

## CHAPTER 5

### Witnesses—Civil Courts

#### Part A

#### ATTENDANCE OF WITNESSES (GENERAL)

**1. Compulsory Attendance**—A Court can compel the personal attendance of any witness residing within the local limits of its jurisdiction, or without such limits if the person to be summoned is at a place, not more than fifty miles from the Court house or not more than two hundred miles if there is a railway communication or public conveyance for 5/6th of distance, provided that he is not exempted under any of the provisions of the Code of Civil Procedure, 1908. A proviso has been added to Order XVI, Rule 19, Civil Procedure Code in Punjab with the result that a Court situate in the State of Punjab may require the personal attendance of any witness residing in the State of Punjab or the Union Territory of Delhi. (High Court Notification No. 60—General IX Y. 8, dated the 4th March, 1955).

**2. Attendance of pardanashin ladies**—Under Section 132 of the Code of Civil Procedure, 1908, women, who according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal attendance in Court.

**3. Other exemptions**—The Court has a discretion to exempt from attendance as witness any person who in the opinion of the Court, is from sickness or infirmity unable so to attend (Order XXVI Rule 1, C.P.C.), or being a Civil or Military Officer of the Government, cannot attend without detriment to the Public Service (Order XXVI Rule 4, C.P.C.). As regards the attendance of Patwaries in Civil Courts Part B of this Chapter should be referred to.

**4. Evidence by Commission**—The Court may issue a Commission for the examination of a witness, whose attendance cannot be compelled according to law, or cannot be secured for any other sufficient reason in the circumstances specified in Order XXVI of the Civil Procedure Code.

**5. Service of processes**—The general procedure for issue of processes to witnesses is the same as that in respect of defendants. For detailed instructions on the subject.

**6. Non-attendance, proof of service**—Where a witness summoned to attend to give evidence or produce a document, fails to attend or to produce the document, without lawful excuse, the Court shall, on return of the service of the summons, examine the serving officer on oath, if his

certificate has not been verified by affidavit and it may do so even when the certificate has already been so verified, to satisfy itself that the summons was duly served.

**7. Proclamation, attachment and arrest in case of non-attendance**—The Court, on being satisfied that the person summoned has intentionally failed to attend or to produce the document in compliance with such summons without any lawful excuse and that his evidence or the document is material, may, issue a proclamation requiring him to attend to give evidence or produce the document at a time and place to be named therein. Or, the Court, may, in lieu thereof, or in addition to it, issue a warrant, with or without bail, for the arrest of such person and may make also an order for the attachment of his property to such an amount as it deems fit to cover the costs of the attachment and any fine which may be imposed for his failure to attend, not exceeding Rs. 500. (*vide* Order XVI, Rule 10 Code of Civil Procedure, 1908).

**8. Fine**—Whenever such person appears and satisfies the Court that he did not, without lawful excuse, fail to comply with the summons, the Court release the attachment or cancel the warrant of arrest, as the case may be. Where such person does not appear, or appears but fails to satisfy the Court that there was a lawful excuse for his absence, the Court may impose a fine, not exceeding Rs. 500 to be recovered by the attachment (if not already effected) and sale of his property (Order XVI, Rule 12, Code of Civil Procedure, 1908).

**9. Party as witness**—It should be noted that, where a party to a suit is required to give evidence or produce a document, the provisions as to witnesses apply to him, so far as they are applicable.

**10. Warrants against Government servants for non-attendance**—The Judges wish to impress upon the Subordinate Courts the desirability of caution in issuing warrants of arrest against a person in Public Service, unless and until the Court is fully satisfied that he is wilfully omitting to obey the summons. In most cases it will produce the desired effect if a notice is issued to the person at fault to show cause why he should not be proceeded against under the penal provisions of Order XVI and the attention of the superior officer is drawn to the conduct of his subordinate. Of course, in cases of pronounced refractoriness, the Courts can set the law in motion in any one or all of the forms, available to them.

**11. Non-attendance, duty of parties and Courts**—In cases where proper service of summons has been effected but the witness fail to attend, either through negligence or in collusion with the party on whose behalf they have been cited, Civil Courts should use their powers to take penal action freely, and if parties are unwilling to take coercive action against their own witnesses, the issue of any further summons through the Court for their attendance should be refused. The Court should also, where necessary, take action themselves against defaulting witnesses. The provisions of Order XVI, Rule 16, should be studied and used, and if parties refuse to make an application under Order XVI, Rule 16(2), the Court may refuse to grant any further adjournment.

