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Colonial Secretary's Office, Perth, June 17, 1836.

HIS Excellency the Governor has been pleased to direct the publication of the following Rules and Orders for the Regulation of Proceedings in the Civil Court of Western Australia, made and prescribed by him on the 13th of May of the present year, with the advice of the Executive Council:—

Rules and Orders for the Regulation of Proceedings in the Civil Court of Western Australia, made and prescribed by His Excellency the Governor, with the advice of the Executive Council, the thirteenth day of May, in the year of our Lord one thousand eight hundred and thirty-six.

WHEREAS, by an Order in Council, dated at Saint James's the 1st of November, 1830, His Majesty was pleased to authorise and empower the Governor of Western Australia, and certain Officers mentioned in the same Order, to make and establish all such laws and ordinances, and to constitute such courts and officers, as might be necessary for the peace, order, and good government of His Majesty's subjects, and others, within the said Colony; and whereas, in pursuance and in exercise of the power and authority so conferred by His Majesty's said Order in Council, the said Governor, with the advice of the Legislative Council of the said Colony, by an Act passed on the 10th of February, 1832, intituled *An Act for establishing a Court of Civil Judicature*, have constituted and established a Court of Civil Judicature for the said Colony, under the style or title of "the Civil Court of Western Australia;" and have authorised and empowered the said Governor, with the advice of the Executive Council of the said Colony, to make and prescribe all such rules and orders touching the times and places of sessions, form of process, pleading, and other business and proceedings of the said Court, and of the fees payable therein, as to him and them should seem fit; and such rules and orders, from time to time, to alter, amend or revoke, as occasion might require;— and whereas the said Governor, with the advice of the said Executive Council, by an order bearing date 17th day of February, 1832, did make and prescribe certain rules and orders for regulating the Proceedings of the said Court; but it has been found expedient to alter and amend the same:—NOW THEREFORE, it is hereby declared and ordained by His Excellency the Governor of Western Australia, with

the advice of the Executive Council thereof, that from and after the first day of June next, the rules and orders so made as aforesaid shall be revoked; and that from and after the day last aforesaid, the times and places of sessions, forms of process, pleadings, and other business and proceedings of the said Court, shall be, and be conducted, respectively, according to the following Rules, Orders, and Regulations,—(that is to say.)—1st, The Civil Court shall hold its ordinary Sessions at Perth; but the Governor, or acting Governor, may from time to time, at his discretion, authorise and direct the Court, by proclamation or other public notice, to hold sessions in any other part of the Colony.

II.—The Court shall sit once every Calendar month, for the dispatch of all business within its Jurisdiction, at intervals and nearly equal as may be, including Holidays; and may be adjourned by the Commissioner, from day to day, until all causes ready for trial therein shall be heard and determined; and it shall be competent to the Commissioner, at his discretion, to hold Special Sessions, on the application of any party about to leave the Colony, or upon other reasonable ground.

III.—The Office of the Court shall be at Perth, and shall be open, and attended by the Registrar Clerk, every day (Sundays and duly authorised Holidays of the Court excepted) from 10 o'clock A.M. till 3 o'clock P.M., except on Saturdays, on which the Office Hours shall be from 10 o'clock A.M. till noon. The following days shall be Holidays in the Civil Court, and in the Office thereof,—(that is to say,)—in January, first Circumcision on the 1st, Charles 1st Martyrdom on the 30th; in February, Shrove Tuesday on the 16th, Ash Wednesday on the 17th; in March, Saint David's on the first, and Saint Patrick's on the 17th; in April, Good Friday on the 1st, Easter Monday on the 4th, Easter Tuesday on the 5th, St. George on the 23d; in May Ascension, Holy Thursday 12th, Whit Monday 23d, Charles II. Restoration 29th, kept 30th; in June, Foundation Colony 1st, Battle Waterloo 18th, Accession King William 4th on 25th; July, St. James' on 25th; August, Queen's Birth Day 13th, King's Birth Day 22d; September, Coronation on 7th, St. Michael's 29th; October, St. Luke on 18th, Simon and Jude 28th; November, Powder Plot on 5th, St. Andrew's 30th; December, Christmas on 25th, St. Stephen on 26th, St. John 27th.

IV.—The Commissioner, previously to entering on the duties of his office, shall take and subscribe the following oath, to be administered to him by the Governor, or other officer for the time being administering the Government of the said Colony, and to be preserved among the Records of the Court:—

I swear that I will execute and discharge the duties, powers, and trusts of my office of Commissioner of the Civil Court of Western Australia according to the best of my knowledge, skill and ability, so as shall most promote the ends of Justice; that I will receive no fee, reward, or emolument from any suitor of the said Court for any thing to be by me done in my said office; but that I will avoid corruption, and duly and impartially administer Justice to all parties, and in all causes, within the said court, without fear, favor or affection for any, according to the laws of the said colony. So help me God!

V.—The Registrar Clerk shall, previously to acting as such, take and subscribe the following oath, to be administered to him by the Commissioner of the Court, and to be preserved among the records thereof:—

I swear that I will truly and faithfully execute the office of Registrar Clerk of the Civil Court of W. Australia without fear, favor or affection for any one; and that I will not demand or take or permit or suffer any one under me to demand or take, any other than such lawful fees as shall be allowed by the Rules and Regulations of the said Court to be taken; and that I will duly and faithfully account, whenever ordered by the Commissioner of the said Court so to do, as well for all such fees as aforesaid, as for all monies received by me, by virtue of my said office, for or on account of any other person or persons whomsoever. So help me God!

VI.—The Bailiff of the Court shall in like manner take and subscribe the following oath, to be kept among the records thereof:—

I swear that I will faithfully and diligently serve the office of Bailiff of the Civil Court of Western Australia, and serve and execute all such process thereof as shall be delivered to me for service or execution, without fear, favor or affection for any one; and that I will not by myself, or by any other, demand or receive any other than such lawful fees as I may be permitted by the Rules and Regulations of the said Court to demand or receive, for any thing done by me in my said office. So help me God!

VII.—The Registrar Clerk shall keep a book ruled and divided into columns, headed and intituled according to the form set forth in the Schedule hereunto annexed, which shall be called “the Record Book of the Civil Court;” and shall enter therein all proceedings in the course of any suit or action in the said Court, in manner hereinafter mentioned; and the Commissioner shall as soon as conveniently may be after every court day, examine and sign the entries of proceedings had on such court day. The Commissioner shall also draw up a set of general forms or precedents of Plaints, which the Registrar Clerk shall forthwith transcribe into some suitable book (to be called “the Plaint Book,”) to which he shall also form a convenient Index, and which shall be constantly kept in the office of the Court, for the inspection of persons about to become suitors therein.

VII.—Any person having any claim or right of action of the same nature as any of the claims or rights of action which may be prosecuted in the Court of King’s Bench, Common Pleas, or Exchequer, in England, against any other person or persons resident or being in the said Colony (excepting only the Governor, or other officer for the time being administering the Government of the said Colony, and the Commissioner of the said Civil Court) may apply, either in person or by agent duly authorised in writing, to the Registrar Clerk, at the office of the Court, and state his claim, or the nature and object of his claim, to that officer, who shall enter the same in the proper column of the Record Book, conformably in all material respects to some one or other (as the case may require) of the said general forms or precedents of plaints, to be selected out of the aforesaid Plaint Book either by the plaintiff himself, or, at his option and request, by the Registrar Clerk, who shall not be liable, in such case, to the costs of any amendment that may thereafter become necessary, by reason of any unintentional error by him committed in making such selection. Provided that in case any claim or ground of action shall be stated to the Registrar Clerk for which no appropriate form of plaint shall be found in the said Plaint Book, the Commissioner, on the application of the Registrar Clerk, shall frame a suitable form.

