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The
Assam Law Department Manual

(Listed and Corrected upto 31st
March, 1967)

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ASSAM LAW DEPARTMENT MANUAL.

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PART I

CIVIL SUIT RULES

CIVIL SUIT RULES

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 the administration of public affairs, or arising out of the acts of Government officers or public servants which may be referred to him by Government.

2. All Government 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. (1) Municipalities should, as a general rule, be left to defend the legality of their own proceedings, and are not entitled to the advice of the Government Law Officers. In cases of special importance or difficulty, however, a reference may be made to Government to obtain the opinion or advice of the 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 he shall consult the Legal Remembrancer in any matter concerning his own administrative office, and shall follow his advice.]¹

CHAPTER II

Rules for the conduct of Civil suits instituted by Government.

6. 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, District Officer to consult 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 whose testimony is essential to the case, 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.

Note—At the headquarters of the districts of Kamrup, Shobang, Goalpara, Cachar, Lakhimpur, Dibrugarh, Nowsong and United Khasi and Jaintia Hills, these are Government Pleaders. Government Pleaders are allowed a monthly retaining fee at the rate of Rs. 100 for Shillong and Rs. 100 at Gauhati, Jorhat, Chirang, Dibrugarh, Tezpur and Nowsong. Government Pleaders stationed at places other than District head quarters are allowed a monthly retaining fee of Rs. 50. When the work of the Subdivisional Public Prosecutor will be assigned to a Govt. Pleader of the Subdivision, he shall however be entitled to a retaining fee of Rs. 100 per month.

4. The District Officer shall also give the Government Pleader any further assistance, information, or Government documents that he may require.

8. The Government Pleader shall then return the papers 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 Rule 14, Order VII, Civil Procedure Code, in the form prescribed by rule 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 halfmargin and drawn up in strict accordance with rules 1, 2, 4, 5 and 6 of Order VII and rule 3 of Order XLVIII of the Civil Procedure Code.

9. The District Officer may, if he thinks fit, require the Government Pleader to prepare a draft plaint and list in a case in which the Government Pleader is of opinion that a suit should be brought, and the Government Pleader shall comply with such requisition.

10. On receiving the draft plaint from the Government Pleader, the District Officer shall make a reference to the Legal Remembrancer, [* * * * *] provided that Small Cause Court 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 his under instructions without reference to the Legal Remembrancer.

N. B. Sec. rule 123

11. In making a reference to the Legal Remembrancer for seeking the sanction of the Commissioner of Divisions under rule 10¹, 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. Quoted by G.S. No.62.
4. Enacted by G.S. No.42.

(3) The list required by rule 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. 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. The brief shall be submitted to the Commissioner for the Legal Remembrancer, as the case may be, with any further remarks or suggestions 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 shall always be submitted. [* * * * *]

14. (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 Government should have an opportunity of considering the matter before litigation is begun, he shall report the case to the Government in the Department concerned, and shall with his report forward a copy of the brief.

5. Deleted by G.S. by No.62.

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

17. In 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. Except in cases dealt with under rule 14(1) the Legal Remembrancer, after revising the pleadings, will return the brief with his opinion to [* * * * *] the District Officer [* * * * *];

20. Notwithstanding the fact that no action has been taken by the [District Officer] under rule 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 administrative 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. 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 the Government Pleader, who shall engross the plaint as approved by the Legal Remembrancer on stamped paper and file it in Court.

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

23. When a written statement has been filed in 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 to its legal bearing.

24. 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 documents to be proved and the facts to be established.

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

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

27. When the day for the trial has been fixed, the Government Pleader should apply for summonses on the witnesses he proposes to call, and the District Officer shall advance 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

Rules for the conduct of Civil Suits against Government.

28. 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 these witnesses and furnish the Government Pleader with materials for their cross-examination.

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

30. 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. 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 or the Commissioner, in case of a suit which has been instituted with his sanction under rule 10]. A copy of the Government Pleader's opinion shall also be forwarded. [The Commissioner may either sanction the compromise 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 recommendations to the Legal Remembrancer. The Legal Remembrancer may sanction the compromise in any other case.]

32. (* * * * *)

33. (* * * * *)

34. When a notice under section 80, Civil Procedure Code, is served 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.

[Note—In this rule a notice to the Central Government shall be construed as a notice to the State Government where the subject matter of the suit concerns Assam and it shall be dealt with in the same manner as a suit against the Government of Assam subject to the provisions of rule 42-B in Chapter III-A.]

35. If the notice relates to a department under his control, the District Officer shall at once have a thorough 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 considers that the matter should be so settled, he shall endeavour to arrange with the notice-giver without prejudice the terms of settlement, explaining carefully that he does so subject to the sanction of the superior authorities.

36. He shall then submit to the [Legal Remembrancer or 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 documents as are necessary to its full comprehension. This report must be submitted within a month of the receipt of the notice.

1. Inserted by C.S. No. 24.

2. Added by C.S. No. 62.

3. Substituted by C.S. No. 62.

1. Substituted by C.S. No. 62.

2. Inserted by C.S. No. 62.

3. Omitted by C.S. No. 62.

37. 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. When a suit is brought against Government without the notice required by section 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 that section.

39. 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 the 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 of Court, the description of the 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 Code 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 a 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 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 of papers required by rule 44.

40. The Government Pleader shall also forward to the District Officer a copy of the list filed in accordance with rule 18 Documents to be sent to District Officer. Order VII, Civil Procedure Code, and copies which are 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 of the plaint till copies of such of the documents as may be made are made, but shall at once forward the plaint and list.

41. 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. If the District Officer is of opinion that the suit should be defended, he shall return 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. The Government Pleader shall then return the papers to the District Officer with his opinion, and if he considers that there is a good defence to the action, he shall draft the 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 rule 472 at page 206 of the Civil Rules and Orders of the High Court, Appellate Side, Volume I.]. These papers he will send to the District Officer, with such observations on the case as he may consider necessary.

44. Upon receiving the draft written statement from the Government Pleader, the District Officer shall make a reference to the Legal Remembrancer for in Small Cause Court Cases of 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.

7. Substituted by C. S. No. 62.

8. Omitted by C. S. No. 62.

9. Substituted by C. S. No. 62.

(3) The list filed under rule 22 on page 47 of the General Rules and Circular Orders of the High Court, Appendix A side (Civil), Vol. I, 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 rule 43.

(5) The opinion of the Government Pleader.

(6) So much of the documentary evidence as is relevant to the case, and as is available on behalf of Government.

N.B.—See rule 123

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

45. The papers shall be properly fastened, paged and indexed. The index shall be in the form B attached to these rules and shall show the dates on which the papers were dealt with.

46. The provisions of rules 13 to 21 and 24 to 31, shall, *mutatis mutandis*, apply to the conduct of civil suits against Government.

47. 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 proceeding against the plaintiff under Order XXV, Civil Procedure Code, 1908, and, if necessary, shall direct the Government Pleader to take action under that section.

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

Suits by or against the Central Government

48A. Under clause (a) of rule 8B of Order XXVII of the first Schedule to the Civil Procedure Code, 1908 (Act V of 1908), all Government Pleaders in Assam have been appointed by the Central Government to be their Government 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 suit 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.

48B. Whenever a Secretary to the State Government shall receive notice of a suit against the Central Government under section 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 view of the State Government as to whether the subject matter of the suit falls within the executive authority of the Central Government or the State Government, and as to the arrangement that should be made for defending the suit.

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 rule 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 note. rule 34 is chapter III.

1. New Chapter III-A containing rules 48A, and 48B, has been added by G. S. No. 5

Rules for the conduct of Civil Appeals on behalf of Government.

A.—Appeals to the District Court.

(1) When Government is appellant.

49. 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. 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 documents filed, which were not included in the original brief.

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

53. If the Government Pleader is unable to procure the copies mentioned in rules 50 and 51 within such time 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 rule 49, but in all such cases he shall explain the cause of his inability to procure the copies in time.

54. 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 [* * *]

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

55. If the period for 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

appeal should be preferred. When this is done, the fact should be reported [* * *] to the Legal Remembrancer and the appellate court should be asked to postpone the issue notice to the respondent until the opinion of the Legal Remembrancer is received.

56. (1) If the [District Officer] thinks it desirable 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 opinion thereon to the Secretary of 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 rule 54, the Legal Remembrancer shall decide whether appeal should be filed, and return the papers to the District Officer [* * *].

57. Whenever the District Officer receives notice of the service of notice on respondent which Government is appellants, he direct a competent officer to cause notice of appeal to be served on the respondent, and the Government Pleader shall see referring to the return, whether the service has duly effected.

67. When Government has not appealed, but an appeal has been filed by one of the parties.

58. 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 the grounds taken in appeal.

59. 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 rule 52, properly paged and indexed.

60. 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 cases of doubt or difficulty, or unless he desires to present an objection under Order XXI, rule 22, Civil Procedure Code.

61. If the District Officer considers that under Order XXI, rule 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. [* 61] If the opinion of Legal Remembrancer be not received in time to allow of filing 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.

* Omitted by G. S. No. 62

62. If it appear to the District Officer that there is reasonable ground for an application under Order XXI, rule 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 of failure, an application under this section should always be presented.

63. Rule 31 shall apply, *Mutatis Mutandis*, to appeals.

B.—APPEALS TO THE HIGH COURT

(1) When Government is appellant

64. 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 grounds 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.

V. B.—Copies of evidence of witnesses are not ordinarily required in cases of second appeal.

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

66. 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.

V. B.—No papers are required to be printed in second appeals where the value is below Rs. 50.

67. (1) When the District Officer receives a notice of an appeal to the High Court against Government, he shall send to the [Senior Government Advocate]² 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

(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

(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 clause (1) need be sent to the [Senior Government Advocate].⁵

68. When the District Officer receives a list of the papers to be printed on behalf of the appellant, he shall send to the [Senior Government Advocate]⁶ a list showing the papers which he thinks should be printed in addition to those mentioned in the appellant's list.

N. B.—See note under rule 66.

69. If the District Officer considers that an objection should be filed under rule 22, Order XLI, Civil Procedure Code, in an appeal, he shall forward a brief of the case to the [Senior Government Advocate]⁷ [* * *] to enable [him]⁸ to draw up the grounds of cross-objection.

² Substituted by C. S. No. 75
³ Omitted by C. S. No. 52

70. 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]⁹ [* * *], the necessary instructions and copies of papers in the case.

71. In no case shall any original paper or document be sent to the [Senior Government Advocate]¹⁰ 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]¹¹ under sealed cover.

C.—APPEALS TO THE SUPREME COURT

72. [When the Senior Government Advocate is of opinion that an appeal should be filed on behalf of Government in the Supreme Court, he shall submit his opinion to the Legal Remembrancer.]¹²

73. 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] 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 an appeal.

74 (b). [* * *]¹³

⁷ Substituted by C. S. No. 75
⁸ Omitted by C. S. No. 52
⁹ Renumbered by C. S. No. 75
¹⁰ Omitted by C. S. No. 62
¹¹ Substituted by C. S. No. 75
¹² Substituted by C. S. No. 75

PAUPER SUITS AND APPEALS

74A. When an application to sue or to appeal in *forma pauperis* is filed in Court, notice is given under rule 6 of Order XXXIII or rule 1 of Order XLIV of the first schedule of 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.

74B. On receipt of the notice the Government Pleader shall at once submit a report to the Deputy Commissioner set forth:—

- (a) the name, description and place of residence of the applicant;
- (b) the relief claimed;
- (c) the schedule of property belonging to the applicant; and
- (d) the date fixed for hearing.

74C. The Government Pleader shall examine the application and ascertain that the procedure enjoined by rules 2 and 3 of Order XXXIII of the first schedule of the Code of Civil Procedure has been followed, and that none of the objections mentioned in rule 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.

74D. 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.

74E. 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*.

74F. Applications for leave to appeal in *forma pauperis* are often admitted when they might be successfully opposed under rule 1 of Order XLIV of the first schedule of the Code of Civil Procedure. Such applications 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 unjust." This point must, whenever possible, be taken by the Government Pleader and strongly pressed upon the notice of the Court.

74G. 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 persons who would ordinarily all appear as plaintiffs 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.

74H. 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.

74I. When the application to sue or to appeal in *forma pauperis* has been allowed, and an order is made under rule 10, rule 11 or rule 12 of Order XXXIII of the first schedule of the Code of Civil Procedure, the Court is required by rule 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.

Execution of Decree

75. 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. 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. 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.
Entry in Register for pauper suits.

78. 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. *Bongfide* travelling expenses incurred by the Officer deputed by the District Officer to make the inquiry should be allowed.

79. The Officer to whom the inquiry 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 and immovable property a complete description of the same sufficient for its identification by the Officer deputed to attach it, and the evidence available to show that the property in question belongs to the debtor.

* O. S. No. 62.

* Omitted by O.S. No. 62.

80. 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 as may be necessary to enable the Government Pleader to apply for the execution of the decree.

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

82. In case claims are made by third parties to the property attached, the officer on whose report the property was attached shall be directed to collect the claims by such evidence, by which it is proposed to show 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 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 be strenuously resisted unless and until good and sufficient security has been given. Delay for an appeal is 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 is reversed in appeal, Government is always in a position to refund the money.

84. 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 the suit under rule 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 versus 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 rule 78 is necessary to ascertain the property which is the subject matter of the suit.

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85. The Government Pleader shall furnish the District Officer 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. Upon receiving this statement, the District Officer shall make the necessary entries in his register, and shall call for explanation, 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. In the execution registers sufficient space should be left to enter all the successive steps which are taken by the District Officer for the execution of a decree. When inspecting the District Officer's office, the Commissioner should scrutinise the entries in this register, and notice in his inspection report any irregularity which he may find in regard to the execution of the decree.

88. When money has been paid into Court in satisfaction of a decree, the Government Pleader shall at once obtain an application for a payment order duly signed 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.

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

90. When the realisation of the amount of a 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 per cent on the amount 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. 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 which he is visiting his village for service of processes, and summarise them and the village chaudhars by the grant of rewards up to 20 per cent on all sums realised by their exertions.

92. 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 rule 94 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. 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 of the work.

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

95. 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 Officer, except that Register E shall be kept by the Manager in duplicate, and one copy shall be submitted on the 15th of each month for the inspection of the District Officer.

96. 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.

Suits by or against Government Officers

97. 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 responsibility, 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. 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 section 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. When notice of an intention to institute such a suit is received by a Government Officer under section 80, Civil Procedure Code, he should, whether he proposes to deal with the matter on his own responsibility and at his own cost, or whether he desires that it should be taken up by the 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 Remembrancer, 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 arrangement is made subject to the sanction of Government.

100. An officer preparing a report under rule 97 or rule 99, or presenting an application under rule 98 of the Civil Procedure Code, shall be entitled to the assistance of the Government Pleader.

101. 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 the 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. The Legal Remembrancer is empowered to sanction the payment of any sum for the carry on suit, purposes—

- (a) of carrying on any suit or 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. 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 irrecoverable.

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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 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 Rule 107A] 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. 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 of the Court. When no such fees are awarded or assessed 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 for each of the other cases under the said rules.

106. In uncontested analogous civil cases, Government Pleaders' fees will be half of what would be payable under rule 105.

107. 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 case, the fees to be 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.

4. Substituted by C. S. No. 62.
 5. Inserted by C. S. No. 66.
 6. Omitted by C. S. No. 76.

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

108. [The District Officer in any case in which he is allowed to deal with the approval of the Legal Remembrancer, Commissioner or Heads 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 Rule 107A] 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.]

(a) to satisfy any decree against the Government in case 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. [Commissioner as] also authorised to sanction the payment in any suit which, under rule 10, need not be reported to the Legal Remembrancer, of any sum not exceeding Rs.500 for the purpose of carrying on such Remembrancer suit or for satisfying the decree therein, or for compromising the same.

110. [The District Officer in any case in which he is allowed to deal with the approval of the Legal Remembrancer, Commissioner or Heads 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 Rule 107A] 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.]

1. Inserted by C. S. No. 68.
 2. Substituted by C. S. No. 62.
 3. Omitted by C. S. No. 61.
 4. Substituted by C. S. No. 28.
 5. Substituted by C. S. No. 61.

110. Whenever 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 adjusting the claim, 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. The District Officer shall inform the Legal Remembrancer of any enquiry under order XX, rule 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 be the duty of the 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.

113. To meet the expenses of appeals to the High Court, District Officers 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 chalan 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 the Government, in which case he shall deposit the amount received in the State Bank of India, Gaubati, to the credit of the "Litigation Fund," and report the fact to the Assistant General, Assam.

