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# Supplement to Government Gazette

OF

WESTERN AUSTRALIA.

[Published by Authority.]

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No. 22.]

PERTH: MONDAY, APRIL 26.

[1909.

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## RULES OF SUPREME COURT, 1909.

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### RULES OF SUPREME COURT, 1909

(DIVORCE AND MATRIMONIAL CAUSES).

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### ORDER AS TO SUPREME COURT FEES AND SCHEDULE OF FEES.

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### REGULATIONS FOR THE PAYMENT OF SUPREME COURT FEES AND PROBATE DUTIES BY MEANS OF ADHESIVE STAMPS.



# RULES OF THE SUPREME COURT, 1909.

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The following Orders and Rules may be cited as “ The Rules of the Supreme Court, 1909 ”; they shall come into operation on the 1st day of May, 1909, and shall also apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken on or after that day in all causes and matters then pending.

The following Orders and Rules, that is to say:—

- (1) The Rules of Court of the 14th day of July, 1881.
- (2) The Orders and Rules of 1887.
- (3) The Rules of the Supreme Court of July, 1888.
- (4) The Rules of the Supreme Court, 1888.
- (5) The following Orders and Rules, namely:
  - (a) Order LXI., rule 43a, dated 27th July, 1898;
  - (b) Order LIa, dated 19th June, 1899;
  - (c) Regulation of 30th May, 1900;
  - (d) Order LIX, rules 7 and 8, dated 2nd May, 1902;
  - (e) Order LIIa, dated 23rd May, 1904,

are hereby annulled, and the following Orders and Rules shall stand in lieu thereof.

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## ORDER I.

(O. 1.)

### FORM AND COMMENCEMENT OF ACTION.

1. All actions which, previously to the commencement of the Principal Act, were commenced by writ in the Supreme Court in its Common Law Jurisdiction and all suits which, previously to the commencement of the Principal Act, were commenced by bill or information in the Supreme Court in its Equitable Jurisdiction, or by citation or otherwise in the said Court in its Ecclesiastical Jurisdiction, shall be instituted in the Supreme Court by a proceeding to be called an action.

2. All other proceedings in and applications to the Supreme Court may, subject to these Rules, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if the Principal Act had not been passed.

## ORDER II.

(O. 2.)

## WRIT OF SUMMONS AND PROCEDURE, ETC.

1. Every action in the Supreme Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action.

2. Any costs occasioned by the use of any forms of writs, and of indorsements thereon, other or more prolix than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court or a Judge shall otherwise direct.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in one of the Forms Nos. 1 and 2 in Appendix A, Part I., with such variations as circumstances may require.

4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the Court or a Judge.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in one of the Forms Nos. 3 and 4 in Appendix A, Part I., with such variations as circumstances may require. Such notice shall be in one of the Forms Nos. 5 and 6 in the same Part, with such variations as circumstances may require.

6. No writ shall hereafter be issued under the Summary Procedure on Bills of Exchange Act, 1855 (18 and 19 Vict. c. 67).

7. Every writ of summons, and also (unless by any statute or by these Rules it is otherwise provided) every other writ, shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Chief Justice of Western Australia.

8. The time to be limited in the writ of summons for the appearance of any defendant shall be the time next hereinafter specified, according to the place of service, that is to say:—

Where the Place of Service is—	Time for Appearance.
(1). In Western Australia—	
Not exceeding 200 miles from Perth ... ..	Ten days.
Above 200 miles, but not exceeding 400 miles ...	Sixteen days.
Above 400 miles, but not exceeding 600 miles ...	Twenty-one days.
Above 600 miles ... ..	Thirty days.
(2). Out of Western Australia—	Such time as the Court or a Judge may direct.



## ORDER III.

(O. 3.)

## INDORSEMENTS OF CLAIM.

1. The indorsement of claim shall be made on every writ of summons before it is issued.

2. In the indorsement required by Order II., Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled.

3. The indorsement of claim shall be to the effect of such of the Forms in Appendix A, Part III., as shall be applicable to the case, or, if none be found applicable, then such other similarly concise form as the nature of the case may require.

4. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show, in manner appearing by such of the Forms in Appendix A, Part III., sec. VI., as shall be applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

5. In Probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character.

6. In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (A) upon a contract, express or implied (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); or (B) on a bond or contract under seal for payment of a liquidated amount of money; or (C) on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or (D) on a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (E) on a trust; or (F) in actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord or any person claiming under a landlord, against a tenant whose term has expired, or has been duly determined by notice to quit, or by forfeiture, or against persons claiming under such tenant; or (G) in actions for possession of land or personal chattels, with or without a claim for the moneys secured, by a mortgagee or persons claiming under a mortgagee, against a mortgagor or persons claiming under a mortgagor, where the right to possession has arisen under the mortgage deed or other instrument, the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, or of the remedy or relief to which he claims to be entitled. Such special indorsement shall be to the effect of such of the Forms in Appendix C, sec. IV., as shall be applicable to the case.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement shall be in the form in Appendix A, Part III., sec. III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

8. In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

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#### ORDER IV.

(O. 4.)

##### INDORSEMENT OF ADDRESS.

1. In all cases where a writ of summons is issued out of the Central Office, the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ and notice in lieu of service of a writ the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall not be within the City of Perth, another proper place, to be called his address for service, which shall be within such City, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

2. In all cases where a writ of summons is issued out of the City of Perth, a plaintiff suing in person shall indorse upon the writ and notice in lieu of service of a writ his place of residence and occupation, and also, if his place of residence shall not be within the City of Perth, another proper place, to be called his address for service, which shall be within such city, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

3. In all cases where proceedings are commenced otherwise than by writ of summons, the preceding Rules of this Order shall apply to the document by which such proceedings shall be originated as if it were a writ of summons.

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## ORDER V.

(O. 5.)

## ISSUE OF WRITS OF SUMMONS.

I. *Place of issue.*

1. Every writ of summons shall be issued out of the Central Office.

II. *Generally.*

2. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as by these Rules directed in the case of proceedings directed to be printed.

3. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

4. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

5. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, which is to be kept in the manner in which Cause Books are now kept, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such Cause Books.

III. *In particular Actions.*

6. The issue of a writ of summons in Probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.

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ORDER VI.

(O. 6.)

## CONCURRENT WRITS.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear *teste* of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

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## ORDER VII.

(O. 7.)

## I. DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

## II. CHANGE OF SOLICITORS.

2. A party suing or defending by a solicitor shall be at liberty to change his solicitor in any cause or matter, without an order for that purpose, upon notice of such change being filed in the Central Office, but until such notice is filed and a copy thereof served, the former solicitor shall be considered the solicitor of the party.

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ORDER VIII.

(O. 8.)

## RENEWAL OF WRIT.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to the Court or a Judge for leave to renew the writ; and the Court or Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 7 in Appendix A, Part I., with such variations as circumstances may require; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

2. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its

having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

3. Where a writ, of which the production is necessary, has been lost, the Court or a Judge, upon being satisfied of the loss, and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ.

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## ORDER IX.

(O. 9.)

### SERVICE OF WRIT OF SUMMONS.

#### I. *Mode of Service.*

1. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service and enters an appearance.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution for service of notice, by advertisement or otherwise, as may seem just.

#### II. *On particular Defendants.*

3. When husband and wife are both defendants to the action, they shall both be served unless the Court or a Judge shall otherwise order.

4. When an infant is a defendant to the action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or a Judge otherwise orders, be deemed good service on the infant; provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service.

5. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he is, shall, unless the Court or a Judge otherwise orders, be deemed good service on such defendant.

#### III. *On Corporations and other Bodies.*

6. In the absence of any statutory provision regulating service of process, every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation; and where by any statute, provision is made for service of any writ of summons, bill, petition, summons, or other process

upon any corporation, or upon any society or fellowship, or any body or number of persons, whether corporate or unincorporate, every writ of summons may be served in the manner so provided.

IV. *In particular Actions.*

7. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

V. *Generally.*

8. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made. This Rule shall apply to substituted as well as other service.

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ORDER X.

(O. 10.)

SUBSTITUTED SERVICE.

1. Every application to the Court or a Judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

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ORDER XI.

(O. 11.)

SERVICE OUT OF THE JURISDICTION.

1. Service out of the jurisdiction of a writ of summons or notice of writ of summons may be allowed by the Court or a Judge whenever—

- (a.) The whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits); or
- (b.) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed, rectified, set aside, or enforced in the action; or
- (c.) Any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (d.) The action is for the administration of the personal estate of any deceased person, who at the time of his

death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of Western Australia; or

- (e.) The action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction; or
- (f.) Any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
- (g.) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

2. In Probate actions service of a writ of summons or notice of a writ of summons may by leave of the Court or a Judge be allowed out of the jurisdiction.

3. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction under this Order.

4. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

5. When the defendant is neither a British subject, nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

6. Notice in lieu of service shall be given in the manner in which writs of summons are served.

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## ORDER XII.

(O. 12.)

## APPEARANCE.

1. Except in the cases otherwise provided for by these Rules a defendant shall enter his appearance in Perth.

2. Appearances entered in Perth shall be entered in the Central Office.

3. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

4. A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance (Form No. 2 in Appendix A., Part II.) to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum.

5. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and a place, to be called his address for service, which shall be within the City of Perth, and where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

6. A defendant appearing in person shall state in such memorandum his address, and a place, to be called his address for service, which shall be in Perth.

7. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff.

8. The memorandum of appearance shall be in the Form No. 1 in Appendix A, Part II., with such variations as circumstances may require.

9. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the Cause Book.

10. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.



11. A solicitor not entering an appearance, in pursuance of his written undertaking so to do, shall be liable to an attachment.

12. A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance, he shall not, unless the Court or a Judge shall otherwise order, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

13. In Probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

14. Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court or a Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant.

15. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

16. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or a Judge to appear and defend, he shall enter an appearance, according to the foregoing Rules of this Order, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

17. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice intituled in the action and signed by him or his solicitor. Such notice shall be served within four days after appearance; and an appearance, where the defence is not limited as above mentioned, shall be deemed an appearance to defend for the whole.

18. The notice mentioned in the last preceding rule shall be in the Form No. 3 in Appendix A, Part II., with such variations as circumstances may require.

19. A defendant before appearing shall be at liberty, without obtaining an order to enter or entering a conditional appearance, to serve notice of motion to set aside the service upon him of the writ or of notice of the writ, or to discharge the order authorising such service.

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## ORDER XIII.

(O. 13.)

## DEFAULT OF APPEARANCE.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff shall, before further proceeding with the action against the defendant, apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last-mentioned service.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

3. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if no writ be specified) at the rate of eight per centum per annum, to the date of the judgment, and costs.

4. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may enter final judgment, as in the preceding rule, against such as have not appeared. and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have appeared.

5. Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant fails, or all the defendants, if more than one, fail, to appear, the plaintiff may enter interlocutory judgment, and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorse-

ment on the writ of summons. But the Court or a Judge may order a statement of claim or particulars to be filed before any assessment of damages, and may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct.

6. Where the writ is indorsed as in the last preceding Rule mentioned, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and the value of the goods and the damages, or either of them, as the case may be, may be assessed, as against the defendant or defendants suffering judgment by default, at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the Court or a Judge shall otherwise direct. Provided that the Court or a Judge may order that instead of a writ of inquiry or trial, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct.

7. Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand, interest and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in such of the preceding Rules of this Order as may be applicable.

8. In case no appearance shall be entered in an action for the recovery of land, within the time limited by the writ for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, double value, or damages for breach of contract or wrong or injury to the premises claimed, upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned for the land; and may proceed as in the other preceding Rules of this Order mentioned as to such other claim so indorsed.

10. Where judgment is entered pursuant to any of the preceding Rules of this Order, it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may be just.

11. In all actions not by the Rules of this Order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing

by the plaintiff of a proper affidavit of service, and, if the writ is not specially indorsed under Order III., Rule 6, of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order XV.

12. Where the writ is indorsed with a claim on a bond within 8 & 9 Wm. III., c. 11, and the defendant fails to appear thereto, no statement of claim shall be delivered, and the plaintiff may at once suggest breaches by delivering a suggestion thereof to the defendant or his solicitor, and proceed as mentioned in the said Statute and in 3 & 4 Will. IV., c. 42, s. 16, adopted by 6 Will. IV., No. 4.

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#### ORDER XIV.

(O. 14.)

LEAVE TO SIGN JUDGMENT AND DEFEND WHERE WRIT SPECIALLY  
INDORSED.

1 (a). Where the defendant appears to a writ of summons specially indorsed under Order III., Rule 6, the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply to a Judge for liberty to enter final judgment for the amount so indorsed, together with interest, if any, or for recovery of the land (with or without rent or mesne profits), as the case may be, and costs. The Judge may thereupon, unless the defendant by affidavit, by his own *viva voce* evidence, or otherwise shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly.

(b.) If on the hearing of any application under this Rule it shall appear that any claim which could not have been specially indorsed under Order III., Rule 6, has been included in the indorsement on the writ, the Judge may, if he shall think fit, forthwith amend the indorsement by striking out such claim, or may deal with the claim specially indorsed as if no other claim had been included in the indorsement, and allow the action to proceed as respects the residue of the claim.

2. The application by the plaintiff for leave to enter final judgment under Rule 1 shall be made by summons returnable not less than two clear days after service accompanied by a copy of the affidavit and exhibits referred to therein.

3 (a). The defendant may show cause against such application by affidavit, or (except in actions for the recovery of land) by offering to bring into Court the sum indorsed on the writ, or the Judge may allow the defendant to be examined upon oath.

(b.) The affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part of the plaintiff's claim.

(c.) The Judge may, if he thinks fit, order the defendant, or in the case of a corporation, any officer thereof, to attend and be examined upon oath, or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court by the sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

5. If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

6. Leave to defend may be given unconditionally, or subject to such terms as to giving security or time or mode of trial or otherwise as the Judge may think fit.

7. The Judge may, with the consent of all parties, dispose of the action finally, and without appeal, in a summary manner.

8 (a). The costs of and incident to all applications under this Order shall be dealt with by the Judge on the hearing of the application, who shall order by and to whom, and when the same shall be paid, or may refer them to the Judge at the trial. Provided that in case no trial afterwards takes place, or no order as to costs is made, the costs are to be costs in the cause.

(b.) If the plaintiff makes an application under this Order where the case is not within the Order, or where the plaintiff, in the opinion of the Judge, knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, in any of such cases the application shall be dismissed with costs to be paid forthwith by the plaintiff.

9. A tenant shall have the same right to relief after a judgment under this Order for the recovery of land on the ground of forfeiture as if the judgment had been given after trial.

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## ORDER XV.

(O. 15.)

## APPLICATION FOR AN ACCOUNT.

1. Where a writ of summons has been indorsed for an account, under Order III., Rule 8, or where the indorsement on a writ of summons involves taking an account, if the defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions formerly usual in Equity in similar cases, shall be forthwith made.

2. An application for such order as mentioned in the last preceding Rule shall be made by summons, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

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ORDER XVI.

O. (16.)

## PARTIES.

I. *Generally.*

1. All persons may be joined in one action as plaintiffs, in whom any right to 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 shall appear that such joinder may embarrass or delay the trial of the action, the Court or a Judge 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 his costs occasioned by so joining any person who shall not be found entitled to relief unless the Court or a Judge in disposing of the costs shall otherwise direct.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge may, 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, order any other person to be substituted or added as plaintiff upon such terms as may be just.

3. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by estab-

lishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

4. 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.

5. 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 Court or a Judge 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.

6. 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.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

8. 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 Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to or in lieu of the previously existing parties.

This Rule shall apply to trustees, executors, and administrators, sued in proceedings to enforce a security by foreclosure or otherwise.

9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested.

10. Where in proceedings concerning a trust a compromise is proposed and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the Court and assenting to the compromise, the Court or a Judge, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on

the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

11. Subject to the provisions of the Acts and these Rules, in all Probate actions the rules as to parties, in use in the Supreme Court in Probate previously to the commencement of the Principal Act, shall continue to be in force.

12. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice.

13. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

14. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a Judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

## II. *Persons under Disability.*

15. Infants may sue as plaintiffs by their next friends, in the manner heretofore practised in the Court in its Equitable Jurisdiction, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued as provided by The Married Women's Property Act, 1892, and amendments thereof.

16. Where lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the Principal Act have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue



as plaintiffs in any action by their committee or next friend according to the practice in Equity, and may in like manner defend any action by their committees or guardians appointed for that purpose.

17. An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance shall make and file an affidavit in the Form No. 8 in Appendix A, Part II., with such variations as circumstances may require.

18. Every infant served with a petition or notice of motion, or summons in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last Rule mentioned.

19. Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the Central Office.

20. In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court or a Judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent.

### III. *Proceedings by or against Paupers.*

21. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth 25*l.*, his wearing apparel and the subject-matter of the cause or matter only excepted.

22. A person desirous of suing as a pauper shall lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding.

23. No person shall be permitted to sue as a pauper unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his solicitor, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, shall be produced before the Court or Judge or proper officer to whom the application is made, and no fee shall be payable by a pauper to his counsel or solicitor.

24. A person admitted to sue or defend as a pauper shall not be liable to any court fee.

25. Where a person is admitted to sue or defend as a pauper the Court or a Judge may, if necessary, assign a counsel or solici-

tor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or Judge that he has some good reason for refusing.

26. Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him any fee, profit, or reward, for the conduct of his business in the Court, and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward shall be guilty of a contempt of Court.

27. If any person admitted to sue or defend as a pauper gives, or agrees to give, any such fee, profit, or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper.

28. No notice of motion shall be served or summons issued, and no petition shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his solicitor, unless it is signed by his solicitor.

29. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented, without good cause.

30. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or a Judge shall otherwise direct, be taxed as in other cases.

#### IV. *Administration and Execution of Trusts.*

31. In any case in which the right of an heir-at-law or the next of kin, or a class shall depend upon the construction which the Court or a Judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or who are such heir-at-law or next of kin or class, and the Court or Judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heir-at-law, next of kin, or class shall have been ascertained by means of inquiry or otherwise, the Court or Judge may appoint some one or more persons to represent such heir-at-law, next of kin, or class, and the judgment of the Court or Judge in the presence of such persons shall be binding upon the heir-at-law, next of kin, or class so represented.

32. In any other case in which an heir-at-law, or any next of kin or a class shall be interested in any proceedings, the Court or Judge may, if, having regard to the nature and extent of the interest of such persons or any of them, it shall appear expedient on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more persons to represent such heir, or to represent all or any of such next of kin or class, and the judgment or order of the Court or Judge in the presence of the persons so appointed shall be binding upon the persons so represented.

33. Any residuary legatee or next of kin entitled to a judgment or order for the administration of the personal estate of a deceased person may have the same without serving the remaining residuary legatees or next of kin.

34. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, and who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate.

35. Any residuary devisee or heir entitled to the like judgment or order may have the same without serving any co-residuary devisee or co-heir.

36. Any one of several *cestuis que trustent* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other *cestui que trust*.

37. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest.

38. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or *ce-tui que trust* for the administration of the estate or the execution of the trusts.

39. The Court or a Judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

40. Wherever, in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made—

- (a) Under Order XV.;
- (b) Under Order XXXII.;
- (c) Affecting the rights or interests of persons not parties to the action;

the Court or a Judge may direct that any persons interested in the estate or under the trust or in the hereditaments, shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings, in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may, within one month after such service, apply to the Court or Judge to discharge, vary, or add to the judgment or order.

41. It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the Central Office in the same manner, and subject to the same provisions, as a defendant entering an appearance.

42. A memorandum of the service upon any person of notice of the judgment or order in any action under Rule 40 shall be entered in the Central Office upon due proof by affidavit of such service.

43. Notice of a judgment or order served pursuant to Rule 40 shall be entitled in the action and there shall be endorsed thereon a memorandum in the Form No. 24 in Appendix G.

44. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action.

45. In any cause or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him.

46. If in any cause, matter, or other proceeding it shall appear to the Court or a Judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding on such notice to such persons, if any, as the Court or Judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding.

47. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Court or a Judge, be entitled to appear either in Court or in Chambers on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. The Court or a Judge may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he shall think fit.

#### V. *Third Party Procedure.*

48. Where a defendant claims to be entitled to contribution, or indemnity over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice (hereinafter

called the third-party notice) to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a Judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the Form No. 1 in Appendix B., with such variations as circumstances may require, and there with shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action.

49. If a person not a party to the action, who is served as mentioned in Rule 48 (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, the third party must enter an appearance in the action within eight days from the service of the notice. 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 third-party notice. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or Judge shall think fit.

50. Where a third party makes default in entering an appearance in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or a Judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third-party notice: Provided that it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

51. Where a third party makes default in entering an appearance in the action, in case the action is tried and results in favour of the plaintiff, the Judge who tries the action may, 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 thereof be not issued without leave of the Judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the Court or a Judge may, on application by motion or summons, as the case may be, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him.

52. If a third party appears pursuant to the third-party notice, the defendant giving the notice may apply to the Court or a Judge for directions, and the Court or Judge, upon the hearing of such 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 Court or Judge 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.

53. The Court or a Judge upon the hearing of the application mentioned in Rule 52, may, if it shall appear desirable to do so, give the third party liberty 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, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the Court or Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action.

54. The Court or a Judge 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 direction as to costs as the justice of the case may require.

55. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party: but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action.

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## ORDER XVII.

(O. 17.)

### CHANGE OF PARTIES BY DEATH, ETC.

1. A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of 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*; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the cause or matter as may be just.

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause 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 Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

5. An order obtained as in the last preceding Rule mentioned shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following Rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, shall be served with such order as in Rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the service thereof.

7. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any order as in Rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the appointment of a

guardian *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

8. When the plaintiff or defendant in a cause 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 cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue as in the case provided for by Order XL., Rule 22.

9. Where any cause or matter becomes abated or in the case of any such change of interest as is by this Order provided for, the solicitor for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the Cause Book opposite to the name of such cause or matter.

10. Where any cause or matter shall have been standing for one year in the Cause Book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause Book.

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## ORDER XVIII.

(O. 18.)

### JOINDER OF CAUSES OF ACTION.

1. Subject to the following Rules of this Order, the plaintiff may unite in the same action several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

2. No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and 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.

Provided that nothing in this Order contained shall prevent any plaintiff in an action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case



may be, and such an action for foreclosure or redemption and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these Rules.

Provided also, that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may by motion or summons apply to the Court or a Judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case shall require.

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

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

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

7. The last three preceding Rules shall be subject to Rules 1, 8, and 9 of this Order.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of together.

9. If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of together, the Court or Judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just.

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## ORDER XIX.

(O. 19.)

### PLEADING GENERALLY.

1. The following rules of pleading shall be used in the Supreme Court.

2. The plaintiff shall, subject to the provisions of Order XX., and at such time and in such manner as therein prescribed, deliver to the defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The defendant shall,

subject to the provisions of Order XXI., and at such time and in such manner as therein prescribed, deliver to the plaintiff his defence, set-off, or counterclaim, if any, and the plaintiff shall, subject to the provisions of Order XXIII., and at such time and in such manner as therein prescribed, deliver his reply (if any) to such defence, set-off, or counterclaim. Such statements shall be as brief as the nature of the case will admit, and the taxing officer in adjusting the costs of the action shall at the instance of any party, or may without any request, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

3. 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 sound in damages or not, and such set-off or counterclaim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

4. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; but where pleadings have been settled by counsel they shall be signed by him; and if not so settled they shall be signed by the solicitor, or by the party if he sues or defends in person.

5. The Forms in Appendices C, D, and E, when applicable, and where they are not applicable forms of the like character, as near as may be, shall be used for all pleadings, and where such Forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be.

6. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the Forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; Provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.

7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

8. The party at whose instance particulars have been delivered under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this Rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time.

9. Every pleading which shall contain less than ten folios (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed, if the Court or a Judge shall so order.

10. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer.

11. Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, the reference to the letter and number of the action, the title of the action, and the description of the pleading, and shall be indorsed with the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

12. Nothing in these Rules contained shall affect the right of any defendant to plead Not Guilty by statute. And every defence of Not Guilty by statute shall have the same effect as a plea of Not Guilty by statute has heretofore had. But if the defendant so plead, he shall not plead any other defence to the same cause of action without the leave of the Court or a Judge.

13. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

14. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

15. The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds.

16. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new-ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

17. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

18. Subject to the last preceding Rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any) subsequent to reply may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

19. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

20. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise.

21. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

22. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

23. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material.

24. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

25. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied (*e.g.*, consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim).

26. In Probate actions it shall be stated with regard to every defence which is pleaded what is the substance of the case on which it is intended to rely: and further, where it is pleaded that the testator was not of sound mind, memory, and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial, and, except by leave of the Court or a Judge, no evidence shall be given of any other instances at the trial.

27. No technical objection shall be raised to any pleading on the ground of any alleged want of form.

28. The Court or a Judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the costs of the application to be paid as between solicitor and client.

29. In actions for damage by collision between vessels, unless the Court or a Judge shall otherwise order, the solicitor for the plaintiff shall, within seven days after the commencement of the action, and the solicitor for the defendant shall within seven days after appearance, and before any pleading is delivered, file with the Registrar, Master, or other proper officer, as the case may be, a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a Judge.

and which shall contain a statement of the following particulars:—

- (a) The names of the vessels which came into collision and the names of their masters;
- (b) The time of the collision;
- (c) The place of the collision;
- (d) The direction and force of the wind;
- (e) The state of the weather;
- (f) The state and force of the tide;
- (g) The course and speed of the vessel when the other was first seen;
- (h) The lights, if any, carried by her;
- (i) The distance and bearing of the other vessel when first seen;
- (k) The lights, if any, of the other vessel which were first seen;
- (l) Whether any lights of the other vessel, other than those first seen, came into view before the collision;
- (m) What measures were taken, and when, to avoid the collision;
- (n) The parts of each vessel which first came into contact;
- (o) What sound signals (if any) and when were given;
- (p) What sound signals (if any) and when were heard from the other vessel.

The Court or a Judge may order the Preliminary Act to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings; but in such case, if either party intends to rely on the defence of compulsory pilotage, he may do so, and shall give notice thereof in writing to the other party, within two days from the opening of the Preliminary Act.

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#### ORDER XX.

(O. 20.)

##### STATEMENT OF CLAIM.

1. The delivery of statements of claim shall be regulated as follows:—

- (a) Where the writ is specially indorsed under Order III., Rule 6, no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim;
- (b) Subject to the provisions of Order XIII., Rule 12, as to filing a statement of claim when there is no appearance, no statement of claim need be delivered unless the defendant at the time of entering appearance, or within eight days thereafter, gives notice in writing to the plaintiff or his solicitor that he requires a statement of claim to be delivered:

- (c) If no statement of claim has been delivered and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within five weeks from the time of the plaintiff receiving such notice:
- (d) The plaintiff may (except as in (a) mentioned) deliver a statement of claim, either with the writ of summons or notice in lieu of writ of summons, or at any time afterwards either before or after appearance, notwithstanding that the defendant may have appeared and not required the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered unless otherwise ordered by the Court or a Judge:
- (e) Where the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such statement, the Court or a Judge may make such order as to the costs occasioned thereby as shall be just, if it appears that the delivery of a statement of claim was unnecessary or improper.

2. In Probate actions the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance, in case he has made default; but where the defendant has appeared, the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

3. Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ.

4. The statement of claim must in all cases in which it is proposed that the trial should be elsewhere than in Perth, show the proposed place of trial.

5. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court or a Judge may think just, to the same extent as if it had been asked for. And the same rule shall apply to any counterclaim made, or relief claimed by the defendant, in his defence.

6. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counterclaim founded upon separate and distinct facts.

7. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.

8. In Probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

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## ORDER XXI.

(O. 21.)

### DEFENCE AND COUNTERCLAIM.

1. In actions for a debt or liquidated demand in money comprised in Order III., Rule 6, a mere denial of the debt shall be inadmissible.

2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact; *e.g.*, the drawing, making, indorsing, accepting, presenting, or notice of dishonour of the bill or note.

3. In actions comprised in Order III., Rule 6, classes (A) and (B), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e.g.*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.

4. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted.

5. If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

6. Where a statement of claim is delivered to a defendant he shall deliver his defence within 10 days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge.

7. A defendant who has appeared in an action, and who has neither received nor required the delivery of a statement of claim, must deliver his defence (if any) at any time within 10 days after his appearance, unless such time is extended by the Court or a Judge.



8. Where leave has been given to a defendant to defend under Order XIV., he shall deliver his defence (if any) within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within eight days after the order.

9. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court or Judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

10. Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he shall, in his statement of defence, state specifically that he does so by way of counterclaim.

11. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim setting forth the names of all the persons who, if such counterclaim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

12. Where any such person as in the last preceding Rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same Rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 2 in Appendix B, or to the like effect.

13. Any person not a defendant to the action, who is served with a defence and counterclaim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

14. Any person named in a defence as a party to a counterclaim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

15. Where a defendant sets up a counterclaim, if the plaintiff or any other person named in manner aforesaid as party to such counterclaim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent action, he may at any time before reply apply to the Court or a Judge for an order that such counterclaim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just.

16. 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.

17. Where in any action a set-off or counterclaim is established as a defence against the plaintiff's claim, the Court or a

Judge 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. In Probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall not, in any event, be liable to pay the costs of the other side, unless the Judge shall be of opinion that there was no reasonable ground for opposing the will.

19. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of a Statute, he shall insert in the margin of his pleading the words "by statute," together with the year of the reign in which the Statute on which he relies was passed, and also the chapter and section of such Statute, and shall specify whether such Statute is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any Statute.

20. No plea or defence shall be pleaded in abatement.

21. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove except as hereinbefore mentioned.

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## ORDER XXII.

(O. 22.)

### PAYMENT INTO AND OUT OF COURT AND TENDER.

1. Where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a Judge, pay into Court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability (except in actions or counterclaims for libel or slander), pay money into Court which shall be subject to the provisions of Rule 6: Provided that in an action on a bond under the Statute 8 & 9 Will. III. c. 11, payment into Court shall be admissible to particular breaches only, and not to the whole action.

2. Payment into Court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein.

3. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court.

4. If the defendant pays money into Court before delivering his defence, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action in respect of which such payment has been made. Such notice shall be in the Form No. 3 in Appendix B, with such variations as circumstances may require.

5. In the following cases of payment into Court under this Order, viz.:—

- (a) When payment into Court is made before delivery of defence:
- (b) When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court is made, is not denied in the defence:
- (c) When payment into Court is made with a defence setting up a tender of the sum paid:

the money paid into Court may, upon the order of the Court or of a Judge, be paid out to the plaintiff, or to his solicitor on the plaintiff's written authority.

6. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the defence, the following rules shall apply:—

- (a) The Plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect of such claim or cause of action, except as to costs shall be stayed; or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in Court subject to the provisions hereinafter mentioned:
- (b) If the plaintiff accepts the money so paid in, he shall, after service of such notice in the Form No. 4 in Appendix B as is in Rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the Court or a Judge shall otherwise order:

- (c) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in Court and be subject to the order of the Court or a Judge, and shall not be paid out of Court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him.

7. The plaintiff, when payment into Court is made before delivery of defence, may within four days after the receipt of notice of such payment, or when such payment is first signified in a defence, may before reply, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the Form No. 4 in Appendix B, and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of four days from the service of such notice, unless the Court or a Judge shall otherwise order, and in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed.

8. Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this Order in the same manner as in the action tried.

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

10. Where money is paid into Court under the certificate of a Master or Associate, such payment must be expressly authorised in such certificate.

11. Money paid into Court under an order of the Court or a Judge or certificate of a Master or Associate shall not be paid out of Court except in pursuance of an order of the Court or a Judge: Provided that, where before the delivery of defence money has been paid into Court by the defendant pursuant to an order under the provisions of Order XIV., he may (unless the Court or a Judge shall otherwise order) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and

the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding Rules of this Order relating to money paid into Court, and shall be subject in all respects thereto.

12. In any cause or matter in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition, the Court or a Judge may at any time order that the whole or any part of such sum shall be paid into Court to the credit of an account intituled in the cause or matter; and any sum so paid into Court, and any dividends or interest thereon, shall be subject to such orders as may from time to time be made by the Court or a Judge concerning the same, and may either be invested, or be paid out of Court, or transferred to such persons, to be held and applied upon and for such trusts and in such manner, as the Court or Judge shall direct.

13. Money paid into Court or securities purchased under the provisions of the last preceding Rule, and the dividends or interest thereon, shall be sold, transferred, or paid out to the party entitled thereto, pursuant to the order of the Court or a Judge.

14. Cash under the control of or subject to the order of the Court may be invested in the following stocks, funds, or securities, namely:—

- (a) In any of the Parliamentary stocks, or public funds, or Government securities of the United Kingdom, or of the Commonwealth, or of any of the Australian States;
- (b) On mortgage of real estate in Western Australia;
- (c) In debentures, or other securities charged on the funds or property of any municipality in Western Australia;
- (d) On fixed deposits in any incorporated or joint-stock bank carrying on business in Western Australia;
- (e) In any security, or manner authorised by any Act heretofore in force and not hereby repealed;
- (f) In the debenture or preference stock of any company now or hereafter carrying on business in Western Australia, and certified by notice in the Government Gazette, signed by the Colonial Treasurer, as a company in the stock of which trustees may invest.

15. Every application for the purpose of the conversion of any stocks, funds, or securities into any other stocks, funds, or securities authorised by the last preceding Rule, shall be served upon the trustees thereof, if any, and upon such other persons, if any, as the Court or Judge shall think fit.

16. Where a cause or matter is tried by a Judge with a jury no communication to the jury shall be made until after the verdict is given, either of the fact that money has been paid into Court, or of the amount paid in. The jury shall be required to find the amount of the debt or damages, as the case may be, without reference to any payment into Court.

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## ORDER XXIII.

(O. 23.)

## REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, within ten days after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then shall be pleaded only upon such terms as the Court or Judge shall think fit.

3. Subject to the last preceding Rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge.

4. Where a counterclaim is pleaded, a reply thereto shall be subject to the Rules applicable to statements of defence.

5. As soon as any party has joined issue upon the preceding pleading of the opposite party simply without adding any further or other pleading thereto, or has made default as mentioned in Order XXVII., Rule 13, the pleadings as between such parties shall be deemed to be closed.

6. No new assignment shall be necessary or used. But every thing which was formerly alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim, or by way of reply.

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ORDER XXIV.

(O. 24.)

## MATTERS ARISING PENDING THE ACTION.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counterclaim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counterclaim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the Court or a Judge, deliver a further defence or further reply as the case may be, setting forth the same.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last Rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence (which confession may be in the Form No. 5 in Appendix B, with such variations as circumstances may require), and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order.

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### ORDER XXV.

(O. 25.)

#### PROCEEDINGS IN LIEU OF DEMURRER.

1. No demurrer shall be allowed.
2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.
3. If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.
4. The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.
5. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

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### ORDER XXVI.

(O. 26.)

#### DISCONTINUANCE.

1. The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's

costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties.

3. Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within four days after taxation.

4. If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court or a Judge may, if they or he think fit, order a stay of such subsequent action, until such costs shall have been paid.

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## ORDER XXVII.

(O. 27.)

### DEFAULT OF PLEADING.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim shall have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as the Court or Judge shall think just.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.



3. When in any such action as in the last preceding Rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding Rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant or all the defendants, if more than one, make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one or more of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others. And in such case the value and amount of damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct.

6. If the plaintiff's claim be for a debt, or liquidated demand, and also for detention of goods with or without a claim for pecuniary damages, or either of them, and any defendant make default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or either of them, as the case may be, and proceed as mentioned in Rules 4 and 5.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed or any part of them, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in Rules 4 and 5.

9. If the plaintiff's claim be for a debt or liquidated demand, or for the detention of goods and pecuniary damages, or either of them, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an

answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the Court or a Judge enter judgment, final, or interlocutory, as the case may be, for the part unanswered; Provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand: Provided also that, where there is a counterclaim, execution on any such judgment as above mentioned in respect of the plaintiff's claim shall not issue without leave of the Court or a Judge.

10. In Probate actions, if any defendant make default in filing and delivering a defence, the action may proceed, notwithstanding such default.

11. In all other actions than those in the preceding Rules of this Order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court or a Judge shall consider the plaintiff to be entitled to.

12. Where, in any such action as mentioned in the last preceding Rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

13. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.

14. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court or Judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

15. Any judgment by default, whether under this order or under any other of these rules, may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit, and where an action has been set down on motion for judgment under Rule 11 of this Order, such setting down may be dealt with by the Court or a Judge in the same way as if judgment by default had been signed when the case was set down.

## ORDER XXVIII.

(O. 28.)

## AMENDMENT.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

2. The plaintiff may, without any leave, amend his statement of claim, whether indorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

3. A defendant who has set up any counterclaim or set-off may, without any leave, amend such counterclaim or set-off at any time before the expiration of the time allowed him for answering the reply and before such answer, or in case there be no reply then at any time before the expiration of twenty-eight days from defence.

4. Where any party has amended his pleading under either of the last two preceding Rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just.

5. Where any party has amended his pleading under Rules 2 or 3, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

6. In all cases not provided for by the preceding Rules of this Order, application for leave to amend may be made by either party to the Court or a Judge or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge.

8. An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions

on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a fresh copy or print of the document as amended.

9. Whenever any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.:  
 “Amended                      day of                      pursuant to order  
 of                      dated the                      of                      .”

10. Whenever any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same.

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion or summons without an appeal.

12. The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

13. The costs of and occasioned by any amendment made pursuant to Rules 2 and 3 of this Order shall be borne by the party making the same, unless the Court or a Judge shall otherwise order.

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## ORDER XXIX.

(O. 30.)

### SUMMONS FOR DIRECTIONS.

1. In every cause or matter one general summons for directions may be taken out at any time by any party with respect to the following matters and proceedings: particulars of claim defence or reply, statement of special case, discovery (including interrogatories), commissions and examinations of witnesses, mode of trial (including proceedings in lieu of demurrer, trial on motion for judgment, and reference), place of trial, and any other matter or proceeding in the cause or matter previous to trial.

2. Such summons for directions shall be a summons returnable in not less than four days, in the Form No. 3 in Appendix K, with such variations as circumstances may require, and shall be addressed to and served upon all such parties to the cause or matter as may be affected thereby. The applicant shall, so far as practicable, include in the summons all or as many of the above-mentioned matters and proceedings as, having regard to the nature

of the cause or matter, can conveniently be dealt with by the order and directions of the Court or Judge. Upon the hearing of the summons, any party to whom the summons is addressed shall be at liberty to apply for any order or directions as to any of the above-mentioned matters or proceedings which he may desire, and thereupon, after giving notice to such parties (if any) as the Court or Judge may direct, any order may be made, and all necessary directions given, as to all or any of such matters and proceedings as may be just, whether applied for or not: such order shall be in the Form No. 4 in Appendix K, with such variations as circumstances may require.

3. If, upon any other application as to any of the above-mentioned matters or proceedings, it shall appear to the Court or Judge that the application is one that could and ought to have been included in or made upon the general summons for directions, such application shall be granted only at the costs of the party making the same.

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### ORDER XXX.

(O. 31.)

#### DISCOVERY AND INSPECTION.

1. In any cause or matter the plaintiff or defendant by leave of the Court or a Judge may deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court or Judge. In deciding upon such application, the Court or Judge shall take into account any offer, which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the matter in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court or Judge shall consider necessary either for disposing fairly of the cause or matter or for saving costs.

3. In adjusting the costs of the cause or matter inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court or Judge, either with or without an application for inquiry, that such interrogatories have been exhibited unreason-

ably, 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.

4. Interrogatories shall be in the Form No. 6 in Appendix B, with such variations as circumstances may require.

5. If any party to a cause or matter be a body corporate or a joint-stock company, whether incorporated or not, or any other 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, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

6. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bona fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a Judge may allow.

9. An affidavit in answer to interrogatories may unless otherwise ordered by a Judge be in writing, and shall be in the Form No. 7 in Appendix B, with such variations as circumstances may require.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a Judge on motion or summons.

11. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the Judge may direct.

12. Any party may, without filing any affidavit, apply to the Court or a Judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court or Judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in their or his dis-

cretion, be thought fit. Provided that discovery shall not be ordered when and so far as the Court or Judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

13. 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 it shall be in the Form No. 8 in Appendix B, with such variations as circumstances may require.

14. It shall be lawful for the Court or a Judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Court or a Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

15. Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the Court or a Judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge shall deem sufficient for not complying with such notice: in which case the Court or a Judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge shall think fit.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 9 in Appendix B, with such variations as circumstances may require.

17. The party to whom such notice is given shall, within two 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 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three 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 bankers' books or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in the Form No. 10 in Appendix B, with such variations as circumstances may require.

18. If the party served with notice under Rule 17 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the Court or Judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit: Provided that the order shall not be made when and so far as the Court or a Judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

19. Any application to inspect documents, except such as are referred to in the pleadings, particulars, 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 Court or Judge shall not make such order for inspection of such documents when and so far as the Court or Judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

20. Where inspection of any business books is applied for, the Court or a Judge may, if they or he shall think 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 Court or a Judge may order inspection of the book from which the copy was made.

21. Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court or a Judge to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

22. The Court or a Judge may, on the application of any party to a cause or matter at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has 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 an 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 document or documents specified in the application, and that they relate to the matters in question in the cause or matter, or to some of them.

23. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or in-



spection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause 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.

24. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. 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 interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

25. Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

26. A solicitor, upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding Rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

27. Any party may, at the trial of a cause, matter, or issue, 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 Judge may look at the whole of the answers, and if he shall be of 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.

28. In every cause, or matter, the costs of discovery, by interrogatories or otherwise, shall, unless otherwise ordered by the Court or a Judge, be secured in the first instance as provided by Rule 29 of this Order, by the party seeking such discovery, and shall be allowed as part of his costs where, and only where, such discovery shall appear to the Judge at the trial, or, if there is no trial, to the Court or a Judge, or shall appear to the taxing officer to have been reasonably asked for.

29. Any party seeking discovery by interrogatories or otherwise may be ordered upon making application for discovery to pay into Court to a separate account in the action to be called "Security for Costs Account," to abide further order the sum of 5*l.*, or any less sum, and may be ordered further to pay into Court such additional sum as the Court or a Judge shall direct. The party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for the said payment into Court,

and the time for answering or making discovery shall in all cases commence from the date of such service. The party from whom discovery is sought shall not be required to answer or make discovery unless and until the said payment has been made.

30. Unless the Court or a Judge shall at or before the trial otherwise order, the amount standing to the credit of the "Security for Costs Account" in any cause or matter shall after the cause 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, in the event of the costs of the cause or matter being adjudged to him, but, in the event of the Court or Judge ordering him to pay the costs of the cause or matter, the amount in Court shall be subject to a lien for the costs ordered to be paid to any other party.

31. If after a cause or matter has been finally disposed of by consent or otherwise, no taxation of costs shall be required, the Taxing Officer may either by consent of the parties or on being satisfied that any party who has lodged any money to the "Security for Costs Account" in such cause or matter has become entitled to have the same paid out to him, give a certificate to that effect, which certificate shall be acted upon and have effect in all respects as if it were an order made in the said cause or matter.

32. In any action against or by a sheriff in respect of any matters connected with the execution of his office, the Court or a Judge may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned.

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

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## ORDER XXXI.

(O. 32.)

### ADMISSIONS.

1. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the Court or a Judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

3. A notice to admit documents shall be in the Form No. 11 in Appendix B, with such variations as circumstances may require.

4. Any party may, by notice in writing, at any time not later than nine days before the day for which notice of trial has been given, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court or a Judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court or a Judge certify that the refusal to admit was reasonable, or unless the Court or a Judge shall at any time otherwise order or direct. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also, that the Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

5. A notice to admit facts shall be in the Form No. 12 in Appendix B, and admissions of facts shall be in the Form No. 13 in Appendix B, with such variations as circumstances may require.

6. Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a Judge may upon such application make such order, or give such judgment, as the Court or Judge may think just.

7. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required.

8. Notice to produce documents shall be in the Form No. 14 in Appendix B, with such variations as circumstances may require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

9. 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.

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## ORDER XXXII.

(O. 33.)

## ISSUES, INQUIRIES, AND ACCOUNTS.

1. Where in any cause or matter it appears to the Court or a Judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court or a Judge.

2. The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

3. The Court or a Judge may, either by the judgment or order directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account, the books of account in which the accounts in question have been kept shall 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.

4. Where any account is directed to be taken, the accounting party, unless the Court or a Judge 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 in the Judge's Chambers, or with the official or other referee, as the case may be.

5. Upon the taking of any account the Court or a Judge 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 Judge in Chambers.

6. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner.

7. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court or a Judge shall otherwise direct.

8. Where by any judgment or order, whether made in Court or in Chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number, and such judgment or order shall be in the Form No. 28

in Appendix L., with such variations as the circumstances of the case may require.

9. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

10. If it shall appear to the Court or a Judge that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court or Judge may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require; and for the purposes aforesaid, any party or the official solicitor may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which may be given; and any costs of the official solicitor shall be paid by such parties or out of such funds as the Court or Judge may direct; and if any such costs be not otherwise paid, the same shall be paid out of such moneys (if any) as may be provided by the Legislature.

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## ORDER XXXIII.

(O. 34.)

### I. SPECIAL CASE.

1. The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

2. If it appear to the Court or a Judge that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a Referee or an Arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

3. Every special case shall be written, or, if directed by the Court or a Judge, printed by the plaintiff, and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. Printed or written copies for the use of the Judges shall be delivered by the plaintiff.

4. No special case in any cause or matter to which a married woman (not being a party thereto in respect of her separate property or of any separate right of action by or against her), infant, or person of unsound mind not so found by inquisition is a party, shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 21 in Appendix G, and also if any married woman, infant, or person of unsound mind not so found by inquisition be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument.

6. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that, on the judgment of the Court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

7. This Order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto.

8. Any special case may hereafter be stated, for the same purposes and in the same manner as was provided by the Act 13 & 14 Vict. c. 35, and the same shall be deemed to be a special case stated in a matter within the meaning of this Order.

## II. ISSUES OF FACT WITHOUT PLEADINGS.

9. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court or a Judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the Form No. 15 in Appendix B, with such variations as circumstances may require, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdic-

tion of the Court or Judge, in the same way as the proceedings in an action.

10. The Court or a Judge may by consent of the parties order that, upon the finding in the affirmative or negative of such issue as in the last preceding Rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them either with or without the costs of the cause or matter.

11. Upon the finding on any such issue, as in Rule 9 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial.

12. The proceedings upon such issue, as in Rule 9 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

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## ORDER XXXIV.

(O. 36.)

### TRIAL.

#### I. *Place.*

1. There shall be no local venue for the trial of any action, except where otherwise provided by Statute. Every action shall, unless the Court or a Judge otherwise orders, be tried in the place named on the statement of claim, or (where no statement of claim has been delivered or required) by a notice in writing to be served on the defendant, or his solicitor, within six days after appearance. Where no place of trial is named, the place of trial shall, unless the Court or a Judge shall otherwise order, be Perth.

#### II. *Mode of Trial.*

2. In actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, the plaintiff may, in his notice of trial to be given as hereinafter provided, and the defendant may, upon giving notice within four days from the time of the service of notice of trial or within such extended time as the Court or a Judge may allow, or in the notice of trial to be given by him as hereinafter provided, signify his desire to have the issues of fact tried by a Judge with a jury, and thereupon the same shall be so tried.

3. Causes or matters in Equity shall be tried by a Judge without a jury, unless the Court or a Judge shall otherwise order.

4. The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the Principal Act could, without any consent of parties, have been tried without a jury.

5. The Court or a Judge may direct the trial without a jury of any cause, matter, or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion conveniently be made with a jury.

6. In any other cause or matter, upon the application (within seven days after notice of trial has been given) of any party there-to for a trial with a jury of the cause or matter or any issue of fact, an order shall be made for a trial with a jury.

7. (a.) In every cause or matter, unless under the provisions of Rule 6 of this Order a trial with a jury is ordered, or under Rule 2 of this Order either party has signified a desire to have a trial with a jury, the mode of trial shall be by a Judge without a jury: Provided that in any such case the Court or a Judge may at any time order any cause, matter, or issue to be tried by a Judge with a jury, or by a Judge sitting with assessors, or by a referee with or without assessors:

(b.) The plaintiff in any cause or matter in which he is entitled to a jury may have the issues tried by a special jury, upon giving notice in writing to that effect to the defendant at the time when he gives notice of trial:

(c.) The defendant, in any cause or matter in which he is entitled to a jury, may have the issues tried by a special jury, on giving notice in writing to that effect at any time after the close of the pleadings or settlement of the issues and before notice of trial, or if notice of trial has been given, then not less than six clear days before the day for which notice of trial has been given:

(d.) Provided that a Judge may at any time make an order for a special jury upon such terms, if any, as to costs and otherwise as may be just.

8. Subject to the provisions of the preceding Rules of this Order, the Court or a Judge may, in any cause or matter, at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others.

9. Every trial of any question or issue of fact with a jury shall be by a single Judge, unless such trial be specially ordered to be by two or more Judges.



### III. *Notice and Entry of Trial.*

10. Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial.

11. If the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the Court or a Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or a Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just.

12. Notice of trial shall state whether it is for the trial of the cause or matter or of issues therein; and the place and day for which it is to be entered for trial. It shall be in the Form No. 16 in Appendix B, with such variations as circumstances may require.

13. Ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms or has been ordered to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge. Short notice of trial shall be four days' notice unless otherwise ordered.

14. Notice of trial shall be given before entering the trial: and the trial may be entered notwithstanding that the pleadings are not closed provided that notice of trial has been given.

15. In Perth, unless within six days after notice of trial is given the trial shall be entered by one party or the other, the notice of trial shall be no longer in force.

16. Notice of trial for Perth shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the trial may come on in its order upon the list.

17. Notice of trial elsewhere than in Perth shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

18. No notice of trial shall be countermanded except by consent, or by leave of the Court or a Judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

19. If the party giving notice of trial for Perth omits to enter the trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last preceding Rule, within four days enter the trial.

20. When any cause or matter in Equity shall have been adjourned for further consideration, the same may, after the ex-

piration of eight days, and within fourteen days from the filing of the Master's certificate, be set down by the Master in the Cause Book for further consideration, on the written request of the solicitor for the plaintiff or party having the conduct of the proceedings, and after the expiration of such fourteen days the cause or matter may be set down by the Master on the written request of the solicitor for the plaintiff or for any other party; and in either case, upon production of the judgment or order adjourning further consideration, or an office copy thereof, and an office copy of the Master's certificate or a memorandum of the date when the certificate was filed, indorsed on the request by the proper officer. The request may be in the Form No. 26 in Appendix L. The cause or matter when so set down shall not be put into the paper for further consideration until after the expiration of ten days from the day on which the same was so set down, and shall be marked in the Cause Book accordingly. Notice thereof shall be given to the other parties in the action at least six days before the day for which the same may be so marked for further consideration. Such notice may be in the Form No. 27 in Appendix L.

#### IV. *Lists for Perth.*

21. Separate lists of trials with juries and trials without juries respectively, to be tried at the sittings of the Supreme Court at Common Law in Perth, shall be prepared, and the trials on each list shall be allotted without reference to any other list, and shall be tried at such times as the Chief Justice may direct or the Judges may arrange.

22. When a trial which has been entered has been withdrawn under Order XXVI., Rule 2, or settled, the party who made the entry shall immediately thereupon give notice thereof to the cause list clerk at the Central Office, and such entry shall be expunged from the list.

#### V. *Papers for Judge.*

23. The party entering the trial shall deliver to the proper officer two copies of the whole of the pleadings, one of which shall be for the use of the Judge at the trial. Such copies shall be in print, except as to such parts (if any) of the documents as are by these Rules permitted to be written.

#### VI. *Proceedings at Trial.*

24. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him.

25. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him.

26. Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a Judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the place of trial or in Perth.

27. The Judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit.

28. Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus* duly issued from the Central Office, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus* may be issued for such future day, if the Court or a Judge shall so direct, without payment of any fee.

29. Upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, 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 heretofore.

30. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

31. The Judge may in all cases disallow any questions 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 cause or matter.

32. The Judge may, at or after trial, direct that judgment be entered as he shall think right, or he may adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after trial without the order of a Court or Judge.

33. The Registrar, Master, or other proper officer present at any hearing or trial, shall make a note of the times at which such hearing or trial shall commence and terminate respectively, on each day on which the same shall take place, for communication to the taxing officer if required.

34. Upon every trial, or at the sittings of the Supreme Court, where the officer present at the trial is not the officer by whom

judgments ought to be entered, the Associate or Master shall enter all such findings of fact as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, in a book to be kept for the purpose.

35. If the Judge shall direct that any judgment be entered for any party absolutely, the certificate of the Associate or Master to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate shall be in the Form No. 17 in Appendix B, with such variations as circumstances may require.

#### VII. *Assessors, Commissioners, and Referees.*

36. Trials with assessors shall take place in such manner and upon such terms as the Court or a Judge shall direct.

37. In any cause or matter the Court or a Judge may, at any time, or from time to time, order the trial and determination of such cause or matter, or of any issue of fact, or partly of fact and partly of law, therein, by any commissioner appointed in pursuance of the 12th section of the Principal Act, or at the sittings to be held in Perth, and such cause, matter, or issue shall be tried and determined accordingly.

38. Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried with a jury.

39. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by *subpoena*, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials are conducted before a Judge.

40. Subject to any such order as last aforesaid, the referee shall have the same authority with respect to discovery and production of documents, and in the conduct of any reference or trial, and the same power to direct that judgment be entered for any or either party, as a Judge of the Supreme Court.

41. Nothing in these Rules contained shall authorise any referee to commit any person to prison or to enforce any order by attachment or otherwise.

42. The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any

facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the Court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence as the Court may direct.

43. Whenever a report shall be made by a referee, he shall on the same day cause notice thereof to be given to all the parties to the trial or the reference before him by prepaid post letter directed to the address for service of each party, who shall in due course of post be deemed to have notice of such report.

44. Where under the provisions of the Arbitration Act (59 Vict., No. 13) the report of the referee has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the Court or Judge to adopt the report, or without leave of the Court or a Judge to give not less than four days' notice of motion, to come on with the further consideration, to vary the report or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee.

45. Where under the provisions of the Arbitration Act (59 Vict., No. 13) the report of the referee has been made in a cause or matter, the further consideration of which has not been adjourned, it shall be lawful for any party by an eight days' notice of motion to apply to the Court to adopt and carry into effect the report of the referee, or to vary the report, or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee.

46. Where the whole of any cause or matter is referred to a referee under an order of Court, he may, subject to any directions in the order, exercise the same discretion as to costs as the Court or a Judge could have exercised.

47. The provisions of Rules 38 to 46 of this Order shall apply, where any cause or matter or any question or issue of fact therein is referred to an officer of the Court or to a special referee or arbitrator. Provided that where the arbitrator is appointed otherwise than by an order of the Court the provisions of Rule 38 as to sitting *de die in diem* shall not apply.

#### VIII. *Writ of Inquiry and Reference as to Damages.*

48. The provisions of Rules 13, 14, 18, 27, 28, 29, and 30 of this Order, shall, with the necessary modifications, apply to an inquiry, pursuant to a writ of inquiry.

49. In every action or proceeding at Common Law in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the Court or a Judge may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the Court, and the attendance of witnesses and the production of documents before such officer may be compelled by *subpoena*, and such officer may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise, as upon the finding of a jury upon a writ of inquiry.

50. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

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## ORDER XXXV.

(O. 37.)

### I. EVIDENCE GENERALLY.

1. In the absence of any agreement in writing between the solicitors of all parties, and subject to these Rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *viva voce* and in open court, but the Court or a Judge 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 hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before a commissioner or examiner; provided that, where it appears to the Court or Judge 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.

2. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the Court or a Judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence.

3. Office copies of all writs, records, pleadings, and documents filed in the Supreme Court shall be admissible in evidence in all causes and matters and between all persons or parties, to the same extent as the original would be admissible.

## II. EXAMINATION OF WITNESSES.

4. The Court or a Judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before the Court or Judge or any officer of the Court, or any other person and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct.

5. An order for a commission to examine witnesses shall be in the Form No. 36 in Appendix K, and the writ of commission shall be in the Form No. 13 in Appendix J, with such variations as circumstances may require. If in any case the Court or a Judge shall so order, there shall issue a request to examine witnesses in lieu of a commission. The Forms 38 and 39 in Appendix K shall be used for such order and request respectively with such variations as circumstances may require.

6. The Court or a Judge may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or Judge may think fit to be produced: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

7. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of Court and may be dealt with accordingly.

8. Any person required to attend 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.

9. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

10. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination.

11. The depositions taken before an officer of the Court, or before any other 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 statement 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 shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear 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 may be 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 statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question.

12. If any person duly summoned by *subpoena* to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed at the Central Office, and thereupon the party requiring the attendance of the witness may apply to the Court or a Judge *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be.

13. If any witness shall object 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 Central Office to be there filed, and the validity of the objection shall be decided by the Court or a Judge.

14. In any case under the two last preceding Rules, the Court or a Judge shall have power to order the witness to pay any costs occasioned by his refusal or objection.

15. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Central Office, and there filed.

16. 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 Court or a Judge may direct such proceedings and make such order as upon the report they or he may think just.

17. Except where by this Order otherwise provided, or directed by the Court or a Judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Court or Judge is satisfied that the deponent is dead, or beyond the jurisdiction of the Court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence saving all just exceptions without proof of the signature to such certificate.



18. Any officer of the Court, or other person directed to take the examination of any witness or person, may administer oaths.

19. Any party in any cause or matter may by *subpoena ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the Court, or other person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such *subpoena* to attend before such officer or person for cross-examination.

20. Evidence taken subsequently to the hearing or trial of any cause 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.

21. 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 cause or matter at any stage.

22. The practice of the Court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case.

23. No affidavit or deposition filed or made before issue joined in any cause or matter shall without special leave of the Court or a Judge be received at the hearing or trial thereof, unless within one month after issue joined, or within such longer time as may be allowed by special leave of the Court or a Judge, notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf.

24. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

### III. SUBPOENA.

25. Where it is intended to sue out a *subpoena*, a *praecipe* for that purpose, in the Form No. 17 in Appendix G, and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm and place of business or residence of the principal solicitor, shall in all cases be delivered and filed at the Central Office.

26. A writ of *subpoena* shall be in one of the Forms 1 to 7 in Appendix J, with such variations as circumstances may require.

27. Where a *subpoena* is required for the attendance of a witness for the purpose of proceedings in Chambers, such *sub-*

*poena* shall issue from the Central Office upon a note from the Judge.

28. Every *subpoena* other than a *subpoena duces tecum* shall contain three names where necessary or required, but may contain any larger number of names.

29. No more than three persons shall be included in one *subpoena duces tecum*, and the party suing out the same shall be at liberty to sue out a *subpoena* for each person if it shall be deemed necessary or desirable.

30. In the interval between the suing out and service of any *subpoena* the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected *praecipe* of such *subpoena* marked with the words "altered and re-sealed," and signed with the name and address of the solicitor suing out the same.

31. The service of a *subpoena* shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ.

32. Affidavits filed for the purpose of proving the service of a *subpoena* upon any defendant must state when, where, and how, and by whom, such service was effected.

33. The service of any *subpoena* shall be of no validity if not made within twelve weeks after the *teste* of the writ.

#### IV. PERPETUATING TESTIMONY.

34. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.

35. In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney General may be made a defendant, and in all proceedings in which the depositions taken in any such action, in which the Attorney General was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken.

36. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose.

37. No action to perpetuate the testimony of witnesses shall be set down for trial.

## V. EXAMINERS.

38. Upon production, to the examiner by the party prosecuting the order or his solicitor, of the order or a duplicate thereof, the examiner shall give an appointment in writing specifying the place and time (within not more than seven days) at which, subject to any application from the parties, the examination shall be taken; and the party prosecuting the order or his solicitor shall within twenty-four hours or such shorter time if any as may be mentioned in the order, give notice of the appointment to all parties.

39. In determining the place and time at which an examination shall be taken, the examiner shall have regard to the convenience of the witnesses or persons to be examined and all the circumstances of the case; and he shall proceed with such examination at the place and time appointed, and, subject to such adjournment as he shall think necessary or just, continue the same *de die in diem*.

40. The examiner may, with the consent in writing of all parties, take the examination of any witnesses or persons in addition to those named or provided for in the order, and shall annex such consent to the original depositions.

41. Upon the completion of an examination taken before an examiner, he shall indorse the original depositions with a note authenticated by his signature, certifying the number of hours or days (as the case may be) exclusively employed thereupon and the fees received in respect thereof.

42. The Court or a Judge may, on the application of an examiner, order the payment to him by the party prosecuting the order of the fees and expenses payable to him on account of any examination, but without prejudice to any question on the taxation of costs as to the party by whom the costs of such examination should eventually be borne.

43. The examiners shall be entitled to charge the fees hereafter mentioned in substitution for the fees heretofore allowed:—

## EXAMINER'S FEES.

	£	s.	d.
1. Upon giving an appointment to take an examination .. .. .	1	1	0
2. For the examiner's clerk .. .. .	0	2	6
3. For each hour or part of an hour occupied in an examination within three miles from Perth ..	0	10	6
4. For each day of six hours or part of a day occupied in an examination beyond three miles from Perth .. .. .	5	5	0
5. For the examiner's clerk where an examination occupies more than three hours (in addition to fee No. 2) per day .. .. .	0	2	6

The party prosecuting the order or his solicitor shall also pay all reasonable travelling and other expenses including charges for the room (other than the examiner's chambers) where the examination is taken.

NOTE.—The fees 1 and 2 shall be paid by the party prosecuting the order or his solicitor at the time of obtaining the appointment, and may be retained by the examiner and his clerk respectively, whether the examination is taken or not. The other fees shall be paid so soon as the examination has been concluded, together with any travelling or other expenses as above mentioned.

44. Every examiner appointed to take an examination under this Order, shall indorse on the depositions, when he transmits them to the Central Office, a statement of the hours within which the examination began and ended.

45. An examiner shall not be required to transmit any deposition, to be filed at the Central Office, until all fees and expenses due to him in respect of that deposition have been paid.

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## ORDER XXXVI.

(O. 38.)

### I. AFFIDAVITS AND DEPOSITIONS.

1. Upon any motion, petition, or summons evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

2. Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

4. Affidavits sworn in Western Australia shall be sworn before a Judge, Commissioner to administer oaths, Justice of the Peace being a Police Magistrate, Government Resident, or Resident Magistrate, or officer empowered under these Rules to administer oaths.

5. Every person who shall administer oaths shall express the time when and the place where he shall take any affidavit, or the acknowledgment of any deed, or recognizance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled

without the leave of the Court or a Judge; and every such Commissioner shall express the time when, and the place where he shall do any other act incident to his office.

6. All examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the Supreme Court, and also acknowledgments required for the purpose of enrolling any deed in the Central Office, may be sworn and taken in the United Kingdom or the Channel Islands, or Isle of Man, or in any colony, island, plantation, or place under the dominion of His Majesty in foreign parts, before any Judge, Court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of His Majesty's consuls or vice-consuls in any foreign parts out of His Majesty's dominions; and the Judges and other officers of the Supreme Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or to any other deed or document.

7. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

8. Every affidavit shall state the description and true place of abode of the deponent.

9. In every affidavit made by two or more deponents the names of the several persons making the affidavit 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 "above-named" deponents.

10. Every affidavit used shall be filed in the Central Office. There shall be endorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court or a Judge shall otherwise direct.

11. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

12. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall without leave of the Court or a Judge be read or made use of in any matter depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the Central Office, either by his initials or by

the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the officer taking it.

13. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer 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 signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

14. The Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause 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.

15. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in Court or in Chambers, who shall cause it to be filed. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office.

16. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself.

17. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk, or partner.

18. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court or a Judge.

19. Except by leave of the Court or a Judge no order made *ex parte* in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

20. The consent of a new trustee to act shall be sufficiently evidenced by a written consent signed by him and verified by signature of his solicitor in the Form No. 29 in Appendix L, with such variations as the circumstances may require.

## II. AFFIDAVITS AND EVIDENCE IN CHAMBERS.

21. The party intending to use any affidavit in support of any application made by him in Chambers in Equity shall give notice to the other parties concerned of his intention in that behalf.

22. All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before the Judge in Chambers.

23. Every alteration in an account verified by affidavit to be left at Chambers shall be marked with the initials of the Commissioner or officer before whom the affidavit is sworn, and such alterations shall not be made by erasure.

24. Accounts, extracts from public registers, particulars of creditors' debts, and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits.

25. Every certificate on an exhibit referred to in an affidavit signed by the person before whom the affidavit is sworn shall be marked with the short title of the cause or matter.

## III. TRIAL ON AFFIDAVIT.

26. Within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the Court or a Judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

27. The defendant, within fourteen days after delivery of such list, or within such time as the parties may agree upon, or the Court or a Judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

28. Within seven days after the expiration of the last-mentioned fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

29. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a Judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

30. The party to whom such notice as is mentioned in the last preceding Rule is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

31. When the evidence under this Order is taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings: Provided that other affidavits may be printed if all the parties interested consent thereto, or the Court or a Judge so order: Provided also that this Rule shall not apply in Probate and Divorce to references in actions, unless the Court or a Judge shall otherwise order.

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### ORDER XXXVII.

(O. 39.)

#### MOTION FOR NEW TRIAL.

1. Every motion for a new trial or to set aside a verdict, finding, or judgment, shall be made to the Full Court.

2. Every application for a new trial shall be by notice of motion, and no rule *nisi*, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of.