**12. Prompt disposal of witnesses**—When witnesses are in attendance, every effort should be made to record their evidence promptly and they should not be required, as far as possible, to attend again at any adjourned hearing. In the case of businessmen and Government servants, the Court should, if possible, give them some indication as to the hour when their evidence is likely

to be recorded; so as to avoid their being detained on the Court premises longer than may be necessary.

**13. (a) *Summoning Government servants to prove birth or death entries***—In any case where a party to a suit wishes to prove the fact of a birth or death by reference to one of the registers of vital statistics he should be directed in the first instance to file a certified copy of the entry on which he relies. Civil Courts should refrain from summoning the clerks of Civil Surgeons' officer with the registers except where their presence is deemed absolutely necessary.

(b) *Municipal records*—Similarly, the Court should not without sufficient reasons summon the original records of Municipal Committees and Property Tax authorities where the purpose could be served by the production of certified copies of these public documents. Whenever it appears necessary to summon the original records as for instance where signatures of a person on an application or plan etc. have to be proved, the Courts should as a rule, return the original record to the official producing the same soon after the witnesses relating to the document and present on that hearing have been examined. The original record should not be retained in Court except under exceptional circumstances, such as, where the authority concerned has declined to give the party a duly certified copy or where the original document appears to have been tampered with.

(c) *Agreements with rulers of former Indian States*—In civil suits involving rights and property of Rulers of former Indian States, it often becomes necessary to prove the agreements respecting their accession to the Indian Union or their merger and integration into new political units. Such agreements with the Union Government are the acts of the sovereign authority and are therefore public documents within clause 1(1) of Section 74 of the Indian Evidence Act. These are also printed in "White Paper on Indian States," a Central Government publication and are therefore, admissible, under Section 78(1) of the Act. These agreements can also be proved by the production of certified copies under Section 77 of the Act. A summons to the Government of India should therefore be avoided where all that is necessary is to prove the agreement. Apart from the trouble and expense involved to an officer of the Ministry concerned there is risk of mishap to or loss of these valuable documents. The Courts should not therefore summon the original agreements except in very special circumstances as, for example, where the direct testimony of an officer of the Ministry is necessary to elucidate any material point arising in the case.

## Part B ATTENDANCE OF PATWARIS IN CIVIL COURTS

**1. Patwari should not be summoned unless absolutely necessary**—Officers presiding over Civil Courts should be careful to see that Patwaris are not summoned unnecessarily to give merely formal evidence regarding entries in the village records and annual papers, information as to which could be as well obtained from an inspection of the records in the District Office or from an examination of the District Qanungo or Record- Keeper. It should be remembered that Patwaris have very important duties to perform and that the discharge of these duties should not be hindered by making them attend Court except when their examination as witnesses is really necessary. In view of these considerations, the following instructions are issued with the concurrence of the Financial Commissioners. The Court should see that every application for

summoning a Patwari as a witness contains a note stating why a copy of the Revenue Record or an excerpt prepared by a Qanungo would not be sufficient and why the attendance of the Patwari is essential.

**2. Summoning Patwari during girdwari season**—Officers presiding over Civil Courts should not summons Patwaris (except in cases of great urgency) during the times when the principal crop girdawaris are going on, viz., ordinarily the months of March, April and October (Financial Commissioner's Standing Order No. 22).

**3. Channel of service and Court certificate**—When a Civil Court requires the attendance of a Patwari at a time other than that above referred to such a Court should forward the summons to the Tahsildar of the Tahsil to which the Patwari belongs. The Tahsildars 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 the date on which he was permitted to leave.

**4. Summoning during settlement operations**—When a settlement is in progress, it is especially undesirable that Patwaries should be summoned to attend in the Civil Courts, and, when they are required to give evidence which cannot be obtained in the manner indicated in paragraph 1 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 should ordinarily be addressed to the Settlement Superintendent of the Tahsil; 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 Civil 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.

## Part C REMUNERATION

**1. Payment of expenses by a party exception**—Order XVI, Rule 2 of the Civil Procedure Code, requires that the party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into Court such sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he required to attend, and for one day's attendance. Government is exempt from the operation of this rule when applying for a summons for any of its own officers. In the case of witnesses summoned as "experts," the Court is authorized to allow remuneration in addition, for performing any necessary work of an expert character for the purposes of the case.