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 Rules; provided, that if the fee so fixed is not in the Deputy Commissioner's opinion sufficient, 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 its own cost, the fee will be fixed by the Deputy Commissioner in consideration of the labour involved.]²

115. 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 mufassal Court on behalf of Government, it shall be paid by the Government before the High Court, etc. on a bill countersigned by the Legal Remembrancer, [xx]³ and charged against the grant allotted to him for the purpose.

116. A fee of Rs. [51]⁴ 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.

116A. 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. The following scale of fees has been adopted in the office of the Legal Remembrancer:—

	Rs.	Paisa
Drawing, plaints and written statements and memoranda of appeals.	5	00
Setting appeals	5	85
Setting petitions	5	85
Opinion	5	85
Compromise	20	85
Consultation	20	85
Motion	20	85

2. Substituted by G. S. No. 17.

3. Substituted by G. S. No. 76.

3A. Omitted by G.S. No. 76.

4. Omitted by G. S. No. 76.

Statement of sums
to be furnished
by District Officers.
District Officers concerned early in April every
year, and the said sums should be recovered and credited to
Government during that month.

119. Whenever in any suit one part of it has been
Division of fee conducted by one Pleader and another part by
between two Pleaders, only one regular fee shall be charged,
and such fee shall be divided by the Legal
Remembrancer between the two Pleaders concerned in pro-
portion 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. When time will permit, and when Legal questions
of importance or difficulty arise, the Legal
Remembrancer should be consulted in every
stage of litigation Government.

122. Whenever any particular instructions seem requisite
in the conduct of any suit, appeal or miscellaneous proceeding,
the Government Pleader shall take the
particular instructions when ordered by the District Officer and act
upon them.

123. No civil proceeding of any kind shall be instituted
or defended in the High Court unless
under the orders of the Legal Remem-
brancer. (* * *)

124. 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.]

4. Deleted by G.S. No. 6.
5. Amended by G. S. No. 7.
5. Substituted by G.S. No. 21.

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
submitted therewith, unless the actual wording of the
document is of importance, in which case a trans-
lation 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 suffi-
cient to write a translation under any vernacular words that
appear on the map. The vernacular figures need not be
translated.

125. 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 Commis-
sioner any sum beyond that amount should be passed by
the Commissioner.

126. All civil suits and appeals to which Government
pleader 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
Ward's estate by the manager.

127. The District Officer shall, whenever any estate im-
poverished by his administration is about to be re-
leased, ascertain from the Legal Remem-
brancer whether any sums are due on ac-
count of the Legal business of such estate,
and if so, he shall at once remit the amount due.

128. Annual returns in Forms G, H and J shall be submitted
by District Officers to the Legal Remembrancer. Re-
turn G will consist of two parts, Part I, state-
ment of original suits, and Part II, statement of
appeals. Return H will consist of two parts, Part I, state-
ment of costs in original suits, and Part II, statement of cost
in appeals. Return J will consist of two parts, Part I,
statement of decrees 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.

1. Substituted by G. S. No. 32.
2. Substituted by G. S. Nos. 1.

129. 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 form, to enable [him] to have substitution or addition of parties duly made in the records of the proceedings of the High Court in connection with litigation.

CHAPTER IX

Employment of Government Pleaders in Revenue and Settlement Cases

130. Whenever the District Officer considers the employment of the Government Pleader necessary in a settlement or 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 authorise 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. 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 in Assam, giving a short statement of the facts of the case and his reasons for the requisition. On receiving the 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. A Government Pleader 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. 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 District Officer's 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 Departments, for Sadiga and Bapipara Frontier Tracts such bills are to be countersigned by the Legal Remembrancer, Assam].

CHAPTER X

GOVERNMENT PLEADERS

135. All the duties that the Government Pleaders owe under the foregoing rules to 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 matters 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 fixed by Legal Remembrancer.

136A. [The Government Pleader shall not advise private parties on the validity of circulars or orders issued by Government or by the Head of Departments, without the consent of Government.]

137. 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 rules 105-107. Provided that in intricate and heavy suits the Legal Remembrancer may sanction the payment of an additional fee to the associate Pleader.

138. Subordinate Government Pleaders may be appointed at stations 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 directed to submit, with all necessary papers to the Legal Remembrancer, 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 incumbents 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. 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 to act in the office until such Pleader is relieved by Government Pleader duly appointed or until his appointment is cancelled by the District Officer.

4. Submitted by C. S. No. 64.

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. 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 same Pleader to fill the absentee's place.

142. 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 his recommendation to [*] the Judicial Department [for the orders of Government.]

143. 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, by consultation appoint some other Pleader to conduct the suit adjusting the Legal Remembrancer of his having done so and stating the reasons therefor.

5. Drafted by C. S. No. 63.

6. Drafted by C. S. No. 9.

7. Submitted by G. S. No. 3.

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	2
Description of papers	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 Rule 39—

Date on which the papers were returned to Government Pleader under Rule 42—

Date on which the papers were returned to District Officer under Rule 43—

(* * * * *)

All dates filed for hearing of case before submission to (Legal Remembrancer)

1	2
Description of papers	Page

FORM C

Brief index prescribed by Rule 53

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	2
Description of Papers	Page

FORM D

Register of Civil Suits, original and appeal, in all Civil Courts.

(Vide Rule 126)

No. on file of Court, in case of an appeal, also No. of Original suit.	Parties to suit or appeal	Value of suit or appeal	Abstract of plaint and written statements, or grounds of appeal.	Date of decision	Purpose of decision	When any amount is decreed to Government, amount so decreed, and number of cases in which the Register is	Number and date of the Legal Remembrancer's letter sanctioning the plaint, written statement, or appeal.	Remarks		
3	4	5	6	7	8	9	10	11	12	13

M.B.—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 expense of Government, should also be shown in this statement.

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

Governments (Plaintiff)

Government (Defendant)

(Vide Rule 128)

Statement of original suits in which Government was a party in the District of _____ during the year 19_____

1	Serial No.	
2	Number of Register—U	
3	Party against whom decree is given.	
4	By what Court decided.	
5	Date of decree.	
6	Principal.	
7	Interest.	
8	Costs.	
9	Total amount decreed.	
10	Date of execution.	
11	Costs of execution.	
12	Further interest accrued on the total amount in column 9 up to date.	
13	Total of columns 9, 11 and 12.	
14	Total realised.	
15	Balance.	
16	Revised by the authorities.	
17	Net balance.	
18	Remarks explaining the steps taken on each occasion for the recovery of the balance in column 17, or why it could not be realised.	
19	Amount not recoverable by ordinary means.	

(Vide rules 76 and 95)

Register of Civil Suit Decrees passed in favour of Government realised and outstanding in the district of—

FORM B

Assam Schedule XLVIII—B—1

Form No. 3

FORM H (I)

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 SUITS

Remarks	Government (Plaintiff)			Government (Defendant)		
	Amount decreed for Government	Amount decreed Against Government	Cost of litigation	Amount awarded to plaintiff	Amount decreed for Government	Amount decreed Against Government
01	2	4	5	6	7	8
9	Cost of litigation			Cost of litigation		

INSTRUCTIONS:—

- (1) In columns 2 and 6 it will be sufficient to enter the amount of the claims as given in the plaint or affidavits.
- (2) The suits which are not directly instituted by or against Government, but by or against officers of Government in respect of suits 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 Counsel or Government Pleaders, and all expenses incurred in stamps, witnesses' expenses, witness-writers' charges, etc.

N.B.—Appeals to suits by or against Government should also be shown in this statement, in respect of suits done or intended to be done in their official capacity, when the prosecution or defence is undertaken at the expense of Government.

Classes of Courts	Government (Appellant)					Government (Respondent)				
	1	2	3	4	5	6	7	8	9	10
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.										
Total No. of appeals pending or instituted.										
Decided in favour of Government.										
Decided against Government.										
Total decided.										
Percentage of appeals decided in favour of Government.										
Remarks										
Total										

(Vide Rule 129)

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

FORM G—(PART II)

54

FORM II (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

Class of Court	Government (Appellant)			Government (Respondent)			Remarks		
	Amount involved in claims	Amount decreed For Government Against Government	Cost of litigation	Amount involved in claims	Amount decreed 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 given in the plaint or appeal.
- (2) The appeals which are not directly instituted by or against Governments, 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 Counsel 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 No. 10

Annual statement of Decrees realised and amount expended during 19..... (Vide Rule 128)

FORM II (PART I)

Items	Outstanding from last year	Received during the year	Remitted
1			
2	Principal		
3	Interest		
4	Costs		
5	Principal		
6	Interest		
7	Costs		
8	Principal		
9	Interest		
10	Costs		
11	Principal		
12	Interest		
13	Costs		
14	Principal		
15	Interest		
16	Costs		
	Decrees in Civil Suits		
	Decrees in Supreme Court appeals		
	Decrees in Revenue suits		
	Decrees in Miscellaneous		
	Total		

Assam Schedule XLVIII-B
Form No. 11

[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)

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

NOTE.—Only the numbers of decrees is to be shown in the statement.

INSTRUCTIONS.—(1) "Principal" means the amount of decree including costs of the suit. "Interest" means the interest which accrues after the date of 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 2, 3 and 5 of the last year's statement. (Part I as also with column 8 of the yearly statement for the preceding year.)

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

Annual statement of decrees realised and amount expended during 19.....

[FORM J]; (PART I)

Form No. 10—Contd.

(Vide Rule 34)

Alotment for this year—Rs. P.

Total expenditure including the bill—
 Bill No. Head of Account. Voucher No.
 21 Administration of Justice—B. Law Officers—
 (b) Legal Remembrancer—(c) Allowances &
 Honoraria—fees to Government Pleaders?
 Bill for fees of Government Pleader, Shri.
 of for conducting civil suit during
 the month of

1	2	3	4	5	6	7	8	9
Number of cases.	Day & date of Government's sanction to the engagement of Pleader.	Court attended.	Names of first plaintiff or applicants and first defendant or opposite party.	Value of the suit.	Date of attendance.	Fees charged.	Clerk's remuneration.	Remark (certified copy of Decree or order).
1	2	3	4	5	6	7	8	9
				Rs. P. Rs. P. Rs. P.				

Total (in words)..... Received payment.
 Checked with work register and
 Countersigned.....
 Dated..... District..... Government Pleader.....
 Passed for Rs..... Magistrate.....
 Dated..... 196..... Rupees.....
 Examined and entered Pay Rs..... Rupees.....
 Accountant..... Dated..... 19..... 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

PART II.
 CRIMINAL RULES

Appointment of Public Prosecutors

1 All Government Pleaders in the State of Assam are *Ex-officio* Public Prosecutors in the District in which they, for the time being, conduct cases on behalf of Government, they having been appointed as such by the State Government under section 492 of the Criminal Procedure Code, 1898.

1 A. [Appointment of Public Prosecutors:—Whenever the office of Public Prosecutor is vacant, the Deputy Commissioner shall, in consultation with the Sessions Judge, nominate a qualified Pleader for the appointment and submit the papers, to the Legal Remembrancer who shall forward them to the State Government, with his recommendations. The Pleader selected will be appointed by the State Government and will receive his deed of appointment, through the Legal Remembrancer. All appointment made after the 1st July 1940 shall be for a period of three years and may be renewed for further periods if the incumbents are found fit and efficient. A Public prosecutor appointed before the 1st July 1940 shall retire at the age of 69 years unless on consideration of the reports of the Local authorities Government consider that it is in the interests of the public service that they should be retained for a further period to be specified, which period may be extended on like conditions.]

2. In Gauhati the Public Prosecutor shall be generally in charge of all criminal works, while the Government Pleader shall conduct all civil and revenue cases.

3. [The Public Prosecutor at Gauhati shall receive a monthly retaining fee of Rs. 100].

4. The [Government Advocates have] been appointed *Ex-officio* Public [Prosecutors], in all cases coming before the High Court of Assam in its Appellate or revisional jurisdiction. [The Senior Government Advocates, Assam shall receive a monthly retaining fee of Rs. 500 and the Junior Government Advocates Assam, shall receive a monthly retaining fee of Rs. 200 each.]

1. Inserted by C. S. No. 30.

2. Substituted by C.S. No. 80 and modified by C.S. No. 84 and Notification No. J.R. 7161/72, dated 25th June, 1964.

3. Substituted and modified by C.S. No. 79.

4. Added by C. S. No. 81 and modified by Notification No. J.R. 7081/75, dated 19th September, 1956.

5 The Public Prosecutor shall advise the Head of any Government office on any legal matter affecting the interests of Government in connection with the department which such officer represents, without the payment of a fee, such service being covered by his general retainer.

6 The Public Prosecutor shall advise an Officer of the Government consulting him on behalf of a Local Authority over whose proceedings such officer has powers of supervision or control on payment of a reasonable fee for his opinion. In the case of a difference of opinion as to the amount of fee, it shall be fixed by the Legal Remembrancer.

[7 (1) The Deputy Commissioner as the Chief executive authority in the District is the representative of the Government and has the first call on the Public Prosecutor's professional services. The Public Prosecutor (including Government Pleader and *Ex-officio* Public Prosecutor) shall not thereafter accept a brief for the defence, or for an appellant or for an application for revision in a criminal case in any court including the High Court, except with the Deputy Commissioner's permission in writing previously obtained.]

Provided that in a case before the High Court, the Deputy Commissioner shall not grant such permission without the prior approval of the Government.

(2) In the Subdivisional headquarters, where there is a Public Prosecutor, the Subdivisional Officer shall exercise the powers of the Deputy Commissioner in respect of his own Subdivision].

[Explanation.—For the purpose of this rule 'Court' includes any statutory Commission or Committee of inquiry into the conduct of public servants].

5. Substituted by C. S. No. 86

6. Inserted by C. S. No. 87

8 The Public Prosecutor shall defend any Government Officer against whom a prosecution has been brought for acts arising out of the performance of his public duty subject to the conditions laid down in Chapter III.

(B) Employment of Public Prosecutors, Other Pleaders and Counsel.

9. The Deputy Commissioner is authorised to employ the Public Prosecutor without reference to the Legal Remembrancer in any case in a Magistrate's Court within his District which presents difficulties of Law or evidence beyond the capacity of the Court Police.

Provided that at Subdivisional headquarters where there is a Public Prosecutor the Subdivisional Magistrate shall exercise the powers of the Deputy Commissioner in respect of his own Subdivision. In all such cases the fact of his employing the Public Prosecutor and the reasons for doing so shall be reported and a monthly return showing the cost incurred therefor submitted to the Deputy Commissioner.

10. A District Public Prosecutor shall not be so employed that his absence from headquarters will interfere with his prosecution of cases before the Court of Sessions.

11. In cases of appeal and revision before the Court of Sessions the Deputy Commissioner may direct the Public Prosecutor to appear on behalf of Government without reference to the Legal Remembrancer. The Deputy Commissioner shall be responsible that a case does not fall because Government is not adequately represented in the appellate Court. In all important appeals before the Sessions Judge (especially if the appellant is represented by a pleader or Counsel and it is unlikely that the complainant will be so represented) the Deputy Commissioner shall direct the Public Prosecutor to appear for the State.

12. When the employment of an associate Pleader is considered necessary to help the Public Prosecutor in any case, the Deputy Commissioner shall apply beforehand to the Legal Remembrancer for sanction, explaining at the same time the necessity for the extra assistance and the fee proposed. The Legal Remembrancer may sanction any fees allowed under these rules.

13. When the Public Prosecutor is unable to appear in any case or appeal and when the Deputy Commissioner is satisfied that it may without prejudice be conducted by another pleader, the Deputy Commissioner may appoint another pleader to conduct such case or appeal.

14. Without the previous sanction of the Legal Remembrancer, no Public Prosecutor or other pleader may be sent on appointment by a Deputy Commissioner beyond the limits of his own District.

15. In any serious or important case in which the Legal Remembrancer considers that counsel should be employed before any Court other than the High Court, the sanction of Government shall be obtained. Where, however, there is not time to refer the matter to Government, the Legal Remembrancer's sanction will be sufficient. Whenever the Legal Remembrancer records such sanction, he shall immediately report the matter to Government.

(C) Representation of State in the High Court

16. The Senior or one of the Junior Government Advocates will conduct criminal prosecutions in the High Court.

17. If a Deputy Commissioner thinks it desirable that Government should be represented in any criminal appeal or application before the High Court, he shall at once send a notice to the Senior Government Advocate in Form C approved to these rules, giving a short statement of the facts of the case and his reasons for the requisition. A copy of the notice shall at the same time be forwarded to the Legal Remembrancer, Assam, for information.

