STANDING ORDERS OF THE FINANCIAL COMMISSIONER HIMACHAL PRADESH

STANDING ORDER NO."2" (Draft)

General Procedure of Revenue Officers and Revenue Courts

Note : In connection with this Standing order Chapters VI and XXIII of the Punjab Land Administration Manual should be consulted.

Section-A

Procedure of Revenue Officers

1. Revenue Officer.-Section 7(1) of the H.P. Land Revenue Act, 1953, prescribed the following classes of Revnue Officers, namely:-

(a) the Financial Commissioner
(b) the Commissioner.
(c) the Collector
(d) the Assistant Collector of the first grade.
(e) the Assistant Collector of the second grade.

The Deputy Commissioner of a district is the Collector thereof under Section 7(2) of the aforesaid Act.

The Sate Government is competent U/S 28 of the aforesaid Act to confer any or all the powers of a Revenue Officer on any officer or class of officers for all or specific purposes.

2. Revenue Court.-When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in Sub-Section (3) of Section 58 of the H.P. Tenancy and Land Reforms Act, 1972, or with respect to an appeal or other proceding arising out of any such suit, he shall be called a Revenue Court.

3. Revenue Officers and Revenue Court distinguished-A Revenue Court is therefore, simply a Revenue Officer acting in a judicial instead of an executive capacity. There are, therefore, the same classes of Revenue Courts as of Revenue Officers and ordinarily a Revenue Officer of any grade is a Revenue Court of the same grade and his jurisdiction in one capacity is co-extensive with his jurisdication in the other (section 5(2) of the H.P. Tenancy & Land Reforms Act, 1972 (Act. No.8 of 1974).

The distinction between Revenue and Civil Courts is more of agency than of procedure. As regards their respective jurisdiction, paragraphs 792-810 of the Pujab Land Administration Manual and Chapter 2-B of the High Court Rules & Orders, Volume I may be referred to

4. Rules 34 to 46 of the Punjab Land Revenue Rules as applicable to Himachal Pradesh and Rules 3-10 of the H.P. Tenancy Rules prescibe the procedure of Revenue officers and should be consulted. These rules precribe that the statements and pleadings made by or on behalf of the parties to the reveune proceedings, whether oral or written shall be as brief as the nature of the case admits and shall not be argumentative. Every written application or statement filed by a party shall be drwan up and verified in the manner provided by the Code of Civil Procedure for written statements in suits. In fixing dates etc; the Revenue Officer is to follow the procedure of Revenue Courts and the provisions of the Code of Civil Procedure in respect of Commission's also apply in case of proceedings before a Revenue Officer. In proceedings before a Revenue Officer under the H.P. Tenancy & Land Reforms Act, 1972, the Revenue Officer shall make with his own hand a brief memorandum of statement of parties and witnesses at the time when each statement is made. In every proceedings in which an order is passed on the merits after inquiry, the Revenue Officer making the order shall record a brief statement of reasons on which it is founded. A Revenue Officer may at his discretion award expenses of witnesses not exceeding the sum to which they may be entitled in Civil Courts. In proceedings in which costs have been incurred, the final order shall aportion the costs which will be recoverable in the manner prescribed in Section 76 of the H.P. Land Revenue Act. Revenue Officer's Orders of ejectment shall be enforced in the manner provided in the Code of Civil Procedure and in enforcing these orders, a Revenue Officer shall have all the powers in regard to contempts, resistance and the like which a civil Court may exercise.

The Memorandum to be made by a Revenue Officer under Rule 40 of the Punjab Land Revenue Rules or Rule 7 of the H.P. Tenancy and Land Reforms Rules shall be in Hindi.

5. Procedure of Revenue Courts.-Section 69(1) of the H.P. Tenancy and Land Reforms Act, 1972 empowers the State Govt. to frame rules for regulating the procedure of Revenue Courts in respect of matters under this Act. But no such rules have been framed and the provisions of the code of Civil Procedure 1908 and Rules and Orders of the High Court so far these are applicable shall apply to all proceedings in Revenue Courts. The Procedure contained in Chapters 1-A to1-I-H,1-J to 1-L, 9, 10-A, 10-B, 11-B and 14_E of Volume-I, Chapter 7 of Volume IV of the High Court Rules and Orders should be followed with special care. Some of these instructions with necessary modifications making them applicable to Revenue Courts are reproduced below.

SECTION-B

Receiption of Plaints and Applications

(See Chapter i-B, Vol.I, High Court Rules & Orders, 1930)

6. Time & hour of presentation.-Plaints and petitions should be received on every day which is not an authorised holiday during office hours.

7. How filed.-Plaints and Petitions must be filed except when other-wise specially provided by any law for the time being in force by the party in person or by his recognized agent or by a duly authorised and qualified legal practioner. Recognized Agents are defined in Order III, Rule 2 of the Code of Civil Procedure. As to the appointment of a pleader, the provisions of Rule 4 ibid should be carefully studied.

8. Preliminary Examination.-Every plaint or peptition should, if possible, specify the provisions of the law under which it is presented. The Presiding Officer of the Court should note, or cause to be noted, on the plaint the date of presentation, and whether it has been presented by the plaintiff in person or by his duly authorised agent or pleader. The court fees should be forthwith examined and cancelled in the manner prescribed in that behalf.

9. Responsibility regarding Court Fee, Stamps.-The instructions contained in the High Court Rules & Orders,, Volume IV, Chapters 4 and 5 should be observed mutatis-mutandis by all Revenue Courts.

The ministerial officer of the Court concerned i.e. the Asstt. Superintendent (Revenue)/Head Vernacular in the case of Deputy Commissioner and Naid-Tehsildar (Peshi) in the case of Commissioner and the Reader in case of other Courts shall be personlly responsible for ensuring that plaints and petitions are properly stamped in all simple and undisputed cases. In case of doubt regarding the correctness of the Court Fee, due, he should take the orders of the Presiding Officer. Personal responsibility shall be enforced against the ministeral officer in all cases that he failed to refer to the Presiding Officer for orders, and against the Presiding Officer in other cases. This shall, however, be subject to the provision that personal responsibility should be enforced against the presiding or ministerial officer, as the case may be where obvious mistakes were made and not in cases in which a genuine doubt was possible regarding the correctness of the court fee due.

Deputy Commissioners should impress upon the Presiding Officers of Subordinate Revenue Courts and their readers etc. their personal responsibility in this matter and make them understand that as a consequence of this, responsibility, all Government losses in stamp revenue will be taken of serious notice and stern action will be taken against the delinquents.

Serious notice should also be taken of failure to cancel the stamps by punching. Erring officials should be suitably proceeded against.

10. When an unstamped petition is presented to the Financial Commissioner and other Senior Revenue Officers, and if it is to be transferred to a subordinate officer, a slip will be attached to the effect that no action should be taken on the petition until it is properly stamped.

SECTION-C

Eamination of the Plaint

(See Chapter 1-C, Volume 1 ibid)

11. Examination of plaint.-On the presentation or receipt of a plaint, the Court should examine it with special reference to the following points viz;

(i) Whether the name of the Court to which the suit is brought is given in the plaint (order VII rule 1(a);

(ii) Whether it contains the name, description and place of residence of the plaintiff, so far as they can be ascertained (order VII, rule 1(b);

(iii) Whether the plaint contains the name, description and place of residence of the defendant (order VII rule 1(a);

(iv) Whether any of the parties to the suit are minor and if so whether they are properly represented (order VII, rule 1(d);

(v) Whether it contains the facts constituting the cause of action and when it arose (order VII, rule 1(e);

(vi) Whether the suit is within the jurisdiction of Court or else it should be returned for presentation to the proper Court (order VII, rule 1(f) and (10);

(vii) Whether plaint states the relief which the plantiff claims (order VII, rule 1(g);

(viii) Whether it contains the amount allowed or relinquished if the plaintiff has allowed a set off or relinquished a portion of his claim (order VII, rule 1(h);

(ix) Whether it contains a statement of the value of the subject matter of the suit for the purpose of jurisdiction and of Court fees to far the case admits (order VII, rule 1(c);

(x) Whether there is prima-facie any non-joinder or mis-joinder of parties, or mis-joinder of causes of action;

(xi) Whether the plaint is duly signed and verified;

(xii) Whether the plaint is liable to be rejected for any of the reasons given in order VII rule 11.

(xiii) Whether the documents attached to the plaint (if any) are accompained by the lists in the prescribed form and are in order .

(xiv) Whether the plaintiff has filed a proceeding containing his address for service during the litigation as required by Rule 19 of order VII as framed by the High Court.

(xv) Instructions contained in paragraph 9 below should also be borne in mind at the time of examination of plaint.