**2. Expenses to be paid at the time of service**—According to Order XVI, Rule 3 of the Code, the sum so paid into Court shall, except in the case of a Government servant who is not entitled to receive such sums, be tendered to the person summoned at the time of serving the summons, if

it can be served personally. When the person summoned is a Government servant the sum so paid into Court shall be credited to Government.

**3. (i)** A Government servant shall not accept any subsistence allowance from the Court.

(ii) A Government servant who is required to give evidence in a Court situated not more than 5 miles from his headquarters may accept such actual travelling expenses as the Court allow provided that he is not in receipt of permanent travelling allowance from Government.

(iii) A Government servant who is summoned to give evidence in a civil case to which Government is a party or in a Criminal Court may draw travelling allowance from Government as for a journey on tour provided that (a) the facts as to which he is to give evidence have come to his knowledge in the discharge of his public duties, (b) he attaches to his bill a certificate of attendance given by the Court, and (c) he does not accept any payment of his travelling expenses from the Court.

Any expenses which may be deposited in the Court for this purpose must be credited to Government under head "XXI-Administration of Justice-Miscellaneous Fees and Fines."

(iv) A Government servant or a Railway employee who is summoned to give evidence in a civil case to which Government is not a party, of facts which come to his knowledge in the discharge of his public duties or to produce official documents before the Court with the Travelling Allowance Rules applicable to him.

(v) A Government servant summoned to give evidence in circumstances other than those mentioned in clauses (iii) and (iv) may receive travelling expenses from the Court according to the scale to which he may be entitled by his status.

(vi) In the case of employees of the Central Government or a State Railway or any other Commercial Department of Government, however, sums deposited for diet money will be credited in the Treasury to the credit of the Government concerned, *i.e.*, Central Railway or any other Commercial Department of Government, as the case may be.

The following is the proper head of account under which subsistence allowance, etc., of Government servants of Himachal Pradesh and other states, etc., should be deposited when they appear as witnesses in the Civil Courts in Punjab:

Serial No.	Classification of Employees	Head to which creditable
1.	Employees of States other than Punjab States	S. Remittances Inter States Suspense A/c with.....State
2.	Employees of Himachal Pradesh Government	S. Remittance, Central, H.P. Government suspense.
3.	Employees of Central Government under the Audit Control of AGCR, New Delhi	S. Remittances, Adjusting A/c between Central and Provincial Government, A/c between Civil and Civil A/c between AGCR and Punjab III item adjustable by AGCR.
4.	Employees of the Central Government under the Audit Control of A.G., Punjab	To the Corresponding receipt head in the Central section of A/c of the Department of the Central Government to which the Government servant belongs.

**4. Further sum for expenses**—Order XVI, Rule 4, empowers the Court to require a further sum to be paid in for the expenses of a witness, if the sum at first paid is found to be insufficient, or if the witness is detained for more than one day.

**5. Scale of expenses**—Order XVI, Rule 2(3), provides that in fixing the scale of expenses to be allowed to witnesses, Subordinate Courts shall be guided by such rules as may be made by competent authority. The rules passed in connection with the scale of expenses are given in Appendix I to this Chapter.

**6. Sending expenses by money order**—When a summons is sent by a Court in one district for service through a Court in another district the expenses must be remitted by money order at the cost of the party taking out the summons. The practice of sending remittances by postage stamps should never be resorted to. The Court to which a remittance is made should be informed by letter, on the day on which application is made to the Post Office for the money order, and all necessary information should be furnished regarding the person or person to whom the money is to be paid. The same procedure will apply when a summons issued by one Court in a district has to be served through the process-serving agency of another Court within the same district.

**7. Court certificate in case of Government servants**—In all cases in which an officer of Government is summoned to give evidence, the Court should give him a certificate in the prescribed Form A given in Appendix II to this Chapter, specifying the dates on which the officer was required to attend and the amount, if any, paid to him by the Court. This certificate will be attached by the officer concerned to any travelling allowance bill which he may submit under the rule quoted above.

**8. Expenses of process-server**—A process-server who is called upon in *ex parte* proceedings to prove service of a summons by affidavit or statement in Court, is not entitled to any subsistence or other allowances for attendance. Such attendance must be regarded as the discharge of one of the ordinary duties of his office.

#### APPENDIX I

The rules contained in this Appendix have been framed by the High Court under Order XVI, Rule 2(3), Civil Procedure Code. They are merely for the guidance of Courts and are not statutory.