(D) Procedure in appeal against acquittal

18. (1) When a Deputy Commissioner thinks that an appeal should be filed by the State Government to the High Court under section 417 of the Criminal Procedure Code,

1930, against an original or appellate order of acquittal passed by any Court other than a High Court, he shall address the Legal Remembrancer forwarding all necessary documents and putting the case in such a way that no further reference will be required. Under no circumstances should a reference be made in the absence of the record of the trial itself, the Legal Remembrancer shall submit the case with his opinion for Government's orders. If there appear to be good grounds for preferring an appeal the complete papers shall be sent to the Senior Government Advocate for necessary action. If in any case, the State Government consider a further opinion necessary the opinion of the Advocate General, Assam shall be obtained.

(2) Under the Union Government's instructions, an appeal against an acquittal should be filed within three months of the order of acquittal and the Senior Government Advocate requires the records to reach him within two months of the order of acquittal whenever, therefore, the Deputy Commissioner thinks that an appeal should be filed against an order of acquittal, he should send his recommendation, with the original records, to the Legal Remembrancer, Assam, within one month from the date of the judgment to be appealed against.

[R3] * * * * *

[B.D.] Procedure in moving for enhancement of sentence

18A. Although the High Courts sometimes entertain references under section 438 of the Code of Criminal Procedure for enhancement of sentences (vide J. L. R. 32 Bombay, 162 and 55 Calcutta 417), it is desirable that motions for this purpose should be made whenever possible through the Senior Government Advocate of the High Court. Whenever, therefore, the Deputy Commissioner thinks that a sentence passed by any Court should be enhanced, he should send a report, with all necessary papers to the Legal Remembrancer with the minimum of delay. The Legal Remembrancer shall submit the case with his opinion for Government's Orders.

The report and papers should be sent so as to reach the Legal Remembrancer within one month of the date of the acquittal.

(E) Defence of paupers accused of murder.

19. (1) When an accused is committed for trial on a charge of murder, the committing Magistrate shall at the time of passing order for his commitment enquire of the accused whether he will make arrangements for his own defence in the Court of Sessions or wishes to be defended at the expense of Government, and shall communicate the result of his enquiry to the Sessions Judge direct filing a copy of the letter with the commitment record. If the accused expresses a wish to be defended at Government expense, the committing Magistrate shall state in the letter whether in his opinion the accused can afford to engage a pleader in the Sessions Court, giving the grounds for his opinion. It shall be stated whether the accused was defended by a pleader in the Lower Court.

(2) On receipt of intimation that a prisoner committed to the Court of Sessions on a charge of murder desires to be defended at the expense of Government, it has been arranged that the Sessions Judge shall, unless he sees reason to believe that the prisoner is in a position to pay for his own defence, engage a pleader for the purpose. To this end the Sessions Judge shall maintain a list of barristers or pleaders of the districts in which Sessions trials are ordinarily held who are willing to accept briefs for the defence of prisoners on their trial for murder; and ordinarily one of the persons on such list should be engaged.

The list should be revised once in every three years, but the Judge shall have a discretion to revise it more frequently if he considers it desirable.

(a) The pleaders on the panel shall be engaged by rotation except where an accused chooses a pleader out of his turn, in which case the pleader thus chosen shall lose his ordinary turn unless he is again chosen out of his turn.

(b) The wishes of the accused shall be ascertained by the Sessions Judge through the District Magistrate who shall depute a magistrate to interview the accused in jail with a list of pleaders on the panel.

(c) The Sessions Judge shall keep the District Magistrate supplied with an up-to-date list of pleaders on the panel, not excluding those who have had their turn, whether by rotation or because they were chosen by an accused out of their turn.]³

(3) Notwithstanding these precautions if it appears at the commencement of the trial that an accused charged with murder is undefended, the Public Prosecutor shall bring the fact to the notice of the presiding Judge, and request him to appoint a pleader for the defence of the prisoner. The Judge may then appoint any barrister or pleader on the list referred to above, or any member of the Bar present in Court, to defend the prisoner.

(4) (Any person) appointed under sub-rule 2 or 3 of this rule shall receive a fee not exceeding [Rs. 32]⁴ a day to be fixed by the Judge: provided that in special cases, for reasons to be recorded, the Judge may, with the sanction of the Legal Remembrancer, allow a higher fee. When however the murder case for the defence of which such a person is engaged, is simply adjourned or when his appearance in a Court is for half a day or less, a fee amounting to only half that fixed under this sub-rule shall be allowed.

20. The Deputy Commissioner shall supply to the barrister or pleader appointed to defend the accused, free of cost, and in time for him to study the papers, copies of all papers including exhibits in the A file of the record of the proceedings in the Court of the committing Magistrate.

4. Added by C.S. No. 25.

5. Substituted by C.S. No. 16

21 (a) In cases in which an accused is called on by the High Court to show cause why a lesser sentence should not be enhanced to a sentence of death, the [Senior Government Advocate will inform the Legal Remembrancer who] will communicate with the District Magistrate concerned, and ascertain whether the accused will be able to defend himself in the High Court or not. If the accused was defended as a pauper at State expense in the Sessions Court, he will obviously require to be similarly defended before the High Court. But cases may arise when the accused defended himself at his own expense in the Lower Court, and yet may be too poor to meet the cost of his defence in the High Court. In such cases enquiries will be made by the Magistrate before submitting his reports to the Legal Remembrancer, [* * *]. If the District Magistrate reports that the accused had not enough means to defend himself in the High Court, the Legal Remembrancer [* * *] will engage counsel for the accused and supply him with copies of charges, depositions and exhibits prepared for the Government Counsel.

When the High Court of their own motion or at the instance of a private party issue a rule of this kind, it is anticipated that a notice will be served on the Legal Remembrancer [* * *] to enable him, if necessary, to make arrangements for the defence of the accused.

(b) In regard to cases where a sentence of death is referred by a Court of Sessions to the High Court for confirmation under the provisions of section 374, Criminal Procedure Code, procedure similar to that described in paragraph (a) above will be followed. The Court of Sessions will, when submitting the case to the High Court, send intimation to the District Magistrate, who will inform the Legal Remembrancer, [* * *] whether the accused has means to defend himself at the reference.

(c) An accused in all these cases shall be informed of the arrangements made in his behalf.

1. Substituted C.S. No. 80

2. Omitted by C. S. No. 89

3. Substituted by C.S. No. 16

Prosecutions by or against Government Officers

22. When a prosecution is instituted by a Government Officer and the charge is of a cognizable offense, the prosecution shall ordinarily be conducted by the police. Where the offense is non cognizable or, though cognizable, calls for special arrangement, the officer who prefers the complaint shall refer for instructions to the Deputy Commissioner. The Deputy Commissioner may either instruct the officer himself to prosecute or if the case is of a complicated or difficult nature rendering legal assistance necessary, direct the Public Prosecutor to prosecute, and, if he gives such a direction, shall report the matter for the sanction of the Legal Remembrancer. The Legal Remembrancer shall check any tendency to employ the Public Prosecutor or pleaders unnecessarily.

23. When a prosecution is instituted by a public officer against a [Public officer] for acts done in the discharge of his public duty, the latter shall be left to defend himself, but Government will defray all reasonable costs incurred in the event of his being acquitted and it being shown that his conduct throughout has been free from all blame. If, though the accused Government officer is acquitted of the offense charged, his conduct should appear not to be free from blame, he shall receive only such portion, if any, of the cost incurred by him as may seem fitting to the State Government.

24. When a prosecution is instituted by a private person against a [Public officer] for acts done in the discharge of his public duty, the following course shall be followed:-

- (a) In regard to prosecutions against officers referred to in Section 197, Criminal Procedure Code, 1898, there will always be ample time to obtain the orders of Government for undertaking the defence of the officer

Substituted by G. S. No. 54.
Substituted by G. S. No. 55.

and these shall be obtained. In the case of prosecutions against other public servants, when it is impossible to obtain the orders of Government before the commencement of the proceedings, it must rest with the local officers to decide, subject to the control of the Government, whether the defence shall be undertaken by Government or not. When, however, it is probable that the orders of Government can be obtained in time, a full report shall be at once submitted to Government through the Legal Remembrancer.

- (b) If such orders are received before the commencement of the proceedings, they shall be acted on. If not, the local officers shall themselves decide upon the course to be taken.
- (c) In pretty cases which, in the opinion of the Deputy Commissioner, do not present any difficulty of Law or evidence, the prosecuted officer shall make his own defence, and the Deputy Commissioner shall see that in such cases no pleader is engaged. In the same way, requests for the payment of Counsel will be entertained only under very exceptional circumstances.
- (d) Where the prosecuted officer is discharged or acquitted, the case will be dealt with as provided under rule 23, allowance being made for the expenses (if any) realizable under the order of Court.
- (e) An incriminated officer who is left to arrange for his own defence, shall before engaging a lawyer report in writing the name of the person selected and his proposed remuneration to the Deputy Commissioner through the head of his office; and it will then be for the Deputy Commissioner to say whether in the event of his being acquitted, he will advise Government to pay the whole or only part of the fees proposed.
- (f) Charges, the payment of which may be applied for under these rules, shall be moderate, and Government do not undertake to pay unnecessary expenses which an officer concerned may choose to incur.

25. The Public Prosecutor and the Assistant Public Prosecutor when employed at their respective stations, subject to any special order of the Legal Remembrancer, entitled to a daily fee of Rs. 40 for a day's work irrespective of the number of cases or appeals he conducts in the day except that for any day on which he appears only in a case or appeal which is adjourned without hearing and that for bail petitions, he shall be entitled only to a fee of Rs. 16.

26. In any case where the sitting of the Court has been prolonged beyond usual hour, or when the prosecution may have involved exceptional labour or ability a fee not exceeding Rs. 50 a day to the Government Pleader or the Public Prosecutor as the case may be, may be sanctioned by the Legal Remembrancer. The Deputy Commissioner or the Sessions Judge, as the case may be, when recommending a higher fee should state the ground upon which the special recommendation is based.

27. When a Public Prosecutor or the Assistant Public Prosecutor, as the case may be, is employed to conduct a case at any place within his District other than the headquarters station, he will be allowed (double his ordinary fee) for every day's absence from his headquarters. When sent on deputation to another district he may be allowed a fee not exceeding [Rs. 100] for each day as the Legal Remembrancer may decide.

[27 A. When a Government Pleader is sent on deputation for the purpose of consultation or advice in any matter to any place outside his headquarters station, he will be allowed double the ordinary fee admissible in criminal cases for each day of his absence from headquarters. Not travelling allowance will be allowed.]¹

28. [* * * * *]²

29. When fees exceeding those ordinarily allowed are claimed, whether at the headquarters of a district or elsewhere, reasons therefor must be given and supported by a recommendation from the Deputy Commissioner or Sessions Judge.

30. [* * * * *]³

1. Substituted by C. S. No. 70

2. Inserted by C. S. No. 92

3. Deleted by C. S. No. 69

4. Deleted.

31. (1) Whenever a pleader other than the Public Prosecutor (which expression includes an Assistant Public Prosecutor) is employed in conducting a case on behalf of the State he shall ordinarily be paid at the rate of—

(a) Rupees 25 a day when engaged within his headquarters station; and

(b) Rupees 25 a day when engaged away from headquarters station but within the District.

The payment of any increased or special fee may be sanctioned by Legal Remembrancer subject to a maximum of—

(c) Rupees 30 a day when engaged within the headquarters station;

(d) Rupees 35 a day when engaged away from his headquarters station but within the district.

(2) When a case is adjourned or any bail petition is moved a fee of Rs. 10 is allowed for the day.

(3) Whenever such pleader is employed to conduct case on behalf of the State, outside his own district he shall be allowed Rs. 40 for every day's absence from headquarters.

32. [* * * * *]¹

33. The Public Prosecutor and all pleaders and appointed under the foregoing rules shall keep a register in Form B appended to these rules. This register shall be submitted for countersignature to the Presiding officer of every court in which the Public Prosecutor or Pleader has appeared.

Within ten days of the close of each month, a bill shall be submitted in Form A appended to these rules for fees for all work done including both original and appellate work with a true copy of the register relating to that month. Where a Public Prosecutor or Pleader has been employed in cases arising in more than one district, a separate bill should be submitted for each district. All bills must be checked by the Deputy Commissioner before being forwarded to the Legal Remembrancer.

25. The Public Prosecutor and the Assistant Public Prosecutor when employed at their respective stations, subject to any special order of the Legal Remembrancer, entitled to a daily fee of Rs. 40 for a day's work irrespective of the number of cases or appeals he conducts in the day except that for any day on which he appears only in a case of appeal which is adjourned without hearing and that for bail petitions, he shall be entitled only to a fee of Rs. 16.

26. In any case where the sitting of the Court has been prolonged beyond usual hour, or when the prosecution may have involved exceptional labour or ability a fee not exceeding Rs. 50 a day to the Government Pleader or the Public Prosecutor as the case may be, may be sanctioned by the Legal Remembrancer. The Deputy Commissioner or the Sessions Judge, as the case may be, when recommending a higher fee should state the ground upon which the special recommendation is based.

27. When a Public Prosecutor or the Assistant Public Prosecutor, as the case may be, is employed to conduct a case at any place within his District other than the headquarters station, he will be allowed [double his ordinary fee] for every day's absence from his headquarters. When sent on deputation to another district he may be allowed a fee not exceeding [Rs. 100] for each day as the Legal Remembrancer may decide.

[27 A. When a Government Pleader is sent on deputation for the purpose of consultation or advice in any matter to any place outside his headquarters station, he will be allowed double the ordinary fee admissible in criminal cases for each day of his absence from headquarters. Not travelling allowance will be allowed.]

28. [* * * * *]

29. When fees exceeding those ordinarily allowed are claimed, whether at the headquarters of a district or elsewhere, reasons therefor must be given and supported by a recommendation from the Deputy Commissioner or Sessions Judge.

30. [* * * * *]

1. Substituted by C. S. No. 70

2. Inserted by C. S. No. 92

3. Deleted by C. S. No. 69

31. (1) Whenever a pleader other than the Public Prosecutor (which expression includes an Assistant Public Prosecutor) is employed in conducting a case on behalf of the State he shall ordinarily be paid at the rate of—

(a) Rupees 25 a day when engaged within his headquarters station; and

(b) Rupees 25 a day when engaged away from headquarters station but within the District.

The payment of any increased or special fee may be sanctioned by Legal Remembrancer subject to a maximum of—

(c) Rupees 30 a day when engaged within the headquarters station;

(d) Rupees 35 a day when engaged away from his headquarters station but within the district.

(2) When a case is adjourned or any bail petition is moved a fee of Rs. 10 is allowed for the day.

(3) Whenever such pleader is employed to conduct case on behalf of the State, outside his own district he shall be allowed Rs. 40 for every day's absence from headquarters.

32. [* * * * *]

33. The Public Prosecutor and all pleaders and appointed under the foregoing rules shall keep a register in Form B appended to these rules. This register shall be submitted for countersignature to the Presiding officer of every court in which the Public Prosecutor or Pleader has appeared.

Within ten days of the close of each month, a bill shall be submitted in Form A appended to these rules for fees for all work done including both original and appellate work with a true copy of the register relating to that month. Where a Public Prosecutor or Pleader has been employed in cases arising in more than one district, a separate bill should be submitted for each district. All bills must be checked by the Deputy Commissioner before being forwarded to the Legal Remembrancer.

CHAPTER V

General

34. The Deputy Commissioner shall see that a Public Prosecutor is properly briefed in all cases in which he is engaged and that briefs are sent to him in time.

35. [* * * * *]

36. A Public Prosecutor is not entitled to any halting allowance when away from the headquarters, but is recognised as a Government Officer of the second grade under rule (153) of the subsidiary Rules for the purpose of drawing travelling expenses only.

36A. The Legal Remembrancer is authorised to grant travelling expenses to Legal Practitioners who are engaged, in the interests of the public service, to conduct cases, elsewhere than in their own stations, provided such charges do not exceed what would be admissible, under parallel circumstances, to a Government Officer of the second grade referred to in Subsidiary Rule 153.

37. The Legal Remembrancer is the countersigning officer for all bills of fees to pleaders and counsel in criminal cases.

38. [The Legal Remembrancer is the countersigning officer] for the purpose of countersigning travelling allowance bills for Public Prosecutors.

39. Whenever the office of Public Prosecutor is vacant, the Deputy Commissioner, in consultation with the Sessions Judge, shall nominate one or more qualified pleaders for the appointment and submit the papers [* * *] to the Legal Remembrancer. The Legal Remembrancer shall forward with his opinion the name or names of the nominated candidates to Government for such order as they may think fit to pass.

