



GOVERNMENT OF BENGAL

THE LEGAL  
REMEMBRANCER'S  
MANUAL  
1930

VOLUME I





Government of Bengal

The  
Legal Remembrancer's Manual  
1930

Volume I

Compiled in the Office of the  
Legal Remembrancer, Bengal and Published by Authority

Calcutta  
Bengal Secretariat Book Depot  
1930

Price—Indian, Rs. 4-12; English, 7s. 3d.

Published by the Bengal Secretariat Book Depot,  
Writers' Buildings, Calcutta.

Agents in India.

Messrs. S. K. Lahiri & Co., Printers and Booksellers, College Street, Calcutta.  
Messrs. Thacker, Spink & Co., Calcutta.

Customers in the United Kingdom and the Continent of Europe  
may obtain publications either direct from the High Commissioner's office  
or through any bookseller.

350  
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Acc. No. 1997  
H. 2616107



## Preface

The necessity to get together a Legal Remembrancer's Manual has been felt for many years by officers of this Government as also by officers outside this Province. The office has developed in many directions and the various rules and orders are scattered in different files. It is hoped that difficulty will be removed by the Manual which has been prepared by my Personal Assistant Babu Noni Gopal Clatterji.

M. C. GHOSE,  
*Legal Remembrancer, Bengal*

CALCUTTA :  
*The 9th May, 1930.*



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## CHAPTER I.

### Law Officers of Government in the High Court.

#### 1.—Legal Remembrancer.

**1. Legal Remembrancer is chief whole-time law officer.**—The Legal Remembrancer is the chief whole-time law officer of Government and his jurisdiction extends over the Province of Bengal.

**NOTE.**—The Legal Remembrancer's Office is wholly distinct from that of a District and Sessions Judge. The former is partly a law officer like the Advocate-General and the Standing Counsel and partly an administrative officer but he is not a Judge at all. A Judge may be appointed to that office or even one who is not a Judge. A Legal Remembrancer so long as he holds that office cannot exercise any judicial function of a District and Sessions Judge.

[Political Department File No. P. 10-G—1 of 1923.]

#### *Civil Litigation in Mufassal.*

**2. Primary duty of Legal Remembrancer.**—It is the primary duty of the Legal Remembrancer to superintend and advise on the conduct of all civil litigation to which Government may be a party or with which Government is in any way concerned arising outside the original jurisdiction of the High Court.

**3. When advice of Legal Remembrancer is taken.**—In such litigation when Government or the Court of Wards is the plaintiff, the advice of the Legal Remembrancer is taken before a suit is instituted and he finally settles the form of plaint, the rough draft being prepared by the Local Government Pleader. For these purposes it is the duty of the local authorities to put him in possession of all necessary facts according to the instructions laid down in the Civil Suit Rules *post*. The advice of the Legal Remembrancer is also sought on points of difficulty during the pendency of the case and in regard to any suggested compromise. He also decides whether an appeal should be lodged against an adverse decision.

**4. He is consulted in notice cases.**—In the case of suits against Government, the Legal Remembrancer is consulted on the receipt of notice under section 80 of the Civil Procedure Code and he shall decide whether the dispute should be compromised or a suit awaited.

**5. Duties of Legal Remembrancer in suits against Government.**—When a suit is instituted against Government or the Court of Wards, the Legal Remembrancer shall perform the same duties as those which are set forth in the case of suits by Government.

**6. His duties in execution of decrees.**—The Legal Remembrancer is also responsible for the execution of decrees obtained by Government and for this purpose half-yearly returns



are submitted by Collectors. He is the authority by whom irrecoverable sums due to Government in pauper suits or otherwise are remitted. He also arranges for the satisfaction of decrees against Government.

7. **Appointment of Counsel or Vakils in the mufassal.**—Whenever it is considered necessary to appoint Counsel or Vakil to appear in original or appellate courts in the mufassal, the Legal Remembrancer decides and selects the terms of his appointment.

*Civil Litigation before the High Court.*

8. **His duties in appeals in the High Court.**—The Legal Remembrancer is responsible for the conduct on behalf of Government or the Court of Wards of cases of appeals in the High Court. The draft memo. of appeal is prepared by the Senior Government Pleader but is finally settled by the Legal Remembrancer. In appeals against Government or the Court of Wards in the High Court the Legal Remembrancer decides whether cross-objection should be filed and what action should be taken to defend the appeal.

9. **In proceedings under Legal Practitioners' Act, Stamp Act, etc.**—In proceedings in the High Court either under the Legal Practitioners' Act, the Stamp Act or the Court Fees Act, etc., he is responsible for the proper representation of Government. It is for him to give the necessary instructions to the Senior Government Pleader after consulting if need be and if time allows, the local authorities.

*Civil Litigation before the Privy Council.*

10. **In appeals under the Letters Patent.**—He has also to decide whether an appeal under the Letters Patent or an application for leave to appeal to the Privy Council should be preferred in any case in which Government or the Court of Wards is interested. On admission of an appeal to the Privy Council, he supplies information to the Solicitors to the India Office and sends a full note for the guidance of the Solicitors and Counsel engaged in England. Similar duties are performed in cases in which State Railways and other such departments are parties.

*Criminal Litigation.*

11. **Legal Remembrancer's duties in criminal matters.**—As Chief Law Officer of Government, it is the duty of the Legal Remembrancer, in criminal matters—

- (i) to instruct the law officers of Government in the High Court or other professional lawyer when necessary in relation to cases coming before the High Court on behalf of the Crown. He will also consider the propriety of moving the High Court for the enhancement of sentence in particular cases;
- (ii) to advise Government in consultation with the Deputy Legal Remembrancer when appeals from acquittals are proposed;

- (iii) in mufassal Courts and Courts of Presidency Magistrates, Calcutta, to provide for the adequate prosecution of important cases and for the proper representation of the Crown in appeals of special moment in district Courts; and
- (iv) generally to watch the interests of Government in the Criminal Courts.

**12. Engagement of Counsel in the High Court.**—The question of engaging Counsel for the conduct of cases before the High Court on behalf of Government is left to the Legal Remembrancer, and it is his duty to decide upon the nature and facts of each case whether to engage the Advocate-General or any other Senior Counsel. The responsibility of District Magistrate is to point out any facts indicating the special importance or difficulty of any particular case, leaving the subsequent action to ensure the proper presentation of the case in Court to the Legal Remembrancer.

[Bengal Government letter Nos. 4086-4090 J., dated the 19th September 1921.]

**13. Legal Remembrancer controls work of Local Government Pleaders and Public Prosecutors.**—The Legal Remembrancer controls the work of the Local Government Pleaders and Public Prosecutors and may sanction extra payments to them in particular cases. The appointment of these officers also are made on his nomination.

**14. Magistrate and Police Commissioner to report important cases.**—District Magistrate and Police Commissioner, Calcutta, shall at once report for the orders of the Legal Remembrancer any criminal case of more than ordinary importance involving a question of great public interest or in which it may appear expedient that the Crown should withdraw from the prosecution and it shall be the duty of the Legal Remembrancer to keep Government informed of all such cases.

**15. Legal Remembrancer is the agent under Civil Procedure Code.**—The Legal Remembrancer is, ex-officio authorised to act for Government in respect of all judicial proceedings in any Civil Court within the Province of Bengal and is the recognized agent of Government under Rule 2, Order XXVII of the Code of Civil Procedure.

**16. Also Public Prosecutor, High Court, Appellate Side.**—The Legal Remembrancer is ex-officio Public Prosecutor in all cases coming before the High Court of Judicature at Fort William in Bengal on its Appellate Side.

[Bengal Government Order No. 125 J.—D., dated 7th May 1915.]

**17. Also Public Prosecutor, High Court, Original Side.**—The Legal Remembrancer is also appointed ex-officio Public Prosecutor on the Original Side of the High Court for the purpose of receiving notices, filing petitions, etc. (Vide Bengal Government Order No. 126 J.—D., dated the 8th May 1915). He is not authorized

to represent Government on the Original Side of the High Court (vide *Legal Remembrancer versus Motilal Ghose*, I. L. R., XII Cal., 173).

18. **Also Public Prosecutor for Assam.**—He is also ex-officio Public Prosecutor in all cases coming before the High Court, Calcutta, in its Appellate or Revisional Jurisdiction from the Province of Assam.

[Assam Government Notification No. 4108 J., dated 19th August 1913.]

19. **Legal Remembrancer's other functions.**—He is ex-officio President of the Central Examination Committee for the conduct of Departmental Examinations, a member of Pledership and Muktearship Examination Committee and also a member of the Committee of Management of the Calcutta University Law College.

20. **Legal Remembrancer's power to pay to carry on suits, etc.**—The Legal Remembrancer is empowered to sanction the payment of any sum for the purpose—

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

NOTE.—The expenditure is debitable to "Law charges."

21. **Power to remit decrees.**—The Legal Remembrancer is also empowered to remit or write off any sum due to the Government under decrees of court which are found to be irrecoverable.

22. **Power in civil proceedings in High Court.**—No civil proceedings of any kind in which the Secretary of State or the Court of Wards is a party shall be instituted or defended in the High Court unless under the orders of the Legal Remembrancer.

23. **Duties towards Court of Wards.**—The Legal Remembrancer will, when so required, advise the Court of Wards in all civil litigation.

24. **Procedure for asking sanction of law charges.**—  
(a) Whenever an officer submits a proposal to the Legal Remembrancer, for sanction, under rule 20 *ante* to the payment of law charges, the sanction of which would involve an excess over the allotment, he should at the time of submitting such proposal inform the Revenue Department of Government that he will require additional grant to meet the claim, stating clearly the amount required by him.

(b) The Legal Remembrancer will, if the proposal is sanctioned by him, forward a copy of his order, sanctioning the payment of the claim, to Government in the Revenue Department so that

arrangements may be made at once to allot necessary funds to the officer concerned.

[Revenue Department Nos. 28-54 T.—R., dated 17th April 1928.]

25. In pursuance of section 17A of the Indian Divorce Act (IV of 1869), the Legal Remembrancer is appointed by the Governor-General in Council to exercise, within the jurisdiction of the Calcutta High Court, the like rights of showing cause regarding dissolution of marriage as is exerciseable in England by the King's Proctor.

[Government of India, Home Department, Notification No. F.-928—27 J., dated 28th July 1928.]

[He is also appointed to exercise, as Proctor, the duties assigned to His Majesty's Proctor by sections 181 and 182 of the Supreme Court of Judicature (Consolidation) Act, 1925.]

## 2.—The Advocate-General.

1. **Appointment of Advocate-General.**—The appointment of the Advocate-General is one for which the Government of India is responsible and section 133 of the Government of India Act, 1915, provides for the appointment of the Advocate-General. The appointment is made by a Royal warrant. For acting and officiating appointment reference may be made to 24 and 25 Vict., C. 67, section 29.

NOTE.—On the question being raised by the Government of Bombay the Court of Directors in their despatch No. 1 of 1831 gave instructions that on the Advocate-General quitting the Presidency and proceeding to sea the Local Government was to appoint a competent person to act in his absence.

2. **Chief Legal Adviser.**—The Advocate-General is the Chief Legal Adviser of the Government of India and Bengal and the Administration of Assam but not the Government of Bihar and Orissa.

[Government of India, Home Department, No. 92 of 4th April 1917.]

3. **Statutory powers and functions.**—The statutory powers and functions vested in the Advocate-General, Bengal, are as follows:—

(i) East India Company Act, 1813, 53 Geo. 3, c. 155, s. 111: power to file information for debts due to the Crown.

NOTE.—This power was kept alive by section 2 of the Government of India Act, 1833, and again by section 1 of the Government of India Act, 1853, merged in the Government of India Act, 1858.

to represent Government on the Original Side of the High Court (vide Legal Remembrancer *versus* Motilal Ghose, I. L. R., XLI Cal., 173).

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2. **Chief Legal Adviser.**—The Advocate-General is the Chief Legal Adviser of the Government of India and Bengal and the Administration of Assam but not the Government of Bihar and Orissa.

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NOTE.—This power was kept alive by section 2 of the Government of India Act, 1833, and again by section 1 of the Government of India Act, 1853, merged in the Government of India Act, 1858.

This has not been limited or affected by the Code of Civil Procedure (section 79 of Code).

(ii) Civil Procedure Code, Act V of 1908, s. 91: power to institute and sanction suits in respect of public nuisances.

(iii) Civil Procedure Code, s. 92: power to institute and sanction suits in cases of public trusts of a charitable or religious nature.

NOTE.—By Notification (Bihar and Orissa) No. 2246 of the 4th April 1913, made under section 93 of the Civil Procedure Code, these powers (under sections 91 and 92) can now be exercised in Bihar and Orissa by the Legal Remembrancer of Bihar and Orissa.

All Collectors and Deputy Commissioners are empowered under section 93 of the Civil Procedure Code to exercise within the limits of their respective districts (excluding the town of Calcutta) the power conferred by sections 91 and 92 of the Code.

[Eastern Bengal and Assam Government Notification No. 704 J., dated 22nd February 1909, and Bengal Government Notification No. 3592 L. R., dated 15th April 1918.]

This Notification does not, however, divest the Advocate-General, Bengal, of his powers under sections 91 and 92 though it enables them also to be exercised by the above officers of the Local Government.

(iv) Indian High Courts Act, 1861, Letters Patent for the High Court, 1865, clause 26: power to certify for review of criminal cases tried on the Original Side of the High Court on ground of error of law.

(v) Criminal Procedure Code, Act V of 1898, section 333: power to stay proceedings in High Court at any stage of a criminal trial.

NOTE.—By section 4 (1) (a), Criminal Procedure Code, "Advocate-General" includes also a Government Advocate, or where there is no Advocate-General or Government Advocate such officer as the Local Government may from time to time appoint in this behalf.

(vi) Criminal Procedure Code, section 194 (2): power (with the previous consent of the Government of India or of the Local Government) to exhibit informations for all purposes for which the Attorney-General may exhibit informations on behalf of the Crown in the High Courts of Justice in England.

NOTE.—The Attorney-General has power to exhibit *ex officio* criminal information (as a mode of instituting criminal proceedings without indictment by a Grand Jury) in any case of misdemeanour as distinguished from felony.

(vii) Criminal Procedure Code, section 495 (1): the right to conduct a prosecution before any Magistrate without permission of the Magistrate.

(viii) Lunacy Act, IV of 1912, section 39: power to make application for an inquisition in lunacy.

4. **Duties without fees.**—In addition to the duties the Advocate-General has to perform under the English and Indian Statutes he shall perform *without fees* the following duties:—

[*Vide* Home Department letter No. 92, dated 4th April 1917, to the Chief Secretary to the Government of Bengal.]

(i) He will advise upon any matter upon which he is consulted by Government through the Government Solicitor, the Legal Remembrancer or the Standing Counsel.

(ii) He will appear in the following civil cases:—

(a) Cases in the ordinary or extraordinary Original Jurisdiction of the High Court to which the Secretary of State is a party.

(b) Cases in the ordinary or extraordinary Original Jurisdiction of the High Court to which Government officers are parties and which Government had decided to conduct on behalf of such officers.

(c) Cases in the ordinary or extraordinary Original Jurisdiction of the High Court in which neither Government nor Government officers are directly interested, but in which Government considers itself to be sufficiently interested to render it advisable to conduct the cases on behalf of some third person.

This does not include cases of the Court of Wards, Calcutta Corporation, Calcutta Improvement Trust, Calcutta Port Trust or any other public corporate body. Cases of such *quasi*-public departments as the Board of Examiners are however included.

(d) Original cases of the same nature as those referred to in items (a), (b) and (c) originally filed in some other Court and transferred to the High Court.

(iii) Appeals from the cases referred to in clause (ii).

(iv) He will appear in the High Court (Original Side) in references under the Stamp Act, Probate Act and the like.

(v) He will similarly appear when so required before the High Court on its Original Side in references from the Presidency Small Cause Court Judges to which Government is a party or can otherwise be heard.

NOTE.—In all the above cases the Advocate-General will be at liberty, should he be so disposed, to claim his fees if recovered from the other party.

(vi) He will represent the Crown at all stages in all criminal cases arising within the ordinary original jurisdiction of the High Court, whether the tribunal be a Judge and Jury or a Special Tribunal and in all *quasi*-criminal matters such as cases under the Press Act, Habeas Corpus and Extradition cases arising within the same limits provided always that Government considers that owing to the special importance of the case the attendance of the Advocate-General is desirable.

NOTE.—Ordinary criminal prosecutions in the High Court are left to the Standing Counsel.

5. **Scale of fees.**—In all other cases the Advocate-General is paid fees according to the following scale:—

- (i) Appearance in the High Court—
  - (a) Regular civil appeals, criminal appeals, miscellaneous proceedings in which evidence is taken or the hearing of which extends for the whole day—30 Gold mohurs.
  - (b) Second appeals, miscellaneous appeals, motions and other miscellaneous proceedings except those mentioned above—15 Gold mohurs.
  - (c) Appearance before special benches of the Calcutta High Court if the case is one arising outside the limits of the ordinary original jurisdiction of the High Court—30 Gold mohurs.
- (ii) Appearance in Calcutta outside the High Court such as appearances in the Police Court, Small Causes Court or Board of Revenue—30 Gold mohurs.
- (iii) Appearances in Howrah, Alipore, Sealdah or elsewhere in the suburbs of Calcutta—45 Gold mohurs.
- (iv) Appearances in the mufassal outside the above limits—60 Gold mohurs.
- (v) Consultation fee in cases for appearances in which fees are payable each—5 Gold mohurs.
- (vi) Perusal fee—No fee in ordinary cases but a special fee to be fixed by the Local Government in cases of complexity which involve prolonged labour.

6. **Local Government's power.**—The Local Government may grant fees to the Advocate-General in any cases 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 likely to be unduly prolonged.

NOTE.—The Advocate-General has been granted, as a special case, the following kinds of fees:—

- (1) Settling affidavit—15 Gold mohurs.
- (2) Drawing up petition of complaint—20 Gold mohurs.  
(Emperor *vs.* Sachindra Nath Sanyal, Sec. 124 A. Bankura, 1925).
- (3) Appearing in the High Court in two appeals heard together—45 Gold mohurs  
(Appeal Nos. 608 and 609 of 1925, Emperor *vs.* Meghu Kahar and others—Sealdah Gang Case; and Appeal Nos. 494 and 495 of 1924—Emperor *vs.* Joshoda Ranjan Pal and another.)

7. **Approval of Finance Department.**—When the Legal Remembrancer proposes to engage the Advocate-General or the Standing Counsel at a fee higher than their prescribed rates or any counsel at a fee higher than 20 gold mohurs, he will obtain the previous approval of the Finance Department to the fee proposed. When, however, there is no time to make a reference to the Finance Department, the Legal Remembrancer may act on his own responsibility and refer to the Finance Department as soon after the engagement is made as possible.

[Bengal Government No. 9410J., dated 13th November 1929.]

8. **His limitations.**—The Advocate-General is debarred from—

- (i) advising or holding briefs against Government;
- (ii) defending accused persons in criminal prosecutions;
- (iii) advising private parties in cases in which he is likely to be called on to advise Government; and
- (iv) accepting appointment as a Director in any Company without the sanction of the Government of India.

The Officer himself must, however, be the Judge as to whether he can, or cannot under rule (iii) advise on a question of law any private party who applies to him.

[Bengal Government (Judicial Department) No. 8447 J., dated the 22nd November 1922.]

9. **Control of expenditure.**—The Legal Remembrancer is the controlling officer in respect of expenditure incurred by the Advocate-General.

[Bengal Government Resolution No. 9585 F., dated 5th September 1924.]

### 3.—The Government Solicitor.

1. **Nature of appointment.**—The Solicitor to the Government of Bengal is appointed subject to the following conditions:—

[Bengal Government No. 882 J., dated 10th February 1923.]

(1) That the term of his appointment shall be for five years, renewable at the option of Government at the end of that period, such renewals not being restricted in number, but never to exceed five years at a time.

(2) That when he is asked by the Government of India, or the Government of Bengal or the Assam Administration to advise in a case which is either in litigation or likely to lead to litigation, the firm to which he belongs shall not advise another client in the same case; and that if it has been advising such a client up to the point at which the Government ask for his advice in respect of the case, it shall at once cease to act further for him.

2. **Duties of Government Solicitor.**—It has been decided that his duties as Government Solicitor shall be confined to those stated below and that the contract allowance payable for these duties shall be Rs. 3,500 per mensem. The duties—

- (a) That portion of the civil legal business of the Government of India, which must necessarily be done in Calcutta, i.e., litigation in Courts and advising the departments of that Government located there.
- (b) Criminal work of an advisory nature for the departments of the Government of India located in Calcutta.
- (c) The entire civil legal business of the Government of Bengal and of the Assam Administration, excluding all business connected with litigation in mufassal Courts.
- (d) Advisory work in cases connected with conveyances and with leases of a complicated character referred to the Government Solicitor by the Legal Remembrancer of Bengal, Bihar and Orissa and Assam.

5. **Scale of fees.**—In all other cases the Advocate-General is paid fees according to the following scale:—

- (i) Appearance in the High Court—
  - (a) Regular civil appeals, criminal appeals, miscellaneous proceedings in which evidence is taken or the hearing of which extends for the whole day—30 Gold mohurs.
  - (b) Second appeals, miscellaneous appeals, motions and other miscellaneous proceedings except those mentioned above—15 Gold mohurs.
  - (c) Appearance before special benches of the Calcutta High Court if the case is one arising outside the limits of the ordinary original jurisdiction of the High Court—30 Gold mohurs.
- (ii) Appearance in Calcutta outside the High Court such as appearances in the Police Court, Small Causes Court or Board of Revenue—30 Gold mohurs.
- (iii) Appearances in Howrah, Alipore, Sealdah or elsewhere in the suburbs of Calcutta—45 Gold mohurs.
- (iv) Appearances in the mufassal outside the above limits—60 Gold mohurs.
- (v) Consultation fee in cases for appearances in which fees are payable each—5 Gold mohurs.
- (vi) Perusal fee—No fee in ordinary cases but a special fee to be fixed by the Local Government in cases of complexity which involve prolonged labour.

6. **Local Government's power.**—The Local Government may grant fees to the Advocate-General in any cases 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 likely to be unduly prolonged.

NOTE.—The Advocate-General has been granted, as a special case, the following kinds of fees:—

- (1) Settling affidavit—15 Gold mohurs.
- (2) Drawing up petition of complaint—20 Gold mohurs.  
(Emperor vs. Sachindra Nath Sanyal, Sec. 124 A. Bankura, 1925).
- (3) Appearing in the High Court in two appeals heard together—45 Gold mohurs  
(Appeal Nos. 608 and 609 of 1925, Emperor vs. Meghu Kahar and others—Sealdah Gang Case; and Appeal Nos. 494 and 495 of 1924—Emperor vs. Joshoda Ranjan Pal and another.)

7. **Approval of Finance Department.**—When the Legal Remembrancer proposes to engage the Advocate-General or the Standing Counsel at a fee higher than their prescribed rates or any counsel at a fee higher than 20 gold mohurs, he will obtain the previous approval of the Finance Department to the fee proposed. When, however, there is no time to make a reference to the Finance Department, the Legal Remembrancer may act on his own responsibility and refer to the Finance Department as soon after the engagement is made as possible.

[Bengal Government No. 9410J., dated 13th November 1929.]

8. **His limitations.**—The Advocate-General is debarred from—

- (i) advising or holding briefs against Government;
- (ii) defending accused persons in criminal prosecutions;
- (iii) advising private parties in cases in which he is likely to be called on to advise Government; and
- (iv) accepting appointment as a Director in any Company without the sanction of the Government of India.

The Officer himself must, however, be the Judge as to whether he can, or cannot under rule (iii) advise on a question of law any private party who applies to him.

[Bengal Government (Judicial Department) No. 8447 J., dated the 22nd November 1922.]

**9. Control of expenditure.**—The Legal Remembrancer is the controlling officer in respect of expenditure incurred by the Advocate-General.

[Bengal Government Resolution No. 9585 F., dated 5th September 1924.]

### 3.—The Government Solicitor.

**1. Nature of appointment.**—The Solicitor to the Government of Bengal is appointed subject to the following conditions:—

[Bengal Government No. 882 J., dated 10th February 1923.]

(1) That the term of his appointment shall be for five years, renewable at the option of Government at the end of that period, such renewals not being restricted in number, but never to exceed five years at a time.

(2) That when he is asked by the Government of India, or the Government of Bengal or the Assam Administration to advise in a case which is either in litigation or likely to lead to litigation, the firm to which he belongs shall not advise another client in the same case; and that if it has been advising such a client up to the point at which the Government ask for his advice in respect of the case, it shall at once cease to act further for him.

**2. Duties of Government Solicitor.**—It has been decided that his duties as Government Solicitor shall be confined to those stated below and that the contract allowance payable for these duties shall be Rs. 3,500 per mensem. The duties—

- (a) That portion of the civil legal business of the Government of India, which must necessarily be done in Calcutta, i.e., litigation in Courts and advising the departments of that Government located there.
- (b) Criminal work of an advisory nature for the departments of the Government of India located in Calcutta.
- (c) The entire civil legal business of the Government of Bengal and of the Assam Administration, excluding all business connected with litigation in mufassal Courts.
- (d) Advisory work in cases connected with conveyances and with leases of a complicated character referred to the Government Solicitor by the Legal Remembrancer of Bengal, Bihar and Orissa and Assam.

3. Works of the Eastern Bengal and North-Western Railways and the Chief Mining Engineer, Railway Board, fall outside the official duties of the Government Solicitor and are taken entirely out of the contract with him.

[Bengal Government No. 3282 J., dated 26th March 1929.]

NOTE.—The Government Solicitor was the Public Prosecutor on the Original Side of the High Court until the end of the year 1928. He got a monthly remuneration of Rs. 1,500 and the Legal Remembrancer was the controlling officer in respect of expenditure incurred by him.

[Bengal Government Resolution No. 9585 F., dated the 5th September 1924.]

#### 4.—The Standing Counsel.

1. **Appointment of Standing Counsel.**—The Standing Counsel is appointed by the Governor-General in Council and is one of the legal advisers of the Governments of India and Bengal and the Administration of Assam, but not of Bihar and Orissa.

[Government of India, Home Department (Judicial), No. 1127, dated 26th October 1917.]

NOTE.—The power of withholding cases is vested in the Standing Counsel. The Advocate-General only can enter *nolle prosequi*. There is difference between the two procedure: in the former the result is acquittal while in the latter it is simply a discharge.

2. **His duties without fees.**—The duties covered by his salary are:—

- (a) to act as junior to the Advocate-General in all cases in the Ordinary or Extraordinary Original Jurisdiction of the High Court in which the Advocate-General is bound to appear without fees;
- (b) to draw pleadings in all actions in which he may be required to act as junior to the Advocate-General;
- (c) to conduct the prosecution at the High Court Sessions of all murder and political cases and such other important cases only as the Government or the Judge presiding at the Sessions might require him to conduct;
- (d) to advise the Government when required; and
- (e) to settle on behalf of the Government all important contracts, deeds and bonds of indemnity.

3. **His fees.**—In cases and appeals outside those covered by his salary in which the Standing Counsel appears for the Government as junior to the Advocate-General, he shall receive fees in the proportion of two-thirds of those received by the latter; and when he appears alone or as a leader, he shall receive fees not exceeding

those admissible to the Advocate-General, under the orders conveyed in the Home Department letter No. 92, dated the 4th April 1917 (vide paragraph 5 under the Advocate-General *ante*).

4. **Local Government's power and limitations.**—The conditions laid down in paragraphs 6 to 8 under the Advocate-General are also applicable to the Standing Counsel.

NOTE.—It is not the practice in Sessions cases to pay consultation fee to a junior.

### 5.—The Deputy Legal Remembrancer.

1. **His duties.**—The chief duties of the Deputy Legal Remembrancer are:—

- (a) to conduct before the High Court the cases for the Crown in references and appeals relating to capital sentence ;
- (b) to appear for the Crown when so instructed by the Legal Remembrancer in all criminal appeals, references and revision cases in the High Court ;
- (c) to give advise to Government or the Legal Remembrancer in any legal matter when so required ;
- (d) to take charge, when required by Government, of the office of the Legal Remembrancer during his enforced absence either on Government duty or on leave or by reason of sickness or other exceptional cause;
- (e) to appear for the Crown in the Marine Court.

[Bengal Government, Marine Department, Resolution No. 1 Marine, dated 3rd January 1893.]

NOTE.—Act V of 1883 provides for an investigation of a judicial character. The investigation is directed by the Local Government in each case.

2. **Engagement of Senior Counsel.**—In cases of importance the services of the Deputy Legal Remembrancer are replaced by those of Senior Counsel specially briefed by the Legal Remembrancer.

3. **Conditions of leave.**—The Deputy Legal Remembrancer is entitled to leave according to the provisions of Rule 99 of the Fundamental Rules.

4. **Fees to outside counsel and vakils.**—When the Deputy Legal Remembrancer is unable to dispose of the work entrusted to him, himself, he may engage a barrister or a pleader (including the Assistant Government Pleader) to whom fees are paid according to the following scale:—

|   | Rs. |
|---|-----|
| In motions and revisions (including reference under section 438, Cr. P. C.) .. .. . | 34  |
| In Appeals and Jury Reference .. .. .   | 51  |

5. **Cannot take up private work.**—The Deputy Legal Remembrancer as a whole-time servant of Government cannot devote his time to any private work.

### 6.—Government Counsel, High Court.

1. The Government of Bengal, with the previous sanction of the Government of India, created a post of Government Counsel, High Court, on a pay of Rs. 500 a month. The office is held during the pleasure of the Governor in Council.

[Judicial Department No. 5815 J., dated 20th August 1926.]

2. The duties of the Government Counsel are:—

(a) to appear for the crown without the payment of any fee in all cases at the High Court Sessions which the Standing Counsel is not required to conduct himself, and

(b) to appear for the Crown in other courts, when required by Government to do so on a fee which will be half of the fee that the Standing Counsel might claim for such appearance.

3. (a) The Government Counsel is allowed to undertake private practice (except at the High Court Sessions), provided that it does not interfere with his work for Government and that Government will always have the first claim to his services in all courts.

(b) He has no claim to the post of Standing Counsel on the occurrence of a vacancy.

(c) He is not entitled to any pension.

(d) In matters of leave he is governed by Subsidiary Rule 280.

(e) He is a first grade officer for the purpose of the travelling allowance rules. [Subsidiary Rule 27.]

(f) He is permitted to occupy circuit houses in Bengal, free of charge, when travelling on duty.

[Revenue Department No. 13405 Mis., dated the 16th December, 1926.]

### 7.—Senior Government Pleader, High Court.

1. **Existence of the post.**—The post of Senior Government Pleader has been in existence since the time of the Sadar Dewany and Sadar Nizamat Adawlat long before the High Court was constituted under the Charter of 1862 and the emolument attached to the post has ever since been a monthly retainer of Rs. 300 and legal fees. [It is in record that in 1853 Babu Rama Prosad Roy, Senior Government Pleader, was in charge of the office of the Legal Remembrancer.] The work of the Senior Government Pleader is ordinarily restricted to civil cases in the High Court.

2. **A gazetted officer.**—The Senior Government Pleader is a gazetted officer and his appointment is made with the sanction of

Government in the Judicial Department. There is no rule requiring that any authority should be consulted in selecting a successor to the Senior Government Pleader. In practice the Judges of the High Court and the Advocate-General or other members of the legal profession are consulted. It is not necessary also, unless any special reason exists, to obtain sanction of Government to the appointment of a locum tenens when the permanent incumbent goes on leave.

3. **Also Government Pleader for Assam.**—The Senior Government Pleader, High Court, is appointed Government Pleader in all cases from the Province of Assam which come before the High Court, Calcutta, in its civil, appellate and revisional jurisdiction.

[Assam Government Notification No. 6546 J., dated the 12th December, 1913.]

4. **Also for Bihar and Orissa.**—The Senior Government Pleader holds similar appointment for the Province of Bihar and Orissa.

[Bihar and Orissa Government Notification No. 467 J., dated the 15th September, 1913.]

5. **Not a whole-time officer.**—The Senior Government Pleader, High Court, is not a whole-time officer of Government and is not entitled to privilege leave especially as he enjoys in full the annual High Court vacation.

6. **Duties.**—The duties of the Senior Government Pleader, High Court, are:—

(a) to represent Government or the Court of Wards, when such representation has been duly assigned to him by the Legal Remembrancer or the Board of Revenue through the Legal Remembrancer as the case may be in appeals before the High Court and in matters to which either Government or the Court of Wards is a party and which come before the High Court by way of review, reference or revision under the Code of Civil Procedure.

Provided that nothing in the above clause shall be deemed to require the Court of Wards, unless they think proper, to retain the Government Pleader to represent them in appeals or matters of review, reference or revision wherein an Advocate has already been engaged for the due representation of the wards estate concerned previous to the assumption of the management of the estate by the Court of Wards.

(b) to represent Government (including the Board of Revenue or other authorities) before the High Court in references under the Stamp Act and in other analogous references; also in matters arising out of the Legal Practitioners Act, and in other miscellaneous matters of a civil nature in which Government may require a representative.

(c) To give advice to Government or the Legal Remembrancer in any civil matter when so required.

7. The Senior Government Pleader shall, if called upon, prepare a note on law and facts for the use of the Legal Adviser,

India Office, regarding an appeal to the Privy Council a certificate for which has been granted by the High Court. The fee for the preparation of this note is in each case determined by the Legal Remembrancer.

**8. Shall not advise or appear against Court of Wards.**—The Senior Government Pleader (as also the Assistant Government Pleader) shall not appear or advise against Government or the Court of Wards in any case either in the High Court or in any other Courts; nor shall he give professional advice to any ward without the previous permission of the Court of Wards.

### **8.—Assistant Government Pleader, High Court.**

**1. Terms of appointment.**—The terms and conditions of the post of the Assistant Government Pleader are as follows:—

(i) The Assistant Government Pleader will assist the Senior Government Pleader in any case in which the latter asks for such assistance; and in such cases, the Assistant Government Pleader will get 6/16ths of the fees, the Senior Government Pleader getting the other 10/16ths.

(ii) The Assistant Government Pleader will occasionally be asked to take up for the Crown criminal cases, whenever the Deputy Legal Remembrancer has his hands too full of work, or on any other special occasion. In such cases the Assistant Government Pleader will get the usual fee.

(iii) The Assistant Government Pleader is debarred from being appointed as Reporter to the Indian Law Reports, as the two appointments cannot be held by one and the same officer.

**2. Fees.**—Besides the monthly salary of Rs. 150 and the six-sixteenths share of the legal fees as stated above the Assistant Government Pleader in addition gets:—

(a) a fee of Rs. 75 for each appearance before the Board of Revenue or before the Commissioner.

(b) a fee of Rs. 51 and Rs. 34 in criminal appeals and revisions respectively.

**3. Duties.**—All matters in connection with the settlement of plaints and written statements in suits in mufassal courts are, as a general rule, sent to the Assistant Government Pleader while the questions of appeal in the High Court and in lower Courts go to the Senior Government Pleader. Where he actually drafts pleadings the Assistant Government Pleader may claim a fee.

**4. Consulted by Legal Remembrancer.**—The Assistant Government Pleader is also consulted by the Legal Remembrancer in regard to any law points that may have been unofficially referred to the latter.

**5. Not a gazetted appointment.**—Under the instructions of the Accountant-General, Bengal, the pay of the Assistant Government Pleader is drawn in a separate pay bill, countersigned by the Legal Remembrancer. The office is not a gazetted one.

## CHAPTER II.

## Other Law Officers of Government.

## 1.—Public Prosecutor, Calcutta.

1. **Duties.**—The duties of the Public Prosecutor are—

- (a) to appear for the Crown in the Presidency Magistrates' Courts in any case, when so to do by the Commissioner of Police or the Legal Remembrancer, and
- (b) to advise the police in difficult cases.

The Public Prosecutor is also consulted by the Legal Remembrancer when occasion requires.

**NOTE.—Special fees.**—Although the Public Prosecutor is a whole-time officer on a rate of pay which is personal to the present incumbent (Rai T. N. Sadhu Bahadur) and it is stated in Government letter No. 2360J., dated the 4th June 1920, sanctioning the appointment that he will no longer be paid by fees, he has received as a special case a daily fee of 7 gold mohurs, in the case—F. W. Kidd, Deputy Commissioner of Police, Calcutta *versus* "The Servant" newspaper (*vide* Bengal Government letter No. 12007P., dated the 8th August 1922). He has also received a daily fee of 3 gold mohurs for appearance before the Presidency Magistrate's Court in connection with the defamation case brought by Mr. F. W. Kidd against the "Amrita Bazar Patrika."

[Bengal Government letter No. 7909P., dated the 22nd August 1923.]

