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Crown Law Department,  
Perth, 25th May, 1976.

THE undermentioned Rules made under the provisions of the Supreme Court Act, 1935, and amended from time to time up to and including the 2nd April, 1976 are reprinted as so amended pursuant to the Reprinting of Regulations Act, 1954 by authority of the Attorney General.

R. M. CHRISTIE,  
Under Secretary for Law.

SUPREME COURT ACT, 1935.

## RULES OF THE SUPREME COURT, 1971.

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Reprinted pursuant to the Reprinting of Regulations Act, 1954 by authority of the Attorney General, dated 25th May, 1976.

SUPREME COURT ACT, 1935-1975.

RULES OF THE SUPREME COURT, 1971

ORDER 1

Citation, Repeal, Application and Forms

1. These Rules may be cited as the Rules of the Supreme Court, 1971. Short title.

2. (1) These Rules shall take effect on the 14th day of February, 1972, and on and from that date the Rules set out in the First Schedule shall be revoked. Commence-  
ment, Repeal  
and Saving.

(2) The revocation effected by paragraph (1) does not affect the validity of any proceedings taken under the Rules of Court so revoked.

(3) A proceeding pending, and a judgment, decree or order given or made before the commencement of these Rules, being of a kind to which these Rules apply, shall be treated as if pending, given or made under these Rules, and may be proceeded with, enforced, varied, reversed or otherwise dealt with accordingly, subject to any special order or direction made or given by the Court in any particular case.

3. (1) Subject to the provisions of this Order, these Rules shall have effect in relation to all proceedings in the Supreme Court.

(2) Subject to the provisions of paragraph (2A), these Rules shall not have effect in relation to proceedings of the kinds specified in the first column of the following Table (being proceedings in respect of which rules may be made under the enactments specified in the second column of that Table):—

**Certain  
proceedings  
excluded.  
Amended by  
G.O. 10/9/73;  
p. 3428.**

TABLE

Proceedings	Enactments
1. Proceedings in the Supreme Court under the Companies Act, 1961.	Companies Act, 1961, s. 383.
2. Non-contentious or common form probate business.	Administration Act, 1903, s. 144. Supreme Court Act, 1935, s. 167. Public Trustee Act, 1941, s. 65.

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|----|--|---------------------------------|
| 3. | Proceedings in the Supreme Court to which the Supreme Court (Mental Health) Rules, 1965, relate. | Mental Health Act, 1962, s. 87. |
| 4. | Proceedings in the Court of Disputed Returns to which the Electoral Rules of 1908 apply.         | Electoral Act, 1907, s. 173.    |
| 5. | Proceedings to which the Criminal Practice Rules relate.   | The Criminal Code, s. 747.      |

(2A) The provisions of Order 83A and of the Fifth Schedule shall apply to and in relation to proceedings of the kinds referred to in paragraphs 1, 2 and 3 of the Table contained in paragraph (2).

(3) These Rules, save as expressly provided, shall not apply to—

- (a) any criminal proceedings;
- (b) any proceedings to which the Matrimonial Causes and Personal Status Rules, 1949, as amended, apply;
- (c) matters of practice or procedure or other matters to which rules of court made pursuant to a power conferred by any Act of the Commonwealth, apply.

(4) In the case of proceedings mentioned in paragraphs (2) and (3), nothing in those paragraphs shall be taken as affecting any provision of any rules (whether made under the Act or any other Act) by virtue of which the Rules of the Supreme Court or any provisions thereof are applied in relation to any of those proceedings.

**Definitions.**

4. (1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely—

“Accountant” means the Accountant, Crown Law Department;

“Australian diplomatic or consular agent” includes a person appointed to hold or act in any of the following offices (being an office of the Commonwealth) in a country or place outside Australia—

- (a) ambassador;
- (b) high commissioner;
- (c) minister;
- (d) head of mission;
- (e) commissioner;
- (f) chargé d'affaires;
- (g) counsellor secretary or attaché at an embassy, high commissioner's office, legation or other post;
- (h) consul-general;
- (i) consul;
- (j) vice-consul;
- (k) trade commissioner; and
- (l) consular agent;

“Cause Book” means the book kept in the Central Office in which the number of and other details relating to a cause or matter are recorded;

“Central Office” means the central office of the Supreme Court at Perth;

“Consular agent” means a consul-general, consul, vice-consul, pro-consul or consular agent, or acting consul-general, acting consul, acting vice-consul, acting pro-consul, or acting consular agent;

“Costs” includes fees to counsel, charges, disbursements, expenses and remuneration;

“Diplomatic agent” means an ambassador, envoy, minister, chargé d’affaires, or secretary of an embassy or a legation;

“Folio” means 72 words, each figure being counted as one word;

“Master” means the Master of the Supreme Court, and includes a Deputy or Acting Master;

“Officer” means an officer of the Supreme Court;

“Originating summons” means every summons other than a summons in a pending cause or matter;

“Practitioner” has the same meaning as in the Legal Practitioners Act, 1893;

“Probate action” has the meaning assigned to it by Order 73;

“Proper officer” shall mean an officer to be ascertained as follows—

- (a) where any duty to be discharged under any Act or these Rules is a duty which has heretofore been discharged by any officer, such officer shall unless otherwise provided by these Rules continue to be the proper officer to discharge the same;
- (b) where under any Act or these Rules any new duty is to be discharged, the proper officer to discharge the same shall be the officer directed by these Rules, or if no such officer such other officer as may from time to time be directed by the Chief Justice to discharge the same;
- (c) when any doubt arises as to who is the proper officer to discharge any duty the Chief Justice may direct by what officer such duty is to be discharged;

“Receiver” includes a manager or consignee;

“Registrar” means the Registrar of the Supreme Court and includes a Deputy or Acting Registrar;

“Rules”, “these Rules” or “rules of Court” means these Rules, and includes—

- (a) any forms, fees and costs referred to in these Rules; and
- (b) any other rules of Court, forms, fees and costs made or prescribed in amendment of, or in addition to, these Rules;

“Taxing Officer” includes the Master, and any other officer of the Court having power to tax costs;

“The Act” means the Supreme Court Act, 1935;

“to file” means to file in the Central Office, and “file”, “filed” and “filing” have corresponding meanings;

“Trial” includes hearing;

“Writ” means a writ of summons.

(2) In these Rules, unless the context otherwise requires, “the Court” means the Supreme Court or any one or more Judges thereof, whether sitting in court or in chambers, or the Master: but this provision shall not be taken as affecting any provision of these Rules, and in particular Order 60, by virtue of which the authority and jurisdiction of the Master is defined and regulated.

Construction  
of references  
to orders,  
rules, etc.

5. (1) Unless the context otherwise requires, any reference in these Rules to a specified Order, rule or Schedule is a reference to that Order or rule of, or that Schedule to these Rules, and any reference to a specified rule, paragraph or sub-paragraph is a reference to that rule of the Order, that paragraph of the rule or that sub-paragraph of the paragraph, in which the reference occurs.

(2) Any reference in these Rules to anything done under a rule or these Rules includes a reference to the same thing done before the commencement of that rule under any corresponding rule of court ceasing to have effect on the commencement of that rule.

(3) Except where the context otherwise requires any reference in these Rules to any Act shall be construed as a reference to that Act as amended, extended or applied by or under any other Act.

**Forms.**

6. (1) The forms in the Second Schedule shall be used where applicable with such variations as the circumstances of the particular case require, and the reference to any form in or at the end of any rule shall be read as referring to the appropriate Form in the Second Schedule to these Rules, and as a direction to use that Form for the purpose indicated by the rule.

(2) Where no form is prescribed for any document required for any purpose of these Rules or by the practice of the Court, the Master may give directions with respect to the form to be used, and subject to any such direction, the appropriate Form as printed in the Masters’ Practice Forms in “The Supreme Court Practice” (commonly known as “The White Book”) should be used.

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## ORDER 2

### Effect of Non-compliance

Non-compliance  
with  
rules.

\*E. O.2, R.1.  
Cf. W.A.  
O.LXX,  
R.1.

1. (1) Where in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure

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\* The Rules of the Supreme Court (England) R.S.C. Revision 1965.

to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3) the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings, or any document judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

2. (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

Application to  
set aside for  
irregularity.  
Cf. E.O.2, R.2.  
Cf. W.A.  
O.LXX, R.1.

(2) An application under this Rule shall be made by summons or motion, as the case may require, and the grounds of objection must be stated in the summons or notice of motion.

### ORDER 3

#### Time

1. Without prejudice to section 4 of the Interpretation Act, 1918, in its application to these Rules, the word "month" where it occurs in any judgment, order, direction or other document forming part of any proceedings in the Supreme Court, means a calendar month unless the context otherwise requires.

"Month"  
means  
calendar  
month.  
Cf. E.O.3,  
R.1.

2. (1) Where clear days are prescribed by these Rules or fixed by any judgment order or direction, the time shall be reckoned exclusively of the first and last day. Where any number of days not expressed to be clear days is prescribed or fixed the time shall be reckoned exclusively of the first and inclusively of the last day.

Reckoning  
periods of  
time.  
Cf. W.A.  
O.LXIV,  
RR. 2, 3.

(2) Where less than seven days is prescribed by these Rules or limited by any judgment order or direction for doing any act any day on which the Central Office is closed for business shall not be reckoned.

3. In the computation of the time prescribed by these Rules or by an order or direction for filing serving or amending any pleading or for filing and serving any notice of appeal the period or any part of the period which is between the 24th December and the 15th January next following shall not be reckoned unless the Court orders.

Period between  
24th December  
and 15th Janu-  
ary excluded  
from time for  
filing, etc., of  
pleading.  
Amended by  
G.G. 9/11/73,  
p. 4164.  
Ib. R.5.

**ORDERS 3  
and 4.**

**6**

Time expires  
on day on  
which Central  
Office closed.  
Ib. R.4.

4. Where the time prescribed by these Rules or by any judgment order or direction for doing any act expires on a day on which the Central Office is closed, and by reason thereof such act cannot be done on that day, the time shall be extended to the day on which the Central Office shall next be open.

Extension, etc.,  
of time.  
Cf. E. O.3,  
R.5.  
Cf. W.A.  
O.LXIV, R.1.

5. (1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules, or by any judgment, order, or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

(3) The period within which a person is required by these Rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.

(4) In this Rule references to the Court shall be construed as including references to the Full Court.

Extension  
where security  
ordered.  
W.A. O.LXIV,  
R.6.

6. Where any security is ordered to be given by a party the time prescribed by these Rules or fixed by any order for the taking of any step by another party contingent on due compliance with the order for security, shall be deemed to be extended by the period between service of the order for security, and the giving of security.

Notice of  
intention to  
proceed after  
year's delay.  
Cf. W.A.  
O.LXIV, R.7.

7. Where a year or more has elapsed since the last proceeding in an action, the party who desires to proceed must give to every other party not less than one month's notice of his intention to proceed. A summons on which no order was made is not a proceeding for the purpose of this Rule.

Time for  
applying to  
set aside or  
remit award  
W.A. O.LXIV,  
R.8.

8. An application to set aside or remit an award may be made at any time within twenty one days after such award has been made and published to the parties.

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**ORDER 4**

**Mode of Commencing Proceedings: Applications in  
Pending Proceedings**

Commence-  
ment of civil  
proceedings.  
Cf. E. O.5,  
R.1.

1. Subject to the provisions of any Act and of these Rules—
  - (a) every action in the Court must be commenced by writ;
  - (b) civil proceedings between parties to be heard in chambers must be commenced by originating summons;
  - (c) all other civil proceedings must be commenced by originating motion.

## 2. Applications in pending proceedings must be made—

- (a) if in court, by motion;
- (b) if in chambers between parties, by summons;
- (c) if in chambers, *ex parte*, by motion.

Applications  
in pending  
proceedings.

3. (1) Subject to paragraph (2) and to Order 70 Rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the Supreme Court by a solicitor or in person.

Right to sue  
in person.Cf. E. O.5,  
R.6.

(2) Except as expressly provided by or under any Act a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.

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**ORDER 5****Writs of Summons**

1. The writ for the commencement of an action, shall, except in the cases in which any different form is provided in these Rules, be in Form No. 1 or 2, whichever is appropriate.

Form of writ.

2. A writ to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction shall be in Form No. 3. Such notice shall be in accordance with Form No. 4.

Writs for  
service out  
of the State.

3. In all cases in which it is proposed that the trial shall be elsewhere than in Perth, the writ must show the proposed place of trial.

Place of trial  
to be shown.  
Cf. W.A.  
O.XX, R.4.

4. Every writ shall be issued out of the Central Office.

Place of issue.

5. Writs shall be prepared by the plaintiff or his solicitor.

Preparation  
of writ.  
Cf. W.A. O.V,  
R.2.

6. Issue of a writ takes place upon its being sealed by the proper officer.

Sealing of  
writ.  
Ib. R.3.

7. The plaintiff or his solicitor shall, on presenting a writ for sealing, leave with the officer a copy of the 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.

Copy to be  
left with  
officer.  
Cf. W.A. O.V,  
R.4.

8. The officer receiving such copy shall file it and an entry of the filing thereof shall be made in a book to be called the Cause Book, which shall be in such form and kept in such manner as the Chief Justice may from time to time direct, and the action shall be distinguished by the date of the year and a number.

Copy to be  
filed.  
Ib. R.5.

**ORDERS 5  
and 6.**

8

Writs for  
service out  
of the State.  
Cf. S.A. O.2,  
R.3.

9. A writ for service out of the jurisdiction or of which notice is to be given out of the jurisdiction shall not be issued without the leave of the Court, unless the writ is to be served under the Service and Execution of Process Act 1901-1968 of the Commonwealth.

All writs to  
be tested.  
Cf. W.A. O.II,  
R.7.  
Cf. Vict. O.2,  
R.6.

10. Every writ of summons and also (unless by an Act or by these Rules it is otherwise provided) every other writ shall bear date on the day on which it is issued and shall be tested in the name of the Chief Justice, whether he is within or outside the State, or if there is no Chief Justice, in the name of the Senior Puisne Judge.

Time for  
appearance  
to be stated  
in writ.  
Amended by  
G.G. 7/12/73,  
p. 4488.  
Cf. W.A.  
O.XII, R.2.

11. The time to be stated in a writ for the appearance of any defendant shall be not less than the time next hereinafter specified according to the place of service, that is to say—

Where the place for service is	Time
(1) In the State of Western Australia—	
Less than 300 kilometres from Perth	10 days
300 kilometres but less than 600 kilo- metres from Perth	16 days
600 kilometres and above 600 kilo- metres	21 days
(2) Outside the State but within the Common- wealth of Australia	30 days
(3) Outside the Commonwealth of Australia	Such time as shall be fixed by the Court.

The number of days allowed shall be clear days.

**ORDER 6**

**Indorsement of Claim: Other Indorsements**

Indorsement  
of claim.  
Cf. E. O.6,  
R.2.  
Cf. Vict. O.3,  
R.1.

1. (1) Before a writ is issued it must be indorsed with a concise statement of the nature of the claim made, and of the relief or remedy required in the action.

(2) In case of non-compliance with paragraph (1) the defendant may apply before appearance to set aside or amend the writ or for particulars.

Actions for  
libel.  
Cf. E. O.82,  
R.2.  
Cf. Vict. O.3,  
R.7.

2. In actions for libel the indorsement must state sufficient particulars to enable the publications in respect of which the action is brought to be identified.

3. In any action other than an action which includes—

- (a) a claim by the plaintiff based on an allegation of fraud; or
- (b) a claim by the plaintiff in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage,

Indorsement  
of statement  
of claim.

a statement of claim may, at the option of the plaintiff, be indorsed on the writ.

4. Where the plaintiff's claim is for a debt or liquidated demand only, the writ before it is issued must be indorsed with a statement of the amount claimed in respect of the debt or demand, and for costs up to and including service, respectively, and such indorsement shall further state that upon payment thereof within the time allowed for appearance, further proceedings will be stayed. The defendant may notwithstanding such payment have the costs taxed and if more than one-sixth is disallowed, the plaintiff's solicitor shall pay the costs of taxation, unless otherwise ordered by the Taxing Officer.

Notice as to  
stay of  
proceedings.  
Cf. W.A. O.III.  
R.7.  
Cf. E. O.6.  
R.2.

5. If the plaintiff sues, or the defendant, or any of the defendants, is sued in a representative capacity, the indorsements shall show, in accordance with such of the indorsements in Form No. 5 as is applicable to the case or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

Representative  
character.  
Cf. E. O.6,  
R.3(1).  
Cf. Vict. O.3,  
R.3.

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

Indorsement  
of claim for  
account.  
Ib. R.6.

7. (1) The solicitor of a plaintiff suing by a solicitor shall indorse upon the writ or notice in lieu of the writ before it is issued, the address of the plaintiff and also his own name and place of business which, if that place is not more than three kilometres from the Supreme Court at Perth, shall be his address for service. If his place of business is more than three kilometres from the said Court he shall also indorse on the writ or notice another place to be his address for service which shall not be more than three kilometres from the said Court. All documents not required by these Rules to be served personally may be left for the solicitor for the plaintiff at his address for service.

Address where  
plaintiff sues  
by solicitor.  
Amended by  
G.G. 7/12/73,  
p. 4489.  
Cf. Vict. O.4,  
R.1.

(2) Where any such solicitor is only agent of another solicitor, he shall add to his own name and place of business the name and place of business of the principal solicitor.

8. A plaintiff suing in person shall indorse upon the writ or notice in lieu of the writ before it is issued, his place of residence, his occupation, and a place to be his address for service, which shall not be more than three kilometres from the Supreme Court at Perth, where all documents not required by these Rules to be served personally may be left for him.

Where plaintiff  
sues in person.  
Amended by  
G.G. 10/1/75,  
p. 50.  
Cf. Vict. O.4,  
R.2.

Proceedings  
other than  
by writ.  
Ib. R.4.

9. In all cases where proceedings are commenced otherwise than by writ, Rules 7 and 8 apply to the document by which such proceedings are originated as if it were a writ.

Document not  
to be filed  
without  
address  
for service.  
W.A. O.IV,  
R.4.

10. No document required to be indorsed with an address for service shall be received unless it complies with the requirements of these Rules.

Address  
indorsed  
to be address  
for service  
until change  
notified.  
Ib. R.5.

11. (1) When an address for service has been given in accordance with these Rules, that address shall be the address for service of the party until a notice has been filed and served in accordance with paragraph (2) of this Rule.

(2) A party shall be at liberty at any time without leave, to change his address for service by notice of such change and of another address for service. The notice shall be given by filing the same in the Central Office, and serving a copy of such notice upon the opposite party. Such notice may be embodied in any notice of change of solicitor under Order 8.

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## ORDER 7

### Duration and Renewal of Writ: Concurrent Writs

Duration and  
renewal of  
writ.  
Cf. E. O.6,  
R.8.  
Cf. W.A.  
O.VIII, R.1.

1. (1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ the validity of which has been extended under this Rule, is served it must be marked with an official stamp showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this Rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

Evidence of  
extension of  
validity of  
writ.  
Cf. W.A.  
O.VIII, R.2.

2. The production of a writ purporting to be marked with the official stamp showing the period for which the validity of the writ has been extended shall be sufficient evidence of the validity of the writ having been so extended, and of the commencement of the action as of the date of the original writ, for all purposes.

3. (1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.

Concurrent  
writs.  
Cf. E. O. 6,  
R. 6.

(2) Each concurrent writ shall bear teste of the same day as the original writ, and shall be sealed by the proper officer with a seal bearing the word "Concurrent" and the date of issue of the concurrent writ.