1. The annexed scale of daily expenses for each witness or other person summoned to attend in the Civil Courts of the Punjab is, prescribed for general observance. These rates will be allowed not only for the period of actual attendance, but for any reasonable time spent in the journey to and from the place of sitting, the mode of conveyance available being taken into consideration.
2. The Presiding Officer of each Court will exercise his discretion in determining the class of each witness where this may be doubtful; and the remuneration fixed in respect to each class will be understood to be exclusive of the *bona fide* travelling expenses of the witness.
3. In estimating travelling expenses the amount allowed should cover the actual cost of the journey by the means of conveyance considered by the Court to be suitable to the person summoned with reference to the class under which he falls.

#### **Rates of remuneration to be paid to witnesses attending the Civil Courts**

Class I (..... Rupees per diem)

Gentlemen of Distinction.

All Covenanted and Commissioned officers of Government.

Uncovenanted officers of Government holding appointments equal in rank to those of Extra Assistant Commissioners.

All officers of the Armed Forces.

Class II (..... Rupees per diem)

Non-officials of the middle class.

Head-Assistants and the higher description of clerks in public offices Tahsildars, Inspectors of Police or officials of similar rank.

Junior Commissioned Officers and Warrant Officers of the Armed Forces.

Class III (..... Rupees per diem)

Inferior clerks in public offices.

Ministerial employees in vernacular offices or departments; and persons of the middle class generally, such as, Zamindars and tradesmen of the better sort, well-to-do Zamindars should always be placed in this class and only very petty Zamindars in class IV.

Non-Commissioned and petty personnel of the Armed Forces.

4. If in any case the highest rate of remuneration above prescribed appears to be insufficient, the Court may, for reason to be stated in writing, allow such remuneration exceeding ten rupees, but not exceeding fifty rupees per diem, as it may think fit. The discretion thus allowed should be used only in very special cases.

5. Registered Accountants as defined in Rule 12 of the Auditors' Certificate Rules, 1932, attending Civil Courts for giving expert evidence, should be paid fees ranging between Rs. 50 and Rs. 150 according to the professional standing of the witness, for each day spent in attendance or travelling, in addition to expenses for travelling.

*Note*—The Auditor's Certificate Rules 1932, are published at page 299 of the Gazette of India, Part I, dated the 26th March, 1932.

For rules regulating applications for any payment of the services of the Government Examiner of Questioned Documents or the Finger Prints Experts at Phillaur.

APPENDIX II

(Forms)

FORM A

Form of certificate to be given by the Court to an officer of Government summoned to give evidence at A Court.

In the Court of the..... in the .....District.

1. Certified that..... was summoned to give evidence in this Court in his public/private capacity in case of..... and was required to attend for a period of..... days, that is from the ..... to the.....19..... .

2. He was paid the following amounts in accordance with the rules of the Court:

3. The amount of..... as his diet money has been recorded from the litigants and has been/will be deposited in the local Treasury/Sub-Treasury on (date).....

FORM B

Detailed Statements of Subsistence Allowances and Compensation (apart from allowance for travelling expenses) paid to Government Servant by order of the .....  
 at..... during the quarter ending..... 19..... for attending as  
 witnesses in civil cases to which Government is not a party.

Date of Payment	Court under whose order the payment was made	Name and official designation of witnesses	Amount paid	Nature of subsistence or compensation allowance	Nature of case and name of parties thereto	Remarks
1	2	3	4	5	6	7

Part D

COPYING AND SEARCHES PAYABLE TO BANKS FOR PRODUCTION OF DOCUMENTS IN  
LAW COURTS

**1. Responsibility of managing authority for production of documents even if fees allowed insufficient**—On receipt of a summons addressed to a Bank requiring the production of documents or of certified copies of entries in books of account, the managing authority must arrange for the production of the documents or the copies by an official of the Bank qualified to give evidence thereon in accordance with the terms of the summons. Unless the documents or entries are incorrectly or insufficiently described in the summons, or are not in the possession of the Bank, the managing authority must comply with the summons, and will be liable to all the penalties, prescribed for failure to comply with a summons, whether the rates fixed by the Court for search or copying fees are acceptable to him or not. Any representation regarding rates of diet money, etc., must be made to the Court, and dissatisfaction with these rates is no ground for refusing to obey the summons.