2. **Fees to outside pleaders.**—Pleaders conducting criminal cases before the Court of a Presidency Magistrate are allowed a fee of one gold mohur (Rs. 17) per diem. If he is deputed to another Court the fee is increased to Rs. 25 a day.

3. **Not paid for adjournments.**—Pleaders appearing before the Police Courts in Calcutta are not paid any fee for adjournment even if the pleader attends the court and waits for the case being taken up. They are also not allowed any fee for consultation.

**NOTE.—Prize cases.**—Prize cases (during the Great European war) were conducted by the Government Solicitor and fees were paid by the Government of India in accordance with the sanction communicated in their Home Department letter No. 54, dated Simla, the 5th August 1918, to the Government of Bengal. Bills of fees were made out by the Government Solicitor to the Government of Bengal, Marine Department, and submitted to the Accountant-General, Bengal, for payment.

4. **Not to appear for defence.**—The Public Prosecutor, Calcutta, is not employed for the defence of an accused person except when he is definitely ordered to do so by the Local Government.

5. **Submission of particulars in commitments to the High Court Sessions.**—When a case is committed to the High Court Sessions



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for trial, the Public Prosecutor, Calcutta, shall furnish the Legal Remembrancer with following particulars as soon after the commitment as possible:—

- (1) Names of the accused.
- (2) Charges on which committed.
- (3) Committing Magistrate.
- (4) Date of commitment.
- (5) Whether defended or undefended before the Magistrate.
- (6) Number of witnesses examined.
- (7) Special importance of the case, if any.
- (8) Whether the brief would be voluminous.
- (9) Whether there is any question of antagonistic defence if the number of accused persons is more than one.

6. **Withdrawal of prosecution in High Court Sessions.**—When the Crown Counsel considers that a case committed to the High Court Sessions is very weak and should be withdrawn, he should at once communicate his views to the Public Prosecutor of the Police Court, Calcutta, and hear his opinion before making the formal application for withdrawal.

[Bengal Government No. 2331 J., dated 16th March 1928.]

## 2.—Junior Public Prosecutor, Calcutta.

1. **Terms of appointment.**—The Junior Public Prosecutor, Calcutta, is a whole-time officer of Government on a salary of Rs. 600—600—650—50—1,200. He is not entitled to house allowance or conveyance allowance. He assists the Senior Public Prosecutor, Calcutta, in all his works, instructs Crown Counsel in the High Court Sessions and is in charge of all criminal works in the Original Side of the High Court.

[Judicial Department No. 4 J., dated 3rd January 1929.]

2. **Duties of the Junior Public Prosecutor.**—The duties of the Junior Public Prosecutor are to peruse the briefs and exhibits and prepare fairly comprehensive notes in cases which are conducted before the High Court Sessions by the Standing Counsel or the Government Counsel or any other Advocate.

**NOTE.**—Counsel frequently desires information in addition to that supplied in the brief and it is often necessary for further evidence to be adduced at the Sessions the preparation of the proofs of which devolves upon the Public Prosecutor.

3. **His other duties.**—The Junior Public Prosecutor prepares summons to secure the attendance of witnesses on subpoena, and attends at the Sessions so that counsel may be adequately instructed. He also attends at the office of the Clerk of the

Crown when inspection of documents is given to the accused's representatives or with counsel for the Crown and the accused to inspect the premises upon which various offences are alleged to have been committed. He also corresponds when necessary with the accused's attorneys.

### 3.—Government Pleaders (in the district).

1. **Duties of Government Pleaders.**—The duties of the Government Pleader are to advise the head of any Government Office of the district to which he is attached on any legal matters affecting the interests of Government and to conduct civil cases in court in which the Government is a party, or in which Government undertakes the defence of officers for acts done in the bona fide discharge of their duties.

[Government letter No. 1102 J., dated 18th April 1911, to Home Department, Government of India.]

2. **Nature of payments.**—For performing his duties, the Government Pleader is paid (1) a monthly retainer for giving opinions and doing other incidental duties, appertaining to the office and (2) ad valorem fees in civil suits according to the scale laid down by the High Court.

3. **Fees for drafting deeds.**—He is also paid fees for drafting deeds and agreements when required for the Public Works Department, but work of this nature when required by the Collector for Government lands is covered by his monthly retainer.

4. **Represents Government in revenue and criminal cases.**—The Government Pleader represents Government in all revenue and criminal cases in which Government is a party.

5. **Ex-officio Public Prosecutor.**—The Government Pleader is ex officio the Public Prosecutor of the district to which he is attached.

[Vide Calcutta Gazette, dated 23rd November, 1881, p. 1026; Bengal Government Notification dated 21st November 1881.]

6. **Duties to other officers.**—All the duties that Government Pleaders owe to Collectors 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.

7. **Employment of Associate Pleaders.**—In Government and Court of Wards' cases, Associate Pleaders may be appointed by the Collector, subject to the sanction of the Legal Remembrancer, who will fix their fees.

8. **Advice to public bodies.**—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 the Legal Remembrancer.

**9. Appointment of Government Pleaders.**—Whenever the office of Government Pleader is vacant, the Collector shall, in consultation with the Sessions Judge, nominate a qualified pleader for the appointment and submit the papers, through the Commissioner, to the Legal Remembrancer, who shall forward them to the Local Government with his recommendations. The Pleaders selected will be appointed by the Local Government and will receive his deed of appointment through the Legal Remembrancer.

**10. Filling of temporary vacancy.**—In the event of a temporary vacancy in the office of Government Pleader, the Collector shall, in consultation with the Sessions Judge, appoint a qualified pleader to act in the office until such pleader is relieved by a Government Pleader duly appointed or until his appointment is cancelled by the Collector. The Collector shall forthwith report to the Legal Remembrancer, through the Commissioner, the occurrence of every such vacancy and the making or cancellation of every such appointment.

**11. Leave of absence.**—Whenever a Government Pleader shall desire leave of absence, he shall submit an application to the Collector, who shall forward his application, through the Commissioner, to the Legal Remembrancer for orders, stating his opinion as to whether or not leave should be granted. If the Collector considers that the leave should be granted, he shall recommend some pleader to fill the absentee's place.

**12. Privilege leave.**—Government Pleaders, who can make suitable arrangements for conducting cases during their absence are allowed one month's leave of absence in each year without forfeiture of pay. Such leave with full pay cannot, however, be granted where it is necessary to appoint a locum tenens for the officer on leave. The leave has no cumulative effect.

**13. Removal, suspension or other punishment.**—Whenever a Collector 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 either direct or through the Commissioner, and the Legal Remembrancer shall, if he thinks fit, report the case for the orders of the Local Government.

**14. Employment of other pleader in place of Government pleader.**—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 Collector shall appoint some other pleader to conduct the suit, advising the Legal Remembrancer of his having done so and stating the reasons therefor.

**15. Recording of confidential opinion.**—Every Collector and every District Judge leaving his district shall place on record his opinion on the capacity and conduct of the Government Pleader for the time being in office. At the close of the year, an annual

statement (confidential) of the capacity and conduct of the Government Pleader is submitted by both the Collector and the District Judge to the Legal Remembrancer for communication to Government.

**16. Cannot advise against Government or Court of Wards.**—Except with the District Officer's permission in writing previously obtained, a Government Pleader shall not advise or appear against the Government or the Court of Wards in any case appertaining to the district or local area to which he is appointed.

**17. Appointment of Government Pleaders in Subordinate Civil or Revenue Courts.**—Government Pleaders are also appointed by the Local Government for the conduct of cases on behalf of Government or the Court of Wards in Subordinate Civil and Revenue Courts. Their duties are ordinarily limited to appearing in the courts for which they are respectively appointed in any suit or other civil matter entrusted to them. They may be required by the District Magistrate to appear in criminal cases, and when so appearing are governed by the rules applicable to outside pleaders.

**18. Employment of other pleader made by Collector or Sub-divisional officer.**—Whenever the Collector thinks that in any civil suit either at Sadar or in any civil court at a subdivision, the conduct of the suit either on behalf of or against the Secretary of State should be conducted by a pleader other than the Government Pleader, he may employ himself or, in consultation with the Subdivisional Officer, one of the members of the local bar to represent Government subject to the sanction of the Legal Remembrancer.

**19. Deputation to mufassal.**—The Government Pleader of the district shall on no occasion be deputed to the mufassal without the previous sanction of the Legal Remembrancer who, if necessary, may refer any case for the orders of Government.

**20. Attendance at meetings of Legislative Councils.**—A Government Pleader or a Public Prosecutor cannot be a member of the Legislative Assembly or the Council of State. If he is a member of the Provincial Legislature he shall, for the purpose of attending a meeting of the Legislative Council, notify the District Magistrate fifteen days before his proposed absence in order that suitable arrangement may be made for carrying on the work of Government.

[Bengal Government No. 6203 J., dated the 8th July 1927.]

#### **4.—Employment of Government Pleaders in Revenue and Settlement cases.**

**1. Collector may employ Government Pleader with Commissioner's approval.**—Whenever the Collector considers the employment of the Government Pleader necessary in a settlement or a

revenue case in which the Government is interested, he may employ him, subject to the approval of the Commissioner of the Division.

**2. Employment of Government Pleader before Commissioner's sanction is obtained.**—Whenever it is found necessary to authorise the employment of the Government Pleader before obtaining the sanction of the Commissioner, the Collector should at once report his proceedings for that officer's approval. The responsibility must rest with the Collector 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 Commissioner's control and criticism, if the discretion appears to have been improperly exercised.

**3. Government Pleader's fees.**—A Government Pleader is allowed a fee of Rs. 25 per day for appearance before a Collector or a Deputy Collector. In the Districts noted below the Government Pleaders are allowed a daily fee at the rate shown against each—

|  | Rs.    |
|--|--------|
| 24-Parganas                                    | ... 50 |
| Burdwan  | ... 32 |
| Hooghly  | ... 32 |
| Howrah   | ... 32 |
| Midnapore                                      | ... 32 |
| Jessore  | ... 32 |
| Rangpur  | ... 32 |
| Dacca  | ... 32 |
| Bakarganj (For senior Government Pleader only) | ... 32 |
| Mymensingh                                     | ... 32 |
| Chittagong                                     | ... 32 |

For appearance before the Board of Revenue or a Commissioner, a Government Pleader is allowed fees according to the following scale:—

|  | Rs.     |
|--|---------|
| In proceedings before the Board (not exceeding)            | ... 100 |
| In the office of a Commissioner of Revenue (not exceeding) | ... 80  |

The above authorities will fix the amount to be paid in individual cases. The Senior Government Pleader, High Court, is allowed a fee of Rs. 200 for appearing before the Board of Revenue, subject to the restriction that when several cases are heard on the same day, one full fee and a half fee for each additional case subject to a maximum of Rs. 500 for the day is allowed. The Assistant Government Pleader, High Court, is allowed a fee of Rs. 75 either for appearing before the Board of Revenue or before the Commissioner.

4. **Government Pleader's bills.**—Government Pleaders will draw their bills, showing the particulars of the cases in respect of which the fees are due to them, and the bills will be paid at the Treasury, after they have been passed by the Collector as correct. In the case of appearance before the Board or the Commissioner, the Government Pleader shall certify on the bills that the Board or the Commissioner, as the case may be, have fixed the fees by order. The bill of the Government Pleader of the High Court for appearance before the Board of Revenue should, however, be countersigned by the Legal Remembrancer and paid in the manner indicated in Chapter V, rule 6.

### 5.—Fees of Government Pleaders in civil litigation.

1. **Commissioner's power to pay fees.**—Commissioners are authorized to sanction the payment of fees to counsel or pleaders engaged in any suit or appeal, provided the fees do not exceed the scales of 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.

NOTE.—When Government loses a case, it has to pay the fee twice, i.e., once to the opposite party according to the decree of the court and again to the pleader appearing on behalf of Government. In absence of any terms previously fixed, the fees payable to the Government pleader in such cases should be recommended on the merit of the case subject to a maximum fee as payable to the opposite party.

2. **Government Pleader's fees in contested analogous cases.**—In contested analogous civil cases (including appeals) tried or heard together, the Government Pleaders, both in the High Court and the mufassal, 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.

3. **In uncontested analogous cases.**—In uncontested analogous civil cases the Government Pleader's fees will be half of what would be payable under the preceding rule.

4. **In cases decided on compromise, etc.**—In civil cases decided ex-parte or on compromise or disposed of by consent of both parties, the Government Pleader's fees as payable by Government, will be half the fees payable in contested cases unless the court in its decree assesses the fees payable to the pleaders, in which case the fees so assessed will be paid to the Government Pleader.

Provided that where, after the hearing of the case has commenced, a compromise is effected, Government Pleaders will be paid their full fees as in contested cases.

revenue case in which the Government is interested, he may employ him, subject to the approval of the Commissioner of the Division.

**2. Employment of Government Pleader before Commissioner's sanction is obtained.**—Whenever it is found necessary to authorise the employment of the Government Pleader before obtaining the sanction of the Commissioner, the Collector should at once report his proceedings for that officer's approval. The responsibility must rest with the Collector 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 Commissioner's control and criticism, if the discretion appears to have been improperly exercised.

**3. Government Pleader's fees.**—A Government Pleader is allowed a fee of Rs. 25 per day for appearance before a Collector or a Deputy Collector. In the Districts noted below the Government Pleaders are allowed a daily fee at the rate shown against each—

|  | Rs.    |
|--|--------|
| 24-Parganas                                    | ... 50 |
| Burdwan  | ... 32 |
| Hooghly  | ... 32 |
| Howrah   | ... 32 |
| Midnapore                                      | ... 32 |
| Jessore  | ... 32 |
| Rangpur  | ... 32 |
| Dacca  | ... 32 |
| Bakarganj (For senior Government Pleader only) | ... 32 |
| Mymensingh                                     | ... 32 |
| Chittagong                                     | ... 32 |

For appearance before the Board of Revenue or a Commissioner, a Government Pleader is allowed fees according to the following scale:—

|  | Rs.     |
|--|---------|
| In proceedings before the Board (not exceeding)            | ... 100 |
| In the office of a Commissioner of Revenue (not exceeding) | ... 80  |

The above authorities will fix the amount to be paid in individual cases. The Senior Government Pleader, High Court, is allowed a fee of Rs. 200 for appearing before the Board of Revenue, subject to the restriction that when several cases are heard on the same day, one full fee and a half fee for each additional case subject to a maximum of Rs. 500 for the day is allowed. The Assistant Government Pleader, High Court, is allowed a fee of Rs. 75 either for appearing before the Board of Revenue or before the Commissioner.

4. **Government Pleader's bills.**—Government Pleaders will draw their bills, showing the particulars of the cases in respect of which the fees are due to them, and the bills will be paid at the Treasury, after they have been passed by the Collector as correct. In the case of appearance before the Board or the Commissioner, the Government Pleader shall certify on the bills that the Board or the Commissioner, as the case may be, have fixed the fees by order. The bill of the Government Pleader of the High Court for appearance before the Board of Revenue should, however, be countersigned by the Legal Remembrancer and paid in the manner indicated in Chapter V, rule 6.

### 5.—Fees of Government Pleaders in civil litigation.

1. **Commissioner's power to pay fees.**—Commissioners are authorized to sanction the payment of fees to counsel or pleaders engaged in any suit or appeal, provided the fees do not exceed the scales of 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.

NOTE.—When Government loses a case, it has to pay the fee twice, i.e., once to the opposite party according to the decree of the court and again to the pleader appearing on behalf of Government. In absence of any terms previously fixed, the fees payable to the Government pleader in such cases should be recommended on the merit of the case subject to a maximum fee as payable to the opposite party.

2. **Government Pleader's fees in contested analogous cases.**—In contested analogous civil cases (including appeals) tried or heard together, the Government Pleaders, both in the High Court and the mufassal, 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.

3. **In uncontested analogous cases.**—In uncontested analogous civil cases the Government Pleader's fees will be half of what would be payable under the preceding rule.

4. **In cases decided on compromise, etc.**—In civil cases decided ex-parte or on compromise or disposed of by consent of both parties, the Government Pleader's fees as payable by Government, will be half the fees payable in contested cases unless the court in its decree assesses the fees payable to the pleaders, in which case the fees so assessed will be paid to the Government Pleader.

Provided that where, after the hearing of the case has commenced, a compromise is effected, Government Pleaders will be paid their full fees as in contested cases.

5. **In suits decreed in part.**—Where a suit is decreed in part, the fees payable to the Government Pleader, should be calculated on the full amount of the claim.

6. **In preliminary hearing.**—In courts where on presentation of appeals, before sending records, a preliminary hearing takes place, Government Pleaders will be entitled to a fee. The fees of the Government Pleaders in the High Court will be half the fee in a contested appeal.

7. **Fees of Government Pleaders, High Court.**—(a) In first appeals not exceeding Rs. 5,000 in value, the fees payable to the Government Pleaders High Court will be fixed by the High Court but will not in any case be less than the fees payable to them in cases of second appeal of similar value. He is also entitled to a fee of Rs. 50 for drawing grounds of an appeal in which he appears. In appeals exceeding Rs. 5,000 in value the fees payable to the Government Pleaders in the High Court will be according to the scale prescribed in the High Court Rules.

(b) In second appeals before the High Court, the Government Pleaders of the High Court will be paid at the following rates:—

|  | Rs. |
|--|-----|
| In institutions not exceeding Rs. 200 in value ...                   | 48  |
| Institutions exceeding Rs. 200 and not exceeding<br>Rs. 1,000 ... .. | 64  |
| Institutions exceeding Rs. 1,000 ...                                 | 80  |

(c) In Miscellaneous Appeals before the High Court the Government Pleaders will be paid a fee of Rs. 50, but in District and Subordinate Judge's Courts the mufassal Government Pleaders will be paid fees as allowed by the Court.

(d) In all cases the Legal Remembrancer may in view of the difficult nature of work and the peculiar circumstances, if any, grant a special fee.

NOTE.—In determining the amount of a special fee, provided the taxed fee is considered inadequate, an additional perusal fee including consultations subject to a maximum of Rs. 500 and a daily fee of 15 gold mohurs are taken into account. The amount of perusal fee depends upon the volume of the paper-book in the appeal.

(e) For drafting the note for the guidance of Counsel in England in respect of a Privy Council Appeal whether Government is the Appellant or Respondent a fee of Rs. 250 is allowed. In special cases the fee may be increased to the extent of the fee as assessed by the High Court for the conduct of the cases subject to a maximum of Rs. 2,000.

(f) A fee of Rs. 80 for appearance before the Bench taking Privy Council Appeals, is allowed to the Government Pleader irrespective of money value of the appeal or fee allowed by the court.

(g) For drawing plaints or written statements in Government or Court of Wards cases a fee varying from Rs. 50 to Rs. 80 is allowed to the Government Pleader, High Court.

8. **Fees in References.**—The fee payable to the Government Pleader in the High Court for each appearance before the High Court in cases under the Legal Practitioners' Act as well as in cases of sanction to prosecute under the Criminal Procedure Code will be Rs. 50. When a rule and a reference under the Legal Practitioners' Act are heard together, the Legal Remembrancer may allow an additional half fee of Rs. 25 for the Reference.

9. **Fees in motions.**—The fee payable to the Government Pleader in the High Court for moving the Court or for appearing in support of a rule or to show cause in any rule will be Rs. 50.

10. **Payment of extra fees.**—In any case requiring special attention, the Legal Remembrancer, before the hearing commences, will be competent to allow Government Pleaders in the High Court extra fees for perusal of briefs and daily fees during hearing.

NOTE.—When a Government Pleader, High Court, is deputed to mufassal, the daily fee is paid for complete days of absence from Calcutta and covers all work done away from Calcutta.

11. **Government Pleaders' fees in land acquisition cases.**—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 Collector's opinion sufficient, the Collector 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 case of a compromise in which each party is to bear his own cost, the fee will be fixed by the Collector in consideration of the labour involved.

12. **Fees in Court of Wards cases.**—In Court of Wards cases the fees of the Government Pleaders will be similar to those in Government cases.

13. **Scale of fees in Legal Remembrancer's office.**—The following scale of fees has been adopted in the office of the Legal Remembrancer in connection with work done on behalf of any Wards estate:—

- \* (1) Examining plaints and written statements—1 or 2 Gold Mohurs.
- \* (2) Settling grounds of appeals and petitions—  
District Courts—1 or 2 Gold Mohurs.
- \* (3) Compromise—1 or 2 Gold Mohurs.
- (4) Consultation—2 or 3 Gold Mohurs.
- (5) Opinion—2 to 5 Gold Mohurs.

\*In analogous cases one-half the fee assessed will be charged for each case after the first (subject to a minimum fee of 2 gold mohurs for all the analogous cases taken together) for which the minimum fee should be 2 gold mohurs.

14. **Division of fee between two pleaders.**—Whenever in any suit one part of it has been conducted by the Government Pleader of one district and another part by the Government

Pleader of another district; only one regular fee shall be charged and such fee shall be divided by the Legal Remembrancer between the two pleaders concerned in proportion of the labour undergone by each pleader.

15. **Fees in cases to which above rules do not apply.**—In cases which are not directly covered by the above rules, the Legal Remembrancer shall decide what fee is to be paid. The daily fee of a Government Pleader (except in the High Court) in an ordinary case, shall be taken to be Rs. 25.

16. **Grant of special fee.**—In cases where the ad valorem fee allowed to Government Pleaders in the mufassal under the rules of the High Court is inadequate for the work done, the Legal Remembrancer is empowered to sanction such fee whether in lump or at a daily rate as may seem to him to be reasonable in consideration of the merit of and the labour involved in each case. The Collector shall report such cases with his recommendation for the orders of the Legal Remembrancer through the Commissioner of the Division.

17. **Fees to outside pleaders.**—When an outside pleader is engaged to conduct a civil suit an ad valorem fee is ordinarily admissible for the conduct of the case. Such a pleader can, however, claim a fee for drawing plaints or written statements, and for giving opinion. In special circumstances a daily rate of fee according to the scale and conditions prescribed for conducting criminal cases is allowed. No fee is payable for accepting vakalatnama.

18. **Fees in adjournments, etc.**—An adjournment fee of Rs. 2 at subdivisions and Rs. 4 at Sadar is allowed when such adjournment was beyond the control of the pleader claiming the fee. Adjournments merely to gain time for the purpose of filing a written statement or a document or to cite witnesses, etc., are not paid.

19. **Fees for commission work.**—A Government Pleader attending and working before a Civil Court commission at Sadar is allowed a fee of Rs. 5 per hour for the first ten days and subsequently at the rate of Rs. 4 per hour. The fee is payable for the time when the pleader is actually before the Commissioner during examination of witnesses or arguments.

The engagement of a pleader before a commission either in Calcutta or a place outside the local jurisdiction of the court issuing the commission is arranged by the Legal Remembrancer on representation by the District Collector.

20. **Fees in execution cases, etc.**—In contested pauper and execution cases or in a claim case a fee varying from Rs. 2 to Rs. 8 per case irrespective of the number of appearances and according to the nature of the case is allowed.

21. **Fees in transfer petitions.**—For arguing transfer petitions a fee of Rs. 16 per case is allowed subject to a maximum of Rs. 32 for the day.

## 6.—Public Prosecutors (in the district).

1. **Public Prosecutor at subdivision.**—There is no Public Prosecutor appointed by Government in any subdivision. When a pleader is appointed to conduct a case at a subdivision he receives a daily fee of Rs. 12 subject to a half fee for adjournments and for less than half day's hearing.

2. **Duties to Government officers.**—The Public Prosecutor is bound to advise the head of any Government office on any legal matters 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.

3. **Duties with regard to local bodies.**—The Public Prosecutor is bound to advise a Government officer consulting him on behalf of a Municipality, District or Local Board Committee, Port Trust or of any public body, over whose proceedings such Government officer is legally vested with powers of supervision or control, on payment of a reasonable fee for his opinion. The amount of such fee shall be noted on the reference, and, if offered to and refused by the Public Prosecutor, shall be fixed by the Legal Remembrancer on reference to him by the officer who makes the tender.

4. **Appearance in appeals and revisions.**—In addition to the duties imposed under the Criminal Procedure Code, the Public Prosecutor is bound to appear in all appeals and revision cases in the Court of Session in which the Magistrate of the district thinks that an appearance on behalf of the Crown is necessary and directs him to appear. In appeals in Magistrate's courts, the Public Prosecutor shall also appear on behalf of the Crown if the Magistrate of the district so desires. No reference to Legal Remembrancer is necessary in these cases. Unless otherwise directed by the Magistrate, the Government Pleader or the Public Prosecutor, as the case may be, should appear in all appeals before the Sessions Judge in which the appellant is represented by a legal practitioner.

5. **Magistrate has first call on Public Prosecutor's Services.**—The Magistrate, as the head executive authority in the district, is the representative of Government and has the first call on the Public Prosecutor's professional services both in the Original and Appellate Court. The Public Prosecutor (including the Government Pleader as ex-officio Public Prosecutor) cannot therefore accept a brief for the defence, or for an appellant or for an applicant for revision in a criminal case, except with the Magistrate's permission in writing previously obtained.

6. **Appearance in lower Court.**—Whenever in any important or serious case or any case in which important questions of law or evidence may arise in the headquarters of the district, the Magistrate of the district thinks that the employment of the Public Prosecutor or in his absence of any other pleader is necessary for conducting the prosecution, he will, if there is sufficient time for reference, apply to the Legal Remembrancer for sanction to the employment of the pleader, or will

engage him in anticipation of sanction and report his action for the sanction of the Legal Remembrancer.

**7. Employment of pleader in subdivisions.**—Whenever the Magistrate of the district thinks that in any case in the court of the Subdivisional Magistrate the prosecution should be conducted by a pleader, he may employ in consultation with the Subdivisional Officer, one of the members of the local bar of sufficient experience and ability to represent the Crown subject to the sanction of the Legal Remembrancer.

**8. Deputation to mufassal.**—The Public Prosecutor of the district or an outside pleader shall on no occasion be deputed to the mufassal or the High Court without the previous sanction of the Legal Remembrancer, to whom all the facts of the case should be reported to enable him to pass orders on the subject. He may, if he considers it necessary, refer any case for the orders of Government.

**9. Employment of pleader in absence of Public Prosecutor.**—Whenever the Public Prosecutor of the district is not available for the purpose of conducting prosecution in Magistrate's Court, the Magistrate of the district may engage any pleader of sufficient standing at the bar to take up the duties of the Public Prosecutor subject to the sanction of the Legal Remembrancer, who will settle his fees at the recommendation of the district authorities. Such sanction of the Legal Remembrancer is not necessary when the employment of the outside pleader is made for sessions cases, appeals or revisions at the usual rate of fee.

**10. Responsibility of Magistrate.**—The Magistrate of the district is responsible to Government that Government prosecutions do not fail, because Government is not adequately represented. It is, therefore, incumbent upon him to make the best arrangement so that Government prosecutions are ably and satisfactorily conducted. The sanction of the Legal Remembrancer is necessary only to check the tendency of the district authorities to engage pleaders in unimportant cases.

**11. Employment of a pleader before lower court to be carefully considered.**—Although it is the duty of the Magistrate of the district to see that Government prosecutions do not fail because Government is not adequately represented, it is equally necessary to realise that the annual grant placed at Government's disposal for meeting fees for the conduct of criminal cases should not be exceeded under any circumstances. Application should not be made for sanction unless the District Magistrate is himself satisfied that it is absolutely necessary to engage a pleader for the proper conduct of the case and in applying for sanction, the reasons why the Court staff cannot do the work should be stated. No pleader should be engaged in anticipation of sanction except in contested political cases when there is no time to apply for such sanction.

**12. Manner of asking sanction.**—Letters asking for sanction to the engagement of the Public Prosecutor or an outside pleader should invariably show at the heading of the letter the name of the officer who applies for such sanction.

**13. Appearance before a Court of Commission of Inquiry.**—No Public Prosecutor shall appear before a court of commission of inquiry unless specially ordered to do so either by Government or the Legal Remembrancer.

**14. Gang cases.**—Before the institution of a gang case, the Criminal Investigation Department shall discuss the case with the Legal Remembrancer and obtain his opinion. The employment of the Public Prosecutor in a gang case is sanctioned for sufficiently cogent reasons as all other work of the Public Prosecutor must not suffer because a gang case is going on. He will get no enhanced fee but may be allowed a junior.

**15. Leave of Public Prosecutors.**—Whenever a Public Prosecutor desires leave of absence, he shall submit an application to the Magistrate, who will forward his application, through the Commissioner, to the Legal Remembrancer for orders, stating his opinion as to whether or not leave should be granted. If the Magistrate considers that the leave should be granted, he will recommend some pleader to fill the absentee's place.

Leave on any ground other than for illness or urgent private affairs should not be allowed without special permission from the Commissioner to be obtained prior to the leave being taken. Permission to practise during leave may be given only in special cases for special reasons to be disclosed.

Public Prosecutors who can make suitable arrangements for conducting cases during their absence may be allowed one month's leave in each year without forfeiture of pay. Leave with pay cannot, however, be granted where it is necessary to appoint a *locum tenens* for the officer on leave. Such leave has no cumulative effect.

**16. Disposal of police cases arising out of riots.**—(1) On the occurrence of serious riots it should at once be considered whether the local police investigation staff should be reinforced. The Superintendent of Police should see that the work is so arranged that the officer or officers investigating the cases arising out of the riots can give undivided attention to them.

(2) The District Magistrate should consider whether an additional or special Magistrate is required to deal with cases arising out of the occurrence, and whether local arrangements can be made; if not, the Commissioner and Government should be informed by wire. It is important that a capable Magistrate should take up the riot cases and deal promptly with them.

(3) The District Magistrate should consider whether local arrangements for the prosecution of cases are adequate; and, if necessary, arrange with the Superintendent of Police to obtain additional court staff. If an additional Public Prosecutor is required, he should at once ask the Legal Remembrancer for sanction. It is desirable that there should be a prosecutor specially detailed for each special court, whether he be a pleader or an inspector, so that he will be able to give his undivided attention to the work of the court and not be liable to be called away.

(4) If applications are made under section 526, Criminal Procedure Code, the District Magistrate should promptly send instructions to the Legal Remembrancer if he wishes the applications to be opposed in the High Court; if it is important that the cases should not be delayed, this should be added and reasons given. The Deputy Legal Remembrancer will then be able to ask the High Court to deal with the applications as urgent. It should be remembered that the Deputy Legal Remembrancer when appearing before the High Court must depend on his instructions, and instructions should always be clear and sufficient.

(5) A common cause of delay is a tendency on the part of investigating officers to postpone sending up a charge sheet until evidence has been collected against all the persons whom it is proposed to prosecute in respect of a particular incident or until all the accused can be sent up together. This not only causes delay, but means the loss of the deterrent effect which follows from prompt prosecution and conviction. The Superintendent of Police must therefore devote special attention to seeing that cases are sent up promptly against those persons about whom evidence is available, and that investigating officers do not keep cases pending whilst evidence is sought against other persons.

This is of special importance when the persons against whom evidence is available are leaders in the riots; but whether the accused are leaders or not, it is essential that prosecution should not be delayed. Other persons, against whom evidence may be forthcoming later, may be dealt with in supplementary cases. The effect if a man who is arrested during a riot, especially if he be a leader, comes back on bail and nothing further happens to him for days or even weeks, is most mischievous and gives the ignorant the impression that the authorities are powerless. Charge sheets should be sent up at once against any one arrested on the spot, and against any ringleaders seen at the time or any one seen causing hurt if corroborative evidence is immediately available.

(6) The Superintendent of Police should also see that court inspectors and court sub-inspectors promptly get Magistrates' orders about dates for trials and communicate the orders and dates to the local police, so that witnesses may be sent on days when the Magistrates can take up the cases. It is obvious that if the cases are to be finished promptly there must be co-ordination of the police work and the court work. The Magistrate and the Superintendent of Police are together responsible for seeing that this co-ordination is secured.

[Bengal Government No. 15-19 P1—D., dated the 11th April 1929.]

**17. Bail applications.**—(1) When a convicted person appeals and there is reason to believe that he will, if released on bail, use his liberty to commit further offences or to instigate others to do so, any application for bail to the Sessions Judge or to the High Court should be opposed. In opposing the application the Public Prosecutor should be instructed to bring to the notice of the court all relevant facts, *e.g.*, that the appellant had already

been convicted of similar offences or that charges of similar offences were pending against him or that there was reasonable ground for believing that he would engage in further unlawful activities.

(2) In similar circumstances in non-bailable cases, when a person is under trial before a Magistrate or has been committed to the Sessions Court, the Public Prosecutor should also be instructed to oppose the grant of bail.

[Bengal Government Nos. 357-61 Pl.—D., dated the 27th April 1929.]

18. **Delay in commitments.**—The attention of Magistrates is also drawn to the High Courts General Letters Nos. 4 and 5 dated the 27th April 1914, regarding delays in the commitment of cases to the court of sessions.

**High Court's General Letter No. 4, dated Calcutta, the 27th April, 1914, to the District Magistrates.**

I am directed to invite your attention to Rule 74, Chapter I, page 28 of the Court's General Rules and Circular Orders, Criminal, in which it is provided that an explanation of the delay should be obtained from committing Magistrates in all cases where a period of more than two months elapses between the apprehension of an accused person and his commitment to the Sessions. The Court have recently observed that the explanations furnished in such cases are frequently inadequate, particularly with regard to any period that may have elapsed between the apprehension of the offender and the submission of a charge-sheet against him, and it appears that Magistrates regard it as sufficient in such cases merely to state that the charge-sheet was not submitted until such and such a date. For example, in a recent case the Magistrate only stated that the accused had appeared before him on the 25th July, and that the case remained under police enquiry until the 2nd October; there was no explanation whatever for the intervening period of over two months' and there appears to be a general idea that the responsibility in such cases rests entirely with the police.

**HIGH COURT;**  
*English*  
*Department*  
*(Criminal.)*

2. With the share of the police in the matter the Court have no concern, but they desire to impress upon all Magistrates the fact that under the law a very real responsibility rests upon them, not only in commitment proceedings but in all criminal cases, to see that adjournments, at whatever stage, are only granted for adequate reasons, and that it is their duty not to allow an accused person to be detained, except for good cause shown. Magistrates cannot shelter themselves behind the police. They are bound to see that persons detained for reasons other than their own culpability are admitted to bail or brought to trial speedily. It is particularly their duty to prevent the detention of any person in custody for an unreasonable period before any offence against him has been proved. Magistrates should, therefore, scrutinize carefully all applications for adjournment submitted on behalf of the

prosecution, particularly when there is an undue delay in the submission of a charge-sheet, and the order-sheet of the Magistrate's record should contain a full statement of the reasons for which each adjournment is granted, and an indication of the fact that the Magistrate regards the reasons advanced as sufficient to justify him in remanding the accused.

3. The Court also desire that the general responsibility of the District Magistrate in this connection should not be lost sight of. District Magistrates are required to control the proceedings of their subordinates, and they are generally held responsible for the early completion of all trials and the prompt despatch of judicial business. The Court, therefore, consider that all explanations called for from committing Magistrates under the above-mentioned rule should in future be submitted to the Sessions Judge through the District Magistrate, who should forward the explanation with any remarks he may think fit to make and with an intimation of any steps that he may propose to take to remedy any faults that may be indicated. District Magistrates will specially be expected to see that the explanation is really a full explanation of the whole period between the apprehension of the accused and his commitment to the Sessions, and that where the proceedings have been conducted before more than one Magistrate the explanation of each Magistrate concerned is obtained. I am to ask that you will issue the necessary instructions to all Magistrates subordinate to you.

4. The same remarks also apply to the explanations at present submitted to the Court regarding the delay in the trial of cases pending in connection with the monthly statement B, and I am to request that in future you will take steps to see that the explanation covers the whole period after the apprehension of the accused, both before and after the submission of the charge-sheet.

**High Court's General Letter No. 5, dated Calcutta, the 27th April, 1914, to the District Magistrates.**

**HIGH COURT,**  
*English*  
*Department*  
*(Criminal).*

On perusing the explanations submitted by subordinate Magistrates in connection with delays in the commitment of cases to the Court of Session the High Court have noticed in several instances that cases are often adjourned in order to secure the arrest of other accused persons concerned in the case. Under the provisions of section 344 of the Criminal Procedure Code proceedings may be adjourned if a witness is absent or for any other reasonable cause, and it has been held (9 Bengal Law Reports, 354; 17 Weekly Reporter, Criminal Rulings 55) that if there is not a proper cause, a cause such as is described, *viz.*, the absence of a witness or any other reasonable cause, a Magistrate has not power to adjourn an enquiry. He is not at liberty to grant an adjournment arbitrarily, or for any reason which he may think sufficient, and Magistrates should understand that the power is only to be exercised in cases which come really within the terms of that section. It was formerly laid down by the Court (3 Weekly Reporter, 21, Criminal Letter No. 795) that if the

proceedings have been completed against a prisoner, the decision of the case should not be deferred because he is merely a subordinate prisoner and because the principal offenders have not been apprehended. It is, in fact, very doubtful whether section 344 applies to an adjournment for securing the arrest of other offenders. The Court, however, cannot lay down any hard-and-fast rule on the subject, but they desire to impress on all Magistrates that adjournments for this purpose should be the exception and not the rule.