4. Deleted.

4. Substituted by C. S. No. 63.

3. Substituted by C. S. No. 5.

40. In the event of a temporary vacancy in the office of Public Prosecutor, the Deputy Commissioner shall, in consultation with the District Judge, appoint a qualified pleader to act in the office until relieved by the Public Prosecutor duly appointed. The Deputy Commissioner shall forthwith report on to the Legal Remembrancer, [* * *] the occurrence of every such vacancy and the making or cancellation of every such appointment.

41. When a Public Prosecutor receiving a retainer declines leave of absence, he shall submit an application to the Deputy Commissioner, who will forward his application to the Legal Remembrancer and state whether in his opinion leave should not be granted. If the Deputy Commissioner considers that the leave should be granted, he will submit his recommendation for filing up the leave vacancy.

42. A Public Prosecutor receiving a retainer is allowed leave of absence under Subsidiary Rule [131] without loss of his retainer, provided that the Deputy Commissioner can make suitable arrangements for the conduct of criminal work during his absence and that no extra cost to Government is entailed.

43. When a Deputy Commissioner sees cause to recommend the removal or suspension from office or other punishment of a Public Prosecutor, he shall submit [* * *] a report of the facts of the case to the Legal Remembrancer and the Legal Remembrancer shall forward the report to the Government stating his opinion as to whether the Public Prosecutor should or should not be removed or suspended. The State Government will pass such orders as they may deem fit.

4. Omitted by C. S. No. 63.

5. Substituted by C. S. No. 63.

Voucher No. of list of payments for 19.

FORM A

(Vide rule 33)

Bill for fees of Government Pleader of for conducting Criminal cases during the month of 19.....

(1)	(2)	(3)	(4)	(5)	(6)
Number of case	Court assigned	Name of the first accused or appellants section of the Act	Date of attendance	Fees charged	Remarks (If expenses charged, the court case or other reasons)

Total (in words) Rupees

Checked with Work Register and Countersigned for Rupees (in words)

Dated 19

District Magistrate, Rupees

Passed for Rs.

Dated 19

LEGAL REMEMBRANCE, ASSAM.

Received contents.

Government Pleader.

Examined and entered

Pay Rs. Rupees

Dated 19

Treasury Officer.

Accountant

FOR USE IN THE ACCOUNTANT GENERAL'S OFFICE

Noted in page of Audit Register.

Admitted Rs.

Objected Rs.

for reasons given below.

Auditor

Superintendent.

(Vide rule 33)

Register of work done by Prosecutor, during the month of Public

1	2	3	4	5	6
Date	Court	Whether original case or appeal	Name of first accused or appellants Section of the Act	Signature of prosecuting officer	Remarks

FORM.—C

(Vide rule 17)

From

To

THE SENIOR GOVERNMENT ADVOCATE OF THE
ASSAM HIGH COURT, GAUHATI

CRIMINAL _____ of _____
Appeal No. _____ of
Case No. _____ of
Appellant

Sir, Petitioner.

Please cause appearance to be entered on behalf of the State in the abovementioned case. A short statement of the facts of the case, and the reasons for making this requisition, are given below :—

PART III

Rules for the Government Advocates of the Assam High Court

PART III*

Rules for the Government Advocates of the Assam High Court

1. The Senior and Junior Government Advocates shall be appointed by the State Government in consultation with the Legal Remembrancer. All appointments shall be for a period of three years and may be renewed for further periods if the incumbents are found fit and efficient. Provided that on attaining the age of 60 years they shall retire unless Government consider that it is in the interests of the public service that they should be retained for a further period to be specified, which period may be extended on like conditions. On appointment by the State Government, the Government Advocates selected will receive their deeds of appointment through the Legal Remembrancer.

[1A. The State Government may, constitute a panel of lawyers who shall act on behalf of the Government in cases transferred to them by the Senior Government Advocate. A member of the panel shall be entitled to staff daily fees as admissible to the Government Advocates under these Rules. No retaining fee shall be allowed.]

2. The Senior Government Advocate shall get a monthly retainer of Rs.200 and the Junior Government Advocate shall get a monthly retainer of Rs.200 each.

3. (a) The Government Advocates (Senior and Junior) will represent Government or Court of Wards, when such representation has duly been assigned to them by the Legal Remembrancer in appeals, review, revision, reference and miscellaneous cases before the High Court :

Provided that nothing in the above clause shall be deemed to require the Court of Wards, unless it thinks proper, to retain the Government Advocate to represent it in appeals or matters of review, reference or revision wherein an advocate has already been engaged for the due presentation of Wards Estate concerned previous to the assumption of the management of the estate by the Court of Wards.

(b) They will represent Government before the High Court in references under the Stamp Act and in any other analogous references; also in matters arising out of Legal Practitioners Act/Advocates Act and in any other miscellaneous matters of Civil, Revenue or Criminal nature in which Government require representation.

(c) They will give advice to Government or the Legal Remembrancer or the Government Pleaders and Public Prosecutors in any Civil, Criminal or Revenue matters when required.

(d) They will examine draft plaints, written statements, petitions, etc., prepared by Government Pleaders of the District when so required by the Legal Remembrancer.

(e) The senior Government Advocate shall, if called upon prepare a note on law and facts for the use of the Legal Remembrancer regarding an appeal to the [Supreme Court]. The fee for the preparation of this note in each case will be determined by the Legal Remembrancer.

(f) They will do such other duties as may be assigned them by the Legal Remembrancer or the State Government from time to time.

4. The Government Advocates are debarred from—

(a) advising or appearing against Government or the Court of Wards in any matter, or in any case, either *in person* or *in vic.* the High Court or in any other Courts ;

(b) advising any Ward without the previous permission of the Court of Wards.

(c) advising private parties in cases in which they are likely to be called on to advise Government ;

(d) defending accused persons in Criminal prosecution unless authorised by Government.

5. Whenever the Senior or the Junior Government Advocate desires leave of absence he shall submit his applications to the Legal Remembrancer who will consider as to whether or not leave should be granted. The Legal Remembrancer will select a substitute to fill the absentee's place.

72 6. The Senior and the Junior Government Advocate shall be allowed a daily fee as follows:—

	Civil Cases	Rs.
(1) First appeals	...	85
(2) Other matters	...	51
(3) Matters relating to Art. 226-28 of the Constitution.	...	85
(4) Tax cases	...	100

Fees to Government Advocates

Criminal Cases

(1) Appeals and Jury references	...	85
(2) Other matters	...	51

Revenue Cases

(1) Revenue appeals and other matters	...	34
---------------------------------------	-----	----

Irrespective of the number of appeals or other matters they conduct in a day, except that for any day on which they appear only in a case or appeal which is adjourned without hearing, they shall be entitled to a fee amounting to only half of that fixed under the rules. If they appear before the High Court in more than one case in a day, they are entitled to get the highest daily fee fixed for any of those cases. No fee shall be admissible for appearance on a day when only judgment is delivered.

7. When a Government Advocate (Senior or Junior) is employed to conduct a case on deputation to other stations, he may be allowed double his ordinary fee not exceeding Rs. 200 for the days of travelling and for the days of appearance before the court. No fee is admissible for other days of halt. He is not entitled to travelling allowance for the journey on halt.

7A. When a Government Advocate (Senior or Junior) is required to leave the headquarter station for the purpose of consultation or advice in any matter, he will be allowed double his ordinary fee for each day of his absence from headquarters. No travelling allowance will be allowed for journey or halt.

7 8. The Legal Remembrancer is the countersigning officer for all bills of fees to Government Advocates in all Civil, Revenue, Criminal cases, and other matters.

9. The Senior or the Junior Government Advocate will, when required and permitted by the Government of Assam, work for other Governments in India at the same rates of fees as for the Government of Assam. Where such other Government in India normally utilise the services of our Senior or Junior Government Advocate for work in Assam the latter will do so in the case of Government of Assam tender advice free.

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APPENDIX I

**Rules Relating To The Duties, Fees, Etc., Of The
Advocate General, Assam**

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76 Rules Relating To The Duties, Fees, Etc., Of The Advocate General, Assam

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Part VII—Miscellaneous
Part VIII—Control of expenditure
Part IX—General

Rules relating to the duties, fees, etc. of the Advocate General, Assam.*
 In exercise of the powers conferred by Article 165(2) of the Constitution of India and in supersessions of all previous orders on the subject, the Governor of Assam is pleased to assign the duties, and fix the remuneration to be paid, to the Advocate General of Assam, as specified below:—

PART I

Duties.—The Advocate General shall—

- (i) advise on legislative measures and rules and by-laws pending before the State Government and on Bills of the Union sent to him for opinion;
- (ii) examine draft plaints and written statement in important Government cases when so required by the Government;
- (iii) advise upon any matter upon which he is consulted by the Legal Remembrancer of Assam at the instance of the Government;
- (iv) furnish Governor with written opinions in respect proceedings and on all other matters on which such opinion may be required;
- (v) conduct before the High Court of Judicature in Assam at the instance of the Government, appeals in Civil, Criminal and Revenue Cases;
- (vi) appear in the Supreme Court in all cases (Civil or Criminal and other matters) to which the Government are party, or in which, although, not themselves a party they find it necessary to order a watching brief, or to instruct somebody else to appear in that Court, if required to do so by the Government;
- (vii) apply to the Court in all suits and appeals conducted by him, to which the Government are a party and in which the decisions are adverse to the Government, on the very date of delivery of judgment for a copy of it and to forward such copy to the Government without delay;

*The duties, etc., of the Advocate General, Assam were fixed by the Government under Article 165 of the Constitution of India, 1950, Notification No. J.D. 77/56, dated 12th April 1951.

(viii) forward a copy of the judgment to the Government to inform them of the date before which further action, if any, should be taken;

(ix) report to the Government as soon as possible to the advisability of appealing against a decision;

(x) assist the High Court of Judicature in Assam, when required by the Honourable the Chief Justice, in cases of special importance or difficulty, on occasions of enquiries made by the Court into the conduct of legal practitioners;

(xi) perform such other duties of a legal character, as may be referred or assigned to him by the Governor from time to time;

(xii) discharge functions conferred on him by or under the Constitution of India, or any other law for the time being in force;

(xiii) report to Government any flaws in legal enactments and any facts arising therefrom or in connection with cases conducted by him which he thinks, or the High Court desires, should be brought to the notice of Government;

(xiv) in particular, bring to the notice of Government any case in which the High Court, in confirming or imposing a minimum legal penalty, expresses or indicates an opinion that a less severe penalty would serve the end of Justice;

(xv) to protect public rights in such matters as public charities and public nuisances.

PART II

Fees.—The Advocate General shall be paid:—

[(i) a monthly retainer of Rs. 1,600;

(ii) for appearance in the High Court of Judicature in Assam and Nagaland a daily fee of Rs. 150 for all categories of cases]*

*Substituted by notification No. 110 dated 22nd Feb. 1957.

Note.—Analogous criminal appeals, miscellaneous appeals, and applications arising from the same judgment shall be deemed to be one appeal, reference or application, for the purpose of this rule.

(iii) for appearance in the Supreme Court:—

(a) in Civil and Income-tax matters a taxed fee not exceeding 60 gold mohurs per diem;

(b) in Criminal matters a daily fee of Rs. 400;

Note.—One gold mohur is equivalent to Rs. 16 (Rupees sixteen).

(iv) for appearance before any High Court other than the High Court of Judicature in Assam in all Civil, Criminal and other matters, a daily fee to be fixed by the Governor on consideration of each case on merit;

(v) for appearance before any Tribunal, Court of Enquiry or Arbitration proceeding outside Assam, a daily fee of Rs. 12

(vi) for appearance before a Tribunal, Court of Enquiry or Arbitration proceeding in Assam, a daily fee of Rs. 100;

[(v) for appearing before Commission of Enquiry, daily fee of Rs. 350 (Rupees three hundred and fifty) in addition to the normal Travelling allowance/Daily allowance admissible to him irrespective of the place where the Commission sits]*

(vii) appearance in Courts other than the Supreme Court, High Courts, Tribunals, Courts of Enquiry or Arbitration proceedings:—

(a) in civil appeals, cases and matters, a daily fee of Rs. 100;

(b) in criminal cases or matters, a daily fee of Rs. 85;

(viii) in stamp cases and cases under Succession Act, a daily fee of Rs. 50;

(ix) appearance in cases under the Legal Practitioners Act a daily fee of Rs. 50;

Note.—Two or more cases argued together constitute one appearance

for opinions in cases of Court of Wards;

(xi) for appearance in Court of Wards cases when so required by the Court of Wards, the same fee as fixed above which will not be less than that provided for his appearance on behalf of the Government in the Supreme Court, High Courts, Tribunals or other Courts as the case may be;

Note.—When a case is adjourned without hearing or decreed *ex parte* the Advocate General shall be entitled to half the fees fixed under the rules.

(xii) the consultation or personal fee in the case in which the Government is a party.

Note.—The Advocate General may be paid a special personal and consultation fee to be fixed by the Governor in complicated cases on the recommendation of the Legal Remembrancer.

PART III

Special Fees.—The Governor may grant fees to the Advocate General in any case falling within the classes for which ordinarily he would receive no fees provided they are of exceptional difficulty or that the hearings have been or are likely to be unduly prolonged. The Governor may also engage the Advocate General on the recommendation of the Legal Remembrancer at a fee higher than the fees prescribed under the rules above for any class or classes of cases.

PART IV

Travelling and Halting allowance.—(i) When traveling on duty by rail, steamer or road the Advocate General shall be entitled to travelling allowance at rates admissible to Government servants of the senior grade*; and for halts away from headquarters he shall draw daily allowance at Rs. 12-50⁰⁰ for all days on duty on which he does not draw any fee. For halts at places outside the State he shall be allowed daily allowance at double the rate admissible within the State provided no fee is drawn for the days of such halt;

*Substituted by Notification No. L.J.R. 2054(17), dated 14th March, 1966.

(ii) For journeys by air the Advocate General is entitled to a mileage allowance at rates admissible to Government servants of the senior grade;

If available, return tickets at reduced rates should, always, be purchased when the Advocate General expects to perform the return journey by air within the period during which a return ticket is available. The mileage allowance for the forward and return journeys when such return tickets are available will, be at the same rates as admissible to Government servants of the Senior Grade. The Advocate General is not entitled to draw daily fee during the days of air travel.

(iii) For journeys by Government aeroplane and by plane chartered by Government, the Advocate General is entitled to the daily allowance ordinarily admissible to him. Where, however, on same day the air journey is preceded or followed by—

(a) a journey by rail or public steamer or

(b) a journey by road, the amount admissible will be as follows:—

In the case of (a) the daily allowance admissible at above rates plus the railway or steamer fare admissible under the rule. In the case of (b) the daily allowance admissible at above rate, unless the journey by road exceeds 32 kms. If the journey by road exceeds 32 k. m. mileage allowance is admissible in addition to daily allowance.

In addition to the cases under (a) and (b) above, any extra daily allowance will be admissible during the journey by air.

(iv) The Advocate General when making a journey by air in a Government machine or a machine chartered by Government for the purpose, shall pay a first class full or half railway fare, as the case may be, to Government on behalf of each person not entitled to travel in that machine who may accompany him.

Note.—If the Advocate General wishes to take with him any "entitled" person in a Government machine or in a machine chartered by Government he should obtain previous sanction of the Governor.

PART VII

Miscellaneous.—The Advocate General shall be entitled to lead whenever he represents Government and the Court of Wards in any Court in association with other counsel.

PART VIII

Control of expenditure.—The Advocate General will be allowed as permanent advance for contingent expenditure a sum which shall be determined by the Governor from time to time. Detailed contingent bills will be submitted by him to Government.

NOTE.—The existing amount is shown in the Schedule below.—

PART IX

General.—The directions are subject to modification from time to time under orders of the Governor.

SCHEDULE I

[Rule (I) Part VIII]

Permanent advance Rs. 30.

PART V

Leave.—The Advocate General will be allowed leave not exceeding such period and on such conditions as would apply in the case of an officer of corresponding grade under the ordinary leave rules provided that during a period in which leave on average pay would be admissible, he shall be allowed half the amount of his retainer and during a period for which half average pay will be admissible, one quarter of the retainer and so on.

NOTE.—Mere absence from the headquarter station with intimation to Government will not amount to taking leave.

PART VI

His limitations.—The Advocate General as a condition of his service is debarred from—

(i) appearing or advising against Government or Court of Wards in any case either in the High Court or in any other Court, and from giving professional advice to any Ward without the previous permission of the Court of Wards.