**2. Search fees**—If the information given is not exact but is sufficient to enable the Bank to trace the documents by making a search, the Bank should communicate at once with the Court mentioning the amount of search fee it wishes to charge and wait for further orders. The Court will communicate with the party concerned and if the party deposits the search fee, it will ask the Bank to comply with the summons.

**3. Report if documents cannot be traced**—If no information whatsoever is given in the summons or if the information given is not sufficient to enable the Bank to trace the document, the summons, should be returned with a report to this effect.

**4. Scale of search fees**—Search fees will be fixed by the Court in proportions to the work involved. Rupees five may be taken as a fair amount for the search fee for a single document not easily accessible; but in the case of documents easily traced such as cheques, the rates should be

less; and when several documents of the same nature, such as cheques, have to be produced, the rate should be further reduced.

**5. Scale of copying fees**—Copying fees for all documents other than entries in account books should be paid for at the Court rates.

**6. Scale of copying fees**—Copying fees for certified copies of entries in account books will be paid at rupees (.....) per ledger folio, part of ledger folio up to Rs.(.....) and Rs.(.....) for each ledger folio or part of a folio after the first four folios. Copying fees for all other documents not being ledger folios will be paid at the Court rates.

**7. Prohibition against summoning higher officers of the Banks**—All Courts must scrutinize carefully all applications for summons to Banks and should refrain from summoning the Banks' higher officers unless they are satisfied that their personal attendance is necessary.

Part E  
GOVERNMENT SERVANTS SUMMONED TO  
PRODUCE OFFICIAL DOCUMENTS

The following instructions have been issued by the Government of India, Ministry of Home Affairs, to all State Governments and with minor modifications, have been circulated by the Punjab Government to all Heads of Departments, Commissioners of Divisions and Deputy Commissioners in Punjab,—*vide* letter No. 5591-J-54/20066, dated the 31st August, 1954 (Punjab High Court endorsement No. 11321-Genl/XX, C.24, dated 15th September, 1954, to all District and Sessions Judges).

1. The law relating to the production of unpublished official records as evidence in Courts is contained in Sections 123, 124 and 162 of the Indian Evidence Act, 1872 (Act 1 of 1872).
2. For the purposes of Section 123 of the said Act, the expression 'Officer at the head of the department concerned' may be held to mean the officer who is in control of the department and in whose charge records of the department remain. Ordinarily such an officer would be the Secretary to the State Government in the case of State Governments and the Secretary, Additional Secretary or Joint Secretary in charge of the Ministry in the case of the Government of India. But in case of attached offices like Director of Industries, Punjab or Director of Agriculture, Punjab, the Director concerned may be regarded as 'the head of the Department' for the purposes of this Section. Only such an officer should be treated as the authority to withhold or give the necessary permission for the production of official documents in evidence. In case of Union territories the Chief Commissioner or the Lieutenant Governor, as the case may be, may be regarded as the head of department and not his Secretaries.
3. In respect of documents (1) emanating from a higher authority, *i.e.*, the Government of India, or the State Government, or which have formed the subject of correspondence with such higher authority, or (2) emanating from other Governments, whether foreign or members of the Commonwealth the head of the Department should obtain the consent of the Government of India or of the State Government as the case may be, through the usual official channels before

giving permission to produce the documents in Court or giving evidence based on them unless the papers are intended for publication or are of a purely formal or routine nature, when a reference to higher authority may be dispensed with.

4. In the case of documents other than those specified in paragraph 3 above production of documents should be withheld only when the public interest would be injured, as where disclosure would be injurious to national defence, or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service. Some High Courts have pointed out the circumstances under which no such privilege should be claimed, *e.g.*, privilege is not to be claimed on the mere ground that the documents are State documents or are official or are marked confidential, or, if produced would result in Parliamentary discussion or public criticism or would expose want of efficiency in the administration or tend to lay a particular department of Government open to a claim for compensation. The mere fact that the head of the department does not wish the documents to be produced is not an adequate justification for objecting to their production. The High Courts have also observed that refusal to produce documents relating to affairs of State implies that their production will be prejudicial to public interest. Consequently the reasons therefore, should be given in an affidavit in Form 1 at the appropriate place.

5. In the case of doubt the head of the department should invariably refer to higher authority for orders.

6. These instructions apply equally to cases in which Government is a party to the suit. In such cases, much will depend on the legal advice as to the value of the documents but before they are produced in Court, the considerations stated above must be borne in mind, and reference to higher authority made, when necessary.