3. The notice of motion shall be a fourteen days' notice, and shall be served within the times following, viz.: if the trial has taken place in Perth, within twenty-one days after the trial; if the trial has taken place elsewhere than in Perth, within twenty-one days after the last day of sitting at the place at which the trial shall have taken place. The time of the vacations shall not be reckoned in the computation of the time for serving the notice of motion.

4. The notice may be amended at any time by leave of the Court or a Judge on such terms as the Court or Judge may think just.

5. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties.



6. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

7. A new trial shall not be granted by reason of the ruling of any Judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

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### ORDER XXXVIII.

(O. 40.)

#### MOTION FOR JUDGMENT.

1. Except where by the Principal Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

2. Every referee to whom a cause or matter shall be referred for trial shall direct how judgment shall be entered, and such judgment shall be entered accordingly by the Master.

3. Where, at or after a trial with a jury, the Judge has directed that any judgment be entered, any party may apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason that the finding of the jury upon the questions submitted to them has not been properly entered.

4. Where, at or after a trial by a Judge, either with or without a jury, the Judge has directed that any judgment be entered, any party may apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.

5. An application under Rules 3 and 4 of this Order shall be to the Full Court.

6. Where at a trial by a referee he has directed that any judgment be entered, any party may move the Full Court to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determina-

tion renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact.

9. No motion for judgment shall, except by leave of the Court or a Judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

10. Upon a motion for judgment, or upon an application for a new trial, the Court may draw all inferences of fact, not inconsistent with the finding of the jury, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit.

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## ORDER XXXIX.

(O. 41.)

### ENTRY OF JUDGMENT.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the cause, other than any petition or summons; such copy shall be in print, except such parts (if any) thereof as are by these Rules permitted to be written: Provided that no copy need be delivered of any document a copy of which has been delivered on entering any previous judgment in such cause. The Forms in Appendix F shall be used, with such variations as circumstances may require.

2. All judgments shall be entered in the Central Office.

3. Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court or Judge shall otherwise order, and the judgment shall take effect from that date: Provided that by special leave of the Court or a Judge a judgment may be ante-dated or post-dated.

4. In all cases not within the last preceding Rule, the entry of judgment shall be dated as of the day on which the requisite docu-

ments are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

5. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, viz.:—

“ If you, the within-named *A. B.*, neglect to obey this judgment [*or order*] by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment [*or order*].”

6. Where under the Principal Act or these Rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly.

7. Where by the Principal Act or these Rules, or otherwise, any judgment may be entered pursuant to any order or certificate or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

8. Where reference is made to a Master to ascertain the amount for which final judgment is to be entered, the Master's certificate shall be filed in the Central Office when judgment is entered.

9. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent.

10. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a Judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, conveyancer, special pleader, or solicitor.

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## ORDER XL.

(O. 42.)

### EXECUTION.

1. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such

judgment or order upon being duly served with the same without demand.

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may on breach or non-performance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a Judge shall otherwise direct.

3. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of the Supreme Court might have been enforced at the time of the passing of the Principal Act.

4. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorised by law, by attachment.

5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

6. A judgment for the recovery of any property other than land or money may be enforced:

(a.) By writ for delivery of the property:

(b.) By writ of attachment:

(c.) By writ of sequestration.

7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

8. In these Rules the term "writ of execution" shall include writs of *fiery facias*, *capias*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding Rules of this Order shall be applicable to the case.

9. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

10. No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the creditor to execution.

11. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *praecipe* for that purpose. The *praecipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firm against whose goods, the execution is to be issued: and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The Forms in Appendix G shall be used, with such variations as circumstances may require.

12. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, or town, and also the name of the street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

13. Every writ of execution shall bear date of the day on which it is issued. The Forms in Appendix H shall be used, with such variations as circumstances may require.

14. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

15. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 8*l.* per cent. per annum from the time when the judgment or order was entered or made, provided that in cases where there is an agreement between the parties that more than 8*l.* per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed.

16. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or

more writ or writs of *fieri facias* to enforce payment thereof, subject nevertheless as follows:—

- (a.) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period:
- (b.) The Court or a Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit.

17. Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than eight days after the first writ.

18. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the Court or a Judge shall order execution to issue at an earlier or later date with or without terms.

19. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided: but such writ may, at any time before its expiration, by leave of the Court or a Judge, 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 writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

20. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding Rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

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

22. In the following cases, viz.:—

- (a.) Where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;
- (b.) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;
- (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 Court or a Judge for leave to issue execution accordingly. And such Court or Judge 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 may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise as shall be just.

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

24. An order of commitment under the Debtors Act, 1871, shall bear date on the day on which such order was made, and shall continue in force for one year from such date and no longer; but it may be renewed in the manner provided for writs of execution by Rule 19 of this Order.

25. Any person not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter.

26. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just.

27. Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

28. Nothing in this Order shall affect the order in which writs of execution may be issued.

29. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract be not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or

order has been obtained, or some other person appointed by the Court or Judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained, and costs.

30. Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property.

31. An award may with the leave of the Court or a Judge, and on such terms as may be just, be enforced at any time though the time for moving to set it aside has not elapsed.

## II. DISCOVERY IN AID OF EXECUTION.

32. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the debtor liable under such 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 a Judge or an officer of the Court as the Court or Judge shall appoint; and the Court or Judge may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents.

33. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a Judge, and the Court or Judge may make such order thereon for the attendance and examination of any party or otherwise as may be just.

34. 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 Judge on whose order they were impounded; or in case of documents impounded on the order of the Full Court by an order of that Court. Such documents shall not be delivered out of the custody of the Court except upon an order made on motion in open court. Provided that impounded documents in the Custody of the Court shall, upon the request in writing of the law officers of the Crown, or either of them, be given into the custody of such law officers.

35. The costs of any application under Rules 32, 33, and 34 of this Order, or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the Court or a Judge, or in the discretion of such officer as in Rule 32 mentioned, if the Court or a Judge shall so direct.



## ORDER XLI.

(O. 43.)

## I. WRITS OF FIERI FACIAS AND SEQUESTRATION.

1. Writs of *feri facias* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed.

2. Where it appears, upon the return of any writ of *feri facias*, that the sheriff or other officer has by virtue of such writ seized, but not sold, any goods of the person directed to pay a sum of money or costs, the person to whom such sum of money or costs is payable shall, immediately after such writ with such return shall have been filed as of record, be at liberty to sue out a writ of *venditioni exponas*.

3. Writs of *venditioni exponas*, *distringas nuper vice comitem*, and all other writs in aid of a writ of *feri facias*, may be issued and executed in the same cases and in the same manner as heretofore.

4. Where any person is by any judgment or order directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall, at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Equity had before the commencement of the Principal Act, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration were before the same date dealt with by the Supreme Court in Equity.

5. No *subpoena* for the payment of costs, and, unless by leave of the Court or a Judge, no sequestration to enforce such payment, shall be issued.

## II. SALES UNDER EXECUTIONS.

6. Every application under Section 129 of the Bankruptcy Act, 1892, for an order that a sale under an execution may be made otherwise than by public auction shall be made by summons at chambers. Upon service of a copy of the summons on the sheriff, he shall forward to the applicant a list of the names and addresses of every person at whose instance any other writ of execution against the goods of the debtor has been lodged with him (hereinafter called the sheriff's list).

7. The summons shall contain a short statement of the grounds of the application.

8. Notice of the application shall be given by serving a copy of the summons four clear days before the day on which the summons is returnable:—

- (a) If the applicant is an execution creditor, upon the sheriff, and upon every person named in the sheriff's list:
- (b) If the applicant is the execution debtor, upon the execution creditor at whose instance the execution has been levied under which the sale is intended to be made, the sheriff, and every other person named in the sheriff's list.

9. On the hearing of the application the applicant shall produce to the Court or Judge the sheriff's list.

10. The sheriff and every other person on whom the summons has been served may attend the hearing of the application and be heard in opposition to or in support of the application.

11. The Court or a Judge may, at the hearing of any summons under these rules, direct that all or any part of the costs may be borne by any of the persons attending, or otherwise as may be just.

12. In these rules—

“Sheriff” includes any officer charged with the execution of any writ of execution.

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#### ORDER XLII.

(O. 44.)

##### ATTACHMENT.

1. A writ of attachment shall have the same effect as a writ of attachment issued in Equity has heretofore had.

2. No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued.

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#### ORDER XLIII.

(O. 45.)

##### ATTACHMENT OF DEBTS.

1. The Court or a Judge may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, or the order made, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor shall be attached to answer the judgment or order, together with the costs of the garnishee proceedings;

and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, 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. At least seven days before the day of hearing, the order *nisi* shall be served on the garnishee or his solicitor, and, unless otherwise ordered, on the judgment debtor or his solicitor, at least seven days before the day of hearing. Service on the judgment debtor may be made in manner provided by Order LXVII., Rule 2, either at the address for service, if the judgment debtor has appeared in the action and given an address for service, or on his solicitor, if he has appeared by solicitor, or if there has been no appearance then at his usual residence or place of business, or in such other manner as the Court or Judge may direct.

2. Service of an order that debts, due or accruing to a debtor liable under a judgment or order, shall be attached, or notice thereof to the garnishee, in such manner as the Court or Judge shall direct, shall bind such debts in his hands.

3. If the garnishee does not forthwith pay into Court the amount due from him to the debtor, liable under a judgment or order, or an amount equal to the judgment or order, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, then the Court or Judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

4. If the garnishee disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined, or may refer the matter to the Master.

5. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or a Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

6. After hearing the allegations of any third person under such order, as in Rule 5 mentioned, and of any other person whom by the same or any subsequent order the Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, together with the costs

of the garnishee proceedings, or any issue or question to be tried or determined according to the preceding Rules of this Order, and may bar the claim of such third person, or make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable.

7. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

8. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer.

9. The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge, and as regards the costs of the judgment creditor shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order, and in priority to the amount of the judgment debt.

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#### ORDER XLIV.

(O. 46.)

##### CHARGING ORDERS, DISTINGUISHING, AND STOP ORDERS.

1. An order charging stock or shares may be made by any Judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided, by the Acts 1 & 2 Vict. c. 110, ss. 14 and 15, and 3 & 4 Vict. c. 82, s. 1, adopted by 38 Vict., No. 28.

2. Every summons by a separate judgment creditor of a partner for an order charging his interest in the partnership property and profits under section 28 of the Partnership Act, 1895 (59 Vict., No. 23), and for such other orders as are thereby authorised to be made, shall be served on the judgment debtor and on his partners, or such of them as are within the jurisdiction; and such service shall be good service on all the partners, and all orders made on such summons shall be similarly served.

3. Every application which shall be made by any partner of the judgment debtor under the same section shall be made by summons, and such summons shall be served on the judgment creditor and on the judgment debtor, and on such of the other partners as shall not concur in the application and as shall be within the juris-

diction, and such service shall be good service on all the partners, and all orders made on such summons shall be similarly served.

4. No writ of *distringas* shall hereafter be issued under the Act 5 Vict. c. 5, s. 5.

5. In the following Rules of this Order the expression "Company" includes any public company, whether incorporated or not, and the expression "stock" includes shares, securities, and money.

6. Any person claiming to be interested in any stock standing in the books of a Company may, on an affidavit by himself or his solicitor in the Form No. 27 in Appendix B, with such variations as circumstances may require, and on filing the same in the Central Office with a notice in the Form No. 22 in the same Appendix, with such variations as circumstances may require, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the Central Office, serve the office copy and duplicate notice on the Company.

7. There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent.

8. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated or at any such substituted address as hereinafter mentioned, whether the person to whom the notice is sent is living or not.

9. The address so stated may from time to time be altered by the person by or on whose behalf the affidavit is filed, but no notice sent by post before the alteration to the address originally given or for the time being substituted therefor shall be effected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the Company in the manner required for service of a notice under this order.

10. The service of the office copy of the affidavit and of the duplicate of the filed notice shall have the same force and effect against the Company as a writ of *distringas* duly issued under the Act 5 Vict. c. 5, s. 5 would have had against the Bank of England if these Rules had not been made.

11. A notice filed under Rule 6 of this Order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice or by petition or by summons at Chambers duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

12. If, whilst a notice filed under Rule 6 of this Order continues in force, the Company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred or to pay the

dividends thereon, the Company shall not, by force or in consequence of the service of the notice, be authorised, without the order of the Court or a Judge, to refuse to permit the transfer to be made or to withhold the payment of the dividends for more than eight days after the date of the request.

13. If the person who files a notice under Rule 6 of this Order desires to correct the description of the stock referred to in the filed notice, he may file an amended notice and serve on the Company a duplicate thereof sealed with the seal of the Central Office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

14. Where any moneys or securities are in Court to the general credit of any cause or matter, or to the account of any class of persons, and an order is made to prevent the transfer or payment of such moneys or securities, or any part thereof, without notice to the assignee of any person entitled in expectancy or otherwise to any share or portion of such moneys or securities, the person by whom any such order shall be obtained on the shares of such moneys or securities affected by such order shall be liable, at the discretion of the Court or a Judge, to pay any costs, charges, and expenses which, by reason of any such order having been obtained, shall be occasioned to any party to the cause or matter, or any persons interested in any such moneys or securities.

15. Any person presenting a petition or taking out a summons for any such order as aforesaid shall not be required to serve such petition or summons upon the parties to the cause or matter, or upon the persons interested in such parts of the moneys or securities as are not sought to be affected by any such order.

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#### ORDER XLV.

(O. 47.)

#### WRIT OF POSSESSION.

1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession in manner before the commencement of the Principal Act used in actions of ejectment in the Supreme Court.

2. Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order and that the same has not been obeyed.

3. Upon any judgment or order for the recovery of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the successful party.

## ORDER XLVI.

(O. 48.)

## WRIT OF DELIVERY.

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a Judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property, upon paying the value assessed, if any, and that if the property cannot be found, and unless the Court or a Judge shall otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the sheriff's bailiwick, till the defendant deliver the property; or at the option of the plaintiff, that the sheriff cause to be made of the defendant's goods the assessed value, if any, of the property.

2. A writ of delivery shall be in the Form No. 5 in Appendix H; and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest.

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ORDER XLVII.

(O. 48a.)

ACTIONS BY AND AGAINST FIRMS AND PERSONS CARRYING ON  
BUSINESS IN NAMES OTHER THAN THEIR OWN.

1. Any two or more persons claiming or being liable as co-partners and carrying on business within the jurisdiction may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a Judge for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all the proceedings shall, nevertheless, continue in the name of the firm.

3. Where persons are sued as partners in the name of their firm under Rule 1, the writ shall be served either upon any one or more of the partners or at the principal place, within the jurisdiction, of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to these Rules, such service shall be deemed good service upon the firm so sued, whether any of the members thereof are out of the jurisdiction or not, and no leave to issue a writ against them shall be necessary: Provided that in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ of summons shall be served upon every person within the jurisdiction sought to be made liable.

4. Where a writ is issued against a firm, and is served as directed by Rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice, the person served shall be deemed to be served as a partner.

5. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

6. Where a writ is served under Rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a member of the firm sued.

7. Any person served as a partner under Rule 3 may enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form.

8. Where a judgment or order is against a firm, execution may issue:—

- (a.) Against any property of the partnership within the jurisdiction:
- (b.) Against any person who has appeared in his own name under Rule 5 or 6, or who has admitted on the pleadings that he is, or who has been adjudged to be a partner:
- (c.) Against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for



leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. But except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of the jurisdiction when the writ was issued, and who has not appeared to the writ unless he has been made a party to the action under Order XI, or has been served within the jurisdiction after the writ in the action was issued.

9. Debts owing from a firm carrying on business within the jurisdiction may be attached under Order XLV, although one or more members of such firm may be resident abroad: Provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order. An appearance by any member pursuant to an order shall be a sufficient appearance by the firm.

10. The above Rules shall apply to actions between a firm and one or more of its members; and to actions between firms having one or more members in common, provided such firm or firms carry on business within the jurisdiction, but no execution shall be issued in such actions without leave of the Court or a Judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just.

11. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules relating to proceedings against firms shall apply.

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## ORDER XLVIII.

(O. 49.)

### CONSOLIDATION.

1. Causes or matters pending in the Supreme Court may be consolidated by order of the Court or a Judge.

2. An application to consolidate shall be made by summons.

3. Upon the hearing of an application under this Order the Court or a Judge may make such order as to the conduct of the consolidated causes or matters as may be deemed advisable.

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## ORDER XLIX.

(O. 49.)

I. INTERLOCUTORY ORDERS AS TO MANDAMUS INJUNCTIONS OR  
INTERIM PRESERVATION OF PROPERTY, ETC.

1. 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 Court or a Judge 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. Whenever an application shall be made for an injunction or other order, and on the opening of such application, or at any time during the hearing thereof it shall appear to the Judge that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, it shall be lawful for the Judge to make an order for such trial accordingly, and to direct such trial to be held at the next or any sittings of the Court at any place, if from local or other circumstances it shall appear to him to be convenient so to do; and in the meantime, to make such order as the justice of the case may require.

3. It shall be lawful for the Court or a Judge, on the application of any party, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as the Court or Judge may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

4. It shall be lawful for the Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorise any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

5. It shall be lawful for any Judge, by whom any cause or matter may be heard or tried with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.

6. The provisions of Rule 4 of this Order shall apply to inspection by a jury, and in such case the Court or a Judge may make all such orders upon the sheriff or other persons as may be

necessary to procure the attendance of a special or common jury at such time and place, and in such manner as they or he may think fit.

7. An application for an order under section 8, subsection 8, of the Principal Act, or under Rules 3 or 4 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said subsection 8 it may be made either *ex parte* or with notice, and if for an order under Rules 3 or 4 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

8. An application for an order under Rule 1 of this Order may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge.

9. When an action is brought to recover, or a defendant in his defence seeks by way of counter-claim 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 Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming 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 such Court or Judge may direct, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

10. Where any real or personal estate forms the subject of any proceedings in Equity, and the Judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge may, at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the Judge shall direct.

11. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge shall otherwise direct.

12. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had.

13. In any cause 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 injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Judge may grant the injunction, either upon or without terms, as may be just.

14. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer.

15. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action.

16. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the King's half of the composition shall be paid into the hands of the Master of the Supreme Court for the use of His Majesty.

## II. RECEIVERS.

17. In every case in which an application is made for the appointment of a Receiver by way of equitable execution, the Court or a Judge, 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 be probably obtained by the Receiver and to the probable costs of his appointment, and may, if he or they shall so think fit, direct any inquiries on these or other matters before making the appointment.

18. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a Judge and taken before a person authorised to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the Form No. 21 in Appendix L, unless the Court or a Judge shall otherwise order.

19. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a Judge may adjourn to Chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding Rule mentioned, and may thereupon direct such judgment or order to be drawn up.

20. When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge shall fix the days upon which he shall (annually, or at longer or shorter periods) 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 balances thereof at the times so to be fixed for that purpose as aforesaid, the Judge before whom any such receiver is to account may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and may also, if he shall think fit, charge him with interest at the rate of 8*l.* per cent. 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.

21. Receivers' accounts shall be in the Form No. 14 in Appendix L, with such variations as circumstances may require.

22. Every receiver shall leave in the Chambers of the Judge to whom the cause or matter is assigned his account, together with an affidavit verifying the same in the Form No. 22 in Appendix L, with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account.

23. In the 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 at Chambers 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 may be given at Chambers or by adjournment into Court, including the discharge of any receiver and appointment of another, and payment of costs.

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

25. When a receivership has been completed, the book containing the accounts shall be deposited in the Central Office.

### III. LIQUIDATORS AND GUARDIANS.

26. The accounts of liquidators and guardians shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts.

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## ORDER L.

(O. 51.)

## SALES BY THE COURT.

1. If in any cause or matter relating to any real estate, it shall appear necessary or expedient that the real estate or any part thereof should be sold, the Court or a Judge may order the same to be sold, and any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed.

2. In all cases where a sale, mortgage, partition, or exchange is ordered, the Court or a Judge shall have power, in addition to the powers already existing, with a view to avoiding expense or delay or for other good reason, to authorise the same to be carried out, either as at present:

- (a.) By laying proposals before the Judge in Chambers for his sanction, or
- (b.) By proceedings altogether out of Court, any moneys produced thereby being paid into Court or to trustees, or otherwise dealt with as the Judge in Chambers may order.

Provided always, that the Judge shall not authorise the said proceedings altogether out of the Court, unless and until he is satisfied, by such evidence as he shall deem sufficient, that all persons interested in the estate to be sold, mortgaged, partitioned, or exchanged are before the Court or are bound by the order for sale, mortgage, partition, or exchange, and every order authorising the said proceedings altogether out of Court shall be prefaced by a declaration that the Judge is so satisfied as aforesaid, and a statement of the evidence upon which such declaration is made.

3. Before any estate or interest shall be put up for sale under a judgment or order, an abstract of the title shall unless otherwise ordered be laid before some counsel approved by the Court or Judge for his opinion thereon, to enable proper directions to be given respecting the conditions of sale and other matters connected with the sale. The conditions of sale shall specify a time for the delivery of the abstract of title to the purchaser or to a solicitor.

4. Where a judgment or order is given or made, whether in Court or in Chambers, directing any property to be sold unless otherwise ordered, the same shall be sold, with the approbation of the Court or a Judge, to the best purchaser that can be got, the same to be allowed by the Court or a Judge, and all proper parties shall join in the sale and conveyance as the Court or Judge shall direct.

5. Affidavits for the purpose of enabling the Court or a Judge to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed.

6. As soon as particulars and conditions of sale settled at Chambers have been printed, two prints thereof, certified by the solicitor to be correct prints of the particulars and conditions settled at the Judge's Chambers, shall be left at Chambers.

7. An office copy of the affidavit of the person appointed to sell of the result of the sale, with the bidding paper and particulars therein referred to, shall be left at Chambers at least one clear day before the day appointed for settling the certificate of the result of the sale.

8. In the case of sales made under the direction of the Court the particulars of sale shall be signed by and the result of the sale shall be certified under the hands of the auctioneer and the solicitor of the party having the conduct of the sale. It shall not be necessary to file any affidavit verifying the particulars or the result of the sale. Such certificate shall be in the Form No. 16 of Appendix L.

9. The Court or a Judge may refer to counsel any matter relating to the investigation of the title to an estate with a view to an investment of money in the purchase or on mortgage thereof, or with a view to a sale thereof, or to the settlement of a draft of a conveyance, mortgage, settlement, or other instrument, or any other matter which the Court or Judge may think fit to refer, and may receive and act upon the opinion given in the matter referred.

10. Any party may object to the opinion given by counsel, and thereupon the point in dispute shall be disposed of by the Judge at Chambers or in Court, as he may think fit.

11. When any business is referred to counsel, a short memorandum or minute of the order of reference shall be prepared and signed by the Master, who shall add at the foot thereof a note specifying the name of the counsel to whom the business is to be referred, and the memorandum or minute shall be left by the party prosecuting the order, or his solicitor, with the counsel, and shall be a sufficient authority for him to proceed with the business so referred.

12. The Master shall keep a record of the references with proper indexes, and enter therein all such references, with the dates when the same are made.

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## ORDER LI.

(O. 52.)

### MOTIONS AND OTHER APPLICATIONS.

1. Where by these Rules any application is authorised to be made to the Court or a Judge, such application, if made to the Court or to a Judge in Court, shall be made by motion.

2. No motion or application for a rule *nisi* or order to show cause shall hereafter be made in any action, or (a) to set aside,

remit, or enforce an award, or (b) for attachment, or (c) to answer the matters in an affidavit, or (d) to strike off the rolls, or (e) against a sheriff to pay money levied under an execution.

3. Except where according to the practice existing at the time of the passing of the Principal Act any order or rule might be made absolute *ex parte* in the first instance, and except where notwithstanding Rule 2 a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or a Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside.

4. Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

5. Unless the Court or a Judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion: Provided that in applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion.

6. If on the hearing of a motion or other application the Court or a Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose.

7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.

8. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose.

9. The plaintiff may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.



10. No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff.

11. When any sheriff shall, before going out of office, arrest any defendant, and render return of *cepi corpus*, he may be called upon by a notice, as provided by the last preceding Rule, to bring in the body within the time allowed by law, although he may be out of office before such notice is given.

12. Every order, if and when drawn up, shall be dated the day of the week, month, and year, on which the same was made, unless the Court or a Judge shall otherwise direct, and shall take effect accordingly.

13. Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave (a) for the issue of any writ other than a writ of attachment, (b) for the amendment of any writ or pleadings, (c) for the filing of any document, or (d) for any act to be done by any officer of the Court other than a solicitor, it shall not be necessary to draw up such order unless the Court or a Judge shall otherwise direct; but the production of a note or memorandum of such order, signed by a Judge, Registrar, or Master, shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this Rule. The solicitor of the person on whose application such order is made shall forthwith give notice in writing thereof to such person (if any) as would, if this Rule had not been made, have been required to be served with such order.

14. It shall not be necessary to obtain an order to enter a judgment or order *nunc pro tunc*, but in all cases in which such entries were formerly made under orders of course, the solicitor applying to have a judgment or order so entered shall leave with the clerk of entries a memorandum in writing countersigned by the Registrar, and bearing a stamp according to the scale of Court fees for the time being in force.

15. At the foot of every petition (not being a petition of course) presented to the Court, and of every copy thereof, a statement shall be made of the persons, if any, intended to be served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof.

16. Unless the Court or a Judge gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition.

17. In the case of applications under Acts of Parliament directing the purchase money of any property sold to be paid into Court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same.

18. Where the relationship of solicitor and client exists, or has existed, a summons may be issued by the client or his representatives for the delivery of a cash account, or the payment of moneys, or the delivery of securities, and the Court or a Judge may from time to time order the respondent to deliver to the applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant, or to bring into Court the whole, or any part of the same, within such time as the Court or a Judge may order. In the event of the respondent alleging that he has a claim for costs, the Court or a Judge may make such provision for the payment or security thereof or the protection of the respondent's lien (if any) as the Court or Judge may think fit.

19. If, during the taxation of any bill of costs or the taking of any account between solicitor and client, it shall appear to the Taxing Master that there must in any event be moneys due from the solicitor to the client, the Taxing Master may from time to time make an interim certificate as to the amount so payable by the solicitor. Upon the filing of such certificate the Court or a Judge may order the moneys so certified to be forthwith paid to the client or brought into Court.

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## ORDER LII.

(O. 53.)

### I. ACTION OF MANDAMUS.

1. The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon the writ of summons.

2. The indorsement shall be in the Form given in Section IV. of Appendix A, Part III.

3. If judgment be given for the plaintiff the Court or Judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the Court or a Judge to be just, to perform the duty in question.

The Court or a Judge may also extend the time for the performance of the duty.

4. No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had.

## II. PREROGATIVE MANDAMUS.

5. Application for a prerogative writ of mandamus shall be made in the Supreme Court, according to the practice heretofore in use.

6. The Court or a Judge may, if they or he think fit, order that any writ of mandamus shall be peremptory in the first instance.

7. Every writ of mandamus shall bear date on the day when it is issued, and shall be tested in the name of the Chief Justice. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the Court thinks fit. A writ of mandamus shall be in the Form No. 12 in Appendix J, with such variations as circumstances may require.

8. Any person by law compellable to make any return to a writ of mandamus shall make his return to the first writ.

9. When any return is made to a writ of mandamus, other than an unconditional compliance therewith, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action; and, subject to these Rules, this pleading and all subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed and may be had and taken as if in an action.

10. Where a point of law is raised in answer to a return or any other pleading in mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party, without any motion for judgment being made or required.

11. Where, under Rules 9 and 10, the applicant obtains judgment he shall be entitled forthwith to a peremptory writ of mandamus to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue.

12. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus issued by the Supreme Court or any Judge thereof.

13. When it appears to the Court that the respondent claims no right or interest in the subject-matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment, shall still be made and proceed in the name of the person to whom the writ is directed, but if the Court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein. In that case

the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons on whose behalf the return is expressed to be made; and if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

14. Where, under the last preceding Rule, the return to a writ of mandamus is expressed to be made on behalf of some persons other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

15. The provisions of Order XL., Rule 23, and of the Orders mentioned in Order LXVIII., Rule 2, shall apply to mandamus, and in any case of mandamus in which a proceeding by way of interpleader may be proper, the provisions of Order LVII. shall be applicable, so far as the nature of the case will admit.

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### ORDER LIII.

(O. 54.)

#### APPLICATIONS AND PROCEEDINGS AT CHAMBERS.

##### *General.*

1. Every application at Chambers not made *ex parte* shall be made by summons.

2. Every application for payment or transfer out of Court made *ex parte*, and every other application made *ex parte* in which the Judge or proper officer shall think fit so to require, shall be made by summons.

3. Summonses shall not be altered after they are sealed except upon application at Chambers.

4. An originating summons shall be in the Form No. 25 in Appendix L., with such variations as circumstances may require. It shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and when so sealed shall be deemed to be issued. The person obtaining the summons shall leave at the Central Office a copy thereof, which shall be filed and stamped in the manner required by law.

5. The day and hour for attendance under an originating summons shall be left to be added, after the sealing thereof, in the margin or at the foot of the same, and shall be there inserted when such day and hour shall have been fixed at the Chambers of the Judge before whom the matter is to be decided, by the proper officer, who shall mark the summons with the seal used in such Chambers.

6. An originating summons, where service is necessary, shall, unless otherwise directed by the Judge, be served seven clear days before the return thereof.

7. Where from any cause an originating summons may not have been served upon any party seven clear days before the return thereof, an indorsement may be made upon the summons, and upon a copy thereof stamped for service appointing a new time for the parties not before served to attend at the Chambers of the Judge, and such indorsements shall be sealed at the Judge's Chambers, and the service of the copy so indorsed and sealed shall have the same force and effect as the service of an originating summons, and where any party has been served before such indorsement, the hearing thereof may, upon the return of the summons, be adjourned to the new time so appointed.

8. The parties served with an originating summons shall, before they are heard in Chambers, enter appearances in the Central Office and give notice thereof.

9. Every summons, other than an originating summons, shall be served one clear day before the return thereof unless in any case it shall be otherwise ordered. Provided that in case of summonses for time only, the summons may be served on the day previous to the return thereof.

10. Where any of the parties to a summons fail to attend, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the Judge may proceed *ex parte* if, considering the nature of the case, he think it expedient so to do; no affidavit of non-attendance shall be required or allowed, but the Judge may require such evidence of service as he may think just.

11. Where the Judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in the Judge's Chambers, unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just.

12. Where a proceeding in Chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally.

13. Where matters in respect of which summonses have been issued are not disposed of upon the return of the summons, the parties shall attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter.

14. In every cause or matter where any party thereto makes any application at Chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court or Judge; and upon the hearing of such application it shall be lawful for the Court or Judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the Judge thinks fit, be adjourned from Chambers into Court, or from Court into Chambers.

15. A summons other than an originating summons shall be in the Form No. 1 in Appendix K, with such variations as circumstances may require, and shall be addressed to all the persons on whom it is to be served.

16. In all cases of applications originating in Chambers, a summons shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave at the Central Office a copy thereof, which shall be filed, and stamped in the manner required by law.

17. The Master may transact all such business, and exercise all such authority and jurisdiction in respect of the same, as under the Principal Act or the Rules made thereunder may be transacted or exercised by a Judge at Chambers, except in respect of the following proceedings and matters, that is to say:—

- (a.) All matters relating to criminal proceedings or to the liberty of the subject.
- (b.) Granting leave for service out of the jurisdiction of a writ or notice of a writ of summons.
- (c.) The settlement of issues, except by consent.
- (d.) Inspection and other orders under Order XLVII., Rules 1 to 5.
- (e.) Prohibitions.
- (f.) Injunctions and other orders under Subsection 8 of Section 8 of the principal Act.
- (g.) Awarding of costs other than the costs of or relating to any proceedings before the Master or Registrar, and other than any costs which by these Rules or by the order of the Court or a Judge he is authorised to award.
- (h.) Reviewing taxation of costs.
- (i.) Orders absolute for charging stocks, funds, annuities, or share of dividends, or annual proceeds thereof.
- (j.) Acknowledgments of married women or applications to dispense with the concurrence of a husband in a disposition by a married woman.

18. If any matter appears to the Master proper for the decision of a Judge, the Master may refer the same to a Judge, and

the Judge may either dispose of the matter or refer the same back to the Master with such directions as he may think fit.

19. Any person affected by any order or decision of the Master may appeal therefrom to a Judge at Chambers. Such appeal shall be by way of indorsement on the summons by the Master at the request of any party, or by notice in writing to attend before a Judge without a fresh summons within four days after the decision complained of, or such further time as may be allowed by a Judge or by the Master.

20. An appeal from the Master's decision shall be no stay of proceedings, unless so ordered by a Judge or by the Master.

21. Unless a Judge otherwise specially directs, summonses for time only shall be returnable at 10.30 in the forenoon, and be heard by the Master in priority to other business. Other summonses shall, unless a Judge otherwise specially directs, be returnable at successive hours, commencing at 11 in the forenoon. In settling the number of summonses returnable at each hour, regard shall be had to the nature of the several applications.

22. Each summons, not being a summons for time only, shall, when issued, be entered by the proper officer in a list. The lists of summonses shall distinguish those which a Master has jurisdiction to hear from those which a Master has not jurisdiction to hear, and those which are to be attended by counsel from those which are not to be so attended.

23. The summonses in each list for hearing by a Judge or by the Master shall be called on in their order. If, when a summons is called on, neither party appears, the summons shall be passed over until the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order; if neither party appears to a summons so called on, it shall be struck out.

24. An appeal from a decision of a Judge at Chambers shall be by motion to the Full Court.

25. An order shall be in the Form No. 2 in Appendix K, with such variations as circumstances require. It shall be sealed, and shall be marked with the name of the Judge or Master by whom it is made.

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#### ORDER LIV.

(O. 54a.)

#### DECLARATION ON ORIGINATING SUMMONS.

1. Any person claiming to be interested under a deed, will, or other written instrument, may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.

2. The Court or a Judge may direct such persons to be served with the summons as they or he may think fit.

3. The application shall be supported by such evidence as the Court or a Judge may require.

4. The Court or Judge shall not be bound to determine any such question of construction if in their or his opinion it ought not to be determined on originating summons.

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## ORDER LV.

(O. 55.)

### CHAMBERS IN EQUITY.

#### I.—*General.*

1. The Equity business in Chambers of the Judges shall be carried on in conjunction with their Court business.

2. In any proceeding before a Judge in Chambers the party may if he desires be represented by counsel.

3. The business to be disposed of in Chambers by Judges shall consist of the following matters, in addition to the matters which under any other Rule or by statute may be disposed of in Chambers:—

- (1.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity or the birth, marriage, or death of any person:
- (2.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where the cash does not exceed 1,000*l.* or the securities do not exceed 1,000*l.* nominal value:
- (3.) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise:
- (4.) Applications for interim and permanent investment and for payment of dividends under any Act, whereby the purchase money of any property sold is directed to be paid into Court:
- (5.) Applications on behalf of infants where the infant is a ward of Court, or the administration of the estate of the infant, or the maintenance of the infant, is under the direction of the Court:
- (6.) Applications for the settlement of any property of any infant on marriage:
- (7.) Applications as to the guardianship and maintenance or advancement of infants:



- (8.) Applications connected with the management of property:
- (9.) Applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into Court and investment of the purchase money:
- (10.) All applications (not being applications for orders of course) for the taxation and delivery of bills of costs and for the delivery by any solicitor of deeds, documents, and papers:
- (11.) Applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of an insolvent estate or for the distribution of the estate of an intestate, or for the distribution of a fund among creditors or debenture holders:
- (12.) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all applications relating to the conduct of any cause or matter:
- (13.) Such other matters as the Judge may think fit to dispose of at Chambers.

## II.—*Administrations and Trusts.*

4. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law, or customary heir of a deceased person, or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in the Chambers of a Judge for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require (that is to say), the determination, without an administration of the estate or trust, of any of the following questions or matters:—

- (a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust* :
- (b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others:
- (c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts:
- (d) the payment into Court of any money in the hands of the executors or administrators or trustees:

- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees:
- (f) the approval of any sale, purchase, compromise, or other transaction:
- (g) the determination of any question arising in the administration of the estate or trust.

5. Any of the persons named in the last preceding Rule may in like manner apply for and obtain an order for—

- (a) the administration of the personal estate of the deceased:
- (b) the administration of the real estate of the deceased:
- (c) the administration of the trust.

6. The persons to be served with the summons under the last two preceding Rules in the first instance shall be the following (that is to say):—

A. Where the summons is taken out by an executor or administrator or trustee or by the Curator of Intestates' Estates—

- (a) for the determination of any question, under subsections (a), (e), (f), or (g) of Rule 4, the persons, or one of the persons, whose rights or interests are sought to be affected:
- (b) for the determination of any question, under subsection (b) of Rule 4, any member or alleged member of the class:
- (c) for the determination of any question, under subsection (c) of Rule 4, any person interested in taking such accounts:
- (d) for the determination of any question; under subsection (d) of Rule 4, any person interested in such money:
- (e) for relief under subsection (a) of Rule 5, the residuary legatees, or next of kin, or some of them:
- (f) for relief under subsection (b) of Rule 5, the residuary devisees, or heirs, or some of them:
- (g) for relief under subsection (c) of Rule 5, the *cestuis que trustent*, or some of them:
- (h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur:

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

7. Any mortgagee or mortgagor whether legal or equitable, or any person entitled to or having property subject to a legal or

equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons returnable in the Chambers of a Judge for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require, that is to say:—Sale, Foreclosure, Delivery of possession by the Mortgagor, Redemption, Reconveyance, Delivery of possession by the Mortgagee.

8. The persons to be served with the summons under the last preceding Rule shall be such persons as under the existing practice would be the proper defendants to an action for the like relief as that specified by the summons.

9. The Court or a Judge may direct such other persons to be served with the summons as they or he may think fit.

10. The application shall be supported by such evidence as the Court or a Judge may require, and directions may be given as they or he may think just for the trial of any questions arising thereout.

11. It shall be lawful for the Court or a Judge upon such summons to pronounce such judgment as the nature of the case may require.

12. The Court or a Judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as they or he may think just.

13. It shall not be obligatory on the Court or a Judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

14. Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Court or a Judge may, in addition to the powers already existing—

- (a.) Order that the application shall stand over for a certain time and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings.
- (b.) When necessary to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge in person.

15. When any summons under Rules 4 or 5 of this Order has been taken out, every subsequent summons relating to the same

estate or trust shall be marked with the name of the Judge by whom, for the time being, the matter is to be heard.

16. The issue of a summons under Rule 4 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

### III.—*Powers and Duties of the Master and other Officers.*

17. The Court or a Judge in Equity shall have power, subject to these Rules, to order what matters shall be heard and investigated by the Master or proper officer, either with or without their direction, during their progress; and what matters shall be heard and investigated by themselves, and particularly if the Judge shall so direct, the Master or other proper officer shall take such accounts and make such inquiries as have usually been taken and made by the Master, and the Judge shall give such aid and directions in every such account or inquiry as he may think fit, but subject to the right hereinafter provided for the parties to bring any particular point before the Judge; Provided that no order appointing a new trustee for general administration or for the execution of a trust or for accounts or inquiries concerning the property of a deceased person or other property held upon any trust or concerning the parties entitled thereto, and no vesting or other order consequential on the appointment of new trustees shall be made except by a Judge in person; Provided also that summonses under Rule 4 of this Order, the object of which is to obtain the opinion of the Court or a Judge upon the construction of a document or any question of law, and any application for the appointment of a liquidator, and applications for substituted service and for service out of the jurisdiction shall be brought before a Judge in person.

18. The Master or proper officer shall, for the purpose of any proceedings directed to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to require the production of documents, to take affidavits and acknowledgments, other than acknowledgments by married women, and when so directed by the Judge to examine parties and witnesses either upon interrogatories or *viva voce*, as the Judge shall direct.

19. Parties and witnesses summoned to attend before the Master or proper officer shall be bound to attend in pursuance of the summons, and shall be liable to process of contempt in like manner as parties or witnesses are liable thereto in case of disobedience to any order of the Court, or in case of default in attendance, in pursuance of any order of the Court or of any writ of *subpoena ad testificandum*, and all persons swearing or affirming before the Master or proper officer shall be liable to all such penalties, pun-

ishments, and consequences for any wilful and corrupt false swearing or affirming contained therein as if the matter sworn or affirmed had been sworn and affirmed before any other person by law authorised to administer oaths, to take affidavits, and to receive affirmations.

20. The Court or Judge may direct any computation of interest, or the apportionment of any fund, to be certified by the Master or proper officer and to be acted upon by the proper person without further order.

#### IV.—*Assistance of Experts.*

21. A Judge in Chambers may, in such way as he thinks fit, obtain the assistance of accountants, merchants, engineers, actuaries, and other scientific persons the better to enable any matter at once to be determined, and he may act upon the certificate of any such person.

#### V.—*Summonses in Chambers.*

22. The summons by the Judge, Master, or proper officer requiring the attendance of parties, witnesses, or others, shall be in the Form No. 1 in Appendix L, with such variations as the circumstances of the case may require.

#### VI.—*Proceedings relating to Infants.*

23. Upon applications for the appointment of guardians of infants and allowance for maintenance the evidence shall show—

- (a.) The ages of the infants;
- (b.) The nature and amount of the infants' fortunes and incomes;
- (c.) What relations the infants have.

24. Upon applications to obtain the sanction of the Court to infants making settlements on marriage, evidence shall be produced to show—

- (a.) The age of the infant;
- (b.) Whether the infant has any parents or guardians;
- (c.) With whom or under whose care the infant is living, and, if the infant has no parents or guardians, what near relations the infant has;
- (d.) The rank and position in life of the infant and parents;
- (e.) What the infant's property and fortune consist of;
- (f.) The age, rank, and position in life of the person to whom the infant is about to be married;
- (g.) What property, fortune, and income such person has;
- (h.) The fitness of the proposed trustees, and their consent to act.

The proposals for the settlement of the property of the infant, and of the person to whom such infant is proposed to be married, shall be submitted to the Judge.

25. At any time during the proceedings at any Judge's Chambers under any judgment or order, the Judge may, if he shall think fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition, who has been served with notice of such judgment or order.

VII.—*Documents to be left at Chambers.*

26. In all cases of proceedings in Chambers under any judgment or order, the party prosecuting the same shall leave a copy of such judgment or order at the Judge's Chambers, and shall certify the same to be a true copy of the judgment or order as passed and entered.

27. Whenever any matter is adjourned from the Court to Chambers, or any directions are given in Court to be acted upon at Chambers, whether upon a matter adjourned into Court from Chambers, or upon any other occasion, without an order being drawn up, a note signed by the Associate, stating for what purpose such matter is adjourned to Chambers, or the directions given, shall be procured from the Associate and left at Chambers.

28. A note stating the names of the solicitors for all the parties, and showing for which of the parties such solicitors are concerned, shall be left at Chambers with every judgment or order.

29. A copy of every certificate of the Central Office of entry of a memorandum of service of notice of a judgment or order, and of every appearance entered by a person served with such notice to attend the proceedings, certified by the solicitor, shall be left at Chambers.

VIII.—*Summonses to proceed.*

30. Every judgment or order directing accounts or inquiries to be taken or made shall be brought in to the Judge's Chambers by the party entitled to prosecute the same within ten days after the same shall have been passed and entered, and in default thereof any other party to the cause or matter shall be at liberty to bring in the same, and such party shall have the prosecution of such judgment or order unless the Judge shall otherwise direct.

31. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons, the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken, and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied, by addition thereto or otherwise, as may be found necessary.

32. Where by a judgment or order a deed is directed to be settled by the Judge in Chambers in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall think fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within eight days after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of the said period of eight days.

33. Where, upon the hearing of the summons to proceed, it appears to the Judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made or ought to be dispensed with, the Judge may, if he shall think fit, wholly dispense with such service, or may at his discretion order any substituted service or notice by advertisement or otherwise in lieu of such service.

34. Where service of notice of a judgment or order for accounts and inquiries is dispensed with, the judge in person may, if he thinks fit, order that the persons as to whom service is dispensed with, shall be bound as if served, and they shall be bound accordingly, except where the judgment or order has been obtained by fraud or non-disclosure of material facts.

35. If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for leaving the accounts in Chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties shall have been served, and are bound, or service shall have been dispensed with, and until directions shall have been given as to the parties who are to attend on the proceedings.

36. The course of proceeding in Chambers shall ordinarily be the same as the course of proceeding in Court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge, and where so directed, copies shall be handed over to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in unless the Judge shall otherwise direct.

#### IX.—*Summons Book.*

37. At the time any summons is obtained, an entry thereof shall be made in "the Summons Book," stating the date on which the summons is issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable.

38. Lists of matters appointed for each day shall be made out and affixed outside the doors of the Chambers of the respective Judges; and, subject to any special direction, such matters shall be heard in the order in which they appear in such lists.

39. Matters coming before the Master or other proper officer shall, unless the Judge otherwise directs, when ready for hearing, be entered in daily lists and taken in their order on such lists; and every matter commenced shall be continued until completion, subject to such adjournments as the Master or other proper officer shall for good cause, and upon such terms as to costs or otherwise as he shall think fit, consider necessary.

#### *X.—Attendances.*

40. Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the Judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon the solicitor to represent them, the Judge may nominate such solicitor for the purpose of the proceedings before him, and where any one of the parties constituting such class declines to authorise the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the Judge, with respect to which such nomination shall have been made, and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so to be nominated.

41. Whenever in any proceeding before a Judge in Chambers the same solicitor is employed for two or more parties, such Judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented.

42. Any of the parties other than those who shall have been directed to attend may attend at their own expense, and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

43. An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who shall have been directed to attend and such of them (if any) as shall have elected to attend at their own expense, and such order is to be recited in the Master's certificate.



XI.—*Advertisements for Creditors and Claimants.*

44. Where a judgment or order is given or made, whether in Court or in Chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time, which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order.

45. Where an advertisement is required for the purpose of any proceeding in Chambers, a peremptory advertisement, and only one, shall be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements, and any advertisement may be repeated as many times and in such papers as may be directed.

46. The advertisement for claimants shall be prepared by the party prosecuting the judgment or order, and submitted to the Master for approval, and when approved shall be signed by him; and such signature shall be sufficient authority to the printer of the "Government Gazette" to insert the same.

47. The advertisement for creditors shall be prepared and signed by the solicitor of the party prosecuting the judgment or order; and such signature shall be sufficient authority to the printer of the "Government Gazette" to insert the same.

48. Advertisements for creditors and other claimants shall fix a time, within which each claimant, not being a creditor, is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased, or to such other party as the Judge shall direct, or to his solicitor, to be named and described in the advertisement, the name and address of such creditor and the full particulars of his claim, and a statement of his account and the nature of the security (if any) held by him. Such advertisements shall be in one of the Forms No. 2 and 3, in Appendix L, with such variations as the circumstances of the case may require. At the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

49. Claimants filing affidavits shall not be required to take office copies, but the person who examines the claims shall take office copies and produce the same at the hearing, unless the Judge shall otherwise direct.

50. No creditor need make any affidavit nor attend in support of his claim (except to produce his security) unless he is served with a notice requiring him to do so as hereinafter provided.

51. Every creditor shall produce the security (if any) held by him before the Judge at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims, and every creditor shall, if required, by notice in writing (Form No. 4 in Appendix L) to be given by the executor or administrator of the deceased, or by such other party

as the Judge shall direct, produce all other deeds and documents necessary to substantiate his claim before the Judge at his Chambers at such time as shall be specified in such notice.

52. In case any creditor shall neglect or refuse to comply with the last preceding Rule, he shall not be allowed any costs of proving his claim unless the Judge shall otherwise direct.

53. The executor or administrator of the deceased, or such other party as the Judge shall direct, shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable, and he shall, at least seven clear days prior to the time appointed for adjudication, file an affidavit (Form No. 5 in Appendix L), to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor or other competent person, or otherwise, as the Judge shall direct, verifying a list of the claims (Form No. 6 in Appendix L), the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is in the opinion of the deponent justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief.

54. In case the Judge shall think fit so to direct, the making of the affidavit referred to in the last preceding Rule shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the Judge may give.

55. Where on the day appointed for hearing the claims any of them remain undisposed of, an adjournment day for hearing such claims shall be fixed, and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced.

56. At the time appointed for adjudicating upon the claims of creditors, or at any adjournment thereof, the Judge may in his discretion allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor to attend and prove his claim, or any part thereof, and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

57. Notice (Form No. 7 in Appendix L) shall be given by the executor or administrator, or such other party as the Judge shall direct, to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor, of such allowance, and to every such creditor as the Judge shall direct to attend and prove

his claim or such part thereof as is not allowed by a time to be named in such notice (Form No. 8 in Appendix L), not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned, and in case any creditor shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed.

58. After the time fixed by the advertisement no claims shall be received (except as hereinbefore provided in case of an adjournment), unless the Judge at Chambers shall think fit to give special leave, upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the Judge shall think fit.

59. A creditor who has come in and established his debt in the Judge's Chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the Judge, unless he shall think fit to direct the taxation thereof; and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established.

60. A list of all claims allowed shall, when required by the Judge, be made out and left in the Judge's Chambers by the person who examines the claims.

61. Where any judgment or order is made for payments by the proper officer to creditors, the party whose duty it is to prosecute such judgment or order shall send to each such creditor or his solicitor (if any) a notice (Form No. 9 in Appendix L) that the cheques may be received from the proper officer, and such party shall, when required, produce such judgment or order and any other papers necessary to enable such creditors to receive their cheques and get them passed.

62. Every notice by this order required to be given to creditors or other claimants shall, unless the Judge shall otherwise direct, be deemed sufficiently given and served if transmitted by the post prepaid to the creditor or other claimant to be served according to the address given in the claim sent in by him pursuant to the advertisement, or in case such creditor or other claimant shall have employed a solicitor, to such solicitor according to the address given by him.

## XII.—*Interest.*

63. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of eight per cent. per annum from the date of the judgment or order.

64. A creditor whose debt does not carry interest, who comes in and establishes the same before the Judge in Chambers under a judgment or order of the Court or of the Judge in Chambers, shall be entitled to interest upon his debt at the rate of eight per cent. per annum from the date of the judgment or order out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest.

65. Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of eight per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will and in that case according to the will.

### XIII.—*Certificates of the Master.*

66. The directions to be given for or touching any proceedings before the Master shall require no particular form, but the result of such proceedings shall be stated in the shape of a concise certificate to the Judge. It shall not be necessary for the Judge to sign such certificate, and unless an order to discharge or vary the same is made, the certificate shall be deemed to be approved and adopted by the Judge.

67. The certificate of the Master shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons, but shall refer to the judgment or order, documents, and evidence or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded.

68. The certificate shall, when the Judge shall direct, be prepared by the solicitor of one of the parties, who shall obtain an appointment to settle the certificate, and shall give notice of such appointment to the other parties. No summons to settle the certificate of the Master shall hereafter be issued.

69. The certificate of the Master shall be in the Form No. 10 in Appendix L, with such variations as the circumstances may require, and when prepared and settled shall be transcribed in such form, and within such time as the Master shall require, and shall be signed by the Master either then or (if necessary) at an adjournment to be made for the purpose.

70. Where an account is directed, the certificate shall state the result of such account, and not set the same out by way of schedule but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or otherwise, and where the account verified by the affidavit has been so altered that it is necessary to have a fair tran-

script of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be filed therewith, or retained in Chambers and subsequently filed, as the Judge in Chambers may direct. No copy of any such account shall be required to be taken by any party.

71. Any party may, before the proceedings before the Master are concluded, take the opinion of the Judge upon any matter arising in the course of the proceedings without any fresh summons for the purpose.

72. Every certificate, with the accounts (if any) to be filed therewith, shall be filed in the Central Office, and shall thenceforth be binding on all the parties to the proceedings unless discharged or varied upon application by summons to be made before the expiration of eight clear days after the filing of the certificate; provided that the time for applying to discharge or vary certificates, to be acted upon by the proper officer without further order, or certificates on passing receivers' accounts, shall be two clear days after the filing thereof.

73. The Judge may, if the special circumstances of the case require it, upon an application by motion or summons for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties.

#### XIV.—*Further Consideration.*

74. Where any matter originating in Chambers shall, at the original or any subsequent hearing, have been adjourned for further consideration in Chambers, such matter may, after the expiration of eight days and within fourteen days from the filing of the Master's certificate, be brought on for further consideration by a summons, to be taken out by the party having the conduct of the matter, and after the expiration of such fourteen days by a summons, to be taken out by any other party. Such summons shall be in the form following:—"That this matter, the further consideration whereof was adjourned by the order of the      day  
" of      19      , may be further considered," and shall be served six clear days before the return. Provided that this Rule shall not apply to any matter the further consideration whereof shall, at the original or any subsequent hearing, have been adjourned into Court.

#### XV.—*Registering and Drawing up of Orders in Chambers.*

75. Notes shall be kept of all proceedings in the Judge's Chambers with proper dates, so that all such proceedings in each cause or matter may appear consecutively, and in chronological order, with a short statement of the questions or points decided or ruled at every hearing.

76. The Judge may direct any order made in Chambers to be drawn up by the Master, and any such order shall be entered in the same manner as orders made in open Court.

77. The Forms Nos. 11 to 24 in Appendix L shall be used for the respective purposes therein mentioned, with such variations as circumstances may require.

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## ORDER LVI.

(O. 54b.)

### PROCEEDINGS UNDER "THE TRUSTEES ACT, 1900."

1. All applications under "The Trustees Act, 1900" (in this Order called "the Act"), may be made by petition, except as otherwise provided under Rule 4 of this Order.

2. (1.) Where a trustee desires to make a lodgment in Court, under Section 46 of the Act, he shall make and file an affidavit intitled in the matter of the trust (described so as to be distinguishable) and of the Act, and setting forth—

- (a.) A short description of the trust and of the instrument creating it.
- (b.) The names of the persons interested in and entitled to the money or securities, and their places of residence, to the best of his knowledge and belief.
- (c.) His submission to answer all such inquiries relating to the application of the money or securities paid into Court, as the Court or Judge may make or direct.
- (d.) The place where he is to be served with any petition, summons, or order or notice of any proceedings relating to the money or securities. Provided that if the fund consists of money or securities being or being part of, or representing a legacy or residue to which an infant or person beyond seas is absolutely entitled, and on which the trustee has paid the legacy duty, or on which no duty is chargeable, the trustee may make the lodgment (without an affidavit) on production of the official receipt for such duty, or a certificate from the proper officer, of the payment thereof, or that no such duty is payable.

(2.) Where the lodgment in Court is made on affidavit—

- (a.) The person who has made the lodgment shall forthwith give notice thereof, by prepaid letter through the post, to the several persons whose names and places of residence are stated in his affidavit as interested in or entitled to the money or securities lodged in Court.
- (b.) No petition or summons relating to the money or securities shall be answered or issued unless the petitioner or applicant has named therein a place where he may be

served with any petition or summons, or notice of any proceeding or order relating to the money or securities, or the dividends thereof.

- (c.) Service of any application in respect of the money or securities shall be made on such persons as the Court or Judge may direct.

3. Applications to deal with funds lodged in Court under the Act shall be intituled in the same manner as the affidavit or request on which the funds were lodged. All other applications under the Act not made in any pending cause shall be intituled in the matter of the trust (described so as to be distinguishable) and of the Act. Every petition or summons for vesting order, or the appointment of a person to convey, shall state the section or sections of the Act under which it is proposed that the order shall be made.

4. Any of the following applications may be made by summons:—

- (a.) An application for the appointment of a new trustee, with or without a vesting or other consequential order.
- (b.) An application for a vesting order or other order consequential on the appointment of a new trustee, whether the appointment is made by the Court or a Judge or out of Court.
- (c.) An application for a vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock, or the suing for or recovering any chose in action.
- (d.) An application relating to a fund paid into Court in any case coming within the provisions of Order 55, Rule 3.

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## ORDER LVII.

(O. 57.)

### INTERPLEADER.

1. Relief by way of interpleader may be granted—

- (a.) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect for which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto:
- (b.) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the Supreme Court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued.

2. The applicant must satisfy the Court or a Judge by affidavit or otherwise—

- (a.) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and
- (b) That the applicant does not collude with any of the claimants; and
- (c) That the applicant, except where he is a sheriff or other officer charged with the execution of process by or under the authority of the Supreme Court who has seized goods and who has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under Rule 16 of this Order, is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a Judge may direct.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another.

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

6. If the application is made by a defendant in an action the Court or a Judge may stay all further proceedings in the action.

7. If the claimants appear in pursuance of the summons, the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant, and the mode in which and the number of jurors (if any) with which such trial shall be had.

8. The Court or a Judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.

9. Where the question is a question of law, and the facts are not in dispute, the Court or a Judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court. If a special case is stated, Order XXXIII. shall, as far as applicable, apply thereto.

10. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a Judge may make an order declaring him, and all persons claiming under him, for ever barred against the



applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

11. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a Judge in a summary way, under Rule 8 of this Order, shall be final and conclusive against the claimants, and all persons claiming under them, unless by special leave of the Court or Judge, as the case may be, or of the Full Court.

12. The plaintiff in an interpleader issue shall file such issue in the Central Office within four days after the making of the order under Rule 7 of this Order, and thereupon pay the fees and jury fees (if any) payable on entering a cause for trial. If the plaintiff make default in so doing the order shall be deemed to be abandoned, and the Court or a Judge may make such further order on the applicant's summons, and as to the costs of the issue directed, as may be just and reasonable.

13. When goods and chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the Supreme Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

14. Orders XXX. and XXXIV. shall, with the necessary modifications, apply to an interpleader issue; and the Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

15. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending in the Supreme Court, such order may be made by the Court or Judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

16. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

17. Where a claim is made to or in respect of any goods or chattels taken in execution under the process of the Court it shall be in writing, and upon the receipt of the claim the sheriff or his officer shall forthwith give notice thereof to the execution creditor according to Form 28 in Appendix B or to the like effect, and the execution creditor shall, within four days after receiving the notice, give notice to the sheriff or his officer that he admits or disputes the claim, according to Form 29 in Appendix B or to the like effect. If the execution creditor admits the title of the claimant,

and gives notice as directed by this Rule, he shall only be liable to such sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

18. When the execution creditor has given notice to the sheriff or his officer that he admits the claim of the claimant, the sheriff may thereupon withdraw from possession of the goods claimed, and may apply for an order protecting him from any action in respect of the said seizure and possession of the said goods, and the Judge or Master may make any such order as may be just and reasonable in respect of the same: Provided always, that the claimant shall receive notice of such intended application, and, if he desires it, may attend the hearing of the same, and if he attend, the Judge or Master may, in and for the purposes of such application, make all such orders as to costs as may be just and reasonable.

19. Where the execution creditor does not in due time, as directed by the last preceding Rule, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the sheriff or his officer, the sheriff may apply for an interpleader summons to be issued, and should the claimant withdraw his claim by notice in writing to the sheriff or his officer, or the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such summons, and at the same time give notice of such admission to the claimant, the Judge or Master 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.

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## ORDER LVIII.

(O. 58.)

### APPEALS TO THE FULL COURT.

1. Subject to the provisions of Order LIX., all appeals to the Full Court shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

2. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such no-

tice had been originally parties. Any notice of appeal may be amended at any time as the Full Court may think fit.

3. Notice of appeal from any judgment, whether final or interlocutory, or from a final order, shall be a fourteen days notice, and notice of appeal from any interlocutory order or decision shall be a four days notice.

4. The Full Court shall have all the powers and duties as to amendment and otherwise of the Supreme Court, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Full Court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Full Court shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

5. If, upon hearing of an appeal, it shall appear to the Full Court that a new trial ought to be had, it shall be lawful for the said Court, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall within the time specified in the next Rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Principal Act upon the Full Court, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

7. Subject to any special order which may be made, notice by a respondent under the last preceding Rule shall in the case of any appeal from a final judgment be an eight days notice, and in the case of an appeal from an interlocutory order a two days notice.

8. The party appealing from a judgment or order shall produce to the proper officer of the Full Court the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Full Court or a Judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

9. The time for appealing from any order or decision made or given in the matter of the winding up of a company under the provisions of the Companies Act, 1893, or any Act amending the same or on the same subject, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under Rule 15.

10. Where an *ex parte* application has been refused by the Court below, an application for a similar purpose may be made to the Full Court *ex parte* within four days from the date of such refusal, or within such enlarged time as a Judge of the Court below or of the Full Court may allow.

11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Full Court as follows:

- (a.) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed:
- (b.) As to any evidence given orally, by the production of a copy of the Judge's notes, or such other materials as the Court may deem expedient.

12. Where evidence has not been printed in the Court below, the Full Court, or a Judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Full Court, or a Judge thereof, shall otherwise order.

13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Full Court from giving such decision upon the appeal as may be just.

15. No appeal to the Full Court from any interlocutory order or decision made or given by a Judge in Chambers, or from any order, whether final or interlocutory, in any matter not being

an action, shall, except by special leave of the Full Court, be brought after the expiration of eight days, and no other appeal shall, except by such leave, be brought after the expiration of three months. The said respective periods shall be calculated, in the case of an appeal from an order in Chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Full Court.

16. The time for appealing against an order made on the further consideration of a cause and on the hearing of a summons to vary the certificate on which such order is made shall be the same as the time for appealing against the order on further consideration.

17. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any Judge thereof, or the Full Court, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

18. Wherever under these Rules an application may be made either to the Court below or to the Full Court, or to a Judge of the Court below or of the Full Court, it shall be made in the first instance to the Court or Judge below.

19. Every application to a Judge of the Full Court shall be by motion, and the provisions of Order LI. shall apply thereto.

20. On an appeal from the Supreme Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court or a Judge otherwise orders, and the taxing officer may compute such interest without any order for that purpose.

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## ORDER LIX.

### THE FULL COURT.

1. The following proceedings and matters shall be heard and determined before the Full Court; but nothing herein contained shall be construed so as to take away or limit the power of a single Judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein heretofore taken before a single Judge to be taken before the Full Court:—

- (a.) Proceedings on the Crown side of the Supreme Court;
- (b.) Appeals and proceedings relating to Election Petitions, Municipal, or otherwise;

- (c.) Appeals from Local Courts;
- (d.) Proceedings on the Revenue side of the Supreme Court;
- (e.) Proceedings directed by any Act of Parliament to be taken before the Court, and in which the decision of the Court is final;
- (f.) Cases of *habeas corpus*, in which a Judge directs that an order *nisi* for the writ, or the writ be made returnable before the Full Court;
- (g.) Special cases where all parties agree that the same be heard before the Full Court;
- (h.) Appeals from Chambers;
- (i.) Applications for new trials;
- (j.) Appeals from Inferior Courts and from Justices.

2. Where a compulsory reference to arbitration has been ordered, any party to such reference may appeal from the award or certificate of the arbitrator or referee upon any question of law; and on the application of any party the Full Court may set aside the award or certificate on any ground on which the Court might set aside the verdict of a jury. Such appeal shall be to the Full Court, who shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just.

3. On any motion by way of appeal from an Inferior Court, the Full Court shall have power to draw all inferences of fact which might have been drawn in the Court below, and to give any judgment and make any order which ought to have been made. No such motion shall succeed on the ground merely of misdirection or improper reception or rejection of evidence, unless, in the opinion of the Court, substantial wrong or miscarriage has been thereby occasioned in the Court below.

4. On any motion by way of appeal from an Inferior Court the Full Court shall have power if the notes of the Judge of such Inferior Court are not produced to hear and determine such appeal upon any other evidence or statement of what occurred before such Judge which the Court may deem sufficient.

5. The following Rules of this Order shall apply to appeals to the Full Court from Local Courts and other inferior Courts of Record of Civil Jurisdiction in all proceedings other than proceedings in Bankruptcy.

6. Every such appeal shall be by notice of motion and no rule *nisi* or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an eight days notice, and shall be served on every party directly affected by the appeal entered.

7. Every appeal shall be entered at the Central Office, and the entry shall be made by lodging a copy of the notice. The notice of motion shall be served and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of; such period shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding on any refusal is made or given.

8. It shall be the duty of the Master of the Supreme Court forthwith, upon the entry of the appeal, to apply on behalf of the Full Court to the Judge of the Court from which the appeal is brought, for a copy of the notes of the evidence given, and for a statement of his judgment or finding on any question of law under appeal. Either party shall be entitled upon payment of the proper fee to obtain from the Master an office copy of such notes and statement.

9. The appeal shall not operate as a stay of proceedings under the decision appealed from unless the Inferior Court shall so order, or unless within ten days after the decision a deposit shall be made of or security given to the satisfaction of such Inferior Court for a sum to be fixed by the said Court not exceeding the amount of the money or the value of the property affected by the judgment, order, or finding appealed from.

10. Every appeal from an Inferior Court shall be entered in the proper list for hearing as the Chief Justice may direct, and shall come on to be heard in its order unless the Full Court shall otherwise direct.

11. The Full Court shall have power to extend the time for appealing or to amend the grounds of appeal or to make any other order on such terms as the Court shall think just to insure the determination of the merits of the real questions in controversy between the parties.

12. Subject to these Rules the rules for the time being in force with respect to appeals from a Judge or Judges of the Supreme Court to the Full Court shall so far as practicable apply to and govern appeals from Local Courts and other Inferior Courts of Record of Civil Jurisdiction to the Full Court.

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## ORDER LX.

(O. 60.)