12. Rules of pleading noticed.-The provisions of the code with regard to the pleadings (which term includes the plaint and written statement of parties) should be carefully studied. The principal rules of pleadings may be briefly stated as follows:-

(a) The whole case must be stated in the pleadings that is to say, all material facts must be stated (order VI, rule 2).

(b) Only material facts are to be stated. The evidence by which they are to be proved is not to be stated (order VI Rules 2, 10, 11 & 12).

(c) The facts are to the stated concisely.

(d) Every pleading is to tbe signed by the party and also by his pleader, if any (order VI, rule 14).

(e) Save as otherwise provided for by law for the time being in force, every pleading is to be verified at the foot by the party or by one of the parties pleading (order VI, rule 15)

(f) The person verifying the pleading is bound to state by reference to the numbered paragraphs of the pleading what he verified of his own knowledge, and what he verified upon information received and believed to be true (order VI, Rule 15(2)).

(g) It is obligatory that the verfication should be signed by the person making it, stating the dates on which and the place at which it was signed (order VI, rule 15(3));

(h) It is not necessary to allege the performance of any condition, precedent, an avement of performances implied in every pleading (order IV, rule 6);

(i) It is not necessary to set out the whole or any part of a document unless the precise words thereof are necessary. It is sufficient to state the effect of the document as briefly as possible (order VI, Rule 9);

(j) It is not necessary to allege a matter of fact which the law presumes or as to which the burden of proof lies on the other side (order VI, Rule 13);

(k) When mis-representation, fraud, undue influence etc. are pleaded necessary particulars must always be given (order IV, Rule 4);

(l) When a suit is prima-facia time barred the ground on which exemption is claimed must be stated (order VII Rule 6);

If the Plaint is prolix or indefinite or omits to give the necessary particulars or to specify the relief claimed precisely or is defective in any other respect, it should be returned to the party or his counsel for such amendments as may be necessary in the actual presence of the Presjding Officer after he has signed the endorsement. The court has wide powers in this respect (See order VI, Rules 5, 16 and 17). Where amendment is directed an order should be recorded by the Court indicating the particulars about the necessary amendement and fixing a date for filing the amended plaint.

13. Joinder of parties and causes of action.-When the plaintiffs or defendants are more than one, the plaint should be examined with a view to see, if there is prima-facie any misjoinder of parties or causes of action;

(i) It should appear in the plaint that the persons if more than one who sue together as plaintiffs all either jointly, severally or in the alternative, claim the right which is the object of suit to vindicate, if all the persons jointly entitled to the right, which according to the palint, has been in-fringed cannot be got to sue together. This fact should be stated in the plaint together with the grounds of refusal, if known. If the plaintiff wishes to sue on behalf of or for the benefit of such persons, he must applpy for the permission of the court under Order 1, Rule 8(1), Code of Civil Procedure.

(ii) Similarly, it should appear in the plaint that the rightsto the relief claimed exists against all the defendants either jointly or severally or in the alternative in respect of the subject matter in dispute. If the cause for suing one defendant is different from that for suing another the plaint should be returned for amendment on the ground that the plaintiff has joined causes of action which ought not to be joined in the same suit. Different causes of saction against different defendants or groups of defendants cannot be brought into one suit. Under order 1, Rule 5, however, it is not necessary that every defendant should be interested as to all the relief claimed in any suit against him.

(iii) Order II, Rule 3 of the Code of Civil Procedure only permits a plaintiff to unite in the same suit several causes of action, against the same defendant or the same defendants jointly. It follows, therefore, that where the defendants are not jointly liable for the several sums which the plaintiff claims from each, or for other relief sought, the provisions of Order II, Rule 3, cannot be applied and each distinct cause of action must form the subject of a separate suit. Several plaintiff having distinct causes of action against the same defendant or defendants cannot join in one suit.

(iv) The general rule to be observed is that while no suit may be defeated by mere mis-joinder of parties and the rights of the parties actually before the court may always be disposed of, distinct causes of action can only be joined in one suit where the parties are indentical and only subject to the provisions of Order II, Rules 4 and 5 and Section 15 to 25 of the Code of Civil Procedure.

(v) In suits which cannot be properly disposed of unless all persons interested in the matter are before the Court, Order I, Rules 8(2) & 10(2) of the Code enables the Court to add necessary parties when it discovers that they have been comitted by the plaintiff.

14. Scrutiny of plaint relating to Agricultural land and when plaintiff is illiterate.-If the plaint relates to agricultural land and the plaintiff is illiterate it should be scrutinized with special care according to the following directions :-

"Every such plaint shall be accompained by a statement, in the prescribed form, setting forth the particulars relating thereto recorded in the settlement record and in the last Jamabandi. It should also include a copy of the Khasra Girdwari of the harvest concerned if the suit is under the H.P.Tenancy & Land Reforms Act. This statement shall be verified by the signatures of the Patwari of the circle in which the land concerned is situated. Where by reason of partition, river action or other cause, the entries in the settlement record and in the last Jamabandi do not accord, a brief explanation of the reasons should be given in the column of remarks. Where the suit is for a specific plot with definite boundaries, it shall also be accompained by a map, drawn to scale, showing clearly the specific plot claimed or in relation to which the decree is to be made and so much of the fields adjoining it, also drawn to may be sufficient to facilitate identification. The specific plot and adjoining field; shall numbered in accordance with the statement and the map shall be certified as correct by the patwari or other person who prepaed it. Where however, the suit is for the whole or one or more Khasra numbers

as shown in the settlement-map or a share in such numbers and not for a specific portion thereof no map will be required unless it is necessary for other reasons to show the boundaries of such Khasra numbers.

SECTION-D

Issue and Service of Processes

15. Court to determine the form of summons.-In order V, Rule 5 of the Code of Civil Procedure, it is laid down that the Court shall determine at the time of issuing the summons whether it shall be for the settlement of issues only or for the final disposal of the suit and the summons shall contain a direction accordingly. Thus, the question of what form of summons is to be issued is one which the Court is bound to consider and determine in each particulas case.

16. Summons to the defendant.-Summons should be clearly and legibly written and signed, and the seal of the court must be affixed.

Order V, Rule (3) of the Code requires that the summons shall be signed by the Judge or the Officer appointed by him. In courts provided with clerk of Courts or Asstt. Superintendent (Revenue)/Head Vernacular Clerk/Naib-Tehsildar (Peshi), he may be authorised to sign summons. In all other courts, the Presiding Officer should himself sign them. The signature should in all cases be fully and legibly written.. The summons must be framed so as to require the defendant to produce any document called for by the plaintiff, or on which the defendant intends to rely in support of his own case which is fixed for the settlement of issues only or for final disposal. It must also have attached thereto one of the copies or concise statements of the plaint which the plaintiff is bound to file with the plaint. Before issuing the summons, the court should satisfy itself that the form selected is that appropriate to the order made under Order V, Rule 5 of the Code.

No court can rightly proceed to hear a suit ex-parte, until it has been proved to the satisfaction of such court that the summon to a defendant to appear has been duly served i.e. has been served strictly in such manner as the law provides. The nature of the proof of service which the court ought to require in such cases are contaned in Rule 7, Chapter i-D of the High Court Rules and Orders, Volume I.

17. The Revenue Courts should note the Rules for the srevice of summons contained in Rules 21-23 and Rules 25-26, Order V of the Civil Procedure Code, which should be carefully studied.

(i) **Service within India**-If the process has to be served within the jurisdiction of another court but within the same district, the agencies located at Tehsils will be employed, the process being transmitted by post from one agency to another. If the process has to be served in another district but within the State it should be transmitted by post to the Collector concerned through the Collector of the district where the court is situated for service and return. But no court should refuse to serve any process received for service within its jurisdiction from a Court in another District of State merely by reason of the process not having been sent through the Collector. In issuing process to Districts in other States, they should be forwarded for execution to the COllector of the District in which service of such process is designed except where they are to be served within one of the Presidency Towns (order V, Rule 22, Code of Civil Procedure_ when they shallbe transmitted for service to the Judge of the Court of Small Causes.

(ii) **Service by post.**-The attention of the Revenue Officer and Revenue Courts is specially drawn to the provisions of Section 21 the H.P. Land Revenue Act and Section 71 of the H.P. Tenancy & Land Reforms Act, 1972 (Act No.8 of 1974) under which a summon may be served by registered post. This mode of service has proved speedy and useful and may be freely resorted to in addition to, or in substitution for any other mode.

The Revenue Courts and Officers in Himachal Pradesh for the purposes of levying process fees are divided into three grades as shown in the table below:-

GRADE	REVENUE COURTS.
First	Financial Commissioner
Second	Commissioners.
Third	Collectors and Asstt. Collectors.

The rates prescribed under High Court Rules and Orders (Chapter 5-B, Vol.IV,) shall apply.

