



Western Australia

Local Court Rules 1961

Compare between:

[13 Apr 2004, 03-y0-02] and [01 May 2005, 03-z0-05]

Western Australia

Local Courts Act 1904

Local Court Rules 1961

Order 1 — Preliminary

1. Citation and commencement

- (1) These rules of court may be cited as the *Local Court Rules 1961*¹.
- (2) [Omitted under the Reprints Act 1984 s.7(4)(f).]
- (3) These rules shall come into operation at the expiration of one month from the publication of these rules in the *Government Gazette*¹.

2.² Interpretation

In these rules, unless the context otherwise requires —

“**the Act**” means the *Local Courts Act 1904*, as amended from time to time;

“**bailiff**” includes deputy and assistant bailiff and police officer when acting as a bailiff;

“**Bankruptcy Act**” means the *Bankruptcy Act 1924*, of the Parliament of the Commonwealth of Australia and any Act passed in amendment of or substitution for that Act;

“**clear days**” means that in all cases in which any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusive both of the first and of the last day;

“clerk delegate” means the clerk to whom a delegation in writing is made by the Minister or magistrate under section 130 of the Act;

“court” means the local court having jurisdiction in the action or matter, and includes a magistrate exercising the powers of the court in chambers;

“disadvantaged person” means —

- (a) a person who produces, or in respect of whom there is produced, to the clerk evidence to the satisfaction of the clerk showing that the person holds —
 - (i) a Health Care Card;
 - (ii) a Health Benefit Card; or
 - (iii) a Pensioner Health Benefit Card,
issued by the Department of Social Security or the Department of Veteran’s Affairs of the Government of the Commonwealth; or
- (b) a person who satisfies the clerk that he is, by reason of his financial circumstances, unable to pay the prescribed fees;

“foreign court” means the court into which process is issued from another court;

“home court” means the court from which process is originally issued;

“order” means the final decision of the court in any matter, and also any decision of the court other than a final decision in any action or matter, and also the decision of the magistrate on an interlocutory application;

“trial” means the hearing of any action or matter in court.

[Rule 2 of Order 1 amended in Gazette 20 January 1984 p.136; 28 June 1985 p.2299.]

Order 2 — Offices and officers

1.² Office opening hours

An office shall be kept open by the clerk at each place where the court of which he is clerk is held, and that office shall be kept open on such days and for such hours as the Minister may from time to time appoint, except on public holidays prescribed by or proclaimed under the *Public Service Act 1904*³. A memorandum of the hours during which the offices of a court will be open shall be written on all summonses and warrants issued from that court.

2.² Clerk to keep books and issue process

The clerk shall —

- (1)
 - (a) file all documents issued to him in any action or matter;
 - (b) number each plaint with a distinguishing number;
 - (c) distinguish each document by the number of the plaint in respect of which it is filed;
 - (d) enter in the register the fact of the receipt and despatch of all documents.
- (2) Issue each summons, warrant, order of commitment, or other process forthwith after the respective plaint is entered, or the warrant, order or other process is applied for.
- (3) Without derogating from the provisions of subrule (1) keep books and make returns in the form and in the manner from time to time directed and approved by the Minister.

3.² Transmission of summons for service by bailiff of foreign court

Where a summons is required to be served by the bailiff of a foreign court, the clerk shall transmit the same to the bailiff of

the foreign court forthwith after the plaint is entered, unless the magistrate of the home court orders the summons in any particular case to be served by the bailiff of the home court; and where any summons is returned to the clerk of the home court by a bailiff of a foreign court, not served, the clerk of the home court shall forthwith give notice to the plaintiff of that non-service.

4.² Copies of documents, how made

Copies of all proceedings or documents in the custody of the court or its officers shall be prepared by the clerk for any party entitled to require the same, upon payment of the fee prescribed by these rules.

5.² Searches and payment out of court

The clerk shall allow searches to be made, and shall pay out the money to which suitors are entitled, on such proof of title thereto as he shall deem sufficient.

5A. Clerk to provide searchable information to approved recipients

(1) In this rule —

“**approved recipient**” means a person who is approved in writing by the Attorney General as a person entitled to receive information from the court;

“**searchable information**”, in relation to an action or matter in the court, means —

- (a) the names and addresses of the parties and the amount and nature of the claim;
- (b) the amount of any judgment entered; and
- (c) whether the action or matter has been discontinued.

(2) Except as provided in subrule (4), the clerk shall on each working day provide an approved recipient with such searchable

information that has not already been provided to the recipient in relation to each action or matter in the court.

- (3) An approved recipient to whom information has been provided under subrule (1) is liable to a fee in the amount prescribed in Appendix Part II Table of court fees item 8(aa) for each action or matter specified in the information.
- (4) If suitable facilities exist at the court to enable searchable information to be provided by email, then the information shall not be provided except by email to an approved recipient who has paid the annual fee prescribed in Appendix Part II Table of court fees item 8(ab).

[Rule 5A inserted in Gazette 17 Dec 2002 p. 5921-2.]

6.² Acknowledgment of payments and deposits

Whenever money is paid into or deposited in court, whether before or after judgment, an acknowledgment in writing of the payment or deposit shall be given by the clerk to the parties to the action.

7.² No officer to act as agent to parties

No clerk, bailiff, or other officer of the court shall, on account of suitors, sign the ledger or any other book, or receive money or otherwise act as an agent for that purpose.

8.² Absence of bailiff from court

When the bailiff is absent from the sitting of the court, he shall inform the clerk of the cause of his absence, and an entry of the cause of that absence shall be made by the clerk on the minutes of the then sitting or the next succeeding court.

9.² Bailiff to keep books

The bailiff shall keep books and make returns according to the forms and in the manner from time to time directed and

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approved by the Minister, and keep the books available and open for inspection by the clerk at all times.

10.² Attendance at office of clerk

The bailiff shall attend for the purpose of receiving process, and for the performance of other duties, at the office of the clerk once at least every day during the hours it is open.

11.² Service of process

The bailiff shall as soon as practicable, serve or cause to be served every summons, or other process issued to him out of the court of which he is bailiff, or sent to him for service from other courts.

12.² Return of copy of judgment summons served by bailiff of foreign court

Where a judgment summons is required to be served by the bailiff of a foreign court he shall, 3 clear days at least before the return day, return the copy thereof duly endorsed and signed by him, or the summons itself if not served, to the clerk of the court out of which it was issued.

13.² Where return of service to home court is not made, foreign bailiff may be ordered to pay costs

- (1) Where the bailiff of a foreign court neglects to return a copy of a judgment summons, as required by rule 12, the magistrate of the home court may, upon evidence of such summons having been delivered for service to the bailiff of the foreign court, direct notice, according to the form in the Appendix, to be given to that bailiff that the magistrate will, on a day to be mentioned, unless the bailiff shows cause to the contrary, make an order directing him to pay to the judgment creditor such sum as the magistrate may think reasonable, as compensation for any loss of time and expense which may have been caused to the judgment creditor by such neglect.

- (2) If on the day mentioned the magistrate makes an order for payment by the bailiff, a memorandum of the order shall be made in the minute book, and the clerk of the home court shall transmit to the bailiff of the foreign court a notice thereof according to the form in the Appendix.
- (3) If the bailiff within the time limited by the order remits to the clerk of the home court the sum directed by the order to be paid, the clerk shall pay the same to the judgment creditor.
- (4) If the bailiff does not, within the time limited by the order, remit to the clerk of the home court, the sum directed by the order to be paid, the clerk shall pay that sum to the judgment creditor out of any money in his hands, and shall transmit to the clerk of the foreign court a copy of the notice, certifying thereon the neglect of the bailiff to pay the money as required, and the payment thereof by the clerk of the home court; and the clerk shall be allowed by the Treasury at his audit the amount so paid; and the clerk of the foreign court shall deduct such sum from any payment he may be required to make to the bailiff.

14.² Execution and entries of warrants and orders

The bailiff shall execute, as soon as possible after delivery to him, every warrant, order of commitment, or other order of the court, and shall enter in the proper book every warrant and order which he has been required to execute, and shall state from time to time therein what he has done under each warrant or order, and if the same be not executed within one month from the day of delivery to him why it has not been executed; and he shall at all reasonable times give to the clerk all information which he may reasonably require as to the execution or non-execution of any warrant or order.

15.² Procedure where bailiff required to hold moneys under Bankruptcy Act

- (1) Where the bailiff is required by or under the provisions of the Bankruptcy Act, or any other statute to hold the proceeds of sale

under an execution or the money paid to avoid a sale for a period of 14 days or such other period of time as is prescribed, he shall forthwith pay the amount of the moneys so received to the clerk of the court of which he is the bailiff.

- (2) Upon receipt of the money the clerk shall —
- (a) in the case of a home court retain the amount in his trust account; and
 - (b) in the case of a foreign court forthwith transmit the same to the clerk of the home court, and in either case the money shall be held for the requisite period of time.

16.² Endorsement of levy — moneys to be paid in within 3 days

Subject to the provisions of rule 15 a bailiff levying or receiving money by virtue of the process of any local court, shall forthwith enter in ink on the face of and at the foot or in the margin of the process, the amount levied or received and shall sign the entry and within 3 days from the receipt of the money pay over the same to the clerk of the court of which he is bailiff, who shall endorse upon the warrant a memorandum of having received the same, and return the process to the bailiff.

17.² Notice of withdrawal on receipt of notice of sequestration

Where the bailiff withdraws from possession after he receives notice that a sequestration order in bankruptcy has been made, he shall, within 24 hours after such withdrawal, send to the clerk notice thereof according to the form in the Appendix, and the clerk shall communicate the fact to the execution creditor.

18.² Non-execution of warrant by bailiff of foreign court

When a warrant, order of commitment, or other order of the court required to be executed by the bailiff of a foreign court has not been executed within one month from the day of delivery, the bailiff of the foreign court shall, on the day after the termination of the month, make a return to the clerk of the home court according to the form in the Appendix; and when any such warrant or order has not been executed during the time it is in

force, such bailiff shall return the same to the clerk of the home court within 24 hours from the expiration of such time, and shall endorse on the warrant or order the reason why it could not be executed, and sign the endorsement; but the bailiff shall return the warrant or order, although unexecuted, to the home court at any time if he is directed so to do by the clerk of the home court, and give such information as that clerk may require respecting the warrant or order.

19.² Duties of bailiff as to sale of property

When any property is directed to be sold by auction, detained, or preserved, the bailiff shall, if the magistrate so directs, effect or superintend the sale, detention, or preservation; and where the property is to be sold by private contract, he shall carry out the directions of the magistrate in respect of the sale.

20.² Taking possession of goods

Where a warrant directs the bailiff to detain and preserve any goods, he shall take and retain possession of the goods until further order is made by the magistrate.

21.² Where possession ordered to be taken until security given

- (1) When a warrant directs the bailiff to take possession of any goods until security is given by some party for their safe keeping, or for the payment of the value in default of safe keeping, but does not specify the amount of the security, the bailiff shall make or cause to be made an inventory and appraisal of the goods which he may take into his possession; and, upon receiving as a deposit the amount of the appraisal, or sufficient security, to be approved by the clerk, for the safe custody of the goods, and for the delivery up of possession thereof upon request, the bailiff shall relinquish possession on condition that the goods shall be re-delivered to him on request, or held to abide the order of the magistrate.
- (2) If the warrant specifies the amount of security, no less deposit or security shall be sufficient.

22.² Bailiff to make return of arrest

Every bailiff to whom a warrant of commitment is forwarded shall immediately after the arrest of the judgment debtor notify the clerk of the court out of which the warrant issued, as well as the clerk of his court, the date of the arrest, and the prison in which the debtor is confined.

Order 3 — Parties

1.² Persons may be joined as plaintiffs who claim relief jointly, severally, or in the alternative

All persons may be joined as plaintiffs in one action in whom any right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise: Provided that if upon the application of any defendant it appears that such joinder may embarrass or delay the trial, the magistrate may order separate trials, or make such other order as may be expedient: And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment; but the defendant, though unsuccessful, shall be entitled to any extra costs occasioned by so joining any person who is not found entitled to relief, unless the magistrate in disposing of the costs of the action otherwise directs.

2.² Persons may be joined as defendants against whom relief claimed jointly, severally, or in the alternative

All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative: And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

3.² All defendants joined need not be interested in all the relief prayed for

It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the magistrate may make such order as may appear just to prevent any defendant

from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

4.² All or any of the persons liable under any one contract may be joined

The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

5.² Where plaintiff in doubt from whom he is entitled to redress

Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join 2 or more defendants, to the extent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

6.² Trustees, executors, and others may sue or be sued without joining parties beneficially interested

Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the magistrate may, at any stage of the proceedings, order any of such persons to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

7.² Where parties numerous, one or more may sue or be sued or defend for the benefit of all

Where there are numerous persons having the same interest in one action or matter, one or more of such persons may sue or be sued, or may be authorised by the magistrate, before or at the trial, to defend in such action or matter, on behalf or for the benefit of all parties so interested.

8.² Where defendant desires to defend on behalf of others

When a defendant desires to defend on behalf or for the benefit of others having the same interest, he shall within 2 clear days of the date of service of the summons on him give notice to the plaintiff of his intention to apply, upon a day and an hour to be named in such notice, to the magistrate or clerk for leave so to defend, and shall file an affidavit of the facts upon which he relies to obtain such leave, together with the names, addresses, and occupations of such persons; and the magistrate or clerk may thereupon make an order for the defendant so to defend, and the names of the persons as to whom such order is made shall be added to that of the defendant in the plaint and minute book; and a copy of such order, with a copy of the summons and particulars in the action, and a notice according to the form in the Appendix, shall be personally served on each of such persons, and notice shall be sent to the plaintiff according to the form in the Appendix: Provided that the plaintiff or any of the persons whose names have been so added may at the trial object to the defendant defending on behalf of all or any of the persons as to whom such order has been made, and the magistrate or clerk may thereupon, if he thinks fit, strike the names of all or any of such persons out of the proceedings, and order the defendant to pay such costs as he may think fit.

9.² Infants

Subject to the provisions of section 57 of the Act infants may sue as plaintiffs by their next friends, and may defend by their guardians appointed for that purpose.

10.² Appointment of guardian

Where it appears on the face of the proceedings that any defendant to an action or matter is an infant not above the age of 18 years, or a person of unsound mind not being an insane person or patient within the meaning of the *Lunacy Act 1903*⁴, as amended, the following provisions shall apply:

- (1) At any time after the service of the summons, and in personal actions not less than one clear day before the expiry of the time limited for giving notice of defence and in other cases not less than 6 clear days before the return day, a guardian *ad litem* to such infant or person of unsound mind may be appointed by the clerk, on application made to him on behalf of such infant or person of unsound mind, on affidavit according to the form in the Appendix, accompanied by a written consent of the proposed guardian to act as such guardian.
- (2) Where such appointment is made, the clerk shall forthwith send notice by post of such appointment to the plaintiff, according to the form in the Appendix.
- (3) Where no application for the appointment of a guardian *ad litem* is made on behalf of the infant or person of unsound mind within the time hereinbefore limited, the clerk shall, in personal actions before the expiry of the time limited for giving notice of defence and in other cases on the sixth day before the return day, send notice by post to the plaintiff that no such application has been made, according to the form in the Appendix.
- (4) The plaintiff shall thereupon, before proceeding further with the action or matter against such infant or person of unsound mind, apply to the magistrate for an order that some proper person be assigned guardian *ad litem* of such defendant, by whom he may appear and defend, and, if necessary, for a postponement of the trial.
- (5) Such application shall be made on affidavit according to the form in the Appendix; and notice of such application, together with a copy of such affidavit shall, 3 clear days at least before the day in such notice named for hearing the application, be served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of service of the summons, and shall also (in the case of such defendant being an infant not residing with or under the care of a

parent or guardian of the infant's) be served upon or left at the dwelling-house of the parent or guardian (if any) of such infant: Provided that the clerk may, on the application of the plaintiff, dispense with such last-mentioned service.

- (6) On the hearing of the application the magistrate, if satisfied with the proposed guardian, may appoint him to act as such guardian; but if not so satisfied, the magistrate may appoint any other person willing to act as guardian; or in default of such person, the magistrate may appoint the clerk to act as guardian; and the action or matter shall thenceforth proceed as if a guardian had been appointed on behalf of the defendant. The magistrate may, if necessary, on the hearing of such application, postpone the trial.
- (7) Provided, that where an infant is sued for a debt or other liquidated demand, the notice required by paragraph (3) need not be sent, nor shall paragraphs (4) to (6) apply, unless in any case the clerk thinks it necessary for the protection of such infant that such notice should be sent, or the magistrate directs such notice to be sent.
- (8) The expression “**insane person**” has the same meaning herein as in Order 6, rule 11.

[Rule 10 of Order 3 amended in Gazette 30 June 2003 p.2613.]

11.² Appointment of guardian *ad litem* for infant or person of unsound mind

Where it does not appear on the face of the proceedings, but is made to appear in the course of the proceedings, that any defendant to an action or matter is an infant not above the age of 18 years, or a person of unsound mind not being such an insane person or patient as aforesaid, the following provisions shall apply:

- (1) If on any defendant appearing at the trial it appears that such defendant is an infant, and such defendant names a person as his guardian who then assents so to act, such

person shall be appointed guardian accordingly; but if the defendant does not name a guardian, the magistrate may appoint as guardian any person in court who is willing to act as such guardian; or in default of any such person the magistrate may appoint the clerk to act as guardian; and the action or matter shall thenceforth proceed as if the infant had named a guardian, and the name of the guardian appointed shall be entered according to one or other of the forms in the Appendix.

- (2) In any other case, on its being made to appear that any defendant is an infant or a person of unsound mind not being such an insane person as aforesaid, a guardian *ad litem* to such defendant may be appointed at any time within 6 days of its being made to appear that such defendant is an infant or a person of unsound mind, on application made on behalf of such defendant in accordance with paragraphs (1) and (2) of the last preceding rule; and if no such application is made within such period of 6 days, the clerk shall send notice to the plaintiff in accordance with paragraph (3) of the same rule; and thereupon the plaintiff shall, before proceeding further with the action or matter against such defendant, apply for such appointment in accordance with paragraphs (4) to (6) of the same rule: and the trial shall, if necessary, be postponed to allow an application for the appointment of a guardian to be made.
- (3) Provided, that paragraph (7) of the last preceding rule shall apply to cases falling within this rule.

12.² Entry of appointment on summons, etc.

Where a guardian is appointed under either of the 2 preceding rules such appointment shall be entered on the summons and in the minute book, and on all subsequent proceedings.

13.² Limitation of liability of guardian for costs

A guardian *ad litem* to an infant or a person of unsound mind shall not be personally liable to any costs not occasioned by his personal negligence or misconduct.

14.² Power to set aside judgment against infant or person of unsound mind where no guardian appointed

Where judgment has been obtained or an order made against a defendant who was at the time an infant not above the age of 18 years or a person of unsound mind not being an insane person or patient as aforesaid, without a guardian *ad litem* having been appointed to such defendant, the magistrate may set aside such judgment or order and order a new trial, or make such other order as may be just.

15.² Infants and others suing by next friends

- (1) Where an infant not above the age of 18 years desires to commence or become a plaintiff in an action (other than for wages or piecework, or for work or services as a clerk, servant, mechanic, or labourer), or is a claimant in an interpleader proceeding, he may sue by a next friend, and the christian name and surname description, and residence or place of business of the next friend shall be stated in the summons or claim; and such next friend shall, at the time of entering the plaint or delivering the particulars of the goods alleged to be the property of the infant, either attend at the office of the clerk and give an undertaking, according to the form in the Appendix, to be responsible for costs, or transmit such an undertaking to the clerk; and if such undertaking is not given at the office of the clerk, it shall be attested by a solicitor. The plaint shall not be entered or the particulars received until such undertaking has been given and on entering into such undertaking the next friend shall be liable in the same manner and to the same extent as if he were himself the plaintiff; and the action or interpleader proceeding shall proceed in the name of the infant by such next friend, and the undertaking shall be filed by the clerk; but no

order of the court shall be necessary for the appointment of such next friend. If the infant fails in or discontinues his action or proceeding, and does not pay the amount of costs ordered to be paid by him to the defendant, proceedings may be taken for the recovery of such amount from the next friend as for the recovery of a judgment debt.

- (2) This rule shall apply mutatis mutandis to all cases in which a party sues by a next friend.

16.² Persons of unsound mind

A person who is an insane person or patient within the meaning of the *Lunacy Act 1903*⁴, as amended, or is or is deemed to be an incapable person within the meaning of that Act may sue or defend by the committee of his estate or the person having the powers of such a committee.

17.² Persons under disability — how consent can be given

In any action or matter to which any person under any disability is a party, any consent as to the mode of taking evidence, or as to any other procedure given by the next friend, guardian, committee, or other person acting on behalf of the person under disability shall, with the consent of the magistrate, have the same force and effect as if such party were under no disability and had given such consent: Provided that no such consent by any committee or a person exercising the powers of a committee of an insane person or patient or of an incapable person or a person deemed to be an incapable person shall be valid as between him and the person on whose behalf the consent is given unless given with the sanction of a Judge or the Master of the Supreme Court.

[18. *Repealed in Gazette 30 June 2003 p.2613.*]

19.² Partners

- (1) Partners may sue or be sued in the firm name and action against a firm in the firm name shall be sufficient to include all partners constituting the firm.
- (2) Where a firm sues or is sued in a firm name the other party to the action may apply to the magistrate in chambers for an order that the names and addresses of the partners of the firm be supplied to that party and the magistrate may order any partner in the firm to file an affidavit setting forth the full names and addresses of the partners at the time the cause of action accrued.
- (3) If the party required to supply the particulars mentioned in subrule (2) fails to comply with the terms of the order the magistrate may —
 - (a) stay any action by a firm in its firm name until; or
 - (b) order that any defence by a firm in its firm name be struck out, unless,

particulars of the constituent partners have been furnished in the terms of the order.

Order 4 — Joinder of causes of action

1.² What claims may be joined with action for recovery of possession of land

- (1) No cause of action shall, unless by leave of the magistrate, be joined with an action for the recovery of possession of land, except claims in respect of rent or mesne profits in respect of the premises claimed or any part thereof, or damages for breach of any contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed, or damages under section 103 of the Act.
- (2) Notwithstanding anything in subrule (1), an action for the recovery of possession of land shall not be joined in an action for a small debt.

[Rule 1 of Order 4 amended in Gazette 9 December 1983 p.4812.]

2.² As to joinder of claims by trustee in bankruptcy

Claims by the Official Receiver or a trustee in bankruptcy as such shall not, unless by leave of the magistrate, be joined with any claim by him in any other capacity.

3.² Joinder of causes of action generally

Subject to the 2 preceding rules, a plaintiff may unite in the same action several causes of action without leave of the magistrate.

4.² Claims by or against husband and wife

Claims by or against husband and wife or de facto partners who are living in a de facto relationship with each other, may be joined with claims by or against either of them separately.

[Rule 4 of Order 4 amended in Gazette 30 June 2003 p.2613.]

5.² Claims by or against executor or administrator

Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

6.² Joint and separate claims by plaintiffs

Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

7.² Separate trials may be ordered

If at any time it appears or is made to appear to the magistrate that any causes of actions united or claims joined in any action cannot be conveniently tried and disposed of together, he may order separate trials, or may exclude any such cause of action or claim, and may order the proceedings to be amended accordingly, and may make such order as to costs as may be just.

Order 5 — Commencement of action, claim and summons

1.² Actions to be commenced by plaintiff

All proceedings authorised to be commenced in a local court by or under the Act shall, except when otherwise provided by the Act or these rules, be commenced by the entry of a plaintiff, and shall be called actions.

2.² Trials by agreement under section 39

Where the parties, in pursuance of section 39 of the Act, agree to try any action in a local court, a plaintiff shall be entered and a summons shall be issued thereon as in other cases, and all the rules and practice of the court shall apply in such cases, so far as the same are applicable. The plaintiff on entering the plaintiff shall file with the clerk the memorandum of consent required by the Act.

3.² Form of plaintiffs

- (1) A plaintiff in a personal action shall be according to form 6 in the Appendix except where the plaintiff wishes to elect under section 106C(1) of the Act to have the action heard and determined under Part VIA of the Act, in which case the plaintiff shall be according to form 6A in the Appendix.
- (2) A summons in a personal action shall be in the form of, and bear the endorsements and subscriptions indicated —
 - (a) in the case of an action for a small debt, in form 14A in the Appendix;
 - (b) in any other case, in form 14 in the Appendix,

but the order in which the various matters are set out in those forms need not be strictly followed, and matters required to be endorsed may be subscribed and vice versa.

[Rule 3 of Order 5 inserted in Gazette 9 December 1983 p.4813.]

4.² Action against company

Where a company having a registered office under the *Corporations Act 2001* of the Commonwealth, is a defendant, the claim or summons shall state the situation of such office.

[Rule 4 amended in Gazette 19 October 2001 p.5609.]

5.² Particulars of parties required in plaint

- (1) Subject to Order 3, rule 19, where a plaintiff commences an action against one or more defendants he shall state in the plaint his own and the defendant's or defendants' full christian names and surnames, and his own and the defendants' addresses for service; such address for service shall be the place of residence or business of the respective parties.
- (2) Where the plaintiff is unable to comply with the provisions of subrule (1), the clerk may accept the plaint, but the magistrate may in his discretion subsequently make an order against the plaintiff, and the provisions of Order 3, rule 19, shall apply mutatis mutandis to the application for and the making of the order.
- (3) Where a plaintiff commences an action against more than one defendant he shall in addition endorse in the margin of each copy of the summons for service the following — "For service on.....of....., one of the defendants."

6.² Action by or against representatives

If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, then such capacity shall be stated in the claim or summons.

7.² Action by assignee of debt

Where an assignee of a debt or other legal chose in action sues, the fact that he is such assignee and the name of the assignor shall be stated in the claim.

[8. *Repealed in Gazette 29 August 2000 p.4987.*]

9. Time to be limited for notice of defence

- (1) The time to be limited in a summons in a personal action for giving notice of defence is —
- (a) where the place of service is within Western Australia, 14 days;
 - (b) where the place of service is outside Western Australia but within the Commonwealth —
 - (i) 21 days; or
 - (ii) such shorter period as the magistrate, on application, allows;
- and
- (c) where the place of service is outside the Commonwealth, such time as is directed by the magistrate.
- (2) For the purposes of subrule (1)(b)(ii), the matters that the magistrate must take into account in determining an application to allow a shorter period include —
- (a) urgency;
 - (b) the places of residence or business of the parties; and
 - (c) whether a related or similar proceeding has been commenced against the person to be served with the summons or another person.

[Rule 9 of Order 5 inserted in Gazette 29 August 2000 pp.4987-8.]

10.² Time when more than one defendant

Where the time for giving notice of defence is not the same for each defendant, the proper time for each defendant shall be separately limited in the summons.

11.² Endorsement of fees

On the issue of a summons, the clerk shall enter thereon all court and service fees.

12.² Security for or undertaking as to costs, where plaintiff not resident in Commonwealth

The magistrate may order security for costs, by deposit of money or otherwise, to be furnished by a plaintiff (which term, in this rule, shall include a defendant who counterclaims by way of defence) who is not resident in the Commonwealth and upon such order being made the plaintiff shall not commence nor take any step or proceeding in an action until he has complied with the terms of the order: Provided that where the plaint is entered through a solicitor, an undertaking by him, according to the form in the Appendix, to be responsible for the costs shall be sufficient. If the plaintiff, or defendant, as the case may be, fails in or discontinues his action or proceeding, and does not pay the amount of costs ordered to be paid by him to the defendant, or plaintiff, as the case may be, proceedings may be taken for the recovery of such amount from him, or from his solicitor if he has given the undertaking, as for the recovery of a judgment debt.

13.² Security by person temporarily resident in Commonwealth

A person ordinarily resident out of the Commonwealth may be ordered to give such security or undertaking as in the preceding rule mentioned, though he may be temporarily resident in Australia.

14.² Service by plaintiff or his solicitor

When a plaint is entered by the plaintiff or his solicitor, he may, at the time of the entry, write in the margin of one copy of the summons the words "Service by plaintiff (or plaintiff's solicitor)".

If the plaintiff or his solicitor undertakes the service of a summons he shall not be required to pay the bailiff's fees for service, and a plaintiff's solicitor shall be allowed such service fee as is hereinafter provided for and a plaintiff may be allowed by the clerk a similar fee for such service.

15.² Particulars of claim

- (1) The plaintiff shall annex to or endorse on the summons a claim containing particulars in accordance with the Act, or such particulars as shall be reasonably sufficient to inform the defendant of the demand intended to be made against him.
- (2) If the plaintiff's particulars have been previously rendered to the defendant, it shall be sufficient, subject to the Act, to state the nature and amount or value of the claim, with the addition of the words "particulars whereof have been rendered".
- (2a) Where the plaintiff intends to seek an order under section 32 of the *Supreme Court Act 1935* for the payment of interest, he shall include in the particulars annexed to or endorsed on the summons a statement to that effect.
- (3) The magistrate may in any case order delivery of further and better particulars, on such terms (if any) as he shall think fit.
- (4) Subrules (2) and (3) do not apply in relation to an action for a small debt.

[Rule 15 of Order 5 amended in Gazette 20 May 1983 p.1523.]

16.² Abandonment of excess

Where the claim or demand —

- (a) exceeds \$25 000 and the plaintiff desires to abandon the excess pursuant to section 59 of the Act; or
- (b) exceeds \$3 000 and the plaintiff desires to abandon the excess pursuant to section 106C(2) of the Act,

the abandonment of the excess shall be stated at the end of the particulars.

[Rule 16 of Order 5 inserted in Gazette 9 December 1983 p.4813; amended in Gazette 17 May 1985 p.1679; 27 November 1987 p.4254; 26 January 1993 p.840.]

17.² Particulars in cases of account

Where the plaintiff in the first instance desires to have an account taken, the particulars shall contain a claim that such account be taken, and shall state the amount which the plaintiff claims subject to such account; and if such amount exceeds \$25 000 and the plaintiff desires to abandon the excess, the abandonment of the excess shall be entered at the end of the particulars. If no amount is stated in the particulars, the plaintiff shall be deemed to claim \$25 000.

[Rule 17 of Order 5 amended in Gazette 12 November 1982 p.4450; 27 November 1987 p.4254; 26 January 1993 p.840.]

18.² Particulars in actions for recovery of possession of land

In actions for recovery of possession of land, the particulars shall contain a full description of the property sought to be recovered and of the annual value thereof, and of the rent, if any, fixed or paid in respect thereof.

19.² Particulars where more than one cause of action

Where the plaintiff seeks to obtain payment or satisfaction, or relief, redress, or remedy upon more than one cause of action or claim, he shall in his particulars state the grounds of each claim separately, and shall also state separately the payment or satisfaction, relief, redress, or remedy he claims in respect of each.

20.² Further particulars

- (1) In any action other than an action for a small debt the defendant may, at any time not later than 5 clear days before the return day, give notice to the plaintiff that he requires further particulars, and the plaintiff shall, within 3 clear days of the

service of such notice, file full particulars of his claim, and of the relief or remedy to which he claims to be entitled, and shall, within the same time, deliver to the defendant a copy thereof. If the plaintiff fails to comply with such notice, or complies therewith insufficiently, the magistrate, before or at the trial, if satisfied that the defendant is thereby prejudiced in his defence, may order the plaintiff to file and deliver full particulars, and may adjourn the action, and stay all proceedings therein, or strike out the action on such terms as he thinks fit.

- (2) Where pursuant to section 106H of the Act the clerk or the court requires particulars to be furnished in relation to an action for a small debt, that requirement shall be made according to form 51A in the Appendix.

[Rule 20 of Order 5 amended in Gazette 9 December 1983 p.4813.]

21.² Fraction of a cent

Where the amount claimed in any case includes a fraction of a cent, such fraction shall not be entered in the books of the court, and judgment shall not be given for any fraction of a cent.

22.² Signature to particulars by solicitor or authorised clerk

Where a plaintiff sues by solicitor, the particulars must be signed by the solicitor in his own name or that of his firm, and he shall state thereon his place of business where he will accept service of proceedings in the action or matter on behalf of the plaintiff, otherwise the costs of entering the plaint by solicitor shall not be allowed: Provided that a clerk or other person, if duly authorised, may sign the particulars on behalf of and in the name of the solicitor.

If in the opinion of the magistrate the particulars are insufficient, he may disallow the solicitor's costs of and incidental to entering the plaint, preparing the claim and procuring the summons to be issued.

Order 6 — Service

1.² No service outside British Commonwealth of Nations

A summons may be issued for service outside the State; but no summons issued out of a Local Court shall be served outside the British Commonwealth of Nations.

2.² Leave for service outside Commonwealth

No summons shall be served outside the Commonwealth without the leave of the magistrate, which leave may be given in the form in the Appendix.

3.² Fixing time for defence

In any order giving leave to serve a summons in a personal action outside the Commonwealth, the magistrate shall fix the time to be limited in the summons for giving notice of defence.

4.² Non-personal service

In case the bailiff or other person charged with the service of a summons in a personal action shall deliver the same to some person of the apparent age of 16 years, at the place of abode or business of the party to be served, then such summons shall be deemed to have been duly served on the said party.

Provided that such bailiff or other person shall, by certificate or by affidavit as the case may require (according to one of the forms in the Appendix) to be filed in the court, certify that the place where such summons was so delivered as aforesaid was to his certain knowledge, at the time of such delivery, the actual place of abode or business of the said party.

For the purpose of this rule, a place of business shall not be deemed the place of business of the defendant unless he is the master or one of the masters thereof.

5.² Proof of service by post

When a summons in a personal action has been served by post, the magistrate or clerk may accept as proof of service a certificate of the clerk of the due posting of the summons as a prepaid registered letter, provided that the clerk has received through the post an acknowledgment of the delivery which appears to the magistrate or clerk to be an acknowledgment of the delivery of such letter, and to be signed by the party to whom such letter was addressed; and it shall be no objection that the said signature does not contain the full names or all the initials of the party.

6.² Proof of service

Proof of service of any summons in a personal action may be given by the certificate of a bailiff, or by the affidavit of any other person according to one of the forms in the Appendix.

7.² Rules applicable to other process

The provisions in the Act or made by any rules of court, applicable or relating to service or to proof of service of summonses in personal actions, shall extend and apply to every other process of a local court and also to a notice to quit to ground an action under the Act.

8.² Time for service

Save as otherwise provided, the service at any place of any summons or other process, which requires the attendance of any party on the trial or hearing of an action or matter in a local court on a return day therein specified shall be effected the same number of days at least before the return day as would be limited for giving notice of defence in a summons in a personal action issued out of the same court and served at the same place.

9.² Service on solicitor

- (1) Where a solicitor represents to the bailiff that he is authorised to accept service on behalf of a party, it shall be sufficient service to deliver the summons to such solicitor.
- (2) In this rule “**bailiff**” includes any person authorised to effect service of the summons.

10.² Service on infant

Where an infant is a defendant, service on a parent or guardian of the infant’s, or (if none) on the person with whom the infant resides or under whose care he is, shall, unless the magistrate otherwise orders, be deemed good service on the infant: Provided that the magistrate may order that service made or to be made on the infant shall be deemed good service.

[Rule 10 of Order 6 amended in Gazette 30 June 2003 p.2613.]

11.² Service on insane person or patient

- (1) Where an insane person or patient within the meaning of the *Lunacy Act 1903*⁴, as amended, is a defendant, service on the committee (if any) of such defendant or (if none) on the person with whom the defendant resides or under whose care he is, shall, unless the magistrate otherwise orders, be deemed good service on such defendant.
- (2) “**Committee**” includes any committee of the person or estate and any person having the powers of such committee, and “**insane person**” includes an incapable person and any person deemed to be an incapable person.

12.² Service on partners

Where persons are sued as partners in the name of their firm, the summons shall be served either upon any one or more of the partners, or at the principal place of the partnership business upon any person having or appearing to have at the time or service the control or management of the business there; and

subject to these rules, such service shall be deemed good service on the firm so sued.

[Rule 12 of Order 6 amended in Gazette 19 September 1986 p.3410.]

13.² Service where person carries on business in name other than his own

Where one person carrying on business in a name or style other than his own name is sued in such name or style as if it were a firm name, the summons may be served at the principal place of business of such person, upon any person having or appearing to have at the time of service the control or management of the business there; and, subject to these rules, such service shall be deemed good service on the person so sued.

[14. Repealed in Gazette 19 September 1986 p.3410.]

15.² Service where defendant on board ship

Where a defendant is living or serving on board of any ship or vessel, it shall be sufficient service to deliver the summons to the person on board who is, at the time of such service, apparently in charge of such ship or vessel.

16.² Service on soldier, marine or airman

Where a defendant is residing or quartered in any barracks or camp and serving Her Majesty as a soldier, marine or airman, it shall be sufficient service to deliver the summons at the barracks or camp to the adjutant, or to any officer, warrant-officer or non-commissioned officer not below the rank of sergeant of the company, troop or unit to which the defendant belongs.

17.² Service on prisoner

Where a defendant is a prisoner in a gaol it shall be sufficient service to deliver the summons at the gaol to the superintendent, keeper, or any person appearing to be the head officer in charge thereof.

18.² Service on miner

Where a defendant is working in any mine or other works underground, it shall be sufficient service to deliver the summons at the mine or works, to any person apparently in charge of the mine or works.

19.² Service where defendant employed in public asylum or prison

Where a defendant is employed and dwells in any hospital for the insane or other public asylum, or in any common gaol or prison, it shall be sufficient service to deliver the summons to the gate-keeper or lodge-keeper of the asylum, gaol, or prison.

20.² Where defendant keeps his house closed

Where a defendant keeps his house or place of dwelling or place of business closed, so as to prevent a bailiff from serving a summons, it shall be sufficient service to affix such summons on the door of such house or place of dwelling or place of business.

21.² Service in case of vacant possession

Service of the summons in an action for the recovery of possession of land may, in case of vacant possession, if it cannot otherwise be effected, be made by posting a copy of the summons upon the door of the dwelling house or affixing it to a tree or other conspicuous part of the property.

22.² Service where violence threatened

Where a bailiff or other person authorised to effect service is prevented by the violence or threats of the defendant, or of any other person in concert with him, from personally serving the summons, it shall be sufficient service to leave such summons as near to the defendant as practicable.

23.² Service of summons on corporation etc.

In the absence of any statutory provision regulating the service of process, service on a municipal council, road board, or other corporation aggregate, may be made on the mayor, chairman, or other head officer, or on the town clerk, treasurer, or secretary of such corporation; and when by any statute provision is made for service of any summons or other process upon any corporation, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or unincorporate, a summons may be served in the manner so provided.

24.² Service of summons in proceedings to recover taxes

If in any proceedings for the recovery of land or income tax, or both, with or without fines, against any taxpayer, the defendant —

- (a) is absent from Western Australia and has not, to the knowledge of the Commissioner of Taxation ⁶ after reasonable inquiry in that behalf, any attorney or agent in Western Australia on whom service of process can be effected; or
- (b) cannot, after reasonable inquiry, be found,

then good service of any summons may, without leave of the court, be effected on him by posting the same, or a copy thereof, in a letter addressed to him at his last-known place of business or abode; and, in case the proceeding is for the recovery of land tax, with or without fines, by affixing a copy thereof on a conspicuous part of the land to which the tax relates.

25.² Where leave given to proceed as if personal service effected

Where an order is made giving liberty to proceed as if personal service had been effected, the plaintiff shall (unless the defendant give notice of defence or files an admission of the debt), after the expiration of the time limited for giving notice of defence, but before or at the time of entering up judgment,

deliver or transmit to the clerk the order giving liberty to proceed, and, where conditions are imposed by the order, an affidavit showing that such conditions have been complied with.

26.² Substituted service, and notice in lieu of service

Where by reason of the absence of any party, or of some difficulty of effecting service, or from any other sufficient cause, the service of any summons (other than a judgment summons), notice, proceeding, or document cannot be made, the magistrate may, upon an affidavit showing grounds, make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may be just.

27.² Magistrate may inquire into service

If any dispute shall arise or the magistrate shall entertain any doubt as to the due service of any summons or document, the magistrate shall be at liberty to examine witnesses, and to decide whether such service has been good or otherwise, and either to proceed to hear the action or matter or defer the hearing as he shall think fit, or under special circumstances to order that a person who has not been regularly served, if notice of the summons shall have come to his knowledge, shall be deemed to have been sufficiently served, and the case or matter shall proceed as though such person had been regularly served.

28.² Notice of service or non-service

When a process which is required to be served by a bailiff has been served or has not been served within due time, the clerk shall forthwith give notice of such service or non-service to the party requiring the service and such notice may be according to one of the forms in the Appendix with any necessary modifications.

29.² Time allowed for service of summons

- (1) The time within which a summons may be served shall, unless extended under the next succeeding paragraph, be limited to a period of 12 months from the issue of the summons.
- (2) Where reasonable efforts have been made to serve the summons within the said period and service has not been effected, the magistrate may, on application, order that the time be extended for a further period not exceeding 12 months or for successive periods not exceeding 12 months each, but the time shall not be extended for any period unless the application is made within the currency of the last preceding period.
- (3) A note of any extension of the time allowed for service shall be endorsed on the summons and on any copy and shall be entered in the books of the court.
- (4) Where the summons has not been served within the time allowed for service by this rule, the action shall be struck out.

Order 7 — Objections to jurisdiction — transfer — of actions

1.² Notice of objection to jurisdiction

The notice to be given to the plaintiff by the clerk of any objection to the jurisdiction of the court chosen for the commencement of an action may be served personally on the plaintiff or left for him at his address for service with some person of the apparent age of 16 years, or sent to him at his address for service through the post or by telegraph, or where a plaintiff acts by a solicitor, such notice may be served on the solicitor.

2.² Affidavit justifying choice of court

The time to be allowed a plaintiff for filing an affidavit justifying his choice of such court shall be the time that would be allowed him under Order 5 rule 9 for giving notice of defence, if he were a defendant in a plaint.

[Rule 2 of Order 7 inserted in Gazette 23 March 1965 p.894.]

3.² Form of affidavit

An affidavit justifying a plaintiff's choice of court shall be according to the form in the Appendix; provided that when all the necessary facts cannot be deposed to by one person, different persons may severally depose to such of the facts as they respectively know, either in the same or in different affidavits.

4.² Transfer of action

- (1) When it becomes necessary to transfer an action under section 36A of the Act, the clerk shall transmit to the clerk of the court to which the action is to be transferred the originals of all proceedings in the action, with a memorandum according to the form in the Appendix, and shall give notice in writing to all parties of the transfer.

- (2) The clerk of the court to which the action is transferred shall set it down for trial on receipt of the application provided for by Order 10, rule 2.

5.² Notice to plaintiff when more than one objection

If there are more defendants than one, and more than one of such defendants object to the jurisdiction but each of the objectors does not require a transfer to the same court, then the notice of objection sent by the clerk to the plaintiff shall be according to the form in the Appendix.

Order 8 — Consolidation of actions or stay of proceedings — transfer

1.² Consolidation of pending actions and matters

Whenever any issues between the same parties can be conveniently tried together, or whenever it appears desirable notwithstanding that the parties are not identical and that the evidence necessary to prove the issues is not identical, the magistrate may consolidate any number of actions or matters in order to quiet all claims relating to one subject matter, transaction or event, or to substantially similar matters, transactions or events.

2.² Magistrate may impose terms

The magistrate may at the hearing or on motion in chambers make all necessary directions and impose such terms and conditions as he deems fit for the pre-trial procedure and for the trial or determination of the consolidated actions or matters.

3.² Transfer of actions commenced in different courts

Where actions are commenced in different courts by parties in the same interest, upon application by any of the parties they shall be transferred to the court in which the first plaint was entered, and shall there be proceeded with in the same way in all respects as if they had been commenced in that court.

4.² Application for transfer — costs before or occasioned by transfer — transmission of certified copy of proceedings

Where application is intended to be made for the transfer of any action, matter, or proceeding under section 61 of the Act, or under the last preceding rule, 3 clear days' notice in writing of such intended application shall be given by the applicant to the clerk of the court in which such action, matter, or proceeding is pending, and to all parties who may be affected by such application; but the magistrate may at any time, by consent of

all parties, or without such consent if he thinks fit, order a transfer, although this rule has not been complied with. When a transfer is ordered the magistrate may make such order as to the costs incurred before or occasioned by such transfer as he may think fit; and a certified copy of the proceedings shall be transmitted in accordance with section 61 of the Act, and the provisions of that section shall apply. The costs of such copy and the costs of transmission shall be paid for in the first instance by the party on whose application the transfer has been made, or, if the transfer is made by the magistrate without any application to transfer being made to him, such costs shall be paid for in the first instance by the plaintiff in the action, matter, or proceeding; but such payment shall be without prejudice to any question as to the party by whom such costs are ultimately to be borne.

5.² Filing order for change of venue

Any person obtaining an order under section 38A of the Act shall, as soon as practicable, file the same or an office copy thereof with the clerk of the court from which the action or matter is ordered to be transferred.

6.² Payment of costs in certain cases by party obtaining change of venue

When an order with respect to any action made by a judge under section 38A of the Act has been made within 3 clear days before the day fixed for the hearing of the action, or when notice of such an order has not been served on the opposite party and the clerk at least 3 days before that day, the magistrate may order the party who obtained the order to pay the whole or any portion of the costs of the day, unless the judge has otherwise ordered.

7.² Transfer of proceedings

The clerk of the court from which any action or matter is transferred under section 38A shall send, with the proceedings or certified copies thereof to be transmitted to the clerk of the

court to which the action or matter is ordered to be transferred, a memorandum according to the form in the Appendix; and the clerk shall give notice in writing to all parties of the transfer of the action.

7A.² Action for small debt ordered to be dealt with under general provisions

Where under section 106E(1)(b)(ii) or 106F of the Act a Local Court orders that an action that has been commenced as an action for a small debt be heard and determined under the general provisions, the court shall make a written record of the order and the clerk shall give notice thereof in writing to all parties to the action.

[Rule 7A of Order 8 inserted in Gazette 9 December 1983 p.4813.]

8.² Notice of trial

On receipt of the memorandum referred to in rule 7, the clerk of the last-mentioned court in that rule shall, after receipt by him of an application from a party to the action in the form in the Appendix, give the parties notice of trial in the manner prescribed by these rules.

[Rule 8 of Order 8 amended in Gazette 27 November 1987 p.4254.]

9.² Changing venue to a place other than a court

Where, pursuant to section 38B of the Act, the trial or hearing of an action is to be held in a place other than a court the clerk shall give not less than 14 days' notice of the time and place appointed for the trial or hearing to all parties to the action in form number 52A in the Appendix.

[Rule 9 of Order 8 inserted in Gazette 27 November 1987 p.4254.]

Order 9 — Discontinuance, confession, admission, and payment into or out of court

1.² Discontinuance

- (1) If the plaintiff which term in this rule and rule 2 includes a defendant who counterclaims by way of defence desires to discontinue any action or matter against all or any of the parties thereto, he shall give notice in writing by post or otherwise thereof to the clerk, and to every party as to whom he so desires to discontinue; and after the receipt of such notice any such party may apply ex parte for an order against the plaintiff for the cost incurred before the receipt of such notice, and for the costs of attending the court to obtain the order.
- (2) A discontinuance under this rule shall not be a defence to any subsequent action; but if after such discontinuance a subsequent action is brought for the same or substantially the same cause of action before payment of the costs allowed on such discontinuance, the magistrate may, if he thinks fit, order a stay of such subsequent action until such costs have been paid.

2.² On discontinuance costs may be taxed

Every such party as to whom proceedings have been discontinued may take out an appointment to have his costs taxed, of which he shall give notice by post or otherwise to the plaintiff, and when such party attends the taxation he shall produce to the clerk the notice of discontinuance; whereupon, whether the plaintiff attends or not, the clerk shall proceed to tax such party's costs, and enter judgment for the amount of the taxed costs, and, if the costs be not paid, such party may recover the same by execution.

3.² Confessions under section 50

Confessions under section 50 of the Act shall be delivered to the clerk before the expiry of the time limited for giving notice of defence, or before a proceeding in default has been taken:

Provided that, at any time before an action is called on, the defendant may withdraw his defence and confess and admit the claim according to the form in the Appendix, subject however to the payment of such costs as the plaintiff has incurred in consequence of the defendant not having delivered such confession as hereinbefore required, and the plaintiff may apply to the magistrate for his costs to be taxed.

4.² Admission by letter addressed to court

Where a defendant has not signed a confession under section 50(1) of the Act, the magistrate or clerk may accept as an admission of the claim or any part thereof any document containing an admission of the claim or part of it in the manner prescribed in section 50(2) of the Act, if the magistrate or clerk is satisfied that such letter was in fact written by or by the authority of the defendant; and a note of such letter having been accepted as an admission shall be entered in the minute book.

5.² Consent judgments under sections 50 and 51

In cases of judgment by consent under sections 50 and 51 of the Act, the defendant may confess the amount of the plaintiff's costs besides the court fees, and judgment may be entered accordingly, and the amount of the plaintiff's costs shall be stated separately.

6.² Admission of truth of plaintiff's statement

Where a defendant desires to admit the truth of the statements in the plaintiff's particulars, and to submit to the judgment of the court thereon, he may, in the presence of the clerk of any court, or of a solicitor, or justice of the peace, sign an admission according to the form in the Appendix. Such admission shall be filed 5 clear days at least before the return day, and the clerk shall transmit a notice thereof by post to the plaintiff; and the plaintiff shall not, unless the magistrate otherwise orders, be allowed any costs incurred after the filing of such admission in relation to the proof of the matter so admitted: Provided that the

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plaintiff shall be entitled, notwithstanding such admission, to the costs of attending on the day of trial to enter up judgment and tax his costs.

7.² Admission by any party

Any party to an action or matter may give notice in writing to any other party that he admits the truth of the whole or any part of the case or claim of such other party, and no costs incurred after the receipt of such notice in respect of the proof of any matters admitted therein shall be allowed; but the costs of any steps taken prior to the receipt of such notice may be allowed, if the clerk, on taxation, is of opinion that they were not taken unnecessarily or prematurely.

8.² Payment into court

- (1) A defendant who desires to pay money into court pursuant to section 49 of the Act shall pay the same within such time as shall allow of notice thereof being given to the plaintiff or his solicitor at least 3 clear days before the return day. Every such payment shall be taken to admit pro tanto the claim or cause of action in respect of which the payment is made, unless it is made with notice of defence and is accompanied by a notice in accordance with the form 47 in the Appendix. When any money is so paid in, the defendant must also pay in a sum sufficient to cover the costs incurred by the plaintiff up to the time of payment, in so far as such costs are sanctioned by the scale applicable to the amount paid in, unless the payment is made with a plea of tender, in which case it may be made without costs.
- (2) The defendant shall, at least 3 clear days before the return day, send the plaintiff notice of such payment; and when such payment is made with a denial of liability, he shall also send therewith a copy of the notice prescribed by the last preceding paragraph.

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- (3) The defendant may also, at any time after the prescribed time, pay money into court, and notice thereof shall be given by the defendant to the plaintiff in accordance with the last preceding paragraph; but the defendant shall not be permitted, except by leave of the magistrate, to give a notice denying liability at the time of such payment.
- (4) Where money is paid into court after the prescribed time, or where it is in any case paid in without costs, if the plaintiff does not elect to accept the money so paid in satisfaction, he may proceed as if no such payment had been made.
- (5) Whenever money is paid into court pursuant to section 49 of the Act, a person shall not, except in an action to which a defence of tender is pleaded, disclose the fact of that payment —
- (a) in the pleadings concerned; or
 - (b) to the court at the trial or hearing of the action or matter concerned or of any question or issue as to debt or damages until all questions or issues of liability and of the amount of debt or damages have been decided,
- but the court shall, in exercising its discretion as to costs, take into account the fact of that payment and the amount thereof.
- (6) The clerk shall, in order to facilitate the operation of subrule (5), ensure that notice of payment into court pursuant to section 49 of the Act is ordinarily kept in a file separate from the file used by the court during the trial or hearing concerned.