### OFFICERS.

1. The office of Master of the Supreme Court shall be deemed to be substituted for the several offices of Registrar, Master, and Keeper of the Records specified in the Supreme Court Ordinance, 1861, and all enactments and documents referring to any of those offices, or to any of the persons holding them, shall, unless the context otherwise requires, be construed and have effect accordingly.

2. Where by the practice of the Supreme Court, recognizances are required to be given, such recognizances shall be given to the Master; and when the same are, by any judgment or order, directed to be vacated, the proper officer shall, on due notice thereof, attend the Master, who shall thereupon vacate such recognizances in the usual manner.

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ORDER LXI.

(O. 61.)

CENTRAL OFFICE.

1. The business of the Central Office shall, for the convenient dispatch of business, be performed by the several officers and clerks in the said office who are now charged with the same or similar duties, and by such others as may from time to time be appointed by lawful authority for that purpose.

2. It shall be the special duty of the Master to be present at, and control the business of, the Central Office, and to give the necessary directions with respect to questions of practice and procedure relating to the business thereof.

3. The Master or other proper officer shall attend each day at the Central Office to tax costs.

4. The Master shall, by virtue of his office, have authority to take oaths and affidavits in the Supreme Court.

5. The official seals to be used in the Central Office shall be such as the Chief Justice from time to time directs.

6. All copies, certificates, and other documents appearing to be sealed with a seal of the Central Office shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate, or other document.

7. It shall not be necessary to enrol any judgment or order, whether dated before or since the commencement of the Principal Act.

8. All deeds and documents which by any statute or statutory rule are directed or permitted to be enrolled in any court may be enrolled in the Central Office.

9. All acknowledgments required for the purpose of enrolling any deed or other document may be made before the Master.

10. No recognizance shall be enrolled after six months from the acknowledgment thereof, except under special circumstances, and by an order made by the Court or a Judge upon motion for the enrolment thereof after that time.

11. No order made on a petition, and no order to make a submission to arbitration, or an award, an order of the Court, and no



judgment or order wherein any written admissions of evidence are entered as read, shall be passed, until the original petition, submission to arbitration, or award, or written admissions of evidence, shall have been filed in the Central Office, and a note thereof made on the judgment or order by the proper officer.

12. Upon every pleading or other proceeding which is filed in the Central Office, the date of filing the same shall be printed or written.

13. Proper indexes or calendars to the files or bundles of all documents filed at the Central Office shall be kept, so that the same may be conveniently referred to when required; and such indexes or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the usual fee.

14. There shall also be entered in proper books kept for the purpose the time when any certificate is delivered at the Central Office to be filed, with the name of the cause and the date of the certificate; and the like entry shall be made of the time of delivery of every other document filed at the Central Office; and such books shall, at all times during office hours, be accessible to the public on payment of the usual fee.

15. Every judgment, order, certificate, petition, affidavit, or document made, presented, filed, or used in any cause or matter, shall be distinguished by having plainly written or stamped on the first page thereof the year, the letter, and the number by which the cause or matter is distinguished in the books kept at the Central Office.

16. There shall also be entered in the Cause Books, the date of every judgment, order, and certificate made in every cause or matter.

17. The Master shall not receive any memorandum of a judgment, execution, *lis pendens*, order, rule, annuity, Crown debt, or other incumbrance, or any memorandum of satisfaction relating to the same, for registration, after the hour of four in the afternoon.

18. The Master or other proper officer shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

19. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the proper officer shall at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the usual fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter in the Central Office.

20. No affidavit or record of the Court shall be taken out of the Central Office without the order of a Judge or Master, and no *subpoena* for the production of any such document shall be issued.

21. Any officer of the Central Office, being required to attend with any record or document at any Court or place out of the Supreme Court, shall be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which may not be fully answered by such deposit.

22. Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in Chambers, or otherwise, the same shall be left or deposited in the Central Office, and shall be subject to such directions as may be given for the production thereof.

23. All certificates of the Master or of a Judge and all petitions and written admissions of evidence whereon any order is founded, and all submissions to arbitration made orders of the Court, shall be transmitted to and left at the Central Office, to be there filed or preserved. And all office copies thereof, or of any part thereof that may be required, shall be ready to be delivered to the party requiring the same within forty-eight hours after the same shall have been bespoken.

24. The Forms contained in the Appendices shall be used in or for the purposes of the Central Office, with such variations as circumstances may require.

25. The Chief Justice may from time to time prescribe the use in or for the purpose of the Central Office of such modified or additional forms as may be deemed expedient.

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## ORDER LXII.

(O. 62.)

### MASTER IN EQUITY.

1. All judgments and orders drawn up by the Master or by the Clerks to the Judges, and all præcipes for attachments, and such other documents (if any) as, according to the present practice or the practice for the time being, ought to be entered by the clerks, shall be entered by them without abbreviations, and in a clear and legible hand, under the direction of the Master for the time being, within one clear day after the same shall be left for entry, and all such entries shall be examined by one of the said clerks, and be marked with his initials to denote such examination.

2. Proper calendars or indexes of such entries shall be made by the clerks, so that the same may be conveniently referred to when required, and the calendars or indexes and the books in

which the entries are made shall when completed be preserved in the Central Office, and shall at all times during office hours be accessible to the public on payment of the usual fee.

3. At the time of bespeaking a judgment or order, the party bespeaking the same shall leave with the Master his counsel's brief, and such other documents as may be required by the Master for the purpose of enabling him to draw up the same.

4. Every judgment or order shall be bespoken, and the briefs and other documents mentioned in the last preceding Rule shall be left with the Master within seven days after the judgment or order is pronounced or finally disposed of by the Court or Judge.

5. In case any judgment or order is not bespoken, and the briefs and other requisite documents are not left with the Master within the time prescribed by the last preceding Rule, the Master may decline to draw up the judgment or order without the leave of the Court or Judge.

6. At the time of delivering out the draft of any judgment or order which requires to be settled by the Master or a Judge in the presence of the parties, the Master shall deliver out to the party on whose application the draft has been prepared, an appointment in writing of a time for settling the same.

7. A notice of the appointment shall be served on the opposite party one clear day at least before the time fixed thereby for settling the draft judgment or order, and the party serving the notice, and the party so served, shall attend the appointment, and produce to the Master their briefs, and such other documents as may be necessary to enable him to settle the draft.

8. Service of the notice of appointment shall be effected by leaving it at the place for service of the party to be served, or by transmitting it by post to such party at such place for service.

9. At the time fixed for settling the draft the Master shall satisfy himself in such manner as he may think fit that service of the notice of appointment has been duly effected.

10. When the draft judgment or order has been settled by the Master, he shall name a time in the presence of the several parties, or else deliver out an appointment in writing of a time for passing the judgment or order, and in the latter case notice of the appointment shall be served on the opposite party in like manner as directed by Rules 7 and 8 of this Order, with reference to an appointment to settle the draft judgment or order.

11. If any party fails to attend the Master's appointment for settling the draft of or passing any judgment or order, or fails to produce his briefs and such other documents as the Judge or Master may require to enable him to settle such draft, or pass such judgment or order, the Judge or Master may proceed to settle the draft, or pass the judgment or order in his absence, and the Judge or Master shall be at liberty to dispense with the production of

counsel's briefs, and to act upon such evidence as he may think fit of the actual appearance by counsel of the party failing to attend or to produce such documents or papers as aforesaid, or may require the matter to be mentioned to the Court or Judge.

12. The Master may adjourn any appointment for settling the draft of or passing any judgment or order to such time as he may think fit, and the parties who attended the appointment shall be bound to attend such adjournment without further notice.

13. Notwithstanding the preceding Rules of this Order, the Judge or Master shall be at liberty, in any case in which he may think it expedient so to do, to settle and pass the judgment or order, without making any appointment for either purpose and without notice to any party.

14. The Judge or Master shall, at the time of any attendance before him for the purpose of settling the terms of and passing any judgment or order, if requested to do so by any party, on the ground that it is of a special nature or of unusual length or difficulty, certify, for the information of the taxing officer, whether in his opinion any special allowance ought to be made in taxation of costs in respect thereof.

15. All orders for the payment or transfer of money or securities into Court, and for the payment or transfer of money or securities out of Court shall be drawn up in conformity with such rules relating thereto as shall be from time to time made.

16. All petitions which require to be answered shall be answered in the name of the Master, and any orders on petitions shall be drawn up, passed, and entered by or under the direction of the Master.

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## ORDER LXIII.

(O. 63.)

### SITTINGS AND VACATIONS.

1. The civil sittings of the Supreme Court for the trial of actions and issues of fact shall be eleven in every year and shall commence on the Tuesday after the 25th day of February, on the second Tuesday in the months of March to November both inclusive, and on the first Tuesday in December. Whenever the day hereby appointed for the commencement of the civil sittings shall fall on the Tuesday after Easter, such sittings shall not be held till the Wednesday after Easter; and whenever any sittings would commence on a public holiday, they shall be held on the following day.

2. The sittings of the Full Court shall be five in every year and the same shall commence respectively on the third Tuesday in the months of March, May, July, September, and November, and on such other days or times as the Full Court may think fit to sit.

3. The sittings of the several offices of the Supreme Court shall extend over the whole of the periods between the vacations.

4. The vacations to be observed in the Supreme Court shall be the Christmas vacation and the Easter vacation. The Christmas vacation shall commence on the 24th of December and terminate on the 25th of February; the Easter vacation shall commence on Good Friday and terminate on Easter Tuesday.

NOTE.—*This Rule is merely declaratory of an Order in Council dated 4th October, 1905, and gazetted 6th October, 1905, whereby the vacations in the Supreme Court are regulated.*

5. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

6. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving, and every public holiday.

7. The Offices of the Supreme Court, including the Judge's Chambers, shall close on Saturday at noon.

8. The office hours in the several Offices of the Supreme Court shall be from ten in the forenoon until four in the afternoon, except in vacation, when the offices shall close at one in the afternoon, and on Saturdays, when the offices shall close at noon.

9. One of the Judges of the Supreme Court shall be selected at the commencement of each vacation for the hearing in Perth, during vacation, of all such applications as may require to be immediately or promptly heard.

10. The Vacation Judge may sit as occasion shall require and may hear and dispose of all causes, matters, and other business which may require to be immediately or promptly heard. No order made by a Vacation Judge shall be reversed or varied except by the Full Court, or the Judge who made the order. Any other Judge of the Supreme Court may sit in vacation for any Vacation Judge.

11. In the interval between the close of any sittings and the commencement of the next sittings, the judgments or orders of any Judge may be prosecuted at the Chambers of any other Judge by his permission; and in case the prosecution thereof shall not be completed during such interval, the prosecution may be continued at the Chambers of the same Judge if and so far as he shall think fit.

12. Any interval between the sittings of the Supreme Court, not included in a vacation, shall, so far as the disposal of business by the Vacation Judge is concerned, be deemed to be a portion of the vacation.

13. Official Referees shall sit at least from 10 a.m. to 4 p.m. on every day during the sittings of the Supreme Court, except on Saturdays, during such sittings, when they shall sit, at least, from 10 a.m. to noon; but nothing in this Rule shall prevent their sitting on any other days.

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#### ORDER LXIV.

(O. 64.)

##### TIME.

1. Where by these Rules, or by any judgment or order given or made after the commencement of the Principal Act, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months, unless otherwise expressed.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices 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.

4. No pleading shall be amended or delivered in the Christmas vacation, unless directed by a Court or a Judge.

5. The time of the Christmas vacation shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, unless otherwise directed by the Court or a Judge.

6. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter.

7. The Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

8. The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court or a Judge.

9. Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of one in the afternoon. Service effected after six in the afternoon on any week-day except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after one in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

10. In any case in which any particular number of days, not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day.

11. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this Rule.

12. An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties.

13. Where the time for making an award is enlarged, the enlargement shall be deemed to be for one month unless a different time is specified in the order.

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## ORDER LXV.

(O. 65.)

### Costs.

1. Subject to the provisions of the Principal Act and these Rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge: Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Equity: Provided also that, where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the Judge by whom such action, cause, matter, or issue is tried, or the Court, shall, for good cause, otherwise order.

2. When issues in fact and law are raised upon a claim or counterclaim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event. And an order giving a party costs, except so far as they have been occasioned or incurred by or relate to some particular issue or part of his proceedings shall be read and construed as excluding only the amount by which the costs have been increased by such issue or proceedings; but the Court or Judge, if the whole costs of the action are not intended to be given to the party, may, wherever practicable, by the order direct taxation of the whole costs and payment of such proportion thereof as the Court or Judge shall determine.

3. If a cause be removed from an inferior Court, having jurisdiction in the cause, the costs in the Court below shall be costs in the cause.

4. Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or Judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award.

5. In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the Court or a Judge shall direct.

6. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs though he may be temporarily resident within the jurisdiction.

7. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the Court.

8. In causes and matters commenced after these Rules come into operation, solicitors shall be entitled to charge and be allowed the fees set forth in the column in Appendix N in all causes and matters.

9. If in any case it shall appear to the Court or a Judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or Judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the solicitor should not repay to his



client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or Judge may, if they or he think fit, refer the matter to a taxing officer for inquiry and report; and direct the solicitor in the first place to show cause before such taxing officer, and may also, if they or he think fit, direct or authorise the Crown Solicitor or some other solicitor to attend and take part in such inquiry. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or Judge may direct. Any costs of such solicitor shall be paid by such parties, or out of such funds as the Court or Judge may direct; or, if not otherwise paid, may be paid out of such moneys (if any) as may be provided by Parliament.

10. In actions founded on contract, in which the plaintiff recovers, by judgment or otherwise, a sum (exclusive of costs) not exceeding £50 he shall be entitled to no more costs than he would have been entitled to had he brought his action in a Local Court, unless the Court or a Judge otherwise orders.

11. Where the Court or a Judge appoints a solicitor to be guardian *ad litem* of an infant or person of unsound mind, the Court or Judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

12. A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought.

13. The costs occasioned by any unsuccessful claim or unsuccessful resistance to any claim to any property shall not be paid out of the estate unless the Judge shall otherwise direct.

14. The costs of inquiries to ascertain the person entitled to any legacy, money, or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money, or share, unless the Judge shall otherwise direct.

15. Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the Court or a Judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in all such cases such order may be made for ascertaining and payment of the costs incurred down to and including such payment as the Court or Judge shall think reasonable.

16. In any Probate action in which it is ordered that any costs shall be paid out of the estate, the Judge making such order may direct out of what portion or portions of the estate such costs shall be paid, and such costs shall be paid accordingly.

17. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

18. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary.

19. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian.

20. The Master and every proper officer shall be respectively assistant to each other, and in the discharge of their duties; and, for the better dispatch of the business of their respective offices, any Master or other proper officer may tax or assist in the taxation of a bill of costs which has been referred for taxation, and for ascertaining what is due in respect of such costs, and in such case shall certify accordingly.

21. The following warrants in the office of the Taxing Master in Equity shall be abolished: warrant on leaving, warrant to bring in, and warrant to tax.

22. The solicitor having the carriage of the order shall leave at the office of the proper taxing officer within seven days (or such further time as the taxing officer may allow for reasons to be certified by him) after the order was signed, entered, or otherwise perfected, a copy of it, and (annexed to such copy) a statement containing the names and addresses of the parties appearing in person, and of the solicitors of the parties not appearing in person, and in case of default no costs of drawing and copying the bill, nor of attending the taxation, shall be allowed to the solicitor so failing.

23. On the copy order being left a notice of an appointment to proceed with the taxation shall forthwith be issued by the taxing officer to the solicitor having the conduct of the order, and a copy of such notice shall be sent by post by the solicitor having the conduct of the order to the solicitors of such other parties as the taxing officer shall direct.

24. At the time mentioned in the notice the taxing officer shall appoint a time within which the bills of costs (with all necessary papers and vouchers) shall be left at his office, and he shall give all requisite directions for the conduct of the taxation pursuant to No. 28 of Rule 31.

25. The taxation shall if possible be continued without interruption till completed, but if adjourned for any reason notice of the adjournment shall be sent by the taxing officer by post to any

solicitor not present at the time of the adjournment whose attendance he may desire at the next appointment.

26. In cases in which the solicitors leave their bills with the proper papers and vouchers and with the copy order as above mentioned, the taxing officer may, if he shall think fit, forthwith issue a notice as in these Rules provided, fixing a time at which the taxation shall be proceeded with.

27. Any solicitor who shall fail to leave his bill of costs (with the necessary papers and vouchers) within the time or extended time fixed by the taxing officer for that purpose or who shall in any way delay or impede the taxation shall, unless the taxing officer otherwise directs, forfeit the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation. And the taxing officer may also, if he shall think fit, exercise all or any of the powers vested in him by Nos. 29 and 59 of Rule 31.

28. In every bill of costs 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.

29. Where, upon the taxation of any bill of costs in Equity, it appears to the taxing officer that for the purpose of duly taxing the same it is necessary to inspect any books, papers, or documents, relating to the cause or matter in the Chambers of any Judge, the taxing officer shall be at liberty to request the Clerk of such Judge to cause the same to be transmitted to the office of the taxing officer, and also to request the Judge to certify any proceedings in the said Chambers which may be comprised in the bill of costs under taxation, and in such cases the Judge's Clerk, when and so soon, and at and for such times, as the due transaction of the business at the said Chambers will permit, shall direct such books, papers, and documents to be transmitted to the office of the taxing officer for his use during the taxation, and shall certify the proceedings which have taken place in the said Chambers according to the request of the taxing officer; and after the costs in respect of which such request of the taxing officer was made shall have been certified, the taxing officer shall cause the same books, papers, and documents, which have been so transmitted to his office, if then remaining there, to be returned to the Chambers of the Judge.

30. When any book, paper, or document shall be transmitted from the Chambers of a Judge to the office of a taxing officer, a memorandum of such transmission shall be made and signed by the taxing officer or the clerk of the taxing officer, at whose request such book, paper, or document may be transmitted, and shall be delivered to the Clerk of such Judge; and when any such book, paper, or document shall be returned from the office of the taxing officer to the Judge's Chambers, a memorandum of such return shall be made and signed by such Judge's Clerk, and shall be delivered to the taxing officer.

31. Where in pursuance of any direction by the Court or a Judge in Chambers drafts are settled by counsel appointed by the Court, the expense of procuring such drafts to be previously or subsequently settled by other counsel, on behalf of the same parties on whose behalf such drafts are settled by the counsel appointed by the Court, shall not be allowed on taxation as between party and party, or as between solicitor and client, unless the Court or a Judge shall otherwise direct.

32. In any case where the Court or a Judge shall think fit to award costs to any party, the Court or Judge may by the order direct taxation of the costs of such party and payment of a proportion thereof, or direct payment of a sum in lieu of taxed costs, and direct by and to whom such proportion or sum shall be paid.

33. The fees and allowances to solicitors on proceedings under the Trustees Act, 1900, shall be the same as are payable under these Rules, and by the practice of the Court for business of a similar nature.

34. Orders for delivery of bills of costs by solicitors and for taxation of such bills may be made by the Court or a Judge, notwithstanding that such bills relate to non-contentious proceedings.

#### SPECIAL ALLOWANCES AND GENERAL REGULATIONS.

35. The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court:—

(1.) As to writs of summons requiring special indorsement, and as to special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits and admissions under Order XXXI., Rule 4, the taxing officer may, in lieu of the allowances for instruction and preparing or drawing, and attendances, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

(2.) As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

(3.) As to instructions to sue or defend, or the preparation of briefs, if the taxing officer shall on special grounds consider the fee in either scale provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

(4.) As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

(5.) The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and at-

tending the deponent to be sworn, include all attendances on the deponent to settle and read over.

(6.) As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

(7.) As to perusals the fees are not to apply where the same solicitor is for both parties.

(8.) Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

(9.) As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

(10.) As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

(11.) As to the attendance of solicitors upon the Master in Equity for the purpose of settling the terms of and passing judgment or orders, the taxing officer may, in such cases as are provided for by Order LXII., Rule 14, make such special allowances in respect thereof as he shall consider reasonable.

(12.) As to attendances at the Judges' Chambers, where from the length of the attendance, or from the difficulty of the case, the Judge or Master shall think the highest prescribed fee an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the Judge or Master in Chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the Judge or Master may allow such fee, in lieu of the fee of 1*l.* 1*s.* provided, not exceeding 2*l.* 2*s.*, or in proceedings to wind up a company 5*l.* 5*s.*, as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a Judge at Chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the Judge, specifying dis-

tinently the grounds of such allowance, such fee, not exceeding £10 10s., as in his discretion he may think fit instead of the prescribed fees.

(13.) As to attendances at the Judges' Chambers, where by reason of the non-attendance of any party (unless it be considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

(14.) A folio is to comprise 72 words, every figure comprised in a column, or authorised to be used, being counted as one word.

(15.) Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

(16.) As to counsel attending at Judges' Chambers, no costs thereof shall in any case be allowed, unless the Judge certifies it to be a proper case for counsel to attend.

(17.) The costs of inspection of documents shall be in the discretion of the taxing officer, but no allowance is to be made for any inspection unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for making such inspection.

(18.) The taxing officers of the Supreme Court shall have power and authority to make one or more interim certificate or certificates, allocatur or allocaturs, in any taxation for any portion or portions of the taxed costs directed to be taxed, without waiting until a certificate for the full amount can be made.

(19.) As to taking copies of documents in possession of another party, or extracts therefrom; under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

(20.) Where any petition in a cause or matter in Equity is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be 1*l.* 10*s.* The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition, without appearing thereon, he is to be allowed a fee not exceeding the amount aforesaid.

(21.) The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion or summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or 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 shall not have been raised before and dealt with by the Court or Judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so: and at Common Law the Master shall make such order as may be required to effect the object of this regulation.

(22.) In any case in which, under the last preceding regulation, or any other Rule of Court, or by the order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer 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 shall think 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 officer may allow or certify the costs to be paid, and direct payment there-

of, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

(23.) Where in Equity any question as to any costs is under Regulation (20) dealt with at Chambers, the Judge's Clerk is to make a note thereof, and state the same for the information of the taxing officer.

(24.) Where any party appears upon any application or proceeding in Court or at Chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or Judge shall expressly direct such costs to be allowed.

(25.) The costs of applications to extend the time for taking any proceedings shall be in the discretion of the taxing officer, unless the Court or Judge shall have specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of a summons to extend time shall not be allowed in cases to which Rule 8 of Order LXIV. applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent, to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application; and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal with such costs, in the manner provided by Regulation (22).

(26.) The taxing officers of the Supreme Court shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been or are by general orders directed to be performed by any officer of the Supreme Court, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the Principal Act were, or by general orders are, vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge.

(27.) Where an account consists in part of any bill of costs, the Court or Judge may direct the taxing officer to assist in settling such costs, not being the ordinary costs of passing the account of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the



same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and he shall return the same, with his opinion thereon, to the Court or Judge by whose direction the same were taxed.

(28.) The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

(29.) When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

(30.) On every taxation the taxing officer shall allow all such costs, charges, and expenses as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same no costs shall be allowed which appear to the taxing officer to have been incurred or increased through over-caution, negligence or mistake or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses.

(31.) As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

(32.) Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment.

(33.) Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

(34.) Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such

costs without any order referring the same for taxation, unless the Court or a Judge upon the application of the party alleging himself to be aggrieved prohibits the taxation of such costs.

(35.) Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper taxing officer, and give notice of his having so done to the other party, and at any time within eight days after such notice such other party shall have liberty to inspect the same without fee, if he thinks fit. And at or before the expiration of the eight days, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the cost or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs.

(36.) Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

(37.) The allowances in respect of fees to counsel, and to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officer, subject to appeal to the Court or Judge, whose decision shall be final.

(38.) The rules, orders, and practice of the Supreme Court relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the Principal Act, shall, in so far as they are not inconsistent with the Principal Act and these Rules, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the Full Court.

(39.) As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to 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 cause 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: and where a party is entitled to sign judgment for his costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment.

(40.) If upon any taxation it shall appear that the costs have been increased by unnecessary delay or by improper, vexatious, prolix, or unnecessary proceedings, or by other misconduct or negligence, or that from any other cause the amount of the costs is excessive having regard to the nature of the business transacted or the interests involved or the money or value of property to which the costs relate, or to the other circumstances of the case, the taxing officer shall allow only such an amount of costs as may be reasonable and proper, and may assess the same at a gross sum, and shall (if necessary) apportion the amount among the parties if more than one.

The provisions as to the review of taxations shall apply to allowances and certificates under this Rule.

(41.) If on the taxation of a bill of costs payable out of a fund or estate (real or personal), or out of the assets of a company in liquidation, the amount of the professional charges contained in the bill is reduced by a sixth part, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, nor for attending the taxation.

(42.) Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, or such earlier time as may in any case be fixed by the taxing officer, deliver to the other party interested therein, and carry in before the taxing officer, 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 objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same. The taxing officer may, if he shall think fit, issue, pending the consideration of such objections, a certificate of taxation or allocatur for or on account of the remainder of the bill of costs, and such further certificate or allocatur as may be necessary shall be issued by the taxing officer after his decision upon such objections.

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

(44.) Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may within 14 days from the date of the certificate or allocatur, or such other time as the Court or a Judge, or taxing officer, at the time he signs his certificate or allocatur, may allow, apply to a Judge at Chambers for

an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as the Judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

(45.) Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the Judge shall otherwise direct.

(46.) No counsel's fee shall in any case be allowed to any practitioner who is a paid clerk of or in receipt of a salary from any practitioner or firm of practitioners.

(47.) No retaining fee to counsel shall be allowed on taxation as between party and party.

(48.) Fees for conferences are not to be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it shall appear to the taxing officer for some special reason that a conference was necessary or proper.

(49.) In any case in which under Rule 10 of this order the scale of costs in Local Courts is applicable, the costs of briefing more than one counsel shall not be allowed, unless the taxing officer shall, for special reasons, be of opinion that briefing more than one counsel was proper.

(50.) Where the costs of retaining two counsel may properly be allowed, such allowance may be made although both such counsel may have been selected from the outer bar.

(51.) As to refresher fees, when any cause or matter is to be tried or heard upon *viva voce* evidence in open Court, if the trial shall extend over more than one day, and shall occupy either on the first day only, or partly on the first and partly on the subsequent day or days, more than five hours, without being concluded, the taxing officer may allow, for every clear day subsequent to that on which the five hours shall have expired, the following fees:—

To the leading counsel . . . . .	from 5 to 10 guineas
To the second, if three counsel . . . . .	„ 3 to 7 „
To the third, if three counsel, or	
the second, if only two . . . . .	„ 3 to 5 „

The like allowances may be made where the evidence in chief is not taken *viva voce*, if the trial on hearing shall be substantially prolonged beyond such period of five hours, to be so computed as aforesaid, by the cross-examination of witnesses whose affidavits or depositions have been used. Provided that in the taxation of costs between solicitor and client the taxing officer shall be at liberty to allow larger fees, under special circumstances to be stated by him.

(52.) Where a cause or matter shall not be brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed if the taxing officer shall be of opinion that such costs were prematurely incurred.

(53.) Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter.

(54.) The following fees are to be allowed to counsel's clerks:—

	£	s.	d.
Upon a fee under 5 guineas .. .. .	0	2	6
5 guineas and under 10 guineas .. .. .	0	5	0
10 guineas and under 20 guineas .. .. .	0	10	0
20 guineas and under 30 guineas .. .. .	0	15	0
30 guineas and under 50 guineas .. .. .	1	0	0
50 guineas and upwards, per cent. .. .. .	2	10	0
On consultations, senior's clerk .. .. .	0	5	0
On consultations, junior's clerk .. .. .	0	2	6
On conferences .. .. .	0	5	0
On retainers (where allowed):			
General retainer .. .. .	0	10	6
Common retainer .. .. .	0	2	6

(55.) No fee to counsel shall be allowed on taxation unless vouched by his signature.

(56.) In cases in which an original affidavit can be used, and to which Order XXXVI., Rule 15, applies, it shall not be necessary to take an office copy.

(57.) It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party.

(58.) Where, in proceedings before the taxing officer, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under Regulation (22).

(59.) Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the

bill of costs has been referred to the taxing officer, giving his name and address for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

(60.) The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the Court or a Judge, a time is appointed for any proceeding before or by a taxing officer, unless the Court or Judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose.

(61.) Every bill of costs which shall be left for taxation shall be indorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor, if any, for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed.

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## ORDER LXVI.

(O. 66.)

NOTICES, PRINTING, PAPER, COPIES, OFFICE COPIES, MINUTES, ETC.

1. All notices required by these Rules shall be in writing, unless expressly authorised by the Court or a Judge to be given orally.

2. All accounts, copies, and papers left at Chambers, shall be written upon foolscap paper, bookwise, unless the nature of the document renders it impracticable.

3. Proceedings required to be printed shall be printed on foolscap paper, bookwise in pica type leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two inches and a half wide.

4. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

5. Where any written deposition of a witness has been filed, such deposition shall be printed, unless otherwise ordered.

6. The Rules of Court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.

7. Where, pursuant to these Rules, any pleading, notice, special case, petition of right, deposition, or affidavit is to be printed, and

where any printed or other office copy of any such document is to be taken, the following regulations shall be observed:—

- (a.) The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 3 of this Order:
- (b.) To enable the party printing, to print any deposition or affidavit, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only:
- (c.) The party printing shall, on demand in writing, furnish to any other party any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1*d.* per folio for one copy, and ½*d.* per folio for every other copy:
- (d.) As between a solicitor delivering any printed copies and his client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed copies:
- (e.) The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or a Judge shall otherwise direct:
- (f.) Except as provided by Order LV., Rule 49, the party by or on whose behalf any deposition, affidavit, or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed:
- (g.) The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates:
- (h.) Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared:
- (i.) The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or a Judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges:

- (j.) In the case of an *ex parte* application for an injunction or writ of *ne exeat colonia*, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court or a Judge:
  - (k.) 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 printed on every copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party:
  - (l.) The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be:
  - (m.) The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies:
  - (n.) In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for:
  - (o.) Where, by any order of the Court (whether of the Full Court or otherwise) or of a Judge, any pleading, evidence, or other document is ordered to be printed, the Court or Judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.
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## ORDER LXVII.

(O. 67.)

## SERVICE OF ORDERS, ETC.

1. Except in the case of an order for attachment, it shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited.

2. All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served as defined by Orders IV. and XII., with any person resident at or belonging to such place, or if posted in a prepaid registered envelope addressed to the person to be served at such address for service as aforesaid; provided that where service under this Rule is made by registered post, the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof.

3. Notices sent from any office of the Supreme Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

4. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service as required by Orders IV. and XII., all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer.

5. Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons.

6. Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, and it is made to appear to the Court or a Judge that prompt personal service cannot be effected, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just.

7. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorised to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served

upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor.

8. Where a person who is not a party appears in any proceeding either before the Court or in Chambers, service upon the solicitor in Perth by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service.

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

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### ORDER LXVIII.

(O. 68.)

#### APPLICATION OF RULES IN CROWN, REVENUE, AND MATRIMONIAL CASES.

1. Subject to the provisions of this Order, nothing in these Rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters:—

- (a.) Criminal proceedings;
- (b.) Proceedings on the Crown side of the Supreme Court;
- (c.) Proceedings on the Revenue side of the Supreme Court;
- (d.) Proceedings for Divorce or other Matrimonial Causes.

2. The following Orders shall, as far as they are applicable, apply to all civil proceedings on the Crown side of the Supreme Court, including mandamus and prohibition, and also to *quo warranto*, and to all proceedings on the Revenue side of the said Division; namely:—

- (a.) Order XXVIII. (Amendment);
- (b.) Order XXXIII. (Special case);
- (c.) Order XXXVI. (Affidavits);
- (d.) Order LI. (Motions);
- (e.) Order LVIII. (Appeals);
- (f.) Order LXIV. (Time);
- (g.) Order LXV. (Costs);
- (h.) Order LXVI. (Notices, etc.);
- (i.) Order LXX. (Non-compliance);

Provided, that Order LVIII. shall not apply to *quo warranto*.

3. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages.

4. Affidavits used in applications on the Crown side of the Supreme Court shall be intituled in the Supreme Court.

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## ORDER LXIX.

(O. 69.)

ARREST OF DEFENDANT UNDER S. 4 OF THE DEBTORS ACT, 1871.

1. An order to arrest under the 4th section of the Debtors Act, 1871 (which shall be in the Form No. 31 in Appendix K., with such variations as circumstances may require), shall be made upon affidavit and *ex parte*; but the defendant may at any time after arrest apply to the Court or a Judge to rescind or vary the order or to be discharged from custody, or for such other relief as may be just.

2. An order to arrest shall before delivery to the sheriff be indorsed with the plaintiff's address for service as required by Order IV., Rules 1 and 2. The sheriff or other officer executing the order shall be entitled to the same fees as heretofore.

3. The security to be given by the defendant may be a deposit in Court of the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties (or with the leave of the Court or a Judge either one surety or more than two), or, with the plaintiff's consent, any other form of security. The plaintiff may, within four days after receiving particulars of the names and addresses of the proposed sureties, give notice that he objects thereto, stating in the notice the particulars of his objections. In such case the sufficiency of the security shall be determined by a Judge who shall have power to award costs to either party. It shall be the duty of the plaintiff to obtain an appointment for that purpose, and unless he do so within four days after giving notice of objection, the security shall be deemed sufficient.

4. The money deposited, and the security, and all proceedings thereon, shall be subject to the order and control of the Court or a Judge.

5. Unless otherwise ordered, the costs of and incidental to an order of arrest shall be costs in the cause.

6. Upon payment into Court of the amount mentioned in the order, a receipt shall be given; and upon receiving the bond or other security, a certificate to that effect shall be given, signed or attested by the plaintiff's solicitor, if he have one, or by the plaintiff, if he sue in person. The delivery of such receipt, or a certificate to the sheriff or other officer executing the order, shall entitle the defendant to be discharged out of custody.

7. The sheriff or other officer named in an order to arrest shall, within two days after the arrest, indorse on the order the true date of such arrest.

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## ORDER LXX.

(O. 70.)

## EFFECT OF NON-COMPLIANCE.

1. 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 Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

2. No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

4. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

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ORDER LXXI.

(O. 71.)

## INTERPRETATION OF TERMS.

1. The provisions of the 33rd section of the Principal Act shall apply to these Rules.

In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following:—

“ Originating Summons ” means a summons by which proceedings are commenced without writ:

“ Person ” includes a body corporate or politic:

“ Probate actions ” include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business:

“ Proper officer ” means an officer to be ascertained as follows:—

(a.) Where any duty to be discharged under the Principal Act or these Rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same:

(b.) Where any new duty is under the Principal Act or these Rules to be discharged, the proper officer to discharge the same, shall be such officer as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court or the Full Court, and in the case of an officer attached to any Judge, by such Judge:

“ Master ” means a Master of the Supreme Court:

“ Receiver ” includes consignee or manager appointed by or under an order of the Court:

“ Taxing Officer ” means the Master or person whose duty it is to tax the costs to be taxed in the Supreme Court:

“ The Principal Act ” means the Supreme Court Act, 1880:

“ Central Office ” means the Office of the Supreme Court in Perth:

“ At Common Law ” shall mean all causes and matters formerly cognizable by the Supreme Court in its common law jurisdiction:

“ In Equity ” shall mean all causes and matters formerly cognizable by the Supreme Court in its equitable jurisdiction or in lunacy:

“ In Probate ” shall mean all causes and matters formerly cognizable by the Supreme Court in its ecclesiastical jurisdiction.

2. In these Rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular.

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## ORDER LXXII.

(O. 72.)

### GENERAL RULES.

1. No Order or Rule annulled by any former Order shall be revived by any of these Rules, unless expressly so declared.

2. Where no other provision is made by the Principal Act or these Rules, the present procedure and practice remain in force.

3. During the period of any vacancy in the office of Chief Justice, or in case of any interruption in the discharge of his functions, these Rules shall operate as if the words “ other Judge of the Supreme Court ” were used whenever the words “ Chief Justice ” are used.

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## APPENDIX A.

## PART I.

*Forms of Writs of Summons, etc.*

## No. 1.

## General Form of Writ of Summons.

19 . [Here put the letter and number.]  
 In the Supreme Court, Between A.B. Plaintiff,  
 Western Australia, and  
 C.D. Defendant.

Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith.

To C.D. of in the State of Western Australia.

We command you, That within days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A.B.; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Chief Justice of Western Australia, the  
 day of in the year of Our Lord One thousand  
 nine hundred and

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the Central Office of the Supreme Court, at Perth.

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, &c.

This writ was issued by the said plaintiff, who resides at , or,  
 this writ was issued by E.F., of , whose address for service is  
 , solicitor for the said plaintiff, who resides at ,  
 or, this writ was issued by G.H., of , whose address for service  
 is , agent for of , solicitor for the said  
 plaintiff, who resides at [mention the city, town, or place, and  
 also the name of the street and number of the house of the plaintiff's residence, if  
 any.]

*Indorsement to be made on the writ after service thereof.*

This writ was served by me at on the defendant  
 on the day of

19 .  
 Indorsed the day of 19 .  
 (Signed)  
 (Address)

No. 2.

Specially Indorsed Writ, Order III., Rule 6.

[Title, etc., as in Form 1.]

Edward the Seventh, by the Grace of God, &c., to  
of \_\_\_\_\_ in the State of Western Australia.  
We command you, that within \_\_\_\_\_ days after the service of this writ  
on you, inclusive of the day of such service, you cause an appearance to be entered  
for you in an action at the suit of \_\_\_\_\_;  
and take notice, that in default of your so doing the plaintiff may proceed therein,  
and judgment may be given in your absence.  
Witness \_\_\_\_\_ Chief Justice of Western Australia, the  
day of \_\_\_\_\_ in the year of Our Lord One thousand nine hundred  
and \_\_\_\_\_

N.B.—This writ is to be served within twelve calendar months from the date  
thereof, or, if renewed, within six calendar months from the date of the last  
renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office of the Supreme Court, at  
Perth.

Statement of Claim:—

The plaintiff's claim is

Particulars:—

Place of Trial

(Signed)

And the sum of £ \_\_\_\_\_, [or such sum as may be allowed on  
taxation] for costs; and also in case the plaintiff obtains an order for substituted  
service, the further sum of £ \_\_\_\_\_. If the amount claimed is paid  
to the plaintiff or his solicitor or agent within four days from the service hereof,  
further proceedings will be stayed.

This writ was issued by the said plaintiff, who resides at \_\_\_\_\_,  
[or] this writ was issued by E.F., of \_\_\_\_\_,  
whose address for service is \_\_\_\_\_, solicitor for the said plaintiff,  
who resides at \_\_\_\_\_, [or] this writ was issued by G.H., of \_\_\_\_\_,  
whose address for service is \_\_\_\_\_,  
agent for \_\_\_\_\_ of \_\_\_\_\_  
solicitor for the said plaintiff, who resides at \_\_\_\_\_

This writ was served by me at \_\_\_\_\_ on \_\_\_\_\_  
on the defendant \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
Indorsed the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
(Signed)  
(Address)



Writ for Service out of the Jurisdiction, or where Notice in lieu of Service  
is to be given out of the Jurisdiction.

Edward the Seventh, by the Grace of God, &c.

We command you *C.D.*, That within [*here insert the number of days directed by the Court or Judge ordering the service or notice*] after the service of this writ [*or notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in Our Supreme Court of Justice in an action at the suit of *A.B.*; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

*Indorsement to be made on the writ before the issue thereof.*

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

**Specially Indorsed Writ for Service out of the Jurisdiction.**

Edward the Seventh, by the Grace of God, &c., to  
of  
in the of

We command you, that within\*                                days after service \*\* of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

\*Insert No. of days directed by Court or Judge.

\*\* If notice of the writ is to be served, insert here "of notice."

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office of the Supreme Court, at Perth, Western Australia.

The plaintiff's claim is

Particulars:—

Place of Trial

(Signed)

And \$ [or such sum as may be allowed on taxation] for costs.  
If the amount claimed is paid to the plaintiff or his solicitor or agent within\*  
days from service \*\* hereof, further proceedings will be stayed.

This writ was issued, &c.

\* Insert No. of days limited for appearance.

\*\* If notice to be served, insert here of notice."

This writ [*or notice of this writ*] was served, &c.

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

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No. 5.

Notice of Writ in lieu of Service to be given out of the Jurisdiction.

[*Title, etc., as in Form 1.*]

To *G.H.*, of

Take notice, that *A.B.*, of \_\_\_\_\_ has commenced an action against you *G.H.*, in His Majesty's Supreme Court of Western Australia, by writ of that Court, dated the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_\_\_; which writ is endorsed as follows [*copy in full the indorsements*], and you are required within \_\_\_\_\_ days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said *A.B.* may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Central Office of the Supreme Court, at Perth, Western Australia.

(Signed) \_\_\_\_\_ *A.B.* of \_\_\_\_\_ &c.

\_\_\_\_\_ *or* \_\_\_\_\_  
\_\_\_\_\_ *X.Y.* of \_\_\_\_\_ &c.

Solicitor for *A.B.*

In the Supreme Court  
of Western Australia.

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No. 6.

Notice of Writ in lieu of Service to be given out of the Jurisdiction.

[*Title, etc., as in Form 1.*]

To \_\_\_\_\_  
of \_\_\_\_\_

Take notice, that \_\_\_\_\_ of \_\_\_\_\_ has commenced an action against you in the Supreme Court of Western Australia, by writ of that Court, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, which writ is endorsed as follows:—[*copy in full the indorsements*]

And you are hereby required within \_\_\_\_\_ days after the receipt of this notice, inclusive of the day of such receipt, to defend this action by causing an appearance to be entered for you thereto, and in default of your so doing, the said \_\_\_\_\_ may proceed therein, and judgment may be given in your absence.

Appearance is to be entered at the Central Office of the Supreme Court, at Perth, Western Australia.

(Signed) \_\_\_\_\_

This notice was served by, &c. \_\_\_\_\_

N.B.—This notice is to be used where the person to be served is not a British subject, and is not in British dominions.

## No. 7.

## Form of Memorandum for Renewed Writ.

[Title, etc., as in Form 1.]

Seal renewed writ of summons in this action indorsed as follows:—

[Copy original writ and the indorsements.]

## PART II.

*Forms of Entry of Appearance.*

## No. 1.

## Memorandum of Appearance in General.

In the Supreme Court.

19     ,     [Here put letter and number.]

Between

and

Plaintiff,  
Defendant.

Enter an appearance for

in this action

Dated the                      day of                      , 19     .

(Signed)

of\*

Agent for  
of\* If this address  
be beyond three  
miles from  
Perth, an ad-  
dress for ser-  
vice in Perth  
must be given.

## No. 2.

## Notice of Entry of Appearance.

[Heading as in Form 1.]

Take notice, that                      have this day entered an appearance at the  
Central Office of the Supreme Court, at Perth, for the defendant  
to the writ of summons in this action.

[If statement of claim is required, add] The said defendant requires delivery  
of a statement of claim.

Dated the                      day of                      , 19     .

(Signed)

of

Agent for

Solicitor for the defendant.

To

No. 3.

Notice limiting Defence.

[Heading as in Form 1.]

Take notice that the [above-named] defendant [A.B.] limits his defence to part only of the property mentioned in the writ of summons, namely, to [e.g., Perth Town Lot 52.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed) \_\_\_\_\_

of \_\_\_\_\_

Agent for  
of

Solicitors for the above-named defendant.

To Messrs.

The plaintiff's solicitors,

## No. 4.

**Entry of Appearance limiting Defence.**

[Heading as in Form 1.]

Enter an appearance for the defendant \_\_\_\_\_ in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to [*e.g., Perth Town Lot 52.*]

The address of \_\_\_\_\_ is \_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
(Signed) \_\_\_\_\_  
of\* \_\_\_\_\_  
Agent for \_\_\_\_\_  
of \_\_\_\_\_

\* If this address be beyond three miles from Perth, an address for service in Perth must be given.

## No. 5.

Entry of Appearance, Order XVI., Rule 49.

[Heading as in Form 1.]

Enter an appearance for \_\_\_\_\_ to the notice issued in  
this action on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by the defendant  
\_\_\_\_\_ under the Rules of the Supreme Court, 1908, Order  
XVI., Rule 49.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed)  
of\*\*  
Agent for  
of \_\_\_\_\_

\* If this address be beyond three miles from Perth, an address for service in Perth must be given.

No. 6.

Entry of Appearance, Order XVII., Rule 5.

[Heading as in Form 1.]

Enter an appearance for \_\_\_\_\_, who has been served with an order dated the \_\_\_\_\_ day of \_\_\_\_\_ to carry on and prosecute the proceedings in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed) \_\_\_\_\_  
of\* \_\_\_\_\_  
Agent for \_\_\_\_\_  
of \_\_\_\_\_

\* If this address be beyond three miles from Perth, an address for service in Perth must be given.

## No. 7.

## Entry of appearance to Counterclaim.

[Heading as in Form 1.]

Enter an appearance for \_\_\_\_\_ to  
the counter-claim of the above-named defendant  
in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_  
(Signed) \_\_\_\_\_  
of\* \_\_\_\_\_  
Agent for \_\_\_\_\_  
of \_\_\_\_\_

\*If this address  
be beyond three  
miles from  
Perth, an ad-  
dress for service  
in Perth must  
be given.

[Note.—The heading should contain the double title of claim and counter claim.]

## No. 8.

## Affidavit for Entry of Appearance as Guardian.

[Heading as in Form 1.]

I, \_\_\_\_\_,  
of \_\_\_\_\_, the solicitor for C.D. (the infant).  
make oath and say as follows:—

A.B., of \_\_\_\_\_  
is a fit and proper person to act as guardian *ad litem* of the above-named infant  
defendant, and has no interest in the matters in question in this action [matter]  
adverse to that of the said infant, and the consent of the said A.B. to act as such  
guardian is hereto annexed.

Sworn, &c.

[To this Affidavit shall be annexed the document signed by such guardian in  
testimony of his consent to act.]

## PART III.

## General Indorsements on Writs of Summons.

## SECTION I.

## In Matters in Equity.

## 1.

The plaintiff's claim is as a creditor of X.Y., of \_\_\_\_\_ deceased,  
to have the [real and] personal estate of the said X.Y. administered. The \_\_\_\_\_ Creditor to ad-  
defendant C.D. is sued as the administrator of the said X.Y. [and the defendants minister estate.  
E.F. and G.H. as his co-heirs-at-law].

## 2.

The plaintiff's claim is as a legatee under the will dated the \_\_\_\_\_ day of \_\_\_\_\_  
, 19 \_\_\_\_, of X.Y. deceased, to have the [real and] personal estate \_\_\_\_\_ Legatee to ad-  
of the said X.Y. administered. The defendant C.D. is sued as the executor of the minister estate.  
said X.Y. [and the defendants E.F. and G.H. as his devisees].

3.

Partnership. The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the day of ], and to have the affairs of the partnership wound up.

4.

By mortgagee. The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the day of , made between [or by deposit of title deeds], and that the mortgage may be enforced by foreclosure or sale.

5.

By mortgagor. The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between [parties], and to redeem the property comprised therein.

6.

Raising portions. The plaintiff's claim is that the sum of l., which by an indenture of settlement dated was provided for the portions of the younger children of may be raised.

7.

Execution of trusts. The plaintiff's claim is to have the trusts of an indenture dated and made between , carried into execution.

8.

Cancellation or rectification. The plaintiff's claim is to have a deed dated and made between [parties], set aside or rectified.

9.

Specific performance. The plaintiff's claim is for specific performance of an agreement dated the day of , for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at

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SECTION II.

Money claims where no Special Indorsement under Order III., Rule 6.

Goods sold.	The plaintiff's claim is	l. for the price of goods sold. [This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.
Money lent.	The plaintiff's claim is	l. for money lent [and interest].
Several demands.	The plaintiff's claim is	l., whereof l. is for the price of goods sold, and l. for money lent, and l. for interest.
Rent.	The plaintiff's claim is	l. for arrears of rent.
Salary, etc.	The plaintiff's claim is	l. for arrears of salary as a clerk [or as the case may be].
Interest.	The plaintiff's claim is	l. for interest upon money lent.
General average.	The plaintiff's claim is	l. for a general average contribution.
Freight, etc.	The plaintiff's claim is	l. for freight and demurrage.
	The plaintiff's claim is	l. for lighterage

The plaintiff's claim is	<i>l.</i> for market tolls and stallage.	Tolls.
The plaintiff's claim is [ . . . . . ]	<i>l.</i> for penalties under the Statute.	Penalties.
The plaintiff's claim is ant as a banker.	<i>l.</i> for money deposited with the defend-	Banker's balance.
The plaintiff's claim is money expended] as a solicitor.	<i>l.</i> for fees for work done [ <i>and</i>	<i>l.</i> Fees, etc., as solicitors.
The plaintiff's claim is racter as auctioneer, broker, &c.]	<i>l.</i> for commission earned as [ <i>state cha-</i>	Commission.
The plaintiff's claim is	<i>l.</i> for medical attendances.	Medical atten- dance.
The plaintiff's claim is upon policies of insurance.	<i>l.</i> for a return of premiums paid	Return of premium.
The plaintiff's claim is	<i>l.</i> for the warehousing of goods.	Warehouse rent.
The plaintiff's claim is way	<i>l.</i> for the carriage of goods by rail-	Carriage of goods.
The plaintiff's claim is house.	<i>l.</i> for the use and occupation of a	Use and occupa- tion of houses.
The plaintiff's claim is	<i>l.</i> for the hire of [furniture.]	Hire of goods.
The plaintiff's claim is	<i>l.</i> for work done as a surveyor.	Work done.
The plaintiff's claim is	<i>l.</i> for board and lodging.	Board and lodging.
The plaintiff's claim is of X.Y.	<i>l.</i> for the board, lodging, and tuition	Schooling.
The plaintiff's claim is as solicitor [ <i>or factor, or collector, or, &amp;c.</i> ] of the plaintiff.	<i>l.</i> for money received by the defendant	Money received.
The plaintiff's claim is under colour of the office of	<i>l.</i> for fees received by the defendant	Fees of office.
The plaintiff's claim is for the carriage of goods by railway.	<i>l.</i> for a return of money overcharged	Money over- paid.
The plaintiff's claim is the defendant as	<i>l.</i> for a return of fees overcharged by	
The plaintiff's claim is the defendant as stakeholder.	<i>l.</i> for a return of money deposited with	Return of money by stake- holder.
The plaintiff's claim is as stakeholder, and payable to plaintiff.	<i>l.</i> for money entrusted to the defendant	Money won from stake- holder.
The plaintiff's claim is the defendant as agent of the plaintiff.	<i>l.</i> for a return of money entrusted to	Money en- trusted to agent.
The plaintiff's claim is the plaintiff by fraud.	<i>l.</i> for a return of money obtained from	Money obtained by fraud.
The plaintiff's claim is defendant by mistake.	<i>l.</i> for a return of money paid to the	Money paid by mistake.
The plaintiff's claim is defendant for [work to be done, left undone, <i>or</i> , a bill to be taken up, not taken up, <i>or</i> &c.]	<i>l.</i> for a return of money paid to the	Money paid for consideration which has failed.
The plaintiff's claim is deposit upon shares to be allotted.	<i>l.</i> for a return of money paid as a	
The plaintiff's claim is his surety.	<i>l.</i> for money paid for the defendant as	Money paid by surety for defendant.
The plaintiff's claim is defendant.	<i>l.</i> for money paid for rent due by the	Rent paid.
The plaintiff's claim is [ <i>or indorsed</i> ] for the defendant's accommodation.	<i>l.</i> upon a bill of exchange accepted	Money paid on accommodation bill.

Contribution by surety.	The plaintiff's claim is money paid by the plaintiff as surety.	<i>l.</i> for a contribution in respect of
By co-debtor.	The plaintiff's claim is joint debt of the plaintiff and the defendant	<i>l.</i> for a contribution in respect of a paid by the plaintiff.
Money paid for calls.	The plaintiff's claim is against which the defendant was bound to indemnify the plaintiff.	<i>l.</i> for money paid for calls upon shares
Money payable under award.	The plaintiff's claim is	<i>l.</i> for money payable under an award.
Life policy.	The plaintiff's claim is the life of X.Y., deceased.	<i>l.</i> upon a policy of insurance upon
Money bond.	The plaintiff's claim is 1,000 <i>l.</i> , and interest.	<i>l.</i> upon a bond to secure a payment of
Foreign judgment.	The plaintiff's claim is Court, in the Empire of Russia.	<i>l.</i> upon a judgment of the
Bills of exchange, &c.	The plaintiff's claim is	<i>l.</i> upon a cheque drawn by the defendant.
	The plaintiff's claim is [or drawn or indorsed] by the defendant.	<i>l.</i> upon a bill of exchange accepted
	The plaintiff's claim is indorsed] by the defendant.	<i>l.</i> upon a promissory note made [or
	The plaintiff's claim is acceptor, and against the defendant C.D. as drawer [or indorser] of a bill of exchange.	<i>l.</i> against the defendant A.B. as
Surety.	The plaintiff's claim is the price of goods sold.	<i>l.</i> against the defendant as surety for
	The plaintiff's claim is principal, and against the defendant C.D. as surety, for the price of goods sold [or arrears of rent, or for money lent, or for money received by the defendant A.B. as traveller for the plaintiffs, or &c.]	<i>l.</i> against the defendant A.B. as prin-
Del credere agent.	The plaintiff's claim is agent for the price of goods sold [or as losses under a policy].	<i>l.</i> against the defendant as a <i>del credere</i>
Calls.	The plaintiff's claim is	<i>l.</i> for calls upon shares.
Waygoing crops, &c.	The plaintiff's claim is case may be], left by the plaintiff as outgoing tenant of a farm.	<i>l.</i> for crops, tillage, manure [or as the

### SECTION III.

#### Indorsement for Costs.

Add to the above forms:—

And £ [or such sum as may be allowed on taxation] for costs; and also, in case the plaintiff obtains an order for substituted service, the further sum of £ . If the amount claimed to be paid to the plaintiff or his solicitor within four days [or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearances limited by the rules] from the service hereof, further proceedings will be stayed.

### SECTION IV.

#### Damages and other Claims.

Account.	The plaintiff's claim that an account be taken of [say what].
Agent, etc.	The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.
	The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and <i>l.</i> for arrears of wages].



The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [and *l.* for money received as factor, &c.].

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X.Y. to the defendant [*or plaintiff*]. Apprentices.

The plaintiff's claim is for damages for non-compliance with the award of X.Y. Arbitration.

The plaintiff's claim is for damages for assault and false imprisonment [and for malicious prosecution]. Assault.

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C.D.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff. Solicitor.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same]. Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same]. Pledge.

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [*or a carriage lent*]. [and for wrongfully, &c.] Hire.

The plaintiff's claim is for damages for wrongfully neglecting [*or refusing*] to pay the plaintiff's cheque. Banker.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. Bill.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a Bond.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. Carrier.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damage for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damage for breach of charter-party of ship [*Mary*]. Charter-party.

The plaintiff's claim is for return of household furniture, or, &c., or their value, and for damages for detaining the same. Claim for return of goods and damages.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c. Damages for depriving of goods.

The plaintiff's claim is for damages for libel. Defamation.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained.

The plaintiff's claim is for damages for improperly distraining Distress Replevin.

[*This form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.*]

The plaintiff's claim is to recover possession of a house, No. in Ejectment.  
street [*or of a farm called Blackacre*], situate

The plaintiff's claim is to establish his title to [*here describe property*], and to recover the rents thereof. To establish title and recover rents.

[*The two previous Forms may be combined.*]

	The plaintiff's claim is for dower.
Fishery.	The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.
Fraud.	The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [ <i>or a business, or shares, or &amp;c.</i> ] The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of <i>A.B.</i>
Guarantee.	The plaintiff's claim is for damages for breach of a contract of guarantee for <i>A.B.</i> The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.
Insurance.	The plaintiff's claim is for a loss under a policy upon the ship "Royal Charter," and freight or cargo [ <i>or for return of premiums.</i> ] [ <i>This Form shall be sufficient whether the loss claimed be total or partial.</i> ]
Fire insurance.	The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.
Landlord and tenant.	The plaintiff's claim is for damages for breach of a contract to insure a house. The plaintiff's claim is for damages for breach of contract to keep a house in repair. The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.
Medical man.	The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.
Mischievous animal.	The plaintiff's claim is for damages for injury by the defendant's dog. The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.
Negligence.	The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants. The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.
Lord Campbell's Act.	The plaintiff's claim is as executor of <i>A.B.</i> deceased, for damages for the death of the said <i>A.B.</i> from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.
Promise of marriage.	The plaintiff's claim is for damages for breach of promise of marriage.
Seduction.	The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.
Sale of goods.	The plaintiff's claim is for damages for breach of contract to accept and pay for goods. The plaintiff's claim is for damages for non-delivery [ <i>or short delivery, or defective quality, or other breach of contract of sale</i> ] of cotton [ <i>or, &amp;c.</i> ]
Sale of land.	The plaintiff's claim is for damages for breach of warranty of a horse. The plaintiff's claim is for damages for breach of a contract to sell [ <i>or purchase</i> ] land. The plaintiff's claim is for damages for breach of a contract to let [ <i>or take</i> ] a house. The plaintiff's claim is for damages for breach of a contract to sell [ <i>or purchase</i> ] the lease, with goodwill, fixtures, and stock in trade of a public-house. The plaintiff's claim is for damages for breach of covenant for title [ <i>or for quiet enjoyment, or, &amp;c.</i> ] in a conveyance of land.
Trespass to land.	The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [ <i>or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or</i>

crossing his field, *or* depositing sand there, *or* carrying away gravel thence, *or* carrying away stones from his river].

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or* house *or* mine]. Support.

The plaintiff's claim is for damages for wrongfully obstructing a way [*public highway or a private way*]. Way.

The plaintiff's claim is for damages for wrongfully diverting [*or* obstructing *or* polluting, *or* diverting water from] a watercourse. Watercourse, etc.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or* into the plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture. Pasture.

*[This Form shall be sufficient whatever the nature of the right to pasture be].*

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house. Light.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent. Patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright. Copyright.

The plaintiff's claim is for damages for wrongfully using [*or* imitating] the plaintiff's trade mark. Trade mark.

The plaintiff's claim is for damages for breach of a contract to build a ship [*or* to repair a house, &c.]. Work.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or, &c.*]. Nuisance.

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or* stables, *or &c.*].

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn. Innkeeper.

*Add to Indorsement:*

And for a mandamus commanding the defendant to Mandamus.

*Add to Indorsement:*

And for an injunction to restrain the defendant from Injunction.

*Add to Indorsement where claim is to land, or to establish title, or both:*

And for mesne profits. Mesne profits.

And for an account of rents or arrears of rent. Arrears of rent.

And for breach of covenant for [*repairs*]. Breach of covenant.

## SECTION V.

### Probate.

#### 1.

The plaintiff claims to be executor of the last will dated the \_\_\_\_\_ day of \_\_\_\_\_ By an executor  
of \_\_\_\_\_ of C.W., late of \_\_\_\_\_ gentleman, or legatee pro-  
deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_, and pounding a will  
to have the said will established. This writ is issued against you as one of the in solemn form.  
next of kin of the said deceased [*or as the case may be*].

2.

By an executor or legatee of a former will, or a next of kin, &c., of the deceased seeking to obtain the revocation of a Probate granted in common form.

The plaintiff claims to be executor of the last will dated the day of of C.D., late of deceased, who died on the day of and to have the probate of a pretended will of the said deceased, dated the day of revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*].

3.

By an executor or legatee of a will when letters of administration have been granted as in an intestacy.

The plaintiff claims to be executor of the last will of C.D., late of deceased, who died on the day of dated the day of .

The plaintiff claims that the grant of letters of administration of the estate and effects of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4.

By a person claiming a grant of administration as next of kin of the deceased, but whose interest as next of kin is disputed.

The plaintiff claims to be the brother and sole next of kin of C.D. of deceased, who died on the day of intestate, and to have as such a grant of administration to the estate and effects of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*].

SECTION VI.

Indorsements of Character of Parties.

Executors.

The plaintiff's claim is as executor [*or administrator*] of C.D., deceased, for &c.

The plaintiff's claim is against the defendant A.B., as executor [*or, &c.*] of C.D., deceased, for, &c.

The plaintiff's claim is against the defendant A.B., as executor of X.Y., deceased, for, &c., and against the defendant C.D., in his personal capacity, for, &c.

Trustee in bankruptcy.  
Trustee.

The plaintiff's claim is as trustee under the bankruptcy of A.B., for

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of A.B. [*or under the settlement upon the marriage of A.B. and X.Y., his wife*].

Public officer.

The plaintiff's claim is as public officer of the Bank, for

The plaintiff's claim is against the defendant as public officer of the Bank, for

The plaintiff's claim is against the defendant A.B., as principal, and against the defendant C.D., as public officer of the Bank, as surety, for

Heir and devisee.

The plaintiff's claim is against the defendant as heir-at-law of A.B., deceased.

The plaintiff's claim is against the defendant C.D., as heir-at-law, and against the defendant E.F., as devisee of lands under the will of A.B.

Qui tam action.

The plaintiff's claim is as well for the King as for himself, for

## APPENDIX B.

*Notices, Etc.*

No. 1 .

## Third Party Notice.

, 19 . [*Here put in the letter and number.*]In the Supreme Court,  
Western Australia.Between A.B., Plaintiff,  
and  
C.D., Defendant.

Notice filed , 19 .

To Mr. X.Y.

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 2,000*l.* 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 the                      day of                      )].

*Or* [as acceptor for a bill of exchange for 500*l.*, dated the                      day of                      , drawn by you upon and accepted by the defendant, and payable three 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* [as acceptor of a bill of exchange for 500*l.*, dated the                      day of                      , drawn by you before and accepted by the defendant, and payable three 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 a contract for the sale and delivery to the plaintiff of 1,000 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].

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C.D., or your liability to the defendant C.D., you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant C.D., and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court, 1908, Order XVI., Part V.

(Signed) E.T.

Or,

X.Y.,

Solicitor for the defendant,  
E.T.

Appearance to be entered at

**No. 2.**

**Notice of Counterclaim.**

[*Heading as in Form 1.*]

To the within-named X.Y.

Take notice that if you do not appear to the within counterclaim of the within-named C.D. within eight days from the service of this defence and counterclaim upon you, you will be liable to have judgment given against you in your absence.

Appearance to be entered at

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**No. 3.**

**Notice of Payment into Court.**

[*Heading as in Form 1.*]

Take notice that the defendant has paid into Court £ , and says that that sum is enough to satisfy the plaintiff's claim [*or the plaintiff's claim for, &c.*].

To Mr. X.Y.  
the plaintiff's solicitor.

Z.,  
defendant's solicitor.

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**No. 4.**

**Acceptance of Sum paid into Court.**

[*Heading as in Form 1.*]

Take notice that the plaintiff accepts the sum of £ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

---

**No. 5.**

**Confession of Defence.**

[*Heading as in Form 1.*]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [*or, of the defendant's further defence*].

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**No. 6.**

**Interrogatories.**

, 19 . [*Here put the letter and number.*]

In the Supreme Court,  
Western Australia.

Between A.B., Plaintiff,  
and  
C.D., E.F., and G.H., Defendants.

Interrogatories on behalf of the above-named [*plaintiff, or defendant C.D.*] for the examination of the above-named [*defendants E.F. and G.H., or plaintiff*].

1. Did not, &c.

2. Has not, &c.

&c.      &c.      &c.

[*The defendant E.F. is required to answer the interrogatories numbered .*]

[*The defendant G.H. is required to answer the interrogatories numbered .*]

**No. 7.****Answer to Interrogatories.***[Heading as in Form 6.]*

The answer of the above-named defendant *E.F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E.F.*, make oath and say as follows:—

**No. 8.****Affidavit as to Documents.***[Heading as in Form 1.]*

I, the above-named 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 suit 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 suit 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 suit, 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.

**No. 9.****Notice to produce Documents.***[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 *[statement of claim, or defence, or affidavit, dated the                      day of                      ]*

*Describe documents required.*

**X.Y.,**  
Solicitor to the

To Z.,  
Solicitor for

No. 10.

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 Thursday next the inst. between the hours of 12 and 4 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]:—

No. 11.

Notice to admit Documents.

[Heading as in Form 1.]

Take notice that the plaintiff [or defendant] in this cause 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 , between the hours of ; and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit 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 such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

(Signed),

To E.F., Solicitor [or agent] for defendant [or plaintiff].

G.H., Solicitor [or agent] for plaintiff [or defendant].

[Here describe the documents, the manner of doing which may be as follows:—]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between A.B. and C.D. first part, and E.F. second part ... ..	January 1, 1907.
Indenture of lease from A.B. to C.D. ... ..	February 1, 1900.
Indenture of release between A.B., C.D. first part, etc. ... ..	February 2, 1902.
Letter—defendant to plaintiff ... ..	March 1, 1908.
Policy of insurance on goods by ship "Isabella," on voyage from Singapore to Fremantle ... ..	December 3, 1907.
Memorandum of agreement between C.D., captain of said ship, and E.F. ... ..	January 1, 1908.
Bill of exchange for 100 <i>l.</i> at three months, drawn by A.B. on and accepted by C.D., indorsed by E.F. and G.H. ... ..	May 1, 1908.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of baptism of A.B. in the parish of X. ... ..	January 1, 1848.	
Letter—plaintiff to defendant ... ..	February 1, 1900	Sent by General Post, February 2, 19 .
Notice to produce papers ... ..	March 1, 1908 ...	Served March 2, 1908, on defendant's attorney by E.F., of ———
Record of a Judgment of the Supreme Court in an action, F.S. v. F.N. ... ..	January 1, 1880.	