18. Service by post to be the general rule.-Provisions for service of summons in foreign territory : Order V, Rule 25 of Code of Civil Procedure and Chapter 7-F Vol.IV of High Court Rules and Order lay down the procedure to be followed which should be studied in detail in this behalf.

19. Service in foreign territories where no special arrangements exist.-When service by post under Order V Rule 25 has failed and it is desired to proceed under Order V, Rule 26 C.P.C. the summons should be submitted to the Deputy Commissioner for transmission to the local Govt. They should never be sent direct to the courts of foreign territories. Before issuing summons, the court should enquire from the postal authorities the time that it normally takes for a letter to get to the required place and must then double that time and add not less than two months to it in fixing the date of hearing for the case. But in no case less than four months be allowed for such service.

In forwarding such summons to Collector for transmission to the Commissioner, subordinate Courts must certify that service by post has been tried and failed and also state in what manner it has failed.

On receipt of summon from Subordniate Courts, it will be the duty of the Assistant Superintendant (Revenue)/Head vernacular Clerk to the Collector, before trnasmitting the same to the Commissioner, to examine the summons carefully and bring in defects, if any, to the notice of the Collector, to the court issuing the summons.

Summonses, notices and other judicial documents intended for service in foreign countries should always be accompained by translation in the language of the country in which service is to be effected where ever possible, summonses should be type written in English and must be checked and legibly signed by the Presiding Officer of the court who will be held personally responsible for their neatness and accuracy.

20. Cases in which Military Officers or Soldiers are concerned.-Unnecessary delay in the case in which Military Officers or Soldiers or members of the Military Reserves are concerned should be avoided and the attention of the Revenue Officers and Revenue Courts is drawn to Chapter 6-A and 6-B of the High Court Rules and Orders Vol.I, In disposing of revenue business such as partition cases and appointment of Lambardars in which one of the parties to the case is a Military Officer or a Soldier on leave for a limited period, this fact should be taken into consideration by the Revenue OFficer/Revenue Courts in fixing the order in which the case shall be sent down for hearing and an attempt should be made to decide such cases within the period for which the officer or soldier has obtained leave to be present at the hearing.

SECTION-E

Written Statement (See Chapter I E. Volume I, ibid)

21. Defendants to present a written statement.-It is laid down in Order VIII, Rule I of the Code of Civil Procedure, that a defendant may and if so required by the court shall, at or before the first hearing and within such time as the Court may permit, present a written statement of his defence. Ordinarly, it is advisable to require such a written statement and the Court should at the time of issuing the summons call for a written statement from the defendant on the dates fixed for his appearance. In most cases, there should be no difficulty in presenting such a written statement on the date fixed, and no adjournment should be given for the purpose except for good cause shown and in proper cases costs should be awarded to the opposite side. Laxity in granting adjournments for the purpose of filing written statements should be avoided and it should be noted that in extreme cases contumacious refusal to comply with the Court's order is liable to be dealt with under Order VIII, Rule10, Code of Civil Procedure.

22. Written statement be accompained by documents relied upon.-Rule I of Order VIII (as amended by the High Court) further requires the defendant to produce the written statement and other documents in his possession or power on which he bases his defence or claim to set off, if any. If he relies in support of his case on any other doocument, not in his possession or power, ne, must annex a list thereof to the written statement with all other particulars. With the written statement the defendant must also file his address for service during the litigation.

23. Plaintiff may also be called upon to file a written statement.-When the defendant has filed a written statement the court may call upon the plaintiff to file a written statement in reply. Under order VIII, Rule 9, the Court has powers to call upon both parties to file written statements at any time and this power should be freely used for elucidating the pleas when necessary, especially in complicated cases. In simple cases, however, examination of the parties after the defendant has filed his written statement is generally found to be sufficient.

24. Each defendant as a rule file separate written statement.-In all cases, where there are several defendants the Court should as a rule take a separate written statement from each defendant unless the defence of various defendants filling a joint written statement are identical in all respects. There may be different defences based upon a variety of circumstances and these should not be allowed to be mixed up together in a single statement merely because all the defendants deny the plaintiffs claim.

25. Set Off.-Written Statement called from the parties may be on plain paper, but when the defendant claims in his written statement any sum by way of set off under Order VIII, Rule 6, Code of Civil Procedure, the statement must be stamped in the same manner as a plaint in a suit for the recovery of that sum.

26. General and special rules as to written statements.-A "Written Statement" is included in the definition of pleading (vide Order VI, Rule 1) and should conform to the general rules of pleadings given in order VI as well as the special rules with regard to written statements in Order VIII. All admissions and denial of facts should be specific and precise and not evasive or ambiguous. When allegations of fraud etc. are set, the particulars should be fully given. When any other legal provision is relied upon not only the provisions of law relied upon should be mentioned but also the facts making it applicable should be stated, for instance when a plea of resjudicate is raised, not only the provision of law (e.g. section 11 of the Code of Civil Procedure) should be mentioned, but the particulars of previous suit which is alleged to bar the suit should be given.

SECTION-F

Settlement of issues

27. Necessity of framing correct issues.-The trial of a suit falls into two broad divisions, the first part leading upto and including the framing of issues and the second, consisting of the hearing of the evidence produced by the party on those issues and the decision thereof. Issues are material propositions of facts and law which are in controversy between the parties and the correct decision of a suit naturally depends upon the correct determination of these propositions. The utmost care and attention is, therefore, needed in ascertaining the matter in dispute between parties and in fixing the issues in precise terms. In most cases, the main difficulty of the trial is overcome when the correct issues are framed. A few hours spent by the Court at the outset in studying and elucidating the pleadings may mean a saving of several days, if not weeks in the later stages of trial. In some courts, the framing of issues is left to the pleaders of the parties concerned. This practice is illegal and must cease.

In suits brought under the Himachal Pradesh Tenancy & Land Reforms Act, 1972 considerable reliance has to be placed on the revenue records and the failure of the Court to scrutinize the entries recorded in the latest Jamabandi and the Khasra Girdwari of the harvest concerned (excerpts of which are produced with the plaints) offen leads to the framing of wrong issues or to laying the burden of proof on the wrong party. Such mistakes subsequently cause unnecessary delay in the disposal of cases and financial loss to the parties. It is, therefore, of great importance that entries recorded in the column of ownership and cultivation of the revenue records should be carefully examined before framing the issues and alloting the burden of proof.

29. Main foundations for the issues.-The main foundations for the issues is supplied by the pleadings of the parties viz, the plaint and the written statements. But owing to the ignorance of the parties and for other reasons, it is frequently found that the facts are stated neither correctly nor clearly

in the pleadings. The code gives ample powers to the courts to elucidate the pleadings by different methods prescribed in Order X, XI and XII of the Code and in most cases it is essential to do so, before framing issues.

30. Procedure in framing issues.-On the dates fixed for the settlement of issues the Court should, therefore, carefully examine the pleadings of the parties and see whether allegations of fact made by each party are either admitted or denied by the opposite party, as they ought to be. If any allegations of fact are not so admitted or denied in the pleadings of any party, either expressly or by clear implication, the Court should proceed to question the party or his pleader and record categorically his admission or denial of those allegations (Order X, Rule 1).

31. Order X, Rule 2 of the Code empowers the Court at the first or any subsequently hearing to examine any party appearing in person or present in Court or any person accompanying him, who is able to answer all material questions relating to the suit. This is a most valuable provision and if properly used results frequently in saving lot of time. To use it properly, the Court should begin by studying the pleas and recording the admissions and denials of the parties under order X, Rule 1 as stated above. The Court then be in a position to ascertain what facts need further elucidation by examination of the parties. The parties should then be examined alternatively on all such points and the process of examination continued/until all the matters in conflict and especially matters of facts are clearly brought to a focus. When there are more defendants than one, they should be examined separately so as to avoid any confusion between their respective defences.

32. In examination, the parties or their pleader, the Court should insist in a detailed and accurate statement of facts. A brief or vague oral plea, e.g. that the suit is barred by limitation or by the rule of resjudicate shuld not be received with a full statement of the material facts and the provisions of law on which the plea is based. Similarly, when fraud, collusion, custom, mis-joinder, estoppel, etc. is pleaded, the facts on which the pleas are based should be fully elucidated. Any inclination of a party or his pleader to evade straight forward answer or make objections or pleas which appear tothe Court to be frivolous can be promptly met, when necessary, by an order for a further written statement on payment of costs. The party concerned should also be warned that he will be liable to pay the costs of the opposite party on that part of the case at a rate to be detemrined by the Court if he failed to substantiate his allegation.

33. Amendment of pleadings.-The examination of the parties frequently discloses that the pleadings in the plaint or written statements are not correctly stated. In such cases, these should be ordered to be amended and the amendment initialled by the party concerned. If any mis-joinder or multi-fariousness is discovered, the Court should take action to have the defect removed.