2. The Court have also observed that adjournments are invariably granted for the maximum period, *viz.*, 15 days, mentioned in section 344. This, again, should be the exception rather than the rule, and in this connection attention is invited to the instructions contained in Chapter I, Rule 80, at page 31 of the General Rules and Circular Orders, Criminal, which lays down that "when it is deemed necessary to adjourn the hearing of a case, the adjournment shall be for as short a time as possible." These instructions do not appear to be observed, and I am to request that you will be so good as to draw the attention of the Magistrates subordinate to you to the above rule and direct them to observe it carefully in future. It should be borne in mind that an accused person is entitled to have his case decided as speedily as possible, but if adjournments are granted frequently and for the maximum period allowed under the law, the trial of an accused person will necessarily be retarded.

## CHAPTER III.

## Civil Suit Rules.

## SECTION I.

**1.—Rules for the conduct of Civil Suits instituted by Government.**

1. **Collector to consult Government Pleader.**—Whenever a Collector purposes to file a suit on behalf of the Secretary of State for India in Council, he shall prepare a statement of the facts of the case and the evidence available to support the facts, and shall transmit it, with all material documents to the Government Pleader of his district. It will not be necessary at this stage to collect the witnesses who can give oral testimony, but the more important witnesses whose testimony is essential to the case should be questioned by a trustworthy officer and notes of their statements taken. A vague statement that oral evidence is obtainable is of no value. The notes should be attached to the statement of facts.

2. **Government Pleader's opinion.**—If the Government Pleader considers that the facts stated do not disclose, or that there is no reliable evidence to support a cause of action, he shall return the papers with his opinion to the Collector.

3. **Further information to be furnished by Collector to Government Pleader.**—If the Government Pleader requires further information or additional documents, he shall communicate with the Collector, and the Collector shall supply the information, and in intricate cases shall depute some officer acquainted with the facts to explain the case to the Government Pleader.

4. **Government Pleader to return papers.**—The Government Pleader shall then return the papers with his opinion to the Collector. 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 Order 7, Rule 14, Civil Procedure Code, in the form prescribed by Rule 22 on page 87 of the High Court Civil Rules and Orders, Vol. I, (Form No. 90 at page 359 of Vol. II).

5. **Reference to Legal Remembrancer.**—On receiving the draft plaint from the Government Pleader, the District Officer shall make a reference to the Legal Remembrancer through the Commissioner.

Proviso:—

Small Cause Court cases less than Rs. 500 in value may be brought with the sanction of the Commissioner and conducted under his instructions without reference to the Legal Remembrancer, except in the following cases:—

- (1) any case which involves substantial questions of law or assumes unforeseen importance;
- (2) any case in which a District Board desires to sue.

Cases falling within the above exceptions should always be referred to the Legal Remembrancer.

6. **Papers to be sent.**—In making a reference to the Legal Remembrancer, the Collector shall submit the following papers or copies thereof:—

- (1) The statement of facts.
- (2) The plaint as drawn by the Government Pleader, together with a map of the locality, if necessary.
- (3) The list required by Order 7, Rule 14 of the Civil Procedure Code, with copies of such of the documents as are necessary to enable the Legal Remembrancer to understand the case. Translations into English should accompany all vernacular documents.
- (4) Notes of the statements of such witnesses as have been examined.
- (5) The opinion of the Government Pleader.

7. **Arrangement of papers.**—The papers shall be fastened together in the ordinary brief form and must be properly paged and indexed. The index in Form A will be the first page of the brief.

8. **Submission of brief to Commissioner.**—The brief shall be submitted to the Commissioner with any further remarks or suggestions which the District Officer may think proper to offer. If the Collector 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 to the Legal Remembrancer.

9. **To Board.**—A copy of the brief or of so much of the brief as may be necessary shall be sent by the Commissioner to the Board of Revenue, for information, in all cases in which the Board by general or special order may so direct and may be sent by the Commissioner in any case in which he thinks it desirable that the Board should be informed of the facts.

NOTE.—The work of the following branches, viz.:—

Land Records, Surveys, Excise and Salt, Customs, Income-tax, Opium, Stamps, Land Acquisition, Cess revaluation (when carried out by the agency of the Settlement Department) Records; Waste lands; (not converted into Government estates); Drainage; Embankment and Irrigation; Establishment, Leave and Pensions, Loans; Suits and Processes, Forms, Stationery and Budget and Treasury, has been brought directly under the Government from the Board. In the cases relating to these branches the Government performs the executive functions of the Board, and all references required under this rule to be made to the Board in connection with the work of these branches should be made to Government direct.

10. **To Legal Remembrancer.**—The Commissioner shall ordinarily forward the brief with such remarks or suggestions as he thinks proper to the Legal Remembrancer direct, but he may, if he thinks fit, forward the brief in any ward's case through the Board, and should do so if it will entail heavy expenditure or if the amount at stake is very considerable.

11. **Brief to be submitted in time.**—The Board, the Commissioner and the Collector 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.

NOTE.—Please see note to rule 9 above.

12. **Filing of suit in urgent cases.**—In cases of urgent necessity where delay might be very prejudicial, the Collector may file a suit on his own responsibility, but in such cases he must report having done so and forward the brief with the least possible delay.

13. **Consulting Legal Remembrancer in urgent cases.**—The Collector may also, when the Legal Remembrancer's opinion is urgently required, forward the brief direct to him. In such cases the Collector must report the fact at once to the Commissioner with an explanation of the reasons for his action.

14. **Return of brief.**—The Legal Remembrancer, after revising the pleadings, will return the brief with his opinion, to the Commissioner or, in case of urgency, to the Collector direct.

15. **Filing of plaint.**—The brief with Legal Remembrancer's opinion and any further instructions which the Collector 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, get it signed and verified according to the provisions of order XXVII, Rule 1, Civil Procedure Code, and file it in Court. The cost of court-fee stamp for the plaint shall be paid by the Collector from his own funds.

16. **Arrest or attachment before judgment.**—When a suit is instituted by Government, the Collector 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 the necessary action.

17. **Filing of answer.**—When an answer has been filed in any suit instituted by Government, the Government Pleader shall send a copy of it to the Collector, with an abstract of any evidence by which the answer is supported and his own opinion as to the legal bearing of the answer. If the Collector or the Government Pleader be of opinion that the Legal Remembrancer should be consulted on the legal question, if any, raised by the answer, or on any other points, the Collector shall send the brief mentioned in rule 6 together with the papers referred to in the foregoing part of this rule, to the Legal Remembrancer, who will return the papers with his opinion to the Collector through the Commissioner, or in cases of urgency, to the Collector direct.

18. **Copy of issues to be sent to Collector.**—When the issues in any case have been framed and recorded by the Court, the Government Pleader shall send a copy of them to the Collector, and shall attach another copy to the brief. In transmitting a copy of the issues to the Collector, the Government Pleader shall state the documents to be proved and the facts to be established.

19. **Collection of evidence.**—After the settlement of issues the Collector shall depute a trustworthy officer to collect evidence, unless the evidence has already been collected.

20. **Selection of witnesses.**—Where the suit involves a dispute of fact, the officer shall select the witnesses upon whom he thinks he may rely, and he shall reduce their statements to writing in the form of a brief for the use of the Government Pleader at the trial.

21. **Statements of witnesses.**—The officer entrusted with the preparation of the evidence shall forward the statements of the witnesses, with any remarks which he may think proper, to the Collector, who will then consult the Government Pleader upon the sufficiency of the evidence and whether any further evidence, documentary or oral, should be given in the case.

22. **Evidence brief.**—If the Collector considers it advisable, the evidence brief shall be submitted for the opinion of the Legal Remembrancer.

23. **Summonses for witnesses.**—When the day for the trial has been fixed, the Government Pleader shall take out summonses for the witnesses he proposes to call.

For meeting the cost of such summonses and the other incidental expenses of cases which it is necessary for him to incur in connection with civil litigation of Government, the Government Pleader shall hold from the Collector a permanent advance of Rs. 30, recouping the same from time to time by submission of bills with necessary vouchers.

At the end of the trial of each case he shall submit to the Collector an account of the expenditure on the same, which will then be entered as costs in suit in Civil Suit Form B.

24. **Defendant's witnesses.**—When the defendant files his list of witnesses, the Government Pleader shall send a copy of it to the Collector, 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.

25. **Report of result of suit.**—When judgment has been delivered, the Government Pleader shall at once report the result to the Collector.

26. **Compromise.**—If, at any stage, the Collector is of opinion that a suit should be compromised, he should report the case, with a full statement of the facts and of his reasons for advising a compromise for the orders of the Commissioner. A copy of the Government Pleader's opinion should also be forwarded.

27. **Commissioner's power to compromise.**—The Commissioner is authorised to sanction the compromise of any suit or claim of a civil nature which, under Rule 5, need not be referred to the Legal Remembrancer.

28. **Submission to Legal Remembrancer.**—When the Commissioner has no authority to compromise such a suit or claim, or when in any case he thinks it expedient to obtain the opinion of the Legal Remembrancer, he shall forward the papers with his recommendations to the Legal Remembrancer, who is authorised to sanction the compromise of any suit or claim.

## SECTION II.

### 2.—Rules for the conduct of Civil Suits against Government.

29. **Receipt of notice.**—Whenever a Collector receives a notice under section 80, Code of Civil Procedure, 1908, he shall forward it to the head of the Department concerned, who will, within 14 days, with a report on the case and the opinion of the Local Government Pleader, to the Legal Remembrancer sending a copy of the same to the Commissioner of the Division. If the report is not ready, it must follow the least possible delay. Notices in cases excepted under Rule 5 need not be reported to the Legal Remembrancer, but reports in such cases shall be forwarded to the Commissioner.

When the notice relates to a suit threatened against a Department, not under the control of the Collector, he shall at once forward it to the head of the Department concerned, who will, within 14 days, *unless the case is excepted under rule 5*, submit to the Legal Remembrancer a full report on the case, together with the original notice, an English translation of the same and the opinion of the local Government Pleader, whenever possible.

30. **Receipt of summons.**—Whenever the Government Pleader shall receive a summons to answer in an action brought against the Secretary of State for India in Council, 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 Collector. If in a suit against the Secretary of State the description of the defendant in the summons is not in conformity with the provisions of Order XXVII, Civil Procedure Code, 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 statement of how it was served, shall be forwarded to the Collector, who shall forward them to the Legal Remembrancer with the copies of papers required by Rule 37. Similar action shall be taken in a suit against a Ward of Court when the description of the defendant is not in conformity with the requirements of Part VII of Act IX (B.C.) of 1879, but in such a case the Government Pleader will act under the instructions of the person on whom the summons is served.

31. **Documents to be sent to Collector.**—The Government Pleader shall also forward to the Collector copies, when procurable, of the material documents which are filed with the plaint.

When the 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 copy of plaint, giving at the same time a description of the documents.

**32. Collector to ascertain facts of the case.**—Upon receiving the copy of the plaint and summons from the Government Pleader, the Collector shall note the date of such receipt, and shall at once proceed to ascertain the facts of the case, as under Rule 19, unless the facts have already been ascertained.

**33. Persons to make inquiries.**—The Officer selected to make inquiries under these rules shall ordinarily be a Kanungo, Sub-Deputy or Deputy Collector, or some other subordinate of the Collector; but if in any particular case no such officer is available, the Collector may engage a junior pleader or any other person he thinks proper. If an officer engaged in a local inquiry under these rules is transferred from his station before he has completed the inquiry, the Collector shall see that the officer, when making over charge of his office, leaves with his successor in office detailed instructions regarding the inquiry, together with the papers concerning the same.

**34. Defence.**—If the Collector shall be 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 all material documents to the Government Pleader to draft the answer. In cases of difficulty the Collector shall arrange that the case be explained to the Government Pleader by an officer acquainted with the facts.

**35. Government Pleader's opinion.**—If the Government Pleader considers that the facts disclose no defence to the action, or that there is no reliable evidence in support of the defence put forward, he shall return the papers with his opinion to the Collector.

**36. Answer for defence.**—If the Government Pleader considers that there is a good defence to the action, he shall draw out the necessary answer, note at the foot of the answer the documents which the Collector will be required to produce in Court to support his case, and send the draft answer to the Collector, with such observations on the case as he may consider necessary.

**37. Reference to Legal Remembrancer.**—Upon receiving the draft answer from the Government Pleader, the Collector shall, except in the cases mentioned in Rule 5, make a reference to the Legal Remembrancer sending a copy of the same to the Commissioner of the Division, forwarding at the same time copies of the following papers:—

- (1) The statement of facts.
- (2) The plaint and the material documents filed with it.
- (3) The draft answer as drawn by the Government Pleader in half margin.
- (4) The opinion of the Government Pleader.

- (5) Copies of so much of the documentary evidence as is relevant to the case, and as is available on behalf of Government together with translation thereof into English, if such evidence be in the vernacular. A list shall at the same time be sent containing a description of the documents forwarded.

38. **Rules applicable.**—The provisions of Rules 7 to 15 and 18 to 28 shall, *mutatis mutandis*, apply to the conduct of civil suits against Government.

39. **Proceedings against plaintiff.**—Whenever a Collector receives a summons to answer in an action brought against Government, he shall cause an inquiry to be made as to whether there are grounds for proceeding against the plaintiff under Order XXV, Civil Procedure Code, and, if necessary, shall direct the Government Pleader to take action under that rule.

40. **Land acquisition.**—Reference cases before the courts are tried out in much the same manner of a civil suit, the claimant being the plaintiff, and the Collector the defendant. It is the Collector's business to defend his awards and he usually arranges to do this through the Government Pleader. In important cases he may consult the Legal Remembrancer.

### SECTION III.

#### 3.—Rules for the conduct of Civil appeals on behalf of Government.

##### A.—APPEALS TO THE DISTRICT COURT.

###### (1) *When Government is appellent.*

41. **Appeal on behalf of Government.**—Where the decision in a case is adverse to the Government, the Government Pleader shall, with the least practicable delay, obtain a copy of the decision and forward it to the Collector. If he considers that an appeal should be preferred, he shall obtain certified copies of the judgment or order and of the decree, draw out the ground of appeal and forward these papers to the Collector, together with his opinion on the case.

42. **Government Pleader to obtain copies of evidence, etc.**—In all cases in which the Government Pleader considers an appeal advisable, he shall obtain a copy of the order sheet and copies of the evidence of the witnesses and of any documents filed, which were not included in the original brief.

43. **And of additional statement, etc.**—If any additional statement or other 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.

44. **Arrangement of papers.**—Copies of the papers mentioned in the last two paragraphs shall be made in the brief form as prescribed in Rule 7. The pages shall be numbered and a list shall be attached to the brief enumerating the papers and the page at which each particular paper is to be found.

45. **Submission of papers to Collector.**—If the Government Pleader is unable to procure the copies mentioned in Rules 42 and 43 within such time as will enable the Collector 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 41, but in all such cases he shall explain the cause of his inability to procure the copies in time.

46. **Reference to Legal Remembrancer.**—Upon receiving the papers with the grounds of appeal from the Government Pleader, the Collector shall record his opinion and forward them through the Commissioner to the Legal Remembrancer, or, in case there is no time to send the papers through the Commissioner, to the Legal Remembrancer direct.

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

47. **Filing of appeal before receipt of Legal Remembrancer's instructions.**—If the period for appeal has almost expired before instructions are received from the Legal Remembrancer, the Collector shall act on his own responsibility and file an appeal, if he thinks an appeal should be preferred. When this is done, the fact should at once be reported to the Commissioner and the Legal Remembrancer.

48. **Legal Remembrancer's opinion.**—Upon receiving the papers mentioned in Rule 46, the Legal Remembrancer shall decide whether an appeal should be filed, and shall communicate his opinion and return the papers to the Collector direct, sending at the same time to the Commissioner a copy of his letter to the Collector.

49. **Service of notice on the respondent.**—Whenever the Collector receives notice of the date fixed for the hearing of any appeal in which Government is appellant, he shall direct a competent officer to cause notice of appeal to be served on the respondent, and the Government Pleader shall see, on referring to the return, whether the service has been duly effected.

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

50. **Receipt of notice of appeal.**—Whenever notice of any appeal against any order in any case in which Government has not appealed is served on the Government Pleader, he shall enter on

the back of the notice the date of its receipt, and obtain a copy of the judgment appealed against, if not already in his possession, and shall transmit them to the Collector, 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.

51. **Depositions of witnesses, etc.**—The Government Pleader shall obtain and submit to the Collector 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 mentioned in rule 44, properly paged and indexed.

52. **Reference to Legal Remembrancer.**—Upon receiving the papers with the grounds of appeal from the Government Pleader, the Collector shall record his opinion and forward them through the Commissioner to the Legal Remembrancer, or, in case there is no time to send the papers through the Commissioner, to the Legal Remembrancer direct. It is not necessary to submit papers to the Legal Remembrancer when no cross appeal is proposed and the appearance of the Government Pleader is put in merely to support the judgment appealed against, i.e., to support the grounds of defence set out in the written statement sanctioned by the Legal Remembrancer and no new point arises in which the opinion or instructions of the Legal Remembrancer are needed.

53. **Legal Remembrancer's opinion.**—The Legal Remembrancer shall return the papers to the Collector with his opinion, informing the Commissioner at the same time of the fact of his having done so.

54. **Objection to the decree.**—If the Collector considers that under Order XLI, 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 in sufficient time to the Legal Remembrancer through the Commissioner. If the orders of the 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 Collector shall file it without awaiting them, and report to the Legal Remembrancer the fact of his having done so.

55. **Security for costs.**—The Collector shall ascertain, if there is reasonable ground for an application under Order 41, Rule 22, Civil Procedure Code, that the appellate Court should 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.

56. **Compromise in appeals.**—Rules 26 to 28 shall, *mutatis mutandis*, apply to appeals.

## B.—APPEALS TO THE HIGH COURT.

*(1) When Government is appellent.*

57. **Applicability of certain rules.**—Rules 41 to 46 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 draw out the grounds of appeal. He needs only specify the points which he recommends, shall be taken as 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.

*N.B.*—Copies of evidence of witnesses are not ordinarily required in cases on second appeals.

58. In the case of every first appeal to the High Court, the District Officer shall send to the Legal Remembrancer the brief used by the Government Pleader in the trial court with notes on the documents used in evidence in the case to enable the Government Pleader in the High Court to settle what papers are to be inserted in the paper-book. The copies of judgments and decrees forwarded to the Legal Remembrancer shall always be certified copies except in cross-objections in which copies on plain paper are sufficient.

59. **Procedure.**—If the Legal Remembrancer be of opinion that an appeal should be preferred in the High Court, he shall make over to the Senior Government Pleader in the High Court, or in his absence to the Assistant Government Pleader, the entire brief of the case, and the Government Pleader will draw up the grounds of appeal and submit them with the brief to the Legal Remembrancer for approval.

60. **Papers to be printed.**—Upon receiving an intimation of an appeal having been filed in the High Court on behalf of Government, the Collector shall send to the Legal Remembrancer a list of the papers which he considers necessary to be printed for conducting the appeal or to be brought to the notice of the Judges as in second appeals.

Such list shall be certified by the District Government Pleader who shall be responsible for its being accurate and exhaustive.

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

*(2) When Government is respondent.*

61. **Receipt of notice of appeal by Legal Remembrancer.**—When notice of an appeal to the High Court against Government is served on the Government Pleader, High Court, he shall forthwith send it with the date of service noted on the back to the Legal Remembrancer, who will at once arrange to obtain a copy of the memorandum of appeal and send the notice to the Collector to be followed by the memorandum of appeal immediately on its receipt from the Government Pleader.

**62. Receipt of notice of appeal by Collector.**—(1) When the Collector receives a notice of an appeal to the High Court against Government, he shall send to the Legal Remembrancer a list of the papers to be printed on behalf of Government, together with the copy of the memorandum of appeal, if any, received by him and a reply drafted by the District Government Pleader to each ground of appeal with reference to the specific, oral and documentary evidence on which reliance is placed.

*N.B.*—See note under Rule 60.

(2) In case of an appeal being preferred against Government from an original decree or from an order filed against Government, a copy on plain paper of the lower Court's judgment appealed against should be sent to the Legal Remembrancer.

(3) In case of an appeal from an appellate decree not exceeding Rs. 50 in value filed against Government, copies on plain paper of the plaint, the written statement and the judgments of the lower Court should be sent to the Legal Remembrancer.

(4) In case of an appeal from an appellate decree exceeding Rs. 50 in value filed against Government, no papers other than those mentioned in clause (1) need be sent to the Legal Remembrancer.

**63. Additional papers to be printed.**—When the Collector receives from the Legal Remembrancer a list of the papers to be printed as filed on behalf of the appellant, he shall send him a list certified by the District Government Pleader 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 60.

**64. Objection in appeal.**—If the Collector wishes that an objection should be filed under Rule 22, Order XII, Civil Procedure Code, in an appeal, he shall forward a brief of the case to the Legal Remembrancer through the Commissioner, to enable the Government Pleader in the High Court to draw up the grounds of cross-objection.

**65. Application on behalf of and issue of rule against Government.**—In case of an application to be made to the High Court on behalf of Government and in case of a civil rule issued by the High Court against Government, the Collector shall forward to the Legal Remembrancer, through the Commissioner, the necessary instructions and copies of papers in the case.

**66. Submission of original paper.**—In no case shall any original paper or document be sent to the Legal Remembrancer, unless especially called for. But if any original document tendered by Government in the lower Court was rejected, it should be sent to the Legal Remembrancer under sealed cover.

## C.—APPEALS TO THE PRIVY COUNCIL.

*(1) When Government is appellants.*

**67. Receipt by Legal Remembrancer of suggestion to appeal and action thereon.**—(a) When a judgment delivered by the High Court is adverse to the Secretary of State or to the Court of Wards, and the case is one falling within section 110 of the Code of Civil Procedure or is otherwise a fit one for appeal to the Privy Council, the Senior Government Pleader in submitting a copy of the judgment, indicates the grounds upon which he considers that an appeal to the Privy Council should be preferred, and the Legal Remembrancer, after consulting with him when necessary, addresses the local officers concerned (in a Court of Wards case, the Board of Revenue), asking for an expression of opinion as to whether an appeal should be preferred.

(a) Where Secretary of State, etc., is Appellant.

Ss. 109 and 110 and O. 45, r. 3, C. P. C.

(b) The suggestion that an appeal should be preferred, may come direct from the local officers in Government cases and from the Board of Revenue in wards cases, and should be made with as little delay as possible. The Legal Remembrancer then, if necessary, consults the Senior Government Pleader.

**68. Petition for certificate for appeal to Privy Council.**—(a) When an appeal is decided upon, the Legal Remembrancer instructs the Senior Government Pleader to file a petition to the High Court praying for a certificate for appeal to the Privy Council.

O. 45, rr. 2 and 3, C. P. C.

[The difference between a case under section 110 and the other class of cases referred to in Order 45, rule 3 (1), is that in the former the petitioner is entitled to a certificate as of right while in the latter the grant of the certificate is in the discretion of the Court.]

23 All. 227, 231.

(b) The Government Pleader, High Court, if required to do so, indicates to the Court within a prescribed period what papers are to be translated or transcribed for the purpose of the appeal, and it is specially incumbent upon him to see that all necessary documents are included in the list of the papers to be transmitted to the Privy Council.

**69. Furnishing of security and deposit of cost of preparing transcript.**—When no opposition is entered as to the granting of a certificate for appeal to the Privy Council, or where such opposition has been entered but disallowed and the Court has granted the certificate, then within six weeks from the date of the grant of the certificate or within six months from the date of the decree or order complained of, whichever is the later date, the appellants must furnish security for the costs of the respondent to the value of Rs. 4,000 and deposit the amount required, as estimated in the office of the High Court, to defray the expenses of translating, transcribing, indexing and transmitting to the Privy Council.

O. 45, r. 7, C. P. C.

**70. Money for cost of preparing transcript and Government promissory notes for security, how procured.**—(a) It is for the Legal Remembrancer to provide the Senior Government Pleader with funds required for the preparation of the record and as security (Rule 69).

(b) In Court of Wards cases, the money is obtained from the Litigation Fund in the usual way.

O. 45, r. 8, C. P.  
C.

71. **Admission of appeal.**—After such security has been furnished and deposit made, the High Court declares the appeal admitted, gives notice thereof to the respondent and transmits to the Privy Council the transcript of the record.

72. **Immediate intimation to Legal Adviser, India Office, of admission of appeal.**—Immediately on the grant of the certificate (or on the admission of the appeal) the Legal Remembrancer requests the Local Government to inform the Legal Adviser and Solicitor to the India Office that a certificate has been granted (or an appeal has been admitted) and to desire him to take the requisite steps. The Legal Remembrancer also sends direct intimation to the Legal Adviser.

NOTE (1).—It has been the custom for the Legal Remembrancer, in cases of importance, in this intimation to request the Legal Adviser to engage leading counsel at once, since otherwise they may be retained by the opposite party.

In their No. 678-59-11 of 22nd August 1918, the Government of India have authorized the Board of Revenue "to communicate direct with the Solicitor to the India Office in the matter of engagement of counsel in Court of Wards cases pending before the Privy Council" but the Board must report through the Local Government to the Government of India, that it has done so. The Board of Revenue will make such report through the Legal Remembrancer, who will then send intimation to the Local Government.

NOTE (2).—No time is to be lost in sending "the intimation" to the Legal Adviser as an appeal is liable to be dismissed if no steps be taken by the appellant within a period of four months from the date of the arrival of the record in England.

O. 45, r. 8 (d),  
C. P. C.

73. **Preparation of note for Legal Adviser, India Office.**—When the transcript is ready, the Senior Government Pleader obtains a copy of it on payment of cost. A full note on law and facts for the guidance of the Solicitors and Counsel in England is then prepared at the instance of the Legal Remembrancer, indicating the points to which special attention should be given. The note is finally settled by the Legal Remembrancer. In Court of Wards cases the Board of Revenue is consulted, when necessary, but ordinarily that is not required.

74. The note is then printed and eight copies of it are sent to the Local Government for transmission to the Legal Adviser, London, through the Government of India. Some copies, ordinarily four, are sent by the Legal Remembrancer direct to the Legal Adviser and Solicitor to the India Office.

NOTE.—The note referred to above has to be prepared, printed and sent to the Legal Adviser as soon as possible. This note is intended to be helpful to him in preparing his Case which he has to lodge before the date of hearing, as no party to an appeal who has not previously lodged his Case is entitled to be heard.

75. **Supply of information required by Legal Adviser.**—Any information required by the Legal Adviser has to be supplied to him, in many cases after correspondence with the local officers or the Board of Revenue, as the case may be.

76. **Copy of decision of Privy Council, how received and decree how executed.**—After an appeal is decided, intimation is received through the usual official channel as to the result, together with a copy of the judgment and the order in Council and copies of the Case prepared in England for the Privy Council. If the appeal is decided in favour of Government or the Court of Wards the order in Council is received in original and is filed in the High Court with a request that it be remitted to the Lower Court for the purpose of executing the decree. In cases in which the decision is against the Government, sanction is given by the Legal Remembrancer to satisfy the decree after the amount is settled in the execution Court.

9 Cal., 482, 492.

(2) *When Government is respondent.*

77. **Procedure in cases where Secretary of State, etc., is respondent.**—(a) In cases of appeal to the Privy Council in which the Secretary of State or the Court of Wards is Respondent, a copy of the notice received by the Government Pleader from the High Court to show cause why the certificate for appeal to the Privy Council should not be granted, is forthwith transmitted to the Legal Remembrancer. Opposition is generally entered on the ground of valuation of the subject matter on instructions from the local officers or the Board of Revenue, as the case may be, and the local Government Pleader is directed to go minutely into the point and the Collector to send full instructions to the Legal Remembrancer.

(b) *Where Secretary of State, etc., is Respondent.*

O. 45, r. 3 (2),  
C. P. C. and  
Rule 4.

If the High Court should, under Orders 45, rule 5, remit a dispute as to the valuation of the property to the Court of first instance for report, the Collector is asked to have an enquiry made into the valuation and to cause appearance to be made before the reporting Court.

O. 45, r. 5, C. P.  
C.

If the certificate for appeal is granted, the Legal Remembrancer adopts the same procedure as in Rules 72—75 above *mutatis mutandis*.

(b) Appellants generally hypothecate immovable property, instead of depositing cash, as the security required to be furnished by them under Order 45, rules 7 and 13 (2) (c), Civil Procedure Code, and the District Judge is then asked to test the sufficiency of the security. In such cases the Government Pleader is directed to go minutely into the question of the value of the security and of whether it is otherwise good, and, if it is insufficient, to place his objection before the District Judge, and the Collector to send forthwith to the Legal Remembrancer a copy of the objection, with full explanations, for use of the Senior Government Pleader, High Court.

(c) If, at any time after the admission of the appeal but before the transmission of the record to His Majesty in Council, the security furnished under Order 45, rule 7, Civil Procedure Code, or any time during the pendency of the appeal, the security furnished under Order 45, rule 13 (2) (c), Civil Procedure Code, appears to be inadequate, the Collector will inform the Legal Remembrancer of the inadequacy of such security and the Legal Remembrancer thereupon decides, in consultation, if necessary,

with the Senior Government Pleader whether an application for further security should be made under Order 45, rule 10 or Order 45, rule 14 (1), Civil Procedure Code, respectively.

[The same procedure as in (b) and (c) above is adopted in cases where the Secretary of State or the Court of Wards is appellant and the respondent is called upon to furnish security under Order 45, rule 13 (2) (b) of the Code of Civil Procedure.]

78. **Special leave to appeal to Privy Council.**—(1) (a) In cases in which leave to appeal to the Privy Council is refused by the High Court and the Legal Remembrancer considers that an application for special leave to appeal to the Privy Council should be presented to the Privy Council itself, he indicates, when forwarding a copy of the judgment refusing leave to appeal, the grounds upon which special leave should be applied for. It is then decided, in further consultation, if necessary, with the local officers and in wards cases, with the Board of Revenue, whether special leave should be applied for or not.

G. C. W. N., 362,  
364.

(b) If it is decided that special leave should be applied for, the Legal Remembrancer takes necessary steps to have a petition for special leave filed before the Privy Council and to furnish security when such leave is granted.

(2) In the case of a petition for special leave to appeal to the Privy Council presented or anticipated against a decision in favour of the Secretary of State or the Court of Wards the Legal Remembrancer takes such steps as may be necessary and feasible to oppose the petition in the Privy Council.

### (3) *Compromise in Privy Council Appeals.*

79. **Legal Remembrancer consults Government or the Board of Revenue.**—When the appellant to England approaches the Legal Remembrancer with a proposal to compromise an appeal to the Privy Council stating the terms, the Legal Remembrancer asks for the opinion of the Senior Government Pleader on the terms of compromise and sends them with his opinion to the Collector (through the Commissioner) for opinion and the Revenue Secretary to Government or the Board of Revenue, as the may be, for orders as to whether the terms of compromise should be accepted.

NOTE.—If necessary, the Legal Remembrancer interviews the Vakil for the opposite party and discusses the terms and reports result with the terms as settled and his own opinion to Government.

80. **File joint petition.**—When the terms of compromise are settled, a joint petition is filed in the High Court and the Legal Adviser, London, is at once informed of it in order to do the needful as also the Judicial Department as usual asking to inform the Legal Adviser of the action taken by the Legal Remembrancer.

The joint petition as filed is directed by the Court to be transmitted to His Majesty in Council for orders in the form of a supplementary record in order that the Judicial Committee of the Privy Council may dispose of the appeals in terms of the petition of compromise.

81. **When Government proposes compromise.**—When a proposal for compromise is made by Government the terms as settled by the Senior Government Pleader are discussed by the Legal Remembrancer with the Vakil for the opposite party. If a favourable settlement is arrived at, Government or the Board of Revenue, as the case may be, is addressed (sending a copy to the Collector through the Commissioner for information) for an expression of opinion. If Government approves of the terms, a joint petition is filed in the High Court and actions taken as stated above.

(4) *Appeals from decisions of Courts other than the High Court.*

82. **Appeals from decisions of courts other than the High Court.**—(1) In the case of an appeal to the Privy Council from the decision of the Board of Revenue, the same procedure is *ordinarily* followed as in the case of an appeal from the decision of the High Court, except that the application for a certificate of appeal in such cases has to be made before the Board, instead of before the High Court. S. 109 (a), C. P. C.  
O. 5, r. 2, C. P. C.

(2) In the case of an appeal to the Privy Council from the decision of a Court other than the High Court or the Board of Revenue, the Collector usually takes the initiative and forwards through the Commissioner, copies of papers, a statement of the case and the opinion of the Government Pleader, and, in cases in which the Secretary of State or the Court of Wards is appellant, also the grounds of appeal proposed by the Government Pleader, to the Legal Remembrancer; and the same procedure is followed as in the case of an appeal from the decisions of the High Court, except that the application for a certificate of appeal in such cases has to be filed in the Court from the decision of which the appeal is to be preferred and that the local Government Pleader conducts the case. S. 109 (a), C. P. C.  
[For a case of appeal to the Privy Council from the decision of a District Judge, *vide* 20 All., 412.]  
O. 45, r. 2, C. P. C.

An appeal lies to a High Court from an order of a subordinate court refusing leave to appeal.

O. 43, r. I (v), C. P. C.

(5) *Cases in which a Railway, etc., is a party.*

83. **Procedure in cases where a Railway, etc., is a party.**—The procedure followed in cases in which State Railways and other local bodies, who submit their cases to the Legal Remembrancer are parties, is the same as in Government cases, and for this purpose they are reckoned as such.

## D.—THE JUDICIAL COMMITTEE RULES, 1925.

At the Court at Buckingham Palace, the 2nd day of May, 1925.

## PRESENT,

The King's Most Excellent Majesty.

|                   |                            |
|-------------------|----------------------------|
| Lord President.   | Chancellor of the Duchy of |
| Lord Chamberlain. | Lancaster.                 |

Sir George Lloyd.

Whereas there was this day read at the Board a representation from the Judicial Committee of the Privy Council in the words following, viz. :—

“The Lords of the Judicial Committee having taken into consideration the Practice and Procedure in accordance with which the general Appellate Jurisdiction of Your Majesty in Council is now exercised and being of opinion that the Rules regulating the said Practice and Procedure ought to be amended Their Lordships do hereby agree humbly to recommend to Your Majesty that with a view to such amendment certain Orders in Council regulating the said Practice and Procedure, viz., the Orders in Council dated respectively the 21st day of December, 1908,\* the 23rd day of May, 1916,† the 25th day of March, 1920,‡ the 9th day of March, 1921,§ and the 15th day of March, 1922,\*\* amending the said Practice and Procedure ought to be revoked as from the 1st day of January, 1926, and that the several Rules hereunto annexed ought to be substituted therefor and ought to come into operation on that date.”

His Majesty having taken the said representation into consideration was pleased, by and with the advice of His Privy Council, to approve thereof and to order, as it is hereby ordered, that the said Orders in Council in the said representation mentioned be and the same are hereby revoked as from the 1st day of January, 1926, and that the Rules hereunto annexed be substituted therefor to come into operation on that date.

Whereof all persons whom it may concern are to take notice and govern themselves accordingly.

*M. P. A. Hankey.*

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\*S.R. & O. 1908, No. 1288.

†S.R. & O. 1919, No. 1810.

‡S.R. & O. 1922, No. 789.

§S.R. & O. 1922, No. 278 (not printed in S.R. & O. form).

\*\*S.R. & O. 1922, No. 279.

1. **Interpretation.**—(1) In these Rules, unless the context otherwise requires:—

“Appeal” means an Appeal to His Majesty in Council;

“Judgment” includes decree, order, sentence, or decision of any Court, Judge, or Judicial Officer;

“Record” means the aggregate of papers relating to an Appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before His Majesty in Council on the hearing of the Appeal;

“Registrar” means the Registrar or other proper officer having the custody of the records in the Court appealed from;

“Abroad” means the country or place where the Court appealed from is situate;

“Agent” means a person qualified by virtue of Her late Majesty’s Order in Council of the 6th March 1896 to conduct proceedings before His Majesty in Council on behalf of another;

“Party” and all words descriptive of parties to proceedings before His Majesty in Council (such as “Petitioner,” “Appellant,” “Respondent”) mean, in respect of all acts proper to be done by an Agent, the Agent of the party in question where such party is represented by an Agent;

“Respondent” includes Intervener;

“Month” means calendar month;

Words in the singular shall include the plural, and words in the plural shall include the singular.