*[Rule 8 of Order 9 amended in Gazette 22 December 1978
p.4791.]*

9.² Acceptance of amount paid in in satisfaction of claim

- (1) If the plaintiff elects to accept, in satisfaction of his claim, the money paid into court by the defendant, whether the same has been paid in in due time or not, or with or without costs, or with or without a notice of denial of liability, he shall send to the clerk and to the defendant by post, or leave at the clerk's office and at the defendant's dwelling or place of business, a written

notice according to the form in the Appendix, stating such acceptance, within such reasonable time before the return day as the time of payment by the defendant has permitted.

- (2) Thereupon the action shall abate, except as herein provided, and the plaintiff shall not be liable to any costs incurred by the defendant after receiving such notice.
- (3) In any such case the magistrate may, in his discretion, subject to section 49 of the Act, order the defendant to pay such fees and costs beyond the fees and costs (if any) paid into court by the defendant, as the plaintiff may have properly incurred for work done before the receipt of notice of payment into court, and in attending the court to obtain the order for the same, including, if the magistrate on consideration of the facts of the case so orders, any of the items which might have been allowed by order of the magistrate at the trial.
- (4) If the plaintiff intends to apply for such costs, he shall give notice of his intention in his notice of acceptance of the sum paid in, according to the form in the Appendix, or where the time of payment into court by the defendant does not permit of notice of acceptance being given, the plaintiff may apply for such costs without giving such notice.
- (5) Where the plaintiff has not given notice of acceptance in accordance with paragraph (1), he may nevertheless accept the money paid into court at any time before the case is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the defendant since the date of payment into court, and which may be allowed by the court.
- (6) In default of acceptance by the plaintiff the action may proceed.
- (7) Where money is paid into court without a denial of liability, or under a defence of tender, and the action proceeds, the sum paid into court shall be included for the purpose of calculating the amount on which any costs allowed to the plaintiff are to be charged; but if the plaintiff recovers more than the sum so paid, judgment shall be obtained and entered only for the additional

amount recovered and the fees and costs so allowed; and in any such case the words “in addition to the sum of \$..... paid into court by the defendant” shall be added to the first paragraph of the form of judgment in the Appendix.

10.² Payment by plaintiff in answer to counterclaim

A plaintiff may, in answer to a counterclaim, pay money into court in satisfaction thereof, subject to the like conditions and rules as to costs, notice and otherwise as upon payment into court by the defendant.

11.² Fees and costs on payment of amount admitted after deducting set-off or counterclaim

Where a defendant pays into court any sum admitted by him to be due, after deducting any amount claimed by him as a set-off or counterclaim, he must pay into court, in respect of the court fees and solicitor’s costs (if any) entered on the summons, a sum proportionate to the amount paid in in respect of the plaintiff’s claim.

12.² Acceptance of money paid into court under defence of tender — costs

Where a defendant pays money into court under a defence of tender, the plaintiff may accept the same in satisfaction of his claim in accordance with rule 9; but he shall not be entitled to take out of court the amount so accepted, nor to any costs, without the order of the magistrate; and the magistrate may make such order as may be just as to the costs of either party, and may order any costs awarded to the defendant to be deducted from such amount and paid to the defendant.

13.² Money paid in to abide trial

Where a defendant pays into court a sum less than the sum claimed, with or without a denial of liability, and the plaintiff does not accept the same in satisfaction of his claim, the money shall not be paid out until after the trial and judgment; and if the

plaintiff recovers less than the amount paid into court, the balance of such amount shall be repaid to the defendant, unless the magistrate otherwise orders, and the magistrate may order any costs awarded to the defendant to be set off against the amount recovered by the plaintiff; and if the amount is paid into court with a denial of liability, and the defendant succeeds, the whole amount paid into court shall be repaid to him, unless the magistrate otherwise orders.

14.² Payment to plaintiff instead of into court

- (1) Where money is paid to the plaintiff instead of being paid into court, the provisions of rule 9 apply mutatis mutandis.
- (2) If the action proceeds, the sum paid to the plaintiff shall be included for the purpose of calculating the amount on which any costs allowed to the plaintiff are to be charged; but if the plaintiff recovers more than the sum so paid, judgment shall be entered only for the additional amount recovered and for the fees and costs so allowed to the plaintiff; and if the plaintiff recovers no more than the sum so paid, the magistrate may order him to pay to the defendant the costs incurred by him after such payment.

15.² Payment out where plaintiff under disability

- (1) Where money has been paid into court in an action by an infant under the age of 18 years, or person of unsound mind, it shall not be paid out of court except in pursuance of an order of a magistrate; and in making such order the magistrate shall have regard to the interests of the plaintiff under disability, and may make any order he may think just as to the disposal or investment of the money for the use of the plaintiff.
- (2) This rule does not apply to any case in which an infant under the age of 18 years sues as if he were of full age for money due to him for wages or piecework, or for work or services as a clerk, servant, mechanic or labourer pursuant to section 57 of the Act.

16.² Transmission of money from one court to another

- (1) A party to an action may pay money into a foreign court for transmission to a home court.
- (2) The clerk of the foreign court shall forthwith after the receipt thereof forward the amount paid in to the clerk of the home court in the manner in which remittances between courts are forwarded, and the said clerk shall not be responsible for any delay in the receipt thereof by the clerk of the home court whereby further costs are incurred by the party so paying in.

Order 10 — Defence, pre-trial conference, notice of trial, and default of defence

[Heading amended in Gazette 27 November 1987 p.4255.]

1.² Notice of defence

- (1) Notice of defence shall be according to the form of notice of defence appearing on the form of summons, and, subject to rule 1A, shall be accompanied by the appropriate fee set out in the Table of Court Fees in the Appendix.
- (2) The form of notice of defence referred to in subrule (1) shall contain the address for service of proceedings of the defendant, or if a solicitor files the notice of defence, the address for service of that solicitor; but where a defendant appears in person the address for service shall be either his residence or place of business as provided for in Order 6, rule 4.

[Rule 1 of Order 10 amended in Gazette 4 December 1981 p.4976; 7 December 1984 p.4020.]

1A.² Claims referred to Small Claims Tribunal

- (1) Where a defendant —
 - (a) is sued with respect to an issue in dispute which is the subject of a claim referred to a Small Claims Tribunal; and
 - (b) files a certificate issued under section 17 of the *Small Claims Tribunals Act 1974* in relation to that claim before or at the time of filing a notice that he intends to defend the action,

no fee is payable for the filing of the notice of defence.

- (2) Where a defendant files a certificate referred to in subrule (1) and subsequently withdraws the claim before the Small Claims Tribunal the clerk may require the defendant to pay the prescribed fee for the filing of a notice of defence.

[Rule 1A of Order 10 inserted in Gazette 7 December 1984 pp.4020-1.]

2.² Notice of trial — dismissal for want of listing

- (1) After notice of defence has been given in accordance with section 46(1) of the Act the clerk shall give to all parties to the action the notice in form number 50 in the Appendix accompanied —
 - (a) in the case of an action for a small debt, by a copy of any reasons or particulars given by the defendant with his notice of defence; and
 - (b) in the case of an action where a certificate referred to in rule 1A has been filed, by a notice in form number 50A in the Appendix.
- (2) Any party upon receipt of the notice referred to in subrule (1) or in rule 7A of Order 8 may —
 - (a) within 14 days after being given that notice request a pre-trial conference by filing with the clerk a request in form number 50C in the Appendix; or
 - (b) apply to the clerk to list the action for trial by filing with him an application in form number 51 in the Appendix, together with —
 - (i) a certificate of readiness in form number 50B in the Appendix unless the requirement for such a certificate has been dispensed with; and
 - (ii) the hearing fee if the person applying to have the action listed is the plaintiff and the action is not an action for a small debt.
- (3) Upon receipt of an application under subrule (2)(b) or rule 2A(2), and if applicable, the certificate of readiness and the hearing fee the clerk shall, unless a direction to hold a pre-trial conference has been given, give notice of trial as prescribed by subrule (4) or rule 2A(3).
- (4) A notice of trial shall be in form number 52 in the Appendix and shall be at least 14 days' notice.

[Rule 2 of Order 10 inserted in Gazette 27 November 1987 p.4255.]

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2A.² Pre-trial conference

- (1) Where a request has been made under rule 2(2)(a) and a magistrate has directed under section 45B(2) of the Act that a pre-trial conference be held the clerk shall give all parties a notice in form number 50D in the Appendix.
- (2) After a pre-trial conference any party may apply to the clerk to list the action for trial by filing with him an application in form number 51 in the Appendix together with a certificate of readiness, if required, and such hearing fee, if any, as is applicable under rule 2.
- (3) A notice of trial under this rule shall comply with rule 2(4).
- (4) The clerk shall ensure that notes of anything said or done at a pre-trial conference in relation to an action are kept on a file which is separate from the file which is used by the court during the trial or hearing of that action.

[Rule 2A of Order 10 inserted in Gazette 27 November 1987 p.4255.]

3.² Service of notices by post, telegram or personal delivery

Notice of defence and of trial may be given or served by post or telegram, or personal delivery.

4.² Default of defence

- (1) The plaintiff may apply for final judgment pursuant to section 46(2)(a) of the Act, by filing with the clerk the praecipe for entry of judgment in the form number 52 in the Appendix.
- (2) Subject to the Act, if the defendant makes default in giving notice of defence, the plaintiff may set the action down for trial or assessment of damages, and notice of trial or assessment of damages shall be given to the defendant, and such judgment shall be given as the court shall consider the plaintiff entitled to.

5.² Notice of assessment of damages

Notice of assessment of damages shall be according to the form prescribed for notice of trial, with the necessary alterations, and subject to section 46(2)(c) of the Act the rules applicable to length and service of notice of trial shall apply thereto.

6.² Time for which notice to be screened for defendant in default

The length of time during which any notice or document intended for a defendant who has not given notice of defence shall be screened or exhibited under section 46(2)(c) of the Act shall be 3 days.

7.² Where plaintiff sues on behalf of others

Where a plaintiff sues on behalf of or for the benefit of others having the same interest, the defendant may avail himself of any defence in respect of each of the persons in whose behalf or for whose benefit the plaintiff so sues which he would have had against such person if he had been plaintiff.

8.² Set-off and counterclaim

A defendant in an action may set off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sounds in damages or not, and such set-off or counterclaim shall have the same effect as a cross action, so as to enable the magistrate to pronounce a final judgment in the same action, both on the original and on the cross claim.

9.² Objection by plaintiff under section 34(2)

When the plaintiff objects in writing under the powers given by section 34(2) of the Act to the court giving any relief on any counterclaim exceeding that which the court would have jurisdiction to give independently of that section, he shall give notice in writing of his objection to the clerk and to the

defendant, according to the form in the Appendix, within such time after receipt of notice of the counterclaim as would be allowed him under Order 5 rule 9 for giving notice of defence, if he were a defendant in a plaint. The plaintiff may, at the time of giving notice of objection, also give notice that he will, on the day fixed for the trial, apply to the magistrate to adjudicate upon the original claim (if not admitted), subject to such order as the magistrate may make for the stay of execution or otherwise in reference thereto.

[Rule 9 of Order 10 amended in Gazette 21 January 1965 p.894.]

10.² In action for recovery of possession, any person not named as a defendant may, by leave, appear

In an action for the recovery of possession of land any person not named as a defendant in the summons may by leave of the magistrate be allowed to appear and defend on filing, 5 clear days at least before the return day, an affidavit together with as many copies thereof as there are plaintiffs and defendants, showing that he is in possession either by himself or his tenant of the property or some part thereof mentioned in the particulars (such part being described in the affidavit with reasonable certainty); and upon such affidavit being filed and leave given, the clerk shall enter the name, address, and description of the person filing the affidavit in the plaint book as a defendant in addition to the name of every person originally made defendant, and shall, 3 clear days at least before the return day, give notice, according to the form in the Appendix, by post or otherwise, to the plaintiffs and the original defendants, that the person filing the affidavit has filed the same, and will appear and defend at the trial of the action, annexing to each notice a copy of the affidavit. In all subsequent proceedings in the action the person filing the affidavit shall be named as a defendant.

11.² In action for recovery of possession, defendant may give notice that he will limit his defence to part of the property

In an action for the recovery of possession of land any defendant may, 5 clear days at least before the return day, file with the clerk a notice in writing, together with a copy for the plaintiff, according to the form in the Appendix, that he intends to limit his defence to a part only of the property mentioned in the particulars, describing that part in such notice with reasonable certainty; and the clerk shall, 3 clear days at least before the return day, send the copy of such notice by post to the plaintiff.

12.² Where one of several persons jointly answerable is sued

Where a plaintiff avails himself of the provisions of section 54 of the Act, and does not proceed against all of several persons jointly answerable, every defendant sued may avail himself of any defence or counterclaim to which he would have been entitled if all the persons liable were made defendants.

13.² Misjoinder of plaintiffs not to defeat counterclaim

Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a set-off or counterclaim, he may obtain the benefits thereof by establishing his set-off or counterclaim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

14.² Disclaimer, admission, and other statements by defendant

A defendant in any action or matter may file a statement disclaiming any interest in the subject matter thereof, or admitting or denying any of the statements in the plaintiff's particulars, or raising any question of law on such statements without admitting the truth thereof; or he may state concisely any new fact or document upon which he intends to rely as a defence, or which he intends to bring to the notice of the court; and a copy of such statement shall be filed therewith, and such

copy shall be transmitted by the clerk to the plaintiff: Provided always, that in exercising his discretion as to costs the magistrate shall consider the fact of a defendant having or not having availed himself of the powers given by this rule. This rule shall apply to a plaintiff who is defendant by counterclaim.

15.² Notice to be given of special defence

Where a defendant intends to rely on any of the grounds of defence mentioned in rules 17, 18, 19, 20, 21, 22 and 23, or upon any set-off or counterclaim, he shall file, in duplicate, with his notice of defence, a notice stating thereon his name and address, together with a concise statement of such grounds of defence, or of his set-off or counterclaim; and the clerk shall, thereupon, within 24 hours after receiving the same, transmit by post one copy of such notice and statement to the plaintiff: Provided that in case of non-compliance with this and the abovementioned rules, and of the plaintiff's not consenting at the trial to permit the defendant to avail himself of such defence, set-off, or counterclaim, the magistrate may, on such terms as he may think fit, adjourn the trial of the action to enable the defendant to give such notice.

16.² Set-off or counterclaim

Where a defendant intends to rely on a set-off or counterclaim against any of the claims of the plaintiff, his statement shall contain particulars of such set-off or counterclaim and mutatis mutandis the provisions of Order 5 shall apply to such particulars.

17.² Infancy

Where a defendant intends to rely on the defence of infancy, he shall, in his statement, set forth, so far as he is able, the place and date of his birth.

[18. Repealed in Gazette 30 June 2003 p.2614.]

19.² Statute of Frauds

Where a defendant intends to rely on the defence of the Statute of Frauds or *The Sale of Goods Act 1895* (section 4), his statement shall state that the requirements of the statute have not been complied with.

20.² Statute of limitations

Where a defendant intends to rely on the defence of any statute of limitations, his statement shall state that the claim for which he is summoned is barred by a statute of limitations.

21.² Bankruptcy

Where a defendant intends to rely on the defence of a discharge or release under any statute relating to bankruptcy or insolvency, he shall, in his statement, set forth the date and particulars of his discharge or release.

22.² Equitable relief

Where a defendant claims to be entitled as matter of defence to any equitable estate or right, or to relief on any equitable ground against the claim of the plaintiff, or any part thereof, he shall, in his statement, show concisely the circumstance which give rise to such defence, and set forth separately each of the grounds of equitable defence.

23.² Tender

Where the defence is a tender, such defence shall not be available unless, at the time of filing the notice of such defence, the defendant makes payment into court (which may be without costs) of the amount alleged to have been tendered.

24.² Notice of defence to counterclaim

Where in answer to a counterclaim the plaintiff intends to rely on any of the defences mentioned in rules 16, 17, 18, 19, 20, 21, 22 and 23, he shall file notice thereof in accordance with the

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said rules. All the provisions of rule 15, mutatis mutandis, shall apply to such notice, provided that such notice shall be deemed to be duly given if filed in duplicate at least 3 clear days before the return day.

25.² Where counterclaim affects other persons

Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff along with any other person, he may apply to the court under Order 16, rule 2, to add the name of such person as a party to the counterclaim; and that rule, and the other provisions of Order 16, and rule 24 of this Order, shall apply to a person made defendant to a counterclaim in the same manner as to a person made defendant to an action, or to a plaintiff made defendant to a counterclaim.

Order 11 — Affidavits

1.² Form of affidavits

All affidavits shall be expressed in the first person, and shall be drawn up in paragraphs and numbered, and shall be in accordance with sections 98A and 99 of the *Evidence Act 1906*.

2.² Sources of knowledge to be stated

All affidavits, other than those for which forms are given in the Appendix, shall state the deponent's full name, occupation and place of residence, and also what facts or circumstances deposed to are within the deponent's own knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what such sources are.

The costs of every affidavit which unnecessarily sets forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

3.² How affidavits to be intituled

Every affidavit shall be intituled in the action or matter in which it is sworn.

4.² Affidavits to show on whose behalf filed

It shall be stated in a note at the foot of every affidavit, filed on whose behalf it is so filed, and such note shall be copied on every office or other copy furnished to a party.

5.² Costs of affidavits when disallowed

The costs of affidavits not in conformity with the preceding rules of this Order may be disallowed on taxation, unless the magistrate otherwise directs.

6.² Affidavits made by 2 or more deponents

In every affidavit made by 2 or more deponents the names of the several persons making the affidavits shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the abovenamed deponents.

7.² Filing of affidavits

Before any affidavit is used it shall be filed in the office of the clerk; but this rule shall not hinder a magistrate from making an order in an urgent case upon the undertaking of the applicant to file any affidavit sworn before the making of such order, provided that such order shall not be issued until such affidavit has been filed.

8.² Affidavits not to be filed if sworn before party's solicitor

An affidavit shall not be filed which has been sworn before any person who was at the time of the swearing of the same the solicitor acting for the party on whose behalf such affidavit is to be used, or the agent, partner, or clerk of such solicitor, or who is the party himself.

9.² Erasure, blotting, interlineation etc. in affidavits

No affidavit or other document shall be filed or used in any action or matter, unless the magistrate otherwise orders, which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, or in the body or jurat of which there is any interlineation, alteration, or erasure, unless the person before whom the same is sworn has duly initialled such interlineation or alteration, and in the case of an erasure has re-written and signed in the margin of the affidavit or document the words or figures appearing to be written on the erasure, or which is so imperfect upon the face thereof by reason of having blanks thereon or otherwise that it cannot easily be read or understood.

10. Illiterate or blind deponent

Where an affidavit is sworn by any person who appears to the person taking the affidavit to be illiterate or blind, the person shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his mark or signature in the presence of the person. No such affidavit shall be used in evidence in the absence of this certificate, unless the magistrate is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

11.² Use of defective affidavit

The magistrate or clerk may receive any affidavit sworn for the purpose of being used in any action or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

12.² Affidavits of service

Affidavits of service, when required, shall state when, where, how, and by whom service was effected.

13.² Notice of rejection of imperfect affidavits or documents

Whenever an affidavit or other document is rejected, the clerk shall give notice, by post or otherwise, to the party offering the same for filing, of such rejection and the reasons thereof; but no such notice shall be necessary if the party offering the same is present when the affidavit or other document is rejected.

Order 12 — Proceedings in chambers

1.² Application made to clerk

All applications in reference to proceedings in chambers must be made to the clerk of the court having cognisance of the matter.

2.² Affidavits first filed

All affidavits or papers upon which it is intended to move must first be filed with the clerk, and placed before the magistrate by him.

3.² Form of applications

- (1) The application may be made either *ex parte* or on summons, according to the form in the Appendix. When made on summons, the summons shall be served on the opposite party 2 days at least before the hearing of the application, unless the magistrate or clerk gives leave for shorter notice.
- (2) No affidavit in support shall be necessary, unless required by the Act or these rules, but the magistrate or clerk, as the case may be, may, if he thinks fit, adjourn the hearing of the application and order affidavits in support to be filed.

4.² When summons returnable

Unless otherwise directed by the magistrate, every summons shall be made returnable at the court whence the summons was issued by the clerk at such an hour of the day on which the court sits as the clerk may appoint.

5.² Magistrate may dispose of business in chambers

Except where otherwise expressly or impliedly provided by statute or by the rules, a magistrate may dispose of such business in chambers as he thinks fit.

6.² Summons to be signed and sealed

Every application returnable in chambers shall set out in plain and distinct terms the nature of the application to be made, and where the application is in the form of a summons shall be signed and sealed by the clerk of the court in which the action, suit, or proceeding is pending.

7.² Grounds of application

The grounds of the application shall be stated in an affidavit, which shall be filed before the issue of the process.

8.² Copies of affidavits to be served

Copies of affidavits intended to be used upon the hearing of any application before a magistrate must be served upon the opposite party before being used and in sufficient time to enable the party served to answer on affidavit any statement which he intends to contest.

9.² Orders may be absolute or on terms

The magistrate or clerk, upon the hearing or adjourned hearing of the application, may make an order absolute in the first instance, or to be absolute at any time to be ordered by him, unless cause be shown to the contrary, or may make such other order or give such directions as may be just.

10.² Costs of applications in chambers

- (1) The allowance of the costs of and incidental to any application in chambers made under these rules shall be in the discretion of the magistrate or clerk; and no such costs shall be allowed on taxation without special order.
- (2) The taxation of costs, when allowed, shall not take place until the general taxation of the costs of the action or matter in which the application is made or the action or matter is determined, unless the magistrate or clerk on the hearing of the application for good cause otherwise orders.

11.² Special applications in chambers

Where an application is made in chambers in the manner provided by a particular statute and such application does not comply with the provisions of this order the magistrate may make such order as to costs as he is authorised to do by that particular statute.

Order 13 — Claim for contribution or indemnity

1.² Notice of claim to contribution or indemnity — issue and service

- (1) Where in any action a defendant claims as against any other defendant or as against any person not already a party (hereinafter in either case called “**the third party**”) —
 - (a) that he is entitled to contribution or indemnity; or
 - (b) that he is entitled to any relief or remedy relating to or connected with the subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
 - (c) that any question or issue relating to or connected with the subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined as between any of the parties,

the defendant claiming may, subject to these rules, issue and serve a third party notice on the other defendant or person against whom the claim is made.

- (2) The notice in the form number 57 in the Appendix shall state the grounds of the claims, the question or issue sought to be determined, and the extent of any relief or remedy claimed and shall be filed and served on the third party in the same manner as a summons is filed and served, and with it shall be served a copy of the summons and of all other pleadings and affidavits up to the time of the bringing in of the third party.
- (3) A copy of the notice shall be served on all other parties.
- (4) The notice shall be served by the defendant within the time limited for giving notice of defence, or in the case of a defendant to a counterclaim, within the time limited by rule 9 of Order 5, as if the defendant is a defendant to a plaint.

2.² Third party when served may act as if original defendant

A third party on whom a third party notice has been served may issue a third party notice against any other person as if the third party originally served were a defendant and the successive third party were an original third party and so on in succession, and the provisions of these rules with the necessary modifications shall apply.

3.² Appearance of third party — default of appearance

If any person served with a notice under the last preceding rule (hereinafter called the third party) desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, he must appear at the court on any day to which he may have received notice of trial from the clerk or on any day to which he may have received notice from the clerk that the trial has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the said notice.

Provided that if it appears to the magistrate that the notice of claim has not been served on the third party in time to enable him to appear on the day hereinbefore mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the magistrate may adjourn the proceedings against the third party, or the original action and the proceedings against the third party, on such terms, as to costs and otherwise, as may be just.

4.² Proceedings on default of the appearance by third party

Where a third party fails to appear on the day mentioned in rule 3, or, if the proceedings are adjourned under that rule, on the day to which the proceedings are adjourned then —

- (a) if judgment in the original action is given in favour of the plaintiff on default of appearance by the defendant, the defendant may at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the magistrate, apply to the magistrate to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice, and the magistrate may enter judgment accordingly; or
- (b) if the original action is tried, and results in favour of the plaintiff, the magistrate may, on the application of the defendant at or after the trial enter such judgment as the nature of the case may require for the defendant giving the notice against the third party: Provided that execution thereon shall not be issued without leave of the magistrate until after satisfaction by such defendant of the judgment against him; or
- (c) if the original action is finally decided in favour of the plaintiff otherwise than by trial, the magistrate may, on application by the defendant, order such judgment as the nature of the case may require to be entered for the defendant giving the third party notice against the third party, at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him.

Provided that the magistrate may set aside or vary any judgment entered against the third party under this rule upon such terms as may be just.

5.² Application for directions — what directions may be given

Any third party, or the defendant in the action, may apply at or before the trial to the magistrate for directions; and the

magistrate, upon the hearing of the application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability as between the third party and the defendant giving the notice to be tried in such manner at or after the trial of the action as the magistrate may direct, and if not so satisfied may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party; or the magistrate may, if it appears desirable so to do, give the third party leave to defend the action upon such terms as may be just, or to appear at the trial and take such part therein as may be just, or he may order such person to be substituted for or to be joined with the defendant in the action, upon such terms as to security or otherwise as may be just, and generally may direct such proceedings to be taken or amendments to be made, and give such directions as he may think proper for having the question most conveniently determined, and as to the mode or extent in or to which the third party shall be bound or made liable by the judgment in the action.

6.² Costs

The magistrate may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other or others, or give such directions as to the costs as the justice of the case may require.

Order 14 — Interlocutory and interim orders and proceedings

1.² Where defence is an alleged right to be relieved of a prima facie case of liability

When by any contract a prima facie case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the magistrate may make an order for the preservation or interim custody of the subject matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured.

2.² Order for sale of perishable articles etc.

The magistrate may, upon the application of any party to any action or matter, make any order for the sale by any person named in such order, and in such manner and on such terms as the magistrate may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which incur charges for food or keep, or which, for any other just and sufficient reason it may be desirable to have sold at once.

3.² Order for detention, preservation etc.

The magistrate may, upon the application of any party to an action or matter, and upon such terms as may be just, make any order for the detention, preservation, inspection, surveying, measuring, or weighing of any property or thing, being the subject of such action or matter, or as to which any question may arise therein, and may for all or any of the purposes aforesaid authorise any persons to enter upon or into any land or building in the possession of any party to such action or matter, and authorise any samples to be taken, or any observation, plan, or model to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

4.² Order for clerk to take deposition of person ordered to weigh, inspect etc.

When an order is made for inspecting, surveying, measuring, weighing, or making experiment, or for taking any sample, or making any plan or model, by any person to be named therein, such order may include an order for the clerk or some other person to be named therein to examine upon oath and take the deposition of the person so named, as to such measure, weight, or inspection, or the correctness of such survey, or the result of such experiment, or the fairness of such samples, or the accuracy of such plan or model, and such order may also empower any or either party to give the deposition so taken in evidence upon any trial or proceeding.

5.² Order for inquiries or accounts

The magistrate may, after deciding or reserving any question of liability in an action or matter, direct any necessary inquiries or accounts to be made or taken by the clerk, notwithstanding that it may appear that there is some special or further relief sought or some special issues to be tried, as to which it may be proper that the action or matter should proceed in the ordinary manner.

6.² Application for interlocutory injunction or order

When any party desires before the trial an immediate order upon any of the matters following (that is to say), an order in the nature of any injunction, or for taking any accounts (whether the particulars pursuant to Order 5, rule 17, claim such accounts, or the claim in the particulars involves taking such accounts), or for making any inquiries, he may apply to the magistrate, either in or out of court, upon affidavits setting forth the facts rendering such order immediately necessary; and the magistrate may, upon such application, make such order, and upon such terms, as he may think fit.

7.² Where specific property other than land is sought to be recovered, but is claimed to be retained under lien or as security

Where an action is brought to recover, or a defendant in his defence seeks, by way of counterclaim to recover, specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the magistrate, upon being satisfied by affidavit or otherwise of the existence of such lien or security, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the magistrate may direct, and that upon such payment into court being made the property be given up to the party seeking to recover it.

8.² Settlement, signing, sealing, filing, and service of orders under preceding rules

Notwithstanding the provisions of Order 12, the draft of any order applied for under any of the preceding rules of this Order shall be prepared beforehand by the party making the application, and shall be settled by the clerk. When the application is made to the magistrate, the applicant shall present the draft order settled by the clerk to the magistrate for his approval, and the magistrate shall sign the same if he approves thereof, or shall make such alterations as he may deem necessary, and sign the draft as so altered; and the draft so signed shall be transmitted by the applicant to the clerk, who shall seal and file the same, and issue a copy thereof under the seal of the court to the bailiff or the applicant or the applicant's solicitor for service.

9.² Deposit by plaintiff may be ordered where defendant resident more than 32 kilometres from court shows defence on merits

Where the residence as well as the place of business (if any) of a defendant is more than 32 kilometres distant from the court in which the plaint is entered, and such court is not the nearest court to the defendant's residence or to his place of business, he may, with his notice of defence, forward by post to the clerk of such court an affidavit disclosing a good defence upon the merits of the action. The clerk upon receipt of such affidavit, if satisfied that it discloses such a defence, shall forthwith, by notice, according to the form in the Appendix, call upon the plaintiff to deposit in court, within such time as the clerk shall deem reasonable and sufficient and shall specify in the notice, such a sum as the clerk may, having reference to all the circumstances of the case, direct. The clerk shall, where the deposit is made or not made, or the affidavit does not disclose a defence, send notice to the defendant according to such one of the forms in the Appendix as shall be applicable to the case; and where the deposit is not duly made the action shall be struck out.

This rule shall apply mutatis mutandis in favour of a third party as against a defendant.

10.² Application for order that loss of bill shall not be set up

An application under section 75 of the *Bills of Exchange Act 1909*⁷, in an action or proceeding upon a bill, for an order that the loss of the instrument shall not be set up, may be made to the magistrate at any time before the hearing of the action, on summons in accordance with the next following rule. If not so made, it may, by leave of the magistrate, be made at the hearing. In dealing with any such application, the magistrate shall take into consideration any offer of indemnity proved to have been made on behalf of the applicant, and may grant the application upon such terms as to payment of costs by the applicant, postponement of the trial, and otherwise, as may be just.

11.² Practice on interlocutory applications

Every interlocutory application shall be made in the manner provided by Order 12 except whereby any statute or by these rules it is expressly or by implication directed to be made otherwise.

12.² Clerk may refer applications to magistrate

When the application may under the particular statute or rule be made to the clerk, and is so made, the following additional provisions shall apply:

- (1) The clerk may, if in doubt as to the proper order to be made, refer the matter to the magistrate forthwith or at the next court day or at the trial.
- (2) The magistrate may vary or rescind any order made by the clerk, and may make such order as may be just, and if necessary adjourn the trial.

13.² Postponement of trial pending interlocutory proceedings

Where in any action or matter interlocutory proceedings are contemplated or pending which cannot be concluded in time to enable the parties to prepare for the trial of such action or matter on the day fixed for the same, the magistrate may, upon the application of any party, and upon being satisfied that such interlocutory proceedings are necessary and proper, make an order postponing such trial upon such terms as to costs or otherwise as may be just; and such order, if made in the absence of the other party, shall be served upon him.

Order 15 — Security

1.² Security by bond

Where a party proposes to give a bond by way of security, he shall serve, by post or otherwise, on the opposite party and upon the clerk, at his office, notice of the proposed sureties, according to the form in the Appendix; and the clerk shall forthwith give notice to both parties of the day and hour on which he proposes that the bond shall be executed, and shall state in the notice to the obligee that any valid objection which he may have to make to the sureties or either of them must be made on such day.

2.² Affidavit of sufficiency

The sureties shall make an affidavit of their sufficiency according to the form in the Appendix, unless the opposite party dispenses with the affidavit.

3.² Execution of bond

The bond shall be executed in the presence of the clerk, a justice of the peace, or other person authorised by law to administer oaths.

4.² Deposit in lieu of bond

Where a party makes a deposit of money in lieu of giving a bond, he shall forthwith give notice to the opposite party, by post or otherwise, of such deposit having been made.

5.² Bond to be deposited

In all cases where the security is by bond, the bond shall be given to the party or persons requiring the security, and shall be deposited with the clerk until the action is finally disposed of.

6.² Officer of court not to be surety

No clerk, bailiff, or other officer of the court shall become surety in any case where by the practice of the court security is required.

Order 16 — Amendment

1.² Change or addition of plaintiff

Where an action or matter has been commenced in the name of the wrong person as plaintiff or otherwise, or where it is doubtful whether it has been commenced in the name of the right person, the magistrate, if satisfied that it has been so commenced through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff or otherwise upon such terms, as to notice and otherwise, as may be just.

2.² Action not to be defeated by misjoinder or nonjoinder of parties

- (1) No action or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the magistrate may deal with the matter in controversy as regards the rights and interests of the parties actually before him.
- (2) The magistrate may at any stage of the proceedings, either upon or without the application of any party, and with or without terms, order that any parties improperly joined be struck out and that any persons who ought to have been joined, or whose presence before him may be necessary in order to enable him effectually and completely to adjudicate upon and settle all the questions involved in the action or matter, be added as parties.
- (3) Except as provided by subrule (2) no person shall be added as a plaintiff without his consent in writing.
- (4) Every party added as defendant shall be served with a notice in manner hereinafter mentioned, or in such manner as may be prescribed in any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such notice.

3.² Where too few persons made plaintiffs

Where it appears at the trial that a less number of persons have been made plaintiffs than is by law required, the name of any omitted person may, at the instance of either party, be added, by order of the magistrate, on such terms as he may think fit, and thereupon the action shall proceed, in all respects, as if the proper persons had been originally made parties; and if such person, either at the trial or at some adjournment thereof, personally or by writing, consents to become a plaintiff in manner aforesaid, the magistrate may then pronounce judgment as if such person had originally been made a plaintiff; but if such person does not consent to become a plaintiff in manner aforesaid, either at the trial or at the adjournment thereof, the action or matter shall be struck out.

4.² Change of defendant

Where a person other than the defendant appears at the trial, and admits that he is the person whom the plaintiff intended to sue, or ought to have sued, his name may be substituted for that of the defendant, if the plaintiff consents; and thereupon the action shall proceed, in all respects, as if such person had been originally named in the summons; and the costs of the person originally named as the defendant shall be in the discretion of the magistrate.

5.² Where party wrongly sues or is sued in representative character

Where a party sues or is sued in a representative character, but it appears that he ought to have sued or been sued in his own right, the magistrate may, at the instance of either party, on such terms as may be just, amend the proceedings accordingly; and thereupon the action shall proceed, in all respects, as if the proper description of the party had been given in the summons.

6.² Where party ought to have sued or been sued in representative character

When a party sues or is sued in his own right, but it appears that he ought to have sued or been sued in a representative character, the magistrate may, at the instance of either party, on such terms as may be just, amend the proceedings accordingly; and thereupon the action shall proceed, in all respects, as if the proper description of the party had been given in the summons.

7.² Amendment of proceedings

The magistrate may at any time before or after judgment and on such terms as to costs or otherwise as he may think just, amend any defect or error in the proceedings, including the names of the parties thereto, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

8.² Where all defendants have not been served

Where 2 or more persons are made defendants and some of them have not been served, the names of the defendants who have not been served may, at the instance of either party, be struck out by order of the magistrate, on such terms as may be just; and thereupon the action shall proceed, in all respects, as if the parties whose names have not been struck out had alone been made defendants; or the action may be adjourned for service upon any defendant not served.

9.² Notice to an added or substituted defendant

Where a defendant is added or substituted, except where a defendant is substituted under rule 4, an order shall be drawn up; and such order shall be served on the defendant, together with a copy of the summons, and a notice according to the form in the Appendix as to the day upon which he is to attend at the court, according to the rules applicable to the service of the original summons in the action.

10.² Amendment of particulars and notice of defence

A plaintiff may file and deliver amended particulars of demand, and a defendant, whether by original action, counterclaim, or otherwise, may file and deliver an amended notice or particulars of any special defence set up or intended to be set up by him under Order 10, rule 15, at any time before the return day, without obtaining any order for the purpose; but the magistrate at the trial, if satisfied that the opposite party has not had a reasonable opportunity of preparing his case to meet any new matter introduced by such amendment, or for any sufficient cause, may disallow the amendment, or may adjourn the trial, and may make such order as to costs as he may think fit.

11.² Abandonment of part of claim

The plaintiff may at any time before an action or matter is called on for trial, or in opening his case when called on, abandon any part of his claim, and such abandonment shall be entered on the particulars (if any), and in the minute book: Provided that, if the defendant succeeds, the magistrate may allow him costs on the scale which would have been applicable to the amount originally claimed; and in any case the magistrate may allow the defendant any costs properly incurred by him in respect of that part of the plaintiff's claim which is abandoned.

12.² Powers of clerk as to amendment when acting under sections 76 and 77

The clerk, when acting under the provisions of sections 76 and 77 of the Act, shall have the same power as the magistrate has of amending the proceedings in any action or matter.

13.² Amendment of particulars where plaintiff entitled to more than amount claimed

Where upon taking an account or otherwise, it appears that the plaintiff is entitled to recover an amount larger than that mentioned in the particulars, but not exceeding \$25 000, he may, by leave of the magistrate, and on payment of the

difference (if any) between the fees payable on the amount so mentioned and those payable on the larger amount amend his particulars so as to claim such larger amount, and thereupon judgment may be entered for the same.

[Rule 13 of Order 16 amended in Gazette 12 November 1982 p.4450; 27 November 1987 p.4254; 26 January 1993 p.840.]

14.² Where plaintiff in case of account found entitled to more than \$25 000

Where upon taking an account it appears that the plaintiff is entitled to a larger amount than \$25 000 and he has not, by his particulars, abandoned the excess over \$25 000, he may, by leave of the magistrate, abandon such excess, and thereupon judgment may be entered for \$25 000; and if the plaintiff does not abandon such excess, the action shall be struck out.

[Rule 14 of Order 16 inserted in Gazette 12 November 1982 p.4450; amended in Gazette 27 November 1987 p.4254; 26 January 1993 p.840.]

15.² Correction of clerical mistakes and omissions

Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the magistrate either ex parte or on application made in the manner prescribed by these rules.

Order 17 — Discovery and inspection

1.² Discovery of documents

An order made under section 66 of the Act directing any party to an action or matter to make discovery on oath of the documents which are or have been in his possession or power relating to the matters in dispute shall be according to the form in the Appendix, and shall specify the time within which the affidavit in answer is to be filed.

2.² Objection to discover documents

The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and on what grounds, and it shall be according to the form in the Appendix, with such variations as circumstances may require. Such affidavit shall be filed, and a copy thereof delivered to the party who obtains the order within the time named in the order.

3.² Production of documents

The magistrate may, at any time during the pendency of any action or matter, order the production upon oath, by any party thereto, of such of the documents in his possession or power relating to any question in such action or matter as the magistrate may direct; and the magistrate may deal with such documents, when produced, in such manner as may be just.

4.² Notice under section 67

Notice to any party to produce any documents under section 67 of the Act shall be according to the form in the Appendix, with such variations as circumstances may require.

5.² Time within which inspection to be given — place of inspection

The party to whom such notice is given shall, within 2 days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 2, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within 4 days from the receipt of such notice deliver to the party giving the same a notice stating a time within 3 days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of banker's books or other books of account, or books in constant use for the purposes of any trade or business, or in case the party is not acting by a solicitor, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what grounds. Such notice shall be according to the form in the Appendix, with such variations as circumstances may require.

6.² Order for inspection

- (1) If any party served with notice omits to give notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than is provided by rule 5, the magistrate may, on the application of the party desiring it, make an order for inspection at such place and in such manner as the magistrate may think fit: Provided that the order shall not be made when and so far as the magistrate is of opinion that it is not necessary either for disposing fairly of the action or matter, or saving costs.
- (2) Any application to inspect documents, except such as are referred to in the particulars, notices, or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The magistrate shall not make an order for inspection of such documents when and so far

as he is of opinion that it is not necessary either for disposing fairly of the action or matter, or for saving costs.

7.² Actions against or by sheriff or bailiff

In an action against or by a sheriff or bailiff, or other officer discharging the like functions, in respect of any matters connected with the execution of his office, the magistrate may, on the application of either party, order that the affidavit to be made in answer to an order for discovery shall be made by the officer actually concerned.

8.² Verified copies

When inspection of any business books is applied for the magistrate may, if he thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations: Provided that, notwithstanding that such copy has been supplied, the magistrate may order inspection of the book from which the copy was made.

9.² Privilege

Where on an application for an order for inspection privilege is claimed for any document, the magistrate may inspect the document for the purpose of deciding as to the validity of the claim of privilege.

10.² Inquiry as to present or past possession of specified documents

The magistrate may, on the application of any party to an action or matter at any time, and whether an affidavit of documents has or has not been already ordered or made, make an order requiring any other party to state by affidavit whether any specific documents, to be specified in the application, are or

have at any time been in his possession or power; and if not then in his possession, when he parted with the same, and what has become thereof. Such application shall be made on affidavit stating that in the belief of the deponent the party against whom the application is made has or has at some time had in his possession or power the documents specified in the application, and that they relate to the matters in question in the action or matter, or to some of them.

11.² Premature discovery

If a party from whom discovery of documents or inspection is sought objects to the same or any part thereof, the magistrate may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action or matter, or that for any other reason it is desirable that any issue or question in dispute in the action or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

12.² Order to apply to infants

This Order shall apply to infant plaintiffs and defendants and their next friends and guardians *ad litem*.

Order 18 — Interrogatories

1.² Discovery by interrogatories

A party may give notice in writing to any other party requiring him to answer specified interrogatories relating to any matter in issue.

2.² Grounds of objection to answering interrogatories

A party may object to answer an interrogatory on all or any of the following grounds — that it is —

- (a) irrelevant;
- (b) scandalous or indecent;
- (c) vexatious or oppressive;
- (d) not bona fide required for the purpose of the litigation;
- (e) not sufficiently material at that stage;
- (f) inadmissible under the laws of evidence:

Provided that interrogatories which do not relate to any matters in issue shall be deemed irrelevant notwithstanding that they might be admissible on the cross-examination of the witness.

3.² Voluntary compliance with request

- (1) If the party making the requisition for answers to interrogatories so elects in the notice the answers may take the form of an unsworn statement of the person answering, which shall be attested by the solicitor for the party interrogated or by some other person authorised by the Supreme Court to take affidavits.
- (2) A party or person wilfully making a false statement in answer to an interrogatory shall be guilty of a contempt of court.
- (3) If the party making the requisition does not agree to accept the statement then the answers to interrogatories shall be made on affidavit.

4.² Compulsory compliance — application for order and proceedings thereon

- (1) If the party requested to answer interrogatories neglects or refuses to do so within the time prescribed or such extended time as may be agreed by the parties; or shall answer interrogatories or any of them evasively or insufficiently, the party making the request may apply to the magistrate for an order to compel compliance with the requisition of the notice. The summons in support of the application shall state the reason for the making of the application.
- (2) No affidavit shall be necessary in support of any application for answers to interrogatories.
- (3) If the magistrate is satisfied that no legitimate objection exists under rule 2 he may make an order for answers to the interrogatories, or for further or better answers as the case may require.
- (4) The party against whom an order is obtained shall pay the costs of the application unless the magistrate on good cause shown shall order otherwise.
- (5) If the magistrate is satisfied that there is a legitimate objection under rule 2 he may refuse the application or grant it as to particular interrogatories or adjourn the application wholly or in part.
- (6) Without limiting the generality of the preceding subrule, if the magistrate is satisfied that the right to answers to interrogatories depends on the determination of any issue or question in dispute or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding such right he may order the issue or question to be determined first and reserve the application for further consideration.

5.² Onus of proof where alleged evasive or insufficient answers to interrogatories

Where it is alleged that a party has answered an interrogatory evasively or insufficiently, the party alleging may, if he can, demonstrate the evasion or insufficiency by the form of the answer to the question; and in cases where it cannot be so demonstrated, the onus shall lie on the party alleging to adduce evidence of reasonable grounds for suspecting such evasion, or failure.

6.² Contested claim of privilege

Any objection to answering one or more of several interrogatories may be taken by affidavit setting out the grounds of objection.

7.² Statements and affidavits — by whom made

Any statement or affidavit in answer to interrogatories or any affidavit of objection to interrogatories may be made as follows:

- (a) by the party;
- (b) where the party is the Crown or an officer of the Crown sued or suing in his official capacity — by some officer of the Crown having personal knowledge of the facts;
- (c) where the party is a body corporate or a body of persons empowered by law to sue or be sued whether in its own name or in the name of any officer or other person — by some member or officer of the corporation or body having knowledge of the facts;
- (d) where the party is not *sui juris* — by his next friend, guardian *ad litem*, or committee, as the case may be,

and in the case of an order against any party to which paragraph (b) or (c) or (d) applies the order shall specify the person who is to comply with the order on behalf of the party.

8.² Effect of non-compliance with order

If any party fails to comply with any order to answer interrogatories, he shall be liable to the penalties provided by section 155 of the Act. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended; and the party who obtained the order may apply to the magistrate for a further order to that effect and an order may be made accordingly.

9.² Order for interrogatories may be served on solicitor

Service of an order for interrogatories made against any party on his solicitor shall be sufficient service to make the party liable to the penalties provided in section 155 of the Act for disobedience to the order. But the party liable may show to the magistrate that he has had no notice or knowledge of the order.

10.² Solicitor neglecting to give notice to client may be liable

A solicitor upon whom an order against any party for interrogatories is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client shall be liable to the same penalties as are provided in rule 8 as if he was the party failing to comply with the order.

11.² Use in evidence of answers to interrogatories

Any party may use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the magistrate may look at the whole of the answers and if he shall be of the opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them he may direct them to be put in.

12.² Actions against or by sheriff or bailiff

In an action against or by a sheriff or bailiff, or other officer discharging the like functions, in respect of any matters connected with the execution of his office, the court may, on the application of either party, order that the affidavit to be made in answer to interrogatories shall be made by the officer actually concerned.

13.² Costs of improper interrogatories

In adjusting the costs of the action or matter inquiry shall, at the instance of any party, be made into the propriety of exhibiting interrogatories, and if it is the opinion of the clerk on taxation, or of the magistrate, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

14.² Costs on order and security for costs

- (1) In granting any application for an order under the preceding rules of this Order, the magistrate may order the party applying to give security for any costs which may be incurred by the other party in complying with the order, and may fix the sum of the costs.
- (2) An order for discovery by interrogatories shall state the amount ordered to be paid into court, or that payment into court is dispensed with; and where payment into court is ordered the party seeking discovery shall, with his interrogatories, serve a copy of the receipt for the payment into court, and the party from whom discovery is sought shall not be bound to answer, unless and until the said copy has been served.

15.² Payment out of amount paid in as security

Unless the court otherwise orders, the amount paid in under the last preceding rule in any action or matter shall after the action

or matter has been finally disposed of, be paid out to the party by whom the same was paid in, on his request, or to his solicitor on such party's written authority, except in the event of his being ordered to pay costs, in which case the amount in court shall be subject to a lien for the costs ordered to be paid to any other party: Provided that, if after the action or matter has been finally disposed of, by consent or otherwise, no taxation of costs is required, the clerk shall, by consent of the parties, or on being satisfied that the party by whom the amount was paid in is entitled thereto, pay out the same to such party, or to his solicitor on such written authority as aforesaid.

16.² Order to apply to infants etc.

This order shall apply to infants and their next friends and guardians *ad litem*, and to the next friends, guardians *ad litem*, or committees of lunatics or persons of unsound mind.

Order 19 — Change of parties by death, etc.

1.² No abatement caused by death etc.

An action or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, or the execution of any statutory deed of assignment by any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*, but may be carried on under the order of the magistrate as hereinafter provided; and, whether the cause of action survives or not, there shall be no abatement, by reason of the death of either party, between the finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death.

2.² Order to carry on proceedings

Where, by reason of marriage, death, bankruptcy, or statutory assignment or by any other assignment or transaction or any other event whatsoever made entered into or occurring after the commencement of a cause or matter, and causing a change, transfer, creation, devolution, or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action or matter, it becomes necessary or desirable that any person not already a party should be made a party or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained *ex parte* on application to the magistrate, upon an allegation of such change, transfer, creation, devolution, or transmission of interest or liability, or of such person interested having come into existence.

3.² Form and service of order

An order obtained as in the last preceding rule mentioned may be according to the form in the Appendix, and shall, unless the

magistrate shall otherwise direct, be served upon the continuing party or parties, other than any party at whose instance the order has been made, and also upon any new party not being the applicant, and the order shall from the time of such service, subject nevertheless to the succeeding rules of this Order, be binding on the persons served therewith. Such order may limit the time for giving notice of defence, fix the time for the trial or for the continuation of any proceedings, provide for any adjournment that may be advisable and may make such other provisions for the disposal of the action or matter as may be just.

4.² Application for discharge of order

Where any person not already a party to the action or matter is served with such order as is mentioned in the 2 last preceding rules, such person may, within 7 days from the service of the order apply to the magistrate to discharge or vary such order.

5.² Provision for cases in which person entitled to proceed does not do so

When the plaintiff or defendant in the action or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the action or matter may be continued) may apply to the magistrate for an order directing the plaintiff (or person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding the action or matter may be struck out, and the magistrate may award costs to the defendant, or, as the case may be, to the person against whom the action or matter might have been continued, in the same manner as in other cases of striking out; and in such case, if the plaintiff has died, execution may issue for such costs as provided by Order 25, rule 11.

6.² Alteration of records after addition of party

Where a plaintiff or defendant is substituted or added under any of the rules of this Order, the minute book shall be altered, and

all subsequent proceedings shall be carried on under the altered title.

7.² Appointment of guardians

The magistrate may, for the purposes of this order, appoint a guardian *ad litem* in any proceeding to any person under disability, at the instance of any party to the proceeding or of any person acting on behalf of the person under disability.

8.² Persons under disability

Where any person is under such disability that an action or matter, in which he has been served with such an order as is mentioned in rules 2 and 3, could not be carried on against him without the appointment of a guardian *ad litem* and no such guardian has been appointed, then application to discharge or vary such order may be made at any time within 7 days from the appointment of a guardian, and until the expiry of such period the order shall have no force or effect as against such person.

Order 20 — Evidence

1.² Evidence to be taken orally

Except where otherwise provided by these rules, the evidence of witnesses on a trial of any action or hearing of any matter shall be taken orally on oath; and where by these rules evidence is required or permitted to be taken by affidavit, such evidence shall nevertheless be taken orally on oath if the magistrate, on any application before or at the trial or hearing, so directs.

[Rule 1 of Order 20 amended in Gazette 28 January 1983 p.320.]

2.² Power to order particular facts to be proved by affidavit, or witnesses to be examined before examiner

The magistrate may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the trial or hearing, on such conditions as he may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with be examined before an examiner; provided that, where it appears to the magistrate that the other party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

3.² Summonses to witnesses and service

Summonses to witnesses may be issued without leave, and served by the party applying for the same or by his solicitor, or by the agent or servant of such party or solicitor, but in any case only one name shall be inserted in any such summons. Such summonses shall be according to the form in the Appendix.