IX.—Where a claim shall be stated by an agent of the plaintiff, such agent shall file with the Registrar Clerk a written warrant or authority, to sue, (Schedule No. 1), or at least an authority to take out a summons, under the hand of his principal, before such summons be issued; unless the Commissioner shall otherwise order, on reasonable presumptive proof of such agent’s authority.

X.—Every such claim, when entered in the Record Book, shall be signed by the plaintiff, or his agent; and shall be in lieu of a declaration of the cause of action; and may be amended at any time before verdict, by leave of, and subject to such terms as may be imposed by, the Commissioner.

XI.—After entry of any such claim, the Registrar Clerk shall issue a summons (except in those cases in which an arrest is applied for and allowed) in the form numbered 2 in the said Schedule, tested in the name of the Commissioner and sealed with the seal of the Court, briefly setting forth the substance of the claim, and warning defendant of the time and place at which respectively he must appear and plead to such claim; the time so appointed being fixed by the Registrar Clerk, with the assent of the plaintiff or his agent, and with due reference to the distance of defendant’s residence from the Court. Every such summons shall

be delivered by the party suing out the same to the Sheriff, to be served in manner hereinafter directed.

XII.—Where husband and wife are sued, service of process on the husband alone shall be sufficient; and where partners are sued, service of process on any one of such partners shall be sufficient. Where any other parties are jointly sued, each must be served with a separate copy of all process issued against them.

XIII.—Where a summons shall be issued against two or more persons jointly, and one or more of them cannot be found, so as to be served therewith, and an affidavit to that effect (Schedule No. 3) shall be made and filed by the Sheriff's Bailiff entrusted with the service of the summons; the Commissioner, on the application of the plaintiff or his agent, in or out of Court, may order (Schedule No. 4) the Sheriff to insert (at the costs of the said plaintiff) a notice (Schedule No. 5) of such joint action in the "Government Gazette," or other Newspaper approved of by the Court, briefly setting forth the names of the parties and the nature of the action, and requiring such of the defendants as cannot be found to appear in Court on a day certain, to be appointed by the Commissioner, for the purpose of defending such action; and if at such day the defendant or defendants so required, or some one duly authorised on his or their behalf, shall not appear, and proof shall be given of the due publication of such notice; such notice and default shall be noted by the Registrar Clerk in the Record Book, and the plaintiff may thereupon proceed in such action against the remaining defendant or defendants, in the same manner as if the defendant or defendants, so making default, had been outlawed by due course of law.

XIV.—If a sole defendant, resident within the said Colony, against whom any such summons as aforesaid shall have issued, cannot be met with so as to be served therewith, and no member of his household or family can be found with whom the same may be left, and the Commissioner shall, by affidavit filed, (Schedule No. 6,) be satisfied thereof of there being reasonable ground to believe that such defendant keeps out of the way purposely to avoid being served with such summons; in such case the Commissioner, at the return of the summons, and on the application of the plaintiff or his agent, may order (Schedule No. 7) the Sheriff to affix on some conspicuous place at or as near as may be to the last known residence of such defendant a written notice (Schedule No. 8) warning such defendant of such action, and requiring him to appear and answer to the same on a day certain, to be appointed by the Commissioner; and may likewise order the Sheriff to cause a like notice to be published in the "Government Gazette," or other newspaper approved of by the Commissioner; and if such defendant, or some one duly authorised on his behalf, do not appear on the day so appointed, and an affidavit (Schedule No. 9) shall be duly made and filed of the due publication of such notice, at defendant's last known residence, and in the said Gazette or newspaper; such notice and default shall be noted by the Registrar Clerk in the Record Book, and final judgment by default shall thereupon be entered against such defendant.

XV.—The summons to appear and plead must be served on a defendant

resident	{	at Perth, or within 3 miles thereof	} at least 3 days	before the time therein appointed for his appearance
		more than 3, and not exceeding 10 miles from Perth	} at least 4 days	
		more than 10, and not exceeding 20 from Perth	} at least 5 days	
		for every additional 10 miles from Perth	} one day in addition to aforesaid 5 days	

XVI.—Where a plaintiff applies for the arrest of a defendant about to leave
(To be continued.)

(Continued.)

the Colony, (under the provisions of the Act of Council 2 Wm. IV, No. 1, section 9,) he shall make and file an affidavit (Schedule No. 10) of his cause of action, and of the grounds of his belief that defendant is about to leave the Colony; and if the same be satisfactory to the Commissioner, he shall endorse thereon an order to the Registrar Clerk to enter the plaint of such plaintiff, and issue a warrant for the arrest of such defendant; and the Registrar Clerk, on such affidavit being filed with him, shall accordingly issue a summons in the form numbered 11 in the said Schedule, under the hand of the Commissioner and seal of the Court; and the plaintiff, or his agent, shall deliver the same for execution to the Sheriff, who shall give to the defendant, at the latter's request and charge, a true copy thereof. Every such warrant shall be made returnable at as early a day as the case in the opinion of the Commissioner may admit, and shall have endorsed thereon by the Registrar Clerk the sum, (to be settled by the Commissioner according to the circumstances of each case, but in no case exceeding double the amount of the debt, sum or value claimed by the plaintiff), for which bail or other security shall be required from such defendant, and also, if such warrant be sued out by an agent, the name of such agent; and every warrant to be thereunder issued by the Sheriff to any his bailiff or deputy shall have endorsed thereon the said sum, the said agent's name, and also the fees and charges lawfully demandable for the arrest.

XVII.—The defendant being arrested under any such warrant as aforesaid, may obtain his discharge by any one of the following modes:—

- 1.—*(When the defendant submits to the plaintiff's claim)* By paying or delivering to the Sheriff or his deputy the sum or object sought to be recovered and mentioned in such warrant, together with the Sheriff's fees and charges endorsed thereon, and the sum of twenty-five shillings to answer plaintiff's costs. In every such case of payment or delivery, the Sheriff shall, as soon as reasonably may be after the return of such warrant, pay or hand over to the plaintiff or his authorised agent, the said sum or object, together with the taxed amount of plaintiff's costs, and shall pay over the balance, if any, of the said sum of twenty-five shillings to the defendant or his agent.
- 2.—By depositing in the hands of the Sheriff or his deputy the sum, for which bail is required, endorsed on the warrant, and the poundage upon such sum payable by the rules of court to the Registrar Clerk for the custody thereof, together with the Sheriff's fees and charges endorsed on the warrant; and the Sheriff or his deputy shall, with all convenient speed, pay over the said bail money, and poundage thereon, to the Registrar Clerk. If final judgment be for the plaintiff, either by default or after hearing, the said bail money shall be applied by the Registrar Clerk, without any order of court for that purpose, in satisfaction of such judgment and plaintiff's taxed costs, and the balance, if any, shall be paid to the defendant, on his application for the same. But if judgment be for defendant, the said bail money shall in like manner be paid over to him, or his agent, forthwith.
- 3.—By obtaining two respectable householders as sureties to enter into a bond, together with the defendant himself, to the plaintiff, each such surety being bound in half the sum endorsed for bail on the warrant, and the defendant being bound in the whole of such sum; or by obtaining one such householder to enter into such bond, together with the defendant himself, in the whole of such sum; which bond shall be upon condition, that the defendant shall duly appear in court, either in person or by deputy, and defend the action, according to the exigency of such warrant; and shall not, from the date of such bond, withdraw any of his property out of the