(2) Where by these Rules any step is required to be taken in England in connection with proceedings before His Majesty in Council, whether in the way of lodging a Petition or other document, entering an Appearance, lodging security, or otherwise, such step shall be taken in the Registry of the Privy Council, Downing Street, London.

*Leave to appeal.*

2. **Leave to appeal generally.**—All Appeals shall be brought either in pursuance of leave obtained from the Court appealed from, or, in the absence of such leave, in pursuance of special leave to appeal granted by His Majesty in Council upon a Petition in that behalf presented by the intending Appellant.

*Special leave to appeal.*

3. **Form of Petition for special leave to appeal.**—A Petition for special leave to appeal to His Majesty in Council shall state succinctly and clearly all such facts as it may be necessary to state in order to enable the Judicial Committee to advise His Majesty whether such leave ought to be granted, and shall be signed by the Counsel who attends at the hearing or by the party himself if he appears in person. The Petition shall deal with the merits

of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which special leave to appeal is sought.

**4. Five copies of Petition to be lodged together with Affidavits in support.**—The Petitioner shall lodge at least five copies of his Petition for special leave to appeal together with the Affidavit in support thereof prescribed by Rule 50 hereinafter contained, and, unless a Caveat as prescribed by Rule 48 has been lodged by the other parties who appeared in the Court below, an Affidavit of service of notice of the intended application upon such parties or their Solicitors or Agents, either abroad or in England.

**5. Time for lodging Petition.**—A Petition for special leave to appeal may be lodged at any time after the date of the judgment sought to be appealed from, but the Petitioner shall, in every case, lodge his Petition with the least possible delay.

**6. Security for costs and transmission of Record.**—Where the Judicial Committee agree to advise His Majesty to grant special leave to appeal, they shall, in their Report, specify the amount of the security, for costs (if any) to be lodged by the Petitioner, and shall, unless the circumstances of a particular case render such a course unnecessary, provide for the transmission of the Record by the Registrar to the Registrar of the Privy Council and for such further matters as the justice of the case may require. Unless otherwise ordered the security shall be lodged at any time before the Appellant enters an Appearance.

**7. General provisions.**—Save as by the four last preceding Rules otherwise provided, the provisions of Rules 47 to 50 and 52 to 59 (all inclusive) hereinafter contained shall apply *mutatis mutandis* to Petitions for special leave to appeal.

**8. Petitions for special leave to appeal in formâ pauperis.**—Rules 3 to 7 (both inclusive) shall apply *mutatis mutandis* to Petitions for leave to appeal in formâ pauperis, but in addition to the Affidavits referred to in Rule 4 every such Petition shall be accompanied by an Affidavit from the Petitioner stating that he is not worth £25 in the world excepting his wearing apparel and his interest in the subject-matter of the intended Appeal, and that he is unable to provide sureties, and also by a certificate of Counsel that the Petitioner has reasonable ground of appeal.

**9. Exemption of pauper Appellant from lodging security and paying Office fees.**—Where a Petitioner obtains leave to appeal in formâ pauperis, he shall not be required to lodge security for the costs of the Respondent or to pay any Council Office fees.

**10. Exemption of unsuccessful Petitioner for leave to appeal in formâ pauperis from payment of Office fees.**—A Petitioner whose Petition for leave to appeal in formâ pauperis is dismissed may, notwithstanding such dismissal, be excused from paying the Council Office fees usually chargeable to a Petitioner in respect of a Petition for leave to appeal, if His Majesty in Council, on the advice of the Judicial Committee, shall think fit so to order.

*Record and Appearance by Appellant.*

11. **Record to be transmitted without delay.**—As soon as the Appeal has been admitted, whether by an Order of the Court appealed from or by an Order of His Majesty in Council granting special leave to appeal, the Appellant shall without delay take all necessary steps to have the Record transmitted to the Registrar of the Privy Council, and the Registrar shall, with all convenient speed, certify to the Registrar of the Privy Council that the Respondent has received notice, or is otherwise, aware, of the Order of the Court appealed from admitting the Appeal, or of the Order of His Majesty in Council giving the Appellant special leave to appeal, and has also received notice, or is otherwise aware, of the dispatch of the Record to England. Where an Appellant who has obtained special leave to appeal by an Order of His Majesty in Council fails to have the Record transmitted to the Registrar of the Privy Council with due diligence, the Registrar of the Privy Council shall call upon the Appellant to explain his default, and if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar insufficient, the said Registrar may issue a Summons to the Appellant calling upon him to show cause before the Judicial Committee at a time to be named in the said Summons why the special leave to appeal granted should not be rescinded. The Respondent shall be entitled to be heard before the Judicial Committee in the matter of the said Summons and to ask for his costs and such other relief as he may be advised. The Judicial Committee may, after considering the matter of the said Summons, recommend to His Majesty to rescind the grant of special leave to appeal or give such other directions therein as the justice of the case may require.

12. **Printing of Record.**—The Record shall be printed in accordance with the Rules contained in Schedule A hereto. It may be printed either abroad or in England. When printed abroad the parties in England shall, upon perusal, consider whether the order of the documents is in accordance with these Rules, and if it is not, they shall agree upon the proper order. The Appellant shall then rearrange copies of the Record for the use of the Judicial Committee and the other parties. In the event of the parties being unable to agree, the matter shall be referred to the Registrar of the Privy Council, who if he thinks fit, may require the parties to attend before the Judicial Committee for directions.

13. **Number of copies to be transmitted, where Record printed abroad.**—Where the Record is printed abroad, the Registrar shall at the expense of the Appellant, transmit to the Registrar of the Privy Council 40 copies of such Record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the seal, if any, of the Court appealed from.

14. **One certified copy to be transmitted, where Record to be printed in England.**—Where the Record is to be printed in England, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council one certified copy of such Record, together with an index of all the papers and exhibits in

the case. No other certified copies of the Record shall be transmitted to the Agents in England by or on behalf of the parties to the Appeal.

15. **Record printed partly abroad, partly in England.**—Where part of the Record is printed abroad, and part is to be printed in England, Rules 13 and 14 shall, as far as practicable, apply to such parts as are printed abroad and such as are to be printed in England respectively.

16. **Reasons for judgments to be included.**—The reasons given by the judge, or any of the judges, for or against any judgment pronounced in the course of the proceedings out of which the Appeal arises, shall by judge or such judges be communicated in writing to the Registrar and shall be included in the Record.

17. **Exclusion of unnecessary documents from Record.**—The Registrar, as well as the parties and their Agents, shall endeavour to exclude from the Record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the Appeal, and, generally, to reduce the bulk of the Record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be printed or copied shall be enumerated in a typewritten list to be transmitted with the Record.

18. **Documents objected to to be indicated.**—Where in the course of the preparation of a Record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, the Record, as finally printed (whether abroad or in England), shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

19. **Registration and numbering of Records.**—As soon as the Record is received in the Registry of the Privy Council, it shall be registered in the said Registry, with the date of arrival, the names of the parties, and the description whether "printed" or "written." A Record, or any part of a Record, not printed in accordance with the Rules contained in Schedule A hereto shall be treated as written. Appeals shall be numbered consecutively in each year in the order in which the Records are received in the said Registry.

20. **Inspection of Record by parties.**—The parties shall be entitled to inspect the Record and to extract all necessary particulars therefrom for the purpose of entering an Appearance.

21. **Appearance by Appellant.**—The Appellant shall enter an Appearance before taking any step in the prosecution of the Appeal, and after entering such Appearance, shall forthwith give notice thereof to the Respondent, if the latter has entered an Appearance.

**22. Times within which a copy of a written Record shall be bespoken.**—Where the Record arrives in England either wholly written, or partly written and partly printed, the Appellant shall, within a period of four months from the date of such arrival in the case of Appeals from Courts situate in any of the countries or places named in Schedule B hereto, and within a period of two months from the same date in the case of Appeals from any other Courts, enter an Appearance and bespeak a typewritten copy of the Record, or of such parts thereof as it may be necessary to have copied, and shall engage to pay the cost of preparing such copy at the following rates per folio typed (exclusive of tabular matter)—*2d.* per folio of English matter, *2½d.* per folio of Indian matter, and *3½d.* per folio of foreign matter; and shall also engage to pay at such price as shall be fixed by the Registrar of the Privy Council the cost of printing at least 50 copies thereof.

**23. Preparation of copy of Record for printer.**—As soon as the Appellant has obtained the typewritten copy of the Record bespoken by him, he shall proceed, with due diligence, to arrange the documents in suitable order, to check the index, to insert marginal notes and check the same with the index, and, generally, to do whatever may be required for the purpose of preparing the copy for the printer, in accordance with the Rules contained in Schedule A hereto, and shall, if the Respondent has entered an Appearance, submit the copy, as prepared for the printer, to the Respondent for his approval. In the event of the parties being unable to agree; the matter shall be referred to the Registrar of the Privy Council who, if he thinks fit, may require the parties to attend before the Judicial Committee for directions.

**24. Lodging copy of Record for printing.**—As soon as the typewritten copy of the Record is ready for the printer, the Appellant shall lodge it in the Registry of the Privy Council for printing by a printer selected by the Registrar of the Privy Council, and at the same time shall lodge the amount of the estimated cost of printing the Record.

**25. Special Case.**—Whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the parties, with the sanction of the Registrar of the Privy Council, may submit such question of law to the Judicial Committee in the form of a Special Case, and print such parts only of the Record as may be necessary for the discussion of the same Provided that nothing herein contained shall in any way prevent the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit, and that, in order to promote such arrangements and simplification of the matter in dispute, the said Registrar may call the parties before him, and having heard them, and examined the Record, may report to the Judicial Committee as to the nature of the proceedings.

**26. Examination of proof of Record and striking off copies.**—The Registrar of the Privy Council shall, as soon as the proof prints of the Record are ready, give notice to all parties who have entered an Appearance requesting them to attend at the Registry of the Privy Council at a time to be named in such notice in order to examine the said proof prints and compare the same with the

certified Record, and shall, for that purpose, furnish each of the said parties with one proof print. After the examination has been completed, the Appellant shall, without delay, lodge his proof print, duly corrected and (so far as necessary) approved by the Respondent, and the Registrar of the Privy Council shall thereupon cause the copies of the Record to be struck off from such proof print.

27. **Number of copies of Record for parties.**—Each party who has entered an Appearance shall be entitled to receive, for his own use, six copies of the Record.

28. **How costs of printing Record are to be borne.**—Subject to any special direction from the Judicial Committee to the contrary, the costs of and incidental to the printing of the Record shall form part of the costs of the Appeal, but the costs of and incidental to the printing of any document objected to by one party, in accordance with Rule 18, shall, if such document is found on the taxation of costs to be unnecessary or irrelevant, be disallowed to, or borne by, the party insisting on including the same in the Record.

*Petition of Appeal.*

29. **Times within which Petition shall be lodged.**—The Appellant shall lodge his Petition of Appeal—

- (a) Where the Record arrives in England printed, within a period of four months from the date of such arrival in the case of Appeals from Courts situate in any of the countries or places named in Schedule B hereto, and within a period of two months from the same date in the cases of Appeals from any other Courts;
- (b) Where the Record arrives in England written, within a period of one month from, but not before, the date of the completion of the printing thereof:

Provided that nothing in this Rule contained shall preclude the Appellant from lodging his Petition of Appeal prior to the arrival of the Record, or the completion of the printing thereof, if there are special reasons why, in the opinion of the Registrar of the Privy Council, it should be desirable for him to do so.

30. **Form of Petition.**—The Petition of Appeal shall be lodged in the form prescribed by Rule 47 hereinafter contained. It shall recite succinctly and, as far as possible, in chronological order, the principal steps in the proceedings leading up to the Appeal from the commencement thereof down to the admission of the Appeal, but shall not contain argumentative matter or travel into the merits of the case.

31. **Service of Petition.**—The Appellant shall, after lodging his Petition of Appeal, serve a copy thereof without delay on the Respondent, as soon as the latter has entered an Appearance, and shall endorse such copy with the date of the lodgment.

*Withdrawal of Appeal.*

**32. Withdrawal of Appeal before Petition of Appeal has been lodged.**—Where an Appellant, who has not lodged his Petition of Appeal, desires to withdraw his appeal, he shall give notice in writing to that effect to the Registrar of the Privy Council, and the said Registrar, shall, with all convenient speed after the receipt of such notice, by letter notify the Registrar of the Court appealed from that the Appeal has been withdrawn, and the said Appeal shall thereupon stand dismissed as from the date of the said letter without further Order.

**33. Withdrawal of Appeal after Petition of Appeal has been lodged.**—Where an Appellant, who has lodged his Petition of Appeal, desires to withdraw his Appeal, he shall present a Petition to that effect to His Majesty in Council. On the hearing of any such Petition a Respondent who has entered an Appearance in the Appeal shall, subject to any agreement between him and the Appellant to the contrary, be entitled to apply to the Judicial Committee for his costs, but where the Respondent has not entered an Appearance, or, having entered an Appearance, consents in writing to the prayer of the Petition, the Petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a Consent Petition under the provisions of Rule 56 hereinafter contained.

*Non-Prosecution of Appeal.*

**34. Dismissal of Appeal where Appellant takes no step in prosecution thereof.**—Where an Appellant takes no step in prosecution of his Appeal within a period of four months from the date of the arrival of the Record in England in the case of an Appeal from a Court situate in any of the countries or places named in Schedule B, hereto, or within a period of two months from the same date in the case of an Appeal from any other Court, the Registrar of the Privy Council shall, with all convenient speed, by letter notify the Registrar of the Court appealed from that the Appeal has not been prosecuted, and the Appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further Order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to any Respondent who has entered an Appearance in the Appeal.

**35. Dismissal of Appeal for non-prosecution after Appellant's Appearance and before lodgment of Petition of Appeal.**—Where an Appellant who has entered an Appearance—

- (a) fails to bespeak a copy of a written Record, or of part of a written Record, in accordance with, and within the periods prescribed by, Rule 22; or
- (b) having bespoken such copy within the periods prescribed by Rule 22, fails thereafter to proceed with due diligence to take all such further steps as may be necessary for the purpose of completing the printing of the said Record; or
- (c) fails to lodge his Petition of Appeal within the periods respectively prescribed by Rule 29;

the Registrar of the Privy Council shall call upon the Appellant to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar shall, with all convenient speed, by letter notify the Registrar of the Court appealed from that the Appeal has not been effectually prosecuted, and the Appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further Order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to all the parties who have entered an Appearance in the Appeal.

**36. Dismissal of Appeal for non-prosecution after lodgment of Petition of Appeal.**—Where an Appellant, who has lodged his Petition of Appeal, fails thereafter to prosecute his Appeal with due diligence, the Registrar of the Privy Council shall call upon him to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar shall issue a Summons to the Appellant calling upon him to show cause before the Judicial Committee at a time to be named in the said Summons why the Appeal should not be dismissed for non-prosecution provided that no such Summons shall be issued by the said Registrar before the expiration of one year from the date of the arrival of the Record in England. If the Respondent has entered an Appearance in the Appeal, the Registrar of the Privy Council shall send him a copy of the said Summons, and the Respondent shall be entitled to be heard before the Judicial Committee in the matter of the said Summons at the time named and to ask for his costs and such other relief as he may be advised. The Judicial Committee may, after considering the matter of the said Summons, recommend to His Majesty the dismissal of the Appeal for non-prosecution, or give such other directions therein as the justice of the case may require.

**37. Restoring an Appeal dismissed for non-prosecution.**—An Appellant whose Appeal has been dismissed for non-prosecution may present a Petition to His Majesty in Council praying that his Appeal may be restored.

*Appearance by Respondent.*

**38. Time within which Respondent may appear.**—The Respondent may enter an Appearance at any time between the arrival of the Record and the hearing of the Appeal, but if he unduly delays entering an Appearance he shall bear, or be disallowed, the costs occasioned by such delay, unless the Judicial Committee otherwise direct.

**39. Notice of Appearance by Respondent.**—The Respondent shall forthwith after entering an Appearance give notice thereof to the Appellant, if the latter has entered an Appearance.

**40. Form of Appearance where all the Respondents do not appear.**—Where there are two or more Respondents, and only one, or some, of them enter an Appearance, the Appearance Form shall set out the names of the appearing Respondents.

41. **Separate Appearances.**—Two or more Respondents may, at their own risk as to costs, enter separate Appearances in the same Appeal.

42. **Non-appearing Respondent not entitled to receive notices or lodge Case.**—A Respondent who has not entered an Appearance shall not be entitled to receive any notices relating to the Appeal from the Registrar of the Privy Council, nor be allowed to lodge a Case in the Appeal.

43. **Procedure on non-appearance of Respondent.**—Where a Respondent fails to enter an Appearance in an Appeal, the following Rules shall, subject to any special Order of the Judicial Committee to the contrary, apply:—

(a) If the non-appearing Respondent was a Respondent at the time when the Appeal was admitted, whether by the Order of the Court appealed from or by an Order of His Majesty in Council giving the Appellant special leave to appeal, and it appears from the terms of the said Order, or Order in Council, or otherwise from the Record, or from a Certificate of the Registrar of the Court appealed from, that the said non-appearing Respondent has received notice, or was otherwise aware, of the Order of the Court appealed from admitting the Appeal, or of the Order of His Majesty in Council giving the Appellant special leave to appeal, and has also received notice, or was otherwise aware, of the despatch of the Record to England, the appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the said non-appearing Respondent at any time after the expiration of three months from the date of the lodging of the Petition of Appeal;

(b) If the non-appearing Respondent was made a Respondent by an Order of His Majesty in Council subsequently to the admission of the Appeal, and it appears from the Record, or from a Supplementary Record, or from a Certificate of the Registrar of the Court appealed from, that the said non-appearing Respondent has received notice, or was otherwise aware, of any intended application to bring him on the record as a Respondent, the Appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the said non-appearing Respondent at any time after the expiration of three months from the date on which he shall have been served with a copy of His Majesty's Order in Council bringing him on the Record as a Respondent:

Provided that where it is shown to the satisfaction of the Registrar of the Privy Council, by Affidavit or otherwise, either that an Appellant has made every reasonable endeavour to serve a non-appearing Respondent with the notices mentioned in clause (a) and (b) respectively and has failed to effect such service, or that it is not the intention of the non-appearing Respondent to enter an Appearance to the Appeal, the Appeal may, without further Order in that behalf and at the risk of the Appellant, be proceeded with *ex parte* as against the said non-appearing Respondent.

**44. Respondent defending Appeal in formâ pauperis.**—

A Respondent who desires to defend an Appeal in *formâ pauperis* may present a Petition to that effect to His Majesty in Council, which Petition shall be accompanied by an Affidavit from the Petitioner stating that he is not worth £25 in the world excepting his wearing apparel and his interest in the subject-matter of the Appeal.

*Petitions generally.*

**45. Mode of addressing Petitions.**—All Petitions for orders or directions as to matters of practice or procedure arising after the lodging of the Petition of Appeal and not involving any change in the parties to an Appeal shall be addressed to the Judicial Committee. All other Petitions shall be addressed to His Majesty in Council, but a Petition which is properly addressed to His Majesty in Council may include, as incidental to the relief thereby sought, a prayer for orders or directions as to matters of practice or procedure.

**46. Orders on Petitions which need not be drawn up.**—Where an Order made by the Judicial Committee does not embody any special terms or include any special directions, it shall not be necessary to draw up such Order, unless the Committee otherwise direct, but a Note thereof shall be made by the Registrar of the Privy Council.

**47. Form of Petition and number of copies to be lodged.**—All Petitions shall consist of paragraphs numbered consecutively and shall be written, typewritten, or lithographed, on brief paper with quarter margin and endorsed with the name of the Court appealed from, the full title and Privy Council number of the Appeal to which the Petition relates or the full title of the Petition (as the case may be), and the name and address of the London Agent (if any), of the Petitioner, but need not be signed, except as provided by Rule 3. Unless the Petition is a Consent Petition within the meaning of Rule 56 at least five copies thereof shall be lodged.

**48. Caveat.**—Where a Petition is expected to be lodged, or has been lodged, which does not relate to any pending Appeal of which the Record has been registered in the Registry of the Privy Council, any person claiming a right to appear before the Judicial Committee on the hearing of such Petition may lodge a Caveat in the matter thereof, and shall thereupon be entitled to receive from the Registrar of the Privy Council notice of the lodging of the Petition, if at the time of the lodging of the Caveat such Petition has not yet been lodged, and, if and when the Petition has been lodged, to require the Petitioner to serve him with a copy of the Petition, and to furnish him, at his own expense, with copies of any papers lodged by the Petitioner in support of his Petition. The Caveator shall forthwith after lodging his Caveat give notice thereof to the Petitioner, if the Petition has been lodged.

**49. Service of Petition.**—Where a Petition is lodged in the matter of any pending Appeal, of which the Record has been

registered in the Registry of the Privy Council, the Petitioner shall serve any party who has entered an Appearance in the Appeal with a copy of such Petition, and the party so served shall thereupon be entitled to require the Petitioner to furnish him, at his own expense, with copies of any papers lodged by the Petitioner in support of his Petition.

50. **Verifying Petition by Affidavit.**—A Petition not relating to any Appeal of which the Record has been registered in the Registry of the Privy Council, and any other Petition containing allegations of fact which cannot be verified by reference to the registered Record or any certificate or duly authenticated statement of the Court appealed from, shall be supported by Affidavit. Where the Petitioner prosecutes his Petition in person, the said Affidavit shall be sworn by the Petitioner himself and shall state that, to the best of the deponent's knowledge, information and belief, the allegations contained in the Petition are true. Where the Petitioner is represented by an Agent, the said Affidavit shall be sworn by such Agent and shall, besides stating that, to the best of the deponent's knowledge, information and belief, the allegations contained in the Petition are true, show how the deponent obtained his instructions and the information enabling him to present the Petition.

51. **Petition for Order of Revivor or Substitution.**—A Petition for an Order of Revivor or Substitution shall be accompanied by a certificate or duly authenticated statement from the Court appealed from showing who, in the opinion of the said Court, is the proper person to be substituted, or entered, on the Record in place of, or in addition to, a party who has died or undergone a change of status.

52. **Petition disclosing no reasonable cause of appeal or containing scandalous matter to be refused.**—The Registrar of the Privy Council may refuse to receive a Petition on the grounds that it discloses no reasonable cause of appeal, or is frivolous, or contains scandalous matter, but the Petitioner may appeal, by way of motion, from such refusal to the Judicial Committee.

53. **Setting down Petition.**—As soon as a Petition and all necessary documents are lodged the Petition shall thereupon be deemed to be set down.

54. **Times within which set-down Petitions shall be heard.**—On each day appointed by the Judicial Committee for the hearing of Petitions the Registrar of the Privy Council shall, unless the Committee otherwise direct, put in the paper for hearing all such Petitions as have been set down. Provided that, in the absence of special circumstances of urgency to be shown to the satisfaction of the said Registrar, no Petition, if opposed, shall be put in the paper for hearing before the expiration of ten clear days from the lodging thereof, unless the Opponent consents to the Petition being put in the paper on an earlier day.

55. **Notice to parties of day fixed for hearing Petition.**—Subject to the provisions of the next following Rule, the Registrar of the Privy Council shall, as soon as the Judicial Committee have appointed a day for the hearing of a Petition, notify all parties concerned by Summons of the day so appointed.

**56. Procedure where Petition is consented to or is formal.**—Where the prayer of a Petition is consented to in writing by the opposite party, or where a Petition is of a formal and non-contentious character, the Judicial Committee may, if they think fit, make their Report to His Majesty on such Petition, or make their Order thereon, as the case may be, without requiring the attendance of the parties in the Council Chamber, and the Registrar of the Privy Council shall not in any such case issue the Summons provided for by the last-preceding Rule, but shall with all convenient speed after the Committee have made their Report or Order notify the parties that the Report or Order has been made and of the date and nature of such Report or Order.

**57. Withdrawal of Petition.**—A Petitioner who desires to withdraw his Petition shall give notice in writing to that effect to the Registrar of the Privy Council. Where the Petition is opposed, the Opponent shall, subject to any agreement between the parties to the contrary, be entitled to apply to the Judicial Committee for his costs, but where the Petition is unopposed, or where, in the case of an opposed Petition, the parties have come to an agreement as to the costs of the Petition, the Petition, may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a Consent Petition under the provisions of the last-preceding Rule.

**58. Procedure where hearing of Petition unduly delayed.**—Where a Petitioner unduly delays bringing a Petition to a hearing, the Registrar of the Privy Council shall call upon him to explain the delay, and if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar may, after notifying all parties interested by Summons of his intention to do so, put the Petition in the paper for hearing on the next following day appointed by the Judicial Committee for the hearing of Petitions for such directions as the Committee may think fit to give thereon.

**59. Only one Counsel heard on a side in Petitions.**—At the hearing of a Petition not more than one Counsel shall be admitted to be heard on a side.

#### *Case.*

**60. Lodging of Case.**—No party to an Appeal shall be entitled to be heard by the Judicial Committee unless he has previously lodged his Case in the Appeal. Provided that where a Respondent who has entered an Appearance does not desire to lodge a Case in the Appeal, he may give the Registrar of the Privy Council notice in writing of his intention not to lodge any Case, while reserving his right to address the Judicial Committee on the question of costs.

**61. Printing of Case.**—The Case may be printed either abroad or in England, and shall, in either event, be printed in accordance with the Rules I to III contained in Schedule A hereto, every tenth line thereof being numbered in the margin, and shall be signed by at least one of the Counsel who attends at the hearing of the Appeal or by the party himself if he conducts his Appeal in person.

62. **Number of prints to be lodged.**—Each party shall lodge 30 prints of his Case.

63. **Form of Case.**—The Case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the Appeal arises, the contentions to be urged by the party lodging the same, and the reasons of appeal. References by page and line to the relevant portions of the Record as printed shall, as far as practicable, be printed in the margin, and care shall be taken to avoid, as far as possible, the reprinting in the Case of long extracts from the Record. The Taxing Officer, in taxing the costs of the Appeal, shall, either of his own motion, or at the instance of the opposite party, inquire into any unnecessary prolixity in the Case, and shall disallow the costs occasioned thereby.

64. **Separate Cases by two or more Respondents.**—Two or more Respondents may, at their own risk as to costs, lodge separate Cases in the same Appeal.

65. **Notice of lodgment of Case.**—Each party shall, after lodging his Case, forthwith give notice thereof to the other party.

66. **Case Notice.**—Subject as hereinafter provided, the party who lodges his Case first may, at any time after the expiration of three clear days from the day on which he has given the other party the notice prescribed by the last-preceding Rule, serve such other party, if the latter has not in the meantime lodged his Case, with a "Case Notice," requiring him to lodge his Case within one month from the date of the service of the said Case Notice and informing him that, in default of his so doing, the Appeal will be set down for hearing *ex parte* as against him, and if the other party fails to comply with the said Case Notice, the party who has lodged his Case may, at any time after the expiration of the time limited by the said Case Notice for the lodging of the Case, lodge an affidavit of Service (which shall set out the terms of the said Case Notice), and the Appeal shall thereupon, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the party in default. Provided that no Case Notice shall be served until after the completion of the printing, or re-arrangement under Rule 12, of the Record, and also that nothing in this Rule contained shall preclude the party in default from lodging his Case, at his own risk as regards costs and otherwise, at any time up to the date of hearing.

67. **Setting down Appeal and exchanging Cases.**—Subject to the provisions of Rule 43 and of the last-preceding Rule, an Appeal shall be set down *ipso facto* as soon as the Cases on both sides are lodged, and the parties shall thereupon exchange Cases by handing one another, either at the Offices of one of the Agents or in the Registry of the Privy Council, ten copies of their respective Cases.

*Binding Records, etc.*

68. **Mode of binding Records, etc., for use of Judicial Committee.**—As soon as an Appeal is set down, the Appellant shall attend at the Registry of the Privy Council and obtain ten

copies of the Record and Cases to be bound for the use of the Judicial Committee at the hearing. The copies shall be bound in cloth or in half leather with paper sides, and six leaves of blank paper shall be inserted before the Appellant's Case. The front cover shall bear a printed label stating the title and Privy Council number of the Appeal, the contents of the volume, and the names and addresses of the London Agents. The several documents, indicated by incuts, shall be arranged in the following order: (1) Appellant's Case; (2) Respondent's Case; (3) Record (if in more than one part, showing the separate parts by incuts, all parts being paged at the top of the page); (4) Supplemental Record (if any); and the short title and Privy Council number of the Appeal shall also be shown on the back.

**69. Time within which bound copies shall be lodged.**—The Appellant shall lodge the bound copies not less than four clear days before the commencement of the Sittings during which the Appeal is to be heard.

*Hearing.*

**70. Notice of day on or before which Appeals must be set down for ensuing Sittings.**—The Registrar of the Privy Council shall name a day on or before which Appeals must be set down if they are to be entered in the List of Business for the ensuing Sittings. All Appeals set down on or before the day named shall, subject to any directions from the Committee or to any agreement between the parties to the contrary, be entered in such List of Business and shall, subject to any directions from the Committee to the contrary, be heard in the order in which they are set down.

**71. Notice to parties of day fixed for hearing Appeal.**—The Registrar of the Privy Council shall, subject to the provisions of Rule 42, notify the parties to each Appeal by Summons, at the earliest possible date, of the day appointed by the Judicial Committee for the hearing of the Appeal, and the parties shall be in readiness to be heard on the day so appointed.

**72. Only two Counsel heard on a side in Appeals.**—At the hearing of an Appeal not more than two Counsel shall be admitted to be heard on a side.

**73. Nautical Assessors.**—In Admiralty Appeals the Judicial Committee may, if they think fit, require the attendance of two Nautical Assessors.

*Judgment.*

**74. Notice to parties of day fixed for delivery of Judgment.**—Where the Judicial Committee, after hearing an Appeal, decide to reserve their Judgment thereon, the Registrar of the Privy Council shall in due course notify the parties by Summons of the day appointed by the Committee for the delivery of the Judgment.

*Costs.*

75. **Taxation of costs.**—All Bills of Costs under the Orders of the Judicial Committee on Appeals, Petitions, and other matters, shall be referred to the Registrar of the Privy Council, or such other person as the Judicial Committee may appoint, for taxation, and all such taxations shall be regulated by the Schedule of Fees set forth in Schedule C. hereto.

76. **What costs taxed in England.**—The taxation of costs in England shall be limited to costs incurred in England.

77. **Order to tax.**—The Registrar of the Privy Council shall, with all convenient speed after the Judicial Committee have given their decision as to the costs of an Appeal, Petition, or other matter, issue to the party to whom costs have been awarded an Order to tax and a Notice specifying the day and hour appointed by him for taxation. The party receiving such Order to tax and Notice shall, not less than 48 hours before the time appointed for taxation, lodge his Bill of Costs (together with all necessary vouchers for disbursements), and serve the opposite party with a copy of his Bill of Costs and of the Order to tax and Notice.

78. **Power of Taxing Officer where taxation delayed through the fault of the party whose costs are to be taxed.**—The Taxing Officer may, if he think fit, disallow to any party who fails to lodge his Bill of Costs (together with all necessary vouchers for disbursements) within the time prescribed by the last-preceding Rule, or who in any way delays or impedes a taxation, the charges to which such party would otherwise be entitled for drawing his Bill of Costs and attending the taxation.

79. **Appeal from decision of Taxing Officer.**—Any party aggrieved by a taxation may appeal from the decision of the Taxing Officer to the Judicial Committee. The Appeal shall be heard by way of motion, and the party appealing shall give three clear days' Notice of Motion to the opposite party, and shall also leave a copy of such Notice in the Registry of the Privy Council.

80. **Amount of taxed costs to be inserted in His Majesty's Order in Council.**—The amount allowed by the Taxing Officer on the taxation shall, subject to any appeal from his taxation to the Judicial Committee and subject to any direction from the Committee to the contrary, be inserted in His Majesty's Order in Council determining the Appeal or Petition.

81. **Taxation on the pauper scale.**—Where the Judicial Committee directs costs to be taxed on the pauper scale, the Taxing Officer shall not allow any fees of Counsel, and shall only award to the Agents out-of-pocket expenses and a reasonable allowance to cover office expenses, such allowance to be taken at about three-eighths of the usual professional charges in ordinary Appeals. Such pauper scale shall apply to and include the application upon which leave to appeal *in formâ pauperis* was granted.

82. **Security to be dealt with as His Majesty's Order in Council determining Appeal directs.**—Where the Appellant has

lodged security for the Respondent's costs of an Appeal in the Registry of the Privy Council, the Registrar of the Privy Council shall deal with such security in accordance with the directions contained in His Majesty's Order in Council determining the Appeal.

*Miscellaneous.*

83. **Power of Judicial Committee to excuse from compliance with Rules.**—The Judicial Committee may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules, and may give such directions in matters of practice and procedure as they shall consider just and expedient. Applications to be excused from compliance with the requirements of any of these Rules shall be addressed in the first instance to the Registrar of the Privy Council, who shall take the instructions of the Committee thereon and communicate the same to the parties. If, in the opinion of the said Registrar, it is desirable that the application should be dealt with by the Committee in open Court, he may direct the party applying to lodge in the Registry of the Privy Council, and to serve the opposite party with, a Notice of Motion returnable before the Committee.

84. **Amendment of documents.**—Any document lodged in connection with an Appeal, Petition, or other matter pending before His Majesty in Council or the Judicial Committee, may be amended by leave of the Registrar of the Privy Council, but if the said Registrar is of opinion that an application for leave to amend should be dealt with by the Committee in open Court, he may direct the party applying to lodge in the Registry of the Privy Council, and to serve the opposite party with a Notice of Motion returnable before the Committee.

85. **Affidavits may be sworn before the Registrar of the Privy Council.**—Affidavits relating to any Appeal, Petition, or other matter pending before His Majesty in Council or the Judicial Committee may be sworn before the Registrar of the Privy Council.

86. **Change of Agent.**—Where a party to an Appeal, Petition, or other matter pending before His Majesty in Council changes his Agent, such party, or the new Agent, shall forthwith give the Registrar of the Privy Council and the outgoing Agent notice in writing of the change, and shall amend the Appearance accordingly. Until such notices are given the former Agent shall be considered the Agent of the party until the final conclusion of the Appeal, Petition, or other matter.

87. **Scope of application of Rules.**—Subject to the provisions of any Statute or of any Statutory Rule or Order to the contrary, these Rules shall apply to all matters falling within the Appellate Jurisdiction of His Majesty in Council.

88. **Mode of citation and date of operation.**—These Rules may be cited as the Judicial Committee Rules, 1925, and they shall come into operation on the 1st day of January, 1926.

## SCHEDULE A.

*Rules as to Printing.*

I. All Records and other proceedings in Appeals or other matters pending before His Majesty in Council or the Judicial Committee which are required by the above Rules to be printed shall be printed in the form known as Demy Quarto.

II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and  $8\frac{1}{2}$  inches in width.

III. The type to be used in the text shall be Pica type, but Long Primer shall be used in printing accounts, tabular matter and notes. The number of lines in each page of Pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

IV. Records shall be arranged in two parts in the same volume, where practicable, viz. :—

Part I. The pleadings and proceedings, the transcript of the evidence of the witnesses, the Judgments, Decrees, etc., of the Courts below, down to the Order admitting the Appeal.

Part II. The exhibits and documents.

V. The Index to Part I shall be in chronological order, and shall be placed at the beginning of the volume.

The Index to Part II shall follow the order of the exhibit mark, and shall be placed immediately after the Index to Part I.

VI. Part I shall be arranged strictly in chronological order, *i.e.*, in the same order as the index.

Part II shall be arranged in the most convenient way for the use of the Judicial Committee, as the circumstances of the case require. The documents shall be printed as far as suitable in chronological order, mixing Plaintiff's and Defendant's documents together when necessary. Each document shall show its exhibit mark, and whether it is a Plaintiff's or Defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter, such as

(a) a series of correspondence, or

(b) proceedings in a suit other than the one under appeal,

shall be kept together. The order in the Record of the documents in Part II will probably be different from the order of the Index, and the proper page number of each document shall be inserted in the printed Index.

The parties will be responsible for arranging the Record in proper order for the Judicial Committee, and in difficult cases Counsel may be asked to settle it.

VII. The documents in Part I shall be numbered consecutively. The documents in Part II shall not be numbered, apart from the exhibit mark.

VIII. Each document shall have a heading which shall consist of the number or exhibit mark and the description of the document in the Index, without the date.

IX. Each document shall have a marginal note which shall be repeated on each page over which the document extends, viz. :—

#### PART I.

(a) Where the case has been before more than one Court, the short name of the Court shall first appear. Where the case has been before only one Court, the name of the Court need not appear.

(b) The marginal note of the document shall then appear consisting of the number and the description of the document in the Index, with the date, except in the case of oral evidence.