34. "Discovery" inspection and "Admission".-The provisions of order XI and order XII of the Code with regard to "discovery" and "admission" are also very important for the purpose of ascertaining the precise cases of the parties and narrowing down the field of controversy.

These provisions are little understood and are not utilized at present as they should be. The Court should make himself conversant with such provisions and encourage the parties to make free use of them especially in long and intricate cases. It should be noted that under section 30 of the Code, the Court has power to make orders suo-moto as regards delivery of interrogatories for the purposes of discovery, inspection and admissions. If these provisions are properly used they will result in a saving of considerable cost to the parties and also curtail the duration of the trial.

35. When the pleadings have thus been exhausted and the Court has before it the plaint, pleas, written statements, admissions and denials recorded under Order X, Rule 1 examination of parties recorded under order X, Rule 2 and admissions of facts or documents made under Order XII of the Code, it will be in a position to frame correctly the issues upon the points actually in dispute between the parties. Each issue should state in interrogative form one point in dispute. Every issue should form a single question and as far as possible issues should not be put in alternative form. In other words each issue should contain a definite proposition of facts or law which one party avers and the other denies. An issue in the form, so often seen of a group of confused questions is no issue at all and is productive of nothing but confusion at the trial. A double or alternative issue generally indicates that the Court does not see clearly on which side or in what manner the true issue arises and on whom the burden of proof should lie, and an issue in general terms such as "Is the plaintiff entitled to a decree" is

meaningless. If there are more defendants than one who make separate answers to the cliam, the Court should note against each issue the defendant or defendants between whom and the plaintiff the issue arises.

36. Burden of proof.-The burden of proof as to each issue should be carefully determined and the name of the party on whom the burden lies, stated opposite to the issue.

SECTION-G

Documentary Evidence

(See Chapter 1-G, Volume 1 ibid)

37. Main provisions with regard to the production of documents.-The main provisions of the Code with regard to the production of documents by the parties are as follows:-

(a) According to Order VII, Rule 14 when the plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented and deliver the document itself or a copy thereof to be filed with the plaint. If he relies on any other document whether in his possession or power or notas evidence in support of his case, he shall enter such document in a list to be annexed to the plaint. If the documents are not so produced or entered in a list, they cannot be produced at a later stage without the leave of the Court, unless they fall within the exception given in Sub-Rule 2 of Rule 18 of Order VII.

(b) Similarly, Order VIII, Rule 1 require the defendants to produce with his written statement any documents upon which his defence or claim to set off is founded.

The defendants must also annex to the written statement a list of all documents on which he intends to rely in support of his defence or claim to set off, whether in his possession or power or not.

(c) Order XIII, Rule 1, lays down that the parties shall produce at the first hearing of the suit documentary evidence of every description in their possession or power, on which they intend to rely and which had not already been filed in Court and all documents which the Court has ordered to be produced. If the documents are not so produced at the first hearing they cannot be produced at a later stage unless good cause is shown to the satisfaction of the Court.

38. List of documents.-Whenever any documents are produced by the parties in the course of a suit, whether with the plaint or written statement, or at a later stage, they must always be accompained with a list in the form given below. In column 3, the Court should note the manner in which the document was dealt with i.e. whether it was admitted in evidence or rejected and returned to the party concerned, or impounded, as the case may be.

List of documents produced by Rule-1, Code of Civil Procedure Plaintiff under Order XIII, Defendant

In the Court of _____ at _____ District

Suit No. _____ of 198

_____ Plaintiff

_____ Versus _____

_____ Defendant

List of documents produced with the plaint (or at the first hearing) on behalf of the plaintiff (or defendant)

The list was filed by _____ this _____ day of 198_____

Sl. No.	Description & date if any of the document	What the document is intended to prove.	What became of the document		Remarks
			If brought on the record, the exhibit mark put on the document.	If rejected date of return to party & signature of party or pleader to whom the document was returned.	
1	2	3	4	5	6

Signature of party or pleader
producing the list.

Note :- Judicial Officers should instruct all petition writers practising in their Courts to prepare the list in above form for all documents intended to be produced in Court.

39. The Court should formally call upon the parties at the first hearing to produce their documents and should make a note that it has done so. Forms have been prescribed by the High Court for the examination of the parties with reference to their dcocuments and these should be invariably used. If the printed forms are not at any time available, the question prescribed therein should be asked and the questions as well as the answers noted. If these instructions are strictly carried out, there will be nojustification for the plea frequently put forward by ignorant litigants with regard to the late production of a document that they had brought the documents at the first hearing but were not called upon to produce.

40. Documents produced at a later stage.-The above provisions with regards the production of the documents at the initial stage of a suit are intended to minimise the chances of fabrication of documentary evidence during the course of the suit as well as to give the earliest possible notice to each party of the documentary evidence relied upon by the opposite party. These provisions should, therefore, be strictly observed and if any document is tendered at a later stage, the Court should consider carefully the nature of the document sought to be produced i.e. whether there is suspicion-about its genuineness or not and the reasons given for its non-production at the proper stage, before admitting it. The fact of a document being in possession of a servant or agent of a party on whose behalf it is tendered is not itself a sufficient reason for allowing the document to be produced after the time, prescribed under Order XIII Rule 1. The Court must always record its reasons for admission of the documents in such cases, if it decided to admit it. (Order XIII, rule 2.)

41. Documents with suspicious appearance or executed on unstampted or in-sufficiently stamped papers.- Should any document which has been partially erased or interlined which otherwise presents a supicious appearance be presented at any time in the course of proceedings, a note should be made of the fact and should a well founded supicions of fradulent alteration or forgery subsequently arises, the document should be impounded under order XIII, Rule 8. The Court should also consider to file a complaint to proceed against the offender for the offence. Similarly, should any document be presented which appears to have been executed on unstamped or insufficiently stamped paper action should be taken under Section 33 and 35 of the Indian Stamp Act, 1899.

42. Distinctions between mere productions admission in evidence.-Courts should be careful to distinguish between mere production of documents and their admission in evidence after being either "admitted" by opposite or proved according to law. When documents are 'produced' by the parties, they are only temporarily placed on the record subject to their being 'admitted in evidence' in due course. Only documents which are duly admitted in evidence form a part of the record while the rest must be returned to the parties producing them. (Order XIII Rule 7).

43. Exhibition of documents.-Every document 'admitted in evidence' must be endorsed and signed or initialled by the Court in the manner required by Order XIII, Rule 4 and marked with an "exhibit number". Document produced by the plaintiff may be conveniently marked as exhibit P-1, Exhibit P-2 etc. while those produced by the defendant as Exhibit D-1, D-2, D-3 etc. To ensure strict compliance with the provisions of Order

XIII, Rule 4, the importance of which has been emphasised by their lordship of the Privy Counsel on more than one occasion, e.g. Indian Law Reports 38, Allahabad 627 page 633) each Revenue Court should be supplied with a rubber stamp in the followng form:-

Suit No_____of 198
Title_____Plaintiff V/S Defendant
Produced by_____
on the_____day of_____198_____
Nature of document

Stamp duty for Rs. As P. Is (is not/correct)

Admitted as Exhibit No.

Collector

The entries in the above form should be filled in at the time when the document is admitted in evidence under the signature of the Revenue Officer. Details as to the nature of document and the stamp duty paid upon it are required to be entered in order that Courts may not neglect the duties imposed on them by Section 33 of the Indian Stamp Act of 1899. Revenue Officers should see that all Courts subordinate to them are supplied with these stamps.

44. Documents how to be dealt with at the trial.-Every document which a party intends is to use as evidence against his opponent, must be formally tendered by him in evidence in the course of proving his case. If a document has been placed on the record, it can be referred to for the purpose. If it is not on the record, it must be called from and produced by the person in whose custody it is.

No application for the production of a Court record should be entertained unless it is supported by an affidavit and the Court is satisfied that the production of the original is necessary (Order XIII, Rule 10).

45. Documents admitted by the opposite party to be endorsed and numbered.-If the opponent does not object to the document being admitted in evidence, an endorsement to that effect must be made by the revenue officer with his own hand and, if the document is not such as is forbidden by the legislature to be used as evidence, the revenue officer will admit it, cause it, or so much of it as the parties may desire, to be read and then endorse and stamp it in the manner already described. Otherwise, it must be proved in accordance with law before it is so endorsed and stamped. The endorsement and stamp will show that the document is proved. It is to be remembered that the word "proved" used in the context here means "that judicial evidence has been led about it, and does not imply proof in an absolute sense.

