per day |

(c) Matters relating to Articles 226- 28 of the Constitution	--	Rs. 85 per day
(d) Tax cases	--	Rs. 100 per day

117. Scale of fees in Legal Remembrancer's office.

The following scale of fees has been adopted in office of the Legal Remembrancer :

		Rs.		Rs.
Drawing complaints and written statements and memoranda of appeal	--	5	to	85
Settling appeals	--	5	"	85
Settling petitions	--	5	"	85
Opinion	--	5	"	85
Compromise	--	20	"	85
Consultation	--	20	"	85
Motion	--		"	85

118. Statement of sums to be furnished to District Officers.

Fees, according to the above rules, will be charged for all legal business done for Wards' estates. Statements of the sums due for the preceding financial year will be furnished to the District Officers concerned early in April every year,

and the said sums should be recovered and credited to Government During that month.

119. Division of fee between pleaders.

Whenever in any suit one part of it has been conducted by one pleader and another part by another, only one regular fee shall be charged, and such fees shall be divided by the Legal Remembrancer between the two pleaders concerned in proportion to the labour undergone by each pleader.

120. In cases to which the foregoing rules do not apply the Government pleader shall be entitled to a daily fee of Rs. 16.

CHAPTER VIII

General Rules

121. Legal Remembrancer to be consulted in every stage of litigation.

When time will permit, and when legal question of importance or difficulty arise, the Legal Remembrancer should be consulted in every stage of litigation conducted on behalf of Government.

122. Government pleader to take particular instructions when necessary.

Whenever any particular instruction seems requisite in the conduct of any suit, appeal or miscellaneous proceeding, the Government pleader shall take the orders of the District Officer and act upon them.

123. Institution of defence of civil proceedings in High Court.

No civil proceeding of any kind shall be instituted or defended in the High Court unless under the orders of the Legal Remembrancer.

124. Government pleader to draft plaint, etc.

All plaints, answers and written statements should be drafted by the Government pleader in English, and should be filed in Court in English unless there be good reasons for using the vernacular.

All written statements should be in English. When any document that is not in English has to be submitted to the Legal Remembrancer, a translation should be sent in its place, unless the actual wording of the document is of importance, in which case a transliteration should be substituted. In no case should any document be submitted to the Legal Remembrancer in the vernacular character. In the case of maps it will be sufficient to write a translation under any vernacular words that appear on the map. The vernacular figures need not be translated.

125. Expenses of taking the copies of papers.

Copies of papers which the Government pleaders are required to take under these Rules shall be paid for by the District Officer as part of the expenses of the suit. Such expenses up to Rs. 50 in each case may be passed by the Deputy Commissioner; and sum beyond that amount should be passed by the Commissioner.

126. Entry of civil suits and appeal sin register.

All civil suits and appeals to which Government is a party shall be entered in a register, in the form 'D' attached to these Rules. A similar register shall be kept up for each Word's estate by the manager.

127. Payment of sums due for Ward's cases before release of estate.

The District Officer shall, whenever any estate under his administration is about to be released, ascertain from the Legal Remembrancer whether any sums are due on account of the legal business of such estate; and if so, he shall at once remit the amount due.

128. Annual Returns.

Annual returns in Forms G, H and J shall be submitted by District Officers to the Legal Remembrancer, Return G will consist of two parts, - Part I, statement of original suits, and Part II, statement of appeals, Return H will consist of two parts - Part I, statement of costs in original suits, and Part II, statement of cost in appeals. Return J will consist of two parts, - Part I, statement of decree realised and amount expended, and Part II, statement showing the number of decrees for execution. These returns should be submitted to the Legal Remembrancer on or before the 1st February of each year.

129. Information to Senior Government Advocate when taking charge of Ward's estate.

Whenever the Court of Wards takes charge of an estate, it shall, if any litigation connected with the estate is pending in the High Court, submit to the Senior Government Advocate the name of the ward, together with an affidavit in proper, to enable him to have substitution on addition of parties duly made in the record of the proceedings of the High Court in connection with litigation.

CHAPTER IX

Employment of Government pleader in Revenue and Settlement cases

130. Employment of Government pleader.

Whenever the District Officer considers the employment of the Government pleader necessary in a settlement of revenue case in which Government is interested, he may employ him, subject to the Legal Remembrancer's approval.