NOTE.—This rule forbids appearance or advice for the opposite party in which the expenses of a private party are defrayed by Government.

(ii) defending accused persons in criminal prosecutions, unless permitted by the Governor;

(iii) advising private parties in cases in which he is likely to be called on to advise Government;

(iv) accepting brief from a legal practitioner or other person concerned in a case under the Legal Practitioners Act, without ascertaining whether his services will be required by the Governor in that case;

(v) appearing in any appeals against orders for the settlement of any lease, contract or for the grant of permits issued by Government or any officer of authority under Government;

(vi) accepting appointment as a Director in any Company without the sanction of the Governor;

NOTE.—Subject to the provisions of these rules and provided his private practice does not interfere with the efficient discharge of his official duties, the Advocate General will be permitted to practice without restriction.

BY REPUBLICAN
 IN SENATE
 FEBRUARY 21, 1962

APPENDIX 2

ASSAM LEGAL SERVICE RULES
 1962

CHAPTER I
 GENERAL PROVISIONS

ARTICLE 1
 NAME AND SCOPE

ARTICLE 2
 OBJECT AND PURPOSE

ARTICLE 3
 JURISDICTION

ARTICLE 4
 OFFICE

ARTICLE 5
 MEMBERSHIP

ARTICLE 6
 ELECTIONS

ARTICLE 7
 TERM OF OFFICE

ARTICLE 8
 REMOVAL

ARTICLE 9
 SALARY AND ALLOWANCES

ARTICLE 10
 VACANCIES

ARTICLE 11
 RESIGNATION

ARTICLE 12
 DEATH

ARTICLE 13
 DISQUALIFICATION

ARTICLE 14
 DISCIPLINE

ARTICLE 15
 MISCELLANEOUS

The 29th October, 1962

No. LJJ.102/61/16.—The Governor of Assam is pleased to constitute a separate State Legal Service.

B. SARMA,

Secretary to the Government of Assam, Law Department.

No. LJJ.102/61/17.—In exercise of the powers conferred by the Proviso to Article 309 of the Constitution of India, the Governor of Assam is pleased to make the following special rules in respect of the Assam Legal Service.

THE ASSAM LEGAL SERVICE RULES, 1962.

Rules.— ARRANGEMENT OF RULES—

Part I—General.

1. Short title and commencement.
2. Definitions.
3. Constitution of the Assam Legal Service.

Part II—Cadre.

4. Strength of the Service.

Part III—Recruitment, probation and confirmation, etc.

5. Recruitment.
6. Absorption of existing members.
7. Selection of candidates.
8. Qualifications for appointment.
9. Promotion.
10. Seniority.
11. Probation and confirmation.

Part IV—Pay.

12. Pay.
13. Leave, pension, etc.
14. Other conditions of service.
15. Power of relaxation.

THE ASSAM LEGAL SERVICE RULES, 1962.

PART I.—GENERAL

1. (1) These rules may be called the Assam Legal Service Rules, 1962.

(2) They shall come into effect from the date of publication.

2. In these rules unless there is anything repugnant to the subject or the context:—

(i) "Advocate or Pleader" means an Advocate or Pleader enrolled under the Indian Bar Councils Act, 1926 or the Legal Practitioners Act, 1879 respectively and includes a person who is qualified to be enrolled as an Advocate under the Advocate's Act, 1961;

(ii) "Existing members of the Service" means those who are holding the post of Legal Remembrancer, Draftsman, Deputy Legal Remembrancer and Law Assistant to Legal Remembrancer to the Government of Assam;

(iii) "Service" means the Assam Legal Service;

(iv) "Judicial Officer" means an Officer holding a post in the Assam Judicial Service, Senior or Junior;

(v) "Members of the Service" means Officers appointed to the Assam Legal Service from the date of publication of these rules;

(vi) "Schedule" means a Schedule appended to these rules;

3. There shall be constituted a Service to be known as the Assam Legal Service consisting of:

Constitution of the Assam Legal Service.

- (a) persons appointed to the Service at the commencement of these rules under 6; and
- (b) persons recruited to the Service after such commencement under rule 7.

4. (1) The strength of the Service and of each kind of post therein shall be determined by the Governor from time to time.

(2) The present strength of the Service and each kind of post therein existing on the date of publication of these rules shall be as given in Schedule I.

(3) The Governor may from time to time leave unfilled or hold in abeyance any post in the cadre or may increase the cadre by the creation of additional permanent or temporary posts as may be found necessary.

PART III.—RECRUITMENT, PROBATION AND CONFIRMATION, ETC.

5. Every post in the cadre shall be filled up by appointment Recruitment thereof.

- (a) A member of the Service in the appropriate grade, or
(b) any other person eligible for recruitment to the Service in the appropriate grade.

6. The existing members of the Service shall be deemed to have been appointed substantively in their respective posts in the Assam Legal Service from the date of publication of these rules.

Provided that any member having a lien in any other Service under the Government shall not be so absorbed unless he exercises an option to be so absorbed, and option once exercised shall be final.

7. (1) In case of selecting persons for appointment to the Service directly, the Governor shall make selection from qualified legal practitioners or judicial officers taking into consideration the person's legal qualifications, fact, general intelligence, integrity and previous experience, if any.

Provided that in the case of appointment of a person to the Service from amongst the Judicial Officers, no such appointment shall be made without consulting the Assam High Court.

(2) It shall not be necessary for the Governor to consult the Public Service Commission for filling up the posts in Grade I and Grade II of the Service, but appointments to Grade III and Grade IV of the Service shall always be in consultation with the Public Service Commission.

8. Any person appointed directly to a post in the service must be qualified in the following manner:—
Qualifications for Appointment.

(1) In relation to recruitment to Grade I of the Service, an Advocate of a High Court who has practised as such for at least 10 years or a Judicial Officer qualified to be appointed as a High Court Judge.

(2) In relation to recruitment to Grade II of the Service, an Advocate of a High Court who has practised as such for at least 7 years or a Judicial Officer qualified to be appointed as a District Judge.

(3) In relation to recruitment to Grade III of the Service an Advocate of a High Court or a Pleader of a District Court who has practised as such for at least 5 years or a Judicial Officer of at least 5 years' standing; and

(4) In relation to recruitment to Grade IV of the Service an Advocate of a High Court or a Pleader of a District Court who has practised as such for at least 3 years or a Judicial Officer of at least 3 years' standing.

9. Notwithstanding anything contained in rule 8 above, a member of the Service shall be eligible for promotion from a lower grade to the next higher grade, whether in a substantive or officiating capacity, and in the case of such promotion the qualifications laid down for direct recruitment shall not be applicable.

Provided that for promotion from Grade II to Grade I from Grade III to II and from Grade IV to Grade III of the Service, the incumbent must have had put in service at least for a period of 3 years, 5 years and 5 years respectively in the Grade immediately below the one to which he has to be considered for promotion.

Provided further that the Governor in appropriate cases may relax the period of service hereinbefore prescribed.

19. Seniority of members in the Service will depend on the date of appointment in the case of persons appointed in the service but members of the Service in a higher grade shall be senior to those in a lower grade irrespective of the date of substantive appointment to the post.

1b. (1) A member of the Service appointed to a permanent post shall be placed on probation for a period of one year from the date of appointment to such post provided that the service rendered in an officiating or temporary capacity may be taken into account in computing the period of probation.

Provided further that the Governor may in any suitable case relax or extend the period of probation.

(2) A probationer may be confirmed at the end of the period of probation;

(3) A probationer shall be liable to discharge from the Service at any time without assigning any reason.

PART IV.—PAY

12. (1) The Scale of pay admissible to the members of each class of Service in the different Grades is shown in Column (2) of Schedule II:

Provided that any existing member of the service shall continue to draw in the said relevant scale of pay at the rate which he would have drawn but for the introduction of these rates as well as increments therein on dates on which they would have been admissible in the old scale.

(2) The Legal Remembrancer, Draftsman, Deputy Legal Remembrancer and the Law Assistant to the Legal Remembrancer shall also be entitled to further special pay for holding the posts of Secretary, Joint Secretary, Deputy Secretary and Under-Secretary respectively of the Government of Assam as shown in Column (3) of Schedule II.

13. Except as provided in these rules, pay, allowances, pension, leave and other conditions of service shall be regulated by the Civil Services (Classification, Control and Appeal) Rules, Fundamental Rules, Assam Subsidiary Rules, Assam Pension Manual and other relevant rules for the time being in force.

14. The conditions of service of members in respect of matters for which no provision is made in these rules shall be the same as are for the time being applicable to other officers of the Government of Assam of corresponding status.

15. For the purpose of removing any difficulty in the implementation of these rules, it will be within the discretion of the Governor to relax any of these rules to resolve the said difficulty.

SCHEDULE I

- Grade I Superintendent and Remembrancer of Legal Affairs 1 and Secretary to the Government of Assam
- Grade II Draftsman and Joint Secy. to the Government of 1 Assam
- Grade III D.L.R. and Deputy Secy. to the Government of 1 Assam
- Grade IV Law Asstt. to the L. R. and Under-Secy. to the 1 Government of Assam

SCHEDULE II*

(a)	(b)	(c)
Grade I	Rs.1,500—60—1,680—(E.B.)—60—1,800.	Special pay as is paid to other Secretaries, Joint Secretaries, Deputy Secretaries and Under Secretaries to the Government of Assam.
Grade II	Rs.1,200—60—1,380—(E.B.)—60—1,500.	
Grade III	Rs.1,000—50—1,150—(E.B.)—50—1,300.	
Grade IV	Rs.850—30—500—(E.B.)—30—650—(E.B.)—35—1,00.	

*The pay scales were revised under the Assam, Services (Revision of Pay) Rules, 1954.

APPENDIX—3

ASSAM JUDICIAL SERVICE (SENIOR)
RULERS, 1952

S. K. DATTA,
Chief Secretary to the Government of Assam.

No. JJD.50/51/24.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Assam is pleased to make, with the concurrence of the Chief Justice, the following special rules in respect of the Assam Judicial Service.

THE ASSAM JUDICIAL SERVICE (SENIOR) RULES, 1952

CONTENTS

PART I—GENERAL

Rule 1.—Short title and commencement.

Rule 2.—Description.

Rule 3.—Definitions.

PART II—CADRE

Rule 4.—Strength of the Service.

PART III—RECRUITMENT, PROMOTION AND CONFIRMATION, ETC.

Rule 5.—Recruitment.

Rule 6.—Absorption of existing members and their seniority.

Rule 7.—Selection of candidates.

Rule 8.—Promotion and confirmation.

PART IV—PAY

Rule 9.—Pay.

PART V—POSTINGS AND TRANSFERS

Rule 10.—Postings and transfers.

PART VI—LEAVE, PENSION, ETC.

Rule 11.—Leave, Pension, etc.

PART I—General

1. *Short title and commencement.*—(i) These rules shall be called the Assam Judicial Service Rules, 1952.

(ii) They shall have effect from the date of publication.

2. The Assam Judicial Service is the State Judicial Service (Senior).

3. *Definitions.*—In these rules, unless there is anything repugnant to the subject or the context,—

(i) "Chief Justice" means the Chief Justice of the Assam High Court.

(ii) "Constitution" means the Constitution of India.

(iii) "High Court" means the Assam High Court.

(iv) (a) "Members of the Service" means the officers appointed under the provision of these rules.

(b) "Existing members of the Service" means those who were on the date of publication of these rules in the post of the Registrar of the Assam High Court, Legal Remembrancer of the Government of Assam, District and Sessions Judges and of the Additional District and Sessions Judges.

(v) The "Service" means the Assam Judicial Service (Senior).

PART II—Cadre

4. *Strength of the Service.*—(i) The strength of the service and of each kind of post therein shall be determined by the Government in consultation with the High Court from time to time.

(ii) The present strength of the service and of each kind of the post therein existing on the date of publication of these rules is given in Schedule I.

(ii) (A) Provided that if the Governor of Assam is satisfied that it is necessary in the interest of Public Service to do so, any vacancy in the post of Legal Remembrancer may be filled up by a person, outside the cadre of the Assam Judicial Service (Senior) either temporary or on substantive basis.

no person shall be so appointed unless he is qualified to be appointed as a Judge of a High Court.

(iii) The Governor may, except in the case of the post of the Registrar, Assam High Court, from time to time leave unfilled or hold in abeyance any post in the cadre or may increase the cadre by the creation of additional permanent or temporary posts as may be found necessary in consultation with the High Court.

PART III—Recruitment, Probation and Confirmation, etc.

5. *Recruitment.*—(i) The Chief Justice of the High Court shall fill up the post of the Registrar by virtue of Article 229 (1) of the Constitution of India preferably from Grade I or Grade II of the service.

(ii) Other posts of the cadre shall be filled up by the Governor in consultation with the High Court. Provided that not more than one-third of the posts in each Grade of the Cadre may be filled up by direct recruitment. The rest of the posts in Grade I and Grade II of the Cadre shall be filled up by promotion from Grade II of the Cadre and from Grade I of the Assam Judicial Service (Junior) respectively.

6. *Adoption of existing members and their seniority.*—The existing member of the Service shall be deemed to have been appointed substantively in their respective posts in the Assam Judicial Service from the date of publication of these rules, but their *inter se* seniority will be determined by the Governor in consultation with the High Court.

7. *Selection of candidates.*—In case of selecting the candidate for appointment, regard shall be had to their:—

- (a) Judicial work,
- (b) Legal qualification,
- (c) Fact and general intelligence,
- (d) Integrity,
- (e) Previous record of service.

1. Inserted by Notification No. L.J.J. 13/16/5/17 dated 15th September, 1960.

1. *Probation and confirmation.*—(i) A member of the service appointed to a permanent post shall be placed on probation for a period of one year from the date of appointment to such post, provided that service rendered in an officiating or temporary capacity may be taken into account in computing the period of probation.

Provided that the Chief Justice in case of the Registrar and the Governor in consultation with the High Court in case of other members can relax or extend the period of probation.

(ii) A probationer may be confirmed at the end of the period of probation, by the Chief Justice in case of the Registrar and by the Governor in case of any other member of his being recommended by the High Court as fit for confirmation.

PART IV

Pay

9. *Pay.*—The scale of pay admissible to the members of each class in the cadre is shown in the Schedule II, provided that an existing member of the service shall continue to draw in the same relevant scale of pay at the rate which he would have drawn but for the introduction of these rules, as well as increments therein on dates on which they would have been admissible in the old scale.

Provided further that nothing in these rules shall adversely affect any personal scale of pay allowed to any member of the service and any such member having a personal scale of pay shall continue to draw his pay in his own personal scale of pay and the rate and the dates of increments shall be determined by his own personal scale of pay.

PART V

Postings and transfers

10. *Postings and Transfers.*—Postings and transfers shall be made by the Governor in consultation with the High Court. A member of the service may be required to serve in any post borne on the cadre of the Service provided that the Registrar shall not be so required without the consent of the Chief Justice.

2. Proviso added by the Notification No. L.J.J. 12/15/5/18 dated 4th March 1967. The amendment shall have retrospective effect from the date on which the Rules came in to force.

Leave, pension, etc.

11. *Leave, Pension, etc.*—Except as provided in these rules, pay, allowance, pension, leave and other conditions of service of the Registrar will be regulated by rules framed under Article 229 (2) of the Constitution of India and those of other members of the service by the rules of the "Classification, Control, and Appeal Rules," Fundamental Rules, Assam Subsidiary Rules and Assam Pension Manual or any other rules for the time being in force.

SCHEDULE—I

[Rule 9 (ii)]

Senior Grade I

Registrar	1
District Judges	3
Additional District Judges	3

Senior Grade II**SCHEDULE—II**

(Rule 9)

Senior Grade I ... Rs. 200—50—1,380—(E.R.)—50—1,500

Senior Grade II ... Rs. 1,000—50—1,150—(E.R.)—50—1,300

NOTE I.—In the case of the Registrar, directly recruited, the Chief Justice will have the power to fix without previous approval of the Governor, the initial pay at any stage up to (Rs. 1,200) according to the experience, ability and age of the person appointed.

NOTE.—The Registrar shall be paid a special pay of Rs. 150 per month for his functions as Registrar and Secretary of the Rule Committee.

1. Schedule—1 Substituted by Notification No. L.J. 15059/46, dated 30.5.1955, with Notification No. L.J. 5359/47, dated 20th October 1963, and L.J. 1521/48, dated 27th October 1960.

2. Substituted by Notification No. L.J. 128/54, dated 18th December 1951 and with Notification No. L.J. 128/55, dated 30th May 1957.