(b) Document objected to by the opposite party.-If, on the document, being tendered, the opposite party objects to its being admitted in evidence two questions commonly arise; first whether the document is authentic or in other words is that which the party tendering it represents it to be, and second whether supposing it to be, authentic, it is legally admissible in evidence as against the party who is sought to be effected by it. The later question, in general is a matter of argument only; but the first must as a rule be supported by such testimony as the party can adduce. It may be noted here that, under Order XII. Rule 2, of the Code of Civil Procedure either party may, by a notice through the Court invite the other party to inspect the documets specified in the notice at a specific time and place, and admit, within forty-eight hours from the time fixed for such inspection the genuineness of such document; that unless such notice be given no costs of proving the document should ordinarily be allowed; and if on the other hand, notice is given and the admission is, without sufficient cause, withheld, the party refusing to admit the document must bear the expense of proving it whatever may be the result of the suit.

46. Inconvenience caused by neglect of foregoing direction.-Owing to the neglect of the foregoing direction as regards endorsing and stamping of document it is often impossible to say what papers on the file constitute the true record; copies of extracts from public or private records or accounts, referred to in the judgement as admitted in evidence, are often found to be not proved according to law, and sometimes altogether absent.

47. Objection as to the admissibility of relevancy of the documents.-All legal objections as to the admissibility of a document should, as far as possible, be promptly disposed of and the Court should carefully note the objection raised and the decision thereon.

The court is also bound to consider, suo motu, whether any document sought to be proved is relevant and whether there is any legal objection to its admissibility. There are certain classes of documents which are wholly inadmissible in evidence for certain purpose, owing to defects such as want of registration etc. (see e.g. section 49 of the Indian Registration Act. There are others in which the defect can be cured, e.g., by payment of penalty in the case of certain unstamped or insufficiently stamped documents.

48. Mode of proof of documents.-As regards the mode of proof, the provision of the Indian Evidence Act should be carefully born in mind. The general rule is that documents should be proved by primary evidence, i.e., the document itself should be produced in original and proved. If secondary evidence is permitted, the Court should see that the conditions under which such evidence can be let in exist. If an old document is sought to be proved under section 90, the Court should satisfy itself by every reasonable means that it comes from proper custody. Under the Banker's Books Evidence Act, 1891, certified copies can be produced, instead of the original entries in the Books of Banks, in certain circumstances and a similar privilege is extended under section 26 of the Co-operative Societies Act, 1912 to entries in books of societies registered under that Act.

49. Examination of witnesses identifying documents.-There are certain points which the court should bear in mind when the signature or attestation of a document is sought to be proved.

Before a witness is allowed to identify a document, he should ordinarily be made, by proper questioning, to state the grounds of the knowledge with regard to it. For instance, in he is about to speak to the act of signature, he should first be made to explain concisely the occurrences which led to his being present when the document was signed; and if he is about to recognise a signature on the strength of his knowledge of the supposed signer's handwriting, he should first be made to state the mode in which this knowledge was acquired. This should be done by the party who seeks to prove the document. It is the duty of the Court, in the event of a witness professing ability to recognise or identify handwriting, always to take care that his capacity to do so is thus tested, unless the opposite party admits it.

50. Signature by the pen of another.-The signature of one person which purports, or which appears by the evidence to have been written by the pen of another is not proved until both the fact of the writing and authority of the writer to write the same on the document is proved. In the case of an illiterate person, it should be proved that he understood the contents of the documents.

51. Proof of registered documents.-Attention is invited to the proviso added to section 68 of the Indian Evidence Act, 1872, by Act XXXI of 1926, which lays down that it shall not be necessary to call attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provision of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed, is specifically denied.

52. Certified extracts from settlement records bearing on the case should be placed on record.-It frequently happens that, although the Wajib-ul Arz or Riwaj-i-Am or other revenue record is referred to by the parties and by the Court itself, as affording most important evidence, there is no certified extract or copy with the record of the entries relied on. Not only has there been no formal proof of such copy, but often, when there is any copy at all, it is incomplete, or so carelessly written as to be unintelligible. It becomes necessary to call for originals, thus causing damage to the records themselves, and delay and inconvenience to the parties to the suit. It is the duty of Appellate Courts to see that the Courts subordinate to them have proper extracts or copies of relevant entries in Settlement records made, verified and placed in the record.

53. Revision of Record before judgement.-(1) It is the duty of the Court before proceeding to judgement, under Order XX, Rule I of the Code of Civil Procedure finally to revise the record which is to form the basis of its judgement and to see that it contains all that has been formally admitted in evidence and nothing else.Any papers still found with the file, which have not been admitted in evidence should be returned to the parties.

(ii) Duties of appellate Courts on such matters.-Appellate Courts should examine records of the cases coming before them on appeal with a view to satisfying themselves that subordinate Court have complied with the provisions of the law on the subject and should take serious notice of the matter when it appears that any court has failed to do so.

54. Return of documents.-Documents admitted in evidence can be returned to the persons producing

them subject to the provisions of Order XIII, Rule 9, If an application is made for return of a document produced in evidence before the expiry of the period for filling an appeal or before the disposal of the appeal (if one is filed), care should be taken to require a certified copy to be placed on the record and to take an undertaking for the production of the original, if required.

SECTION H-PRODUCTION OF REVENUE RECORDS
(Chapter 9 Volume I ibid)

55. Requisitions of appellate Courts to be sent to Deputy Commissioner.-Requisitions by Commissioners or the Financial Commissioners for original revenue records will be addressed to the Deputy Commissioner, who will take measures to transmit such records to the court calling for them. Such Court will be responsible for the safe custody of the records, and if, in any case, a record is found to have been damaged in the Court of the Commissioner or Financial Commissioner, the Deputy Commissioner will report the fact to the court concerned and to the Financial Commissioner within twenty four hours of its being returned.

56. Production of records in appellate Courts.-Original Revenue records will be produced in Courts of first instance by the Kanungo, or Patwari Moharrir in accordance with the instructions contained in Chapter 9, Volume I, of the High Court Rules and Orders.

Briefly, the procedure to be followed in such cases is under:-

(i) The Court in which the suit is pending issues a summons to the Kanungo, or Patwari, Moharrir who after preparing his excerpt goes to the court on the date fixed, taking with him the revenue records from which the excerpts has been compiled. He is then placed in the witness box, Counsels thus have the opportunity of comparing the excerpts with the original, and of examining him on any point they choose.

(ii) Parties who desire to summon the Kanungo or Patwari Moharrir as a witness with his records must be required to state succinctly and in writing the point on which information is required and the application must be sent along with the summons to the Kanungo or Patwari Moharrir. The Court must see that the application is in a readily intelligible form before they issue it, and the practice where it occurs, of sending for the Kanungo or Patwari Moharrir to tell what is required must be discontinued though Courts may also issue written instructions or supplement or correct the applications.

(iii) Courts must be on their guard against using the Kanungo or Patwari Moharrir for purposes for which he is not intended, e.g., he is not to be required to give opinions, he is not to be used as local commissioner, or to be asked to provide instances in support of or to refute an alleged custom. Courts must also see that if, Special Kanungo or Patwari Moharrir is required, he is summoned for the first hearing after issues are framed, and not, as some times happens at present, at the end of the case. They must also never fail to ask him on oath whether the excerpts is in accordance with the revenue records.

(v) The excerpts prepared by the Kanungo is not evidence unless proved and cannot be used as such. He cannot be allowed to go to outlying Courts because he cannot take revenue record with him and without them, there would be no check over his excerpts. It is, however, very desirable that outlying Courts should be able to utilize the Kanungo, and as the best practicable method of securing that object, Presiding Officers of outlying Courts may issue either interrogatories for the Kanungo or an open commission to a senior official at headquarters ordinarily and, unless there is some special reason to the contrary, Revenue Assistant or an Officer not below the rank of an Assistant Collector I Grade. This official, who will have other duties and is described in the instructions appended as the officer incharge, will then comply with the directions given, summon the Kanungo record his statement on oath and make the return to the Court. In this connection, attention is drawn to Order XXVI Rule 18(1) of the Code of Civil Procedure. This issue of a commission should not become a source of unnecessary delay, and the officer-in-charge should in the absence of very strong reasons proceed in the absence of parties if, they do not appear. Parties should be informed that their appearance at headquarters is optional if interrogatories are issued.

57. Duty of Court in such matters.-In every case, it is the duty of the Court to insist;
(a) On the plaintiff filing with the plaint the statement referred to in paragraph 14 supra.
(b) On each party filing certified copies or extracts of all relevant entries on which they rely.

58. Duties of appellate courts in calling for revenue record.-Appellate Courts should refrain from calling for an original records unless it it absolutely necessary for a determination of the case and if the necessity arises from the neglect of a court of first instance to comply with the instruction

here issued, such court should be severely dealt with by the appellate court in the exercise of the functions of administrative control vested in it.