4.² Witnesses may require payment before giving evidence

If any witness who has been summoned to attend shall, before he is sworn, require the magistrate to fix the amount to be paid

to him as a witness, the magistrate shall do so, and no witness shall be compelled to give his evidence until the amount so fixed shall have been paid to him or security given to the satisfaction of the magistrate.

5.² Time and mode of service

- (1) It shall be sufficient if a summons to a witness is served within a reasonable time; and such summons may be served by delivering the same to the witness in the same manner as a summons in an action.
- (2) Notwithstanding any other provisions in these rules, where the person serving a witness summons on a witness intends to pay or tender payment at the same time of the expenses of that witness in accordance with the Act or these rules, he must effect personal service of the summons on the witness.

5A.² Enforcement of summons

- (1) Orders fining witnesses pursuant to section 63 of the Act, praecipies for warrants to arrest witnesses pursuant to section 64 of the Act, and warrants to so arrest witnesses, shall be according to the forms in the Appendix.
- (2) A warrant to arrest a witness pursuant to section 64 of the Act shall not be issued, except by leave of the magistrate, where more than 28 days have elapsed since the magistrate made an order for its issue.

[Rule 5A of Order 20 inserted in Gazette 28 January 1983 p.320.]

6.² When witness does not produce documents, order for production may be made

Where a witness served with a summons containing a direction for the production of any documents at the trial does not produce the same, the magistrate may, upon admission or proof that the summons was served within a reasonable time, and that

such documents are in the possession or power or under the control of the party so served, and that they relate to the matter then pending before him, make an order for their production by the witness, and may deal with them, when produced, and with all costs occasioned by their non-production as may be just: Provided that nothing herein shall prevent the receiving of secondary evidence where admissible.

7.² Production of papers on summons by head of Government department etc.

- (1) When a witness summons containing a direction to produce books, papers, or writings, is served upon the head of any Government department or sub-department, public hospital or bank, such books, papers or writings may be forwarded to the clerk of the court in which their production is required.
- (2) The production of such books, papers, or writings by such clerk, or any of his officers, upon the trial or hearing of any action or matter, when the production of the said books, papers or writings, shall be formally called for, shall be deemed to be production by the head of the Government department or sub-department, public hospital or bank, who has been summoned to produce such books, papers, or writings.
- (3) At the conclusion of such trial or hearing, the clerk shall, on request, hand out to an officer of the department, sub-department, public hospital or bank by which it was produced, any such books, papers or writings, put in as an exhibit, unless the magistrate shall otherwise order.
- (4) At the time of handing out any such exhibit, the clerk shall obtain an undertaking, signed by the head of the Government department or sub-department, public hospital or bank by which such exhibit was produced, to return the exhibit to the clerk whenever called upon prior to the final determination of such action or matter.
- (5) Where a party to a cause or action requires one of the class of persons described in this rule to attend personally at the trial and

produce the books, papers, or writings, the magistrate may order, either before or at the trial, that person to attend and when an order is made the person obtaining the same shall serve the order on the person required to attend in the manner provided for the service of a summons.

8.² Admission of facts or documents

A notice by any party to an action or matter calling on any other party thereto to admit any factor or document, saving all just exceptions, shall be according to the forms in the Appendix and shall be given not less than 5 clear days before the trial; and if such other party does not, within 3 clear days after receiving such notice, make such admission, in the prescribed form, any expense of proving the same at the trial shall be paid by him, whatever may be the result, unless the court otherwise orders; and no costs of proving any documents shall be allowed unless such notice has been given except in cases where, in the opinion of the magistrate at the trial, or of the clerk on taxation, the omission to give such notice has been a saving of expense.

9.² Notice to admit or produce

Notices to admit or to produce documents shall be according to the forms in the Appendix, with such variations as circumstances may require.

An affidavit of the party, or his solicitor, or of some clerk or servant of either of them, of the service of any notice to admit or to produce, and of the time when it was served, with a copy of the notice to admit or to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

An affidavit of the signature to any admission made in pursuance of such notice shall be in the form in the Appendix.

10.² Costs of notice to admit or produce

If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

11.² Documents produced from proper custody to be read without proof unless objected to

Where any documents which would, if duly proved, be admissible in evidence are produced from proper custody they shall be read without further proof, if in the opinion of the magistrate they appear genuine, and if no objection is taken thereto; and if the admission of any documents so produced is objected to, the magistrate may adjourn the hearing for the proof of the documents, and the party objecting shall pay the costs caused by such objection, in case the documents shall afterwards be proved, unless the magistrate otherwise orders.

12.² Where it is desired to use an affidavit, notice may be given — costs of objection

Where a party desires to use at the trial an affidavit by any particular witness, or an affidavit as to particular facts as to which no order has been made under rule 2 he may, not less than 4 clear days before the trial, give a notice with a copy of such affidavit annexed, to the party against whom such affidavit is to be used; and unless such last-mentioned party shall, 2 clear days at least before the trial, give notice to the other party that he objects to the use of such affidavit, he shall be taken to have consented to the use thereof, unless the magistrate otherwise orders; and the magistrate may make such order as he may think fit as to the cost of or incidental to any such objection.

13.² Evidence taken after trial

Evidence taken subsequently to the trial or hearing of any action or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial or hearing.

14.² Practice as to taking evidence at any stage of action or matter

The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any action or matter at any stage.

15.² Affidavits are evidence of persons using them

Affidavits and depositions shall be read as the evidence of the person by whom they are used.

16.² Expenses of persons attending before examiner

Any person required to attend before an examiner for the purpose of being examined or of producing any document shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court.

17.² How depositions taken

The depositions taken before any person appointed to take the examination shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statements of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness refuses to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there appears to be any special reason for doing so, and may put any question to the witness as to the meaning of any answer or as to any matter arising in the course of the examination. Any questions which are objected to shall be taken down by the examiner in the depositions and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statements in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question.

18.² Failure to comply with summons, or refusal to be sworn or answer

If any person duly summoned to attend for examination or to produce any document refuses to attend, or if, having attended, he refuses to be sworn or to answer any lawful question or to produce any document, a certificate of such refusal, signed by the examiner, shall be filed with the clerk, and thereupon the party requiring the attendance of the witness may apply to the magistrate for an order directing the witness to attend or to be sworn, or to answer any question, or to produce such document, as the case may be.

19.² Objection to answer

If any witness objects to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the clerk to be filed, and the validity of the objection shall be decided by the magistrate.

20.² Witness may be ordered to pay costs

In any case under the 2 last preceding rules, the magistrate may order the witness to pay any costs occasioned by his refusal or objection.

21.² Filing of depositions

When the examination of any witness before any examiner has been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the clerk to be filed.

22.² Special report by examiner

The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the court touching such examination and the conduct or absence of any witness or other person thereon; and the magistrate may

direct such proceedings and make such order upon the report as he may think just.

23.² Power to administer oaths

Any officer of the court, or other person directed to take the examination of any witness or person under section 69 of the Act, may administer oaths for the purpose of the examination.

Order 21 — Arbitration

1.² Arbitration

- (a) At any time after an action is commenced, the magistrate may, with the consent of the parties, in cases within the ordinary jurisdiction of the court, or in cases of agreement under section 39 of the Act, make an order for a reference under the provisions of section 92 of the Act; and the provisions in that section contained as to references shall apply to a reference proceeding under such an order.
- (b) The same fees shall be paid as would have been payable on entering judgment under a summons, but where any reference is ordered to the clerk of the court the same hearing fee shall be paid as if the action had been tried.

Order 22 — Trial

1.² Actions to be heard in order, with exception

Actions shall be heard in the order in which they stand in the list, unless the magistrate or clerk otherwise orders.

2.² Right to begin and addresses to court at hearings and trials

- (a) Upon the hearing of actions and trials of issue, the right to begin is the same as in the Supreme Court, and the party who begins shall be allowed at the close of his case to address the court a second time for the purpose of summing up the evidence if his opponent does not announce any intention to adduce evidence, and the opposite party shall be allowed to open his case and also to sum up the evidence (if any), and the right to reply shall be the same as in the Supreme Court.
- (b) If persons having the same interest are represented by different counsel, the magistrate may in his discretion allow one or more of such counsel to address the court, or to take part in the examination of witnesses.

3.² Magistrate may request statement of defence before hearing evidence

At the close of the opening of the plaintiff's case and before any evidence is taken, the defendant, shall, if called upon by the magistrate to do so, by himself or the advocate appearing for him, give a concise statement of his defence to the action and of the points upon which he relies, and he shall not, except by leave of the magistrate, be at liberty to enter upon or to give evidence as to any matter not included in the defence and points so stated, and the provisions of this rule apply mutatis mutandis to defences to counterclaims.

4.² Where plaintiff does not appear

If, when an action is called on for trial the plaintiff does not appear, and the defendant appears and does not admit the

plaintiff's claim, the magistrate may, in his discretion, award costs to the defendant in the same manner, and to the same amount as if the action had been tried.

5.² Judgment on counterclaim where plaintiff does not appear

- (a) If when an action is called on for trial the plaintiff does not appear, and the defendant has given notice of a counterclaim, he may prove that counterclaim as far as the burden of proof lies upon him, and have judgment accordingly.
- (b) Any judgment obtained under this rule may be set aside upon the application of the plaintiff in like manner as a judgment obtained under section 73 of the Act.

6.² Restoring case struck out for non-appearance of plaintiff

Where a plaintiff has been non-suited, or an action or matter has been struck out under section 72 of the Act, the magistrate may on application in chambers order the action or matter to be restored to the list for hearing on the same day or any subsequent day, and may set aside any order awarding costs to the opposite party which may have been made under rule 4, upon such terms as to payment of costs of the day, adjournment of the hearing, notice to the opposite party, and otherwise, as may be just.

7.² Subsequent action after non-suit or striking out

If after the magistrate has directed a non-suit under section 72 or section 90 of the Act, or after an action has been struck out, a subsequent action is brought for the same or substantially the same cause of action before payment of the costs (if any) allowed on non-suit or striking out, the magistrate may, if he thinks fit, order a stay of subsequent action until those costs have been paid.

8.² Action pending in another court for same cause

Where at the trial it appears that an action for the same cause at the suit of the same plaintiff is pending in any other court of

record, the magistrate shall order the trial to stand adjourned to a certain day, and unless before that day the action in the other court has been discontinued the action shall be struck out.

9.² Disallowance of vexatious questions in cross-examination

The magistrate may in all cases disallow any question put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the action or matter.

10.² General jurisdiction of magistrate on trial of action

At the trial the magistrate may try the whole matter of the action and give judgment thereon, or grant any relief, redress, or remedy, or may make any order or give any direction which he may consider necessary to enable final judgment to be given upon a day to which the trial may be adjourned, and may also make such order as to costs as he may think fit.

11.² Application for injunction

In any action or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any wrongful act or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the magistrate may, in addition to giving judgment for damages and costs as the plaintiff may be entitled to, grant the injunction, either upon or without terms, as may be just.

An application under this rule may be made —

- (a) before the trial or hearing, or subsequent to the judgment and in either case it shall be made in accordance with Order 14, rule 11; or
- (b) at or immediately after the trial or hearing, in which case the order, if any, shall be included in the judgment.

12.² Inspection of property by magistrate

The magistrate may, in his discretion, inspect any property or thing concerning which any question may arise in any action or matter.

13.² Absent parties may be added on hearing

Where at the trial it appears to the magistrate that there are claims or rights, or any duties or liabilities, which cannot be disposed of by reason of all the proper parties not being before the court, the magistrate may order such parties as may be necessary to be made plaintiffs or defendants, upon such terms as to adjournment, notices and costs as he may think fit; but no person shall be added as a plaintiff without his consent. Where a defendant is added, the provisions of Order 16, rule 9, shall apply.

14.² Counterclaim where action stayed, discontinued, or dismissed

If in any case in which the defendant sets up a counterclaim the action of the plaintiff is stayed, discontinued, or dismissed, the counterclaim may nevertheless be proceeded with.

15.² Counter or other claim may be ordered to be tried by independent action

In any case of counterclaim or otherwise, or where any incidental claim arises at the trial, if the magistrate thinks that such claim can be better disposed of by an independent action, he may order such claim to be excluded, whether any application for that purpose is made or not.

16.² When a person brought in does not appear at the trial

If a person not originally a party to the action who has been served with a notice of counterclaim does not appear at the trial, the magistrate may proceed with the trial notwithstanding, and give such judgment or make such order as may be just against

the person so served and not appearing, or may adjourn the trial and give such directions and make such order as to costs as he may think fit.

17.² Judgment may be given for balance found due to defendant

Where in any action a set-off or counterclaim is established as a defence against the plaintiff's claim, the magistrate may, if the balance is in favour of the defendant, give judgment for the defendant for such balance or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

18.² Leave to clerk to exercise jurisdiction

Where by the Act the leave of the magistrate is required for the exercise of any powers or jurisdiction by the clerk, such leave may be either general or special.

19.² When clerk authorised to hear disputed claims

Where a clerk is authorised by the magistrate to hear and determine disputed claims when the sum claimed or amount involved does not exceed \$10, he shall, when any such case is called on before him, ask the parties whether they desire to have the case heard by him or by the magistrate.

20.² Postponement of trial on joint application of parties

The magistrate or clerk may at any time postpone the trial of any action or matter upon the joint application of the parties.

21.² Postponement of trial by magistrate

Where it appears that from the course of proceedings in any action or matter the trial cannot be held on the return day, the magistrate may postpone the trial until such other day as the state of the proceedings may require, and notice of such postponement shall be given by the clerk to all parties and persons interested who are not present when the order is made.

22.² Adjournment to enable party to comply with rules

When anything required by the practice of the court to be done by either party before or during the trial has not been done, the magistrate may, in his discretion, and on such terms as he shall think fit, adjourn the trial to enable such party to comply with the practice.

Order 23 — Judgments and orders

1.² Entries to be made in minute book

The clerk shall enter in the minute book a minute of all judgments and orders.

[Rule 1 of Order 23 amended in Gazette 30 June 2003 p. 2614.]

2.² Form of ordinary judgment

An ordinary judgment for debt or damages shall be according to the form in the Appendix.

A judgment, when a counterclaim has been made, and a judgment for the delivery of goods may be according to forms 95 and 96 respectively.

[3. Repealed in Gazette 30 June 2003 p. 2614.]

4.² Certain orders need not be drawn up or served

(1) No order giving leave to take any proceedings, and no interlocutory order, need be drawn up or served unless the magistrate otherwise orders.

(2) Except where a judgment or order is required to be served on the opposite party, it shall not be necessary to draw up any formal judgment or order to warrant further proceedings on such judgment or order, but the entry of such judgment or order by the clerk in the minute book shall be sufficient to warrant any further proceedings.

5.² Orders directed to be drawn up by magistrate — time to be stated for doing any act ordered to be done — memorandum to be endorsed

Every judgment or order given or made in any action or matter requiring any person to do an act thereby ordered, other than the payment of money or costs, shall state the time, or the time after service of the judgment or order, within which the act is to be

done, and a copy of the judgment or order shall be served personally upon the person required to obey the same, on which copy shall be endorsed a memorandum according to the form in the Appendix.

6.² Purposes for which certificate of judgment required to be stated

- (1) Any person requiring a certificate of any judgment or order shall state in writing whether such certificate is required for the purpose of taking proceedings thereon in any other court, or for proving the debt in bankruptcy, or for the purpose of evidence only; and in such latter case the clerk shall state thereon the purpose for which it is required.
- (2) The clerk before issuing any certificate of judgment may require the person applying for the same to furnish a praecipe in the form number 97 in the Appendix.

7.² How money payable under ordinary judgment to be payable

Money payable under an ordinary judgment shall be paid forthwith, unless the magistrate at the time of giving judgment otherwise orders. Where judgment is given for payment by instalments, such instalments shall be payable at such periods as the order directs; and if no period is mentioned, the first shall become due on the seventh day from the day of making the order, and such instalments shall be paid into court in accordance with section 91 of the Act.

8.² Fresh order for payment by instalments on application of judgment creditor

- (1) Where there is an unsatisfied judgment or order the party entitled to enforce it may apply ex parte to the court in which the same was given or made to order that the amount due and unpaid be paid by instalments, or if payable by instalments, by the like or smaller instalments; and the magistrate may thereupon make an order accordingly.

- (2) An application under this rule may be made at any sitting of the court, or it may be made at any other time by request in writing, giving the number of the plaint and the names of the parties to the action or matter in which the judgment or order was given or made, and the instalments by which the applicant desires that the amount due and unpaid may be ordered to be paid. Such request shall be left at or sent by post to the office of the clerk, accompanied by a stamped and directed envelope; and when the request has been dealt with the clerk shall forward the party notice thereof.
- (3) The clerk may, by leave of the magistrate, deal with any application under this rule out of court, and without requiring the attendance of the applicant; but he may, and where no payment has been made within 6 years before the date of the application, he shall, refer such application to the magistrate, who may make such order in the matter as he shall think right, and may require the attendance of the applicant.
- (4) An order made on an application under this rule shall be entered in the minute book, and shall have the same effect as a fresh order for payment by instalments made on the hearing of a judgment summons.

9.² Fresh order for payment of sum not exceeding \$100 on application of judgment debtor

Where a judgment has been given or an order made for the payment of any sum not exceeding \$100, exclusive of costs, by instalments or otherwise, and it appears to the satisfaction of the magistrate that the person liable under the judgment or order is unable to pay the sum ordered to be paid at the time or by the instalments ordered he may, on the application of such person, made on notice served on the party entitled to enforce the judgment or order 2 days at least before the hearing of the application, order the amount due and unpaid under the judgment or order to be paid by instalments, or, if already payable by instalments, by the like or smaller instalments, and may from time to time vary such order.

10.² Fresh order for payment in one sum or by increased instalments on application of judgment creditor

In like manner, if it appears to the satisfaction of the magistrate that the person liable under any such judgment or order is able to pay the sum ordered to be paid either in one sum or by larger instalments than those ordered, he may, on the application of the person entitled to enforce the judgment or order, made on the like notice to the person liable thereunder, order the amount due and unpaid to be paid in one sum, or by larger instalments than those previously ordered, and may from time to time vary such order.

An order made on an application under this or the last preceding rule shall be entered in the minute book, and shall have the same effect as a fresh order for payment made on the hearing of a judgment summons.

11.² Assessment of value of goods

When a judgment for delivery of goods has been obtained in default of defence, the plaintiff may have the value of the goods or any of them assessed in the same manner as damages are assessed and rules 5 and 6 of Order 10 shall apply in respect of such assessment. When the judgment has been obtained at the trial, the value of the goods shall be thereupon assessed by the magistrate.

Order 24 — Accounts

1.² How accounts to be taken

Where, pursuant to section 77 of the Act, the magistrate refers to the clerk any matter of account all parties shall have the same power of summoning witnesses, including as witnesses any parties in the action, and of examining them, and of compelling the production of documents, as they would have upon the trial of an action; and all rules as to the summoning, swearing, and examining of witnesses, and the production of documents at the trial, shall be applicable (as far as may be) to such summoning, swearing, examining, and production on taking any such accounts.

2.² Clerk to appoint time and place for taking account

Where any matter of account is referred to the clerk he shall by summons, according to the form in the Appendix, addressed to all parties entitled to attend, direct such parties to attend at his office for the purpose of proceeding with the inquiry.

3.² Hearing before clerk

Upon the day so appointed or at any adjourned sitting, the clerk shall sit at the time and place appointed, and shall hear all parties interested.

4.² Accounts to be verified by affidavit

Where any account is directed to be taken, the accounting party, unless the magistrate shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be left with the clerk.

5.² Vouchers to be produced

Upon the taking of any account the magistrate may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged shall be brought before the clerk.

6.² Clerk's certificate

The result of the proceedings before the clerk shall be stated in the form of a certificate in writing, signed by the clerk, and presented to the magistrate.

7.² Books of account to be prima facie evidence

Any books of account in which the accounts required to be taken, or any of them, have been kept shall, unless the magistrate otherwise directs, be taken as prima facie evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Order 25 — Enforcement of judgments and orders

Division 1 — By warrants of execution

1.² Orders enforceable like judgments

Every order of the court in any action or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

2.² Enforcing judgment or order against corporation

When any judgment or order against a corporation is wilfully disobeyed the magistrate may order the judgment or order to be performed or observed and carried into effect by some responsible director or officer of the company.

[3. *Repealed in Gazette 30 June 2003 p. 2614.*]

4.² Examination where difficulty arises in execution

- (1) In case of any judgment or order other than for the recovery or payment of money, if any difficulty arises in or about the execution or enforcement thereof, any party interested may apply to the magistrate, and the magistrate may make such order thereon for the attendance and examination of any party or otherwise as may be just.
- (2) The costs of any applications under this rule and of any proceedings arising from or incidental thereto shall be in the discretion of the magistrate and rule 10 of Order 12 shall apply to such costs.

5.² Date and duration of warrants of execution

A warrant of execution shall bear date on the day on which it is issued, and if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided: but such warrant may at any time before its expiration by leave of the magistrate, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to

time during the continuance of the renewed warrant, and a warrant of execution so renewed shall have effect, and be entitled to priority, according to the time of the original issue thereof. The party issuing the warrant shall apply on motion to the magistrate to renew the warrant and if an order is made the order shall be served by that party on the bailiff who is executing or attempting to execute the warrant.

6.² Applicant to furnish praecipe

- (1) The clerk before issuing any warrant may require the person applying for the same to furnish a praecipe containing the number of the plaint, and the residence, or place of business, and description of the person against whose goods or land the warrant is to be issued.
- (2) Upon receipt of the praecipe the clerk shall issue a warrant in form number 104 in the Appendix and he may amend that form in such manner as is appropriate to each case.

7.² Where default made, execution may issue

Where a defendant has made default in payment of the whole amount awarded by the judgment, or of an instalment thereof, a warrant of execution without leave of the magistrate may issue, and such execution shall be for the whole amount of the judgment and costs then remaining unsatisfied, unless in the case of instalments the magistrate shall otherwise direct.

8.² Separate executions for money recovered and for costs

Where judgment is given or an order made for the recovery or payment of a sum of money exceeding \$100 and costs, a warrant of execution may, in default of payment, issue for the recovery of the sum and costs after the latter have been taxed; or, if default is made in payment of the sum of money before the costs have been taxed, separate warrants may issue for the recovery of such sum on default in payment thereof, and for the recovery of the costs after the same have been taxed and default

has been made in payment thereof; but a second warrant shall only be for costs.

9.² Execution may issue within 6 years without leave

As between the original parties to a judgment or order, execution may issue at any time within 6 years from the recovery of the judgment or the date of the order.

10.² Execution on judgment against a firm

Where a judgment or order is against a firm, execution may issue in manner following:

- (a) against any property of the partnership;
- (b) against any person who has admitted before the court in the proceedings in which the judgment or order was obtained that he was a partner at the time of the accruing of the cause of action, or who has been adjudged to be liable as a partner;
- (c) against any person who was individually served with the summons as a partner or a person sought to be made liable and failed to appear at the trial.

If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as a member of the firm, he may, after giving to such person 2 clear days' notice of his intention, apply to the magistrate for leave so to do; and the magistrate may give such leave if the liability is not disputed, or, if such liability is disputed, may order that the liability of such person be tried and determined in an action to be commenced by plaint and summons in the ordinary way.

11.² Application for leave to issue execution after six years or on change of parties after judgment etc. — order thereon

In the following cases, viz.:

- (a) where 6 years have elapsed since the judgment or date of the order, or any change has taken place by death,

assignment, or otherwise in the parties entitled or liable to execution;

[(b) *deleted*]

(c) where a party is entitled to execution upon a judgment of assets *in futuro*;

(d) where a party is entitled to execution against any of the shareholders of a joint-stock company upon a judgment recorded against such company, or against a public officer or other person representing such company,

the party alleging himself to be entitled to execution may apply to the magistrate for leave to issue execution accordingly, and the magistrate may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action maybe tried, and in either case the magistrate may impose such terms as to costs or otherwise as shall be just.

Any order made *ex parte* under this rule shall be drawn up and served by post or otherwise on the persons to be affected thereby; and proceedings thereon shall not issue until 6 clear days at least after the day on which the copy of the order was served on, or in the normal course of events it would be received by the persons affected.

[Rule 11 of Order 25 amended in Gazette 30 June 2003 p.2614.]

12.² Application to stay execution

- (1) An execution debtor may apply to the magistrate in chambers to stay any warrant of execution issued in the action by lodging with the clerk an application in form number 113 in the Appendix together with an affidavit verifying the particulars set out in that form.

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- (2) The magistrate may make an interim order in the form number 114 in the Appendix and thereupon the clerk shall issue the chamber summons in duplicate on form 115 in the Appendix and cause a copy to be served on the bailiff who shall thereupon comply with the interim order and the execution debtor shall serve or cause a further copy of the summons to be served on the execution creditor.
- (3) On the return day of the chamber summons, the magistrate after hearing the parties may further extend the interim order or make such further order as he deems just.
- (4) Where a further order extending the stay of the warrant is made under subrule (3), a copy of the order shall be served on the bailiff.
- (5) In this rule the term, “**magistrate**” includes a magistrate of the home court or any foreign court.
- (6) No fee is chargeable on the filing of the application or extraction of an order.

13.² Notice of execution to be left with debtor

The clerk shall, on issuing a warrant of execution, prepare and deliver to the bailiff with the warrant a notice according to the form in the Appendix; and the bailiff, upon levying, shall deliver such notice to the party against whom the execution has issued, or leave the same at the place where the execution is levied.

14.² Concurrent warrants

Warrants of execution may be issued concurrently, provided that the costs of more than one warrant shall not be allowed against the execution debtor unless by order of the magistrate.

15.² Cost of warrants

Except as otherwise provided by these rules, the costs of warrants, whether executed or unexecuted or unproductive, shall

be allowed against execution debtor, unless the magistrate otherwise directs.

16.² Possession fee

No possession fee shall be payable where execution is paid out within half an hour of the bailiff's entry.

17.² Sale

- (1) Except where the magistrate otherwise orders all land or goods sold in execution of the process of the court shall be sold publicly and for ready money by the bailiff or his deputy to the highest bidder, either at the place where the same were levied upon or at such other place as the bailiff or his deputy considers is more suitable or convenient for the sale thereof; and the bailiff or his deputy shall advertise notice of the sale at least once in a newspaper circulating in the town or district in which the land or goods are to be sold, in cases where there is such a newspaper in circulation, or otherwise the bailiff or his deputy shall affix notice of the sale conspicuously at or near the place where the sale is to be held.

Subject as hereinafter provided, the day appointed for the said sale shall not be earlier than the sixth day from the day of levying, and notice of the sale shall be advertised or affixed as aforesaid at least 4 days before the day appointed for the sale.

Provided that —

- (i) where goods to be sold are of a perishable nature, or where the execution debtor so requests, the goods may be sold immediately without notice of sale, or may be sold earlier than 4 days after notice of the sale given as aforesaid; and
- (ii) the day appointed for the sale may be extended, and notice of such extended date may be advertised by the bailiff or his deputy, where he considers that the nature or value of the property or goods to be sold warrants such extension; and

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- (iii) this rule shall not (except insofar as it provides that the sale shall be public) apply to land of which an actual seizure has not been made.
- (2) (a) Notwithstanding the provisions of subrule (1), if, in the opinion of the bailiff, the value of any goods seized by him under a warrant of execution, is less than \$100, he may sell the goods by public auction in any public auction room approved by the magistrate without advertising notice of the sale in any newspaper.
- (b) The magistrate shall notify the bailiff in writing of his approval of any public auction room, and the written notification shall be sufficient authority for the bailiff to sell goods in the auction room so approved.

18.² Requirements where land taken in execution

- (1) Before the bailiff shall take any land under a warrant of execution the execution creditor by whom such warrant has been issued shall deliver to the bailiff a statement in writing verified by the Registrar of Titles or Registrar of Deeds, as the case may be, containing particulars of the land proposed to be taken, the date of service of the warrant of execution upon the Registrar of Titles or the Registrar of Deeds, as the case may be, and particulars of all encumbrances registered against the said land at the date of such service of the warrant of execution.
- (2) The sale of land shall be made subject to such conditions as the bailiff shall deem suitable. Such conditions may be according to form 108 set out in the Appendix hereto, with such modifications as the circumstances of the case may require.
- (3) The magistrate may on the request of the execution creditor settle the conditions of sale.
- (4) The purchase money shall be lodged by the bailiff with the clerk of court until the transfer or conveyance of the property sold shall have been delivered to the purchaser, unless the magistrate shall otherwise order.

- (5) If for any reason the sale shall be rescinded the bailiff shall have authority under the warrant of execution to cause the land to be again offered for sale.
- (6) The fees paid by the execution creditor to the Registrar of Titles or the Registrar of Deeds, as the case may be, for the said statement in writing, verified as aforesaid, shall, upon the receipt for such payment being produced to the clerk of the court, be added to and form part of the cost of the warrant of execution, and thereafter shall be recoverable by the execution creditor under such warrant of execution or in any subsequent proceedings taken by the execution creditor to enforce the judgment.

19.² Inventory and notice of sale of goods removed under execution

Where goods taken in execution are removed, the bailiff shall give to the execution debtor a sufficient inventory of the goods so removed, and shall also give to the execution debtor notice in writing, signed by the bailiff, of the time when and place where such goods will be sold. Such inventory and notice shall be given to the execution debtor personally, or sent to him by post to his place of residence, if known, or if such residence is not known, they shall be left at or sent by post addressed to the execution debtor at the place from which the goods are removed. The inventory shall be given or sent at the time of or immediately after the removal of the goods; and the notice shall be given or sent at least 24 hours before the time fixed for the sale.

20.² Account of sale under execution

Where goods or land are sold in execution the bailiff shall, on the request of the execution debtor, furnish him with a detailed account in writing of the sale, and of the application of the proceeds thereof.

21.² Part payment after issue of warrant of execution

- (1) Where after the issue of a warrant of execution, but before sale, money is paid into the home court, or into any foreign court, or to the bailiff holding the warrant, the following provisions shall apply.
- (2) Where payment is made into the court, the bailiff whereof is charged with the execution of the warrant, the fact and amount of such payment shall forthwith be notified by the clerk to the bailiff holding the warrant.
- (3) Where payment is made into the home court after the warrant has been sent for re-issue to any foreign court, the fact and amount of such payment shall forthwith be notified by post by the clerk of the home court to the clerk of the foreign court, who shall forthwith notify the same to the bailiff holding the warrant.
- (4) The bailiff holding the warrant, on receiving any payment or notice of any payment, shall forthwith endorse on the warrant the amount of such payment, and shall sign the endorsement; and if the amount paid is not sufficient to satisfy the amount to be levied and the costs of execution incurred before payment or notice of payment is received, the execution, unless withdrawn by the bailiff, shall proceed only for the balance of the original amount to be levied and the costs of execution calculated on that amount, less the amount so paid.
- (5) Money paid into court under paragraph (2) shall be deemed to have been received by the bailiff at the time when such money is received by the clerk; and money paid into the home court under paragraph (3) shall be deemed to have been received by the bailiff of the foreign court at the time when he receives notice of such money having been received; and such money shall be applied as if it had been received by the bailiff; and where, if the money paid into court had been received by the bailiff, it would be his duty under the Bankruptcy Act, to pay over the same to the official receiver or trustee in bankruptcy, the bailiff shall pay over the amount paid into court, whether

under paragraph (2), (3) or (4); and the clerk of the court to which the bailiff is appointed shall pay such amount to the bailiff, and shall be allowed, at his audit, the amount so paid; and if any part of such amount was paid into the home court under paragraph (3), the clerk of the home court shall account for and pay over such amount.

22.² Notice of sale

Unless the magistrate otherwise directs, the publication pursuant to section 123 of the Act of notice of a warrant and of the intended day and place of sale, and of particulars of the property concerned shall be by advertisement appearing twice in a newspaper circulating in the neighbourhood of such property, and such advertisement shall appear first at least 14 days before the day appointed for the sale.

Division 2 — Transmission of proceeds of warrants, from foreign courts

1.² Transmission of warrants to be executed by bailiff of foreign court

In all cases of warrants of execution or orders of commitment to be executed by the bailiff of a foreign court, the clerk of the court from which the warrant or order issued shall send the same with a warrant according to the form in the Appendix, signed by him and sealed with the seal of the court, to the clerk of the foreign court, as required by section 135 of the Act; and the clerk of the foreign court shall, immediately on the receipt of the warrant or order, make an entry of the receipt thereof in the Foreign Executions Re-issue Book.

2.² Accounting for and transmission of proceeds levied

When by virtue of any warrant sent to a foreign court any money has been received by the bailiff of the foreign court, such bailiff shall, within 3 days from the receiving of such money, pay over the same to the clerk of the foreign court, and shall, unless an interpleader summons as to such money is pending,

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make a return in writing of the amount received, according to the form in the Appendix; and in the case of a levy having been made, the bailiff shall state in the return the gross amount produced by such levy, and the particulars of his charges and shall pay to the clerk of the foreign court the gross amount. The clerk of the foreign court shall certify in the return the amount paid into court and the amount of charges allowed by him to the bailiff and shall transmit the return and the net proceeds to the clerk of the home court, as directed by section 135 of the Act, who shall file such return and thereupon pay out of any money in his hands to the judgment creditor the amount certified in such return to have been received by the clerk of the foreign court as the proceeds of the execution, and shall enter in a book the amount so certified, according to the form in the Appendix.

3.² Payment into foreign court under order of commitment

Where by virtue of any order of commitment to be executed by the bailiff of a foreign court, any money has been paid into such court, the clerk of such court shall transmit to the clerk of the home court the amount so paid in; and the clerk of the home court shall, upon the receipt of the money, pay out the same to the judgment creditor.

Order 26 — Enforcement of judgments and orders by judgment summons

1.² No commitment except after judgment summons — judgment summons to be served personally

- (1) No order of commitment under section 130 of the Act shall be made unless a summons to appear and be examined on oath, hereinafter called a judgment summons, has been personally served upon the judgment debtor.
- (2) No order of commitment under section 130 of the Act made by any clerk delegate shall be effective until it is confirmed by the magistrate in accordance with section 130(7) of the Act.
- (3) Any confirmation, variation, direction or setting aside of the order by the magistrate shall be endorsed on the order by the magistrate and notice of the endorsement given to the parties to the action.
- (4) Upon the notice being given as required by subrule (3) the order may be enforced in the manner provided by the rules.

2.² Praeceptum for summons

A person requiring a judgment summons to be issued shall file a praecipe according to the form in the Appendix.

3.² Summons for 2 or more defendants

Where a judgment has been given or an order made against 2 or more persons, the person entitled to enforce the judgment or order may require a judgment summons to be issued against all or any one or more of the persons liable under the judgment or order.

4.² Issue of summons against debtor without leave

- (1) A judgment summons may be issued without leave from the court nearest to the place where the debtor resides or carries on business or is employed.

- (2) Pursuant to section 38B of the Act a judgment summons may be issued for the attendance of a debtor at a place other than a court.

[Rule 4 of Order 26 amended in Gazette 27 November 1987 p.4254.]

5.² Application for leave for judgment summons

A judgment summons shall not be issued from a court which is not the court nearest to the place where the debtor resides or carries on business or is employed, without the leave of the magistrate or clerk. The application for leave shall be made upon affidavit according to the form in the Appendix, and leave shall not be granted unless the magistrate or clerk is satisfied that the evidence afforded by such affidavit, if uncontradicted, would justify the making of an order of commitment against the debtor. If leave is granted, a copy of the affidavit shall be lodged with the clerk and annexed to the judgment summons and served therewith:

Provided that such affidavit may be dispensed with at the discretion of the magistrate or clerk if the person requiring a judgment summons to be issued either —

- (a) when such summons is to be served by a bailiff, deposits with the clerk, to be paid or tendered to the judgment debtor with the summons, or
- (b) when such summons is to be served otherwise than by a bailiff, gives an undertaking in writing to pay, or tender to the judgment debtor with the summons,

a sum reasonably sufficient to cover the travelling expenses of the debtor to attend the court, the amount to be fixed by the clerk.

[Rule 5 of Order 26 amended in Gazette 28 January 1983 p.320.]

6.² Judgment summons on judgment against a firm etc.

- (1) When a judgment or order is against a firm, or against a person carrying on business in any name other than his own in such other name, and the person entitled to enforce the judgment or order desires to do so by judgment summons against any person whom he alleges to be liable under the judgment or order as a partner in or the sole member of the firm, or as the person carrying on business in such other name as aforesaid, he shall file an affidavit, together with a copy thereof, according to one of the forms in the Appendix, and thereupon a judgment summons may issue according to the form in the Appendix directed to the person alleged to be liable as aforesaid, and there shall be annexed to such judgment summons, and served therewith, a copy of the said affidavit, sealed with the seal of the court.
- (2) If such person does not appear on the return day of the judgment summons, he shall be deemed to admit his liability as a partner in or the sole member of the firm, or as the person carrying on business in such other name as aforesaid, to pay the amount due and payable under the judgment or order; but if such person appears and denies his liability, the magistrate may decide the question on the evidence then before him, or may order the question to be tried and determined in an action to be commenced by plaint and summons in the ordinary way.

7.² Where judgment summons applied for at a court in which judgment was not obtained

Where a judgment creditor desires to apply for a judgment summons to a court other than the court in which the judgment or order was obtained, he shall obtain from the clerk of the court in which the judgment or order was obtained a certified copy of the judgment or order in the action, according to the form in the Appendix, and file the same with the application, together with an affidavit of the sum due thereon.

8.² Where judgment summons required on judgment of a court other than a local court

Where a party desires to enforce by commitment in any court a judgment or order of the Supreme Court, or of any court other than a local court, he shall obtain from the Supreme Court, or such other court, an office copy of the judgment or order he desires so to enforce, and shall file such office copy, together with an affidavit of the sum due thereon, with the clerk of the court, and the clerk shall thereupon issue a judgment summons.

9.² Issue and service of judgment summons

- (1) A judgment summons shall be in the form in the Appendix as shall be applicable to the circumstances of the case, and shall be issued not less than 7 clear days and be served not less than 5 clear days before the day on which the judgment debtor is required to appear, except in the case provided for by the next following rule.
- (2) If a judgment summons is served otherwise than by a bailiff, an affidavit of service according to the form in the Appendix by the person who actually effected service must be lodged with the clerk at least 3 days before the return day.

[Rule 9 of Order 26 amended in Gazette 28 January 1983 p.320.]

10.² Where judgment debtor about to remove

Where the person applying for a judgment summons states to the clerk that the judgment debtor is about to remove from his residence or place of business, or is keeping out of the way to avoid service, the judgment summons may be issued and served at any time before the hearing: Provided that the magistrate or clerk delegate shall not act upon a summons issued under this rule in the absence of the judgment debtor unless at the hearing the magistrate or clerk delegate is satisfied by evidence on oath, that at the time of the application for the judgment summons such party was either about to remove from his residence or

place of business or was keeping out of the way to avoid service.

11.² Time allowed for service of judgment summons

- (1) The time within which a judgment summons may be served shall, unless extended under this rule, be limited to a period of 12 months from the issue of the judgment summons.
- (2) Where reasonable efforts have been made to serve the summons within the period of 12 months and service has not been effected, the magistrate may, on application in chambers, order that the time be extended for a further period not exceeding 12 months or for successive periods not exceeding 12 months each, but the time shall not be extended for any period unless the application is made within the currency of the last preceding period.
- (3) A note of an extension of the time allowed for service shall be endorsed on the summons and on any copy and shall be entered in the books of the court.
- (4) Subject to these rules, where a judgment summons has not been served within the time limited by either of subrules (1) or (2) a fresh summons may be issued on payment of the fee.

12.² Summons of judgment debtor and witnesses to prove means — when expenses paid to judgment debtor may be allowed — arrest of judgment debtor

- (1) Witnesses may be summoned to prove the means of a judgment debtor in the same manner as witnesses are summoned to give evidence upon the hearing of a plaint; and the expenses of any person examined, whether summoned or not, may, subject to these rules, be allowed.

Where the judgment debtor does not appear at the hearing, or pay into court the amount in payment of which he has made default, expenses paid to him with the judgment summons may, if the magistrate or clerk delegate so directs, be allowed as

expenses of a witness; and where the judgment debtor appears at the hearing, expenses so paid to him may, if the magistrate or clerk delegate so directs, be allowed as expenses of a witness in any case in which the cost of witnesses may be allowed under these rules.

- (2) Where the judgment debtor is summoned to appear under section 130 of the Act he shall be summoned in accordance with the form in the Appendix.
- (3) A praecipe for a warrant to arrest a judgment debtor pursuant to section 130(2a) of the Act and the warrant to so arrest the judgment debtor shall be according to the forms in the Appendix.

[Rule 12 of Order 26 amended in Gazette 28 January 1983 p.320.]

13.² Evidence by affidavit where creditor or debtor resides at a distance from court issuing judgment summons

Where a judgment summons is issued from a court which is not the court held nearest to the place where the judgment creditor at whose instance a judgment summons is issued, or the judgment debtor summoned to appear by a judgment summons resides or carries on business or is employed, the creditor or debtor, as the case may be, may forward to the clerk of the court from which the summons is issued an affidavit, setting forth any facts which he may wish to be before the court prior to any order being made on the summons: And the magistrate or clerk delegate may, if he thinks fit, on the hearing of the judgment summons, admit the affidavit as the evidence of the person by whom the same is made.

13A.² Consent affidavit under judgment summons

- (1) Where a judgment debtor consents to pay the amount in respect of which an order is sought under a judgment summons, he may make and forward to the clerk of the court from which the summons is issued an affidavit setting forth any facts which he

may wish to be before the court prior to any order being made on the summons and the magistrate or clerk delegate may, if he thinks fit, on the hearing of the judgment summons, admit the affidavit, as the evidence of the judgment debtor.

- (2) An affidavit for the purposes of subrule (1) may be in accordance with the form in the Appendix.

[Rule 13A of Order 26 inserted in Gazette 31 December 1969 pp.4392-3.]

14.² On issue of judgment summons, any warrant of execution issued to be lodged in court

Upon the issue of a judgment summons against a party upon a judgment or order of the court out of which the judgment summons is issued, the bailiff of such court shall lodge in court any warrant of execution against the goods or land of such party which may have been issued in the action, whether executed or not; but any such warrant, if not fully executed may be reissued by leave of the magistrate.

15. Minute that certificate of judgment has been given to be made — restriction on proceedings in court issuing certificate

Where a certified copy of a judgment or order is obtained from a clerk for the purpose of taking proceedings thereon in any other court, the clerk shall make on the minute of the judgment or order a memorandum of such certified copy having been given, and the bailiff of the court issuing such certified copy shall lodge in court any warrant of execution against the goods or land or judgment summons or order of commitment which may have been issued by such court upon such judgment or order; and no such warrant, summons, or order shall be reissued, nor shall any subsequent warrant of execution against the goods or land or judgment summons upon such judgment or order be issued by such court, nor shall any order be made under Order 23, rule 8, 9, or 10, in such court, unless it is shown to the

satisfaction of the magistrate that no order has been made against the person liable under such judgment or order in any other court upon such certified copy.

16.² Where order of commitment made or order altered by another court — proceedings to be transferred to and continued in that court

- (1) Where a judgment summons is heard in a court other than that in which the judgment or order was obtained, a memorandum of the result of such hearing shall be sent by the clerk to the clerk of the court in which the judgment or order was obtained, and shall be entered by such last-mentioned clerk on the minute of the judgment or order.
- (2) If on such hearing an order of commitment or an order altering the terms of the judgment or order is made, the proceedings shall be thereby transferred to the court in which such order is made; and all payments, whether under the order of commitment or under the original judgment or order, or under the new order, shall be made into, and execution or other process for enforcing either the order of commitment or the original judgment or order or the new order shall be issued by, the court making such order of commitment or new order.
- (3) If on such hearing no order is made, the judgment or order shall remain in the court in which it was obtained, and the certified copy thereof shall be returned to that court; and subsequent payments thereunder shall be made into, and subsequent proceedings for the enforcement thereof may be taken in, such last-mentioned court.

17.² Where order of commitment sent to a foreign court

Where an order of commitment is sent to a foreign court under the provisions of section 135 of the Act, the clerk of the foreign court shall endorse on it a notice, according to the form in the Appendix, addressed to the bailiff of the court, and shall affix the seal of the court thereto.

18.² No commitment after bankruptcy or administration order in respect of debt provable thereunder

Where a judgment debtor upon the return day of a judgment summons satisfies the magistrate or clerk delegate that a sequestration order has been made for the protection of his estate, or that he has been adjudicated bankrupt, and that the debt was provable in the bankruptcy, or that an order has been made for the administration of his estate under the Bankruptcy Act, and that the debt was incurred before the date of the order, and has been duly notified to the court, or that he has executed, made or arranged a deed of assignment, composition or scheme of arrangement under the Bankruptcy Act, no order of commitment shall be made.

19.² Commitment not to be enforced where sequestration or administration order made after order of commitment

Where a judgment debtor after the making of an order of commitment against him files in the court in which the order was made an affidavit according to the form in the Appendix, stating that a sequestration order has been made for the protection of his estate or that he has been adjudicated a bankrupt, and that the debt was provable in the bankruptcy or that an order for the administration of his estate has been made under the Bankruptcy Act, and that the debt was incurred before the date of the order, and has been duly notified to the court, annexing to such affidavit in such last-mentioned case a certificate of the clerk of the court in which such last-mentioned order has been so made, or that he has executed, made, or arranged under the Bankruptcy Act a deed of assignment, composition, or scheme of arrangement and forthwith, upon such affidavit being so filed, gives notice to the judgment creditor of the filing thereof, the order of commitment shall not be issued, and if issued and not executed, it shall be recalled.

20.² Discharge of judgment debtor on filing affidavit as to bankruptcy etc.

Where a judgment debtor is arrested, he may file in the court held nearest to the place in which he is in custody an affidavit as mentioned in the last preceding rule, and thereupon he shall be discharged out of custody upon the certificate of the clerk of that court, who shall forthwith give notice to the judgment creditor of such discharge.

21.² Hearing, adjournment and order on judgment summons

- (1) On the hearing of a judgment summons the magistrate or clerk delegate, if he is of opinion that an order of commitment ought not to be made, may refuse to make any order, or may make a fresh order for payment of the amount remaining due and unpaid under the judgment or order, either at a special time, or by instalments.
- (2) The hearing of a judgment summons may, by leave of the magistrate or clerk delegate, be adjourned from time to time.
- (3) Where the hearing of a judgment summons is adjourned the judgment creditor may apply for the re-listing of the hearing, and the issue of a summons requiring the judgment debtor to attend at the resumption of the hearing, by filing a praecipe according to the form in the Appendix.
- (4) A summons referred to in subrule (3) shall be in the form in the Appendix and shall be served in accordance with these rules; and where travelling expenses are paid or tendered to the judgment debtor, the service of the summons shall be deemed to be service of a summons on him under section 130 of the Act.

[Rule 21 of Order 26 amended in Gazette 28 January 1983 p.320.]

22.² Suspension of order of commitment

If an order of commitment is made, the magistrate or clerk delegate may direct the execution of such order to be suspended

to enable the debtor to pay the amount in respect of the non-payment of which the order is made, by instalments or otherwise. When such direction is given, notice shall be sent to the debtor according to the form in the Appendix.

23.² Payments to be made into court

Subject to the provisions of rules 27 and 29, all payments under a fresh order or order of commitment shall be paid into court.

24.² Form, date, and duration of order of commitment

- (1) An order of commitment shall be according to the form in the Appendix, and shall, on whatever day it may be issued from the clerk's office, bear date on the day on which the order for commitment was made; but such order shall not be enforced after the expiration of one year from the date thereof, unless at any time before or after the expiration of such year the magistrate or clerk delegate otherwise orders. The fact of the making of any such order shall be endorsed on the order of commitment.
- (2) If default is made in such payment by instalments, or in the manner ordered and it is desired to issue an order of commitment, such order shall issue for the full amount in respect of the non-payment of which the order was made, less any payments made under the order.

25.² Power to suspend order for payment of future instalments during suspension of order of commitment in respect of past instalments

Where a judgment or order has been given or made for payment by instalments, and an order of commitment is made in respect of the non-payment of one or more of such instalments before the whole of such instalments have become due, then if the magistrate or clerk delegate orders the execution of the order of commitment to be suspended to enable the debtor to pay the amount in respect of the non-payment of which the order is made, by instalments or otherwise, he may, if he thinks fit, order

that the judgment or order for payment of instalments shall also be suspended for so long as the execution of the order of commitment is suspended, or for any less period. If the magistrate or clerk delegate makes such order as last-mentioned, he may at any subsequent time order that the suspension of the judgment or order for payment of instalments shall cease; and if the plaintiff withdraws or abandons the order of commitment, the suspension of the judgment or order for payment of instalments shall cease to operate on such withdrawal or abandonment.

26.² Application by party to vary order of commitment

- (1) A judgment debtor or judgment creditor may apply to the magistrate to vary, suspend or stay an order made upon the hearing of a judgment summons; and pending the hearing of such an application the magistrate may stay any order of commitment in the matter which is in the hands of a bailiff.
- (2) The application shall be filed in duplicate in the form in the Appendix, and no fee shall be payable on filing if the application is filed by the judgment debtor.
- (3) The duplicate shall be sealed by the clerk and shall be served on the other party to the action in accordance with these rules; and where the person to be served is the judgment debtor, and conduct money or expenses is paid or tendered to him, the service of the application shall be deemed to be service of a summons on him under section 130 of the Act.
- (4) On the hearing of the application the magistrate may, where the judgment debtor is unable from sickness or other sufficient cause to pay or discharge the judgment debt or any instalment thereof, suspend or stay any execution for such time and upon such terms as he thinks fit, and for the purpose of so suspending or staying the execution the magistrate may make an interim order to enure until the next sitting of the court.
- (5) The power to vary an order pursuant to section 130 of the Act, and this rule may be exercised by a clerk delegate, but such

clerk delegate shall not have powers to suspend or stay an order pursuant to section 139 of the Act.

[Rule 26 of Order 26 amended in Gazette 28 January 1983 p.320.]

27.² Payment on arrest

When an order of commitment for non-payment of money is issued, the debtor may, at any time before his body is delivered into the custody of the gaoler, pay to the bailiff the amount endorsed on the order as that on the payment of which he may be discharged; and on receiving such amount, the bailiff shall discharge the debtor, and shall, within 3 days after receiving such amount, pay over the same to the clerk of the court of which he is a bailiff.

28.² Part payment after issue of order of commitment

- (1) Where after the issue of an order of commitment for non-payment of money, but before the body of the debtor is delivered into the custody of the gaoler, money is paid into the home court, or into any foreign court, or to the bailiff holding the order, the following provisions apply.
- (2) Where payment is made into the court the bailiff whereof was charged with the execution of the order of commitment, the fact and amount of such payment shall forthwith be notified by the clerk to the bailiff holding the order.
- (3) Where payment is made into the home court after the order has been sent for re-issue to any foreign court, the fact and amount of such payment shall forthwith be notified by post by the clerk of the home court to the bailiff of the foreign court holding the order.
- (4) The bailiff holding the order, on receiving any payment or notice of any payment, shall forthwith endorse on the order the amount of such payment, and shall deduct the same from the amount endorsed on the order as that on payment of which the

debtor may be discharged, and shall sign such endorsement; and the order of commitment, unless withdrawn by the plaintiff, shall thenceforth operate as an order of commitment for non-payment of the amount remaining due after such deduction.