## No. 12.

## Notice to admit Facts.

*[Heading as in Form 1.]*

Take notice that the plaintiff [*or defendant*] in this cause requires the defendant [*or plaintiff*] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [*or plaintiff*] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

G.D., Solicitor [*or agent*] for the plaintiff [*or defendant*].

To E.F., Solicitor [*or agent*] for the plaintiff [*or defendant*].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1870.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

## No. 13.

## Admission of Facts, pursuant to Notice.

*[Heading as in Form 1.]*

The defendant [*or plaintiff*] in this cause, for the purposes of this cause 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 cause.

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 admission*].

Delivered, &c.

E.F., solicitor [*or agent*] for the defendant [*or plaintiff*].

To G.H., solicitor [*or agent*] for the plaintiff [*or defendant*].

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1870	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1876.
5. That Julius Smith never was married.	5.

## No. 14.

## Notice to Produce (General Form).

*[Heading as in Form 1.]*

Take notice that you are hereby required to produce and show to the Court on the trial of this 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

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

To the above-named \_\_\_\_\_

h \_\_\_\_\_ solicitor or agent

(Signed) \_\_\_\_\_  
of \_\_\_\_\_  
Agent for \_\_\_\_\_  
Solicitor for the above-named \_\_\_\_\_

No. 15.

**Issue.**

[Heading as in Form 1.]

Whereas *A.B.* affirms and *C.D.* denies [*here state the question or questions of fact to be tried*], and it has been ordered by His Honour Mr. Justice \_\_\_\_\_ that the said question shall be tried [*here state mode of trial, whether with or without a jury*], therefore let the same be tried accordingly.

No. 16.

### Notice of Trial.

[Heading as in Form 1.]

Take notice of trial of this [or of the issues in this  
ordered to be tried] [or as the case may be] in [or as  
the case may be], for the day of next  
X.Y., plaintiff's solicitor [or as the case may be].

Dated

To Z., defendant's solicitor [or as the case may be].

No. 17.

Certificate of Officer after Trial with a Jury.

[Heading as in Form 1.]

I certify that this \_\_\_\_\_ was tried before His Honour Mr. Justice \_\_\_\_\_ with a special jury \_\_\_\_\_, on the 12th and 13th days of November, 19 \_\_\_\_.

The jury found [state findings].

The Judge directed that judgment should be entered for the plaintiff for  
l. with costs of summons [or as the case may be].

A.B.,  
[Title of officer.]

The                      day of                      , 19                      .

No. 18.

### Notice of Motion.

[Heading as in Form 1.]

Take notice, that the Court will be moved  
on                      day the                      day of                      , 19                      , at  
o'clock in the forenoon, or so soon thereafter as counsel can be heard, by  
   that

Dated the                      day of                      , 19     .

(Signed)

of

Agent for

Solicitor for the

**To**

**No. 18a.****Notice of Appeal from Master.***[Heading as in Form 1.]*

Take notice that the above-named plaintiff [*or* defendant] intends to appeal against the decision of Master \_\_\_\_\_ given on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, ordering [*or* refusing to order] \_\_\_\_\_ that

And further take notice, that you are required to attend before the Judge in Chambers at the Supreme Court, Perth, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the hearing of an application by the said plaintiff [*or* defendant], that

[And further take notice that it is the intention of the said \_\_\_\_\_ to attend by counsel].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
Solicitor for the \_\_\_\_\_

**No. 19.****Notice of Discontinuance.***[Heading as in Form 1.]*

Take notice, that the plaintiff hereby\*

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed)  
of \_\_\_\_\_

Agent for  
Solicitor for the plaintiff.

To \_\_\_\_\_

\* "Wholly discontinues this action," or "withdraws so much of his claim in this action as relates to," &c.  
If not against all the defendants add "as against the defendant," &c.

**No. 20.****Notice of Cross-examination of Deponents at Trial.***[Heading as in Form 1.]*

Take notice, that the \_\_\_\_\_ intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed)

Agent for  
of \_\_\_\_\_

Solicitor for the \_\_\_\_\_

To \_\_\_\_\_

**THE SCHEDULE above referred to.**

Name of Deponent.	Address and Description.	Date when Affidavit filed.

No. 21.

Notice of Renewal of Writ of Execution.

[Heading as in Form 1.]

Take notice, that the writ of \_\_\_\_\_ issued in this action  
directed to the Sheriff of \_\_\_\_\_ and bearing date the  
day of \_\_\_\_\_, 19\_\_\_\_, has been renewed for one year from the  
day of \_\_\_\_\_, 19\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed)

of

Agent for

Solicitor for the

To the Sheriff of \_\_\_\_\_

No. 22.

Notice as to Stock under Order XLIV.

To the [here add the name of the Company].

Take notice that the stock comprised in and now subject to the trusts of the  
[settlement, will, &c.] referred to in the affidavit to which this notice is annexed  
consists of the following (that is to say) [here specify the stock].

This notice is intended to stop the transfer of the stock only, and not the  
receipt of dividends [or, the receipt of the dividends on the stock as well as the  
transfer of the stock].

(Signed) A.B.

No. 23.

Affidavit of Service of Summons.

[Heading as in Form 1.]

I,  
of \_\_\_\_\_  
solicitor for the above-named \_\_\_\_\_ make oath and say  
as follows—

I did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before the hour  
of \_\_\_\_\_ in the \_\_\_\_\_ noon, serve \_\_\_\_\_ the  
above-named \_\_\_\_\_  
in this action with a true copy duly stamped of the summons hereto annexed  
marked A, by leaving it at the \_\_\_\_\_ of the  
said \_\_\_\_\_  
situate \_\_\_\_\_ [with  
their clerk or his servant, or as may be there].

Sworn at \_\_\_\_\_  
this \_\_\_\_\_ }  
day of \_\_\_\_\_, 19\_\_\_\_.

Before me

This affidavit is filed on behalf of the \_\_\_\_\_

No. 23a.

Affidavit on Application under Order XIV.

[Heading as in Form 1.]

I \_\_\_\_\_ of \_\_\_\_\_ [the above-named plaintiff, or solicitor  
for the above-named plaintiff, or as may be] make oath and say as follows:—

1. The defendant \_\_\_\_\_ is justly and truly indebted to [me] in  
the sum of £ \_\_\_\_\_ for \_\_\_\_\_, and was so indebted at the  
commencement of this action.

The particulars of the said claim appear by the indorsement on the writ of summons in this action.

2. I verily believe that there is no defence to this action.

Sworn, &c.

This affidavit is filed on behalf of the plaintiff.

---

**No. 23b.**

**Affidavit of Service of Summons under Order XIV.**

*[Heading as in Form 1.]*

1. I did on the                      day of, &c., before the hour of                      in the [fore or after] noon, serve [A.B. & Co., solicitors for the above-named defendant, or C.D., the above-named defendant, who appeared in person] in this action with a true copy of the summons now produced and shown to me marked A, by leaving it [or by posting it at the post office at                      in a duly registered envelope addressed to the said                      ] at [insert address] being the address for service [with their clerk, or his servant, or as the case may be there].

2. I did also at the same time leave with the said                      a true copy of the affidavit of                      [if any exhibits add, and the exhibits therein referred to], to be used in support of such summons.

---

**No. 24.**

**Affidavit on Application for Substituted Service.**

*[Heading as in Form 1.]*

I                      of                      clerk to                      of                      solicitor for the above-named plaintiff, make oath and say as follows:—

1. Having been directed by                      to serve the above-named defendant                      with a copy of the writ of summons in this action, which appeared to me to have been regularly issued out of and under the seal of the Central Office of the Supreme Court by the above-named plaintiff against the above-named defendant, and dated the day of                      , 19                      , which said writ and copy were subscribed and indorsed in the manner and form prescribed by the Rules of the Supreme Court, and a true copy of which said writ is now produced and shown to me, marked "A," I did on the                      day of                      , 19                      , attend for the purpose of serving a copy of the said writ at [describe efforts to effect service].

I have made all reasonable efforts and used all due means in my power to serve the said defendant personally with a true copy of the said writ, but I have not been able to do so.

Sworn, &c.

This affidavit is filed on behalf of the

---

**No. 25.**

**Affidavit in support of Garnishee Order.**

In the Supreme Court.

, 19                      .                      No.

Between

Judgment Creditor.

and

Judgment Debtor.

I,  
of

the above-named judgment creditor [or solicitor for the above-named judgment creditor] make oath and say as follows:—

1. By a judgment of the Court given in this action, and dated the  
day of , 19 , it was adjudged that I [or the above-named  
judgment creditor] should recover against the above-named judgment debtor  
the sum of £ , and costs to be taxed, and the  
said costs were by the master's certificate dated the day of ,  
19 , allowed at £

2. The said still remains unsatisfied to the extent  
of and interest amounting to £

† Name, ad-  
dress, and des-  
cription of  
garnishee.

3. † is indebted to the judgment debtor  
in the sum of £ or thereabouts.

4. The said is within the jurisdiction of  
this Court.

Sworn, &c.

No. 26.

Affidavit on Interpleader.

[Heading as in Form 1.]

I,  
of  
the defendant in the above action make oath and say as follows:—

1. The writ of summons herein was issued on the day  
of , 19 , and was served on me on the  
day of , 19 .

\* "is" or  
"are."

2. The action is brought to recover  
The said \* in my possession, but I claim  
no interest therein.

† If claim in  
writing make  
the writing an  
exhibit.

3. The right to the said subject matter of this action has been and is claimed †  
by one  
who †

‡ State expecta-  
tion of suit, or  
that he has  
already sued.

4. I do not in any manner collude with the said or  
with the above-named 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, &c.

No. 27.

Affidavit as to Stock under Order XLIV.

In the matter of [here state the nature of the document comprising the stock, and  
add the date and other particulars, so far as known to the deponent, suffi-  
ciently to identify the document];

and

In the matter of the Act of Parliament, 5 Vict., c. 5.

I of make oath  
and say that according to the best of my knowledge, information, and belief, I am  
[or if the affidavit is made by the solicitor, A.B., of is]  
beneficially interested in the stock comprised in the [settlement, will, &c.] above-  
mentioned, which stock, according to the best of my knowledge and belief, now  
consists of the stock specified in the notice hereto annexed.

Sworn, &c.

This affidavit is filed on behalf of A.B., whose address is [state address for  
service].

**No. 28.****Notice of Claim to Goods taken in Execution.**

Take notice that *A.B.* has claimed the goods (or certain goods) [*where only certain goods are claimed here enumerate them*] taken in execution by the sheriff of \_\_\_\_\_, under the warrant of execution issued in this action. You are hereby required to admit or dispute the title of the said *A.B.* to the said goods and give notice thereof in writing to the said sheriff within four days from the receipt of this notice, failing which the said sheriff may issue an interpleader summons. If you admit the title of the said *A.B.* to the said goods, and give notice thereof in manner aforesaid to the said sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, &c.

(Signed)

To the plaintiff

Sheriff of

**No. 29.****Notice of Plaintiff of Admission or Dispute of Title of Claimant.**

Take notice that I admit (*or, dispute*) the title of *A.B.* to the goods [*or, to certain of the goods, namely (set them out)*] seized by you under the execution issued under the judgment in this action.

(Signed)

Plaintiff  
or  
Solicitor.

To the sheriff of  
and his officers.

, }

**No. 30.****Notice of Change of Solicitor and Agent.**

[*Heading as in Form 1.*]

Take notice that [*new solicitor's name or names*], of \_\_\_\_\_, has [or have] been appointed to act as the solicitor of the above-named [*plaintiff or defendant (naming the defendant or defendants if more than one)*] in this action in the place of [*original solicitors*], and that the undersigned \_\_\_\_\_, of \_\_\_\_\_, has [or have] been appointed to act as the Perth agents of the said [*new solicitors*] in this action in the place of [*original agents*].

The address for service (of the above-named) is

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

Yours, &c.,

[*Signatures of new agents.*]

Agents for

To the above-named defendant [or plaintiff] or his [or their] solicitors.

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, 19 [here put letter and number].

In the Supreme Court,  
Western Australia.

Writ issued the \_\_\_\_\_ of \_\_\_\_\_, 19 \_\_\_\_.

Between *A.B.* - - - - - **Plaintiff,**

and

*C.D.* - - - - - **Defendant.**

The plaintiff, &c.

The plaintiff's claim is, &c.

[To be filled up in manner exemplified in the following forms.]

The plaintiff claims [as in following forms].

Place of trial

(Signed)

Delivered the \_\_\_\_\_ of the \_\_\_\_\_, 19 \_\_\_\_.

### **Actions in Equity.**

## Administration.

The plaintiff is a creditor of X.Y. deceased, of whom the defendant C.D. is executor (or administrator) and the defendant E.F. is heir-at-law (or devisee).

Particulars of the claim:

	Principal due on the bond of the testator ( <i>or</i> intestate) dated the									
of	, 19	-	-	-	-	-	£2,000	0	0	
	Interest from the			of						
	at 5 per cent.	-	-	-	-	-	250	0	0	
							£2,250	0	0	

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said X.X. administered.

(Signed)

Delivered



## No. 2.

1. The plaintiff is residuary legatee of *A.B.*, of the City of Perth, who died March 3rd, 1902, having made his will dated March 2nd, 1902, and appointed the defendants his executors, who proved his will April 6th, 1902. Wilful Default.

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows:—

*C.D.* owed to the testator 1,000*l.*, in respect of which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to *C.D.* for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims:—

- (1.) Account of testator's personal estate on footing of wilful default.
- (2.) Administration of the testator's estate and effects.

(Signed)

Delivered

## No. 3.

1. The plaintiff on December 20, 1905, entered into partnership articles with the defendant for 10 years. Dissolution of Partnership.

2. The defendant has broken the partnership articles as follows:—

*a.*

*b.*

*c.*

The plaintiff claims:—

1. Dissolution
2. Accounts and inquiries.
3. A receiver and manager.

(Signed)

Delivered

## No. 4.

1. The plaintiffs are executors of *A.*, deceased. For Accounts.

2. From the year 1875 till his death *A.* employed the defendant as his confidential agent in the management of a large building estate at *X*.

3. The defendant as such agent received large sums of money for the said *A.*, for which he refuses to account.

The plaintiffs claim:—

1. Accounts of all sums received and paid by the defendant as agent of *A.*
2. Payment of the amount found due.

(Signed)

Delivered

## No. 5.

1. The plaintiff is mortgagee of lands belonging to the defendant. Foreclosure or Sale.

2. The following are the particulars of the mortgage:—

(*a.*) (*Date, and registration No. if registered, and names of mortgagor and mortgagee.*)

- Delivered

## Delivered

## Delivered

## No. 8.

1. On November 12, 1900, *A.* and the defendant *B.* deposited with the plaintiff 500 Russian Government bonds as security for a debt of 1,000*l.*, and interest at 4 per cent. due from *A.* and the defendant *B.* to the plaintiff.

Sale and distribution of proceeds of property subject to any lien or charge.

2. *A.* died March 12, 1901.

3. On March 30, 1901, administration of the estate of *A.* was granted to the defendant *C.*

4. 800*l.* and 30*l.* for interest is owing to the plaintiff on the security of the said bonds

The plaintiff claims:

1. Sale of the said bonds.
2. Application of the proceeds in payment of his debt.
3. Distribution of the surplus among the parties entitled.

(Signed)

Delivered

## No. 9.

1. By a settlement dated July 3, 1900, on the marriage of the plaintiff's father and mother, of which the defendant *A.B.* and one *C.D.* were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

Breach of trust.

2. On August 5, 1901, *C.D.* died, and the defendant *E.F.* was appointed in his place

3. On December, 1902, the plaintiff's father died.

4. On January 1, 1903, the plaintiff's mother died.

5. The defendants have committed the following breaches of trust by:

(a.) Sale of 3,000*l.* Bank Stock and investment of the proceeds in the business of the defendant *A.B.*

(b.) Sale of leasehold property worth 5,000*l.* to *G.H.* for 1,000*l.* [without taking any proper steps to ascertain its value or to obtain such value].

The plaintiffs claim:

- (1.) The replacement of 3,000*l.* Bank Stock and 5*l.* per cent. interest on the proceeds of the Bank Stock sold from the date of sale till replacement.
- (2.) Payment of 4,000*l.* and interest at 5 per cent. per annum from the date of the sale.

(Signed)

Delivered

## No. 10.

1. By a settlement dated June 10, 1899, upon trust for *A.B.* and *C.B.* successively for life, with remainder for their children who should attain 21, the following property was assured:—

Execution of trust.

(a.) A sum of 5,735*l.* 14*s.* 2*d.* consolidated 3*l.* per cent. annuities.

(b.) 4,000*l.* invested on mortgage of land at X.

(c.) One-fifth of the residuary estate of *D.* deceased, subject to a prior life interest.

2. On August 15, 1900, *C.B.* died.

3. On February 18, 1902, *A.B.* died

4. On September 10, 1904, *D.* died.

5. *A.B.* and *C.B.* had five children only, of whom the plaintiff is one.
6. The defendants are the present trustees of the settlement.

The plaintiff claims:

1. Execution of the trust of the settlement.
2. All necessary accounts and inquiries.
3. A receiver.

(Signed)  
delivered

---

No. 11.

For rectifica-  
tion &c., of  
instruments.

1. In 1898 a marriage was arranged between *A.B.* and the plaintiff.
  2. By an agreement contained in two letters, dated February 10 and 12, 1898, it was agreed between *C.B.*, the father of *A.B.*, and *D.*, the father of the plaintiff, that each should settle 10,000*l.* on trust, for *A.B.* and the plaintiff successively for life, with remainder on the usual trusts for the children of the marriage.
  3. By letters dated March 7, 1898, from *D.* to Messrs. *E. & Co.*, his solicitors, he instructed them to prepare a settlement.
  4. A settlement, dated April 25, 1898, was executed upon the marriage of *A.B.* and the plaintiff, accidentally omitting to give a life interest to the plaintiff after the life interest of *A.B.*
  5. On May 20, 1902, *A.B.*, died.
  6. The defendants *H.* and *K.* are the present trustees of the settlement.
  7. The defendants *L.*, *M.*, and *N.*, are the only children of the marriage.
- The plaintiff claims:

Rectification of the settlement.

(Signed)  
Delivered

---

No. 12.

specific per-  
formance.

1. By an agreement (*or*, letters) dated (*or*, made verbally or at interviews on or about) the            day           , the plaintiff agreed to sell to the defendant the Home Farm, near Perth, for £           . The sale was to be completed on the            of           .
- (If the agreement was verbal, add—)
2. The agreement so entered into has been part performed as follows (*state how*).

The plaintiff claims specific performance of the above agreement, and that the defendant may be ordered to execute a proper conveyance of the premises to the plaintiff (*stating in each case what the defendant is required specifically to do*).

(Signed)  
Delivered

---

No. 13.

Partition or  
sale of real  
estates.

1. By will, dated January 5, 1895, *A.* devised Whiteacre to *B.*, *C.*, and *D.* as tenants in common.
2. On March 10, 1896, *A.* died.
3. On March 20, 1896, *A.*'s will was proved.
4. On June 25, 1898, *B.* conveyed to the plaintiff his share of Whiteacre.

5. On July 30, 1900, *C.* conveyed his share to the defendants on trust for sale.
6. By will, dated November 5, 1903, *D.* devised his share among his children equally.
7. On December 2, 1903, *D.* died.
8. On December 15, 1903, *D.*'s will was proved.
9. There were 10 children of *D.* living at his decease, some of whom have since died.
- [10. Whiteacre consists of a mansion, house, and grounds.
11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property].

The plaintiff claims:

A division of Whiteacre among the parties interested.

[or, a sale of Whiteacre and distribution of the proceeds among the parties interested.]

(Signed)

Delivered

#### No. 14.

1. By will dated August 10, 1902, *A.* devised Perth Town Lot 52 and 10,000L. to defendant on trust for plaintiff.
2. On August 15, 1902, *A.* died.
3. On August 30, 1902, probate was granted to the defendant, the sole executor.
4. The plaintiff is an infant 12 years old.

Wardship of  
infants and  
care of infants'  
estates.

The plaintiff claims:

1. That the plaintiff may become a ward of the Court.

2. Administration of the trusts of the will of *A.* so far as necessary.

(Signed)

Delivered

### SECTION III.

#### Actions in Probate.

##### No. 1.

- The plaintiff is cousin-german and one of the next of kin of *M.N.*, late of No. 1. High Street, Fremantle, grocer, who died on or about the 1st of March, 1903, a widower without child, parent, brother, or sister, uncle or aunt, nephew or niece.

Interest suit  
(Probate).

The plaintiff claims:

A grant to him of letters of administration of the estate and effects of the said deceased.

(Signed)

Delivered

##### No. 2.

- The plaintiff is the executor appointed under the will of *C.T.*, late of Perth, gentleman, who died on the 20th of January, 1903, the said will bearing date the 1st of January, 1875, and a codicil thereto, the 1st of October, 1875.

Probate of will  
a solemn form.

The plaintiff claims:

That the Court shall decree probate of the said will and codicil in solemn form of law.

(Signed)

Delivered

SECTION IV.

Actions included in Order III., Rule 6.

No. 1.

Goods sold and  
delivered.

The plaintiff's claim is for the price of goods sold and delivered.

Particulars:—

1907.—31st December.—	£	s.	d.
Balance of account for butcher's meat to this date ..	35	10	0
1908.—1st January to 31st March—			
Butcher's meat .. .. .	74	5	0
	<hr/>		
	109	15	0
1908.—1st February.—Paid .. .. .	45	0	0
	<hr/>		
Balance due .. .. .	£64	15	0
	<hr/>		

Place of trial, Perth.

(Signed)

Delivered

No. 2.

Money had and  
received.

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars:—

1908.—1st January.—	£	s.	d.
To amount of rents of No. 5, Smith Street, collected by the defendant .. .. .	72	10	0
To deposit on intended sale of Eva Villa .. .. .	100	0	0
	<hr/>		
Amount due .. .. .	£172	10	0
	<hr/>		

Place of trial, Perth.

(Signed)

Delivered

No. 3.

Payee against  
maker of a pro-  
missory note.

The plaintiff's claim is against the defendant, as maker of a promissory note for 250l., dated 1st January, 1908, payable four months after date.

Particulars:—

	£
Principal .. .. .	250
Interest .. .. .	10
	<hr/>
Amount due .. .. .	£260
	<hr/>

Place of trial, Perth.

(Signed)

Delivered

## No. 4.

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for 400*l.*, dated 1st January, 1908, drawn by *A.B.*, payable three months after date to the order of *E.F.*, and indorsed to the plaintiff.

Indorsee  
against acceptor  
of a bill of  
exchange.

Particulars:—

						£
Principal due	..	..	..	..	..	400
Interest	..	..	..	..	..	16
						—
Amount due	..	..	..	..	..	£416
						—

Place of trial, Perth.

(Signed)  
Delivered

## No. 5.

The plaintiff's claim is against the defendant *A.B.* as acceptor, and against the defendant *C.D.* as drawer, of a bill of exchange for 500*l.*, dated 1st January, 1908, payable three months after date, and indorsed by the defendant *C.D.* to the plaintiff of the dishonour of which on presentation the defendant *C.D.* had notice.

Indorsee  
against acceptor  
and drawer of a  
bill of exchange  
severally.

Particulars:—

Principal	..	..	..	..	..	500
Interest	..	..	..	..	..	20
						—
Amount due	..	..	..	..	..	£520
						—

Place of trial, Perth.

(Signed)  
Delivered

## No. 6.

The plaintiff's claim is against the defendant as drawer of a bill of exchange for 600*l.*, dated 1st March, 1908, drawn upon *A.B.*, payable to the plaintiff three months after date, which was duly presented for payment and dishonoured, but *A.B.* had no effects of the defendant nor was there any consideration for the payment of the said bill by the said *A.B.*

Payee against  
drawer of a bill  
of exchange ex-  
cusing notice of  
dishonor.

Particulars (as in Form 4).

Place of trial

(Signed)  
Delivered

## No. 7.

The plaintiff's claim is for principal and interest due upon the defendant's bond to the plaintiff, dated 1st January, 1908, conditioned for payment of 100*l.* on the 26th December, 1908.

Obligee against  
obligor of a  
money bond.

Particulars:—

						£
Principal	..	..	..	..	..	50
Interest	..	..	..	..	..	2
						—
Amount due	..	..	..	..	..	£52
						—

Place of trial, Perth.

(Signed)  
Delivered

No. 8.

Covenantee  
against cove-  
nantor on a  
covenant to pay  
money.

The plaintiff's claim is for principal and interest due under a covenant in a deed dated the 1st of January, 1902.

Particulars:—

					£
Principal	..	..	..	..	100
Paid	..	..	..	..	20
					—
Principal due	..	..	..	..	£80
Interest	..	..	..	..	3
					—
Amount due	..	..	..	..	£83
					—

Place of trial, Perth.

(Signed)  
Delivered

No. 9.

Against share-  
holder for allot-  
ment money  
and calls by a  
company.

The plaintiff's claim is for money in which the defendant, as a member of the Company, is indebted to the plaintiffs (being a company, etc. [*here state how constituted*]) for allotment money of per share on shares in the Company allotted to the defendant, as such member, at his request and for calls of £ each upon shares in the Company of which the defendant is a holder, whereby an action has accrued to the plaintiffs.

Particulars:—

19	—Allotment of	shares to the		
	defendant at £	per share	..	£
19	—(1st) call at £	per share	..	£
	(2nd) call at £	per share	..	£
				—
	Amount due	..	..	..
				£
				—

Place of trial,

(Signed)  
Delivered

No. 10.

On a guarantee  
for the price of  
goods setting  
out the guaran-  
tee.

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to E.F. under the following guarantee:—

Sir,

2nd February, 1908.

In consideration of your supplying goods to E.F., I undertake to see you paid.

Yours, &c.,  
C.D. (Defendant).

To Mr. A.B. (plaintiff).

Particulars:

1908.

25 March, 55 tons of coal at 20s.	..	..	£55	0	0
					—
Amount due	..	..	..	£55	0 0
					—

Place of trial,

(Signed)  
Delivered



## No. 11.

The plaintiff's claim is against the defendant *A.B.* as principal and against the defendant *C.D.* as surety, for the price of goods sold and delivered by the plaintiff to *A.B.* on the guarantee by *C.D.*, dated the 2nd of February, 1908.

Creditor  
against principal  
debtor and  
his surety  
severally on a  
guarantee for  
goods sold.

Particulars:—

				£	s.	d.
2nd February—Goods	..	..	..	47	15	0
3rd March—Goods	..	..	..	105	14	0
17th March—Goods	..	..	..	14	12	0
5th April—Goods	..	..	..	34	0	0
Amount due	..	..	..	£202	1	0

Place of trial, Perth.

(Signed)

Delivered

## No. 12.

The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of *A.B.* and *X.Y.*, dated January 1st, 1897, whereby £10,000 invested on mortgage of land at *Z.* was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Debt upon a  
trust.

Particulars:—

		£
1907, December 25th, half a year's income	..	200

## No. 13.

See Sect. VII., Form No. 1.

Landlord  
against tenant  
whose term has  
expired or has  
been deter-  
mined by notice  
to quit.

## SECTION V.

Action for Damages for Breach of Contract or Duty arising out of Contract.

## No. 1.

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons of Scotch pig iron at 5*l.* per ton to be delivered on rail at Fremantle on the 15th March, 1908.

Buyer against  
seller of goods  
for not deliver-  
ing.

2. The defendant did not deliver any (or                      tons, as the case may be) of the said iron.

Particulars of damage:—

		£
Loss of profit at 1 <i>l.</i> per ton on 100 tons	..	100

The plaintiff claims 100*l.*

Place of trial, Perth.

(Signed)

Delivered

No 2.

Buyer against  
seller of goods  
for delivering  
them inferior  
to contract.

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant for sale and delivery of 100 sacks of flour known as seconds at 35s. per sack.

2. 80 sacks delivered were inferior to seconds, and 20 sacks were not delivered.

Particulars of damage:—

						£
80 sacks at 4s.	..	..	..	..	..	16
20 sacks at 5s.	..	..	..	..	..	5
						—
						£21
						—

The plaintiff claims 21l.

Place of trial, Perth.

(Signed)

Delivered

No. 3.

Shipowner  
against char-  
terer for deten-  
tion beyond the  
demurrage  
days.

1. The plaintiff has suffered damage by breach of a charter party dated the 10th of March, 1907, between the plaintiff and the defendant of the ship "Mary."

2. The ship was detained at the port of loading.

Particulars of damage:—

1908.	Jan. 1	} 10 days' detention beyond the demurrage days at 25l. per day .. .. 250	£
	to		
	Jan. 10		

The plaintiff claims 250l.

Place of trial, Perth.

(Signed)

Delivered

No. 4.

Shipper  
against master  
on a bill of  
lading for  
damage to  
goods.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the "Jane" signed by defendant, dated the 1st of January, 1908.

2. 50 bales of cotton were delivered in a damaged condition.

Particulars of damage:—

						£
50 bales at 2l.	..	..	..	..	..	100

The plaintiff claims 100l.

Place of trial, Perth.

(Signed)

Delivered

No. 5.

Shipper  
against ship-  
owner on a bill  
of lading for  
damage and  
short delivery.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff signed by the master of the ship "Mary" as the defendant's agent, dated the 1st of January, 1908.

2. 50 quarters of wheat were delivered in a damaged condition, and 100 quarters were not delivered.

Particulars of damage:—

	£
100 quarters at 40s. . . . .	200
50 quarters at 4s. . . . .	10
	<hr/>
	£210
	<hr/>

The plaintiff claims 210l.

Place of trial, Perth.

(Signed)  
Delivered

#### No. 6.

The plaintiff was interested to the amount of £ under a marine policy of insurance for that amount, dated the of , 19 , on On a marine policy against underwriter.  
the ship "Hero," subscribed by the defendant for £ .

Particulars:—

1. Valued or open:—Valued at 20,000l.
2. Voyage:—At and from Valparaiso to Fremantle.
3. (Or, Time:—From noon of 1st January, 1907, to noon of 1st January, 1908).
4. Premium to defendant:—£ per cent.
5. Perils insured against causing loss:—Of the seas.
6. Loss:—Total (or exceeding 3 per cent.).

The plaintiff claims £

Place of trial, Perth.

(Signed)  
Delivered

#### No. 7.

The plaintiff has suffered damage from the defendants' negligence in carrying the plaintiff as a passenger by railway from Perth to Fremantle, causing personal injuries to the plaintiff, in a collision near Claremont on the 15th January, 1908. Passenger against railway company for negligence.

Particulars of expenses, &c:—

	£	s.	d.
Loss of 15 weeks' salary as clerk at 2l. per week . . . . .	30	0	0
Dr. Smith . . . . .	10	10	0
Nurse for 6 weeks . . . . .	3	0	0
	<hr/>		
	£43	10	0
	<hr/>		

The plaintiff claims 500l.

Place of trial, Perth.

(Signed)  
Delivered

#### No. 8.

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer. Client against solicitor for negligence.

2. The negligence was in making an application under Order XIV., Rule I., in the case of *A.B.* (the plaintiff) *v. C.D.*, where the case was one of unliquidated damages and not of debt.

Particulars of damage:—

Taxed costs paid to defendant on dismissal of summons £

The plaintiff claims £

Place of trial, Perth.

(Signed)

Delivered

---

No. 9.

Landlord  
against tenant  
for breach of  
covenant to  
repair.

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 1901, of a house, No. 401, Hay Street, Perth, for seven years from the 25th day of December, 1900, the defendant covenanted to keep the premises in such repair and condition as therein mentioned.

2. The premises were during the term out of such repair as was required by the covenant.

3. They were yielded up out of such repair at the expiration of the term.

4. Particulars of dilapidations were delivered to the defendant's solicitor on the \_\_\_\_\_ of \_\_\_\_\_, 19\_\_\_\_, and exceed three folios.

The plaintiff claims £

Place of trial, Perth.

(Signed)

Delivered

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No. 10.

Breach of  
promise of  
marriage.

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the \_\_\_\_\_ of \_\_\_\_\_ [or, within a reasonable time, which elapsed before action] [or, on the death of A.B., which happened before action].

2. The defendant refused to marry the plaintiff on the \_\_\_\_\_ of \_\_\_\_\_ [or, within a reasonable time] [or, on the death of A.B.].

Particulars of special damage.

[As the case may be, if any.]

The plaintiff claims £

Place of trial, Perth.

(Signed)

Delivered

---

SECTION VI.

Actions claiming Injunctions, Damages, or Declarations of Right founded on Wrongs.

No. 1.

Conversion of  
goods.

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil by refusing to give them up on demand (or, throwing them overboard out of a boat in Gage Roads, &c.).

[If any special damage is claimed, add]—

Particulars [fill them in].

The plaintiff claims 100l.

Place of trial, Perth.

(Signed)

Delivered

## No. 2.

The defendant detained from the plaintiff the plaintiff's goods and chattels, that is to say, a horse, harness, and gig. Detinue.

The plaintiff claims a return of the said goods and chattels, or their value, and 10*l.* for their detention.

Place of trial, Perth.

(Signed)  
Delivered

## No. 3.

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1908, negligently driving a cart and horse in Negligent driving.  
Street.

Particulars of expenses, &c.:

	£	s.	d.
Charges of Mr. Smith, surgeon .. ..	10	10	0
Charges of Mr. Jones, coachmaker ..	14	5	6
	<u>£24</u>	<u>15</u>	<u>6</u>

The plaintiff claims 150*l.*

Place of trial, Perth.

(Signed)  
Delivered

## No. 4.

The plaintiff, as executor of *C.D.*, deceased, brings this action for the benefit of Eva the widow, and William and Margaret and Dorothea, the children of *C.D.* [as the case may be], who have suffered damage from the defendant's negligence, in carrying the said *C.D.* by omnibus, whereby the said *C.D.* was killed in Perth on the 15th of January, 1908. Lord Campbell's Act.

Particulars pursuant to Statute are delivered herewith.

The plaintiff claims 500*l.*

Place of trial, Perth.

(Signed)  
Delivered

## No. 5.

The plaintiff has suffered damage from injuries to his ship, the "Betsy," and the cargo on board thereof, by a collision with the ship, the "Jane," caused by the negligent navigation thereof by the defendant or his servants in Gage Roads, on the 1st of February, 1908. Collision of ships.

Particulars of loss and expenses:—

1. Charges of Jones & Co., shipwrights, 450*l.* 2*s.*
2. Loss of use of ship from 1st of February, 1908, to 1st of March, 1908, 280*l.*

Particulars of damage to cargo:—

(Insert them.)

The plaintiff claims £

Place of trial, Perth.

(Signed)  
Delivered

No. 6.

Injunctions,  
etc., for in-  
fringement of  
patent.

The defendant has infringed the plaintiff's patent, No. 14,084, granted for the term of 14 years, from the 21st of May, 1899, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

The plaintiff claims an injunction to restrain the defendant from further infringement, and 100*l.* damages.

Particulars of breaches are delivered herewith.

Place of trial, Perth.

(Signed)

Delivered

No. 7.

Damages for  
infringement  
of copyright.

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the                      day of                      , 1907.

Particulars of special damage are as follows:—

	£
Loss of sale of 50 copies .. .. .	50
Loss of profit in the copyright .. .. .	50
	— —
	£100
	— —

The plaintiff claims 100*l.*

Place of trial, Perth.

(Signed)

Delivered

No. 8.

Injunction,  
etc., for in-  
fringement of  
copyright.

1. The defendant has infringed the plaintiff's trade mark.

2. The trade mark is (*describe it*).

[*If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived*].

3. The following are the acts complained of, viz.:—

(*Set them out.*)

The plaintiff claims an injunction to restrain the defendant, his servants, and agents, from infringing the plaintiff's said trade mark, and in particular from [*stating any particular injunction sought*].

The plaintiff also claims an account of damages.

Place of trial, Perth.

(Signed)

Delivered

No. 9.

Seduction.

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of *G.H.* the [daughter and] servant of the plaintiff.

Particulars of special damage are as follows:—

	£	s.	d.
Loss of service from the 1st March to the 30th of November, 1907 .. .. .	100	0	0
Nursing and medical attendance .. .. .	10	10	0
	— — — —		
	£110	10	0
	— — — —		

The plaintiff claims 500*l.*

Place of trial, Perth.

(Signed)

Delivered

## No. 10.

1. The plaintiff is the owner [*or, lessee*] and occupier of a house, in Hay Street, in which are the following ancient lights:—

Obstruction of  
lights.

- (1.) The kitchen window in the basement on the south side.
- (2.) The two back dining room windows on the ground floor on the south side.
- (3.) The landing window and back drawing room window on the south side.

2. The defendant is erecting a building which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants, and workmen, from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain if the same is completed and not pulled down.

Place of trial, Perth.

(Signed)  
Delivered

## No. 11.

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling-house, No. 15, James Street, Guildford.

Nuisance by  
smells.

The plaintiff claims:—

- (1.) £50.
- (2.) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind in respect of the same property.

Place of trial, Perth.

(Signed)  
Delivered

## No. 12.

1. The plaintiff is the owner (*or lessee*) and occupier of a farm known as , through which there runs a river known as

Nuisance by  
pollution of  
water.

2. The defendant or persons in his employ pollute the water in the said river by passing into the same the refuse of the defendant's dye works, situate higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from sending from the said dye works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff (*or, as the case may be*).

The plaintiff will also claim damages in respect of the said nuisance.

Place of trial, Perth.

(Signed)  
Delivered

No. 13.

Fraudulent  
prospectus.

1. On 31st January, 1906, the defendant issued a prospectus to the public relating to the A.B. Company, Limited.

2. On February 1st, 1906, the plaintiff received a copy of this prospectus.

3. The plaintiff subscribed for 100 shares in the company on the faith of this prospectus.

4. The prospectus contained misrepresentations, of which the following are particulars:—

(a.) The prospectus stated "....." whereas in fact.....

(b.) The prospectus stated "....." whereas in fact.....

(c.) The prospectus stated "....." whereas in fact.....

5. The defendant knew of the real facts as to the above particulars.

6. The following facts, which were within the knowledge of the defendants, are material, and were not stated in the prospectus:

(a.)

(b.)

7. The plaintiff has paid calls to the Company to the extent of 1,000*l*.

The plaintiff claims:—

(1.) Repayment of 1,000*l*. and interest.

(2.) Indemnity.

Place of trial, Perth.

(Signed)

Delivered

No. 14.

Fraudulent  
sale of a lease.

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the George public house, Perth, by fraudulently representing to the plaintiff that the takings of the said public house were 40*l*. a week, whereas in fact they were much less, to the defendant's knowledge.

Particulars of special damage:—

(*Fill them in.*)

The plaintiff claims £

Place of trial, Perth.

(Signed)

Delivered

No. 15.

Malicious  
prosecutions.

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a Justice of the Peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted the plaintiff thereon at the Geraldton Quarter Sessions, where the plaintiff was acquitted.

Particulars of special damage:—

Messrs. L. and L.'s bill of costs, 65*l*.

Loss in business from January 1, 1908, to February 18, 1908, 100*l*.

The plaintiff claims £500.

Place of trial, Perth.

(Signed)

Delivered



## SECTION VII.

## Actions for Recovery of Land, &amp;c.

## No. 1.

The plaintiff is entitled to the possession of a farm and premises called Church Farm on the Upper Swan, which was let by the plaintiff to the defendant for the term of 3 years from the 29th September, 1905, which term has expired [*or*, as tenant from year to year from the 29th September, 1905, which said tenancy was duly determined by notice to quit expiring on the 29th of September, 1908, *or* which term has become liable to forfeiture for, &c.].

Landlord  
against tenant  
whose term  
has expired,  
&c.

The plaintiff claims possession and 50*l.* for the mesne profits.

Place of trial, Perth.

(Signed)

Delivered

## No. 2.

1. The plaintiff is entitled to the possession of Blackacre in the Swan District.
2. On or before the                      of                      , 1883, A.B. was seised in fee and in possession of the premises.
3. On the                      of                      , 1884, the said A.B. died so seised. whereupon—
4. The estate descended to the plaintiff, his eldest son and heir-at-law.
5. After the death of the said A.B. the defendant wrongfully took possession of the premises.

Heir-at-Law  
against  
stranger.

The plaintiff claims:—

(1.) Possession of the premises.

(2.) Mesne profits from the                      of

Place of trial, Perth.

(Signed)

Delivered

## APPENDIX D.

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*Forms of Defence to be used pursuant to Order XIX.,  
Rule 5.*

---

## SECTION I.

No. 1.

General Form.

, 19 [Here put letter and number].

In the Supreme Court,  
Western Australia.  
Between

Plaintiff,  
and  
Defendant.

---

Defence.

The defendant says that:—

1. }
  2. }
  3. }
- (To be filled up in the manner exemplified in the following forms.)

(Signed)

Delivered

---

Counter-claim.

The defendant says that:—

1. }
  2. }
- (To be filled up in the manner exemplified in the following forms.)

The defendant counter-claims:—

(Signed)

Delivered

---

Defence and Counter-claim.

Defence.

The defendant says:—

1. }
  2. }
- (To be filled up.)

Counter-claim.

The defendant repeats paragraph 2 of his defence, and says that:—

3. }
  4. }
- (To be filled up.)

The defendant counter-claims:—

(Signed)

Delivered

## No. 2.

## Form of Title where new Party brought in.

, 19 [Here put letter and number].

In the Supreme Court of Western Australia.

Between A.B., plaintiff,

and

C.D., defendant

(By original action).

And between the said C.D., plaintiff,

and

The said A.B. and E.F., defendants

(By Counter-claim).

## SECTION II.

## To Actions in Equity.

## No. 1.

1. The defendants do not admit the plaintiff's claim.

[or]

The defendant A.B. admits the plaintiff's claim, but not assets.

[or]

The defendant C.D. admits assets, but not the plaintiff's claim.

2. The claim is barred by the Statute of Limitations.

[State which.]

3. Payment was made by deceased.

4. The claim is fraudulent in the following particulars:

[Set out particulars.]

5. The defendant is entitled to a set off, of which the following are the particulars:

[Set out particulars.]

6. The claim was released by deed dated the \_\_\_\_\_ of \_\_\_\_\_ 1901.

7. Notice was given and assets distributed under Statute 22 and 23 Vict., c. 35, s. 29 (adopted by Local Statute, 31 Vict., No. 8).

## Particulars of the Notice.

Advertisements in the *Inquirer* of January 1, 1900.„ *New York Herald*, February, 1901.„ *Bombay Gazette* of January 25, 1901.

[Giving the titles of the newspapers and the dates of those in which the advertisement appeared].

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.

9. The defendant is not heir-at-law or devisee of the deceased.

(Signed)

Delivered

To actions for  
Administra-  
tion.

## No. 2.

1. The defendant did not execute the mortgage.

2. The mortgage was not assigned to the plaintiff (if more than one assignment is alleged say which is denied).

3. The debt is barred by the Statute of Limitations.

To actions for  
foreclosure by  
mortgagee.

4. Payments have been made, viz.:—

10 July, 1894, 1,000*l*.

18 October, 1895, 500*l*.

5. The plaintiff took possession on the \_\_\_\_\_ of \_\_\_\_\_ 1904,  
and has received the rents ever since.

6. The plaintiff released the debt by deed, dated 1 June, 1896.

7. The defendant conveyed all his interest to *A.B.* by deed, dated 25 November,  
1900.

The defendant claims:—

(1.) Account.

(2.) Re-conveyance.

(Signed)

Delivered

No. 3.

To same by  
alleged second  
incumbrancer  
who claims  
priority.

1. {  
2. {  
3. {  
4. { (*As in preceding Form.*)  
5. {  
6. {

7. By a deed dated 1st June, 1900, the mortgagor *A.B.* mortgaged the property  
in question to the defendant to secure 5,000*l*. and interest at 5 per cent. per  
annum.

The defendant claims—

(1.) A declaration of priority and foreclosure (and a receiver).

(Signed)

Delivered

*[If the plaintiff claims payment of the mortgage debt, the defendant  
must, if he disputes his liability, show the grounds on which he does  
so as in other cases of debt; or he can claim indemnity against the  
owner of the Equity of Redemption under Order XVI., Rule 48.]*

No. 4.

To actions for  
redemption.

1. The plaintiff's right to redeem is barred by the Statute of Limitations.—  
[*State which.*]

2. The plaintiff assigned all interest in the property to *A.B.*

3. The defendant by deed, dated the \_\_\_\_\_ day of \_\_\_\_\_ 1902,  
assigned all his interest in the mortgage debt and property comprised in the mort-  
gage to *A.B.*

4. The defendant never took possession of the mortgaged property, or received  
the rents thereof.

*[If the defendant admits possession for a time only, he should state the  
time, and deny possession beyond what he admits.]*

(Signed)

Delivered

## No. 5.

1. The defendant did not enter into the agreement.
  2. *A.B.* was not the agent of the defendant (*if alleged by plaintiff*).
  3. The plaintiff has not performed the following conditions:—(*Conditions*.)
  4. The defendant did not.—[*Alleged acts of part performance*.]
  5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters:—[*State why*.]
  6. The Statute of Frauds has not been complied with.
  7. The agreement is uncertain in the following respects:—[*State them*.]
  8. [*or*] The plaintiff has been guilty of delay;
  9. [*or*] The plaintiff has been guilty of fraud [*or misrepresentation*];
  10. [*or*] The agreement is unfair;
  11. [*or*] The agreement was entered into by mistake.
- The following are particulars of (8), (9), (10), (11), [*or as the case may be*].
12. The agreement was rescinded under Conditions of Sale, No. 11 (*or, by mutual agreement*).

To actions for  
specific per-  
formance.

(Signed)

Delivered

[*In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., Statute of Limitations, accord and satisfaction, release, fraud, &c.*]

## SECTION III.

Forms to be used in Actions in Probate: Appendix C., Section III.

## No. 1.

The defendant is nephew and next of kin of the deceased, being son of *G.B.*, Interest suit.  
the brother of the deceased, who died in his lifetime.

The defendant claims:—

That the Court pronounce that the defendant is the nephew and next of kin of the deceased, and entitled to a grant of letters of administration of the personal estate and effects of the deceased.

(Signed)

Delivered

## No. 2.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the Statute 1 Vict. c. 26. Probate of will in solemn form.

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory, and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him, whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, [or] of the contents of the residuary clause in the said will [*as the case may be*].

6. The deceased made his true last will, dated the 1st day of January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims:—

- (1.) That the Court will pronounce against the said will and codicil propounded by the plaintiff:
- (2.) That the Court will decree probate of the will of the deceased, dated the 1st of January, 1873, in solemn form of law.

(Signed)

Delivered

---

SECTION IV.

To Actions included in Order III., Rule 6.

No. 1.

To actions on  
bills of ex-  
change, pro-  
missory notes  
or cheques.

1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the cheque.
4. The defendant did not indorse to *A.B.*
5. The defendant (*or A.B.*) did not indorse to the plaintiff.
6. The bill was not presented for payment.
7. The defendant had not due notice of dishonour.
8. The plaintiff was not the holder at the commencement of the action.
9. The bill was accepted (*or*, the note was made) for the accommodation of the defendant without consideration.
10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.
11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant, and contrary to the said purpose indorsed the bill to the plaintiff without consideration (*or* with notice of the said fraud, *or*, overdue).
12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration (*or*, with notice of the fraud, *or*, overdue).

Particulars of the fraud are as follows:—The drawer on or about the 15th of May, 1906, falsely and fraudulently stated to the defendant that he had shipped 20 tons of pig iron for the defendant on board the "Ajax," which he had not done.

13. The defendant accepted the bill (*or*, made the note) for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1908, and the plaintiff failed to deliver the goods.

14. The bill (*or*, note, *or*, cheque) was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st of January to the 2nd of January, 1908.

(Signed)

Delivered

## No. 2.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not *l.*

[or]

4. } Except as to *l., same as* { 1.
5. } { 2.
6. } { 3.

7. The defendant (*or, A.B., the defendant's agent*) satisfied the claim by payment before action to the plaintiff (*or, to C.D., the plaintiff's agent*) on the of , 19 .

8. The defendant satisfied the claim by payment after action to the plaintiff on the of , 19 .

(Signed)

Delivered

To actions for any simple contract debts, other than bills, notes, or cheques.

## No. 3.

1. The bond (*or, deed*) is not the defendant's bond (*or, deed*).
2. The defendant made payment to the plaintiff on the day according to the conditions of the bond.
3. The defendant made payment to the plaintiff, after the day named and before action, of the principal and interest mentioned in the bond.

(Signed)

Delivered

To actions on bonds or contracts under seal for the payment of a liquidated amount in money.

## No. 4.

1. The principal satisfied the claim by payment before action.
2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

(Signed)

Delivered

In actions on guarantees, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only. Order III., Rule 6, Class (E.)

## No. 5.

1. As to £50 parcel of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff. Particulars are as follows:—

To any action of debt.

	£	s.	d.
1905, Jan. 25.—To 20 tons of Collie coal at 1 <i>l.</i>	..	20	0 0
„ Feb. 1.—To 30 tons of Collie coal at 1 <i>l.</i>	..	30	0 0
Total	..	£50	0 0

2. As to the whole (*or, as to £* , parcel of the money claimed), the defendant made tender before action (*or, on the day on which it fell due*) of £ and has paid the same into Court.

(Signed)

Delivered

No. 6.

General Defences.

- |                           |  |
|---------------------------|--|
| Accord and satisfaction.  | 1. On 5th April, 1908, a brown horse was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action;<br>( <i>or</i> , on 5th April, 1908, an agreement between the plaintiff and the defendant whereby it was agreed between the plaintiff and the defendant that the defendant should deliver the cargo of the "Mary" at Fremantle instead of at Geraldton as per charter-party of 1st March, 1908, was accepted in discharge of the alleged cause of action). |
| Bankruptcy, etc.          | 2. The defendant became bankrupt.<br>3. The plaintiff became bankrupt before action, and the cause of action vested in the trustees of his property.<br>4. The defendant was discharged under a composition ( <i>or</i> , scheme of arrangement) under the provisions of the Bankruptcy Act, 1892.<br>5. The defendant compounded with his creditors under the provisions of the Bankruptcy Act Amendment Act, 1898, and duly paid to the plaintiff the composition on the day appointed.                    |
| Coverture.                | 6. The defendant was covert at the time of making the alleged contract ( <i>or</i> , contracting the alleged debt).  |
| Infancy.                  | 7. The defendant was an infant at the time of making the alleged contract ( <i>or</i> , contracting the alleged debt).   |
| Payment into Court.       | 8. The defendant as to the whole action ( <i>or</i> , as to £ , parcel of the money claimed, <i>or</i> , as to the plaintiff's claim on the guarantee of the of , 19 , <i>or as the case may be</i> ), has paid into Court £ and says that sum is enough to satisfy the plaintiff's claim ( <i>or</i> , the plaintiff's claim herein pleaded to).  |
| Release.                  | 9. The causes of action were released by deed dated the 1st of May, 1902, between the plaintiff of the one part and the defendant of the other part.   |
| Rescission before breach. | 10. The contract was rescinded ( <i>or</i> , the defendant was exonerated by the plaintiff) before breach. Particulars are as follows:—An arrangement between the plaintiff and the defendant, made verbally on the 15th of April, 1908 ( <i>or</i> , by letter from the defendant to the plaintiff, and answer of the plaintiff dated the 14th and 15th of April, 1908).  |
| Statute of Limitations.   | 11. The debt was barred by the Statute of Limitations [ <i>state which</i> ].  |
| Statute of Frauds.        | 12. (17th) section of the Statute of Frauds has not been complied with.  |

(Signed)

Delivered

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SECTION V.

To Actions for Damages for Breach of Contract or Duty. Appendix C., Sect. V.

- |                          |   |
|--------------------------|---|
| Denials.                 | 1. The defendant did not contract ( <i>or</i> , promise, <i>or</i> , agree) as alleged.<br>2. The defendant did not receive the goods for the alleged purpose ( <i>or</i> , on the alleged terms).<br>3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.<br>4. The defendant did not [ <i>insert breaches denied</i> ].<br>5. The defendant was not ready and willing to accept and pay for the goods ( <i>or</i> , to deliver the goods, <i>or</i> , as the case may be). |
| Contributory negligence. | 6. There was contributory negligence on the part of the plaintiff.  |



7. The plaintiff did not pay or tender the money for the carriage.
8. The damage or loss occurred from the inherent vice (*or*, bad condition when received) of the goods (*or*, horse, *or*, *as the case may be*).
9. The loss occurred by reason of the expected perils mentioned in the charter-party (*or*, bill of lading), that is to say, the perils of the seas (*or*, fire, *or*, *as the case may be*).
10. The goods were above the value of 10*l.*, and consisted of articles mentioned in the first section of the Land Carriers Act (11 G. IV., and 1 Will. IV., c. 68), that is to say, silks (*or*, *as the case may be*), and their value and nature were not declared or any increased charge paid, &c.
11. The charter-party was cancelled pursuant to cancelling clause therein, the ships not having arrived at port of loading on or before 1st May, 1908.
12. The alleged liability of the defendant has ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.
13. The loss was not by the perils insured against.
14. The plaintiff was not interested in the subject matter of the insurance.
15. The ship was not seaworthy at commencement of risk (*or*, voyage).
16. The plaintiff was not ready and willing to marry the defendant.

Carriers.

Charter-parties.

Insurance.

Breach of promise.

(Signed)

Delivered

## SECTION VI.

To Actions claiming Injunctions, Damages, or Declarations of Right, founded upon Wrongs. Appendix C., Sect. VI.

## No. 1.

1. Denial of the several acts (*or*, matters) complained of.

To all actions for wrongs.

(Signed)

Delivered

## No. 2.

1. The goods (*or*, chattels, *or*, *as the case may be*) were not the plaintiff's.
2. The goods were detained for a lien to which the defendant was entitled.
- Particulars are as follows:—

To actions for detention or conversion of chattels.

1908, May 3.—To carriage of the goods claimed from Perth to Fremantle:  
45 tons at 2*s.* .. .. . £4 10*s.*

(Signed)

Delivered

## No. 3.

1. The defendant did the acts complained of in necessary self-defence.
2. There was contributory negligence on the part of the plaintiff (*or*, the plaintiff's servant).

To actions for personal bodily injuries or injuries to carriages, goods, or animals by trespass or negligence.

(Signed)

Delivered

No. 4.

To actions for  
infringement  
of a patent.

1. The defendant did not infringe the patent.
2. The invention was not new.
3. The plaintiff was not the first or true inventor.
4. The invention was not useful.
5. [*Denial of any other matter of fact affecting the validity of the patent.*]
6. The patent was not assigned to the plaintiff.

(Signed)

Delivered

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No. 5.

Copyright.

1. The plaintiff is not the author [assignee, &c., as the case may be].
2. The book was not registered.
3. The defendant did not infringe.

(Signed)

Delivered

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No. 6.

Trade Mark.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

(Signed)

Delivered

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No. 7.

Light.

1. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].
2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

Nuisance.

3. The defendant denies that he or his servants pollute the water [*or do what is complained of*].

[*If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of his claim, i.e., whether by prescription, grant, or what.*]

4. The plaintiff has been guilty of laches, of which the following are particulars:—

1890. Plaintiff's mill began to work.

1891. Plaintiff came into possession.

1908. First complaint.

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [*If other grounds are relied on, they must be stated, e.g., the Statute of Limitations as to past damage.*]

(Signed)

Delivered

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No. 8.

To actions for  
seduction.

1. The said A.B. was not the servant of the plaintiff.
2. The defendant did not seduce and carnally know the said A.B.

(Signed)

Delivered

## SECTION VII.

To actions for recovery of Land. Appendix C., Section VII.

1. The defendant is in possession of the premises by himself or his tenant.
2. The defendant had no notice to quit.

General form.

(Signed)

Delivered

## SECTION VIII.

## Counter-claims.

The defendant lent 500*l.* to the plaintiff on 1st May, 1905.The defendant counter-claims 500*l.*

1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of Colliery coal at 18*s.* 6*d.* per ton F.O.B. at Bunbury by equal monthly deliveries over the first five months of 1907.
2. The April and May instalments were not delivered.

To actions on a guarantee to which defence raised of time given to the principal and counter-claim for non-delivery of goods.

Particulars of the damages:—

	£	s.	d.
Difference between market price in April and May, and the contract price, 2 <i>s.</i> 6 <i>d.</i> per ton on 2,000 tons	..	250	0 0
The defendant counter-claims 250 <i>l.</i>			

(Signed)

Delivered

## APPENDIX E.

*Forms of Reply, etc., to be used pursuant to  
Order XIX., Rule 5.*

## SECTION I.

General Form.

, 19 . [Here put the letter and number.]

In the Supreme Court,  
Western Australia.  
Between

Plaintiff,  
  
and  
  
Defendant.

## Reply.

To actions on a  
guarantee to  
which defence  
raised of time  
given to the  
principal and  
counter-claim  
for non-delivery  
of goods.

The plaintiff as to the defence says that—

- 1.
- 2.

The plaintiff as to the counter-claim says that—

- 1.
- 2.

(Signed)

Delivered

## Reply.

The plaintiff as to the defence says that—

1. He joins issue.
2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff as to the counter-claim says that—

1. The defendant was not ready and willing to accept and pay for the goods.

(Signed)

Delivered

## SECTION II.

*Example of a Statement of Claim. Defence, and Reply.*

, 19 . [Here put the letter and number.]

In the Supreme Court,  
Western Australia.

Between A.B. - - - - - Plaintiff,  
and  
C.D. - - - - - Defendant,

## Statement of Claim.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

Particulars:—

	£	s.	d.
1902.—January 1st to 31st May.—To rebuilding house at Perth, as per contract dated the 24th December, 1900 .. .. .	3,400	0	0
To extras as per account delivered .. .. .	243	0	0
	3,643	0	0
Paid on account .. .. .	3,000	0	0
Balance due .. .. .	643	0	0

The plaintiff also seeks to recover interest on the above balance from the 31st May, 1902, till payment or judgment.

Place of trial, Perth.

(Signed)

Delivered the 1st of January, 19 ..

[*Heading as in General Form.*]

Defence and Counter-claim.

Defence.

The defendant says that—

1. Except as to 200*l.*, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.

2. As to 200*l.*, parcel of the money claimed, the defendant brings (*or* has brought) into Court 200*l.*, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

Counter-claim.

The defendant says that—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st of March, 1902, or in default pay to the defendant 1*l.* a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for 61 days to the 31st of May.

The defendant counter-claims 61*l.*

(Signed)

Delivered the 22nd of January, 19 ..

[*Heading as in General Form.*]

Reply.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue.

2. As to the second paragraph thereof, the plaintiff accepts the £ .. in satisfaction.

The plaintiff as to the counter-claim says that—

3. The liquidated damages were waived by ordering extras and material alterations in the works.

4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed)

Delivered the 5th of February, 19 ..

SECTION III.

Defence including an objection in Point of Law.

No. 1.

[*Heading as in General Form.*]

Defence.

To action on a  
guarantee for  
the price of  
goods.

The defendant says that—

1. The goods were not supplied to *E.F.* on the guarantee.
2. The defendant will object that the guarantee discloses a past consideration on the face of it.

(Signed)

Delivered

---

No. 2.

[*Heading as in General Form.*]

Defence.

To action for  
verbal slander  
actionable only  
by reason of  
special damage.

The defendant says that—

1. The defendant did not speak or publish the words.
2. The words did not refer to the plaintiff.
3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

(Signed)

Delivered

---

No. 3.

[*Heading as in General Form.*]

Defence.

To action on a  
marine policy  
stated to  
contain clauses  
that the policy  
was to be proof  
of interest and  
without benefit  
of salvage.

The defendant says that—

1. The defendant did not make the policy.
  2. The loss was not by the perils insured against.
  3. The defendant will object that the policy was avoided by 19 Geo. II., c. 37,
- s. 1.

(Signed)

Delivered

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## APPENDIX F.

*Forms of Judgment*

## No. 1.

## Default of Appearance and Defence in Case of Liquidated Demand.

, 19 . [*Here put the letter and number.*]In the Supreme Court,  
Western Australia.Between *A.B.* . . . . . Plaintiff,  
and*C.D.* and *E.F.* . . . . . Defendants.

30th November, 19 .

The defendants [*or the defendant C.D.*] not having appeared to the writ of summons herein [*or not having delivered any defence*], it is this day adjudged that the plaintiff recover against the said defendant £ , and costs, to be taxed.

## No. 1a.

## Judgment in Default against a Married Woman, alone or with Others.

[*Heading as in Form 1.*]

The defendant , not having appeared to the writ of summons herein [*or not having delivered any defence*], it is this day adjudged that the plaintiff recover against the defendant , £ , and costs [*if fixed costs insert amount, if taxed, insert to be taxed*] such sum and costs so far as regards the defendant [*name of married woman*] to be payable out of her separate property and not otherwise.

*Ante-nuptial debt.*[*If for ante-nuptial debts the form should be as follows:—*]

Adjudged (*as above*) such sum and costs to be payable out of her separate property, whether subject to any restriction against anticipation or not, and not otherwise, and execution hereon is limited to such separate property.

*Against Widow on Contract prior to Married Women's Property Act, 1895.*

On contract during coverture.

*In this case if the contract was made prior to "The Married Women's Property Act, 1895," the form should run "and execution is limited to such property of the said as during her coverture was her separate property not subject to any restriction against anticipation," &c.*

*Against widow, or divorced woman, on contract during coverture, subsequent to Married Women's Property Act, 1895.*

Adjudged that plaintiff recover against defendant £ , and costs to be taxed (*or, fixed costs*) provided that nothing in this judgment contained shall render available to satisfy the said sum and costs or any part thereof, any separate property which, at the time of entering into the contract the subject matter of this action, or thereafter, the said defendant was restrained from anticipating.

*Against married woman plaintiff.*

*The following words should be added to the form, "with liberty to apply for payment out of any property which is subject to restraint on anticipation."*

Interlocutory Judgment in default of Appearance or Defence where demand unliquidated.

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

It is this day adjudged that the plaintiff recover against the defendant the value of the goods [or damages or both, as the case may be,] to be assessed.

**Judgment in Default of Appearance in Action for Recovery of Land.**

30th November, 19 .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the indorsement on the writ described as

### Judgment in Default of Appearance and Defence after Assessment of Damages.

30th November, 19 .

The defendant not having appeared to the writ of summons herein [*or not having delivered any defence*], and a writ of inquiry, dated \_\_\_\_\_, 1906, having been issued directed to the sheriff of \_\_\_\_\_ to assess the damages which the plaintiff was entitled to recover, and the said sheriff having by his return dated the \_\_\_\_\_, 19\_\_\_\_, returned that the said damages have been assessed, at £ \_\_\_\_\_, it is adjudged that the plaintiff recover £ \_\_\_\_\_ and costs to be taxed.

Judgment after Appearance and Order under Order XIV., Rule 1.

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV., Rule 1, for [*recite order*]. It is this day adjudged that the plaintiff recover against the defendant £ \_\_\_\_\_ [*or possession of the land in the indorsement on the writ described as \_\_\_\_\_*] and costs to be taxed.

The above costs have been taxed and allowed at £ \_\_\_\_\_, as appears by a (taxing officer's) Certificate dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.



**No. 5a.****Judgment under O. 14, r. 1, against Married Woman.**

The \_\_\_\_\_, day of \_\_\_\_\_, 19 \_\_\_\_.

The defendant [*name of married woman*] having appeared to the writ of summons herein, and the plaintiff having by order of \_\_\_\_\_ dated \_\_\_\_\_ obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV., r. 1, for [*recite order*] and such order directing that as regards the said [*name of married woman*] such sum and costs should be payable out of her separate property and not otherwise. It is this day adjudged that the plaintiff recover £ \_\_\_\_\_, and costs to be taxed against the said defendant, such sum and costs to be payable out of her separate property and not otherwise. The above costs have been taxed, &c.

**No. 6.****Judgment at Trial by Judge without a Jury.**

[*Heading as in Form 1.*]

This action coming on for trial [the \_\_\_\_\_ day of \_\_\_\_\_ and] this day, before \_\_\_\_\_ in the presence of counsel for the plaintiff and the defendants [*or, if some of the defendants do not appear*, for the plaintiff and the defendant *C.D.*, no one appearing for the defendants *E.F.* and *G.H.*, although they were duly served with notice of trial as by the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ appears] upon hearing the probate of the will of \_\_\_\_\_, the answers of the defendants *C.D.*, *E.F.*, and *G.H.*, to interrogatories, the admission, in writing, dated \_\_\_\_\_ and signed by [Mr. \_\_\_\_\_ the solicitor for] the plaintiff *A.B.* and by [Mr. \_\_\_\_\_ the solicitor for] the defendant *C.D.*, the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_, the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_, the evidence of \_\_\_\_\_ taken on their oral examination at the trial, and an exhibit marked X., being an indenture dated, &c., and made between [*parties*], and what was alleged by counsel on both sides: This Court doth declare, &c.

And this Court doth order and adjudge, &c.

**No. 7.****Judgment after Trial with a Jury.**

[*Heading as in Form 1.*]

15th November, 19 \_\_\_\_.

The action having on the 12th and 13th November, 19 \_\_\_\_, been tried before His Honour Mr. Justice \_\_\_\_\_ with a special jury of the State, and the jury having found [*state findings as in officer's certificate*], and the said Mr. Justice \_\_\_\_\_ having ordered that judgment be entered for the plaintiff for \_\_\_\_\_ l. and costs [*or as the case may be*]: Therefore it is adjudged that the plaintiff recover against the defendant \_\_\_\_\_ l. and \_\_\_\_\_ l. for his costs [*or, that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff \_\_\_\_\_ l. for his costs of defence, or as the case may be*].

No. 8.

Judgment after Trial before Referee.

[Heading as in Form 1.]

30th November, 19 .