(3) Without prejudice to the generality of paragraph (1) a writ for service within the jurisdiction may be issued as a concurrent writ with one which, or notice of which, is to be served out of the jurisdiction, and a writ which, or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.

(4) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.

#### ORDER 8

##### **Disclosure by Solicitors: Change of Solicitors**

1. (1) Every solicitor whose name is 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.

Solicitor to  
declare  
whether writ  
issued by his  
authority.  
Cf. Vic.  
O. 7, R. 1.

(2) If the solicitor answers in the affirmative, then he shall also, in case the Court so orders and directs, declare in writing within a time allowed by the Court, the profession, occupation, or quality, and place of abode of the plaintiff, on pain of being guilty of a contempt of court.

(3) If the solicitor declares that the writ was not issued by him or with his authority, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereon without leave of the Court.

2. (1) A party suing or defending by a solicitor may change his solicitor 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 in accordance with this Rule, the former solicitor shall subject to the provisions of this Order, be considered the solicitor of the party until the final conclusion of the cause or matter including any appeal therein.

Change of  
solicitor.  
Cf. W.A.  
O. VII, R. 2

(2) The party giving the notice must serve on every other party to the cause or matter (not being a party in default as to entry of appearance) and on the former solicitor a copy of the notice indorsed with a memorandum stating that the notice has been duly filed.

Notice of  
change of  
agent.  
Cf. E. O.  
67, R.2.

3. (1) Where a solicitor for whom some other solicitor is acting as agent in a cause or matter changes the solicitor so acting, notice of the change must be given, and Rule 2(1) shall apply in relation to a notice of change of agent as it applies in relation to a notice of change of solicitor.

(2) The solicitor giving the notice must serve on every party to the cause or matter (not being the party for whom he is acting or a party in default as to entry of appearance) and on the solicitor formerly acting as agent a copy of the notice indorsed with a memorandum stating that the notice has been duly filed.

Notice of  
appointment  
of solicitor.  
Cf. E. O.  
67, R.3.

4. Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter on his behalf, the change may be made without an order for that purpose, by filing in the Central Office a notice of appointment of a solicitor and Rule 2 (2) shall with the necessary modifications, apply in relation to a notice of appointment of a solicitor as it applies in relation to a notice of change of solicitor.

Notice of  
intention to  
act in person.  
Cf. E. O.  
67, R.4.

5. Where a party, after having sued or defended by a solicitor, intends and is entitled to act in person, the change may be made without an order for that purpose and Rule 2 shall with the necessary modifications apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of solicitor except that the notice of intention to act in person must contain an address for service of the party giving it.

Removal of  
solicitor from  
the record.  
Cf. E. O.  
67, R.5.

6. (1) Where a solicitor who has acted for a party in a cause or matter has died or become bankrupt, or cannot be found or has ceased to have the right of practising in the Court, or for any other reason has ceased to practise, and the party has not given notice of change of solicitor or notice of intention to act in person, any other party to the cause or matter may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the cause or matter, and the Court may make an order accordingly.

(2) An application for an order under this Rule must be made by summons which, unless the Court otherwise directs, must be served on the party to whose solicitor the application relates, and must be supported by an affidavit stating the grounds of the application.

(3) Where an order is made under this Rule the party on whose application it was made must—

- (a) forthwith serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order; and
- (b) file in the Central Office a certificate signed by him or his solicitor that the order has been duly served as aforesaid.

7. (1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with the provisions of this Order, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter and the Court may make an order accordingly; but unless and until the solicitor—

Withdrawal of a solicitor who has ceased to act for a party. Amended by G.G. 15/6/73, p. 2247; G.G. 23/5/75, p. 1404. Cf. E. O. 67, R.6.

(a) serves on every party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, and

(b) files in the Central Office a certificate signed by him that the order has been duly served as aforesaid,

he shall, subject to the foregoing provisions of this Order, be considered the solicitor of the party until the final conclusion of the cause or matter including any appeal therein.

(2) An application for an order under this Rule must be made by summons, which unless the Court otherwise directs, must be served on the party for whom the solicitor acted, and must be supported by an affidavit stating the grounds of the application.

(3) The Court may dispense with the necessity of serving a party to a cause or matter with an order of the kind mentioned in paragraph (1).

8. Any order made under this Order shall not affect the rights of the solicitor and the party as between themselves.

Effect of order. W.A. O.VII, R.4. (2).

9. Where—

(a) an order is made under Rule 6, or

(b) an order is made under Rule 7, and the applicant for that order has complied with Rule 7 (1),

Address for service of party whose solicitor is removed. Cf. E. O. 67, R.7.

then unless and until the party to whose solicitor or to whom, as the case may be, the order or certificate relates either appoints another solicitor and complies with Rule 4, or being entitled to act in person, gives notice of his intention so to do and complies with Rule 5, his last known address or such other address as on ex parte application may be ordered by the Court or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

10. In this Order subject to Rule 9, the expression "address for service" means the address for service required by Orders 6 and 12.

"Address for Service". Cf. Vic. O.7, R.6.

11. No solicitor shall act in any cause or matter for plaintiff and defendant, or for any two or more defendants having adverse interests in a cause or matter.

Solicitor not to act for adverse parties. Cf. Vic. O.7, R.7.

12. No practitioner or articled or other clerk to a practitioner shall be security for any party in any court without the leave of a Judge.

Practitioner or clerk not to be security. Ib. R.8.

## ORDER 9

## Service of Originating Process: General Provisions

General  
Provisions.  
Cf. E. O.  
10, R.1.

1. (1) Subject to the provisions of any Act and these Rules, a writ must be served personally on each defendant by the plaintiff or his agent.

(2) Where a defendant's solicitor indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.

(3) Where a writ is not duly served on a defendant but he enters an unconditional appearance in the action begun by the writ, the writ shall be deemed to be duly served on him and to have been so served on the date on which he entered the appearance.

(4) Where a writ is duly served on a defendant otherwise than by virtue of paragraph (2) or (3), then subject to Order 10 Rule 9 (9), unless within three days after service the person serving it indorses on the sealed copy of the writ the following particulars, that is to say, the day of the week and date on which it was served, where it was served, the person on whom it was served, and, where he is not the defendant, the capacity in which he was served, the plaintiff in the action begun by the writ shall not be entitled to enter final or interlocutory judgment against the defendant in default of appearance or in default of defence.

Service of  
writ on agent  
of oversea  
principal.  
E. O.10,  
R.2.

2. (1) Where the Court is satisfied on an *ex parte* application that—

- (a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction, and
- (b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate, and
- (c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal,

the Court may authorise service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

(2) An order under this Rule authorising service of a writ on a defendant's agent must limit a time within which the defendant must enter an appearance.

(3) Where an order is made under this Rule authorising service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction, if such address is known to the plaintiff.

## 3. (1) Where—

- (a) a contract contains a term to the effect that the Supreme Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Supreme Court has jurisdiction to hear and determine any such action, and
- (b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner or at such place (whether within or out of the jurisdiction), as may be so specified,

Service of writ in pursuance of contract.  
Ib. R.3.

then if an action in respect of the contract is begun in the Supreme Court and the writ by which it is begun is served in accordance with the contract the writ shall, subject to paragraph (2) be deemed to have been duly served on the defendant.

(2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ, or notice thereof, out of the jurisdiction has been granted under Order 10 Rule 1 or 2.

## 4. In an action claiming possession of land, the Court may—

- (a) if satisfied on an *ex parte* application that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ to the door of the dwelling house or to some conspicuous part of the land;
- (b) if satisfied on an *ex parte* application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to the door of the dwelling house or to some conspicuous part of the land shall be treated as good service on that defendant.

Service of writ in certain actions for possession of land.  
Cf. W.A. O.IX, R.9.  
Cf. E. O.10, R.4.

5. The foregoing Rules of this Order except Rule 1 (4) shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ, and Rule 1 (1) and (2) shall, with any necessary modifications, apply in relation to an originating summons to which no appearance need be entered, a notice of an originating motion and a petition as they apply in relation to a writ.

Service of originating summons, petition and notice of motion.  
Ib. R.5.

## ORDER 10

## Service Out of the Jurisdiction

When service  
out of  
jurisdiction is  
permissible.  
Cf. W.A.  
O.XI, R.1.  
Cf. E. O.11,  
R.1.

1. (1) Service of a writ or notice of a writ out of the jurisdiction is permissible with the leave of the Court whenever—

- (a) the subject matter of the action, so far as it concerns the party to be served, is
  - (i) land (with or without rents or profits) or other property situate within the State, or the perpetuation of testimony relating to land within the State; or
  - (ii) any shares or stock of a corporation or joint stock company having its principal place of business within the State;
- (b) any Act, deed, will, contract, obligation or liability affecting land or hereditaments situate within the State is sought to be construed rectified set aside or enforced in the action;
- (c) in the action relief is sought against a person domiciled or ordinarily resident within the jurisdiction;
- (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 if the action is for any relief or remedy which might be obtained in any such action as aforesaid;
- (e) the action is one brought to enforce, rescind, dissolve, annul, or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being in either case a contract—
  - (i) made within the jurisdiction, or
  - (ii) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or
  - (iii) which by its terms or implications is governed by the law of Western Australia;
- (f) the action is brought in respect of a breach committed within the jurisdiction of a contract wherever made and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;

Cf. E. O.11,  
R.1(1)(g).

- (g) in the action an injunction is sought ordering the defendant to do or refrain from doing anything 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; Cf. W.A.  
O.XI, R.1(f).
- (h) 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; Ib. R.1  
(g).
- (i) the action is for the recovery of taxes or duty (with or without interest or fines for default in payment thereof) which have been imposed or become due on or in respect of property situate within the jurisdiction; Ib. R.1 (h).
- (j) the action is by a mortgagee or mortgagor in relation to a mortgage of personal property situate within the jurisdiction and seeks relief of the nature or kind following, that is to say, sale foreclosure delivery of possession by the mortgagor, redemption reconveyance delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under sub-paragraph (e) ) any personal judgment or order for payment of any moneys due under the mortgage; Cf. Vict. O.11,  
R.1(h).
- (k) the action is founded on a tort committed within the jurisdiction; Cf. W.A.  
O.XI,  
R.1 (i).
- (l) the action is properly brought under the Civil Aviation (Carriers' Liability) Act 1959 of the Commonwealth. Cf. Vict.  
O.11,  
R.1 (i).

(2) In paragraph (1) (j) the expression "personal property situate within the jurisdiction" means personal property, which on the death of an owner thereof intestate, would form subject matter for the grant of letters of administration to his estate in Western Australia; the expression "mortgage" means a mortgage charge or lien of any description; the expression "mortgagee" means a party for the time being entitled to or interested in a mortgage; and the expression "mortgagor" means a party for the time being entitled to or interested in property subject to a mortgage.

2. Where it appears to the Court that a contract contains a term to the effect that the Supreme Court shall have jurisdiction to hear and determine any action in respect of the contract, the Court may, subject to Rule 3, grant leave for service out of the jurisdiction of the writ or notice of the writ, by which an action in respect of the contract is begun. Service out of  
the jurisdic-  
tion in  
certain actions  
in contract.  
E. O.11,  
R.2.

3. Unless service is to be effected within the Commonwealth of Australia, leave granted under Rule 1 or 2 shall be leave for service out of the jurisdiction of notice of the writ and not the writ itself. Notice of  
writ.  
Cf. E. O.11,  
R.3.  
Cf. W.A.  
O.XI, R.5.

4. (1) An application for the grant of leave under Rule 1 or 2 shall be supported by an affidavit stating the grounds on which the application is made and that, in the deponent's belief, the plaintiff has a good cause of action, and showing in what place or country the defendant is, or probably may be found. Application  
for leave.  
Amended by  
G.G. 15/6/73,  
p. 2247.  
Cf. E. O.11,  
R.4.

(2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

Time for  
appearance.  
Cf. W.A.  
O.XI, R.4.

5. Where service is to be effected outside the Commonwealth of Australia, the order giving leave to serve notice of a writ, out of the jurisdiction shall limit a time within which the defendant to be served must enter an appearance, and the Court in fixing that time shall have regard to the place or country where or within which the notice of the writ is to be served.

Service of  
notice.  
Cf. Vict.  
O.11, R.5.

6. Where leave is given under this Order to serve notice of a writ out of the jurisdiction, the notice shall subject to any direction given by the Court as to the manner in which such notice shall be served or brought to the notice of the defendant, be served in the manner in which writs are served.

Service of  
originating  
summons and  
other docu-  
ments.  
Cf. W.A.  
O.XI, R.11.  
Cf. E. O.11,  
R.9.

7. The Court may allow service outside the jurisdiction of any originating process other than a writ, or of any summons, order, or notice in any proceedings duly instituted, whether by writ of summons or otherwise, and the provisions of Rules 3, 4, 5, and 6 of this Order shall apply, *mutatis mutandis*, to such service.

Saving of  
existing  
practice.  
W.A. O.XI,  
R.11 (4).

8. Nothing contained in this Order shall prejudice or affect any practice or power of the Court under which, when lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without purporting to exercise jurisdiction over any person out of the jurisdiction, cause such person to be informed of the nature or existence of the proceedings, with a view to such person having an opportunity of claiming, opposing, or otherwise intervening.

Service abroad  
through  
foreign  
governments,  
judicial  
authorities,  
and consuls.  
Cf. E. O.11,  
R.6.

9. (1) This Rule does not apply to service in—

- (a) the United Kingdom;
- (b) any Commonwealth country mentioned in subsection (3) of section 1 of the British Nationality Act, 1948 of the United Kingdom;
- (c) any British possession.

(2) Where in accordance with these Rules leave is given to serve notice of a writ on a defendant in any foreign country with which a Convention in that behalf has been or shall be made and extended to the Commonwealth of Australia or the State of Western Australia, the notice may be served—

- (a) through the judicial authorities of that country; or
- (b) through a British or Australian diplomatic or consular agent in that country (subject to any provision of the Convention as to the nationality of persons who may be so served).

(3) Where notice of a writ is to be served on a defendant in a country with which a Convention has not been made, the notice may be served—

- (a) through the government of that country, if the government is willing to effect service; or
- (b) through a British or Australian diplomatic or consular agent in that country except where service through such an authority is contrary to the law of that country.

(4) Where a person wishes to serve notice of a writ by a method mentioned in paragraph (2) or (3) he shall lodge in the Central Office a request for service of notice of the writ by that method, together with a copy of the notice and an additional copy thereof for each person to be served.

(5) Every copy of a notice lodged under paragraph (4) shall be accompanied by a translation of the notice in the official language of the country in which service is to be effected, or if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected: Provided that this paragraph does not apply where the copy of the notice is to be served in a country the official language of which is, or the official languages of which include English, or is to be served by a British or Australian diplomatic or consular agent on a British subject or an Australian citizen, unless the Convention expressly requires the copy to be accompanied by a translation.

(6) Every translation required by paragraph (5) shall be certified by the person making it to be a correct translation, and the certificate shall state his full name and address and his qualifications for making the translation.

(7) The document to be served shall be sealed with the seal of the Supreme Court for use out of the jurisdiction and shall be forwarded by the Registrar to the Attorney-General for Western Australia for transmission through the diplomatic channel to the foreign country.

(8) An official certificate transmitted to the Court through the diplomatic channel by the British or Australian diplomatic or consular agent, or by the foreign government or judicial authorities establishing the fact and the date of the service of the document shall be deemed to be sufficient proof of such service, and shall be filed of record and be equivalent to an affidavit of service within the requirements of these Rules in that behalf. Any document purporting to be such a certificate shall, until the contrary is proved, be deemed to be such a certificate.

(9) Where an official certificate is produced pursuant to paragraph (8) in relation to the service of a notice of a writ under this Rule, no endorsement of service under Order 9 Rule 1 (4) shall be required.

Service  
abroad:  
general and  
saving  
provisions.  
Cf. E. O.11,  
R.5.

10. (1) Subject to Rule 9 (9) and to the following provisions of this Rule Order 9 Rule 1 and Order 72 Rule 4 shall apply in relation to the service of a writ or notice of a writ, notwithstanding that the writ or notice is to be served out of the jurisdiction.

(2) Nothing in this Rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

(3) A writ or notice of a writ which is to be served out of the jurisdiction—

(a) need not be served personally on the person required to be served, if it is served on him in accordance with the law of the country in which service is effected; and

(b) need not be served by the plaintiff or his agent if it is served by a method provided for by Rule 9.

W.A. O.XI,  
R.9.

(4) Rule 9 shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to the procedure of the Supreme Court and which is not expressly excluded by the Convention.

Undertaking  
to pay  
expenses of  
service.  
Cf. E. O.11,  
R.8.

11. Every request lodged under Rule 9 (4) must contain an undertaking by the person making the request to be responsible personally for all expenses incurred in respect of the service requested, and on receiving due notification of the amount of those expenses to pay that amount into the Central Office forthwith.

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## ORDER 11

### Service of Foreign Process

Definitions.

1. In this Order—

“Official channel” includes a consular or other authority of the foreign country concerned;

“process” includes a citation.

Service of  
foreign legal  
process.  
Cf. E. O.  
69, R.2.

2. (1) This Rule applies to the service of any process required to be served in any civil or commercial proceedings pending before a court or other tribunal of a foreign country where a letter of request from such a tribunal for service on a person in Western Australia of any such process sent with the letter is received by the Registrar through an official channel.

(2) In order that service may be effected under this Rule the letter of request must be accompanied by a translation thereof in English, by 2 copies of the process to be served and by 2 copies of a translation of the process in English.

(3) Subject to Rule 4 and to any Act which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served.

(4) The Registrar shall transmit through the official channel to the tribunal making the request, a certificate establishing the fact, and the date of service, or stating the reasons for which it has not been possible to effect service, and in the certificate shall certify the amount properly payable for effecting or attempting to effect service. The certificate shall be sealed with the seal of the Supreme Court for use out of the Jurisdiction.

3. (1) This Rule applies to the service of any process required to be served in any civil or commercial proceedings pending before a court or other tribunal of a foreign country with which a Convention in that behalf has been or shall be made and extended to the Commonwealth of Australia or the State of Western Australia where a letter of request from a consular or other authority of that country requesting service on a person in Western Australia of any such process sent with the letter is received by the Registrar.

Service under  
Convention.  
Cf. E. O.  
69, R.3.

(2) In order that service may be effected under this Rule the letter of request must be accompanied by a copy of a translation in English of the process to be served.

(3) Subject to any Act which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the Convention, service of the process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served.

(4) When service of the process has been effected or if attempts to effect service have failed, the process server shall leave with the Registrar an affidavit made by the person who served or attempted to serve, the process stating when, where and how he did or attempted to do so, and a statement of the costs incurred in effecting or attempting to effect service.

(5) The Registrar shall transmit to the consular or other authority by whom the request for service was made a certificate certifying that the process or a copy thereof as the case may be, was served on the person, at the time and in the manner specified in the certificate, or if such be the case, that service of the process could not be effected for the reason so specified, and certifying the amount properly payable for effecting or attempting to effect, service. The certificate shall be sealed with the seal of the Supreme Court for use out of the Jurisdiction.

4. Service of process under the provisions of this Order shall be effected through the Sheriff by the process server whom he may from time to time appoint for that purpose, or his authorized agent.

Service to be  
through  
Sheriff.  
Cf. Vict.  
O.11, R.7.  
(2).

5. Upon the application of the Crown Solicitor, with the consent of the Attorney-General, the Court may make all such orders for substituted service or otherwise as are necessary to give effect to the Rules of this Order.