29.² Payment after debtor lodged in gaol

- (1) Where a prisoner has been delivered into the custody of the gaoler, the sum endorsed on the order of commitment as that upon payment of which the prisoner may be discharged may be paid into the home court, or into the foreign court, or to the gaoler in whose custody the prisoner is.
- (2) Where payment is made into the court from which the order was executed, the clerk shall sign and seal a certificate thereof, and shall forward the same by post or otherwise to the gaoler in whose custody the prisoner then is, who on receipt thereof shall forthwith discharge the prisoner.
- (3) Where payment is made into the home court after the order has been sent for re-issue to any foreign court, the fact of such payment shall forthwith be notified by post by the clerk of the home court to the clerk of the foreign court, who shall forthwith sign and seal a certificate thereof, and forward the same by post or otherwise to the gaoler in whose custody the prisoner then is, who on receipt thereof shall forthwith discharge the prisoner.
- (4) When payment is made to the gaoler he shall, upon payment to him of the amount endorsed on the order of commitment, together with costs sufficient to pay for transmitting that amount, transmit the amount forthwith to the clerk of the home court, and he shall sign a certificate of payment, and discharge the prisoner, and such costs of transmission shall be part of the prescribed costs.

30.² Part-payment after debtor lodged in gaol

- (1) Where after a prisoner has been delivered into the custody of the gaoler, money is paid into the court out of which the order of commitment issued or into the court from which the order was

executed, but the sum paid is less than that endorsed on the order of commitment as that upon payment of which the prisoner may be discharged, the following provisions apply.

- (2) Where payment is made into the court from which the order was executed, the fact and amount of such payment shall forthwith be notified by post by the clerk to the gaoler.
- (3) Where payment is made into the home court after the order has been sent for re-issue to any foreign court, the fact and amount of such payment shall forthwith be notified by post by the clerk of the home court to the clerk of the foreign court, who shall forthwith notify the same by post or otherwise to the gaoler.
- (4) Upon payment to the gaoler of the balance of the sum endorsed on the order of commitment, after deducting the amount notified to the gaoler as having been paid into court, together with costs sufficient to pay for transmitting such balance, the gaoler shall transmit such balance forthwith to the clerk of the court under the order of which the prisoner was committed, and he shall sign a certificate of such payment, and discharge the prisoner, and such costs of transmission shall be part of the prescribed costs.

31.² Discharge of prisoner on request of judgment creditor

Upon the judgment creditor lodging with the clerk a request in writing, according to the form in the Appendix, that the judgment debtor, if in prison, may be discharged from custody, the clerk shall issue a certificate according to the form in the Appendix and transmit the certificate by post to the gaoler in whose custody the judgment debtor is; and the gaoler shall upon receipt of the certificate forthwith discharge the prisoner.

32.² Certificate of payment

A certificate of payment by a prisoner shall be according to the form in the Appendix.

33.² Costs on default of appearance of judgment creditor

If a judgment debtor appears on the return day, but the judgment creditor fails to appear the magistrate or clerk delegate may award costs to the judgment debtor.

34.² Where no costs are to be allowed on judgment summons

Where on the hearing of a judgment summons on a judgment or order of a local court the magistrate or clerk delegate, in lieu of making an order of commitment, makes a fresh order for payment of the amount remaining due and unpaid under the judgment or order, no costs for fees or witnesses shall be allowed to the judgment creditor unless the magistrate or clerk delegate is satisfied that the debtor has had since the date of the original judgment or order the means to pay the sum in payment of which he had made default.

35.² Provisions as to amount for which debtor has been imprisoned, where fresh order made on judgment summons or under Order 23, rule 9, and as to subsequent judgment summons under such order

Where on the hearing of a judgment summons the magistrate or clerk delegate, in lieu of making an order of commitment, makes a fresh order for payment of the amount remaining due and unpaid under the judgment or order, or where an order for payment by instalments is made under Order 23, rule 8, 9 or 10, there shall be included in the amount payable under such order, for the purpose of any proceedings under such order otherwise than by way of judgment summons, the amount (if any) in respect of which an order of commitment has been made, and in respect of which the debtor has been imprisoned, but so that the debtor shall not be liable to be imprisoned a second time for non-payment of such last-mentioned amount. On any subsequent judgment summons on default in payment of any instalments payable under such order, the amount (if any) in respect of which the debtor has been imprisoned before the date of the order shall be deducted on the face of the summons from

the amount payable under the order; but in calculating for the purposes of any such subsequent summons the amount in payment of which the debtor has made default, the instalments payable under the order shall be considered as attributable in the first instance to the discharge of the amount payable under the order other than the amount in respect of which the debtor has been so imprisoned, and the summons may be issued for the full amount of the instalments in arrear, if such amount does not exceed the balance which remains payable under the order after deducting the amount in respect of which the debtor has been so imprisoned, or if the instalments in arrear exceed such balance, then for the amount of such balance.

36.² Costs of abortive execution not to be included in judgment summons, or fresh order under Order 23, rule 8, 9 or 10

Costs (other than the court fee payable for enforcement proceedings) incurred in endeavouring to enforce a judgment or order by way of execution against the property of the debtor, and not recovered under such execution, shall not be included in the amount due under such judgment or order for the purposes of a judgment summons, or of an application for a fresh order for payment under Order 23, rule 8, 9 or 10, nor shall money paid into court otherwise than under execution against the property of the debtor be attributed to payment of such costs.

[Rule 36 of Order 26 amended in Gazette 4 December 1987 p.4976.]

Order 27 — Further methods of enforcement of judgments and orders

1.² Proceedings under section 155

Whenever it shall be necessary to proceed against any person under section 155 of the Act the person may be summoned to answer the matter alleged against him in manner provided in the *Justices Act 1902*, in respect of simple offences and the provisions of that Act shall apply to and in respect of the person charged and the matter charged against him as if he were charged with a simple offence and summoned to answer the same before the magistrate sitting as a court of summary jurisdiction.

2.² Enforcement of order for discovery — warrant of attachment

The magistrate may order a warrant of attachment to issue whenever he deems it necessary so to do for the purposes of section 68 of the Act, and the warrant may be issued by the clerk and be according to the form in the Appendix.

Such an order may be obtained on application to the magistrate in chambers.

3.² Discharge of person in custody by magistrate

Any person in custody under any order made under section 68 or 155 of the Act may make application for release at the court, or by leave of the magistrate at any place which he may appoint, on filing an affidavit showing that he has given satisfactory security that he will do the act referred to or cease to do the act prohibited or that he has cleared or is desirous of clearing his contempt or that it is otherwise just and expedient that he should be released, and giving to the party at whose instance he was committed notice in writing of his intention so to apply, with a copy of such affidavit, 2 clear days at least before making the

application; and such discharge if granted, shall be given according to the form in the Appendix.

4.² Recovery of land or possession to be enforced by warrant of possession

A judgment or order for the recovery or for the delivery of the possession of land may be enforced by warrant of possession, which shall be according to the appropriate form in the Appendix.

5.² Enforcement of judgment for delivery of goods — warrant of delivery

Where it is sought to enforce a judgment for the delivery of goods, the plaintiff may obtain the issue of a warrant of delivery in the form in the Appendix, and the warrant shall have effect and confer authority in accordance with its tenor.

6.² Warrant may issue without assessment of value

The warrant may issue without any assessment of value having been made.

7.² Separate warrants for damages and costs

The plaintiff shall, by the same warrant or a separate warrant of execution, be entitled to have levied of the plaintiff's goods and land any damages for detention or trespass of or against the goods and any costs awarded by the judgment, as well as the costs of any assessment of the value of the goods, and the expenses of executing the warrant, and also all costs and expenses of or incidental to the issue of the same; provided that rule 8 of Division 1 of Order 25 shall apply in respect of the costs.

8.² Option to enforce delivery or payment of value

After the assessment of the value of the goods or any of them, the plaintiff may (subject to any order made by the magistrate

under the Act) require the bailiff to enforce delivery of all or any specified goods still undelivered, or payment of their value, at the sole option of the plaintiff.

9.² Certifying assessment to bailiff

If an assessment or order under section 91A of the Act has been made after the issue of a warrant of delivery, the clerk shall certify such assessment and any such order and the costs of the assessment to the bailiff.

10.² Application of rules relating to execution

A warrant of delivery, in so far as it authorises the levying of moneys, shall be subject to the rules and provisions applicable to warrants of execution.

11.² Recovery of value and damages and costs by warrant of execution

Subject to any such order as aforesaid, the plaintiff may issue a warrant of execution for the recovery of the assessed value of the goods for the delivery whereof judgment has been given in any action, and may include therein any damages, costs, and expenses as aforesaid, and any other moneys payable under any judgment in the same action.

12.² Wilful disobedience of judgment for delivery of goods

Disobedience of a judgment for the delivery of goods shall render the offender liable to be dealt with under section 155 of the Act.

13.² Examination of debtor when judgment etc. for recovery of money

- (1) Where a judgment or order is for the recovery or payment of money, the party entitled to enforce it may file with the clerk a praecipe in the form number 184 in the Appendix for a summons to the debtor requiring that the debtor liable under the

judgment or order, or in the case of a corporation that any officer thereof, be orally examined as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before the magistrate.

- (2)
 - (a) If the clerk refuses the application made in accordance with subrule (1), the applicant may make application to the magistrate in the form 61 in the Appendix.
 - (b) The magistrate shall hear the application in chambers and may direct the clerk to issue the summons applied for and in such case shall note his direction on the application and the clerk shall thereupon issue the summons.
- (3)
 - (a) Where a summons is issued under either of subrules (1) or (2) a sealed copy of the summons shall be served on the person to be bound thereby.
 - (b) The clerk shall issue the sealed copy summons to the applicant, or by his leave to any other person who may serve a summons in a personal action but otherwise the summons shall be served by the bailiff.
 - (c) Service of the summons shall be personal service unless the magistrate orders otherwise.
- (4) A praecipe for a warrant to arrest a judgment debtor pursuant to section 144(2) of the Act and the warrant to so arrest the judgment debtor shall be according to the forms in the Appendix.
- (4a) An order pursuant to section 144(4) of the Act shall be according to the form in the Appendix.

[(5) *repealed*]

[Rule 13 of Order 27 amended in Gazette 28 January 1983 p.320; 30 June 2003 p. 2614.]

13A. Court may impound documents

A court hearing an examination under rule 13 may make an order impounding any documents produced at the examination.

[Rule 13A of Order 27 inserted in Gazette 26 February 1999 p.617.]

14. Costs under rule 13

(1) A court hearing an application or examination under rule 13 may make such order as to costs as may be just, including an order for fixed costs.

(2) Subrule (1) applies despite rules 6 and 7(2) of Order 37.

[Rule 14 of Order 27 inserted in Gazette 26 February 1999 p.617.]

15.² Impounded documents

(1) Impounded documents while in the custody of the court are not to be parted with; and are not to be inspected, except on a written order signed by the magistrate.

(2) Documents shall not be delivered out of the custody of the court except upon an order made on application to the magistrate, or upon an order of the Supreme Court or a Judge; but impounded documents in the custody of the court shall, upon the request in writing of the Attorney General, be given into the custody of the Attorney General.

Order 28 — Attachment of debts

1.² Proceedings against garnishee

An affidavit in support of an application, under section 145 of the Act, for a garnishee order, may be in the form in the Appendix. On the filing of the affidavit the magistrate or clerk may endorse on such affidavit an order attaching the debt; and thereupon, a summons in the form in the Appendix, calling upon the garnishee to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order together with the costs aforesaid, shall be issued by the clerk.

2.² Where garnishee resides at a distance from court

Where the garnishee resides or carries on business at a distance from the court in which judgment or order was obtained, the judgment creditor may lodge with the clerk of the court held nearest to the place where the garnishee carries on business, a certificate of the judgment or order and thereupon the provisions of rule 1 apply and all proceedings shall be held or taken thereon as if the judgment or order had been obtained in that court.

3.² Service of garnishee summons

The summons shall be personally served on the garnishee, by any person by whom a summons in a personal action may be served, or on the solicitor of the garnishee, in accordance with Order 6, rule 9; but where the garnishee is a firm or a company or other corporation, the summons need not be served personally, but it may be served as provided by Order 6 with respect to the service of a summons in a personal action.

4.² Payment into court by garnishee

- (1) The garnishee may at any time before the return day of the summons pay into court the amount admitted by him to be due from him to the debtor, or so much of it as is sufficient to satisfy the judgment together with the costs of the garnishee proceedings.
- (2) The clerk shall send notice of any payment into court to the judgment creditor, as in the case of a payment into court in an action before judgment.
- (3) If the person who obtained the judgment or order elects to accept the money paid into court in satisfaction of his claim against the garnishee, he shall send notice of his acceptance to the clerk and the garnishee, as in the case of payment into court in an action.
- (4) Thereupon all further proceedings against the garnishee shall abate, except as herein provided, and the person who obtained the judgment or order shall not be liable to any costs incurred by the garnishee after receiving such notice.
- (5) If payment into court is made less than 5 clear days before the return day, the magistrate may, in his discretion, order the garnishee to pay such fees and costs, beyond the fees and costs (if any) paid into court by the garnishee, as the person who obtained the judgment or order may have properly incurred for work done before receipt of the notice of payment into court, and in attending the court to obtain the order for the same; and if such person intends to apply for such costs, he shall give notice of his intention in his notice of acceptance of the sum paid in; or where the time of payment into court by the garnishee does not permit of notice of acceptance being given, he may apply for such costs without giving such notice.
- (6) Where the person who obtained the judgment or order has not given notice of acceptance in accordance with paragraph (1), he may nevertheless accept the money paid into court at any time before the case is called on and opened, subject to the payment

of any costs which may have been reasonably incurred by the garnishee since the date of payment into court, and which may be allowed by the court.

- (7) In default of acceptance by the person who obtained the judgment or order, the proceedings against the garnishee may proceed.

5.² Payment out of court of money paid in by garnishee

Subject to the provisions of this rule, money paid into court by the garnishee, and accepted by the person who obtained the judgment or order, shall, on application made by such person, be paid out to him in accordance with the rules as to payment out of money paid into court: but before the money is paid out the clerk shall send to the judgment debtor by post or otherwise a notice according to the form in the Appendix that the money will be paid out to the judgment creditor unless the debtor appears on the day stated therein and shows cause according to such notice, and the magistrate may thereupon make such order as to the money paid into court, as he deems fit.

6.² Order on return day, if garnishee does not appear or dispute liability

If the garnishee does not before the return day of the summons pay into court the amount admitted by him to be due from him to the debtor liable under the judgment or order, or so much thereof as shall be sufficient to satisfy the amount in respect of which such judgment or order is unsatisfied and the fees and solicitor's costs endorsed on the garnishee summons, and does not on the return day dispute the debt due or claimed to be due from him to such debtor, or if he does not appear on the return day, the magistrate may give judgment for the person by whom the judgment or order was obtained and may order execution to issue to levy the amount due from the garnishee, or so much thereof as shall be sufficient to satisfy the judgment or order and any costs allowed.

7.² Certificate where garnishee sued in court other than that in which judgment obtained

Where the court in which the garnishee is sued is not the court in which the judgment or order upon which he is garnisheed was given or made, the clerk of such first-mentioned court shall send forthwith a certificate of the order of his court to the court in which such judgment or order was given or made, and shall also send notice from time to time of any payment made on, before, or after the return day.

8.² Costs

Any costs allowed to the judgment creditor, which are not ordered to be paid by the garnishee personally, shall, unless otherwise directed, be taxed by the clerk, and retained by the judgment creditor out of the money recovered by him in the garnishee proceedings, in priority to the amount due under the judgment or order obtained by him against the debtor.

9.² Magistrate may refuse to interfere

In proceedings to obtain an attachment of debts, the magistrate may, in his discretion, refuse to interfere, where from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious.

10.² Application by judgment creditor as to money paid into court under judgment or order obtained by debtor against third person

No proceedings under this order shall be taken against a clerk of a local court to attach moneys paid to him by a party to an action, but in any such case the judgment creditor may, on giving 2 days notice to the debtor and to the clerk, apply to the magistrate for an order that the sum be paid to him, and on the receipt of the notice the clerk shall retain the money in court until after the application has been heard, and the magistrate,

upon the hearing, may make such order as to the money, as he deems fit.

11.² Attachment of debts owing from a firm

Debts owing from a firm carrying on business within Western Australia may be attached under this Order, although one or more members of such firm may be resident out of Western Australia, if any person having the control or management of the partnership business or any member of the firm within Western Australia is served with the garnishee summons.

Order 29 — Appointment of receivers

1.² Receiver's security and allowance

Where an order is made directing a receiver to be appointed, unless otherwise ordered by the magistrate, the person to be appointed shall (subject as hereinafter provided) first give security, to be allowed by a magistrate and taken before a justice of the peace or other person authorised to administer oaths, duly to account for what he shall receive as such receiver and to pay the same as the magistrate shall direct; and the person so to be appointed shall, unless otherwise ordered by the magistrate, be allowed a proper salary or allowance. Such security shall be by recognisance in such form as the magistrate shall direct.

2.² Fixing days for receiver to pass accounts and pay balances

When a receiver is appointed, with a direction that he shall pass accounts, the clerk shall fix the days upon which he shall leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be paid by him. And with respect to any such receiver as shall neglect to leave and pass his accounts and pay the balance thereof at the times so to be fixed for that purpose as aforesaid, the magistrate may, on the report of the clerk, order that the clerk shall, when the receiver's subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and also, if the magistrate shall think fit, charge him with interest at the rate of 5% per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver.

3.² Form of receiver's accounts

Every receiver shall leave in the clerk's office his account, together with an affidavit verifying the same. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the action or matter for the purpose of passing such

account. A certificate of the clerk stating the result of a receiver's account shall from time to time be taken.

4.² Consequences of default by receiver

In case of any receiver failing to leave any account or affidavit, or to pass such account, or to make any payment or otherwise, the receiver or the parties, or any of them, may be required to attend before the magistrate to show cause why such account or affidavit has not been left, or such account passed or such payment made, or any other proper proceeding taken; and thereupon such directions as shall be proper shall be given, including the discharge of any receiver and appointment of another and payment of costs.

5.² Appointment of receiver by way of equitable execution

In every case in which an application is made for the appointment of a receiver by way of equitable execution, the magistrate, in determining whether it is just or convenient that such appointment should be made, shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment.

6.² Bailiff may be appointed

The bailiff may be appointed a receiver, and he shall not be required to give any security unless the magistrate shall specially direct security to be given.

Order 30 — Interpleader

1.² Notice of claim to execution creditor

Where a claim is made to or in respect of goods taken in execution under the process of a court it shall be in writing; and thereupon the bailiff shall forthwith send notice to the execution creditor, according to the form in the Appendix.

2.² Order for possession fees where claim admitted

If the execution creditor admits the title of the claimant to the goods and sends notice in due course of post to the bailiff of such admission, according to the form in the Appendix, or to the like effect, he shall only be liable to such bailiff for any possession fees or expenses incurred by the bailiff prior to the receipt of such notice; and the magistrate may, if he thinks fit, on application by the bailiff, make an order for payment of any such fees or expenses by the execution creditor to the bailiff. Any such application shall be made in writing, and intituled in the matter of the execution, and 3 clear days' notice in writing thereof shall be given by the bailiff to the execution creditor.

3.² Power to make order protecting bailiff from action by claimant, where execution creditor admits claim before interpleader summons issued

Where the execution creditor gives notice in due time to the bailiff, as directed by rule 2, that he admits the title of the claimant to the goods the bailiff may thereupon withdraw from possession, and may apply for an order protecting him from any action in respect to the seizure and possession of the said goods, and the magistrate may make any such order as may be just and reasonable in respect of the same. Any such application shall be made in writing, and intituled in the matter of the execution, and 3 clear days' notice in writing thereof shall be given by the bailiff to the claimant, who may, if he desires it, attend the hearing of the application; and if he attends, the magistrate may,

in and for the purposes of such application, make all such orders as to costs as may be just and reasonable.

4.² Issue of summons where the execution creditor does not admit claim

Where the execution creditor does not in due time, as directed by rule 2, admit the title of the claimant to the goods and the claimant persists in his claim thereto the bailiff shall apply for an interpleader summons to be issued; and if, before the return day of such summons, the claimant files notice that he withdraws his claim, and at the same time gives notice of such withdrawal to the execution creditor, or the execution creditor files an admission of the title of the claimant, and at the same time gives notice of such admission to the claimant, the goods taken in execution or the proceeds of sale thereof, or the money paid into court (as the case may be), shall be dealt with and disposed of as if such claim had not been made, or as if the execution had been withdrawn (as the case may be), and the magistrate may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges, and expenses as may be just and reasonable.

5.² Proceedings generally

Where any claim is made to or in respect of any goods taken in execution, or in respect of the proceeds or value thereof, and summonses have been issued on the application of the bailiff, such summonses shall be served in such time and mode as by these rules directed for the service of a summons in a personal action, and the case shall proceed as if the claimant were the plaintiff, and the execution creditor the defendant.

6.² Claimant to lodge particulars and grounds of claim

The claimant shall, 5 clear days at least before the return day, leave at the office of the clerk 2 copies of the particulars of any goods alleged to be the property of the claimant and of the grounds of his claim; and the name, address, and description of

the claimant shall be fully set forth in such particulars, and the clerk shall forthwith send by post to the execution creditor one of the copies of such particulars. Any money paid into court under the execution shall be retained by the clerk until the claim has been adjudicated upon: Provided that by consent of all parties, or without such consent if the magistrate so directs, an interpleader claim may be tried although this rule has not been complied with.

7.² Bailiff's fees

The magistrate upon the hearing shall adjudicate upon any claim of the bailiff for fees, and may, if he thinks fit, order the same, or such part thereof as he may think just, to be paid by the claimant or by the execution creditor.

8.² Power to delay sale

The bailiff may, in his discretion, delay selling such goods until the magistrate has adjudicated on the claim; and for the keeping of such continued possession he shall be allowed such costs out of pocket only as the magistrate may order.

9.² Interpleader summons

Interpleader summonses shall be issued by the clerk, on the application of the bailiff, without leave of the magistrate, and shall be served on the solicitor of any party who acts by a solicitor.

10.² From what court issued

Interpleader summonses, on the application of the bailiff, may be issued from the court of the district in which the levy was made, or the court from which the process issued, and the execution creditor and claimant shall be summoned to such court.

11.² Magistrate may direct sale of goods claimed under bill of sale etc.

When goods have been seized in execution under process of the court, and any claimant alleges that he is entitled under a bill of sale or otherwise to such goods by way of security for a debt, the magistrate may order a sale of the whole or part thereof, and may direct the application of the proceeds of such sale in such manner and upon such terms as may be just. A duplicate of such order shall be delivered by the clerk to the bailiff, who shall thereupon forthwith sell the goods pursuant to the order, and after deducting the expenses of the sale shall pay the balance of the proceeds into court, and such balance shall thereupon be applied by the clerk in accordance with the directions contained in the order of the court.

12.² Order on interpleader

The order made upon the hearing of an interpleader summons shall contain directions as to how any money paid into court in the proceedings is to be disposed of. A minute of every such order shall be entered in the minute book, but no order need be drawn up or served unless any of the parties shall require it or the magistrate otherwise orders. The order if drawn up shall be according to such one of the forms in the Appendix as shall be applicable to the case.

13.² Interpleader in action by assignee, where assignor disputes assignment, or in action for debt, chose in action, or chattel, where defendant has notice of conflicting claims

- (1) Where the defendant in an action brought by the assignee of a debt or chose in action has had notice that the assignment is disputed, as to the whole or any part of such debt or chose in action, by the assignor or any one claiming under him, or where the defendant in any such action, or in any other action for any debt, chose in action, or goods, has had notice of any other opposing or conflicting claims to the whole or any part of such debt, chose in action, or goods, such defendant may, within

5 days of the service of the summons, apply to the clerk for a summons against the assignor or the person making such opposing or conflicting claim, hereinafter called the claimant.

- (2) The defendant must satisfy the clerk, by affidavit according to the form in the Appendix, that he claims no interest in the subject matter in dispute other than the charges or costs, and does not collude with either the plaintiff or the claimant, and is willing to pay or transfer the subject matter into court, or dispose of it as the court may direct. On filing such affidavit the defendant shall lodge with the clerk copies thereof for the plaintiff and the claimant.
- (3) The defendant shall not be disentitled to relief by reason only that the titles of the plaintiff and the claimant have not a common origin, but are adverse to and independent of each other.
- (4) The clerk shall, on being satisfied as aforesaid, issue for service on the claimant an interpleader summons according to the form in the Appendix, returnable as soon as conveniently may be, and shall annex thereto a copy of the original summons and of the defendant's affidavit, and shall adjourn the trial of the action to the day on which the interpleader summons is made returnable and shall give notice to the plaintiff and defendant of the issue of the interpleader summons and of the adjournment of the trial of the action, according to the forms in the Appendix.
- (5)² The claimant shall, 5 clear days at least before the return day of the interpleader summons, leave at the office of the clerk either 3 copies of a notice that he relinquishes his claim, or 3 copies of particulars, stating the grounds on which he disputes the assignment or founds his claim to the subject matter in the action; and the clerk shall forthwith send by post one of such copies to the defendant: Provided that by consent of all parties, or without such consent if the magistrate so directs, the interpleader may be tried, although this rule has not been complied with.

- (6)² On filing his affidavit, or at any time after the issue of the interpleader summons, the defendant may pay the debt or money or bring the chose in action or goods into court, to abide its decision.
- (7)² Upon the return day of the interpleader summons —
- (a)² If the plaintiff does not appear, the action and interpleader summons shall be struck out, and the magistrate may make such order as to costs as may be just.
 - (b)² If the claimant does not appear, the magistrate shall hear and determine the action as between the plaintiff and the defendant, and may make an order declaring the claimant and all persons claiming under him for ever barred against the defendant and all persons claiming under him, and may make such order as to costs against the claimant as may be just, but the order shall not affect the rights of the plaintiff and the claimant between themselves; or if the claimant has filed notice that he relinquishes his claim, the magistrate may make an order declaring him and all persons claiming under him for ever barred against both the plaintiff and the defendant and all persons claiming under them, and may make such order against the claimant as to costs incurred by the other parties before the receipt of notice of relinquishment as may be just.
 - (c)² If both the plaintiff and the claimant appear, the magistrate shall, whether the defendant does or does not appear, hear the cases of the plaintiff and the claimant (and the case of the defendant if he appears), and shall give such judgment thereon as shall finally determine the rights and claims of all parties; but the magistrate shall not make any order in favour of the claimant against the defendant unless the claimant requests him so to do.

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- (8)² Orders 12, 17, and 22, shall, with the necessary modifications, apply to interpleader proceedings; and the magistrate may in and for the purposes of any such proceedings make all such orders as to costs and all other matters (including the repayment to the defendant of any costs paid by him into court, and the disposal of any money, chose in action, or goods paid or brought by the defendant into court) as may be just and reasonable.

Order 31 — Proceedings by and against executors and administrators

1.² Costs where plaintiff fails

In actions by executors or administrators, if the plaintiff fails, the costs shall, unless the court otherwise orders, be awarded in favour of the defendant, and shall be levied *de bonis propriis*.

2.² Costs on non-appearance

Where an executor or administrator, plaintiff or defendant, does not appear on the day of hearing, the provisions of sections 72 and 73 of the Act shall apply respectively, subject to the rules applicable to executors or administrators suing or sued.

3.² Waste of assets

A party suing an executor or administrator may charge in the summons that the defendant has had assets and has wasted them, and he shall state in his particulars the amount of assets alleged to have been left by the deceased and the manner in which the said assets have been wasted.

4.² Judgment where waste charged

Where a defendant is charged with waste in the summons, if the magistrate is of opinion that the defendant has wasted the assets, the judgment shall be that the debt or damages and costs shall be levied *de bonis testatoris, si, etc., et si non, de bonis propriis*; and the non-payment of the amount of the demand immediately on the magistrate finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

5.² Judgment where representation admitted, but demand denied

Where a defendant, sued as an executor or administrator, admits his representative character, and only denies the demand, if the plaintiff proves the demand, the judgment shall be that the demand and costs shall be levied *de bonis testatoris, si, etc., et si non*, as to the costs, *de bonis propriis*.

6.² Judgment where representation admitted, and demand denied but proved, and administration alleged and proved

When such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be to levy the costs of proving the demand *de bonis testatoris, si, etc., et si non, de bonis propriis*; and as to the demand, judgment of assets, *quando acciderint*; and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the magistrate otherwise orders.

7.² Judgment in like case where administration not proved

Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand but the defendant does not prove the administration alleged the judgment shall be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, etc., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

8.² Judgment where representation and demand admitted, and administration alleged and proved

Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial

administration of assets, and proves the administration alleged, the judgment shall be of assets, *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the court otherwise orders.

9.² Judgment in like case where administration not proved, and no other defence established

When such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of assets, but does not prove the administration alleged, and has not established any other ground of defence, the judgment shall be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, etc., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

10.² Proceedings after judgment on assets, *quando acciderint*

Where judgment has been given against an executor or administrator that the amount be levied upon assets of the deceased, *quando acciderint*, the plaintiff may apply on summons for such order as is hereinaftermentioned; and if it appears that assets have come to the hands of the executor or administrator since the judgment, the magistrate may order that the debt, damages, and costs be levied *de bonis testatoris, si, etc., et si non*, as to the costs, *de bonis propriis*: Provided that it shall be competent for the party applying to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in rule 3, and the provisions of rule 4 shall apply to such inquiry; and the magistrate may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si, etc., et si non, de bonis propriis*.

11.² Payment into court on defendant's admission of demand and of assets

When a defendant admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into court, subject to the rules relating to payment into court in other cases.

12.² Judgment in other cases

In actions against executors or administrators for which provision is not hereinbefore specially made, if the defendant fails as to any of his defences, the judgment shall, unless the court otherwise orders, be for the plaintiff as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris, si, etc., et si non de bonis propriis*.

Order 32 — New trial

1.² **Application for new trial**

An application for a new trial, or to set aside proceedings may be made and determined on the day of trial, if both parties are present, or such application shall be made at the first court held next after the expiration of 7 clear days from such day of trial: Provided that the intended applicant shall, 3 clear days at least before the holding of such court, deliver to the clerk at his office and also give to the opposite party by serving the same upon the solicitor to such party, or personally on such party, or by leaving the same at his residence or place of business, a notice in writing stating that such an application is intended to be made at such court, and setting forth shortly the grounds of such intended application; but such notice shall not operate as a stay of proceedings unless the magistrate so orders; and if any money paid into court under any execution or order in the action has not been paid out at the time when such notice in writing is given to the clerk, the clerk shall retain the same to abide the event of such application, or until the magistrate shall otherwise order; and if no such application is made, the money shall, if required, be paid over to the party in whose favour the order was made, unless the magistrate otherwise orders; and if such notice is not given in manner aforesaid, or such application is not made at the court mentioned in the notice, no application for a new trial or to set aside proceedings shall be subsequently made, unless by leave of the magistrate, and on such terms as he may think fit: Provided that this rule shall not apply to cases falling within the provisions of section 73 of the Act.

2.² **Affidavit in support**

Every application for a new trial shall be supported by an affidavit setting out the facts upon which the application is based, and a copy of such affidavit shall be served upon the opposite party with the notice of application.

3.² When new trial not granted

A new trial shall not be granted on the ground of improper admission or rejection of evidence, or of the ruling of the magistrate that the stamp upon a document is sufficient, or that a document does not require a stamp; unless in any such case, in the opinion of the magistrate, some substantial wrong or miscarriage has been thereby occasioned.

4.² When new trial may be granted

A new trial may be granted on the ground of discovery of fresh evidence when it is shown to the satisfaction of the magistrate that such evidence can be adduced and that, through no default of the applicant, the evidence was unknown to him at the time of the trial, and that, if the evidence had been adduced at the trial, it ought, if believed, to have altered in some substantial particular the decision of the magistrate.

**Order 32A — Practice and procedure relating to
warrants under the *Fines, Penalties and Infringement
Notices Enforcement Act 1994***

[Heading inserted in Gazette 26 February 1999 p.618.]

1. Interpretation

- (1) In this Order —
“**Act**” means the *Fines, Penalties and Infringement Notices
Enforcement Act 1994*;
“**claim**” means a claim under section 93 of the Act;
“**claimant**” means a person who makes a claim.
- (2) The definitions in Part 7 of the Act apply to this Order.
*[Rule 1 of Order 32A inserted in Gazette 26 February 1999
p.618.]*

2. Examination in aid of seizure

- (1) An application by the Sheriff for an order under section 69(1) of the Act shall be made ex parte in the form 185D and supported by an affidavit.
- (2) An order under section 69(1) of the Act shall be in the form 185E and shall be served personally on the person to be examined.
- (3) Except as provided in this rule, the practice and procedure relating to an examination under section 69(1) of the Act shall be the same as the practice and procedure relating to an examination of a judgment debtor in aid of execution.
*[Rule 2 of Order 32A inserted in Gazette 26 February 1999
p.618.]*

3. Claims to property seized

- (1) If the Sheriff admits a claim the Sheriff shall give notice of that admission to the claimant and, except where section 82 of the Act applies, withdraw from possession of the property in respect of which the claim is made or the proceeds of the sale of that property.
- (2) If the Sheriff does not admit a claim, the Sheriff shall apply for an interpleader summons under this rule to be issued to the claimant in the form 185F.
- (3) On the application of the Sheriff, the clerk shall issue an interpleader summons and forward the interpleader summons to the Sheriff.
- (4) Upon receiving an interpleader summons under subrule (3), the Sheriff shall serve the summons on the claimant, or on the solicitor of any claimant who acts by a solicitor, in the time and mode directed by these rules for the service of a summons in a personal action.
- (5) If before the return day of the summons the claimant files notice withdrawing the claim, and at the same time gives notice of that withdrawal to the Sheriff, the property seized or the proceeds of sale of that property shall be dealt with and disposed of as if the claim had not been made.
- (6) The claimant shall, 5 clear days before the return day of an interpleader summons, leave at the office of the clerk 2 copies of the particulars of the claim in the form 185G in the Appendix.
- (7) Subject to this rule and to section 94(3) of the Act, proceedings in respect of a claim shall proceed as if the claimant were the plaintiff in a personal action and the Sheriff the defendant in that action.

*[Rule 3 of Order 32A inserted in Gazette 26 February 1999
pp.618-9.]*

Order 33 — Appeals

1.² Order of Supreme Court to be filed

When the Supreme Court has determined an appeal against a judgment of a local court and a copy of the order of the Supreme Court has, in accordance with rule 5 of Order 64 of the *Rules of the Supreme Court 1971*, been sent to the officer of the local court, the copy of the order shall be filed and the order may be enforced as if it had been made by the local court.

[Rule 1 of Order 33 inserted in Gazette 16 December 1971 p.5227.]

2.² New trial

A new trial in pursuance of an order of the Supreme Court shall be entered for trial at the first local court which shall be held next after 7 clear days from the time when such order or office copy thereof has been deposited as aforesaid, unless the parties agree that it shall take place sooner, or the magistrate otherwise orders, and it shall be conducted in the same manner as any new trial granted by the local court itself.

3.² Proceedings on judgment of Supreme Court

If the order of the Supreme Court be that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as on a judgment of the local court.

Order 34 — Actions or matters remitted from or transferred to the Supreme Court

1.² Where action or matter remitted from Supreme Court

Where by order of the Supreme Court any action or matter is remitted or transferred to a local court, the plaintiff shall lodge with the clerk the order, or a duplicate thereof, and the writ, together with the pleadings, affidavits, and other documents filed in the Supreme Court, or copies thereof; and (if no statement of claim has been delivered in the Supreme Court) a concise statement of the particulars of claim, such as would be required upon entering a plaint; and the clerk shall after receipt by him of an application in the form in the Appendix from a party to the action enter the action or matter for trial, and give notice to the parties of the day appointed for such trial, by post or otherwise, 10 clear days at least before such day.

2.² Order to be filed — proceedings in local court

The clerk shall forthwith endorse on the order or duplicate thereof the date on which the same was lodged, and file the same, and the action or matter shall proceed in all things as if it were an ordinary action in the court. No notice of defence under the Act shall be required where the defendant has entered an appearance in the Supreme Court, and a notice of a special defence pursuant to the Act or Order 10 shall not be required where a statement containing such defence has been delivered in the Supreme Court.

3.² Defendant to proceed as if action originally brought in local court

Upon being served with a notice of trial under rule 1 a defendant shall proceed in all things in the same way as if the action had been brought in the local court. Any notice of defence or special defence which it may be necessary to file shall be filed within such time as the clerk or magistrate may determine.

4.² Special notice in action for libel or slander

Where in any action for libel or slander remitted under section 88 of the Act to be tried in a local court, the defendant intends to avail himself of the provisions of sections 1 and 2 of the *Libel Act 1843*, (adopted by 10 Vict., No. 8), he shall give notice in writing of such intention to the clerk 5 clear days at least before the day appointed for the trial of the action.

5.² Transmission of documents etc. to Supreme Court by clerk after order of transfer

Where any order is made by the Supreme Court or judge thereof for the removal of any action or matter from a Local Court to the Supreme Court then, subject to such order, the clerk shall forthwith transmit to the Master of the Supreme Court all documents filed in the action or matter.

Order 35 — Replevin

1.² No other cause of action to be joined

In actions of replevin no other cause of action shall be joined in the summons.

2.² Particulars

On entering a plaint in replevin, the plaintiff shall specify and describe in a statement of particulars the several goods taken, and the distress or other taking of which he complains.

3.² Mode of trial

An action of replevin shall be tried in the same way as other actions, and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall be, unless otherwise ordered, according to the forms in the Appendix.

4.² Where defendant succeeds in action where distress is for a sum of money

Where the distress is for any sum of money for which a distress may be lawfully taken, and the defendant succeeds in the action, if the defendant so requires, the magistrate shall find the value of the goods distrained, and if the value is less than the amount of the sum of money in arrear, judgment shall be given for the amount of such value, but if the amount of the sum of money in arrear be less than the value so found, judgment shall be given for the amount of the sum of money, and such judgment may be enforced in the same manner as any other judgment of the court.

5.² Where defendant entitled to a return in damage feasant

Where the distress is for damage feasant, and the defendant is entitled to judgment for a return, if the plaintiff so requires, the magistrate shall find the amount of the damage sustained by the defendant, and judgment shall then be given in favour of the

defendant, in the alternative, for a return, or for the amount of the damage so found.

6.² Where defendant succeeds in other cases

In all cases of replevin, other than those arising out of a seizure by way of distress, where the defendant justifies the taking and proves his case, the judgment for the defendant shall be for a return of the goods, with or without costs.

**Order 36 — Fines. Neglect or misconduct of officers.
Committal for contempt. Enforcement of fines**

1.² Summons for neglect

A summons against a bailiff under section 21 of the Act for neglect, connivance, or omission, or a summons against a bailiff or other officer of the court under section 24 of the Act for extortion or misconduct or any other offence, shall, on complaint made by the party aggrieved, be issued according to such of the forms in the Appendix as shall be applicable, and such summons shall be served personally on the party to be charged 10 clear days before the return day.

2.² Order

An order under section 21 or section 24 of the Act shall be according to such of the forms in the Appendix as shall be applicable, and in default of compliance with any such order, execution or other process may issue thereon in like manner as on a judgment in an action. The costs awarded by any such order shall be taxed on such scale as the magistrate shall order, and in default of any order they shall be taxed on the scale which would be applicable to the amount ordered to be paid, or, if costs are awarded to the defendant, the amount claimed, if such amount were recovered or claimed in an action.

3.² Order imposing fine on witness

An order under section 63 of the Act, imposing a fine for non-attendance on a person summoned as a witness, or a fine on a person present in court who refuses to be sworn or give evidence, shall be according to the form in the Appendix; and payment of such fine may be enforced, upon the order of the magistrate, pursuant to section 157 of the Act.

4.² Committal or fine for contempt of court

An order committing a person to prison or imposing a fine for any offence mentioned in section 156 of the Act shall be according to the form in the Appendix, and such order may be enforced by warrant in the form in the Appendix.

5.² Report by clerk to magistrate if fine not paid

Where a fine is not paid in accordance with the order imposing such fine, the clerk shall forthwith report the matter to the magistrate, and shall act on any orders given by the magistrate for the enforcement of such fine.

Order 37 — Fees, costs, and allowance to witnesses

1.² Generally costs to be awarded to successful party

Subject to the express provisions of these rules the costs of and incidental to all proceedings shall be in the discretion of the magistrate but, without limiting the general discretion conferred on the magistrate by the Act, the magistrate will generally order that the successful party in any action or matter recover his costs.

2.² Conduct disentitling successful party to costs

If the magistrate is of opinion that the conduct of a party either before or after the commencement of the litigation has resulted in costs being unnecessarily or unreasonably incurred he may deprive that party of costs wholly or in part, and may further order him to pay the costs of an unsuccessful party either wholly or in part.

3.² Unnecessary costs

Where a party though generally successful in an action has, by the introduction of some issue or issues on which he has failed, increased the costs, the magistrate may order such party to pay the costs of such issue or issues.

4.² Cost where counterclaim raised and tried

Where a counterclaim is raised and tried, unless the magistrate otherwise orders, the scale upon which the costs of the parties are to be taxed shall be determined as follows:

- (1) If the plaintiff is successful on both claim and counterclaim, by the amount which he recovers on his claim, unless the amount of the defendant's claim is the larger, in which case the costs incurred subsequently to the delivery of the counterclaim shall be determined by the amount of such counterclaim.

- (2) If the defendant is successful on both claim and counterclaim, by the amount which he recovers on his counterclaim, or the amount of the plaintiff's claim, whichever may be the larger.
- (3) If both parties are successful, by the amounts which they recover on their respective claims; and if both claims fail, by the amount claimed by the opposite party.
- (4) Provided that in cases falling within paragraph (1) or paragraph (2), if the subject-matter of the counterclaim is entirely unconnected with that of the claim, items of costs, fees to counsel, and allowances to witnesses reasonably incurred or paid in respect of the counterclaim or claim (as the case may be) in addition to those incurred or paid in respect of the claim or counterclaim, may be allowed by the magistrate, or where no special directions as to costs are given by the magistrate, at the discretion of the clerk, subject to review by the magistrate.

5.² Where plaintiff recovers less than claim

- (1) Where the claim is unliquidated, and the plaintiff recovers less than the amount claimed, the magistrate may, in his discretion, order that his costs be taxed on the scale applicable to the amount claimed, or any intermediate scale.
- (2) Subject to any other rule of court the taxation of costs as against a plaintiff shall be on the scale applicable to the amount claimed, and as against a defendant on the scale applicable to the amount recovered.

6.² Scales on which costs are to be taxed

- (1) Subject to the provisions of rule 7, a magistrate may order that the costs in any action or matter are to be taxed.
- (2) Costs shall be taxed on the basis of the items set out in Part III of the Appendix in accordance with the column of that scale appropriate to the value of the sum recovered in, or the subject

r. 6A

matter of, the action or matter, but the court has a discretion to order that a different column of the scale shall apply.

- (3) In relation to any item not specifically provided for in the scale the court may allow costs by analogy to the item most nearly applicable, or if there is no such analogous item at such sum as is adequate.

[Rule 6 of Order 37 inserted in Gazette 1 February 1974 pp.271-3 (erratum in Gazette 8 February 1974 pp.323-4).]

6A.² Court may order increased costs

- (1) Notwithstanding any other provision of these rules, where the value of the sum recovered in, or the subject matter of, an action or matter exceeds \$6 000, the magistrate, upon application, may order that, by reason of the complexity or importance of the case or for any other good and sufficient reason, discretionary costs shall be increased by not more than 100%.
- (2) Where an application for an order for costs in accordance with subrule (1) is made, the party against whom the order is sought is entitled to be heard in reply to the application.
- (3) In this rule “**discretionary costs**” means costs allowable on the basis of items 4(b), 4(ba), 4(c), 5(a), 5(b), 7, 8(a), 8(b), 9, 10(a), 10(b), 11(b), 11(c) and 13(c) set out in Part III of the Appendix.

[Rule 6A of Order 37 inserted in Gazette 27 November 1987 p.4254.]

6B.² Exceptional award of costs in the Small Disputes Division

Where costs other than those referred to in section 106M(a) or (b) of the Act are allowed to or against any party to an action for a small debt the court shall make a written record of the amount of the costs so allowed, the details of those costs, and the grounds on which those costs are allowed.

[Rule 6B of Order 37 inserted in Gazette 9 December 1983 p.4814; amended in Gazette 18 August 1989 p.2751.]

7.² Costs may be fixed at trial

- (1) Notwithstanding the provisions of rule 6, the magistrate may order that the costs awarded by him in any action or matter be fixed and thereupon fix the sum of the costs so ordered to be paid.
- (2) Except in an action for a small debt, an order referred to in subrule (1) shall not be made unless —
 - (i) application is made by the party awarded costs or his counsel; and
 - (ii) the opposing party or parties to the action or his or their counsel consent to the order being made.
- (3) Any costs awarded under this rule may be recovered in the same manner as costs which are taxed under this Order.

[Rule 7 of Order 37 amended in Gazette 9 December 1983 p.4814.]

8.² Entry of costs on summons

On the issue of a summons in an action the clerk may enter such costs which have been or which it shall appear will be incurred by the plaintiff up to and including the service thereof.

9.² Allowance of costs without taxation

On the entry of a judgment on default of defence or appearance or on confession, the clerk may without formal taxation allow such costs as are allowed by the Act, and the rules made thereunder.

10.² When costs to be taxed — delivery of bill

Where practicable the costs of an action or matter may be taxed on the day on which the action or matter is tried or heard; and where the costs have not been so taxed, 48 hours' notice of taxing, together with a copy of the bill of costs, shall be given

by the solicitor of the party whose costs are to be taxed to the other party or his solicitor.

11.² Notice of taxation

Notice of taxation may be sent by post prepaid, provided that it is posted in time to reach the party to whom it is addressed in due course of post 48 hours before the time fixed for taxation.

12.² Forms of bills of costs

In every bill of costs to be taxed, the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is left for taxation.

13.² Taxing costs on bill as taxed

On taxation of a bill of costs the clerk shall allow the fee prescribed in item 9 of the Table of court fees in Part II of the Appendix for taxing costs on the amount of the bill of costs as taxed, notwithstanding that a greater sum has been paid on the bill of costs as filed.

[Rule 13 of Order 37 amended in Gazette 1 February 1974 pp.271-3 (erratum in Gazette 8 February 1974 pp.323-4); 12 November 1982 p.4451; 10 July 2001 p.3439.]

14.² Party dissatisfied to make objections in writing — clerk may obtain directions

- (1) Any party who may be dissatisfied with the allowance or disallowance by the clerk on taxation on any bill of costs taxed by him of the whole or any part of any item may, at any time before the allocatur is signed, deliver to the other party interested therein, and carry in before the clerk on taxation an objection in writing to such allowance or disallowance specifying therein by a list, in a short and concise form, the items or parts thereof objected to, and the grounds and reasons for such objection, and may thereupon apply to the clerk to review the taxation in respect of the same.

- (2) After consideration of such objections, the clerk may, if he thinks fit, apply to the magistrate for directions in respect of all or any of the items objected to and of any other items affecting or affected by those objected to. If the magistrate issues directions in regard to any of the items, his directions thereto shall, in respect of those particular items, have the same effect as a review of taxation by the magistrate under rule 47.

15.² Review of taxation upon objections

Upon such application the clerk shall reconsider and review his taxation upon such objection, and he may, if he thinks fit, receive further evidence in respect thereof, and if so required by either party, he shall state either in his allocatur or by reference to such objections, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

16.² Costs of objection to jurisdiction

The magistrate may in any action, whatever may be the result of the action, order the defendant to pay to the plaintiff the costs of and occasioned by any objection to the jurisdiction which shall have been unreasonably taken or made by the defendant.

17.² How order for particular costs to be made and obtained

The order of the magistrate required for the allowance of any particular costs under any of these rules shall be a special order made upon consideration of the facts of the particular case, and not a general order; and the application for such allowance shall be made at or immediately after the trial or hearing; and if not so made shall not afterwards be entertained unless the magistrate for good cause otherwise orders.

18.² Actions for recovery of possession

- (1) The costs in action under Part VI of the Act, for recovery of possession of land, shall be taxed, in the case of a plaintiff, in accordance with the column of the scale contained in Part III of the Appendix applicable to the rent or value of the premises

upon which the court fees are assessed, plus the amount of any rent and mesne profits or damages recovered; and in the case of a defendant, on that applicable to the said rent or value, plus the amount of the rent and mesne profits or damages claimed.

- (2) The costs in an action for the recovery of possession of land in which no notice of defence is given shall be limited to Item 19 in Part III of the Appendix.

[Rule 18 of Order 37 amended in Gazette 1 February 1974 pp.271-3 (erratum in Gazette 8 February 1974 pp.323-4); 12 November 1982 p.4451.]

19.² Costs on judgment for delivery of goods

The cost to be allowed on a judgment for delivery of goods shall be calculated on the assessed value thereof, or, if the value has not been assessed, on the value put upon them by the plaintiff; provided that where the value put upon them by the plaintiff exceeds \$20, it shall be verified by the affidavit of the plaintiff, his solicitor or agent.

20.² Jurisdiction by consent

Costs in actions under section 39 of the Act shall be taxed as actions within the jurisdiction of the court, and if the amount recovered exceeds \$25 000 it shall, for the purpose of this rule, be deemed to be \$25 000.

[Rule 20 of Order 37 amended in Gazette 12 November 1982 p.4451; 27 November 1987 p.4254; 26 January 1993 p.840.]

21.² Interpleader proceedings

The “**subject matter**” in an interpleader proceeding shall mean (1) in the case of a claimant the amount of the value of the goods his claim to which is allowed, plus the amount of the damages (if any) adjudged, (2) in the case of an execution creditor the amount of the value of the goods seized, plus the amount of the damages (if any) claimed, and (3) in the case of a bailiff, the amount of the damages claimed.

22.² Taxation of costs ordered to be paid by or to third party

Where an order is made for payment of costs by or to a third party, any costs, fees to counsel, and allowances to witnesses reasonably incurred or paid in addition to the costs of the original action by reason of such third party having been brought in, in respect of the trial of the question of the liability of the third party, or in preparing for such trial, may be allowed, and such costs shall be taxed as if the third party were a defendant, and the party to or by whom such costs are ordered to be paid were a plaintiff, and as if the notice to the third party were a summons with particulars annexed.

23.² Fees where party recovers less than he claims

Where the plaintiff or defendant recovers less than the amount of his claim or counterclaim, so as to reduce the amount of court fees recoverable by him, he shall bear the loss.

24.² No costs allowed if not sanctioned by scales

Costs not sanctioned by the scale are not to be allowed, except in cases expressly provided for by these rules.

[25. Deleted in Gazette 6 February 1976 p.286.]

26.² Fee for service of summons

Notwithstanding anything to the contrary in any rule of court or scale of charges, a solicitor shall be allowed for the service of any summons the same fee as would be allowed if the summons had been served by a bailiff.

27.² Discretion of clerk

When under the scales or rules a discretion as to the allowance to be made is vested in the clerk, he shall exercise such discretion with care and discrimination, and strictly in accordance with the particular directions set forth in the scales and rules.

28.² When costs unnecessarily incurred

No costs which are to be paid or borne by another party shall be allowed which do not appear to the clerk on taxation to have been necessary or proper for the attainment of justice or for defending the rights of the party incurring the same, or which appear to such clerk to have been incurred through overcaution, negligence, or mistake, or merely at the desire of such party.

29.² Discretionary fees and allowances

All fees and allowances which are discretionary, shall, unless otherwise provided, be allowed at the discretion of the clerk on taxation, who, in the exercise of such discretion, shall take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the action or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances.