The action having on the 27th November, 19 , been tried before X.Y. Esq., an official [*or special*] referee, and the said X.Y. having found [*or having ordered that judgment be entered*] [*state substance of referee's certificate*], it is this day adjudged that

No. 9.

Judgment after Trial of Questions of Account by Referee.

[Heading as in Form 1.]

The day of , 19 .

The questions of account in this action having been referred to and he having found that there is due from the to the the sum of £

and directed that the do pay the costs of the reference

It is this day adjudged that the recover against the said £ and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a (taxing officer's) Certificate dated the day of , 19 .

No. 10.

Judgment upon Motion for Judgment.

[Heading as in Form 1.]

30th November, 19 .

This day before Mr. X, of counsel for the plaintiff [*or as the case may be*], moved on behalf of the said [*state judgment moved for*], and the said Mr. X. having been heard of counsel for and Mr. Y. of counsel for the Court adjudged

No. 11.

Judgment after Trial by Court without Jury.

[Heading as in Form 1.]

This action having on the day of , 19 , been tried before and the said on the day of , 19 , having ordered that judgment be entered for the for £

It is this day adjudged that the recover from the £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a (taxing officer's) Certificate dated the day of 19 .

Judgment entered the day of , 19 .

**No. 12.****Judgment in pursuance of Order.***[Heading as in Form 1.]*

Pursuant to the Order of \_\_\_\_\_ dated \_\_\_\_\_, 19\_\_\_\_,  
 whereby it was ordered  
 and default having been made  
 It is this day adjudged that the plaintiff recover against the said defendant  
 £ \_\_\_\_\_ and costs to be taxed.

The above costs have been taxed and allowed at £ \_\_\_\_\_, as appears by a  
 (taxing officer's) Certificate dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**No. 13.****Judgment of Dismissal.***[Heading as in Form 1.]*

Dated and entered the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
 This action having on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, been  
 called on for hearing before \_\_\_\_\_, and the plaintiff having failed  
 to appear, and the defendant having thereupon become entitled \_\_\_\_\_ under  
 Order XXXIV., Rule 25, to judgment dismissing the action, and the said  
 \_\_\_\_\_ having ordered that judgment be entered accordingly.

Therefore it is adjudged that this action do stand dismissed out of this Court  
 with costs.

And it is further adjudged that the defendant recover against the plaintiff  
 his costs to be taxed.

The above costs have been taxed, &c.

**No. 14.****Judgment for Defendant's Costs on Discontinuance.***[Heading as in Form 1.]*

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

The plaintiff having by a notice in writing dated the  
 day of \_\_\_\_\_, 19\_\_\_\_, wholly discontinued this action *or* with-  
 drawn his claim in this action for *or* withdrawn so much of his claim in this action  
 as relates to—[*or as the case may be*].

It is this day adjudged that the defendant recover against the plaintiff costs  
 to be taxed.

The above costs have been taxed and allowed at £ \_\_\_\_\_, as appears by a  
 (taxing officer's) Certificate dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**No. 15.****Judgment for Plaintiff's Costs after Confession of Defence.***[Heading as in Form 1.]*

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

The defendant in his defence herein having alleged a ground of defence which  
 arose after the commencement of this action, and the plaintiff having on the  
 day of \_\_\_\_\_, 19\_\_\_\_, delivered a con-  
 fession of that defence.

It is this day adjudged that the plaintiff recover against the defendant costs  
 to be taxed.

The above costs have been taxed and allowed at £ \_\_\_\_\_, as appears by a  
 (taxing officer's) Certificate dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

No. 16.

**Judgment for Costs after Acceptance of Money paid into Court.**

[Heading as in Form 1.]

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

The defendant having paid into Court in this action the sum of £  
in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated  
the                      day of                      , 19                      , accepted that sum in  
satisfaction of his entire cause of action, and the plaintiff's costs herein having been  
taxed, and the defendant not having paid the same within forty-eight hours after  
the said taxation;

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £                      , as appears by a (taxing officer's) Certificate dated the                      day of                      , 19                      .

No. 17.

Judgment where no Judgment entered at Trial by Jury.

[Heading as in Form 1.]

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

This action having on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, been tried before \_\_\_\_\_ and a \_\_\_\_\_ jury of the \_\_\_\_\_ of \_\_\_\_\_, and the jury having found \_\_\_\_\_ and the \_\_\_\_\_ not having thought fit to order any judgment to be entered.

Now on motion before the Court for judgment on behalf of the  
 , the Court having

It is this day adjudged that the \_\_\_\_\_ recover  
against the \_\_\_\_\_ the sum of £ \_\_\_\_\_  
and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a (taxing officer's) Certificate dated the day of , 19 .

Judgment entered the day of , 19 .

No. 18.

**Judgment on motion after Trial of Issue.**

[Heading as in Form 1.]

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

The issues [*or* questions of fact arising in this action] [*or* cause *or* matter] by the order dated the \_\_\_\_\_ day of \_\_\_\_\_ ordered to be tried before \_\_\_\_\_ having on the \_\_\_\_\_ day of \_\_\_\_\_ been tried before \_\_\_\_\_ and the \_\_\_\_\_ having found \_\_\_\_\_ . Now on motion before the Court for judgment on behalf of the \_\_\_\_\_, the Court having

It is this day adjudged that the  
recover against the                      the sum of £  
and costs to be taxed.

The above costs have been taxed and allowed at £ \_\_\_\_\_, as appears by a (taxing officer's) Certificate dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

Judgment entered the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

## APPENDIX G.

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Forms of *Præcipe*.

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## No. 1.

Of *Fieri Facias*.

, 19 . [Here put the letter and number.]  
 In the Supreme Court,  
 Western Australia.

Between *A.B.*

Plaintiff,

and

*C.D.* and others

Defendants.

Seal a writ of *feri facias* directed to the Sheriff of  
 to levy against *C.D.*  
 the sum of £ and interest thereon at the rate of £ per  
 centum per annum from the day of [and £  
 costs] to Judgment [or order] dated  
 day of

[Taxing officer's certificate, dated

day of .]

X.Y., solicitor for [party on whose  
*behalf writ is to issue.*]

## No. 2.

Of *Venditioni Exponas*.

[Heading as in Form 1.]

Seal a writ of *venditioni exponas* directed to the Sheriff of  
 to sell the goods and of *C.D.* taken under a writ of *feri*  
*facias* in this action tested day of

X.Y.

Solicitor for

## No. 3.

## Of Writ of Sequestration.

[Heading as in Form 1.]

Seal a writ of sequestration against *C.D.* for not  
 at the suit of *C.D.* directed to [names of Commissioners].

Order dated

day of

## No. 4.

## Of Writ of Possession.

[Heading as in Form 1.]

Seal a writ of possession directed to the Sheriff of to  
 deliver possession to *A.B.* of

Judgment dated

day of

**No. 5.**

**Of Writ of Delivery.**

[*Heading as in Form 1.*]

Seal a writ of delivery directed to the Sheriff of \_\_\_\_\_ to make  
delivery to *A.B.* of \_\_\_\_\_

**No. 6.**

**Of Writ of Attachment.**

[*Heading as in Form 1.*]

Seal in pursuance of order dated \_\_\_\_\_ day of \_\_\_\_\_ an  
attachment directed to the Sheriff of \_\_\_\_\_ against *C.D.* for not  
delivering to *A.B.*

**No. 7.**

**Of Distringas as against Ex-Sheriff.**

[*Heading as in Form 1.*]

Seal a writ of *distringas nuper vicecomitem quod venditioni exponat*, directed  
to the Sheriff of \_\_\_\_\_, to sell the goods and  
of \_\_\_\_\_ taken under a writ of *feri facias* in this  
action tested the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

(Signed)

(Address)

Solicitor for the

**No. 8.**

**Of Inquiry.**

[*Heading as in Form 1.*]

Seal a writ of inquiry directed to the Sheriff of \_\_\_\_\_ to assess  
the damages in this action.

Judgment dated

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

(Signed)

(Address)

Solicitor for the

**No. 9.**

**Of Certiorari.**

[*Heading as in Form 1.*]

Seal in pursuance of order dated \_\_\_\_\_ a writ of *certiorari*  
directed to \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

(Signed)

(Address)

Solicitor for the

**No. 10.**  
**Of Prohibition.**

, 19 . [Here put the letter and number.]

In the Supreme Court,  
Western Australia.In the matter of a certain  
Court of .

now depending in the Local

Between

Plaintiff,

and

Defendant.

Seal a writ of prohibition directed to the Judge (or Magistrate) of the above-named Court and to the above-named plaintiff to prohibit them from further proceeding in the said , 19 . [Here put reference.]

Dated the day of , 19 .

(Signed)

(Address)

Solicitor for the

---

**No. 11.**  
**Of Mandamus.**

[Heading as in Form 1.]

Seal in pursuance of order dated a writ of mandamus  
directed to , commanding  
to returnable

Dated the day of , 19 .

(Signed)

(Address)

Solicitor for the

---

**No. 12.**  
**Of Habeas Corpus ad Testificandum.**

[Heading as in Form 1.]

Seal in pursuance of order dated a writ of *habeas*  
*corpus ad testificandum* directed to the to bring  
before

Dated the day of , 19 .

(Signed)

(Address)

Solicitor for the

---

**No. 13.**  
**Of Commission to examine Witnesses.**

[Heading as in Form 1.]

Seal in pursuance of order dated a writ in the  
nature of a mandamus or commission to examine witnesses directed to

Dated the day of , 19 .

(Signed)

(Address)

Solicitor for the

No. 14.  
Of Commission of Partition.

[Heading as in Form 1.]

Seal in pursuance of order dated \_\_\_\_\_ a commission  
partition directed to \_\_\_\_\_ returnable \_\_\_\_\_ .  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ , 19 \_\_\_\_ .  
(Signed) \_\_\_\_\_  
(Address) \_\_\_\_\_  
Solicitor for the \_\_\_\_\_

No. 15.  
Of Amended Summons.

[Heading as in Form 1.]

Amended in pursuance of order [*or fiat*] dated \_\_\_\_\_, the writ of summons  
in this action by [*set out amendments when required*].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(Signed)  
(Address)  
\_\_\_\_\_  
Solicitor for the \_\_\_\_\_

No. 16.  
Of Renewed Summons.

[Heading as in Form 1.]

Seal in pursuance of order dated \_\_\_\_\_, a renewed writ of summons in this action, indorsed as follows:—  
Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.  
(Signed) \_\_\_\_\_  
(Address) \_\_\_\_\_  
Solicitor for the \_\_\_\_\_

No. 17.  
Of Subpoena.

[Heading as in Form 1.]

Seal writ of subpoena  
on behalf of the \_\_\_\_\_ directed to \_\_\_\_\_

returnable \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(Signed) \_\_\_\_\_  
(Address) \_\_\_\_\_

Solicitor for the \_\_\_\_\_

No. 18.

Entry of Action for Trial.

[Heading as in Form 1.]

Enter this action for trial.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(Signed) \_\_\_\_\_

(Address) \_\_\_\_\_



**No. 19.****Entry of Appeal.***[Heading as in Form 1.]*

Enter this appeal from the order [*or judgment*] of  
in this action, dated the                      day of                      19 .

Dated the                      day of                      , 19 .

(Signed)

(Address)

**No. 20.****Entry for Argument generally.***[Heading as in Form 1.]*

Set down for argument the

Dated the                      day of                      , 19 .

(Signed)

(Address)

**No. 21.****Entry of Special Case.***[Heading as in Form 1.]*

Set down the                      dated the                      day of                      the                      referee in this  
19 , of Mr.                      for hearing as a special case.

Dated the                      day of                      , 19 .

(Signed)

(Address)

**No. 22.****Memorandum of Service of Notice of Judgment.***[Heading as in Form 1.]*

Enter memorandum of service of notice of judgment made in this action, and  
dated the                      day of                      , 19 , on the undermentioned  
persons, viz.:—

Name of Party served.	Date of Service.

Dated the                      day of                      , 19 .

(Signed)

(Address)

**No. 23.**

**Search.**

[*Heading as in Form 1.*]

Search for

Dated the                      day of                      , 19   .

(Signed)

(Address)

Agent for

Solicitor or

---

**No. 24.**

**Memorandum on Notice of Judgment.**

Take notice that from the time of the service of this notice you [*or, as the case may be, the infant or person of unsound mind*] will be bound by the proceedings in the above cause in the same manner as if you [*or the said infant or person of unsound mind*] had been originally made a party, and that you [*or the said infant or person of unsound mind*] may, on entering an appearance at the Supreme Court, attend the proceedings under the within-mentioned judgment [*or order*] and that you [*or the said infant or person of unsound mind*] may within one month after the service of this notice apply to the Court to add to the judgment [*or order*].

---

## No. 1.

19      , [Here put letter and number.]

Between  $A, B$ .

Plaintiff,

and

*C.D.*

Defendant.

Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith.

To the Sheriff of \_\_\_\_\_ greeting.

We command you that of the lands and tenements, goods and chattels of *C.D.* in your bailiwick you cause to be made the sum of £ \_\_\_\_\_ and also interest thereon at the rate of £ \_\_\_\_\_ per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_ \*which said sum of money and interest were lately before us in our Supreme Court in a certain action [*or certain actions, as the case may be*] wherein *A.B.* is plaintiff and *C.D.* defendant *or* in a certain matter there depending intituled "*In the matter of E.F., as the case may be*" by a judgment [*or order, as the case may be*] of our said Court, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ adjudged [*or ordered, as the case may be*] to be paid by the said *C.D.* to *A.B.*, together with certain costs in the said judgment [*or order, as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of £ \_\_\_\_\_, as appears by the Certificate of the said taxing officer, dated the \_\_\_\_\_ day of \_\_\_\_\_. And that of the lands and tenements, goods and chattels of the said *C.D.* in your bailiwick you further cause to be made the said sum of £ \_\_\_\_\_ [*costs*] together with interest thereon at the rate of £8 per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_, \*and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said *A.B.* in pursuance of the said judgment [*or order, as the case may be*]. And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

## No. 2.

Fieri Facias on Order for Costs.

[Heading as in Form 1.]

Edward the Seventh, by the Grace of God, &c., to the Sheriff of  
greeting: We command you, that of the lands and tenements, goods and chattels  
of \_\_\_\_\_ in your bailiwick you cause to be made the sum

\* Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

of £  
for certain costs which by an order of our Supreme Court dated the  
day of \_\_\_\_\_, 19\_\_\_\_, were ordered to be paid by the said  
to \_\_\_\_\_  
and which have been taxed and allowed at the said sum, and interest on the said  
sum at the rate of £8 per centum per annum from the  
day of \_\_\_\_\_, 19\_\_\_\_, and that you have the said sum and  
interest before us in our said Court, immediately after the execution hereof, to be  
rendered to the said \_\_\_\_\_ And in what  
manner, &c. And to have there then this writ.

Witness, &c.

Levy £ \_\_\_\_\_ and £ \_\_\_\_\_ for costs of execution, &c.  
and also interest on £ \_\_\_\_\_ at £8 per centum per annum from  
the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
until payment; besides sheriff's poundage, officers' fees, costs of levying, and all  
other legal incidental expenses.

\_\_\_\_\_

This writ was issued by, &c., of \_\_\_\_\_  
agent for \_\_\_\_\_ of \_\_\_\_\_  
solicitor for the \_\_\_\_\_

\_\_\_\_\_

The \_\_\_\_\_ is a \_\_\_\_\_ and resides at \_\_\_\_\_  
in your bailiwick

**No. 3.**

**Writ of Venditioni Exponas.**

[*Heading as in Form 1.*]

Edward the Seventh, by the Grace of God, &c.,

To the Sheriff of \_\_\_\_\_ greeting:

Whereas by our writ we lately commanded you that of the lands and tenements,  
goods and chattels of *C.D.* [*here recite the fieri facias to the end*]. And on the  
day of \_\_\_\_\_ you returned to us in our Supreme Court  
aforesaid, that by virtue of the said writ to you directed you had taken lands and  
tenements, goods and chattels of the said *C.D.* to the value of the money and  
interest aforesaid, which said lands and tenements, goods and chattels, remained in  
your hands unsold for want of buyers. Therefore, we being desirous that the said  
*A.B.* should be satisfied his money and interest aforesaid, command you that you  
expose for sale and sell, or cause to be sold, the lands and tenements, goods and  
chattels of the said *C.D.*, by you in form aforesaid taken, and every part thereof,  
for the best price that can be gotten for the same, and have the money arising  
from such sale before us in our said Court immediately after the execution hereof,  
to be paid to the said *A.B.* And have there then this writ.

Witness, &c.

**No. 4.**

**Writ of Possession.**

[*Heading as in Form 1.*]

Edward the Seventh, by the Grace of God, &c. To the Sheriff of \_\_\_\_\_,  
greeting: Whereas lately in our Supreme Court, by a judgment of the Supreme  
Court *A.B.* recovered or [*E.F.* was ordered to deliver to *A.B.*] possession of all  
that \_\_\_\_\_ with the appurtenances in your bailiwick:  
Therefore, we command you that you omit not by reason of any liberty of your  
bailiwick, but that you enter the same, and without delay you cause the said *A.B.* to  
have possession of the said land and premises with the appurtenances. And in  
what manner, &c.

And have you there then this writ.

Witness, &c.

## No. 5.

## Writ of Delivery.

[Heading as in Form 1.]

Edward the Seventh, by the Grace of God, &c. To the Sheriff of greeting: We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*], to be returned to *A.B.*, which the said *A.B.* lately in our Supreme Court recovered against *C.D.* [*or, C.D. was ordered to deliver to the said A.B.*] in an action in the said Supreme Court.\* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said *C.D.* by all his lands and chattels in your bailiwick, so that neither the said *C.D.* nor any one for him do lay hands on the same until the said *C.D.* render to the said *A.B.* the said chattels.\*\*

And in what manner, &c.

And have you there then this writ.

Witness, &c.

## No. 6.

*The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on defendant's goods and lands the assessed value of it.*

[*Proceed as in the preceding form until the\*, and then thus:*] And we further command you, that if the said chattels cannot be found in your bailiwick, of the lands and tenements, goods and chattels of the said *C.D.* in your bailiwick you cause to be made £ [the assessed value of the chattels].\*\*

And in what manner, etc.

And have you there then this writ.

Witness, &c.

[*If in either of the preceding forms it is wished to include damages, costs, and interest, proceed to the\*\* and continue thus.*]

And we further command you that of the lands and tenements, goods and chattels of the said *C.D.* in your bailiwick, you cause to be made the sum of £ [damages]. And also interest thereon at the rate of £8 per centum per annum, from the day of which said sum of money and interest were in the said action by the judgment therein [*or by order dated* the day of adjudged [*or ordered*] to be paid by the said *C.D.* to *A.B.* together with certain costs in the said judgment [*or order*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of £ as appears by the certificate of the said taxing officer dated the day of . And that of the lands and tenements, goods and chattels of the said *C.D.* in your bailiwick you further cause to be made the said sum of £ [costs], together with interest thereon at the rate of £8 per centum per annum from the day of and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said *A.B.* in pursuance of the said judgment [*or order*].

And in what manner, &c.

And have you there this writ.

Witness, &c.

No. 7.

Writ of Attachment.

[*Heading as in Form 1.*]

Edward the Seventh, by the Grace of God, &c. To the Sheriff of  
greeting:

We command you to attach *C.D.* so as to have him before us in our Supreme Court wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you.

Witness, &c.

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No. 8.

Writ of Sequestration.

[*Heading as in Form 1.*]

Edward the Seventh, by the Grace of God, &c. To [*names of not less than four Commissioners*], greeting:

Whereas lately in our Supreme Court in a certain action there depending, wherein *A.B.* is plaintiff and *C.D.* and others are defendants [*or, in a certain matter then depending, intituled "In the matter of E.F.," as the case may be*] by a judgment [*or ORDER, as the case may be*] of our said Court made in the said action [*or matter*] and bearing date the                      day of                      , 19                      , it was ordered that the said *C.D.* should [pay into Court to the credit of the said action the sum of £                      , *or as the case may be*]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said *C.D.*, and to collect, receive, and sequester into your hands not only all the rents and profits of the said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said *C.D.*, and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C.D.* shall [pay into Court to the credit of the said action the sum of £                      , *or, as the case may be*], clear his contempt, and our said Court make other order to the contrary.

Witness, &c.

---

No. 9.

Distringas against Ex-Sheriff.

[*Heading as in Form 1.*]

Edward the Seventh, by the Grace of God, &c., to the Sheriff of

greeting:

We command you that you distrain                      late  
sheriff of your State aforesaid by all his land and chattels in your bailiwick, so that neither he nor anyone by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said  
expose for sale and sell or cause to be sold for the best price that can be gotten for the same, those goods and chattels which were of

in your bailiwick, to the value of £ \_\_\_\_\_, the  
sum of £ \_\_\_\_\_ which lately before us in our Supreme Court  
in a certain action wherein \_\_\_\_\_ plaintiff and  
\_\_\_\_\_ defendant, by a \*\* \_\_\_\_\_ of  
our said Court bearing date the \_\_\_\_\_ day of \_\_\_\_\_, was \*\*\*  
to be paid by the said \_\_\_\_\_ to the said \_\_\_\_\_ and of  
the sum of £ \_\_\_\_\_, the amount at which the costs in the  
said\*\* \_\_\_\_\_ mentioned have been taxed and allowed,  
and of interest on the said sum of £ \_\_\_\_\_ at the rate of £8 per  
centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_, and on the  
said sum of £ \_\_\_\_\_ at the same rate from the \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, which goods and chattels he lately took by virtue of our writ,  
and which remain in his hands for want of buyers, as the said late sheriff hath  
lately returned to us in our said Court. And have the money arising from such  
sale before us in our said Court immediately after the execution hereof, to be paid  
to the said \_\_\_\_\_ And have there then  
this writ.

Witness, &c. \_\_\_\_\_

This writ was issued by, &c. \_\_\_\_\_

The defendant is a \_\_\_\_\_ and resides  
at \_\_\_\_\_ in your bailiwick.

#### No. 10.

#### Fieri Facias on Judgment Removed from Local Court.

[Heading as in Form 1.]

Edward the Seventh, by the Grace of God, &c., to the Sheriff of  
greeting:

Whereas by the judgment of the Local Court of \_\_\_\_\_ holden at \_\_\_\_\_  
it has been adjudged that the said \_\_\_\_\_ recover against  
the said \_\_\_\_\_ the sum of £ \_\_\_\_\_ [debt and costs].

And whereas this judgment has been removed into our Supreme Court, and has  
become of the same effect as a judgment recovered in that Court:

And whereas the costs attendant on the removal of the said judgment were  
on the [day of removal] \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, taxed  
and allowed at £ \_\_\_\_\_ [costs of removal].

Therefore we command you, that of the goods and chattels of the said  
\_\_\_\_\_ in your bailiwick, you cause to be  
made the said sums of £ \_\_\_\_\_ and £ \_\_\_\_\_ with interest  
thereon at the rate of £8 per centum per annum from the said  
day of \_\_\_\_\_, 19 \_\_\_\_\_, and that you have that money and interest before us  
in our said Court immediately after the execution hereof, to be rendered to the  
said \_\_\_\_\_ And in what manner, &c. And  
have there then this writ.

Witness, &c. \_\_\_\_\_

Levy £ \_\_\_\_\_, and £ \_\_\_\_\_ for costs of execution, and  
also interest on £ \_\_\_\_\_ at £8 per centum per annum, from the  
day of \_\_\_\_\_, 19 \_\_\_\_\_, until payment; besides sheriff's poundage, officers'  
fees, costs of levying, and all other legal incidental expenses.

This writ was issued by, &c. \_\_\_\_\_

The defendant is a \_\_\_\_\_ and resides at \_\_\_\_\_  
in your bailiwick.





day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ in the  
noon, and so from day to day until the above cause  
is tried, to give evidence on behalf of the \_\_\_\_\_, and also to bring  
with you and produce at the time and place aforesaid [*specify documents to be  
produced*].

Witness, &c.

---

#### No. 4.

##### Subpoena ad Testificandum at Special Session.

[*Heading as in Form 1.*]

Edward the Seventh, by the Grace of God, &c., to [*the names of three witnesses  
may be inserted*] greeting: We command you to attend at the session of the  
Supreme Court to be holden at \_\_\_\_\_ on \_\_\_\_\_ day the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon,  
and so from day to day during the said session, until the above cause is tried, to  
give evidence on behalf of the \_\_\_\_\_

Witness, &c.

---

#### No. 5.

##### Subpoena Duces Tecum at Special Session.

[*Heading as in Form 1.*]

Edward the Seventh, by the Grace of God, &c., to [*the names of three witnesses  
may be inserted*] greeting: We command you to attend at the session of the  
Supreme Court to be holden at \_\_\_\_\_ on \_\_\_\_\_ day the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, and so  
from day to day during the said session, until the above cause is tried, to give  
evidence on behalf of the \_\_\_\_\_, and also to bring with you and pro-  
duce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

---

#### No. 6.

##### Subpoena Ad Testificandum at Sittings of Supreme Court.

[*Heading as in Form 1.*]

Edward the Seventh, by the Grace of God, &c., to [*the names of three witnesses  
may be inserted*] greeting: We command you to attend at the sittings of the  
Supreme Court to be holden at \_\_\_\_\_ on \_\_\_\_\_ day the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon,  
and so from day to day during the said sittings, until the above cause is  
tried, to give evidence on behalf of the \_\_\_\_\_

Witness, &c.

---

#### No. 7.

##### Subpoena Duces Tecum at Sittings of Supreme Court.

[*Heading as in Form 1.*]

Edward the Seventh, by the Grace of God, &c., to [*the names of three witnesses  
may be inserted*]. We command you to attend at the sittings of the Supreme  
Court to be holden at \_\_\_\_\_ on \_\_\_\_\_ day the \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, and  
so from day to day until the above cause is tried, to give evidence on behalf of the \_\_\_\_\_  
and also to bring with you and produce at the time and  
place aforesaid [*specify documents to be produced*].

Witness, &c.

**No. 8.**

**Writ of Inquiry for Assessment of Damages.**

*[Heading as in Form 1.]*

Edward the Seventh, by the Grace of God, &c., to the Sheriff of Western Australia, greeting:

Whereas it has been adjudged that the plaintiff recover against the defendant damages to be assessed.

Therefore we command you, that by the oaths of twelve good and lawful men of your bailiwick you inquire what damages the plaintiff is entitled to recover under the said judgment, and that forthwith thereafter you send the inquisition which you shall take thereupon to our said Court, under your seal, and the seals of those by whose oaths you take the inquisition, together with this writ.

Witness, &c.

This writ was issued by, &c.

The defendant  
and resides at  
in your bailiwick.

is a

**No. 9.**

**Certiorari to Local Court.**

*[Heading as in Form 1.]*

Edward the Seventh, by the Grace of God, &c., to the Magistrate of the Local Court holden at

greeting:

We, willing for certain causes to be certified of a plaint levied in our Court before you against

at the suit of

command you that you send to us forthwith in our Supreme Court the said plaint with all things touching the same, as fully and entirely as the same remain in our said Court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

**No. 10.**

**Certiorari (General).**

*[Heading as in Form 1.]*

Edward the Seventh, by the Grace of God, &c., to the

greeting:

We, willing for certain causes to be certified of  
command you that you send to us in our Supreme Court on the day  
of , the aforesaid,  
with all things touching the same, as fully and entirely as they remain in  
, together with this writ, that we may  
further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

**No. 11.****Prohibition.**

[Heading as in Form 1.]

Edward the Seventh, by the Grace of God, &c., to the [Magistrate of the Local Court holden at]

and to [name of plaintiff] of

greeting:

Whereas we have been given to understand that you the said have [entered a plaint against] *C.D.* in the said Court, and that the said Court has no jurisdiction in the said [cause] or to hear and determine the said [plaint] by reason that [state facts showing want of jurisdiction].

We therefore hereby prohibit you from further proceeding in the said [action] in the said Court.

Witness, &c.

This writ was issued by, &c.

**No. 12.****Mandamus.**

[Heading as in Form 1.]

Edward the Seventh, by the Grace of God, &c.

to  
of

greeting:

Whereas by [here recite Act of Parliament, Council, or Charter if the act required to be done is founded on either one or the other]. And whereas We have been given to understand and be informed in Our Supreme Court before Us that [insert necessary inducements and averments]. And you the said were then and there required by [insert demand] but that you the said

well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to [insert refusal] nor have you or any of you at any time since

in contempt of Us and to the great damage and grievance of

as We have been informed from their complaint made to Us. Whereupon We being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said

and every of you firmly enjoining you that you [insert command] or that you show Us cause to the contrary thereof, lest by your default the same complaint should be repeated to Us, and how you shall have executed this Our Writ make known to Us in Our said Court forthwith then returning to Us this Our said Writ, and this you are not to omit.

Witness,  
in the                      year of Our reign.

the

day of

By the Court.

(Signed)

No. 13.

Commission to examine Witnesses.

[Heading as in Form 1.]

Edward the Seventh, by the Grace of God, &c., to  
of  
and  
of  
Commissioners named by and on behalf of the  
and to  
of  
and  
of  
Commissioners named by and on behalf of the  
greeting: Know ye that we in confidence of your prudence and fidelity have  
appointed you and by these presents give you power and authority to examine on  
interrogatories and *vivâ voce* as hereinafter mentioned witnesses on behalf of the  
said and  
respectively at before  
you or any two of you, so that one Commissioner only on each side be present and  
act at the examination.—And we command you as follows:

1. Both the said and the said shall be at  
liberty to examine on interrogatories and *vivâ voce* on the subject matter thereof  
or arising out of the answers thereto such witnesses as shall be produced on their  
behalf with liberty to the other party to cross-examine the said witnesses on cross-  
interrogatories and *vivâ voce*, the party producing any witness for examination  
being at liberty to re-examine him *vivâ voce*; and all such additional *vivâ voce*  
questions, whether on examination, cross-examination, or re-examination, shall be  
reduced into writing, and with the answers thereto shall be returned with the said  
Commission.

2. Not less than days before the examination of any witness on  
behalf of either of the said parties, notice in writing, signed by any one of you,  
the Commissioners of the party on whose behalf the witness is to be examined, and  
stating the time and place of the intended examination and the names of the wit-  
nesses to be examined, shall be given to the Commissioners of the other party by  
delivering the notice to them, or by leaving it at their usual place of abode or  
business, and if the Commissioners or Commissioner of that party neglect to attend  
pursuant to the notice, then one of you, the Commissioners of the party on whose  
behalf the notice is given, shall be at liberty to proceed with and take the examina-  
tion of the witness or witnesses *ex parte*, and adjourn any meeting or meetings,  
or continue the same from day to day until all the witnesses intended to be examined  
by virtue of the notice have been examined, without giving any further or other  
notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-  
examination producing any book, document, letter, paper, or writing, and refusing  
for good cause to be stated in his deposition to part with the original thereof, then  
a copy thereof, or extract therefrom, certified by the Commissioners or Commis-  
sioner present and acting to be a true and correct copy or extract shall be annexed  
to the witnesses' deposition.

4. Each witness to be examined under this Commission shall be examined on  
oath, affirmation, or otherwise in accordance with his religion by or before the  
Commissioners or Commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language  
(the interrogatories, cross-interrogatories, and *vivâ voce* questions, if any, being  
previously translated into the language with which he or they is or are conversant),  
then the examination shall be taken in English through the medium of an inter-  
preter or interpreters to be nominated by the Commissioners or Commissioner  
present at the examination, and to be previously sworn according to his or their

several religions by or before the said Commissioners or Commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this Commission shall be subscribed by the witness or witnesses, and by the Commissioners or Commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Master of the Supreme Court of Western Australia, in Perth, on or before the \_\_\_\_\_ day of \_\_\_\_\_ enclosed in a cover under the seals or seal of the Commissioners or Commissioner.

8. Before you or any of you in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other Commissioner, a Commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, &c.

\_\_\_\_\_  
This writ was issued by, &c.

#### WITNESSES' OATH.

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

#### COMMISSIONERS' OATH.

You [*or I*] shall, according to the best of your [*or my*] skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the Commission within written. So help you [*or me*] God.

#### INTERPRETER'S OATH.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the Commissioners named in the Commission within written, as far forth as you are directed and employed by the said Commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

#### CLERK'S OATH.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said Commissioners named in the Commission within written, as far forth as you are directed and employed by the Commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

*Direction of Interrogatories, &c., when returned by the Commissioners :*

*"The Master of the Supreme Court of Western Australia,  
Perth."*

## APPENDIX K.

*Summonses and Orders.*

## No. 1.

## Summons (General Form).

, 19 . [here put the letter and number.]

In the Supreme Court,  
Western Australia.

Between

and

Plaintiff,

Defendant.

Let all parties concerned attend the Judge [or Master] in Chambers on  
 day the day of , 19 ,  
 at o'clock in the noon, on the hearing of an application  
 on the part of

Dated the day of , 19 .

This summons was taken out by of  
 solicitor for  
 To

## No. 2.

## Order (General Form).

[Heading as in Form 1.]

\*Insert name of Judge or Master. \*Judge [or Master] in Chambers.

Upon hearing , and upon reading the affidavit  
 of filed the day of , 19 ,  
 and

It is ordered  
 and that the costs of this application be

Dated the day of , 19 .

## No. 3.

## Summons for Directions pursuant to Order XXIX.

[Heading as in Form 1.]

Fill in a date not  
 less than 4 days  
 from service of  
 summons.

Let all the parties concerned attend me [ ] in Chambers on  
 day the day of , 19 , at  
 o'clock in the noon, on the hearing of an application on the  
 part of for directions for

[Here state all matters or proceedings previous to trial on which directions are  
 required.]

Dated the day of , 19 .

This summons was taken out by of  
 solicitor for  
 To

**No. 4.****Order for Directions pursuant to Order XXIX.***[Heading as in Form 1.]*

Upon hearing  
and upon reading  
follows:—

it is ordered as

1. That the plaintiff deliver to the defendant further and better particulars with dates and items of his claim, and that unless such particulars be delivered within                      days from the date of this order, all further proceedings be stayed until the delivery thereof.

2. That the plaintiff and defendant be at liberty to deliver to each other interrogatories in writing, and that the said parties do respectively answer the said interrogatories as prescribed by Order XXX., rules 8 and 25.

3. That the                      be at liberty to issue a commission for the examination of witnesses on his behalf at                      and that the trial of the action be stayed until the return of the said commission, the usual long order for the said commission to be drawn up, and unless agreed upon by the parties within one week, to be settled by me (or a Judge).

4. That the action be tried at                      by a Judge.

5. That either party be at liberty without further summons, to apply to a Judge herein for further directions, such application to be made upon two clear days' notice to be served upon the other party.

6. That the costs of this application be costs in the action.

Dated the                      day of                      , 19 .

**No. 5.****Order for Time.***[Heading as in Form 1.]*

Upon hearing                      , and upon reading the affidavit  
of                      filed the                      day of                      , 19 ,  
and

It is ordered that the                      shall have                      time  
and that the costs of this application be

Dated the                      day of                      , 19 .

**No. 6.****Order under Order XIV., No. 1.***[Heading as in Form 1.]*

Upon hearing                      , and upon reading the affidavit  
of                      filed the                      day of                      , 19 , and

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ, with interest, if any [or possession of the land in the indorsement of the writ described as                      ] and costs to be taxed, and that the costs of this application be

Dated the                      day of                      , 19 .

No. 7.

Order under Order XIV., No. 2.

[Heading as in Form 1.]

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that the defendant be at liberty to defend this action by delivering  
a defence within \_\_\_\_\_ days after service of this order, and that the costs  
of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

No. 8.

Order under Order XIV., No. 3.

[Heading as in Form 1.]

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that if the defendant \_\_\_\_\_ pay into Court  
within a week from the date of this order the sum of £\_\_\_\_\_, he be at  
liberty to defend this action by delivering a defence within \_\_\_\_\_ days after  
service of this order, but that if that sum be not so paid the plaintiff be at liberty  
to sign final judgment for the amount indorsed on the writ of summons, with  
interest, if any, and costs, and that in either event the costs of this application  
be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

No. 9.

Order under Order XIV., No. 4.

[Heading as in Form 1.]

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that if the defendant pay into Court within a week from the date  
of this order the sum of £\_\_\_\_\_ he be at liberty to defend this action as to the  
whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid the plaintiff be at liberty  
to sign judgment for that sum and the defendant be at liberty to defend this action  
as to the residue of the plaintiff's claim.

And it is ordered that in either event the defence be delivered within  
\_\_\_\_\_ days after service of this order, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

No. 9a.

Order under Order XIV., No. 5.

[Heading as in Form 1.]

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that if the defendant \_\_\_\_\_ do not pay  
to the plaintiff's solicitor within a week from the date of this order, the sum of  
£\_\_\_\_\_, the plaintiff be at liberty to sign judgment for the same.



Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

[Heading as in Form 1.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

**No. 13.**

**Order for Particulars (Accident Case).**

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the injuries mentioned in the statement of claim, together with the time and place of the accident, and the particular acts of negligence complained of, and that unless such particulars be delivered within \_\_\_\_\_ days from the date of this order all further proceedings in this action be stayed until the delivery thereof, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

**No. 14.**

**Order to Discharge or Vary on Application by Third Party.**

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that the order of \_\_\_\_\_ in this action dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, be discharged [*or varied by* \_\_\_\_\_], and that costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

**No. 15.**

**Order to Dismiss for want of Prosecution.**

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that this action be, for want of prosecution, dismissed with costs to be taxed and paid to the defendant by the plaintiff, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

**No. 16.**

**Order for Delivery of Interrogatories.**

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that the \_\_\_\_\_ be at liberty to deliver to the \_\_\_\_\_ interrogatories in writing, and that the said \_\_\_\_\_ do answer the interrogatories as prescribed by Order XXX., Rules 8 and 25, of the Rules of the Supreme Court, 1908, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**No. 17.****Order for Affidavit as to Documents.***[Heading as in Form 1.]*

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 \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

---

**No. 18.****Order to produce Documents for Inspection.***[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19 \_\_, and \_\_\_\_\_

It is ordered that the \_\_\_\_\_ do, at all seasonable 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 so 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 \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

---

**No. 19.****Order for Production (Underwriters).***[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19 \_\_, and \_\_\_\_\_

It is ordered that the \_\_\_\_\_ do produce and show to the \_\_\_\_\_ upon oath all insurance slips, policies, letters of instruction, or other orders for effecting such slips or policies, or relating to the insurance or the subject matter of the insurance on the ship \_\_\_\_\_ or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship \_\_\_\_\_

the cargo on board thereof and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence papers, and writings (whether originals, duplicates, or copies respectively), which now are in the custody, possession or power, of the \_\_\_\_\_

his brokers, solicitors, or agents, in any way relating or

referring to the matters in question in this action, with liberty for the  
to inspect and take copies of or extracts from the same or any  
of them, and that in the meantime all further proceedings be stayed, and that the  
costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

---

**No. 20.**

**Order for Service out of Jurisdiction.**

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19 \_\_\_\_, and

It is ordered that the plaintiff \_\_\_\_\_ be at liberty to  
issue a writ for service out of the jurisdiction against

And it is further ordered that the time for appearance to the said writ be  
within \_\_\_\_\_ days after the service thereof, and that the costs of this  
application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

---

**No. 21.**

**Order for Substituted Service.**

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19 \_\_\_\_, and

It is ordered that service of a copy of this order, and of a copy of the writ of  
summons in this action, by sending the same by a pre-paid post letter, addressed  
to the defendant

\_\_\_\_\_ at \_\_\_\_\_, shall be good  
and sufficient service of the writ.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

---

**No. 22.**

**Order for Renewal of Writ.**

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19 \_\_\_\_, and

It is ordered that the writ in this action be renewed for six months from the  
date of its renewal, pursuant to the Rules of the Supreme Court, 1908, Order VIII.,  
Rule 1.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

---

**No. 23.**

**Order for Issue of Notice Claiming Contribution.**

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19 \_\_\_\_, and

Dated the                      day of                      , 19   .

[Heading as in Form 1.]

and by consent

1. [State matters to be referred] shall be referred to the award of
2. The arbitrator shall have all the powers as to certifying and amending of a Judge of the Supreme Court.
3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award) on or before the next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.
4. The said parties shall in all things abide by and obey the award so to be made.
5. The costs of the said cause and the cost of the reference and award shall be
6. The arbitrator may (if he think fit) examine the said parties to this cause, and their respective witnesses, upon oath or affirmation.
7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.
8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.
9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as may think reasonable and just.
10. In the event of either of the said parties disputing the validity of the said award, or moving the to set it aside, the said shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.
11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or if they cannot agree, the Master may, on application of either side, appoint a new arbitrator.
- \*12. Unless restrained by any order of the Court or a Judge, the party or parties in whose favour the award shall be made shall be at liberty within days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\* [As to present necessity for this paragraph see O. XXXVIII., Rule 2.]

No. 25.

**Order for Examination of Witnesses before Arbitrator.**

[*Heading as in Form 1.*]

*Note.*—This form is now obsolete. *See* note to No. 26, *infra.*]

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No. 26.

**Order for Examination of Witnesses and Production of Documents.**

[*Heading as in Form 1.*]

[*Note.*—Form No. 25 and this form (No. 26) are now obsolete, the attendance of witnesses before an arbitrator or before a referee being now enforced by *subpoena*. *See* O. 34, Rules 39 and 47.]

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No. 27.

**Order Charging Stock—Nisi.**

[*Heading as in Form 1.*]

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, whereby it appears

It is ordered that unless sufficient cause be shown to the contrary before  
on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
at \_\_\_\_\_ o'clock in the forenoon, the defendant's interest in the  
so standing as aforesaid shall, and that it in the meantime do, stand charged with  
the payment of the above-mentioned amount due on the said judgment.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

No. 28.

**Order Charging Stock—Absolute.**

[*Heading as in Form 1.*]

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and an order *nisi* made herein  
on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, reciting the affidavit of \_\_\_\_\_,  
whereby it appeared

It is ordered that the defendant's interest in the  
so standing as aforesaid stand charged with the payment of the above-mentioned  
amount due on the said judgment.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

No. 29.

**Charging Order. Solicitor's Costs.**

[*Heading as in Form 1.*]

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that the said \_\_\_\_\_ in this action shall have a charge  
the solicitor for the \_\_\_\_\_ upon  
for his costs, charges, and expenses of and in reference to this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

### Order to Remove Judgment from Local Court.

In the Supreme Court,  
Western Australia.

In the matter of a plaint in the Local Court of  
holden at    wherein    plaintiff  
and    defendant

Upon reading the affidavit of \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and the certified copy of the judgment in the plaint above-mentioned,

It is ordered that a writ of certiorari issue to remove the said judgment from the above-named Local Court into the Supreme Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

**Order for Arrest (capias) under Debtors' Act.**

[Heading as in Form 1.]

Upon hearing \_\_\_\_\_  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and \_\_\_\_\_

It is ordered that the defendant \_\_\_\_\_ be arrested and imprisoned for the term of \_\_\_\_\_ from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in Court the sum of £ \_\_\_\_\_, or give to the plaintiff a bond executed by him and two sufficient sureties in the penalty of £ \_\_\_\_\_, or some other security satisfactory to the plaintiff, that

And it is further ordered that the Sheriff of \_\_\_\_\_, do within one calendar month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid, if he shall be found in the said Sheriff's bailiwick.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Order of Reference under s. 16 of "The Arbitration Act, 1895."

[Heading as in Form 1.]

Upon hearing \_\_\_\_\_  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and \_\_\_\_\_

It is ordered that the following question arising in this action, namely,

be referred for inquiry and report to  
under section 20 of the Supreme Court Act, 1880, and that the costs of this appli-  
cation be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

No. 33.

**Order of Reference under s. 17 of "The Arbitration Act, 1895."**

Upon hearing the solicitors on both sides , and upon reading the affidavit of , filed herein

It is ordered that the whole of this cause be tried before a referee [*or, G.K., the special referee, or arbitrator, agreed upon by the parties*] who shall have all the powers of certifying and amending of a Judge of the Supreme Court, and shall direct judgment to be entered and otherwise deal with the whole action pursuant to Order XXXIV. of the Rules of the Supreme Court, 1908.

Dated the                      day of                      , 19 .

---

No. 34.

**Order of Reference to Master.**

[*Heading as in Form 1.*]

Upon hearing  
and upon reading the affidavit of                      filed the  
day of                      , 19 , and

It is ordered that this action [*or the matters of account in this action, or the following questions in this action being matters of account, namely, stating them*] be referred to the certificate of the Master, with all the powers as to certifying and amending of a Judge of the Supreme Court, and that the costs of the                      and of a reference be in the discretion of the Master, and that the costs of this application be .

Dated the                      day of                      , 19 .

---

No. 35.

**Order for Examination of Witnesses before Trial.**

[*Heading as in Form 1.*]

Upon hearing  
and upon reading the affidavit of                      filed the  
day of                      , 19 , and

It is ordered that                      a witness on behalf of the                      be examined *vivâ voce* (on oath or affirmation) before the Master [*or before*                      solicitor or agent giving esquire, special examiner], the                      notice in to the                      solicitor or agent                      writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Central Office of the Supreme Court, and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the                      as to his belief, and that the costs of this application be .

Dated the                      day of                      , 19 .

---

No. 36.

**Short Order for Issue of Commission to Examine Witnesses.**

[*Heading as in Form 1.*]

Upon hearing  
and upon reading the affidavit of                      filed the  
day of                      , 19 , and

It is ordered that the                      be at liberty to issue a commission for the examination of witnesses on                      behalf at



And it is further ordered that the trial of this action be stayed until the return of the said commission, the usual long order to be drawn up, and unless agreed upon by the parties within one week, to be settled by the Judge [*or as the case may be*], and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

### No. 37.

#### Long Order for Commission to Examine Witnesses.

[*Heading as in Form 1.*]

Upon hearing \_\_\_\_\_  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19 \_\_\_\_, and

It is ordered as follows:

1. A commission may issue directed to \_\_\_\_\_  
of \_\_\_\_\_ and \_\_\_\_\_  
of \_\_\_\_\_ commissioners named by and on behalf of  
the \_\_\_\_\_ and to \_\_\_\_\_ of \_\_\_\_\_  
and \_\_\_\_\_ commissioners named by and on behalf of  
the \_\_\_\_\_ for the examination upon interrogatories  
and *vivâ voce* of witnesses on behalf of the said \_\_\_\_\_  
and \_\_\_\_\_ respectively at  
aforesaid before the said commissioners, or any two of them, so that one commis-  
sioner only on each side be present and act at the examination.

2. Both the said \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_\_ shall be at liberty to examine upon  
interrogatories and *vivâ voce* upon the subject matter thereof or arising out of the  
answers thereto such witnesses as may be produced on their behalf, with liberty  
to the other party to cross-examine the said witnesses upon cross interrogatories  
and *vivâ voce* the party producing the witness for examination being at liberty to  
re-examine him *vivâ voce*; and all such additional *vivâ voce* questions, whether on  
examination, cross-examination, or re-examination, shall be reduced into writing,  
and, with the answers thereto, returned with the said commission.

3. Within \_\_\_\_\_ days from the date of this order the solicitors or agents  
of the said \_\_\_\_\_ and \_\_\_\_\_ shall exchange  
the interrogatories they propose to administer to their respective witnesses, and  
shall also within \_\_\_\_\_ days from the exchange of such  
interrogatories, exchange copies of the cross-interrogatories intended to be adminis-  
tered to the said witnesses.

4. \_\_\_\_\_ days previously to the sending out of the said commis-  
sion, the solicitor of the said \_\_\_\_\_ shall give to  
the solicitor of the said \_\_\_\_\_ notice in writing  
of the mail or other conveyance by which the commission is to be sent out.

5. \_\_\_\_\_ days previously to the examination of any witness on behalf  
of the said \_\_\_\_\_ or \_\_\_\_\_ respectively, notice in  
writing signed by any one of the commissioners of the party on whose behalf the  
witness is to be examined and stating the time and place of the intended exami-  
nation, and the names of the witnesses intended to be examined, shall be given to  
the commissioners of the other party by delivering the notice to them personally,  
or by leaving it at their usual place of abode or business, and if the commissioners  
of that party neglect to attend pursuant to the notice, then one of the commissioners  
of the party on whose behalf the notice is given shall be at liberty to proceed with  
and take the examination of the witness or witnesses *ex parte*, and adjourn any  
meeting or meetings, or continue the same, from day to day until all the witnesses  
intended to be examined by virtue of the notice have been examined, without giving  
any further or other notice of the subsequent meeting or meetings.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

## No. 39.

## Request for Commission.

Whereas an action is now pending in the Supreme Court of Western Australia in which  
is plaintiff and  
is defendant and in the said action the plaintiff claims

(*Endorsement upon Writ.*)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath touching such matters [*that is to say*]:—

of  
,  
of  
,  
and  
of

And it appearing that such witnesses are resident within the jurisdiction of Your Honourable Court.

Now I, \_\_\_\_\_ as Chief Justice of Western Australia have the honour to request and do hereby request that for the reasons aforesaid and for the assistance of the said Supreme Court you as the Resident and Judges of the said \_\_\_\_\_ or some one or more of you will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses and that you will call such witnesses to be examined upon the interrogatories which accompany this letter of request (or *vivâ voce*) touching the said matters in question in the presence of the agents of the plaintiff or defendant or such of them as shall on due notice given attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as in accordance with your procedure, and to return the same together with such request in writing, if any, for the examination of the witnesses through the Governor of Western Australia for transmission to the Supreme Court of Western Australia.

## No. 39a.

## Order for Appointment of Special Examiner to take Evidence Abroad.

[*Heading as in Form 1.*]

Upon hearing the solicitors on both sides, and upon reading the affidavit of

It is ordered that \_\_\_\_\_ be appointed as special examiner for the purpose of taking the examination, cross-examination, and re-examination, *vivâ voce*, on oath or affirmation, of \_\_\_\_\_ witnesses on the part of \_\_\_\_\_ at \_\_\_\_\_ aforesaid. The \_\_\_\_\_ solicitors to give to the \_\_\_\_\_ solicitors \_\_\_\_\_ days' notice in writing of the date on which they propose to send out this order to \_\_\_\_\_ for execution, and that \_\_\_\_\_ days after the service of such notice the solicitors for the plaintiffs and defendants respectively do exchange the names of their agents at \_\_\_\_\_, to whom notice relating to the examination of the said witnesses may be sent. And that \_\_\_\_\_ days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall

be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party (unless such notice be dispensed with). And that the deposition when so taken, together with any document referred to therein, or certified copies of such documents, or of extracts therefrom, be transmitted by the examiner, under seal, to the Master of the Supreme Court of Western Australia, Perth, on or before the \_\_\_\_\_ day of \_\_\_\_\_ next, or such further or other day as may be ordered, there to be filed in the proper office. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action be stayed until the filing of such depositions. And that the costs of and incident to this application and such examination be costs in the action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

No. 40.

### Order for Examination of Judgment Debtor.

, 19 . [here put the letter and number.]

In the Supreme Court,

Western Australia.

Between

Judgment Creditor,

and

Judgment Debtor.

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_, filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any and what debts are owing to him, before \_\_\_\_\_ in Chambers, at such time and place as he may appoint, and that the said judgment debtor produce his books [*or as may be ordered*] before the said \_\_\_\_\_ at the time of the examination, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

No. 41.

Garnishee Order (Attaching Debt).

, 19 . [here put the letter and number.]

In the Supreme Court,

Western Australia,

in Chambers.

Between

Judgment Creditor,

and

Judgment Debtor.

Garnishee.

Upon hearing \_\_\_\_\_,  
and upon reading the affidavit of \_\_\_\_\_, filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the Supreme Court on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, for the sum of \_\_\_\_\_ on which judgment the said sum of £ \_\_\_\_\_ remains due and unpaid.

And it is further ordered that the said garnishee attend the  
 in Chambers on                      day the                      day of                      , 19                      ,  
 at                      o'clock in the                      noon, on an application by the said  
 judgment creditor, that the said garnishee pay the debt due from him to the said  
 judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

APP. K.  
 Nos. 41-42a.

And that the costs of this application be

Dated the                      day of                      , 19                      .

#### No. 42.

**Garnishee Order (Absolute) where Garnishee owes more than Judgment Debt.**

[*Heading as in No. 41.*]

Upon hearing the solicitors for the judgment creditor and the garnishee, and  
 upon reading the affidavit of                      , filed herein and the order *nisi*  
 made herein, dated the                      day of                      , 19                      , whereby it  
 was ordered that all debts owing or accruing due from the above-named garnishee  
 to the above-named judgment debtor should be attached to answer a judgment  
 recovered against the said judgment debtor by the above-named judgment creditor  
 in the Supreme Court on the                      day of                      , 19                      ,  
 for the sum of £                      and £                      costs (together with the costs  
 of the garnishee proceedings), on which judgment the sum of £                       
 remains due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment  
 creditor £                      being so much of the debt due from the said garnishee to  
 the said judgment debtor as is sufficient to satisfy the said judgment debt and costs,  
 together with £                      , the costs of the garnishee proceedings, and that in default  
 thereof execution may issue for the same. And that the said garnishee be at liberty  
 to retain £                      for his costs of this application out of the balance of the debt  
 due from him to the judgment debtor.

Dated the                      day of                      , 19                      .

#### No. 42a.

**Garnishee Order (Absolute) where Garnishee owes less than Judgment Debt.**

[*Heading as in No. 41.*]

Upon hearing the solicitors for the judgment creditor and the garnishee, and  
 upon reading the affidavit of                      filed herein and  
 the order *nisi* made herein dated the                      day of                      , 19                      ,  
 whereby it was ordered that all debts owing or accruing due from the above-named  
 garnishee to the above-named judgment debtor should be attached to answer a  
 judgment recovered against the said judgment debtor by the above-named judgment  
 creditor in the Supreme Court on the                      day of                      ,  
 19                      , for the sum of £                      debt, and £                      costs (together with  
 the costs of the garnishee proceedings), on which judgment the sum of £                       
 remained due and unpaid.

It is ordered that the said garnishee (after deducting therefrom  
 for his costs of this application) do forthwith pay to the said judgment creditor  
 £                      the debt due from the said garnishee to the said judgment debtor  
 (or so much thereof as may be sufficient to satisfy the judgment debt and costs),  
 and that in default thereof execution may issue for the same. And that the sum  
 of £                      , the costs of the judgment creditor of this application be added to the  
 judgment debt and be retained out of the money recovered by the said judgment  
 creditor under this order and in priority to the amount of the judgment debt.

Dated the                      day of                      , 19                      .

**No. 43.**

**Order on Client's Application to tax Solicitor's Bill of Costs.**

, 19 . [here put the letter and number.]

In the Supreme Court,  
Western Australia.

in Chambers.

In the matter of the taxation of costs, and in the matter of  
gentleman, one of the solicitors of the Supreme Court.

It is ordered that the bill of fees, charges, and disbursements delivered to the applicant by the above-named solicitor be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that if the said solicitor attends on the taxation, the taxing officer tax the costs of the reference, and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference to be charged (if payable) according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the applicant.

And it is ordered that the costs of this application be

Dated the                      day of                      , 19 .

---

**No. 44.**

**Order on Solicitor's Application to tax Bill of Costs.**

, 19 . [here put the letter and number.]

In the Supreme Court,  
Western Australia.

in Chambers.

In the matter of the taxation of costs, and in the matter of  
gentleman, one of the solicitors of the Supreme Court.  
Supreme Court.

Upon hearing  
and upon reading the affidavit of                      filed  
the                      day of                      , 19 . and

It is ordered that the above-named solicitor's bill of fees, charges, and disbursements, delivered to                      (hereinafter called the said client) be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that the taxing officer tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be paid according to the event of the taxation pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver to the said client, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the said client.

And it is ordered that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

#### No. 45.

#### Order to tax after Action brought.

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19 , and

It is ordered that the plaintiff's bill of costs, charges, and disbursements delivered to the defendant, for the recovery of which this action is brought, be referred to the taxing officer to be taxed, and that the plaintiff give credit at the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the taxing officer tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference pursuant to the statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the reference.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

#### No. 46.

#### Order to try Action in Local Court.

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19 , and

It is ordered that this action be tried before the Local Court of \_\_\_\_\_, and  
holden at \_\_\_\_\_, and  
that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

#### No. 47.

#### Order to give Security or try Action in Local Court.

*[Heading as in Form 1.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19 , and

It is ordered that unless the plaintiff within \_\_\_\_\_  
give full security for the defendant's costs to the satisfaction of the Master [or as  
the case may be] this action be remitted for trial before the Local Court of \_\_\_\_\_  
holden at \_\_\_\_\_ and

that the costs of this application be  
Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

No. 48.

Order for Examination touching Means.

, 19 . [here put the letter and number.]

In the Supreme Court,  
Western Australia.

Between

Judgment Creditor,

and

Judgment Debtor.

Upon hearing  
and upon reading the affidavit of filed the  
day of , 19 , and

It is ordered that the above-named do attend before  
the Judge or Master on the day of next,  
at in the noon, to be examined upon oath touching his  
means of paying the judgment debt, and that the costs of this application be

Dated the day of , 19 .

---

No. 49.

Order for Payment of Judgment Debt by Instalments.

[Heading as in Form 48.]

Upon hearing  
and upon reading the affidavit of filed the  
day of , 19 , and

It is ordered that the above-named judgment debtor do pay to the above-named  
judgment creditor the sum of £ , together with interest thereon  
at the rate of £8 per centum per annum from the day of  
, 19 , the date of the judgment, and also £  
the costs of this application in manner following; namely [*here describe the mode  
in which the payment is to be made*].

Dated the day of , 19 .

---

No. 50.

Order for Committal of Judgment Debtor.

[Heading as in Form 48.]

Upon hearing  
and upon reading the affidavit of filed the  
day of , 19 , and

It is ordered that the above-named judgment debtor be, for default in payment  
of the debt hereinafter mentioned, committed to prison for the term of  
from the date of his arrest, including the day of such date,  
or until he shall pay £ being the amount due from him in pursu-  
ance of a judgment [or order] of the Supreme Court bearing date the  
day of , 19 , together with interest thereon  
at £8 per cent. per annum from the aforesaid date, and £ , for costs of this  
order, and sheriff's fees for the execution thereof.

And it is further ordered that the sheriff take the said debtor for the purpose  
aforesaid if he is found within his bailiwick.

And it is ordered that the costs of this application be

Dated the day of , 19



## No. 51.

## Order for Committal of Judgment Debtor on Non-payment of Instalment.

*[Heading as in Form 48.]*

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that the above-named judgment debtor be for default in payment of £\_\_\_\_\_, being the amount of the [*first*] instalment of the judgment debt of £\_\_\_\_\_ in this action directed to be paid pursuant to the order of \_\_\_\_\_ bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, committed to prison for the term of \_\_\_\_\_ from the date of his arrest, including the day of such date, or until he shall pay the said instalment together with £\_\_\_\_\_ the cost of this order and sheriff's fees for the execution thereof. And it is further ordered that the sheriff of \_\_\_\_\_ take the said debtor for the purpose aforesaid if he is found in his bailiwick.

And it is ordered that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

## No. 52.

## Interpleader Order, No. 1.

, 19\_\_\_\_. [*here put the letter and number.*]

In the Supreme Court,  
Western Australia,  
in Chambers.

Between

and  
and between  
and  
Plaintiff,  
Defendant,  
Claimant,  
Respondent.

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and

It is ordered that the claimant be barred. that no action be brought against the above-named [sheriff]  
and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

## No. 52a.

## Interpleader Order, No. 1a.

, 19\_\_\_\_. No.

In the Supreme Court,  
Western Australia,  
in Chambers.

Between

and  
Plaintiff,  
Defendant,  
Claimant.

Upon hearing the solicitors for the plaintiff, the claimant, and the Sheriff of  
, and reading the affidavit of

It is ordered that the sheriff withdraw from possession of the goods seized by  
him under the writ of *feri facias* herein and claimed by the claimant, that no action  
be brought,

And that the pay to the  
the costs of the interpleader to be taxed, and possession money to the sheriff.

Dated the day of , 19 .

No. 53.

Interpleader Order, No. 2.

[Heading as in Form 52A.]

Upon hearing  
and upon reading the affidavit of filed the  
day of , 19 , and

It is ordered that the above-named claimant be substituted as defendant in  
this action in lieu of the present defendant and that the costs of this application  
be

Dated the day of , 19 .

No. 54.

Interpleader Order, No. 3.

, 19 . [Here put the letter and number.]

In the Supreme Court,  
Western Australia,  
in Chambers.  
Between

Plaintiff,

and

Defendant.

and between

and the said execution creditor, and Claimant,  
Respondents. the sheriff of

Upon hearing  
and upon reading the affidavit of filed the  
day of , 19 , and

It is ordered that the said sheriff proceed to sell the goods seized by him under  
the writ of *feri facias* issued herein, and pay the net proceeds of the sale, after  
deducting the expenses thereof, into Court in this cause, to abide further order  
herein.

And it is further ordered that the parties proceed to the trial of an issue in the  
Supreme Court, in which the said claimant shall be the plaintiff and the said  
execution creditor shall be the defendant, and that the question to be tried shall be  
whether at the time of the seizure by the sheriff the goods seized were the property  
of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the  
plaintiff therein within from this date, and be returned by  
the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be  
reserved until the trial of the said issue, and that no action shall be brought against  
the said sheriff for the seizure of the said goods.

Dated the day of , 19 .

[Heading as in Form 52.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

[Heading as in Form 52.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

[Heading as in Form 52.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

No. 58.

Interpleader Order, No. 7.

[Heading as in Form 52.]

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and \_\_\_\_\_

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of *fiery facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent, if any) the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

No. 59.

Order Dismissing Summons (generally).

[Heading as in Form 1.]

Upon hearing  
and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and \_\_\_\_\_

It is ordered that the application of \_\_\_\_\_ to  
be dismissed with costs to be taxed and paid by the \_\_\_\_\_  
the \_\_\_\_\_ (or, and that the costs of and occasioned by this  
application be the \_\_\_\_\_'s in any event).

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

No. 60.

Summons for Receiver, with Injunction.

[Heading as in Form 1.]

Upon reading the affidavit of \_\_\_\_\_

Let the defendant \_\_\_\_\_ attend the Judge  
in Chambers, at the Supreme Court, Perth, on \_\_\_\_\_ day the \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on  
the hearing of an application on the part of the plaintiff for the appointment of  
\_\_\_\_\_ as receiver in this action, on all usual terms, to  
receive the rents, profits, and moneys receivable in respect of the defendant's interest  
in the following property, namely: \_\_\_\_\_, in satisfaction of the sum of  
£ \_\_\_\_\_ due under the judgment in this action dated the \_\_\_\_\_.

And, the plaintiff by his solicitor hereby undertaking to abide by any order the Court or a Judge may make as to damages in case the Court or a Judge should hereafter be of opinion that the defendant shall have sustained any by reason of this order which the plaintiff ought to pay, it is ordered and directed that the said defendant \_\_\_\_\_, his agents and servants, and every of them, be restrained, and an injunction is hereby granted restraining them, and every of them, until after the hearing of the above application, from selling, charging, or otherwise dealing with the said property.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Solicitor for the plaintiff.

To \_\_\_\_\_

## No. 61.

## Receiver Order (Interim).

*[Heading as in Form 1.]*

Upon the application of \_\_\_\_\_ for the plaintiff and the  
 plaintiff by his \_\_\_\_\_ undertaking to be answerable for all sums to  
 be received by the receiver hereinafter named.

It is ordered that \_\_\_\_\_ be appointed without  
 security until the \_\_\_\_\_ day of \_\_\_\_\_ next inclusive or  
 further order to receive the rents and profits of \_\_\_\_\_, but  
 without prejudice to the rights of any prior incumbrancer or his possession (if any)  
 and the tenants of the said estate are (without prejudice as aforesaid) to attorn and  
 pay their rents in arrear and growing rents to the said \_\_\_\_\_ so  
 long as he shall continue to be such receiver, and that all questions as to passing his  
 accounts and payments thereunder and all further questions be reserved until further  
 order.

Defendant to be at liberty to apply in meantime.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

## No. 62.

## Receiver Order.

*[Heading as in Form 1.]*

Upon hearing \_\_\_\_\_ for the plaintiff, and upon reading the  
 affidavit of \_\_\_\_\_

It is ordered that \_\_\_\_\_ be appointed receiver  
 upon first giving security by bond to the satisfaction of the Master of the Supreme  
 Court to receive the rents, profits, and moneys receivable in respect of the following  
 property (that is to say):

But this appointment is to be without prejudice to the rights of any prior  
 incumbrancers upon the said premises, who may think proper to take possession  
 of or receive the same by virtue of their respective securities, or, if any prior in-  
 cumbrancer is in possession, then without prejudice to such possession.

And that the tenants of the said premises do attorn and pay their rents in arrear  
 and growing rents to such receiver. And that such receiver have liberty, if he shall  
 think proper (but not otherwise), out of the rents, profits, and moneys to be received  
 by him, to keep down the interest upon the prior incumbrances, according to their  
 priorities. and be allowed such payments (if any) in passing his accounts, and  
 that such receiver shall on the \* \_\_\_\_\_ day of \_\_\_\_\_ next,  
 and at such further and at other times as may be ordered by the Master, leave and  
 pass such accounts, and shall on the \*\* \_\_\_\_\_ day of \_\_\_\_\_  
 next, and at such further and other times as may be hereafter ordered by the  
 Master pay the balance or balances appearing due on the accounts so  
 left or such part thereof as shall be certified as proper to be so paid;  
 such sums to be paid in or towards satisfaction of what shall for the time being  
 be due in respect of the judgment signed on the \_\_\_\_\_ day of \_\_\_\_\_

for the sum of £ \_\_\_\_\_ debt, and £ \_\_\_\_\_ for costs, making  
 together the sum of £ \_\_\_\_\_; and that the costs of this order and of carrying  
 the same into effect and of obtaining the discharge of the receiver (such costs to  
 be ascertained by the Master) shall be primarily payable out of the sums received  
 by the receiver, but if there shall be no sums received or the amount shall be in-  
 sufficient, then upon the certificate of the Master being given stating the amount of  
 the deficiency (such certificate to be given after passing the final account), the  
 amount of the deficiency so certified shall be paid by the judgment debtor to the  
 judgment creditor.