Consequential  
orders.  
Cf. W.A.  
O.XI, R.7.  
(7).

## ORDER 12

## Appearance.

Mode of  
entering  
appearance.  
Cf. E. O. 12,  
R.1.

1. (1) Subject to paragraph (2) and to Order 70 Rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) enter an appearance in the action and defend it by a solicitor or in person.

(2) Except as expressly provided by any Act, a defendant to such an action which is a body corporate may not enter an appearance in the action or defend it otherwise than by a solicitor.

(3) A defendant shall enter his appearance in the Central Office.

(4) An appearance is entered by properly completing a memorandum of appearance as defined by Rule 2, and a copy thereof and delivering both documents to the Registrar.

(5) If two or more defendants to an action enter an appearance by the same solicitor and at the same time, only one set of the requisite documents need be completed and delivered for those defendants.

Memorandum  
of  
Appearance.  
Amended by  
G.G. 7/12/73,  
p. 4489.  
Cf. E. O. 12,  
R.3.

2. (1) A memorandum of appearance is a request to the Registrar to enter an appearance for the defendant or defendants specified in the memorandum.

(2) A memorandum of appearance must be in Form No. 6, and both the memorandum of appearance and the copy thereof required for entering an appearance must be signed by the solicitor by whom the defendant appears or, if the defendant appears in person, by the defendant.

(3) A memorandum of appearance must specify—

- (a) in the case of a defendant appearing in person the address of his place of residence and a place to be his address for service, which shall not be more than three kilometres from the Supreme Court at Perth,
- (b) in the case of a defendant appearing by a solicitor, the business address of the solicitor, and if that address is more than three kilometres from the said Court, a place not more than three kilometres from the said Court which shall be the address for service of the defendant.

(4) Where the defendant enters an appearance by a solicitor who is acting as agent for another solicitor having a place of business within the jurisdiction, the memorandum of appearance must state that the first-named solicitor so acts and must also state the name and address of that other solicitor.

(5) Where the memorandum of appearance of a defendant appearing in person does not contain an address for service as required by paragraph (3) it shall not be received, and if the court, on the application of the plaintiff, is satisfied that any such address is illusory or fictitious, the appearance may be set aside.

3. On receiving the requisite documents the proper officer must in all cases affix to the copy of the memorandum of appearance an official stamp showing the date on which he received those documents, enter the appearance in the Cause Book, and then return the copy of the memorandum to the person entering the appearance and the copy memorandum so stamped shall be a certificate that the appearance was entered on the day indicated on the official stamp.

Procedure on receipt of requisite documents.  
Amended by G.G. 15/6/73, p. 2247.  
Cf. E. O.12, R.4.

4. On the day on which he enters an appearance to a writ, a defendant shall give notice of his appearance to the plaintiff's solicitor, or if the plaintiff sues in person, to the plaintiff himself, by serving 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, the stamped copy memorandum.

Notice of appearance.  
Cf. Vict. O.12, R.3.

5. (1) A defendant may not enter an appearance in an action after judgment has been entered therein except with the leave of the Court.

Late appearance.  
Cf. E. O.12, R.6.

(2) Except as provided by paragraph (1), nothing in these Rules or any writ or order thereunder shall be construed as preventing a defendant from entering an appearance in an action after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

6. (1) A defendant in any cause may enter a conditional appearance denying the jurisdiction of the Court or reserving the right to apply to the Court to set aside the originating process, or the notice thereof, or the service of the originating process, or notice thereof, on the ground of any informality or irregularity which renders the originating process or the service thereof invalid, and shall not thereby be deemed to have submitted to such jurisdiction, except as to the costs occasioned by the appearance or by any application under this Rule.

Conditional appearance.  
Cf. Tas. O.13, R.24.  
S.A. O.12, R.9.

(2) The defendant shall forthwith apply to the Court to have the question raised by his conditional appearance decided, and if such an application is not made within fourteen days from the entry of the conditional appearance, or if the application be dismissed, the conditional appearance shall, unless the Court otherwise orders, become and operate as an unconditional appearance.

7. A defendant to an action may at any time before entering an appearance therein, serve notice of motion to set aside the writ or service of the writ, or notice of the writ on him or discharging any order giving leave to serve the writ or notice on him out of the jurisdiction.

Setting aside service before appearance.  
Cf. E. O.12, R.8.

8. Any person not named as a defendant in a writ for the recovery of land may, by leave of the Court, appear and defend on filing an affidavit showing that he has an interest in the land which would be prejudiced or frustrated if an order for recovery were made without his being a party.

Person not named may defend for land.  
Cf. W.A. O.XII, R.10.

**ORDERS 12  
and 13.**

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Person  
appearing to  
be named as  
defendant.  
Cf. Ib. O.XII,  
R.11.

9. Where a person not named as a defendant in a writ for the recovery of land has obtained leave of the Court to appear and defend he shall in all subsequent proceedings be named as a party defendant to the action.

Limited  
defence and  
notice thereof.  
Cf. Vict.  
O.12, R.15.

10. (1) Any person appearing to a writ for the recovery of land may 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, and such notice shall be served within four days after appearance, and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.

(2) The notice mentioned in paragraph (1) shall be in accordance with Form No. 7.

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**ORDER 13**

**Default of Appearance to Writ**

Affidavit of  
service.  
Cf. E. O.13,  
R.7.

1. (1) Judgment shall not be entered against a defendant under this Order unless—

- (a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the defendant and due indorsement of service in accordance with Order 9 Rule 1 (4); or
- (b) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that he accepts service of the writ on the defendant's behalf.

(2) Where, in an action begun by writ, an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

Claim for  
liquidated  
demand.  
Cf. E. O.13,  
R.1.

2. Where the writ is indorsed with a claim for a liquidated demand only, then if a defendant fails to enter an appearance to the writ, the plaintiff may, after the time limited for appearance has expired, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand, together with interest at the rate agreed upon (if any) or (if no rate is claimed to have been agreed upon) at the rate of six per cent. per annum to the date of the judgment, and costs.

Where  
liquidated  
demand  
judgment  
against  
several  
defendants.  
Cf. Vict.  
O.13, R.3.

3. Where the writ is indorsed with a claim for a liquidated demand only, 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 Rule 2 against such as have not appeared and may issue execution upon such judgment without prejudice (except where the defendants are sued in the alternative) to his right to proceed with his action against such as have appeared.

4. (1) Where the writ is indorsed with a claim relating to the detention of goods only, then, if a defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, at his option enter either—

Claim in  
detinue.  
Cf. E. O.13,  
R.3.

(a) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs; or

(b) interlocutory judgment against him for the value of the goods to be assessed and costs,

and proceed with the action against the other defendants, if any.

(2) On an interlocutory judgment under this Rule against a defendant or all the defendants, if more than one, the value of the goods shall be assessed by the Master, unless the Court otherwise directs.

5. (1) Where the writ is indorsed with a claim against a defendant for possession of land only, then if that defendant fails to enter an appearance within the time limited, the plaintiff may, on producing a certificate from his solicitor, or, if he sues in person an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 62A Rule 1, enter judgment for possession of the land against that defendant and the costs, and proceed in the action against the other defendants if any.

Claim for  
possession of  
land.  
Amended by  
G.G. 10/1/75,  
p. 50<sup>1</sup>  
Cf. E. O.13,  
R.4.  
Cf. Vict.  
O.13, R.8.

(2) Where there is more than one defendant, judgment entered under this Rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

6. Where the writ is indorsed with two or more of the claims mentioned in Rules 2, 3, 4, 5, and 7, and no other claim, then if a defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those Rules if that were the only claim made by him against the defendant, and proceed with the action against the other defendants, if any.

Mixed claims.  
Amended by  
G.G. 15/6/73,  
p. 2247.  
Cf. E. O.13,  
R.5.

7. (1) Where the writ is indorsed with a claim against a defendant for unliquidated damages only, and that defendant fails to enter an appearance within the time limited for appearing, the plaintiff shall be entitled to enter interlocutory judgment against that defendant and obtain an order for directions for the assessment of damages, and proceed with the action against the other defendants, if any.

Claims for  
damages.  
Cf. W.A.  
O.XIII, R.2  
(1).  
Cf. E. O.13,  
R.2.

(2) The plaintiff shall at least 7 days before the day fixed for the assessment of the damages serve notice of the appointment for hearing on the party against whom the judgment has been given.

<sup>1</sup> Rule 12 of rules published G.G. 10/1/75, p. 54, read as follows:—

Saving.

12. A judgment or order for recovery or delivery up of possession of land given or made before the day on which these rules come into operation may be enforced in the manner in which it was enforceable before that day and leave to enforce any such judgment or order shall not be required.

(3) Notwithstanding anything in Order 72 Rule 8 a notice under this Rule must be served on the party against whom the judgment has been given, unless the writ was served on that party by substituted service, and his address is unknown to the plaintiff.

Other cases.  
Amended by  
G.G. 15/6/73,  
p. 2247.  
Cf. E. O.13,  
R.6.

8 (1) Where the plaintiff's claim against any defendant is of a description not mentioned in Rules 2, 3, 4, 5, and 7, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, and upon filing an affidavit proving due service of the writ on that defendant, and where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, apply to a Judge on motion for judgment.

(1A) On an application under paragraph (1) the applicant or his solicitor must produce a certificate issued by the proper officer on the day of the hearing stating that no appearance has been entered by the defendant against whom it is sought to enter judgment.

(2) Where the plaintiff's claim is as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof, or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then if the defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, enter judgment with the leave of the Court against that defendant for costs. The application for such leave shall be by summons which must unless the Court otherwise orders and notwithstanding anything in Order 72 Rule 8, be served on the defendant against whom it is sought to enter judgment.

Reference  
to Judge in  
case of doubt.  
Cf. W.A.  
O.XIII, R.2  
(2).

9. In any case in which the plaintiff claims to be entitled under the Rules of this Order to enter final or interlocutory judgment in default of the defendant's appearance, the Master may, if any doubt or difficulty appears to arise, refer the question of the entry of the judgment to a Judge for directions.

Setting aside  
judgment.  
E. O.13, R.9.

10. The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

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#### **ORDER 14**

##### **Summary Judgment**

Plaintiff's  
application  
for summary  
judgment.  
Cf. E. O.14,  
R.1.

1. (1) Where in an action to which this Rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

Supreme Ct.  
Act, 1935,  
s.42.

(2) Subject to paragraph 3, this Rule applies to every action begun by writ other than one which includes—

- (a) a claim by the plaintiff based on an allegation of fraud; or
- (b) a claim by the plaintiff in respect of libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise of marriage.

(3) This Order shall not apply to Probate or Admiralty actions, or to an action to which Order 15 applies.

2. (1) An application under Rule 1 shall be made by summons supported by an affidavit verifying the facts on which the claim or the part of the claim to which the application relates is based, and stating that in the deponent's belief there is no defence to that claim or part thereof, as the case may be, or no defence except as to the amount of any damages claimed.

Application to be by summons. Amended by G.G. 3/10/75, pp. 3769-71. Cf. E. O.14, R.2.

(2) Unless the Court otherwise directs, an affidavit for the purposes of this Rule may contain statements of information or belief with the sources and grounds thereof.

(3) The summons and a copy of the affidavit in support and of any exhibits therein referred to shall be served on the defendant not less than 7 days before the return day of the summons.

3. (1) On the hearing of an application under Rule 1 unless the Court dismisses the application, or the defendant satisfies the Court with respect to the claim, or the part of the claim, to which the application relates that there is an issue or question in dispute which ought to be tried, or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against the defendant on that claim or part thereof as may be just, having regard to the nature of the remedy or relief claimed.

Judgment may be given for Plaintiff. Cf. E. O.14, R.3.

(2) The Court may, by order and subject to such conditions, if any, as may be just, stay execution of any judgment given against a defendant under this Rule until after the trial of any counterclaim made or raised by the defendant in the action.

4. (1) A defendant may show cause against an application under Rule 1 by affidavit or otherwise to the satisfaction of the Court.

Leave to defend. Cf. E. O.14, R.4.

(2) Rule 2 (2) applies *mutatis mutandis* for the purposes of this Rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim to which the application relates, either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary, or other similar officer thereof, or any person purporting to act in such capacity—

(a) to produce any document or,

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

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

Summary disposal. Cf. W.A. O.XIV, R.7.

Summary  
judgment on  
counterclaim.  
Cf. E. O.14,  
R.5.

6. (1) Where a defendant in an action begun by writ has served a counterclaim on the plaintiff, then subject to paragraph (3) the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such claim, apply to the Court for judgment against the plaintiff on that claim or part.

(2) Rules 2, 3 and 4 apply in relation to an application under this Rule as they apply in relation to an application under Rule 1, but with the following modifications, that is to say—

- (a) references to the plaintiff and defendant shall be construed as references to defendant and plaintiff respectively;
- (b) the words in Rule 3 (2) “any counterclaim made or raised by the defendant in” shall be omitted; and
- (c) the reference in Rule 4 (3) to the action shall be construed as a reference to the counterclaim to which the application under this Rule relates.

(3) This Rule shall not apply to a counterclaim which includes any such claim as is referred to in Rule 1 (2).

Directions.  
Cf. E. O.14,  
R.6.  
Cf. Vict.  
O.14, R.8.

7. Where the Court—

- (a) gives leave (whether conditional or unconditional) to defend any action or counterclaim, as the case may be, with respect to a claim or a part of a claim, or
- (b) gives judgment for a plaintiff or a defendant on a claim or a part of a claim, but also orders that execution of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court may give all such directions as to the further conduct of the action as might be given on a summons for directions under Order 29, and may direct that the affidavit filed by the defendant or the plaintiff, as the case may be, under this Order, shall serve in lieu of defence and may order the action to be forthwith set down for trial, and may define the issues that are to be tried.

Costs.  
Amended by  
G.G. 15/6/73,  
p. 2248.  
Cf. E. O.14,  
R.7.

8. (1) If the plaintiff makes an application under Rule 1 and the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, the Court may dismiss the application with costs, and may require the costs to be paid by the plaintiff forthwith.

(2) The Court shall have the same power to dismiss an application under Rule 6 as it has under paragraph (1) to dismiss an application under Rule 1, and that paragraph shall apply accordingly with the necessary modifications.

Right to  
proceed with  
residue of  
action or  
counterclaim.  
Ib. R.8.

9. (1) Where on an application under Rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim, or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under Rule 6 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

10. Where the claim to which an application under Rule 1 or Rule 6 relates is for the delivery up of a specific chattel, and the Court gives judgment under this Order for the applicant, the Court shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

Judgment for delivery of specific chattel.  
Cf. E. O.14, R.9.  
Cf. W.A. O.XIV, R.1. (5).

11. 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.

Relief from forfeiture.  
Cf. W.A. O.XIV, R.9.

12. Any judgment given against a party who does not appear at the hearing of an application under Rule 1 or Rule 6 may be set aside or varied by the Court on such terms as it thinks just.

Setting aside judgment.  
Cf. E. O.14, R.11.  
Cf. W.A. O.XIII, R.5.

## ORDER 15

### Actions for Specific Performance, etc.: Summary Judgment

1. (1) In any action begun by writ indorsed with a claim for—
  - (a) specific performance of an agreement (whether in writing or not) for the sale, purchase or exchange of any property or any estate or interest therein, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or
  - (b) rescission of such an agreement or
  - (c) the forfeiture or return of any deposit made under such an agreement,

Plaintiff may apply for judgment.  
Cf. E. O.86, R.1.

the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.

(2) An application under this Rule may be made against a defendant whether or not he has entered an appearance in the action.

2. (1) An application under Rule 1 shall be made by summons supported by affidavit made by some person who can swear positively to the facts verifying the cause of action and stating that in his belief there is no defence to the action.

Manner in which application to be made.  
Amended by G.G. 3/10/75, pp. 3769-71.  
Ib. R.2.

(2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff, and such summons together with a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than 7 days before the return day.

Court may  
give judgment  
for plaintiff.  
Ib. R.4.

3. Unless on the hearing of an application under Rule 1 either the Court dismisses the application, or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried, or that there ought for some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.

Leave to  
defend.  
Ib. R.5.

4. (1) A defendant may show cause against an application under Rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) The Court may give a defendant against whom such an application is made leave to defend the action either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(3) On the hearing of the application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—

(a) to produce any document;

(b) if it appears to the Court that there are special circumstances making it desirable that he should do so, to attend and be examined on oath.

Summary  
disposal.  
Cf. W.A.  
O.XIV, R.7.

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

Directions.  
Cf. E. O.86,  
R.6.

6. Where the Court gives leave to defend, either conditionally or unconditionally, the Court may give all such directions as to the further conduct of the action as might be given on a summons for directions under Order 29, and may order that the action be forthwith set down for trial.

Costs.  
Cf. E. O.86,  
R.7.

7. If the plaintiff makes an application under Rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, the Court may dismiss the application with costs and may require the costs to be paid by the plaintiff forthwith.

Setting aside  
judgment.  
Ib. R.8.

8. Any judgment given against a defendant who does not appear at the hearing of an application under Rule 1 may be set aside or varied by the Court on such terms as it thinks just.

## ORDER 16

## Summary Judgment on Application of Defendant

1. Any defendant to an action may within ten days after appearance or at any later time by leave of the Court, apply to a Judge for summary judgment, and the Judge, if satisfied that the action is frivolous or vexatious, that the defendant has a good defence on the merits, or that the action should be disposed of summarily or without pleadings, may order—

Defendant  
may apply for  
summary  
judgment.  
Cf. Vict.  
O.14(A),  
R.1.

(a) that judgment be entered for the defendant with or without costs; or

(b) that the plaintiff shall proceed to trial without pleadings—

or if all parties consent, may dispose of the action finally and without appeal in a summary manner.

2. (1) The plaintiff may show cause against such application by affidavit or by *viva voce* evidence.

Plaintiff may  
show cause.  
Ib. R.2.

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

Attendance for  
examination.

3. If the Judge directs that the action shall proceed to trial, he may give all such directions as to the further conduct of the action as might be given on a summons for directions under Order 29 and may order that the action be forthwith set down for trial.

Directions.  
Ib. R.3.

## ORDER 17

## Interpleader

1. Relief by way of interpleader may be granted by the Court—

(a) where the person seeking relief (called the applicant) is under liability—

(i) to yield up or give possession of any land; or

(ii) to perform a contract; or

(iii) for any debt or money; or

(iv) to yield up goods or chattels or any document, muniment of title, or security,

in respect of which he is or expects to be sued by two or more parties (called the claimants) making adverse claims; or

(b) where the applicant is the Sheriff or other officer charged with the execution of process under the authority of the Court, and claim is made to any land, goods, chattels, or money taken or intended to be taken in execution, or to the proceeds or value of any such land, goods, or chattels by any person other than the person against whom the process is issued.

Relief by way  
of  
interpleader.  
W.A. O.XVII,  
R.1.

Mode of  
Application.  
Cf. E. O. 17,  
R.3.

2. (1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action.

(2) No appearance need be entered to an originating summons under this Rule.

(3) Subject to paragraph (4) a summons under this Rule must be supported by evidence that the applicant—

- (a) claims no interest in the subject matter in dispute other than for charges and costs,
- (b) does not collude with any of the claimants to that subject-matter, and
- (c) is willing to dispose of any property involved in such manner as the Court or a Judge may direct.

(4) Where the applicant is the Sheriff he shall not provide such evidence as is referred to in paragraph (3) unless the Court directs him to do so.

Time for  
application by  
defendant.  
W.A. O.XVII,  
R.3.