- 131.** Whenever it is found necessary to authorize the employment of the Government pleader before obtaining the sanction of the Legal Remembrancer, the District Officer should at once report his proceedings for that officer's approval. The responsibility must rest with the District Officer in the first instance of deciding whether it is necessary to employ the Government pleader or not, and he must act on his own discretion in the matter, subject to the Legal Remembrancer's control and criticism, if the discretion appears to have been improperly exercised.

132. Representation of Government in a revenue case before the High Court.

If a District Officer or a Head of a Department thinks it desirable that Government should be represented in any application or reference in a revenue case before the High Court, he shall at once send a letter to the Legal Remembrancer, Assam, giving a short statement of the facts of the case and his reasons for the requisition. On receipt of the letter the Legal Remembrancer shall ask the Senior Government Advocate to cause appearance to be entered on behalf of the Government unless, after consultation with the Revenue Department, he thinks that it is inadvisable that Government should be represented.

133. Payment for Government pleader.

A Government pleaser is allowed a fee of Rs. 16 a day for appearance before a Collector or a Deputy Collector. For appearance before the Assam Board of Revenue a Government pleader will be allowed fees not exceeding Rs. 100 according to the amount fixed by that authority.

134. Payment of Government pleader's bill.

Government pleaders will draw their bills, showing the particulars of the cases with respect to which the fees are due to them, and the bills will be paid at the treasury, after they have been passed by the District Officer as correct. In the case of appearance before the Assam Board of Revenue the Government pleader shall certify on the bills that the Board have fixed the fees by order. The bills for fees of pleaders in connection with civil cases and pauper suits are to be countersigned by the Commissioner of Divisions, Assam and Heads of Department. In Sadiya and Balipara Frontier Tracts such bills are to be countersigned by the Legal Remembrancer, Assam.

CHAPTER X

Government of Pleaders

135. Duties to other officers.

All the duties that the Government pleaders owe under the foregoing rules to the District Officers, they also owe to other officers of Government entrusted with the conduct of Government suits. They are also bound to advise gratuitously the head of any Government office on any legal matter affecting the interests of Government.

136. The Government pleader is bound to advise a Government Officer consulting him on behalf of any public body over whose proceedings the officer has powers of supervision or control on payment of a reasonable fee. In the case of a dispute the fee will be by Legal Remembrancer.

136-A. The Government pleader shall not advise private parties on the validity of circulars or orders issued by Government or by the Heads of Departments, without the consent of Government.

137. Employment of associate pleaders.

In Government and Court of Wards cases, associate pleaders may be appointed by the District Officer subject to the sanction of the Legal Remembrancer. They will be paid out of the fees allowed by Rr. 105-107; Provided that in intricate and heavy suits the Legal Remembrancer may sanction the payment of additional fee to the associate pleader.

138. Subordinate Government pleaders may be appointed at station other than the headquarters of Districts. They will be subject to the control and supervision of the District Government pleader. They will be remunerated by fees according to the High Court Civil Rules.

139. All Government pleaders whether at headquarters or other stations shall be appointed by the State Government. Whenever the office of Government pleader is vacant, the Deputy Commissioner shall, in consultation with the District and Sessions Judge, submit the names of as many pleaders who are qualified for the appointment as he thinks desirable, or is who shall forward them to the State Government with his recommendations. On appointment by the State Government, the pleader selected will receive his deed of appointment through the Legal Remembrancer. All appointments made after 1st July, 1940 shall be for a period

of three years and may be renewed for further periods if the incumbent are found fit and efficient.

A Government pleader appointed before 1st July, 1940 shall retire at the age of 60 years unless on consideration of the reports of the Local Authorities Government consider that it is in the interests of the public service that he should be retained for a further period to be specified, which period may be extended on like conditions.

140. Filling in a temporary vacancy.

In the event of a temporary vacancy in the office of Government pleader, the District Officer shall, in consultation with the District Judge, appoint a qualified pleader duly appointed or until his appointment is cancelled by the District Officer. The District Officer shall forthwith report to the Legal Remembrancer, the occurrence of every such vacancy and the making or cancellation of every such appointment.

141. Leave of absence.

Whenever a Government pleader shall desire leave of absence, he shall submit an application to the District Officer, who shall forward his application to the Legal Remembrancer, stating his opinion as to whether or not

leave should be granted. If the District Officer considers that the leave should be granted, he shall recommend some pleader to fill the absentee's place.

142. Removal, suspension or other punishment.

Whenever a District Officer shall see cause to recommend the removal or suspension from office or other punishment of a Government pleader, he shall submit a report of the facts of the case to the Legal Remembrancer. The Legal Remembrancer shall submit the papers with the recommendation to the Judicial Department for the orders of Government.