3. The pay scales were revised under the Assam Service (Revision of Pay) Rules, 1954.

APPENDIX 4**THE ASSAM JUDICIAL SERVICE (JUNIOR) RULES
1951**

Contents

APPENDIX I

Part I—General

- 1. Short title and commencement
- 2. Omitted
- 3. Age

Part II Cadre

- 4. Strength of the Service

PART III—APPOINTMENT, PROBATION AND CONFIRMATION

- 5. Appointment, Probation and confirmation
- 6. Pay
- 7. Postings, promotion and leave
- 8. Liability to serve in any post in the Cadre
- 9. Exercising certain powers of Cr. P. C. by a Munsiff
- 10. Exercising the powers under the Cr. P. C. and of an Assistant Sessions Judge, etc., by a Subordinate Judge
- 11. No Administrative works to be assigned to the members of the service except in consultation with the High Court
- 12. Service conditions

- 12.A Publication of the list of the Selected candidates

Schedule I—Strength of Cadre
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APPENDIX II

Rules framed under Article 234 of the Constitution of India.

- 1. Absorption of members of the Assam Civil Service and the recruitment of the first set of Sub-judges, etc.
- 2. Omitted
- 3. Age
- 4. Educational qualifications for appointment as a Munsiff
- 5. Requirement to pass prescribed medical test
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- 8. Government to make appointments
- 9. Filling up of vacancy in grade II
- 10. Public Service Commission to consider applications and interview candidates
- 11. Examination and syllabus
- 12. Public Service Commission to select candidates and submit list
- 12.A Publication of the list of candidates selected
- 13. Expenses for appearing in Interview, etc.

No. LJJ 84/54/167.—The Governor of Assam is pleased to constitute a separate State Judicial Service (Junior).

S. K. Dutta,
Secretary to the Government of Assam,
Leg. and Judicial Department.

THE ASSAM JUDICIAL SERVICE (JUNIOR) RULES, 1954.

APPENDIX I

No. LJJ 84/54/168, dated 9th April 1954.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Assam is pleased to make in consultation with the Chief Justice the following rules in respect of the Assam Judicial Service (Junior).

Part—I General

1. *Short title and commencement.*—(i) These rules shall be called the Assam Judicial Service (Junior) Rules, 1954.

(ii) They shall come into force on such date as the State Government may by notification in the official Gazette direct.

2. Assam Judicial Service (Junior), is the State Judicial Service (Junior).

3. *Definition.*—In these Rules, unless there is anything to the contrary, the expression—
(i) "Chief Justice" means the Chief Justice of the Assam High Court.

(ii) "Constitution" means the Constitution of India.

(iii) "High Court" means the Assam High Court.

(iv) "The Service" means the Assam Judicial Service (Junior).

Part—II Cadre

4. *Strength of the service.*—(i) The strength of the service and of each kind of post therein shall be determined by the Governor in consultation with the High Court from time to time.

(ii) The strength of the service and of each kind of the post therein existing on the date of enforcement of these rules is given in Schedule I.

1. The figures "1954" have been substituted for the figures "1953" by amendment dated 8th April 1954.

(iii) The Governor may from time to time leave unfilled or hold in abeyance any post in the Cadre or may increase the Cadre by the creation of additional permanent or temporary posts as may be found necessary in consultation with the High Court.

Part—III Appointment, Probation and Confirmation.

5. *Appointment, Probation and confirmation.*—(i) Appointment to the Service shall be made in accordance with the rules set out in Appendix II.

(ii) A member of the Service in Grade I or Grade II appointed to a permanent post shall be placed on probation for one year and two years respectively;

Provided that the competent authority may extend the period of probation in individual cases if the work of any probationer is found unsatisfactory in his opinion.

Provided further that in case of the first set of recruits the period of probation may be relaxed and those who had already been confirmed in the Assam Civil Service may be confirmed immediately.

(iii) During the period of probation all officers appointed to Grade II of the Service will be required to pass such Departmental examination as the Governor in consultation with the High Court may from time to time prescribe. Provided that exemption may be granted by the Governor in deserving cases in consultation with the High Court.

(iv) When a person is appointed to a permanent post he will be confirmed in his appointment at the end of the period of probation or extended period of probation. In case of the Deputy Registrar and Assistant Registrar of the High Court confirmation shall be made by the High Court. In other cases it will be made by the Governor in consultation with the High Court.

(v) If during or at the end of the probationary period or extended probationary period it is found that a probationer has not made sufficient use of his opportunities or has failed to give satisfaction, he may be reverted to his substantive post, if he has one, or his service may be dispensed with.

(6. *Pay.*—The scales of pay admissible to the members of each class of Service in the Cadre is shown in Schedule II.

Provided that person recruited from any Government Service shall continue to draw in the said relevant scales of pay at the rate which he would have drawn but for the introduction of these rules, inclusive of special pay, if any, as well as increments therein on dates on which they would have been admissible in the old scales.)

7. *Posting, promotion and leave.*—The posting and promotion of, and the grant of leave to members of the service shall be vested in the High Court, but nothing in this rule shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the condition of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

8. A member of the service may be required to serve in any post borne in the Cadre of the Service provided that the Deputy Registrar and the Assistant Registrar shall not be so required without the consent of the Chief Justice.

9.(a) The Governor in consultation with the High Court may confer upon any Munsiff all or any of the powers exercisable under the Code of Criminal Procedure on a Magistrate of the First, Second and Third class or additional powers under section 37 of the said Code or any power under any local or special Act.

(b) The High Court may require any Munsiff invested with powers as mentioned in (a) above to try criminal cases, and the District Magistrate or Subdivisional Magistrate, as the case may be, may make over cases to such Munsiff subject to the Criminal Procedure Code.

10.(a) The Sub-Judges shall also exercise the powers of Assistant Sessions Judges within their respective territorial jurisdiction as Sub-Judges.

(b) The Governor may in consultation with the High Court confer on any Sub-Judge any of the powers conferrable under the Criminal Procedure Code on a Magistrate of the First Class in respect to particular cases or to a particular class or particular classes of cases or in regard to cases generally within his respective territorial jurisdiction.

(c) The Governor in consultation with the High Court may appoint a Sub-Judge as a special Judge under any law in force.

11. The members of this service shall not be assigned any administrative works except in consultation with the High Court. In case of grave emergency the District Magistrate or the Sub-Divisional Magistrate, as the case may be, may use them for such work in anticipation of the permission of the High Court provided that a report is forthwith sent to the High Court with reasons for such assignment.

[11A(1) Notwithstanding anything contained in the rules, vacancy, temporary or permanent, in the post of Assistant Registrar may be filled in by promoting from amongst the Ministerial Staff of the Assam High Court by the Chief Justice.

(2). A person appointed to the post of Assistant Registrar under sub-rule (1) shall be a member of the Service, and the conditions of service of such Assistant Registrar shall be regulated by Rules framed under Article 209(2) of the Constitution of India.]⁶

12. Except as provided in these rules, the pay, leave, allowances, and pensions and other conditions of service of the Deputy Registrar and Assistant Registrar of the High Court will be regulated by rules framed under Article 209(2) of the Constitution of India and of the other members of the service shall be regulated by the Civil Services (Control, Classification and Appeal) Rules, the Fundamental Rules, the Assam Subsidiary Rules and the Assam Pension Manual.

SCHEDULE I

Junior Grade I

- | | | | | |
|---------------------|-----|-----|-----|---------------------------|
| 1. Sub-Judges | ... | ... | ... | 6 |
| 2. Deputy Registrar | ... | ... | ... | 1 Vide below ¹ |

(When the post of the Deputy Registrar of the High Court next falls vacant temporarily, or permanently, this post shall be filled up by the Chief Justice and the Chief Justice when filling the post may do so from among members of this grade or by promotion from grade II.)

Junior Grade II

- | | | | |
|------------------------|-----|-----|-----------------------------------|
| 3. Mansiff | ... | ... | [2] (including 3 leave reserves)] |
| 4. Assistant Registrar | ... | ... | 1 Vide below, |
| [* * * * * | ... | ... | *]' |

(When the post of the Assistant Registrar of the High Court next falls vacant temporarily or permanently, this post shall be filled up by the Chief Justice and the Chief Justice when filling the post may do so from among members of this Grade)

- | | | | |
|-------------|-----|-----|-----|
| [* * * * * | ... | ... | *]' |
|-------------|-----|-----|-----|

SCHEDULE II.*

- | | | |
|-----------------|-----|---|
| Junior Grade—I | ... | Rs. 350—30—500—(E.B.)—30—650—
(E.B.)—35—1,000 plus a special pay of
Rs. 200 p. m. ... |
| Junior Grade—II | ... | Rs. 350—30—500—(E.B.)—30—650—
(E.B.)—35—1,000. |

² Substituted by Notification No. L.J. 93/59/203, dated 2nd May 1963 read with corrigendum published under notification No. L.J. 93/59/210, dated 16th July 1963.

⁴ Deleted by Notification No. L.J. 93/59/203, dated 2nd May 1963.

⁵ Clause 4(i) added by Notification No. L.J. 58/58/53, dated 15th July 1951, has been deleted by Notification No. L.J. 53/59/203, dated 2nd May 1963.

⁶ The scales of pay were revised under the Assam Services (Revision of Pay) Rules, 1964.

2 (* * * * *

(3 Age.—The candidates for appointment to Grade II shall belong to the age group of 21-28 years on the first day of January of the year in which the competitive examination is held, with relaxation in the case of candidates belonging to the Backward Classes, Scheduled tribes and other special categories in accordance with the general order issued by the Governor from time to time.)

STANDARD OF QUALIFICATIONS

A.—For Munsiff

4 Every candidate for appointment as a Munsiff must be a graduate in Law of a recognised University, or a Barrister-at-Law. He must also produce a certificate of good conduct from the Principal Academic Officer of the University or College in which he was last educated, and from two respectable persons of status (not relations) who are well acquainted with him in private life.

5 For appointment to Grade II of the Service a candidate shall be required to pass the same medical test as prescribed for candidates for the Assam Civil Service, provided that the State Government may by Notification modify from time to time the requisite test.

B.—Sub-Judges

6 Every person for direct appointment as a Sub-Judge must be a graduate in law of a recognised University or a Barrister-at-law who has practised at least for seven years as a pleader or an advocate or be an officer exercising judicial powers under the Criminal Procedure Code.

7 Not more than one-third of the Sub-Judges may be persons who are either recruited from the Bar or from among officers exercising judicial powers under the Criminal Procedure Code and the present Sub-Judges who were originally recruited to the Assam Civil Service Cadre and now are absorbed in the service shall not be considered as direct recruits.

6. Rule 2 has been deleted by Notification No.L.J. 93/59/196, dated 9th October 1961.
7. Rule 3 has been amended by ibid.

(When the posts of the Deputy Registrar and Assistant Registrar are included in the Assam Judicial Service (Junior) on the retirement of the present incumbents, the said posts will carry a special pay of Rs.75 and Rs.50 per month respectively).

(No member of the Service shall be allowed to cross the Efficiency Bars unless he is found to have worked steadily and to the best of his ability and unless his integrity is certified by the High Court).

APPENDIX III

In exercise of the powers conferred by Article 234 of the Constitution of India the Governor of Assam is pleased to make the following rule in consultation with the Assam High Court and the Assam Public Service Commission for recruitment to the Assam Judicial Service (Junior),

(a) Munsiffs

1. (i) On the Constitution of the Service firstly those members of the Assam Civil Service who were recruited for the purpose of the Judicial Section shall be absorbed in the Service. Secondly those members of the Assam Civil Service who are law graduates shall be given an option to join this service, the Law Assistant to the Legal Remembrancer being deemed as a Member of the Assam Civil Service for this purpose. If the number of optees is more than the number of posts in Grade II, a selection will be made by the Governor. If less, the requisite number of Munsiffs shall be recruited in accordance with the rules laid down hereafter.

(b) Sub-Judges

(ii) The first set of Sub-Judges shall be recruited as far as practicable by the Governor in consultation with the High Court from among the Sub-Judges who hold substantive office on the date of enforcement of these rules. Any vacancy which cannot thus be filled up and all future vacancies shall be filled up by promotion from among the Munsiffs or by direct recruitment. Direct recruitment shall be in accordance with the rules set out in this Appendix.

8 Recruitment of Munsiffs shall be made by the Governor in consultation with the Public Service Commission as laid down under Article 320 of the Constitution and direct recruitment of the Sub-Judges shall be made by the Governor in consultation with the High Court.

9 When any vacancy in Grade II is to be filled up, the State Government shall ask the Public Service Commission to invite applications by a notice in the official Gazette.

10 The Public Service Commission shall consider all the applications received and shall interview such candidate as it may consider suitable for appointment.

11 A candidate may be examined by the Public Service Commission in order to test his practical acquaintance with law and procedure, the examination having special reference to his ability to draft pleadings, frame issues, appreciate evidence and write judgments. If a competitive examination is held the syllabus shall be fixed by the Government after consultation with the High Court.

12 The Public Service Commission shall select and submit to the State Government the names of as many candidates as may be called for by the Government. Appointment will be made by the Governor.

12A The list of selected candidates shall also be published for general information. The inclusion of a candidate's name shall confer no right to appointment, unless the Governor is satisfied after such enquiry as may be considered necessary that the candidate is suitable in all respects for appointment to the Service.

13 The candidates will have to bear their own expenses for appearing for interview or examination before the Public Service Commission and pay such application and medical examination fees as may be fixed by the Government.

Circular letter No. LR.32/53/3, dated the 18th February, 1953.

SUBJECT:—Filing of affidavit-in-objection or showing cause in cases under Article 226 of the Constitution.

I am directed to say that after admission of a petition under Article 226 of the Constitution of India by the Hon'ble High Court, Assam, a Rule nisi is used to show cause why the writ or appropriate orders asked for should not be granted. Such rules with a copy of the petition are issued on the State and/or on the Heads of Departments and/or the District Officers whose orders are complained against. The Rule is usually to be returned within 14 days from the date of service and is to be heard on the aforesaid returnable date.

Previously this practice was not enforced and the Rule was actually heard on a subsequent date. So henceforward if a statement or an affidavit-in-opposition is to be filed in showing cause against the Rule, it must be submitted before the returnable date.

It has been brought to my notice that in many cases the copies of the petitions, grounds of opposition, relevant records and papers and other necessary instructions do not reach the Government Advocates at the High Court in time and for which it becomes difficult for them to obtain instructions, if any, and to get affidavits drafted and sworn in time to be ready for argument on the hearing date.

I would therefore request you to instruct Senior Government Advocate, Assam High Court, Gauhati to enter appearance where such appearance is considered necessary and to furnish simultaneously necessary instructions and papers along with the notice and a copy of the petition as soon as the same is received (noting the date of receipt thereon). Comments on facts stated in the petition should be given paragraph by paragraph to enable the Government Advocate to prepare the counter affidavit. It may be mentioned here that in such cases the existing procedure is also to instruct appearance of Government Advocates directly by the Heads of Departments or the District officers, as the case may be, with intimation to this office.

It is hoped that the procedure referred above will be strictly adhered to so that occasion may not arise of Government to go unrepresented.

APPENDIX 6

Circular Letter No. L.R. 32/53/48, dated the 14th August 1954

To

All Departments of the Secretariat including the Public Works Department, Heads of Departments and all Deputy Commissioners.

SUBJECT:—Filing of affidavit-in-objection or showing cause in cases under Articles 226 and 227 of the Constitution before the High Court, Assam.

In continuation of this Department Circular letter No. L.R. 32/53/3, dated the 18th February, 1953, I am directed to say that it has been found necessary to add the following further directions in connection with the above subject matter, viz:—

1. As soon as copy of such petition is served a full report regarding the facts contained therein should be prepared paragraph by paragraph, with explanations wherever necessary, so that an affidavit may be drafted by the Government Advocates on the basis thereof. If Department itself can draft such an affidavit, such reports need to be sent.

The reports should be sufficiently exhaustive and words like "No comments", "Admitted", "Denied" should be avoided where details can be furnished.

2. Copies of important documents having bearing particularly on facts which are material and are to be controverted should be supplied to the Government Advocates along with the above report. In the alternative some responsible officer able to give complete instructions and authorised to act on behalf of the respondent in the matter of swearing in the affidavit-in-opposition should be sent to contact the Government Advocate as early as possible. It has already been pointed out that such Affidavit-in-opposition is to be submitted within fourteen days of the receipt of the notice.

3. In case the Departments send affidavits themselves one copy of the same should be typed out on thick papers affixing a Court-fee stamp of Rs. 2 (Rupees two only) and three copies in ordinary paper and should be supplied to the Government Advocates. In no case such affidavits should be sent to the High Court direct. These are to be filed by the Government Advocates according to rules.