3. Where the applicant is a defendant, application for relief may be made at any time after the service of the writ.

Stay of  
Proceedings.  
Ib. R.5.

4. If the application is made by a defendant the Court may stay all further proceedings.

Order on  
summons.  
Ib. R.6.  
Cf. E. O. 17,  
R.5.

5. 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 give directions as to which of the claimants is to be plaintiff and which defendant, and as to the method of trial and such other directions as may be necessary in the circumstances.

Summary  
determination.  
Cf. W.A.  
O.XVII,  
R.7.  
Cf. E. O. 17,  
R.5.

6. The Court may, with the consent of both claimants or on the request of any claimant, or if the applicant is the Sheriff, dispose of the merits of the claims and decide the same in a summary manner.

Where  
question of  
law only.  
W.A. O.XVII,  
R.8.  
Cf. E. O. 17,  
R.5.

7. Where the question is one of law, and the facts are not in dispute, the Court 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 31 shall, as far as applicable, apply.

Claimant  
failing to  
appear etc.  
W.A. O.XVII,  
R.9.

8. 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 may make an order declaring him and all persons claiming under him barred against the applicant and persons claiming under him.

9. Whenever it appears desirable from the nature of the subject matter or the parties agree, the Court or a Judge may order the sale of the whole or any part thereof and direct the application of the proceeds according to the rights of the parties as determined on the interpleader proceedings.

Power to order sale of goods.  
Ib. R.10.

10. The Rules relating to discovery, interrogatories and inspection, and the trial of actions shall apply to interpleader issues with the necessary modifications.

Discovery, etc., and trial.  
Ib. R.11.

11. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters, such order may be made by the Court before whom the proceedings may be taken, and shall be entitled in 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.

One order where several causes pending.  
Cf. Ib. R.12.

12. (1) Where a claim is made to any property taken in execution it must be in writing and the claimant must indorse thereon an address for service which must not be more than three kilometres from the Court at Perth, where notices and other documents in the proceedings not required to be served on the claimant personally may be served on him.

Claim etc. to goods taken in execution. Amended by G.G. 15/6/73, p. 2247; G.G. 7/12/73, p. 4489.  
Cf. Ib. R.13.

(2) Upon the receipt of the claim the Sheriff or his officer must forthwith give notice thereof to the execution creditor (Form No. 8), and the execution creditor must within four days after receiving the notice give notice to the Sheriff or his officer whether he admits or disputes the claim (Form No. 9). If the execution creditor admits the title of the claimant and give notice as directed by this Rule he shall only be liable to the Sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

13. 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 property claimed, and may obtain an order protecting him from any action in respect of the seizure and possession.

Withdrawal by Sheriff.  
Ib. R.14.

14. (1) Where the execution creditor does not within the time prescribed by Rule 12 (2) admit the title of the claimant to the property, or where the execution creditor disputes the claimant's title, and the claimant does not withdraw his claim by notice in writing to the Sheriff or his officer, the Sheriff may issue an interpleader summons; and service of the summons upon the claimant may be effected by leaving it at or posting it to his address for service, or, where the claimant has no address for service, by posting the summons to him at his last known address.

Application by the Sheriff. Amended by G.G. 15/6/73, p. 2248.  
Ib. R.15.

(2) Should the claimant withdraw his claim by notice in writing to the Sheriff, or his officer, or the execution creditor 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 may make all necessary orders as to costs and expenses.

15. Subject to the foregoing Rules of this Order, the Court may in and for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

Other powers of the Court.  
E. O.17, R.8.

## ORDER 18

**Causes of Action, Counterclaims and Parties**

Joinder of  
causes of  
action.  
Cf. E. O.15,  
R.1.

1. (1) Subject to Rule 5 (1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action—

- (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action, or
- (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others, or
- (c) with the leave of the Court.

(2) An application for leave under this Rule must be made *ex parte* by affidavit before the issue of the writ and the affidavit must state the grounds of the application.

Counterclaim  
against  
plaintiff.  
Ib. R.2.

2. (1) Subject to Rule 5 (2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

(2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

(3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

Counterclaim  
against  
additional  
parties.  
Ib. R.3.

3. (1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action then, subject to Rule 5 (2), he may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which by virtue of Order 20, Rule 4, he must serve on the plaintiff the defence to which the counterclaim is added.

(4) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these Rules, namely, Order 9 except Rule 1 (4), Order 10 except Rule 3, Order 12 and Order 13 shall, subject to the last foregoing paragraph, apply in relation to the counterclaim and the proceedings arising from it as if—

- (a) the counterclaim were a writ and the proceedings arising from it an action; and
- (b) the party making the counterclaim were a plaintiff and the party against who it is made a defendant in that action.

(5) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 10, addressed to that person—

- (a) stating the effect of Order 12, Rule 1, as applied by paragraph (4), and
- (b) specifying the appropriate office for the entry of appearance by that person to the counterclaim.

4. (1) Subject to Rule 5 (1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where—

Joinder of parties.  
Ib. R.4.

- (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions, and
- (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any Act and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.

This paragraph shall not apply to a probate action.

(3) Where relief is claimed in an action against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the action, by order stay proceedings in the action until the other persons so liable are added as defendants.

Court may  
order  
separate trials,  
etc.  
Ib. R.5.

5. (1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

Misjoinder  
and nonjoinder  
of parties.  
Cf. E. O.15,  
R.6.

6. (1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application—

- (a) order that any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order that any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, be added as a party;

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(3) An application by any person for an order under paragraph (2) adding him as a defendant must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter.

Change of  
parties by  
reason of  
death, etc.  
Ib. R.7.

7. (1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

An application for an order under this paragraph may be made *ex parte*.

(3) An order may be made under this Rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record, or on the same side but in a different capacity; but—

- (a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side, and
- (b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this Rule must procure the order to be noted in the Cause Book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun.

(5) Any application to the Court by a person served with an order made *ex parte* under this Rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

8. (1) Where an order is made under Rule 6, the writ by which the action in question was begun must be amended accordingly and must be indorsed with—

- (a) a reference to the order in pursuance of which the amendment is made, and
- (b) the date on which the amendment is made;

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

(2) Where by an order under Rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the Cause Book.

(3) Where by an order under Rule 6 or 7 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under Rule 7, to the modification that the time limited for appearing shall begin with the date on which the order is served on him under Rule 7 (4) or, if the order is not required to be served on him, with the date on which the order is noted in the Cause Book.

Provisions consequential on making of order under Rule 6 or 7.  
Cf. E. O. 15, R. 8.

(4) Where by an order under Rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until—

- (a) where the order is made under Rule 6, the writ has been amended in relation to him under this Rule and (if he is a defendant) has been served on him, or
- (b) where the order is made under Rule 7, the order has been served on him under Rule 7 (4) or, if the order is not required to be served on him, the order has been noted in the Cause Book;

and where by virtue of the foregoing provision a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old, except that entry of appearance by the old party shall not dispense with entry of appearance by the new party.

Failure to  
proceed after  
death of party.  
1b. R.9.

9. (1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under Rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this Rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

(2) Where in any action a counterclaim is made by a defendant, this Rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

Actions for  
possession of  
land.  
1b. R.10.

10. (1) Without prejudice to Rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.

(2) An application by any person for an order under this Rule may be made *ex parte*, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him.

(3) A person added as a defendant by an order under this Rule must serve a copy of the order on the plaintiff and must enter an appearance in the action within such period, if any, as may be specified in the order or, if no period is so specified, within 7 days after the making of the order, and the rules as to entry of appearance shall apply accordingly to entry of appearance by him.

11. (1) Before the name of any person is used in any action as a relator, that person must give to his solicitor a written authorisation so to use his name and the authorisation must be filed.

Relator  
actions.  
Cf. E. O.15,  
R.11.

(2) In all relator actions the plaintiff shall file with the writ or other originating process, the consent of the Attorney-General to the action being brought.

W.A. O.XVI,  
R.19.

12. (1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in Rule 13, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

Representative  
proceedings.  
Cf. E. O.15,  
R.12.  
Cf. W.A.  
O.XVI,  
RR.9, 12.

(2) At any stage of proceedings under this Rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued, to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under Rule 6 adding that person as a defendant.

(3) A judgment or order given in proceedings under this Rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of leave under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

13. (1) In any proceedings concerning—

- (a) the administration of the estate of a deceased person, or
- (b) property subject to a trust, or
- (c) the construction of a written instrument, including a statute or a regulation, rule or by-law made under a statute,

Representation  
of interested  
persons who  
cannot be  
ascertained,  
etc.  
Cf. E. O.15,  
R.13.  
Cf. W.A.  
O.XVI,  
R.9.

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by paragraph (1) are as follows:—

- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
- (b) that the person, class or some member of the class, though ascertained, cannot be found;
- (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

(4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons) but—

- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it 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.

Representation  
of benefi-  
ciaries by  
trustees, etc.  
E. O.15,  
R.14.

14. (1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under Rule 13.

15. (1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

Representation  
of deceased  
person  
interested in  
proceedings.  
Ib. R.15.

(2) Before making an order under this Rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

16. No action or other 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 or not any consequential relief is or could be claimed.

Declaratory  
judgment.  
Cf. W.A.  
O.XXV,  
R.5.  
Cf. E. O.15,  
R.16

17. The Court may give the conduct of any action, inquiry or other proceeding to such person as it thinks fit.

Conduct of  
proceedings.  
Cf. E. O.15,  
R.17.

## ORDER 19

### Third Party and Similiar Proceedings

1. (1) Where in any action a defendant who has entered an appearance claims against any person not already a party to the action (in this Order called the third party)—

Third party  
notice.  
Cf. E. O.16,  
R.1.  
Cf. W.A.  
O.XVI, R.32.

- (a) that he is entitled to contribution or indemnity; or
- (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) that any question or issue relating to or connected with the original subject-matter of the action is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but also as between either or both of them and the third party

then, subject to paragraph (2), the defendant may issue a notice in Form No. 11 or 12, whichever is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court unless he issues the notice before serving his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice is issued.

Application  
for leave to  
issue third  
party notice.  
E. O.16, R.2.

2. (1) An application for leave to issue a third party notice may be made *ex parte* but the Court may direct a summons for leave to be issued.

(2) An application for leave to issue a third party notice must be supported by an affidavit stating—

- (a) the nature of the claim made by the plaintiff in the action;
- (b) the stage which proceedings in the action have reached;
- (c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and
- (d) the name and address of the person against whom the third party notice is to be issued.

Issue and  
service of,  
and entry of  
appearance to,  
third party  
notice.  
Cf. E. O.16,  
R.3.  
Cf. W.A.  
O.XVI, R.32  
(2).

3. (1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There must be served with every third party notice a copy of the writ by which the action was begun and of the pleadings (if any) served in the action.

(3) Subject to the foregoing provisions of this Rule, the following provisions of these Rules, namely, Order 5 Rules 7 and 8, Order 9 except Rule 1 (4), Order 10 except Rule 3 and Order 12, shall apply in relation to a third party notice and to the proceedings begun thereby as if—

- (a) the third party notice were a writ and the proceedings begun thereby an action; and
- (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action.

Third party  
directions.  
Cf. E. O.16,  
R.4.  
Cf. W.A.  
O.XVI,  
RR.36, 37.

4. (1) If the third party enters an appearance, the defendant who issued the third party notice must, by summons to be served on all the other parties to the action, apply to the Court for directions.

(2) If a summons is not served on the third party under paragraph (1), the third party may, not earlier than 7 days after entering an appearance, by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

(3) On an application for directions under this Rule the Court may—

- (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or
- (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
- (c) dismiss the application and terminate the proceedings on the third party notice;

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this Rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) The Court may at any time vary or rescind any order made or direction given under this Rule.

5. (1) If a third party does not enter an appearance or, having been ordered to serve a defence, fails to do so—

Default of  
third party,  
etc.  
E. O.16, R.5.  
Cf. W.A.  
O.XVI, R.40.

- (a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and
- (b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court before satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

(2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgment entered under paragraph (1) (b) or paragraph (2) on such terms (if any) as it thinks just.

Setting aside  
third party  
proceedings.  
Cf. E. O.16,  
R.6.

Cf. W.A.  
O.XVI, R.34.

Judgment  
between  
defendant  
and third  
party.

Cf. E. O.16,  
R.7.

Cf. W.A.  
O.XVI, R.38.

6. Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

7. (1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on an application by summons or motion, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.

(2) Where in an action judgment is given against a defendant and judgment is given for the defendant against a third party, execution shall not issue against the third party except as to costs, without the leave of the Court until the judgment against the defendant has been satisfied at least to the extent of the third party liability which he claims to enforce under the judgment.

Claims and  
issues between  
a defendant  
and some other  
party.  
E. O.16, R.8.

8. (1) Where in any action a defendant who has entered an appearance—

- (a) claims against a person who is already a party to the action any contribution or indemnity; or
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action;

then, subject to paragraph (2), the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined.

(2) Where a defendant makes such a claim as is mentioned in paragraph (1) and that claim could be made by him by counterclaim in the action, paragraph (1) shall not apply in relation to the claim.

(3) No appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served of the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.

(4) Rule 4 (2) shall have effect in relation to proceedings on a notice issued under this Rule as if for the words “7 days after entering an appearance” there were substituted the words “14 days after service of the notice on him”.

9. (1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in Rule 1 or Rule 8, this Order shall, with the modification mentioned in paragraph (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where any further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim or requirement.

Claims by  
third and  
subsequent  
parties.  
E. O.16,  
R.9.  
Cf. W.A.  
O.XVI, R.33.

(2) The modification referred to in paragraph (1) is that paragraph (3) shall have effect in relation to the issue of a notice under Rule 1 by a third party in substitution for Rule 1 (2).

(3) A third party may not issue a notice under Rule 1 without the leave of the Court unless he issues the notice before the expiration of 14 days after the time limited for appearing to the notice issued against him.

10. If, before the trial of an action, a party to the action who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute to a specified extent to the debt or damages, then, notwithstanding that he reserves the right to bring the offer to the attention of the Judge at the trial, the offer shall not be brought to the attention of the Judge until after all questions of liability and amount of debt or damages have been decided.

Offer of  
contribution.  
E. O.16,  
R.10.

11. Where in any action a counterclaim is made by a defendant, the foregoing provisions of this Order shall apply in relation to the counterclaim as if the subject-matter of the counterclaim were the original subject-matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

Counterclaim  
by defendant.  
E. O.16,  
R.11.  
Cf. W.A.  
O.XVI, R.43.

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

Costs.  
Vict. O.16(A),  
R.13.

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## ORDER 20

### Pleadings

1. Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 14 days after that defendant enters an appearance.

Service of  
Statement  
of Claim.  
Cf. E. O.18,  
R.1.

Statement of  
Claim.  
Cf. E. O. 18,  
R. 15.

2. (1) A statement of claim must state specifically the relief or remedy which the plaintiff claims, but costs need not be specifically claimed.

(2) A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned.

(3) Subject to paragraph (2) a plaintiff may in his Statement of Claim alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement.

(4) Except when indorsed on the writ every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

Pleadings,  
etc., to be  
filed before  
service.  
Cf. W.A.  
O. XIX,  
R.R. 2A, 10.

3. (1) Subject to paragraph (2) the original of every statement of claim, defence, set off, or counterclaim, and of every reply or subsequent pleading, and of any further particulars of any pleading, a copy of which is required by these Rules to be served on one party by another, must be filed before the copy is served, and the copy must be served within twenty-four hours after filing the original.

(2) This Rule does not apply where the statement of claim is indorsed on the writ.

Service of  
defence.  
Cf. E. O. 18,  
R. 2.

4. (1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for appearing or after the statement of claim is served on him, whichever is the later.

(2) If a summons under Order 14, Rule 1 is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 14 days after the making of the order or within such other period as may be specified therein.

Service of  
reply and  
defence to  
counterclaim.  
Ib. R. 3.

5. (1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with Rule 9, and if no reply is served, Rule 15 (1) will apply.

(2) A plaintiff on whom the defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 14 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 14 days after the service on him of the counterclaim to which it relates.

6. No pleading subsequent to a reply or a defence to counter-claim shall be served except with the leave of the Court.

Pleadings subsequent to reply.

Ib. R.4.

Pleadings: formal requirements. Amended by G.G. 15/6/73, p. 2248. Cf. E. O.18, R.6.

7. (1) Every pleading in an action must bear on its face—

- (a) the year in which the writ in the action was issued and the number of the action,
- (b) the title of the action,
- (c) the description of the pleading, and
- (d) the date on which it was filed.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

(4) Every pleading of a party must be indorsed—

- (a) where the party sues or defends in person, with his name and address for service;
- (b) in any other case, with the name or firm and address for service of the solicitor by whom it was filed and also (if the solicitor is the agent of another) the name or firm and business address of his principal.

(5) Every pleading of a party must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

(5A) It shall be a sufficient compliance with paragraph (5) if the pleading is signed by a solicitor who—

- (a) is employed by the party's solicitor;
- (b) has settled the pleading;
- (c) is authorized to sign the pleading on his principal's behalf, and
- (d) adds his own signature after the name of his firm.

(6) The date of service of a pleading must be stated on every copy which is served.

Date of service to be shown.

8. (1) Subject to the provisions of this Rule, and Rules 11, 12 and 13 every pleading must 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 those facts are to be proved, and the statement must be as brief as the nature of the case admits.

Facts, not evidence, to be pleaded. Ib.R.7.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

Matters which must be specifically pleaded. Amended by G.G. 3/10/75, pp. 3769-71. Ib. R.8.

9. (1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality—

- (a) which he alleges makes any claim or defence of the opposite party not maintainable; or
- (b) which, if not specifically pleaded, might take the opposite party by surprise; or
- (c) which raises issues of fact not arising out of the preceding pleading.

(2) Without prejudice to paragraph (1), a defendant to an action for possession of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

(3) A claim for exemplary damages or a claim for aggravated damages must be specifically pleaded together with the facts on which the party pleading relies.

Matter may be pleaded whenever arising. Cf. E. O.18, R.9.

10. Subject to Rules 8 (1) and 11, a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

Departure. Ib. R.10.

11. (1) A party shall not in any pleading make any allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his.

(2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

Points of law may be pleaded. Ib. R.11. Particulars of pleading. Cf. E. O.18, R.12.

12. A party may by his pleading raise any point of law.

13. (1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words—

- (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and
- (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party—

(a) where he alleges knowledge, particulars of the facts on which he relies, and

(b) where he alleges notice, particulars of the notice.

(5) An order under this Rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this Rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

(7) The party at whose instance particulars have been served under an order of the Court shall, unless the order otherwise provides, have the same length of time for pleading after the service 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.

W.A. O.XIX,  
R.8.

14. (1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under Rule 15 operates as a denial of it.

Admissions  
and denials.  
Cf. E. O.18,  
R.13.

(2) A traverse may be made either by a denial or by a statement of non-admission.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

15. (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

Denial by  
joinder of  
issue.  
Ib. R.14.

(2) Subject to paragraph (3)—

(a) there is at the close of pleadings an implied joinder of issue on the pleading last served, and

(b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.

Defence of  
tender.  
Ib. R.16.

16. Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 24 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

Defence of  
set-off.  
Ib. R.17.

17. Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

Counterclaim  
and defence  
to  
counterclaim.  
Ib. R.18.

18. Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically—

- (a) Rule 2 (1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;
- (b) Rules 9 (2), 16, and 17 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

Striking out  
pleadings and  
indorsements.  
Ib. R.19.

19. (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading, or the indorsement of any writ in the action, or anything in any pleading or in the indorsement on the ground that—

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1) (a).