30.² Costs incurred before transfer of action

Subject to the Act and to any rule of court, the costs incurred prior to transfer in any action or matter transferred from one court to another shall be in the discretion of the magistrate of the court to which the action or matter is transferred, and may be taxed and payment thereof enforced as if incurred in or about proceedings in that court.

31.² Where separate judgments against defendants

Where 2 or more defendants are joined and judgment is given separately against each with costs, the costs shall, unless the magistrate otherwise orders, be apportioned according to the respective amounts of each judgment.

32.² Costs of solicitor appearing in person as plaintiff or defendant

Where a solicitor who is a plaintiff or defendant appears in person and is allowed costs, he shall be entitled to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting directly renders unnecessary.

[33. Deleted in Gazette 6 February 1976 p.286.]

34.² Folio

A folio shall comprise 72 words, every figure comprised in a column or authorised to be used counting as one word.

35.² Costs of persons in fiduciary position etc.

When in the course of an action or matter a party suing or sued in a fiduciary or representative character necessarily incurs costs not allowable upon taxation under any scale, the clerk shall apply to the magistrate, who may by an order to be filed with the proceedings, allow such a sum as he may think fit for such costs to be paid out of any funds applicable to the purpose.

36.² Disallowance of costs of improper, vexatious, or unnecessary matter in documents or proceedings

The magistrate may, at the hearing of any action or matter, or upon any application or proceeding in any action or matter, and whether the same is objected to or not, direct the costs of any affidavit, evidence, notice, or other proceeding, or any part thereof which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or is caused by misconduct or negligence, to be disallowed, or may direct the clerk to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, or vexatious, or to contain unnecessary matter, or to be of unnecessary length, or to have been caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to

the other parties; and in any case where such question has not been raised before and dealt with by the magistrate, it shall be the duty of the clerk to look into the same for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

37.² Set-off of costs

In any case in which, under the last preceding rule, or any other rule, or by the order or direction of the magistrate, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the clerk may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he thinks fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such clerk may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

38.² Allowances to witnesses for attendance

Subject to the following rules, allowances may be made to witnesses, including plaintiffs and defendants if personally attending the court, for their attendance at court and for such further period which allows the witness to travel to and from his home or place of business to the court, according to the scales in the Appendix.

39.² Travelling expenses

There may also be allowed to all witnesses, and the plaintiffs and defendants if personally attending the court, for travelling expenses, the sums actually and reasonably paid by them.

40.² When attending in more than one case

If witnesses attend in more than one action or matter they shall be allowed a proportionate part only of their allowance in each action or matter.

41.² Costs of witnesses not summoned

The costs of witnesses, whether they have been examined or not, may, unless otherwise ordered, be allowed, though they have not been summoned.

42.² Compensation to seamen

Seamen necessarily detained on shore for the purpose of an action or matter shall be allowed such remuneration as the magistrate may order, or, in the absence of an order, as the clerk may think reasonable compensation for their loss of time.

43.² Allowances to expert or scientific witnesses

In any action or matter the magistrate may order that any expert or scientific witness may be allowed for qualifying to give evidence and for attending the trial such sums (in addition to travelling expenses to attend the trial) as the clerk on taxation may think fit, not exceeding the maximum allowances mentioned in the scale of allowances to “expert and scientific witnesses” in the Appendix; and in like cases the magistrate, subject to the provisions of the next rule, may order that the expense of preparing and proving plans, drawings, models, etc., shall be allowed.

44.² Allowances for proof and costs of plans etc.

Persons who prepare plans, drawings, models, etc., for the purpose of illustration, and who if called at the trial prove the correctness of such plans, drawings, models, etc., only, shall not be entitled to allowances as expert and scientific witnesses, but shall be allowed for their attendance upon the scale applicable to ordinary witnesses; and there may be also allowed for the preparation of such plans, drawings, models etc., and of all tracings and copies thereof, the sum reasonably paid for the same.

45.² Taxation as between solicitor and client

- (1) An application to the magistrate under section 85 of the Act for the taxation of any costs and charges as between solicitor and client shall be made in writing, and shall state on whose behalf the application is made.
- (2) On receipt of such application the magistrate shall fix a time and place for proceeding with such taxation, and shall give or send by post to the applicant and the other party notice in writing of the time and place so fixed 3 clear days at least before the day so fixed.
- (3) Rules 7 and 8 shall apply to any such taxation.
- (4) The costs of such taxation shall be dealt with by the magistrate in accordance with the provisions of the *Legal Practitioners Act 1893*, and shall be added to or deducted from the amount certified to be due.

46.² Scale applicable to taxation as between solicitor and client

The taxation of a bill as between solicitor and client shall be on the scale applicable to the amount claimed.

47.² Application for review of taxation by magistrate

An application to the magistrate to review any taxation of costs shall be made on notice in writing in accordance with the rules for the time being in force as to interlocutory applications. Such applications shall be heard and determined upon the evidence which has been brought in before the clerk, and no further evidence shall be received on the hearing thereof unless the magistrate otherwise directs.

48.² Fees

- (1) Subject to subrule (2) the fees set out in the Table of Court Fees in the Appendix shall be paid and taken in local courts in respect of the various matters and proceedings therein mentioned.

- (2) The clerk may waive, reduce or defer any fee payable, or refund any fee paid —
- (a) by a disadvantaged person; or
 - (b) if the clerk considers it to be in the interests of justice to do so.

[Rule 48 of Order 37 inserted in Gazette 28 June 1985 p.2299; amended in Gazette 24 March 2000 p.1642.]

49.² Recovery of fees paid

Fees and expenses properly disbursed shall in all cases be allowed on taxation but at such amount only as shall be authorised by the scale governing the taxation.

Order 38 — General provisions

1.² Party may act by solicitor

Whenever by any rule of court any act is required to be done by or to or with reference to a party, then in the case of a party who is represented by a solicitor, such act shall be done by or to or with reference to such solicitor, unless it appears expressly or by necessary implication that it is to be done by or to or with reference to the party in person.

2.² Service of notices etc. where no mode of service prescribed

Any notice, proceeding, or document required by these rules to be served on any party, and as to which no mode of service is prescribed by these rules, may be so served by delivering the same to the person on whom it is to be served, or by leaving the same at the residence or place of business of such person or by sending the same by post addressed to such person at his last-known residence or place of business; and any such notice, proceeding, or document, if served by post, shall, unless the contrary be proved, be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice, proceeding, or document, it shall be sufficient to prove that the same was properly addressed and posted: Provided that for the purposes of this rule, a place of business shall not be deemed to be the place of business of the person to be served unless he is the master or one of the masters thereof.

3.² Service by or upon solicitor acting for party

Where a party acts by a solicitor, any document, notice or proceeding, required to be served by or upon such party may be served by or upon such solicitor, except in cases where by the Act and these rules personal service upon a party is required; and service of any such document, notice, or proceeding upon such solicitor, or delivery of the same at his office, or sending the same to him by post prepaid, shall be deemed to be good

service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered.

3A.² Service at a document exchange

- (1) Where a solicitor acting for a party has facilities for the reception of documents in a document exchange, delivery of a document into those facilities shall be deemed to be sufficient delivery to or service on that solicitor.
- (2) Delivery to or service on a solicitor shall be deemed to be effected on the day following the day upon which the document is delivered into the facilities of the document exchange, but where documents are so delivered on a Friday delivery or service shall be deemed to be effected on the following Monday.
- (3) In this rule, “**document exchange**” means a document exchange for the time being approved by the Minister.
- (4) The Minister may approve a document exchange by notice published in the *Gazette* and may at any time in like manner amend or revoke a notice so given.

[Rule 3A of Order 38 inserted in Gazette 27 November 1987 p.4254.]

4.² Solicitor may give notice that he is acting — service by or on such solicitor — change of solicitor

- (1) A solicitor acting for a party in any action or matter may give notice in writing by post or otherwise to the clerk and to the other party, or his solicitor, that he is so acting, whereupon service of any document, notice, or proceeding whatsoever authorised by these rules to be served by or upon a solicitor so acting shall be served by or upon such solicitor accordingly, and he shall be deemed to be the solicitor acting for the party on whose behalf he has given such notice, until notice of change of solicitor has been duly given: Provided that where the plaint is entered by a solicitor acting for the plaintiff, and the particulars

have been duly signed by him or on his behalf as provided by Order 5, rule 25, or where a notice of defence, set-off, or counterclaim is signed by or on behalf of a solicitor acting for a defendant, no further notice need be given under this rule.

- (2) A solicitor may at any time give notice to the clerk and the other parties to the action that he no longer acts for a party, and the clerk shall alter his records accordingly, and all notices and processes thereafter shall be served on that party until such time as notice is given to the clerk and the other parties that another solicitor is acting for such party.
- (3) A party may at any time give notice in the form in the Appendix to the clerk and the other parties to the action that he no longer retains the services of his solicitor, and shall incorporate in the notice the name and address of the new solicitor, if any, who is representing him. The clerk shall thereupon alter his records accordingly and, except where these rules provide otherwise, cause all notices and processes to be served on the new solicitor: but where a notification of the employment of a new solicitor is not incorporated in the notice previously referred to, all notices and processes shall be served on the party until such time as notice is given to the clerk and the other parties that another solicitor is acting for the party.
- (4) Notwithstanding subrules (2) and (3), a solicitor may apply to the magistrate at any time, either in or out of court, for leave to withdraw from an action. Where the magistrate grants such leave, the clerk shall endorse a memorandum thereof on his records and notify each of the parties to the action of the substance of the order made, by letter addressed to his address as shown on the proceedings.

5.² Practice on service by solicitor

Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the clerk shall seal the same and return them to the solicitor for service.

6.² No notice of employment of legal practitioner required

It shall not be necessary for any party to give notice to any other party or to the court of his intention to employ a legal practitioner to act as his advocate at the trial, and the allowance of costs for such practitioner shall not be affected by such want of notice.

7.² Enlargement or abridgement of time

The times fixed by these rules for serving any process, taking any step, filing any document, giving any notice, or for any other purpose in any action or matter may be enlarged or abridged by order of the magistrate, or by consent of the parties. An order may be made under this rule although the application for the order is not made until after the expiration of the time allowed or appointed, and on such terms, as to costs and otherwise, as the magistrate may direct.

8.² Filing of documents and copies for service

Where particulars or documents are directed to be filed, they shall be filed with the clerk, together with as many copies thereof as there are parties to be served, and the names, addresses, and descriptions of such parties, and if required an additional copy for the use of the magistrate.

9.² Sealing of documents

Before any summons, notice, or other document, or any copy thereof, is issued by the clerk, the same shall be sealed with the seal of the court.

10.² Notices to be in writing

All notices required by these rules shall be in writing, unless expressly authorised by the magistrate to be given orally.

11.² Form of notices

Where by these rules any party is required to give notice according to a form mentioned in the Appendix, it shall be sufficient if the notice given complies substantially with such form.

12.² Computations of periods not exceeding 48 hours

Where anything is required by these rules to be done within a period not exceeding 48 hours, no part of any Sunday or day on which the offices of the court need not be open under these rules or under any statute or by order of the Minister shall be included in the computation of such period.

13.² When time for doing any act expires on day when offices are closed

Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices of the court are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

[14. *Repealed in Gazette 27 November 1998 p.6347.*]

15.² Transmission of notices etc. by post

All letters, notices, documents, or process sent by post by or to the officers of the courts, or by or to parties in any action or matter shall be prepaid.

16.² Notices by post delivered after office hours

All notices which may be sent by post to the office of the clerk shall be taken to have been duly delivered on the day on which they should have been delivered, if they are delivered at the office of the clerk before the opening thereof on the following day.

17.² Use of forms in Appendix — where no forms prescribed

All proceedings and documents shall be in the forms similar to the forms in the Appendix, where the same are applicable; and in cases where such forms are not applicable, or where no forms are provided, parties shall frame the proceedings or documents, using as guides the forms contained in the Appendix. Such forms may be varied to suit any particular case.

18.² Rules and forms to be adhered to

No practice shall prevail in any court which shall be inconsistent with these rules, nor shall any matter be added to or taken from any form in the Appendix, whereby any obligation shall be imposed upon any suitor or any officer of the court to which he is not liable under statute or these rules, or otherwise by law.

19.² Non-compliance with rules not to render proceedings void

Non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the magistrate shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or may be amended or otherwise dealt with in such manner or upon such terms as the magistrate may think fit.

20.² Application to set aside proceedings for irregularity

Applications to set aside proceedings for irregularity may be made to the magistrate on summons in manner prescribed by Order 14, rule 11. No application to set aside any proceedings for irregularity shall be allowed unless made within a reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity. Where any such application is made, the several objections intended to be insisted upon shall be stated in the notice.

21.² Duplicate of warrant etc. — lost or destroyed

In the event of any warrant, original or duplicate summons, order, or other document issued by the court being lost or destroyed, a duplicate thereof may be issued from time to time upon proof, by affidavit or otherwise, to the satisfaction of the clerk, of such loss or destruction.

22.² Duplicate summons may be issued

Where a duplicate summons has been dispatched for service by registered post under the provisions of the Act and rules, and a return of service of such summons has not, in the opinion of the clerk, been made within a reasonable time after dispatch of such summons, or where the plaintiff satisfies the clerk that he is able to effect service more expeditiously than if he waited for the return of the summons so sent by post, the clerk may, on the application of the plaintiff, or of his solicitor, issue a duplicate of such summons for bailiff or for personal service, at such fee as may be prescribed.

23.² Service of telegram

When under any rule of court it is permissible to send, give, or serve any notice, process, or other document by telegraph, then it shall be sufficient to transmit the substance of the document; provided that enough is transmitted to render the telegram clearly intelligible.

24.² Designation of local courts

It shall not be necessary to designate any local court as a “Local Court of Western Australia,” but process and documents for service out of the jurisdiction shall have the words “Western Australia” written at the head thereof.

25.² Service by post

In any case in which service of any document, other than a summons in a personal action, is authorised by post or telegram

the service shall be presumed, unless the contrary is shown, to have been effected at the time when by the ordinary course of post and telegraph the letter or telegram would be delivered.

[Rule 25 of Order 38 amended in Gazette 2 August 1985 p.2690.]

26.² Change of address for service

When a party to an action or matter who by these rules is required to give an address for service of proceedings changes that address, he shall forthwith file with the clerk a notice in writing of his new address for service and serve a copy of the notice on the other parties to the action or matter. Such new address for service shall be the residence of the party, or his place of business as provided for by Order 6, rule 4, or the place of business of his solicitor.

Schedule
Appendix

Part I

1 — General form of heading and conclusion of all notices and admissions

No.....

In the Local Court of Western Australia held at.....

Between

A.B. plaintiff,

and

C.D. defendant.

* * * * *

Dated this.....day of.....20.....

.....
Clerk of the court (or person sending
notice or making admission).

To (the person to whom notice is sent).

2 — General form of heading and conclusion of judgments and orders

No.....
In the Local Court of Western Australia, held at.....
(Seal)
Between
A.B. plaintiff,
and
C.D. defendant.
The.....day of.....20.....
* * * * *
By the court.
.....
Clerk of the court.

4 — General form of heading and conclusion of affidavits

No.....

In the Local Court of Western Australia, held at.....

Between

A.B. plaintiff,

and

C.D. defendant.

* * * * *

Sworn at.....this }
.....day of..... }
20, before me }

5 — Memorandum to be placed at foot of summons and warrant

Hours of attendance at the office of the clerk at (place of office)
from Monday to Friday are: —
10 a.m. to 1 p.m. and 2 p.m. to 3.30 p.m.

6 — Plaintiff in personal action

No.....20.....

Christian and surnames and places of abode or business of parties	}	Plaintiff
		Place of abode (or business)
		Defendant.....
		Place of abode (or business)

General nature of cause of action.....

Amount or value of claim.....

(Seal of court.)

6A — Plaintiff in action for a small debt

0.5 r.3(1)
No.....20.....

Christian and surnames and places of abode or business of parties	}	Plaintiff
		Place of abode (or business)
		Defendant.....
		Place of abode (or business)

Particulars of claim.....

Amount or value of claim.....

The plaintiff by this plaint, elects to have this action heard and
determined under Part VIA of the *Local Courts Act 1904* as an
action for a small debt.

.....

Signature of plaintiff

7 — Affidavit justifying a plaintiff's choice of court

(Heading as in Form 4)

I, (here state name, residence, and occupation of deponent) make oath and say as follows: —

1. That....., of....., and....., of....., are justly and truly indebted to me or to (here state name, residence and occupation of the plaintiff) in the sum of \$....., for (the price of goods sold, or money lent or as the case may be).

2. That this court is the nearest Local Court to (here state with particularity the place of residence or business) the place where the defendant (or..... one of the defendants) reside(s) (or carries(y) on business), or.....

3. That the defendants (or.....one of the defendants) within 6 months from the date hereof dwelt or carried on business at..... (when residence, etc., within 6 months relied on) (or That the cause of action in respect of which the defendants have been sued arose wholly or in part at.....) (when cause of action or part relied on) at which place this is the nearest court (or set out any other facts justifying the plaintiff's choice of court).

4. That the facts relied on as constituting the alleged cause of action or a part thereof are (here set out the facts relied on). (This paragraph need only be used when the plaintiff wishes to prove that the action has been commenced in the court nearest to the place where the cause of action wholly or in part arose.)

5. And I further say that the matters herein deposed to are within my personal knowledge. Sworn at....., this.....day of....., 20....., before me,

.....
Clerk of the court, or Commissioner or J.P.

(Filed on behalf of the plaintiff.)

N.B. — If only one defendant, form to be amended accordingly.

8 — Notice transferring action under section 36a
(Form B)

(Heading as in Form 1)

To the clerk of the Local Court at.....

Whereas the defendant has objected to the jurisdiction of this court and has required the action to be transferred to your court, and the plaintiff has failed to justify to my satisfaction his choice of this court for the commencement of this action, and it has been decided that this action shall be transferred to your court. I do, therefore, transmit to you herewith the originals of all proceedings in this action, and do transfer the said action to your court.

Dated the.....day of....., 20.....

.....
Clerk of the Local Court.

9 — Notice to plaintiff of objection to jurisdiction by 2 or more defendants

—————
(Heading as in Form 1)
—————

Take notice that the defendants C.D. and E.F. object to the jurisdiction of this court and say that they reside, the said C.D. at.....and the said E.F. at.....and that the said C.D. requires the action to be transferred to the court nearest to....., and the said E.F. to the court nearest to.....: And further take notice that unless you shall within (the prescribed time) file in this court an affidavit to my satisfaction, according to the prescribed form, justifying your choice of court or discontinue this action, I shall transfer the action to such one of the courts to which a transfer has been required as you shall, within one week after the receipt by you of this notice, select or in default of such selection as I shall determine.

Dated at.....this.....day of....., 20.....

.....
Clerk of the court.

(For appropriate form where one defendant, see *Local Courts Act 1904*, Second Schedule, Form 1.)

—————

10 — Agreement to give jurisdiction to a Local Court

(Heading as in Form 1)

We,
do hereby agree that the Local Court held at.....shall
have power to try an action to be brought by.....against
.....for.....under the
provisions of section 39 of the *Local Courts Act 1904*, and we hereby state that
we know the action is not within the jurisdiction of the court, without this our
consent.

Witness our hands this.....day of.....
20.....

11 — Agreement not to appeal

(Heading as in Form 1)

We,
the abovenamed plaintiff and defendant (or solicitors for the abovenamed
plaintiff and defendant) do hereby, under the provisions of section 112 of the
Local Courts Act 1904, agree that the decision of the magistrate of this court
shall be final.

Witness our hands this.....day of.....
20.....

.....
Plaintiff (or solicitor for plaintiff.)

.....
Defendant (or solicitor for defendant.)

12 — Undertaking by solicitor to be responsible for costs

(Heading as in Form 1)

As solicitor for the abovenamed plaintiff, I hereby undertake to be personally responsible for any costs which the said plaintiff may be ordered to pay to the said defendant in this action.

Dated this.....day of....., 20.....

.....
Solicitor for the plaintiff.

13 — Undertaking by next friend of infant to be responsible for defendant's costs

(Heading as in Form 1)

I, the undersigned, E.F., of....., being the next friend of A.B., who is an infant, and who is desirous of entering a plaint in this court against C.D., of, etc., hereby undertake to be responsible for the costs of the said C.D., in such action, in manner following: namely, if the said A.B. fail to pay the said C.D., when and in such manner as the court shall order, all such costs of such action as the court shall direct him to pay to the said C.D., I will forthwith pay the same to the clerk of the court.

Dated this.....day of....., 20.....

.....
E.F.

14 — Summons

No.....

In the Local Court at.....

Between

.....
of..... } plaintiff
and

.....
of..... } defendant

To the defendant:

You are hereby summoned to answer the plaintiff's claim endorsed hereon (or annexed hereto), and take notice that unless within.....days after service of this summons upon you, you give notice to the clerk of this court that you intend to defend this action, the plaintiff may proceed therein and judgment may be given in your absence.

	\$
Amount or value of claim.....	
Court fees (including post fee)	
Service fees.....	
Kilometrage.....	
Solicitor's costs.....	
Total.....	\$

Dated the..... Re-issue / /
Ct.....Ser.....K.....

..... Extra fees.....
Clerk of the court.

Local Court Rules 1961
Schedule

Particulars of claim.

The plaintiff's claim is as follows (or hereunto annexed): —

Ordinary
account forms
may be annexed
thereto

.....
Plaintiff (or solicitor for the plaintiff).

The plaintiff's residence (or place of business) is.....
....., or the place of business of the plaintiff's solicitor,
where service of all proceedings in this action will be accepted on behalf of the
plaintiff, is
.....

NOTE. — If the plaintiff's particulars have been previously rendered to the
defendant, it shall be sufficient, subject to the Act, to state the nature and
amount or value of the claim, with the addition of the words "particulars
whereof have been rendered."

The claim is to be signed at the foot by the plaintiff or his solicitor.

Hours of attendance at the office of the clerk of the court at.....
from Monday to Friday are: 10 a.m. to 1 p.m., and 2 p.m. to 3.30 p.m.

Notice of defence must be according to the following form and may be given by
post, telegraph, or personal delivery: —

In the Local Court at.....No.....of 20.....
.....V.....

I intend to defend this action.

Dated this.....day of....., 20.....
....., Defendant (or solicitor for
defendant).
.....Place of residence or place of
business.

If you intend to rely on a *set-off*, *counterclaim*, *infancy*, *the Statute of Frauds*,
any Statute of Limitations, or a *discharge under any statute relating to
bankruptcy* as a defence, you must with the notice of intention to defend, give to
the clerk notice of such special defence, and such lastmentioned notice must
contain the particulars required by the rules of the court; and you must deliver to
the clerk as many copies of such notice as there are plaintiffs, and an additional
copy for the use of the court. If your defence is a *set-off* or *counterclaim*, you

must, with the notice thereof, also deliver to the clerk a statement of the particulars thereof. If your defence is a *tender*, you must pay into court the amount tendered.

If you satisfy the plaintiff's claim and also pay the costs, as per margin on the other side, into the clerk's office before the expiration of the time allowed for giving notice of defence, without giving notice of defence, you will avoid further costs.

If you admit the debt or demand claimed by the plaintiff you should, unless you pay the amount, give to the clerk of the court before the expiration of the time allowed for giving notice of defence, an admission signed by you and witnessed by a clerk of court, solicitor, or justice of the peace.

If you admit a part only of the debt or damages you should give notice of intention to defend within the time allowed for so doing; and you may, by paying into the clerk's office the amount so admitted, together with costs proportionate to the amount you pay in, within the time aforesaid, avoid further costs, unless the plaintiff at the hearing shall prove a claim against you exceeding the sum so paid.

A defendant who has been sued in a court which is not the nearest to his place of residence may, *if he contends that the action has not been commenced in a proper court*, object to the jurisdiction by adding to his notice of defence words to the effect following: — "I object to the jurisdiction of this court and say that I reside at (*naming the place*) and I require action to be transferred to the court nearest to that place."

The following are proper courts for the commencement of an action: —

- (i) The court nearest to the place where the defendant or one of the defendants resides or carries on business, or, within the 6 months next before the commencement of the action, resided or carried on business.
- (ii) The court nearest to the place where the cause of action wholly or in part arose.

If any such objection is taken by you without reasonable grounds you may be ordered to pay the costs thereby occasioned, whatever the result of the action may be.

[Form 14 amended in Gazette 30 June 2003 p.2614.]

14A — Summons in action for a small debt
Western Australia

0.5 r.3(2)
 Plaintiff no.

In the Local Court
 held at.....
 Small Disputes Division

Between

..... }
 of..... } plaintiff
 and }
 }
 of..... } defendant
 }

To the defendant:

You are hereby summoned to answer the plaintiff's claim endorsed hereon (or annexed hereto), and take notice that unless withindays after service of this summons upon you, you give notice to the clerk of this court that you intend to defend this action the plaintiff may proceed therein and judgment may be given in your absence.

Dated.....

.....

Clerk of the court

Particulars of plaintiff's claim
The plaintiff, by his plaint elects to have this action heard and determined under Part VIA of the <i>Local Courts Act 1904</i> as an action for a small debt.

Financial details
Amount of claim.....
Court fee.....
Service fee.....
Travelling.....
Total _____
Re-issue date.....
Ct.....Ser.....
Additional fees

.....

Plaintiff

The address at which documents may be served on the plaintiff is

.....

(SEE NOTES ON REVERSE FOR GUIDANCE TO DEFENDANT)

(Reverse of Form 14A)
TO THE DEFENDANT

This summons is issued out of the Small Disputes Division of the Local Court. Legal representation is not permitted unless all parties consent.

If you have any doubts or queries in relation to this summons or these proceedings, you should seek advice from a clerk of the Local Court.

A. IF YOU DENY THE CLAIM:

Fill in the notice of defence which is enclosed with this summons and send or take it to the clerk of the Local Court from where the summons was issued. Your notice should be according to the attached form and it must be accompanied by the filing fee. **YOU MUST DO THIS WITHIN THE TIME SHOWN ON THE FACE OF THIS SUMMONS OTHERWISE THE PLAINTIFF CAN APPLY FOR JUDGMENT TO BE MADE AGAINST YOU.** If the time allowed has passed, you should send the notice of defence in as soon as possible, but you should contact the clerk of the Local Court for advice.

If you have been sued in a court which is not the nearest to your place of residence, you may object to the jurisdiction by adding to your notice of defence the following words: "I object to the jurisdiction of this court and say that I reside at (name the place) and I require this action to be transferred to the court nearest to that place."

B. IF YOU ADMIT THE CLAIM:

If you admit the whole claim, pay that amount together with the costs of this summons to the plaintiff and obtain a receipt for it. You must do this within the time allowed for giving notice of defence. You cannot then be made to pay any further costs.

If you admit the debt or demand claimed by the plaintiff but cannot pay the whole of the claim and costs you should give to the clerk of the Local Court within the prescribed time, an admission of debt signed by you and witnessed by a qualified person. The clerk will assist you to do this.

C. IF YOU ADMIT PART OF THE CLAIM:

You are advised to contact the plaintiff to see whether a settlement can be arranged. If you reach agreement, you should both complete an agreement form and send it to the clerk of the Local Court.

If you cannot reach agreement to settle the claim, and if you admit only a part of the amount claimed, you should give notice of defence of the balance within the time allowed to the clerk of the Local Court together with the filing fee (see A above). By also paying into the clerk's office the amount admitted, you may

avoid further costs unless the plaintiff at the hearing proves his claim against you for a greater amount.

D. FURTHER ACTION:

If you have sent in a notice of defence within the time allowed, you will be notified of any further proceedings which are taken by the plaintiff and of hearing dates.

IF YOU ADMIT OR SETTLE THE CLAIM AND COSTS, EITHER IN FULL OR IN PART, PAYMENTS EITHER IN FULL OR BY INSTALMENTS MUST BE MADE DIRECT TO THE PLAINTIFF.

The staff of the Local Court will advise how to complete any of the necessary forms.

The Plaintiff number given on the front of this summons, and the names of the parties, should be mentioned whenever you contact the court about this matter.

Plaint No.

NOTICE OF DEFENCE

.....V.....

Take notice that the defendant.....whose address for service is.....

PART A

Intends to defend this proceeding as to the full amount claimed.

* * * OR * * *

PART B

Intends to defend this proceeding as to \$....., the amount remaining in dispute.

* * * Delete Part not applicable * * *

This proceeding is defended for the following reasons: —

.....
.....
.....
.....

Local Court Rules 1961
Schedule

As regards the plaintiff's particulars of claim —

The defendant admits the following facts: —

.....
.....
.....
.....
.....
.....
.....

and does not admit the following facts: —

.....
.....
.....
.....
.....

IMPORTANT: The prescribed fee for filing a notice of defence is \$10.00 and must accompany this notice.

Dated this.....day of....., 20.....

.....

Signature of defendant.

15 — Leave to serve summons outside the Commonwealth

(Heading as in Form 1)

Upon hearing.....and upon reading the affidavit of H.J., filed herein. It is ordered that the plaintiff be at liberty to serve on the defendant at the summons in this action, and that the time for giving notice of defence in this action be and the same is hereby fixed at.....days after the service of the said summons on the defendant.

Dated this.....day of....., 20.....

.....
Magistrate.

16 — Notice by plaintiff of consent to accept instalments

(Heading as in Form 1)

Take notice that payment of the amounts sued for herein will be accepted by instalments of.....payable on the.....

Dated this.....day of....., 20.....

.....
Plaintiff
(or plaintiff's solicitor).

To the abovenamed defendant.

17 — Notice of non-service of summons

(Heading as in Form 1)

You are hereby informed that the defendant has not been served with the summons issued in this action.

Reasons:

.....
.....
.....
.....

.....
(Bailiff or police officer).

Stationed at.....

To the clerk of the Local Court,
.....

To the plaintiff or plaintiff's solicitor,
For your information.

.....
Clerk of the Local Court.

To be detached by clerk of home court only.

**18 — Notice of service or non-service of process other than summons
on a plaint**

(Heading as in Form 1)

If process not
served state
reasons.

You are hereby informed that the.....
has (or has not) been served with the.....
in this action on the....., day of.....,
20.....

This.....summons will be heard on
.....day, the.....day of.....,
20....., on which date you are requested to attend.

To the plaintiff (or plaintiff's solicitors).
defendant (or defendant's solicitors).

Clerk of Local Court,.....

Date.....

Date of notice

ServiceNon-service.....

19 — Certificate of service

In the Local Court at.....

No.....

Between....., plaintiff,
and....., defendant

I,.....
(a) Bailiff of the Local Court [(b) or police officer stationed]
at.....
.....
.....
.....

(a) (b)
Strike
out portion
not required

do hereby certify that I did, on the.....day of
.....20....., at.....
serve.....

.....
the abovenamed defendant [*or* one of the abovenamed
defendants] with the summons in this action [numbered
.....of 20.....], which summons appeared
to me to have been regularly issued out of the Local Court
at....., at the suit of the
abovenamed plaintiff, and which was dated the.....
day of.....20....., and I further certify
that such service was effected by delivering the said summons
to the said defendant (c) personally by leaving same with a
person of the apparent age of 16 years at the defendant's place
of abode (or business) and that I had necessarily to
travel.....kilometres to effect such service.

(c) Strike
out portion
not required.

.....
[Bailiff *or* Police officer.]

To the clerk of the Local Court,
.....

To the plaintiff or plaintiff's solicitor,
For your information, the defendant has been served with the
above summons.

.....
Clerk of the Local Court.

20 — Certificate of service by registered letter

(Heading as in Form 1)

I,....., clerk of the
above Local Court, do hereby certify that I did on the.....day of
....., 20..... post a summons in the
action (numbered.....of 20.....) as a prepaid
registered letter addressed to..... which
summons was regularly issued out of this court at the suit of the abovenamed
plaintiff and which was dated the..... day of.....
20....., and I further certify that I have received through the post the attached
acknowledgment of delivery, which appears to be an acknowledgment of
delivery of such letter and to be signed by the defendant.

Dated this.....day of....., 20.....

.....
Clerk of the Local Court.

21 — Affidavit of service at abode or place of business of defendant

(Heading as in Form 1)

(a) Insert name, address and description of deponent. I, (a).....
.....
.....
make oath and say as follows: —
1. I did on the.....day of.....
20....., at.....
serve.....the abovenamed
defendant (or one of the abovenamed defendants) with the
summons in this action (numbered.....) at
.....
(b) personally or how otherwise 2. Such service was effected by delivering the said summons
to the said defendant (b)
.....
3. The said place where service was so effected was to my
certain knowledge, at the time of such service, the actual
place of abode of the said..... (or place
of business of the said....., of which place of
business he was then the master, or one of the masters).
4. I had necessarily to travel.....kilometres
to effect such service.

Sworn at..... in the
State of Western Australia
this.....day
of.....20.....
Before me,
.....
.....

.....
(Clerk of the court or Commissioner or J.P.)
(This affidavit is filed on behalf of the plaintiff.)

To the plaintiff or plaintiff's solicitor,
For your information. The defendant has been served with the above summons.

Date.....

.....
Clerk of the Local Court.

22 — General form of certificate of service and affidavit of service

Certificate of service

No.....

In the Local Court of Western Australia, held at.....

Between

.....plaintiff (judgment creditor),

and

.....defendant (judgment debtor).

I hereby certify that I did serve a copy of this summons personally on the judgment debtor at.....on the..... day of.....20....., and that I paid (or tendered) to him at the same time and place the sum of.....for expenses. And that I had necessarily to travel.....kilometres to serve this summons.

.....
Bailiff.

Affidavit of service

I,
of....., make oath and say that
I am.....,
and that I did on the.....day of.....20.....
(with authority) duly serve the judgment debtor with a true copy of this summons by delivering the same personally to the judgment debtor and that I paid (or tendered) to the said at the same time and place the sum of.....for expenses.
And I further say that I had necessarily to travel.....
kilometres to serve this summons.

appear; and if you do not appear either in person or by your solicitor at the time and place abovementioned, such order will be made and proceedings taken as the magistrate may think just and expedient.

Dated this.....day of....., 20.....

.....
Clerk of the court.

25 — Affidavit on application on behalf of infant or person of unsound mind for appointment of guardian *ad litem*

(Heading and conclusion as in Form 4)

I,....., make oath and say as follows: —

1. The summons in this action (or matter) was served on the defendant C.D.....on the..... day of20.....
2. The defendant is an infant (or a person of unsound mind).
3. E.F.,.....of....., is a fit and proper person to act as guardian *ad litem* of the abovenamed defendant, and has no interest in the matters in question in this action (or matter) adverse to that of the defendant, and the consent of the said E.F..... to act as such guardian is hereto annexed.

Form of consent to be annexed to affidavit

I, E.F.,.....of....., consent to act as guardian *ad litem* of C.D....., an infant (or person of unsound mind), a defendant in this action (or matter), and I authoriseto defend this.....action (or matter).

.....
Signature of guardian.

26 — Order appointing guardian *ad litem*

(Heading and conclusion as in Form 2)

On the application of....., and
on reading, the affidavit of....., filed on
the.....day of....., and the consent thereto annexed.
It is ordered that E.F.,.....of.....
be appointed to act as guardian *ad litem* of the defendant C.D. an infant (or
person of unsound mind).

27 — Notice to plaintiff of appointment of guardian *ad litem*

(Heading as in Form 1)

Take notice, that the summons in this action (or matter) was served on
the.....day of....., on the defendant
C.D.....who is an infant (or person of unsound mind), and that
E.F.,.....of....., has been appointed to act as
guardian *ad litem* of the said defendant.

Dated this.....day of....., 20.....

.....
Clerk of the court.

**28 — Notice to plaintiff where no application made on behalf of
infant or person of unsound mind for appointment of
guardian *ad litem***

—————
(Heading as in Form 1)
—————

Take notice that the summons in this action (or matter) was served on
the.....day of.....on the defendant
C.D.,who is an infant (or person of unsound
mind), and that no application has been made on behalf of the said defendant for
the appointment of a person to act as guardian *ad litem*.

And further take notice, that before proceeding further with this action (or
matter) against the said defendant you must apply to the magistrate for an order
that some proper person be assigned as guardian of the said defendant, by whom
he may appear and defend.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the plaintiff and his solicitor.

—————

**29 — Application by plaintiff for appointment of guardian *ad litem*
to defendant who is an infant or a person of unsound mind**

—————
(Heading as in Form 1)
—————

Take notice that I intend to apply to the magistrate at....., on.....the.....day of..... at the hour of.....in the.....noon, for an order appointing G.H.,.....of.....or some other proper person, guardian *ad litem* of the defendant C.D.,..... who is an infant (or a person of unsound mind) and that I shall apply, if necessary, for postponement of the trial.

And further take notice that an affidavit of....., filed this day (a copy of which accompanies this notice) will be read in support of such application.

Dated this.....day of....., 20.....

.....
Plaintiff (or solicitor for the plaintiff).

To the defendant C.D.,.....and to..... a parent (or guardian) of the said C.D.,.....and to the clerk of the court.

[Form 29 amended in Gazette 30 June 2003 p.2614.]

30 — Affidavit in support of application by plaintiff for appointment of guardian *ad litem* to defendant

(Heading and conclusion as in Form 4)

I,....., of....., make oath and say as follows : —

1. I am informed by the clerk that the summons in this action (or matter) was on the.....day of....., served on the defendant C.D.,.....who is an infant (or a person of unsound mind), and that no application has been made to the court on behalf of the said C.D.,..... for the appointment of a guardian *ad litem*.
2. G.H.,.....of....., is a fit and proper person to act as guardian *ad litem* of the abovenamed defendant C.D.,.....and has no interest in the matters in question in this action (or matter) adverse to that of the defendant C.D.
3. The consent of the said G.H.,..... to act as such guardian is hereto annexed.

Form of consent to be annexed to affidavit

I, G.H.,.....of....., consent to act as guardian *ad litem* of C.D.,....., an infant (or a person of unsound mind), a defendant in this action (or matter) (and I authoriseto defend this action (or matter).)

.....
Signature of guardian.

31 — Order appointing guardian *ad litem* on application of plaintiff

(Heading and conclusion as in Form 2)

Upon the application of the plaintiff for the appointment of G.H.,.....
.....of....., or some other
proper person, guardian *ad litem* of the defendant C.D.,.....,
who is an infant (or a person of unsound mind), and upon reading the affidavit
of.....filed on the.....day of.....,
and the consent thereto annexed.

And upon hearing....., on behalf of the said
defendant.

I do order that G.H.,.....of.....,
be appointed to act as guardian *ad litem* of the said defendant.

(or, if the person proposed by the plaintiff is not appointed,

And it appearing to me that the said G.H.,..... is
not a proper person to be appointed such guardian, and that J.L.,.....
.....of.....is a proper person to be
appointed such guardian,

I do order that the said J.L.,..... be appointed to act
as guardian *ad litem* of the said defendant)

(or, in default of any other person being willing to act,

And it appearing to me that the said G.H.,..... is
not a proper person to be appointed such guardian, and that there is no other
proper person willing to act as such guardian,

I do order that the clerk of this court be appointed to act as guardian *ad litem* of
the said defendant).

(And I do further order that the hearing of this action (or matter) be postponed
till.....the.....day of.....,
at.....o'clock in the.....noon.)

**32 — Order appointing guardian *ad litem* named by infant defendant
appearing at the trial**

—————
(Heading and conclusion as in Form 2)
—————

Whereas now at the trial of this action (or matter) the defendant C.D.,.....
being an infant, appears here in court and names E.F.,.....
of....., to act as his guardian, who now
assents to act as such guardian:

It is ordered that the said E.F.,.....be, and he is hereby
appointed to be, guardian of the said defendant C.D.,.....
to act on his behalf in this action (or matter).

—————
**33 — Order appointing guardian *ad litem* of infant defendant
appearing at the trial and not naming a guardian**

—————
(Heading and conclusion as in Form 2)
—————

Whereas now at the trial of this action (or matter) the defendant C.D.,.....
being an infant, appears here in court and does not name a guardian:

It is ordered that G.H.,.....of..... (or the
clerk of this court) be, and he is hereby appointed to be, guardian of the said
defendant C.D., to act on his behalf in this action (or matter).

34 — Order for consolidation

(Heading as in Form 1)

and No.....
Between A.B., plaintiff,
and
C.D., defendant.

(Add the plaint numbers and titles of all the actions to be consolidated.)

Whereas the said A.B. has commenced the (2) actions abovementioned against the said C.D. for or in respect of different causes of action which might have been joined in one action: and whereas the aggregate amount of the debts and damages claimed (or the aggregate claims) in the said actions does (or do) not exceed the jurisdiction of this court.

I do therefore order that the said actions be consolidated and tried together as one action (add any special terms).

(And I do further order that the plaintiff do pay and bear in any event all costs, thrown away by reason of the bringing of (2) actions instead of one, and that the costs of and incident to this application and the order consequent thereon be defendant's costs in any event).

And I do further order that this order be drawn up and served on the said A.B.

Dated this.....day of....., 20.....

.....
Magistrate.

35 — Undertaking by defendant applying for stay of proceedings

(Heading as in Form 1)

and No.....
Between E.F., plaintiff,
and
C.D., defendant.

Whereas the abovementioned actions have been brought in this court by the said A.B. and E.F. against me, and whereas the causes of action in the said actions arise out of the same alleged breach of contract (or wrong or breach of duty).

Now, therefore, I undertake to be bound, so far as my liability in the said actions is concerned, by the judgment of the court, in either of the said actions which may be selected by the magistrate.

.....
C.D., defendant.

Dated this.....day of....., 20.....

36 — Order to stay proceedings

—————
(Heading as in Form 35)
—————

Whereas the above actions have been commenced in the court against the said C.D. for or in respect of causes of actions arising out of the same alleged breach of contract (or wrong or breach of duty):

And whereas the said C.D. has filed an undertaking to be bound, so far as his liability to the plaintiffs, A.B. and E.F., in the said actions is concerned, by the decision of the court in one of such actions:

I do therefore order that all proceedings in the second-mentioned action be stayed until judgment shall have been given in the first-mentioned action.

(And I do further order that the costs of this application and of the order consequent thereon be costs in the first-mentioned action and abide the event thereof).

And I do further order that this order shall be drawn up and served on the said A.B. and E.F.

Dated this.....day of....., 20.....

.....
Magistrate.

37 — Notice to other plaintiffs of judgment in selected action

(Heading as in Form 1)

Whereas by order dated the.....day of....., it was ordered that all proceedings in the abovementioned action of E.F. v. C.D. should be stayed until judgment should have been given in the abovementioned action of A.B. v. C.D.

Now I hereby give you notice that on the.....day of..... judgment was given in the said action of A.B. v. C.D. in favour of the defendant.

And I further give you notice that the said defendant will be entitled to his costs of the abovementioned action of E.F. v. C.D. up to the date of the said order of the.....day of.....unless you, the said E.F. shall, on or before the.....day of (one month from date of judgment in selected action) give to me or send to my office written notice to set down your action of E.F. v. C.D. for hearing.

(or, if judgment in selected action was given for plaintiff) proceed as follows: —

Now I hereby give you notice that on the.....day of....., judgment was given in the said action of A.B. v. C.D. in favour of the plaintiff.

And I further give you notice that you will be at liberty to proceed with your action of E.F. v. C.D. for the purpose of ascertaining and recovering your debt (or damages) and costs, and that if you desire so to proceed you must, on or before the.....day of..... (one month from date of judgment in selected action), give to me or send to my office written notice to set down your action of E.F. v. C.D. for hearing.

Dated this.....day of....., 20.....

To the abovenamed plaintiff, E.F.

.....
Clerk of the court.

**38 — Notice to be sent to clerk of court to which action transferred
by judge**

(Heading)

To the clerk of the Local Court at.....
Whereas the Honourable Mr. Justice.....has ordered
this action to be transferred to your court. Now, therefore, I do transmit to you
herewith the original (or a certified copy) of the proceedings in this action,
together with a copy of the order of the said Mr. Justice.....
Dated this.....day of....., 20.....

.....
Clerk.

39 — Notice of discontinuance of action

(Heading as in Form 1)

Take notice that I shall not proceed further in this action, and that I hereby
withdraw from the same.

Dated this.....day of....., 20.....

.....
Plaintiff (or plaintiff's solicitor).

To the clerk of the court
and to defendant (or defendant's solicitors).

40 — Order for costs against plaintiff on discontinuance

(Heading and conclusion as in Form 2)

On the application of the defendant, it is ordered that the defendant do recover against the plaintiff the sum of \$.....for costs incurred before the receipt by him of notice of discontinuance of this action, and for the costs of attending the court to obtain this order. And it is ordered that the plaintiff do pay the said sum of \$..... to the clerk of this court on the.....day of....., 20.....
To be altered as required if order made for payment of costs to be taxed.

41 — Confession of debt under section 50

(Heading as in Form 1)

I, the defendant, do hereby confess and admit that the sum of \$....., the amount claimed (or the sum of \$..... being part of the amount claimed) by the plaintiff in this action is due to him from me (and that I will pay the same, by instalments of.....).
Dated this.....day of....., 20.....
Signed in the presence of

42 — Notice to plaintiff of confession of debt under section 50

(Heading as in Form 1)

I hereby give you notice that the defendant(s).....
have/has filed a statement confessing and admitting the amount claimed.

The following proposal has been submitted for settlement: —

(If there are more Defendants than one and if judgment has been entered by
confession against some or one only, name him or them).

...../...../20.....

.....
Clerk of the Local Court.

To the plaintiff (or plaintiff's solicitors).

43 — Notice to plaintiff of confession of part of debt under section 50

(Heading as in Form 1)

I hereby give you notice that the defendant has filed a statement confessing and
admitting \$....., part of the amount claimed by you (and proposing to
pay the same by instalments of.....).

If you consent to accept the amount so admitted, judgment will be entered
accordingly on receipt of your election in writing to accept such amount.

If, however, you do not consent to accept the sum so admitted in satisfaction of
your claim, you must be prepared to prove the same.

Dated this.....day of....., 20.....

.....
Clerk of court.

To the abovenamed plaintiff.

44 — Agreement as to debt under section 50

(Heading as in Form 1)

We, the plaintiff and defendant, hereby agree that the amount of the debt or demand due from the defendant to the plaintiff is \$....., and that the same with \$.....for the plaintiff's costs, and \$....., the court fees, amounting together to the sum of \$....., shall be paid to the clerk of the court at his office, in manner following, viz. : —

Dated this.....day of....., 20.....

.....
..... } Signature of plaintiff and defendant
..... }
..... }

Signed in the presence of

.....

45 — Defendant's admission

(Heading as in Form 1)

I, the undersigned defendant, admit the truth of the allegations in the plaint, and hereby submit to the judgment of the court thereon.

(Signed) C.D., defendant.

Signed in the presence of

.....

46 — Notice of payment of part of claim into court

(Heading as in Form 1)

Take notice that the defendant has this day paid into court the sum of \$..... in respect of your claim in this action, and the sum of \$..... in respect of fees and costs. If you elect to accept the same in full satisfaction of the sum claimed, and the costs you have incurred, and send to the clerk of this court and to the defendant a written notice forthwith, by post, or by leaving same at the clerk's office and at the defendant's place of abode or business, the action will be discontinued, and you will be liable to no further costs. In default of such notice the said sum will be retained until the action has been heard. If you do not appear at the hearing you will be liable to pay to the defendant such costs as he may incur for appearing at the hearing, or such other sum of money as the Magistrate may order, for expenses subsequent to the payment into court.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the plaintiff (or solicitor).

47 — Notice of payment into court with denial of liability

—————
(Heading as in Form 1)
—————

Take notice, that the abovenamed defendant (or C.D., one of the abovenamed defendants) has paid into court the sum of \$..... in satisfaction of the whole of the plaintiff's claim herein (or of so much of the plaintiff's claim as relates to (here describe the part of the claim or cause of action in respect of which the payment is made)).

And further take notice that notwithstanding such payment the defendant denies his liability.

And further take notice that the address of the said defendant is as follows (state the address).

Dated, etc.

C.D.,.....
the abovenamed defendant (or E.F.,
solicitor for the abovenamed defendant).

To the clerk of the court and to A.B., the abovenamed plaintiff.

Note — A sealed copy of this notice must be sent to the plaintiff with Form 46 when the defendant denies liability.

48 — Order against defendant paying money into court or to plaintiff for payment of further costs

(Heading and conclusion as in Form 2)

On the application of the plaintiff, it is ordered that the plaintiff recover against the defendant the sum of \$..... for costs incurred by the plaintiff before the receipt of notice of payment into court herein (or before payment of the plaintiff's demand herein by the defendant to the plaintiff) and for the costs of attending the court to obtain this order.

And it is ordered that the defendant do pay the same to the clerk of this court on or before the.....day of.....20.....

(To be altered as required, if order made for payment of costs to be taxed.)

49 — Notice of acceptance of sum paid into court

(Heading as in Form 1)

Take notice, that the plaintiff accepts the sum of \$..... paid by the defendant into court (or to the plaintiff) in satisfaction of the claim in respect of which it is paid in.

(But the plaintiff will apply to the magistrate on the..... day of.....at.....o'clock in the.....noon for an order directing the defendant to pay the fees and costs properly incurred by the plaintiff before the receipt of notice of payment into court (or before the receipt of the said sum), and, in attending the court to obtain such order.)

Dated this.....day of....., 20.....

.....
Plaintiff.

To the clerk of the court and to the defendant.

50 — Notice of entry of intention to defend

Plaint No.

In the Local Court of Western Australia, held at Perth

Between

plaintiff,

and

defendant.

Take notice that:

1. The *defendant/plaintiff has lodged notice of intention to *defend/counter claim by his solicitor**.
2. Any party to the action may request a pre-trial conference not later than 14 days after being given this notice. The magistrate shall direct that a pre-trial conference be held or such a conference not be held.
3. The action will not be listed for trial until a certificate of readiness is filed, except where the magistrate dispenses with this requirement.

The action will be listed for trial on application and payment of the prescribed hearing fee.

Date

Clerk of the court

* Plaintiff/Defendant.

To

.....

.....

* Plaintiff/Defendant's solicitor.

* Strike out inappropriate word.

** Here add name of solicitor, if any.

50A — Notice of entry of small claims certificate
Western Australia

O.10 r.2

(Heading as in Form 1)

Take notice that the defendant has lodged a certificate issued by a Small Claims Tribunal specifying an issue in dispute in a claim referred to it which appears to be the same as the issue in dispute in this action.

And further take notice that, by reason of section 17 of the *Small Claims Tribunals Act 1974*, the issue in dispute may not be justiciable in this court.

Dated this day of 20

Clerk of the court.

To plaintiff (or plaintiff's solicitors).

50B — Certificate of readiness

Plaint No.

In the Local Court of Western Australia, held at.....

Between

plaintiff,

and

defendant.

Take notice that:

1. The action is in all respects ready for trial as far as is known to the undersigned.
2. The estimated length of the trial is.....*day(s)/hours.
3. There have/have not been discussions with the *defendant/plaintiff to determine which issues are in dispute.

Dated this day of 20

.....
* Plaintiff (or solicitor)

* Defendant (or solicitor)

* Strike out which not required.

51 — Application to list action for trial (or assessment of damages)

Plaint No.

In the Local Court of Western Australia, held at.....

Between

plaintiff,

and

defendant.

Take notice that;

1. I apply for the above action to be listed for trial *(or set down for assessment of damages).
- *2. No pre-trial conference was requested within the time prescribed.
- *3. All orders made at the pre-trial conference have been complied with.

Hearing fee \$: enclosed.

Estimated duration of hearing hours/days.

Remarks:

Date

.....

* Plaintiff (or solicitor).

* Defendant (or solicitor).

to the clerk of the courts,

.....