\* Three  
 months.

\*\* One month  
 after the three  
 months.

It is further ordered that the balance (if any) remaining in the hands of the receiver, after making the several payments aforesaid, shall forthwith be paid by the receiver into Court to the credit of this action, subject to further order.

And any of the parties are to be at liberty to apply to the Judge in Chambers as there may be occasion.

Dated the                      day of                      , 19   .

---

**No. 63.**

**Order for Interim Injunction.**

*[Heading as in Form 1.]*

Upon hearing    for the plaintiff and upon  
reading the affidavit of    filed the  
day of                      , 19   , and the plaintiff by his said  
undertaking to abide by any order the Court or a Judge may make as to damages  
in case the Court or a Judge should hereafter be of opinion that the defendant  
    shall have sustained any by reason of this  
order which the plaintiff ought to pay. It is ordered and directed that the defend-  
ant    his agents and servants                      and  
every of them be restrained, and an injunction is hereby granted restraining them  
and every of them from    until after the trial of this  
action or until further order.

Dated the                      day of                      , 19   .

---

**No. 64.**

**Order for Sale by Private Contract.**

*[Heading as in Form 1.]*

Upon hearing the solicitors for     
It is ordered that the sheriff of    be at liberty  
to sell the goods and chattels seized by him under the writ of *ieri facias* in this  
action by private contract.

Dated the                      day of                      , 19   .

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## APPENDIX L.

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*In Equity.*

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## No. 1.

## Summons by Judge.

, 19 . [*Here put the letter and number.*]In the Supreme Court,  
Western Australia.In the matter of the estate of *A.B.*, late of \_\_\_\_\_ in the  
of \_\_\_\_\_, deceased.  
*Or*Between *C.D.*, Petitioner,  
and  
*E.F.*, Defendant.The defendant *E.F.*, [*or G.H.*, of, &c.] is hereby summoned to attend at my  
Chambers, at the Supreme Court, on \_\_\_\_\_ the \_\_\_\_\_ day  
of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon,  
to be examined [*or to be examined as a witness*] on the part of the \_\_\_\_\_  
\_\_\_\_\_, for the purpose of the proceedings directed by Mr. Justice  
to be taken before him (*or me*).

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

[*Master.*]This summons was taken out by \_\_\_\_\_, of \_\_\_\_\_,  
Solicitors for \_\_\_\_\_.

## No. 2.

## Form of Advertisement for Claimants not being Creditors.

Pursuant to a judgment [*or order*] of the Supreme Court of Western Australia  
made in [the matter of the estate of \_\_\_\_\_  
and in] and action by \_\_\_\_\_  
against \_\_\_\_\_the persons claiming to be the next of kin to [*or the heir of, as the case may be*]  
\_\_\_\_\_, late of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, who died in or about the month of \_\_\_\_\_,  
are by their solicitors, on or before the \_\_\_\_\_ day of \_\_\_\_\_,  
to come in and prove their claims at the Chambers of Mr. Justice \_\_\_\_\_,  
at the Supreme Court in Perth, or in default thereof they will be peremptorily  
excluded from the benefit of the said judgment [*or order*].The \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_  
o'clock in the \_\_\_\_\_ noon, at the said Chambers, is  
appointed for hearing and adjudicating upon the claims.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

[*Master.*]

No. 3.

Form of Advertisement for Creditors.

Pursuant to a judgment [*or an order*] of the Supreme Court of Western Australia made in [the matter of the estate of *A.B.*, and in] an action *S.* against *P.*, the creditors of *A.B.*, late of , in the of , 19 , who died in or about the month of , 19 , are on or before the day of , 19 , to send by post, prepaid, to *E.F.*, of , the solicitor of the defendant *C.D.*, the executor [*or administrator*] of the deceased [*or as may be directed*], their Christian and surnames, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them, or in default thereof, they will be peremptorily excluded from the benefit of the said judgment [*or order*]. Every creditor holding any security is to produce the same before Mr. Justice at his Chambers, the Supreme Court in Perth, on the day of , 19 , at o'clock in the noon, being the time appointed for adjudication on the claims.

Dated this day of , 19 .

No. 4.

Notice to Creditor to produce Documents.

(*Short Title.*)

You are hereby required to produce in support of the claim sent in by you against the estate of *A.B.*, deceased [*describe the document required to be produced*], before Mr. Justice , at his Chambers at the Supreme Court, Perth, on the day of , 19 , at o'clock in the noon.

Dated this day of , 19 .

*G.R.*, of, &c., solicitor for plaintiff [*or defendant, or as the case may be*].

To Mr. *S.T.*

No. 5.

Affidavit of Executor or Administrator as to claims of Creditors.

In the Supreme Court,  
Western Australia.

(*Title.*)

We, *C.D.*, of, &c., the above-named plaintiff [*or defendant, or as may be*], the executor [*or administrator*] of *A.B.*, late of , in the of , deceased, and *E.F.*, of &c., solicitor, severally make oath and say as follows:

1, the said *E.F.*, for myself, say as follows:

1. I have in the paper writing now produced, and shown to me, and marked A., set forth a list of all the claims the particulars of which have been sent in to me by persons claiming to be creditors of the said *A.B.*, deceased, pursuant to the advertisement issued in that behalf, dated the day of , 19 .

And I, the said *C.D.*, for myself, say as follows:

2. I have examined the particulars of the several claims mentioned in the paper writing now produced, and shown to me, and marked A., and I have compared the same with the books, accounts, and documents of the said *A.B.* [*or as may be, and state any other inquiries or investigations made*], in order to ascertain, so far as I am able, to which of such claims the estate of the said *A.B.* is justly liable.



Sworn. &c.

## W.B. &amp;c.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.
				£      s.      d.

No. 7.

Notice of Creditor of Allowance of Claim.

(Short Title.)

The claim sent in by you against the estate of A.B., deceased, has been allowed at the sum of £ , with interest thereon at £ per cent. per annum, from the day of , 19 , and £ for costs.

[If part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of , 19 , next, and to attend by your solicitor at the Chambers of Mr. Justice at the Supreme Court, Perth, on day of , 19 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of , 19 .

G.R., of, &c., solicitor for the plaintiff [or defendant, or as may be].  
To Mr. P.R.

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No. 8.

Notice to Creditor to prove his Claim.

(Short Title.)

You are hereby required to prove the claim sent in by you against the estate of A.B., deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of next, and to attend by your solicitor at the Chambers of Mr. Justice at the Supreme Court, Perth, on the day of , 19 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day , 19 .

G.R., of, &c., solicitor for the plaintiff [or defendant, or as may be].  
To Mr. S.T.

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No. 9.

Notice that Cheques may be Received.

(Short Title.)

The cheques for the amounts directed to be paid to the creditors of A.B., deceased, by an order made in this [matter and] action dated the day of , 19 , may be received at the Supreme Court office on and after the day of , 19 .

G.R., of, &c., solicitor for the plaintiff [or defendant, or as may be].  
To Mr. W.S.

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## No. 10.

## Certificate of Master or Proper Officer.

(Title.)

In pursuance of the directions given to me by Mr. Justice \_\_\_\_\_, I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment [or order] in this cause dated the \_\_\_\_\_ day of \_\_\_\_\_ is as follows:

1. The defendants \_\_\_\_\_ the executors of \_\_\_\_\_ the testator have received personal estate to the amount of £ \_\_\_\_\_ and they have paid or are entitled to be allowed on account thereof, sums to the amount of £ \_\_\_\_\_ having a balance due from [or to] them of £ \_\_\_\_\_ on that account.

The particulars of the above receipts and payments appear in the account marked \_\_\_\_\_ verified by the affidavit of \_\_\_\_\_ filed on the \_\_\_\_\_ day of \_\_\_\_\_ and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums [*state the same here or in a schedule*], and except that I have disallowed the items of disbursements in the said account numbered \_\_\_\_\_, and,

[Or in cases where a transcript has been made.]

The defendants \_\_\_\_\_ have brought in an account verified by the affidavit of \_\_\_\_\_, filed on the \_\_\_\_\_ day of \_\_\_\_\_ and which account is marked \_\_\_\_\_ and is to be filed with this certificate. The account has been altered, and the account marked \_\_\_\_\_ and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed, are set forth in the \_\_\_\_\_ Schedule hereto, and with the interest thereon and costs mentioned in the Schedule are due to the persons therein named, and amount altogether to £ \_\_\_\_\_

3. The funeral expenses of the testator amount to the sum of £ \_\_\_\_\_ which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the \_\_\_\_\_ Schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to £ \_\_\_\_\_

5. The outstanding personal estate of the testator consists of the particulars set forth in the \_\_\_\_\_ Schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the \_\_\_\_\_ Schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, &c. [*in a form similar to that provided with respect to the personal estate*].

8. The incumbrances affecting the said testator's real estate are specified in the \_\_\_\_\_ Schedule hereto.

9. The real estates of the testator directed to be sold have been sold and the purchase moneys amounting altogether to £ \_\_\_\_\_ have been paid into Court.

N.B.—The above numbers are to correspond with the numbers in the order after each statement, the evidence produced is to be stated as follows:—

The evidence produced on this account [or inquiry] consists of the probate of the testator's will, the affidavit of A.B. filed \_\_\_\_\_ and paragraph numbered \_\_\_\_\_ of the affidavit of C.D., filed \_\_\_\_\_

No. 11.

Affidavit verifying Accounts and answering usual Inquiries as to Real and  
Personal Estate.

In the Supreme Court,  
Western Australia.

(Title.)

We, *A.B.*, of, &c., *C.D.*, of, &c., and *E.F.*,  
of, &c., the above-named defendants, severally make oath and say  
as follows:

1. We have, according to the best of our knowledge, information, and belief, set forth in Schedule I. hereto a full account and inventory of the personal estate of or to which *G.H.*, the testator in the judgment [or order] dated made in this action [or matter] named, who died on the day of , was possessed or entitled at the time of his death, *and not by him specifically bequeathed.*

The words in italics to be inserted only where the direction is to take an account of personal estate not specifically bequeathed.

2. Save what is set forth in the said Schedule I. *and what is by the said testator specifically bequeathed*, the said testator was not to the best of our knowledge, information, or belief, at the time of his death possessed of or entitled to any debt or sum of money due to him from us or any of us on any account whatsoever, nor to any leasehold or other personal estate whatsoever.

3. The said testator's funeral expenses have been paid. The same consist of the items of disbursement numbered and in the account hereinafter referred to [or if not paid, it should be so stated with the amount due and to whom due].

This should accord with the order directing the account.

4. We have in the account marked A., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of the personal estate of the said testator, *not by him specifically bequeathed*, which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use or the use of any of us, with the times when the names of the persons from whom, and on what account the same has been received, and also a like account of the disbursements, allowances, and payments made by us or any of us on account of the said testator's funeral expenses, debts, and personal estate, together with the times when the names of the persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

5. And we, each speaking positively for himself and to the best of his knowledge and belief as to other persons, further say that except as appears in the said account marked A., we have not, nor has any of us, nor has nor have any other person or persons by our order or the order of any of us, or for our use or the use of any of us, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof, and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

6. To the best of our knowledge, information, and belief, the personal estate of the said testator, now outstanding or undisposed of, consists of the particulars set forth in Schedule II. hereto.

7. Save what is set forth in the Schedule II., there is not to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding or undisposed of.

8. We have, according to the best of our knowledge, information, and belief, set forth in Schedule III. hereto the particulars of all the real estate which the said *G.H.* was seized of or entitled to at the date of his death.

9. Save what is set forth in the said schedule, the said testator was not to the best of our knowledge, information, or belief, at the time of his death seized of or entitled to any real estate whatsoever.

10. We have, according to the best of our knowledge, information, and belief, set forth in Schedule IV. hereto the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

11. We have in the account marked B., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of all the rents and profits of the said testator's real estate which have come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due, and also a like account of the disbursements, allowances, and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

This should  
accord with the  
order directing  
the account.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that, except as appears in the said account marked B., we have not, nor has any of us, nor has any other person by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof, and that the said account marked B. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

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The FIRST SCHEDULE above referred to.

1. £50 cash in the house.
2. £100 cash at the testator's bankers, the Bank.
3. £1,000 Consolidated £3 per cent. annuities, standing in the testator's name.
4. £10 due from John James, for half-year's rent of house at  
to , 1907.
5. £32 6s. 8d. balance remaining due from John Thomas on account of half-year's rent of farm at , to , 1907.
6. £300, a debt due from Samuel Jones on a bond, with interest from  
, at per cent.
7. A leasehold house situate at , held under a lease for a  
term of , which will expire on , at a rent  
of £ a year, underlet to James Evans for a term which will  
expire on , at a rent of £50 a year.
8. £25, half a year's rent due from the said James Evans to

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The SECOND SCHEDULE above referred to.

[The particulars to be set forth in the same manner as above.]

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The THIRD SCHEDULE above referred to.

[To contain short particulars of the real estate.]

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The FOURTH SCHEDULE above referred to.

[To contain short particulars of the incumbrances, and showing what part of the above real estate is subject to each.]

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No. 12.

Account of Personal Estate, being Account A. referred to in Form No. 11.

A.

In the Supreme Court,  
Western Australia.

(Title.)

This account marked A. was produced and shown to A.B., C.D., and E.F., and is the account referred to in their affidavit sworn this day of

Before me [*to be signed here by Commissioner or officer before whom the affidavit is sworn*].

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what account received.	Amount received.
	19 .			£ s. d.
1			Found in house ...	
2		Evans & Co.	Balance at bankers ...	
3			Half-year's dividend on £2,000 £3 per cent. annuities due	
4		John James ...	Bond debt of £300 and interest from	
5		Samuel Jones ...	to Bond debt of £300 and interest from	
6		James Evans ...	to Half-year's rent of leasehold house due	
7		William Williams ...	Produce of sale of the above leasehold house	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	19 .			£ s. d.
1		James Price ...	Undertaker's bill for funeral	
2		Messrs. A. & B. ...	Expenses of probate ...	
3		John George ...	A debt due to him for medical attendance	
4		James Price ...	Bond debt of £1,000 and £25 for interest thereon from to	

## No. 13.

Account of Rents and Profits, being the Account B. referred to in No. 11.

B.

In the Supreme Court,  
Western Australia.

(Title.)

This account marked B. was produced and shown to *A.B.*, *C.D.*, and *E.F.*, and is the account referred to in their affidavit sworn this day of

Before me [*to be signed here by Commissioner or officer before whom affidavit sworn*].

## RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account and in respect of what Part of the Estate received, and when due.	Amount received.
1	19 .	John James ...	Half year's rent for farm at due	£ s. d.
2		Thomas James ...	One quarter year's rent of house at due	
3		John James ...	Same as No. 1, due	

## DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed.
1	19 .	Sun Insurance Office ...	One year's insurance against fire, due	£ s. d.
2		Thomas Carpenter ...	Repairs at John James' farm	
3		James Francis ...	Income Tax, half year due	

## No. 14.

## Receiver's Account.

[Title.]

(To Accord with the Order.) The [ ] Account of A.B. the receiver appointed in this cause [or pursuant to] an order made in this cause, dated the                      day of                      , to receive the rents and profits of the Real Estate, and to collect and get in the outstanding Personal Estate of C.D., the testator [or, intestate] in this cause, named from the                      day of                      to the                      day of                     

## REAL ESTATE—RECEIPTS.

No. of Item.	Date when received.	Tenant's Name.	Description of Premises.	Annual Rent.			Arrears due at			Amount due at			Amount received.			Arrears remaining due.			Observations.
1		John Jones ...	Farm in ... ..	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
2		Thomas Jones ...	House at                      afore-said                      ... ..																

## PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of Item.	Date of Payment or Allowance.	Names of Persons to whom Paid or Allowed.	For what purpose Paid or Allowed.	Amount.		
1		Sun Fire Office ... ..	One year's insurance of ... ..	£	s.	d.
2		Thomas Carpenter... ..	Bill for repairs at house let to Thomas Jones ... ..			
3		James Francis ... ..	Allowance for a half-year's Income Tax, due ... ..			
			Total payments	£		



RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.

PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received.			No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed.		
				£	s.	d.					£	s.	d.

SUMMARY.

Amount of balance due from receiver on account of real estate on last account	...	...	£	s.	d.	£	s.	d.
Amount of receipts on the above account of real estate	...	...	...	...	...	...	...	...
Balance of last account paid into Court	...	...	£	s.	d.			
Amount of payments and allowances on the above account of real estate	...	...						
Amount of receiver's costs of passing this account as to real estate	...	...						

Balance due from the receiver on account of real estate ... £

Amount of balance due from receiver on last account of personal estate	...	...						
Amount of receipts on the above account of personal estate	...	...	...	...	...	...	...	...
Balance of last account paid into Court	...	...	£	s.	d.			
Amount of payments and allowances on the above account of personal estate	...	...						
Amount of receiver's costs of passing this account as to personal estate	...	...						

Balance due from the receiver on account of personal estate ... £

No. 15.

**\*Ordinary Conditions of Sale.**

### Conditions of Sale.

1. No person is to advance less than £ \_\_\_\_\_ at each bidding.
2. The sale is subject to a reserved bidding for each lot which has been fixed by Mr. Justice \_\_\_\_\_
3. Each purchaser is at the time of sale to subscribe his name and address to his bidding and the abstract of title, and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.
4. Each purchaser is at the time of sale to pay a deposit of £ \_\_\_\_\_ per cent. on the amount of his purchase money to \_\_\_\_\_, the person appointed by the said Judge to receive the same.
5. The Master will after the sale proceed to certify the result, and the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ of the clock noon is appointed as the time at which the purchasers may, if they think fit, attend by their solicitors at the Chambers of the said Judge at the Supreme Court, Perth, to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the purchasers.
6. The vendor is within [ \_\_\_\_\_ ] days after such certificate has become binding to deliver to each purchaser, or his solicitor, an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions. And each purchaser is, within four days after the actual delivery of the abstract to deliver at the office of \_\_\_\_\_, solicitor, at \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract, and upon the expiration of such last-mentioned time,—and in this respect time is to be deemed of the essence of the contract,—the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions, if any.
7. Each purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards, if any, on the lot purchased by him, down to 1s. per stick, inclusive, the amount thereof to be ascertained by a valuation to be made in manner following; that is to say, each party (vendor and purchaser), or their respective solicitors, is within \_\_\_\_\_ days after the Master's certificate has become binding to appoint by writing one valuer, and give notice in writing to the other party of such appointment, and the valuers so appointed are to make such valuation, but before they commence their duty they are to appoint an umpire by writing, and the decision of such valuers if they agree, or of such umpire if they disagree, is to be final; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.
8. Each purchaser is under an order for that purpose to be obtained by him, or in case of his neglect by the vendor at the cost of the purchaser, upon application at the Chambers of the said Judge to pay the amount of his purchase money (after deducting the amount paid as a deposit), together with the amount of the valuation under the seventh condition, if any, into Court to the credit of this cause \_\_\_\_\_, on or before the said \_\_\_\_\_ day of \_\_\_\_\_, and if the same is not so paid, then the purchaser is to pay interest on his purchase money, including the amount of such valuation at the rate of £ \_\_\_\_\_ per cent. per annum from the \_\_\_\_\_ day of \_\_\_\_\_ to the day on which the same is actually paid. Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the \_\_\_\_\_ day of \_\_\_\_\_, to the day on which the same is actually paid. Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession, or to the

To be altered  
if the 4th or 7th  
condition not  
inserted.

This to be in accordance with the order directing the sale.

rents and profits, as from the \_\_\_\_\_ day of \_\_\_\_\_, down to which time all outgoings are to be paid by the vendor.

9. If any error or mis-statement shall appear to have been made in the above particulars, such error or mis-statement is not to annul the sale or entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser, as the case may be, and the amount of such compensation is to be settled by the said Judge at Chambers.

[Add to these such conditions respecting the title and title deeds as the conveying counsel shall advise to be necessary or proper.]

Lastly. If the purchaser shall not pay his purchase money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said Judge upon application at Chambers for the re-sale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency, if any, in the price which may be obtained on such re-sale and of all costs and expenses occasioned by such default.

\*NOTE.—[Attention is directed to the provisions of "The Transfer of Land Act, 1893," and of Table A., Schedule 26, of the said Act.]

#### No. 16.

#### Certificate of Result of Sale.

In the Supreme Court,  
Western Australia.

(Title.)

I, A.B., of &c., auctioneer, the person appointed by Mr. Justice to sell the estate comprised in the particulars hereinafter referred to hereby certify as follows:

1. I did at the time and place in the lots, and subject to the conditions specified in the particulars and conditions of sale hereto annexed and marked with the letter A., put up for sale by auction the estates described in such particulars. The result of such sale is truly set forth in the bidding paper hereto annexed marked with the letter B., now produced and shown to me.

2. I have received the sums set forth in the fourth column of the schedule hereto as deposits from the respective purchasers whose names are set forth in the second column of such schedule opposite the said sums, in respect of their purchase moneys, leaving the sums set forth in the fifth column of the said schedule due in respect thereof.

#### The SCHEDULE above referred to.

No. of Lot.	Name of Purchaser.	Amount of Purchase Money.	Amount of Deposit received.	Amount remaining due.

(Signed) A.B.,  
Auctioneer.

To the best of my belief the above certificate is correct.

(Signed) C.D.,  
The Solicitor for the party having  
the conduct of the above-  
mentioned sale.

**No. 17.**  
**List of Debts allowed.**  
James v. Jones.  
LIST OF DEBTS.

No. of Entry of Claim.	Names of Creditors.	Addressee.	Amounts allowed for Principal, Interest, and Costs.	Total Amounts Due.
2	James Allen ...	, in the	£ s. d. 100 0 0	£ s. d.
		Interest ...	4 0 0	
		Costs ...	2 2 0	
1	Charles Cohen ...	executor of John Thomas...	67 0 0	106 2 0
		Interest from 5th October, 1901, at 25 per cent. ...	4 2 0	
		Costs ...	2 2 0	
5	John Dennis and Owen Thomas		100 0 0	73 4 0
		Interest from 16th October, 1901, at 25 per cent. ...	5 0 0	
		Another debt ...	62 0 0	
		Interest ...	2 10 0	
		Costs ...	2 4 6	
		Total £		171 14 6

**No. 18.**  
**List of Legacies remaining unpaid.**  
James v. Jones.  
LIST OF LEGACIES.

Name of Legatees.	Descriptions.	Amounts of Principal and Interest.	Total Amounts Due.
James Oliver ...	Son of testator, an infant	£ s. d. 100 0 0	£ s. d.
	Interest ...	7 5 6	
Mary Russell ...	Of Interest from 1st January, 1900, the death of testator ...	50 0 0	107 5 6
		4 8 0	
Jane, the wife of John Williams	Of Paid in part ...	250 0 0	54 8 0
		50 0 0	
	Interest ...	200 0 0	
		14 11 0	
	Total £		214 11 0

List of Annuities and Arrears due.

Names of Annuitants.	Description of Annuitants and Nature of Annuitants.	Amounts of Annuities.	Amounts of Arrears due.
Mary Jones ... ..	Spinster, daughter of testator during her life ... ..	£ s. d. 50 0 0	£ s. d. 25 0 0
Maria Williams ...	Widow of testator, during her life and widowhood ... ..	200 0 0	
	Arrears due from 7th August, 1902, down to which it has been paid ... ..	...	300 0 0
	Totals ... .. £		£

**List of Apportionments among Creditors or Legatees.**

Names of Creditors (or Legatees).	Addresses.	Amounts before certified to be due and subse- quent Interest.	Totals due.	Amounts apportioned.
John Jones ... ..	20 Hay Street, Perth, woollen draper	£ s. d. 200 0 0	£ s. d.	£ s. d.
	Subsequent interest ..	17 10 0	217 10 0	57 4 8
Thomas Young and Robert Young	... ..	200 0 0		
	Subsequent interest ...	17 10 0	217 10 0	57 4 8
			Total ... £	

### Receiver's Recognizance.

No. 21.

Receiver's Recognizance.

*A.B.*, of \_\_\_\_\_, *C.D.*, of \_\_\_\_\_, and  
*E.F.*, of \_\_\_\_\_,

Before our Sovereign Lord the King in his Supreme Court personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to our Sovereign Lord the sum of \_\_\_\_\_, to be paid to our said Sovereign Lord or his successors, and unless they do pay the same, they, the said \_\_\_\_\_ do grant, and each of them doth grant for himself, his heirs, executors, and administrators, that the said sum of \_\_\_\_\_ shall be levied, recovered, and received, of and from them, and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods and chattels, of them and each of them wheresoever the same shall or may be found. Witness our said Sovereign Lord Edward the Seventh, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, and so forth, at the Supreme Court of Justice, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Mr. Justice \_\_\_\_\_, has approved of and allowed this recognizance.

Master.

v.

Whereas, by an order of the Supreme Court made in a cause wherein  
are plaintiffs and  
defendants, dated the  
day of

It was ordered that a proper person should be appointed to receive [or that  
upon the above bounden first giving security he should be appointed  
receiver of] the rents and profits of the real estate, and to collect and get in the  
outstanding personal estate of in the said order named.  
And whereas Mr. Justice hath [approved  
of the said as a proper person to be such  
receiver, and hath] approved of the above bounden  
and as sureties for the said  
and hath also approved of the above-written recognizance with the under-written  
condition as a proper security to be entered into by the said  
and pursuant to the said  
order and the general orders of the said Court in that behalf, and in testimony of  
such approbation the Master hath signed an allowance in the margin hereof.

Now the condition of the above written recognizance is such that if the said  
do and shall duly account for all and every the sum  
and sums of money which he shall so receive on account of the rents and profits of  
the real estate, and in respect of the personal estate of the said  
, at such periods as a Judge of the said Court shall appoint,  
and do and shall duly pay the balances which shall from time to time be certified to  
be due from him as the said Court or Judge hath directed or shall hereafter direct,  
then the above recognizance shall be void and of none effect, otherwise the same is  
to be and remain in full force and virtue.

Taken and acknowledged by the above-named. &c.

No. 22.

Affidavit verifying Receiver's Report.

In the Supreme Court.  
Western Australia.

(Title.)

I, of , the  
receiver appointed in this cause, make oath and say as follows:

This is to  
accord with  
the order ap-  
pointing the  
receiver.

The day to  
which the  
account is made  
up.

1. The account marked with the letter A. produced and shown to me at the  
time of swearing this my affidavit, and purporting to be my account of the rents  
and profits of the real estate and of the outstanding personal estate of  
, the testator [or intestate] in this cause, from the  
day of , 19 , to the day of , 19 ,  
both inclusive, contains a true account of all and every sum of money received by  
me or by any other person or persons by my order or, to my knowledge or belief,  
for my use on account, or in respect of the said rents and profits accrued due on or  
before the said day of on an account or in  
respect of the said personal estate, except what is included as received in my former  
account [or accounts] sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to  
have been paid and allowed, have been actually and truly so paid and allowed for  
the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars  
therein contained, according to the best of my knowledge and belief.

4. W.X. and Y.Z. , the sureties named in the recogni-  
zance dated the day of , 19 , are both  
alive, and neither of them has become bankrupt or insolvent.

Sworn, etc.,

## No. 23.

## Affidavit verifying Abstract.

In the Supreme Court,  
Western Australia.

(Title.)

I, *A.B.*, of, &c.  
solicitor for  
in this cause [*or matter*], make oath and say as follows:

I have carefully examined and compared the abstract written on sheets of paper, now produced and shown to me at the time of swearing this affidavit, and marked with the letter *A.*, with the several deeds and documents thereby purporting to be abstracted. Such abstract is a true and correct abstract of the said deeds and documents, so far as such deeds and documents relate to the hereditaments referred to in an order made in this action [*or matter*] dated the day of

Sworn, etc.,

## No. 24.

## Affidavit verifying Engrossments of Deeds.

In the Supreme Court,  
Western Australia.

(Title.)

I, *A.B.*, of, &c., , make oath and say as follows:

1. I have carefully examined and compared the parchment or paper writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter *A.*, with the draft or paper writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter *B.*, being the draft of the conveyance [*or settlement, &c.*] settled at the Chambers of Mr. Justice , pursuant to the order made in this cause [*or matter*] dated

2. The said parchment or paper writing is a true and correct transcript and engrossment of the said draft.

Sworn, etc.,

## No. 25.

## Originating Summons.

In the Supreme Court,  
Western Australia.

In the matter of the estate of *A.B.*, deceased.

Between *C.D.*, plaintiff,  
and  
*E.F.*, defendant.

Let *E.F.*, the executor of the said *A.B.*, attend at the Chambers of Mr. Justice at the Supreme Court in Perth at the time specified in the margin [*or at the foot*] hereof, upon the application of *C.D.*, of , Esq., who claims to be a creditor [*or, as the case may be*] upon the estate of the above-named *A.B.*, for an order for the administration of the personal [*or real and personal*] estate of the said *A.B.*

The day of , 19 .

(Seal.)

This summons was taken out by \_\_\_\_\_, of  
solicitors for the above-named C.D.

*The following note to be added to the original summons, and when the time is altered by indorsement the indorsement to be referred to as below:—*

NOTE.—If you do not attend either in person or by your solicitor at the time and place above-mentioned [*or at the place above-mentioned at the time mentioned in the indorsement hereon*], such order will be made and proceedings taken as the Judge may think just and expedient.

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**No. 26.**

**Request to set down Cause for further consideration.**

In the Supreme Court,  
Western Australia.

*A. v. B.*

I request that this cause, the further consideration whereof was adjourned by order of the \_\_\_\_\_ day of \_\_\_\_\_, may be set down for further consideration before Mr. Justice

*C.D.*,  
Plaintiff's [*or defendant's*] solicitor.

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**No. 27.**

**Notice that Clause has been set down for further consideration.**

In the Supreme Court,  
Western Australia.

*A. v. B.*

Take notice that this cause, the further consideration whereof was adjourned by the order of the \_\_\_\_\_ day of \_\_\_\_\_, was on the \_\_\_\_\_ day of \_\_\_\_\_ set down for further consideration before Mr. Justice \_\_\_\_\_ for the day of \_\_\_\_\_

Dated, &c.

*C.D.*,  
Solicitor for

To Mr.  
Solicitor for

---

**No. 28.**

**Form of Ordering Accounts and Inquiries.**

This Court doth order that the following accounts and inquiry be taken and made; that is to say,

1. An account of the personal estate not specifically bequeathed of *A.B.*, deceased, the testator in the pleadings named, come to the hands of, &c.
2. An account of the testator's debts.
3. An account of the testator's funeral expenses.
4. An account of the testator's legacies and annuities (if any), given by the testator's will.
5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.



And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what real estate the testator was seized of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by, &c.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(If Sale ordered.)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry, what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's real estate be sold with the approbation of the Judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

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#### No. 29.

##### Form of Consent to act as a Trustee.

I, A.B., of \_\_\_\_\_ hereby consent to act as  
a trustee of the (describe the instrument)

(Signed) A.B.

I, C.D., of \_\_\_\_\_ solicitor,  
hereby certify that the above-written signature is the signature of A.B., the person  
mentioned in the above-written consent.

(Signed) C.D.

Solicitor for the said A.B.

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## APPENDIX M.

*Payment into and out of Court.*

1. Any party who intends to pay money into Court will on request at the Supreme Court Office be furnished with a form of request which must be filled up as hereinafter provided, and signed by such party or his solicitor. The money will then be received by the Master, and an official receipt for the money will be given. Where the money is paid in upon a notice or pleading, such notice or pleading must be produced at the Supreme Court Office at the time the money is paid in, and the receipt will be given on the margin thereof.

2. Money paid into Court shall be paid by the Master to the Colonial Treasurer or to such Bank as the Court may approve.

3. In filling up the request mentioned in the first preceding regulation, the party paying the money into Court shall enter thereon the letter, number, and short title of the action, and the name of the party by whom the payment is made, and also such one of the following statements as may be applicable to the circumstances under which the money is paid in, viz. :—

(a.) Where the money is paid in, under the provisions of Rule 5 of Order XXII., an entry in the following form:—

A. Paid in in satisfaction of claim of above-named (name of party).

(b.) Where the money is paid in under the provisions of Rule 6 of Order XXII., an entry in the following form:—

B. Paid in against claim of above-named (name of party), with defence, denying liability.

(c.) Where the money is paid in under the provisions of Rule 25 of Order XXX., an entry in the following form:—

C. Paid into "Security for Costs Account."

(d.) Where the money is paid in under an order or certificate, an entry in the following form:—

D. Paid in under order (or certificate) dated the  
day of

Upon the money being paid in, an entry corresponding with the entry in the request shall be made in the books of the Supreme Court, and in the receipt given by the Master for the money, whether such receipt be indorsed on a notice or pleading, or be a separate document.

4. Where a defendant has paid money into Court under an order, and desires to appropriate the whole or any part of such money to the whole or any specified portion of the plaintiff's claim, pursuant to Rule 11 of Order XXII., he or his solicitor shall lodge with the Master the original receipted order and a notice, entitled with the letter, number, and short title of the action, and in such one of the following forms as may be applicable to the case, viz. :

A. Take notice that £ of the money in Court herein, is appropriated by the above-named (name of party) to the satisfaction or claim of the above-named (name of party).

B. Take notice that £ of the money in Court herein, is placed by the above-named (name of party) against the claim of the above-named (name of party) with a defence, denying liability.

Upon such notice being lodged at the Supreme Court Office, an entry corresponding thereto shall be made in the books of the Court, and the money mentioned in the notice shall thereupon, for the purpose of payment out, be subject, in all respects, to regulations 5 and 6. A record of such appropriation shall be made by the Master on the original receipted order, and the Master will give a receipt in the usual form for the money so appropriated.

5. Where, upon the payment of money into Court, the request contains a statement in the Form A. of regulations 3 and 4, the money will not be paid out except on production to the Master of an order or fiat of the Court or a Judge.

6. Where, upon the payment of the money into Court, the request contains a statement in the Form B. of regulations 3 and 4, the following regulations shall apply:—

(a.) If the plaintiff accepts the money paid in in satisfaction, he or his solicitor shall lodge with the Master a notice, entitled with the letter, number, and short title of the action, and in the following form:—

“Take notice that the sum paid in herein has been accepted by  
“the above-named [name of party] in satisfaction, and that  
“I have given due notice of my acceptance thereof.”

Such notice shall be sufficient evidence to the Master, of compliance by the plaintiff with all the conditions entitling him under Order XXII. to have the sum in question paid out to him, and such notice being lodged, the money will, on request, be paid out to the party mentioned in such notice, or on his written authority to his solicitor.

(b.) Unless such a notice as is above-mentioned is lodged with the Master, the money will not be paid out except on production to the Master of an order of the Court or a Judge.

7. Where, upon the payment of the money into Court, the request contains a statement in the Form C. of regulations 3 and 4, if, after the cause or matter has been finally disposed of, the party who paid the money in is entitled, under Order XXX., Rule 26, to have the money paid out to him, the taxing officer shall, on the taxation of the costs, give to such party a certificate that he is so entitled; and upon production of such certificate to the Master, unless an order restraining the payment out of Court has previously been lodged with the Master, the money mentioned in the certificate will, on request, be paid out to the party mentioned in the certificate as entitled thereto, or on his written authority to his solicitor. Except as above provided, where, upon the payment of the money into Court, the request contains a statement in either of the Forms C. or D. the money will not be paid out except on production to the Master of an order of the Court or a Judge.

8. On bespeaking payment out of Court of money paid in on a notice or pleading, the original receipted notice or pleading must be lodged at the Bank.

9. Where money is to be paid out under an order or authority, on bespeaking the payment out the order or authority must be lodged at the Supreme Court, and after having been examined by the Master must be filed in the Supreme Court.

10. Every authority for the payment of money out of Court must be attested by a witness, whose residence and description must be added to his attestation.

11. Each sum paid into Court shall, as regards its payment out of Court, be deemed (when the time for payment out arrives) to be money standing to the credit of the Supreme Court.

12. All payments out shall be authorised by cheques upon the Bank or Colonial Treasurer filled in by the Master, and drawn in favour of the party claiming to receive the money. One clear day shall be allowed for the preparation of the cheque and it shall be signed by the Master, and made payable to order, crossed specially or generally, and marked “not negotiable.”

13. Whenever the cheque is required to be drawn in favour of any person, not a solicitor of the Supreme Court, the Master may require him to be identified by a solicitor. If such person shall be represented in the cause or matter by a solicitor, the identifying solicitor must be such solicitor.

14. Where an order directs that money paid into Court is to be invested, the Master shall, in the case of an investment, invest such money in the securities mentioned in the Order, and the said direction shall specify the title of the cause or matter to the credit of which the securities purchased is to be placed in the books of the Court.

15. The Master, on receipt of a direction to invest, shall cause the securities mentioned therein to be purchased in his name, or of the other persons mentioned in the direction, and shall receive and retain the certificate issued by the body corporate or company, in whose books the securities purchased are registered, and all other evidences of the said securities, and the said certificate shall be sufficient evidence for all purposes that the purchase of such securities has been actually made; and the securities so purchased shall be placed in the books of the Court to the same credit as that to which the money was paid in, unless the order of the Court or a Judge otherwise directs.

16. The dividends and interest on the securities purchased shall, as and when the same respectively are received, or become due, be placed in the books to the same credit as that to which the money was originally paid in.

17. When securities are to be sold, the Master shall receive the proceeds of the sale, and place the same to the credit of such cause or matter, and shall, upon receipt of the necessary direction, cause the necessary sale to be carried out and the proceeds of such sale to be placed to the credit of the cause or matter mentioned in the direction.

18. The books kept by the Court relating to payments of money into and out of Court shall be open at all times for inspection by any person upon the written authority of a Master.

19. In any case in which an affidavit is required, an office copy must be produced to the Master. All forms to be used under these regulations shall be framed by the Master.

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## APPENDIX N.

*Costs.*

WRITS, SUMMONSES, AND WARRANTS.		Scale.		
		£	s.	d.
Writ of summons for the commencement of any action .. .. .		0	6	8
And for indorsement of claim, if special .. .. .		0	5	0
Concurrent writ of summons .. .. .		0	6	8
Renewal of a writ of summons .. .. .		0	6	8
Notice of a writ for service in lieu of writ out of jurisdiction .. .. .		0	4	0
Writ of inquiry .. .. .		1	1	0
Writ of mandamus .. .. .		0	10	0
Or per folio .. .. .		0	1	4
Writ of <i>subpoena ad testificandum</i> or <i>duces tecum</i> .. .. .		0	6	8
And if more than four folios, for each folio beyond four .. .. .		0	1	4
Writ or Writs of <i>subpoena ad testificandum</i> for any number of persons not exceeding three, and the same for every additional number not exceeding three .. .. .		0	6	8
Writ of <i>distringas</i> , pursuant to Statute 5 Vict., c. 5 .. .. .		0	13	4
Writ of execution, or other writ to enforce any judgment or order .. .. .		0	7	0
And if more than four folios, for each folio beyond four .. .. .		0	1	4
Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal .. .. .		0	6	8
Notice thereof to serve on sheriff .. .. .		0	4	0
Any writ not included in the above .. .. .		0	7	0
These fees include all indorsements and copies, or <i>praecipies</i> , for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the Court fees.				
Summonses to attend at Judges' Chambers .. .. .		0	3	0
Or if special, at taxing officer's discretion, not exceeding .. .. .		0	13	4
Copy for the Judge, when required .. .. .		0	2	0
Or per folio .. .. .		0	0	4
Originating summonses for proceedings in chambers in the Chancery Division at taxing officer's discretion, not exceeding .. .. .		1	1	0
And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped .. .. .		0	13	4
Copy for the Judge .. .. .		0	2	0
Or per folio .. .. .		0	0	4
Indorsing same and copies under Order LII., Rule 24 .. .. .		0	6	8

## SERVICES AND NOTICES.

Service, or filing in lieu of service, of any writ, summons, warrants, interrogatories, petition, order, or notice on a party who has not entered an appearance, and if not authorised to be served by post .. .. .	0	5	0
If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom .. .. .	0	1	0
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the Perth agent), for correspondence in addition .. .. .	0	7	0

Scale.  
£ s. d.

Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.			
For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit.			
Service where an appearance has been entered on the solicitor or party ..	0	2	6
Or if authorised to be served by post .. .. .	0	1	6
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.			
In addition to the above fees, the following allowances are to be made:—			
As to writs, if exceeding two folios, for copy for service, per folio beyond such two .. .. .	0	0	4
As to summonses to attend at the Judge's Chambers, for each copy to serve ..	0	1	0
Or per folio .. .. .	0	0	4
As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories .. .. .	0	1	0
And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call ..	0	1	0
And for drawing notice to be served on contributories or creditors of a meeting, per folio .. .. .	0	1	0
For each copy of the last-mentioned notice to serve, per folio .. ..	0	0	4
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any .. .. .	0	1	0
For preparing notice to produce on the trial or hearing of an action, or notice to admit .. .. .	0	5	0
If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio .. .. .	0	0	8
And for each copy, such allowance as the taxing officer shall think proper, not exceeding per folio .. .. .	0	0	4
For preparing notice of motion .. .. .	0	3	0
Or per folio .. .. .	0	1	0
Copy for service .. .. .	0	1	0
Or per folio .. .. .	0	0	4
For preparing any necessary or proper notice, not otherwise provided for, or any demand, pursuant to Order VII., Rules 1 and 2 ..	0	1	6
Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three .. .. .	0	1	0
And for each copy for service, per folio beyond such three .. ..	0	0	4
Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio .. .. .	0	0	4
Except as otherwise provided, the allowances for services include copies for service.			
Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.			
In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than 3 <i>l</i> .			
Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.			

#### APPEARANCES.

Entering any appearance .. .. .	0	6	8
If entered at one time, for more than one person, for every defendant beyond the first .. .. .	0	1	0

Scale.  
£ s. d.

If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above 0 6 8

## INSTRUCTIONS.

To sue or defend .. .. .	0 6 8
For statement of claim or special case .. .. .	0 13 4
For indorsement of writ of summons when no further statement of claim	0 13 4
For originating summons 6s. 8d., or not to exceed .. .. .	1 1 0
For defence or further defence .. .. .	0 6 8
For counter claim .. .. .	0 6 8
For reply when defendant sets up a counterclaim .. .. .	0 13 4
For reply or further reply in any other case with or without joinder of issue .. .. .	0 6 8
For confession of defence .. .. .	0 6 8
For joinder of issue without other matter .. .. .	0 6 8
For special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness .. .. .	0 6 8
To amend any pleading .. .. .	0 6 8
For affidavit in answer to interrogatories, and other special affidavits ..	0 6 8
To appeal against order of Court or Judge, and to appear thereon ..	0 13 4
To add parties by order of Court or Judge .. .. .	0 6 8
For counsel to advise on evidence when the evidence in chief is to be taken orally .. .. .	0 6 8
Or not to exceed .. .. .	1 1 0
For counsel to make any application to a Court or Judge where no other brief .. .. .	0 6 8
For brief on motion for special injunction .. .. .	0 13 4
For brief on hearing or trial of action upon notice of trial or notice for judgment given, whether such trial be before a Judge, with or without a jury, or before an official or special referee, or on trial of an issue of fact, before a judge, commissioner, or referee, or on assessment of damages .. .. .	1 1 0
For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.	
The fees for instructions for brief are to apply to a hearing on further consideration in Court only where an order for accounts and inquiries was made without such hearing or trial, as above mentioned.	

## DRAWING PLEADINGS AND OTHER DOCUMENTS.

Statement of claim .. .. .	0 10 0
Or per folio .. .. .	0 1 0
Defence .. .. .	0 5 0
Or per folio .. .. .	0 1 0
Counter claim .. .. .	0 5 0
Or per folio .. .. .	0 1 0
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and any other pleading (not being a petition or summons) and amendments of any pleading .. .. .	0 5 0
Or per folio .. .. .	0 1 0
Particulars, breaches, and objections, when required, and one copy to deliver .. .. .	0 5 0
Or such amount as the taxing officer shall think fit, not exceeding per folio .. .. .	0 0 8
If more than one copy to be delivered, for each other copy, per folio	0 0 4

	Scale. £ s. d.		
Special case, whether original or in an action, affidavits in answer to interrogatories and other special affidavits, special petitions, and interrogatories, per folio .. .. .	0	1	0
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, special case and petition before a Court or judge, sheriff, commissioner, referee, examiner, or officer of the Court, when necessary and proper in addition to pleadings, including necessary and proper observations, per folio .. .. .	0	1	0
Brief on application to add parties .. .. .	0	6	8
Or per folio .. .. .	0	1	0
Brief on further consideration, per sheet of 10 folios .. .. .	0	6	8
Accounts, statements, and other documents for the Judges' Chambers, when required, not exceeding per folio .. .. .	0	0	8
Advertisements to be signed by judge's clerk, including attendance therefor .. .. .	0	6	8
Bills of costs for taxation, including copy for the taxing officer .. .. .	0	0	8

## COPIES.

Of pleadings, briefs, and other documents where no other provision is made, at per folio .. .. .	0	0	4
Where pursuant to Rules of Court any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the Court), at per folio .. .. .	0	0	4
And for examining the proof print, at per folio .. .. .	0	0	2
And for printing the amount actually and properly paid to the printer, not exceeding per folio .. .. .	0	1	0
And in addition for every 20 beyond the first 20 copies, at per folio .. .. .	0	0	1
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.			
These allowances are to include all attendances on the printer.			
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.			
In addition to the allowances for printing and taking printed copies there shall be allowed for such printed copies as may be necessary or proper for the following, but for no other purposes ( <i>videlicet</i> ):			
Of any pleading for delivery to the opposite party, or filing in default of appearance .. .. .			
Of any special case for filing .. .. .			
Of any petition of right for presentation, if presented in print, and for the Crown Solicitor, and service on any party .. .. .			
Of any pleading, special case, or petition of right, for the use of the Court or Judge .. .. .			
Of any affidavit to be sworn to in print .. .. .			
And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio .. .. .	0	0	2

Such additional allowances for printed copies for the Court or judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause.



Scale.  
£ s. d.

Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.

Inserting amendments in a printed copy of any pleading, special case, of petition of right, when not reprinted .. .. .	0	1	0
Or per folio .. .. .	0	0	4

## PERUSALS.

Of statement of claim, defence, reply, joinder of issue, and other pleading (not being a petition in a pending cause or matter, or summons other than an originating summons), by the solicitor of the party to whom the same are delivered .. .. .	0	6	8
Or per folio .. .. .	0	0	4
Of amendment of any such pleading in writing .. .. .	0	6	8
Or per folio .. .. .	0	0	4
If same reprinted .. .. .	0	6	8
Or per folio of amendment .. .. .	0	0	4
Of interrogatories to be answered by a party by his solicitor .. .. .	0	6	8
Or per folio .. .. .	0	0	4
Of special case by the solicitor of any party except the one by whom it is prepared .. .. .	0	6	8
Or per folio .. .. .	0	0	4
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order XVI., Rule 49, and of defendant's defence and counter claim served on a person not a party under Order XXI., Rule 13, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed unless the solicitor has been previously allowed such perusal .. .. .	0	6	8
Or per folio .. .. .	0	0	4
Of notice to produce on trial or hearing of action, and notice to admit by the solicitor of the party served .. .. .	0	6	8
Or (if to admit facts) under Order XXXII., Rule 4, per folio .. .. .	0	1	0
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio .. .. .	0	0	4

## ATTENDANCES.

To obtain consent of next friend to sue in his name or of a guardian <i>ad litem</i> .. .. .	0	6	8
To deliver, or file in lieu of delivery, any pleading (not being a petition or summons) and a special case .. .. .	0	3	4
To inspect, or produce for inspection, documents pursuant to a notice to admit .. .. .	0	6	8
Or per hour .. .. .	0	6	8
To examine and sign admissions .. .. .	0	6	8
To inspect or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit, pursuant to notice under Order XXX., Rule 14 .. .. .	0	6	8
Or per hour .. .. .	0	6	8
To obtain or give any necessary or proper consent .. .. .	0	6	8
To obtain an appointment to examine witnesses .. .. .	0	6	8
On examination of witnesses before any examiner, commissioner, officer, or other person .. .. .	0	13	4
Or according to circumstances not to exceed .. .. .	2	2	0
Or if without counsel, not to exceed .. .. .	3	3	0

	Scale.		
	£	s.	d.
On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit ..	0	6	8
On a summons at Judges' Chambers .. .. .	0	6	8
Or according to circumstances, not to exceed .. .. .	1	1	0
In Equity, all allowances for attending at the Judges' Chambers are to be by the judge as heretofore.			
To file chief clerk's and taxing masters' certificates, and get copy marked as an office copy .. .. .	0	6	8
On counsel with brief or other papers—			
If counsel's fee one guinea .. .. .	0	3	4
If more and under five guineas .. .. .	0	6	8
If five guineas and under 20 guineas .. .. .	0	6	8
If 20 guineas .. .. .	0	13	4
If 40 guineas or more .. .. .	1	1	0
On consultation or conference with counsel .. .. .	0	13	4
To enter or set down action, special case, or appeal, for hearing or trial .. .. .	0	6	8
In Court on motion of course and on counsel and for order .. .. .	0	10	0
To present petition for order of course and for order .. .. .	0	10	0
In Court on every special motion, each day .. .. .	0	6	8
On same when heard each day .. .. .	0	13	4
Or according to circumstances, not to exceed .. .. .	2	2	0
On special case, or special petition, or application adjourned from the Judges' Chambers, when in the special paper for the day, or likely to be heard .. .. .	0	6	8
On same when heard .. .. .	0	13	4
Or according to circumstances, not to exceed .. .. .	2	2	0
On hearing or trial of any cause, or matter, or issue of fact, in Perth, or the town where the solicitor resides or carries on business, whether before a judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper .. .. .	0	10	0
When heard or tried .. .. .	0	13	4
Or according to circumstances, not to exceed .. .. .	3	3	0
When not in Perth, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent .. .. .	3	3	0
And expenses (besides actual reasonable travelling expenses), each day, including Sundays .. .. .	1	1	0
Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case .. .. .	1	1	0
The expenses in such case to be rateably divided.			
To hear judgment when same adjourned .. .. .	0	6	8
Or according to circumstances .. .. .	0	13	4
To deliver papers (when required) for the use of a judge prior to a hearing .. .. .	0	6	8
If more than one judge .. .. .	0	13	4
On taxation of a bill of costs .. .. .	0	6	8
Or according to circumstances, not to exceed .. .. .	2	2	0
Unless the same shall necessarily occupy so much time that the taxing officer shall consider such amount inadequate, in which case he may allow such further fee as he shall think proper.			
In actions and matters for purposes within the cognizance of the Supreme Court in Equity before the Principal Act came into operation, such further fee as the taxing officer may think fit, not exceeding the allowances heretofore made.			
To obtain or give an undertaking to appear .. .. .	0	6	8
To present a special petition, and for same answered .. .. .	0	6	8
On printer to insert advertisement in <i>Government Gazette</i> .. .. .	0	6	8
On printer to insert same in other papers, each printer .. .. .	0	5	0
Or every two .. .. .	0	6	8

	Scale.		
	£	s.	d.
On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing .. .. .	0	6	8
For an order drawn up by clerk or master, and to get same entered ..	0	6	8
On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same .. .. .	0	6	8
To mark conveyancing counsel or taxing master .. .. .	0	6	8
For preparing and drawing up an order made at chambers in proceedings to wind-up a company and attending for same, and to get same entered .. .. .	0	13	4
And for engrossing every such order, per folio .. .. .	0	0	4
NOTE.—An order of course means an order made on an <i>ex parte</i> application, and to which a party is entitled as of right on his own statement and at his own risk.			
To examine an abstract of title with deeds, per hour, in a cause or matter	0	10	0
To produce deeds for such purpose, per hour .. .. .	0	6	8

## OATHS AND EXHIBITS.

Commissioners to take oaths or affidavits. For every oath, declaration, affirmation, or attestation upon honour in Perth or the country ..	0	1	6
The solicitor for preparing each exhibit in town or country ..	0	1	0
The commissioner for marking each exhibit .. .. .	0	1	0

## TERM FEES.

There shall be allowed for the whole time occupied by a cause or matter, after appearance entered, shall take place .. .. .	0	15	0
And further, in country agency causes or matters, for letters .. ..	0	6	0
Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.			
In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents.			

S. H. PARKER,  
Chief Justice.

R. F. McMILLAN,  
Puisne Judge.

R. B. BURNSIDE,  
Puisne Judge.

JOHN ROOTH,  
Puisne Judge.

The Supreme Court,  
21st April, 1909.



# The Supreme Court of Western Australia

(DIVORCE AND MATRIMONIAL CAUSES).

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## R U L E S

*Made under the Provisions of 44 Victoria, No. 10, ss. 5 and 24.*

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All rules and regulations heretofore made and issued for His Majesty's Supreme Court of Western Australia, sitting in exercise of its jurisdiction in Divorce and Matrimonial Causes in the State of Western Australia, shall be revoked on and after the 1st day of May, 1909, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following rules shall take effect in the said Court on and after the 1st day of May, 1909.

### PETITION.

1. Proceedings in Divorce and Matrimonial Causes shall be commenced by filing a petition. A form of petition is given in the Appendix, No. 1.

2. Every petition shall be accompanied by an affidavit made by the petitioner, verifying the facts of which he or she has personal cognizance, and deposing as to belief in the truth of the other facts alleged in the petition; and such affidavit shall be filed with the petition.

3. In cases where the petitioner is seeking restitution of conjugal rights, the affidavit filed with the petition, as required by Rule 2, shall further state sufficient facts to satisfy the registrar that a written demand for cohabitation and restitution of conjugal rights has been made by the petitioner upon the party cited, and that after a reasonable opportunity for compliance therewith such cohabitation and restitution of conjugal rights have been withheld.

4. At any time after the commencement of proceedings for restitution of conjugal rights the respondent may apply by summons to a Judge, or in his absence to the Registrar, for an order to stay the proceedings in the cause by reason that he or she is willing to resume or return to cohabitation with the petitioner.

5. In cases where the petitioner is seeking a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the petitioner's affidavit, filed with his or her petition, shall further state that no collusion or connivance exists between the petitioner and the other party to the marriage or alleged marriage.

#### CO-RESPONDENTS.

6. Upon a husband filing a petition for dissolution of marriage on the ground of adultery, the alleged adulterers shall be made co-respondents in the cause, unless a Judge shall otherwise direct.

7. Application for such direction is to be made to a Judge, on summons founded on affidavit.

8. If the names of the alleged adulterers or either of them should be unknown to the petitioner at the time of filing his petition, the same must be supplied as soon as known, and application must be made forthwith to the Registrar to amend the petition by inserting such name therein; and the Registrar shall give his directions as to such amendment, and such further directions as he may think fit as to the service of the amended petition.

9. The term "respondent," where the same is hereinafter used, shall include all co-respondents so far as the same is applicable to them.

#### CITATION.

10. Every petitioner who files a petition and affidavit shall forthwith extract a citation, under seal of the Court, for service on each respondent in the cause. A form of citation is given in the Appendix, No. 2.

11. Every citation shall be written or printed on parchment or paper; and the party extracting the same, or his or her proctor, solicitor, or attorney, shall take it, together with a præcipe, to the central office, and there deposit the præcipe, and get the citation signed and sealed. A form of præcipe is given in the Appendix, No. 3. The address given in the præcipe must be within one mile of the General Post Office at Perth.

#### SERVICE.

12. Citations are to be served personally, when that can be done.

13. Service of a citation shall be effected by personally delivering a true copy of the citation to the party cited, and producing the original if required.

14. To every person served with a citation shall be delivered, together with the copy of the citation, a certified copy of the petition under seal of the Court.

15. In cases where personal service cannot be effected, application may be made by summons to a Judge, or in his absence to the Registrar, to substitute some other mode of service.

16. After service has been effected, the citation, with a certificate of service indorsed thereon, shall be forthwith returned into and filed in the Central Office. The form of certificate of service is given in the Appendix, No. 4.

17. When it is ordered that a citation shall be advertised, the newspapers containing the advertisements are to be filed in the Central Office with the citation.

18. The above rules, so far as they relate to the service of citations, are to apply to the service of all other instruments requiring personal service.

19. Before a petitioner can proceed, after having extracted a citation, an appearance must have been entered by or on behalf of the respondents, or it must be shown by affidavit, filed in the Central Office, that they have been duly cited, and have not appeared.

20. An affidavit of service of a citation must be substantially in the form given in the Appendix, No. 5; and the citation referred to in the affidavit must be annexed to such affidavit, and marked by the person before whom the same is sworn.

#### APPEARANCE.

21. All appearances to citations are to be entered in the Central Office in a book provided for that purpose. The form of entry of appearance is given in the Appendix, No. 6.

22. An appearance may be entered at any time before a proceeding has been taken in default, or afterwards as hereinafter directed, or by leave of a Judge, or, in his absence, of the Registrar, to be applied for by summons founded on affidavit.

23. Every entry of an appearance shall be accompanied by an address within one mile of the General Post Office at Perth.

#### ACT ON PETITION.

24. If a party cited wishes to raise any question as to the jurisdiction of the Court, he or she must enter an appearance under protest, and within eight days file in the Central Office his or her

act on petition in extension of such protest, and on the same day deliver a copy thereof to the petitioner. After the entry of an absolute appearance to the citation, a party cited cannot raise any objection as to jurisdiction.

25. Any party in a cause who has entered an appearance may apply on summons to a Judge, or in his absence to the Registrar, to be heard on his petition touching any collateral question which may arise in a suit.

26. The party to whom leave has been given to be heard on his petition shall, within eight days, file his act on petition in the Central Office, and on the same day deliver a copy thereof to such parties in the cause as are required to answer thereto.

27. Each party to whom a copy of an act on petition is delivered shall, within eight days after receiving the same, file his or her answer thereto in the Central Office, and on the same day deliver a copy thereof to the opposite party, and the same course shall be pursued with respect to the reply, rejoinder, etc., until the act on petition is concluded.

28. A form of act on petition, answer, and conclusion is given in the Appendix, No. 7.

29. Each party to the act on petition shall, within eight days from that on which the last statement in answer is filed, file in the Central Office such affidavits and other proofs as may be necessary in support of their several averments.

30. After the time for filing affidavits and proofs has expired, the party filing the act on petition is to set down the petition for hearing in the same manner as a cause; and in the event of his failing to do so within a month, any party who has filed an answer thereto may set the same down for hearing, and the petition will be heard in its turn with other causes to be heard by a Judge without a jury.

#### INTERVENERS.

31. Application for leave to intervene in any cause must be made to a Judge by motion, supported by affidavit.

32. Every party intervening must join in the proceedings at the stage in which he finds them, unless it is otherwise ordered by a Judge.

#### SUITS *IN FORMA PAUPERIS*.

33. Any person desirous of prosecuting a suit *in forma pauperis* is to lay a case before counsel, and obtain an opinion that he or she has reasonable grounds for proceeding.



34. No person shall be admitted to prosecute a suit *in formá pauperis* without the order of a Judge; and to obtain such order the case laid before counsel and his opinion thereon, with an affidavit of the party or of his or her proctor, solicitor, or attorney, that the said case contains a full and true statement of all material facts, to the best of his or her knowledge and belief, and an affidavit of the party applying as to his or her income or means of living, and that he or she is not worth £25 after payment of his or her just debts, save and except his or her wearing apparel, shall be produced at the time such application is made.

35. The affidavit required by the last preceding rule, if application is made by a wife to prosecute a suit against her husband *in formá pauperis*, shall state to the best of her knowledge and belief the amount of income or means of living of her husband.

36. When a husband has been admitted to prosecute a suit against his wife *in formá pauperis*, the wife may apply for an order that she be at liberty to proceed with her defence *in formá pauperis* on production of an affidavit that she has no separate property, save and except her wearing apparel, exceeding £25 in value after payment of her just debts.

37. When a wife has been permitted to prosecute a suit against her husband *in formá pauperis*, the husband may apply for leave to proceed with his defence *in formá pauperis* on production of an affidavit as to his income or means of living and showing that besides his wearing apparel he is not worth £25 after payment of his just debts.

38. When a husband admitted to sue as a pauper neglects to proceed in a cause, he may be called upon by summons to show cause why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs be paid.

#### ANSWER.

39. Each respondent who has entered an appearance may, within twenty-one days after service of citation on him or her, file in the Central Office an answer to the petition. A form of answer is given in the Appendix, No. 8.

40. Each respondent shall, on the day he or she files an answer, deliver a copy thereof to the petitioner, or to his or her proctor, solicitor, or attorney.

41. Every answer, which contains matter other than a simple denial of the facts stated in the petition, shall be accompanied by an affidavit made by the respondent verifying such other or addi-

tional matter, so far as he or she has personal cognizance thereof, and deposing as to his or her belief in the truth of the rest of such other or additional matter, and such affidavit shall be filed with the answer.

42. In causes involving a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the respondent, who is husband or wife of the petitioner, shall in the affidavit filed with the answer further state that there is not any collusion or connivance between the deponent and the petitioner.

#### FURTHER PLEADINGS.

43. Within 14 days from the filing and delivery of the answer, the petitioner may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder, or any subsequent pleading.

44. A copy of every reply and subsequent pleading shall, on the day the same is filed, be delivered to the opposite parties, or their proctor, solicitor, or attorney.

#### GENERAL RULES AS TO PLEADINGS.

45. Either of the parties before the Court desiring to alter or amend a pleading may apply by summons to the Registrar for an order for that purpose.

46. When a petition, answer, or other pleading has been ordered to be altered or amended, the time for filing and delivering a copy of the next pleading shall be reckoned from the time of the order having been complied with.

47. A copy of every pleading, showing the alterations and amendments made therein, shall be delivered to the opposite parties, on the day such alterations and amendments are made in the pleadings filed in the Central Office: and the opposite parties, if they have already pleaded in answer thereto, shall be at liberty to amend such answer within four days, or such further time as may be allowed for the purpose.

48. If either party in the cause fail to file or deliver a copy of the answer, reply, or other pleading, or to alter or amend the same or to deliver a copy of any altered or amended pleadings, within the time allowed for the purpose, the party to whom the copy of such answer, reply, or other pleading, or altered or amended pleading, ought to have been delivered shall not be bound to receive it, and such answer, reply, or other pleading shall not be filed, or be amended, unless by order of a Judge, or of the Registrar, to be

obtained on summons. The expense of obtaining such order shall fall on the party applying for it, unless a Judge or the Registrar shall otherwise direct.

49. Applications for further particulars of matters pleaded are to be made to a Judge, or in his absence to the Registrar, by summons.

50. The Registrar will direct such order to issue as he shall think fit, or refer the matter at once to a Judge.

51. Any person heard on the summons objecting to the order so issued under the direction of the Registrar may, subject to any order as to costs, apply to a Judge on summons to rescind or vary the same.

#### PLEADING CLAIM FOR DAMAGES.

52. A husband who, either in a petition for dissolution of marriage or for judicial separation or in a petition limited to such object only, claims damages from any person on the ground of his having committed adultery with the wife of such petitioner, shall, in a separate paragraph in the prayer, set out his claim in words following:

“Your Petitioner claims damages against A.B.”;  
but the amount of damages so claimed shall not be specified. Any petition which violates this Rule shall be struck out so far as the claim for damages is concerned unless a Judge upon summons or the Judge at the trial, upon such terms as he thinks fit, shall otherwise order.

#### SERVICE OF PLEADINGS, ETC.

53. It shall be sufficient to leave all pleadings and other instruments, personal service of which is not expressly required by these rules, at the respective addresses furnished by, or on behalf of the several parties to the cause.

#### MODE OF HEARING OR TRIAL.

54. It shall not be necessary in any case to apply to the Court for directions as to the mode of hearing or trial of a cause. When the pleadings are concluded the parties to a cause may proceed in all respects as though upon the day of filing the last pleading a special direction had been given by the Court as to the mode of hearing or trial to the effect following:—

- 1st. In cases in which damages are not claimed that the cause be heard by oral evidence before a Judge without a jury.
- 2nd. In cases in which damages are claimed that the cause be tried before a Judge with a common jury.

Provided that any party to a cause may apply by summons for a direction that the cause may be heard or tried otherwise than is hereby provided.

#### QUESTIONS OF FACT FOR THE JURY.

55. Whenever the issues of fact in a cause are to be tried by a jury, the questions of fact raised by the pleadings are to be briefly stated in writing by the petitioner, and settled by the Registrar. A form is given in the Appendix, No. 9.

56. Should the petitioner fail to prepare and deposit the questions for settlement in the Central Office, within fourteen days after the filing of the last pleading, either of the respondents on whose behalf such questions have been raised shall be at liberty to do so.

57. After the questions have been settled by the Registrar, the party who has deposited the same shall deliver a copy thereof, as settled, to each of the other parties to be heard on the trial of the cause, and either of such parties shall be at liberty to apply to a Judge, by summons, within eight days, or at the expiration of that time on the next day appointed for hearing summonses in this Court, to alter or amend the same.

#### SETTING DOWN THE CAUSE FOR TRIAL OR HEARING.

58. In cases to be tried by a jury, the petitioner, after the expiration of eight days from the delivery of copies of the questions for the jury to the opposite parties, or from alteration or amendment of the same, in pursuance of the order of the Registrar, shall file such questions, as finally settled, in the Central Office, and at the same time set down the cause as ready for trial, and on the same day give notice of his having done so to each party for whom an appearance has been entered.