(c) In the case of oral evidence, "Plaintiff's evidence" or "Defendant's evidence" shall appear beneath the name of the Court, and then the marginal note consisting of the number in the Index and the witness's name, with "examination," cross-examination," or "re-examination," as the case may be.

#### PART II.

The word "Exhibits" shall first appear.

The marginal note of the exhibit shall then appear consisting of the exhibit mark and the description of the document in the Index, with the date.

X. The parties shall agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the Index and in the Record), if desired, with the words "not printed" against it.

A long series of documents, such as accounts, rent rolls, inventories, etc., shall not be printed in full, unless Counsel so advise, but the parties shall agree to short extracts being printed as specimens.

XI. In cases where maps sent from abroad are of an inconvenient size or unsuitable in character, the Appellant shall, in agreement with the Respondent, prepare in England, from the materials sent from abroad, maps drawn properly to scale and of reasonable size, showing, as far as possible, the claims of the respective parties, in different colours.

#### SCHEDULE B.

*Countries and places referred to in Rules 22, 29 and 34.*

Australia.

British Honduras.

British North Borneo.

Brunei.

Ceylon.

China.

Eastern African Dependencies.  
 Falkland Islands.  
 Federated Malay States.  
 Fiji.  
 Hong Kong.  
 India.  
 Mauritius.  
 New Zealand.  
 Persia.  
 Seychelles.  
 Somaliland Protectorate.  
 Straits Settlements.

## SCHEDULE C.

## PART I.

*Fees allowed to Agents conducting Appeals or other matters before the  
 Judicial Committee of the Privy Council.*

(33½ per cent. is added to these fees.)

|  | £. | s. | d. |
|--|----|----|----|
| Retainer fee .. .. .   | 0  | 13 | 4  |
| Drawing Appearance or Caveat .. .. .   | 0  | 5  | 0  |
| Perusing printed Record, for every printed sheet of 8 pages ..                                       | 1  | 1  | 0  |
| Perusing written Record, for every 25 folios .. .. .   | 0  | 6  | 8  |
| Drawing Index .. .. . per folio  | 0  | 2  | 0  |
| Drawing Marginal Notes and Headings .. .. . per folio  | 0  | 0  | 6  |
| Attending at the Registry to examine proof print of Record with the certified Record .. .. . per day | 3  | 3  | 0  |
| .. .. . per half-day   | 1  | 11 | 6  |
| Correcting revised print of Record, per sheet of 8 pages—  |    |    |    |
| Foreign or Indian cases .. .. .  | 1  | 1  | 0  |
| Other cases .. .. .  | 0  | 10 | 6  |
| Instruction for Petition or Motion, or to Oppose .. .. .   | 0  | 10 | 0  |
| Instructions for Petition of Appeal .. .. .  | 0  | 10 | 0  |
| Instructions for Case .. .. .  | 1  | 0  | 0  |
| Drawing Petition, Motion, Case or Affidavit .. .. . per folio  | 0  | 2  | 0  |
| Copying Petition, Motion, Case or Affidavit .. .. . per folio  | 0  | 0  | 6  |
| Correcting proof of Case, per sheet of 8 pages—  |    |    |    |
| Foreign or Indian cases .. .. .  | 1  | 1  | 0  |
| Other cases .. .. .  | 0  | 10 | 6  |
| Drawing and fair copy Case Notice .. .. .  | 0  | 10 | 0  |
| Perusing Petition, Motion or Affidavit .. .. . per folio   | 0  | 2  | 0  |
| Perusing Petition of Appeal .. .. .  | 1  | 1  | 0  |
| Perusing Case, per printed sheet of 8 pages .. .. .  | 1  | 1  | 0  |
| Instructions for and preparing Retainer to Counsel .. .. .   | 0  | 10 | 0  |
| Instructions to Counsel to argue an Appeal .. .. .   | 1  | 0  | 0  |
| Instructions to Counsel to argue a Petition or Motion .. .. .  | 0  | 10 | 0  |

|  | £ | s. | d. |
|--|---|----|----|
| Instructions to printer .. .. .  | 0 | 10 | 0  |
| Attending Consultation .. .. .   | 1 | 0  | 0  |
| Attending at the Council Chamber for the hearing of a Petition or Motion                           | 1 | 6  | 8  |
| Attending at the Council Chamber all day on an Appeal not called on                                | 2 | 6  | 8  |
| Attending the hearing of an Appeal .. .. . per day   | 3 | 6  | 8  |
| Attending a Judgment .. .. .   | 1 | 6  | 8  |
| Approving draft Order .. .. .  | 0 | 10 | 0  |
| Attendances generally .. .. .  | 0 | 10 | 0  |
| Attendances on Counsel where fee is 30 guineas or over .. .. .                                     | 1 | 0  | 0  |
| Drawing Bill of Costs .. .. . per folio  | 0 | 1  | 0  |
| Copying Bill of Costs .. .. . per folio  | 0 | 0  | 6  |
| Attending Taxation of Costs of an Appeal .. .. .   | 2 | 2  | 0  |
| Attending Taxation of Costs of a Petition or Motion .. .. .  | 1 | 1  | 0  |
| Sessions Fee for each year or part of a year from the date of Appearance (in Appeals only) .. .. . | 3 | 3  | 0  |
| Letters, etc. (in Petitions) .. .. .   | 1 | 1  | 0  |
| Letters, etc. (in Appeals)—  |   |    |    |
| For 1st year .. .. .   | 2 | 2  | 0  |
| For each following year .. .. .  | 1 | 1  | 0  |

## PART II.

*Council Office Fees.*

|  |   |    |   |
|--|---|----|---|
| Entering Appearance .. .. .  | 1 | 0  | 0 |
| Amending Appearance .. .. .  | 0 | 10 | 0 |
| Examining proof print of Record with the certified record at the Registry (chargeable to Appellant only) .. .. . per day | 2 | 0  | 0 |
| per half-day   | 1 | 0  | 0 |
| Lodging Petition of Appeal .. .. .   | 3 | 0  | 0 |
| Lodging Petition for special leave to appeal .. .. .   | 2 | 0  | 0 |
| Lodging any other Petition or Motion .. .. .   | 1 | 0  | 0 |
| Lodging Case or Notice under Rule 60 .. .. .   | 2 | 0  | 0 |
| Setting down Appeal (chargeable to Appellant only) .. .. .   | 5 | 0  | 0 |
| Setting down Petition for special leave to appeal (chargeable to Petitioner only) .. .. .                                | 2 | 0  | 0 |
| Setting down any other Petition (chargeable to Petitioner only) .. .. .  | 1 | 0  | 0 |
| Summons .. .. .  | 1 | 0  | 0 |
| Committee Report on Petition .. .. .   | 2 | 0  | 0 |
| Committee Report on Appeal .. .. .   | 3 | 0  | 0 |
| Original Order of His Majesty in Council determining an Appeal .. .. .   | 5 | 0  | 0 |
| Any other original Order of His Majesty in Council .. .. .   | 3 | 0  | 0 |
| Plain copy of an Order of His Majesty in Council .. .. .   | 0 | 5  | 0 |
| Original Order of the Judicial Committee .. .. .   | 2 | 0  | 0 |
| Plain copy of Committee Order .. .. .  | 0 | 5  | 0 |
| Lodging Affidavit .. .. .  | 0 | 10 | 0 |
| Certificate delivered to parties .. .. .   | 0 | 10 | 0 |
| Lodging Caveat .. .. .   | 1 | 0  | 0 |
| Subpoena to witnesses .. .. .  | 0 | 10 | 0 |

Taxing Fee 6d. for each pound allowed, or a fraction thereof, up to £300, and one per cent. beyond that sum, calculated at the rate of 5s. for each £25, or a portion thereof.

#### 4.—Civil Suits relating to Wards' Estate.

1. **Duties of Managers in Wards' suits.**—In Court of Wards' suits the duties devolving on the Collector in Government suits will ordinarily be performed by the Manager under the control of the Collector, except that the Execution Register 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 Collector.

2. **Inquiries in Wards' cases.**—Inquiries in Court of Wards' cases shall be made by such officers as the Manager, under the general control of the Collector, may appoint.

3. **Manager to submit half-yearly statement of decrees.**—The Manager shall submit half-yearly to the Collector a statement in the form prescribed by Rule 30, Chapter IV, for Government cases.

4. **Registers for Wards' suits.**—Separate registers in Forms B and C given in Appendix A similar to those prescribed for Government suits, will be used for Wards' suits. In the column of remarks of Register B it will be noted whether the suit was referred to the Legal Remembrancer.

5. **Payment of sums due for Wards' cases before release of estate.**—The Collector shall, whenever any estate under his administration is about to be released, ascertain from the Legal Remembrancer whether any sums are due on account of the legal business of such estate; and, if so, he shall at once remit the amount due.

6. **Information to Legal Remembrancer when taking charge of Wards' estate.**—Whenever the Court of Wards takes charge of an estate it shall, if any litigation connected with the estate is pending in the High Court, submit to the Legal Remembrancer a list of the pending cases, and the name of the ward, together with an affidavit in proper form, to enable the Government Pleader in the High Court to have substitution or addition of parties duly made in the record of the proceedings of the High Court in connection with litigation. Except for special reasons, the conduct of all such pending cases shall be placed in the hands of the Government Pleader. If the Court of Wards desires to retain the services of pleaders or counsel previously employed in addition to or in place of the Government Pleader it shall inform the Legal Remembrancer.

7. **Collector authorized to apply for stay of execution proceedings.**—Collectors are authorized to apply under section 10C of Bengal Act IX of 1879, at any time within a year after the Court of Wards assumes charge of any estate, to the Civil Court to stay any proceedings in the matter of any process of execution which such Civil Court may have directed to issue against any immovable property of the ward or the rents thereof or any crops standing thereon.

**8. Collector's and Commissioner's powers in Wards' suits.**—Under section 15 of Bengal Act IX of 1879, the Court of Wards has delegated—

(i) To Collectors—

- (a) Powers under section 52 to nominate or substitute any person to be the next friend or guardian for any particular suit.
- (b) Powers under section 53 to sanction the payment of costs and damages in a suit decided finally against a ward.
- (c) Powers to file applications under section 105 and suits under section 106 of the Bengal Tenancy Act subject to the provisions of Rule 167 of the Wards' Manual, 1928.
- (d) Powers to sanction the institution of suits of the value of Rs. 500 and under, informing the Commissioner of the action taken by him in cases in which the value is over Rs. 100, and sanctioning the defence of such suits when instituted against the estate.

(ii) To Commissioners—

Powers under section 55 to sanction the institution and defence of suits on behalf of a ward.

The order sanctioning the filing of applications or the institution of suits under sub-clauses (i) (c) and (d) and (ii) above must be in writing, must bear the personal signature of the officer authorised to sanction the institution of the suit, and must be filed with the plaint in every suit. A general order or an order by telegram is not admissible, and a telegram, if acted on, must be supplemented by a post copy or formal order as referred to above. A Manager or Collector may, however, in anticipation of sanction, file a plaint or appeal under the first proviso of section 55 to avoid limitation; when this is done, the circumstances should be stated and the Civil Court asked to stay proceedings till the necessary sanction is received.

**9. Sanction for institution of suit or appeal.**—The attention of Managers and Collectors is drawn to the last paragraph of the preceding rule and to rule 15 below, and they are specially requested to submit their proposals in proper time so as to admit of their obtaining the sanction of the proper authority before the institution of a suit or an appeal.

**10. Conduct of suits.**—After institution, Government suits in all cases and Wards' suits as a general rule will be conducted by the Collector under the supervision of the Commissioner; but in the case of large estates with experienced Managers, the conduct of such suits may, with the sanction of the Commissioner, be left to the Managers.

**11. Collector's power to sanction defence of appeals.**—The Collectors are also authorised to sanction the defence of appeals without reference to any higher authority in the following cases:

subject to the proviso that the advice of the Legal Remembrancer should be taken when necessary.

(1) Where a suit has been instituted by a Wards estate with proper sanction and has been decreed in full.

(2) Where a suit has been instituted against a Wards Estate and defended with proper sanction and has been dismissed.

**12. Local Pleader to be consulted.**—Collectors or Managers before instituting or defending such suits should obtain the opinion of the local pleader employed by them, and should be careful not to enter upon any suit which may probably involve important issues without reference to the Legal Remembrancer or the Board or the Government, as the case may be.

**13. Reference to Legal Remembrancer, if necessary.**—Whenever the Commissioner sees reason to apprehend that any case is likely to assume unforeseen importance, he should call for such information as will enable him to judge whether the advice of the Legal Remembrancer is necessary, and, if such advice seems necessary, should forward the papers to the Legal Remembrancer.

**14. Reference to Board or Government if appeal appears necessary.**—Whenever an appeal appears to be necessary in a case conducted without reference to the Legal Remembrancer, a reference should be made to the Board or the Government as the case may be, in respect of estates with current rent and cess demand of over Rs. 1,00,000 and to the Commissioner in all other cases so as, if possible, to admit of their passing orders in time for the institution of the appeal; but if orders are not received in time, the appeal may be instituted.

**NOTE.**—An appeal under section 51 (1) of the Public Demands Recovery Act, 1913, on behalf of a Ward's estate against the orders of a Certificate Officer may be made without reference to any authority higher than the Collector unless the case is one of an unusual and specially difficult character. (Board's Wards' Proceedings of 11th August 1888, No. 20, Collection 10, File 168 of 1888.)

**15. Copies of papers to be sent up in appeals.**—The papers sent up should be—

- (1) Copy of plaint.
- (2) Copy of reply.
- (3) Copy of decision.
- (4) Copy of decree (if necessary).
- (5) Copies of evidence of witnesses and of any other documents filed which were not included in the brief.
- (6) Copies of any other additional statement or important application with the orders passed on them.
- (7) Copy of grounds of appeal.
- (8) Copy of Government Pleader's opinion.
- (9) Collector's remarks.

**16. Court of Wards' cases on the Original Side of the High Court or the Small Cause Court, Calcutta.**—Works on behalf of

the Court of Wards in connection with matters arising on the Original Side of the High Court or in the Small Cause Court, Calcutta, are done through private agency without having recourse to the Legal Remembrancer.

[Board's letter Nos. 1705-09 W., dated 10th February, 1927.]

### 5.—Procedure for conducting Civil Suits in which Government is a party on behalf of the Eastern Bengal Railway.

1. **Service of notice to eject.**—An outsider encroaching on Government land or a licensee whose license is not renewed will be served with an ejectment notice, duly signed by the Agent, to vacate the land on or before the specified time as per Ejectment Notice.

2. **Institution of Ejectment suit.**—If, in spite of the receipt of the Ejectment Notice the party does not vacate the Railway land in due time, the Executive Engineer concerned is authorised to make arrangements for instituting an Ejectment suit against the party, the Agent's signature on the Ejectment Notice being equivalent to his sanction to the proposed suit.

3. **Preparation of statement of facts.**—The Executive Engineer will then prepare a statement of facts as required under rule 1, Chapter III (Civil Suit Rules) and forward the same together with the necessary Schedule to the Government Pleader concerned for drawing up the draft plaint.

4. **Drawing up of draft plaint.**—The Government Pleader on thus being requisitioned by the Executive Engineer, will draw up the draft plaint and return all papers to the Executive Engineer along with his opinion, as regards the validity of the suit on the statement of facts, supplied by the Executive Engineer together with an estimate for cost of Court-fee stamp, etc., for the plaint.

5. **Sending up of draft plaint to Chief Engineer.**—The Executive Engineer will then forward the draft plaint along with the Schedules, statement of facts and Government Pleader's opinion to the Chief Engineer at the same time informing him of the amount that will be required for the purpose of court-fee and stamp, etc., as per estimate by the Government Pleader.

6. **Reference to Agent and Legal Remembrancer.**—The Chief Engineer will then move the Agent to obtain the approval of the Legal Remembrancer of the draft plaint and on its receipt from him will return the same to the Executive Engineer and sanction the estimated amount of Court-fee stamp, etc., if within his power of sanction; if not, he will obtain Agent's sanction to the same and communicate it to the Executive Engineer who should draw the money by Pay Order sent to the Chief Auditor as at present.

7. **Purchase of stamp, etc.**—The Executive Engineer will then send his General Assistant Clerk or a responsible subordinate to purchase the Court-fee stamp, etc., and hand over the same (and

not cash for the stamp) to the Government Pleader with a letter from the Executive Engineer authorising the Government Pleader to draw the plaint on stamped paper.

8. **Sending of stamped plaint to Chief Engineer.**—The Government Pleader will then send the stamped plaint to the Executive Engineer who will forward the same to the Chief Engineer for obtaining the Agent's signature thereon.

9. **Agent's signature on plaint.**—The Chief Engineer in his turn will have the stamped plaint signed by the Agent immediately and return the same to the Executive Engineer for institution of the suit through the Government Pleader.

10. **Payment of cost for summons of witnesses.**—The Government Pleader will be given an imprest of Rs. 30 for cost of summons, etc., contemplated in Rule 23, Chapter III (Civil Suit Rules), as amended by Government of Bengal, Judicial Department, Notification No. 1227J., dated the 25th March 1919. He should submit an account for recoupment in the same way as is done by the Executive Engineer who will instruct the Government Pleader in detail on this point and provide the necessary forms.

11. **Submission of bills.**—On final disposal of the suit the Government Pleader will submit a bill for his professional fee in accordance with Rule 2, Section 5, Chapter II, *ante* together with a detailed account of expenditure properly supported by vouchers or in absence of supporting vouchers the detailed account prepared and signed by the clerk of the Government Pleader and countersigned by him to the Executive Engineer who after check will forward the same to the Chief Engineer for arranging payment to the Government Pleader in the usual way.

NOTE.—No bill for professional fee of the Government Pleader will be passed for payment, unless it is accompanied by the detailed accounts of the suit.

12. **Submission of account to Chief Engineer and Chief Auditor.**—As soon as a suit is instituted in the Court, the Executive Engineer will at once submit an account of the money drawn by him for Court-fee stamp, etc., together with an intimation of the date of institution of the Suit to the Chief Engineer for check and transmission to the Chief Auditor to enable the latter officer to clear his suspense balance expeditiously.

13. **Rules regarding defence of suits.**—Suits in which the Government is the defendant will be conducted in accordance with Rules 29 to 39, Chapter III (Civil Suit Rules).

14. **Employments of pleaders at subdivisions.**—In Munsif's Courts in some subdivisions where there is no Government Pleader a local Pleader may be engaged by the Executive Engineer in consultation with the Government Pleader of the district. The Executive Engineer will arrange to obtain sanction in the usual way to the approximate fees payable to the pleader for his professional services in connection with the suit and may pay the Pleader from the Executive Engineer's Imprest money.

## 6.—Rules regarding adoption of measures for preventing institution of groundless civil suits.

Procedure to be followed in connection with the India Government, Home Department, No. 967, dated the 9th July 1906, in cases in which groundless civil suits are instituted in Courts situated at such a distance from the homes of the defendants that it is practically impossible for them to contest the claims satisfactorily:—

1. **Magistrate to communicate with Criminal Investigation Department.**—On receipt of intimation that a fraudulent civil suit has been instituted or a fraudulent decree obtained at a distant Court against a resident of Bengal, the District Magistrate, or, in Calcutta, the Commissioner of Police, shall at once communicate with the Criminal Investigation Department, Bengal, and at the same time inform the Magistrate of the district in which the suit has been instituted.

If the case is instituted or fraudulent decree obtained in the Small Cause Court of Calcutta, only the Deputy Inspector-General of Police in charge of the Criminal Investigation Department, Bengal, shall be communicated with.

2. **Criminal Investigation Department to make inquiries.**—The Deputy Inspector-General of Police in charge of the Criminal Investigation Department, Bengal, on receipt of such information or information from other sources shall at once cause an enquiry to be made with a view to ascertain the truth or falsity of the suit, and shall communicate the result of such enquiries to the Magistrates concerned.

3. **Arrangement for defence or setting aside decree.**—If on enquiry the case or decree is found to be fraudulent the Criminal Investigation Department, Bengal, in consultation with the Magistrate of the district where the case has been instituted, shall arrange for the proper defence of the suit at the expense of the State or the necessary application for setting aside the decree. If the decree was passed *ex-parte* an application for setting it aside shall be made to the Court concerned within 30 days from the date on which the passing of the decree came to the knowledge of the defendant.

4. **Application for sanction to prosecute.**—If the suit be dismissed or withdrawn, or the time for setting aside the *ex-parte* decree have expired, and if clear evidence be forthcoming that the suit has been fraudulently instituted, an application under section 195, Criminal Procedure Code, shall without delay be made to the Court concerned either through the defendant or by the Public Prosecutor or the Deputy Inspector-General of Police in charge of the Criminal Investigation Department, Bengal, for sanction to prosecute the plaintiff and his abettor, if any.

5. **Reference to Legal Remembrancer.**—When sanction is obtained the Public Prosecutor or any other competent pleader shall, with the sanction of the Legal Remembrancer, be appointed

by the District Magistrate to conduct the prosecution of the case in the Criminal Court.

The Public Prosecutor of Calcutta shall prosecute cases in which sanction is granted by the High Court or the Small Cause Court of Calcutta.

6. **Disbursement of expenses.**—Expenses incurred in the Civil Courts in Bengal and the Small Cause Court, Calcutta, shall be borne by Government and be met by the Deputy Inspector-General of Police in charge of the Criminal Investigation Department, Bengal, who has been granted a special sum for the purpose. Expenses incurred in prosecutions in Criminal Courts shall be met by the Magistrate in whose Court the case is tried as in other Crown cases.

7. **Suits instituted in another province.**—If a suit be instituted in any other province against a resident of Bengal, the Deputy Inspector-General of Police in charge of the Criminal Investigation Department, Bengal, on receipt of intimation from the District Magistrate, shall at once communicate with the Deputy Inspector-General of Police in charge of the Criminal Investigation Department of the province in which the suit has been instituted, who will act according to the rules of that province. The Deputy Inspector-General of Police in charge of the Criminal Investigation Department, Bengal, shall at the same time cause an enquiry to be made in this province and forward the papers to the Deputy Inspector-General of Police in charge of the Criminal Investigation Department of the province in which the suit was instituted.

8. **Suits instituted in Bengal against resident of another province.**—On receipt of information from Magistrates or the Criminal Investigation Department of another province of a suit instituted in the Civil Courts in Bengal or the Small Cause Court, Calcutta, against a resident of that province, the Criminal Investigation Department, Bengal, shall proceed according to the foregoing rules.

9. **Power of Attorney.**—A general power-of-attorney shall, whenever possible, be taken from the defendants in favour of the Deputy Inspector-General of Police in charge of the Criminal Investigation Department, Bengal, or of any other officer selected by the Deputy Inspector-General of Police.

10. **Control of cases.**—The control of these cases both in the Civil and Criminal Courts shall remain with the Deputy Inspector-General of Police in charge of the Criminal Investigation Department, Bengal.

## 7.—General Rules.

1. **Requisition of papers by Board or Government in suits of the Revenue Department.**—With reference to Rule 9, Chapter III (of the Civil Suit Rules) the Board or the Government, as the

case may be required that a copy of the brief or of so much of the brief as is necessary shall be submitted to it—

(a) in all cases in which a suit is brought against Government or the Court of Wards to contest, set aside, or modify and proceedings of the Revenue authorities in which the Board or the Government has taken a part; in cases affecting the right of Government to lands taken possession of as islands; and in cases affecting the right of Government to assess alluvial increments;

(b) in cases instituted by under-tenants or raiyats to contest enhancements of rent, whether in Government estates, Wards' estates, or in estates the property of private individuals brought under settlement. In such cases when several suits are instituted on similar grounds, it will only be necessary to send up a copy of the brief in one typical case, with a report explanatory of the general circumstances.

2. **Preparation of brief.**—The copy of the brief required is a copy of the statement of facts which is drawn up for the Legal Remembrancer according to rule 6, and rule 37, Chapter III (Civil Suit Rules), and of any other papers which may be material to a proper understanding of the merits of the case.

3. **Reference regarding notice to Board or Government.**—When a notice is received of a suit which will, if instituted, come within the meaning of clause (a) or (b) above and the suit is likely to be of importance, copy of the report sent to the Legal Remembrancer under Rule 29, Chapter III (Civil Suit Rules), should be forwarded to the Board or the Government, as the case may be, so that the Board or the Government may have opportunity of indicating the points on which further information appears necessary before the institution of the suit.

4. **Consultation with Board of Revenue.**—The Legal Remembrancer is to consult the Government or the Board in cases involving general revenue questions, or affecting seriously the interests of Government in the Revenue Department.

5. **Preparation of pleadings.**—Where Head of the district exercises both revenue and judicial powers the assistant to the principal District Officer must, in communication with the Government Pleader, where there is such an officer, or, where there is not, with a pleader selected from the local courts, prepare the pleadings in all Government suits and send them to the Legal Remembrancer through the Commissioner, for orders and instructions, care only being taken that no case which the assistant has previously taken part in preparing is made over to him for trial.

6. **Deputation of technical adviser in diara resumption proceedings.**—In important cases of relay in connection with diara resumption proceedings the Collectors should instruct the Government pleaders to ask courts for appointment of technical experts from the office of the Director of Surveys as Commissioners. If the court refuses and appoints a local pleader-commissioner, the matter should be reported to the Board, who will decide whether the case is sufficiently important to justify asking the Director of the Department of Land Records to depute the technical

adviser of one of the major settlements to watch the proceedings. A prayer for appointment of an expert should be included in the draft written statement submitted to the Board and Legal Remembrancer for approval with briefs of these civil suits.

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

**8. Government Pleader to take particular instructions when necessary.**—Whenever any particular instructions seem requisite in the conduct of any suit, appeal or miscellaneous proceeding the Government Pleader shall take the orders of the Collector and act upon them.

**9. Collector may apply for extension of time and, if application is refused, will give instructions for filing written statement.**—Whenever the Collector shall deem it advisable to ask that an extension of time may be granted for any purpose, he shall instruct the Government Pleader to apply for such extension. Should the Court refuse to grant the extension of time applied for, the Collector shall instruct the Government Pleader to file such answer as the Collector may think fit, and shall transmit a copy of such answer to the Commissioner, advising him of what has been done.

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

**11. Government Pleader to draft plaints, etc.**—All plaints, answers and written statements should be drafted by the Government Pleader in English, and should be filed in Court in English unless there be good reasons for using the vernacular.

**12. English translation of vernacular paper.**—Whenever any document or paper in the vernacular is submitted to the Legal Remembrancer it should be accompanied by a translation in English.

**13. Expenses for taking copies of papers.**—Copies of papers which the Government Pleaders are required to take under these rules shall be paid for by the Collector as part of the expenses of the suit. Such expenses may be passed by the Collector.

**14. Copies of correspondence.**—Collectors are not, as a rule, permitted to grant any copies of correspondence between the several officers of Government on the subject of suits without previous sanction obtained from the Commissioner in case of estates with current rent and cess demand of Rs. 1,00,000 and less. For estates with a higher demand, the sanction of the Board should be obtained. Copies of correspondence which has passed between the Legal Remembrancer and the Commissioner or Collector may, however, be given with the sanction of the Legal Remembrancer.

15. **Rules applicable to wards, District Boards, etc.**—The rules in this Chapter and in the foregoing Chapters shall apply not only to Government cases, but to all cases connected with the Court of Wards, and every other institution or department controlled or superintended by Government officers.

16. **Procedure to be adopted by Heads of Departments.**—The word "Collector" in all these rules includes Heads of Departments of the local Government in connection with cases arising in their own Departments. Such officers shall conduct all cases arising in their own departments in direct communication with the Government Pleader of the District and the Legal Remembrancer, instead of through the Collector and the Commissioner. These officers will keep Register B in the form given in the Appendix, and submit to the Legal Remembrancer on the 15th of January each year Returns F (Part I) and F (Part II) prescribed by Rule 19 below. But when a decree is obtained in any suit, it shall be transferred to the Collector of the district for execution, and that officer shall enter it in his register of execution cases and shall thenceforth be responsible for the realization of all sums due on it.

17. **Duties of Government Solicitor in civil suits.**—The Government Solicitor deals with questions of civil law exclusively relating to or arising in the local jurisdiction of the Original Side of the High Court, Calcutta. He gives advice and acts for Government in all civil suits on the Original Side of the High Court or in the Small Cause Court, Calcutta, in the same manner as Government Pleaders work in the mufassal for District Officers.

In practice, where the head of a department proposes to institute a suit in either of these Courts or receives a notice under section 80, Civil Procedure Code, of the intention to file a suit therein he will, as far as possible, ascertain the facts and (in the case of a notice within 15 days from the date of receipt of the notice) send all papers and information collected to the Government Solicitor for his opinion. The Government Solicitor will record his opinion and return it with the papers at the earliest possible moment. When requisition for such opinion involves sending confidential documents to the Government Solicitor, the officer consulting him shall himself or through an officer acting on his behalf see the Government Solicitor with the confidential papers and discuss the case with him direct giving particular instructions (and caution, etc.) about the confidential documents. If in any case, the Government Solicitor wishes to retain a confidential document, such document shall be separated from the general file and personally made over to the Government Solicitor taking from the latter a receipt therefor.

No copy of the confidential papers shall be allowed and the Government Solicitor, when taking the opinion of the Advocate-General or Standing Counsel, should arrange so that he himself will explain to the law officer the nature of the confidential documents.

On receiving the papers from the Government Solicitor, the head of the department will forward the same to the Legal



## CHAPTER IV.

## Execution of Decrees.

1. **Copy of decree to be sent to Collector.**—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 Collector. A decree dismissing a suit against Government is a decree in favour of Government.

2. **Entry of decrees in execution registers.**—Upon receiving a copy of the decree, the Collector shall enter the same in his Register C. The Collector shall keep up two execution registers in Forms C and D—C for cases in which decrees have been given in favour of Government, and D for cases in which stamp-fees have to be realised in pauper suits. A separate page should be reserved for each decree.

3. **Entry in register for pauper suits.**—In pauper suits, when the quarterly statement showing the stamp-fees which are due to Government is received from the Civil Court, the Collector shall enter the same in his register for pauper suits.

4. **Execution of decree.**—When a decree has become final, either from not being appealed against or from being confirmed on appeal, steps should at once be taken for executing the same.

5. **Application for execution.**—Where special reasons exist, execution can be applied for as soon as the decree has been passed.

6. **Instruction for satisfaction or taking out of execution.**—When the Government Pleader receives from the Collector instructions to satisfy or to take out execution of a decree, he shall note the date of receipt on the back of the instructions, and shall then at once carry them into effect, and shall be from the date of receipt of instructions responsible for all proceedings in Court in furtherance of them.

7. **Inquiry about debtor's property.**—Before application is made for the execution of a decree, the Collector shall ascertain what property, movable or immovable, the debtor possesses. Inquiries of this nature can be made through such trustworthy agency as the Collector may think proper to employ. *Bonâ fide* travelling expenses incurred by the officer deputed by the Collector to make the inquiry should be allowed.

8. **List of debtor's property.**—The officer to whom the inquiry has been entrusted shall, after completing his investigation, furnish the Collector 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.

9. **Further instructions for execution.**—After receiving the above report, the Collector, in case the debtor does not come forward to make arrangement for the settlement of the decree, shall furnish the Government Pleader with a copy of the list of the debtor's property, and such further instructions and papers as may be necessary to enable the Government Pleader to apply for the execution of the decree.

10. **Attachment of debtor's property.**—Upon the Court issuing orders for the attachment of the debtor's property, the Collector shall depute someone to accompany the attaching officer and to point out the property.

11. **Claims by third parties.**—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 evidence by which it is proposed to show that the property belongs to the debtor, and he shall be present in Court and instruct the Government Pleader when the case comes on for trial.

12. **Execution not to be delayed during pending of appeal.**—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 the property. If the decree be reversed in appeal, Government is always in a position to refund the money.

13. **Execution for Court-fees in pauper suits.**—Execution of decrees for Court-fees in pauper suits should invariably be taken out within a very few days so as to present the money decreed being realized 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 Order XXXIII, Rule 10 of the Civil Procedure Code. In such suits, 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 inquiry under Rule 7 is necessary to ascertain the property which is the subject-matter of the suit.

14. **Quarterly statement of cases for realization of decrees.**—The Government Pleader shall furnish the Collector with a quarterly statement of cases, *both civil and pauper*, in which any steps have been taken for the realization of a decree during the quarter. The statement will show the name of the case, the steps taken, and the result.

15. **Entry in register from the statement.**—Upon receiving this statement, the Collector 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 must be reported to the Legal Remembrancer through the Commissioner.

16. **Inspection of execution register.**—In the execution registers sufficient space should be left to enter all the successive steps which are taken by the Collector for the execution of a decree. When inspecting the Collector'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.

17. **Payment of decretal money to Collector.**—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 Collector, and request the Court to grant him a payment order for the amount in favour of the Collector, and forward the same, when received, to the Collector.

**18. Government Pleader not to receive money direct or to give receipts.**—A Government Pleader has no authority, and a Collector cannot authorize him, to receive money direct from 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.

**19. Collector's duty to recover Government dues.**—(i) Collectors and Managers should *personally* see that timely and systematic efforts are made to recover sums due to Government or wards estates under decrees of the Civil Courts.

(ii) To ensure this being done, the work of realization should, in each district, be specially placed in immediate charge of an Assistant or Deputy Collector and should be frequently supervised by the Collector himself. The officer in charge of the Arrear Collection Department will perhaps be generally the best officer for this work.

(iii) The outstanding balances of decretal sums due to Government are not, as a rule, large, and it will not therefore be generally necessary for a gazetted officer to inquire locally into the matter of their realization; but in important cases, and where any suspicion of collusion or concealment of assets exists, the Collector might usefully depute such an officer or a kanungo for the purpose.

20. When inspecting a Collector's or Manager's office, the inspecting officer should scrutinise the entries in the Execution Register and notice in his inspection report any irregularity which he may find in regard to the execution of any decree.

**21. Reward for realization of amount of decree.**—When the realization of the amount of a decree is due to the special exertions of any officer, the Collector or the Manager should represent the matter to the Legal Remembrancer, who may sanction 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 shall make an application to the Collector stating the grounds upon which the application is based.

**22. Reward for realization of decretal debt not exceeding Rs. 50.**—When the decretal debt does not exceed Rs. 50, the Collector should direct the peons of his office to make inquiries as to the debtor's property when visiting his village for service of processes, and stimulate them and the village chaukidars by the grant of rewards, say, up to 20 per cent. on all sums realized by their exertions.

**23. Decretal amount not recoverable by ordinary means.**—When the Collector considers a decretal amount to be not recoverable by ordinary means, he shall sanction the transference of the amount to the last column of the Register of Civil Suit Decrees (Form C in Appendix A), recording the steps taken by him for the realization of the amount and the reasons for their failure. After the amount is entered in red ink in the last column of the

register, the Collector shall take any steps he considers justifiable to realize the amount, including the offer of a percentage, but not the sale of the decree.

**24. Steps to be taken before writing off decrees as irrecoverable.**—Before writing off any decrees as irrecoverable, whether such decrees be in Government or pauper suits, a notice offering a reward of half the sum realized should be sent to those villages from which there may be likelihood of information being obtained.

In districts where a large number of apparently irrecoverable decrees are outstanding, a special peon may be appointed, whose duty it will be to take notices to the different villages, and to make the purport of them known to the villagers. He should obtain the signature of some of the villagers upon his return in the usual way.

**25. Delivery of notice by peon.**—In districts where it is not thought advisable to entertain a special peon, notice may be sent by a peon paid for each particular occasion.

**26. Sending of notice to police station.**—In case where the amount likely to be recovered is too small to make it worth while to pay a special peon, the notice may be sent to the police station or outpost, and the officer in charge directed to make it over to the village chaukidar, when he reports himself at the station.

**27. Reasons to be stated as to steps taken.**—When applications are made to write off decrees as irrecoverable, it must be stated that this plan has been adopted and has failed in each case.

**28. Time of reward notice.**—No reward will be offered until all other inquiries have failed to discover property from which the decrees may be realized.

**29. Time of application to write off decrees.**—The action described above should be taken and, if unsuccessful, application should be made for writing off the decree when submitting the half-yearly statement of Government decrees in Form E (1) or the annual statement of decrees in pauper suits in Form E (2) as the case may be.

**30. Half-yearly and yearly statement of decrees.**—A half-yearly statement in Form E (1) shall be submitted to the Legal Remembrancer direct on the 15th July and 15th January regarding Government decrees and a yearly statement in Form E (2) on the 15th January each year as regards decrees in pauper suits.

**31. Officer in charge of Execution Department.**—In every district in which there is at headquarters a covenanted Deputy Collector of sufficient experience, he should be placed in charge of the Execution Department. When there is no covenanted Deputy Collector of sufficient experience, a senior Deputy Collector should be placed in charge of the work.