jurisdiction of the court, so as to evade the judgment thereof, if the same shall be for plaintiff. Every person purposing to become such surety as aforesaid, shall make affidavit, if required by the Sheriff or his deputy so to do, that he or she has property within the said colony, independently of all his or her existing debts, worth double the sum for which he or she proposes to become bound; and after the making of such affidavit, (which shall be filed in the Sheriff's Office.) and the execution of such bond, the Sheriff shall be discharged from all liability for the appearance of such defendant. Every such bond as aforesaid shall be in the form numbered 12 in the said Schedule, and shall be executed in the presence of the Sheriff or his deputy, and shall be lodged in the Sheriff's Office until after the trial of the suit or action in the course of which the same shall be taken; and if judgment be for defendant, or plaintiff be nonsuited, such bond shall be cancelled by the Sheriff, and delivered to the defendant, or to either of his sureties; but if judgment be for the plaintiff, such bond shall, without any order of court for that purpose, be handed over to the plaintiff or his agent, on his application for the same.

XVIII.—If the defendant do not obtain his discharge by any of the aforesaid methods, he may be lodged in custody in any of His Majesty's Jails in the said Colony; from whence he shall be conveyed and produced in Court, by the Sheriff, at the return of the warrant upon which he shall have been arrested; and shall continue in the custody of the Sheriff, until verdict be given, or the plaintiff be nonsuited, or the plaint dismissed. And if the verdict be for plaintiff, the Commissioner may, in his discretion, order that the plaintiff be at liberty to issue execution forthwith; of which order the Registrar Clerk shall make a note in the Record Book.

XIX.—If verdict be given for the plaintiff in any suit or action in which the defendant shall have been arrested as aforesaid, and the defendant shall exhibit to the Commissioner, by affidavit, any reasonable ground of presumption that the plaintiff has delayed his suit or action vexatiously or negligently after notice in the *Government Gazette*, or other usual mode of publication, of his, the said defendant's, intention to leave the Colony, the Commissioner may summon the plaintiff to shew cause why he, the plaintiff, should not pay all costs of, or consequent upon, such arrest; and if, upon cause shewn, (or, in default of cause shewn, on proof of service on the plaintiff of such summons to shew cause,) the Commissioner shall be satisfied that the plaintiff has been guilty of such vexatious or negligent delay, he may order that the plaintiff shall not, on taxation of costs, be allowed any greater sum, in respect of such arrest, than the usual allowance for the issue and service of a summons; and that the costs and charges incurred by the defendant by reason of such arrest shall be deducted from the costs of suit adjudged to the plaintiff, or be otherwise paid by the plaintiff.

XX.—The parties to any suit or action in the said Civil Court may appear on the day appointed by the summons, or other process to enforce appearance, and conduct their respective cases, either in person or by agent; provided that such agent shall, on the cause being called, deliver to the Registrar Clerk, if not previously filed, a warrant to sue or defend under the hand of his principal, or, in default of such warrant, shall satisfy the Commissioner, by affidavit, if required, of his or her authority. And all such warrants and affidavits of authority to sue or defend shall be filed by the Registrar Clerk, who shall exhibit the same, within office hours, to either party to the cause or his agent, on tender of the lawful fee; and to the Sheriff of the Colony, and Bailiff of the Court, without fee. And as often as any party to a cause shall change his agent in Court, a fresh warrant to sue or defend shall be filed by the agent so newly appointed.

XXI.—All causes shall be called on for trial in the order of their entry in

the Record Book, unless otherwise ordered by the Commissioner, on reasonable ground shewn.

XXII.—On a cause being called, if the parties, or any agent or agents duly authorised on their behalf, appear, the Registrar Clerk shall take a minute of such appearance, to be afterwards recorded in the Record Book; and shall then read the plaint. The plaint being read, the defendant shall be asked what answer or plea he has to offer thereto; and the answer or plea then given by the defendant shall be forthwith minuted by the Registrar Clerk, and afterwards recorded by him in the proper column of the Record Book. The plaintiff, or his agent, shall then state the nature and grounds of his claim, call and examine his witnesses, and produce his documentary evidence, if any. The plaintiff's case and evidence being stated and produced, the defendant shall state the grounds of his defence, and examine and produce his witnesses and documentary evidence.

XXIII.—The defendant's plea and evidence having been heard, the parties, respectively, may further plead and prove any such facts material and relevant to the matter at issue, or raise such objections on points of law, as they would be respectively allowed to plead by replication, rejoinder, or other subsequent pleading, or raise by demurrer, in His Majesty's Courts of Westminster; the substance whereof, respectively, shall be forthwith minuted by the Registrar Clerk, and afterwards briefly entered in the proper column of the Record Book.

XXIV.—The avowed object of the present rules being the administration of substantial Justice, with such simplicity, as may enable parties not professionally conversant with law to conduct their own cases, and that no cause brought before the said Civil Court shall be decided without due investigation into the merits thereof, by reason merely of the parties thereto, or either of them, being destitute of technical knowledge and skill in the practice of the law; therefore, if at the trial of any cause, and at any stage of such trial, any material fact shall be proved on either side, and the adverse party, though unprepared at that time to answer or rebut the same, shall make and file an affidavit (Schedule No. 13) that he is able to produce evidence which he has been advised or verily believes will be sufficient to answer or rebut such fact, and shall undertake to produce the same within some reasonable time; it shall be lawful for the Commissioner to adjourn the trial of such cause, for such time as shall appear to him reasonable, in order that such evidence may be adduced, in all cases in which he shall be of opinion that the present want of such evidence is not clearly attributable to purposes of wilful delay. Every such adjournment shall be upon such terms, as to payment of costs, and otherwise, as to the Commissioner shall seem equitable; and shall be noted by the Registrar Clerk in the Record Book.

XXV.—The witnesses, on either side, after being examined by the party calling them, and cross-examined by the adverse party, may be recalled and re-examined by either party, or by the Court, on any subject relevant to the question at issue, and at any stage of the trial, as often as the Commissioner shall think conducive towards eliciting the merits of the cause. In all cases in which an appeal is allowable by law, the Registrar Clerk shall take down in writing the material parts of all evidence, oral or documentary, given on either side; and shall note any objections made by either party to any evidence received by the Court; and shall also take notes of any evidence tendered by either party, but rejected by the Court, and of the grounds of such rejection.

XXVI.—On the conclusion of the pleadings and evidence in cases heard and determined without a Jury, the Court shall give its verdict or pronounce judgment either immediately, or, if it take time to consider, shall appoint a day for giving or pronouncing the same respectively. All verdicts and judgments shall be given in open Court, and minuted at the same time by the Registrar Clerk, and afterwards entered by him in the proper column of the Record Book.