59. In cases to be heard without a jury, the petitioner shall, after obtaining directions as to the mode of hearing, set the cause down for hearing, and on the same day give notice of his having done so to each party in the cause for whom an appearance has been entered.

60. If the petitioner fail to file the questions for the jury, or to set down the cause for trial or hearing, or to give due notice thereof, for the space of one month from the filing of the last pleading or after directions have been given as to the mode in which the cause shall be tried or heard, as provided by the proviso to Rule 54, either of the respondents entitled to be heard at such trial or hearing may file the questions for the jury, and set the cause down for trial or hearing, and shall on the same day give

notice of his having done so to the petitioner, and to each of the other parties to the cause for whom an appearance has been entered.

61. A copy of every notice of the cause being set down for hearing or trial shall be filed in the Central Office, and the cause shall come on in its turn, unless a Judge shall otherwise direct.

#### TRIAL OR HEARING.

62. No cause shall be called on for trial or hearing until after the expiration of ten days from the day when the same has been set down for trial or hearing, and notice thereof has been given, save with the consent of all parties to the suit.

63. The Registrar shall enter in the Court book the finding of the jury and the decree of the Court, and shall sign the same.

64. Either of the respondents in the cause, after entering an appearance, without filing an answer to the petition in the principal cause, may be heard in respect of any question as to costs, and a respondent who is husband or wife of the petitioner may be heard also in respect of any question as to custody of children, but a respondent who may be so heard is not at liberty to bring in affidavits touching matters in issue in the principal cause, and no such affidavits can be read or made use of as evidence in the cause.

#### EVIDENCE TAKEN BY AFFIDAVIT.

65. When a Judge has directed that all or any of the facts set forth in the pleadings be proved by affidavits, such affidavits shall be filed in the Central Office within eight days from the time when such direction was given, unless a Judge shall otherwise direct.

66. In an undefended cause when directions have been given that all or any of the facts set forth in the petition be proved by affidavits, such affidavits may be filed in the Central Office at any time up to 10 clear days before the cause is heard.

67. Counter affidavits as to any facts to be proved by affidavit may be filed within eight days from the filing of the affidavits which they are intended to answer.

68. Copies of all such affidavits and counter affidavits shall, on the day the same are filed, be delivered to the other parties to be heard on the trial or hearing of the cause, or to their proctors, solicitors, or attorneys.

69. Affidavits in reply to such counter affidavits cannot be filed without permission of a Judge, or, in his absence, of the Registrar.

70. Application for an order for the attendance of a deponent for the purpose of being cross-examined in open Court shall be made to a Judge, on summons.

71. In every suit service of the citation and petition on the respondent or co-respondent may be proved by affidavit sworn by the person effecting such service. Such affidavit shall exhibit an office copy of the citation and petition served.

Provided that no such affidavit shall be received as evidence unless filed at least seven days before the hearing of the suit.

Notwithstanding anything in this Rule to the contrary, the Judge at the trial may, if he thinks fit, require proof of such service to be given by oral evidence.

72. In every suit the identity of the person served, with the respondent or co-respondent named in the petition, may be proved by affidavit of some person who was present when such service as mentioned in the preceding rule was effected, and who of his own personal knowledge can swear that the person so served is the person named in such petition as respondent or co-respondent.

73. The identity of the person or persons served as provided in the two last preceding rules with the person or persons charged with having committed adultery shall not be proved by affidavit unless the Judge at the trial upon application so orders.

#### NEW TRIAL AND HEARING.

74. An application for a new trial of the issues of fact tried by a jury or for a rehearing of a cause shall be made to the Full Court, and shall be by notice of motion filed in the Central Office, stating the grounds of the application, and whether all or part only of the verdict or finding or decree is complained of; and such notice of motion shall be filed and served upon the other parties in the cause, or their proctors, solicitors, or attorneys, within eight days after the trial or hearing, and the motion shall be made eight days after the service of the notice of motion if the Full Court shall be then sitting, or otherwise on the first day appointed for the sitting of the Full Court after the expiration of the eight days, and the time of the vacation shall not be reckoned in the computation of time for serving such notice of motion.

75. The notice of motion may be amended at any time by leave of the Court or a Judge on such terms as the Court or Judge may think fit.

#### PETITION FOR REVERSAL OF DECREE OF JUDICIAL SEPARATION.

76. A petition to the Court for the reversal of a decree of judicial separation must set out the grounds on which the peti-

tioner relies. A form of such petition is given in the Appendix, No. 10.

77. Before such a petition can be filed, an appearance on behalf of the party praying for a reversal of the decree of judicial separation must be entered in the cause in which the decree has been pronounced.

78. A certified copy of such petition, under seal of the Court, shall be delivered personally to the party in the cause in whose favour the decree has been made, who may within fourteen days file an answer thereto in the Central Office, and shall on the day on which the answer is filed deliver a copy thereof to the other party in the cause, or to his or her proctor, solicitor, or attorney.

79. All subsequent pleadings and proceedings arising from such petition and answer shall be filed and carried on in the same manner as before directed in respect of an original petition for judicial separation and answer thereto, so far as such directions are applicable.

#### DEMURRER.

80. All demurrers are to be set down for hearing in the same manner as causes, and will come on in their turn with other causes to be heard by a Judge without a jury, unless a Judge shall otherwise direct.

#### INTERVENTION OF THE KING'S PROCTOR.

81. The King's Proctor shall, within fourteen days after he has obtained leave to intervene in any cause, enter an appearance and plead to the petition; and on the day he files his plea in the Central Office shall deliver a copy thereof to the petitioner, or to his proctor, solicitor, or attorney.

82. All subsequent pleadings and proceedings in respect to the King's Proctor's intervention in a cause shall be filed and carried on in the same manner as before directed in respect of the pleadings and proceedings of the original parties to the cause.

#### SHOWING CAUSE AGAINST A DECREE.

83. Any person wishing to show cause against making absolute a decree *nisi* for dissolution of marriage shall enter an appearance in the cause in which such decree *nisi* has been pronounced.

84. Every such person shall at the time of entering an appearance, or within four days thereafter, file affidavits setting forth the facts upon which he relies.

85. Upon the same day on which such person files his affidavits he shall deliver a copy of the same to the party in the cause in whose favour the decree *nisi* has been pronounced.

86. The party in the cause in whose favour the decree *nisi* has been pronounced may, within eight days after delivering of the affidavits, file affidavits in answer, and shall, upon the day such affidavits are filed, deliver a copy thereof to the person showing cause against the decree being made absolute.

87. The person showing cause against the decree *nisi* being made absolute may, within eight days, file affidavits in reply, and shall upon the same day deliver copies thereof to the party supporting the decree *nisi*.

88. No affidavits are to be filed in rejoinder to the affidavits in reply without permission of a Judge, or, in his absence, of the Registrar.

89. The questions raised on such affidavits shall be argued in such manner and at such time as a Judge may, on application by summons, direct; and if he thinks fit to direct any controverted question of fact to be tried by a jury, the same shall be settled and tried in the same manner, and subject to the same rules, as any other issue tried in this Court.

90. When the King's Proctor desires to show cause against making absolute a decree *nisi* for dissolution or nullity of marriage, it shall not be necessary for him to obtain leave, but he shall enter an appearance in the cause in which such decree *nisi* has been pronounced, and shall within fourteen days after entering an appearance file his plea in the Central Office, setting forth the grounds on which he desires to show cause as aforesaid, and on the day he files his plea in the Central Office shall deliver a copy thereof to the person in whose favour such decree has been pronounced or to his or her proctor, solicitor, or attorney, and all subsequent pleadings and proceedings in respect to such plea shall be filed and carried on in the same manner as directed by Rules Nos. 81 and 82 hereof in regard to the plea of the King's Proctor filed after obtaining leave to intervene in a cause, and the Rules from No. 83 to No. 89 hereof, both inclusive, shall not be applicable to the King's Proctor on his showing cause as aforesaid, save as far as regards any proceedings already commenced in pursuance of the said rules.

#### DECREE ABSOLUTE.

91. All applications to make absolute a decree *nisi* for dissolution or nullity of a marriage need not hereafter be made to the Court by motion, but it shall be sufficient to file in the Central



Office with the affidavit or affidavits as hereinafter required a notice in writing setting forth that application is made for such decree absolute, which will thereupon be pronounced in open Court at a time appointed for that purpose.

92. In support of every such application an affidavit must be filed setting forth that search has been made in the proper books at the Central Office up to within two days of the affidavit being filed, and that at such time no person had obtained leave to intervene in the cause, and that no appearance had been entered nor any affidavit filed on behalf of the King's Proctor or any person wishing to show cause against the decree *nisi* being made absolute; and in case leave to intervene had been obtained or appearance entered or affidavits filed on behalf of the King's Proctor or any such person it must be shown by affidavit what proceedings, if any, had been taken thereon; but it shall not be necessary to file a copy of the decree *nisi*. A form of affidavit is given in the Appendix, No. 11.

#### ALIMONY.

93. The wife being the petitioner in the cause, may file her petition for alimony pending suit at any time after the citation has been duly served on the husband, or after order made by a Judge to dispense with such service, provided the *factum* of marriage between the parties is established by affidavit previously filed.

94. The wife being the respondent in a cause, after having entered an appearance, may also file her petition for alimony pending suit.

95. A form of petition for alimony is given in the Appendix, No. 12.

96. The husband shall, within eight days after the filing and delivery of a petition for alimony, file his answer thereto upon oath.

97. The husband being respondent in the cause, must enter an appearance before he can file an answer to a petition for alimony.

98. The wife, if not satisfied with the husband's answer, may object to the same as insufficient, and apply to a Judge on summons to order him to give a further and fuller answer, or to order his attendance on the hearing of the petition for the purpose of being examined thereon.

99. In case the answer of the husband alleges that the wife has property of her own, she may, within eight days, file a reply on oath to that allegation; but the husband is not at liberty to file

a rejoinder to such reply without permission of a Judge, or, in his absence, of the Registrar.

100. A copy of every petition for alimony, answer, and reply must be delivered to the opposite party, or to his or her proctor, solicitor, or attorney, on the day the same is filed.

101. After the husband has filed his answer to the petition for alimony (subject to any order as to costs), or if no answer is filed, at the expiration of the time allowing for filing an answer, the wife may proceed to examine witnesses in support of her petition, and apply by summons for an allotment for alimony, pending suit, notice of the summons, and of the intention to examine witnesses, being given to the husband or to his proctor, solicitor, or attorney four days previously to the summons being heard and the witnesses examined, unless a Judge shall dispense with such notice.

102. No affidavits can be read or made use of as evidence in support of, or in opposition to, the averments contained in a petition for alimony, or in an answer to such a petition, or in a reply, except as may be required by a Judge, or by the Registrar.

103. A wife who has obtained a final decree of judicial separation, on such decree being affirmed on appeal, or after the expiration of the time for appealing against the decree if no appeal be then pending, may apply to the Court by petition for an allotment of permanent alimony, though no alimony shall have been allotted to her pending suit, and the Rules from 95 to 99, both inclusive, of these rules relating to petition for alimony pending suit shall be observed upon such application.

104. A wife may at any time after alimony has been allotted to her, whether alimony pending suit or permanent alimony, file her petition for an increase of the alimony allotted by reason of the increased faculties of her husband, or the husband may file a petition for a diminution of the alimony allotted by reason of reduced faculties; and the course of proceeding in such cases shall be the same as required by these rules in respect of the original petition for alimony, and the allotment thereof, so far as the same are applicable.

105. Permanent alimony shall, unless otherwise ordered, commence and be computed from the date of the final decree.

106. Alimony pending suit, and also permanent alimony, shall be paid to the wife, or to some person or persons to be nominated in writing by her, and approved of by the Court, as Trustee or Trustees on her behalf.

## MAINTENANCE AND SETTLEMENTS.

107. Applications to the Court to exercise the authority given by sections 29, 41, and 43 of the Ordinance 27 Vict., 19, are to be made in a separate petition, which must, unless by leave of a Judge, be filed as soon as by the said Ordinance such applications can be made, or within one month thereafter.

108. In cases of application for maintenance under the 29th section of the said Ordinance, such petition may be filed as soon as a decree *nisi* has been pronounced, but not before.

109. A certified copy of such petition, under seal of the Court, shall be personally served on the husband or wife (as the case may be), and on the person or persons who may have any legal or beneficial interest in the property in respect of which the application is made, unless a Judge, on summons, shall direct any other mode of service, or dispense with service of the same on them, or either of them.

110. The husband or wife (as the case may be), and the other person or persons (if any) who are served with such petition, within fourteen days after service, may file his, her, or their answer on oath to the said petition, and shall on the same day deliver a copy thereof to the opposite party, or to his proctor, solicitor, or attorney.

111. Any person served with the petition, not being a party to the principal cause, must enter an appearance before he or she can file an answer thereto.

112. Within fourteen days from the filing the answer, the opposite party may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder.

113. Such pleadings, when completed, shall in the first instance be referred to the Registrar, who shall investigate the averments therein contained, in the presence of the parties, their proctors, solicitors, or attorneys, and who, for that purpose, shall be at liberty to require the production of any documents referred to in such pleadings, or to call for any affidavits, and shall report in writing to the Court the result of his investigation, and any special circumstances to be taken into consideration with reference to the prayer of the petition.

114. The report of the Registrar shall be filed in the Central Office by the husband or wife on whose behalf the petition has been filed, who shall give notice thereof to the other parties heard by the Registrar; and either of the parties, within fourteen days after such notice has been given, may be heard by a Judge on

summons, in objection to the Registrar's report, or may apply on motion for a decree or order to confirm the same, and to carry out the prayer of the petition.

115. The costs of the wife of and arising from the said petition or answer shall not be allowed on taxation of costs against the husband, before the final decree in the principal cause, without direction of a Judge.

#### CUSTODY OF AND ACCESS TO CHILDREN.

116. Before the trial or hearing of a cause, a husband or wife who is party to it may apply to a Judge, by summons founded on affidavit, for an order with respect to the custody, maintenance, or education of or for access to children, issue of their marriage.

#### GUARDIANS TO MINORS.

117. A minor above the age of seven years may elect any one or more of his or her next of kin, or next friends, as guardians, for the purpose of proceeding on his or her behalf as petitioner, respondent, or intervener in a cause. The form of an instrument of election is given in the Appendix, No. 13.

118. The necessary instrument of election must be filed in the Central Office before the guardian elected can be permitted to extract a citation, or to enter an appearance on behalf of the minor.

119. When a minor shall elect some person or persons other than his or her next of kin, as guardian for the purposes of a suit, or when an infant (under the age of seven years) becomes a party to a suit, application, founded on affidavit, is to be made to the Registrar, who will assign a guardian to the minor or infant for such suit.

120. It shall not be necessary for a minor, who, as an alleged adulterer, is made a co-respondent in a suit, to elect a guardian, or to have a guardian assigned to him for the purpose of conducting his defence.

#### SUBPŒNAS.

121. Every subpœna shall be written or printed on parchment or paper, and may include the names of any number of witnesses. The party issuing the same, or his or her proctor, solicitor, or attorney, shall take it, together with a præcipe, to the Central Office, and get it signed and sealed, and there deposit the præcipe. It shall not be necessary to serve more than one subpœna upon any witness. Forms of subpœna, Nos. 14 and 16, and forms of præcipe, Nos. 15 and 17, are given in the Appendix.

## WRITS OF ATTACHMENT AND OTHER WRITS.

122. Applications for writs of attachment must be made to a Judge by summons founded on affidavit.

123. Such writs, when ordered to issue, are to be prepared by the party at whose instance the order has been obtained, and taken to the Central Office, with an office copy of the order, and when approved and signed by the Registrar shall be sealed with the seal of the Court, and it shall not be necessary for a Judge to sign such writs.

124. Any person in custody under a writ of attachment may apply for his or her discharge to a Judge, if the Court be then sitting; if not, then to the Registrar, who for good cause shown shall have power to order such discharge.

125. In default of payment of any sum of money at the time appointed by any order of the Court for the payment thereof, a writ of *fiery facias* or writ of sequestration or writ of *elegit* shall be issued as of course in the Central Office upon an affidavit of service of the order and non-payment.

## NOTICES.

126. All notices required by these rules or by the practice of the Court shall be in writing, and signed by the party, or by his or her proctor, solicitor, or attorney.

## SERVICE OF NOTICES, ETC.

127. It shall be sufficient to leave all notices and copies of pleadings and other instruments which by these rules are required to be given or delivered to the opposite parties in the cause, or to their proctors, solicitors, or attorneys, and personal service of which is not expressly required, at the address furnished as aforesaid by the petitioner and respondent respectively.

128. When it is necessary to give notice of any motion to be made to the Court, such notice shall be served on the opposite parties who have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the Central Office with the case for motion, but no proof of the service of the notice will be required, unless by direction of a Judge.

129. If an order be obtained on motion without due notice to the opposite parties, such order will be recinded, on the application of the parties upon whom the notice should have been served;

and the expense by and arising from the rescinding of such order shall fall on the party who obtained it, unless a Judge shall otherwise direct.

130. When it is necessary to serve personally any order or decree of the Court, the original order or decree, or an office copy thereof, under seal of the Court, must be produced to the party served, and annexed to the affidavit of service marked as an exhibit by the Commissioner or other person before whom the affidavit is sworn.

#### TIME FIXED BY THESE RULES.

131. A Judge shall in every case in which a time is fixed by these rules for the performance of any act, or for any proceeding in default, have power to extend the same to such time, and with such qualifications and restrictions, and on such terms, as to him may seem fit.

132. To prevent the time limited for the performance of any act, or for any proceedings in default, from expiring before application can be made to a Judge for an extension thereof, the Registrar may, upon reasonable cause being shown, extend the time, provided that such time shall in no case be extended beyond the day upon which a Judge shall next sit in Chambers.

133. The time fixed by these rules for the performance of any act, or for any proceeding in a cause, shall in all cases be exclusive of Sundays, Christmas Day, and Good Friday.

#### PROTECTION ORDERS.

134. Applications on the part of a wife, deserted by her husband, for an order to protect her earnings and property, acquired since the commencement of such desertion, shall be made in writing to a Judge in Chambers, and supported by affidavit. A form of application is given in the Appendix, No. 18.

135. In the affidavit in support of an application on the part of a wife deserted by her husband for an order to protect her earnings and property acquired since the commencement of such desertion, the applicant must state whether or not she has any knowledge of the residence of her husband, and if he is known to be residing within the jurisdiction of the Court, he must be served personally with a summons to show cause why such order should not be made.

136. Applications for the discharge of any order made to protect the earnings and property of a wife are to be made to a Judge by summons and supported by affidavit. Notice of such motion

and copies of any affidavit or other document to be read or used in support thereof must be personally served on the wife eight clear days before the motion is heard.

#### BOND NOT REQUIRED.

137. On a decree of judicial separation being pronounced, it shall not be necessary for either party to enter into a Bond conditioned against marrying again.

#### CHANGE OF PROCTOR, SOLICITOR, OR ATTORNEY.

138. Any party to a cause shall be at liberty to change his or her proctor, solicitor, or attorney without an order for that purpose upon notice of such change, containing an address for service of pleadings and other instruments, within one mile of the General Post Office at Perth, being filed in the Central Office, but until such notice is filed and a copy thereof served on the other parties in the cause, the former proctor, solicitor, or attorney shall be considered the proctor, solicitor, or attorney of the party.

#### ORDER FOR THE IMMEDIATE EXAMINATION OF A WITNESS.

139. Application for an order for the immediate examination of a witness, who is within the jurisdiction of the Court, is to be made to a Judge, or in his absence to the Registrar, by summons, or if on behalf of a petitioner proceeding in default of appearance of the parties cited in the cause, without summons, before the Registrar, who will direct the order to issue, or refer the application to a Judge, as he may think fit.

140. Such witness shall be examined *viva voce*, unless otherwise directed, before a person to be agreed upon by the parties in the cause, or to be nominated by a Judge, or by the Registrar, to whom the application for the order is made.

141. The parties entitled to cross-examine the witness to be examined under such an order shall have four clear days' notice of the time and place appointed for the examination, unless a Judge, or the Registrar to whom the application is made for the order, shall direct a shorter notice to be given.

#### COMMISSIONS AND REQUISITIONS FOR EXAMINATION OF WITNESSES.

142. Application for a commission or requisition to examine witnesses who are out of the jurisdiction of the Court is to be made by summons, or if on behalf of a petitioner proceeding in default of appearance, without summons, before the Registrar, who will

order such commission or requisition to issue, or refer the application to a Judge, as he may think fit.

143. A commission or requisition for examination of witnesses may be addressed to any person to be nominated and agreed upon by the parties in the cause, and approved of by the Registrar, or for want of agreement to be nominated by the Registrar to whom the application is made.

144. The commission or requisition is to be drawn up and prepared by the party applying for the same, and a copy thereof shall be delivered to the parties entitled to cross-examine the witnesses to be examined thereunder two clear days before such commission or requisition shall issue, under seal of the Court, and they or either of them may apply to the Registrar, by summons, to alter or amend the commission or requisition, or to insert any special provision therein, and the Registrar shall make an order on such application, or refer the matter to a Judge. A form of a commission and requisition is given in the Appendix, No. 19.

145. Any of the parties to the cause may apply to the Registrar by summons for leave to join in a commission or requisition, and to examine witnesses thereunder; and the Registrar may direct the necessary alterations to be made in the commission or requisition for that purpose, and settle the same, or refer the application to a Judge.

146. After the issuing of a summons to show cause why a party to the cause should not have leave to join in a commission or requisition, such commission or requisition shall not issue under seal without the direction of the Registrar.

147. In case a husband or wife shall apply for, and obtain an order or a commission or requisition for the examination of witnesses, the wife shall be at liberty, without any special order for that purpose, to apply by summons to the Registrar to ascertain and report to the Court what is a sufficient sum of money to be paid or secured to the wife to cover her expenses in attending at the examination of such witnesses in pursuance of such order, or in virtue of such commission or requisition, and such sum of money shall be paid or secured before such order, or such commission, or requisition shall issue from the Central Office unless a Judge, or, in his absence, the Registrar, shall otherwise direct.

148. The Registrar to whom a commission or requisition for examination of witnesses is referred for settlement, on application on behalf of the wife by summons, may, upon good cause shown and having regard to the provisions of Rule 172, proceed to ascertain what is a sufficient sum of money to be paid or secured



to her to cover her expenses in attending at the examinataion of such witnesses, and shall thereupon issue an order upon the husband to pay or secure the said sum within a time to be fixed by such order.

#### AFFIDAVITS.

149. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent is to be inserted therein.

150. In every affidavit made by two or more persons the names of the several persons making it are to be written in the jurat.

151. No affidavit will be admitted in any matter depending in the Supreme Court in which any material part is written on an erasure or in the jurat of which there is any interlineation or erasure, or in which there is any interlineation the extent of which at the time when the affidavit was sworn is not clearly shown by the initials of the Registrar, Commissioner, or other authority before whom it was sworn.

152. Where an affidavit is made by any person who is blind, or who, from his or her signature, or otherwise, appears to be illiterate, the Registrar, Commissioner, or other authority before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature thereto in the presence of the Registrar, Commissioner, or other authority before whom the affidavit was made.

153. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his or her proctor, solicitor, or attorney, or before a partner or clerk of his or her proctor, solicitor, or attorney.

154. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

155. No affidavit can be read or used unless the fees chargeable on filing the same be paid.

156. Where a special time is fixed for filing affidavits, no affidavit filed after that time shall be used unless by leave of a Judge.

157. The above rules in respect to affidavits shall, so far as the same are applicable, be observed in respect to affirmations and declarations to be read or used in Divorce and Matrimonial Causes.

## CASES FOR MOTION.

158. Cases for motion are to set forth the style and object of, and the names and descriptions of the parties to, the cause or proceeding before the Court; the proceedings already had in the cause, and the dates of the same; the prayer of the party on whose behalf the motion is made, and, briefly, the circumstances on which it is founded.

159. If the cases tendered are deficient in any of the above particulars, the same shall not be received in the Central Office without permission of the Registrar.

160. On depositing the case in the Central Office, and giving notice of the motion, the affidavits in support of the motion, and all original documents referred to in such affidavits, or to be referred to by counsel on the hearing of the motion, must be also left in the Central Office; or in case such affidavits or documents have been already filed or deposited in the Central Office, the same must be searched for, looked up, and deposited with the proper clerk, in order to their being sent with the case to a Judge.

161. Copies of any affidavits or documents to be read or used in support of a motion, are to be delivered to the opposite parties to the suit who are entitled to be heard in opposition thereto.

## TAXING BILLS OF COSTS.

162. All Bills of Costs are referred to the Taxing Master for taxation, and may be taxed by him without any special order for that purpose. Such bills are to be filed in the Central Office.

163. Notice of the time appointed for taxation will be forwarded to the party filing the bill, at the address furnished by such party.

164. The party who has obtained an appointment to tax a Bill of Costs shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall at or before the same time deliver to him or them a copy of the bill to be taxed.

165. When an appointment has been made by the Taxing Master for taxing any Bill of Costs, and any parties to be heard on the taxation do not attend at the time appointed, the Taxing Master may nevertheless proceed to tax the bill after the expiration of a quarter of an hour, upon being satisfied by affidavit that the parties not in attendance had due notice of the time appointed.

166. The Bill of Costs of any proctor, solicitor, or attorney will be taxed on his application as against his client, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons, after sufficient notice given to the practitioner.

167. The fees payable on the taxation of any Bill of Costs shall be paid by the party on whose application the bill is taxed, and shall be allowed as part of such bill; but if more than one-sixth of the amount of any Bill of Costs taxed as between practitioner and client is disallowed on the taxation thereof, no costs incurred in such taxation shall be allowed as part of such bill.

168. If an order for payment of costs is required the same may be obtained by summons, on the amount of such costs being certified by the Taxing Master.

169. In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, the proctor, solicitor, or attorney of the party to whom such costs are to be paid may forthwith file his Bill of Costs in the Central Office, and obtain an appointment for the taxation, provided that such taxation shall not take place before the time allowed for moving for a new trial or re-hearing shall have expired; or, in case a rule *nisi* should have been granted, until the rule is disposed of, unless the Judge shall, for cause shown, direct a more speedy taxation.

170. Upon the Taxing Master's certificate of costs being signed, he shall at once issue an order of the Court for payment of the amount within seven days.

171. This order shall be served on the proctor, solicitor, or attorney of the party liable (or, if it is desired to enforce the order by attachment, on the party himself), and if the costs be not paid within the seven days, a writ of *fiery facias* or writ of sequestration shall be issued as of course in the Central Office upon an affidavit of service of the order, and non-payment.

#### WIFE'S COSTS.

172. Upon the conclusion of the pleadings or at any earlier stage of a cause, by leave of a Judge to be obtained on summons upon good cause shown, a wife who is petitioner or has entered an appearance as respondent in a cause may file her bill or bills of costs for taxation as against her husband, and the Taxing Master to whom such bills of costs are referred for taxation shall, having regard to the proviso to Rule 54 or any order made thereunder, ascertain what is a sufficient sum of money to be paid into the Central Office or what is a sufficient security to be given by the hus-

band to cover the costs of the wife of and incidental to the hearing of the cause; and shall thereupon issue an order upon the husband to pay or secure the sum within a time to be fixed by the Registrar, provided that in case the husband should, by reason of his wife having separate property or for other reasons, dispute her right to recover any costs pending suit against him, the Registrar may suspend the order to pay the wife's taxed costs or to pay or secure the sum ascertained to be sufficient to cover her costs of and incidental to the hearing of the cause, for such length of time as shall seem to him necessary to enable the husband to obtain the decision of the Court as to his liability.

173. When on the hearing or trial of a cause the decision of the Judge, or the verdict of the jury, is against the wife, no costs of the wife of and incidental to such hearing or trial shall be allowed as against the husband, except such as shall be applied for, and ordered to be allowed by the Judge, at the time of such hearing or trial.

### COSTS.

174. The bond taken to secure the costs of a wife of and incidental to the hearing of a cause shall be filed in the Central Office, and shall not be delivered out or be sued upon without the order of the Court.

175. If more than one-sixth of the amount of any Bill of Costs taxed as between practitioner and client is disallowed on taxation thereof, the party on whose application the bill is taxed shall be at liberty to deduct the costs incurred by him in the taxation from the amount of the bill as taxed, if so much remains due, otherwise the same shall be paid by the practitioner to the person on whose application the bill is taxed.

176. The order for payment of costs of suit in which a respondent or co-respondent has been condemned by a decree *nisi* shall, if applied for before the decree *nisi* is made absolute, direct the payment thereof into the Central Office, and such costs shall not be paid out of the Central Office to the party entitled to receive them under the decree *nisi* until the decree absolute has been obtained; but a wife who is unsuccessful in a cause, and who at the hearing of the cause has, in pursuance of Rule 172, obtained an order of a Judge that her costs of and incidental to the hearing or trial of the cause shall be allowed against her husband to the extent of the sum paid or secured by him to cover such costs, may nevertheless proceed at once to obtain payment of such costs after allowance thereof on taxation.

## SUMMONSES.

177. A summons may be taken out by any person in any matter or suit depending, provided there is no rule or practice requiring a different mode of proceeding.

178. The name of the cause or matter, and of the agent taking out the summons, is to be entered in the Summons Book, and a true copy of the summons is to be served on the party summoned one clear day at least before the summons is returnable, and before five o'clock, p.m.

179. On the day and at the hour named in the summons the party taking out the same is to present himself with the original summons at a Judge's Chambers, or elsewhere appointed for hearing the same.

180. Both parties will be heard by the Judge, who will make such order as he thinks fit, and a minute of such order will be made in the Summons Book.

181. If the party summoned do not appear, after the lapse of half an hour from the time named in the summons, the party taking out the summons shall be at liberty to go before a Judge, who will thereupon make such order as he may think fit.

182. An attendance on behalf of the party summoned for the space of half an hour, if the party taking out the summons do not during such time appear, will be deemed sufficient, and bar the party taking out the summons from the right to go before the Judge on that occasion.

183. If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons, or the copy served on the party summoned, must be filed in the Central Office. An order will thereupon be drawn up and delivered to the person filing such summons or copy.

184. If a summons is brought to the Central Office with consent to an order indorsed thereon, signed by the party summoned, or by his proctor, solicitor, or attorney, an order will be drawn up without the necessity of going before a Judge; provided that the order sought is, in the opinion of the Registrar, one which, under the circumstances, would be made by a Judge.

185. The same rules shall, as far as applicable, be observed in respect to summonses which may be heard and disposed of by the Registrar.

## PAYMENT OF MONEY OUT OF COURT.

186. Persons applying for payment of money out of Court are to bring into the Central Office a notice in writing, setting forth the day on which the money applied for was paid into the Central Office, the minute entered in the Court books on receiving the same, the date and particulars of the order for payment to the applicant. In case the money applied for be in payment of costs, the notice must also set forth the date of filing the bill for taxation and of the Taxing Master's certificate.

187. The above notice must be deposited in the Central Office two clear days at least before the money is paid out, and is, in that interval, to be examined by the Registrar with the original entry in the Court books, and the bill of costs referred to in it, and certified by the Taxing Master to be correct.

188. Payment of money out of Court will be made only on such day or days of the week as may be fixed by the Registrar, notice whereof will be given in the Central Office.

## PROCEEDINGS UNDER THE LEGITIMACY DECLARATION ACT, 1858—ORDINANCE 31 VICT. No. 8.

189. The above rules, so far as the same may be applicable, shall extend to applications and proceedings under the Legitimacy Declaration Act, 1858, the provisions of which are, by Ordinance 31 Vict No. 8, adopted and applied in the administration of justice in Western Australia.

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## FORMS

No. 1.—*Petition.*

The \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

The Petition of A.B., of \_\_\_\_\_, showeth:—

1. That your Petitioner was on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, lawfully married to C.B., then C.D. [*spinster or widow*], at [*here state where the marriage took place*].
2. That after his said marriage, your Petitioner lived and cohabited with his said wife at \_\_\_\_\_, and at \_\_\_\_\_, and that your Petitioner and his said wife had issue of their said marriage three children; to wit,  
[*Here state the names and ages of the children, issue of the marriage.*]
3. That on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, and on other days between that day and \_\_\_\_\_, the said C.B., at \_\_\_\_\_, committed adultery with R.S.
4. That in and during the months of January, February, and March, 19 \_\_\_\_, the said C.B. frequently visited the said R.S. at \_\_\_\_\_, and on divers of such occasions committed adultery with the said R.S.

And that your Petitioner may have such further and other relief in the premises as to Your Honour may seem meet.

[Petitioner's signature.]

No. 2—*Citation.*

Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To C.B., of

Whereas A.B., of &c., claiming to have been lawfully married to \_\_\_\_\_, has filed \_\_\_\_\_ petition against \_\_\_\_\_ in Our said Court, praying for \_\_\_\_\_, wherein \_\_\_\_\_ alleges that you have been guilty of adultery [or have been guilty of cruelty towards \_\_\_\_\_ the said \_\_\_\_\_, or as the case may be]: Now, this is to Command You, that within eight days after service hereof on you, inclusive of the day of such service, you do appear in Our said Court, then and there to make answer to the said Petition, a copy whereof, sealed with the seal of \_\_\_\_\_

Our said Court, is herewith served upon you. And take Notice, that in default of your so doing, Our said Court will proceed to hear the said charge [*or charges*] proved in due course of law, and to pronounce sentence therein, your absence notwithstanding. And take further Notice, that for the purpose aforesaid you are to attend in person, or by your proctor, solicitor, or attorney, at the Central Office of Our said Court at Perth, and there to enter an appearance in a book provided for that purpose, without which you will not be allowed to address the Court, either in person or by counsel, at any stage of the proceedings in the cause.

Dated at Perth, the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_,  
and in the \_\_\_\_\_ year of Our Reign. (Signed) X.Y., Registrar.  
[L.S.] \_\_\_\_\_

No. 3.—*Praecipe for Citation.*

[*Heading as in Form No. 1.*]

Citation for A.B., of \_\_\_\_\_ against C.B., of \_\_\_\_\_  
to appear in a suit for \_\_\_\_\_, by reason of \_\_\_\_\_  
(Signed) A.B. in person, or C.D.,  
proctor, solicitor, or attorney for the said A.B.  
[*Here insert the address required within one mile of the  
General Post Office.*]

No. 4.—*Certificate of Service.*

This Citation was duly served by the undersigned G.H. on the within-named  
C.B., of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
(Signed) G.H.

No. 5.—*Affidavit of Service of Citation.*

[*Heading as in Form No. 1.*]

A.B. v. C.B. and E.F.

I, C.D., of, &c., make oath and say,—  
That the Citation, bearing date the \_\_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_\_, issued under seal of this Court against C.B., the respondent [*or*  
co-respondent] in this cause, and now hereunto annexed, marked with the letter A,  
was duly served by me on the said C.B., at \_\_\_\_\_ by  
showing to him the original under seal, and by leaving with him a true  
copy thereof, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
And I further make oath and say, that I did at the same time and place deliver to  
the said C.B. personally a certified copy, under seal of this Court, of the petition  
filed in this cause.

Sworn at, &c., on the \_\_\_\_\_ day  
of \_\_\_\_\_, 19 \_\_\_\_\_, before me

No. 6.—*Entry of an Appearance.*

[*Heading as in Form No. 1.*]

A.B., Petitioner, <i>versus</i> C.B., Respondent, and E.F., Co-respondent.	}	The Respondent, C.B., appears in person [ <i>or</i> C.D., the proctor, solicitor, or attorney for C.B., the Respondent, or E.F., the Co-respondent, ap- pears for the said Respondent or Co- respondent].
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[*Here insert the address required within one mile of the  
General Post Office.*]

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.



No. 7.—*Act on Petition.*[*Heading as in Form No. 1.*]

A.B. v. C.B. and E.F.

On the                      day of                      , 19                      .

A.B., the Petitioner [*or C.D., the proctor, solicitor, or attorney of A.B., the Petitioner*] alleged that—[*Here state briefly the facts and circumstances upon which the Petition is founded.*]Wherefore the said A.B. *or C.D.*, referring to the affidavits and proofs to be by him exhibited in verification of what he so alleged, prayed that—[*Here set forth the prayer of the Petitioner.*](Signed)                      A.B. *or C.D.**Answer.*[*Heading as in Form No. 1.*]

A.B. v. C.B. and E.F.

On the                      day of                      , 19                      .

C.B., the Respondent [*or G.H., the proctor, solicitor, or attorney of C.B., the Respondent*], in answer to the allegations in the Act on Petition, bearing date the                      day of                      , 19                      , of A.B. admitted [*or denied*]

that

[*Here set forth any allegations admitted or denied.*]

And he alleged that—

[*Here state any facts or circumstances in explanation or in answer.*]Wherefore the said C.B., *or G.H.*, referring to the affidavits and proofs to be by her exhibited in verification of what she so alleged, prayed[*Here state the prayer of Respondent.*](Signed)                      C.B. *or G.H.**Conclusion.*

A.B. v. C.B. and E.F.

On the                      day of                      , 19                      .

A.B., the Petitioner [*or C.D., the proctor, solicitor, or attorney for A.B., the Petitioner*] in reply to the allegations of C.B. [*or G.H.*] in her answer, bearing date                      , denied the same in great part to be true or relevant. Wherefore he alleged and prayed as before.(Signed) , A.B. *or C.D.*No. 8.—*Answer.*[*Heading as in Form No. 1.*]

The                      day of                      , 19                      .

A.B. v. C.B.

The respondent, C.B., by C.D., her proctor, solicitor, or attorney [*or in person*], in answer to the Petition filed in this cause, saith,—

1. That she denies that she committed adultery with R.S., as set forth in the said Petition.

2. Respondent further saith, that on the                      day of                      , 19                      , and on other days between that day and                      , the said A.B., at                      , committed adultery with K.L.

[*In like manner Respondent is to state connivance, condonation, or other matters relied on as a ground for dismissing the Petition.*]

Wherefore this Respondent humbly prays,—

That Your Honour will be pleased to reject the prayer of the said Petition, and decree, &amp;c.

No. 9.—*Questions of fact for the Jury.*

[Heading as in Form No. 1.]

A.B. v. C.B. and E.F.

### Questions for the Jury.

1. Whether C.B., the Respondent, committed adultery with E.F., the Co-respondent.
2. Whether E.F., the Co-respondent, committed adultery with C.B., the Respondent.
3. Whether A.B., the Petitioner, has condoned the adultery (if any) committed by C.B., the Respondent.
4. Whether A.B., the Petitioner, has been guilty of cruelty towards C.B., the Respondent.

[Here set forth in the same form all the questions at issue between the parties.]

5. What amount of damages should be paid by E.F., the Co-respondent, in respect of the adultery (if any) by him committed.

No. 10.—*Petition for Reversal of Decree.*

[Heading as in Form No. 1.]

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
The Petition of A.B., of \_\_\_\_\_ showeth

1. That your Petitioner was on the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_, lawfully married to C.B., then C.D.,  
spinster [*or* widow], at \_\_\_\_\_, &c.

[Here state where the marriage took place.]

2. That on the \_\_\_\_\_ day of \_\_\_\_\_, your Honour, by your final Decree, pronounced in a cause then depending in this Court, intituled C.B. v. A.B., decreed as follows; to wit,

[Here set out the decree.]

3. That the aforesaid Decree was obtained in the absence of your Petitioner who was then residing at \_\_\_\_\_

[State facts tending to show that the Petitioner did not know of the proceedings; and further, that had he known of them he might have offered a sufficient defence.]

*or,*

That there was reasonable ground for your Petitioner leaving his said wife.  
for that his said wife

[Here state any legal grounds justifying the Petitioner's separation from his wife.]

Your Petitioner therefore humbly prays—

That your Honour will be pleased to reverse the said Decree.

No. 11.—*Affidavit in support of Application for Decree Absolute.*

[Heading as in Form No. 1.]

A.B. v. C.B. and E.F.

I, C.D., of, &c., solicitor for A.B., the Petitioner in this cause, make oath and say, that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I carefully searched the books kept in the registry of this Court for the purpose of entering appearances, from and including the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the day of the date of the decree *nisi* made in this cause, to the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and that during such period no appearance has been entered in the said books by His Majesty's Attorney General, or by or on behalf of any other person or persons whomsoever. And I further make oath and say, that I have also carefully searched the books kept in the said registry for entering the minutes of proceedings had

in this cause from and including the said                       day of  
19     , to the                       day of                       , 19     , and  
that no leave has been obtained by His Majesty's Attorney General, or by any other  
person or persons whomsoever to intervene in this cause, and that no affidavit or  
affidavits, instruments, or other documents whatsoever, have been filed in this cause  
by His Majesty's Attorney General, or any other persons whomsoever during such  
period, or at any other period during the dependence of this cause, in opposition  
to the said decree nisi being made absolute.

Sworn at, &c., on the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_, before me.

No. 12.—*Petition for Alimony.*

[Heading as in Form No. 1.]

A.B. v. C.B. and E.F.

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

The Petition of C.B., the lawful wife of A.B., sheweth:—

1. That the said A.B. does now carry on, and has for many years past carried on, the business of a \_\_\_\_\_ at \_\_\_\_\_; and from such business he derives the net annual income of £ \_\_\_\_\_.
2. That the said A.B. is now, or lately was, possessed of or entitled to \_\_\_\_\_ proprietary shares of the \_\_\_\_\_ Company, amounting in value to £ \_\_\_\_\_, and yielding a clear annual dividend of £ \_\_\_\_\_.
3. That the said A.B. is possessed of certain stock in trade in his said business of a \_\_\_\_\_, of the value of £ \_\_\_\_\_.

[In same manner state particulars of any other property which the husband may possess.]

Your Petitioner therefore humbly prays—

That your Honour will be pleased to decree her such sum or sums of money, by way of alimony *pendente lite* [or permanent alimony], as to your Honour shall seem meet.

No. 13.—*Election of a Guardian.*

*By a Petitioner.*

Whereas a suit is about to be instituted in His Majesty's Supreme Court of Western Australia on behalf of A.B. v. C.B., the wife of the said A.B., and E.F. And whereas the said A.B. is now a minor of the age of \_\_\_\_\_ years and upwards, but under the age of 21 years, and therefore by law incapable of acting in his own name.

Now, I, the said A.B., do hereby make choice and elect G.H., my natural and lawful father and next of kin, to be my curator or guardian for the purpose of instituting the said suit, and for the purpose of carrying on and prosecuting the same until a final decree shall be given and pronounced therein, or until I shall attain the age of 21 years, and I hereby appoint C.D., of, &c., my proctor [solicitor *or* attorney] to file, or cause to be filed, this my election, for me in the Central Office of the said Court.

In witness whereof I have hereunto set my hand and seal this  
day of \_\_\_\_\_, 19\_\_.

[L.S.]

(Signed) A.B.

Signed, sealed, and delivered by the within A.B., in the presence of

One attesting witness.

*By a Respondent.*

Whereas a Citation bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, has issued under seal of His Majesty's Supreme Court of Western Australia, at the instance of A.B., claiming to have been lawfully married to C.B., citing the said C.B. to appear in the said Court and then and there to make answer to a certain petition of the said A.B., filed in the said Court. And whereas the said C.B. is now a minor of the age of \_\_\_\_\_ years and upwards, but under the age of 21 years, and therefore by law incapable of acting in her own name.

Now, I, the said C.B., do hereby make choice of and elect G.H., my natural and lawful father and next of kin, to be my curator or guardian for the purpose of entering an appearance for me and on my behalf in the said Court, and for the purpose of making answer for me to the said petition, and of defending me in the said Cause, and to abide for me in judgment until a final decree shall be given and pronounced therein, or until I shall attain the age of 21 years, and I hereby appoint, &c.

*No. 14.—Subpoena ad Testificandum.*

Western Australia.

Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, to [names of all witnesses included in the Subpoena to be inserted], Greeting: We command you and every of you to be and appear in your proper persons before Our Supreme Court at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by ten of the clock in the forenoon in the same day, and so from day to day, whenever our said Court is sitting, until the Cause or proceeding is heard, to testify the truth, according to your knowledge, in a certain Cause now in our said Court, depending between A.B., Petitioner, and C.B., Respondent, and E.F., Co-respondent, on the part of the Petitioner [or Respondent, or Co-respondent, or as the case may be], and on the aforesaid day between the parties aforesaid to be heard. And this you or any of you shall by no means omit, under the penalty of each of you of £100. Witness [insert the name of the Chief Justice of Western Australia] at Perth, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the \_\_\_\_\_ year of Our Reign.

[L.S.]

(Signed) X.Y., Registrar.

*No. 15.—Praeceptum for Subpoena ad Testificandum.*

[Heading as in Form No. 1.]

Subpoena for [insert witnesses' names], to testify between A.B., Petitioner, C.B., Respondent, and E.F., Co-respondent, on the part of the Petitioner [or Respondent, or Co-respondent].

(Signed)  $\left\{ \begin{array}{l} \text{A.B.} \\ \text{C.B.} \\ \text{E.F.} \end{array} \right\}$  or  $\left\{ \begin{array}{l} \text{P.A. Petitioner's [or Respondent's or} \\ \text{Co-respondent's]} \text{ proctor, solicitor,} \\ \text{or attorney.} \end{array} \right\}$

*No. 16.—Subpoena Duces Tecum.*

Western Australia.

Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, to [names of all parties included in the Subpoena to be inserted], Greeting: We command you and every of you to be and appear in your proper persons before Our Supreme Court at \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by ten of the clock in the forenoon of the same day, and so from day to day, whenever Our said Court is sitting, until the cause or proceeding is heard, and also that you bring with you, and produce at the time and place aforesaid [here describe

*shortly the deeds, letters, papers, &c., required to be produced*], then and there to testify and show all and singular those things which you or either of you know, or the said deed or instrument doth import, of and concerning a certain cause or proceeding now in Our said Court, depending, between A.B., Petitioner, and C.B., Respondent, and E.F., Co-respondent, on the part of the Petitioner [*or the Respondent or Co-respondent, as the case may be*], and on the aforesaid day between the parties aforesaid to be heard. And this you or any of you shall by no means omit, under the penalty of each of you of £100. Witness [*insert the name of the Chief Justice of Western Australia*], at Perth, the                      day of                      , 19     , in the                      year of Our Reign.

[L.S.]

(Signed) X.Y., Registrar.

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No. 17.—*Praecipe for Subpoena Duces Tecum.*

[Heading as in Form No. 1.]

Subpoena for                      to testify and produce, &c., between A.B., Petitioner, C.B., Respondent, and E.F., Co-respondent, on the part of the Petitioner [*or Respondent, or Co-respondent*].

(Signed)  $\left\{ \begin{array}{l} \text{A.B.} \\ \text{C.B.} \\ \text{E.F.} \end{array} \right\}$  or  $\left\{ \begin{array}{l} \text{P.A. Petitioner's} \\ \text{Co-respondent's} \\ \text{or attorney.} \end{array} \right\}$  [*or Respondent's or proctor, solicitor,*]

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No. 18.—*Application for a Protection Order.*

[Heading as in Form No. 1.]

The application of C.B., of                      , the lawful wife of A.B., sheweth—

That on the                      day of                      she was lawfully married to A.B. at                      ;

That she lived and cohabited with the said A.B. for                      years at                      , and also at                      , and hath had                      children, issue of her said marriage, of whom                      are now living with the applicant, and wholly dependent upon her earnings ;

That on or about                      the said A.B., without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her;

That since the desertion of her said husband the applicant hath maintained herself by her own industry, and hath thereby and otherwise acquired certain property [*or hath become possessed of certain property*], consisting of [*here state generally the nature of the property*].

Wherefore the said C.B. prays an Order for the protection of her earnings and property acquired since the said                      day of                      , from the said A.B., and from all creditors and persons claiming under him.

(Signed) C.B.

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No. 19.—*Commission or Requisition for Examination of Witnesses.*

In the Supreme Court of Western Australia

(Divorce and Matrimonial Causes).

Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, to [*here set forth the names and proper description of the Commissioner*], Greeting: Whereas a certain cause is now depending in Our Supreme Court of Western Australia, between A.B., Petitioner, and C.B., Respondent, and E.F., Co-respondent, wherein the said A.B. has filed his Petition

praying for a dissolution of his marriage with the said C.B. [*or otherwise as in the prayer of the Petition*]. And whereas, by an order made in the said cause on the day of \_\_\_\_\_, 19\_\_\_\_, on the application of the said A.B., it was ordered that a Commission [*or Requisition*] should issue under seal of Our said Court for the examination of [*here insert name and address of one of the persons to be examined*] and others as witnesses to be produced on the part of the said A.B., the Petitioner, in support of his said Petition (saving all just exceptions). Now, Know ye that We do, by virtue of this Commission [*or Requisition*] to you directed, authorise [*or request*] you, within thirty days after the receipt of this Commission [*or Requisition*], at a certain time and place to be by you appointed for that purpose, with power of adjournment to such other time and place as to you shall seem convenient, to cause the said witnesses to come before you and to administer to the said witnesses respectively an oath truly to answer such questions as shall be put to them by you touching the matters set forth in the said Petition (a true and authentic copy whereof, sealed with the Order of Our said Court is hereto annexed), and such oath being administered, we do hereby authorise [*or request*] and empower you to take the examination of the said witnesses touching the matter set forth in the said Petition, and to reduce the said examination, or cause the same to be reduced, into writing. And for the purpose aforesaid you do assume to yourself, some Notary Public, or other lawful scribe, as and for your Actuary in that behalf, if to you it should seem meet and convenient so to do. And the said examination being so taken and reduced to writing as aforesaid, and subscribed by you, we do require [*or request*] you forthwith to transmit the said examination, closely sealed up, to the Central Office of Our said Court at Perth, together with these presents. And we do hereby give you full power and authority to do all such acts, matters, and things as may be necessary, lawful, and expedient for the due execution of this Our Commission [*or Requisition*].

Dated at Perth, Western Australia, the \_\_\_\_\_ day of \_\_\_\_\_ in  
the year of Our Lord, 19\_\_\_\_, and in the \_\_\_\_\_ year of Our Reign.  
[L.S.] (Signed) X.Y., Registrar.

#### No. 20.—Bond for Securing Wife's Costs.

Know all men by these presents that we, A.B., of, &c., S.H., of, &c., and K.L., of, &c., are held and firmly bound unto X.Y., Registrar of His Majesty's Supreme Court of Western Australia, in the penal sum of £ \_\_\_\_\_ of good and lawful money of Great Britain, to be paid to the said X.Y., and for which payment to be well and truly made we bind ourselves and each of us for the whole, our heirs, executors, or administrators, firmly by these presents.

Sealed with our seals.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord, 19\_\_\_\_.

Whereas a certain cause is now depending in His Majesty's Supreme Court of Western Australia between A.B., Petitioner, of the one part, and C.B., Respondent, and E.F., Co-respondent, of the other part: and whereas X.Y., the Registrar of the said Court, has, by a report under his hand, made in the said cause on the day of \_\_\_\_\_, 19\_\_\_\_, reported to the Court that £ \_\_\_\_\_ was a sufficient sum to be paid into the Central Office of the said Court to cover the costs of the said Respondent [*or Petitioner*] of and incidental to the hearing of the said cause [*or otherwise, as in the Registrar's report*], or that a bond under the hand and seal of the said A.B., and of two sufficient sureties in the penal sum of £ \_\_\_\_\_, conditioned for the payment of such costs of the said C.B. as shall be certified to be due and payable by the said A.B., not exceeding the sum of £ \_\_\_\_\_ [*or otherwise as in the report*], with \_\_\_\_\_ hours' notice of such sureties to the proctor [*solicitor or attorney*] of the said C.B., was a sufficient surety to be given for the costs aforesaid: Now, the condition of this obligation is such, that if the above

bounden A.B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, to the above-named X.Y., his heirs, executors, administrators, or assigns, the full sum of £                      of good and lawful money of Great Britain, or the lawful costs of the said C.B., the Respondent [*or Petitioner*], of and incidental to the hearing and trial of this cause [*or otherwise, as in the report*], to the extent of £                      , then this obligation is to be void and of none effect, otherwise to remain in full force and virtue.

Sealed and delivered by the said { A.B. [L.S.]  
A.B., G.H., and K.L., in { G.H. [L.S.]  
the presence of, { K.L. [L.S.]  
*One attesting witness.*

S. H. PARKER,  
Chief Justice.

R. F. McMILLAN,  
Puisne Judge.

R. B. BURNSIDE,  
Puisne Judge.

JOHN ROOTH,  
Puisne Judge.

The Supreme Court,  
21st April, 1909.

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## O R D E R

AS TO

## SUPREME COURT FEES, 1909.

The Supreme Court,

21st April, 1909.

WE, the Honourable Sir Stephen Henry Parker, Kt., Chief Justice of Western Australia, the Honourable Robert Furse McMillan, Puisne Judge, the Honourable Robert Bruce Burnside, Second Puisne Judge, and the Honourable John Rooth, Third Puisne Judge, with the concurrence of the Honourable Frank Wilson, Colonial Treasurer, do hereby, in pursuance of the Supreme Court Act (Amendment), 1892, and all other powers and authorities enabling us in that behalf, order and direct that the fees and duties contained in the Schedule to this Order are fixed and appointed to be, and shall be taken in the Supreme Court in lieu of the fees prescribed by Schedule H referred to in the Order made under the said Act on the 27th day of August, 1903.

This Order shall come into force on the first day of May, 1909.

S. H. PARKER,  
Chief Justice.

R. F. McMILLAN,  
Puisne Judge.

R. B. BURNSIDE,  
Puisne Judge.

JOHN ROOTH,  
Puisne Judge.

I concur in the above order.

FRANK WILSON,  
Colonial Treasurer.

## THE SCHEDULE ABOVE REFERRED TO.

## SUMMONSES, WRITS, NOTICES, COMMISSIONS, AND WARRANTS.

	Fee or Duty.			Document to which stamp is to be affixed.
	£	s.	d.	
1. On sealing a writ of summons for commencement of an action .. .. .	0	5	0	.. Filed copy of writ.
2. On sealing a concurrent, renewed, or amended writ of summons for commencement of an action .. .. .	0	2	6	.. Filed copy of writ.
3. On sealing a notice for service under Order XVI., Rule 48 ..	0	2	6	.. Filed copy of notice.
4. On sealing a writ of mandamus or injunction .. .. .	0	10	0	.. Filed copy of writ.
5. On sealing a writ of subpoena for witnesses, not exceeding three persons .. .. .	0	2	6	.. Præcipe.
6. On sealing every other writ .. .. .	0	5	0	.. Filed copy.
7. On sealing or issuing an originating summons .. .. .	0	5	0	.. Filed copy.
8. On amending same .. .. .	0	2	6	.. Filed copy.
9. On sealing or issuing a summons for directions under Order XXIX. .. .. .	0	10	0	.. Filed copy.
10. On sealing or issuing any other summons .. .. .	0	2	0	.. Filed copy.
11. On sealing or issuing a commission to take oaths or affidavits in the Supreme Court .. .. .	1	0	0	.. Fiat.
12. On every other commission .. .. .	1	0	0	.. Fiat or præcipe.
13. On marking a copy of a petition of right for service .. ..	0	5	0	.. Schedule G.

## APPEARANCES.

14. On entering an appearance, for each person .. .. .	0	2	0	.. Præcipe.
15. On amending same .. .. .	0	2	0	.. Fiat of Master.

## COPIES.

16. On a copy of a written deposition of a witness, for each folio .. .. .	0	0	4	.. Schedule G.
17. On examining a written or printed copy and marking or sealing same as an office copy, for each folio .. .. .	0	0	2	.. Schedule G.
18. On making a copy and marking same as an office copy, for each folio .. .. .	0	0	6	.. Schedule G.
19. On a copy in a foreign language, the actual cost .. .. .	..	..	..	Schedule G.
20. On a copy of a plan, map, section, drawing, photograph, or diagram, the actual cost .. .. .	..	..	..	Schedule G.
21. On a printed copy of an order, not being an office or certified copy, for each folio .. .. .	0	0	1	.. Schedule G.

## ATTENDANCES.

22. On an application, with or without a subpoena, for any officer to attend as a witness, or to produce records or documents to be given in evidence (in addition to the reasonable expenses of the officer), for each day or part of a day he shall necessarily be absent from his office .. .. .	1	0	0	.. Notice, request, or subpoena.
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The officer may require a deposit on account of further fees, and a memorandum thereof shall be made. Such deposit shall be paid in cash.

The officer may also require an undertaking in writing to pay any further fees and expenses.

NOTE.—The Schedule G referred to in the third column is prescribed by the regulations for the payment of Supreme Court Fees and Probate Duties by means of adhesive stamps. Where no document is specified in the third column, the fee is payable in cash.

SCHEDULE—*continued.*

	Fee or Duty. £   s.   d.	Document to which stamp is to be affixed.
<b>OATHS.</b>		
23. On taking an affidavit or an affirmation or a declaration, for each person making the same .. .. .	0   1   6   ..	Schedule G.
24. And in addition thereto for each exhibit therein referred to and required to be marked .. .. .	0   1   0   ..	Schedule G.
<b>FILING.</b>		
25. On filing a special case or petition of right .. .. .	0   10   0   ..	Document filed.
26. On filing, unless otherwise provided, an affidavit, deposition, or set of depositions (including any exhibits annexed to any such affidavit or deposition), statement of claim in default of appearance, official and special referees' certificates, petition, preliminary act, submission to arbitration, award, warrant of attorney, cognovit, bail, satisfaction, piece, bond, writ of execution with return, and power of attorney, and every other proceeding in a probate action required to be filed in the Supreme Court office .. .. .	0   2   0   ..	Document filed.
27. On filing scripts in a probate action or on deposition, pursuant to an order in any cause or matter, any documents for safe custody or production, if the number does not exceed five .. .. .	0   5   0   ..	Copy order.
28. If exceeding five .. .. .	0   10   0   ..	Copy order.
29. On a receipt for any document or documents to which the two last fees apply, when delivered out, or for any other documents when delivered out in probate .. .. .	0   2   6   ..	Receipt.
30. On filing an affidavit and notice under Order XLIV., Rule 6..	0   10   0   ..	Document filed.
31. On filing a memorandum of satisfaction .. .. .	0   5   0   ..	(Provided under Bill of Sale Act) Document filed.
<b>CERTIFICATES.</b>		
32. On a certificate of appearance or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof, unless otherwise provided .. .. .	0   1   6   ..	Schedule G.
33. Or if required for use in a foreign country .. .. .	0   5   0   ..	Schedule G.
34. Or if a certificate of proceedings pursuant to Order LXI., Rule 19 .. .. .	0   5   0   ..	Schedule G.
<b>SEARCHES AND INSPECTIONS.</b>		
35. On an application to search for an appearance or an affidavit and inspecting the same .. .. .	0   1   0   ..	Schedule G.
36. On an application to search an index, and inspect a pleading, judgment, decree, order or other record, unless otherwise expressly provided for by any Act of Council or this Order, and to inspect scripts filed or documents deposited pursuant to an order for safe custody or production, for each hour or part of an hour occupied .. .. .	0   2   6   ..	Schedule G.
37. Not exceeding on one day .. .. .	0   10   0   ..	Schedule G.
<b>EXAMINATION OF WITNESSES.</b>		
38. On every memorandum of appointment for an examination to be taken before an examiner of the Court .. .. .	0   5   0   ..	Copy filed.
39. On every witness sworn and examined by an Officer of the Court in his office, unless otherwise provided, including oath, for each hour or part of an hour .. .. .	0   10   0   ..	Schedule G.

SCHEDULE—*continued.*

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
40. On an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses), per day .. .. .	3 3 0 ..	Schedule G.
41. The officer may require a deposit, in cash, on account of expenses which may become payable, and shall make a memorandum thereof. The officer may also require an undertaking, in writing, to pay any further fees and expenses.		

## HEARING.

42. On entering or setting down, or re-entering or re-setting down an appeal to the Full Court, or a cause or matter for trial or hearing in the Supreme Court, including hearing on further consideration where no such fee was paid on the original hearing, whether on summons adjourned from Chambers or otherwise, and including special case and petition of right, but not any other petition, nor any other summons adjourned from Chambers .. .. .	0 10 0 ..	Præcipe or notice.
43. On entering directions of the Judge at a trial pursuant to Order XXXIV., Rules 34 and 35, and certifying the same when required .. .. .	0 5 0 ..	Certificate or in minute book.
44. On answering and setting down for hearing in Court a petition by which any proceeding is commenced, unless otherwise provided .. .. .	0 10 0 ..	Document filed.
45. Any other petition .. .. .	0 5 0 ..	Document filed.
46. Certificate of officer of the result of trial .. .. .	0 10 0 ..	Document filed.

## JUDGMENTS, DECREES, AND ORDERS.

On drawing up and entering judgment, decrees, and orders—		
47. If made in Court on the original hearing or hearing on further consideration of a cause, or on the hearing of a special case or petition, or on any application to the Court of Appeal, unless otherwise provided .. .. .	0 10 0 ..	Document filed.
48. If a judgment without hearing in Court, or a final or other order in a probate action or matter on a motion, including filing the case, or application on which the order is made ..	0 10 0 ..	Document filed.
49. If made on the hearing or an originating summons, unless otherwise provided .. .. .	0 10 0 ..	Document filed.
50. If made at chambers in Equity on the hearing of a cause or matter on further consideration .. .. .	0 10 0 ..	Document filed.
51. If made under Order XV., Order XXXI., Rule 6, or Order XXXII., Rule 2 .. .. .	0 10 0 ..	Document filed.
52. If made on an application by Order LV., Rule 3, directed to be disposed of in chambers comprised in sections (1), (2), (3), (4), or (6) of the said rule, exclusive of those comprised in section (7) of the same rule .. .. .	0 10 0 ..	Document filed.
53. If an order of course on a petition of right .. .. .	0 10 0 ..	Document filed.
54. If an order for a commission on a petition of right .. ..	1 1 0 ..	Document filed.
55. If an order to tax a solicitor's bill of costs, or for delivery of a bill of costs by a solicitor .. .. .	0 10 0 ..	Document filed.
56. On any other order, and filing same .. .. .	0 5 0 ..	Document filed.
57. On signing a note or memorandum of an order pursuant to Order LI., Rule 13, when required for production, where no order is drawn up .. .. .	0 3 0 ..	Fiat.

SCHEDULE—*continued.*

	Fee or Duty.			Document to which stamp is to be affixed.
	£	s.	d.	
58. On a memorandum to enter an order <i>nunc pro tunc</i> .. ..	0	5	0	.. Document filed.
59. Answering petition for hearing in Court and setting down, or for answering a non-attendable petition not being a peti- tion for an order of course .. .. .	0	5	0	.. Document filed.
ON PROCEEDINGS IN EQUITY AT THE JUDGES' CHAMBERS, OR BEFORE A MASTER.				
60. On the sale or mortgage of any land or hereditaments pur- suant to any order directing a sale or mortgage with the approbation of the Judge, made in any cause or matter for the purpose of raising money to be dealt with by the Court in such cause or matter, for every £100 or fraction of £100 of the amount raised .. .. .	0	2	0	.. Document filed.
61. On the approval of the purchase of any land or hereditaments, or of the title to any land or hereditaments, to any order in any cause or matter with money under the control of the Court in such cause or matter, for every £100 or fraction of £100 of the amount of the purchase money .. ..	0	2	0	.. Document filed.
62. On proceedings pursuant to an order in any cause or matter where the amount of the outstanding or undisposed of es- tate of a deceased person, or of the estate subject to any trust or partnership, shall be ascertained for the purpose of being dealt with in such cause or matter, without deduct- ing any payment for creditors or parties interested after the commencement of the cause or matter, for every £100 or portion of £100 of the amount or value thereof .. ..	0	1	0	.. Document filed.
63. On taking an account of moneys received by an executor, ad- ministrator, trustee, agent, solicitor, mortgagee, co-tenant, partner, receiver, guardian, consignee, bailee, manager, pro- visional official or other liquidator, sequestrator or execu- tion creditor, or other person liable to account, for every £100 or fraction of £100 of the amount found to have been received, without deducting any payment .. .. .	0	1	0	.. Document filed.
64. On taking an account of the debts or ascertaining the amount of any debt due from a deceased person, or from any com- pany in any cause or matter, when any creditor shall be re- quired to prove his debt otherwise than by production of his security, for every £100 or fraction of £100 of the amount found to be due to such creditor, or, if more than one, of the aggregate amount found to be due to all such creditors .. .. .	0	1	0	.. Document filed.
65. And in any such case, if after evidence adduced by the creditor his claim shall be disallowed, on each such claim .. ..	0	10	0	.. Document filed or Schedule G.
66. On taking an account of or ascertaining the amount due in re- spect of the debentures or bonds of a joint stock or other company, for every £100 or fraction of £100 of the aggre- gate amount found to be due .. .. .	0	2	0	.. Document filed.
67. On an inquiry to ascertain the heir and next of kin, or the heir or next of kin of any one or more than one deceased per- son whose estate is being administered in any cause or matter, or in respect of whose estate an application is made under Order LV., Rule 4, and on any such inquiry at Chambers upon an application under any Act whereby the purchase money of any property sold is directed to be paid into Court .. .. .	1	0	0	.. Document filed.