Close of  
pleadings.  
Cf. E. O.18,  
R.20.

20. (1) Subject to paragraph (2) the pleadings in an action are deemed to be closed—

- (a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim, or

(b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.

(2) Where the time for the service of a reply or defence to counterclaim or both is extended either by order of the Court or by written consent of the parties, or by the operation of Rule 13 (7), the pleadings are deemed to be closed at the expiration of 14 days after such extended time has expired.

21. (1) Where in an action to which this Rule applies any defendant has entered an appearance in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

Trial without  
pleadings.  
E. O.18,  
R.21.

(2) If, on the hearing of an application under this Rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree such a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate, and Order 29 Rules 2 to 5 shall, with the omission of so much of Rule 5 as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application under this Rule were a summons for directions.

(4) This Rule applies to every action begun by writ other than one which includes—

- (a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or
- (b) a claim by the plaintiff based on an allegation of fraud.

22. Where in any cause or matter it appears to the Court 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.

Preparation  
of issues.  
Cf. W.A.  
O.XXXII,  
R.1.

23. (1) In an action for damage by collision between vessels, unless the Court otherwise orders, the plaintiff or his solicitor must, within seven days after the commencement of the action, and the defendant or his solicitor must, within seven days after appearance and before any pleading is delivered, respectively file in the Central Office a document to be called a Preliminary Act.

Preliminary  
Act.  
Cf. H.Ct.  
O.20, R.30.  
Cf. E. O.75,  
R.18.

(2) Every Preliminary Act shall be sealed up and, unless the Court otherwise orders, shall not be opened until the pleadings are closed and a consent signed by the respective parties or their solicitors that the Preliminary Acts shall be opened is filed in the Central Office.

(3) The Preliminary Act shall contain a statement of the following particulars—

- (i) the names of the vessels which came into collision, the names of their masters, and their ports of registry;
- (ii) the date and time of the collision;
- (iii) the place of the collision;
- (iv) the direction and force of the wind;
- (v) the state of the weather;
- (vi) the state, direction and force of the tidal or other current;
- (vii) the course and speed of the vessel when the other was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (viii) the lights (if any) carried by the vessel;
- (ix) (a) the distance and bearing of the other vessel if and when her echo was first observed by radar;  
(b) the distance, bearing and approximate heading of the other vessel when first seen;
- (x) what light or combination of lights (if any) of the other vessel was first seen;
- (xi) what other lights or combinations of lights (if any) of the other vessel were subsequently seen before the collision, and when;
- (xii) what alterations (if any) were made to the course and speed of the vessel after the earlier of the two times referred to in article (vii) up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when;
- (xiii) the parts of each vessel which first came into contact and the approximate angle between the two vessels at the moment of contact;
- (xiv) what sound signals (if any) were given, and when;
- (xv) what sound signals (if any) were heard from the other vessel, and when.

(4) Where the Court orders the Preliminary Acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the Preliminary Acts.

(5) Rule 1 shall not apply to an action in which Preliminary Acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within 14 days after the latest date on which the Preliminary Act of any party to the action is filed.

24. (1) Where in an action to which Rule 23 applies, the plaintiff fails to lodge a Preliminary Act within the time prescribed for that purpose by that rule or by any order of the Court, any defendant who has lodged such an Act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

Failure to  
lodge  
Preliminary  
Act.

(2) Where in such an action, being an action *in personam*, a defendant fails to lodge a Preliminary Act within the period prescribed for that purpose by Rule 23 or by any order of the Court, Order 22 Rules 2 and 3 shall apply as if the defendant's failure to lodge the Preliminary Act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these Rules for service thereof, and the plaintiff may enter judgment against the defendant in accordance with the said Rule 2 or the said Rule 3, as the circumstances of the case require.

## ORDER 21

### Amendment

1. (1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.

Amendment of  
writ without  
leave.  
Cf. E. O.20,  
R.1.

(2) A writ amended under this Rule after service must, unless the Court otherwise directs on application made *ex parte*, be served as amended on each defendant to the action.

(3) This Rule shall not apply in relation to an amendment which consists of—

- (a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued, or
- (b) the addition or substitution of a new cause of action,
- (c) without prejudice to Rule 3 (1) an amendment of the statement of claim, if any, indorsed on the writ.

2. A defendant may not amend his memorandum of appearance without the leave of the Court.

Amendment  
of appearance.  
Ib. R.2.

3. (1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.

Amendment  
of pleadings  
without leave.  
Ib. R.3.  
Cf. W.A.  
O.XXVIII,  
RR. 2, 3, 5.

(2) Where an amended statement of claim is served on a defendant—

- (a) the defendant, if he has already served a defence on the plaintiff, may amend his defence, and
- (b) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these Rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.

(3) Where an amended defence is served on the plaintiff by a defendant—

- (a) the plaintiff, if he has already served a reply on that defendant, may amend his reply, and
- (b) the period for service of his reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him.

(4) In paragraphs (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counterclaim respectively.

(5) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this Rule, he shall be taken to rely on it in answer to the amended pleading, and Order 20, Rule 15 (2) shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

Application  
for dis-  
allowance of  
amendment  
made without  
leave.

E. O.20,  
R.4.  
Cf. W.A.  
O.XXVIII,  
R.4.

4. (1) Within 14 days after the service on a party of a pleading amended under Rule 3 (1), that party may apply to the Court to disallow the amendment.

(2) Where the Court hearing an application under this Rule is satisfied that if an application for leave to make the amendment in question had been made under Rule 5 at the date when the amendment was made under Rule 3 (1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

(3) Any order made on an application under this Rule may be made on such terms as to costs or otherwise as the Court thinks just.

Amendment  
of writ or  
pleading with  
leave.

E. O.20. R.5.  
Cf. W.A.  
O.XXVIII,  
R.6.

5. (1) Subject to Order 18, Rules 6, 7 and 8, and the following provisions of this Rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake

and was not misleading or such as to cause any reasonable doubt as to the identity of the party intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

6. Rule 5 shall have effect in relation to an originating summons, and an originating motion as it has effect in relation to a writ.

Amendment  
of other  
originating  
process.  
E. O.20,  
R.7.

7. (1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

Amendment  
of other  
documents.  
E. O.20,  
R.8.

(2) This Rule shall not have effect in relation to a judgment or order.

8. Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

Failure to  
amend after  
order.  
E. O.20,  
R.9.

9. (1) Where the amendments authorised under any Rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorised and showing its original contents with the amendments written in red, must be prepared, and in the case of a writ or originating summons re-issued.

Mode of  
amendment.  
Cf. W.A.  
O.XXVIII,  
RR. 8, 9.  
Cf. E. O.20,  
R.10.  
Cf. M. C.  
Rules  
(Clth.),  
RR.94, 95  
(2).

(2) Except as provided in paragraph (1), and subject to any direction given under Rules 5 or 7, the amendments so authorised shall be effected by writing the necessary alterations on the writ, pleading or other document in red or in such other manner as will distinguish the alterations from the original document or from any previous amendment, and in the case of a writ or originating summons, causing it to be re-sealed and filing a copy thereof.

(3) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the Judge or Master by whom the order (if any) authorising the amendment was made, and the date thereof, or if no such order was made, the number of the Rule of this Order in pursuance of which the amendment was made.

(4) When any pleading has been amended such amended document must be filed and served on the opposite party not later than the day next following the day on which the pleading is amended, unless the opposite party has no address for service in which case, notwithstanding Order 72 Rule 8, the amended document must be served as soon as practicable after the amendment is made.

Amendment  
of judgments  
and orders  
Cf. W.A.  
O.XXVIII,  
R.11.

10. 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 on motion or summons without an appeal.

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## ORDER 22

### Default of Pleadings

Default in  
service of  
statement of  
claim.  
Cf. E. O.19,  
R.1.

1. If the plaintiff, being required by these Rules to serve a statement of claim on a defendant fails to serve it on him within the time allowed by or under these Rules for that purpose, the defendant may after the expiration of that time, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

Default of  
defence: claim  
for liquidated  
demand.  
Cf. E. O.19,  
R.2.

2. Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand together with interest at the rate agreed upon (if any) or (if no rate is claimed to have been agreed upon), at the rate of six per cent. per annum to the date of the judgment and costs, and proceed with the action against the other defendants, if any.

Claim for  
unliquidated  
damages.  
Cf. E. O.19,  
R.3.

3. (1) Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter interlocutory judgment against that defendant and obtain an order for directions for the assessment of damages, and proceed with the action against the other defendants, if any.

(2) Order 13 Rule 7 (2) and (3) shall apply for the purposes of this Rule as they apply for the purposes of that Rule.

4. Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter either—

Claim in  
detinue.  
Ib. R.4.

(a) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs, or

(b) interlocutory judgment for the value of the goods to be assessed and costs,

and proceed with the action against the other defendants, if any.

5. (1) Where the plaintiff's claim against a defendant is for possession of land only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, on producing a certificate from his solicitor, or, if he sues in person an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 62A Rule 1 after the expiration of the period fixed by or under these Rules for service of the defence, enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.

Claim for  
possession of  
land.  
Amended by  
G.G. 10/1/75,  
p. 501.  
Ib. R.5.

(2) Where there is more than one defendant, judgment entered under this Rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

6. Where the plaintiff makes against a defendant two or more of the claims mentioned in Rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those Rules if that were the only claim made, and proceed with the action against the other defendants, if any.

Mixed claims.  
Ib. R.6.

7. (1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in Rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

Other claims.  
Amended by  
G.G. 15/6/73,  
p. 2248.  
Ib. R.7.

(1A) On an application under paragraph (1), the applicant or his solicitor must produce a certificate issued by the proper officer on the day of the hearing stating that no defence has been filed by the defendant against whom it is sought to enter judgment.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may—

(a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or

<sup>1</sup> See footnote to Order 13, Rule 5.

- (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.

- (3) An application under paragraph (1) must be by summons.

Default of  
defence to  
counterclaim.  
Ib. R.8.

8. A defendant who counterclaims against a plaintiff shall be treated for the purposes of Rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those Rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

Reference to  
Judge.  
Cf. W.A.  
O.XIII,  
R.2(2).

9. Order 13, Rule 9 applies *mutatis mutandis* to a claim by the plaintiff to enter final or interlocutory judgment under the provisions of this Order.

Setting aside  
judgment.  
E. O.19,  
R.9.

10. The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

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## ORDER 23

### Discontinuance

Withdrawal of  
Appearance.  
E. O.21.  
R.1.

1. A party who has entered an appearance in an action may withdraw the appearance at any time with the leave of the Court.

Plaintiff may  
discontinue:  
Defence may  
be withdrawn.  
Cf. W.A.  
O.XXVI, R.1.

2. (1) The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other step in the action, 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.

(2) The costs referred to in paragraph (1) shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action.

(3) 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, but the Court 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.

(4) The Court 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 counterclaim, or any part thereof, without such leave.

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.

Costs.  
Ib. R.3.

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 may, if it thinks fit, order a stay of such subsequent action, until such costs shall have been paid.

Subsequent  
action stayed  
pending  
payment.  
Ib. R.4.

5. A party who has taken out a summons in a cause or matter may not withdraw it except by leave of the Court.

Withdrawal  
of summons.  
E. O.21, R.6.

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## ORDER 24

### Payment into Court—Offers to Consent to Judgment

1. (1) In any action for a debt or damages any defendant may at any time pay into court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims, or where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.

Payment  
into Court.  
Cf. W.A.  
O.XXII,  
R.1.

(2) The amount paid into court may be increased without leave and by leave of the court reduced or withdrawn, with or without terms.

(3) On making any payment into court whether originally or by way of increase the defendant must forthwith serve notice thereof in Form No. 13 on all parties interested or their respective solicitors. A defendant who obtains leave to reduce or withdraw the amount paid in may withdraw the amount authorised by the order unless the court otherwise directs and need not serve any fresh notice on the other party or parties affected but must serve the order within three days.

(4) Where two or more causes of action are joined in the one action and money is paid into court under this rule in respect of all or some only of those causes of action the notice of payment shall—

- (a) in an action for libel or slander, unless the Court or a Judge otherwise orders, specify the cause or causes of action in respect of which the payment in is made and the sum in respect of each cause of action; and

- (b) in any other case specify the cause or causes of action in respect of which the payment is made; and where the defendant makes separate payments in respect of separate causes of action shall specify the sum paid in respect of each such separate cause of action.

(5) Where a single sum of money is paid into court under this Rule in respect of two or more causes of action, then if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

(6) Subject to the express provisions of this Rule a notice of payment into court shall not be withdrawn or amended without leave.

(7) Where a cause of action under the Fatal Accidents Act, 1959, and a cause of action under the Law Reform (Miscellaneous Provisions) Act, 1941, are joined in an action, with or without any other cause of action, the causes of action under the said Acts shall, for the purpose of paragraph (5), be treated as one cause of action.

Payment in  
by defendant  
who has  
counter-  
claimed,  
Ib. R.2.

2. Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum into court under Rule 1, the notice of payment must state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy—

- (a) the cause of action in respect of which he claims; or
- (b) where two or more causes of action are joined in the counterclaim, all those causes of action, or if not all which of them.

Acceptance  
of money  
paid into  
Court.  
Ib. R.3(1).

3. (1) Where money is paid into court under Rule 1, then, subject to paragraph (2), within fourteen days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within fourteen days after receipt of the notice of the last payment or the amended notice, but, in any case, before the trial begins, the plaintiff may—

- (a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be; or
- (b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,

by giving notice in Form No. 14 to every defendant to the action.

Cf. E. O.22,  
R.3(2).

(2) Where after the trial or hearing of an action has begun—

- (a) money is paid into court under Rule 1, or
- (b) money in court is increased by a further payment into court under that Rule,

the plaintiff may accept the money in accordance with paragraph (1) within two days after receipt of the notice of payment or notice of the further payment, as the case may be, but in any case before the Judge begins to deliver judgment, or if the trial is with a jury, before the Judge begins his summing up.

(3) Rule 1 (5) shall not apply in relation to money paid into court in an action after the trial or hearing of the action has begun. Ib. R.3(3).

(4) On the plaintiff accepting any money paid into court— W.A. O.XXII,  
R.3(2).

- (a) where the action is for libel or slander against several defendants sued jointly and the money is paid into court by any of those defendants in satisfaction of the plaintiff's cause of action against that defendant or those defendants the action shall be stayed only against that defendant or those defendants paying into court but the sum paid into court shall be set off against any damages awarded to the plaintiff against any other defendant against whom the action is continued; and
- (b) in any other case, all further proceedings in the action or in respect of the specified cause or causes of action to which the acceptance relates shall be stayed both as against the defendant making the payment and as against any other defendant sued jointly with or in the alternative to him.

(5) (i) Where a party takes out of court money paid into court in satisfaction of a cause of action for libel or slander the plaintiff or the defendant, may apply to a Judge in chambers by summons for leave to make in open court a statement in terms approved by the Judge. Ib. R.3(3).

(ii) Where a party to an action for libel or slander which is settled before trial but without any money having been paid into court desires to make a statement in open court, an application must be made to a Judge in chambers for an order that the action be set down for trial, and before the date fixed for the trial the statement must be submitted for the approval of the Judge before whom it is to be made.

(6) Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action, in respect of which he claimed, then on the plaintiff accepting that sum all further proceedings on the counterclaim or in respect of the specified cause or causes of action, shall be stayed. Ib. R.3(4).

(7) A plaintiff who has accepted any sum paid into court shall, subject to paragraph (10) and Rule 4 and Order 70 Rule 12, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates. Ib. R.3(5).

(8) If the plaintiff accepts money paid into court in satisfaction of the cause of action, or all the causes of action, in respect of which he claims, or if he accepts a sum or sums paid in respect of one or more specified causes of action and gives notice that he abandons the others, he may unless the Court otherwise orders, tax his costs incurred to the time of receipt of the notice of payment into court and sign judgment for his taxed costs. Ib. R.3(6).

Ib. R.3(7).

(9) Where a plaintiff in an action for libel or slander against several defendants sued jointly accepts money paid into court by one of the defendants he may, subject to Rule 4 (3), tax and sign judgment for his costs incurred to the time of the receipt of the notice of payment into court.

Ib. R.3(8).

(10) When money is paid out of court payment shall be made to the party entitled, or on his written authority to his solicitor, or if the Court so orders to his solicitor without such authority, provided that where the party entitled is a person in receipt of assistance under any scheme of legal aid administered by the Law Society of Western Australia, payment shall be made only to his solicitor, or if he is no longer represented by a solicitor, then if the Court so directs, to the Society, without the need for any authority from the party.

Order for  
payment out  
of money  
accepted  
required in  
certain cases.

4. (1) Where a plaintiff accepts any sum paid into court—
- (a) by some but not all of the defendants sued jointly or in the alternative by him; or
  - (b) with a defence of tender before action; or
  - (c) in an action to which any of the rules of Order 70 apply; or
  - (d) in satisfaction either of causes of action arising under the Fatal Accidents Act, 1959, and the Law Reform (Miscellaneous Provisions) Act, 1941, or of a cause of action arising under the first mentioned Act where more than one person is entitled to the money,

the money in court shall not be paid out except under paragraph (2) or in pursuance of an order of the Court and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates, as the case may be.

(2) Where an order of the Court is required by reason only of paragraph (1) (a) then if, either before or after accepting the money paid into court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the action against all the other defendants and those defendants consent in writing to payment out of the sum, it may be paid out without an order of the Court.

Cf. E. O.22,  
R.4(3).

(3) Where after the trial or hearing of an action has begun a plaintiff accepts any money paid into court and all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates are stayed in pursuance of Rule 3 (4) then, notwithstanding anything in paragraph (2) the money shall not be paid out except under an order of the Court, and the order shall deal with the whole costs of the action.

Money  
remaining in  
Court.  
Cf. W.A.  
O.XXII, R.5.

5. If any money paid into court in an action is not accepted in accordance with Rule 3 the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the action; and where such an order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

6. (1) Where liability is not in dispute but the amount of the liability for debt or damages is in dispute, the following provisions shall apply:—

Offer to  
consent to  
judgment.

- (a) Subject to Order 20 Rule 16, any defendant may at any time before trial file and serve on all the parties to the action a notice (Form No. 15), offering to consent to judgment for such sum of money as the defendant claims will satisfy the plaintiff's cause of action or, where several causes of action are joined, will satisfy one or more of the causes of action.
- (b) Where a defendant offers to consent to judgment in an action where several causes of action are joined, the notice shall specify the cause or causes of action in respect of which the offer is made.
- (c) The plaintiff may within fourteen days after receipt of notice or such longer period as may be allowed by the Court, but in any case before the trial or hearing of the action begins, file and serve on all the parties to the action notice of acceptance of the offer or, where the offer is made in respect of more than one cause of action, such part of the offer as relates to some one or more causes of action; (Form No. 16); and thereupon, unless otherwise ordered by the Court—
  - (i) he shall be entitled to sign judgment for the amount so offered, and to tax his costs of action up to the service of the notice on him together with the costs of his filing and serving his notice of acceptance, and of signing judgment; and
  - (ii) he may proceed to enforce such judgment; and
  - (iii) the action shall proceed in respect of any other cause of action.
- (d) A notice under this Rule shall be served on the day on which the notice is filed or on the next following day.
- (e) A defendant may at any time before the filing by the plaintiff of a notice of acceptance, and without leave, withdraw an offer to consent to judgment by filing and serving on all parties to the action notice of such withdrawal. The notice of withdrawal shall take effect from the time it is served upon the plaintiff to whom the offer was made.
- (f) A defendant who has withdrawn an offer to consent to judgment may, at any time before trial and without leave, make a fresh offer to consent to judgment and the provisions of this Rule shall apply to such fresh offer.