59. Inconveniences resulting from.-Where Revenue Courts neglected to make the parties supply proper copies or extracts of relevant entries inconvenience is caused (1) to the Revenue authorities in being required to produce original records unnecessarily; and (2) to appellate court from the fact that all evidence necessary for a proper decision on the case is not actually on the record and that references are made to revenge records which must be called for before the appeal can be decided. The revenue records themselves moreover often sustain injury in being sent from Court to Court, while the work of the Revenue Department may be delayed by their records being retained for long periods by Revenue Courts. At the same time, the Revenue authorities of districts should clearly understand that one of the chief objects of the more important standing records of rights is to supply reliable evidence for the decision of land suits by Revenue Courts; that the requirements of such courts must be complied with; and that such records must be freely available to courts engaged in investigating and deciding questions affecting land or interests in land.

60. Deputy Commissioners to bring to the notice of the Financial Commissioner the case of any officer who systematically fails to comply with the orders on the subject.-The Financial Commissioner will be prepared to take proper notice of the action of any Revenue Court which disregards the directions as to the manner in which original revenue records are to be referred to and Deputy Commissioners as Collectors, should bring to the notice of the Financial Commissioner through the usual channel, the case of any officer who fails to comply with the orders on the subject.

SECTION-J ATTENDANCE OF PATWARIS IN REVENUE COURT
(See Chapter 5-B, Volume I ibid)

61. Patwaris not to be unnecessarily summoned.-Officers presiding over Revenue Courts should be careful to see that Patwaris are not summoned unnecessarily to give merely formal evidence regarding entries in the village record and annual papers, information as to which could be as well obtained from an inspection of the records in the district office . It should be remembered that Patwaris have very important duties to perform, and that the discharge of these duties should not be allowed to be hindered by making them to attend courts except when examination as witness is really necessary. It is of great importance that they should not be called away at times presumed for harvest inspections in view of these consideration.

62. Patwaris not to be summoned during girdawari time.-Officers presiding over Revenue Courts should not summon Patwari (except in case of great urgency) during the times when the prncipal crop girdwaris are going on, Patwari should be summoned only when their presence is absolutely necessary in the opinion of the courts and the evidence of the Kanungo is insufficent. The question whether urgency exists will be decided by the Revenue Court.

63. Patwaris to be summoned through the Tehsildar, courts to furnish Patwaris with certificates showing attendance.-When a Revenue Court requires the attendance of a Patwari at a time other than that above referred to, such court should forward the summons to the Tehsildar as principle revenue authority of the tehsil to which the Patwari belongs. The Tehsildar should serve the summons with as little delay as possible. A certificate should be furnished by the Court to every Patwari, who attends in obedience to a summons, showing the date of his appearance before the Court and date on which he was relieved.

64. During Settlement Patwaris to be examined by Commission.-When a Settlement is in progress, it is especially undesirable that Patwaris should be summoned to attend in the Revenue Courts when they are required to give evidence which cannot be contained in the manner indicated in paragraph I, this should usually be obtained by the issue of a Commission under order XXVI, Rule 4(1) (c) of the Code of Civil Procedure. Such Commissions ordinarily be addressed to the Settlement Tehsildar of the tehsil, but any wish expressed on this point by the Settlement Officer should be responded to, and the period to be ordinarily allowed for the execution of a commission should be arranged in consultation with him.

The Revenue Court issuing the commission should always note thereon the date to which the case has been adjourned, and the officer to whom the commission is sent should then be careful either to return the commission by that date, or to inform the Court, before such date, of the circumstances which will prevent the return of the commission within the time fixed, and what further time will be required.

SECTION K-COMMISSIONS AND LETTERS OF REQUEST
(See Chapter 10, Volume I ibid)

65. The general law as to commissions and letter of request is contained in Sections 75 to 78 and Order XXVI of the Code of Civil Procedure and the forms to be used are No. 7 or 8 of Appendix H of Schedule I of the said Code.

66. Expenses of Commissioners.-Applications for issue of commission should be made as early as possible. Notice of any such application should be given to the other side. If the application is granted, the Court should fix a sum for the expenses of the Commission which should, ordinarily, provide a reasonable fee to the Commissioner. If, at any time the sum so fixed is found to be insufficent, it may, for special reasons, be increased by the Court, the full sum fixed should be paid to the Commissioner, but where the commission is not executed at all or not fully or satisfactorily executed or the work done turns out to be less than was expected, it will be in the discretion of the Court to direct a less amount to be paid or to make any other order in the matter which it thinks just and proper in the circumstances.

67. Issue of Commission to Revenue Officials.-The following directions relate to issue to Revenue Officials:-

(i) No Revenue Court, of a grade lower than the court of the Collector, shall issue a Commission to a Revenue official to make a local investigation or to examine accounts or to make a partition of immovable property, not paying revenue to Government, except with the previously obtained sanction of the Deputy Commissioner.

(ii) When a Commission is issued under the preceding rule to any Revenue official below the rank of Tehsildar, moderate fees may be allowed by the Court issuing the Commission if such Court is satisfied with the manner in which the Commission has been executed. and considers the services rendered sufficiently onerous to deserve remuneration.

Provided that in the case of a Commission issued by a Court subordinate to that of the Collector no fees shall be allowed except with the approval of the Deputy Commissioner, and of such amount as he considers appropriate.

68. Issue of Commissions for local investigation etc.-Wherever it becomes necessary in the course of a suit to appoint a Commissioner to make local enquiry or to examine accounts (see Order XXVI), the Revenue Officer who makes the Order for such appointment should write the order with his own hand, and specify therein.

(a) the precise matter of the enquiry,

(b) the reason why the evidence bearing on that could not reasonably have been taken in the usual way at the trial in Court.

69. Duties of Commissioners so appointed.-The Commissioner's duties should be strictly limited by the order to such matters as taking accounts and dispositions of witnesses, reporting to the Court, either by means of a map or plan, or in writing or both the existing physical features of the subject inspected, its boundaries and situation relative to other subjects, and so on as the case may be The functions of the Commissioners are thus limited to procuring evidence and information for purpose of the trial and this evidence, including the maps, reports and record of evidence made by the Commissioner must be adduced in open Court before the parties, and placed on record like all other evidence The Court has no power to depute to the Commissioners the final determination of any issue between the parties.

70. Selection of Commissioners.-Great care should be exercised by the Courts in selecting persons for appointment as Commissioners for the purpose of making local inquiries and Deputy Commissioner should exercise strict supervision over the action of subordinate Courts in this respect. The habitual employment of the same person should not be encouraged. The issue of Commissions to petition writers and persons who hang about the Court should not be permitted.

71. **As above.**- Court Readers or other ministerial officers should never be appointed to make local investigation, such as finding out the market value of the property, etc. Such Commissions should be issued wherever possible to retired Revenue Officers or professional men such as Engineers, Contractors, Auctioneers and Accountants.

Commissioners to examine accounts should be selected from men competent in the particular form of accounts. It is absolutely futile to issue Commission in a particular form of account to a person who is unable even to read the script in which those accounts are written.

72. Letters of request to a foreign country.-Letters of a request for execution in a foreign country should invariably be sent though the State Government. They should be accompanied by a complete list of questions to be put to the witness. Translations of the letter of Request and of the interrogatories and cross-interogator and of any other document about which the witness is to be examined, should in all cases be furnished by the party at whose instance the letter of Request is issued in the language of the Country in which the Commission is to be executed and should be transmitted with the Letter of Request. In cases where both parties are to be represented at the examination, the Letter of Request might further ask that the agents of the parties be permitted to ask such further questions in examination and cross-examination as they may be advised.

73. As the foreign authorities responsible for executing Letters of Request, etc., are entitled to the payment of any out-of-pocket expenses actually incurred in obtaining the evidence for Indian Courts, the Courts should, therefore, satisfy themselves before sending any document for execution that in case of such a demand being made the money will be forthcoming.

SECTION L-(HEARING OF SUITS, ADJOURNMENTS, EXAMINATION OF WITNESSES, ETC.)
(See Chapter I-H, Vol. I ibid)

74. Notice of lay of trial and adjournment.-Notice of the day of trial reasonably sufficient to enable the parties to attend with their witnesses, should be given beforehand. It is the business of the parties respectively to take all reasonable steps to have all their witnesses present in Courts on the day fixed. The Court should on application and deposit of process-fees within proper time, issue the requisite summonses as soon as possible so as to secure their attendance on the day fixed for hearing. The day fixed for the trial should not be changed except for sufficient cause, and in dealing with applications for adjournment the interests of both parties ought to be considered. When the day of trial is changed otherwise than with the consent of all parties, reasonable notice of the change should be given as in the first instance. The Court should in every instance, at the time of granting an adjournment, record its reasons for so doing and make an order as to the cost thereof.