## SCHEDULE—continued.

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
68. On settling a list of shareholders entitled to a return, where there is any money to be returned, or a list of contributions, for every person settled on either such list not exceeding £2,000 .. .. .	0 2 0 ..	Document filed.
69. On settling the list of the creditors of a limited company which proposes to reduce its capital .. .. .	5 0 0 ..	Document filed.
70. On settling a scheme for the management of a charity ..	2 0 0 ..	Document filed.
71. On a certificate of a Clerk or Taxing Master, of the result of any proceeding or taxation of costs before him, including one or any number of matters .. .. .	0 10 0 ..	Document filed.
ON PROCEEDING AT COMMON LAW AND IN PROBATE BEFORE A MASTER.		
72. The fee No. 63 on taking accounts applicable to proceedings in equity upon similar proceedings .. .. .	.. ..	Document filed.
73. On every other reference, investigation, or inquiry, including examination of witnesses, if any, for every hour or part of an hour the officer is occupied .. .. .	0 10 0 ..	Document filed.
ON PROCEEDINGS IN PROBATE ON REFERENCES BEFORE A MASTER.		
74. On any reference to the Master, including examination of witnesses, if any, having regard to the nature and importance of the accounts and other matters, and to the time occupied .. .. .	From £5 5s. to £15 15s. ..	Document filed.
TAXATION OF COSTS.		
75. On appointment for taxation of a Bill of Costs where the amount claimed does not exceed £4 .. .. .	0 2 0 ..	Document filed.
76. Where the amount claimed exceeds £4, for every £2 (or a fraction thereof) of nine-tenths of the total amount at which the Bill of Costs is drawn .. .. .	0 1 0 ..	Document filed.
The Taxing Master to allow against the person, estate, or fund, chargeable with the costs as taxed, taxing fees at the rate of 1s. for every £2 (or a fraction thereof) of the amount found due upon taxation only.		
Taxation fees in taxation under "The Legal Practitioners Act, 1893," to be paid at the same rate and in like manner as heretofore.		
77. For Certificate or allocatur .. .. .	0 2 6 ..	Document filed.
ON PROCEEDING IN THE PAY DEPARTMENT OF THE SUPREME COURT.		
78. On a certificate of the amount and description of any money, funds, or securities, including the request therefor .. .. .	0 1 0 ..	Schedule G.
79. On a transcript of an account for each opening, including the request therefor .. .. .	0 2 0 ..	Document filed.
80. On a request to the Master (or unless otherwise provided) for any of the following purposes: Paying, lodging, transferring, or depositing money, funds, or securities, in Court without an order, or money in addition to the amount directed by an order to be paid in; paying out of Court any money without an order or a certificate of a taxing officer; information in writing in respect of any money, funds, or securities, or any transaction in the Office of the Supreme Court .. .. .	0 1 0 ..	Document filed.
81. On a request for information respecting any money, funds, or securities to the credit of any cause or matter contained in any list prepared by the Master to the credit of which any money, funds, or securities have not been dealt with during 15 years .. .. .	0 2 6 ..	Document filed.

## SCHEDULE—continued.

	Fee or Duty.				Document to which stamp is to be affixed.
	£	s.	d.		
82. On an affidavit for the purpose of paying, transferring, or depositing any money, funds, or securities in Court .. ..	0	1	0	..	Document filed.
83. On preparing a power of attorney .. .. .	0	3	0	..	Document filed.

## REGISTER OF JUDGMENTS AND LIS PENDENS.

84. On registering a judgment or <i>lis pendens</i> , although more than one name may have to be registered .. .. .	0	2	6	..	Document filed.
85. On re-registering same .. .. .	0	1	0	..	Document filed.
86. On a search for each name .. .. .	0	1	0	..	Schedule G.
87. On a certificate of entry of satisfaction .. .. .	0	1	0	..	Schedule G.
88. On a request for a search and certificate pursuant to Order LXI., Rule 18 .. .. .	0	5	0	..	Document filed.
89. If more than one name included in the same request, for each additional name .. .. .	0	2	0	..	Document filed.
90. On a duplicate certificate, if not more than three folios ..	0	1	0	..	Schedule G.
91. For every additional folio .. .. .	0	0	6	..	Schedule G.
92. On every continuation search, if requested, within 14 days of any former search (the result to be indorsed on such certificate) .. .. .	0	1	0	..	Schedule G.
93. On a certificate of a judgment for registration in a Foreign Court, including affidavit .. .. .	0	2	0	..	Schedule G.

## SERVICE AND EXECUTION OF PROCESS.

## No. 11 of 1901 (COMMONWEALTH).

## 19 Vict., No. 13.

94. On filing a memorial of judgment under 19 Vict., No. 13 ..	0	10	0	..	Document filed.
95. On registering a certificate of judgment under No. 11 of 1901 (Commonwealth) .. .. .	0	10	0	..	Document filed.
96. On sealing summons to show cause .. .. .	0	5	0	..	Document filed.
97. On sealing writ of execution (including filing of Judge's order, if any) .. .. .	0	5	0	..	Document filed.
98. On filing each affidavit .. .. .	0	2	0	..	Document filed.
99. For every certificate of judgment under No. 11 of 1901 ..	1	0	0	..	Schedule G.
100. On marking copy presented, office copy, per folio .. ..	0	0	2	..	Schedule G.
101. For every office copy, if less than five folios .. .. .	0	2	6	..	Schedule G.
102. For additional folio .. .. .	0	0	6	..	

## MISCELLANEOUS.

103. On a fiat of a Judge .. .. .	0	5	0	..	Document filed.
104. On signing, settling, or approving an advertisement .. ..	0	10	0	..	Document filed.
105. On taking the acknowledgment of a deed by a married woman .. .. .	0	2	6	..	If by Officer of Court, Schedule G.
106. On an appointment of a Receiver in a Probate action .. ..	1	0	0	..	Document filed.
107. On taking a recognisance or bond, whether one or more than one recognisor or obligor, and whether entered into by all at one time or not .. .. .	0	10	0	..	If by Officer of Court, Schedule G.
108. On assignment of a bond .. .. .	0	5	0	..	Document filed.
109. On a commitment .. .. .	0	5	0	..	Document filed.
110. On an application to produce Judges' Notes .. .. .	0	5	0	..	Document filed.
111. On examining and signing enrolments of decrees and orders ..	2	0	0	..	Schedule G.
112. For transcript of an account in the books for each opening ..	0	2	0	..	Schedule G.
113. On a citation .. .. .	0	5	0	..	Schedule G.
114. On the admission or re-admission of a barrister or solicitor ..	10	0	0	..	See Stamp Act.

SCHEDULE—*continued*.

	Fee or Duty. £   s.   d.	Document to which stamp is to be affixed.
IN ADMIRALTY.		
<i>1.—For preparing instruments, etc.</i>		
115. For sealing any writ of summons or other document required to be sealed .. .. .	0   5   0   ..	Copy filed.
116. For preparing any warrant, release, commission, attachment, or other instrument required to be sealed or any bail bond .. .. .	0   10   0   ..	Document filed.
117. For preparing a receivable order or a receipt for money to be paid out of Court .. .. .	0   5   0   ..	Document filed.
118. For preparing and sending any notice .. .. .	0   2   6   ..	Document filed.
119. For preparing any other document, for every folio .. .. .	0   2   0   ..	Document filed.
NOTE.—The fees for preparing shall include drawing and fair copying or engrossing.		
<i>2.—For filing.</i>		
120. On filing any instrument or other document, except minutes and exhibits .. .. .	0   5   0   ..	Document filed.
<i>3.—For evidence, etc.</i>		
121. For administering any oath or declaration except before the Judge .. .. .	0   2   6   ..	Schedule G.
122. For taking down and certifying the evidence on any witness examined before him, for every folio .. .. .	0   1   6   ..	Schedule G.
<i>4.—For the trial, etc.</i>		
123. On a final decree in an uncontested action .. .. .	0   10   0   ..	Document filed.
124. On a final decree in a contested action .. .. .	1   0   0   ..	Document filed.
125. For attendance before the Judge when any order is made or act done other than pronouncing a final decree .. .. .	0   10   0   ..	Document filed.
NOTE.—The above fees shall include the entry of the decree or order in the minute book.		
<i>5.—For references.</i>		
126. For hearing any reference, according to the case, per day ..	From £1 to ..	Document filed.
	£5	
127. For preparing the report of a reference .. .. .	1   0   0   ..	Document filed.
<i>6.—For Taxation.</i>		
See items 75 et seq.		
<i>7.—For Office Copies, etc.</i>		
128. For an office copy of any document, for every folio, in addition to the fee for sealing .. .. .	0   1   0   ..	Schedule G.
129. For a search of the records by any person not a party to the action .. .. .	0   2   6   ..	Schedule G.
<i>By the Sheriff.</i>		
130. For executing any warrant or attachment .. .. .	1   0   0	
131. For keeping possession of any ship, goods, or ship and goods (exclusive of any payments necessary for the safe custody thereof), for each day .. .. .	0   2   0	
132. On release of any ship goods, or person from arrest .. .. .	0   10   0	
133. For attending the unlivery of cargo, for each day .. .. .	2   0   0	
134. For executing any commission of appraisement, sale, or appraisement and sale, exclusive of the fees, if paid to the appraiser and auctioneer .. .. .	1   0   0	



SCHEDULE—*continued*.

	Fee or Duty.	Document to which stamp is to be affixed.
£ s. d.		
135. For executing any other commission or instrument .. ..	1 0 0	
136. On the gross proceeds of any ship, or goods, etc., sold by order of the Court:—		
If not exceeding £100 .. .. .	1 0 0	
For every additional £100, or part thereof .. ..	0 10 0	
137. On a final decree in an uncontested action .. ..	0 10 0	Schedule G.
138. On a final decree in a contested action .. ..	1 0 0	Schedule G.

## IN DIVORCE.

139. On every citation .. .. .	0 5 0	Præcipe.
140. On entering appearance, each person .. .. .	0 2 0	Document filed.
141. Filing a petition .. .. .	0 5 0	Document filed.
142. Filing an answer .. .. .	0 5 0	Document filed.
143. Filing a reply .. .. .	0 5 0	Document filed.
144. Filing any further replication to a petition .. ..	0 5 0	Document filed.
145. Filing application for an order for the protection of a wife's earnings and property .. .. .	0 5 0	Document filed.
146. Filing application for discharge of such order .. ..	0 5 0	Document filed.
147. Filing interrogatories .. .. .	0 5 0	Document filed.
148. Filing answer to each deponent to interrogatories .. ..	0 5 0	Document filed.
149. On every motion by counsel, inclusive of filing the case for motion .. .. .	0 5 0	Document filed.
150. Entering order of the Court on motion .. .. .	0 5 0	Document filed.
151. Summons to attend in Chambers .. .. .	0 2 0	Document filed.
152. For entering order of Court on summons .. .. .	0 2 6	Schedule G.
153. Filing notice .. .. .	0 1 0	Document filed.
154. For the settling of the record by one of the Registrars ..	1 0 0	Document filed.
155. Setting down a cause for hearing or trial .. .. .	0 10 0	Document filed.
156. Entering sentence or final decree in a cause .. .. .	0 10 0	Document filed.
157. Entering special verdict, if five folios of seventy-two words or under .. .. .	0 2 6	Document filed.
158. If exceeding five folios, per folio of seventy-two words ..	0 0 6	Document filed.
159. Entering decree or order in pursuance of a written judgment	0 10 0	Document filed.
160. Entering any decree or order for alimony .. .. .	0 5 0	Document filed.
161. Entering order directing how damages shall be applied ..	0 5 0	Document filed.
162. Entering order providing for custody, maintenance, or educa- tion of children, if two folios of seventy-two words or under .. .. .	0 5 0	Document filed.
163. Entering order for settlement of the wife's property, if two folios of seventy-two words or under .. .. .	0 5 0	Document filed.
164. If either of the above orders exceed five folios, for each addi- tional folio .. .. .	0 2 0	Document filed.
165. Entering any minute, order, or decree in the Court book other than the orders or decrees before specified .. .. .	0 2 6	Schedule G.
166. On withdrawal of a cause after same is set down for hearing, to be paid by the party at whose instance it is withdrawn	0 5 0	Document filed.
167. Producing the Judge's notes .. .. .	0 5 0	Schedule G.
168. Entering on the record the finding of the jury or the decision of the Judge .. .. .	0 5 0	Document filed.
169. On every subpoena .. .. .	0 2 6	Præcipe.
170. On a certificate under the hand of the Judge .. .. .	0 2 6	Document filed.
171. On every commission issuing under the Seal of the Court ..	1 0 0	Schedule G.
172. Writ of attachment .. .. .	0 7 6	Document filed.
173. Writ of sequestration .. .. .	1 0 0	Document filed.

SCHEDULE—*continued.*

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
174. On lodging instrument of appeal .. .. .	0 10 0 ..	Document filed.
175. Search in Court books, if within the last two years .. ..	0 1 0 ..	Schedule G.
176. If at an earlier period than within two years .. .. .	0 2 6 ..	Schedule G.
177. In case the Court books to be searched or the documents re- quired are not in the registry, in addition to the above ..	0 2 6	
178. Filing and entry of remission of appeal .. .. .	0 10 0 ..	Document filed.
179. Filing exhibits, not exceeding ten, for each exhibit .. ..	0 1 0 ..	Schedule G.
180. Exceeding ten but not exceeding twenty .. .. .	0 10 0 ..	Schedule G.
181. Exceeding twenty but not exceeding fifty .. .. .	0 15 0 ..	Schedule G.
182. If exceeding fifty .. .. .	1 0 0 ..	Schedule G.
183. Office copies of minutes, orders, or decrees, Judge's notes or other documents filed in a cause:—		
If five folios or under .. .. .	0 2 6 ..	Schedule G.
184.    If exceeding five folios, per folio .. .. .	0 0 6 ..	Schedule G.
185.    In case the same are under the Seal of the Court, in addition for the seal .. .. .	0 5 0 ..	Schedule G.
186. For administering oaths to each deponent .. .. .	0 1 6 ..	Schedule G., when taken by officer of Court.
187. For marking each exhibit annexed or referred to in an affidavit	0 1 0 ..	Schedule G., when marked by officer of Court.
188. Filing every affidavit or other document brought into Court or deposited in the registry for filing which no fee is before specified .. .. .	0 2 6 ..	Document filed.
189. Examiner appointed to take evidence under a commission for examination of witnesses, for each day's attendance, be- sides travelling expenses .. .. .	3 3 0 ..	Schedule G., when taken before an offi- cer of the Court.
190. For settling the form or advertisements of citation or other advertisements .. .. .	0 5 0 ..	Document filed.
191. For taking the evidence of one or more witnesses before the Registrar, for each day, and within three miles of the General Post Office .. .. .	3 3 0 ..	Document filed.
192. If beyond that distance .. .. .	5 5 0 ..	Document filed.
193. If for part of a day only, such smaller fee as the Registrar, in his discretion, shall think proper .. .. .	.. ..	Document filed.
194. For entering order for the protection of wife's earnings and property .. .. .	0 5 0 ..	Document filed.
195. For the order under seal of the Court .. .. .	0 10 0 ..	Document filed.
196. For entering an order of the Registrars of the Court of Pro- bate the same fee as would be payable for entering a similar order made by the Judge .. .. .	.. ..	Document filed
197. For a new trial .. .. .	0 5 0 ..	Document file l.
198. For taxing costs. (See items 75 et seq.)		

## IN LUNACY.

(3 Edwd. VII., No. 15.)

199. Accounts passing, per hour .. .. .	0 10 0 ..	Schedule G.
200. Advertisements, pursuant to order of Court, settling .. ..	0 5 0 ..	Document filed.

SCHEDULE—*continued.*

	Fee or Duty.			Document to which stamp is to be affixed.
	£	s.	d.	
201. Amending Petition or any document filed in Court .. ..	0	2	6	.. Document filed.
202. Auctioneer, appointment of, if pursuant to order of the Court	0	2	6	.. Document filed.
203. Certifying to office copy, minimum charge .. ..	0	1	0	.. Schedule G.
204. Or if made in the Central Office, per folio .. ..	0	0	6	.. Schedule G.
205. " " outside " " .. ..	0	2	6	.. Schedule G.
206. Depositing bond or recognisance .. ..	0	2	0	.. Document filed.
207. Engrossing, including Master's notes, at per folio .. ..	0	0	4	.. Schedule G.
208. Examination of witness before Court or Master .. ..	0	3	0	.. Schedule G.
209. Filing affidavit or declaration .. ..	0	2	0	.. Document filed.
210. Filing any other document (see exemption) .. ..	0	2	0	.. Document filed.
211. Petition .. ..	0	10	0	.. Document filed.
212. Settling any draft mortgage bond, conveyance lease, under- lease agreements, etc., under order of Court .. ..	0	10	0	.. Document filed.
213. Schedule, examination of, on depositing and handing out of deeds and documents .. ..	0	5	0	.. Schedule G.
214. Search fee .. ..	0	1	0	..
215. Summons, Master's .. ..	0	2	0	.. Document filed.
216. Subpœna duces tecum .. ..	0	2	6	.. Document filed.
217. Subpœna ad test for every three names .. ..	0	2	6	.. Document filed.
218. Chamber order .. ..	0	5	0	.. Document filed.
219. Order of Court of Petition:— Where the net estimated value of the property of the insane person—				
Does not exceed £100 .. ..			Nil	
Exceeds £100 but does not exceed £500 .. ..	0	10	0	.. Document filed.
Exceeds £500 .. ..	1	0	0	.. Document filed.
220. Order of Court, other than on Petition, Master's report, Master's certificate and directions, and report and cer- tificate on passing accounts .. ..	0	10	0	.. Document filed.
221. For taxing costs ( <i>see</i> Item 75 <i>et seq.</i> )				

The following documents are exempt from fees:—

- (a.) Affidavits and declarations in proof of debts less than £2 in support of rent accounts in estates of insane persons, such rent accounts are exempt from all fees.
- (b.) All appointments other than those specified in the list above.
- (c.) Leases other than those made under order of the Court or under Master's order pursuant to Section No. 123 of the Act shall be exempt from fee.
- (d.) Accounts other than those of committees or managers appointed by the Court.
- (e.) The Master in Lunacy may remit any fee.

## PROBATE AND ADMINISTRATION.

(3 Edwd. VII., No. 13.)

222. Probates or Letters of Administration with Will annexed:—  
If the estate is sworn to be—

	£		
Under the value of .. ..	5	0	1 0
	20	0	1 0
	100	0	1 0
	200	0	3 0
	300	0	7 6
	450	0	12 0
	600	0	16 6

} .. Schedule G.

SCHEDULE—*continued.*

	£	Fee or Duty.			Document to which stamp is to be affixed.
		£	s.	d.	
Under the value of .. .. .	800	1	2	6	} ... Schedule G.
	1,000	1	13	0	
	1,500	2	5	0	
	2,000	3	0	0	
	3,000	3	15	0	
	4,000	4	10	0	
	5,000	4	15	0	
	6,000	5	0	0	
	7,000	5	5	0	
	8,000	5	10	0	
	9,000	5	15	0	
	10,000	6	0	0	
	12,000	6	5	0	
	14,000	6	10	0	
	16,000	6	17	6	
	18,000	7	5	0	
	20,000	7	12	6	
	25,000	8	2	6	
	30,000	8	15	0	
	35,000	9	7	6	
	40,000	10	6	3	
	45,000	11	5	0	
	50,000	12	3	9	
	60,000	13	2	6	
	70,000	15	0	0	
	80,000	16	17	6	
	90,000	18	15	0	
	100,000	20	12	6	
	120,000	21	11	3	
	140,000	23	8	9	
	160,000	25	6	3	
	180,000	27	3	9	
	200,000	29	1	3	
	250,000	30	18	9	
	300,000	35	12	6	
	350,000	40	6	3	
	400,000	41	17	6	
	500,000	43	8	9	
For every additional £100,000, or any fractional part of £100,000, a further and additional fee of .. ..		3	2	6	

## Letters of Administration.

223. If the estate is sworn to be—

	£				
Under the value of .. .. .		£	s.	d.	
	5	0	1	0	} ... Schedule G.
	20	0	1	0	
	50	0	1	0	
	100	0	1	0	
	200	0	4	6	
	300	0	12	6	
	450	0	16	6	
	600	1	2	6	
	800	1	13	0	
	1,000	2	5	0	
	1,500	3	7	6	
	2,000	4	10	0	
	3,000	4	13	9	
	4,000	4	17	6	

## SCHEDULE—continued.

	£	Fee or Duty.			Document to which stamp is to be affixed.
		£	s.	d.	
Under the value of .. .. .	5,000	5	5	0	Schedule G.
	6,000	5	12	6	
	7,000	6	0	0	
	8,000	6	7	6	
	9,000	6	15	0	
	10,000	7	2	6	
	12,000	7	10	0	
	14,000	7	17	6	
	16,000	8	8	9	
	18,000	9	0	0	
	20,000	9	11	3	
	25,000	10	6	3	
	30,000	11	5	0	
	35,000	12	3	9	
	40,000	13	11	3	
	45,000	15	0	0	
	50,000	16	7	6	
	60,000	17	16	3	
	70,000	20	12	6	
	80,000	23	8	9	
	90,000	26	5	0	
	100,000	29	1	3	
	120,000	30	9	6	
	140,000	33	5	9	
	160,000	36	2	0	
	180,000	38	18	3	
	200,000	41	14	6	
	250,000	44	10	9	
	300,000	46	17	6	
	350,000	49	4	6	
	400,000	51	11	3	
	500,000	53	18	3	
For every additional £100,000, or any fractional part of £100,000, a further and additional fee of .. ..		4	13	6	
224. Probate pursuant to leave reserved, or letters of administra- tion <i>de bonis non</i> , or <i>pendente lite</i> , or limited to answer a suit or to substantiate proceedings in equity, or any other limited administration, where the net value of the estate exceeds £1,500 .. .. .		2	0	0	Schedule G.
In addition to items applicable thereto as hereinafter prescribed.					
<i>Double or Cessate Probate, etc.</i>					
225. For every double or cessate probate or letters of administra- tion, with the will annexed <i>de donis non</i> or <i>cessate</i> ..		0	12	6	Schedule G.
226. For every duplicate and triplicate probate or letters of ad- ministration with the will annexed .. .. .		0	12	6	Schedule G.
<i>Exemplifications.</i>					
227. For every exemplification of a probate or letters of adminis- tration with the will annexed, in addition to the fees for engrossing and collating the will and other documents registered with the same .. .. .		1	1	0	Schedule G.
<i>Registering and Collating.</i>					
228. For registering and collating wills and other documents, if three folios or under .. .. .		0	1	6	Schedule G.
229. If above three folios, per folio .. .. .		0	0	6	

## SCHEDULE—continued.

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
<i>Codicils to Wills already proved.</i>		
230. For every probate of a codicil or codicils, or letters of administration with a codicil or codicils annexed, being a codicil or codicils to a will already proved, the same fees respectively as on a duplicate probate or duplicate letters of administration with will annexed .. .. .	.. .. .	Schedule G.
<i>Duplicate and Triplicate Letters of Administration, etc.</i>		
231. For every duplicate and triplicate letters of administration ..	0 12 6 ..	Schedule G.
<i>Exemplifications.</i>		
232. For every exemplification of letters of administration ..	1 1 0 ..	Schedule G.
<i>Administrations de Bonis Non or Cessate.</i>		
233. For every grant of letters of administration <i>de bonis non</i> or <i>cessate</i> .. .. .	0 12 6 ..	Schedule G.
<i>Additional Security.</i>		
234. For noting on the grant of letters of administration with or without will annexed, and on the act, that additional security has been given .. .. .	0 5 0 ..	Schedule G.
<i>Searches and Inspections of Wills, etc.</i>		
235. For every search for will or grant of letters of administration or any document filed in the principal registry, including the looking up and inspecting an original will before the same is registered or a registered copy of a will or an Administration Act .. .. .	0 1 0 ..	Schedule G.
236. For every third will or Administration Act looked up in addition to the above .. .. .	0 1 0 ..	Schedule G.
237. For looking up and inspecting an original will after the same is registered, in addition to the fee for the search ..	0 1 0 ..	Schedule G.
238. For looking up and producing any document filed in the Registry other than an original will or an Administration Act .. .. .	0 1 0 ..	Schedule G.
239. For search of a will or grant of letters of administration and for reading the will when the party applying is unable or unwilling to search for or read the same, for the search for each year or part of a year .. .. .	0 0 6 ..	Schedule G.
240. For reading the will, if twenty folios or under .. ..	0 1 0 ..	Schedule G.
241. For every additional twenty folios, each .. .. .	0 1 0 ..	Schedule G.
<i>Sealing Foreign Grants.</i>		
242. For affixing the seal of the Court to any grant of probate or letters of administration .. .. .	1 1 0 ..	Schedule G.
<i>Notation of Domicile.</i>		
243. For noting on a probate or on letters of administration, with or without will annexed, that the testator or intestate died domiciled in Western Australia .. .. .	0 5 0 ..	Schedule G.
<i>Office Copies and Extracts, Engrossing and Marking.</i>		
244. For engrossing and marking every office copy or extract of a will or of a probate or administration act, or of any document filed or deposited, if five folios or under ..	0 2 6 ..	Schedule G.
245. If exceeding five folios, for every additional folio or part of a folio .. .. .	0 0 6 ..	Schedule G.

SCHEDULE—*continued.*

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
246. If the office copy of a will or any part of a will or other document is required to be made <i>fac simile</i> , and such will or part of a will or other document is two folios in length or under, in addition to the fee for the copy .. ..	0 1 0 ..	Schedule G.
247. If exceeding two folios, for every additional folio or part of a folio .. ..	0 0 6 ..	Schedule G.
248. For copies of wills and other documents in foreign languages made by persons specially employed for that purpose, the charges of the persons so employed will be taken in addition to any other fees which may be payable in respect of such copies .. ..	.. ..	Schedule G
249. Marking every office copy if of ten folios or under .. ..	0 2 6 ..	Schedule G.
250. If exceeding ten folios, for every additional folio or part of a folio .. ..	0 0 3 ..	Schedule G.
251. For office copy of a will, minute, order, decree, or any document under seal of the Court for which no other fee is payable: For the seal, in addition to the fee for the copy and collating .. ..	0 5 0 ..	Schedule G.
252. For copies of plans, drawings, and armorial bearings, etc., such fee as shall be determined by the Registrar in each particular case .. ..	.. ..	Schedule G.
<i>Collating Documents.</i>		
253. For collating a copy of a probate and will or copy of letters of administration, with or without the will annexed, or any other instrument to be filed or deposited in the registry, or for collating any copy or instrument with an original document already filed or deposited in the registry, including Registrar's certificate in verification thereof— If ten folios or under .. ..	0 2 6 ..	Schedule G.
254. If above ten folios, per folio .. ..	0 0 3 ..	Schedule G.
255. If there is any pencil writing copied, or the copy of any part thereof is <i>fac simile</i> , in addition to the above fees:— If such pencil writing or <i>fac simile</i> copy is two folios or under .. ..	0 0 6 ..	Schedule G.
256. For every additional folio or part of a folio .. ..	0 0 3 ..	Schedule G.
<i>Orders.</i>		
257. For every order for revocation of a grant .. ..	0 5 0 ..	Copy order filed.
258. For every other Registrar's order .. ..	0 2 6 ..	Copy order filed.
<i>Filing.</i>		
259. For filing every affidavit and other document brought into and deposited in the principal registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond, and the testamentary papers in respect of which probate or administration with will annexed is granted .. ..	0 2 6 ..	Document filed.
260. For filing every exhibit .. ..	0 1 0 ..	Document filed.
261. Filing bond .. ..	0 2 0 ..	Document filed.
<i>Caveats.</i>		
262. For the entry of every caveat .. ..	0 1 0 ..	Document filed.
263. For every warning to a caveat .. ..	0 2 6 ..	Copy document.
264. For every service of a warning to caveat sent by a Registrar through the public post .. ..	0 2 6 ..	Schedule G.
265. For subducing a caveat .. ..	0 1 0 ..	Document filed.

## SCHEDULE—continued.

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
<i>Deposit of Wills.</i>		
266. For depositing every will of a person deceased for safe custody	0 10 0 ..	Schedule G.
267. For depositing every will of a living person for safe custody, including the deposit receipt .. .. .	1 1 0 ..	Schedule G.
<i>Alterations in Grants.</i>		
268. For making alterations in grants of probate of letters of administration .. .. .	0 2 6 ..	Schedule G.
<i>Notations.</i>		
269. For noting alterations in and revocations of grants on the record of the same .. .. .	0 2 6 ..	Schedule G.
270. For noting second and subsequent grants on the record of the first grant .. .. .	0 2 6 ..	Schedule G.
271. For noting renunciations or other necessary matter on the record of a grant .. .. .	0 2 6 ..	Schedule G.
<i>Certificates.</i>		
272. For every certificate under the hand of the Registrar for which no other fee is payable .. .. .	0 2 6 ..	Schedule G.
<i>Fiats.</i>		
273. For the fiat of a Judge as to the form in which any will or codicil is to be registered .. .. .	0 5 0 ..	Document filed.
274. For noting on a testamentary paper that probate thereof is refused .. .. .	0 5 0 ..	Schedule G.
<i>Perusing and Settling Oaths, etc.</i>		
275. For perusing and settling oaths to lead special or limited grants of probate or letters of administration, with or without will or other instruments— If five folios or under .. .. .	0 2 6 ..	Schedule G.
276. If above five folios, for each additional folio .. .. .	0 0 3 ..	Schedule G.
277. For perusing deeds and other documents when necessary, per folio .. .. .	0 0 3 ..	Schedule G.
<i>Citation.</i>		
278. On every citation .. .. .	0 5 0 ..	Copy citation.
279. For settling citation or abstract thereof for advertisement or other advertisement— If five folios or under .. .. .	0 2 6 ..	Schedule G.
280. If above five folios, for each additional folio .. .. .	0 0 3 ..	Schedule G.
<i>Appearance.</i>		
281. On entering appearance .. .. .	0 2 6 ..	Document filed.
282. On amending an appearance .. .. .	0 2 6 ..	Schedule G.
283. Search for appearance .. .. .	0 1 0 ..	Schedule G.
<i>Affidavits as to Scripts.</i>		
284. Filing affidavit as to scripts .. .. .	0 2 6 ..	Document filed.
285. Filing every script annexed to such affidavit .. .. .	0 5 0 ..	Document filed.
<i>Curator's Orders.</i>		
286. Every order, including Judge's fiat .. .. .	0 7 6 ..	Schedule G.
Note.—No fees are payable by the Curator where the value of the estate does not exceed Two pounds.		



## SCHEDULE—continued.

*Curator's Commission.*

(3 Edwd. VII., No. 13, s. 63.)

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
287. Curator's commission on estates collected to be charged at the rate of one per centum on the total value of each estate, and four per centum on all moneys actually collected or received by the curator or his agent .. .. .	.. .. .	Schedule G.
288. The Curator may charge every estate collected or administered by him a fee for postages according to the following scale:—		
Value of estate.		
Under £10 .. .. .	0 2 6	
£10 and not exceeding £50 .. .. .	0 5 0	
£50 and not exceeding £100 .. .. .	0 10 0	
£100 and not exceeding £200 .. .. .	0 15 0	
£200 and not exceeding £500 .. .. .	0 17 6	
£500 and upwards .. .. .	1 0 0	

## DUTIES ON THE ESTATES OF DECEASED PERSONS.

(Prescribed by 3 Edwd. VII., No. 13.)

289. On the estate, real and personal, of a deceased person, and on the property given or accruing to any person under a settlement or deed of gift—		
Where the total value of such estate, after deducting all debts on the value of such property, does not exceed £1,000 ..	1 per cent.	} .. Statement filed.
Where the value exceeds £1,000, and does not exceed £3,500 ..	2 per cent.	
Where the value exceeds £3,500, and does not exceed £5,000 ..	3 per cent.	
Where the value exceeds £5,000, and does not exceed £7,500 ..	4 per cent.	
Where the value exceeds £7,500, and does not exceed £10,000 ..	5 per cent.	
Where the value exceeds £10,000, and does not exceed £15,000 ..	6 per cent.	
Where the value exceeds £15,000, and does not exceed £20,000 ..	7 per cent.	
Where the value exceeds £20,000, and does not exceed £30,000 ..	8 per cent.	}
Where the value exceeds £30,000, and does not exceed £50,000 ..	9 per cent.	
And over the value of £50,000 .. .. .	10 per cent.	
When beneficial interests pass to <i>bona fide</i> residents of and domiciled in Western Australia and occupying towards the deceased the relationship of parent, issue, husband, wife, and issue of husband or wife, the duty shall be only one-half of the percentage upon the property so acquired by such persons.		
290. On all settlements of property made by any person, the trusts or disposition of which are to take effect after his death, and on all deeds of gift in the event of the death of the donor within six months from date of deed, except in case of death by accident, the duty is calculated at the same percentage as above. ( <i>See</i> Section 96.)		

## IN BANKRUPTCY.

(55 Vict., No. 32.)

291. File for proceedings .. .. .	0 5 0 ..	On File.
<i>Table A.</i>		
292. Every declaration of a debtor of inability to pay his debts ..	0 5 0 ..	Document filed.
293. Every bankruptcy notice .. .. .	0 5 0 ..	Document filed.
294. Every bankruptcy petition .. .. .	2 10 0 ..	Document filed.
295. Every bond with sureties .. .. .	0 10 0 ..	Document filed.
296. Every affidavit filed (or report of an Official Receiver in lieu of an affidavit) other than proof of debts .. .. .	0 2 0 ..	Document filed.
297. Every subpoena or summons under Sec. 25 .. .. .	0 1 0 ..	Document filed.
298. For taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for proof of debts, for each person making the same .. .. .	0 1 6 ..	Schedule G. when taken before an officer of Court.

SCHEDULE—*continued.*

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
299. And in addition thereto for each exhibit therein referred to and required to be marked .. .. .	0 1 0 ..	Schedule G. when taken before an officer of Court.
300. On every proof of debt above £2 .. .. .	0 1 0 ..	Document filed.
301. Every petition under Sec. 114, and every order of administration under Sec 114 (3) of the Act .. .. .	2 10 0 ..	Document filed.
302. Every special proxy or voting paper .. .. .	0 0 1 ..	Document filed.
303. Every receiving order under Sec. 94 of the Act .. .. .	5 0 0 ..	Document filed.
304. Every application for an order of discharge, including expense of gazetting .. .. .	1 10 0 ..	Document filed, £1 balance cash to Government Printer.
305. And for each creditor to be notified .. .. .	0 1 0 ..	Document filed.
306. Every application to the Court under Secs. 17 and 21 to approve a scheme, a fee computed at the following rates on the gross amount of the estimated assets (but not exceeding the gross amount of the unsecured liabilities), viz., £1 on the first £100 or fraction of £100, and 5s. on each £25 or fraction of £25 above £100 up to £5,000, and 2s. 6d. on each £25 or fraction of £25 above that amount ..	.. ..	Document filed.
307. Every application to the Court under Sections 17 and 21 to approve a composition, a fee computed at the following rates on the gross amount of the composition, viz., £1 on the first £100 or fraction of £100, and 5s. on each £25 or fraction of £25 above £100 up to £5,000, and 2s. 6d. on each £25 or fraction of £25 above that amount ..	.. ..	Document filed.
(NOTE.—Where a scheme or composition has not been approved by the Court, and a subsequent application is made to the Court to approve of another scheme or composition, one or other of the above fees—as the case may require—shall be charged, less seven-eighths of the fee paid on the first application, and also on any net fee not already paid under Table C.)		
308. Every application for search other than by petitioner, trustee, bankrupt, or officer of the Court .. .. .	0 1 0 ..	Schedule G.
309. Every application to the Court except by the Official Receiver .. .. .	0 5 0 ..	Document filed.
310. Every office copy, each folio of 72 words .. .. .	0 0 4 ..	Schedule G.
311. On every record of trial .. .. . (Or such less sum as the Court may specially order.)	5 0 0 ..	Document filed.
312. Every allocatur by any officer of the Court for any costs, charges, or disbursements .. .. . Where the amount allowed shall not exceed £4 .. .. .	.. .. 0 2 0 ..	Document filed. Document filed.
313. Where the amount exceeds £4, for every £2 allowed or a fraction thereof .. .. .	0 1 0 ..	Document filed.
314. Every application to an Official Receiver to appoint a special manager to carry on the business of a debtor .. .. .	0 5 0 ..	Document filed.
315. Every application under Section 138 to the Court for payment of money out of The Bankruptcy Estates' Account, and every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the Bankruptcy Estates Account .. .. .	0 2 6 ..	Document filed.
316. On one copy of the Cash Book, showing assets realised, forwarded by the trustee to the Registrar, a fee according to the following scale on the gross amount of the assets realised and brought to credit, viz., £1 on the first £100 or fraction of £100, and 5s. on each £25 or fraction of £25 above £100 up to £5,000, and 2s. 6d. on each £25 or fraction of £25 above that amount. Provided that where a fee has been taken on an application under Sections 17 or 21, seven-eighths of the amount thereof shall be deducted from this fee .. .. .	.. ..	Document filed.

SCHEDULE—*continued*.

Fee or Duty.  
£ s. d. Document to which stamp  
is to be affixed.

Table B.

317. On the net assets realised or brought to credit by the Official Receiver, whether acting as interim receiver, receiver, or trustee, after deducting any sums paid to secured creditors in respect of their securities, and not being assets realised by a special manager, or moneys received and spent in carrying on the business of the debtor, and on the net assets realised by an Official Receiver when acting as trustee to administer a debtor's property under a composition or scheme, after deducting any sums paid to secured creditors in respect of their securities, and not being moneys received and spent in carrying on the business of a debtor, a percentage according to the following scale:—					
On the first £1,000 or fraction thereof	..	..	..	£5 per cent.	} Schedule G.
On the next £1,500 or fraction thereof	..	..	..	£4 per cent.	
On the next £2,500 or fraction thereof	..	..	..	£3 per cent.	
On the next £5,000 or fraction thereof	..	..	..	£2 per cent.	
Above £10,000 or fraction thereof	..	..	..	£1 per cent.	
318. On the amount distributed in dividends by the Official Receiver, when acting as trustee under adjudications, scheme, or compositions, a percentage according to the following scale:—					
On the first £1,000 or fraction thereof	..	..	..	£2½ per cent.	} Schedule G.
On the next £1,500 or fraction thereof	..	..	..	£2 per cent.	
On the next £2,500 or fraction thereof	..	..	..	£1½ per cent.	
On the next £5,000 or fraction thereof	..	..	..	£1 per cent.	
Above £10,000 or fraction thereof	..	..	..	£½ per cent.	
319. For the Official Receiver, acting as interim receiver of the property of a debtor, under Section 10, in addition to the percentage chargeable on realisations on every order				3 0 0 ..	Schedule G.
320. And in addition, where the order is in force for a longer period than 14 days, for every seven days after the first 14, and for every fraction of seven days				1 0 0 ..	Schedule G.
321. For each notice by an Official Receiver to a creditor of a first or any other meeting or sitting of the Court				0 1 0 ..	Document filed.
322. For each notice by an Official Receiver to a creditor of an adjourned meeting or an adjourned sitting of the Court				0 0 6 ..	Document filed.
323. For the Official Receiver supervising a special manager or the carrying on of a debtor's business, a fee according to the following scale:—					
If the gross assets are estimated by the Official Receiver not to exceed £500				£1 per week	Schedule G.
If to exceed £500 but not to exceed £5,000				£2 per week	Schedule G.
If to exceed £5,000 but not to exceed £10,000				£3 per week	Schedule G.
If to exceed £10,000 but not to exceed £20,000				£4 per week	Schedule G.
If to exceed £20,000				£5 per week	Schedule G.
324. Rooms for meetings or adjourned meetings of creditors summoned by Official Receiver for each creditor to whom notice has been given of such meeting, but not exceeding in summary administration £2 for each meeting, and in non-summary administrations not exceeding £5 for each meeting				0 1 0	
325. Travelling, keeping possession, and other reasonable expenses of Official, the amount disbursed.					
326. For official stationery, printing, books, and forms, each estate:—					
Where the creditors do not exceed twenty				2 0 0 ..	Schedule G.

SCHEDULE—*continued.*

	Fee or Duty.		Document to which stamp
	£ s. d.		is to be affixed.
327. For each additional ten or fraction of ten .. .. .	0 10 0	..	Schedule G.
328. For postages and telegrams .. .. .	1 10 0	..	Schedule G.
329. On every payment, under Section 138, of money out of the bankruptcy estates account, threepence on each pound or fraction of a pound, to be charged as follows:— Where the money consists of unclaimed dividends, on each dividend paid out .. .. .	..	..	Document filed.
330. Where the money consists of undistributed funds or balances on the amount paid out .. .. .	..	..	Document filed
331. High Bailiff, for attending sittings of the Court under each receiving order in summary cases, per case .. .. .	0 4 0		
332. High Bailiff, for attending Court in non-summary cases, per case .. .. .	0 6 0		
333. Serving every bankruptcy notice, bankruptcy petition, or sub- pœna, or receiving or other order (not serviceable by post) within two miles, including affidavit of service .. .. .	0 3 6		
334. If serviceable by post .. .. .	0 1 0		
335. Executing every warrant of seizure, or search warrant, or war- rant of apprehension, or order of commitment within two miles of Court .. .. .	0 10 0		
336. Keeping possession under a warrant, for each day the man is actually in possession, including affidavit of service being actually kept .. .. .	0 4 6		
(Not less than 3s. 6d. of the above sum is to be paid to the man in possession and his receipt produced.)			
337. High Bailiff's or officer's man travelling to place of possession, or to execute a warrant of or order of commitment, or to serve a summons or subpœna, or for any other purpose specially directed by the Court, per mile .. .. .	0 0 5		
338. His time per day when distance exceeds 10 miles .. .. .	0 4 6		
339. His expenses per day .. .. .	0 4 6		
340. If bankruptcy officer of Supreme Court directed by the Court personally to travel, per mile .. .. .	0 0 7		
341. His time per day .. .. .	0 10 0		
342. His expenses per day .. .. .	0 10 0		
343. For taxing costs or disbursements (see items 75 <i>et seq.</i> )			
BANKRUPTCY AMENDMENT ACT, 1898. (62 Vict., No. 15.)			
344. File for proceedings .. .. .	0 5 0	..	On File.
345. On every application to the Court other than by the Official Receiver .. .. .	0 5 0	..	Document filed.
346. On every recognisance .. .. .	0 10 0	..	Document filed.
347. On every order .. .. .	0 10 0	..	Document filed.
348. On every certificate of validity of a deed of assignment .. .. .	2 0 0	..	Document filed.
349. On every application to the Official Receiver to request pay- ment into Court of any moneys in the hands of a trustee .. .. .	0 5 0	..	Document filed.
350. On every affidavit or an affirmation or attestation upon honour in lieu of affidavit or declaration .. .. .	0 1 6	..	Schedule G.
351. On every exhibit thereon .. .. .	0 1 0	..	Schedule G.
352. On every application for search or inspection of documents other than by the Official Receiver .. .. .	0 1 0	..	Schedule G.
353. On examining a written or printed copy and making or seal- ing same as an office copy, for each folio .. .. .	0 0 2	..	Schedule G.
354. On making a copy and marking same as an office copy, for each folio .. .. .	0 0 6	..	Schedule G.
355. On filing a deed of assignment .. .. .	0 10 0	..	Document filed.
356. On filing an account for audit .. .. .	0 10 0	..	Document filed.
357. On filing every document other than orders of Court .. .. .	0 2 0	..	Document filed.

SCHEDULE—*continued*.

FEES PRESCRIBED BY OR UNDER SPECIAL ACTS.		Fee or Duty.		Document to which stamp
COMPANIES.		£	s. d.	is to be affixed.
(56 Viet., No. 8, 60 Viet., No. 2, 61 Viet., No. 35, 62 Viet., No. 28, 63 Viet., No. 54, 2 Edwd. VII., No. 19.)				
For registration of a company whose nominal capital does not ex- ceed £2,000, a fee of .. .. .	2	0	0	.. Memorandum.
For registration of a company whose nominal capital exceeds £2,000, the above fee of £2, with the following additional fees, regulated according to the amount of nominal capital, that is to say:—				
For every £1,000 of nominal capital or part of £1,000, after the first £2,000 up to £5,000 .. .. .	1	0	0	.. Memorandum.
For every £1,000 of nominal capital or part of £1,000, after the first £5,000, up to £100,000 .. .. .	0	5	0	.. Memorandum.
For every £1,000 of nominal capital or part of £1,000, after the first £100,000 .. .. .	0	1	0	.. Memorandum.
For registration of any increase of capital made after the first regi- stration of the company, the same fees per £1,000 or part of £1,000 as would have been payable if such increased capital had formed part of the original capital at the time of registration ..	..	..	..	Document filed.
For registering any document hereby required or authorised to be registered, other than the memorandum of association .. ..	0	5	0	.. Document filed.
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, or receiving any notice or other document required to be given to or left or filed with the Registrar, a fee of .. .. .	0	5	0	.. On Request, or docu- ment filed.
On a change of name, for registration of the new name and issue of certificate thereon .. .. .	2	0	0	.. Document filed.
For <i>Gazette</i> —Notice of incorporation .. .. .	0	5	0	.. Cash. (This fee is payable to Govern- ment Printer.)

*Table of Fees to be paid to the Registrar of Companies by a  
Company not having a Capital divided into Shares.*

(56 Vict., No. 8.)

For registration of a company whose number of members, as stated in the articles of association, does not exceed twenty .. ..	2	0 0	.. Articles of association.
For registration of a company whose number of members, as stated in the articles of association, exceeds twenty but does not exceed one hundred .. .. .	5	0 0	.. Articles of association.
For registration of a company whose number of members, as stated in the articles of association, exceeds one hundred, but is not stated to be unlimited, the above fee of £5, with an additional 5s. for every fifty members, or less number than fifty members after the first one hundred .. .. .	..	..	Articles of association.
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of ..	20	0 0	.. Articles of association.
For registration of any increase on the number of members made after the registration of the company, in respect of every fifty members or less than fifty members of such increase .. ..	0	5 0	.. Document filed.
Provided that no one company shall be liable to pay on the whole a greater fee than £20, in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			

SCHEDULE—*continued.*

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
For registering any document hereby required or authorised to be registered, other than the memorandum of association .. ..	0 5 0 ..	Document filed.
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, or receiving any notice or other document required to be given to or left or filed with the Registrar, a fee of .. .. .	0 5 0 ..	On Request, or document filed.
On a change of name, for registration of the new name, and issue of certificate thereon .. .. .	2 0 0 ..	Document filed.
<i>Foreign Companies.</i>		
(Part VIII., 56 Viet., No. 8.)		
On depositing power of attorney, declaration certificate of incorporation, notice of situation of office and approval, each .. ..	0 5 0 ..	Document filed.
Certifying to any document .. .. .	0 5 0 ..	On request.
(60 Viet., No. 2.)		
Filing <i>Gazette</i> and newspapers .. .. .	0 5 0 ..	Schedule G.
Certificate of compliance with the provisions of the Companies Acts	1 1 0 ..	Schedule G.
(63 Viet., No. 54.)		
Filing declaration of compliance .. .. .	0 5 0 ..	Document filed.
(2 Edwd. VII., No. 19.)		
On depositing authenticated office copy original Power of Attorney, "Sub-Power of Attorney," and Declaration, each .. .. .	0 5 0 ..	Document filed.
ASSOCIATIONS INCORPORATION ACT, 1895.		
(59 Viet., No. 20.)		
For every search at the Supreme Court for documents filed .. ..	0 2 6 ..	Schedule G.
For filing any document .. .. .	0 2 6 ..	Document filed.
For certificate of registration .. .. .	2 0 0 ..	Schedule G.
REGISTRATION OF FIRMS ACT, 1897.		
(61 Viet., No. 14.)		
(Prescribed by Order in Council. See <i>Government Gazette</i> , 15th April, 1898.)		
Filing any statutory declaration .. .. .	0 5 0 ..	Document filed.
Registration of firm at present carrying on business .. .. .	0 5 0 ..	Document filed.
Registration of firm about to carry on business .. .. .	0 5 0 ..	Document filed.
Registration of change of name or condition of registered firm ..	0 5 0 ..	Document filed.
Registration of firm changing its firm name .. .. .	0 5 0 ..	Document filed.
Every inspection of statements filed .. .. .	0 1 0 ..	Schedule G.
Every inquiry referring to any statement registered .. .. .	0 1 0 ..	Schedule G.
Every office copy or extract of statements filed, per folio of 72 words	0 0 6 ..	Schedule G.
Any other document required to be filed under this Act .. .. .	0 5 0 ..	Document filed.
THE LIMITED PARTNERSHIP ACT, 1909.		
(9 Edwd. VII., No. 17.)		
(Prescribed by Order in Council. See <i>Government Gazette</i> , 4th March, 1909.)		
(a.) On the original registration of a limited partnership .. ..	2 0 0 ..	Document filed.
(b.) On the registration of a statement of any change within the meaning of Section 9 (1) of the Act occurring during the continuance of a limited partnership .. .. .	0 5 0 ..	Document filed.

SCHEDULE—*continued.*

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
(c.) By any person inspecting the statements filed by the Registrar in the Register Office, for each inspection .. .. .	0 1 0 ..	Schedule G.
(d.) By any person requiring a certificate of the registration of any limited partnership or a certified copy of or extract from any registered statement, for each certificate ..	0 2 0 ..	Schedule G.
For such certified copy or extract, for each folio ..	0 0 6 ..	Schedule G.

## POWERS OF ATTORNEY.

(60 Vict., No. 3.)

(Prescribed by the Hon. the Attorney General. See *Government Gazette*, 27th November, 1896.)

On depositing Power of Attorney .. .. .	0 5 0 ..	Document filed.
For every copy presented and marked as an office copy, when such copy does not exceed five folios .. .. .	0 2 6 ..	Schedule G.
For every additional folio .. .. .	0 0 3 ..	Schedule G.
For every search and inspection .. .. .	0 2 0 ..	Schedule G.
On filing notice of revocation or extinguishment .. .. .	0 5 0 ..	Document filed.
For <i>Gazette</i> notice .. .. .	0 5 0 ..	Cash. (This fee is payable to Government Printer.)
For every certificate .. .. .	0 2 6 ..	Schedule G.
For every office copy or extract made in the office, not exceeding five folios .. .. .	0 5 0 ..	Schedule G.
For every additional folio .. .. .	0 0 6 ..	
These fees are distinct from the fees payable on filing Powers of Attorney under Part VIII. of "The Companies Act, 1893."		

## BILLS OF SALE.

(63 Vict., No. 45; 64 Vict., No. 28; 6 Edwd. VII., No. 13.)

On notice of intention to register a bill of sale .. .. .	0 1 0 ..	Document filed.
On caveat by creditor .. .. .	0 1 0 ..	Document filed.
On presentation of bill of sale for registration or upon the renewal of registration, including the fee for filing the affidavit of execution .. .. .	0 5 0 ..	Document filed.
Every search .. .. .	0 1 0 ..	Schedule G.
On entering satisfaction .. .. .	0 5 0 ..	Document filed.
Office copy, if made in the office, for each folio of 72 words ..	0 0 4 ..	Schedule G.
If made by party—for each bill of sale or extract thereof, and certified by Registrar .. .. .	0 5 0 ..	Schedule G.

## THE ADOPTION OF CHILDREN ACT, 1896.

(60 Vict., No. 6.)

(Prescribed by Order in Council. See *Government Gazette*, 30th June, 1899.)

Filing application for order of adoption .. .. .	0 2 0 ..	Document filed.
Filing application to discharge or vary order .. .. .	0 2 0 ..	Document filed.
Filing every affidavit or statutory declaration .. .. .	0 2 0 ..	Document filed.
Filing every consent .. .. .	0 2 0 ..	Document filed.
Filing any other document required by the Act or ordered by the Judge to be filed .. .. .	0 2 0 ..	Document filed.
Appointment for hearing of any application .. .. .	0 3 0 ..	Document filed.
Hearing of any application .. .. .	0 5 0 ..	Schedule G.
Order thereon .. .. .	0 10 0 ..	Document filed.
Registering order .. .. .	0 3 0 ..	Record book.
Registering memorandum of discharge, etc., of order .. .. .	0 3 0 ..	Document filed.
Summons for witness .. .. .	0 2 0 ..	Præcipe.

SCHEDULE—*continued*.

	Fee or Duty.			Document to which stamp is to be affixed.
	£	s.	d.	
NEWSPAPER LIBEL AND REGISTRATION ACT, 1884.				
(48 Vict., No. 12.)				
(See <i>Government Gazette</i> , 8th January, 1897.)				
For every return .. .. .	0	5	0	Document filed.
For every search or inspection .. .. .	0	2	0	Schedule G.
For every certified copy, if less than five folios .. .. .	0	5	0	Schedule G.
For each additional folio .. .. .	0	1	0	

## PUBLIC NOTARIES.

(2 Edwd. VII., No. 8.)

Public Notaries—Appointment .. .. .	5	0	0	
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## THE ELECTORAL ACT, 1907.

(7 Edwd. VII., No. 27.)

## COURT OF DISPUTED RETURNS.

(Prescribed by rules published in the *Government Gazette* of 9th October, 1908.)

On filing petition .. .. .	0	10	0	Document filed.
On application for leave to withdraw petition .. .. .	0	3	0	Document filed.
On an order for leave to withdraw petition .. .. .	0	5	0	Document filed.
On an order of the Court after notice by respondent of intention not to oppose petition .. .. .	0	5	0	Document filed.
On an order of the Court after trial .. .. .	0	10	0	Document filed.
On any interlocutory application .. .. .	0	3	0	Document filed.
On any interlocutory order .. .. .	0	5	0	Document filed.
For sealing any copy of a document as an office copy, per folio ..	0	0	2	Schedule G.
For making any copy of a document, and sealing same as an office copy, per folio .. .. .	0	0	6	Schedule G.
For every summons for the attendance of a witness .. .. .	0	2	6	Document filed.

## SCHEDULE OF FEES, SHERIFF'S OFFICE.

## EXECUTION.

Warrant and entry of execution .. .. .	0	5	0	Warrant.
Office copy of any document, per folio, 6d.; search or inspection of any document in each suit, 1s. .. .. .	..	..	..	Schedule G.
Attendance on any writ of inquiry .. .. .	2	2	0	Schedule G.
Drawing and engrossing inquisition, per folio .. .. .	0	1	6	Schedule G.
Jury panel .. .. .	0	12	0	Schedule G.
Executing any writ, including making inquiries as to execution debtor's property .. .. .	1	1	0	
Mileage from the bailiff's residence, one way, per mile (to cover all travelling expenses except cost of conveyance) .. .. .	0	1	0	
Return to any writ .. .. .	0	2	6	
Poundage on executing every writ of <i>feri facias</i> or other process under or by reason of which money is received by the Sheriff or by the execution creditor after seizure, £5 per centum on the first £300, and 2½ per centum above that amount .. .. .	..	..	..	



## SCHEDULE—continued.

	Fee or Duty. £ s. d.	Document to which stamp is to be affixed.
Poundage on executing writ of possession, the same rate of fee on annual rental value .. .. .	..	
Man in possession .. .. .	..	
Advertising .. .. .	..	
Conveyance of bailiffs and assistants .. .. .	..	
Clerical assistance when necessary .. .. .	..	
Cost of feeding live stock.. .. .	..	
Hire of horses, yards, etc. .. .. .	..	
Warehouses .. .. .	..	
Telegrams .. .. .	..	
Any other necessary expenditure .. .. .	..	
Bill of sale of goods if not exceeding six folios (preparing and executing) .. .. .	1 1 0	
Bill of sale of goods, if above six folios, for each additional folio ..	0 1 0	
Settling and executing any transfer, conveyance, or bill of sale, when prepared by solicitors .. .. .	1 1 0	
Preparing particulars and conditions of sale, such sum as may be allowed on taxation or agreed upon, not exceeding .. .. .	10 0 0	
To cover postage on each writ where the defendant resides outside Perth district .. .. .	0 1 0	
Summons for each witness in inquiry .. .. .	0 5 0	

The amount actually and reasonably incurred

## ARREST.

For every arrest in Perth .. .. .	0 10 6
For every arrest elsewhere .. .. .	1 1 0
Conveying defendant to gaol or Court, per mile .. .. .	0 1 0
To bailiff for conducting prisoner to gaol or Court, per diem ..	0 10 0
Discharge from custody .. .. .	0 2 6

## BAIL BOND.

For bail bond, if the debt shall not exceed £50 .. .. .	0 10 6
For bail bond, if the debt shall not exceed £100 .. .. .	1 1 0
For bail bond, if the debt shall not exceed £150 .. .. .	1 11 6
For bail bond, if the debt shall not exceed £300 .. .. .	2 2 0
For bail bond, if the debt shall not exceed £400 .. .. .	3 3 0
For bail bond, if the debt shall not exceed £500 .. .. .	4 4 0
For bail bond, if debt shall exceed £500 .. .. .	5 5 0
For receiving money as a deposit and paying same into Court ..	0 10 0
For filing bail bond .. .. .	0 4 0
For return to <i>habeas corpus</i> .. .. .	0 12 0

## REPLEVIN.

For bond .. .. .	1 1 0
Receipt for bailiff .. .. .	0 2 6
Notice for service on defendant .. .. .	0 2 6
Appraisement, if paid under £50 .. .. .	0 10 6
Appraisement, if paid above £50 .. .. .	1 1 0
Bailiff summoning parties and delivering goods to tenant ..	1 1 0
Bailiff's travelling expenses, per mile .. .. .	0 1 0

## JURY PROCESS.

Fee to Sheriff for attending a view within five miles of his office ..	1 1 0
Fee to Sheriff for attending a view at a greater distance .. ..	2 2 0
Mileage to cover all travelling expenses of Sheriff or officer (except cost of conveyance) at 1s. per mile, except on Goldfields, when 1s. 6d. shall be paid.	

SCHEDULE—*continued.*

	Fee or Duty.			Document to which stamp is to be affixed.
	£	s.	d.	
Striking Special Jury .. .. .	2	2	0	
Striking Common Jury .. .. .	1	1	0	
Summoning each Juror or the Service of any Notice if under three miles from the Court .. .. .	0	2	6	
Summoning each Juror or the Service of any Notice if above three miles from the Court, 1s. per mile in addition beyond three miles	0	5	0	
Every Jury panel .. .. .	0	5	0	

REGULATIONS FOR THE PAYMENT OF SUPREME  
COURT FEES AND PROBATE DUTIES BY MEANS  
OF ADHESIVE STAMPS.

Crown Law Department,  
Perth, 21st April, 1909.

HIS Excellency the Governor in Executive Council has been pleased to make the following regulations for the payment of Supreme Court Fees and Probate Duties by means of adhesive Stamps, to take effect on the first day of May, 1909.

H. G. HAMPTON,  
Under Secretary for Law.

1. The regulations for the payment of Supreme Court Fees by means of adhesive stamps dated the 26th August, 1903, are hereby annulled.

2. There shall be an office of the Crown Law Department to be known as the "Stamp Office," which shall be under the charge of an officer hereinafter called the "Stamp Officer."

3. (1.) The Under Treasurer shall provide revenue stamps having printed thereon the words "Supreme Court," or "Probate Duty."

(2.) Such stamps shall be issued to the Stamp Officer upon presentation of a requisition (Schedule A), and the said officer shall sign a receipt therefor (Schedule B).

4. The Stamp Officer shall be responsible for all stamps delivered to him, and shall issue such stamps and keep such books and records of the dealings therewith as may be required from time to time by the Under Treasurer.

5. (1.) The stock of stamps in the Stamp Office shall be balanced and audited at least once a week by an officer of the Audit Office, who shall compare such stock with the books and records relating thereto, and such officer shall certify the result to the Attorney General (Schedule C).

(2.) At every such audit the Auditing Officer shall inspect such documents filed in the Supreme Court, as may afford a reasonable check on the due cancellation of the stamps on such documents.

6. (1.) Whenever the Stamp Officer issues stamps he shall enter such issue in a book to be called the "Issue Book."

Provided that he may issue stamps in small quantities to any officers of the Supreme Court approved by the Master, and take receipts therefor in a "Temporary Receipt Book."

(2.) Such officers of the Supreme Court must account for the stamps so issued, or the proceeds thereof, when required by the Stamp Officer.

7. All money received by the Stamp Officer shall be paid to the Treasury daily, in accordance with the regulations respecting public moneys framed under the Audit Act, 1904.

8. All stamps, books, and records kept in the Stamp Office shall be placed in a fire-proof safe or strong room every day after office hours, and the Stamp Officer shall alone keep the key thereof and be responsible for the contents, but a duplicate key shall be kept by the Under Treasurer.

9. (1.) If any stamps after issue become spoiled the party in whose possession such stamps are may apply for others in lieu of and in exchange for such spoiled stamps (Schedule D).

(2.) On receipt of such application the Master may direct the Stamp Officer to exchange the said spoiled stamps for new stamps of the same value (Schedule E).

(3.) All spoiled stamps received by the Stamp Officer under this regulation shall be returned to the Treasury and the value thereof shall be credited to such officer (Schedule F).

10. (1.) The stamps for the fees or duties payable in respect of the several matters specified in the Schedule to the Order dated the twenty-first day of April, 1909, and made by the Judges of the Supreme Court, with the concurrence of the Colonial Treasurer, under the provisions of the Supreme Court Act (Amendment), 1892, or prescribed by or under the Special Acts in the said Schedule referred to, shall, where the document is filed, be affixed to the document specified opposite such matters in the third column of the said schedule.

(2.) The stamp for every fee or duty payable under these regulations, where no document is filed, shall be affixed to a short note or praecipec (Schedule G), stating the matter in respect of which such fee or duty is paid, and signed by the person by whom it is payable.

11. (1.) The document bearing the stamp by which any fee or duty is payable shall be presented to the officer of the Supreme Court whose duty it is to receive the said document, and such officer, before anything is done, or permitted to be done, in respect of that for which such fee or duty is payable, shall cancel such stamp.

(2.) Such officer shall cancel such stamp by putting thereon the impress of a seal bearing the word "Cancelled," with the words "Central Office" or "Associate's Office" (or other words as the case may be), and the date of cancellation, and in addition shall initial such stamp with his own initials.

12. If any officer of the Supreme Court—

- (a) Allows any unstamped document to be used or filed, or
- (b) Files any document insufficiently stamped, or
- (c) Omits to cancel or obtain due cancellation of any stamps presented on any document under the last preceding regulation,

he shall be held liable by the Attorney General to make good the loss occasioned by any breach of this regulation.

13. (1.) If any fee or duty has been erroneously paid, the party who made such payment may apply to the Master for an order directing the Stamp Officer to refund such fee or duty.

(2.) The Stamp Officer shall produce such order, and the documents on which the stamps for such fee or duty are placed, to the Under Secretary for Law, when the Under Secretary for Law shall mark such stamps “Refund £ s. d.” and shall refund such amount to the Stamp Officer.

(3.) The party entitled to such refund shall give a receipt therefor to the Stamp Officer, and such receipt shall be attached to the document bearing the cancelled stamps, and the books shall be adjusted accordingly.

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## SCHEDULE A.

*Requisition for Revenue Stamps.*

REQUIRED for the service of the Supreme Court, Revenue Stamps of the under-mentioned values:—

Face value of Fee Stamps.	Number required.	Total value.	Face value of Duty Stamps.	Number required.	Total value.

Total value of Stamps applied for above:                      pounds  
shillings and                      pence.

Dated the.....day of....., 190 .

Stamp Officer.

Approved,

.....,

Under Secretary for Law.

Received this                      day of                      , 19                      , the above stamps to  
the value of                      pounds                      shillings and                      pence  
for which sum I hold myself personally liable to the Government.

## SCHEDULE B.

RECEIVED this day Revenue Stamps, for the use of the Supreme Court, of the undermentioned values, from the Under Treasurer:—

Face value of Fee Stamps.	Number received.	Total value.	Face value of Duty Stamps.	Number received.	Total value.

Total value of Stamps received:                      pounds                      shillings and  
pence.

Dated the.....day of....., 190 .

Witness,

.....

.....

Stamp Officer.

## SCHEDULE C.

I,....., hereby certify that on                      , the  
day of                      , 190 , I examined the stock of stamps in the Stamp  
Office, that I compared the stock with the books and records relating thereto, and  
that the amounts, balance, and the accounts and stock are in order (*or as the  
case may be*).

Dated the.....day of....., 190 .

(Signed).....

Audit Officer.

To the Honourable

The Attorney General.

## SCHEDULE D.

I, \_\_\_\_\_, do solemnly and sincerely declare that I have spoiled the stamps attached to the margin hereof to the value of \_\_\_\_\_ pounds \_\_\_\_\_ shillings and \_\_\_\_\_ pence, that such stamps have not been used for any purpose, nor have I received any value therefor or therefrom. The said stamps were spoiled [*here state cause*], and I make this solemn declaration by virtue of section one hundred and six of "The Evidence Act, 1906."

Declared at.....  
this.....day of....., 190 .  
before me,

I apply for stamps of the same value as those spoiled and attached to the margin of the foregoing declaration.

(Signed).....

## SCHEDULE E.

To the Stamp Officer,  
Crown Law Department.

I hereby direct you to exchange the spoiled stamps in the margin of the attached declaration, to the value of £ \_\_\_\_\_ s. \_\_\_\_\_ d., for new stamps of a like value.

....., 190 .

.....  
Master Supreme Court.

## SCHEDULE F.

I certify that Revenue Stamps were this day destroyed as under, the said stamps having been spoiled, and that this voucher shall stand good for the amount of such destroyed stamps.

Face value of Stamps.	Number destroyed.	Value.

Total value destroyed: \_\_\_\_\_ pounds \_\_\_\_\_ shillings and \_\_\_\_\_ pence.

(Signed).....

Under Treasurer.

To the Stamp Officer,  
Crown Law Department.

## SCHEDULE G.

[STAMP.]

NOTE.—Insert matter on which fee paid, and also for what purpose, *e.g.*:—  
1903, *S. No. 6, Smith v. Jones.*

*Search.*

(Signature).....