**32. Definition of Collector.**—In this chapter the word "Collector" includes any Assistant or Deputy Collector who may be in immediate charge of this Department under the general control of the Collector.

## CHAPTER V.

**Disbursement or remission of money in cases in which Government is a party.**

1. **Commissioner's power to disburse sums to carry on suit or appeal.**—Commissioners 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 Secretary of State is a party, if the Legal Remembrancer has directed that such suits shall be instituted or defended.

2. **Commissioner's power to disburse sums to satisfy decree, etc.**—Commissioners are also authorized to sanction the disbursement of any sum in order—

(a) to satisfy any decree against the Secretary of State in cases where the law allows of no further appeal from such decree or in which the Legal Remembrancer has directed that no further appeal shall be made; and

(b) to adjust or compromise any suit or claim against the Secretary of State which the Legal Remembrancer has directed to be compromised or which can be dealt with by the Commissioner under Rule 27, Section I, Chapter III.

3. **And in suit not reported to the Legal Remembrancer.**—Commissioners are also authorized to sanction the payment in any suit, which under Rule 5, Section I, Chapter III, need not be reported to the Legal Remembrancer, of any sum not exceeding Rs. 500 for the purpose of carrying on such suit or for satisfying the decree therein, or for compromising the same.

4. **Remission of sums due to Wards' estates under decree.**—Commissioners are also authorized to remit or write off any sums due to Wards' estates under decree of Court, which are found to be irrecoverable.

5. **Instructions for satisfaction of decree or adjustment of suit or claim.**—Whenever in any suit against the Secretary of State, 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 Collector to take the necessary steps for satisfying the decree, or for adjusting the suit or claim compromised. For this purpose he may issue any necessary instructions to the Government Pleader, who will be responsible that the satisfaction of any decree or claim is duly recorded by the Court.

6. **Expenses of appeals to the High Court in Wards' cases.**—To meet the expenses of appeals to the High Court or to the Board of Revenue in Wards' cases, Collectors 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 Government, in which case he shall deposit the amount received by him in the Bank of Bengal to the credit of the "Litigation Fund," and report the fact to the Accountant-General, Bengal.

**7. Payment of fee to Government Pleader or Counsel for appearance before the High Court, etc.**—Whenever a fee is due from Government to a Government Pleader or counsel for appearance before the High Court or Board of Revenue or deputed from Calcutta to appear at a Mufassal Court on behalf of Government, it shall be paid by the Accountant-General, Bengal, on a bill countersigned by the Legal Remembrancer and charged against the grant allotted to him for the purpose.

## CHAPTER VI.

**Suits by or against public servants.**

1. **Liability to defend suit.**—Every public servant is liable to be left individually to defend a suit brought against him in his official capacity.

2. **Suit against public officer drawing pay Rs. 200 and above.**—The Commissioner will decide whether a public servant subordinate to him, drawing pay under Rs. 200 per mensem, should be left to defend in his individual capacity any suit brought against him in his official capacity. In the case of other officers, whenever the Commissioner is of opinion that a public servant should be left to defend in his individual capacity any suit brought against him in his official capacity, he shall submit the case for the orders of the Board or the Government, as the case may be.

3. **Report before bringing suits.**—A public servant 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 in the matter. On receipt of such report the Legal Remembrancer will submit the case with his remarks for the orders of Government.

4. **Suit without notice.**—A public servant against whom a suit is instituted in respect to any thing 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.

5. **Procedure on receipt of notice.**—When notice of an intention to institute such a suit is received by a public servant 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 in his name under the orders and at the cost of Government, submit a full report of the case with a statement of the action he proposes to take, for the orders of Government through the Legal 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.

6. **Assistance of Government Pleader.**—An officer preparing a report under Rule 3 or Rule 5 or presenting an application under Rule 4 shall be entitled to the assistance of the Government Pleader.

7. **Procedure.**—When Government undertakes the conduct of a case instituted by or against a public servant, the Collector 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.

When the case is conducted under this rule by the officer concerned, he must do so at a reasonable cost and must not incur expenses exceeding a total of Rs. 250 without the previous sanction of the Legal Remembrancer. No public servant who undertakes the conduct of a suit instituted by or against him will be entitled to recover from Government any expenses that he may have incurred for this purpose unless he has complied with these rules.

8. **Charges to be moderate.**—It is to be distinctly understood that charges, the payment of which may be applied for under these rules, must be moderate, and that the Government does not bind itself to pay unnecessary expenses which the officer concerned may choose to incur. In petty cases an appearance in person will be often quite sufficient, and, where this is so, the employment of a pleader is superfluous. In the same way requests for the payment of counsel will be entertained only under very exceptional circumstances. If counsel is not engaged on the other side, ordinarily counsel will not be employed at Government expense on behalf of the public servant.

9. **In appeal.**—The sanction hereinbefore mentioned should be taken at each stage of the case, *e.g.*, when there is an appeal.

10. **In suits relating to local bodies.**—When a Government servant is sued for acts done by him in good faith in connection with the conduct of elections to local bodies or the decisions of disputes arising out of such elections, it should merely be necessary for him to file a written statement without taking any further participation in the suit. When it is considered desirable that he should be defended, the local body concerned should be consulted and it should be decided beforehand whether there should be a joint or a separate defence and whether the local authority will undertake to bear the whole or part of the costs.

When there is time, this consultation should invariably take place before any application is made for Government sanction to the defence of a Government servant in connection with an election suit.

Before the Legal Remembrancer can advise Government he will have to be in possession of, in particular he should know, the full facts of the case and the local body's attitude towards the defence of the Government servant concerned.

When there is no time for full consultation with the local authority before sanction to the defence of the suit is sought from Government, the consultation should take place afterwards and a further report should be submitted at the earliest possible opportunity.

[Bengal Government circular No. 2148-2152 L. S.-G., dated 16th July 1926.]

## CHAPTER VII.

### Conduct of cases on the Criminal Appellate Side of the High Court.

1. **Procedure in appeals in High Court.**—When an appeal is filed or application for revision made to the High Court against the conviction and sentence or any order passed by the lower court, a copy of the notice sent to the District Magistrate, when such cases are admitted, is invariably sent to the office of the Legal Remembrancer. A similar notice is sent to the Legal Remembrancer when a reference is made under section 307 or 374, Criminal Procedure Code. On receipt of such notice appearance is entered on behalf of the Crown in those appeals in which the appellant is represented by a counsel or vakil without any reference to the Magistrate of the district. In cases, however, in which the appellant is not represented in the High Court by counsel or pleader, or the appeal is only on a question of sentence the Crown does not appear unless there is some special matter to bring to the notice of the court. It is important that this should be clearly understood, in order that particular care may be taken to specify the reasons why the Magistrate wishes the Crown to appear in such a case.

[NOTE.—The date given in the High Court's notice is only a provisional one. The approximate date of hearing is ascertained by correspondence with the Legal Remembrancer.]

2. **In Revision.**—In cases of revision, appearance is entered only in such cases in which instructions are received from the District Magistrate asking for the representation of the Crown. When an Advocate applies for the representation of the Crown the application is to be sent to the District Magistrate concerned for his opinion first.

3. **In Capital Sentence Cases.**—In a Capital Sentence case and in cases under section 307, Criminal Procedure Code, the Crown is represented whether the case is defended or not.

4. **Reference by Magistrate to Legal Remembrancer.**—Whenever the Magistrate of the district thinks that the Crown should be represented before the High Court, he shall make the requisition in the form given in Appendix C stating the reasons for which he thinks an appearance is necessary. No copies of the record need be sent in criminal appeals and in cases submitted to the High Court by the Sessions Judge under section 307, Code of Criminal Procedure, as the brief of such case is made in the High Court under the supervision of the office of the Legal Remembrancer. Copies of the commitment record need not be sent.

5. **In Rules.**—In every criminal case before the High Court in revision, in which the Magistrate of the District desires the rule to be opposed, an explanation should be submitted to the Registrar. It is not advisable merely to give the Legal Remembrancer a general instruction to oppose a rule without submitting any explanation to the High Court direct.

6. **Submission of explanation in Rules.**—Conversely, it is not sufficient merely to submit an explanation to the High Court in reply to a rule without instructing the Legal Remembrancer to oppose the rule. In every case in which the Magistrate of the district desires that a rule should be opposed, he should give the Legal Remembrancer full instructions.

7. **Drafting of Explanation.**—Success in opposing a rule may depend upon the explanation submitted by the District Magistrate, and care should therefore be taken in drafting the same. The explanation should be as lucid and as concise as possible. It should specifically, separately and completely deal with every ground referred to in the rule: but it should not travel outside the grounds referred to in the rule. The explanation should not deal generally with the case, unless the rule is general in its terms.

8. **Brief in Revision and Transfer Cases.**—In revision and transfer cases it is sufficient ordinarily to include in the brief for the Legal Remembrancer's use—

- (1) Copies of the judgments or orders and the order-sheets of the first court and of the Appellate Court:
- (2) a copy of the petition to the High Court: with affidavit and the court's order:
- (3) a copy of the explanation submitted by the Magistrate to the High Court.

9. **In Reference under section 438, Criminal Procedure Code.**—Cases reported to the High Court by the Sessions Judge under section 438, Code of Criminal Procedure, 1898, should be dealt with upon the same principles as revision cases.

10. **In Excise and Opium cases.**—In Excise and Opium cases in the High Court relating to Calcutta a copy of the High Court's notice is sent by the Legal Remembrancer to the Collector of Excise, Calcutta, for information.

11. **Copy of High Court's Judgment.**—In all criminal appeals and revisions before the High Court in which the Crown is represented, a copy of the High Court Judgment is sent gratis to the Legal Remembrancer.

12. **In District Bail matters.**—When notice for an application for bail is received in the office of the Legal Remembrancer steps are at once taken to get instruction from the District officer concerned as to whether the application should be opposed.

13. **In Calcutta Bail matters.**—If the bail refers to a case pending before the Court of a Presidency Magistrate the necessary information is obtained (by phone) from the Deputy Commissioner, Detective Department. If, however, the petition is concerned with a case pending in the district a copy of the petition is at once sent to the District Magistrate concerned asking for instruction as to whether the petition should be opposed.

14. **Step taken in Transfer application.**—When notice of an application for transfer under section 526, Criminal Procedure

Code, is received a caveat is at once entered and steps are taken to get instructions from the District Officer concerned as to whether the application should be opposed in case a Rule is granted by the High Court. Appearance is entered by the Crown or the caveat is withdrawn according as the instructions are in favour of or against opposing the rule.

15. **Fees.**—In revisions before the High Court a fee of Rs. 34 and in appeals a fee of Rs. 51 is ordinarily allowed. A special fee is admissible in special cases and is calculated according to the status in the Bar of the Advocate engaged.

16. **Fee of Alipur and Calcutta pleaders deputed to High Court.**—When a junior pleader either from Alipur or any court of the Presidency Magistrate comes to instruct Counsel in the High Court a fee of Rs. 34 a day is allowed.

17. **Engagement of counsel in important cases.**—In serious or important cases the question whether Government should be represented or not should not depend on whether a pleader or counsel is employed on the other side, but should be decided by the Legal Remembrancer on the merits of the case itself.

18. **Law expenses.**—The Local Government in the matter of law expenses are ordinarily guided by the advice of the Legal Remembrancer.

19. **Engagement of counsel or vakil in place of Deputy Legal Remembrancer.**—In cases which might take more of the Deputy Legal Remembrancer's time than he can afford to give with regard to his other duties, the Legal Remembrancer will transfer the overflow brief to the Assistant Government Pleader in the first instance. He may also exercise the authority vested in him of employing other Advocates to appear for the Crown.

20. **Engagement of Junior.**—The Deputy Legal Remembrancer or any other Law Officer of Government can also for the proper conduct of a case take a Junior with the approval of the Legal Remembrancer previously obtained. The Junior is not entitled to a consultation fee.

21. **Employment of Advocates.**—The employment of Advocates for the conduct of criminal cases before the High Court shall be restricted to the lowest possible limits.

22. **Deputation of High Court counsel to mufassal.**—It will also be open to the Magistrate to apply through the Legal Remembrancer for the sanction of Government to the employment of High Court counsel in mufassal cases. In cases, however, where there is no time to refer the matter to Government for sanction, the Legal Remembrancer's sanction will be sufficient.

23. **In undefended cases.**—In undefended cases, if the Crown enters appearance and the case is on the Ready List the Undefended Bench is moved by the Deputy Legal Remembrancer for sending down records for the preparation of the Deputy Legal Remembrancer's brief.

24. **Checking of grounds of appeal.**—In appeals, when the brief is received, the grounds of appeal should be checked to see

whether any objection has been taken in the grounds as to non-compliance with the provisions of sections 342 and 360, Criminal Procedure Code. If such an objection has been taken, a report supported by an affidavit from a responsible officer (preferably the officer who presided over the said proceedings in court) should at once be called for from the District Officer concerned.

25. **Brief in appeals.**—In appeals the following papers are included in the brief:—

1. Petition with the court's order.
2. Grounds of commitment.
3. First Information Report.
4. Statement of accused before Magistrate.
5. The Sessions record.
6. Maps (in sections 147, 148, 302 and 304, Indian Penal Code cases).

26. **In Jury Reference.**—In Jury references, the same papers as in appeals are required for the brief except that item No. 1 is replaced by the Letter of Reference.

27. **Applications under section 449 (1), Cr. P. C., and under the Letters Patent.**—In appeals under section 449 (1) Criminal Procedure Code, the Crown gets notice of the application for leave to file an appeal. No such notice is received in an application under clause 26 or clause 41 of the Letters Patent.

28. **Proceedings under section 449, Cr. P. C.**—Proceedings under section 449, Criminal Procedure Code, lie in the Criminal Appellate or Criminal Revisional Jurisdiction of the High Court [*Martindale vs. Turner*, 29 C. W. N. 447, 458]. They are, therefore, not held on the Original Side of the High Court nor are they a continuation of the original trial.

29. **Proceedings under clause 26, Letters Patent.**—Proceedings under clause 26 of the Letters Patent are proceedings in revision and therefore, they are regarded as a continuation of the original trial.

30. **Proceedings under clause 41, Letters Patent.**—Proceedings under clause 41 of the Letters Patent are fresh proceedings after the termination of the trial in the High Court. A certificate under that clause is a step in the appeal to the Privy Council.

31. **Compensation to defence witness.**—Payment of compensation claimed by a defence witness for attending the High Court Sessions is arranged by the Clerk of the Crown.

## CHAPTER VIII.

## Appeals against acquittal.

1. **Local authorities to primarily consider.**—Whenever the local authorities are of opinion that there has been miscarriage of justice by the order of acquittal passed in any case either by a Magistrate or a Sessions Judge, the following instructions should be followed in making a reference with a view to an appeal being filed under section 417 of the Code of Criminal Procedure against such order of acquittal.

2. **Nature of cases for appeal.**—As a general rule, action under section 417 of the Code will not be taken unless the case is of public importance, nor should it be taken in any case unless there has been a miscarriage of justice so grave as would induce the Local Government to move in the matter and unless there are good grounds for anticipating that the High Court will reverse the order.

[I. L. R. 22 Cal. 170.]

3. **Scrutiny of record.**—No reference should be made for action under section 417, unless a very careful scrutiny of the entire record has led to the conclusion that the acquittal was not justified by the evidence. It is not sufficient to examine only a part of the record. The complete papers should be passed under review, from the complaint or first information to the statements of witnesses before the police (so far as they are relevant), the depositions recorded at the judicial enquiry (if any), and the evidence given at the actual trial; and care should be taken to see whether the witnesses have given consistent stories throughout, or whether they have contradicted themselves or each other at different stages of the case. Under no circumstances should a reference be made in the absence of the record of the trial itself; this can always be obtained, in the case of a Sessions trial, through the Divisional Commissioner.

[Chapter III, Rule 57, p. 97, H. C. G. R. and O., 1910.]

4. **Records to be sent up.**—Every reference when made should be accompanied by the complete records of all the courts which have had to deal with the case, and also by a clear statement of the circumstances which are considered to justify an appeal against an acquittal, and the point or points upon which it should be preferred. A mere criticism of the final judgment is insufficient and not to the point, and statements of matters not contained in the record should be altogether omitted.

5. **In appeals from Jury trials.**—When the case is one which has been tried by jury, it should be borne in mind that an appeal will lie only on a question of law; section 418, Criminal Procedure Code, and I. L. R. 10 Cal. 1029 and the probative force or effect of evidence is a question of fact and not of law; section 6 W. R. Cr., 6. On the other hand, the High Court does not refuse to interfere with an acquittal not based upon the verdict of a jury, when the judgment of the lower Court is wrong, and

the accused should have been convicted; (I. L. R. 17 Cal. 487) but in such cases it should be clear that the conclusions drawn from the evidence upon the record, upon which reliance can with safety be placed, are unreasonable and have produced a miscarriage of justice.

**6. Procedure in making reference to Legal Remembrancer.—**

Any such reference must be submitted through the Divisional Commissioner, who will forward it to the Legal Remembrancer with an expression of opinion. It must be made as soon after the judgment is delivered as possible, so that the appeal may be filed in the High Court within three months from the date of judgment. The statutory period of limitation (Article 157 of the first Schedule to the Indian Limitation Act, IX of 1908), viz., six months is not altered but it has been decided by Government that an appeal against an acquittal should in practice be filed within three months. If the Legal Remembrancer after observing the procedure prescribed in Government of India, Home Department, letter No. 626 of the 1st of August, 1918, considers that an appeal should be filed, he will report the case to Government for sanction. If in the opinion of the Legal Remembrancer it is not desirable to file an appeal, he will inform the Commissioner accordingly.

**7. Magistrate to avoid delay.—**When a District Magistrate considers that an appeal against an acquittal should be filed in the High Court by the Local Government, he should with as little delay as possible address the Divisional Commissioner on the subject and follow the instructions laid down in the preceding rules. The proposal with complete records should reach the Legal Remembrancer within two months from the date of the order of acquittal.

**8. Requisition for enhancement of sentence.—**Requisitions to move the High Court for the enhancement of a sentence should be sent to the Legal Remembrancer with the minimum of delay. Although there is no statutory limit, the Calcutta High Court has fixed the period of limitation for such applications to be sixty days from the date of order complained of (I. L. R. 43 Cal. 1029). It is necessary, therefore, that very prompt action should be taken in such cases.

**9. Dangers in delaying matters.—**It should always be borne in mind that the prospects of success in the High Court are improved if the motion or appeal is filed with the least possible delay and that delay may result in a failure or even a denial of Justice.

**10. Instructions to Magistrate with regard to the accused.—**

When the District Magistrate receives intimation that an appeal against acquittal has been admitted he will at once ascertain whether the accused person is in custody or not. If he be in custody, arrangements must be made for his immediate transfer to the Presidency Jail. If he is not in custody, the Magistrate must in cases of poverty, provide him with sufficient funds to enable him to proceed to Calcutta and must in either case inform him that unless he desires any other arrangement the Legal Remembrancer will engage counsel at Government expense to appear on his behalf in the High Court.

## CHAPTER IX.

**Fees for the conduct of Criminal Cases in districts.**

**1. Fees payable to Public Prosecutor.**—When a Public Prosecutor conducts a case (including a Sessions case) in court he is, subject to any special orders of the Superintendent and Remembrancer of Legal Affairs, entitled to a fee of Rs. 25 or 32 a day according to the scale mentioned in Appendix B. When each day's hearing of any case occupies half or less than half a day or 3 hours or when a case is simply adjourned the Public Prosecutor is entitled to a minimum fee of Rs. 16 only.

**NOTE 1.**—The Public Prosecutor is entitled to one minimum fee of Rs. 16 only even when more than one case is adjourned during the day in the same or different courts or when the adjournment is in respect of a case in which a special fee may have been fixed.

**NOTE 2.**—No fee is admissible when a case is simply adjourned unless the pleader is present in Court and has no other Government case before any Court on the day and has received no notice before the day fixed for the hearing of the case that the case will not be taken up that day.

**2. Payment of special fee to Public Prosecutor.**—Whenever the prosecution of any case may have involved exceptional labour and ability or when the contest of the case may have been exceptionally severe; or when the sitting of the Court may have been prolonged considerably beyond the usual hours, the Public Prosecutor, may be allowed such special fee varying from Rs. 32 to Rs. 50 per diem as the presiding officer may think reasonable and may specifically recommend stating the reasons. The Legal Remembrancer may accept the recommendation up to the extent he may deem proper and reasonable. This rule is not applicable to outside pleaders.

**NOTE.**—In recommending extra fee for prolonged sitting it should be borne in mind that a full fee is paid for a case which takes only a few minutes over half a day and the Public Prosecutor is expected to take the rough with the smooth. In practice no extra fee is allowed unless the period is prolonged one hour beyond the prescribed closing time of the Court.

**3. Fee in criminal appeals.**—The Public Prosecutor is entitled to only one full day's fee irrespective of the number of cases, motions and appeals heard during the day either in the same or different courts. When, however, a large number of appeals are heard on the same day in addition to a Sessions case the Public Prosecutor is entitled to a full day's fee only unless the Sessions Judge, in consideration of the labour involved and complexity of the case, recommends a special fee subject to the maximum fee of Rs. 50 a day. The Legal Remembrancer will pass such charges as may seem to him proper and reasonable.

**4. Fee of Public Prosecutor, Alipore.**—The Public Prosecutor of Alipore is allowed as a special case a fee of Rs. 50 a day. This fee may be enhanced up to Rs. 100 a day on account of the special nature of any case on the recommendation of the trying officer at the close of the case. The Legal Remembrancer, however, reserves the right to sanction, refuse or reduce it. Special fees should only in exceptional cases be fixed beforehand, the *mufassal* practice being followed. When the Public Prosecutor conducts

more cases than one on the same day he is allowed ordinary full fee for the first case and half fee for each additional case heard on the same day. When several cases or appeals are fixed for one day no fee shall be admissible for those cases or appeals which are merely adjourned.

The Public Prosecutor shall be allowed consultation fee only with the Advocate-General or other counsel appearing with him in a sessions case, appeal or revision at Rs. 68 a day.

The special rule as to the Public Prosecutor, 24-Parganas, in the general rules will not apply to other pleaders.

5. **Special fee in adjournments.**—When a case in which a special fee is sanctioned is simply adjourned, the fee for the adjournment is the ordinary half fee of the pleader or the Public Prosecutor engaged. This rule is applicable to the Public Prosecutor of the 24-Parganas.

6. **Fee of Public Prosecutor, Howrah.**—The Public Prosecutor of Howrah is also allowed a special privilege of charging half-fee for each additional case heard on same day subject to the maximum fee of Rs. 64 a day.

7. **Fee to outside Pleader at Sadar.**—Whenever a pleader other than the Public Prosecutor of the district is employed in conducting a case at Sadar on behalf of the Crown he is paid at the usual rate of Rs. 16 a day. When a case is simply adjourned or no material progress is made therein or when appearance in court is for less than half a day, a half fee is allowed for the day. The payment of any increased or special fee depends on the specific recommendation of the presiding officer subject to the reservation mentioned in the note under rule 2 above.

8. **Fee at Subdivision.**—Subject to the conditions laid down in the preceding rule a pleader at a subdivision is allowed a fee of not more than Rs. 12 a day.

9. **Fee for work outside hadquarters.**—Whenever a Public Prosecutor is deputed to the mufassal within the district for conducting cases on behalf of the Crown he is allowed a fee of Rs. 50 a day in addition to travelling allowances admissible under the Fundamental and Subsidiary Rules to a second class officer. For work outside the district or for attending the High Court for instructing the Crown Counsel a special rate of fee inclusive of halting allowances is allowed by the Legal Remembrancer in consideration of the circumstances of each case.

10. **Fee of Alipore Pleaders in mufassal Courts.**—When a pleader other than the Public Prosecutor of Alipore appears on the same day in more than one court outside Sadar or both at Sadar and in a Court or Courts outside it, he will get the prescribed fees subject to a half fee for half day's work, i.e., for three hours or less.

11. **Fee for Sundays and holidays.**—When the Public Prosecutor is deputed to mufassal he is allowed a half fee for intervening Sundays and holidays, if any, on which days no Court work is done.

12. **Fee during transit.**—A Public Prosecutor deputed to the mufassal receives during transit a full or a half day's fee as sanctioned for the deputation according as he leaves the headquarters before or after midday. The converse is the case when he returns.

**NOTE.**—No fee is admissible for the day of starting if the journey begins after the prescribed court hour.

13. **Fee for local inspection.**—A fee for local inspection is admissible only when the inspection is held under orders of the Court or the District Magistrate. In such inspections a fee is allowed based on the usual rate of fee of the pleader and calculated according as the time taken is more or less than half a day.

14. **Fee for late sitting.**—When a special fee is sanctioned for the day no extra fee is again allowed for late sitting of the Court.

15. **Fee for conducting more than one cases in a day.**—When more than one case (including appeals) are heard on the same day and one of the cases carries a special rate of fee for the day, no fee in addition to the special fee is allowed unless the duration of hearing is prolonged one hour beyond the prescribed closing time of the Court.

16. **Fee for two sitting in one day.**—When there are two sittings of the Court in one day a Public Prosecutor is allowed two sets of fees subject to the usual conditions as to the duration of hearings.

17. **Fee when junior is given.**—When a junior is sanctioned it is not the practice to again give an increased fee to the pleader to whom the assistance is given.

18. **Fee of junior.**—The fee of a junior is ordinarily Rs. 10 a day at Sadar and Rs. 8 at Subdivisions.

19. **Register of work.**—The Public Prosecutor and all pleaders engaged by a Magistrate shall keep up a register of work in the form prescribed in Appendix F. This register shall be submitted daily to the presiding officer of the Court in which the Public Prosecutor or Pleader has appeared for his signature. Bills of fees should be carefully checked with the Register of work before being countersigned by the District Magistrate.

20. **Procedure for preparation of bills.**—At the end of each month the Public Prosecutor, will draw up three separate bills for fees, viz., for Sessions cases, Criminal Appeals and cases in Magistrates' Court in the form shown in appendix D. All the details therein mentioned require to be given so that the work rendered may be gathered from the bill itself. The result or progress of cases must always be mentioned. In cases of appeals and revision cases the column which cannot be filled up with necessary alterations, may be left blank.

21. **Each pleader to submit his own bill.**—If two pleaders conduct the same case at different stages, a separate bill should be submitted by each of the pleaders for his work done.

A bill of fees should clearly show the duration of hearings.

**22. Procedure for submission of bills with certificates of attendance.**—After the bills have been drawn up in the form hereinbefore mentioned, they should be submitted in the first instance to the Sessions Judge, or to the Magistrate, as the case may be, before whom the pleader appeared in the cases for the conducting of which he demands the fees, and that officer shall certify thereon the dates of appearance of the Public Prosecutor in his Court in the cases which the bill relates. In certifying to the dates of appearance he may also record any observations which he may wish to make in any special case regarding the rate of fee demanded and may recommend either a reduction of the rate on any ground to be stated therein, or a special rate on any of the grounds specified above.

**23. Countersignature by District Magistrate.**—After a certificate has been obtained, as mentioned in the above rule, the bill shall be submitted to the District Magistrate or the Deputy Commissioner, as the case may be, or, in his absence from headquarters, to the officer in charge of the headquarter's office. This officer shall then satisfy himself as to the correctness of the several entries made in the bill, countersign the same and forward it to the Legal Remembrancer with any recommendations which he may consider desirable to make regarding the rate or amount of fee charged.

**24. Passing of bills for payment.**—No payment will be made on any such bill, unless and until it has been passed by the Legal Remembrancer or by the Deputy Legal Remembrancer.

**25. Increased fee.**—No claim for increased fee will be admitted, unless it is supported by the officer before whom the case was conducted.

**26. Fee for hearing judgment.**—Ordinarily there is no necessity for the Public Prosecutor to attend court simply for the purpose of hearing a judgment delivered. When a Public Prosecutor is specially directed to attend for that purpose for any particular reason, he is entitled to a fee at not less than the minimum rate.

**27. Time for submission of bills.**—All bills should be submitted once every month not later than ten days from the end of the month to which they relate. Where there is any delay in the submission of a bill for any month, the Public Prosecutor shall submit with the bill an explanation of the cause of delay, and such explanation, with the remarks of the District Magistrate thereon, shall be forwarded with the bill to the Legal Remembrancer for consideration and orders.

**28. Unauthorised appearance.**—A pleader or a muktear who takes up work on an unauthorised assurance or promise given by a police officer does so at his own risk and the Legal Remembrancer is not bound to pay his bills from his own budget provision.

**29. Approval of Magistrate to appearance of outside pleaders.**—Whenever a pleader other than the Public Prosecutor is engaged under rules 7 and 8, section 6 of Chapter II, his bill of fees should invariably contain a certificate showing that the pleader was engaged by or with the approval of the Magistrate.

30. **Prompt submission of bills.**—It is essential that bills of fees should be promptly submitted according to rules and very carefully checked in the Magistrate's office. To ensure this the form prescribed in Appendix E should be used when employing an outside-pleader and the bill should contain a note of the bill clerk in the Magistrate's office to say that the bill was checked and found correct.

31. **Observance of Rule 316 of the Bengal Financial Rules.**—When sending up a bill of fees to the Legal Remembrancer it should be stated whether an extra allotment would be required and, if so, the approximate amount of it. This, in view of Rule 316 of the Bengal Financial Rules, is specially necessary in the months of January and February and bills for *all* work done in those months must be got in and sent up by the first week of the succeeding month in order that the Legal Remembrancer may be given sufficient time to obtain additional grant, if necessary, and that all the bills may be paid before the expiry of the financial year. The District Magistrates are further requested to see that bills of fees are prepared according to their budget classifications as instructed in Rule 8 under Departmental Accounts in Chapter XV post.

32. **Deputation of Counsel to mufassal.**—When a High Court counsel is deputed to mufassal to conduct a case the condition in respect of his travelling allowance is to be included as a term of the contract when his services are engaged.

33. **Travelling allowance.**—The Legal Remembrancer is authorised to grant travelling expenses to legal practitioners (e.g., pleaders and mukhtears) who are engaged, in the interest of 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 servant of the second grade referred to in Subsidiary Rule 24.

34. **Daily allowance.**—The following scale of daily allowance is prescribed for pleaders and mukhtears entitled to travelling expenses:—

- (i) Rupees 4 for all Government Pleaders and Public Prosecutors, whose daily rate of fee at the headquarters is more than Rs. 25.
- (ii) Rupees 3 for all other Government Pleaders and Public Prosecutors, and also outside pleaders.
- (iii) Rupees 2 for mukhtears.

35. **Countersignature of travelling allowance bills.**—The Legal Remembrancer is the controlling officer for the purpose of countersigning travelling allowance bills of mufassal Government Pleaders—Appendix 17, page 263 of the Fundamental Rules.

## CHAPTER X.

**Rules for prosecutions by, or against, public servants.**

1. **Procedure for prosecutions by public servants.**—The following is the procedure to be followed when prosecutions are instituted by public servants. Where the charge is of a cognizable offence, the prosecution will ordinarily be conducted by the police. Where the charge is of an offence which is non-cognizable, or, though cognizable calls for special arrangements, the officer who prefers the complaint should refer for instructions to the Magistrate of the district, who may, if he thinks fit, either instruct the officer himself to prosecute, or, if the case is of a complicated and difficult nature rendering, in his opinion, the employment of the Public Prosecutor or of some legal practitioner necessary for a proper prosecution, may direct the Public Prosecutor or some other pleader to prosecute and report the matter for the sanction of the Legal Remembrancer.

2. **Prosecutions against public servants by private persons.**—In all cases of criminal prosecutions brought against public servants for acts done in the performance of their public duties, Public Prosecutors are bound to defend them, and are entitled to fees provided that the Local Government has sanctioned the defence being undertaken by Government at its expense. The sanction of Government shall, in the first instance, be obtained by the departmental head of the officer through the Legal Remembrancer before any action is taken in this behalf, unless there be no time for such reference.

**NOTE.**—The Public Prosecutors, Calcutta, are whole-time servants of Government and as such are not entitled to fees.

3. **Prosecution against a public servant by a public servant.**—(1) When a prosecution against a public servant for acts done in the discharge of his public duty is instituted by a public servant, the officer charged will be left to defend himself, but Government will defray his reasonable costs in the event of his being acquitted and it being shown that his conduct throughout had been free from all blame. If, though acquitted of the offence charged, his conduct should appear not to be free from blame, he will receive only such portion, if any, of the cost incurred by him as may seem fitting to the Government.

(2) In the case of a criminal prosecution instituted by a private person against a public servant for acts done in the discharge of his public duty, the following course will be followed:—

Section 197 of the Criminal Procedure Code lays down a special procedure in regard to criminal prosecutions against certain classes of officers. In those cases there would always be ample time to obtain the orders of Government as to undertaking the defence of the officers, and this should be done. In the case of criminal prosecutions against other classes of public servants, it may ordinarily be impossible to obtain the orders of Government before the commencement of the proceedings before the court, and, when this is so, it must rest with the local officers to

decide whether the defence should be undertaken by the Government or not. Whenever it is probable, however, that the orders of the Government can be obtained in time, a full report should be at once submitted to Government through the Legal Remembrancer. If such orders are received before the commencement of the proceedings, they will be acted on; if not, the local officers should themselves decide upon the course to be taken.

(3) Where the accused is discharged or acquitted, the case will be dealt with as is provided under paragraph (1) allowance being made for the expenses or compensation (if any) realisable under the order of the Court.

(4) In cases of enquiry by a commission, whether such commission is appointed under the Public Servants' Enquiries Act, or under any other rules or orders, the Public Prosecutor shall ordinarily be engaged to put the case before the commission: if his services are not available some other pleader may, with the previous sanction of the Legal Remembrancer, be engaged. It will be open to the officer whose conduct is under investigation to be represented by a pleader; but any claim by the officer to be reimbursed the reasonable expenses of his defence will be considered only if he is honourably acquitted of the charge in respect of which the enquiry has been ordered.

(5) It is to be distinctly understood that charges, the payment of which may be applied for under these rules must be moderate, and that the Government does not bind itself to pay unnecessary expenses which the officer concerned may choose to incur. In petty cases an appearance in person will be often quite sufficient, and where this is so, the employment of a pleader is superfluous. In the same way requests for the payment of counsel will be entertained only under very exceptional circumstances. If counsel is not engaged on behalf of the prosecution, ordinarily counsel will not be employed at Government expense on behalf of the defence.

(6) In case of enquiry resulting in honourable acquittal, no officer shall be entitled to receive, on account of lawyer's fees any sum greater than the amount paid by the Government to the Public Prosecutor or other pleader engaged for his services in putting the case before the commission.

4. **Previous sanction before any action is taken.**—But before any action is taken in pursuance of the rules hereinbefore mentioned regarding prosecution by and against a public servant, a public servant considering that a prosecution 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 conduct the prosecution on his own responsibility and at his own cost, or whether he desires that the case 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. On receipt of such report the Legal Remembrancer will submit the case with his remarks for the orders of Government.

5. **Delegation of duty of officer concerned.**—When Government undertake the conduct of a case instituted by or against a public servant, the Magistrate may deal with the case in consultation with the officer concerned in accordance with the rules mentioned above 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.

6. **Maximum amount to be spent without previous sanction.**—When the case is conducted under rule 5 by the officer concerned he must do so at a reasonable cost and must not incur expenses exceeding a total of Rs. 250 without the previous sanction of the Legal Remembrancer. No public servant who undertakes the conduct of a case instituted by or against him will be entitled to recover from Government any expenses that he may have incurred for this purpose unless he has complied with these rules.

7. **Sanction to be taken at each stage.**—The sanction hereinbefore mentioned should be taken at each stage of the case, e.g., when a case is committed to the Sessions Judge or if there is an appeal to the Sessions Judge or to the High Court.

## CHAPTER XI.

**Representation by Government of pauper accused punishable with death.**

1. **Pauper accused punishable with capital sentence to be given legal assistance.**—Every person charged with committing an offence punishable with death, shall have legal assistance at his trial and the Courts should provide advocates or pleaders for the defence unless they certify that the accused can afford to do so.

**NOTE.**—Offences punishable with death are those under sections 121, 132, 194, 302, 303, 307 and 396 of the Indian Penal Code.

2. **Committing Magistrate to report to District Magistrate.**—In committing murder cases to the Sessions Court, the Magistrate will report to the District Magistrate whether the accused was represented in the proceedings before him, and if not, whether he can afford to engage an advocate or pleader for his trial in the Sessions Court. If the Magistrate reports that the accused has not sufficient means, it will be incumbent on the District Magistrate to engage an advocate or pleader at Government expense.

3. **Judge to take action when accused goes unrepresented.**—In any case, if the accused is unrepresented in the Sessions Court, and the Judge considers that he has insufficient means to obtain legal assistance, in spite of the committing Magistrate's report to the contrary, the Judge shall immediately inform the District Magistrate, who must make the necessary arrangements for the defence of the accused.