XXVII.—After the rising of the Court, if within office hours, otherwise on the day following each session, and so from day to day till the costs in all causes determined at such session be disposed of, holidays excepted, the parties, or their respective agents, shall attend as of course at the office of the Court for taxation of costs ; and if the party entitled to costs or his or her agent attend, the Registrar Clerk shall proceed to taxation without regard to the adverse party if absent ; and shall tax all bills delivered to him for that purpose, in the order of their delivery. Provided that either party to a cause (whether the same shall have been carried on to trial or settled out of Court) may obtain, from the Registrar Clerk, an appointment (Schedule No. 14) of a certain time for taxation, not being later than the time at which execution can, by the rules of the Court, be sued out ; of which appointment the party obtaining the same shall cause notice to be served on the adverse party.

XXVIII.—The bill of costs of any agent in the said Court for any business done therein may be taxed, without previous order of court for that purpose, before or after action commenced thereon, by applying to the Registrar Clerk for an appointment to tax, and causing notice thereof to be served on such agent. If an action be brought upon any such bill, which shall not have been taxed at the time of trial, and the Jury, or the Commissioner if the cause be tried without a Jury, shall consider the plaintiff entitled to a verdict, the same may be given, generally, “for such amount as shall be found due to the plaintiff on taxation ;” which amount shall, immediately after taxation, be entered up by the Registrar Clerk in the proper column of the Record Book. If one-sixth of the total amount of such bill, when delivered, shall be deducted therefrom on taxation, the costs of taxation shall be paid by the agent delivering such bill. If the sum or value recovered in any cause shall not exceed five pounds, there shall not be allowed in the taxation of the costs of suit between the adverse parties to such cause any fee, charge or expense whatsoever of, or on account of, any agent employed by either of the said parties in conducting or defending such cause.

XXIX.—In the taxation of costs, the Registrar Clerk shall conform, in all ordinary cases, to the scale of allowances (marked A in the said Schedule), or to such scale as is sanctioned by the rules and orders for the time being of the Court ; but in any case not clearly provided for by such scale, he shall refer to the Commissioner, who shall make such order relative to the admission or amount of disputed items, as shall seem to him just. No process of execution shall be issued for levying the amount of any costs awarded by the Court, until the same shall have been taxed ; and then only for the taxed amount thereof, which shall be noted in the judgment column of the Record Book.

XXX.—The party in whose favor any final judgment or order of the said Civil Court shall have been given or pronounced, may (in cases in which there can be no appeal) on or after the fourth day from that on which such judgment or order shall have been given or pronounced, (and in cases in which there may by law be an appeal, then after the expiration of the time allowed by law for appealing, in case no appeal shall be noted and allowed within that time), sue out of the office of the Court one or more writ or writs to enforce execution thereof, in the form numbered 15 in the said Schedule, to be tested in the name of the Commissioner and sealed with the seal of the Court, and to be addressed to the Sheriff, requiring him, by sale of the real or personal property, or both if requisite, of the party against whom such judgment or order shall have been given or pronounced, to levy and raise (over and above all poundage fees and expenses of levy) the debt

(To be continued.)

(Continued.)

or damages recovered, and taxed costs ; or the taxed costs only, as the case may require ; or to give possession of any specific property recovered by such Judgment ; or otherwise to carry into effect the terms of such Judgment.

XXXI.—Every such writ as last aforesaid shall be delivered by the Registrar Clerk to the party applying for the same, who shall endorse thereon the sum bonâ fide due and leviabie thereunder, and shall then deliver the same to the Sheriff, or his deputy, who shall levy according to such endorsement. And if a larger sum is so endorsed than is bonâ fide due, restitution shall be awarded summarily by the Court ; and the levy fees for the surplus shall be paid by the party by whom, or by whose Agent, such endorsement was made.

XXXII.—In executing any such writ as last aforesaid, the Sheriff shall first levy on the defendant's personal property only, found within the jurisdiction of the said Civil Court. But if such personalty shall prove, when sold, insufficient to satisfy the judgment and expenses of execution, the Sheriff, without any further writ, order or process of execution, shall proceed to sell so much of the defendant's real property found within the said jurisdiction, as, together with the proceeds of the said personalty, shall, in the reasonable estimation of the Sheriff, be sufficient to answer the judgment and costs of execution. Provided that if the Sheriff's deputy entrusted with the execution of any such writ as aforesaid, shall make affidavit, (Schedule No. 16,) to be filed in the Sheriff's office, that he has made diligent search after defendant's personal property, and that all such property discovered by him within the jurisdiction of the said Civil Court would not in deponent's belief and judgment produce, if sold by auction, a sufficient sum to pay the expenses of levy, in such case it shall not be incumbent on the Sheriff to sell the personal property so found, but he may forthwith proceed to sell the defendant's real property, if any. The like order of seizure and sale shall be observed, when process of execution shall issue against the plaintiff's property. The term judgment, when used in these Rules with reference to execution thereof, shall be understood to include not only the debt or damages thereby recovered, but also the taxed amount of costs thereby awarded.

XXXIII.—Whenever it shall be necessary to sell any real property under any such writ as last aforesaid, and the party against whom the same shall have issued shall allege that his lands and tenements are more than sufficient to satisfy the amount leviabie under such writ ; and shall point out to the Sheriff, or his deputy, what part of such lands or tenements he will have first sold, such part shall be first sold accordingly. But if such part shall not be sufficient to satisfy the said amount, then the Sheriff or his deputy shall proceed to sell such further part of the said lands and tenements as shall be sufficient for that purpose.

XXXIV.—As soon as reasonably may be after seizure of any personal property under any such writ as last aforesaid, the Sheriff, or his deputy, shall give notice thereof (Schedule No. 17) to the owner of such property ; or, if he cannot be found, to some adult member of his family or household ; or, if none such can be found, shall affix the same to some conspicuous part of the house or premises where the seizure shall be made ;—and shall cause an advertisement to be inserted in the ' Government Gazette,' or other newspaper, approved of by the Commissioner of the time and place at which such property shall be sold ; and shall affix a like notice at the place of seizure, and at the intended place of sale, if different from the place of seizure. And no sale of any personal property so seized shall take place until after the expiration of eight days from the service of the said notice of seizure, and publication of the aforesaid notice of sale at the place or places of seizure and sale. Provided always, in order to avoid the great expenses that might otherwise ensue.

in such cases, from long continued keeping of possession of goods seized, that when any goods shall be seized in execution as aforesaid at any place between which and the ordinary place of session of the said Civil Court, there shall be no regular communication by land, it shall not be necessary to publish any such advertisement of sale as aforesaid in the 'Government Gazette,' or other newspaper. Provided, further, that where there shall be no regular communication by land between the place at which any personal property shall be seized in execution as aforesaid and the place at which the owner thereof shall then be resident, it shall not be necessary in such case to give notice of seizure to such owner.

XXXV.—When it shall be necessary to sell any real property under any such process of execution as aforesaid, it shall not be requisite for the Sheriff, or his deputy, to take possession or to make any formal attachment thereof; but in such case, the Sheriff, or his deputy, shall serve a written notice (Schedule No. 18) of the time and place of intended sale of such property on the owner thereof (in like manner a notice of seizure of personal property is required to be served on the owner thereof by the last foregoing rule), and shall cause an advertisement of the time and place of such intended sale to be inserted in the 'Government Gazette,' or other newspaper, as aforesaid; and shall also affix a notice of such time and place at the intended place of sale; and no such sale of real property shall take place until after the expiration of twenty-eight days from the service on such owner, and publication, of the aforesaid notice of sale.