Cf. W.A.  
O.XXII,  
R.6.  
Cf. S.A. O.22,  
RR.4A.  
*et seq.*

(2) This Rule applies *mutatis mutandis* to a counterclaim by a defendant against the plaintiff for a debt or damages.

7. A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into court in accordance with Rule 1, and that Rule and Rules 3 (except paragraph (6)), 4 and 5 shall apply with the necessary modification and so far as they may be applicable.

Counter-  
claim.  
Cf. W.A.  
O.XXII,  
R.8.

Payment in  
or offer to  
consent to  
judgment not  
to be  
disclosed.  
Cf. Ib. R.10.

8. Except in an action to which a defence of tender before action is pleaded or in which a plea under Act 6 and 7 Vic. Cap. 96 (adopted by 10 Vic. 8) has been filed, no statement of the fact that money has been paid into court, or that any offer to consent to judgment has been made under the preceding Rules of this Order, shall be inserted in the pleadings, and no communication of that fact shall be made to the Judge or jury at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of debt or damages have been decided, but the Judge, shall in exercising his discretion as to costs, take into account the fact that money has been paid into court, or that any offer to consent to judgment has been made and the amount of such payment or offer to consent to judgment or that any such offer of contribution as is mentioned in Rule 10 of Order 19 has been made and is brought to his attention in pursuance of a reserved right to do so.

In certain  
cases no  
payment out  
without  
order.  
Cf. E. O.22,  
R.8.

9. (1) Subject to paragraph (2) money paid into court under an order of the Court, or certificate of the Master, shall not be paid out of court except in pursuance of an order of the Court.

(2) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 14—

- (a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the statement of claim or counterclaim, as the case may be, and specified in the notice, or
- (b) if he makes a plea of tender, may by his pleading appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered; and money appropriated in accordance with this Rule shall be deemed to be money paid into court under Rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.

Parties under  
disability.  
Amended by  
G.G. 15/6/73,  
p. 2248.  
Cf. W.A.  
O.XX, R.12.

10. (1) Where in any action by or on behalf of a person under disability or where a claim has been made by or on behalf of a person under disability without an action having been commenced it is proposed to settle or compromise the action or claim wholly or in part by the payment of money and the Court approves the proposal under the provisions of Rule 10 or Rule 11 of Order 70 the sum of money (if not already paid into court or to the extent that it has not already been paid into court) shall, unless the Court otherwise orders, be paid into court within seven days of the order approving the proposal.

(2) Such payment shall be subject in all respects to the order and direction of the Court pursuant to Rule 12 of Order 70.

Amounts  
under  
\$2,000 may  
be paid  
without  
administra-  
tion.

11. Where the estate of a deceased person who has died intestate is entitled to a fund or to a share of a fund in court, not exceeding \$2,000 and it is proved to the satisfaction of the Court—

- (a) that no administration to such deceased person's estate has been taken out; and

- (b) that his assets do not exceed the value of \$2,000 including the amount of the fund or share to which the estate of such deceased person is entitled,

the Court may direct that such fund or share of a fund shall be paid, transferred or delivered to the person, who being the widower, widow, child, father, mother, brother or sister of the deceased would be entitled to take out administration.

12. The manner of payment into and out of court and the manner in which money in court shall be dealt with shall be subject to the regulations contained in the Third Schedule.

Regulations.  
Cf. App. M.  
(W.A.).

## ORDER 25

### Security for Costs

1. The Court may order security for costs to be given by a plaintiff, but no order shall be made merely on account of the poverty of the plaintiff or the likely inability of the plaintiff to pay any costs which may be awarded against him.

Security  
generally.  
W.A. O.LXV,  
R.10.

2. Without limiting the generality of the preceding Rule the Court may order security for costs to be furnished where the plaintiff—

Grounds for  
ordering.  
Ib. R.11.

- (a) is ordinarily resident out of the jurisdiction, notwithstanding that he may be temporarily within the jurisdiction;
- (b) is about to depart from the jurisdiction;
- (c) enjoys within the jurisdiction some privilege which renders him immune, wholly or partially, from the normal processes of execution;
- (d) is an undischarged bankrupt or a person who has suspended, or given notice of suspension of, his debts;
- (e) is a company in liquidation or under official management, or a company in respect of which a receiver of its property has been appointed;
- (f) is a relator suing for the enforcement or declaration of some public right or to have some public trust carried out or some charitable scheme settled;
- (g) is in default in respect of any costs ordered to be paid by him in any proceedings previously brought by him against the same defendant or another defendant for substantially the same cause of action or in relation to substantially the same subject matter;
- (h) is a person who has in the past vexatiously brought litigation against the same defendant or against any other defendant;
- (i) is suing the Sheriff in respect of anything done or omitted to be done by the Sheriff or his officers in the execution of any judgment of the Court.

Court has a  
discretion.  
Ib. R.12.

3. The granting of security shall be in the discretion of the Court, and in determining whether an order should be made the Court shall take into consideration—

- (a) the *prima facie* merits of the claim;
- (b) what property within the jurisdiction may be available to satisfy any order for costs against the plaintiff;
- (c) whether the normal processes of the Court would be available within the jurisdiction for enforcement of any order for costs made against the plaintiff.

Definition.  
Ib. R.13.

4. In this Order the term “plaintiff” shall include a defendant counterclaiming in respect of a claim not arising out of the claim made against him.

Manner of  
giving  
security.  
Ib. R.14.

5. In fixing security the Court shall direct the form and manner in which the security is to be given and may from time to time vary the amount and form of the security.

Action may  
be stayed.  
Ib. R.15.

6. Where security is ordered the action or other proceedings shall be stayed until the security is furnished, unless the Court otherwise orders.

Payment out.  
Ib. R.16.

7. Where money has been paid into court as security for costs and the action has been finally disposed of, the amount of the security shall be paid out to the party for whose security it was furnished to the extent *pro tanto* that costs are due from the securer to such party, and the Registrar shall pay out the security accordingly unless the Court has otherwise ordered, and the balance (if any) shall be refunded to the securer without the necessity for any special order.

Saving.  
Cf. E. O.23,  
R.3.

8. This Order is without prejudice to the provisions of any Act which empowers the Court to require security to be given for the costs of any proceedings.

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## ORDER 26

### Discovery and Inspection

Discovery  
without  
order.  
Cf. W.A.  
RR.1, 3.  
O.XXX,  
Cf. E. O.24,  
R.2.

1. (1) Any party may give notice in writing to any other party in a cause or matter requiring him to give discovery of all documents which are or have been in his possession, custody or power relating to any matter in question therein.

(2) Where the cause or matter has been entered for trial a notice of the kind mentioned in paragraph (1) shall not be given without the leave of the Court.

(3) If the party making the requisition for discovery of documents so elects in the notice the discovery may take the form of a list of documents which must be attested by the solicitor for the party giving discovery or by some person authorised by the Court to take affidavits.

(4) If the party making the requisition does not agree to accept the list in the form provided by paragraph (3) then the list must be verified by affidavit.

(5) On the application of any party required by this Rule to make discovery of documents, the Court may—

- (a) order that the parties or any of them shall make discovery under this Rule of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or
- (b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all, or at that stage;

and the Court shall make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

2. (1) Subject to the provisions of this Rule and of Rules 3 and 7 the Court may order any party to a cause or matter to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such list and to serve a copy thereof on the other party.

Order for  
discovery.  
Cf. E. O.24,  
R.3.  
Cf. W.A.  
O.XXX, R.5.

(2) If a party who is required by Rule 1 to give discovery of documents fails to comply with any provision of that Rule, the Court on the application of any party to whom the discovery was required to be made, may make an order against the first mentioned party under paragraph (1) of this Rule, or as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under Rule 1 and to serve a copy thereof on the applicant.

(3) An order under this Rule may be limited to such documents or classes of documents only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

(4) An application under this Rule shall be made by summons which shall state the reason for the making of the application, and no supporting affidavit shall be necessary.

3. If the Court is satisfied that the right to discovery or inspection of documents depends on the determination of any issue or question in the cause or matter or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding such right the Court may order that the issue or question be determined first and may reserve the application for further consideration.

Determina-  
tion of  
issue before  
discovery.  
Cf. W.A.  
O.XXX,  
R.5(8).  
Cf. E. O.24,  
R.4.

4. (1) The list of documents made in compliance with Rule 1 or with an order under Rule 2 must be in Form No. 17, and must enumerate the documents in a convenient order and as shortly as possible, but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified, and must be filed within ten days after the service of the requisition or order.

Form of list  
and affidavit  
—by whom  
made.  
Cf. E. O.24,  
R.5.

(2) If it is claimed that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit verifying a list of documents must be in Form No. 18.

Cf. W.A.  
O.XXX, R.10.

(4) Any list of documents or affidavit verifying such list may be made—

(a) by the party;

(b) where the party is the Crown or an officer of the Crown sued or suing in his official capacity—by an officer of the Crown;

(c) where the party is a body corporate or a body of persons empowered by law to sue or be sued whether in its own name or in the name of any officer or other person—by a member or officer of the corporation or body;

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

Defendant  
entitled to  
copy of  
co-defend-  
ant's list.  
Cf. E. O.24,  
R.6.

5. (1) Any defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing Rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those Rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) On request made by a party entitled to a copy of a list of documents, the party required by paragraph (1) to supply the same must supply it free of charge.

(3) In this Rule "list of documents" includes an affidavit verifying a list of documents.

Order for  
discovery of  
particular  
documents.  
E. O.24,  
R.7.

6. (1) Subject to Rule 7 the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document specified or described is, or has at any time been, in his possession custody or power, and if not then in his possession custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this Rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under Rule 1 or Rule 2.

(3) An application under this Rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this Rule has, or at some time had, in his possession, custody or power the document or class of document specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

7. On the hearing of an application for an order under Rule 2 or Rule 6 the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss, or as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

Discovery to be ordered only if necessary.  
Ib. R.8.

8. (1) A party who has served a list of documents on any other party in compliance with Rule 1 or with an order under Rule 2 must allow the other party to inspect the documents mentioned in the list, other than any which he objects to produce, and must when serving the list on the other party also serve on him a notice stating a time within seven days after the service thereof at which the said documents may be inspected at the place specified in the notice.

Inspection of documents in list.  
Amended by G.G. 7/12/73, p. 4489.  
Cf. E. O.24, RR.9, 10.  
W.A. O.XXX, RR.1, 4.

(2) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for inspection by the party giving the notice.

(3) The party on whom a notice is served under paragraph (2) must within four days after service of the notice, serve on the party giving the notice a notice stating a time within seven days after the service thereof at which the documents or such of them as he does not object to produce, may be inspected at the place specified in the notice, and stating which, if any, of the documents he objects to produce and the grounds of his objection.

(4) Subject to Rule 9, inspection under this Rule shall be made at the office of the solicitor for the party producing the documents or if the party appears in person at an office not more than three kilometres from the Court at Perth, or in the case of bankers' books or other books of account or books in constant use for the purpose of any trade or business, at their usual place of custody.

(5) The party making the inspection shall be entitled to make copies of any documents produced for inspection under this Rule.

9. (1) Where a party who is required by Rule 8 (1) to serve the notice therein mentioned, or who is served with a notice under Rule 8 (3)—

Order for inspection of documents.  
Cf. E. O.24, R.11.

- (a) fails to serve the notice under Rule 8 (1) or as the case may be Rule 8 (3), or
- (b) objects to produce any document for inspection, or
- (c) offers inspection at a time or place which in the opinion of the Court is unreasonable for such purpose,

the Court may on the application of the party entitled to inspection make an order for production of the documents in question for inspection at such time and place, and in such manner as it thinks fit.

(2) Without prejudice to paragraph (1) but subject to Rule 11 the Court may on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that such documents are in the possession, custody or power of the other party, and relate to a matter in question in the cause or matter.

Order for production to the Court.  
Cf. E. O.24, R.12.

10. At any stage of the proceedings in any cause or matter the Court may subject to Rule 11 order any party to produce to the Court any document in his possession, custody or power, relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

Production only if necessary.  
Cf. E. O.24,

11. No order for production of any documents for inspection or to the Court shall be made unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

Claim of privilege.  
Cf. W.A. O.XXX, RR.8, 9.  
Cf. E. O.24, R.13(2).

12. (1) Where—

(a) on an application for production of a document for inspection or to the Court, or

(b) in any list of documents supplied on discovery,

a party claims privilege the party requiring production or discovery may traverse the claims to privilege by adducing evidence either that the claim to privilege is unfounded or mistaken, but in the absence of any evidence to that effect the claim to privilege shall be sustained.

(2) In determining any objection on the ground of privilege to the production or discovery of any document or class of document the Court may inspect the document.

Production of business books.  
W.A. O.XXX, R.5(5).

13. Where inspection of any business books is applied for the Judge may 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, a Judge may order inspection of the book from which the copy was made.

Where disclosure against public interest.  
Cf. E. O.24, R.15.

14. The provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

15. (1) If any party who is required by any of the Rules of this Order or by any order made thereunder, to give discovery of documents or to produce any documents for the purpose of inspection or any other purpose fails to comply with any provisions of that Rule or with that order, as the case may be, then without prejudice, in the case of a failure to comply with any such provision, to Rules 2 (2) and 9 (1) the Court may make such order as it thinks just including in particular, an order that the action be dismissed or as the case may be, an order that the defence be struck out and judgment entered accordingly.

Non-compliance with requirements for discovery etc.  
Cf. E. O. 24, R. 16.  
W.A. O. XXX, R. 11.

(2) If any party fails to comply with an order for discovery or production of documents then, without prejudice to paragraph (1) he shall be liable to attachment.

(3) Service of an order for discovery or production of documents on the solicitor for the party against whom the order has been made shall be sufficient service to found an application for the attachment of the party disobeying the order, but it shall be an answer to the application if the party shows that he had no notice or knowledge of the order.

(4) A solicitor on whom an order against his client for discovery or production of documents is served under paragraph (3) who fails without reasonable excuse to give notice thereof to his client shall be liable to attachment.

16. Any order which has been made under this Order, including an order made on appeal, may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in relation to which the original order was made.

Revocation and variation of orders.  
E. O. 24, R. 17.

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## ORDER 27

### Interrogatories

1. (1) Any party may once without leave, before a cause or matter has been entered for trial or hearing, serve notice on any other party requiring him to answer specified interrogatories relating to any matter in question between the party interrogating and the party served.

Discovery by interrogatories.  
Cf. W.A. O. XXX, R.R. 1, 1A.

(2) If the party interrogating so elects in the notice the answers may take the form of a statement signed by the person answering, but otherwise the answers to the interrogatories shall be by a statement verified by affidavit.

(3) The statement referred to in paragraph (2) shall be in accordance with Rule 4 and must be attested by the solicitor for the party interrogated or by a person having authority to take affidavits for use in the Court.

(4) A party or person who wilfully makes a false statement in answer to an interrogatory shall be guilty of contempt of court and shall be punishable accordingly.

(5) Where the cause or matter has been entered for trial or hearing a notice of the kind mentioned in Rule 1 shall not be given without the leave of the Court.

(6) Further interrogatories may be delivered by leave of the Court.

Answers.  
Cf. Vict. 0.31,  
R.8.

2. A party required under Rule 1 to answer interrogatories shall answer the interrogatories by filing within fourteen days of the day on which the interrogatories were served the statement referred to in Rule 1 (2) and the verifying affidavit, if required, and serving on the interrogating party within the same time a copy of the document, or, as the case may be of each such document filed.

Note as to  
party required  
to answer.  
Cf. E. O. 26,  
R.3.

3. Interrogatories served on two or more parties or which are required to be answered by an agent or servant of a party shall have a note at the end thereof stating which of such interrogatories each of such persons is required to answer.

Statement in  
answer.

4. The statement in answer to interrogatories required by or under this Order must deal with each interrogatory specifically, by answering its substance without evasion, or objecting to answer on one or more of the grounds specified in Rule 5 and stating briefly the facts on which the objection is taken.

Grounds for  
objection.  
Amended by  
G.G. 15/6/73,  
p. 2248.  
Cf. H.Ct. O.32,  
R.7.

5. (1) A party may object in his statement in answer to interrogatories to answer any interrogatory on one or more of the following grounds—

- (a) that it is scandalous or irrelevant, not *bona fide* for the purpose of the proceeding, unreasonable, prolix, oppressive or unnecessary;
- (b) that the matters inquired into are not sufficiently material at that stage;
- (c) privilege;
- (d) any other ground on which objection may be taken.

(2) Where on an application under Rule 7 the Court decides that an objection by the party interrogated to answering an interrogatory is not sufficient or the party interrogated does not object to answering an interrogatory, that party shall not be entitled to object to answer that interrogatory in a statement in answer to interrogatories.

Statements,  
etc.—by  
whom made.  
Cf. W.A. O.  
XXX, R.10.

6. (1) A statement or an affidavit verifying a statement in answer to interrogatories may be made as follows—

- (a) by the party;
- (b) where the party is the Crown or an officer of the Crown sued or suing in his official capacity—by an officer of the Crown;
- (c) where the party is a body corporate or a body of persons empowered by law to sue or be sued whether in its own name or in the name of any officer or other person—by a member or officer of the corporation or body.

(2) In the case of an order against any party to which sub-paragraph (b) or (c) of paragraph (1) applies the order shall specify the person who is to comply with the order on behalf of the party.

(3) Subject to paragraph (2) a party to which sub-paragraphs (b) or (c) of paragraph (1) applies shall in relation to each interrogatory choose a person to make the statement (and verifying affidavit, if required) who is qualified under the relevant sub-paragraph, and has knowledge of the facts.

7. If any person on whom interrogatories have been served fails, within the prescribed time or within such other time as the Court may allow, to answer the interrogatories or answers any of them insufficiently, the Court may make an order requiring him to answer or answer further as the case may be, by a statement verified by affidavit or may order him or any of the persons mentioned in sub-paragraphs (b) and (c) of Rule 6 (1) as the case may require to attend for oral examination.

Order for answers or further answers.  
Cf. Vict. O.31, R.11.  
Cf. W.A. O.XXX, R.5.

8. (1) If any party against whom an order is made under Rule 7 fails to comply with it, the Court may make such order as it thinks just including in particular an order that the action be stayed or dismissed, or as the case may be, an order that the defence be struck out and that judgment be entered accordingly.

Non-compliance with order.  
Cf. E. O.26, R.6.

(2) Any party who fails to comply with an order made against him under Rule 7 shall, without prejudice to paragraph (1), be liable to attachment.

(3) Service of an order to answer interrogatories or to make a further answer, on the solicitor for the party against whom the order has been made shall be sufficient service to found the application for the attachment of the party disobeying the order, but it shall be an answer to the application if the party shows that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories or make further answer is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to attachment.

9. At the trial of a cause or matter or of any issue therein, a party may tender as evidence some only of the answers to interrogatories, or part only of such an answer without tendering the others or the whole of such answer: Provided that the Court may look at the whole of the answers and if of opinion that any other answer or any other part of an answer is so connected with an answer or part of an answer which has been tendered, that the matter tendered ought not to be used without that other answer or part, the Court may reject the matter tendered unless the other answer or part is also tendered.

Use of answers in evidence.  
Cf. E. O.26, R.7.  
Cf. W.A. O.XXX, R.14.

10. Any order which has been made under this Order including an order made on appeal, may on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in relation to which the original order was made.

Revocation and variation of orders.  
Cf. E. O.26, R.8.