4. **No discretion of court allowed.**—It is no longer left to the discretion of the courts to decide whether the nature of the case makes legal assistance essential. The sole criterion is whether the accused has sufficient means or not, and the courts are bound to satisfy themselves on this point.

5. **Engagement of pleaders to be in time.**—In all cases, the advocate or pleader should be appointed in time to be able to study the case, and the person selected should be of sufficient standing and ability to render substantial assistance. He should be given a brief similar to that prepared for the Public Prosecutor, and it would be convenient if the two briefs were prepared together. He should be supplied, free of cost, with copies of all papers of which an accused person is ordinarily allowed copies.

6. **Employment of pleaders in mutually antagonistic defence.**—When two or more paupers accused of murder in the same trial put forward mutually antagonistic defence, arrangement should be made for separate representation of the accused by different pleaders or advocates at the expense of Government.

7. **Nature of fee allowed.**—The fee allowed in the foregoing cases shall ordinarily be a fee for the whole case and not a daily fee, while the arrangement made will, in each case, require the sanction of the Superintendent and Remembrancer of Legal Affairs.

8. **Fee when trial is incomplete or abruptly ends.**—When the trial abruptly ends on the plea of insanity of the accused person, or on the accused person admitting his guilt and the case is not contested the fee previously fixed for the whole case is liable to modification according to the discretion of the Legal Remembrancer. If the trial ends on the plea of insanity a fresh sanction is necessary for the defence of the accused person when a fresh trial is begun.

9. **Fee once settled is not revised.**—The lump fee settled is not ordinarily subject to revision again.

10. **Defence of pauper accused in High Court Sessions.**—In regard to cases where an accused is to be tried by the High Court for an offence punishable with death, the committing Magistrate should report to the Commissioner of Police whether the accused is a pauper, and will not be able to defray the expense of defending himself in the High Court. If the Magistrate reports that the accused has not sufficient means it will be incumbent on the Commissioner of Police to report the matter to the legal Remembrancer who will arrange for counsel. The counsel will obtain the copies of charges, depositions and exhibits from the Clerk of the Crown and receive his instructions, from the accused direct. The police will give facilities for this purpose.

11. **In Rules and References for enhancement of sentence to one of death.**—In cases in which an accused is called on by the High Court to show cause why lesser sentence should not be enhanced to a sentence of death, the Legal Remembrancer 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 Crown 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 report to the Legal Remembrancer. If the District Magistrate reports that the accused has 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 Crown 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.

12. **References under section 374, Criminal Procedure Code.**—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, or a reference under section 307, Criminal Procedure Code, is made in a case in which an accused is charged with an offence punishable with death, procedure similar to that described in paragraph 11 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.

13. **Accused person to be informed.**—In all the above cases the accused persons should be informed of the arrangements made in their behalf.

14. **When charge of an offence punishable with death is withdrawn in favour of a lesser offence.**—If in the course of a trial of a pauper accused charged with an offence punishable with death, the charge is withdrawn in favour of an offence punishable with a lesser sentence the arrangement previously made for the defence of the pauper accused may continue till the end of the trial.

## CHAPTER XII.

**Rules regarding reference to the Legal Remembrancer for opinion.**

1. **Legal Remembrancer consulted by Government.**—It is the duty of the Legal Remembrancer to give his opinion in any matter upon which Government may think fit to consult him.

NOTE.—Government means the Secretary to Government in charge of any of its Departments.

2. **Regarding draft agreements, leases and like instruments.**—Draft agreements, leases and like instruments to which Government is a party are submitted to the Legal Remembrancer. These he settles unless they are or ought to be in English form in which case they are referred to the Government Solicitor. He is also authorized to refer to the Government Solicitor for the settlement of conveyances and leases of a complicated character.

3. **Officers entitled to consult Legal Remembrancer.**—Besides the Board of Revenue, the following officers are entitled to consult the Legal Remembrancer and their references must be confined to legal questions arising out of a concrete case:—

1. Commissioners of Divisions.
2. Surgeon-General with the Government of Bengal.
3. Inspector-General of Police.
4. Inspector-General of Prisons.
5. Inspector-General of Registration.
6. Director of Public Instruction.
7. Director of Civil Veterinary Department.
8. Commissioner of Police, Calcutta.
9. Registrar, Co-operative Societies.
10. Superintending Engineers.
11. Postmaster General, Bengal.
12. Accountant-General, Bengal.
13. District Officers (through Commissioners).
14. Director of Land Records and Surveys (through Board of Revenue.)
15. Commissioner of Excise and Salt (through Board of Revenue.)
16. Collector of Customs.
17. Commissioner of Income-tax.
18. Director-General of Telegraphs.
19. Port Officer, Marine Department.
20. Director of Industries.
21. Chief Inspector of Factories.
22. Director of Agriculture.

23. Director of Public Health.
24. Conservator of Forests.
25. Agent, State Railways.
26. Inspector-General, Supply and Transport of the Circle.
27. Inspector-General of Ordnance of the Circle.
28. Other Heads of Offices (through Government).

**4. Instructions regarding reference to Legal Remembrancer.—**

The following instructions are laid down for the guidance of local officers in the matter of references to the Legal Remembrancer.

(1) The local officers should not make the Legal Remembrancer the channel for obtaining the advice of the Advocate-General. The Legal Remembrancer will only consult the Advocate-General when asked to do so by Government or by the Board of Revenue.

**NOTE.**—Such advice is readily accorded and consultations are frequent. But the Legal Remembrancer's duties in this respect are not merely mechanical. The cases frequently need preparation; further information must be called for and, unless all that is necessary is apparent on the file, a note must be prepared for the assistance of the Advocate-General.

(2) In cases of urgency District Officers may apply to the Legal Remembrancer direct for legal advice.

(3) The advice of the Legal Remembrancer should be sought only when it is required for some administrative purpose or for the guidance of executive officers in the discharge of their duties. No opinion should be asked with a view to carry on or to raise a controversy between the Sessions Judge and the Magistrate or between any other Government Officers or in order to settle questions of law of a hypothetical character or which possess only an academic interest.

(4) No judgment or order of the Sessions Judge or any other officer should be referred to the Legal Remembrancer for opinion, unless the object of such reference be the filing of an appeal or application for revision in the High Court, or revisioning of an existing rule.

(5) No officer should ask for the opinion of the Legal Remembrancer on any legal question which such officer is required to decide in any case or judicial proceeding pending before him. All such questions should be decided by the officer himself on his own responsibility, subject to the orders of the superior court or authority in appeal or revision.

(6) The opinion of the Legal Remembrancer regarding proposed appeals against acquittals and criminal motions for enhancement of sentence should be obtained through the Commissioner of the Division, who will in each case give his own opinion.

(7) The above rules will not affect the procedure prescribed in the Civil Suit Rules for conducting Government suits and appeals and other civil cases.

(8) Any document or paper in the vernacular should be accompanied by a translation in English.

5. **Legal Remembrancer's opinion is confidential.**—Legal opinions given to Government or other officers of Government by the Legal Remembrancer are confidential. No copy of such opinion can be sent out and no officer can make such opinion, the subject of public discussion.

[Local Self-Government Department File No. M. 3L—3 of 1924.]

6. **Reference to Legal Remembrancer by District Boards and Municipalities.**—In cases affecting the general administration of District Boards which may be regarded as matters of provincial importance, the Chairman shall communicate with the District Magistrate who may consult the Legal Remembrancer (through Government).

[Local Self-Government Department Notification No. 2328 L.S.-G., dated the 18th July, 1925, with corrigenda No. 1 Local Self-Government Department dated the 4th January 1926.]

NOTE.—In all cases where a District Board desires to sue or is sued or threatened with a suit in the Civil Court and in matters of ordinary local administration the District Board shall take legal advice from a competent lawyer, if necessary, on payment of fees.

7. The same procedure is followed when the Chairman of a Municipality desires to consult the Legal Remembrancer or carry on litigation.

## CHAPTER XIII.

## Budget and accounts.

*(a)—Budget.*

1. **Dates of submission of budget estimate.**—The dates of submission of the budget under the head “24—Administration of Justice—Law Officers” of which the Legal Remembrancer is the controlling officer are as follows:—

| Budget estimate.                                  | Disbursing officer by whom the estimate is submitted.         | Date of submission of the estimate to Legal Remembrancer. | Date by which consolidated estimate should reach Accountant-General's Office. |
|---|---|---|---|
| <i>24—Administration of Justice Law Officers.</i> |   |   |   |
| (1) English Law Officers ..                       | Advocate General, Standing Counsel, and Government Solicitor. | 15th September  | } 15th October.   |
| (2) Legal Remembrancer and High Court Pleaders.   | Legal Remembrancer ..   | ....  |   |
| (3) Muffasil Establishment ..                     | District Officers   | 15th September  |   |

2. **Department to which Budget estimate is sent.**—At the same time that the consolidated estimate is sent to the Accountant-General, copies of it are forwarded to the Judicial and Finance Departments of Government.

3. **Distribution of appropriations to Disbursing Officers.**—On receipt of the sanctioned budget from the Judicial Department the appropriations under (1) English Law Officers and (2) Muffasal Establishment are distributed to the Disbursing Officers concerned except those under the primary units “Pay of Officers” and “Pay of establishment” which are not distributed.

4. **Appropriation not distributed.**—The appropriation “Traveling allowance” under the head “Muffasal Establishment” is not distributed.

*(b)—Departmental Accounts.*

5. **Procedure for keeping check over expenditure.**—With a view to keep a check over the expenditure of the disbursing officers the following procedure prescribed by Government in the Finance Department Resolution No. 9585-F., dated the 5th September 1924, is observed.

(a) Monthly statement of accounts of expenditure is received from every disbursing officer under the Legal Remembrancer and it is checked and verified with the Treasury schedules received from the corresponding Treasury officer.

(b) The statement of account of the Legal Remembrancer's office and those of the English Law Officers are verified with the schedule received from the Accountant-General, Bengal.

(c) After verification the amounts of the monthly statements of expenditure are posted in the Compilation Register.

(d) A monthly statement of accounts of expenditure for transfer adjustment and exchange account is also received from the Accountant-General, Bengal. This is also posted in the Compilation Register.

(e) The totals of each detailed head are finally transferred to the Consolidation Accounts Register.

**6. Monthly Consolidated Accounts for Accountant-General.**—A monthly consolidated accounts of expenditure under each detailed head is sent to the Accountant-General, Bengal, for verification with his accounts, prepared from vouchers received from treasury.

**7. Figures obtained from Accountant-General.**—The expenditure under "Pay of officers" and "Pay of establishment" are obtained from the Accountant-General's office.

**8. Classification of fees.**—In Criminal cases fees are classified under "Allowances, etc.," if paid to Government Pleaders and Public Prosecutors and under "Supplies and Services" if paid to other pleaders.

In civil suits all fees are classified under "Allowances, etc."

**9. Authority to regularise Excess over Expenditure.**—(a) The Legal Remembrancer is authorised to sanction the admission of Excess Expenditure over appropriation up to a limit of Rs. 500 on each item of Expenditure, subject to the following conditions:—

- (1) that the excesses could have been met from savings under some detailed heads under the same minor head,
- (2) if the year had been current, the sanctioning authority could have met the excesses by reappropriation within his powers of sanction.

[Finance Department circular No. 7250 F.B., dated 28th September 1929.]

(b) In sanctioning the expenditure he shall ask the Accountant-General, Bengal, to admit the Excess in audit after ascertaining from the officers concerned why the Excess could not be prevented by obtaining additional grants before the close of the year.

[Bengal Government No. 10331 J., dated 11th December 1929.]

(c)—*Litigation Fund Accounts.*

**1. Purpose of Litigation Fund.**—The Litigation Fund formed under Board's Cir. No. 2 of November 1874 to meet the expenses for filing appeals to the High Court in Wards Cases, is drawn upon by cheques signed by the Legal Remembrancer.

**2. Procedure to draw money.**—Accordingly, when the Legal Remembrancer notifies to a Collector that money is required for the purpose of the fund, the Collector instead of remitting the money to the Litigation Fund or to the Bank of

Bengal, will pay it into his own Treasury and credit it as a receipt of the "Litigation Fund" and will send copy of the receipt to the Legal Remembrancer in order that that officer may know that the amount has been duly credited.

3. **Litigation fund cheques.**—The Legal Remembrancer's cheques against the fund will be honoured by the Accountant-General, so long as there is a balance at credit; the Legal Remembrancer being responsible for the due appropriation of moneys received on this account. If the cheque is for an amount which is to be refunded to a Collector, the Accountant-General will enface it for payment at the Collector's treasury.

4. **Half-yearly accounts from Accountant-General.**—A statement shewing receipts, charges and balance in the Litigation Fund is received from the Accountant-General every six months and this is verified from the accounts of the Fund kept in the Legal Remembrancer's office.

5. **Annual accounts of Legal Remembrancer.**—An account of the money deposited by the Wards Estates is kept in the Legal Remembrancer's office and an annual account is forwarded to the Collectors for the information of the Managers of the Estates as soon as the account of the Litigation Fund is adjusted with the Accountant-General, Bengal.

6. **Fees for legal opinion not to be credited to Litigation Fund.**—Fees for opinions given by the Legal Remembrancer payable for Wards Estates, should not be credited to the Litigation Fund but to "XXXV—Miscellaneous."

7. **Recovery of costs in Land Acquisition appeals on behalf of local bodies.**—For the recovery of costs of litigation in appeals in the High Court in Land Acquisition Cases undertaken by Government on behalf of or at the instance of municipalities and the local bodies or institutions the following procedure is prescribed:—

(1) The Legal Remembrancer should advise the Collector of any sums advanced or required for the above purpose and furnish the Accountant-General with a copy of the advice in each case when money is advanced to enable the latter to see that the costs incurred by Government are recovered.

(2) The Collector on receipt of the advice from the Legal Remembrancer (but not in anticipation of such advice) shall deposit the sum required to the credit of the Litigation Fund out of the funds placed at his disposal by the local bodies or the institutions concerned and will furnish a duplicate chalan of the amount so deposited to the Litigation Fund for information.

(3) When, however, an amount is advanced from the Legal Remembrancer's budget for the above purpose, the Collector on receipt of the information shall credit the amount to Government and not to the Litigation Fund.

(4) If the Collector has not sufficient funds in his hands at credit of "Deposits for work done for public bodies and individuals" he will at once obtain the required amount from the party concerned.

*(d)—Central Government Account.***1. Central subjects for which expenses are accounted for.—**

As the result of a settlement made between the Central Government and the Government of Bengal, the Government of India pay certain fixed contributions on account of the services rendered to them by the law officers of the Bengal Government and also pay, on submitting an account at the close of the year, all actual charges incurred from the Legal Remembrancer's budget on account of pleaders' or counsel's fees, etc., in connection with cases relating to Central subjects including Railways, Post and Telegraph, Customs, Army and Marine Cases.

**2. Maintenance of register and statements of actual expenditure.**—A register is maintained in the Legal Remembrancer's office in which all actual expenditure incurred for Central Government cases both in the High Court and in the mufassal courts are entered. A monthly statement is received from the District Officers shewing the expenditure in the district courts. In April of each year a statement is submitted to the Judicial Department showing an account of the actual expenditure of the preceding year.

**3. Subjects for which fees are fixed and their scale.**—For the periodical revision of the fixed contribution a register is also maintained of all Central Government cases (official or unofficial) dealt with by the Legal Remembrancer without fees and these are taxed at the following rates:—

Rupees 32 for opinion as to awaiting suits in notice cases and settling written statement and plaints.

Rupees 85 for legal opinions.

Rupees 10 for the preparation of the plaints and written statement by Muffasil Government Pleaders for which no fee is paid.

**4. For Marine Court cases.**—In Marine Court cases, the Deputy Legal Remembrancer has to appear for Government. In his absence, pleaders have to be engaged to do his work in the High Court and the average costs is fixed at Rs. 750 a case (only cases of sea-going vessels are central subjects).

**5. Statements obtained from English Law officers.**—A statement in connection with the work done by the Advocate General, Standing Counsel and Government Solicitor are also obtained from the Advocate General and Government Solicitor, respectively.

*(e)—Returns and Statements.*

| Description.  | To whom to be submitted.                            | Date of submission. |
|---|---|---------------------|
| Actual cost incurred on account of the Government of India.                                 | Judicial Department ..                              | April.              |
| Annual Establishment Return .. ..   | Accountant-General, Bengal ..                       | 15th May.           |
| Annual return of expenditure on stores purchased in India.                                  | Commerce Department ..                              | 30th June.          |
| Forecast of leave and deputation allowance of officers.                                     | High Commissioner for India and Finance Department. | 15th September.     |
| Statement showing progress of expenditure and allotment regarding Central Government cases. | Judicial Department ..                              | December.           |

## CHAPTER XIV.

## Miscellaneous.

1. **Hours of attendance.**—The hours of attendance in the office of the Legal Remembrancer is from 10-30 a.m. to 5 p.m. including tiffin time.

NOTE.—Under the standing order of Government No. 1, dated 9th May, recorded on the proceedings of late Board of Revenue, 20th May, 1788, the ordinary attendance of monthly assistants is fixed (Sundays excepted) at six hours *per diem*.

2. **Articles supplied to menials when going to Darjeeling.**—Every inferior servant when going up to Darjeeling with the Legal Remembrancer will receive once in two years (i.e., 4 trips).

- (1) A pair of putties.
- (2) If not entitled to livery, a warm coat.
- (3) Also each peon is supplied with a blanket, a pair of warm trousers and a cloth umbrella once a year (i.e., 2 trips).

3. **Cost of the articles.**—The cost of the above articles will be fixed each year by the Finance Department and met by the department concerned.

4. **Supply of summer uniforms.**—Under the Bengal Government Order No. 6566 F., dated the 6th April 1922, the Jamadar and the three personal orderlies of the Legal Remembrancer are annually supplied with two sets of summer uniforms at a cost which is fixed by the Finance Department each year.

The uniforms consists of the following articles:—

- (1) Chapkan—One pair.
- (2) Pyjama—One pair.
- (3) Comarbund—One pair.

Action is taken in the office about the beginning of March for the supply of the uniforms.

5. **Supply of winter liveries.**—The jamadar, the chaprasis and the messenger peons of the office of the Legal Remembrancer are supplied with winter livery every alternate year at a cost which is fixed by the Finance Department each year.

The livery consists of—

- 2 Pugrees.
- 1 Warm chapkan.
- 1 Comarbund.
- 1 Pugree band.

NOTE.—Liveried peons get annas eight only bi-monthly for washing their pugrees.

[Bengal Government No. 9487F., dated 22nd June 1922.]

6. **Indent for stationery.**—Indent for articles of stationery is submitted in August every year and the articles are supplied by the end of November.

A supplementary indent, if any, must be submitted not later than the 10th March.

NOTE.—The Public Prosecutor, Calcutta, has got a separate allotment for his stationery and he sends his indent direct.

7. **Indent for Forms.**—The following table shows the classification of forms and the dates of submission and supply of their indent so far as the office of the Legal Remembrancer is concerned.

| Name of form.                        | Date of indent.  | Date of supply.   |
|--------------------------------------|------------------|-------------------|
| (1) Non-standard and Calcutta Police | .. 1st March ..  | .. 31st August.   |
| (2) Bengal routine .. ..             | .. 15th March .. | .. 31st July.     |
| (3) Bengal Executive .. ..           | .. 15th April .. | .. 31st August.   |
| (4) Civil Suit .. ..                 | .. 1st June ..   | .. 30th November. |
| (5) Accountant-General, Bengal ..    | .. 1st September | .. 15th February. |

A supplementary indent is accepted only under a special order of Government in the Revenue Department.

8. **Purchase of law reports.**—In accordance with the decision of local Governments to discontinue the free supply of the Indian Law Reports published by them, it has been decided that the recipients in this Presidency of Reports should send their requisitions for copies required direct to the publishing agency concerned and meet the cost of the same from their contingent grant.

[Bengal Government Nos. 1011-1190 J., dated 7th February 1924.]

9. **Purchase of publications from Central Publication Bureau.**—It has been decided that all officers of this Government should be supplied with the publications of the Central Government at a discount of 25 per cent. when they are required for official use. The cost of such publications is to be adjusted through exchange accounts only.

[Bengal Government, Finance Department, No. 278 Mis., dated the 8th February, 1926.]

10. **Purchase of umbrellas.**—The Bengal Government in their No. 8490 F., dated the 18th September, 1923, have decided that in future only seven umbrellas will be supplied to the peons of the office of the Legal Remembrancer as detailed below. The umbrellas should last for two years:—

2 for common use of the Legal Remembrancer's Jamadar and 3 Chaprasis.

2 for common use of the Legal Remembrancer's 3 office peons.

1 for common use of Deputy Legal Remembrancer's 2 Chaprasis.

2 for common use of Public Prosecutor, Calcutta's 2 peons.

Farash would get no umbrella.

11. **Casual leave.**—The maximum amount of casual leave allowed during each calendar year is fifteen days, but the whole amount cannot be claimed or taken as a matter of course. When the limit of fifteen days is exceeded, leave will only be granted under the Fundamental Rules.

Casual leave will not ordinarily be granted for more than seven days at one time, including any gazetted holidays that may fall within the period. If an assistant requires longer leave, he must apply for regular leave under the leave rules. If an assistant prefixes or affixes casual leave to Gazetted holidays the entire period including the gazetted holidays will be treated as casual leave in the absence of specific orders to the contrary by the officer granting the leave. No casual leave will be granted, save in very exceptional circumstances, in extension of the two days allowed on the occasion of the move to and from Darjeeling.

12. **Casual leave to menials.**—The general principles regulating the grant of casual leave to superior officers apply also in the case of menial servants of Government.

[Bengal Government No. 2192 J., dated the 13th March, 1926.]

13. **Period of leave admissible to menials.**—The time limit as to the period of leave admissible to inferior servants is the same as in the case of officers in superior service but their leave allowance is subject to the restrictions imposed by Article 147 (iii) and 321 (a) of the Civil Service Regulations.

NOTE.—The "leave allowance" of the inferior service is equivalent to what is "average pay" of the superior service.

14. **Local holidays.**—Under Bengal Government (Finance Department) order No. 4428 Mis., dated the 16th May, 1918, the following days shall be observed as local holidays in all Government offices located in Calcutta with exception of the offices of the Collector of Customs, Calcutta, and the Collector of Stamp Revenue, Calcutta:—

|    | Name of local holiday. | Number of days. |
|----|------------------------|-----------------|
| 1. | Ratha Jatra            | ... 1           |
| 2. | Punar Jatra            | ... 1           |
| 3. | Baruni                 | ... 1           |
| 4. | Sivaratri              | ... 1           |
| 5. | Kartic Puja            | ... 1           |

15. **Destruction of office records.**—The following procedure is observed for the destruction of records in the office of the Legal Remembrancer.

*To be preserved.*

1. All standing orders of Government, the Accountant-General and the Legal Remembrancer.
2. All cases for opinion.

3. All civil appeals in the High Court and His Majesty's Privy Council.
4. All briefs in important criminal cases in the High Court.
5. Law Reports.
6. Gazettes.
7. Correspondence regarding appointment of Government Pleaders and Public Prosecutors.
8. Receipt Register.
9. Issue Register.
10. Index Books.
11. Pay bills.

*To be destroyed after 12 years from date of disposal.*

1. All correspondence relating to civil suits.
2. Confidential reports on the capacity and conduct of Government Pleaders and Public Prosecutors (the Register only).
3. Contingent Register.

*To be destroyed after 6 years from date of disposal.*

Litigation Fund Account.

*To be destroyed after 3 years from date of disposal.*

1. Notice cases.
2. Criminal cases.
3. Civil Suit Returns.
4. Files regarding engagement of outside pleaders.
5. Government Periodicals (with Legal Remembrancer's orders).
6. Annual statements (with Legal Remembrancer's orders)-

*To be destroyed after 2 years from date of disposal.*

1. Bills of fees and travelling allowance.
2. Contingent bills.

*To be destroyed after 1 year from date of disposal.*

1. Miscellaneous cases containing no opinion of the Legal Remembrancer.
2. Marine Court cases.
3. Departmental Examination cases.

**NOTE.**—Old annotated editions of Acts and Codes may be sold on receipt of the latest publication.

## APPENDIX A—FORMS.

## Form A.

## Brief Index.

(Vide Rules 7, 37, and 44, Chapter III.)

Date on which summons was served on Government Pleader.....  
 Date on which the papers were received by Collector.....  
 Date on which the papers were returned to Government Pleader.....  
 Date on which the papers were returned to Collector.....  
 Date on which the papers were submitted to Commissioner.....

All dates fixed for hearing of case before submission  
 to Commissioner. }

| Serial<br>No.<br>1 | Description of paper.<br>2 | Page.<br>3 |
|--------------------|----------------------------|------------|
|                    |                            |            |

Dated , the 19 .

Collector.  
 Deputy Commissioner.

**Civil Suit Form B.**

**Register of Civil Suits, Original and Appeal, in all Civil Courts.**

(Vide Rule 5, Section 4, and Rules 16 and 18, Section 8, Chapter III.)

| Serial num-ber. | Name of Court. | Number on file of Court. In case of an appeal, also number of original suit. | Parties to suit or appeal. |                           | Value of suit or appeal. | Abstract of plaint and written statement, or grounds of appeal. | Date of institution. | Date of decision. | Purport of decision. | When any amount is decreased to Government, amount so decreased and number of case in Execution Register C. | Number and date of the Legal Rem-embancer's letter sanc-tioning the plaint, writ-ten state-ment or appeal. | Costs of litigation. | Remarks. |
|-----------------|----------------|--|----------------------------|---------------------------|--------------------------|---|----------------------|-------------------|----------------------|---|--|----------------------|----------|
|                 |                |  | Plaintiff or appellant.    | Defendant or res-pondent. |                          |   |                      |                   |                      |   |  |                      |          |
| 1               | 2              | 3  | 4                          | 5                         | 6                        | 7   | 8                    | 9                 | 10                   | 11  | 12   | 13                   | 14       |



**Form D.**  
**Register of Stamp Fees due to Government in Pauper Suits.**

*(Vide Rule 2, Chapter IV.)*

| Serial No. | By what Court tried. | Parties against whom stamp fees are decreed. | Date of decree. | AMOUNT DECREED AS PER COURT'S DECREE. |           |        |                       | Date of execution. | Cost of execution. | Further interest accrued on the total amount in column 5 up to date. | Total of columns 8, 10 and 11. | Realized and credited into the treasury up to the end of the preceding month. | Realized and credited this month. | Total realized. | Balance. | Remitted by the authorities. | Net balance. | Remarks explaining the steps taken on each occasion for the recovery of the balance in column 18, or why it could not be realized. | Amount not recoverable by ordinary means. |
|------------|----------------------|--|-----------------|---------------------------------------|-----------|--------|-----------------------|--------------------|--------------------|--|--------------------------------|---|-----------------------------------|-----------------|----------|------------------------------|--------------|--|---|
|            |                      |  |                 | Principal.                            | Interest. | Costs. | Total amount decreed. |                    |                    |  |                                |   |                                   |                 |          |                              |              |  |   |
| 1          | 2                    | 3  | 4               | 5                                     | 6         | 7      | 8                     | 9                  | 10                 | 11   | 12                             | 13  | 14                                | 15              | 16       | 17                           | 18           | 19   | 20  |



**INSTRUCTIONS.**—(1) The amount to be entered in the second line of column 1, and the other columns which refer to column 1, as the value of each particular decree is to be the amount outstanding upon each such decree on the last day of the half-year previous to the half-year for which the statement is submitted. Column 1 will therefore agree with the balance, column 31, of the previous statement. But when any amount is disallowed by the Court, it should be deducted from the value in column 1, and an explanation given at the foot of the statement.

(2) Total of columns 4 and 7 will agree with column 1.

(3) Total of columns 5 and 8 will agree with column 2.

(4) Total of columns 10, 13 and 16 will agree with column 1.

(5) Total of columns 11, 14 and 17 will agree with column 2.

(6) By "decrees under execution" is meant decrees in which the Court has been moved to take some steps towards executing the decree.

(7) By "decrees fully satisfied during the half-year" (columns 10 to 12) is meant decrees the whole amounts of which were realised during the half-year, and not decrees the full satisfaction of which was obtained during the half-year by the realization of the balance outstanding at the close of the preceding half year; nor decrees the amounts of which were remitted during the half-year. These last decrees are to be shown in columns 16 to 18.

(8) Interests and costs which accrued during the half year on account of a decree are not to be included in its value in the same half-year, but to be shown in columns 19 to 25.

(9) Fractions of a rupee need not be entered.

(10) Total of column 12 and foot-notes to columns 15 and 25 will agree with that of columns 27 and 28.

**Explanation to be given by Collectors in respect of Decrees which appear in column 1 of the Statement and which have not been satisfied during the half-year.**

| Date of decree. | Names of Parties. | Amount of decree as originally awarded. | Subsequent interest and costs up to end of half-year under report. | Total amount realizable, being total of columns 3 and 4. | Amount realized up to the end of the previous half-yearly statement. | Amount realized during present half-year. | Balance outstanding. | Reasons for the non-realization of the outstanding balance. |
|-----------------|-------------------|---|--|--|--|---|----------------------|---|
| 1               | 2                 | 3                                       | 4  | 5  | 6  | 7   | 8                    | 9   |
|                 |                   |   |  |  |  |   |                      |   |

**NOTE.**—The decrees of each separate official year should be separated from those of the succeeding year by a line, and the totals of columns 3, 4, 5, 6, 7 and 8 should be given for each year, and a further grand total at the bottom for all decrees for which the explanation is given.

CIVIL SUIT. ]  
 [To be submitted by the Collector to the Legal Remembrancer on the 15th January each year.]  
**Form E (2).**

**Yearly statement of decrees for the year ending**  
 Decrees in the Pauper Suits in the district of  
*(Vide Rule 30, Chapter IV.)*

| Decrees awarded.   | Decrees under execution during the year. |                    | Decrees not under execution during the year. |                              | Decrees fully satisfied during the year. |                                | Decrees partly satisfied during the year. |                                | Decrees of which no part has been paid during the year. |                       |                       |                       |                       |                       | Total amount to be realized of columns 3 and 5. | Amount recovered by legal process. | Amount recovered without legal process. | Total of columns 27 to 29. | Balance outstanding between columns 26 and 30. | Amount proposed for remission. |               |               |               |               |               |               |                            |    |    |    |    |  |  |  |  |  |
|--|--|--------------------|--|------------------------------|--|--------------------------------|---|--------------------------------|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|---|------------------------------------|---|----------------------------|--|--------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|----------------------------|----|----|----|----|--|--|--|--|--|
|  | Before year ended.                       | During year ended. | Of those in column 1.                        | Of those in columns 7 and 8. | Of those in column 1.                    | Of those in columns 10 and 11. | Of those in column 1.                     | Of those in columns 13 and 14. | Of those in column 1.                                   | Of those in column 2. | Of those in column 3. | Of those in column 4. | Of those in column 5. | Of those in column 6. |   |                                    |   |                            |  |                                | In column 10. | In column 11. | In column 13. | In column 14. | In column 16. | In column 17. | Total of columns 19 to 24. |    |    |    |    |  |  |  |  |  |
| 1  | 2  | 3                  | 4  | 5                            | 6  | 7                              | 8   | 9                              | 10  | 11                    | 12                    | 13                    | 14                    | 15                    | 16  | 17                                 | 18                                      | 19                         | 20   | 21                             | 22            | 23            | 24            | 25            | 26            | 27            | 28                         | 29 | 30 | 31 | 32 |  |  |  |  |  |
| Against the plaintiff—<br>Number<br>Value..  |  |                    |  |                              |  |                                |   |                                |   |                       |                       |                       |                       |                       |   |                                    |   |                            |  |                                |               |               |               |               |               |               |                            |    |    |    |    |  |  |  |  |  |
| Against the defendant—<br>Number<br>Value..  |  |                    |  |                              |  |                                |   |                                |   |                       |                       |                       |                       |                       |   |                                    |   |                            |  |                                |               |               |               |               |               |               |                            |    |    |    |    |  |  |  |  |  |
| Amount realized during the half-year in these decrees  |  |                    |  |                              |  |                                |   |                                |   |                       |                       |                       |                       |                       |   |                                    |   |                            |  |                                |               |               |               |               |               |               |                            |    |    |    |    |  |  |  |  |  |
| <p>*N.B.—State here the number of decrees in which amounts were remitted, the name of the authority sanctioning the remission and the number and date of the letter by which such sanction was communicated.</p> |  |                    |  |                              |  |                                |   |                                |   |                       |                       |                       |                       |                       |   |                                    |   |                            |  |                                |               |               |               |               |               |               |                            |    |    |    |    |  |  |  |  |  |

See the reverse for notes of this Statement and instructions and explanations to be given by Collector.

INSTRUCTIONS.—(1) The amount to be entered in the second line of column 1, and the other columns which refer to column 1, as the value of each particular decree is to be the amount outstanding upon each such decree on the last day of the year previous to the year for which the statement is submitted. Column 1 will therefore agree with the balance, column 31, of the previous statement. But when any amount is disallowed by the Court, it should be deducted from the value in column 1, and an explanation given at the foot of the statement.

(2) Total of columns 4 and 7 will agree with column 1.

(3) Total of columns 5 and 8 will agree with column 2.

(4) Total of columns 10, 13 and 16 will agree with column 1.

(5) Total of columns 11, 14 and 17 will agree with column 2.

(6) By "decrees under execution" is meant decrees in which the Court has been moved to take some steps towards executing the decree.

(7) By "decrees fully satisfied during the half-year" (columns 10 to 12) is meant decrees the whole amounts of which were realised during the half-year, and of decrees the full satisfaction of which was obtained during the half-year by the realization of the balance outstanding at the close of the preceding year; nor decrees the amounts of which were remitted during the year. These last decrees are to be shown in columns 16 to 18.

(8) Interests and costs which accrued during the year on account of a decree are not to be included in its value in the same year, but to be shown in columns 19 to 25.

(9) Fractions of a rupee need not be entered.

(10) Total of column 12 and foot-notes to columns 15 and 25 will agree with that of columns 27 and 28.

**Explanations to be given by Collectors in respect of Decrees which appear in column 1 of the Statement and which have not been satisfied during the year.**

| Date of decree.<br>1 | Name of parties.<br>2 | Amount of decree as originally awarded.<br>3 | Subsequent interest and cost, up to end of year under report.<br>4 | Total amount realizable, being total of columns 3 and 4.<br>5 | Amount realized up to the end of the previous yearly statement.<br>6 | Amount realized during present year.<br>7 | Balance outstanding.<br>8 | Reasons for the non-realization of the outstanding balance.<br>9 |
|----------------------|-----------------------|--|--|---|--|---|---------------------------|--|
|                      |                       |  |  |   |  |   |                           |  |

NOTE.—The decrees of each separate official year should be separated from those of the succeeding year by a line, and the totals of columns 3, 4, 5, 6, 7 and 8 should be given for each year, and a further grand total at the bottom for all decrees for which the explanation is given.

CIVIL SUIT.]

[To be submitted by the Manager to the Collector on the 15th January and 15th July each year.]

Form E (3).

Half-yearly statement of decrees for the half-year ending

Decrees of the Estate in the District of

(Vide Rule 4, Section 4, Chapter III.)

| Decrees awarded.                    | Decrees under execution during the half-year. |                       | Decrees under execution during the half-year. |                       | Decrees fully satisfied during the half-year. |                       | Decrees partly satisfied during the half-year. |                       | Decrees which no part has been paid during the half-year. |                       | Interest and cost accrued during the half-year on decrees. |               |               |               |               |               | Total amount to be realized, being the totals of columns 3 and 25. | Amount received by legal process. | Amount recovered without legal process. | Amount remitted. | Total of columns 27 to 29. | Balance outstanding, being the difference between columns 26 and 30. |                            |    |    |    |    |    |    |
|-------------------------------------|---|-----------------------|---|-----------------------|---|-----------------------|--|-----------------------|---|-----------------------|--|---------------|---------------|---------------|---------------|---------------|--|-----------------------------------|---|------------------|----------------------------|--|----------------------------|----|----|----|----|----|----|
|                                     | Of those in column 1.                         | Of those in column 2. | Of those in column 1.                         | Of those in column 2. | Of those in column 1.                         | Of those in column 2. | Of those in column 1.                          | Of those in column 2. | Of those in column 1.                                     | Of those in column 2. | In column 10.  | In column 11. | In column 13. | In column 14. | In column 16. | In column 17. |  |                                   |   |                  |                            |  | Total of columns 19 to 24. |    |    |    |    |    |    |
| 1 Before half-year above mentioned. | 4   | 5                     | 6   | 7                     | 8   | 9                     | 10   | 11                    | 12  | 13                    | 14   | 15            | 16            | 17            | 18            | 19            | 20   | 21                                | 22                                      | 23               | 24                         | 25   | 26                         | 27 | 28 | 29 | 30 | 31 |    |
| 2 During half-year above mentioned. | 3   | 4                     | 5   | 6                     | 7   | 8                     | 9  | 10                    | 11  | 12                    | 13   | 14            | 15            | 16            | 17            | 18            | 19   | 20                                | 21                                      | 22               | 23                         | 24   | 25                         | 26 | 27 | 28 | 29 | 30 | 31 |
| 3 Total.                            | 7   | 9                     | 11  | 13                    | 15  | 17                    | 19   | 21                    | 23  | 25                    | 27   | 29            | 31            | 33            | 35            | 37            | 39   | 41                                | 43                                      | 45               | 47                         | 49   | 51                         | 53 | 55 | 57 | 59 | 61 | 63 |

\*N.B.—State here the number of decrees in which amounts were remitted, the name of the authority sanctioning the remission, and the number and date of the letter by which such sanction was communicated.