4. No report of any kind regarding the facts of the case should be sent to the High Court. If reports, as in Revenue Appeals, are sent to the High Court, Affidavits-in-oppositions become meaningless and sometimes injurious to Government. These cases are mainly decided on affidavits and records are not ordinarily looked into unless challenged.

5. The records, if called by the High Court, should be sent direct to the High Court and not through the Government Advocates. The records are to be sent in original and the Department should keep copies of the same for use by the Government Advocate and for their own reference.

6. When there are any material references to, and challenge of, any notification, rule, empowerment of authority, copies of the same should be supplied to the Government Advocates or Gazette or other references should be quoted.

7. In cases where Advocate General, Assam, is also appointed a complete brief should be supplied to him and the Government Advocate be informed of it.

Lastly I would like to say that the Government Advocates are usually busy with the court cases on working days and it may not be possible for them to do the affidavit work alone. It is, therefore, essential that contact be not ordinarily made in the nick of time.

APPENDIX 7

No. JJD.88/53/39, dated the 20th May, 1954

To

The Registrar, Assam High Court, Gauhati

SUBJECT—Representation of the Government of Assam in all cases and matters before the Assam High Court.

It was brought to the notice of the Government that sometimes the State goes unrepresented in important matters in the High Court and also at others the representation is delayed due to the present procedure according to which the District Officers, Heads of Departments, etc., have to obtain the approval of the Legal Remembrancer, Assam for the appearance of the Government Advocate. With a view to avoid the above omissions in future it has been suggested that a general authority enabling the Government Advocates to represent the State in all cases and matters before the High Court of Judicature in Assam should be issued.

Considering that (1) there is hardly any case in which the State is a party and in which the Government Advocate do not appear and that (2) as the High Court and the office of the Legal Remembrancer, Assam are situated at different places and difficulty arises sometimes in authorising the Government Advocates in time as the District Officers often fail to move the Legal Remembrancer timely in the matter, Government are pleased to accept the suggestions and to give herewith the general authority so that the Government Advocate, Assam High Court may represent the State in all cases and matters before the said High Court.

APPENDIX 8

No. LJR. 62/57/2, dated the 3rd April, 1957

To The Registrar, Supreme Court of India, Delhi

SUBJECT—Representation of the Government of Assam in all cases and matters before the Supreme Court of India.

I am directed to say that the Governor of Assam is pleased to give herewith the General Authority to Shri Naamit Lal, an Advocate of the Supreme Court to act and appear in all cases and matters before the Supreme Court of India in which the State of Assam is a Party.

APPENDIX 9

Letter No. LJR.95/54/Pt.12, dated 4th October, 1955 from the Secretary and Legal Remembrancer, Assam to all Departments.

SUBJECT :—Drafting Agreements, etc.

I am directed to invite a reference to this Department Letter No. LJR. 95/54/Pt.2 dated 8th February, 1955, in which it was pointed out that it is the Government Pleader, Shillong who is to be approached for drafting agreements, mortgage deeds and other instruments. I am to say that in spite of the above instructions such drafts are sent to the Legal Remembrancer without any indication as to whether the same was prepared by the Government Pleader, Shillong or not.

I am therefore to request you to have such drafts prepared by the Government Pleader, Shillong and countersigned by him before sending on the Legal Remembrancer for vetting, which unless so authenticated, I shall have painfully to return for the needful involving consequent delay in the disposal of the matter.

APPENDIX 10

Letter No. JJD.67/49/76, dated the 26th November 1949 from Deputy Secretary to the Government of Assam, General and Judicial Department to all the Government Pleaders in Assam.

SUBJECT :—Realisation of decretal amounts in Civil Suits against Government.

It has been noticed that Civil Courts often submit report to Government in this Department under Section 82, Civil Procedure Code for satisfaction of decretal amounts in Civil Suits with which this Department is not generally concerned. In doing so none of the Courts furnish Government with full particulars in respect of the decree, details of all judgement debtors, etc. In order to find out the appropriate Department dealing with the decree this Department has to call for the above facts and the result is that the disposal of the case is further delayed.

The question of non-satisfaction of a decree arises only when Government default in making payment. From the above it appears that the Departments directly concerned do not know when a decree has been passed against Government and consequently cannot take any action towards satisfaction of the same till they receive a report about their default. When a suit is decreed against Government the decree should and it is believed does specify the period within which the same has to be satisfied. When a decree is formally drawn up Government Pleader's signature is also taken.

The Government Pleaders are therefore requested to inform, as soon as possible, the Deputy Commissioners or the Heads of Departments concerned when a decree is passed against Government with full particulars of the same and the time allowed for taking necessary steps towards its satisfaction within the period specified. A copy of the report should also be sent to the Secretary to the Government in the Department concerned.

APPENDIX 11

No.LJJ.72/56/6, dated the 23rd May, 1956

To

All the Government Pleaders in Assam

SUBJECT:—Realisation of Decreeal Amounts in Civil Suits against Government.

I am directed to invite your attention to the General and Judicial Department's Circular No. LJD.67/49/76, dated 26th November, 1949 (copy enclosed) and to say that in spite of clear instructions contained in the circular under reference, this Department is receiving notices under Section 82, C.P.C. for satisfaction of decreeal amounts in civil suits for which it causes unnecessary delay in the disposal of the matter. It is requested that the above instruction should strictly be observed in future to avoid unnecessary correspondence with a view to eliminate delay in disposal of cases.

APPENDIX 12

No.LJJ.185/55/1, dated the 12th October, 1955

To—All Departments of the Secretariat (including Public Works Department) and Heads of Department

SUBJECT:—Reference to the Legal Remembrancer, Assam by various Departments of the Government.

I am directed to say that it has almost grown into practice for every Department to send references to the Legal Remembrancer, Assam without any precis or any precise question on which it requires an advice. Such procedure puts severe strain on the Legal Remembrancer and results in considerable waste of time. Further, often than not, in spite of spending all the time and energy, it is not possible for the Legal Remembrancer who is not supposed to be acquainted with the subjects and their history to ascertain the facts correctly. Necessarily the Legal Opinion on such premises must be very risky. It is also not desirable that the Legal Remembrancer should see all the Departmental communications and notes. It may sometimes be prejudicial to the Departments themselves. In the circumstances I am directed to request you to give proper precis stating the material facts shortly, but completely, and also the precise questions on which the Legal advice is required. In absence of such precis and the precise questions the Legal Remembrancer, though with utmost regret, may have no alternative but to return the references to the Departments for resubmitting them in the manner stated above.

APPENDIX 14

Letter No.D.4043/J/11/55, dated the 2nd November, 1955, from Government of India, Ministry of Home Affairs to the Chief Secretaries of all States.

SUBJECT—Bills for prior approval of the Government of India, or for obtaining the assent of the President.

It has been noticed that some State Governments are not enclosing sufficient number of copies of Bills which are sent to the Government of India either for their prior approval or for obtaining the assent of the President. It is, therefore, requested that atleast six copies of all such Bills may invariably be forwarded to enable the Government of India to make simultaneously references to the various Ministries concerned

APPENDIX 13

No.LJR. 185/55/37, dated the 30th June 1956

To—All Deputy Commissioners

SUBJECT:—Reference to the Legal Remembrancer, Assam for opinion on Civil Suits against Government.

In inviting a reference to Rule 36 and Rule 44 of the Civil Suit Rules of the Assam Law Department Manual, I am directed to say that in making reference to the Legal Remembrancer under these rules the papers mentioned therein are not furnished and the Departments may kindly appreciate the difficulty of Legal Remembrancer in venturing an opinion without the necessary document.

It has further been noticed that such references are made at the nick of time giving very little time for Legal Remembrancer to reflect. Departments are again requested to appreciate that the Legal Remembrancer cannot work as a slot machine. I am therefore, to say that in future the Legal Remembrancer may painfully refuse to take the responsibility of advising on such matters and return the reference unanswered unless accompanied by all relevant papers and documents and submitted in time.

APPENDIX 15

Letter No.17/77/57—Judl. (I), dated the 25th June, 1957 from the Under Secretary to the Government of India, Ministry of Home Affairs, New-Delhi to the Chief Secretaries of all States (except J. and K. and Union Territories).

SUBJECT :—Supply of copies of previous enactments referred to in the Bills sent for prior approval or assent of the President.

I am directed to invite a reference to this Ministry's letter No. D.4043/J/1/55, dated the 2nd November 1955 (copy enclosed) on the subject noted above. I am to request that whenever any Bills seeking to amend earlier enactments is referred to the Government of India for their prior approval or for obtaining the assent of the President at least four upto date copies of the Principal Act or Acts sought to be amended may also be furnished in order to facilitate expeditious examination of the provisions of the Bills at the Centre.

APPENDIX 16

No. D.H. 37/57/43 dated the 11th July, 1957

To,

All Departments of the Secretariat including Public Works Department,

SUBJECT :—Supply of copies of previous enactments referred to in the Bills sent for prior approval or assent of the President.

In forwarding herewith a copy of letter No.17/77/57, Judl. (I), dated the 25th June, 1957 from the Under Secretary to the Government of India, Ministry of Home Affairs, New-Delhi, I am directed to request you to kindly follow the procedure laid down therein in respect of Bills that may be referred to the Government of India for prior approval.

(22)

12

To All Departments of the Secretariat (including P. W. D.)
All Deputy Commissioners

Subject:—Sanction to lodge complaints under Section 198-B(1), Criminal Procedure Code.

I am directed to say that the Secretary to the Government of Assam in the Legislative and Judicial Department has been authorised to accord sanction under Section 198-B(3) (c) to lodge complaints under sub-section (1) of Section 198-B, Criminal Procedure Code for offences falling under Chapter XXI of Indian Penal Code committed against any public servant employed in connection with the affairs of the State of Assam. You are, therefore, requested to furnish the following materials while coming up with a proposal for such prosecution.

- (1) A copy of the publication containing the alleged imputation.
- (2) A request in writing by the officer defamed to prosecute the publisher.
- (3) The facts which constitute the offence making accurately the exact passages which in opinion of the officer contain imputation.
- (4) The nature of the offence.
- (5) A detailed statement as to the truth of each of the allegations.
- (6) A general statement explaining the exact position with such other facts as the officers may deem necessary for the purpose of the case particularly of the existing malice, if any, and any previous or subsequent publication made by the party accused which may prove their intention or the knowledge.

It may be noted that such complaints to be filed within six months from the date on which the offence as alleged to have been committed.

Memo. No. L77/53/30 dated the 11th April 1955.

To All Departments of the Secretariat.

Subject:—Adoption of a system of numbering Rules, Orders, Notifications, etc.

Reference:—This Department Memo. No. L71/53/3, dated 3rd June, 1953.

It has been decided to follow the system of numbering the amendments to the Statutory Rules, Orders, Notifications, etc., as has been adopted by the Government of India in respect of Rules, etc., framed by them. The system in respect of Rules, for example, is that amendments to the Assam Sales Tax Rules should bear serial numbers as ASTR/AM(1), ASTR/AM(2) and so on. Orders and Notifications should also be systematically numbered, for example, Notification under section 2(b) of the Assam Sales Tax Act, 1947 should be numbered as AST/2(b)(1), AST/2(b)(2) and so on and amendments thereto should be numbered as AST/2(b)(1)/AM/1, AST/2(b)(1)/AM/2 and so on. The Department or office concerned should maintain master copies of the Rules, etc., brought up to date, as well as a complete list of all amendments made therein. It is desirable to reprint the Rules, etc., from time to time after incorporating the various amendments.

The above numbering of the Order, Notification, etc., and amendment thereto and also of the Rules should be indicated at the end of the Rules, etc., within brackets as shown below.

Notification No. _____

Contents _____
(the serial No. of amendment).

Secretary to the Government of Assam.

In case of any difficulty in following the system of numbering of the Rules, etc., on above lines, a reference may be made to this Department.

No. LJR 2156/50, dated the 27th September 1956.

To

All the Deputy Commissioners and Heads of Departments.

SUBJECT—Forwarding of Bills submitted by Government Pleaders for conducting civil suits to Legal Remembrancer, Assam.

I am directed to say that it has become a general practice to forward the bills submitted by the Government Pleaders for conducting suits on behalf of the Government to the Legal Remembrancer for certifying the correctness of the amount charged. In this connection I am to refer to rule 104 as amended by correction slip No. 62 and Rule 134 of Assam Law Manual and to say that the former rule empowers the District officers to sanction disbursement of all sums necessary for carrying on of any suit or appeal in which the Government is a party provided the suit or appeal has been instituted or defended at the direction of the Legal Remembrancer.

Fees of the Government Pleaders engaged on behalf of the Government may accordingly be paid by the District Officer without reference to the Legal Remembrancer in accordance with the scale prescribed in Civil Rules and Orders Chapter 28. In this connection please see Rule 134 of Assam Law Department Manual.

If however the District Officers consider in any case that a fee higher than the prescribed scale should be allowed he should then move the Legal Remembrancer for sanction.

EXTRACTS FROM THE CIVIL RULES AND ORDERS

CHAPTER 28

LIV

Rule 717.—In suits for the recovery of specific property, or a share of specific property whether immovable, or for breach of any contract, or for damage:—

- (1) If the amount or value of the property, debt or damages claimed shall not exceed Rs. 5,000, at 7½ per cent on the amount or value claimed.
- (2) If the amount or value shall exceed Rs. 5,000 and not exceed Rs. 15,000, on Rs. 5,000 at 7½ per cent and on the remainder at 5½ per cent.
- (3) If the amount or value shall exceed Rs. 15,000 and not exceed Rs. 30,000, on Rs. 15,000 as above, and on the remainder at 4½ per cent.
- (4) If the amount or value shall exceed Rs. 30,000 and not exceed Rs. 60,000, on Rs. 30,000 as above and on the remainder at 4 per cent and for the rest 3½ per cent.

Provided that in no case shall the amount of any fees exceed Rs. 4,000.

Rule 718.—When such suits are settled, withdrawn, or promised, decided on admission of claim or dismissed for delay the fee shall not exceed one-fourth of the fee calculated under Rule 717 unless the Court otherwise directs subject to a maximum of Rs. 500.

Rule 719.—Where such suits are decided *ex parte* the defendant not entering appearance or having entered appearance not contesting, the fee payable shall not exceed one-half the fee calculated under Rule 717 unless the Court otherwise directs subject to a maximum fee of Rs. 1,000.

I. Substituted by a notification dated 13th January 1960 by the Assam High Court.

1. In suits for injuries to the persons or character of the plaintiff, such as suits for assaults or defamations or for injuries to property, or to enforce rights, where the pecuniary value of such injury or right, cannot be exactly defined, as in suits for interference with a right to light or water, or to enforce a right of pre-emption, or suits for the partition of joint property, where partition is improperly resisted, and generally in all suits not included in Rule 717, if the plaintiff succeed, the Court may order the fee of the pleader for the plaintiff to be calculated with reference either to the amount decreed or according to the valuation of the suit, or according to such a sum, not exceeding the valuation, as the Court shall think reasonable and shall fix with reference to the importance of the subject of the dispute. In any such case, the amount of the Pleador's fee shall be calculated according to the scale in Rule 717.

(2) In this and in the following rules, cases under part II of the Land Acquisition Act I of 1894, shall be deemed to be suits, and the fees allowable therein may be calculated either on the amount of compensation decreed in excess of the sum tendered by the Collector, or on any smaller amount which the Court in its discretion may think proper.

(3) In event of the sum tendered by the Collector being decreed, pleaders' fees may be awarded to Government on the difference between that sum claimed or on any smaller amount which the Court in its discretion may think proper.

(4) Provided that in any case in which the remuneration under the above rules shall in the opinion of the presiding judge, prove to be insufficient or in any case not provided for, he shall be at liberty to allow pleaders' fees as in miscellaneous cases under Rule 727.

(Note.—The Government of Assam has fixed the fees of the Government Pleaders for conducting land acquisition cases under Part III of the Land Acquisition Act, 1894 according to the following principles under Notification No. L.R. 710/14, dated Shillong, the 26th June, 1952.

When the amount of compensation decreed by the Court in any reference exceeds twice the amount tendered by the Collector and no order is passed by the Court regarding the fees of the pleaders, the fees shall be calculated only on a sum which is equal to the amount award by the Collector. No fee shall be paid to the pleader on the amount of the claim which is in excess of such sum.