143. Disqualification for conducting suit.

Whenever any Government pleader is disqualified, either from interest in the suit or from relationship to the parties, or from any other similar or sufficient cause from conducting any suit, the District Officer shall appoint some other pleader to conduct the suit, advising the Legal Remembrancer of his having done so and stating the reasons therefore.

FORM 'A'

Brief Index prescribed by Rule 12

Date on which the papers were sent to the Government pleader ...

Date on which the papers were returned to the District Officer ...

Date on which the papers were submitted to the
Legal Remembrancer

1 Description of papers	2 Page

FORM 'B'

Brief Index prescribed by Rule 45

Date on which summons was served on Government pleader ...

Date on which the papers were received by District Officer
under R. 39

Date on which the papers were returned to
Government pleader under R. 42

Date on which the papers were returned to District Officer
under R. 43

All dates fixed for hearing of case before submission
to Legal Remembrancer

1 Description of papers	2 Page

FORM 'C'

Brief Index prescribed by Rule 52

Date of judgment

Date on which decree was signed

Date of report by Government pleader under Rule 49

Date of submission to Legal Remembrancer
under Rule 54

Date on which period of limitation expires

1 Description of papers	2 Page

FORM 'D'

Register of civil suits, original and appeal, in all Civil Courts

[Vide Rule 126]

		Parties to suit or appeal										
Serial No.	Name of Court.	No. on file of Court. In case of an appeal also No. of original suit.	Plaintiff or appellant	Defendant or respondent	Value of suit or appeal	Abstract of plaint and written statement, or grounds of appeal	Date of institution	Date of decision	Purport of decision	When any amount is decreed to Government, amount so decreed and number of case in Execution Register	No. and date of the Legal Remembrance's letter sanctioning the plaint, written statement, or appeal	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13

FORM 'G' (PART I)

**Statement of original suits to which Government was a party
in the District ofduring the year 19**

[Vide Rule 128]

Government (Plaintiff)							Government (Defendant)						
Classes of Courts	Total number of cases pending or instituted	Decided in favour of Government	Decided against Government	Total decided	Percentage of cases decided in favour of Government	Percentage of cases decided against Government	Total number of cases pending or instituted	Decided in favour of Government	Decided against Government	Total decided	Percentage of cases decided in favour of Government	Percentage of cases decided against Government	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Total													

Notes. Suits by or against Government Officers in respect of acts done or intended to be done in their official capacity, when the prosecution or defence is undertaken at the expenses of Government, should be shown in this statement.

FORM G (Part II)

**Statement of Civil Appeals to which Government was a party
in the District of for the year 19**

[Vide Rule 128]

	Government (Appellant)						Government (Respondent)						
	Total number of appeals pending or instituted	Decided in favour of Government	Decided against Government	Total decided	Percentage of appeals decided in favour of Government	Percentage of appeals decided against Government	Total number of appeals pending or instituted	Decided in favour of Government	Decided against Government	Total decided	Percentage of appeals decided in favour of Government	Percentage of appeals decided against Government	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Total													

Notes. Appeals in suits by or against Government Officers in respect of acts done or intended to be done in their official capacity, when the persecution or defence is undertaken at the expense of Government should be shown in this statement.

FORM 'H' (1)

**Statement showing the cost of Litigation to which
Government was a party in the district of..during the
year 19**

[Vide Rule 128]

Part I – Original suit

Government (Plaintiff)					Government (Defendant)				
Class of Court	Amount involved in Claims	Amount decreed			Amount involved in claims	Amount decreed			Remarks
		For Government	Against Government	Cost of litigation		For Government	Against Government	Cost of litigation	
1	2	3	4	5	6	7	8	9	10

Instructions:

- (1) In column 2 and 6 it will be sufficient to enter the amount of the claims as given in the plaint or appeal.

- (2) The suits, which are not directly instituted by or against Government, but by or against officers of Government in respect of acts done, or intended to be done in their official capacity, should be taken into account when the defence or prosecution is undertaken at the expense of Government.
- (3) In columns 5 and 9 should be shown the gross amount of costs involved in litigation, such as fees to Counsels or Government pleaders, and all expenses incurred in stamps, witnesses' expenses, section-writers' charges, etc., the information being given separately for each class of Court.