ORDER 28

**Medical Examination: Inspection of Physical Objects**

Medical  
Examination  
of Parties.  
Cf. W.A.  
O.XXX, R.15.

1. (1) (a) Where it becomes material in any cause or matter before the Court to consider the question of the physical or mental condition of any party, any opposing party may serve on such first-mentioned party a notice to submit himself for examination at a specified time and place by a medical practitioner provided and paid by the party requiring the examination. At any such examination a medical adviser chosen by the party to be examined shall be entitled to be present if the party so desires.
- (b) Where the party objects to complying with the notice, or in default of agreement as to the time and place of the examination, or if any matter shall arise in relation to such examination, either party may apply to the Court for an order as to whether or not the objecting party shall submit himself for examination, or as to when and where such examination may be made, or as to any other matters to facilitate the examination.
- (c) If the Court is of opinion that either party has been unreasonable in the matter it may order that party to pay the costs of the application and any other costs unnecessarily incurred in consequence.

(2) A reasonable sum to cover the travelling and other expenses of the party to be examined of and incidental to the examination, including the expenses of having the medical adviser chosen by him attend the examination, shall on demand be paid to the party to be examined by the party requiring the examination.

Stay on  
default.

(3) If any party fails to submit himself for examination as required by this Rule, or in any way obstructs the examination, the Court may order that the proceedings be stayed, either wholly or in part, until the examination has taken place, or that any pleading be struck out.

Copy report  
to be served.

(4) The examining medical practitioner shall make a written report of his examination to the party who required the examination and that party shall serve on the party who has been examined a full and true copy of such report.

(5) If default be made for one week in serving the copy mentioned in paragraph (4) or if the party examined alleges that the report is insufficient or incomplete, such party may obtain an order for service of the report or of a further and better report and the Court may direct that if the order be not complied with within a time to be therein specified the claim or defence be struck out or the proceedings be stayed. Unless otherwise directed the costs of obtaining such order shall be borne by the party in default.

(6) In this Rule the expression "party" includes a person for whose benefit an action is brought pursuant to the Fatal Accidents Act, 1959.

Inspection of  
Physical  
Objects.  
Ib.R.16.

2. (1) Where one party alleges that another party to any cause or matter has in his possession or control some physical object, not in the nature of a document, the inspection of which is material for the

proper presentation of his case such first-mentioned party may by notice in writing require the other to permit inspection by the party requiring it with, or without, his solicitor or expert adviser.

(2) The party required to permit inspection shall nominate a time and place for inspection. In default of agreement as to the time and place, or if any matter shall arise in relation to such inspection, either party may apply to the Court for an order specifying how and when and where such inspection may be made.

(3) If the Court is of opinion that either party has been unreasonable in relation to the matter it may order that party to pay the costs of the application, and any other costs unnecessarily incurred in consequence.

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## ORDER 29

### Summons for Directions

1. (1) A summons for directions may be taken out by any party in any cause or matter at any time before entry for trial or thereafter by leave of the Court, but if the defendant is required to appear in the proceedings it may be taken out only after he has appeared.

Summons for directions.  
Cf. Vict. O.30,  
R.1.  
Tas.O.32,

(2) The summons shall specify the matters regarding which orders or directions are required.

2. (1) On the hearing of the summons the Court shall give such directions as may be just with respect to all matters capable of being dealt with on an interlocutory application in the action, and shall adjourn the further hearing of the summons from time to time until the conclusion of the cause or matter.

Hearing of summons.  
Cf. W.A. O.XXIX,  
R.1.  
S.A. O.30,  
RR.3, 6,  
Tas. O.32,  
R.4.

(2) Without affecting the generality of paragraph (1) the Court may make—

(a) such orders as may be just with respect to the following matters—

pleadings or issues, particulars, transfer of the action to an inferior court, security for costs, admissions, discovery, interrogatories, inspection of documents, inspection of real or personal property, commissions, examination of witnesses, place, time and mode of trial, and the mode by which particular facts may be proved at the trial, or

(b) an order under Order 31.

3. Upon the hearing of the summons the Court may order that the action be set down for trial forthwith, and may settle the issues that are to be tried.

Early trial.  
Cf. Vict.  
O.30, R.2.

4. (1) An affidavit shall not be used on the hearing of the summons for directions except by the leave or direction of the Court, but subject to paragraph (2) it shall be the duty of the parties to the action and their advisers to give all such information and produce all such documents on any hearing of the summons as the Court may reasonably require for the purpose of enabling it properly to deal with the summons.

Duty to give information.  
Cf. E. O.25.  
R.6.

(2) No information or documents which are privileged from disclosure shall be required to be given or produced under this Rule by or by the advisers of any party otherwise than with the consent of that party.

Duty to make all interlocutory applications on the summons.  
Cf. E. O.25, R.7(1).

5. Any party must so far as practicable apply at the hearing of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and must give the other parties two clear days' notice specifying those orders or directions in so far as they differ from the orders and directions asked for by the summons.

Subsequent applications.  
Ib. R. 7(3).

6. Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the summons by two clear days' notice to the other party stating the ground of the application.

Costs of subsequent application.  
Vict. O.30, R.6.

7. Any application by any party which might have been made at the hearing of the original summons shall, if granted on any subsequent application, be granted at the cost of the party applying, unless the Court shall be of opinion that the application could not properly have been made at the hearing of the original summons.

Evidence.  
Vict. O.30, R.7.

8. On the hearing of the summons the Court may order that evidence of any particular fact, to be specified in the order, shall be given at the trial by statement on oath of information and belief, or by production of documents or entries in books, or by copies of documents or entries, or otherwise as the Court may direct.

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**ORDER 30**

**Admissions**

Admission of other party's case.  
Cf. W.A. O. XXXI, R.1.  
E. O.27, R.1.

1. Without prejudice to Order 20 Rule 14 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.

Notice to admit facts.  
Cf. W.A. O. XXXI, R.4.  
E. O.27, R.2.

2. (1) A party to a cause or matter may by notice in writing at any time not later than seven days before the day for which notice of trial has been given or which has otherwise been appointed for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, a fact or facts specified in the notice.

(2) Any admission made in pursuance of a notice to admit facts shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made, or in favour of any person other than the person by whom the notice was given.

(3) The Court may at any time allow a party to amend or withdraw an admission made under this Rule on such terms as may be just.

3. (1) Where admissions of fact have been made on the pleadings or otherwise, any party may at any stage of a cause or matter apply to the Court 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 may on such application make such order or give such judgment as the Court thinks just.

Judgment on admissions.  
Cf. W.A.  
O.XXXI, R.6.  
E. O.27, R.3.

(2) An application under this Rule may be made on motion or by summons.

4. (1) A party on whom a list of documents is served in pursuance of any provision of Order 26 (which relates to the discovery and inspection of documents) shall unless the Court otherwise orders, and without prejudice to his right to object to the admission in evidence of any document, be deemed to admit—

Admission and production of documents.  
Cf. E. O.27,  
R.4.

- (a) that a document if described in the list as an original document, is an original document and was printed, written, signed or executed as it purports to have been; or
- (b) that a document if described in the list as a copy, is a true copy.

(2) Paragraph (1) does not apply—

- (a) to a document the authenticity of which has been denied by a party in his pleading; or
- (b) to a document concerning which a party within fourteen days after the time limited under Order 26 for inspection serves on the party giving inspection, a notice that he disputes the authenticity of that document.

(3) Where a party serves on any other party a list of documents in pursuance of Order 26 the party serving the list shall be deemed to have been served on the date of service of the list, with a notice requiring production by him at the trial of the cause or matter, of such of the documents specified in the list as are in his possession, custody or power.

(4) Paragraphs (1), (2) and (3) apply in relation to an affidavit made in compliance with an order under Order 26 Rule 6, as they apply to a list of documents served under that Order.

5. (1) A party to any proceedings may serve on any other party a notice requiring him to admit for the purpose of those proceedings only, the authenticity of the documents specified in the notice, and the notice must specify a reasonable time and place for inspection.

Notice to admit documents.  
Cf. E. O.27,  
R.5.

(2) If, in relation to any document specified in the notice, the party on whom a notice under paragraph (1) is served does not within 7 days after the time limited for inspection serve on the party giving the notice, a notice disputing the authenticity of the document, its authenticity shall, unless the Court otherwise orders, be deemed to be admitted by the party on whom the notice under paragraph (1) is served.

(3) Except where Rule 4 (3) applies, a party to any proceedings may serve on any other party a notice requiring him to produce at the trial or hearing the documents specified in the notice.

## ORDER 31

**Special Cases and Stated Cases**

Questions of  
law.  
Amended by  
G.G. 15/6/73,  
p. 2248.  
Cf. W.A.  
O.XXXIII,  
R.1.

1. (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 or of the Full Court.

(2) The 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 by the special case.

(3) Upon the argument of the case the Court and the parties may refer to the whole contents of the documents stated.

Preliminary  
question of  
law.  
Ib. R.2.

2. (1) If it appear to the Court 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 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 may deem expedient.

(2) All such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

Preparation of  
case.  
Ib. R.3.

3. (1) Every special case shall be prepared by the plaintiff or the party having the carriage of the proceedings and shall be signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff or the party having carriage of the proceedings.

(new)

(2) At least 14 days before the day appointed for argument the plaintiff or the party having the carriage of the proceedings shall lodge at the Central Office copies of the special case for the use of the Judge or Judges hearing the argument, and in default thereof the other party may on the day following, lodge such copies.

Person under  
disability—  
leave to set  
down.  
Cf. W.A.  
O.XXXIII,  
R.4.

4. (1) A special case in any cause or matter to which a person under disability is a party shall not be set down for argument without the leave of the Court.

(2) An application for leave under paragraph (1) shall be supported by sufficient evidence that the statements contained in the special case, so far as they affect the interest of the party under disability, are true.

Entry of  
special case  
for argument.  
Ib. R.5.

5. (1) Either party may enter a special case for argument before the Court, by filing a memorandum of entry, and if a person under disability is a party, by producing an office copy of the order giving leave to enter the same for argument.

(2) On the day on which a special case is entered for argument the party entering it shall serve notice of the entry on all other parties.

6. (1) The parties to a special case may, if they think fit, enter into an agreement in writing that, on the judgment of the Court being given in the affirmative or negative of the question or 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 a party to another party, either with or without costs of the cause or matter.

Agreement as to payment of money and costs.  
Cf. W.A. O.XXXIII, R.6.

(2) 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. A Judge may order that a special case which has been set down for hearing before the Court shall be argued before the Full Court.

Reference of case to Full Court: Vide Supreme Court Act, s.58(1)(d).

8. (1) This Rule applies to cases not stated in the Court and to cases stated by any tribunal which is empowered or may be required to state a case on a question of law for determination by or the opinion of the Court or the Full Court.

Cases stated outside the Court.  
(new)

(2) Every case to which this Rule applies shall be entered for argument before the Court or the Full Court as the case may require, and any party may file the memorandum of entry, and the party making the entry shall on the same day serve on all other parties a copy of the case and notice of the entry.

(3) Rule 1 (3), Rule 3 (2) and Rule 7 shall apply to cases under this Rule as they apply to special cases stated in the Court.

(4) On the hearing of the case, the Court or the Full Court, as the case may be, may order it to be sent back to the tribunal for amendment with such directions (if any) as the Court thinks fit.

(5) The proper officer shall notify the tribunal of the decision of the Court or Full Court on the case, and of any directions given by that Court thereon.

(6) In this Rule "tribunal" includes any authority or person which or who is empowered or may be required to state a case for determination by or the opinion of the Court or the Full Court.

## ORDER 32

### Place and Mode of Trial

1. Where the plaintiff proposes that the action be tried elsewhere than in Perth, he shall name in his writ the place appointed within the Circuit District in which he proposes that the action shall be tried, and the action shall, unless the Court otherwise orders, be tried at a Sitting of the Court at that place.

Place of Trial.  
Cf. W.A. O.XXXIV, R.1.  
Cf. S.A. O.36, R.1.

2. The application for an order for the trial by a jury of any cause or matter, or of any issue of fact, shall be made not later than seven days after the cause, matter, or issue has been entered for trial.

Application for trial by jury.  
W.A. O.XXXIV, R.2.

Usual mode  
of trial.  
Cf. W.A.  
O.XXXIV,  
R.3.

3. In every cause or matter, unless an order for trial with a jury has been made, the mode of trial shall be by a Judge without a jury, but in any such case the Court may at any time order that any cause, matter, or question or issue of fact shall be tried by a Judge with a jury, or by a Judge sitting with assessors, or by a referee with or without assessors.

Time of trial  
of questions or  
issues.  
Cf. E. O.33,  
R.3.  
Cf. W.A.  
O.XXXIV,  
R.8.

4. The Court may order that any question or issue arising in a cause or matter whether of law or fact or partly of law and partly of fact, and whether raised by the pleadings or by agreement of the parties or otherwise be tried separately from any other question or issue whether before at or after the trial or further trial of the proceedings, and may direct that a case and the question or issue for decision be stated.

Issues may be  
tried  
differently.  
Cf. W.A.  
O.XXXIV,  
R.8.  
Cf. E. O.33,  
R.4(2).  
Trial with  
jury by a  
single Judge.  
Cf. W.A.  
O.XXXIV,  
R.9.  
Disposal of  
action.  
Cf. E. O.33,  
R.7.

5. In any cause or matter the Court may at any time, or from time to time, order that different questions or issues arising therein be tried at different places or by different modes of trial, and that one or more questions or issues be tried before the others.

6. A trial of a question or issue of fact with a jury shall be by a single Judge.

7. Where the decision of a question or issue under this Order—

- (a) substantially disposes of the cause or matter; or
- (b) renders unnecessary the trial or further trial of the cause or matter

the Court may dismiss the cause or matter or give such judgment or make such other order as the nature of the case requires.

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## ORDER 33

### Entry for Trial

Time for  
entering  
action.  
W.A.  
O.XXXIV,  
R.10.

1. Subject to Rule 8, a cause, matter or issue may be entered for trial by the plaintiff—

- (a) when the pleadings are closed;
- (b) at any time after the issues of fact have been stated; or
- (c) in the case of trial on affidavit, after the time for closing the evidence has expired.

When  
plaintiff in  
default, other  
party may  
act.  
Ib. R.11.

2. (1) Where the plaintiff neglects to enter the cause, matter or issue for trial, any party on the record who is entitled to be heard generally or on any issue may—

- (a) subject to Rule 8, enter the cause, matter or issue for trial; or
- (b) apply to the Court for an order dismissing the cause or matter for want of prosecution so far as concerns the plaintiff's claim or the issue raised by the plaintiff against the party so applying.

(2) On an application to dismiss the cause or matter for want of prosecution, the Court may make such order as may be just either dismissing the claim or striking out the issue or permitting it to go to trial with or without the imposition of terms.

(3) For the purpose of this Rule, the plaintiff has neglected to enter a cause, matter or issue for trial where he does not make the entry within four weeks after the requirements of paragraphs (a), (b) or (c) of Rule 1 (whichever shall be applicable) have been satisfied.

3. (1) A party who has entered a cause, matter or issue for trial shall on the day of entry give notice thereof in writing to every party on the record who is entitled to be heard generally or on any issue.

Notice of  
entry.  
Ib. R.12.

(2) This Rule does not affect the provisions of Order 13, Rule 7 (2) and (3).

4. (1) The entry for trial and notice of trial shall state whether it is for the trial of the cause or matter or of an issue therein and shall state the place of trial.

Form of  
entry for  
trial.  
Ib. R.13.

(2) Entry for trial and notice of trial shall be in such form and contain such information as the Chief Justice shall direct from time to time.

5. A cause, matter or issue shall not be tried before the expiration of fourteen days from the day of entry unless the party to whom notice of trial is given has consented or is under terms to accept shorter notice of trial, or the Court otherwise orders.

Time to  
elapse before  
hearing.  
Ib. R.14.

6. Entry for trial at the civil sittings in Perth shall not operate for any particular sittings, but shall be deemed to be for the day fixed by the proper officer, or by order of the Court.

Entry for  
Perth.  
Ib. R.15.

7. Entry for trial in a Circuit Court shall be for the first sittings to be held fourteen days next after the entry is made, unless the Court otherwise orders.

Entry for  
Circuit  
Court.  
Ib. R.16.

8. (1) A party shall not enter a cause or issue for trial unless he is ready for trial and has filed a certificate of readiness.

Certificate  
of readiness  
for trial  
required.  
Ib. R.17.

(2) The certificate referred to in paragraph (1)

(a) shall be in such form and contain such information as the Chief Justice shall direct from time to time; and

(b) shall be signed personally and in his own name by the solicitor for the party making the entry or by that party where he is not represented by a solicitor.

(3) A copy of the certificate shall be served with the notice of trial.

9. (1) Within seven days after a party has entered a cause, matter or issue for trial and has served notice of trial, any other party on the record who is entitled to be heard generally or on any issue may apply by summons to the Master on two clear days' notice to the party who has made the entry for an order countermanding the entry.

Application  
to counter-  
mand entry.  
Amended by  
G.G. 9/11/73,  
p. 4164.  
Ib. R.18.

(2) Unless otherwise ordered, it shall not be necessary for an affidavit in support of the summons to be filed if the summons states the grounds of the application.

(3) A party entitled to apply for an order under paragraph (1) who has failed to apply for such an order within the time limited thereby shall be deemed to be ready for trial.

(4) Where a party (whether applicant or respondent) is represented by a solicitor, that solicitor, or another solicitor who is conversant with the matter, shall attend personally on the return of the summons. It shall not be sufficient for a clerk in the solicitor's employment to attend on his behalf.

(5) On the return of the summons the Master may countermand the entry or allow it to stand, or direct that the entry take effect upon the happening of certain events or at the expiration of such period as he may fix; or he may make such other order or give such other direction as he thinks proper.

(6) Unless otherwise ordered the costs of the summons shall be costs in the cause.

(7) This Rule does not affect the provisions of paragraph (1) of Rule 11 of this Order.

After entry  
no inter-  
locutory  
applications  
without leave.  
Ib. R.19.

10. (1) Where a cause, matter or issue has been entered for trial, no further interlocutory applications shall be made by a party for or in relation to any of the following matters:—

- (a) amendment of pleadings or filing of further pleadings;
- (b) joinder or substitution of parties;
- (c) particulars;
- (d) interrogatories, discovery or inspection; or

(e) taking of evidence before a special examiner or on commission, without the leave of the Court.

(2) Paragraph (1) does not limit the power of the Judge at the trial to make orders for or in relation to any of the matters referred to in that paragraph.

No with-  
drawal from  
list after  
date fixed  
except by  
leave.  
Ib. R.20.

11. (1) At any time before a date of trial has been fixed, entry for trial may be countermanded by consent of the parties or by leave of the Court on terms as to costs or otherwise as may appear just.

(2) Once a date of trial has been fixed, no withdrawal from the list or adjournment shall be made except by order of the Court; but an action that has been settled may be withdrawn from the list upon production to the proper officer before the trial commences of a consent in writing signed by the parties.

Fixing dates  
of trial.  
Amended by  
G.G. 15/6/73,  
p. 2248,  
G.G. 9/11/73,  
p. 4164.  
Ib. R.21.

12. (1) Subject to any order of the Court, dates of hearing of all causes, matters and issues shall be fixed by the proper officer in accordance with the practice of the Court.

(2) [*Deleted by G.G. 15/6/73, p. 2248.*]

(3) Nothing in this Order shall prejudice any powers of the Chief Justice to give directions—

Chief Justice  
may give  
directions.