* Strike out which not required.

**51A — Requirement to furnish particulars
Western Australia**

O.5 r. 20(2)

In the Local Court
Held at.....
Small Disputes Division
Plaintiff
and
Defendant

Plaint No.

REQUIREMENT TO FURNISH PARTICULARS

Take notice that pursuant to section 106H of the *Local Courts Act 1904*, the court/clerk requires you within.....days to file in duplicate the Particulars required hereunder of your claim/defence/counterclaim.

(set out hereunder specific requirements)

Magistrate or Clerk

52 — Notice of trial

—————
(Heading as in Form 1)
—————

To the plaintiff (or defendant).
—————

Take notice, that this action is set down for trial at this court on.....
day, the.....day of....., 20....., at
.....o'clock in the.....noon.

Dated this.....day of....., 20.....

.....
Clerk of court.

(If the action has been transferred to the court of trial from another court the
notice should be prefaced with the words — “This action having been
transferred to this court from the Local Court at.....”)

(If an objection to the jurisdiction has been taken by the defendant and
disallowed the notice should be prefaced with the words — “The objection to
the jurisdiction of this court taken by the defendant having been disallowed.”)

—————

52A — Notice of trial under section 38B

In the Local Court of Western Australia, held at.....

Plaint No.

Between

plaintiff,

and

defendant.

Take notice, that pursuant to s. 38B of the Act this action is set down for trial
at.....on.....day, the.....day
of....., 20....., at.....o'clock in thenoon.

Dated this day of 20

Clerk of the court.

To the plaintiff (or defendant),

.....
.....
.....

53 — Praeipie for entry of judgment

(Heading as in Form 1)

Enter judgment by default against the defendant.....

(If there are more defendants than one and it is desired to enter judgment against
some or one only, name them or him.)

	\$
Claim as stated on summons.....	
Deduct amount (if any) since received by plaintiff.....	_____
Cost of summons.....	
Court fee entry judgment.....	
Solicitor's cost entry judgment.....	_____
Total (being amount for which judgment is to be entered)...	_____

Dated.....
Plaintiff or plaintiff's solicitor.

To the clerk of the court.
Office memoranda.

Fee paid/...../ 20.....	Checked and entered.	Judgment accordingly.
.....

54 — Notice of special defence

—————
(Heading as in Form 1)
—————

Take notice that I intend, at the hearing of this cause, to give evidence and rely upon the following ground of defence*

Dated this.....day of....., 20.....

.....
Defendant (or defendant's solicitor).

To the clerk of the court and to plaintiff (or plaintiff's solicitor).

* Set the grounds of defence, as required by Order 10, rules 17 to 23.

55 — Notice of set-off or counterclaim

—————
(Heading as in Form 1)
—————

Take notice that I intend, at the hearing of this action, to claim a*.....
.....against the plaintiff's demand, the particulars of
which *.....are as follows: —

Dated this.....day of....., 20.....

.....
Defendant (or defendant's solicitor).

To the clerk of the court and to plaintiff (or plaintiff's solicitor).

* Set-off or counterclaim.

N.B. — If a counterclaim is set up, the statement of particulars must be headed with the word "Counterclaim."

56 — Notice of objection to jurisdiction to try counterclaim

—————
(Heading as in Form 1)
—————

Take notice that the plaintiff objects to the court giving any relief upon the counterclaim raised in this action beyond that which the court is entitled to give by section 34 of the Act.

And further take notice that the plaintiff will, on the day appointed for the trial of this action, apply to the magistrate to adjudicate upon the original claim herein.

.....
Plaintiff (or plaintiff's solicitor).

To the clerk and the defendant.

—————

57 — Notice by defendant to third party

(Heading as in Form 1)

To X.Y., of (address and description).

Take notice, that this action has been brought by the plaintiff against the defendant (as surety for M.N., upon a bond conditioned for payment of \$40 and interest to the plaintiff).

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are his co-surety under the said bond (or, also surety for the said M.N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated theday of..... 20.....).

(Or, as acceptor of a bill of exchange for \$100, dated the..... day of.....20....., drawn by you upon and accepted by the defendant, and payable 3 months after date.

The defendant claims to be indemnified by you against liability under the said bill on the ground that it was accepted for your accommodation.)

(Or, to recover damages for a breach of contract for the sale and delivery to the plaintiff of 100 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.)

A copy of the summons and claim is served on you herewith, and if you wish to dispute the plaintiff's claim in this action as against the defendant or your liability to the defendant, you must appear at the court on the trial.

In default of your so appearing you will be deemed to admit the validity of any judgment obtained against the defendant in this action, whether obtained by consent or otherwise, and your own liability to contribute or indemnify to the extent herein claimed.

(Signed) C.D., defendant.
(or L.M., solicitor for the defendant.
C.D.)

**58 — Notice to plaintiff to deposit sum in court under
Order 14, rule 9**

(Heading as in Form 1)

Take notice that the abovenamed defendant (whose residence (and place of business) is (or are) more than 32 kilometres distant from this court) having filed with me an affidavit disclosing a good defence to his action upon the merits, you are required within (such a time as fixed by the clerk) from the date hereof to deposit in court the sum of \$....., to abide the event of this action: And also take notice, that in default of your making such deposit as directed the action will be struck out.

Dated this.....day of....., 20.....

.....
Clerk of the court.

**59 — Notice to defendant of deposit under Order 14, rule 9, having
been made, or not having been made**

(Heading as in Form 1)

Take notice that the plaintiff has this day deposited with me the sum of \$....., to abide the event of this action.

Or, take notice that the plaintiff has not deposited with me any sum of money to abide the event of this action. The action will be struck out and you need not attend the court in pursuance of your summons.

Dated this.....day of....., 20.....

.....
Clerk of the court.

**60 — Notice to defendant of non-sufficiency of affidavit under
Order 14, rule 9**

—————
(Heading and conclusion as in Form 1)
—————

Take notice, that the affidavit filed by you does not disclose a good defence to this action on the merits thereof, and you must therefore attend the court upon the day mentioned in the notice sent herewith.

—————
61 — Interlocutory or chamber summons

—————
(Heading as in Form 1)
—————

Let all parties concerned attend the magistrate (or clerk) in chambers (or in court) at the Local Court.....on....., the.....day of....., 20....., at the hour of.....o'clock in the.....noon on the hearing of an application on the part of the plaintiff (or as the case may be) for an order (here state the substance of the order desired).

Dated the.....day of....., 20.....

.....
Clerk of the court.

This summons was taken out by....., Perth, solicitor for the.....

To.....and his solicitor.

62 — Order for name to be added

(Heading and conclusion as in Form 2)

Upon the application of....., it is ordered that the name of one....., of....., be added as ain the above action.

63 — Notice to parties whose names are added as defendants

(Heading as in Form 1)

I hereby give you notice that by an order of this court, dated the..... day of....., a copy of which order is hereunto annexed, together with a copy of the summons in the action, you were ordered to be added as one of the defendants in the above action.

And further take notice, that the hearing of the above action has been adjourned to the.....day of.....at..... o'clock in the forenoon, and that if you do not attend upon the day and at the hour abovementioned, either in person or by your solicitor, such order will be made and proceedings taken as the magistrate may think fit.

.....
Clerk of the court.

Dated this.....day of....., 20.....

To.....

64 — Order for defendant to defend on behalf of others having the same interest

(Heading and conclusion as in Form 2)

Upon reading the affidavit of....., it is ordered that the defendant.....be at liberty to defend this action on behalf or for the benefit of the following persons, as well as on his own behalf; that is to say:

(Insert names, addresses, and occupations).

Dated this.....day of....., 20.....

65 — Notice to plaintiff that defendant defends on behalf of others

(Heading as in Form 1)

Take notice, that the abovenamed defendant has obtained an order for leave to defend the above action on behalf of or for the benefit of (state names of persons as in order), as well as on his own behalf. You may, if you think fit, object at the trial to the defendant defending on behalf of all or any of such persons. The affidavit on which the abovementioned order was made is filed at my office, and may be inspected by you.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the abovenamed plaintiff.

66 — Notice to persons on whose behalf defendant has obtained leave to defend

(Heading as in Form 1)

Take notice, that the abovenamed defendant has obtained an order, a copy whereof, with a copy of the summons in the above action, is served herewith, for leave to defend the above action on your behalf or for your benefit as well as on his own behalf. You may, if you think fit, object at the trial to the defendant defending on your behalf. The affidavit on which the abovementioned order was made is filed at my office, and may be inspected by you. And take notice that this action will come on for trial on the.....day of....., 20....., at.....o'clock in the.....noon.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To....., of.....

67 — Order for affidavit as to documents

(Heading and conclusion as in Form 2)

Upon hearing.....
It is ordered that the.....do, within.....days from the date of this order, answer on affidavit stating what documents are or have been in.....possession or power relating to the matters in question in this action, and that the costs of this application be.....

68 — Affidavit as to documents

(Heading and conclusion as in Form 4)

I, the abovenamed defendant, C.D., make oath and say as follows: —

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.
2. I object to produce the said documents set forth in the second part of the said first schedule hereto.
3. That (here state upon what grounds the objection is made, and verify the facts as far as may be).
4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action set forth in the second schedule hereto.
5. The last-mentioned documents were last in my possession or power on (state when).
6. That (here state what has become of the last-mentioned documents, and in whose possession they now are).
7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

69 — Order to produce documents for inspection

—————
(Heading and conclusion as in Form 2)
—————

Upon hearing.....
It is ordered that the.....do, at all reasonable
times, on reasonable notice, produce at (insert place of inspection), situate at.....
.....the following documents, namely.....
....., and that the.....be at liberty to inspect
and peruse the documents as produced, and to take copies and abstracts thereof
and extracts therefrom, at expense, and that in the meantime all further
proceedings be stayed, and that the costs of this application be.....

—————
70 — Notice to produce documents for inspection

—————
(Heading as in Form 1)
—————

Take notice that the plaintiff (or defendant) requires you to produce for his
inspection the following documents referred to in your (particulars of claim, or
of defence, or affidavit dated the.....day of.....).
(Describe documents required).
Dated this.....day of....., 20.....

71 — Notice to inspect documents

(Heading as in Form 1.)

Take notice that you can inspect the documents mentioned in your notice of the.....day of.....(except the deed numbered.....in that notice) at (insert place of inspection) on.....next, the.....inst., between the hours of.....and.....o'clock.

Or, that the plaintiff (or defendant) objects to giving you inspection of the documents mentioned in your notice of the.....day of....., on the ground that (state the ground): —

Dated this.....day of....., 20.....

72 — Notice to admit and inspect

(Heading as in Form 1)

Take notice that the plaintiff (or defendant) in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (or plaintiff) his solicitor or agent, at..... on.....the.....day of20..... between the hours of.....and....., and the defendant or plaintiff is hereby required within 48 hours from the lastmentioned hour to admit, saving all just exceptions to the admissibility of all such documents as evidence in this action, that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been, that such as are specified as copies are true copies, and that such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively.

Dated this.....day of....., 20.....

G.H., of....., solicitor for plaintiff (or defendant).

To E. F., solicitor for defendant (or plaintiff).

Originals

Description of document	Dates

Copies

Description of document	Dates	Original or duplicate served, sent, or delivered, when, how, and by whom

73 — Notice to produce

(Heading as in Form 1)

Take notice that you are hereby required to produce and show to the court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession or power, containing any entry, memorandum, or minute relating to the matters in question in this, and particularly (specify them).

Dated this.....day of....., 20.....

(Signed).....of.....

* Solicitor for plaintiff/defendant.

* Strike out any words not required.

To the abovenamed.

74 — Notice to admit facts

(Heading as in Form 1)

Take notice that the plaintiff (or defendant) in this action requires the defendant (or plaintiff) to admit, for the purposes of this action only, the several facts respectively hereunder specified: and the defendant (or plaintiff) is hereby required, not later than 3 clear days before the return day, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this action.

Dated, etc.

G.D., Solicitor for the plaintiff (or defendant).

To E.F., solicitor for the defendant (or plaintiff).

The facts, the admission of which is required, are —

75 — Admission of facts, pursuant to notice

(Heading as in Form 1)

The defendant (or plaintiff) in this action, for the purposes of this action only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this action:

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant (or plaintiff) on any other occasion, or by anyone other than the plaintiff (or defendant or party requiring the admissions).

Dated, etc.

E.F., solicitor for the defendant (or plaintiff).

To G.H., solicitor for the plaintiff (or defendant).

Facts admitted	Qualifications or limitations, if any, subject to which they are admitted
1.	1.
2.	2.
3.	3.
4.	4.

76 — Affidavit of signature to admission, under Order 20, rule 9

(Heading and conclusion as in Form 4)

I....., of....., make oath and say, that I was present on the.....day of....., 20....., and did see the abovenamed defendant sign the statement hereunto annexed, marked with the letter A. and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as the witness attesting the same is in my handwriting.

77 — Notice of intention to use affidavit

(Heading and conclusion as in Form 1)

Take notice that at the trial of this action (or as the case may be) I intend to use an affidavit, copy of which is annexed.

78 — Order to continue proceedings against a new party

(Heading as in Form 2)

Upon hearing who alleged (state circumstances rendering the order necessary), it is ordered that the proceedings in this action be carried on between the plaintiff and the defendant (name the continuing defendant) and A.B., who is hereby added as defendant (or between the plaintiff and A.B., who is hereby substituted as defendant).

And I direct (here insert such directions as the magistrate thinks proper for limiting the time for giving notice of defence, fixing the time for the trial, or for the continuation of any proceedings, providing for any adjournment or making any such provision for the disposal of the action or matter as may be just).

And it is further ordered that the said defendant and A.B. (or the said A.B.) may, within 7 days from the service of this order on them (or him) apply to the magistrate by summons served on the plaintiffs for an order to discharge or vary this order.

Dated this.....day of....., 20.....

.....
Magistrate.

Note. — This form is specially applicable to cases in which a defendant is added or substituted. When a plaintiff is added or substituted the form must be altered to suit the circumstances of the case. This order shall, unless the magistrate shall otherwise direct, be served upon any continuing party or parties (other than any party at whose instance the order has been made) and also upon any new party, not being the applicant.

79 — Order to compel the person entitled to proceed to proceed with action

(Heading as in Form 2)

Upon hearing....., it is ordered that E.F., the executor of the abovenamed plaintiff A.B., who has died (or as the case may be) do within (seven) days from the date of this order proceed with this action by obtaining leave to carry on the same against the defendant (or as the case may be). And the said.....is required to take notice that in default of him so proceeding this action may be struck out on the order of the Magistrate and costs may be awarded to the said.....

Dated this.....day of....., 20.....

.....
Magistrate.

80 — Summons to witness

(Heading as in Form 1)

You are hereby required to attend at.....on.....
the.....day of....., 20.....,
at the hour of.....in the.....noon, and so from day
to day until the above action is tried, to give evidence in the above action on
behalf of the.....(and, then and there to have
and produce.....and all other books, papers, writings
and other documents relating to the said action which may be in your custody,
possession, or power). In default of your attendance you will be liable to a
penalty not exceeding \$100, or to arrest, under sections 63 and 64 of the Act.

Dated this.....day of....., 20.....

.....
Clerk of the court.

Conduct money.....

81 — Order under section 63 of the *Local Courts Act 1904*, fining a witness for non-attendance

(Heading as in Form 2)

Whereas.....of.....was duly summoned to appear as a witness in this action at a court this day held, and at the time of being so summoned payment (or a tender of payment) of his reasonable expenses was made:

And whereas he has neglected, without sufficient cause shown, to appear at the court (or to produce) (here describe what he was required by summons to produce): (* or Whereas.....being this day present in court, and being required by the court to give evidence in this action, refused to be sworn or to make affirmation (or after being duly sworn) (or after having made affirmation) refused to give evidence (or to produce) (here describe what he was required and bound to produce).

It is hereby ordered that the said.....do forfeit and pay a fine of \$.....for such neglect (or refusal):

And it is ordered that the said.....do pay the said sum of \$.....to the clerk of the court on the.....day of (or by instalments of.....for everydays, the first instalment to be paid on the.....day of):

And in default of payment of the said sum according to this order, payment thereof may be enforced, upon the order of the magistrate pursuant to section 157 of the *Local Courts Act 1904*.

Given under the seal of the court this.....day of.....

By the court,

.....
Clerk.

(Or, It is ordered that the said.....do on or before theday of....., produce and leave with the clerk of this court at his office, situate at....., the following (describe what he was required and bound to produce).

Given under the seal of the court this.....day of....., 20.....

By the court,

.....
Clerk of the court.

* Where witness is present in court commence form here.

82 — Praecipe for bench/chamber warrant to arrest witness

(Heading as in Form 1)

I apply for the issue of a bench/chamber warrant for the arrest of.....
.....of
.....who
was summoned to appear as a witness in this action and who failed to attend this
court.

To the clerk of the court,
.....

* Fee for issuing this warrant —

	\$
Court fee.....	
Bailiff's fee.....	
Kilometrage.....	
Total.....	\$

* To be filled in by the clerk of the court.

Dated.....

* Plaintiff (or solicitor).
* Defendant (or solicitor).

Office memoranda.

Date lodged.....

Assessed by.....

Date issued.....

by.....

Checked and entered by.....

* Strike out which is not required.

83 — Warrant to arrest witness under section 64 of the Act

(Heading as in Form 2)

Whereas.....of.....
was duly summoned to appear as a witness in this action at a court this day held
and, at the time of being so summoned, payment (or a tender of payment) of his
reasonable expenses was made: and whereas he has neglected, without
sufficient cause shown, to appear at the said court (or to produce (here described
what he was required by summons to produce)): These are therefore to require
and order you forthwith to apprehend and take the said.....
and to bring and have him at.....o'clock on the.....day
of....., 20....., at.....before me to testify what he
knows concerning the matters in dispute in this action.

Given under the seal of the court this.....day of....., 20.....

(Signed).....
Magistrate.

* Fee for issuing this warrant —

	\$
Court fee.....	
Bailiff's fee.....	
Kilometreage.....	_____
Total.....	\$

* To be filled in by the clerk of the court.

To the bailiff and others the officers of the said court, and all peace officers
within the jurisdiction of the said court.

84 — Affidavit in support of application for *de bene esse* examination

(Heading and conclusion as in Form 4)

I.....of....., in the State of Western Australia, make oath and say: —

1.(name, address, and description of witness) is a material witness in this action, for the following reasons:
2. I am informed by the said.....and verily believe that he is absent from the State (or above 161 kilometres from the place of trial, or unable from sickness or infirmity to attend, or is about to quit the State, or to go some place beyond the said distance).
3. I am desirous of having the evidence taken *de bene esse* before.....or some other suitable person.

85 — Order for examination of witness *de bene esse*

(Heading and conclusion as in Form 2)

Upon hearing.....and upon reading the affidavit offiled the.....day of....., 20....., and.....

It is ordered that....., a witness on behalf of the be examined *viva voce* (on oath or affirmation) before (here insert name of person appointed), the plaintiff (or defendant), or his solicitor giving to the defendant (or plaintiff) or his solicitordays' notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examinations so taken be filed with the clerk of this court, at his office, situate at....., and that an office copy thereof may be read and given in evidence on the trial of this action, saving all just exceptions, on proof to the satisfaction of the magistrate that the deponent is absent from the State, or above 161 kilometres from place of trial, or unable from sickness or other infirmity to attend the trial, and that the costs of this application be.....

86 — Form of jurat

Sworn at.....by the said C.D. (or by both the abovenamed deponents or as the case may be) this.....day of....., 20.....

Before me,

E.F., etc.

87 — Form of jurat when deponent illiterate or blind

I certify that on the.....day of....., 20....., at....., this affidavit was read in my presence to the said A.B., who appeared to me to be illiterate (or blind) and that the said A.B. seemed perfectly to understand it, and made his mark (or signature) thereto in my presence and was thereupon duly sworn to the truth of this affidavit.

Before me,

E.F., etc.

88 — Form of jurat when affidavit sworn through interpreter

On the.....day of....., 20....., at....., the said A.B. was duly sworn to the truth of his affidavit by the interpretation of C.D., who was previously sworn that he was well acquainted with the English and.....languages, and that he would faithfully interpret the said affidavit.

Before me,

E.F., etc.

89 — Notice by clerk rejecting affidavit

—————
(Heading as in Form 1)
—————

I hereby give you notice, that I reject the affidavit of.....of.....
.....sworn the.....day of.....,
and refuse to file the same, and my reasons for rejecting such affidavit and
refusing to file the same are as follows: —

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the abovenamed plaintiff or defendant.

90 — Order of reference

—————
(Heading and conclusion as in Form 2)
—————

By the consent of the plaintiff and defendant it is at a court holden this day
ordered that all matters in difference in this action (and all other matters within
the jurisdiction of this court in difference between the said parties) be referred
to.....of.....
whose award shall be made or given on or before the.....
day of....., 20....., and shall thereupon be entered as the
judgment in this action.

91 — Precedent for award on reference

—————
(Heading as in Form 1)
—————

Whereas by an order made on the.....day of....., 20....., it was by consent ordered that all matters in difference in this action should be referred to me.....whose award to be made on or before the.....day of....., 20....., should be entered as the judgment in the action; and it was further ordered that the costs of the said reference and award should be in my discretion, and that the costs of the action should abide the event:

Now having heard and considered the allegations and the evidence of the parties, I do hereby make my award concerning the matters referred to me as follows:

I award and find that the plaintiff is entitled to recover in this action from the defendant the sum of \$....., (or that the plaintiff is not entitled to recover anything in this action from the defendant):

And I further award and direct that the defendant (or plaintiff) do pay the plaintiff's (or defendant's) costs of the reference, to be taxed in case of dispute, and the costs of this my award (which I assess at the sum of \$.....).

And in case the plaintiff (or defendant) shall pay such last-mentioned costs, then I award and direct that the defendant (or plaintiff) do repay to the plaintiff (or defendant) the amount which he shall so pay:

(Or such other order as the arbitrator shall make as to costs).

Or, where a counterclaim has been made,

I award and find that the plaintiff is entitled to recover in this action from the defendant the sum of \$....., and that the defendant is entitled to recover on his counterclaim from the plaintiff the sum of \$.....: or that the plaintiff is entitled to recover in this action from the defendant the sum of \$....., and that the defendant is not entitled to recover anything on his counterclaim from the plaintiff (or as the case may be).

And I further award and direct that the plaintiff and defendant do each bear his own costs of the reference, and do each pay one-half of the costs of this my award (which I assess at the sum of \$.....):

And that if either party shall in the first instance pay the whole or more than one-half of the costs of the award the other party shall repay him so much of the

amount so paid as shall exceed one-half of the said costs (or such other order as the arbitrator shall make as to costs).

(If the award directs that anything be done or omitted by the plaintiff or defendant, the directions given should be concisely stated immediately before that part of the award which deals with the costs).

Dated this.....day of....., 20.....

.....
Arbitrator.

92 — Order for costs to defendant where plaintiff does not appear

.....
(Heading and conclusion as in Form 2)
.....

Whereas the plaintiff has not appeared either in person or by his solicitor at the court held this day, being the day appointed for the trial of this action, and the defendant has appeared in person (or by his solicitor), and has not admitted the demand: It is awarded that the plaintiff do pay the sum of \$..... for the defendant's costs: And it is ordered that the plaintiff do pay the same to the clerk of this court on the.....day of....., 20.....

(To be altered as required, where order made for payment of costs to be taxed).

93 — Judgment for defendant, or of non-suit

.....
(Heading and conclusion as in Form 2)
.....

Upon hearing this action at a court held this day, it is adjudged that judgment be entered for the defendant (or that judgment of non-suit be entered), and that the plaintiff do pay the sum of \$..... for the defendant's costs (or to the defendant, his costs to be taxed): And it is ordered that the plaintiff do pay the same to the clerk of this court forthwith.

94 — Judgment for plaintiff

—————
(Heading as in Form 2)
—————

It is this day adjudged that the plaintiff do recover against the defendant the sum of \$..... for debt (or damages) and \$..... for costs, amounting together to the sum of \$.....

And it is ordered that the defendant do pay the same to the clerk of the court forthwith (or on the.....day of.....) (or by instalments of.....for every.....days, the first instalment to be made on the.....day of....., 20.....).

(Where costs are ordered to be taxed, in place of the preceding paragraphs, insert —

It is this day adjudged that the plaintiff do recover against the defendant the sum of \$..... for debt (or damages), and his costs of action to be taxed.

And it is ordered that the defendant do pay the said sum of \$..... to the clerk of the court forthwith (or on the.....day of.....), and do pay the amount of the said costs, when taxed, to the clerk of the court forthwith (or within.....days) after the date of the certificate of taxation). (Here insert any special order or conditions made by the magistrate.)

Given under my hand this.....day of....., 20.....

By the court,

.....
Clerk of the court.

(Seal.)

95 — Judgment where a counterclaim has been made

(Heading and conclusion as in Form 2)

It is this day adjudged that the plaintiff in this action do recover against the defendant the sum of \$..... for debt (or damages) and \$..... for costs, amounting together to the sum of \$..... (or that judgment be entered for the defendant) (or that a non-suit be entered in this action, and that the plaintiff do pay the sum of \$..... for the said defendant's costs).

And it is further adjudged that the defendant do recover on his counterclaim against the plaintiff the sum of \$..... for debt (or damages as the case may be) and \$..... for costs, amounting together to the sum of \$..... (or that judgment be entered for the plaintiff on the defendant's counterclaim) (or that the counterclaim be struck out), and that the defendant do pay the sum of \$..... for the plaintiff's costs of the counterclaim.

(If the same party succeeds both in the action and on the counterclaim, proceed as follows: —

And it is ordered that the (party against whom judgment is given) do pay to the clerk of this court the sum of \$..... being the total amount adjudged against him as aforesaid in this action and on the defendant's counterclaim):

(Or, if one party succeeds in the action and the other on the counterclaim, proceed as follows: —

And it is ordered that the (party against whom the balance is) do pay to the clerk of this court the sum of \$..... being the balance in favour of (the other party) after deducting the amount adjudged to the (party against whom the balance is) as aforesaid) and it is ordered that the said sum be so paid forthwith (on the..... day of.....) (or by instalments of for everydays, the first instalment to be paid on the..... day of....., 20.....).

(To be altered as required when judgment is given for costs to be taxed).

96 — Judgment for delivery of goods

(Heading)

It is adjudged that the defendant do forthwith deliver to the plaintiff the following goods of the plaintiff; that is to say (here specify the goods), (and also that the plaintiff recover against the defendant the sum of \$..... for damages for the detention of (or trespass against) the said goods), and the sum of \$..... for costs (or costs to be taxed).

And it is ordered that the defendant do pay the said sums of \$....., and \$..... for damages and costs to the clerk of the court forthwith (or as the case may be).

97 — Praecept for certified copy of judgment order and other proceedings

(Heading as in Form 14)

Judgment *(by consent, by default, after hearing) for \$ _____ for debt (or damages) and \$ _____ for costs, together amounting to the sum of \$ _____ given for *plaintiff/defendant on ____ / ____ /20

Subsequent proceedings.

(In chronological order.)

Date	Nature of action	Amount for	Costs	Results
------	------------------	------------	-------	---------

Clerk of the court:

Supply certified copy of judgment for purpose of —

* Registration at the Local Court.

* Proving the debt in bankruptcy.

* Use as evidence.

The amount of \$ _____ has been paid off the judgment debt.

Date.....

.....

Plaintiff (or plaintiff's solicitor).

Office memoranda:

Amount of judgment..... \$ _____ Date lodged.....

Subsequent costs..... _____ Court fee paid.....

Paid into court..... _____ Date issued.....

Remaining due..... _____ Prepared by.....

Checked and entered

by.....

* Strike out which is not required.

98 — Certified copy of judgment, order and other proceedings

(Heading as in Form 14)

Judgment *(by consent, by default, after hearing) for \$..... for debt (or damages) and \$..... for costs, together amounting to the sum of \$..... given foron/...../20.....

Subsequent proceedings.

(In chronological order.)

Date	Nature of action	Amount for	Costs	Results
------	------------------	------------	-------	---------

Summary.

\$

Amount of judgment or order and taxed costs

All subsequent costs.....

Paid into court.....

Remaining due on judgment or order.....

This certificate is issued for the purpose of:

* Registration at theLocal Court.

* Proving the debt in bankruptcy.

* Use as evidence.

* Strike out which is not required.

I hereby certify that the above is a true copy of entries in the Minute Book, Judgment, Orders and other proceedings of the Local Court held at.....

Dated this.....day of....., 20.....

.....
Clerk of the Local Court.

99 — Notice to plaintiff of payment into court under judgment or order

(Heading as in Form 1)

I hereby give you notice, that A.B., the defendant (or garnishee) has paid into court the sum of \$..... under the judgment (or order) obtained by you against him.

(If the money is paid into court by a garnishee add: If you elect to accept the sum paid into court as a satisfaction of your claim against the garnishee, you must, in order to save costs, send a written notice of acceptance to the clerk and to the garnishee within 48 hours after receipt of this notice.)

Dated this.....day of....., 20.....

.....
Clerk of the Local Court.

**100 — Order to proceed after death of plaintiff after judgment,
where such order affects more actions than one**

—————
(Heading as in Form 2)
—————

Upon reading the affidavit of....., it is ordered that E.F.,
.....the executor of A.B.,.....the plaintiff
in the several actions mentioned in the schedule hereto, who has died since
judgment, be substituted as plaintiff for the original plaintiff in the said actions,
and that the said E.F., be at liberty
to issue execution against the several defendants in the said actions (or to take
any such proceedings against the several defendants in the said actions as the
deceased plaintiff was entitled to take against them respectively) for the several
amounts of the unsatisfied judgments and costs in the said actions (or that the
question whether E.F.,....., the executor of
A.B.,....., the original plaintiff, now deceased in the
several actions mentioned in the schedule hereto is entitled to recover against
the several Defendants in the said actions the several amounts of the unsatisfied
judgments and costs in the said actions, shall be tried by separate actions to be
commenced by plaint in the ordinary way, wherein the said E.F.
shall be plaintiff, and the several defendants in the said actions shall be
defendants).

Dated this.....day of....., 20.....

.....
Magistrate (or clerk).

The schedule above referred to.

Number of plaint	Plaintiff	Defendant

N.B. — If order is in respect of only one action, form to be amended
accordingly.

—————

101 — Order to proceed after change of interest by assignment or otherwise after judgment, where such order affects more actions than one

(Heading as in Form 2)

Upon reading the affidavit of, it is ordered that E.F.,
....., the assignee (or as the case may be) of several judgments (or orders) obtained by A.B..... the plaintiff in the several actions mentioned in the schedule hereto, be substituted as plaintiff in the said actions in the name and by the description of E.F..... of, etc., the assignee of A.B.....of etc.,..... and that the said E.F., in and by such name and description, be at liberty to issue execution against the several defendants in the said actions (or to take any such proceedings against the several defendants in the said actions as the said A.B....., the plaintiff was entitled to take against them respectively) for the several amounts of the unsatisfied judgments and costs in the said actions (or that the question whether E.F., of, etc.,, the assignee of A.B..... of, etc.,..... is entitled to the benefit of the several judgments (or orders) obtained by the said A.B.,, the plaintiff in the several actions mentioned in the schedule hereto, against the several defendants in the said actions, shall be tried by separate actions to be commenced by plaintiff in the ordinary way, wherein the said E.F.,, in and by such name and description as aforesaid, shall be the plaintiff, and the several defendants in the said actions shall be defendants).

Dated this.....day of....., 20.....

.....
Magistrate or clerk.

The schedule referred to.

Number of Plaintiff	Plaintiff	Defendant

N.B. — If order is against only one action, form to be amended accordingly.

102 — Praecept for warrant of execution

(Heading as in Form 3)

Address of execution debtor.....
Whereas on the.....day of.....20.....,
the execution creditor obtained a judgment (or an order) in this court against the
execution debtor for the amount of debt (or damages) and costs shown below
and it was thereupon ordered by the court that the execution debtor should pay
the same to the clerk forthwith (or on the.....day of20.....);
and whereas default has been made in payment according to the said judgment
(or order).

Now I,....., do require a warrant of execution to issue
against the goods and land of....., to pay to the execution
creditor the sum shown hereunder: —

	\$
Amount of judgment (or order) and costs.....	
Add subsequent costs.....	_____
Less amount paid since date of judgment.....	_____
Amount for which warrant required.....	
* Add fees for issuing this warrant —	\$
Court fee including post fee.....	
Home } Foreign } bailiff.....	
Kilometrage.....	_____
Add solicitor's costs.....	_____
* Total amount to be levied.....	_____

* To be filled in by the clerk of the court.

Date..... Judgment creditor (or solicitor).

Office memoranda.

Date lodged.....	Application made at..... minutes past the hour of	Date issued..... By.....
Assessed by.....in the $\frac{\quad}{\quad}$ fore after noon	Checked and entered by.....

Credit \$

103 — Notice to be sent with all warrants of execution against goods and land

(Heading as in Form 3)

Address of execution debtor.....

Whereas on the.....day of.....20.....,
the execution creditor obtained a judgment (or an order) in this court against
you for the amount of debt (or damages) and costs shown below and it was
thereupon ordered by the court that you should pay the same to the clerk
forthwith (or on the.....day of.....20.....);
and whereas default has been made in payment according to the said judgment
(or order):

Take notice that after allowance for payments made and additional costs, the
warrant of execution against your goods and land on the judgment obtained
against you in this action is for the following amount: —

	\$
Amount of judgment (or order) and costs.....	
Add subsequent costs.....	

Less amounts paid since date of judgment.....	

Remaining due.....	
Fee for issuing warrant CT.....BLF.....K.....	
Solicitor's costs.....	

Total amount to be levied.....	

Re-issue/...../20.....

Bailiff's fees for executing this warrant.....
For keeping possession (maximum \$2.20 per day) or such
lesser amount as is prescribed.

For poundage —

If goods or land sold by licensed auctioneer including
auctioneers charges \$15 per cent. on amount
realised. If sold by auctioneer other than licensed
auctioneer \$10 per cent. on amount realised. If not
sold \$4 per cent. on amount levied.

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For incidental expenses, viz. — _____

Application was made for the warrant at.....minutes past the hour
of.....in the.....noon of this date.

...../...../20.....

Clerk of the court.

If the amount to be levied is paid to the bailiff within half an hour of his entry,
you will not be required to pay him for keeping possession.

Your goods are not to be sold until after the end of 5 days next following the
day on which they are seized, except at your request or unless the goods are of a
perishable nature.

The bailiff's fees are subject to review by the clerk of the court.

104 — Warrant of execution against the goods and land of execution debtor

(Heading as in Form 3)

Address of execution debtor.....
Whereas on the.....day of.....20....., the execution creditor obtained a judgment (or an order) in this court against the execution debtor for the amount of debt (or damages) and costs shown below, and it was thereupon ordered by the court that the execution creditor should pay the same to the clerk forthwith (or on the.....day of20.....); and whereas default has been made in payment according to the said judgment (or order); these are therefore to require and order you forthwith to make and levy by distress and sale of the goods and lands of the execution debtor wheresoever they may be found (excepting so much of the goods of the execution debtor as are protected by section 126 of the Act*) the sum stated at the foot of this warrant being the amount due to the judgment creditor under the said judgment (or order) including the costs of this execution; and to pay what you shall have so levied to the clerk of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

\$

Amount of judgment (or order) and costs.....

Subsequent costs (if any).....

Less amount paid since date of judgment.....

Remaining due.....

Fee for issuing warrant CT.....BLF.....Klge.....

Solicitor's costs.....

Total amount to be levied.....

Re-issue/...../20.....

Bailiff's fees for executing this warrant.....

Application was made for the warrant at.....minutes past the hour of.....in the.....noon of this date.

...../...../20.....

Clerk of the court.

Local Court Rules 1961
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To the bailiff of the said court.

Notice — The goods are not to be sold until after the end of 5 days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the execution debtor.

* Protected by section 126 — Wearing apparel of such person to the value of one hundred dollars and of the person's spouse or de facto partner to the value of \$100 and of his family to the value of \$50 for each member thereof dependent on him; household furniture and effects to a value not exceeding in the aggregate \$300; implements of trade to the value of \$100; all beds and bedding; family photographs and portraits.

- N.B. (1) If warrant issued by a successful defendant this warrant should be amended accordingly.
- (2) This warrant must not be executed against land unless particulars of the land sought to be attached are endorsed hereon.

[Form 104 amended in Gazette 30 June 2003 p.2614.]

[Form 105 repealed in Gazette 30 June 2003 p.2614.]

106 — Warrant to clerk of foreign court

(Heading as in Form 3)

Whereas the warrant of execution (or order of commitment) hereto annexed has been issued out of this court against the goods and land (or the person) of the abovenamed C.D.

And whereas property of the said C.D. (or the said C.D.) is believed to be at.....on the warrant, to which place yours is the nearest court.

These are therefore to require you to cause the said warrant to be executed by the bailiff of your court.

Dated.....

.....

Clerk of the Local Court.

To the clerk of the Local Court,
held at.....

For re-issue to bailiff.....

107 — Bailiff's return to warrant

Return to warrant No.....for \$.....from the bailiff of the Local Court held at.....to the clerk of the Local Court at.....

Particulars.

Date of bailiff's entry.....Time.....a.m./p.m.

Goods seized at (address).....

Gross amount collected and paid into court by bailiff: — \$

Paid by execution debtor on.....at..... a.m./p.m.

Proceeds of sale held on..... as per A/c. sales attached

Total..... \$

Charges claimed on levy — \$

Possession fee in respect of the day of levy

Man in possession (not being the execution debtor) from.....a.m./p.m. on.....to..... a.m./p.m. on.....

Bailiff's expenses of sale (receipts attached).....

Poundage at.....per cent.....

Other expenditure: —

(Particulars of claim for extra kilometreage special allowance, costs of Interpleader, cartage, removal and storage of goods or for any other item provided for in the Schedule of Bailiff's Fees to be sent out on an annexure, with supporting vouchers).....

Total charges claimed..... \$

I certify that the particulars shown above are true and correct and in accordance with the Rules of the Local Court.

Date..... Bailiff at.....

I certify that I have allowed the charges to bailiff at \$.....

Gross amount paid in..... \$.....

Allowed charges..... \$.....

Net proceeds due to execution creditor..... \$.....

Deficit on levy..... \$.....

Refund due to execution debtor..... \$.....

Dated this.....day of....., 20.....

.....
Clerk of the Local Court.

108 — Particulars and conditions of sale of land under warrant of execution

Issued by the Local Court at.....in an action
numbered.....of.....20.....,
wherein.....is plaintiff and..... is defendant.

Particulars.

All that piece of land being (here describe the land) which is offered for sale
this.....day of.....20....., by (or on
behalf of) the bailiff of the Local Court at.....under the
warrant of execution mentioned above which has been issued against the
abovenamed defendant at the instances of the abovenamed plaintiff (or as the
case may be) subject to the encumbrances and easements hereunder.

Encumbrances and easements.

(Here give particulars of encumbrances and easements.)

Conditions.

1. The highest bidder shall be the purchaser, and if any dispute shall arise between 2 or more bidders the property shall be put up again at the last undisputed bidding and resold.
2. The bailiff, or the auctioneer, acting for the bailiff, shall have the right to make one bid at the sale.
3. The purchaser shall forthwith after the fall of the hammer pay the total amount of the purchase money to the bailiff (or auctioneer).
4. The land being under the provisions of the *Transfer of Land Act 1893*, no abstract of title shall be required or need be delivered, but a copy of the certificate of title shall be delivered to the purchaser if he demands same within 3 days after the sale, and if the purchaser shall not demand a copy of such certificate of title within the said period of 3 days, the title shall be deemed to be absolutely accepted.

To be used when the title is not under the *Transfer of Land Act 1893*.

5. If the purchaser shall not within 3 days after the sale demand an abstract of title none need be delivered and the title shall be deemed to be absolutely accepted.
6. The purchaser shall within 3 days after the delivery of the copy of the certificate of title (or the abstract of title) deliver at the office of the said bailiff a statement in writing of his objections and requisitions (if any) to or on the title, and upon the expiration of such time the title is to be considered as approved

and accepted by the purchaser, subject only to such objections and requisitions (if any).

7. The purchase money having been paid and the title accepted, the magistrate of the said Local Court will forthwith sign a transfer or conveyance of the property as provided in section 124 of the *Local Courts Act 1904*, such transfer or conveyance to be prepared at the expense of the purchaser who shall pay or bear the expense of all incidental registration fees and stamp duties. Any necessary registration shall be effected by the purchaser.

8. Should any objection or requisition be made and insisted upon which the vendor shall be unable or unwilling to satisfy or comply with, the vendor may, notwithstanding any attempt remove or satisfy the same, or any negotiations in respect thereof, by notice in writing to the purchaser making such objection or requisition, rescind the contract upon repaying to the purchaser the amount of the purchase money, which shall be accepted as in full satisfaction of all claims under the contract or otherwise howsoever, but the purchaser may within 7 days after receiving notice to rescind withdraw in writing the objection or requisition upon which the notice is founded, in which case the notice to rescind shall be deemed to be withdrawn also.

9. If the purchaser shall not pay the purchase money in accordance with the condition in that behalf, and in all other respects perform or abide by these conditions, the vendor may by notice rescind the sale, and the purchaser shall be liable for any deficiency in the price which may be obtained upon any subsequent sale and for all costs and expenses occasioned by his default, but shall not be entitled to any increase of price upon any such subsequent sale.

10. Time is in every case deemed to be of the essence of this contract.

11. The sale is subject to the encumbrances notified in the above particulars.

Memorandum that at the sale by auction this..... day of....., 20....., of the property mentioned in the above particulars.....of..... was the purchaser, subject to the above conditions, at the price of \$.....and has paid such price to the vendor, the abovenamed bailiff (or to Mr..... the auctioneer as agent of the vendor), and the vendor and purchaser agree to complete the sale in accordance with and subject to the above conditions.

(Signatures of vendor, and of purchaser or his agent, or signature of auctioneer as agent for both parties.)

.....
.....

**109 — Notice of application for sale of goods otherwise than by
auction**

(Heading as in Form 3)

Take notice that I, the undersigned A.B., the execution creditor (or execution debtor) herein, shall on.....the day of..... at.....o'clock in the.....noon, at (state where application will be made), apply to the magistrate (or to the clerk) of this court for an order that a sale of the goods seized under the execution herein may be made otherwise than by public auction, that is to say (e.g., by private sale to (state name of intending purchaser, if known)).

The grounds of the application are as follows (state the grounds).

A.B.

To the bailiff and to E.F., G.H., etc. (name the other person to be served).

110 — Notice of non-execution of warrant or order of commitment

(Heading as in Form 1)

Take notice that the warrant of execution (or order of commitment) in this action has not been executed within one calendar month from the day of its delivery to me, for the following reasons (state reasons).

.....
Bailiff of the Local Court
held at.....

To the clerk of the Local Court
held at.....

111 — Notice of return to warrant of execution

(Heading as in Form 3)

To the clerk of the Local Court
held at.....

I have to report as follows in regard to the above warrant of execution:

.....
Bailiff,
at.....

To the execution creditor (or solicitor).

Take notice that the bailiff has made a return to the execution herein, as above.

Dated this.....day of....., 20.....

.....
Clerk of the Local Court.

112 — Notice of sequestration order

(Heading as in Form 3)

Take notice that having received notice that a sequestration order has been made under the Bankruptcy Act, against the execution debtor, I have withdrawn from possession of the goods seized under the warrant of execution issued against the execution debtor (and have delivered the same to the official receiver or trustee under the said order.)

.....
Bailiff.

To the clerk.

113 — Application for stay of warrant of execution

(Heading as in Form 3)

Before: The magistrate in chambers.

The execution debtor, pursuant to section 139 of the Act, to move that the warrant of execution issued in this action be stayed on the grounds of.....

.....
.....
.....

.....
Execution debtor.

Address.....
.....

Order that warrant be stayed until.....day of.....,
20....., and no longer unless a further order is made herein.

...../...../20

.....
Magistrate.

114 — Interim order for stay of warrant of execution

(Heading as in Form 3)

Before the magistrate in chambers this.....day of.....,
20.....

Upon hearing the execution debtor it is ordered that the warrant of execution issued herein be stayed until the.....day of.....,
20....., and no longer unless a further order is made herein.

By the court,

.....
Clerk of the court.

115 — Chamber application for stay of execution

(Heading as in Form 3)

Address of execution debtor.....

Let the execution creditor attend the magistrate in chambers at the Local Court
at.....on.....day, the
.....day of.....20....., at the hour of
.....o'clock in the.....noon, on the hearing of an application on the part
of the execution debtor for an order continuing the order staying the warrant of
execution issued herein.

Dated this.....day of....., 20.....

.....
Clerk of the court.

Note — A copy of the interim order is served on you herewith.

This application was taken out by the execution debtor (or Solicitor)

.....
To the execution creditor (or solicitor).....

116 — Order for stay of Warrant of Execution

(Heading as in Form 3)

Before the magistrate in chambers this.....day of.....
20.....

Upon hearing the defendant, it is ordered that the warrant of execution issued
herein be stayed until.....20.....

By the court,

.....
Clerk of the Local Court.

117 — Praeceptum for Judgment Summons

(Heading as in Form 3)

Address of judgment debtor.....

I apply for the issue of a judgment summons against the said judgment debtor in respect of a judgment (or order) of this court (or of the..... court held at.....) obtained on the day of20....., for \$ and \$ costs.

And I undertake to prove to the satisfaction of the court at the hearing that the judgment debtor has, or has had since the date of the judgment (or order), the means to pay the sum in respect of which he has made default, and that he has refused or neglected, or refuses or neglects, to pay the said sum.

I am aware that if I do not prove the same accordingly that I shall have to pay the costs of this summons.

\$

Amount of judgment (or order) and costs.....

Deduct — Amounts (if any) in respect of which an order of commitment was made and judgment debtor was imprisoned before date of order.....

Add — Costs of previous judgment summonses, hearings and commitments (if any) since date of judgment (or order) allowed by the magistrate.....

Deduct —

\$

Amounts (if any) paid since judgment (or order)

Amounts in respect of which an order of commitment has been made since date of judgment (or order) and in respect of which judgment debtor has been or may be imprisoned.....

Amounts which were not required
to have been paid before the
date of this summons (*see note*
(a) below) _____

Sum in payment of which judgment debtor has made
default..... \$ _____

\$ _____

Add —

 Court fee including post fee.....

 Witness summons fee.....

 Bailiff's attendance.....

Home	}	service.....
Foreign		
Plaintiff		
}		
}		

 Kilometrage.....

 Conduct money..... _____

 Add solicitor's costs..... _____

 * Amount due..... \$ _____

* To be filled in by the clerk of the court.

Date..... _____
Judgment creditor (or solicitor).

Office memoranda.

Date lodged.....	Date fixed for hearing.	Date issued..... by.....
------------------	----------------------------------	-----------------------------

Assessed by.....	Credit \$	Checked and entered by.....
------------------	-----------	--------------------------------

(a) Where a fresh order has been made **after** judgment debtor has been committed and imprisoned, this amount will be the difference between the amount of the instalments in arrear at the date of the summons and the whole sum payable under the fresh order, **exclusive** of the amount in respect of which judgment debtor was imprisoned **before** the order.

**118 — Affidavit for leave to issue judgment summons against
defendant in certain cases**

(Heading as in Form 4)

I..... of.....,
the abovenamed plaintiff, (or I..... of.....),
make oath and say as follows: —

1. On the.....day of....., 20.....,
I (or the plaintiff) obtained a judgment (or an order) in this court for the sum of
\$..... (or for \$..... including costs) against the abovenamed
defendant, and the same (or \$..... part thereof) is still unsatisfied
(and.....instalments of.....are now in arrear).

2. The said defendant now lives at.....

3. The said defendant carries on the business of a.....
in a.....at.....(or the said defendant is now
employed as a.....at.....).*

4. I apply to the court for leave to issue a judgment summons against the said
Defendant in respect of the non-payment of the said sum.....
.....remaining unsatisfied and in arrear as abovementioned.

Sworn at.....this.....day of.....
20.....

Before me,

.....
Clerk or J.P.

Leave granted (or refused).

.....
Magistrate or clerk.

* State any circumstances showing that he has means to pay.

119 — Judgment summons

(Heading as in Form 3)

Address of judgment debtor.....

Whereas the judgment creditor obtained a judgment (or order) against the abovenamed judgment debtor in this court (or in the..... court held at.....) on the.....day of20....., for the payment of \$..... for debt (or damages) and costs forthwith (or on the.....day of..... 20....., or by instalments of.....for every.....days), and subsequent costs have been incurred in pursuance thereof and allowed by the magistrate amounting to \$.....

And whereas default has been made in payment of the sum of \$..... payable in pursuance of the said judgment (or order), and the plaintiff has required this judgment summons to be issued against you the defendant (*)

You are therefore hereby summoned to appear personally in this court at.....on....., the.....day of..... 20....., at the hour of.....in the forenoon, to be examined on oath by the court touching the means you have or have had since the date of the said judgment (or order) to satisfy the sum payable in pursuance of the said judgment (or order); and also to show cause why you should not be committed to prison for such default.

Dated this.....day of....., 20.....

To the judgment debtor (*)
Clerk of the court.

* If the summons is issued against some or one only of several judgment debtors, name them or him.

This summons must be served not later than....., 20.....

\$

Amount of judgment (or order) and costs.....

Deduct — Amounts (if any) in respect of which an order of commitment was made and judgment debtor was imprisoned before date of order.....

Add — Costs of previous judgment summonses, hearings, and commitments (if any) since date of judgment (or order) allowed by the magistrate.....

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Deduct —

Amount (if any) paid since judgment (or order)....

Amounts in respect of which
an order of commitment
has been made since date
of judgment (or order)
and in respect of which
judgment debtor has been
or may be imprisoned.....

Amounts which were not
required to have been
paid before the date
of this summons (see
note (a) below)..... _____

Sum in payment of which defendant has made
default..... _____

Costs of this summons CT..... WS..... BA.....

Ser..... K..... CM..... _____

Solicitor's costs..... _____

Amount upon the payment of which no further
proceedings will be had until default in payment of
next instalment (if any)..... _____

(a) Where a fresh order has been made after judgment debtor has been committed and imprisoned, this amount will be the difference between the amount of the instalments in arrear at the date of the summons and the whole sum payable under the fresh order, exclusive of the amount in respect of which judgment debtor was imprisoned before the order.

In default of your attendance you will be liable to arrest under section 130(2a) of the Act.

Conduct money..... _____

119A — Consent affidavit under judgment summons

(Heading as in Form 3)

I,.....of
....., in
the State of Western Australia,.....,
being duly sworn make oath and say as follows: —

(a) insert
marital status.

(b) strike out
that which is
not applicable.

(c) strike out which
clause not applicable.

1. I am the abovenamed defendant, and am over the age of 21 years.
2. I am a (a).....with.....dependants, and I pay (b) rent/board at the rate of \$.....per week.
3. My average nett earnings are \$.....per week.
4. (c) I am at present paying instalments of \$.....per week in respect of previous orders of commitment made against me.

OR

There are no orders of commitment outstanding against me.

5. I am justly and truly indebted to the abovementioned plaintiff in the sum of \$..... being the sum due on the judgment summons issued in this action with the addition of a fee of.....cents for filing this affidavit.
6. I admit that I have, or have had, since the date of the judgment (or order) the means to pay the sum in respect of which I have made default.
7. I (b) am/am not in receipt of assistance from the Department of Social Services.
8. I am aware that on the hearing of the said judgment summons an order for imprisonment may be made against me to be suspended so long as I continue to pay the sum due by instalments of \$..... per....., the first of such payments to be made on the.....day of..... 20.....
9. I am also aware that should I default in payment

of any one such instalment I am liable to be
imprisoned in accordance with the said order.