XXXVI.—If the party against whom any final Judgment or order shall have been given shall, before process of execution issued, appear before the Commissioner and exhibit to him an Inventory of goods and chattels, with an affidavit (Schedule No. 19) annexed, that the same are the property of such party, and together with an affidavit (Schedule No. 20) by any two competent persons, that they have appraised the said goods and chattels to the best of their skill and judgment, and verily believe that the same would produce, if sold by auction, a sum exceeding the amount of the said Judgment or order, and the usual expenses of levy, and such party shall further undertake in writing, (Schedule No. 21,) together with two respectable persons as his sureties (to be approved of by the Commissioner), that the said goods and chattels shall be delivered up, at such time and place as the Commissioner shall appoint, to the Sheriff, for the purpose of being sold, unless the said Judgment shall be sooner satisfied; in such case, after such undertaking shall be deposited as hereafter mentioned, no process of execution shall be issued in respect of such Judgment until the day so appointed for the sale of such goods and chattels, which shall in no case be later than the day on which such sale could be enforced under process of execution by the ordinary practice of the Court. Every such undertaking shall be executed in the presence of the Commissioner, or of some Justice of the Peace, and shall be forthwith deposited with the Registrar Clerk by the party giving the same; and in case the same shall not be duly and fully performed, and the Sheriff shall not find sufficient property of the person against whom such Judgment or order shall have been given whereon to levy the amount of such Judgment or order and usual expenses of levy, such undertaking shall be handed over by the Registrar Clerk, without order of court for that purpose, to the party in whose favor the same shall have been made.

XXXVII.—If the defendant, or some one duly authorised on his behalf, do not appear on the day appointed for that purpose by the summons to appear and plead, the Court, being satisfied of the service of such summons by the return of the Sheriff or his deputy thereon endorsed, shall, on the application of the plaintiff or his agent, proceed to hear the plaintiff's case and witnesses, the material part of whose evidence shall be taken down in writing by the Registrar Clerk; and if the Jury, or the Commissioner when the cause is tried without a Jury, shall be of

opinion that the plaintiff is entitled to a verdict, in such case interlocutory judgment shall be entered against such defendant, as by default, by the Registrar Clerk, in the Record Book, for such amount of debt or damages as the Jury, or the Commissioner when the trial is without Jury, shall deem just; and the Registrar Clerk shall forthwith make out a notice to the defendant (Schedule No. 22), to be served by some bailiff or messenger of the Court, warning such defendant that if he do not appear on a certain day to be therein named (being the next regular monthly court day, or such earlier day as the Commissioner on reasonable ground shewn to his satisfaction may appoint), and shew cause to the contrary, the said Judgment by default will become final. And in case the defendant do not appear in person or by deputy on the day appointed by such notice, then, the Court being satisfied of the service of such notice by the Bailiff's return thereto, such interlocutory judgment shall become final, and shall be so recorded by the Registrar Clerk in the proper column of the Record Book.

XXXVIII.—If the defendant, or some one duly authorised on his behalf, shall appear on the day appointed by such notice as last aforesaid, and shall exhibit to the Court, and file, an affidavit (Schedule No. 23) that he or she has a good defence to the action upon the merits thereof, then the Court shall order the Judgment by default to be opened, and shall permit the defendant to answer the plaint at a time then to be appointed for that purpose by the Court, upon the terms that the evidence before given on the plaintiff's behalf shall be read from the minutes thereof taken by the Registrar Clerk; and the cause shall then proceed in the same manner, except as aforesaid, as if the defendant had appeared to the original summons. If the defendant shall satisfy the Court, by affidavit filed, that his default was unintentional and unavoidable, the plaintiff's costs incurred by reason of such default shall abide the event of the cause; otherwise if the Court be not so satisfied, the judgment by default shall not be opened, except upon the further terms and condition, that defendant do pay such costs before the time so appointed for pleading.

XXXIX.—Where the defendant fails to appear as aforesaid, at the return of the summons to appear and plead, the Commissioner, if after hearing the plaintiff's case and witnesses he shall be of opinion that the plaintiff has not made out any cause of action sustainable in law, may, notwithstanding such default of the defendant, order a nonsuit to be entered against the plaintiff. But the defendant in such case shall not be entitled to any costs.

XL.—If the plaintiff shall not appear at the return of the summons to appear and plead, but the defendant shall duly so appear, the Commissioner shall adjudge the plaint to be dismissed for want of prosecution; of which dismissal the Registrar Clerk shall make an entry in the Record Book, and the defendant shall be adjudged his costs to be taxed and enforced, if necessary, by process of execution, in the same manner as if judgment had been given for defendant on a hearing; but such judgment against a plaintiff for non-appearance shall not, after payment of defendant's costs, be a bar to any fresh action by the plaintiff for the same cause.

XLI.—If the defendant be desirous of obtaining further time to consider and prepare his plea or answer, than that which is allowed by the summons to appear and plead, he may apply for the same to the Commissioner, in or out of court, at any time before the day of trial, or when the cause is called on for trial. In the latter case the Commissioner may at once call on the plaintiff to shew cause against such application; in the former case, he may direct a summons to be issued, calling on the plaintiff to shew cause. In either of the said cases, if the Commissioner shall be satisfied, after cause shewn, (or in default thereof, after an opportunity of shewing the same has been given,) that there are reasonable

grounds for granting further time, he may grant the same, (of which the Registrar Clerk shall make an entry in the Record Book), upon such terms as to payment of costs and otherwise as he shall deem just; and may require the grounds of defendant's application to be supported by affidavit.

XLII.—The trial of any suit or action pending in the said Court may be postponed or suspended by the Commissioner on the application of either party thereto, either when the same is called on for trial or at any time previous to trial, on account of the absence of a material witness who has been duly summoned, or is out of the Colony, or is unable to attend Court from illness, or on account of the illness of either party to such suit or action or his or her agent, or upon any other ground that shall appear reasonable to the Commissioner. When such application shall be made on the day appointed for trial, the Commissioner may either altogether postpone the trial, or may, at his discretion, examine such witnesses on either side as shall be in attendance, and adjourn the further hearing of the cause to another day. Every such postponement or adjournment shall be upon such terms as to payment of costs and otherwise as to the Court shall seem just; and shall be noted, together with the cause thereof, by the Registrar Clerk in the Record Book.

XLIII.—Summonses for witnesses, in the form numbered 24 in the said Schedule, shall be issued, on the application of either party to a suit or action or his or her agent, by the Registrar Clerk, who shall deliver, together with each such summons, a note or ticket for each witness named therein (Schedule No. 25) Every such summons may contain the names of four witnesses, and shall be served by some bailiff or messenger of the Court, by shewing the same, and delivering at the same time such note or ticket as aforesaid to the party intended to be served; and such service must be made on a witness

resident	}	at Perth, or within 3 miles thereof	} at least 12 hours	}	before the time therein appointed for his appearance.
		more than 3, and not exceeding 10 miles from Perth	} „ 24 ditto		
		more than 10, and not exceeding 20 miles from Perth	} „ 36 ditto		
		and for every additional 10 miles	} 12 hours in addition to the above 36		

Any witness wilfully disobeying any such summons after due service thereof, and after tender of his reasonable travelling expenses, and not having any lawful impediment, shall be liable to the same punishment, by attachment, fine and imprisonment, as may be inflicted in like case by His Majesty's Superior Courts at Westminster.