Amount realized during the half-year in those decrees .. .. .

(11). See the reverse for notes of this Statement and explanations to be given by Collectors.

INSTRUCTIONS.—(1) The amount to be entered in the second line of column 1, and the other columns which refer to column 1, as the value of each particular decree is to be the amount outstanding upon each such decree on the last day of the year previous to the half-year for which the statement is submitted. Column 1 will therefore agree with the balance, column 31, of the previous statement. But when any amount is disallowed by the Court, it should be deducted from the value in column 1, and an explanation given at the foot of the statement.

(2) Total of columns 4 and 7 will agree with column 1.

(3) Total of columns 5 and 8 will agree with column 2.

(4) Total of columns 10, 13 and 16 will agree with column 1.

(5) Total of columns 11, 14 and 19 will agree with column 2.

(6) By "decrees under execution" is meant decrees in which the Court has been moved to take some steps towards executing the decree.

(7) By "decrees fully satisfied during the half-year" (columns 10 to 12) is meant decrees the whole amounts of which were realised during the half-year, and not decrees the full satisfaction of which was obtained during the half-year by the realization of the balance outstanding at the close of the preceding half-year: nor decrees the amounts of which were remitted during the half-year. These last decrees are to be shown in columns 16 to 18.

(8) Interests and costs which accrued during the half-year on account of a decree are not to be included in its value in the same half-year, but to be shown in columns 19 to 25.

(9) Fractions of a rupee need not be entered.

(10) Total of column 12 and foot-notes to columns 15 and 25 will agree with that of columns 27 and 28.

**Explanation to be given by Managers in respect of Decrees which appear in column 1 of the Statement and which have not been satisfied during the half-year.**

| Date of decree.<br>1 | Name of parties.<br>2 | Amount of decree originally awarded.<br>3 | Subsequent interest and costs up to end of half-year under report.<br>4 | Total amount realizable, being total of columns 3 and 4.<br>5 | Amount realizable up to the end of the previous half-yearly statement.<br>6 | Amount realized during present half-year.<br>7 | Balance outstanding.<br>8 | Reasons for the non-realization of the out standing balance.<br>9 |
|----------------------|-----------------------|---|---|---|---|--|---------------------------|---|
|                      |                       |   |   |   |   |  |                           |   |

NOTE.—The decrees of each separate official year should be separated from those of the succeeding year by a line, and the totals of columns 3, 4, 5, 6, 7 and 8 should be given for each year, and a further grand total at the bottom for all decrees for which the explanations have been given.

Explanation concerning decrees awarded against plaintiffs are to be kept separate from explanations concerning decrees awarded against defendants.

## CIVIL SUIT G(1).

[To be submitted by the Collector to the Legal Remembrancer on the 15th January each year.]

[Approved in letter No. 2458, dated the 12th March 1902.]

## Annual Statement F (1).

(Vide Rules 16 and 19, Section 8, Chapter III.)

## Statement of Original Suits to which Government was a party in the district of \_\_\_\_\_ during the year 19 .

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

N.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.

## CIVIL SUIT G(2).

[To be submitted by the Collector to the Legal Remembrancer on the 15th January each year.]

[Approved in letter No. 2458, dated the 12th March 1902.]

## Annual Statement F (11).

(Vide Rules 16 and 19, Section 8, Chapter III.)

## Statement of Civil Appeals to which Government was a party in the district of \_\_\_\_\_ during the year 19 .

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

N.B.—Appeals in 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.

## CIVIL SUIT.

[To be submitted by the Collector to the Legal Remembrancer on or before the 15th January each year.]

[Approved in Memorandum No. 1329, dated the 11th September 1901.]

**Form C (1).**

(Vide Rule 19, Section 8, Chapter III.)

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

## PART I.—ORIGINAL SUITS.

| Class of Court. | GOVERNMENT (PLAINTIFF).    |                 |                     |                     | GOVERNMENT (DEFENDANT).    |                 |                     |                     | REMARKS. |
|-----------------|----------------------------|-----------------|---------------------|---------------------|----------------------------|-----------------|---------------------|---------------------|----------|
|                 | Amount involved in claims. | Amount decreed— |                     | Cost of litigation. | Amount involved in claims. | Amount decreed— |                     | Cost of litigation. |          |
|                 |                            | For Government. | Against Government. |                     |                            | For Government. | Against Government. |                     |          |
| 1               | 2                          | 3               | 4                   | 5                   | 6                          | 7               | 8                   | 9                   | 10       |
|                 |                            |                 |                     |                     |                            |                 |                     |                     |          |

## INSTRUCTIONS :—

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

(2) The suits which are not directly instituted by or against Government, but by or against officers of Government in respect of acts done, or intended to be done, in their official capacity, should be taken into account, when the defence or prosecution is undertaken at the expense of Government.

(3) In columns 5 and 9 should be shown the gross amount of costs involved in litigation, such as fees to Counsels or Government Pleaders and all expenses incurred in stamps, witnessess' expenses, section-writers' charges, etc., the information being given separately for each class of court.

## CIVIL SUIT.

[To be submitted by the Collector to the Legal Remembrancer on or before the 15th January each year.]

[Approved in Memorandum No. 1329, dated the 11th September 1901.]

## Form C (2).

(Vide Rule 19, Section 8, Chapter III.)

Statement showing the cost of litigation to which Government was a party in the district of \_\_\_\_\_ during the year 19 \_\_\_\_ .

## PART II.—APPEALS.

| Class of Court. | GOVERNMENT (APPELLANT).    |                 |                     |                     | GOVERNMENT (RESPONDENT).   |                 |                     |                     | REMARKS. |
|-----------------|----------------------------|-----------------|---------------------|---------------------|----------------------------|-----------------|---------------------|---------------------|----------|
|                 | Amount involved in claims. | Amount decreed— |                     | Cost of litigation. | Amount involved in claims. | Amount decreed— |                     | Cost of litigation. |          |
|                 |                            | For Government. | Against Government. |                     |                            | For Government. | Against Government. |                     |          |
| 1               | 2                          | 3               | 4                   | 5                   | 6                          | 7               | 8                   | 9                   | 10       |
|                 |                            |                 |                     |                     |                            |                 |                     |                     |          |

## INSTRUCTIONS:—

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

(2) The appeals which are not directly instituted by or against Government, but by or against officers of Government in respect of acts done, or intended to be done, in their official capacity, should be taken into account, when the defence or prosecution is undertaken at the expense of Government.

(3) In columns 5 and 9 should be shown the gross amount of costs involved in litigation, such as fees to Counsels or Government Pleaders and all expenses incurred in stamps, witnesses' expenses, section-writers' charges, etc., the information being given separately for each class of court.

## APPENDIX B.

| District.                   | Government and Public Prosecutor.                       | Remuneration.     |                                       |
|-----------------------------|---|-------------------|---------------------------------------|
|                             |   | Monthly retainer. | Daily rate of fees in criminal cases. |
|                             |   | Rs.               | Rs.                                   |
| <b>BURDWAN DIVISION.</b>    |   |                   |                                       |
| Burdwan .. ..               | Government Pleader .. ..                                | 100               | 32                                    |
|                             | Public Prosecutor .. ..                                 | 50                | 32                                    |
| Hooghly .. ..               | Government Pleader and Public Prosecutor (one officer). | 100               | 32                                    |
| Howrah .. ..                | Ditto .. ..   | 100               | 32                                    |
| Midnapore .. ..             | Government Pleader .. ..                                | 100               | 32                                    |
|                             | Public Prosecutor .. ..                                 | 50                | 32                                    |
| Bankura .. ..               | Government Pleader and Public Prosecutor (one officer). | 75                | 25                                    |
| Birbhum .. ..               | Ditto .. ..   | 60                | 25                                    |
| <b>PRESIDENCY DIVISION.</b> |   |                   |                                       |
| 24-Parganas .. ..           | Government Pleader .. ..                                | 100               | ..                                    |
|                             | Public Prosecutor .. ..                                 | 100               | ..                                    |
| Jessore .. ..               | Government Pleader and Public Prosecutor (one officer). | 100               | 32                                    |
| Khulna .. ..                | Ditto .. ..   | 75                | 25                                    |
| Nadia .. ..                 | Government Pleader .. ..                                | 75                | 25                                    |
|                             | Public Prosecutor .. ..                                 | 50                | 25                                    |
| Murshidabad .. ..           | Government Pleader and Public Prosecutor (one officer). | 60                | 25                                    |
| <b>RAJSHAHI DIVISION.</b>   |   |                   |                                       |
| Darjeeling .. ..            | Government Pleader and Public Prosecutor (one officer). | 60                | 25                                    |
| Rajshahi .. ..              | Ditto .. ..   | 75                | 25                                    |
| Rangpur .. ..               | Ditto .. ..   | 100               | 32                                    |
| Dinajpur .. ..              | Ditto .. ..   | 60                | 25                                    |
| Pabna .. ..                 | Ditto .. ..   | 75                | 25                                    |
| Jalpaiguri .. ..            | Ditto .. ..   | 60                | 25                                    |
| Malda .. ..                 | Ditto .. ..   | 60                | 25                                    |
| Bogra .. ..                 | Ditto .. ..   | 60                | 25                                    |
| <b>DACCA DIVISION.</b>      |   |                   |                                       |
| Dacca .. ..                 | Government Pleader .. ..                                | 100               | 32                                    |
|                             | Public Prosecutor .. ..                                 | 75                | 32                                    |
| Bakarganj .. ..             | Senior Government Pleader .. ..                         | 100               | 32                                    |
|                             | Junior Government Pleader .. ..                         | 50                | 25                                    |
| Faridpur .. ..              | Government Pleader .. ..                                | 75                | 25                                    |
|                             | Public Prosecutor .. ..                                 | 50                | 25                                    |
| Mymensingh .. ..            | Government Pleader .. ..                                | 100               | 32                                    |
|                             | Public Prosecutor .. ..                                 | 50                | 32                                    |
| <b>CHITTAGONG DIVISION.</b> |   |                   |                                       |
| Chittagong .. ..            | Government Pleader .. ..                                | 100               | 32                                    |
|                             | Public Prosecutor .. ..                                 | 50                | 25                                    |
| Noakhali .. ..              | Government Pleader .. ..                                | 50                | 25                                    |
|                             | Public Prosecutor .. ..                                 | 25                | 25                                    |
| Tippera .. ..               | Government Pleader .. ..                                | 60                | 25                                    |
|                             | Public Prosecutor .. ..                                 | 50                | 25                                    |

**APPENDIX C.****Form.**

FROM

To

THE SUPERINTENDENT AND REMEMBRANCER OF LEGAL  
AFFAIRS, BENGAL.

CRIMINAL APPEAL No.....OF  
APPLICATION No.....OF  
APPELLANT  
PETITIONER

SIR,

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

---

*Précis*

PRESCRIBES forms of requisition by District Officers for causing appearance to be entered on behalf of the Crown in Criminal appeals and motions before the High Court.

*Index*

FORM of requisition by District Officers for appearance on behalf of the Crown in Criminal appeals and motions before the High Court.

**APPENDIX D.**

**Bill of fees due to Babu \_\_\_\_\_, Public Prosecutor of \_\_\_\_\_, for conducting Sessions cases (for criminal appeals) during the month of \_\_\_\_\_ 19 \_\_\_\_\_.**

| Number and date of calendar. | Names of parties. | Crime. | Number of persons concerned in the trial. | Name and designation of the pleader conducting the prosecution. | Whether the prisoner confessed or not. | Number of witnesses examined for the prosecution. | Number of witnesses examined for the defence. | Dates on which the case was heard. | Whether the prisoner was convicted or acquitted or case pending. | Fee demanded. | Remarks. |
|------------------------------|-------------------|--------|---|---|--|---|---|------------------------------------|--|---------------|----------|
| 1                            | 2                 | 3      | 4   | 5   | 6                                      | 7   | 8   | 9                                  | 10   | 11            | 12       |
|                              |                   |        |   |   |  |   |   |                                    |  | Rs. A. P.     |          |

I HEREBY certify that Babu \_\_\_\_\_ attended my Court on the \_\_\_\_\_

\_\_\_\_\_, Public Prosecutor, \_\_\_\_\_ Countersigned for Rs. (in words and figures)

Checked and found correct.

*District Magistrate.*

*Bill clerk.*

*Sessions Judge  
Magistrate.*

*Signature of Public Prosecutor.*

Dated the \_\_\_\_\_ of \_\_\_\_\_ 19 \_\_\_\_\_.

## APPENDIX E.

Office of the District Magistrate.  
Deputy Commissioner.

*Dated*

EMPEROR

*versus*

Babu \_\_\_\_\_ is hereby engaged on behalf of  
the Crown/accused in the court of the \_\_\_\_\_ on a  
daily/lump fee of Rs. ( \_\_\_\_\_ ) subject to the conditions  
noted below.

*District Magistrate.*

## CONDITIONS.

1. The pleader will quote authority of his engagement in his bill of fees.
2. When a case is simply adjourned or when appearance in court for a case or cases is for less than half a day, a half fee is allowed for the day. The payment of any increased or special fee requires the specific recommendation of the presiding officer.
3. At the end of each month the pleader will draw up his bill of fees in the prescribed form showing all the details mentioned therein and noting also the duration of hearings.
4. All bills shall be submitted once every month not later than four days from the end of the month to which they relate. Any delay in the submission of a bill should be explained. Such explanation with the remarks of the District Magistrate thereon may affect the fees charged.
5. When a case is simply adjourned fees will not be allowed unless the pleader is actually present and has no other case before the court on that date and has received no notice before the day fixed that the case will not be taken up that day.

## APPENDIX F.

Register of work done by Public Prosecutor / Pleader  
during the month of .

| Date. | Number and date of calendar. | Name of parties. | Court. | Actual duration of hearing. | Signature of presiding officer. | Remarks. |
|-------|------------------------------|------------------|--------|-----------------------------|---------------------------------|----------|
| 1     | 2                            | 3                | 4      | 5                           | 6                               | 7        |
|       |                              |                  |        |                             |                                 |          |

## APPENDIX G.

## Returns and Statements

(1) Submitted to the Legal Remembrancer.

| Serial No. | Description.  | By whom to be submitted.                                  | Time for submission.       |
|------------|---|---|----------------------------|
| 1          | Treasury Schedules ..   | District Treasury Officer                                 | Within 7th of every month. |
| 2          | Monthly statement of expenditure, including expenditure relating to Central Government. | District Officer ..                                       | Ditto.                     |
| 3          | Annual Confidential Report regarding Government Pleaders and Public Prosecutors.        | District Magistrate and the Sessions Judge.               | 15th January.              |
| 4          | Half-yearly statement of Government decrees ending 31st December.                       | District Officers ..                                      | Ditto.                     |
| 5          | Annual statement of pauper suit decrees.  | Ditto ..  | Ditto.                     |
| 6          | Annual Civil Suit Returns F (1), F (2), G (1), G (2).                                   | Ditto ..  | Ditto.                     |
| 7          | Half-yearly statement of accounts relating to Litigation Fund ending 31st March.        | Accountant-General ..                                     | April-May.                 |
| 8          | Half-yearly statement of Government decrees ending 30th June.                           | District Officers ..                                      | 15th July.                 |
| 9          | Revised and annual budget estimate.   | District Officers and English Law Officers of Government. | 1st week of September.     |
| 10         | Half-yearly statement of accounts relating to Litigation Fund ending 30th September.    | Accountant-General ..                                     | October-November.          |

## (2) Submitted by the Legal Remembrancer.

| Serial No. | Description.  | To whom submitted.  | Time for submission.             |
|------------|---|---|----------------------------------|
| 1          | Consolidated monthly account ..   | Accountant-General ..   | Every month.                     |
| 2          | Indent for Non-standard and Calcutta Police Forms.  | Forms Department ..   | 1st March.                       |
| 3          | Annual statement of landed property.  | Judicial Department ..  | 1st week of March.               |
| 4          | Supplementary indent for stationery (when required).  | Controller of Stationery  | 10th March.*                     |
| 5          | Indent for Bengal routine forms   | Forms Department ..   | 15th March.                      |
| 6          | Confidential statement regarding Government Pleaders and Public Prosecutors.                | Judicial Department ..  | Ditto.                           |
| 7          | Actual cost incurred on account of the Government of India.                                 | Ditto ..  | April.                           |
| 8          | Indent for Bengal Executive forms.  | Forms Department ..   | 15th April.                      |
| 9          | Annual statement of fees for legal opinion.   | Accountant-General and District Officers.                       | 1st May.                         |
| 10         | Annual establishment return ..  | Accountant-General ..   | 15th May.                        |
| 11         | Indent for Civil Suit Forms ..  | Forms Department ..   | 1st June.                        |
| 12         | Annual return of expenditure on stores purchased in India.                                  | Judicial Department ..  | 15th June.                       |
| 13         | Capital and Revenue Accounts of non-Public Works residential buildings.                     | Accountant-General ..   | 30th June.                       |
| 14         | Forecast of stores proposed to be purchased from the United Kingdom.                        | Judicial Department ..  | 15th July.                       |
| 15         | Annual statement of accounts relating to Wards' Estates.                                    | District Officers ..  | 1st August.                      |
| 16         | Indent for stationery ..  | Controller of Stationery  | Ditto.                           |
| 17         | Indent for Accountant-General forms.  | Forms Department ..   | 1st September.                   |
| 18         | Forecast of leave and deputation allowance of officers.                                     | High Commissioner for India and Finance Department.             | 15th September.                  |
| 19         | Annual Budget Estimate ..   | Judicial Department, Finance Department and Accountant-General. | 15th October.                    |
| 20         | Statement showing progress of expenditure and allotment regarding Central Government cases. | Judicial Department ..  | December.                        |
| 21         | Statement showing the employment of Muhammadans in the Government offices.                  | Ditto ..  | At the end of the calendar year. |

NOTE.—Action regarding purchase of summer uniforms and winter liveries is taken in the months of March and October respectively.

\*Must be submitted within this date except under special order of Government.

## APPENDIX H.

**History of the office of the Legal Remembrancer, Bengal.**

In 1816, a Regulation (VIII of 1816) was passed "for establishing the office of Superintendent and Remembrancer of Legal Affairs." The purposes for which the office was legally constituted are set out in the preamble to the Regulation thus:—

"The duty of determination on the propriety of instituting or defending, on the part of Government original suits or appeals in the several Courts of Civil Judicature rests under the existing Regulations with the Governor-General in Council, and with the several Boards, acting under his authority in different departments. With a view to afford further facilities in the discharge of a duty which so materially involves the reputation as well as the interests of the Government, it is deemed advisable that an officer should be appointed, who, in the quality of Superintendent and Remembrancer of Legal Affairs, may aid the said authorities in such manner as may, on experience, be deemed most convenient, as well as in the conduct of important suits and appeals when instituted, as generally in deciding on the propriety of having recourse to the established Courts of Justice for the recovery or maintenance of the rights and interests of Government. It is conceived also that the public convenience will be in other respects promoted by the appointment of an officer of this description, whose services, in certain cases of more than ordinary importance, be available in matters of a criminal as well as of a civil nature; and who may be employed by Government in the conduct of other judicial concerns in any mode not inconsistent with the existing Regulations. The following rules have accordingly been enacted, to be in force from the date of the promulgation of this Regulation throughout the whole of the provinces immediately subject to the Presidency of Fort William."

Although legislative sanction to the creation of the office of the Legal Remembrancer was first given under the provisions of Regulation VIII of 1816, it would appear from a letter dated the 29th March 1816, from Mr. Secretary W. B. Bayley to Mr. H. T. Prinsep, the officer at that time appointed as the Legal Remembrancer, that the Regulation only gave formal sanction to the legal constitution of an office already in existence. For we find the following in the Fifth Report from the Select Committee of the House of Commons on the affairs of the East India Company, in July 1812:—

"The better to enable the Government to observe the effects of the regulations thus introduced and to watch over the general administration of Criminal Justice throughout the provinces, a separate department was established at the Presidency, under the immediate control of the Governor-General, to which were to be transmitted monthly reports of proceedings, and lists of prisoners apprehended and convicted by the respective authorities throughout the provinces. To arrange these records, and to maintain a check on all persons entrusted with the administration of Criminal Justice, an officer was appointed to act under the Governor-General, with the title of Remembrancer of the Criminal Courts." This was before 1784. The duties of the office were

fully and elaborately dealt with in the letter of Mr. Bayley referred to above. No earlier Legal Remembrancer than Mr. Prinsep is traceable.

The post was subsequently abolished by Government Resolution dated the 16th June 1829, on the recommendation of a Finance Committee. It was held inexpedient to maintain in the then existing state of public finances an office of which the duties could be provided for by less expensive means. The post of the Legal Remembrancer was thus abolished for reasons of economy and the necessary legal sanction was secured by Regulation XIII of 1829. The necessity for the revival of the office in some form or other was soon felt, for in 1837 Government acceded to the strong recommendation of the Board of Revenue for the appointment of an uncovenanted officer to act as their Deputy and take charge of the suits in connection with the Land Revenue administration. The mismanagement and delinquency of this Deputy confirmed Government in their opinion that the duties in connection with Government suits should be left in charge of an independent officer who would be directly responsible to Government for his work.

On the 4th July 1844, the Government of Bengal informed the Sudder Board of Revenue of the appointment of an officer to perform duties similar to those of the Superintendent and Remembrancer of Legal Affairs. The letter says "The utility of the office during its existence had never been questioned, but on the contrary was supported by the united testimony of the controlling Boards and other authorities, and fully acknowledged by the Hon'ble Court of Directors, who reluctantly consented to its abolition on grounds of economy. As regards the management of the Government suits connected with the Land Revenue Administration, the most numerous and important class, the necessity for the revival of the office in some form or other was so strongly felt that in 1837 the Government acceded to the strong recommendation of the Board for the appointment of an Uncovenanted Officer as their Deputy in this Department. The mismanagement and delinquency of the late incumbent, though they have served to confirm the Governor in his view of providing for the efficient superintendence and control of the legal affairs of Government have, in connexion with the difficulties which are found to arise from the conflicting claims of different departments of executive administration, convinced His Honour that the duty can on the whole be more advantageously performed by an independent officer, directly responsible to Government, than by an uncovenanted subordinate or by means of the less objectionable expedient proposed by the Board." The new office was created under the designation of "Solicitor to the Government of Bengal" and Mr. James Alexander, a member of the covenanted civil service, was appointed to the post.

On the 18th June 1845, the name "Solicitor to the Government of Bengal" was changed to its present designation under orders of the Hon'ble the Court of Directors on the ground that the former designation is liable to misapprehension respecting the nature and sphere of its duties (vide Despatch No. 6, dated 16th April 1845, and Government order No. 496, dated 18th June 1845).

In 1875, the duties performed by the Legal Remembrancer were examined by a Committee presided over by the Hon'ble Mr. C. Hobhouse which in their Report (1875) wrote: "Roughly speaking it may be said that he and the Government Pleaders with some help from the Collectors of districts, perform the same duties for mufassal business as the Advocate-General, Standing Counsel and Government Solicitor perform for business arising in Calcutta but with two very material exceptions. One of these is that the duty of ascertaining the facts of litigated cases is devolved upon the Collector of the districts. The other is that the Legal Remembrancer is in all things subject to the control of the Board of Revenue." The Committee found that the work of the office was excessive and that the appointment was not sufficiently well paid or attractive with the result that there was frequent change of officers. The Committee further urged that the Legal Remembrancer should be one of the most experienced and strongest men in the Judicial Service, and recommended that—

- (1) the pay of the post should be raised from Rs. 2,500 to Rs. 3,000 a month;
- (2) five years' service as Legal Remembrancer should qualify for a seat in the High Court;
- (3) a Deputy Legal Remembrancer should be appointed on a salary of Rs. 1,500—2,000 a month;
- (4) either the Legal Remembrancer or the Deputy Legal Remembrancer should be a professional lawyer, preferably a Barrister or Attorney, the other office being held by a Civilian;
- (5) a staff of competent Government Pleaders or Muktears should be established in the mufassal;
- (6) the Legal Remembrancer should have the right to seek outside legal assistance when necessary;
- (7) the Legal Remembrancer should be subordinate to the Local Government and not to the Board of Revenue;
- (8) the Legal Remembrancer should be the immediate superior of the legal staff in Calcutta and in the mufassal;
- (9) the machinery for litigation in Wards Estates should be strengthened;
- (10) that arrangement should be made to give him due notice of all appeals in the High Court.

The Report of the Committee was forwarded to the Government of India who resolved in their Resolution No. 13/1052—57, dated the 18th September 1879, that the recommendations of the Committee should be adopted with the exception of that relating to the five years' qualification for the High Court which would require Parliamentary sanction.

In 1886, the Legal Remembrancer was appointed Public Prosecutor in the Appellate Side of the High Court with the exception of cases coming before it from the Presidency Magistrate's Courts.

The duties of the Legal Remembrancer were again investigated by a Committee appointed by the Lieutenant-Governor of Bengal in his minute of the 5th December 1904. This Committee recommended that the Legal Remembrancer should not be called upon

to deal with questions of civil law relating exclusively to Calcutta, that he should be authorized to refer to the Government Solicitor all conveyances and leases of a complicated nature and whenever he considers it expedient to do so. The Committee also recommended transference of various duties then performed by the Legal Remembrancer to the Legislative Department of Government particularly the work of revising and advising on statutory rules and orders in draft. The Local Government with the approval of the Government of India embodied their decision in its Resolution No. 545 J.—D., dated the 7th May 1907, in which were also laid down rules regarding references to the Legal Remembrancer by local officers. It was also as a result of the recommendation of the Committee that Mr. Hume, Public Prosecutor, Calcutta, and his office were placed under the Legal Remembrancer. Since then all cases in the Presidency Magistrate's Courts have come under his control.

In 1914, an interesting discussion took place on the question of the Legal Remembrancer being appointed Public Prosecutor under section 492 (7) of the Code of Criminal Procedure in respect of cases coming before the Original Side of the High Court. It appears that in 1904 the Legal Remembrancer was appointed a Public Prosecutor in the Original Side in connection with the Craster fraud case in which Mr. Cowie of Messrs. Sanderson & Co. was impleaded but the order was not gazetted. The question again came up in 1914 and it was then discovered that the Resolution, dated 14th May 1864, passed by the then Chief Justice and other Judges of the High Court "admitted and enrolled the Legal Remembrancer as a Vakil of the High Court entitled ex-officio and in accordance with the Resolution of the late Sudder Court of the 27th February 1852, to plead and act during his continuance." The matter was finally referred to Mr. (now Sir) B. C. Mitter the then Standing Counsel who expressed his opinion that Government have no power to appoint the Legal Remembrancer a Public Prosecutor to conduct the prosecutions on the Original Side of the High Court.

In 1911, the Legal Remembrancer was given the work of the Judicial Secretary which arrangement continued till January 1914 and Mr. (afterwards Mr. Justice) Chapman was the first holder of the combined appointment of the Legal Remembrancer and the Judicial Secretary to the Government of Bengal. On account of the altered conditions consequent upon the transfer of the Imperial Capital to Delhi and the creation of a separate Province of Bihar and Orissa with a High Court at Patna the Government of India by their Resolution No. 826, dated the 4th August 1916, appointed a small expert Committee presided over by Sir Basil Scott, Chief Justice, High Court of Judicature, Bombay. As a result of the recommendations of this Committee, the Legal Remembrancer was called upon in 1918 to do all the work of the Judicial Secretary provided he was relieved of the criminal work which was then proposed to be transferred to the Director of Public Prosecutions a newly created appointment. This new post existed for about six years and on its abolition the criminal work with which that officer was entrusted has again come back to the Legal Remembrancer.

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- (5) a staff of competent Government Pleaders or Muktears should be established in the mufassal;
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### The Deputy Legal Remembrancer.

1. **Creation of the appointment.**—In 1875 a Committee was constituted to examine the legal affairs of the Government of Bengal and among the several recommendations made by the Committee was the one of creating the appointment of a Deputy Legal Remembrancer.

The primary object of the creation of the post of Deputy Legal Remembrancer was to remedy the defect that existed before in the matter of representation of the Crown in criminal cases and the first Deputy Legal Remembrancer that was appointed was Mr. G. C. Kilby, a Counsel practising in Muzaffarpur, as it was decided that the holder of either of the post of Legal Remembrancer or Deputy Legal Remembrancer shall be a practising Barrister or Attorney. When he was appointed he was placed in charge of work in connection with examination of pleadings on behalf of Wards Estates, of bye-laws under the Bengal Municipal Act and of half-yearly returns and he used also to give opinion in many matters referred to him in addition to conduct of some criminal cases.

The duty of representing the Crown in criminal cases was in charge of the Junior Government Pleader who had a clerk under him, in the same way as there is one under the Senior Government Pleader, whose duty was to prepare briefs, but the duty of both was most unsatisfactorily done, and the Deputy Legal Remembrancer was relieved of all other work he used to do and placed in complete charge of criminal cases.

**His present position.**—The Deputy Legal Remembrancer is now a whole-time servant of Government working directly under the Legal Remembrancer.

Mr. B. I. Gupta (Legal Remembrancer) in his note dated the 3rd July 1905, for the Legal Business Committee then appointed by the Lieutenant-Governor, Bengal, stated that the Deputy Legal Remembrancer "could be of material help to the Legal Remembrancer in putting up notes and collecting authorities (English or Indian) on various questions that daily come up before the Legal Remembrancer for opinion or advice." The Committee accepted the suggestion (paragraph 49 of the Committee's report, dated the 23rd September 1905) and more use is now made of his services.

### The Assistant Government Pleader.

1. **Creation of the post.**—In accordance with the Board's memorandum No. 8 A. of the 21st January, 1875, by which they forwarded a copy of the Report of the Committee appointed by the India Government to consider in what way the legal business of the Governments of India and Bengal could be more efficiently performed and asked for a report on the subject, Mr. Bell, the then Legal Remembrancer reported amongst other things, that he "felt the extreme want of a junior pleader to go through vernacular papers, prepare briefs and to assist in the proper preparation of cases." He further proposed to give a salary of Rs. 200 a month. In March, 1876, the Bengal Government sanctioned

Mr. Bell's proposal (Bengal Government letter No. 965, dated the 15th March, 1876, and Board's letter No. 76, dated 12th February, 1876, paragraph 5). Thus the post of the Assistant Government Pleader was first created on Rs. 200 a month and Babu Ram Charan Mitra was appointed the first Assistant Government Pleader in May, 1876. The Government of India subsequently sanctioned the appointment in their Resolution (Home Department) No. 988, dated the 15th June, 1876.

2. **Post abolished.**—In May, 1878, the Government of Bengal declined to sanction supplemental fees proposed to be charged for the conduct of legal business of Wards Estates. This proposal was made with a view to apportioning the cost of the office establishment of the Legal Remembrancer between Government and the Wards Estates at the ratio of 2 to 1 and Government asked the Legal Remembrancer if the aim could be arrived at by a reduction of the Legal Remembrancer's office expenditure (Government letter No. 426 J., dated the 11th May, 1878). In reply, Mr. Allen, the then Legal Remembrancer, recommended the abolition of Ram Charan Mitra's appointment. Government sanctioned the reduction (Government letter No. 3480, dated the 24th August, 1878) and Babu Ram Charan Mitra's services were dispensed with.

3. **Post created again and pay.**—In February, 1879, Mr. O'Kinealy (Legal Remembrancer) suggested to Government the reappointment of a pleader on Rs. 100 a month on the ground that there are certain duties to be performed in the office which require a professional man—a pleader (Legal Remembrancer, Bengal's No. 1333, dated the 13th February, 1879). The India Government sanctioned the appointment (Home Department No. 567, dated the 13th May, 1879). The pay of the post was subsequently increased to Rs. 150 on the ground that the work done by the Assistant Government Pleader had much increased.

### The Public Prosecutor, Calcutta.

1. **Creation of the post.**—In 1859, at the instance of the Government of India, the Advocate-General was requested to submit, and submitted in his letter, dated the 6th May, 1859, addressed to the Government of Bengal, a report showing what was then understood to be the duty of the respective law officers. In paragraph 36 of that letter it was stated that the Government Solicitor acts as attorney in all cases in which Government desires him so to act, and conducts such prosecutions as he is directed to conduct or as Clerk of the Crown refers to him. (Home Department No. 432, dated the 21st March, 1905). Subsequently, in the Home Department Resolution No. 2641, dated the 20th March, 1866, the Government of India sanctioned the addition of "a distinct department to the office of the Solicitor to Government from criminal business." The head of the department was to be a European clerk, a passed Attorney, who with his subordinates was to attend to all prosecutions in Calcutta which duty was then in charge of Deputy Superintendents of Police, in order to make the evidence as complete as possible. It was expected that the

cost of the measure would not exceed Rs. 1,000 per mensem. This arrangement continued for a long time.

2. **Condition in 1904.**—In December, 1904, the Lieutenant-Governor of Bengal appointed a small committee to consider what action should be taken to place on a satisfactory footing the arrangement for conducting the legal business of the Government of Bengal. One of the leading points to which His Honour directed the attention of the committee was the unsatisfactory position in which the Government of Bengal stood towards the Government Prosecutor who conducted criminal prosecutions in the Calcutta Police Court. At that time, criminal prosecutions before the Presidency Magistrates, were done by a Solicitor who was employed in the firm of Messrs. Sanderson & Co., and two Prosecuting Inspectors were also appointed in January, 1904, to prosecute some of the less difficult cases in the Police Court. Mr. Hume received his remuneration from the Government Solicitor. It consisted of a contract allowance paid to the Government Solicitor by Government, the details of which are as follows:—

A salary of Rs. 1,000 a month, plus Rs. 70 a month for the pay of two clerks employed by Mr. Hume at the Police Court, Rs. 8 a month for a peon and Rs. 25 a month for carriage hire=Rs. 1,103 a month.

[Paragraph 7 of the Legal Committee's Report, dated the 23rd September, 1905.]

The pay of the two Prosecuting Inspectors was Rs. 250 a month each=Rs. 500.

3. **Committee's Report.**—The Committee, among other things, recommended "that the work connected with criminal prosecution in Calcutta should be separated from the civil work of the Government Solicitor and placed under a different department. We would accordingly recommend that the Government Solicitor should be relieved of all responsibilities for, and in connection with, criminal prosecutions, and that the Government Prosecutor (Mr. Hume) should be attached to the office of the Legal Remembrancer receiving the same remuneration as heretofore, to be paid to him through the Legal Remembrancer.

**Public Prosecutor attached to office of Legal Remembrancer.**—"The object of attaching the Government Prosecutor to the office of the Legal Remembrancer would be to place him under some definite official control, not to alter the present arrangements, under which Mr. Hume's work is carried on in consultation with the Commissioner of Police and the Standing Counsel." The above recommendations were given effect to in 1907.

4. **Appointment of Mr. T. N. Sadhu as Public Prosecutor, Calcutta.**—In their Despatch No. 98, dated the 5th March, 1920, to the Secretary of State, the Government of India supported the recommendation of the Local Government to appoint Rai T. N. Sadhu Bahadur "as a whole-time Public Prosecutor for the Calcutta Police Courts on Rs. 1,500—100—2,000 a month plus the

existing carriage allowance of Rs. 50 per mensem with the right to retain the work he does at present on fees for the Registrar, Joint-Stock Companies." The Government of India further observed that the remuneration proposed for the Public Prosecutor was not excessive provided it was regarded as personal to Rai T. N. Sadhu Bahadur.

[Finance Department No. 5124, dated 6th November 1914.]

5. **Conveyance allowance.**—Subsequently the Government of Bengal in their letter No. 4459 J., dated the 8th December, 1920, increased the conveyance allowance of the Public Prosecutor from Rs. 50 to Rs. 100 per mensem provided he maintained a motor car of his own. The Public Prosecutor's other claim for granting him a house allowance was, however, not approved.