Rule 721. If the suit be dismissed upon the merits be there decided in favour of the defendant the defendant's pleaders' fees shall be calculated according to the scale in Rule 717 on the whole value of the suit. If the suit be dismissed if the merits and a decree awarded to the defendant for any matter not included in the plaint, the defendant-pleader's fee shall be calculated upon the amount involved in the plaint, plus the amount decreed according to the scale in Rule 717.

Rule 722. If the suit shall be decreed for the plaintiff as to part only of his claim, and as to the remainder shall be dismissed or decreed for the defendant, the fees payable by any party in respect of the fees of his adversary's pleader shall be fixed with reference to the value of that part of the claim in respect of which such adversary shall succeed, and shall be calculated according to the scale in rule 717.

Rule 723.—(1) If in any suit for unliquidated damages the plaintiff shall succeed as to the whole of his cause of action, but shall fail to recover the full amount of damages claimed, the defendant shall not be entitled to any allowance for a pleader's fee in respect of the difference between the amount of damages claimed and the amount recovered, unless the court shall be of opinion that the amount claimed for damages was unreasonable or excessive, and shall, for that or any other cause to be specified, direct that a fee for his pleader shall be allowed to the defendant.

(2) If specially allowed, the amount of such fee shall be fixed with reference to the amount of damages disallowed to the plaintiff, and shall be calculated according to the scale in rule 717.

Rule 724.—In addition to any fees prescribed in the above rules 717-723 costs awarded in any proceeding under Order II and 12, C. P. Code, shall be on the same scale as in a miscellaneous proceeding under rules 727 and 738 notwithstanding anything in those rules to the contrary.

Rule 725.—If several defendants who have a joint or common interest, succeed upon a joint defence, or upon separate defences substantially the same, not more than one pleader's fee shall be allowed, unless the Court shall otherwise order for a reason which shall be recorded. If only one fee be allowed the court shall direct to which of the defendants it shall be paid, or shall apportion it among the several defendants in such manner as the Court shall think fit.

Rule 726.—If several defendants who have separate interests set up separate and distinct defences and sued thereon, a fee for one pleader for each of the defendants who shall appear by a separate pleader may be allowed in respect of his separate interest. Such fee, if allowed, shall be calculated with reference to the value of the separate interest of such defendant, according to the scale in rule 717.

Rule 727.—(1) In execution and miscellaneous proceedings or for any matter other than that of appearing, acting or pleading in a suit prior to decree, the fee when allowed, shall not ordinarily exceed the following scale:—

	(Rs.)
In the court of a District or Subordinate Judge	150
In the Court of Munsiff	50

NOTE 1.—When fee is allowed in an execution case an order should be recorded by the court stating the amount.

NOTE 2.—In miscellaneous proceedings a special team (interim) according to the value and circumstances of each case shall be awarded on account of the adversary's pleader's fee and the award of such sum shall be distinctly recorded at the foot of the order in the hand of the presiding Judge unless each party is directed to bear his own costs.

(2) In miscellaneous appeals, on appeals from orders, except in case where it may be ordered that each party shall pay his own cost, a specific sum shall be awarded as payable on account of the adversary's pleader's fees and the award of such sums shall be distinctly recorded by the presiding Judge at the foot of the order with the other costs if any, incurred by the parties respectively.

NOTE 3.—This rule does not apply to the Courts of Small Causes. See rule 338.

NOTE 4.—For the purpose of these rules, cases, under Part IV of the Land Acquisition Act I of 1894, shall be treated as "miscellaneous cases" and the fees allowable to the pleaders therein shall be calculated under rule 727 (Rule No. 9 of 23rd March 1935).

Rule 278.—Fees in the hearing of interlocutory applications in suits are in the discretion of the court and if allowed, they shall not exceed the scale in rule 727.

Notification relating to execution of contracts and assurances, etc. The 9th October 1957.

No. JJD.151/53/72.—In exercise of the powers conferred by clause (1) of Article 166 and clause (1) of Article 299 of the Constitution and in supersession of this Department Notification No. JJD.8/49/68, dated the 16th December 1950, as amended from time to time, the Governor of Assam is pleased to direct that the undermentioned contracts and assurances of property made in the exercise of the executive powers of the Government of Assam may be executed on his behalf as follows:—

A.—GENERAL

1. All deeds and instruments relating to matters other than those specified elsewhere in this resolution.
2. Contracts and other instruments in matters connected with the lease of land:—
 - (a) If the lease be permanent,
 - (b) if otherwise

By Deputy Commissioner.

By Settlement Officers, Deputy Commissioners and Sub-divisional Officers (for any other officers authorised by the Deputy Commissioners under the provisions of the Assam Land and Revenue Regulation and rules made thereunder and also the Director, Additional Director of Agriculture, Assam and Director of Fisheries, Assam, as the case may be).

By Deputy Commissioners (and also the Director, Additional Director and Joint Director of Agriculture, Assam and Director of Fisheries, Assam, as the case may be).

3. (e) Contracts and other instruments in matters connected with the hire or purchase of land or buildings or with the sale of Government land or with the lease or sale of Government buildings or with prospecting and exploring licences and mining leases.

* Secretary includes Additional Secretary, Joint Secretary, etc., as defined in Rule 2 (f) of the Assam Rules of Executive Business.

Contracts and other instruments not included in Article 3 for the sale, purchase, supply carriage or conveyance of stores and building materials and for the provisions of labour and for the execution of Public Works not-executed by the Public Works Department and such like engagements

4. Contracts and other instruments not included in Article 3 in matters connected with the lease of ferries, fisheries and other benefits arising out of land.

5. Contracts for the supply of articles required for the use of any Department or for the sale of articles produced or manufactured by the Department and for the execution of Public Works otherwise than through the agency of the Public Works Department and other instruments connected with the administration of the Department.

6. Contracts and other instruments not included in Article 3 for the sale, purchase, supply carriage or conveyance of stores and building materials and for the provisions of labour and for the execution of Public Works not-executed by the Public Works Department and such like engagements

7. Contracts for the supply of articles produced in the local markets for hospitals, lunatics asylums, etc.

8. Contracts and other instruments relating to house building and other advances.

9. Bonds executed by Government stipendiary

10. Deeds and instrument relating to supply of food and drink by contractors in Circuit Houses and Dak Bungalows.

By Assistant Commissioners and Sub-divisional Officers (and also the Deputy Director of Agriculture and District Agricultural Officers).

By Deputy Commissioners and Sub-divisional Officers.

By the Head of the Department and those who have been temporarily authorised to exercise the powers of the Head of Department.

By Deputy Commissioners (and also Director, Additional Director and Joint Director of Agriculture, Assam and Director of Fisheries, Assam, in the case may be.

By the Civil Surgeon, Sub-divisional Officer or Superintendent, as the case may be.

By authorities granting the advances.

By the Deputy Commissioner or the Secretary to the Government of the relevant Department.

By Deputy Commissioners or Sub-divisional Officers, as the case may be.

11. Pledging and release of Postal Savings Certificates as security By the Chief Officer of the State Government who for due performance of their duties, are required to accept and release securities.

12. Deeds and instruments relating to financial assistance for schemes approved under the Local Development works programme. By the Block Development Officer.

B--IN THE CASE OF THE PUBLIC DEBT AND CURRENCY DEPARTMENT, TREASURIES AND ACCOUNTS OFFICERS

1. Mortgage deeds given as security in connection with the employment of Officers as Treasurers and Sheriffs in Districts or Sub-District Treasuries and agreement entered into with such Officers.

2. Mortgage deeds given as security in connection with the employment of Treasurers, Cashiers or Clerks in Account Officers, charged with the disbursements of money of the custody and handling of securities.

3. Instrument relating to the reassignment of insurance policies which are assigned to the Governors of Assam in accordance with rules relating to the General Provident Fund.

4. Deeds of conveyance of security given by Sheriffs in District and Sub-District Treasuries.

5. Treasuries bills and other Government securities issued by the Government of Assam in respect of deposits contracted under the provisions of the Constitution of India.

C--IN THE CASE OF PUBLIC WORKS DEPARTMENT (SUBJECT TO ANY LIMIT FIXED BY DEPARTMENTAL ORDERS)

1. All instruments relating to purchase, supply and conveyance or carriage of materials, stores, machinery, etc.

2. All instruments relating to the execution of works of all kinds, connected with buildings, bridges, roads, tanks, reservoirs, embankments and River Training Dam construction and irrigation and also instruments relating to the construction of water works, sewage works and the erection of machinery.

1. Added by the Notification No. J.D. 151/33/95, dated 3rd September, 1964.
2. Added by the Notification No. J.D. 151/33/169, dated 26th February, 1965.

- 3. Bonds of auctioneers and security bonds for the due performance and completion of works: Do.
- 4. Security bonds for the due performance of their duties by Government servants whom the Officers specified have power to appoint. Do.
- 5. Leases for grazing cattle or road sides, and instruments relating to the sale of grass, trees or other produce on road sides.
- 6. Leases of houses, land and other immovable property, provided that the rent reserved shall not exceed Rs.5,000 a month.
- 7. All instruments connected with the reconveyance of property given as security. By Chief Engineer, Superintending Engineers and Divisional Officers.
- 8. Instruments connected with the collection or farming of tolls at bridges or ferries or other means of communication provided by the State Government.
- 9. Agreements relating to the loan of tolls and plant to contractors and others. By Divisional Officers and Subdivisional Officers.
- 10. All deeds and instruments relating to any matters other than those specified in items 1 to 9 above. By the Secretary to the Government.

D--IN THE CASE OF FOREST DEPARTMENT

Contracts and other instruments in matters connected with the administration and working of forests and with the business of the Forest Department generally. By the Chief Conservator of Forests and working rates; Conservators; Deputy Assistant and Joint Assistant Conservators of Forests to such extent and within such limits as the State Government may prescribe by notification in the official Gazette.

E--IN THE CASE OF THE SURVEY DEPARTMENT

- 1. Contracts or agreements for the supply of survey instruments. By the Director of Surveys, Assam.
- 2. Contracts for the supply of Bazaar articles and chemicals. By the Deputy Director, Assam Surveys.
- 3. Contracts for the supply of clothing to the Assam Survey Department. Do.
- 4. Contracts for the supply of demarcation stones and the repair and erection of same. Do.

F--IN THE CASE OF THE PUBLIC HEALTH DEPARTMENT

- 1. Contracts for the supply of calves to the charge of the Vaccine Depot. By the Officer-in-charge of the Vaccine Depot.

G--IN CASE OF THE AGRICULTURE DEPARTMENT

- 1. Contracts for supply of cattle food and other requisites to Agricultural Farms. By the Director of Agriculture, Assam, Additional Director and Joint Director of Agriculture, Assam. Do.
- 2. Contracts for sale of Agriculture Farm produced through contractors. Do.
- 3. Bond for credit sale of articles. By the Deputy Directors of Agriculture and Economic Botanist (Agriculture Experiment, and the Mycologist).
- 4. Date. Rice purchase system. Do.
- 5. Agreement relating to the credit sale of articles from Government Agricultural Farm and Seed Depots. By the Deputy Director of Agriculture, Additional Director of Agriculture and Joint Director of Agriculture, Assam.
- 6. Contracts relating to giving of farm land to Adhians. By the Director of Agriculture, Additional Director of Agriculture and Joint Director of Agriculture, Assam.

H--IN THE CASE OF THE SUPPLY DEPARTMENT

- 1. All instruments relating to the trade purchase of rice and paddy and products thereof. By the Secretary to the Government, The Director of Supply, Deputy and Assistant Directors of Supply, Controller of Supply and all the Deputy Commissioners and Sub-Divisional Officers and the Extra Assistant Commissioners in-charge, Supply. By the Secretary to the Government, The Director of Supply.
- 2. All instruments relating to contracts for payments handling and transport of rice and paddy and products thereof.

134 3. Security bonds for the due performance and completion of contracts by Traders, Millers, Contractors and Agents.

- By the Secretary to Government Director and Assistant Director of Supply, Controller of Supply and all Deputy Commissioners and Subdivisional Officers (and the Extra Assistant Commissioner in-charge, Supply.)
4. All deeds and instruments relating to matters other than those specified in items 1 to 3 above.
- I—IN THE CASE OF THE TRANSPORT DEPARTMENT
1. All deeds and instruments relating to Transport Department. By the Secretary to Government.

J—IN THE CASE OF THE ELECTRICITY DEPARTMENT (SUBJECT TO ANY LIMIT FIXED BY DEPARTMENTAL ORDERS AND STANDING RULES, ETC.)

1. All instruments relating to purchase, supply and conveyance or carriage of materials, stores machinery, etc. By Chief Electrical Engineer without any limit, Superintendent Engineer, Executive Engineer, Subdivisional Officer subject to the limits of their powers to accept tenders.
2. All instruments relating to the execution of works of all kinds connected with buildings, bridges, roads, tanks, reservoirs, embankments, dams, tunnels transmission and distribution relating to the erection of machinery, etc.
3. Bonds of auctioneers and security bonds for the due performance and completion of works. By Chief Electrical Engineer, Superintendent Engineer, Executive Engineer and Subdivisional Officers.
4. Security bonds for the due performance of their duties by Government servants whom the officers specified have power to appoint.
5. Leases of houses, land or other immovable property provided the rent reserved shall not exceed Rs.5,000 a month. By Chief Electrical Superintendent Engineer and Executive Engineer.
6. All instruments connected with reconveyance of property given as security.

1. Added by Notification No. J.D. 191/63/77, dated 25th February 1956.

7. All instruments connected with supply of power to street lights, domestic lighting systems, lighting and power installations in public buildings, lighting and power installation in factories, industries, etc. Also instruments connected with supply of power to Cinema installations. By Chief Electrical Superintendent Engineer and Executive Engineer. By Subdivisional Officer. Assistant Engineer for domestic lighting installation.

8. Agreements relating to loan of tools and plants to contractors and others. By Executive Engineer and Subdivisional Officers.
9. Contracts and other instruments relating to house building and other advances. By authorities granting the advance.
10. All deeds and instruments relating to any matters other than those specified in items 1 to 9 above. By the Secretary to Government.

(K—IN THE CASE OF TOWN AND COUNTRY PLANNING DEPARTMENT)

1. Loans and Subsidies under various Housing Schemes. By the Deputy Commissioners (Additional Deputy Commissioners) and Subdivisional Officers.

(L—IN THE CASE OF RELIEF AND REHABILITATION DEPARTMENT)

1. All deeds and instruments ... By the Executive Engineer, Assistant Engineer, Subdivisional Officers Relief and Rehabilitation Department.

1. Now Part added by Notification No. J.D. 151/53/80, dated 8th January 1950.
 2. Added by Notification No. J.D. 191/5/393, dated 12th September 1952.
 3. Now part added by Notification 131/53/81, dated 2nd March 1950.

GOVERNMENT OF ASSAM

NOTIFICATION

Dated Shillong, the 4th July, 1967

No. L.J.R. 51/66/6.—In furtherance of the general authority conferred under the Government letter No. JJD 88/5/39, dated the 29th May, 1954, on the Government Advocates Assam High Court to represent the State in all cases and matters before the said High Court, the Governor of Assam, in exercise of the power conferred by section 499 of the Criminal Procedure Code, is pleased to declare the Government Advocates as Public Prosecutors for the State of Assam.

B. SARMA,

Secretary to the Government of Assam,
Law Department.

Memo. No. L.J.R. 51/66/6A, dated Shillong, the 4th July, 1967.

Copy forwarded to:—

(1) The Registrar, High Court of Assam and Nagaland, Gauhati in continuation of this Department letter No. JJD 88/5/39, dated the 20th May, 1954 to his address.

(2) Senior Government Advocate, High Court of Assam and Nagaland, Gauhati.

(3) Superintendent, Government Press for publication in the next issue of the Assam Gazette.

By order, etc.,

B. SARMA,

Secretary to the Government
of Assam, Law Department.

1. Boards in connection with Industrial loans granted to displaced persons. By the (1) Director of Industries, (2) Assistant Director of Industries, Assam, (3) Superintendent of Industries Assam.

2. Contracts and other instruments in matters connected with the hire or purchase of land or building or machinery or with lease or sale of Government land or building or machinery or for the supply of raw materials. By the Director of Industries, Assam or any other officer authorised by him in this regard.

(N—IN THE CASE OF EDUCATION DEPARTMENT)

1. Agreements under the National Loan Scholarship Scheme. By the Director of Public Instruction, Assam.

4. New item added by Notification J.D. 151/53/96, dated 29th March 1964.

5. New item added by Notification J.D. 151/53/95, dated 13th February 1964.

6. New item added by Notification No. L.J.R. 51/66/1, dated 25th June, 1966.