Revenue Judicial cases especially in which parties have engaged counsel should not as far as possible, be taken up on tour without giving notice sufficiently in advance to the parties of the place of hearing. The record should show that due notice of date and place has been given and served upon the parties.

75. Adjournments on payment of costs.-It has been observed that a number of Courts grant an adjournment merely because the party at fault is prepared to pay the cost of adjournment. Subordinate Courts should bear in mind that the offer of payment of the costs of adjournment is not in itself a sufficient ground for adjournment. The provisions of Order XVII, Rule 3, also deserves notice in this connection. If a party to a suit whom time has been granted for a specific purpose as contemplated by order XVII, Rule 3, Civil Procedure Code, fails to perform the act or acts for which time was granted with any good cause, the rules gives the court the discretion to proceed to decide the suit 'forthwith', i.e,, without granting any adjournment. In such cases a further adjournment should not ordinarily be granted, merely because offer is made for payment of costs. In some courts, it is apparently assumed that if such an adjournment is not granted the case will be remanded by an Appellate Court. There are however, no valid grounds for this assumption. If the record makes it clear that a further adjournment has been refused because of negligence of the party concerned, such refusal would not in itself justify an Appellate Court in remanding the case. An adjournment granted otherwise than on full and sufficient grounds is a favour and in suits favour can be shown to one party only at the expense of the other.

No hard and fast rule can, however, be laid down. Each case must be judged on its own merits.

76. Witnesses should be examined on the day on which they attend.-Revenue Courts should endeavour to hear the evidence on the date fixed, much expense and inconvenience being caused by postponments ordered on insufficient grounds, before the witnesses in attendance have been heard. Under Order XVII, Rule I, of the Code when the hearing of the evidence has once begun, the hearing of the suit should be continued from day to day until all the witnesses in attendance have been examined unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the presiding officer with his own hand.

77. Court to note when each party has closed his case.-It is frequently urged in appeals that a party has had a witness in attendance whom the lower court has omitted to examine. It is often impossible to ascertain from the record whether this is the case and it would be equally impossible to ascertain it by a remand. It is, therefore, directed that, as regard both plaintiff and defendant, when the examination of the last witness produced in Court by either party is closed such party shall be distinctly asked if he has more witnesses to produce; that the question, and reply shall be noted on the record, and that if more witnesses are named, the Court shall either examine them or record its reasons for not doing so. If either party stated that he desires additional witnesses to be summoned, the Court should record the fact of the application and pass an order thereupon.

78. Examination of witnesses how to be conducted.-In the examination of witnesses, questions ought to be put in a leading form as to induce a witness, other than an expert, to state a conclusion of his reasoning an impression of fact or a matter of belief in the place of describing what he actually observed. The question should be simple, should be put one by one, and should be framed so as to elicit from the witness, as bearly as may be in chronological order, all the material facts to which he can speak of his own personal knowledge. A general request to a witness to tell what he knows or to state that fact of the case should as a rule not be allowed because it gives an opening for a prepared story. Where the party calling witnesses is not aided by a counsel, and is unable himself to examine properly his witnesses he may be asked to suggest questions and the examination may be conducted by the Court.

79. Cross examination.-When the examination-in chief is concluded, the opposite side should be allowed to cross-examine the witness, or if unable to do so, to suggest questions to be put by the court. In cross-examination leading questions are permissible.

Re-examination.-Then should fellow, if necessay for the purpose of enabling the witness to explain answers which he may have imperfectly given on cross-examination and to aid such further facts as may be admissible for the purpose.

80. Question by the court.-When the examination, cross-examination and re-examination are conducted by the parties or by their pleaders, the presiding officer, ought not as a general rule, to interfere except when necessary, e.g., for the purpose of causing questions to be put in a clear and proper shape, or checking improper questions, and of making a witness give precise answers, at the end, however, if these have been reasonably well conducted, he ought to know fairly well the exact position of the witness with regard to the material facts of the case, and he should then put any questions to the witness that he thinks necessary. The examination, cross-examination, re-examination and examination by the court (if any) should be indicated by marginal notes on the record.

SECTION-M-JUDGEMENT AND DECREES

81. General instructions as to the judgement.-When the trial in Court is over the Revenue Officer should proceed at once, or as soon as possible to the consideration of his judgement. It is entirely necessary that he should do so while the demeanour of the witnesses and their individual characteristics are fresh in his memory. He should bear in mind that his first duty is to arrive at a conscientious conclusion as to the true state of those facts of the case about which the parties are not agreed. The oral and documentary evidence adduced upon each issue should be carefully reviewed and considered in the judgement. The judgement should contain a concise statement of the pleadings the points for determination, decision thereon, and the reasons for such decision. The judgement should be dated and signed in open Court at the time of pronouncing it, and should be pronounced in open Court at a time fixed for the purpose. When a judgement is not written by the Presiding Officer with his hand, every page of such judgement should be signed by him. It should contain the direction of the Court as to costs.

82. Evidence and final order to be recorded legibly.-Judgements (when not type-written) should always be written in a clear and legible manner. If they are not so written, such a copy should be made and placed with the record. When a Revenue Officer has occasion to decide any case in accordance with any rules or order of Government or of the Financial Commissioner, or any section of any Act of the Legislature, he should make a reference in his order to such rules, orders or Acts, and in recording his Order he should as far as possible use the actual wording of such rules, order or Acts.

83. Judgements must be written and announced within 14 days from the date on which arguments are heard.-Instances have occurred of judgement not being written until a considerable time after final arguments in a case have been heard. This practice is open to grave objection, and in any case, in which judgement

is not written and pronounced within 14 days from the date on which arguments were heard, a written explanation of the delay must be furnished by the subordinate Court concerned to the Deputy Commissioner. This is not meant to encourage judgements; on the contrary, judgements should ordinarily be written as soon as arguments have been heard.

It is only in the exceptional case where the Court has to consider many rulings and cannot conveniently give judgement at once, that there is any justification for judgement being reserved.

84. Decree.-The decree should be framed by the Revenue Officer with the most careful attention to its object. It must agree with the judgement, and not only complete in itself but also precise and definite in its terms. It should specify clearly and distinctly the nature and extent of the relief granted, and what eachparty effected by it, is ordered to do or to forbear from doing. Every declaration of right made by it must be concise, yet accurate and every injuction, simple and plain.

85. Standard forms of decree prescribed in certain cases.-Standard forms of decree for use in the following classes of Revenue Court cases have been prescribed by the Financial Commissioner:-

I. Claims for right of occupancy.
II. Claims to contest notice of ejectment.
III. Claims for enhancement of rent.

OCCUPANCY

86. Powers of the Court to be disclosed.-Every judicial officer hearing or deciding a suit, proceeding or appeal, is responsible that the record, the final order of judgement and the decree, shall disclose the powers which such officer exercised in hearing or deciding such suits, proceeding or appeal.

87. Preparation of decree.-The following directions relate to the preparation of decree:-

(i) In decrees for possession of agricultural land, it should be stated whether possession is to be given at once or after the removal of any crop that may be standing on the land at the time when the decree is executed or on or after any specified date.

(ii) In Appellate Courts the language used in filing in the decretal order, shall conform to the action recognised by the law, and shall direct that the decree of the lower court be either "affirmed" "varied" set "aside" or "revised". In each case, in which a decree is affirmed, the terms thereof shall be recited, so as to make the appellate decretal order complete in itself. In varying a decree, the relief granted in lieu of that originally granted shall be fully and accurately set out. Where a decree is reversed on appeal, the consequential relief granted to the successful party similarly be stated. Every decretal order shall be so worded as to be capable of execution without reference to any other document and so as to obviate misunderstanding on the part of the persons concerned.

(iii) When any parties are added or substituted in the course of the suit, care should be taken to see that their names are properly shown in the decree-sheet.

88. Decree based on compromise.-When a decree is to be passed on the basis of a compromise, the court should order the terms of compromise to be recorded in accordance with the provisions of Order XXIII Rule 3, Civil Procedure Code, and then pass a decree in accordance with the terms. When, however, the compromise goes beyond the subject matter of the suit, a decree can be passed only in so far as it related to the suit. As regards the proper form of decree in the latter class of cases, the direction of their Lordships of the Privy Counsel in 'Hemant Kumari Devi versus Midapur Zamindari Company' (46 IA 240 and 244 and ILR 18 Cal 485) should be followed.

When any of the parties to the case are minors care should be taken to see whether the compromise is to their benefit and record a finding to that effect if the compromise is sanctioned and made the basis of a decree.

SECTION N-APPEALS
(See Chapter 14, Volume I ibid)

89. General.-The instruction contained in Chapter 14-B, and 14-D of Volume I of High Court Rules and orders should be observed mutatis mutandis by all Revenue Appellate Courts.