XLIV.—If any witness have in his possession or controul any deed, instrument or writing, which the party requiring his attendance desires to shew in evidence, such witness may be summoned for that purpose (Schedule No. 24.)

XLV.—If any party to a suit or action shall make affidavit (Schedule No. 26) that a material witness on his behalf is resident abroad, or at any place within the said Colony between which and the ordinary place of session of the Court there is no regular communication by land, or is unable to attend court at the trial of such suit or action from age, infirmity or other real disability, and such party shall apply to the Commissioner, in or out of court, on the ground of such affidavit, to have such witness examined upon interrogatories, the Commissioner may endorse on such affidavit an order for a commission to be issued for that purpose. The Registrar Clerk, upon such affidavit and order being filed with him, shall thereupon issue a notice (Schedule No. 27) warning the adverse party to such suit or action of such order, and appointing a day and hour of meeting at the office of the Court; at

(To be continued.)

which appointed time the Registrar Clerk shall, in the presence of both parties, take down the Interrogatories of the party requiring the evidence of such witness, and the cross-interrogatories of the adverse party; and shall forthwith transmit the same, together with a commission for administering the same (Schedule No. 28), to some competent person or persons resident near the dwelling-place of such witness, who shall be appointed to execute such commission by the parties to such suit or action, or their respective agents, or, in case of their disagreeing, by the Commissioner of the Court, on reference; and who, having taken the oath prescribed to them by such commission, shall take down the answers given to them upon oath to such Interrogatories, and shall certify such answers under his or their hand or hands, and shall return the same, together with such Interrogatories and Commission, to the Registrar Clerk, to be by him produced in Court when required. If the party who shall be served with such notice as last aforesaid, shall fail to attend in conformity therewith, it shall be lawful for the Commissioner, on proof of such service, to order that such commission shall issue for administering the Interrogatories of the party applying for the same, solely.

XLVI.—Any material witness in any suit or action, who is about to leave the Colony, or whose evidence may, from dangerous illness or other cause, be in danger of being lost, before such suit or action can be brought to trial, may be examined conditionally by order of the Commissioner, on the application, in or out of Court, grounded on an affidavit of circumstances (Schedule No. 26), of any party to such suit or action, who requires the evidence of such witness. The Registrar Clerk shall, upon such affidavit, with the Commissioner's said order thereon endorsed, being filed with him, issue a summons (Schedule No. 29), requiring the attendance of such witness, when capable of attending, at the office of the Court, at a certain time thereby appointed, with the assent of the party summoning such witness, to give evidence in such suit or action, which summons shall be served upon such witness in like manner and time as any ordinary summons for a witness is hereinbefore required to be served. As soon as reasonably may be after issuing such summons, the Registrar Clerk shall cause a written notice (Schedule No. 30) of the place and time so appointed as last aforesaid to be served, in like time as such summons, by some bailiff of the Court on the adverse party to such suit or action. At the time so appointed, such witness, in the presence of the Commissioner and of both the said parties, (or, in the absence of the party served with such notice, upon proof of service thereof), shall be sworn by the Registrar Clerk and examined by the party calling him or her, and cross-examined by the adverse party, when in attendance; and the material parts of the answers of such witness shall be taken down in writing, sealed up and filed, by the Registrar Clerk, to be by him produced in Court when required; and in case such witness cannot be produced in person at the hearing of the cause, the answers so taken as aforesaid shall be read at such hearing; and received as competent evidence. If such witness cannot attend the office of the Court from illness, or be resident at an inconvenient distance from the said office, he may be examined under a commission, to be issued in the manner set forth by the last preceding rule.

XLVII.—When any record entry or document of the Court forms part of the evidence of any party to a suit or action, it shall not be necessary to produce an office copy thereof, but the Registrar Clerk, on the request of such party and on payment of the authorised fee, shall produce the original.

XLVIII.—If either plaintiff or defendant elect to have the cause tried before a Common Jury, he shall signify such election to the Registrar Clerk, and deposit with that officer a sufficient sum to cover the expenses, allowing for reasonable contingencies, of summoning and remunerating the Jury; the amount of such deposit being fixed, in the first instance, by the Registrar Clerk, and, in case of dispute, by the Commissioner, on reference. The Registrar Clerk shall thereupon issue a precept to the Sheriff (Schedule No 31.) Where a Special Jury has been applied for, and ordered by the Court, the like deposit shall be paid to the Registrar Clerk, and a precept to the Sheriff shall in like manner be issued. All Juries shall be summoned the like length of time before the time at which their attendance is required in Court, in proportion to the distance of their respective residences from the said Court, as is hereinbefore directed with respect to witnesses.

XLIX.—A Jury may be applied for by either plaintiff or defendant at any time before the cause shall be actually commenced. If such application be made after the return of the summons to appear and plead, or so shortly before that return as to make a postponement of the trial necessary to allow time for summoning the Jury, in either of such cases, if the plaintiff be the applicant, he shall forthwith pay the costs unavoidably incurred by the defendant by reason of such postponement; but if, in either of such cases, the defendant be the applicant, the Commissioner may, in his discretion, order the costs thereby unavoidably incurred by the plaintiff either to be forthwith paid by the defendant, or to abide the event of the cause as general costs, accordingly as the Commissioner shall be of opinion that the interval between the service and return of the summons to appear and plead did, or did not, afford sufficient time to the defendant to apply for and summon a Jury before such return. But the Commissioner may, in all cases, disallow any such costs, which shall appear to him to have been wilfully incurred after reasonable notice of a Common Jury having been applied for, or of a Special Jury having been ordered, and of the day for which such Jury respectively is to be summoned.

L.—No action, suit or proceeding in the said Civil Court shall abate by reason of the death of any party thereto. If a sole plaintiff or sole defendant shall die at any time before final Judgment, a summons may be had on application to the Commissioner, in or out of Court, by the surviving party against the real or personal representatives of the party dying, or *vice versâ*, to shew cause why such representatives should not be made parties in the place of the party deceased. And if the claim, right or liability involved in such action, suit or proceeding, be such as to descend or survive in law to or against such representatives, or any of them, then the Commissioner, after cause shewn, or, in default thereof, on proof of service of such summons, may order, upon such terms as he shall deem equitable, that such of the said representatives, as the case may admit and require, be made party or parties, in the place of the party so dying as aforesaid, to such action, suit or proceeding; which shall then be continued as if such representative or representatives had been originally party or parties thereto; and the Registrar Clerk shall thereupon make an entry in the Record Book of the death of such original party, and the admission of his representative or representatives.

LI.—If the plaintiff or defendant in any action, suit or proceeding in the said Civil Court, being an unmarried woman at the commencement thereof, shall afterwards marry at any time before final Judgment, the plaintiff or de-

defendant may obtain a summons, in like manner as the summons obtainable by the last preceding rule, to shew cause why the husband of the party so marrying should not be made a party to such action, suit or proceeding; and the Commissioner, (on cause shewn, or, in default thereof, on proof of service of such summons,) may thereupon order that such husband, either together with his wife or alone, as the case may require, be made a party to such action, suit or proceeding, which shall then be continued in the same manner as if such husband had been originally a party thereto. And the Registrar Clerk shall make an entry of such order in the Record Book.