Sworn at
in the State of Western Australia
this day of
20 .

}
-
}
}

Clerk of the Local Court, Commissioner of
the Supreme Court for taking Affidavits
or Justice of the Peace.

.....

**120 — Affidavit where judgment summons is sought on a judgment
or order of a court other than a Local Court**

In the Local Court of Western Australia, held at.....

In the matter of a judgment (or order) of the Supreme Court (or as the case may
be).

Between

A.B.
(address.....),
description.....), plaintiff (judgment creditor).

and

C.D.
(address.....),
description.....), defendant (judgment debtor).

I, A.B., the abovementioned judgment
creditor, make oath and say: —

1. That on the.....day of....., 20.....,
I obtained a judgment (or an order) in (here set forth the style of the court
in which the judgment or order was obtained) against C.D.,
the abovenamed judgment debtor, for the payment of the sum
of.....
2. That there is still due under the said judgment (or order) the sum
of.....
3. I apply for the issue of a judgment summons against the abovenamed
judgment debtor in respect of the non-payment of the said sum
of.....

Sworn at....., etc.

121 — Praecept for listing of an adjourned judgment summons

(Heading as in Form 3)

I apply for re-listing of judgment summons in above action and issue of a summons against the judgment debtor....., of..... to attend at the sittings of the court to be held on a date to be fixed.

Particulars of judgment.

Amount of judgment (or order) and costs.....		\$
Add subsequent costs.....	_____	
	\$	
Less amount paid since date of judgment.....		
Less amount not required to be paid prior to date of judgment summons.....	_____	_____
Amount for which summons required.....		
* Add fees for issuing this summons — \$		
Court fee including post fee		
Home	} service.....	
Foreign		
Plaintiff		
Bailiff's attendance.....		
Kilometreage.....		
Conduct money.....	_____	
* Amount due		\$ _____

To be filled in by the clerk of the court.

Date..... Judgment creditor (or solicitor).
Office memoranda.
Date lodged..... Date fixed for hearing Date issued.....
By.....
Assessed by..... Credit \$ Checked and entered by.....

**122 — Summons for attendance of debtor on adjourned judgment
summons**

(Heading as in Form 3)

Whereas the judgment creditor obtained a judgment against the judgment debtor, particulars of which appear hereunder; and whereas the said judgment remains unsatisfied.

And whereas at the previous hearing the matter was adjourned to a date to be fixed and the judgment creditor has now applied for the matter to be re-listed.

You are therefore summoned to appear personally in this court at
..... on, the day of
.....20....., at the hour of in the
..... noon to be examined on oath by the court touching the means
you have or have had since the date of the said judgment (or order) to satisfy the
sum payable in pursuance of the said judgment (or order); and also to show
cause why you should not be committed to prison for such default.

Further take notice that unless you obey the directions contained in this
summons you will be liable to arrest under section 130(2a) of the Act.

Dated this.....day of....., 20.....

.....
Clerk of the court.

Particulars of judgment.

Amount of judgment (or order) and costs.....	\$	
Add subsequent costs.....		_____
	\$	
Less amount paid by judgment debtor.....		
Less amount not required to be paid prior to date of judgment summons	_____	_____
Amount for which summons required.....		
Fees for issuing this summons —		
Court.....Ser.....Klg.....CM.....		_____
Total amount due.....		_____
To	(Judgment debtor)	
.....		
.....		

Conduct money.....

123 — Application for variation of order made on judgment summons

(Heading as in Form 3)

* Address of judgment debtor/judgment creditor.....

* Let the judgment creditor/debtor attend the sitting of the Local Court at.....on.....day, the..... day of 20....., at the hour of.....o'clock in thenoon, on the hearing of an application on the part of the judgment

* creditor/debtor for a variation of the order for payment by instalments or for suspension of the order of commitment made in this action, due to changed circumstances.

Dated this.....day of....., 20.....

.....
Clerk of the court.

* The judgment creditor's/debtor's claim as to changed circumstances is: —

.....
Judgment creditor/debtor (or solicitor).

* To the judgment creditor/debtor (or solicitor).

.....
* Strike out whichever word is not applicable.

124 — Affidavit in support of application for leave to issue a judgment summons on a judgment or order against a firm, or a person carrying on business in a name other than his own

(Heading as in Form 3)

I....., of....., the abovenamed judgment creditor (or.....), make oath and say, as follows: —

1. On the.....day of....., 20....., I (or the judgment creditor) obtained a judgment (or order) in this action in this court (or in the.....court of, held at.....) against the abovenamed judgment debtorsfor the sum of \$.....(and costs) and there is now due and payable under the said judgment (or order) the sum of \$.....
2. I am informed and believe..... that....., of....., was at the date of the judgment (or order) a partner in the said firm of.....(or the sole member of the said firm of....., or carrying on business on his own behalf in the name of.....).
3. The said.....now lives at.....
4. The said firm of.....(or the said.....) carry (or carries) on the business of.....
5. I verily believe that the said.....is well able to pay the sum aforesaid now due and payable under the said judgment (or order)....., and I am duly authorised by the judgment creditor to make this affidavit on his behalf.

Sworn at, etc.

**125 — Judgment summons on a judgment or order of a Local Court
against a firm or a person carrying on business in a name other than
his own**

(Heading as in Form 3)

To G.H., of..... (state the name, address, and description of one of the persons alleged to be partners in the firm against whom the judgment or order was obtained, or of the person alleged to be the sole member thereof, or of the person alleged to be carrying on business on a name other than his own).

Whereas the judgment creditor obtained judgment (or an order) against the judgment debtors by and in the name of the firm of C.D. & Co. (or as the case may be) above described in this court (or in thecourtheld at.....) on the..... day of.....for the sum of \$.....(and costs) and there is now due and payable under the said judgment (or order) from the said C.D. & Co. to the said.....the sum of \$.....

And whereas the said A.B. has filed an affidavit in this court, a copy whereof is hereunto annexed, wherein it is deposed that you the said G.H. are one of the partners in the said judgment debtor firm of C.D. & Co. (or that you the said G.H. are the sole member of the said firm of C.D. & Co., or that you carry on business on your own behalf in the name of J.K.).

You are therefore hereby summoned to appear personally in this court at (place where court held) on.....the.....day of , 20.....at the hour of.....in thenoon, to be examined on oath by the court touching the means you have or have had since the date of the judgment (or order) to satisfy the sum payable in pursuance of the said judgment (or order); and also to show cause why you should not be committed to prison for default in payment of the said sum.

And take notice that if you deny that you are one of the partners in the said judgment debtor firm of C.D. & Co. (or that you are the sole member of the said firm of C.D. & Co., or that you carry on business on your own behalf in the same name of J.K.) you must appear at this court on the day and at the hour abovementioned, and that in default of your so appearing you will be deemed to admit that you are one of the partners in such firm (or that you are the sole

member of the said firm of C.D. & Co, or that you carry on business on your own behalf in the name of J.K.) and your own liability to pay the amount due and payable under such judgment (or order).

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the judgment debtor (*).

* If the summons is issued against some or one only of several judgment debtors, name them or him.

\$

Amount of judgment (or order) and costs.....

Deduct — Amounts (if any) in respect of which an order of commitment was made and judgment debtor was imprisoned before date of order..... _____

Add — Costs of previous judgment summonses, hearings, and commitments (if any) since date of judgment (or order) allowed by the magistrate..... _____

Deduct — \$

Amounts (if any) paid since judgment (or order).....

Amounts in respect of which an order of commitment has been made since date of judgment (or order) and in respect of which judgment debtor has been or may be imprisoned.....

Amounts which were not required to have been paid before the date of this summons (see note (a) below)..... _____

Sum in payment of which judgment debtor has made default..... _____

Costs of this summons CT.....WS.....BA.....
Ser.....K.....CM.....

Solicitor's costs..... _____

Amount upon the payment of which no further

proceedings will be had until default in payment
of next instalment (if any)..... _____

(a) Where a fresh order has been made after judgment debtor has been committed and imprisoned, this amount will be the difference between the amount of the instalments in arrear at the date of the summons and the whole sum payable under the fresh order, exclusive of the amount in respect of which judgment debtor was imprisoned before the order.

In default of your attendance you will be liable to arrest under section 130(2a) of the Act.

Conduct money.....

**126 — Affidavit where judgment summons is sought on a judgment
of another Local Court**

(Heading as in Form 3)

I....., the abovenamed judgment creditor, make oath
and say: —

1. That on the.....day of....., 20.....,
I obtained a.....against.....the
abovenamed judgment debtor for payment of the sum of \$.....
2. That there is still due on the said.....the sum of
\$.....

Sworn at, etc.

127 — Order upon a judgment summons altering original order of judgment

(Heading as in Form 2)

Whereas the judgment creditor obtained a judgment (or order) against the judgment debtor in the Local Court of..... held at.....on the.....day of....., 20....., for the payment of \$.....together with \$..... for costs, and in payment thereof (or of....., part thereof) the judgment debtor has made default:

And whereas a summons was, at the instance of the judgment creditor, duly issued out of this court, by which the judgment debtor was required to appear personally at this court on the.....day of, 20....., to be examined on oath touching the means he had then or had had since the date of the judgment (or order) to pay the said sum, which summons was proved to this court to have been personally and duly served on the judgment debtor.

It is ordered that the judgment debtor do pay the amount still due on the said Judgment, and the costs of the said summons and its hearing, as stated at the foot of this order, to the clerk of this court, by instalments of \$..... for every.....days: the first payment to be made on the..... day of, 20.....

Given under the seal of the court, this.....day of....., 20.....

.....
Clerk of the court.

\$

Amount on judgment or order remaining due

Costs of judgment summons and its hearing

\$

**128 — Order on judgment summons altering original order or
judgment when obtained in Supreme Court**

—————
(Heading as in Form 3)
—————

Whereas the judgment creditor obtained a judgment (or an order) against the judgment debtor in the Supreme Court, on the day of....., for the sum of \$....., and there is now due and payable under the said judgment (or order) the sum of \$.....

(Proceed as in Form 127, omitting first paragraph).

—————

**128A — Praecept for bench/chamber warrant to arrest judgment
debtor under section 130(2a) of the Act**

(Heading as in Form 3)

I apply for the issue of a bench/chamber warrant for the arrest of.....
.....of
.....who
was summoned to appear to be examined pursuant to section 130 of the *Local
Courts Act 1904* and who failed to attend this court.

To the clerk of the court,
.....

Summary:	\$
Amount of judgment (or order) and costs.....	
Subsequent costs.....	_____
Less amount paid since date of judgment.....	\$

* Fee for issuing this warrant —	\$
Court fee.....	
Bailiff's fee.....	
Kilometrage.....	_____
Total.....	\$

* To be filled in by the clerk of the court.

Dated..... Judgment creditor (or solicitor).
Office memoranda. Date issued.....
Date lodged..... By.....
Assessed by..... Checked and entered by
Credit
\$

128B — Warrant to arrest judgment debtor under section 130(2a) of the Act

(Heading as in Form 3)

Whereas.....of.....
was duly summoned to appear to be examined pursuant to section 130 of the *Local Courts Act 1904* at a court this day held and, at the time of being so summoned, payment (or a tender of payment) of his reasonable expenses was made:

And whereas he has neglected, without sufficient cause shown, to appear at the said court:

These are therefore to require and order you to apprehend and take the said.....and to bring and have him before me on the day on which he is apprehended, or as soon as is practicable thereafter, to be examined pursuant to that section.

Given under the seal of the court, this.....day of....., 20.....

(Signed).....

Magistrate.

Summary:	\$
Amount of judgment (or order) and costs.....	
Subsequent costs.....	_____
Less amount paid since date of judgment.....	\$ _____
* Fee for issuing this warrant —	\$ _____
Court fee.....	
Bailiff's fee.....	
Kilometrage.....	_____
Total	\$ _____

* To be filled in by the clerk of the court.

To the bailiff and others the officers of the said court, and all peace officers within the jurisdiction of the said court.

129 — Praeceptum for order of commitment

(Heading as in Form 3)

Address of judgment debtor.....
Whereas on the.....day of.....20.....,
the judgment debtor was committed to prison for.....days, such
committal to be suspended whilst he pays the sum of \$.....by instalments
of \$.....per.....: and whereas at this date default has been made
to the extent of.....instalments amounting to \$.....
Now, I,....., do require an order of commitment
to issue against the person of....., to pay to the judgment
creditor the sum shown hereunder: —

		\$
Amount of judgment (or order) and costs.....		
Add all subsequent costs.....	\$	_____
Amount unpaid and due on judgment.....		
Less amount paid since date of order.....		
Less amount of instalments at per week which were not required to be paid before the date of this warrant.....	_____	_____
* Add costs of issuing this order —		
Court fee including post fee		
Home } bailiff.....		
Foreign } _____		
Kilometrage.....		
* Amount upon payment of which judgment debtor is to be discharged.....	\$	_____

* To be filled in by the clerk of the court.

Local Court Rules 1961
Schedule

Dated.....
.....
Judgment creditor (or solicitor).

Office memoranda.

Date lodged.....

Date issued.....

By.....

Assessed by.....

Credit \$

Checked and
entered by.....

130 — Order of commitment on judgment summons

(Heading as in Form 3)

Address of judgment debtor.....
To the bailiff of the said court and all peace officers within the jurisdiction of
the said court, and to the superintendent or keeper of the *.....
Whereas the judgment creditor obtained a judgment (or an order) against the
abovenamed judgment debtor in this court (or in the.....
Court held at.....) on the.....day of.....
20....., for the payment of \$.....for debt (or damages) and costs, and in
payment thereof (or of....., part thereof) the judgment
debtor has made default:

And whereas a summons was, at the instance of the judgment creditor, duly
issued out of this court by which the judgment debtor was required to appear
personally at this court on the..... day of..... 20.....,
to be examined on oath touching the means he had then or had had since the
date of the judgment (or order) to pay the said sum, and to show cause why he
should not be committed to prison for such default, which summons was proved
to this court to have been personally and duly served on the judgment debtor.

And whereas at the hearing of the said summons it has been proved to the
satisfaction of the court that the judgment debtor now has (or has had since the
date of the judgment (or order)) the means to pay the sum in respect of which he
made default as aforesaid, and has refused (or neglected) (or then refused or
neglected) to pay the same, and the judgment debtor has shown no cause why he
should not be committed to prison.

Now therefore it is ordered that the judgment debtor shall be committed to
prison for.....days unless he shall sooner pay the sum stated below as
that upon the payment of which he is to be discharged, or shall file such
affidavit as is mentioned in Order 26, rule 19, of the Local Court Rules.

These are therefore to require you the said bailiff and others to take judgment
debtor and to deliver him to the superintendent or keeper of the †,
and you, the said superintendent or keeper, to receive the judgment debtor and
him safely keep in the said prison for.....days from the arrest under
this order, or until he shall be sooner discharged by due course of law.

Given under the seal of the court this ‡.....day of.....,
20.....

.....
Clerk of the court.

* Prison used by the court † Prison used by the court ‡ Insert date of order

Local Court Rules 1961
Schedule

	\$
Amount of judgment or order, including costs.....
Less amount paid since date of order (if under execution against the goods deduct costs of execution).....
Amount unpaid and due on judgment.....
Deduct amount of instalments at.....per week, which were not required to have been paid before the date of this warrant.....
Costs of judgment summons and fees for issuing this order.....
Bailiff's fees.....
Amount upon the payment of which the prisoner is to be discharged.....

This order remains in force one year from the date thereof

131 — Notice of an order under a judgment summons

(Heading as in Form 3)

Take notice that an order was this day made against you in this matter for the payment of \$....., the amount now due and payable under a judgment of this court (or of the.....court of.....), at the rate of.....per....., the first instalment to be paid on theday of..... 20.....

Dated this.....day of....., 20.....

.....
Clerk of the court.

All moneys under this order must be paid into court.

To the.....judgment debtor.

Address

.....

**132 — Notice to debtor where order of commitment made but
directed to be suspended**

—————
(Heading as in Form 3)
—————

Take notice that an order of commitment for your imprisonment for.....
days was this day made by the magistrate of this court.

The order will not be put into force if the sum of \$.....is paid into court on
or before the.....day of.....20.....
(or by instalments of \$.....for every.....days, the first payment to be
made on the.....day of.....20.....)

In default of payment within the time abovementioned (or of any instalment), an
order may issue for your imprisonment for the period abovementioned, unless
you shall sooner pay the whole amount remaining due under the said order, and
the poundage on the order.

Dated this.....day of....., 20.....

.....
Clerk of the court.

All moneys under this order must be paid into court.

To the.....judgment debtor.

Address

.....
—————

133 — Affidavit under Order 26, rule 19

(Heading and conclusion as in Form 4)

I, C.D., of....., make oath and say: —

1. That under the *Local Courts Act 1904*, an order for my committal was made by the above court (or the Local Court of..... held at.....), for making default in payment of \$....., due from me in pursuance of an order (or judgment) of the (here insert the court in which order or judgment was given).
2. That on the.....day of....., 20....., I was adjudicated a bankrupt (or that on the.....day of....., 20....., a sequestration order was made for the protection of my estate).
3. That the debt, in respect of which the above order (or judgment) was given, was provable under the bankruptcy.

134 — Request by creditor for discharge of prisoner

(Heading as in Form 3)

I, the undersigned A.B.,, the plaintiff in this action, request that the defendant, C.D.,, if still in custody, may be discharged.

.....
A.B.

To the clerk of the court.

135 — Certificate of payment by prisoner

(Heading as in Form 3)

I hereby certify that the judgment debtor, who was committed to my (or your) custody by virtue of an order of commitment under the seal of this court (or of the Local Court held at.....), bearing date the..... day of.....20....., has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof; (add, where the certificate is sent by the clerk), (and that the judgment debtor may, in respect of such order, be forthwith discharged out of your custody).

Dated (or given under the seal of the court) this.....day of
....., 20.....

.....
Superintendent of the.....
Prison (or Clerk of the Local Court
held at.....).

To the.....of..... (or the Clerk
of the Local Court held at.....).

136 — Certificate by clerk for discharge of judgment debtor

(Heading as in Form 3)

I hereby certify that the judgment debtor, who was committed to your custody by virtue of an order of commitment under the seal of this court (or the Local Court held at bearing date the day of....., 20.....has filed an affidavit in this court, stating that (here insert statement in affidavit); and that the judgment debtor may, in respect of such order, be forthwith discharged out of your custody.

Given under the seal of the court this.....day of....., 20.....

.....
Clerk of the court.

To the.....of the.....(prison used by the court)

137 — Notice of arrest of debtor under commitment order

(Heading and conclusion as in Form 3)

Take notice that on the.....day of....., 20....., I arrested the judgment debtor, and conveyed him to (state prison where debtor imprisoned).

.....
Bailiff.

To the clerk of the court.

138 — Endorsement of an order of commitment issued in a foreign court

To the bailiff of the Local Court at.....

Take notice that in accordance with the provisions of section 135 of the *Local Courts Act 1904*, this order of commitment has been sent to me, and issued by me to you as the bailiff of this court, and that the debtor, if apprehended, is to be conveyed to the prison named in the said warrant, and is to be there kept for the time mentioned in the order of commitment, unless sooner discharged by law.

Dated this.....day of....., 20.....

.....
Clerk of the Local Court.

at.....

139 — Affidavit to ground garnishee order

(Heading as in Form 3)

I,.....of....., the abovenamed judgment creditor (or the solicitor for the abovenamed judgment creditor) make oath and say: —

1. That I (or the abovenamed judgment creditor) on the..... day of.....last past recovered judgment in the Local Court held at.....against the abovenamed defendant for the sum of \$....., and costs.
2. That the said judgment is still wholly unsatisfied (or is still unsatisfied to the extent of the sum of \$.....).
3. That.....of.....is indebted to the said defendant judgment debtor in the sum of \$.....
4. That the said.....resides at.....

Sworn at, etc.

140 — Summons to garnishee

In the Local Court of Western Australia held at.....

No.....

Between

A.B., (address and description)....., plaintiff (judgment creditor),
and

C.D., (address and description)....., defendant (judgment debtor),
and

M.N. (address and description)....., garnishee.

Whereas the judgment creditor at a court held at.....
on the.....day of....., 20....., recovered
judgment (or obtained an order) against C.D.,.....of (name,
address, and description) for the sum of \$.....for debt (or damages) and
costs, (or for payment of the sum of \$.....and \$.....for costs) which
judgment (or order) remains unsatisfied as to the sum of \$.....

And whereas the judgment creditor has filed an affidavit stating that you are
indebted to the said C.D.....in the sum
of \$.....:

You are hereby summoned to appear at a court to be held at.....
on.....the.....day of....., 20.....,
at the hour of.....in the.....noon, to show cause why an order
should not be made upon you for the payment to the judgment creditor of the
amount of the debts due and owing and accruing from you to the said C.D.,
.....or so much thereof as will satisfy the debt due under the said
judgment (or order) and the judgment creditor's costs of this proceeding:

And take notice, that from and after the service of this summons upon you all
such debts are attached to answer the said judgment (or order):

And further take notice, that if you pay to the clerk of this court the amount of
such debts, or so much thereof as will satisfy the debt due under the said
judgment (or order) (and the fees and solicitor's costs endorsed on this
summons) 5 clear days before the day upon which you are required to appear,
you will incur no further costs.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To (the garnishee).

\$

Amount remaining due under judgment (or order).....
Costs of this summons.....
Solicitor's costs..... _____
Total amount..... \$ _____

This summons is issued at the instance of....., the
abovenamed judgment creditor (or solicitor for the abovenamed judgment
creditor), whose address for service is.....

141 — Notice to judgment debtor of payment into court by garnishee

(Heading as in Form 140)

Take notice that the summons, copy of which is hereunto annexed, was issued
on theday of....., and that M.N.,
....., the garnishee named in the said summons, has paid
into court the sum of \$.....

And further take notice, that the said sum of \$.....will
be paid out to the judgment creditor A.B.,....., unless you
appear at this court on.....the.....day of
.....and show cause to the contrary.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the abovenamed judgment debtor C.D.

142 — Judgment on garnishee summons

(Heading as in Form 140)

Whereas the judgment creditor at a court held at.....
on the.....day of....., 20....., recovered a
judgment (or obtained an order) against C.D.....of
.....for the sum of \$.....for debt (or damages)
and costs (or for the payment of the sum of \$....., and \$..... for
costs), which judgment (or order) remains unsatisfied as to the sum of \$.....
And whereas the judgment creditor having filed an affidavit stating that the
above named M.N.,..... was indebted to the said
C.D.,..... in the sum of \$....., the said
M.N.,....., was summoned to show cause why he
should not be ordered to pay to the judgment creditor the amount of the debts
due and owing and accruing from him to the said C.D.,.....,
or so much thereof as would satisfy the debt due under the said judgment (or
order) and the judgment creditor's costs of this proceeding:

And whereas the said M.N.,....., has failed to appear
before the court this day (or has appeared before the court this day and has
failed to show cause why he should not be ordered to pay such debts) (or has
shown sufficient cause why he should not be ordered to pay such debts) to the
judgment creditor:

It is ordered (a) (add order made by the magistrate).

143 — Execution against garnishee

(Heading as in Form 140)

Whereas on the.....day of....., 20....., the abovenamed judgment creditor obtained a judgment in this court against the abovenamed M.N.,....., whereby it was ordered that the judgment creditor should recover against the said M.N. the sum of....., being (recite the judgment entered according to Form 142), and it was thereupon ordered that the said M.N. should pay the sum of \$..... to the clerk on the.....day of, 20....., (or by instalments of..... for every days); and whereas default has been made in payment according to the said order: These are therefore (the same as in ordinary executions).

144 — Notice of claim to goods taken in execution

(Heading as in Form 1)

Take notice that E.F. has claimed the goods (or certain goods) (where only certain goods are claimed here enumerate them) taken in execution by me under the warrant of execution issued in this action. If you admit the title of the said E.F. to the said goods, and give notice thereof to me by return of post, you will not be liable for all costs incurred after the receipt by me of your notice.

Dated, etc.

.....
Bailiff.

To the execution creditor.

145 — Notice by execution creditor of admission of title of claimant

(Heading as in Form 3)

Take notice that I admit the title of E.F. to the goods seized by you under the execution issued under the judgment in this action.

.....
Execution creditor.

To the bailiff.

146 — Interpleader summons to execution creditor

In the Local Court of Western Australia, held at.....

No.....

Between

A.B....., plaintiff (execution creditor),

and

C.D....., defendant (execution debtor),

and

E.F.....claimant.

Whereas (here insert the name, address, and description of claimant, so far as is then known) has made claim to certain goods (or the proceeds of sale (or value) of certain goods) taken in execution under process issuing out of this court at your instance (or certain rent alleged to be due to him in respect of, and issuing out of, the premises upon which certain goods were taken in execution under process issuing out of this court at your instance).

You are, therefore, hereby summoned to appear at a court to be held at..... on the.....day of....., at the hour ofin thenoon, when the said claim will be adjudicated upon, and such order made thereon as to the magistrate shall deem fit.

Given under the seal of the court this.....day of....., 20.....

(seal)

.....
Clerk of the court.

To the execution creditor.

Note. — The claimant is called upon to give the particulars of his claim, which you may inspect on application at the office of the clerk of this court, 4 days before the day of hearing.

147 — Interpleader summons to a claimant of goods

(Heading as in Form 146)

You are hereby summoned to appear at a court to be held at.....
.....on the.....day of....., 20.....,
at the hour of.....in the.....noon, to support a claim made by you to
certain goods taken in execution under process issued in this action at the
instance of....., and in default of your then establishing such claim
the said goods will then be sold according to the exigency of the said process;
and take notice that you are hereby required, 5 clear days before the said day, to
deliver to the officer in charge of the said process, or leave at my office,
particulars of the goods which are claimed by you, and of the grounds of your
claim; and in such particulars you shall set forth fully your name, address, and
description; and take notice that, in the event of your not giving such particulars
as aforesaid, your claim will not be heard by the court.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To of

148 — Particulars of claim under interpleader summons

(Heading as in Form 146)

Take notice that I, E.F., of (insert address and description), claim certain goods
to wit (or specified in the schedule hereunder written), taken in execution under
process issuing out of this court in this action, and mentioned in the interpleader
summons, and that the grounds of my claim are that the said goods were
assigned to me by an indenture dated the, and made
between the said C.D., the execution debtor, of the one part, and me, the said
E.F., the claimant, on the other part.

Dated, etc.

(Signed).....E.F., claimant.

To the execution creditor, and the bailiff of this court.

149 — Order on an interpleader summons where the claim is not established

—————
(Heading as in Form 146)
—————

It is this day adjudged touching the claim of E.F. to certain goods (or the proceeds of sale (or value) of certain goods) taken in execution under process issuing out of this court at the instance of (the execution creditor), that the said goods (or proceeds of sale (or value) are not the property of the said E.F.)

And it is ordered that the said E.F. do pay the sum of \$..... for costs to the clerk of this court for the use of the said (execution creditor), on or before the day of....., 20.....

(Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court.)

And it is ordered (a) (insert here particulars of order).

To (the claimant), and to the bailiff.

—————

150 — Order on an interpleader summons where the claim is established

(Heading as in Form 146)

It is this day adjudged, touching the claim of E.F. to certain goods (or the proceeds of sale (or value) of certain goods) taken in execution under process issuing out of the court at the instance of the said (execution creditor), that the said goods (or proceeds of sale (or value) or part thereof, to wit, specifying them or it) are the property of the said E.F. (or that rent to the amount of \$..... is due to the said E.F.).

And it is ordered that the said (execution creditor) do pay the sum of \$..... for costs to the clerk of this court, for the use of the said E.F., on or before the day of....., 20.....

(Here insert directions as to the payment for the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court.)

And it is ordered (a) (insert here particulars of order).

To (the execution creditor) and to the bailiff.

151 — Warrant of execution against the goods of claimant

(Heading as in Form 146)

Whereas at a court held at.....on the.....day of 20....., the execution creditor, by the judgment of the said court, recovered against the execution debtor the sum of \$..... for debts (or damages) and for costs:

And whereas, the execution debtor, by an order of the court, was ordered to pay the same to the clerk of the court:

And whereas default having been made in payment according to the said order, an execution issued against the goods of the execution debtor, under which certain goods were seized, in respect of which E.F. of, etc., made claim, and which claim was heard and decided upon at a court held at.....on the.....day of 20....., and it was adjudged that the goods so seized under the said execution were not the property of the said E.F.....

And it was ordered that the said E.F.....should pay the sum of \$..... for costs to the clerk of the court, for the use of the said(execution creditor), on or before the.....day of....., 20.....

And whereas default has been made in payment according to the said last-mentioned order:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods of the said E.F....., wheresoever they may be found within the jurisdiction of this court (except so much as are protected by section 126 of the Act), the sum stated at the foot of this warrant, being the amount due to the execution creditor under the said order, together with the costs of this execution; and also to seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialities or securities for the money of the said E.F..... which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay what you shall have so levied to the clerk of the court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this.....day of....., 20.....

.....
Clerk of the court.

To the bailiff of the said court.

Local Court Rules 1961
Schedule

\$

Costs adjudged.....

Paid.....

Remaining due.....

Fee for issuing this warrant.....

 Total amount to be levied.....

 With bailiff's fees for executing warrant..... _____

Notice. — The goods are not to be sold until after the end of 5 days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said E.F.

Application was made to the clerk for this warrant at.....
minutes past the hour of.....in the.....noon of the.....
day of....., 20.....

152 — Affidavit by defendant sued by an assignee who has had notice that the assignment is disputed by the assignor, or by defendant in action for debt, chose in action, or chattel, who has had notice of any opposing or conflicting claim

(Heading and conclusion as in Form 4)

I, C.D....., of....., the abovenamed defendant, make oath and say, as follows: —

1. The summons in this action was issued on the.....day of....., and was served on me on the.....day of..... .
2. The action is brought to recover the sum of \$....., which is alleged to have been due from me to.....of....., but which sum is alleged to have been assigned by the saidto the plaintiff.
(Or the action is brought to recover (state what).)
3. The said sum of \$.....(or the sum of \$....., part of the sum of \$.....) is due from me (or the said.....is in my possession, but I claim no interest therein, except for charges and costs).
4. I have received notice from the said (assignor) (or from....., who claims under the said assignor) that he disputes the assignment of the said sum of \$..... (or of \$.....part of the said sum of \$.....) to the plaintiff.
or I have received notice from.....of..... that the right to the said subject matter of this action (or to, part of the said subject matter of this action) is claimed by him.
5. I admit the claim of the plaintiff to \$....., part of the said sum of \$....., which is not claimed by the said (or I admit the claim of the plaintiff to....., part of the said subject matter of this action, which is not claimed by the said.....).
6. I do not in any manner collude with the said (opposing claimant), or with the abovenamed plaintiff, but I am ready to bring into court or to pay or dispose of the said.....in such manner as the court may order or direct.

Sworn, etc.

153 — Interpleader summons to assignor or other person disputing assignment, or person making, opposing or conflicting claim to debt, chose in action, or chattel sued for

(Heading as in Form 1)

Whereas the defendant in this action (copy of the summons and particulars wherein is hereto annexed) has filed an affidavit (copy whereof is also hereto annexed) stating that he has received notice from you that you dispute the assignment of the subject matter in this action (or of \$....., part of the subject matter of this action) (or that you claim the subject matter in this action, or....., part of the subject matter of this action):

You are therefore summoned to appear at a court, to be held at..... on.....the.....day of....., at..... in the.....noon, when the dispute or claim to the subject matter in this action will be determined, and judgment will be given determining the rights and claims of the plaintiff, the defendant, and yourself.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To E.F., of, etc. (here insert name, address, and description of the person to be summoned).

Note — You are called upon, 5 clear days at least before the day of hearing, to leave at the office of the clerk, either 3 copies of a notice that you relinquish your claim, or 3 copies of particulars stating the grounds on which you dispute the assignment or found your claim to the subject matter of the action; and the clerk is required to forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant.

154 — Notice to plaintiff where interpleader summons issued to assignor or other person disputing assignment, or person making, opposing, or conflicting claim to debt, chose in action, or chattel sued for

(Heading as in Form 1)

Whereas the defendant in this action has filed an affidavit (copy whereof is hereto annexed) stating that he has received notice from.....
.....of.....,
that he disputes the assignment of the subject matter in this action (or of \$....., part of the subject matter of this action) (or that he claims the subject matter in this action) (or....., part of the subject matter of this action.)

Take notice that a summons has been issued to the said.....
.....to appear at a court, to be held at.....on the
.....day of....., at.....in the
.....noon, and that the hearing of this action has been adjourned to the same place, day, and hour, when the dispute or claim to the subject matter in this action will be determined, and judgment will be given determining the rights and claims of yourself, the defendant, and the said.....

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the abovenamed plaintiff.

Note — The claimant is called upon, 5 clear days at least before the day of hearing, to leave at the office of the clerk, either 3 copies of a notice that he relinquishes his claim, or 3 copies of particulars stating the grounds on which he disputes the assignment or founds his claim to the subject matter in the action; and the clerk is required to forthwith send by post one of such copies to the plaintiff or his solicitor, and one other of such copies to the defendant or his solicitor.

155 — Notice to defendant of issue of interpleader summons

—————
(Heading as in Form 1)
—————

Whereas you have filed an affidavit stating that you have received notice fromof....., that he disputes the assignment of the subject matter in this action (or of \$....., part of the subject matter of this action) (or, that he claims the subject matter in this action, or....., part of the subject matter of this action):

Take notice that a summons has been issued to the said..... to appear at a court, to be held at....., on....., the.....day of....., at..... in the.....noon, and that the hearing of this action has been adjourned to the same place, day, and hour, when the dispute or claim to the subject matter in this action will be determined, and judgment will be given determining the rights and claims of the plaintiff, yourself, and the said.....

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the abovenamed defendant.

Note — The claimant is called upon, 5 clear days at least before the day of hearing, to leave at the office of the clerk, either 3 copies of a notice that he relinquishes his claim, or 3 copies of particulars stating the grounds on which he disputes the assignment or founds his claim to the subject matter in the action; and the clerk is required to forthwith send by post one of such copies to the plaintiff and one other of such copies to the defendant.

**156 — Particulars of grounds on which assignment is disputed or
subject matter claimed**

—————
(Heading as in Form 1)
—————

Take notice that I dispute the assignment of the subject matter in this action to the plaintiff (or of \$....., part of the subject matter of this action), and that the grounds on which I dispute the same are(state grounds).

(Or, Take notice that I claim to be entitled to the subject matter in this action (or to....., part of the subject matter of this action), and that the grounds of which my claim are.....(state grounds).

(Or, Take notice that I relinquish my claim to the subject matter of this action).

.....
E.F.

To the clerk of the court, and to the plaintiff, A.B., and the defendant, C.D.

—————

157 — Order where assignment is adjudged invalid, or opposing claim is sustained

In the Local Court of....., held at.....

No.....

Between

A.B....., plaintiff,

and

C.D....., defendant,

and

E.F.....,
made party by summons, dated the.....day of.....,
20.....

It is this day adjudged, touching the dispute as to the assignment of the subject matter of this action to the plaintiff, that there is no such assignment as alleged (or touching the claim of the plaintiff to the subject matter of this action, that he has no claim thereto), and that the abovenamed E.F.....do recover against the plaintiff the sum of \$.....for costs, and that the defendant do recover against the plaintiff the sum of \$.....for costs:

And it is further adjudged that the said E.F.....do recover against the defendant the sum of \$.....for debt, and the sum of \$.....for costs, amounting together to the sum of \$.....:

And it is ordered that the plaintiff do pay the said sums of \$..... and \$.....to the clerk of this court on.....the.....day of.....

And it is further ordered that the defendant do pay the said sum of \$..... to the clerk of this court on the.....day of..... (or by instalments of \$.....for every.....days, the first instalment to be paid on the.....day of....., 20.....).

(If the subject matter of the action is a chose in action, or chattel, the order is to be framed accordingly).

Dated this.....day of....., 20.....

By the court,

.....
Clerk of the court.

158 — Order where assignment is valid or opposing claim fails

(Heading and conclusion as in Form 157)

It is this day adjudged, touching the dispute as to the assignment of the subject matter of this action to the plaintiff, that the said assignment is good (or touching the claim of the plaintiff to the subject matter of this action, that such claim is valid) and that the plaintiff do recover against E.F., the sum of \$.....for costs; and that the defendant do recover from the said E.F. the sum of \$.....for costs.

It is further adjudged that the plaintiff do recover against the defendant the sum of \$.....for debt, and \$.....for costs, amounting together to the sum of \$.....

It is ordered that E.F. do pay the sum of \$.....and the sum of \$..... to the clerk of the court, on the.....day of.....

And it is further ordered that the defendant do pay the sum of \$..... to the clerk on the.....day of.....
(or by instalments of.....for every.....days, the first instalment to be paid on the.....day of....., 20.....)

(If the subject matter of the action is a chose in action or chattel, the order to be framed accordingly.)

159 — Order where assignment is invalid, or opposing claim is sustained, and defendant files a counterclaim against plaintiff

—————
(Heading and conclusion as in Form 2)
—————

It is this day adjudged, touching the dispute as to the assignment of the subject matter of this action to the plaintiff, that there is no such assignment as alleged (or touching the claim of the plaintiff to the subject matter of this action, that he has no claim thereto), and that the counterclaim of \$.....against the plaintiff by the defendant is sustained (or is not sustained).

It is adjudged that E.F. do recover against the defendant the sum of \$.....for debt, together with the sum of \$.....for costs, amounting together to the sum of \$.....

It is further adjudged that the defendant do recover against the plaintiff the sum of \$.....in respect of his counterclaim and the sum of \$.....for costs, amounting together to the sum of \$..... (or that judgment be entered for the plaintiff upon the counterclaim with costs).

It is ordered that the defendant do pay the sum of \$....., together with the sum of \$....., to the clerk on, etc.

It is further ordered that the plaintiff do pay the sum of \$....., and the sum of \$.....to the clerk on, etc. (or that the defendant do pay to the plaintiff the further sum of \$.....for costs of counterclaim).

(If the subject matter of the action is a chose in action or chattel, the order to be framed accordingly.)

—————
[Forms 160 to 166 deleted in Gazette 16 December 1971 p.5227.]
—————

167 — Summons for recovery of possession of land

(Heading as in Form 1)

You are hereby summoned to appear at a Local Court, to be held at.....
....., on the.....day of.....20.....,
at the hour of.....in the forenoon, to answer the plaintiff wherefore you
neglect or refuse to deliver up to him possession of a certain messuage with
appurtenances, or part of a house, etc., or as the case may be,.....
situate at.....

And take notice that the plaintiff claims of you for rent (or mesne profits, or for
rent and mesne profits) the sum of \$.....for a period from the.....day
of.....20....., to theday
of....., 20.....

And further take notice, if you do not appear at the said court and show cause
why you do not deliver up possession as aforesaid, the magistrate of the said
court may order that possession of the said premises be given by you to the
plaintiff on or before such day as the magistrate shall name, and that if such
order be made and be not obeyed, a warrant may issue to give possession to the
plaintiff.

Dated this.....day of....., 20.....

(Seal)

.....
Clerk of the court.

To the defendant.

Claim for..... \$.....
Cost of this summons..... \$.....
Solicitor's costs..... \$.....

Take notice — If the plaintiff in this action be not your immediate landlord you
must, upon your being served with this summons, or if this summons shall come
to your knowledge, forthwith give notice thereof to your immediate landlord,
and if you do not give such notice you will be liable, under section 102 of the
Act, to forfeit to your immediate landlord 3 years' rack-rent of the premises
held by you of him in respect of which the summons shall have issued.

168 — Summons for recovery of possession of land for non-payment of rent

(Heading as in Form 1)

You are hereby summoned to appear at a court to be held at....., on the.....day of....., 20....., at the hour ofin the forenoon, to answer the plaintiff why possession of a certainsituate at.....should not be given up to the plaintiff by reason of the rent payable in respect thereof by you being..... in arrear, and the plaintiff having right by law to re-enter for the non-payment thereof.

If you shall pay to the clerk the rent in arrear and the costs of this action as stated, at the foot of the summons, 5 clear days before the day you are required to appear to this summons, this action will cease.

And take notice that if you do not pay such rent in arrear, and costs, or appear at the said court and show cause why possession of the saidshould not be recovered against you, you may be ordered by the court to give possession of such premises to the plaintiff, and that if such order be not obeyed a warrant may issue to give possession to the plaintiff.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the abovenamed defendant.

Rent in arrear.....	\$.....
Cost of this summons.....	\$.....
Solicitor's costs.....	\$.....

Take notice — If the plaintiff in this action be not your immediate landlord you must, upon your being served with this summons, or if this summons shall come to your knowledge, forthwith give notice thereof to your immediate landlord, and if you do not give such notice you will be liable, under section 102 of the Act, to forfeit to your immediate landlord 3 year's rack-rent of the premises held by you of him in respect of which the summons shall have issued.

169 — Order for recovery of possession of land for non-payment of rent

(Heading as in Form 2)

Upon the trial of this action at a court held this day, it is ordered that the defendant do give to the plaintiff possession of certain....., situate at....., on or before the.....day of....., 20....., unless the rent in arrear for the said premises, amounting to \$....., and the costs of this action, be paid into court before such.....day of....., 20.....

And it is adjudged that the plaintiff do recover against the defendant the sum of \$.....for costs of this action (or his costs of this action to be taxed).

And it is ordered that the defendant do pay the same to the clerk of this court on or before the.....day of....., 20.....

To the defendant.

Take notice — That if you do not pay the said rent and costs, or give such possession, a warrant may issue requiring the bailiff of the court to give possession of the said.....to the plaintiff and to levy the sum of \$.....abovementioned, together with further costs.

170 — Summons for recovery of possession of land under section 103

—————
(Heading as in Form 1)
—————

You are hereby summoned to appear at the Local Court to be held at.....
....., on the.....day of.....,
20....., at the hour of.....in the forenoon, to answer the plaintiff
wherefore you refuse to deliver up to him possession of certain land, situate
at.....of which he alleges you are in unlawful occupation.

And take notice that the plaintiff claims of you for damages the sum of
\$.....for such occupation.

And further take notice, if you do not appear at the said court and show cause
why you do not deliver up possession as aforesaid, the magistrate of the said
court may order that possession of the said land be given by you to the plaintiff
on or before such day as the magistrate shall name, and that if such order be
made and be not obeyed, a warrant may issue to give possession to the plaintiff,
as well as for the recovery of such damages and costs as the court may award.

Dated this.....day of....., 20.....

(Seal)

.....
Clerk of the court.

To the defendant.

Claim for damages.....	\$.....
Cost of this summons.....	\$.....
Solicitor's costs.....	\$.....

171 — Order for recovery of land under section 99 or 103

(Heading as in Form 2)

Upon the trial of this action at a court held this day, it is ordered that the defendant do give to the plaintiff possession of certain land.....
.....situate at.....on the.....day of
.....and it is adjudged that the plaintiff do recover
against the defendant the sum of \$..... for damages and \$..... for
costs (or costs to be taxed).

And it is ordered that the defendant do pay to the clerk of the court the said
damages and costs on or before the.....day of, 20.....

Given under the seal of the court this.....day of....., 20.....

By the court,

.....
Clerk of the court.

To the defendant.

Take notice that if you do not give such possession a warrant may issue
requiring the bailiff of the court to give possession of the said.....
.....to the plaintiff, and to levy the sum abovementioned together
with further costs.

172 — Warrant of possession

In the Local Court of Western Australia, held at.....

No.....

Between

....., plaintiff,

and

....., defendant,

of.....

Whereas at a court held at.....on the.....day of....., 20....., it was ordered by the court that the defendant should forthwith on or before the.....day of 20....., give to the plaintiff possession of certain land situated at.....and that the plaintiff should recover against the defendant the sum of \$.....for rent (and mesne profits or damages) \$.....for costs, amounting together to the sum of \$.....

And whereas the defendant has not obeyed the said order: These are therefore to authorise and require you to forthwith give possession of the said hereinbefore-mentioned land to the plaintiff and for such purposes to enter and remove therefrom all persons, and all goods and chattels not being the property of the plaintiff. And these are therefore further to require and order you forthwith to make and levy by distress and sale of the goods and land of the defendant, wheresoever they may be found within the jurisdiction of the court (excepting so much as are protected by section 126 of the Act), the said sums and the costs of this warrant and execution, and to pay the amount so levied to the clerk of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this.....day of....., 20.....

.....
Magistrate.

\$

Rent \$ per week
Annual rental \$.
Rent (and mesne profits or
damages), and costs ordered \$
court fees on issue of warrant..... _____
Bailiff's fees —
 Execution.....
 Kilometrage.....
 Special fee..... _____

Application was made to the clerk for this warrant at.....minutes past the
hour of.....in the.....noon of the.....day of.....
20.....
.....
Clerk of the court.

**173 — Notice in action for recovery of land that a person not
originally made a defendant will appear and defend**

(Heading as in Form 1)

Take notice that M.N. has filed the affidavit, a copy of which is hereunto
annexed, and that by leave of the clerk he will appear at the trial as a defendant.
To the plaintiffs.

174 — Notice in action for recovery of land that a defendant will limit his defence to part of the property

—————
(Heading as in Form 1)
—————

Take notice that the abovenamed defendant K.L. will at the trial of this action limit his defence to a part only of the property mentioned in the statement annexed to the summons; that is to say (here described the part to which the defence is limited with reasonable certainty). To the clerk of the court and to the plaintiffs.

—————
175 — Warrant of delivery
—————

(Heading as in Form 2)
—————

To the bailiff of the Local Court at.....
Whereas lately in the Local Court at.....by a judgment of the said court it was adjudged that....., of..... should deliver to....., of....., certain goods, that is to say (here enumerate the goods): —
These are therefore to require and order you that you do (subject to any order of the magistrate made under the Act) seize the said goods and forthwith deliver them into the possession of the said....., and if the said goods or any of them cannot be found, that you distrain all the goods of the defendant and them hold till the defendant shall deliver such unfound goods to you: Provided that you shall (subject as aforesaid), at the request of the plaintiff, cause to be made by distress and sale of the goods and land of the defendant the assessed value of the said goods or any of them specified by the plaintiff in lieu of seizing or causing delivery of the same as aforesaid: And these are further to require you that you do by distress and sale of the defendant's goods and land cause to be made the sum of \$....., which said sum was adjudged to be paid by the said..... to the said.....for damages for detention (or trespass) of (or against) the said goods: And that you also cause to be made by distress and sale of the defendant's goods and land the costs awarded by the said judgment

and the costs of the assessment of the value of the said goods or any of them, as well as the expenses of executing this warrant, and all expenses of and incidental to the issue of the same, and that you make return of what you shall have done under this warrant as soon as practicable after the issue thereof.

The costs awarded by the said judgment are \$.....

The costs of the said assessment are \$..... (or will hereafter be certified to you by me if and when the said assessment is made).

The expenses of and incidental to the issue of this warrant are \$.....

The assessed value of the goods (or of certain of them) is as follows (or will be certified by me to you if and when made): —

Given under the seal of the court this.....day of....., 20.....

.....
Clerk of the court.

Note — This warrant does not authorise the seizure or sale of property protected by section 126 of the Act.

176 — Notice to distrainer of goods intended to be replevied

(Heading as in Form 1)

Take notice that A.B.....of, etc., whose goods (or cattle) you have distrained, intends to replevy the same, and has proposed as his sureties for the due prosecution of an action of replevin against you in the (here mention the court in which the action is to be brought), E.F. of, etc., and G.H. of, etc., and that if you have any valid objection to make to the proposed sureties, or either of them, you must attend at (here insert place of office of Clerk), on the.....day of.....20....., at the hour of.....when the bond will be submitted to me for approval.

.....
Clerk of the court.

To.....of.....

**177 — Bond in replevin where action to be commenced in
Supreme Court**

Know all men by these presents, that we, A.B. of, etc., C.D. of, etc., and E.F., of, etc., are held and firmly bound unto G.H. (the distrainer) of, etc., in \$.....to be paid to the said G.H. or his certain attorney, executors, administrators or assigns, for which payment to be made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this.....day of....., 20.....

Whereas the abovenamed C.D. and E.F., at the request of the said A.B., have agreed to enter into the abovementioned obligation, and his security has been approved of by....., the clerk of the Local Court of....., held at....., as appears by his allowance in the margin hereof;

Now the condition of this obligation is such, that if the abovebounden A.B. do and shall within one week from the date of the said obligation commence an action of replevin against the abovenamed G.H. in the Supreme Court for taking and unjustly detaining of certain goods of the said....., to wit, (here insert the description of the goods), and prosecute such action with effect and without delay, and unless judgment be obtained thereon by default, do and shall prove before the said court of.....that he the said..... had good ground for believing that the title of the hereditament in respect of which the distress was made was in question (or, as the case may be), and do and shall also make return of the said goods if return thereof shall be awarded, then this obligation shall be void and of no effect, otherwise shall be and remain in full force.

A.B.	(L.S.)
C.D.	(L.S.)
E.F.	(L.S.)

Signed, sealed and delivered by the abovebounden in the presence of.....
.....

Note — If a deposit of money be made, the memorandum thereof should follow the terms of the conditions of the bond.

**178 — Bond in replevin where action to be commenced in
Local Court**

Know all men by these presents, that we A.B. of, etc., C.D. of, etc., and E.F., of, etc., are held and firmly bound unto G.H. (the distrainer) of, etc., in the sum of \$....., to be paid to the said G.H., or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly, and severally, firmly by these presents.

Sealed with our seals, and dated this.....day of.....
20.....

Whereas the abovenamed C.D. and E.F., at the request of the said A.B., have agreed to enter into the abovementioned obligation, and this security has been approved of by....., the clerk of the Local Court of....., holden at....., as appears by his allowance in the margin hereof:

Now the condition of this obligation is such, that if the abovebounden A.B. do and shall within one month from the date of the said obligation commence an action of replevin against the abovenamed G.H. in the Local Court of....., held at....., for taking and unjustly detaining certain goods of the said....., to wit (here insert the description of the goods), and prosecute such action with effect and without delay, and do and shall also make return of the said goods if return thereof shall be adjudged, then this obligation shall be void and of no effect, otherwise the same shall be and remain in full force.

A.B. (L.S.)
C.D. (L.S.)
E.F. (L.S.)

Signed, sealed, and delivered by the abovebounden in the presence of.....
.....

Note — If a deposit of money be made, the memorandum thereof shall follow the terms of the conditions of the bond.

179 — Warrant to bailiff to replevy

(Heading as in Form 2)

Whereas.....hath given security as well to commence his action of replevin against.....for the taking and unjustly detaining of certain goods (or cattle) of the said.....that is to say:.....and prosecute such action with effect and without delay, as also to return the said goods if return thereof shall be adjudged: Now as clerk of the said Local Court, and by virtue of the provisions of the *Local Courts Act 1904*, I hereby authorise and direct you without delay to replevy and deliver the said goods to the said and forthwith to return to me this warrant and what you shall have done under the same.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the bailiff of the court.

In obedience to this warrant, I have replevied and caused to be delivered to the within-named.....the withinmentioned goods.

Dated this.....day of....., 20.....

.....
Bailiff.

180 — Judgment for defendant in replevin for rent

—————
(Heading and conclusion as in Form 2)
—————

Upon hearing this action at a court held this day, it is adjudged that the plaintiff do return to the defendant the goods (stating the particulars thereof), and pay to the clerk of the court, forthwith (or on the.....day of.....) the sum of \$.....for costs of suit (or, It is adjudged that the amount due for rent in arrear from the plaintiff to the defendant is \$....., and that the goods were of the value of \$....., and that the plaintiff do forthwith (or on the.....day of.....) pay to the clerk of the court, at his office, the said sum of \$.....and also the sum of \$....., for costs of suit.)