**6-A.** A Government servant other than the Head of a Department who is summoned to produce an official document should first determine whether the document is in his custody and he is in a position to produce it. In this connection, it may be stated that all official records are normally in the custody of the Head of the Department and it is only under special circumstances that an official document can be said to be in the custody of an individual Government servant. If the document is not in the custody of the Government servant summoned, he should inform the Court accordingly. If, under any special circumstances, the document is in the custody of the Government servant summoned, he should next determine whether the document is an unpublished official record relating to affairs of State and privilege under Section 123 should be claimed in respect of it. If he is of the view that such privilege should be claimed or if he is doubted of the position should refer the matter to the Head of Department, who will issue necessary instructions and will also furnish the affidavit in Form 1 in suitable cases. If the document is such that privilege under Section 123 could not be claimed but if the Government servant considers that the document is a communication made to him in official confidence and that the public interest would suffer by its disclosure, he should claim privilege under Section 124 in Form 2. In case of doubt, he should seek the advice of the Head of the Department.

The expression 'Head of Department' used in this paragraph will have the same meaning as the expression 'Head of Department' in paragraph 2 of these instructions.

7. The Government servant who is to attend a Court as a witness with official documents should where permission under Section 123 has been withheld, be given an affidavit in Form 1 duly signed by the head of the department in the accompanying form. He should produce it when he is called upon to give his evidence, and should explain that he is not at liberty to produce the documents before the Court, or to give any evidence derived from them. He should, however, take with him the papers which he has been summoned to produce.

8. The Government servant who is summoned to produce official documents in respect of which privilege under Section 124 has to be claimed, will make an affidavit in the accompanying Form 2. When he is not attending the Court himself to give evidence, he shall have it sent to the Court along with the documents. The person through whom the document are sent to Court should submit the affidavit to the Court when called upon to produce the documents. He should take with him the documents which he has been called upon to produce but should not hand them over to the Court unless the Court directs him to do so. They should not be shown to the opposite party.

9. The head of the department should abstain from entering into correspondence with the presiding officer of the Court concerned in regard to the ground on which the documents have been called for. He should obey the Court's orders and should appear personally, or arrange for the appearance of another officer in the Court concerned, with the documents, and act as indicated in paragraph 7 above, and produce the necessary affidavit if he claims privilege.

#### FORM 1

In the Court of.....

Suit No.....of 19.....

I\* ..... do hereby solemnly affirm and state as follows :

A summons bearing No.....date.....issued by the Court of..... in suit No.....of 19.....(..... Vs.....) has been received on ..... 19..... requiring production in the said Court on ..... 19 ..... of documents stated below. I, as the Head of Department am in control of, and in charge of its records. I have carefully considered the relevant documents and have come to the conclusion that they are unpublished official records relating to affairs of state and their disclosure will be prejudicial to public interest for the following reasons:

\*Here insert the name, designation and address of the person making the affidavit.

#### **List of documents summoned**

I do not, therefore, give permission to anyone under Section 123 of the Indian Evidence Act, 1872, to produce the said documents to give any evidence derived therefrom.

Solemnly affirmed at..... this ..... day of.....19.....

Name and Designation of the Person Making the Affidavit

FORM 2

**Form of Affidavit**

In the High Court of.....

SuitNo..... of 19.....

I, \*..... do hereby solemnly affirm and state as follows :

A summons bearing No ..... dated..... issued by the Court of..... in suit No..... of 19.....(..... Vs.....) has been served on me on ..... 19..... requiring production in the said Court on..... 19..... of documents stated below. I have carefully checked them and have come to the conclusion that they contain communication made in official confidence and I consider that the public interest would suffer by their disclosure for the following reasons:

\*Here insert the name, designation and address of the person making the affidavit.

**List of documents summoned**

I, therefore, the claim privilege under Section 124 of the Indian Evidence Act, 1872.

Solemnly affirmed at..... day of....19.....

(Here write the name and designation of the officer making the affidavit.)

Sworn before me.

1. Name and official designation of the officer.

2. Paragraph 2 is only required in the following cases, namely :

(i) In cases in which Government servants have to give evidence at a Court, situate not more than 5 miles from their headquarters, or in their private capacity actual travelling expenses incurred by them may, when the Court considers it necessary, be paid to them.

(ii) A Government servant whose salary does not exceed Rs. 10 mensem may receive his expenses from the Court.

3. Insert Court to which return relates.