LII.—In any case, arising out of any action, suit or proceeding in the said Civil Court, in which, by the practice of His Majesty's Courts at Westminster, it would be necessary or usual to proceed by writ of *scire facias*, such writ shall be issued, on the application of the party entitled thereto, by the Registrar Clerk, conformably in all material respects to the form of summons (or some of the variations thereof, as the case may require) numbered 34 in the said Schedule; and shall be served by the Sheriff, or his deputy, in manner hereinafter directed, as to the serviceable process of the said Civil Court; and the forms and mode of proceeding at the return of any such writ shall be the same as at the return of a summons to appear and plead. If the person, against whom any such writ shall issue, cannot be found, so as to be served therewith, the Commissioner may order a like notice to be published in the Government Gazette, or other newspaper approved of by him, as either of the notices (according to the exigency of the case) hereinbefore directed by rules 13 and 14; and if the person or persons addressed by such notice do not appear in conformity therewith, the Court shall award or adjudge in like manner as if such person or persons had appeared to such writ and failed to shew cause thereto.

LIII.—No Judgment shall be entered up on any warrant of attorney, unless the same shall have been executed in the presence of the Commissioner, or the Registrar Clerk, or of some Justice of the Peace; and the Registrar Clerk, and every such Justice, as often as he shall attest the execution of any such warrant, shall subscribe his name thereto, together with a memorandum that previously to the execution thereof he did caution the person proposing to execute the same, as to the nature and consequences thereof.

LIV.—When the nature of the plaintiff's claim is such that the plaint cannot, without running to an inconvenient length, be so worded as to specify the particulars of such claim, and is consequently generally worded (as for "goods sold and delivered," for "work and labour," or the like,) the Sheriff shall not serve any summons to appear and plead, issued upon such plaint, unless there shall be therewith delivered to him a written statement of the particulars of the plaintiff's demand; which statement shall be served upon the defendant at the same time with the said summons. If the defendant intends to plead a set-off, he shall cause to be delivered to the plaintiff or his agent in Court, a written statement of the particulars of such set-off, at least twenty-four hours before the opening of the Court on the day of trial; otherwise the Commissioner, if it shall appear to him that the plaintiff had not reasonable ground to anticipate such a set-off, may postpone or adjourn the trial of the cause in like manner as he is authorised to do by rule 25, or may order the defendant to pay the costs of such postponement or adjournment.

LV.—The plaintiff may at any time before trial discontinue his suit or action, without order of Court, on terms of paying defendant's costs: and

shall, for that purpose, by himself or his agent, sign an entry to be made by the Registrar Clerk in the Record Book, to the effect, that "plaintiff withdraws his plaint on payment of defendant's costs:" and shall obtain from the Registrar Clerk an appointment to tax, and cause notice thereof to be served on the defendant. After payment of such costs, such suit or action shall be deemed to be discontinued; and plaintiff shall be at liberty to commence a fresh action for the same cause. Provided that such costs shall be paid, or security given to the satisfaction of the defendant for payment thereof, before the opening of the Court on the return day of the summons to appear and plead; otherwise, on the application of defendant, grounded on an affidavit (Schedule No. 35) of the non-payment of such costs, Judgment shall be given against plaintiff in manner hereinbefore provided by rule 41.

LVI.—If the defendant is willing at any time before trial to admit the plaintiff's claim, he may stay all further proceedings, on delivery of the specific property, or payment of the debt or damages, claimed by the plaintiff, and of plaintiff's costs, without rule or order of Court for that purpose, by applying to the Registrar Clerk for an appointment to tax, and causing notice of such appointment to be served on the plaintiff or his agent; and such service shall operate as a conditional stay of proceedings until such costs be taxed, provided that such taxation take place at least twenty-four hours before the return of the summons to appear and plead; and if the taxed amount of such costs, together with the said debt, damages or specific property, be paid or delivered immediately after taxation, all proceedings in the suit or action shall be absolutely stayed; and the Registrar Clerk shall make an entry of such stay in the Record Book.

LVII.—In any action, suit or proceeding in the said Civil Court, in which the plaintiff's claim is of such a nature as to admit in law of a Tender; being either for a sum certain, or for uncertain damages (except in actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation with plaintiff's wife, or seduction of plaintiff's daughter or servant); and the defendant, admitting the plaintiff's right of action, but disputing the amount claimed, has before the commencement of such action, suit or proceeding, made a tender to the plaintiff of such sum as he, the defendant, admits to be due or just; if the defendant means to plead the same, he must pay the sum so tendered into the hands of the Registrar Clerk (who shall receive the same without any order of Court, and shall make an entry of such payment in the Record Book), together with the authorised percentage payable to that officer, and shall cause notice of such payment to be served on the plaintiff. If the plaintiff proceeds to trial, and fails to recover more than the sum so tendered, then, upon proof of such tender, of such payment into Court (by production of the Registrar Clerk's receipt for the same), and of notice to plaintiff of such payment, a verdict shall be given for the defendant, who shall be adjudged his costs of suit, including the aforesaid percentage. If the plaintiff, at any time before trial, consent to accept the sum so paid into Court in full discharge of his claim, he shall be at liberty to do so, without order of Court, on payment of defendant's costs of suit and the aforesaid percentage; and shall in such case apply to the Registrar Clerk for an appointment to tax, and cause notice thereof to be served on the defendant; and the Registrar Clerk, on being satisfied of the payment of such costs, by production of defendant's receipt for the same or otherwise, shall pay over the sum, so paid into Court, to the plaintiff or his agent, who shall sign a receipt for the same in the Record Book.

LVIII.—In any such action, suit or proceeding, as aforesaid, in which a tender may by law be made, if the defendant has neglected to make a tender before action commenced, he may, nevertheless, at any time before trial, pay such sum as he admits to be due or just, without order of Court, into the hands of the Registrar Clerk, (who shall receive the same and make an entry thereof in the Record Book), together with the percentage thereon payable to the Registrar Clerk; and shall cause notice of such payment to be served on the plaintiff. If the plaintiff accepts the sum so paid into Court in full satisfaction of his claim, the same shall be paid over to him, on his application and on his signing a receipt for the same in the Record Book; and he shall be entitled to his costs of suit up to the service of notice of such payment into Court; and shall obtain an appointment to tax from the Registrar Clerk, and cause notice of such appointment to be served on the defendant. If the defendant fails to pay such costs before the opening of the Court on the return day of the summons to appear and plead, the plaintiff, on an affidavit of the non-payment thereof, (Schedule No. 36), shall be entitled to a verdict for nominal damages and costs of suit, as in ordinary cases. If the plaintiff refuses to accept the said sum in full satisfaction of his claim, and fails, at the trial, to recover a larger amount than such sum, he shall (on production of the Registrar Clerk's receipt for the same, and proof of notice to the plaintiff of the payment thereof into Court) have a verdict against him, and shall be adjudged to pay the defendant's costs of suit incurred after service of notice of such payment into Court; but the plaintiff shall still be entitled to his costs of suit up to the time of service of such last mentioned notice.

LIX.—When money has been paid into Court under either of the two last preceding rules, it shall not afterwards be taken out again by the defendant; and shall not be paid to the plaintiff before final Judgment, unless he or his agent in Court expressly agree to receive the same in full satisfaction of his claim, and shall sign a receipt to that effect in the Record Book; but shall otherwise be retained in Court as security for any costs to which the defendant may become entitled by the event of the trial. After verdict for plaintiff, the Registrar Clerk shall pay such money over to the plaintiff, or his agent, on application, without order of Court for that purpose. After verdict for defendant, the Registrar Clerk shall in like manner pay to the plaintiff the balance of such money, after deducting thereout and paying to defendant (which he is hereby authorised to do) the taxed amount of defendant's costs; but where the plaintiff is still entitled, after verdict for defendant, to costs up to the time of payment into Court, as by the last rule, in such case, the Registrar Clerk shall deduct out of the money paid into Court only the excess, if any, of defendant's costs, subsequent to notice of such payment into Court, above those of plaintiff up to the time of such notice.