The provisions of Order XLI, Rule II, of the Code of Civil Procedure, which enables the Appellate Court to dispose of a registered appeal by confirming the decision of the lower Court on a fixed date

in presence of the appellant, without sending for the records and without summoning the respondent is a very important one, and Appellate Courts should be careful to see that its object is not defeated and respondents put to unnecessary trouble and expense by the indiscriminate issue of notice to the respondents in all cases. It should be observed, that when a decision is confirmed under Order XLI, Rule II of the code the confirmation must be notified to the lower court. Such confirmation within the definition of 'Decree' in section 2 of the Code, and being as such, appealable, a formel decree should be framed in every case disposed of under the provisions of Order XIII, Rule II.

90. Copy of decree to be filed.-Appellants should always file, with the petition of appeal and the copy of the judgement copy appealed against, a copy of the decree appealed against.

91. Vernacular copies of English order not Required.-It is not necessary to file copies of orders in Vernacular (Hindi) as well as in English. Where English order is the original it will suffice to file a copy of the order in English, on duly stamped paper, without its counterpart in vernacular. (Hindi).

92. Terms "Appellant" and "Respondent" not to be used.-As confusion frequently arises from the use of the words "Appellant" and "Respondent", in two successive Appellate courts, especially when the parties appealing belong to different side Appellate Courts should not use these terms, but always "Plaintiff" and "Defendant" throughout their proceedings. If the latter terms are used no mistake can possibly arise.

93. Appellate files transmitted in vernacular.-In case of appeal to the Financial Commissioner files should not be transmitted under English docket or covering letter; nor will they be so returned except in case of importance, or general interest.

94. The following rules are made by the Financial Commissioner in regard to the transmission of Appellate Courts orders to lower Courts:-

(i) The Commissioner will send copies of all his Judgements on appeal to the Collector, who will transmit the copies to the original court for information and return direct to the Record-Keeper, to whom the original records will be sent at once.

(ii) The Collector will similarly send copies of all his judgements on appeal to the original Courts for information and return direct to the Record-Keeper, to whom the original records will be sent at once.

SECTION O-ABATEMENT OF PROCEEDINGS

95. Death, marriage or insolvency of parties.-(1) In Revenue Officer's cases, death of one of the parties to a revenue proceeding, or in a proceeding to which a female is a party, her marriage does not cause the proceedings to abate. And the Revenue Officer before whom the proceeding is held shall have power to make the successor in interest of the deceased person or of the married female a part thereto.

(b) In Revenue Court cases, the procedure to be followed in the event of death, marriage or insolvency of parties is laid down in Order XXII, Civil Procedure Code. Proper steps must be taken to bring the legal representatives of the persons concerned (the Receiver in the case of a person who is declared an insolvent) on the record within the period of limitation. Otherwise the suit is liable to abate, wholly or partly in certain cases. The abatement take place automatically and a formal order of abatement, though not essential, should be recorded. The abatement can be set-aside on an application by the aggrieved party, if sufficient cause is shown (Order XXII, Rule, 9).

There is no abatement if a party dies after the conclusion of the case but before judgement. In such cases judgement may be pronounced and will take effect as though it had been pronounced while the party was alive.

In certain cases, the abatement of a suit against as one defendant results in the dismissal of the whole suit. Reference may be made in this connection to I.L.R., 10 Lahore 7 (F.B.).

SECTION-P-MISCELLANEOUS

96. Rent suits.-Para 804 of Land Administration Manual and Section 51(1) of the H.P. Tenancy and Land Reforms Act, 1972 should be strictly observed and in case no application for grant of compensation is put, in a note should be made by the Court that the tenant was so directed.

In suits for enhancement of rent the Revenue Court should invariably state in tabular form in its judgement the area involved and the present land revenue, and cesses, together with the rent or malikana

as the case may be. If there has been a recent re-assessment of land revenue the previous land revenue cesses and malikana (if any) should be stated also.

97. Tenure to be accurately described.-The attention of the Revenue Officers is invited to the necessity of describing accurately the tenures dealt with in their administrative and judicial proceedings. It is very common for an undivided share in a holding to be described as if it were a stated area of land held separately. Care should be taken to eliminate misdescriptions of this nature from revenue proceedings. If a person holds an undivided share in land his interest should always be so described; and the use of words which imply that he holds separately a definite area should be carefully avoided. Plaints, applications and reports which contain errors of this nature should be returned for correction.

98. Surveys and boundaries.-When time has been granted by the Civil Court to party in suit for the purpose of making an application under Section 107 of the H.P. Land Revenue Act, 1953 and such application is made, the Revenue Officer should endeavour to dispose of the application as promptly as the circumstances of the case will allow.

99. References to High Court Under Section 81.-Direct references to the High Court of the kind provided for in section 81 of the H.P. Tenancy and Land Reforms Act, 1972 be made by Commissioner and Collectors, and the rules published in Chapter 15 of the Rules and Orders of the High Court Volume-I, should so far as they are applicable, be observed by Commissioners and Collectors in making these references and all Revenue Courts should similarly observe these rules in making these references under Section 80 of the Act ibid.

100. Court hours holidays and cause lists.-The attention of Revenue Officers is invited to the instructions laid down in Chapter I-A of the High Court Rules and Orders, Volume I, in regard to the means to be adopted of informing litigants of the hours of business of Court holidays and cause lists, with the object of reducing the number of dismissals of cases in default of appearance of plaintiffs or appellants. Revenue Courts and Officers should conform to the practice thus laid down for Civil Courts.

101. Petition Paper.-With regard to the paper employed in formal petitions to Revenue Courts and Officers, the practice of Civil Courts should be followed. The paper required should be obtained by Collectors from the Deputy Controller, H.P. Printing and Stationery Shimla quarterly on regular indents. The paper is to be sold to the public at ten paise paper sheet, and the rules for the supply, custody and sale of non-postal stamps given in the Punjab Stamp Manual apply mutatis mutandis to the water marked petition paper.

102. Preparation of Records, size and quality of paper.-Instructions for the preparation of Revenue Judicial Records and the size and quality of paper to be used in all Revenue Courts and Offices are reproduced below:-

1. Petition paper to be used for all copies, petitions and applications.-The instructions conveyed in Chapter 16 Part-A, Rule-1 of the Rules and Orders of the High Court, Volume IV, regarding the use of the standard pattern water-marked plain paper supplied by the Dy. Controller of Printing and Stationery H.P. should be strictly followed in Revenue Courts and Offices. All copies of Revenue documents and all applications and petitions should be written on this paper, and copyists and petition writers should be required to comply with this direction. The paper is to be used and kept flat at its full size (13½"x8½").

2. Official foolscape paper.-The official full scape half-sheet, which is very nearly the same size as the petition paper alluded to in the last paragraph should be used for all English portions of the record; and should also be kept flat.

3. Unbleached double fool-scape paper of 24 lbs. should be used for the autograph records of officers who do not write their record in English. For ordinary purposes, paper of 20 lbs. should be used.

4. Instructions to prevent waste.-In order to prevent waste and injury and improve the vernacular (Hindi) records, attention should be paid to the following matters:-

(a) In all cases depositions of witnesses should be written continuously instead of on separate sheet, a clear space of 3 and 4 inches being left between the end of one and the begining of the next deposition (if on the same sheet).

(b) The practice of writing orders and other matters across the top and along the sides of a page should not be avoided.

(c) In all vernacular proceedings an eighth margin should be left on each side of the paper, so that writing should not be obliterated by fraying at the edges.

(d) Files in use in Revenue Offices should be placed between stiff wooden or cardboard protectors, of the size of the standard file when tied together, so that the strain of the cloth or other covering or of the strin or tape does not fall on the papers within. It is not intended that the file of each case should be placed between stiff covers, all that is necessary is to tic each file with broad tape or nawar instead of strings, but each bundle of files should until packed away in the Record Room, be kept between stiff covers to prevent fraying, folding, etc.

(e) English records and papers should be placed at their full size in envelopes of the size of the file.

(f) Exhibits should be folded to as nearly as possible the same size and placed in envelopes of the size of the file.

103. All Revenue Courts are required to enter on a separate sheet or sheets in the annexed form, a short abstract of every order passed in the course of the proceedings in a case. The entries are to be made consecutively according to the dates of the orders, and the sheet is to be the first paper entered in the index of papers. The entries so made are to be in addition to the usual record of the orders in their proper places in the file, and are intended to facilitate the tracing by appellate Courts of the course of procedure in a case.

FORM OF CHRONOLOGICAL ABSTRACT OF ORDERS

In the court of at
Case No. of

Against

Date of order	Abstract of order

Generally, this abstract is not necessary in Revenue Officers and miscellaneous cases, but partition, boundary and muafi cases are exception to this general rule.