FORM 'H' (2)

**Statement showing the cost of litigation to which Government
was a party in the District of during the year 19**

[Vide Rule 128]

Part II – Appeals

Government (Appellant)					Government (Respondent)				
Class of Court	Amount involved in claims	Amount decreed			Amount involved in claims	Amount decreed			Remarks
		For Government	Against Government	Cost of litigation		For Government	Against Government	Cost of litigation	
1	2	3	4	5	6	7	8	9	10

Instructions:

- (1) In columns 2 and 6 it will be sufficient to enter the amount of the claims as given in the plaint or appeal.

- (2) The appeals which are not directly instituted by or against Government, but by or against officers of Government in respect of acts done, or intended to be done in their official capacity, should be taken into account when the defence or prosecution is undertaken at the expense of Government.
- (3) In columns 5 and 9 should be shown the gross amounts of costs involved in litigation, such as fees to Counsels or Government pleaders, and all expenses incurred in stamps, witnesses' expenses, section-writers' charges, etc., the information being given separately for each class of Court.

FORM 'J' (PART I)

**Annual Statement of Decrees realised and amount expended
during 19**

[Vide Rule 128]

Items	Outstand- ing from last year			Awarded during the year			Total			Realised during the year			Remitted		
	Principal	Interest	Costs	Principal	Interest	Costs	Principal	Interest	Costs	Principal	Interest	Costs	Principal	Interest	Costs
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Decrees in civil suits															
Decrees in Supreme Court appeals															
Decrees in Pauper suits															
Decrees in Miscellaneous															
Total															

FORM 'J' (PART I) (Concl'd.)

Annual statement of decrees realised and amount expended

during 19

[Vide Rule 128]

Items	Amount expunged from the returns, the decree having been set aside or barred by limitation			Total of columns 11 to 19			Balance			Amount expended in litigation during the year	
	Principal	Interest	Costs	Principal	Interest	Costs	Principal	Interest	Costs	Balance	Amount
	17	18	19	20	21	22	23	24	25	26	27
Decrees in civil suits	--									Awarded against Government in regular suits. In prosecution of suits.	
Decrees in Supreme Court appeals	--									In defence of suits. In Supreme Court appeals. In pauper suits. In	
Decrees in Pauper suits	--									Miscellaneous appeals.	
Decrees in Miscellaneous	-										

Instructions. 1) "Principal" means the amount of decree including costs of the suits. "Interest" means the interest, which

accrues after the decree. (2) "Costs" means the cost of execution. (3) Fraction of a Rupee need not be entered in the statement. (4) An explanation should be given of the difference, if any, between the total of columns 2, 3 and 4 of this statement and the total of columns 23, 24 and 25 of the last year's Statement J (Part I) as also with column 32 of the yearly statement for the preceding year.

FORM 'J' (Part II)

Annual Statement showing the number of decrees for execution satisfied and pending in the Civil Courts of the district of during the year 19

[Vide Rule 128]

1	2	3	4	5	6	7	8	9
Number of decrees pending from the previous year	Number of decrees received during the year	Total of columns 1 and 3	Number of decrees wholly satisfied	Number of decrees in which amount was remitted	Number of decrees set aside on appeal or review of judgment	Number of decrees the amount of which were expunged from the returns as having been barred	Number of decrees which remained unsatisfied at the end of the year	Remarks

FORM 'K'

[Vide Rule 134]

Allotment for this year – Rs. P.
Total expenditure including the bill

Bill No. Head of Account. Voucher No.

“21. Administration of Justice – (a) Law Officer –
(b) Legal Remembrancer – (c) Allowance and
Honoraria – fee to Government pleaders”

**Bill for fee of Government pleader, Shri
offor conducting Civil Suit during the
month of.**

1	2	3	4	5	6	7	8	9
Number of cases	Number and date of Government sanction to the engagement of pleader	Court attended	Name of first plaintiff or applicant and first defendant or opposite party	Value of the suit	Date of attachment	Fees charged	Clerk's remuneration	Remarks (certified copy of decree or order)
				Rs. P.	Rs. P.	Rs. P.	Rs. P.	

Total (in words)
Received payment

Checked with work register
and countersigned

Dated

District
Magistrate

Government Pleader

Passed for Rs. Rupees.....
dated19 Legal Remembrancer, Assam,
Shillong examined and entered. Pay Rs. Rupees
.....

Accountant

Dated19

Treasury Officer

(For use in the Accountant General's Office)

Noted in page of Audit Register

Admitted Rs

Objected Rs. for reasons given below.

Auditor

Superintendent

**** ** *