LX.—Affidavits required to be exhibited in the said Civil Court by any rule or order thereof, shall be sworn before the Commissioner thereof, or before any Justice of the Peace for the said Colony.

LXI.—All summonses, orders, notices, and serviceable process of the said Court, shall be served by delivering a copy thereof (shewing at the same time the original) to the person intended to be served therewith; or, if he or she be absent from his or her usual place of residence, to some adult member of his or her household or family, with a verbal notification of the purport and object thereof.

LXII.—In order to avoid the increased expence attendant on the service of any process of the Court upon a party resident at a distance therefrom, if any person served, or in expectation of being served, with a summons to appear and plead, shall file with the Registrar Clerk, and also with the Sheriff, a written

appointment and consent (Schedule No. 37) nominating some agent resident near the Court, and consenting to service upon such agent of all process to be thereafter issued to or against such person in the suit, action, or proceeding referred to in such consent; in every such case, all such process as aforesaid as may be in its nature serviceable, and issued as last aforesaid, shall be served upon such agent, (as long as such agent consents to receive the same,) and such service shall be as good and effectual, to all intents and purposes, as service on the party appointing such agent.

LXIII.—The Sheriff of the said Colony shall attend the said Civil Court at and during every sitting thereof, and shall not depart the Court without leave of the Court first obtained.

LXIV.—A Bailiff or Messenger of the Court may serve any process of the Court delivered to him for service on a party residing at an inconvenient distance, or which he is unable to serve in person by reason of his being engaged with other business of the said Court, by a deputy to be appointed by Indorsement on such process under the signature of such bailiff, who shall be responsible for the acts, charges and expenses of such his deputy.

LXV.—The Sheriff, or his deputy, and every other officer or person entrusted with the service or execution of any process of the said Civil Court, shall, without being ruled for that purpose, return such process with all reasonable despatch to the Registrar Clerk, with an Indorsement thereon under his signature of the date and manner of the service or execution thereof. Provided that the Commissioner, on reasonable cause shewn, may extend the time for making any such return.

LXVI.—The Registrar Clerk, the Sheriff of the Colony, or any Bailiff or Messenger of the said Civil Court, may refuse, respectively, to issue, serve or execute any process whatsoever of the said Court, or to do any act of office, if thereunto required by any private person other than some party to the suit, action or proceeding to which such process or act refers, or the agent of such party appointed by warrant filed in the office of the Court, or whose authority as agent has been established to the satisfaction of the Commissioner by affidavit filed in the said office; nor unless the fees lawfully demandable for any such issue, service, or execution, be first paid. Nor shall the Registrar Clerk be compelled to issue any summons to appear and plead, until the party applying for the same shall pay to him the fees lawfully demandable for the several acts and matters following,—(that is to say,) for recording the plaint—for issuing the summons to appear and plead, and the copy thereof—for entering appearance, plea, and Judgment—for swearing each witness proposed to be called by the plaintiff—and the Bailiff's cause fee. But in case any such act or matter so paid for in advance, shall afterwards be found unnecessary, the fee so advanced for the same shall be repaid by the Registrar Clerk, on demand.

LXVII.—If the party against whom any final Judgment, order or decree of the said Civil Court shall have been given or made, be desirous of appealing therefrom, in cases in which the law of the Colony admits of appeal, he shall notify such his desire to the Registrar Clerk within the time prescribed by the said law for appealing; and shall, in all cases, deposit, as security for the costs of appeal, the sum of Ten pounds with the Registrar Clerk, who shall thereupon enter a note in the Record Book of such appeal and deposit, and of the date thereof; and such appellant shall also bring two sufficient sureties, to be approved of by the Commissioner, who, together with the appellant himself, shall enter into a recognizance (Schedule No. 38) to the respondent for the due prosecution of such appeal, and for the payment of all such further costs of the appeal (above the said sum of ten pounds) as may be awarded thereon by the

Governor and Executive Council to the respondent. If the Commissioner, in exercise of the discretionary power hereinafter given, shall direct execution of the order, Judgment or decree appealed from to be suspended pending such appeal, in such case, the appellant and his said sureties shall be further bound by recognizance (Schedule No. 39) to the respondent for the due performance and execution of such Judgment as the Governor and Executive Council shall think fit to make upon such appeal. After appeal noted, deposit made, and recognizance entered into, no process of execution shall be issued by the Registrar Clerk without an order of Court for that purpose first obtained; but the costs of suit may be taxed as usual.

LXVIII.—After appeal noted and deposit made as aforesaid, the Commissioner may, in his discretion as shall appear to him most consistent with Justice, direct that execution of the Judgment, order or decree appealed from, shall be suspended pending the appeal; (in which case the appellant shall enter into the recognizance mentioned in the last foregoing rule); or that such Judgment, order or decree shall be carried into execution, notwithstanding such appeal. In the latter case, the party requiring such execution shall, before process of execution be allowed to issue, enter into a recognizance (Schedule No. 40) to the appellant, with two sureties, to be approved of by the Commissioner, for full restitution of the amount to be levied or raised, or matter or thing to be recovered, under such Judgment, order or decree, should the same be reversed, as also for the due execution of any such further Judgment, order or decree as may be afterwards pronounced in respect of such appeal.

LXIX.—Every such recognizance as mentioned in the two last preceding rules shall be taken by the Registrar Clerk before the Commissioner; the appellant or respondent, as the case may be, being bound in a reasonable sum, at the discretion of the Commissioner, (not exceeding in any case twice the sum or value, including costs, of the Judgment, order or decree appealed from); and each of the sureties being bound in half the sum for which their principal is bound. The Commissioner may require each such surety to make affidavit, to be filed in the office of the Court, that he or she has property in the Colony, independently of all his or her existing debts, worth double the sum for which he or she proposes to become bound.

LXX.—As soon as conveniently may be after appeal noted, deposit made, and recognizance entered into by the appellant as aforesaid, the Registrar Clerk shall draw up and deliver to the appellant a copy and summary, certified (Schedule No. 41) under the hand of the Commissioner, of all the proceedings had before the said Civil Court in the cause out of which the appeal arises, containing a copy of the plaint, and of the entries in the Record Book of the pleadings, Judgment, and other matters relating to the said cause, and truly setting forth at least the material part of all oral and documentary evidence given at the trial of the said cause, together with notes of any objections made to the evidence received by the Court at the trial, and a minute of any evidence offered by either of the parties to such cause, but rejected by the Court, together with the grounds of such rejection.

LXXI.—All questions of practice relative to the doing or conducting any business, matter or thing in any action, suit or proceeding in the said Civil Court, not provided for specifically by the Rules and Orders for the time being of the said Court, shall be settled by the Commissioner in conformity with the practice of His Majesty's Superior Courts at Westminster, so far as such practice shall be capable of application to the peculiar constitution of the said Court, and shall be consistent with the local laws and circumstances of the said Colony.