—————
181 — Judgment for defendant in replevin of cattle damage feasant

—————
(Heading and conclusion as in Form 2)
—————

Upon hearing this action at a court held this day, it is adjudged that the plaintiff do return to the defendant the cattle (here specify the cattle), or do pay to the clerk of this court, forthwith (or on the.....day of....., 20.....), the sum of \$....., which is now adjudged to be the amount of damage sustained by the defendant.

It is also adjudged that the plaintiff do pay to the clerk of the court, on the day and year aforesaid, the sum of \$....., for costs.

182 — Interlocutory order in the nature of an injunction

—————
(Heading as in Form 2)
—————

The plaintiff undertaking (by his counsel or solicitor) to abide by any order this court may make as to damages, in case this court shall hereafter be of opinion that the defendant shall have sustained any, by reason of this order, which the plaintiff ought to pay: Now, therefore, C.D., the defendant in this cause, his servants, agents, and workmen, are hereby strictly enjoined and restrained from until the day after the day upon which the cause shall be heard, or until further order (or until the.....day of....., upon which day this court will consider whether this order shall be further continued).

Dated this.....day of....., 20.....

.....
Magistrate.

If you, the said C.D. (your servants, agents, or workmen), act in disobedience to this order, you, the said C.D., will be liable to be proceeded against under section 155 of the Act.

—————
183 — Notice to be endorsed on order under Order 23, rule 5

To A.B., of.....

Take notice that, unless you obey the directions contained in this order you will be guilty of a contempt of court and liable to be committed to prison.

Dated this.....day of....., 20.....

.....
Clerk of the court.

184 — Praecept for summons for examination in aid of execution

(Heading as in Form 3)

I apply for issue of a summons against the judgment debtor.....
.....of.....to attend to
be orally examined as to whether any and what debts are owing to him.

\$

Amount of judgment (or order) and costs.....

Add subsequent costs.....

Less amount paid by judgment debtor.....

* Add costs of this summons — \$

Court fee including post fee.....

Home }
Foreign } service.....
Plaintiff }
}

Kilometrage.....

Conduct money.....

Add solicitor's costs.....

* Amount due..... \$

* To be filled in by the clerk of the court

Date..... Judgment creditor (or solicitor).

Office memoranda.

Date lodged..... Date fixed for hearing Date issued.....

..... By.....

Assessed by..... Credit \$ Checked and entered by.....

**185 — Summons for examination in aid of execution on a judgment
or order of a Local Court**

(Heading as in Form 3)

Whereas the judgment creditor obtained a judgment against the judgment debtor, particulars of which appear hereunder: and whereas the said judgment remains unsatisfied.

You are therefore summoned to appear personally at the sittings in chambers of this court to be held at.....m. on.....theday of.....20....., to be orally examined as to whether any and what debts are owing to you and whether you have any and what other property or means of satisfying the judgment.

Take notice that you then and there are required to produce all savings bank pass books and other bank pass books in your name and all books deeds papers and writings of whatsoever nature in your possession or power, in any way relating to your financial affairs.

Further take notice that unless you appear as required by this summons you will be liable to arrest under section 144(2) of the Act.

Dated this.....day of....., 20.....

.....
Clerk of the court.

Particulars of judgment.

\$

Amount of judgment (or order) and costs.....

Subsequent costs (if any).....

Deduct amount paid by judgment debtor.....

Amount for which summons required.....

Fees for issuing this summons —

Court.....Ser.....K.....CM.....

Solicitor's costs.....

Total.....

To(judgment debtor)

.....

..... Conduct money.....

185A — Praeceptum for bench/chamber warrant to arrest judgment debtor under section 144(2) of the Act

—————
(Heading as in Form 3)
—————

I apply for the issue of a bench/chamber warrant for the arrest of.....
.....
of.....who was summoned to appear
to be examined pursuant to section 144 of the *Local Courts Act 1904* and who
failed to attend this court.

(Proceed as in Form 128A, omitting first paragraph)

—————

185B — Warrant to arrest judgment debtor under section 144(2) of the Act

—————
(Heading as in Form 3)
—————

Whereas.....of..... was duly summoned to
appear to be examined pursuant to section 144 of the *Local Courts Act 1904* at a
court this day held and, at the time of being so summoned, payment (or a tender
of payment) of his reasonable expenses was made.

(Proceed as in Form 128B, omitting first paragraph)

—————

**185C — Order under section 144(4) for production of books, deeds,
papers or writings**

(Heading as in Form 3)

Whereas.....of.....being this day present
in court having been duly summoned to be examined pursuant to section 144 of
the *Local Courts Act 1904* refused (or neglected) to produce (here describe what
he was required by summons to produce):

It is hereby ordered that the said.....do,
on or before the.....day of....., 20.....,
produce and leave with the clerk of this court at his office, situate at.....
....., the following (here describe what he was required
by summons to produce).

Given under the seal of the court this.....day of....., 20.....

By the court,

.....
Clerk of the court.

**185D — Application for order for examination in aid of
seizure under the *Fines, Penalties and Infringement
Notices Enforcement Act 1994***

In the Local Court of Western Australia, held at

No.

Between

A.B. sheriff of Western Australia,

and

C.D. offender.

I, [name], the sheriff of Western Australia, apply for an order under section 69(1) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* that [name] of [address] being the [offender/a person having management of the body corporate that is the offender]* personally attend —

- (a) to be examined as to the existence and whereabouts and value of any property that may be seized under a warrant of execution issued against the offender under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, including any debts due to the offender; and
- (b) to produce all documents relevant to any such property.

Dated this day of

.....
Sheriff (or solicitor)

Order granted/refused*

Dated this day of

.....
Magistrate

[* *Delete whichever does not apply.*]

**185E — Order for examination in aid of seizure under
the *Fines, Penalties and Infringement Notices
Enforcement Act 1994***

(Heading as in Form 185D)

1. On [date] a warrant of execution was issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to the sheriff in respect of the offender.
2. You, [name] of [address] are ordered to appear personally at the sittings of this court to be held at [place] on [date] at [time] —
 - (a) to be examined as to the existence and whereabouts and value of any property that may be seized under the warrant of execution, including any debts due to the offender; and
 - (b) to produce all documents relevant to any such property.
3. If you do not appear as required by this Order you may be dealt with under section 155 of the *Local Courts Act 1904*.

Dated this..... day of.....

.....
Magistrate

Amount outstanding

Fine/amount forfeited		\$.....
Enforcement fees	+	\$.....
Sub-total	=	\$.....
Less any amount paid	-	\$.....
Amount outstanding	=	\$.....

To [name and address of person ordered to appear]

185F — Interpleader summons to a claimant of property

In the Local Court of Western Australia, held at.....

No.

Between

A.B.sheriff of Western Australia,

and

C.D.offender.

and

E.F.claimant.

1. You, the claimant, are summoned to appear at a court to be held at [time] on [date] at [location] to support a claim made by you to certain property taken by the sheriff pursuant to a warrant of execution issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* against the offender.
2. You must, 5 clear days before the hearing date, leave at my office particulars of —
 - (a) your full name, address, and occupation;
 - (b) the property claimed by you; and
 - (c) the grounds of your claim,and if you do not provide those particulars your claim will not be heard by the court.

Dated this day of

.....
Clerk of the court

To [name and address of claimant]

185G — Particulars of claim under interpleader summons

(Heading as in Form 185F)

1. I, E.F., of [*address and occupation*], claim the following property:
..... [*or specified in an attached Schedule*], taken by the sheriff pursuant to a warrant of execution issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* against the offender.
2. The grounds of my claim are as follows: [*or specified in an attached Schedule*].

Dated this day of

.....
E.F., claimant

To the sheriff.

186 — Warrant of attachment

(Heading as in Form 2)

To the bailiff of the said court, and all peace officers within the jurisdiction of the said court, and to the superintendent of the (here insert prison used by the court).

Whereas by an order bearing date the.....
day of....., it was ordered that the defendant C.D. should stand committed to prison for contempt of this court, for that he (here describe the contempt).

These are, therefore, to require you forthwith to arrest and apprehend the defendant, C.D., and him safely convey and deliver to the superintendent (or keeper) of the (prison used by this court), and you, the said superintendent (or keeper), to receive the defendant C.D. until the further order of this court.

Dated this.....day of....., 20.....

.....
Clerk of the court.

187 — Notice of application for discharge from custody

(Heading as in Form 1)

Take notice that I intend on the.....day of....., 20....., to apply to the magistrate of this court (or the clerk of this court) to discharge me from custody, on the grounds appearing on the affidavit served you herewith.

Dated this.....day of....., 20.....

To A.B., Plaintiff.

C.D., defendant.

188 — Order of discharge from custody

(Heading as in Form 2)

Upon application made this.....day of....., by.....for the defendant, who was committed to prison under section 155 (or 68) of the Act, by order of this court, dated the..... day of....., 20....., and upon reading the affidavit of the defendant, filed the.....day of20....., showing that he has given satisfactory security that he will do the act required to be done by him (or will cease to do the act prohibited or that he has cleared or is desirous of clearing his contempt or that it is just and expedient that he should be released), and upon hearing.....for the plaintiff (or if no one appears for plaintiff, then upon being satisfied that the notice of this application has been duly served upon the plaintiff).

It is ordered that the said defendant be discharged out of the custody of the superintendent of (here insert name of prison) as to the said contempt.

(Add if so ordered: And it is ordered that the said defendant do pay the costs of the plaintiff of this application, such costs to be taxed by the clerk and paid by the defendant to the clerk within 14 days from the date of the certificate of taxation).

Dated this.....day of....., 20.....

.....
Clerk of the court.

189 — Notice of change of solicitor

(Heading as in Form 1)

Take notice that I, A.B. (or C.D.), who have hitherto employed G.H. of.....
.....as my solicitor in the abovementioned action, have ceased
to employ him, (and that my present solicitor is I.K., of.....)

A.B. (or C.D.)

Dated this.....day of....., 20.....

To the clerk of the court and to

190 — Notice to bailiff of foreign court of complaint against him

(Heading as in Form 2)

Take notice that, unless you show cause to the contrary, the magistrate of this
court will on the.....day of.....,
20....., make an order directing you to pay to the judgment creditor the sum of
\$..... as compensation for loss of time and expense incurred by him
owing to your neglect to return the copy of the summons in this action within
due time.

191 — Notice to bailiff of foreign court of order against him for neglect

(Heading as in Form 2)

On the application of the abovenamed plaintiff made the.....
day of....., and you not having shown good cause to
the contrary, it is ordered that within.....days of the service of this order
upon you, you do pay to me for the use of the said judgment creditor, the sum of
\$..... as compensation for loss of time and expense incurred by him
owing to your neglect to return to me the copy summons herein.

Dated this.....day of....., 20.....

.....
Clerk of the court.

To the bailiff, Local Court.

192 — Summons under section 21 of the Act, for neglect to levy execution

(Heading as in Form 1)

And in the matter of a complaint made by.....
of....., and section 21 of the *Local Courts Act 1904*.
To E.F.....of....., bailiff of the said court.
You are hereby summoned to appear at a court to be held at.....
.....on.....the.....day of.....
at..... o'clock in the forenoon, to answer a complaint made against you
by..... of..... that you, being
employed to levy an execution against the goods and land of.....
....., did by neglect (or connivance or omission) lose the opportunity
of levying such execution, and to show cause why an order should not be made
against you under section 21 of the *Local Courts Act 1904*, for payment of such
damages as it shall appear that the saidhas sustained by
such your neglect (or connivance or omission).

Dated this.....day of....., 20.....

.....
Clerk of the court.

(To be served personally 10 clear days before the return day).

193 — Order under section 21 of the Act, awarding damages for neglecting to levy execution

(Heading and conclusion as in Form 2)

It is this day adjudged that E.F.,.....of....., bailiff of this court, do pay the sum of \$..... for damages sustained by.....of.....by reason of the said E.F.....having by neglect (or connivance or omission) lost the opportunity of levying an execution against the goods of....., and the sum of \$.....for costs, amounting together to the sum of \$.....: And it is ordered that the said E.F.....do pay the said sum of \$.....to the clerk of this court on the.....day of..... (or by instalments of.....for everydays, the first instalment to be paid on the.....day of).

Dated, etc.

**194 — Summons under section 24 of the Act for extortion or
misconduct**

—————
(Heading as in Form 1)
—————

And in the matter of a complaint made by.....of.....,
and section 24 of the *Local Courts Act 1904*.

To E.F....., of....., bailiff (or other
officer) of the said court. You are hereby summoned to appear at a Local Court
to be held at.....on.....the.....day of
....., at.....o'clock in the forenoon, to answer a
complaint made against you by.....of.....
that you have, while acting under colour or pretence of the process of the court,
been guilty of extortion (or misconduct) in that you (here state particulars of
extortion or misconduct alleged) (or as stated in the particulars annexed) (annex
particulars of extortion or misconduct alleged) (or that you have not duly paid or
accounted for certain moneys levied by you against.....of.....
at the suit of....., under the authority of the *Local Courts Act 1904*),
and to show cause why an order should not be made against you under
section 24 of the *Local Courts Act 1904*, for the repayment of the money
extorted by you (or for the due payment of the money so levied by you) and for
the payment of such damages and costs as the magistrate shall think just, and for
the payment of a fine for each offence so committed by you.

Dated this.....day of....., 20.....

.....
Clerk of the court.

(To be served personally 10 clear days before the return day.)

195 — Order under section 24 of the Act, for repayment of money extorted, or payment of money levied, and for damages, costs, and fine

(Heading and conclusion as in Form 2)

It is this day adjudged that E.F....., of....., bailiff (or other officer) of the court, do repay the sum of \$....., extorted by him from....., under colour or pretence of the process of this court (or do pay the sum of \$....., levied by him against....., of....., at the suit of....., under the authority of the *Local Courts Act 1904*, and not duly paid over or accounted for by him) and the sum of \$.....for damages sustained by....., of....., by reason of such extortion (or the neglect of the said E.F.....to pay over the said moneys so levied by him) (or by reason of the misconduct of the said E.F....., while acting under colour or pretence of the process of the court, in that (here state particulars of the misconduct proved) and the sum of \$.....for costs):

And it is further adjudged that the said E.F.....do forfeit and pay the sum of \$.....for the offence (or for each offence) so committed by him in (here state particulars of each offence in respect of which a fine is imposed) the sums to be paid by the said E.F....., amounting together to the sum of \$.....

And it is ordered that the said E.F....., do pay the said sum of \$.....to the clerk of this court on the.....day of(or by instalments of.....for every.....days, the first instalment to be paid on the.....day of.....).

**196 — Order under section 156 of the Act for imprisonment or fine
for insult or misbehaviour**

In the Local Court of Western Australia held at.....

Whereas on the.....day of....., A.B.
wilfully insulted the magistrate during his sitting in court (or in going to (or
returning from) the court) (or C.D.the clerk or E.F.,
the bailiff, or G.H., a bailiff (or officer) of the court, or
J.K., a witness, during his attendance at the court), (or in
going to (or returning from) the court) (as the case may be), (or wilfully
interrupted the proceedings of the court or misbehaved in court):

It is hereby ordered that the said A.B.do stand
committed for.....days to Her Majesty's prison at.....
(here insert prison used by the court) for such offence.

Or, It is hereby ordered that the said A.B.....do forfeit
and pay the sum of \$.....for such offence:

And it is ordered that the said A.B.do pay the said sum of \$.....
to the clerk of this court forthwith:

And that in default of payment the said A.B. be imprisoned in Her Majesty's
prison at....., and there kept for the space of..... days, unless
the said fine be sooner paid.

Given under the seal of the court this.....day of....., 20.....

.....
Magistrate.

**197 — Warrant of commitment under section 156 of the Act, for
insult or misbehaviour**

In the Local Court of Western Australia held at.....
To the bailiff of the said court, and all peace officers within the jurisdiction of
the said court, and
To the superintendent of the (prison used by the court).
Whereas on the.....day of.....,
A.B.....wilfully insulted the magistrate during his sitting in court (or
as the case may be, reciting the insult or misbehaviour as stated in the order,
Form 196), and the magistrate thereupon ordered that the said A.B.....
should stand committed for.....days to Her Majesty's prison at
.....for such offence: (or should forfeit and pay the sum of
\$......for such offence and in default of payment should be imprisoned in
Her Majesty's prison at for.....days, unless the said
fine should be sooner paid. And whereas the said A.B. has made default in
payment of the said fine.
These are, therefore, to require you, the said bailiff and others to take the said
A.B..... and to deliver him to the superintendent of the abovenamed
prison, together with this warrant, and you, the said superintendent, to receive
the said A.B....., and him safely keep in the said prison for
..... days from the arrest under this warrant (unless the said fine shall be
sooner paid) or until he shall be sooner discharged by due course of law.
Given under the seal of the court this.....day of....., 20.....
.....
Magistrate.

**198 — Notice of judgment or order to party directed to be served
with notice thereof**

(Heading as in Form 1)

Take notice that on the.....day of.....
judgment (or order) of which a copy is hereunto annexed was made in this
action (or matter), and that from the time of the service of this notice on you,
you will be bound by the proceedings in this action (or matter) in the same
manner as if you had been originally made a party to it, and that you may attend
the proceedings under the said judgment (or order) and that you may apply to
the court to discharge, vary, or add to the said judgment (or order).

Dated this.....day of....., 20.....

.....
Clerk of the court.

To.....

199 — Summons to parties to attend upon taking accounts

(Heading as in Form 1)

Let all parties concerned attend at my office at.....,
on.....the.....day of.....20....., at
.....o'clock in the.....noon, to proceed with the accounts and
inquiries directed by the judgment (or order) herein, dated theday
of....., 20.....

Dated this.....day of....., 20.....

.....
Clerk of the court.

200 — Clerk's certificate

(Heading as in Form 1)

In obedience to the order of this court made in the above action, I hereby certify that the result of the accounts which have been taken in pursuance of themade in this.....dated theday of....., 20....., is as follows: —

The plaintiffs and defendants have attended by themselves or by their respective solicitors.

Notice of order.

Notice of the said order of the.....day of....., 20....., has been served upon.....

Service of notice of the said order upon the said..... was dispensed with.

References to account.

The particulars of the above receipts and payments appear in the account marked A verified by the affidavit of the said defendant, filed the.....day of....., and the account marked B verified by the affidavit of....., filed the.....day of....., and which accounts are to be filed with this certificate.

Variations from accounts.

Except that in addition to the sums appearing in such account to have been received, the said defendants (or plaintiff) are (or is) charged with the following sums; (that is to say) \$....., and except that of the items of disbursement in the said account I have disallowed those numbered....., and I have deducted from the item numbered....., the sum of \$.....and from the item numbered....., the sum of \$....., and in addition to the disbursements appearing in such account the said defendants (or plaintiff) have (or has) paid and been allowed the sum of \$.....

Special allowances in accounts.

The payments allowed to the said defendants (or plaintiff) in the said account include the sum of \$....., paid into court to the credit of this action, on the.....day of....., 20.....

Reference to transcript of account.

The beforementioned account marked A has been altered, and the account marked A B, and which is also to be filed with this certificate, is a transcript of the said account marked A as altered and passed.

Dated this.....day of....., 20.....

.....
Clerk of the court.

201 — Notice that clerk’s certificate may be inspected

.....
(Heading as in Form 1)
.....

Take notice, that the certificate of the result of the inquiries made and accounts taken by me under the judgment (or order) of this court made on the.....day of....., in this action (or matter) lies in my office, and can be inspected by you up to and inclusive of the.....day of....., (here insert the day before that on which the action or matter is to be further heard).

.....
Clerk of the court.

To.....

.....

Part II
Table of court fees

Service	Claim not exceeding \$5 000	Claim exceeding \$5 000 but not exceeding \$10 000	Claim exceeding \$10 000
1. For entering any plaint, including an action for a small debt;	\$51.00	\$105.00	\$208.00
For commencing proceedings under the MWSS&D Act Part VIII (6)(iii), for each parcel of land; or	\$51.00	\$105.00	\$208.00
For filing any originating summons	\$51.00	\$105.00	\$208.00
2. Defence, set-off or counterclaim; <i>(one fee payable irrespective of number of defendants)</i> or Chambers Application filed by a defendant	\$40.00 <i>(irrespective of value of claim)</i>		
	\$40.00 <i>(irrespective of value of claim)</i>		
3. Hearing fee, including trial fee, or hearing in Chambers, or on any matter listed <i>(not payable for small debts or residential tenancies proceedings or hearing of set-off or counterclaim)</i> <i>(Payable only where the person applying is the plaintiff)</i>	\$64.00	\$130.00	\$221.00
Garnishee proceedings where hearing fee not previously collected	\$51.00	\$73.00	\$95.00
4. Application for summary judgment (s. 47A)	\$51.00	\$73.00	\$95.00
5. Enforcement proceedings of			

Local Court Rules 1961
Schedule

Service	Claim not exceeding \$5 000	Claim exceeding \$5 000 but not exceeding \$10 000	Claim exceeding \$10 000
any kind, including warrant under the MWSS&D Act or Restraint of Debtors Act (<i>only one fee is payable for the issue of any one or more processes</i>)	\$26.00	\$52.00	\$104.00
6. Examination of witness <i>de bene esse</i> before a clerk – for the first hour or part thereof	\$19.00	\$36.00	\$55.00
for every subsequent hour or part thereof	\$12.00	\$25.00	\$36.00
7. Appeal motion, application or proceeding within jurisdiction that is not specifically provided for (<i>includes hearing fee, summons to witness and issue of order</i>)	\$64.00	\$130.00	\$221.00
Stating case for Supreme Court	\$98.00 irrespective of value of claim		
8. Miscellaneous fees to be paid irrespective of value of claim —			
(a) Search	\$11.50		
(aa) Fee per action or matter specified in information under Order 2 rule 5A(3)	\$1.00		
(ab) Annual fee for information provided by email under Order 2 rule 5A(4)	\$30 000.00		
(b) Service of summons authorised by post, inclusive of postage	\$18.50		

Service	Claim not exceeding \$5 000	Claim exceeding \$5 000 but not exceeding \$10 000	Claim exceeding \$10 000
(c) Issue of any duplicate document or order under O. 38 r. 21 or r. 22	\$14.00		
(d) Issue of any copies of other documents	\$1.00 per page (<i>an additional fee of \$6.00 is to be paid per document for certifying that the document is a true copy</i>)		
(e) Copies of transcript of proceedings or notes of evidence supplied to a party to the proceedings	\$4.50 per page (Minimum fee of \$15.00 is payable)		
(f) For each copy of a transcript in electronic format if a fee has been paid under paragraph (e) by the applicant for a copy of the transcript	\$10.00 for each day of the transcript		
(g) For each copy of a transcript not in electronic format if a fee has been paid under paragraph (e) by the applicant for a copy of the transcript	\$1.50 per page		
9. Taxing Costs	For the first \$1 300 of a bill — \$0.05 for each \$1.00 of the amount of the filed bill (<i>amounts of less than \$1.00 to be disregarded</i>); For any part of a bill exceeding \$1 300 — \$0.025 for each \$1.00 in excess of \$1 300. (<i>Minimum fee of \$11.50 is payable regardless of amount of bill</i>)		

Table of Bailiff fees

Item	Service	Fee
1. (a)	<u>Service</u> of any process when non-personal service may be utilised	\$18.00
1. (b)	<u>Service</u> of any process requiring personal service	\$25.00
1. (c)	<u>Additional fee</u> where an attempt to effect any service is unsuccessful and the clerk is satisfied that the failure was not due to any fault of the bailiff and that a further attempt to effect the service is necessary one additional fee not exceeding 50% of fee prescribed by either item 1(a) or 1(b) is payable.	
2. (a)	<u>Warrant fee</u> which includes execution, (attempted execution), initial attendance, initial enquiry, seizure of goods, service of any notice and returns, investigation, appraisal of seizable goods, arrest and conveying a debtor to court when executing a bench warrant or chamber warrant, and eviction when executing a warrant of possession	\$48.00
2. (b)	<u>Enquires</u> or <u>attendances</u> prior to execution	\$25.00
2. (c)	<u>Inspection</u> of chattels under seizure	\$25.00
	<u>NOTE:</u> Where the bailiff has several warrants only one fee is chargeable to the first warrant in priority	

Item	Service	Fee
3. (a)	<p><u>Kilometrage</u></p> <p>For kilometres travelled on execution of a warrant or other process, or on service of a summons other process or document, or on making an arrest or for all other necessary attempts, attendances and inspections for each kilometre (one way) from the bailiff's office</p>	<p>\$0.90 for travel in the metropolitan area \$1.00 for travel outside the metropolitan area or such additional fee as the clerk may allow</p>
	<p><u>NOTE:</u> Where more than one process or document is executed or served at the same time on the same person or on different persons at the same address, only one allowance for kilometres travelled shall be chargeable.</p> <p><u>NOTE:</u> In addition to the above the bailiff may charge kilometrage to convey a debtor from a place of arrest to court or a lockup provided the clerk is satisfied those duties have been carried out and where a bailiff will be required to travel an excessive distance the clerk may require kilometrage to be prepaid into court. Prepaid fees shall be allowed or disallowed by the clerk upon completion of execution.</p> <p><u>NOTE:</u> Outside the metropolitan region kilometrage is not claimable for the first 6 kilometres by bailiffs stationed at Albany, Bunbury, Geraldton or Kalgoorlie when serving or executing a process.</p>	
3. (b)	<p><u>Special fee to bailiff at Albany, Bunbury, Geraldton or Kalgoorlie (for each process or document for service or execution in any one action) —</u></p>	
	<p>(i) where there is one person named on the process or document</p>	\$6.50
	<p>(ii) where there is more than one person named on the process or document —</p> <p style="padding-left: 20px;">(I) for the first named person at the same address</p>	\$6.50

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Item	Service	Fee
	(II) for each other person at the same address	\$2.20
	(III) for each person at a different address	\$6.50
4.	<p><u>Preparation for sale</u> Provided the clerk is satisfied duties have been carried out, the following fees are allowed —</p> <p>For each REVS or other official record search (personalty) \$6.00</p> <p>Bill of sale and encumbrance search (personalty) \$12.00</p> <p>Encumbrance investigation (realty) \$53.00</p> <p>Implementation of an advertising program (realty or personalty) \$65.00</p>	
5.	<p><u>Attendance at sale</u> (or to cancel same)</p>	\$55.00
6.	<p><u>Poundage</u></p> <p>(a) Poundage on executing a warrant of execution or other process under or by reason of which money is received by the bailiff or by the judgment creditor — after seizure 5% on the first \$13,500.00 and 2.5% on the balance above that amount</p> <p>(b) Where the sale of land, interest in land, or goods or chattels is conducted by a licensed auctioneer instructed by the bailiff, poundage shall be charged at one-half the abovementioned rates</p>	
	<p><u>NOTE:</u> For the purpose of this item —</p> <p>(a) the service of a warrant of execution on the Registrar of Titles under section 133 of the <i>Transfer of Land Act 1893</i> (in the case of land or an interest in land); or</p>	

Item	Service	Fee
	<p>(b) <u>the seizure of chattels in the possession or apparent possession of the judgment debtor, is or is deemed to be "seizure".</u></p> <p><u>NOTE:</u> Poundage is to be calculated on the amount realised at the sale but the maximum amount upon which poundage is to be calculated is the amount of the judgment debt notwithstanding sale proceeds may exceed the amount of the judgment debt.</p>	
7.	Where the sale, whether by public auction or otherwise, is conducted by the bailiff or his officer without the intervention of an auctioneer or agent, poundage of 1% of the proceeds of sale (in addition to that prescribed by item 6(a)) shall be chargeable; but the amount chargeable under this item shall not exceed \$109.00	
8. (a)	Poundage on executing a warrant of possession — 5% on the annual rental value of property as fixed by the clerk, but the amount chargeable under this item shall not exceed \$181.00	
8. (b)	Poundage on executing a warrant of delivery (Replevin) — 5% on the first \$13,500.00 and 2.5% on the balance of the value of the property delivered, as fixed by the clerk	
	<u>NOTE:</u> Poundage as assessed by the clerk must be prepaid and held by the court until execution is completed.	
9.	<p><u>Possession</u></p> <p><u>NOTE:</u> Claimable by bailiff when he enters into close possession of chattels and retains actual physical possession and control.</p> <p><u>NOTE:</u> If this item is claimed an allowance under item 12(d) is not appropriate</p>	<p>\$4.15 per day for maximum of 10 days</p>

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Item	Service	Fee
10.	For auctioneer's or agent's commission, advertising and sundry expenses on account of sale by auction or otherwise of goods or chattels, or land or any interest in land, whether a sale does or does not take place	A fee fixed in accordance with the recognised scale of charges for auctioneers and agents in the State of Western Australia or such other fee as the clerk may allow
11.	Where a sale takes place by auction or private contract, or when no sale takes place — (a) for advertising and giving publicity to any sale, or intended sale, printing catalogues and bills and distributing and posting the same	
	(b) for labour (if any) employed in lotting and showing goods or chattels, preparing catalogues and where a sale takes place by auction attending the sale and superintending the removal of goods or chattels by purchaser (c) travelling expenses	The sums actually and reasonably paid
12.	(a) Assistants required to execute a warrant or order	
12.	(b) Man in possession	

Item	Service	Fee
12.	(c) Out-of-pocket expenses incurred by the bailiff or officer while serving or executing any process including postage, telegraphic and telephonic messages, and travelling expenses of himself and assistants	The sums actually and reasonably paid
12.	(d) Warehousing or storage of goods or vehicles which are being or about to be, or have been removed, and insurance thereof against fire, damage and in the case of motor vehicles, accident and third party risk	
12.	(e) Removal or cartage expenses	
12.	(f) Where animals or other livestock have been removed, for taking charge of same and for their keep while in custody of the bailiff whether before or after removal	
12.	(g) REVS searches, corporate searches and any other search allowed by the clerk	
13.	Where a bailiff is required to attend court in charge of any person including a prisoner ordered to attend for examination pursuant to an order of the court, or to lodge any person in a lock up, the reasonable travelling and other expenses of the officer and the person or prisoner, and in addition for each hour or part of an hour when the officer is necessarily engaged	\$34.75
14.	(a) <u>Attendance</u> on a judgment summons hearing or related matter	\$2.30
	Other situations	\$1.00
14.	(b) <u>Attendance</u> at trial	\$2.70

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Item	Service	Fee
15.	Where a bailiff, or other person employed under a bailiff, shall be necessarily put to and incur extra trouble and expense in the discharge of any duty incidental to his office or employment or for any duty or service not herein provided, such sum or such additional sum, as the case may be, as the clerk may allow	
16.	If GST (within the meaning of section 195-1 of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> of the Commonwealth) is payable on a service listed in this Table of bailiff fees, the fee for the service is the applicable fee in this Table, increased by 10%	

[Part II amended in Gazette 30 Dec 2003 p. 5710-12; 12 Mar 2004 p. 751-6.]

**Part III
Local Court scale of costs**

Item	A Not exceeding \$500	B Exceeding \$500 but not exceeding \$2 000	C Exceeding \$2 000 but not exceeding \$4 000	D Exceeding \$4 000
1. (a) Summons.....	25	45	55	70
(b) For each additional defendant.....	5	5	10	10
2 Entry of Judgment by Default...	10	15	20	30
3 Payment into, or out of court (as part of pleadings only).....	15	20	25	40
4. (a) Notice of Intention to Defend.....	10	15	20	25
(b) Particulars of Defence.....	15-45	20-80	30-100	30-120
(ba) Further and better particulars of claim.....	15-45	20-80	30-100	30-120
(c) counterclaim.....	15-45	20-80	30-100	30-120
5. (a) Reply.....	15-45	20-80	30-100	30-120
(b) Defence to Counterclaim..	15-45	20-80	30-100	30-120
6. Examination of witness before trial pursuant to order, per hour	50	60	65	70
*7. Getting up case for trial.....	100-250	150-450	200-550	250-750
*8. (a) Trial.....	75-250	100-450	150-550	200-750
(b) Extra day.....	75-150	100-250	150-350	150-400
(c) Reserved decision.....	35	40	50	60
9. Application in court, not otherwise provided for.....	25-60	40-100	40-130	30-150
10. (a) Delivery of Interrogatories.....	15-40	20-60	30-75	30-85
(b) Answer to Interrogatories	15-40	20-60	30-75	30-85
11. (a) Notice requiring discovery.....	10	15	20	20
(b) Giving discovery of documents.....	15-40	20-60	30-75	30-85
(c) Inspection and giving inspection per hour.....	20-40	20-50	20-60	20-60
12. Interpleader (uncontested)	40	60	75	75
13. Proceeding in Chambers:				

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Item	A Not exceeding \$500	B Exceeding \$500 but not exceeding \$2 000	C Exceeding \$2 000 but not exceeding \$4 000	D Exceeding \$4 000
(a) Without appearance.....	20	30	40	50
(b) Including appearance by clerk.....	30	40	50	60
(c) Including appearance by solicitor.....	30-80	40-100	50-120	60-150
14. (a) Drawing Bill of Costs copies and service.....	25	40	45	45
(b) Taking accounts, inquiries, taxation of costs — per hour.....	30	45	50	50
15. Enforcement —				
(a) Judgment Summons.....	25	35	40	50
(b) Bench Warrant.....	25	35	40	50
(c) Order of Commitment.....	15	20	25	30
(d) Consent Affidavit.....	15	20	25	30
(e) Warrant of Execution or Possession.....	20	25	30	35
(f) Warrant of Execution where land involved.....	35	50	65	70
16. Certified copy of Judgment.....	15	20	25	25
17. Registration of Supreme or District Court Judgment.....	20	25	30	30
18. Affidavits justifying choice of court.....	20	25	30	30
19. Recovery of Possession — undefended including appearance.....	80	100	120	150
20. Service of any process — Bailiff's scale.....				
21. Allowances to Witnesses: —				
(a) Persons carrying on a profession or business as principals, not exceeding \$100 per day.				
(b) Other adult persons, not exceeding \$60 per day.				
(c) Persons under 18 years of age in receipt of salary or wages, not exceeding \$45 per day.				
(d) Persons under 18 years of age, not in receipt of salary or wages — the amount of any loss in respect of which the Taxing Officer thinks the person should be indemnified, but not exceeding \$35 per day.				
(e) Where any person is required, by reason of the distance which he or she has to travel, to remain away from home overnight, not exceeding an additional \$50 per day.				

Note: In fixing the allowance to be made under paragraphs (b) and (c) of this item, the Taxing Officer shall have regard to the amount of salary or wages actually lost by the witness.

In addition to the above allowances, witnesses residing at a distance from the place of trial or hearing may be allowed reasonable travelling expenses actually paid, excluding any charges for maintenance or sustenance.

The Taxing Officer may also allow such amount as he thinks has been reasonably and properly incurred and paid to witnesses for qualifying to give skilled evidence.

Except by special order of the trial magistrate no allowance shall be made to any expert witness for attendance at court assisting or advising counsel or solicitor for a party during the trial.

In the case of persons giving evidence as experts the allowance in the above scale may be increased in the discretion of the Taxing Officer.

* Assessment of damages 50% of scale.

[Appendix amended in Gazette 14 January 1966 pp.89-104; 26 September 1969 p.2932; 31 December 1969 pp.4391-2; 16 October 1972 pp.4066-8; 23 February 1973 pp.532-3; 2 November 1973 p.4110; 1 February 1974 pp.271-3 (erratum 8 February 1974 pp.323-4); amended in Gazette 11 October 1974 p.3833 (corrigenda 18 October 1974 p.3952); amended in Gazette 31 October 1975 p.4027; 5 March 1976 pp.646-7; 15 April 1976 pp.1177-8; (corrigenda 14 January 1977 pp.62-3); amended in Gazette 29 July 1977 p.2440; 10 February 1978 p.426; 10 March 1978 p.685; 23 March 1978 pp.849-50; 30 June 1978 pp.2138-40 (corrigendum 7 July 1978 p.2264); amended in Gazette 1 August 1980 pp.2547-9; 5 December 1980 pp.4089-93; 4 December 1981 pp.4977-8; 18 December 1981 pp.5176-7; 28 January 1983 pp.320-3; 14 October 1983 pp.4155-7; 9 December 1983 pp.4812-6; 20 January 1984 pp.136-7; 14 September 1984 pp.2904-6; 30 November 1984 p.3951; 7 December 1984 pp.4020-1; 2 August 1985 pp.2690-2; 14 March 1986 p.738; 22 August 1986 pp.2978-9; 19 September 1986 pp.3410-12; 10 April 1987 pp.1299-300; 27 November 1987 pp.4256-7; 27 May 1988 pp.1722-3; 14 April 1989 pp.1094-6; 23 June 1989 pp.1805-6; 4 August 1989 p.2495; 18 August 1989 p.2751; 4 May 1990 pp.2132-3; 26 October 1990 pp.5375-9; 21 June 1991 pp.3025-6; 27 September 1991 pp.4985-90; 28 July 1992 p.3675; 26 January 1993 pp.831-9; 7 October 1994 p.5080; 28 February 1995 pp.681-2; 22 March 1996 p.1428; 25 June 1996 pp.2929-30; 28 August 1998 pp.4752-3 and pp.4754-6; 26 February 1999 pp.619-22; 30 June 2000 pp.3419-20; 12 December 2000 pp 7153-4; 10 July 2001 pp.3439-40; 17 December 2002 p. 5922; 20 December 2002 pp. 6021-5; 30 June 2003 p.2614; 30 Dec 2003 p. 5710-12; 12 Mar 2004 p. 751-6.]

Notes

¹ This is a compilation of the *Local Court Rules 1961* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Local Court Rules 1961</i>	6 Jun 1961 p. 1475-714	7 Jul 1961 (see rule 1(3))
Rules of Court	23 Mar 1965 p. 894	24 Apr 1965
Rules of Court	14 Jan 1966 p. 89-104	15 Feb 1966
Rules of Court	26 Sep 1969 p. 2932	27 Oct 1969
Rules of Court	31 Dec 1969 p. 4391-2	1 Feb 1970
Rules of Court	16 Dec 1971 p. 5227	14 Feb 1972
Rules of Court	6 Oct 1972 p. 4066-8	7 Nov 1972
Rules of Court	23 Feb 1973 p. 532-3	24 Mar 1973
Rules of Court	2 Nov 1973 p. 4110	1 Jan 1974
Rules of Court	1 Feb 1974 p. 271-3 (Erratum 8 Feb 1974 p. 323-4)	2 Mar 1974
Rules of Court	11 Oct 1974 p. 3833-5 (Corrigenda 18 Oct 1974 p. 3952-3)	12 Nov 1974
Rules of Court	31 Oct 1975 p. 4027	1 Dec 1975

Citation	Gazettal	Commencement
Rules of Court	6 Feb 1976 p. 286	7 Mar 1976
Rules of Court	5 Mar 1976 p. 646-7	6 Apr 1976
Rules of Court	15 Apr 1976 p. 1177-8	16 May 1976
Rules of Court	29 Jul 1977 p. 2440	30 Aug 1977
Rules of Court	10 Feb 1978 p. 426	11 Mar 1978
Rules of Court	10 Mar 1978 p. 685	11 Apr 1978
Rules	23 Mar 1978 p. 849-50	24 Apr 1978
Rules of Court	30 Jun 1978 p. 2138-40 (Corrigenda 7 Jul 1978 p. 2264)	31 Jul 1978
Rules	22 Dec 1978 p. 4791	23 Jan 1979
<i>Local Court (Amendment) Rules 1980</i>	1 Aug 1980 p. 2547-9	2 Sep 1980 (see r. 1(b))
<i>Local Court (Amendment) Rules 1980</i>	5 Dec 1980 p. 4091-3	6 Jan 1981 (see r. 2)
<i>Local Court Amendment Rules (No. 2) 1980</i>	5 Dec 1980 p. 4089-91	6 Jan 1981 (see r. 2)
<i>Local Court Amendment Rules 1981</i>	4 Dec 1981 p. 4976-8	5 Jan 1982 (see r. 2)
<i>Local Court Amendment Rules 1981</i>	18 Dec 1981 p. 5176-7	19 Jan 1982 (see r. 2)
<i>Local Court Amendment Rules 1982</i>	12 Nov 1982 p. 4450-1	13 Dec 1982 (see r. 1)
<i>Local Court Amendment Rules 1983</i>	28 Jan 1983 p. 320-3	1 Mar 1983

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Citation	Gazettal	Commencement
<i>Local Court Amendment Rules (No. 2) 1983</i>	25 Feb 1983 p. 646	26 Mar 1983 (see r. 1)
<i>Local Court Amendment Rules (No. 3) 1983</i>	20 May 1983 p. 1523	21 Jun 1983 (see r. 2)
<i>Local Court Amendment Rules (No. 4) 1983</i>	9 Dec 1983 p. 4812-6	1 Mar 1984 (see r. 2 and <i>Gazette</i> 20 Jan 1984 p. 120)
<i>Local Court Amendment Rules (No. 5) 1983</i>	14 Oct 1983 p. 4155-7	15 Nov 1983 (see r. 2)
<i>Local Court Amendment Rules 1984</i>	20 Jan 1984 p. 136-7	1 Mar 1984 (see r. 3)
<i>Local Court Amendment Rules (No. 2) 1984</i>	14 Sep 1984 p. 2904-6	15 Oct 1984 (see r. 2)
<i>Local Court Amendment Rules (No. 3) 1984</i>	30 Nov 1984 p. 3951	31 Dec 1984 (see r. 3)
<i>Local Court Amendment Rules (No. 4) 1984</i>	7 Dec 1984 p. 4020-1	8 Jan 1985 (see r. 2)
<i>Local Court Amendment Rules 1985</i>	17 May 1985 p. 1679	18 Jun 1985 (see r. 2 and <i>Gazette</i> 17 May 1985 p. 1671)
<i>Local Court Amendment Rules 1985</i>	28 Jun 1985 p. 2299	29 Jul 1985 (see r. 2)
<i>Local Court Amendment Rules (No. 2) 1985</i>	2 Aug 1985 p. 2690-2	3 Sep 1985 (see r. 2)
<i>Local Court Amendment Rules (No. 3) 1985</i>	2 Aug 1985 p. 2692	3 Sep 1985 (see r. 2)
<i>Local Court Amendment Rules 1986</i>	14 Mar 1986 p. 738-9	15 Apr 1986 (see r. 3)
<i>Local Court Amendment Rules (No. 2) 1986</i>	22 Aug 1986 p. 2978-9	23 Sep 1986 (see r. 2)
<i>Local Court Amendment Rules (No. 3) 1986</i>	19 Sep 1986 p. 3410-2	20 Oct 1986 (see r. 2)
<i>Local Court Amendment Rules 1987</i>	10 Apr 1987 p. 1299-300	11 May 1987 (see r. 2)
<i>Local Court Amendment Rules (No. 2) 1987</i>	27 Nov 1987 p. 4253-5	1 Jan 1988 (see r. 2)

Citation	Gazettal	Commencement
<i>Local Court Amendment Rules (No. 3) 1987</i>	27 Nov 1987 p. 4255-7	1 Jan 1989 (see r. 2 and <i>Gazette</i> 30 Dec 1988 p. 5083)
<i>Local Court Amendment Rules 1988</i>	27 May 1988 p. 1722-3	28 Jun 1988 (see r. 2)
<i>Local Court Amendment Rules 1989</i>	18 Aug 1989 p. 2751	1 Oct 1989 (see r. 2 and <i>Gazette</i> 18 Aug 1989 p. 2748)
<i>Local Court Amendment Rules (No. 2) 1989</i>	14 Apr 1989 p. 1094-6	15 May 1989 (see r. 2)
<i>Local Court Amendment Rules (No. 3) 1989</i>	23 Jun 1989 p. 1805-6	24 Jul 1989 (see r. 2)
<i>Local Court Amendment Rules (No. 4) 1989</i>	4 Aug 1989 p. 2495	5 Sep 1989 (see r. 2)
<i>Local Court Amendment Rules 1990</i>	4 May 1990 p. 2132-3	5 Jun 1990 (see r. 2)
<i>Local Court Amendment Rules (No. 4) 1990</i>	26 Oct 1990 p. 5375-9	27 Nov 1990 (see r. 2)
<i>Local Court Amendment Rules 1991</i>	21 Jun 1991 p. 3025-6	22 Jul 1991 (see r. 2)
<i>Local Court Amendment Rules (No. 2) 1991</i>	27 Sep 1991 p. 4985-90	28 Oct 1991 (see r. 2)
<i>Local Court Amendment Rules 1992</i>	28 Jul 1992 p. 3675	1 Sep 1992 (see r. 2)
<i>Local Court Amendment Rules 1993</i>	26 Jan 1993 p. 830-40	1 Mar 1993 (see r. 2)
<i>Local Court Amendment Rules 1994</i>	7 Oct 1994 p. 5080	8 Nov 1994
<i>Local Court Amendment Rules 1995</i>	28 Feb 1995 p. 681-2	29 Mar 1995 (see r. 2)
<i>Local Court Amendment Rules (No. 2) 1995</i>	22 Mar 1996 p. 1428	23 Apr 1996 (see r. 2)
<i>Local Court Amendment Rules 1996</i>	25 Jun 1996 p. 2929-30	26 Jul 1996 (see r. 2)
<i>Local Court Amendment Rules 1998</i>	27 Nov 1998 p. 6347	28 Dec 1998

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Citation	Gazettal	Commencement
<i>Local Court Amendment Rules (No. 2) 1998</i>	28 Aug 1998 p. 4752-3	29 Sep 1998 (see r. 2)
<i>Local Court Amendment Rules (No. 3) 1998</i>	28 Aug 1998 p. 4754-6	29 Sep 1998 (see r. 2)
<i>Local Court Amendment Rules (No. 4) 1998</i>	26 Feb 1999 p. 617-22	27 Mar 1999 (see r. 2)
<i>Local Court Amendment Rules (No. 5) 1998</i>	20 Apr 1999 p. 1641	21 May 1999
<i>Local Court Amendment Rules 1999</i>	24 Mar 2000 p. 1641-2	25 Apr 2000
<i>Local Court Amendment Rules 2000</i>	29 Aug 2000 p. 4987-8	30 Sep 2000 (see r. 2)
<i>Local Court Amendment Rules (No. 2) 2000</i>	30 Jun 2000 p. 3419-20	31 Jul 2000 (see r. 2)
<i>Local Court Amendment Rules (No. 4) 2000</i>	12 Dec 2000 p. 7153-4	13 Jan 2001 (see r. 2)
<i>Local Court Amendment Rules 2001</i>	10 Jul 2001 p. 3439-40	11 Aug 2001 (see r. 2)
<i>Local Court Amendment Rules (No. 2) 2001</i>	19 Oct 2001 p. 5608-9	20 Nov 2001 (see r. 2)
<i>Local Court Amendment Rules 2002</i>	17 Dec 2002 p. 5921-2	18 Jan 2003 (see r. 2)
<i>Local Court Amendment Rules (No. 2) 2002</i>	20 Dec 2002 p. 6020-5	21 Jan 2003 (see r. 2)
<i>Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 23</i>	30 Jun 2003 p. 2581-638	1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Local Court Amendment Rules 2003</i>	30 Dec 2003 p. 5710-12	31 Jan 2004 (see r. 2)
<i>Local Court Amendment Rules 2004</i>	12 Mar 2004 p. 750-6	13 Apr 2004 (see r. 2)

[These rules were repealed by the Courts Legislation Amendment and Repeal Act 2004 s. 11\(1\) \(No. 59 of 2004\) as at 1 May 2005 \(see s. 2 and Gazette 31 Dec 2004 p. 7128\)](#)

NB. Section 158(2) of the *Local Courts Act 1904* (No. 51 of 1904) provides that rules of court made under that Act shall not take effect until one month after they are

published in the *Gazette*. Also see sections 61 and 62 of the *Interpretation Act 1984* for provisions relating to the computation of commencement dates.

NB. The *Local Court Amendment Rules (No. 2) 1990* as amended by the *Local Court Amendment Rules (No. 3) 1990* was never published.

² The heading to this provision was deleted by the *Local Court Amendment Rules (No. 5) 1998*, see *Gazette* 20 April 1999 p.1641.

³ Under section 112(1) of the *Public Sector Management Act 1994*, references to the *Public Service Act 1904* are to be construed as references to the *Public Sector Management Act 1994* (No. 31 of 1994).

⁴ Repealed by the *Mental Health Act 1962* (No. 46 of 1962) which was repealed by the *Mental Health (Consequential Provisions) Act 1996* (No. 69 of 1996).

⁵ Footnote no longer applicable.

⁶ Under the *Alteration of Statutory Designations Order (No. 2) 1996*, the former Commissioner of Taxation is known as the Commissioner of State Revenue.

⁷ No. 27 of 1909 of the Commonwealth.

⁸ The *Courts Legislation Amendment and Repeal Act 2004* Pt. 2 Div. 2 reads as follows:

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Division 2 — Transitional provisions

5. Interpretation

In this Division —

“**commencement**” means the commencement of this Division.

6. Clerks of Local Courts

(1) If immediately before commencement a person holds office under the *Local Courts Act 1904* section 13 as a clerk, then on commencement the person is to be taken to have been appointed —

(a) in the case of a person who immediately before commencement is an employee of the department principally assisting the Minister with the administration of the *Local Courts Act 1904* — under the *Magistrates Court Act 2004* section 26(2) as a Registrar of the Magistrates Court;

(b) in any other case — under the *Magistrates Court Act 2004* section 26(2) and (6) as a Registrar of the Magistrates Court.

(2) If immediately before commencement a person holds office under the *Local Courts Act 1904* section 13 as an assistant clerk, then on

commencement the person is to be taken to have been appointed under the *Magistrates Court Act 2004* section 26(2) as a Deputy Registrar of the Magistrates Court.

7. Cases pending

If immediately before commencement an action or matter (as defined in the *Local Courts Act 1904*) is pending before a Local Court, then on commencement the action or matter —

- (a) is to be taken to be a case pending before the Magistrates Court; and
- (b) shall be heard and determined under the *Magistrates Court (Civil Proceedings) Act 2004* as if it is within the civil jurisdiction of the Magistrates Court.

8. Existing summonses and warrants

- (1) If immediately before commencement a summons, warrant or other process issued under the *Local Courts Act 1904*, other than an enforcement process within the meaning of section 143, is in force, then on commencement the summons, warrant or process is to be taken to be a summons, warrant or process issued under the *Magistrates Court (Civil Proceedings) Act 2004*.
- (2) If immediately before commencement a summons or warrant is in force and requires a person to attend or to be brought before a Local Court, then on commencement the summons or warrant is to be taken to require the person to attend or to be brought before the Magistrates Court at the place specified in the summons or warrant.

9. References to *Local Courts Act 1904* to be read as references to *Magistrates Court (Civil Proceedings) Act 2004*

A reference in a written law or book, document or writing to the *Local Courts Act 1904* is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the *Magistrates Court (Civil Proceedings) Act 2004*.

10. References to ‘Local Court’ to be read as references to the ‘Magistrates Court’

A reference in a written law or book, document or writing to a Local Court is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the Magistrates Court.

11. *Local Court Rules 1961* repealed and transitional provision

- (1) The *Local Court Rules 1961* are repealed.

- (2) Until subsection (1) comes into operation, the *Local Court Rules 1961*, as in force immediately before the commencement of this subsection, continue in operation with any necessary changes as if they were rules of court made under the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004* and accordingly may be amended by rules of court made under those Acts.
- (3) If subsection (1) comes into operation before subsection (2), subsection (2) is repealed.

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