- (a) specifying the lists in which causes, matters or issues or causes, matters or issues of any class or description, are to be entered for trial; and providing for the keeping and publication of the lists;
- (b) providing for the fixing of a date for the trial of any cause, matter or issue that has been entered;
- (c) as to the making of applications (whether to a Court or a Judge or to an officer of the Court) to fix, vacate or alter any such date and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information; and
- (d) providing for the holding of callovers of causes, matters and issues which have been entered for trial but in respect of which dates of hearing have not been fixed.

13. (1) Any trial adjourned for further consideration may be re-listed for hearing on the written request of the party having the conduct thereof or of any other party entitled to bring the same on for hearing, or on the order of a Judge.

Re-listing for  
further con-  
sideration.  
Ib. R.22.

(2) Where the further consideration is requested by a party he shall on the day of making such request obtain an appointment for further consideration not less than ten days ahead and on the same day shall give notice thereof to the other parties on the record.

(3) Any such request may be in Form No. 19 and any such notice may be in Form No. 20 with such variations as the circumstances may require.

14. (1) The party making an entry for trial shall deliver to the proper officer two copies in book form (one of which shall be for the use of the Judge at the trial) of each of the following documents:—

Papers for  
the Judge.  
Amended by  
G.G. 10/1/75,  
p. 50.  
Ib. R.23.

- (a) the pleadings and any affidavits ordered to stand as pleadings;
- (b) any request or order for particulars and the particulars given;
- (c) any order for directions made under Order 19 Rule 4; and
- (d) where an issue in an action is being entered, any order relating to the trial of that issue.

(2) Where the pleadings are amended after entry for trial but before trial then, subject to any order of the Court the party who made the entry shall forthwith after the filing of the amended pleading, or of any further pleading filed in consequence of the first amendment, file two further copies of the whole of the pleadings as amended.

(3) Where the pleadings are amended at trial a party shall, if so ordered, file two further copies of the whole of the pleadings as amended.

(4) All copies of pleadings required by this Rule to be delivered or filed must be clear copies of the pleadings as amended, with a suitable notation of the date or dates of any amendments.

(5) The party filing copies of pleadings (including copies of the pleadings as amended) shall on the day of filing or on the next following day serve a copy thereof on each of the other parties on the record.

(6) The costs of preparation filing and serving of further copies of pleadings shall be in the discretion of the Judge at trial and shall not be allowed without a certificate of the Judge.

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**ORDER 34**

**Proceedings at Trial**

Failure of  
both parties  
to appear.  
Cf. E. O.35,  
R.1(1).

1. If, when the trial of an action is called on, neither the plaintiff nor the defendant appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a Judge.

Non-appear-  
ance of either  
party.  
Cf. E. O.35,  
R.1(2).  
Cf. W.A.  
O.XXXIV,  
RR. 24, 25.

2. If, when a trial is called on, one party does not appear the Judge may proceed with the trial of the action or of any counterclaim in the absence of that party.

Setting aside  
judgment  
given in ab-  
sence of  
party.  
Cf. W.A.  
O.XXXIV,  
R.26.

3. Any judgment, order, or verdict obtained where one party does not appear at the trial may be set aside by the Court upon such terms as the Court thinks just upon application made within fourteen days after the trial.

Adjournment  
of trial.  
Ib. R.27.

4. The Judge may if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.

Conduct of  
the trial.  
Cf. E. O.35,  
R.7.

5. (1) The Court (whether the trial is with or without a jury) may give directions as to the party who is to begin and the order of addresses at the trial, and subject to any such directions, the party to begin and the order of addresses shall be as provided by the following paragraphs of this Rule.

(2) Except in cases where the burden of proof of all issues rests with the defendant, the plaintiff shall open his case and adduce evidence.

(3) If at the conclusion of the evidence for the party who begins, the opposite party elects to adduce no evidence, the party who begins may make an address closing his case, and the opposite party may make an address stating his case.

(4) If at the conclusion of the evidence for the party who begins, the opposite party elects to adduce evidence, he may open his case, and after adducing his evidence may make a second address closing his case, and the party who begins may then make an address closing his case.

6. 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.

Evidence in mitigation of damages in libel or slander.  
W.A. O.XXXIV, R.30.  
Cf. E. O.82, R.7.

7. (1) The Judge before whom any cause or matter is heard or tried may inspect any property, place or thing concerning which a question arises in the cause or matter.

Inspection by Judge or jury.  
Cf. W.A. O.XLIX, RR. 5, 6.  
Cf. E. O.35, R.8.

(2) Where a cause or matter is tried with a jury, and the Judge inspects any property, place or thing under paragraph (1), he may authorise the jury to inspect it also.

8. 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.

Judgment at or after trial.  
Cf. W.A. O.XXXIV, R.32.

9. The associate or other officer present at any hearing or trial shall maintain and complete a record of proceedings at the trial in a form providing for such particulars as the Chief Justice may from time to time direct.

Record of proceedings  
Cf. W.A. O.XXXIV, R.33.

10. (1) The Judge may, if he considers the time occupied at a hearing or trial has been excessive, certify what time should have been so occupied, and that certificate shall be final.

Where time occupied by trial excessive.  
Cf. H.Ct. O.36, R.33.

(2) The certificate of a Judge under paragraph (1) shall be communicated to the Taxing Officer by the associate or other officer as the case may be.

11. Upon every hearing or trial the associate or other officer 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.

Entry of findings of fact on trial.  
W.A. O.XXXIV, R.34.

12. (1) If the Judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate or other officer to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate shall be in the Form No. 21 with such variations as circumstances may require.

Certificate for entry of judgment.

(2) If the Judge directs that a judgment be entered for a party subject to leave to move, judgment shall be entered accordingly upon the filing of the certificate of the associate or other officer.

Exhibits.  
Cf. E. O.35,  
R.11.

13. (1) The associate shall take charge of and mark every document or object put in as an exhibit during the trial of an action, and shall make a list of the exhibits which he shall attach to the pleadings and which shall form part of the record.

(2) A bundle of documents put in evidence may be treated and marked as one exhibit.

Custody of  
exhibits after  
trial.  
Cf. H.Ct.  
O.70, R.16.

14. (1) The associate shall, subject to any order of the Court, retain the exhibits in an action for twenty-one days from the day on which judgment is given.

(2) If within the period mentioned in paragraph (1) an appeal to the Full Court has been instituted, the associate shall deliver the exhibits to the Registrar who shall retain them until the appeal has been disposed of.

Duty of  
parties to  
uplift  
exhibits.  
Cf. E. O.35,  
R.12.

15. (1) Where no appeal is instituted within the time mentioned in Rule 14 (1), or where an appeal is instituted, then upon the disposal of that appeal, it shall be the duty of the solicitor for each party to an action, or the party himself, if appearing in person, to apply forthwith to the associate or to the Registrar, as the case may be, for the return of the exhibits put in at the trial by that party.

(2) If the solicitor or party fails to comply with paragraph (1), the associate or Registrar, as the case may be, shall, subject to any order of the Court, cause to be delivered or transmitted to that solicitor or party the exhibits put in by the party.

(3) This Rule is subject to the provisions of the High Court Rules providing for the retention and transmission of exhibits in appeals from the Supreme Court.

Death of  
party before  
judgment is  
given.  
Cf. E. O.35,  
R.9.

16. (1) Where a party dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given and entered notwithstanding the death of that party.

(2) Paragraph (1) does not affect the power of the Court to make orders under Order 18, Rule 7 (2).

Impounded  
documents.  
Cf. W.A.  
O.XL, R.34.

17. Impounded documents while in the custody of the Court are not to be parted with and are not to be inspected, except on the order of a Judge 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.

Assessment  
of damages by  
the Master.  
Amended by  
G.G. 9/11/73,  
p. 4162.  
Cf. Supreme  
Court Act,  
1935,  
s. 51 (2).  
Cf. W.A.  
O.XXXIV,  
R.49.

18. (1) This rule applies where the Court orders that the amount of damages for which final judgment is to be entered shall be assessed by the Master.

(2) The attendance of witnesses and the production of documents before the Master may be compelled by subpoena.

(3) The Master may adjourn the inquiry from time to time.

(4) The Master shall certify by endorsement upon the order by which the question is referred to him, the amount of damages found by him and shall deliver the order with such endorsement to the person entitled to the damages.

(5) Such and the like proceedings may thereupon be had as to entering judgment, taxation of costs, and otherwise, as upon the finding of a jury upon an issue.

(6) The directions as to service on the defendant of notice of the day fixed for the assessment of damages contained in Order 13 Rule 7 shall apply *mutatis mutandis* to an assessment or inquiry under this Rule.

19. (1) Where damages are to be assessed in respect of—

- (a) any continuing cause of action;
- (b) repeated breaches of recurring obligations;
- (c) intermittent breaches of a continuing obligation,

Damages to  
time of  
assessment.  
Cf. W.A.  
O.XXXIV,  
R.50.

the damages shall be assessed down to the time of assessment, including damages for breaches occurring after the proceedings were begun.

(2) Paragraph (1) applies to the assessment of damages under this Order or otherwise.

20. No writ of inquiry as to damages shall be issued in any cause or matter.

Writ of  
inquiry not to  
be used.  
Ib. R.48.

## ORDER 35

### Assessors and Referees

1. Trials with assessors shall take place in such manner and upon such terms as the Court shall direct.

Trial with  
assessors.  
Cf. W.A.  
O.XXXIV,  
R.36.

2. Where any cause or matter, or any question or issue of fact in any cause or matter, is referred to a referee for trial, he may, subject to the order of the Court, 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, proceed with the trial from day to day, in a similar manner as in actions tried with a jury.

Trial before  
a referee.  
Ib. R.38.

3. Subject to any order by the Court 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.

Evidence  
before referee.  
Ib. R.39.

Authority of  
referee.  
Ib. R.40.

4. Subject to any such order as is mentioned in Rule 3, 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 Court.

No power  
to imprison.  
Ib. R.41.

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

Referee may  
submit  
question to  
the Court.  
Ib. R.42.

6. 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.

Notice of  
report.  
Ib. R.43.

7. Whenever a report is made by a referee he shall cause notice thereof to be served forthwith on all parties to the trial or reference.

Adoption etc.  
of report  
where  
further con-  
sideration  
adjourned.  
Ib. R.44.

8. Where 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 to adopt the report, or without leave of the Court 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.

Application  
to adopt  
or vary  
report.  
Ib. R.45.

9. Where the report of the referee has been made in a cause or matter, the further consideration of which has not been adjourned, any party may, by an eight days' notice of motion, 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.

Costs.  
Ib. R.46.

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

Extension of  
rules to  
arbitrators  
and officers  
of the Court.  
Ib. R.47.

11. The provisions of Rules 2 to 9 apply, where any cause or matter or any question or issue of fact therein is referred to the Master or to a special referee or arbitrator: Provided that the provisions of Rule 2 as to sitting from day to day do not apply where the reference is to the Master.

## ORDER 36

**Evidence: General**

1. Subject to these Rules and to the provisions of the Evidence Act, 1906, and any other Act relating to evidence, any fact required to be proved at the trial of any action by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open Court. General rule  
—oral  
examination.  
Cf. E. O.38,  
R.1.  
Cf. W.A.  
O.XXXV,  
R.1.
2. (1) The Court may, before or at the trial or hearing of an action, order that all or any of the evidence therein shall be given by affidavit if the Court thinks that in the circumstances of the case it is reasonable so to order. Evidence by  
affidavit.  
Cf. E. O.38,  
R.2.  
Cf. W.A.  
O.XXXV,  
R.1;  
O.XXXVI,  
R.1.

(2) An order under paragraph (1) may be made on such conditions as the Court may think reasonable and in particular may give directions as to the filing and serving of the affidavits and the production of the deponents for cross-examination, but subject to such directions and any subsequent order of the Court, the deponents shall not be subject to cross-examination.
- (3) Subject to these Rules, evidence may be given by affidavit upon any originating summons, originating motion or petition, and on any application made by motion or summons, but the Court may order the attendance for cross-examination of the person making any such affidavit, and if such person fails to attend his affidavit shall not be used in evidence without the leave of the Court.
3. The Court may before the trial of an action order that the number of medical or expert witnesses who may be called at the trial shall be limited in accordance with the directions of the order. Limitation of  
expert  
witnesses.  
Cf. E. O.38,  
R.4.
4. Unless before or at the trial the Court otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before the trial the parties, other than the party who intends to produce it, are given the opportunity to inspect it and to agree to its admission without further proof. Reception of  
plans etc.  
in evidence.  
Cf. E. O.38,  
R.5.
5. An order under Rules 2, 3 and 4, including an order made on appeal, may on sufficient cause being shown be revoked or varied by a subsequent order of the Court made before or at the trial. Orders may be  
revoked.  
Ib. R.7.
6. The foregoing rules of this Order apply to trials of issues or questions of fact or law, and assessments of damages as they apply to the trial of actions. Trials of  
issues,  
references,  
etc.  
Ib. R.8.
7. (1) A deposition taken in any cause or matter shall not be received in evidence at the trial or hearing of the cause or matter unless the deposition was taken pursuant to an order under Order 38, Rule 1, and Depositions  
as evidence.  
Ib. R.9.  
Cf. W.A.  
O.XXXV,  
R.17, 24.
  - (a) the party against whom the deposition is tendered consents;
  - or

(b) the deponent is dead or beyond the jurisdiction of the Court or is unable through sickness or other infirmity to attend the trial.

(2) Where a party intends to use a deposition in evidence at the trial of a cause or matter, he must notify the other party of his intention a reasonable time before the trial begins.

(3) A deposition purporting to be certified under the hand of the person before whom it was taken shall be receivable in evidence without proof that the signature is the signature of that person.

Court documents  
admissible  
in evidence.  
Cf. E. O.38,  
R.10.  
W.A.  
O.XXXV,  
R.3;  
O.LXI, R.6.

8. (1) Office copies of writs, records, pleadings and documents filed in the Court shall be admissible in evidence in any cause or matter, and between all persons and parties to the same extent as the original would be admissible.

(2) Subject to the provisions of any Act every document purporting to be sealed with a seal of the Central Office shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in or issued out of the Court, shall be deemed to be an office copy of that document without further proof unless the contrary is shown.

Evidence at  
trial may be  
used in sub-  
sequent pro-  
ceedings.  
W.A.  
O.XXXV,  
R.24.  
Evidence in  
another  
cause.  
Ib. R.2.

9. 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.

10. 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, 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.

Production  
of docu-  
ments.  
W.A.  
O.XXXV,  
R.6.  
Cf. E. O.38,  
R.13.

11. The Court 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 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.

Writ of  
subpoena:  
form and  
issue.  
Cf. W.A.  
O.XXXV,  
R.25.  
Cf. E. O.38,  
R.14.

12. (1) A writ of subpoena shall be in accordance with Form No. 22 or 23, whichever is appropriate.

(2) Where it is intended to sue out a writ of subpoena, a praecipe for that purpose in accordance with Form No. 24 must first be filed containing the number of names inserted in the writ of subpoena, the name and address of the party issuing it, if he is acting in person or the name or firm and business address of that party's solicitors, and if the solicitor is agent only, the name or firm and business address of his principal.

(3) A writ of subpoena is issued upon its being sealed by an officer of the Central Office.

13. A writ of subpoena to compel the attendance of a witness for the purpose of proceedings in Chambers may be issued upon the production of a note from a Judge, or the Master, as the case may be, authorising the issue of the writ.

Subpoena for attendance in Chambers.  
Cf. W.A. O.XXXV, R.27.  
Cf. E. O.32, R.7.

14. (1) Every subpoena other than a subpoena *duces tecum* may contain the names of two or more persons.

Number of names.  
Cf. E. O.38, R.15.

(2) The name of only one person shall be included in a subpoena *duces tecum*.

15. Where a writ of subpoena has not been served, a mistake in any person's name or address in such writ may be corrected by the person suing out such writ, and the writ may be re-sealed in correct form upon the filing of a second praecipe under Rule 12 (2) indorsed with the words "amended and re-sealed".

Amendment of writ of subpoena.  
Cf. E. O.38, R.17.

16. A writ of subpoena must be served personally, and service shall not be valid unless effected within 12 weeks after the date of issue of such writ.

Service of writ of subpoena.  
Ib. R.17.

17. A writ of subpoena remains in force from the date of issue until the conclusion of the trial or hearing at which the attendance of the witness is required.

Duration of writ of subpoena.  
Ib. R.18.

18. (1) The Court may on the application of a person named in a subpoena, set aside the subpoena wholly or in part.

Setting aside subpoenas.

(2) The application under paragraph (1) must be made by summons which must be served on the party suing out the writ of subpoena.

## ORDER 37

### Affidavits

1. (1) Subject to paragraphs (2) and (3) every affidavit must be entitled in the cause or matter in which it is sworn and bear the number of the cause or matter.

Title of affidavits.  
Cf. W.A. O.XXXVI, R.2.

(2) Where a cause or matter is entitled in more than one matter it is sufficient to state the first matter followed by the words "and other matters".

Cf. E. O.41, R.1.

(3) Where a cause or matter is entitled in a matter or matters and between parties, so much of the title as consists of the matter or matters may be omitted.

2. (1) Every affidavit must be expressed in the first person and must state the place of residence and occupation of the deponent, and if he has no occupation his description must be stated. Vague occupations or descriptions must not be used.

Form of affidavit.  
Cf. W.A. XXXVI, RR. 7,8.  
Cf. E. O.41, R.1.

(2) If the deponent is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state so.

(3) Every affidavit must be divided into paragraphs numbered consecutively, and each paragraph must be confined, as far as possible to a distinct portion of the subject.

(4) Dates, sums, and other numbers must be expressed in an affidavit in figures and not in words.

(5) Every affidavit must be signed on each page by the deponent and by the person before whom the affidavit is sworn and that person must also complete and sign the jurat.

Affidavits  
by two or  
more  
deponents.  
Cf. W.A.  
O.XXXVI,  
R.9.  
Cf. E. O.41,  
R.2.

3. In every affidavit made by two or more deponents the names of the persons making the affidavit must be inserted in the jurat, except that, if the affidavit of all the deponents is taken at one time by the same person it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Affidavits by  
illiterate or  
blind persons.  
Cf. W.A.  
O.XXXVI,  
R.13.  
Cf. E. O.41,  
R.3.

4. (1) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, that person must certify in the jurat that—

- (a) the affidavit was read by him, or in his presence, to the deponent;
- (b) the deponent seemed perfectly to understand it; and
- (c) the deponent made his signature or mark in the presence of that person.

(2) The affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that the affidavit was read to the deponent and that he appeared to understand it perfectly.

Irregularity.  
Cf. E. O.41,  
R.4.

5. (1) Unless the Court otherwise orders, an affidavit may be filed notwithstanding any irregularity in the form thereof.

(2) An affidavit may, with the leave of the Court be used in evidence notwithstanding any irregularity in the form thereof.

Contents of  
affidavit.  
Cf. E. O.41,  
R.5.  
Cf. H.Ct.  
O.39, R.3.

6. (1) Except as provided by Order 14 Rules 2 (2) and 4 (2), and by paragraph (2) of this Rule, and subject to any order made under Order 29 Rule 8 an affidavit must be confined to such facts as the deponent is able of his own knowledge to prove.

(2) On interlocutory proceedings an affidavit may contain statements of information or belief with the sources and grounds of that information and belief.

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

Scandalous  
matter.  
Cf. W.A.  
O.XXXVI,  
R.11.  
Cf. E. O.41,  
R.6.

7. The Court may order to be struck out from an affidavit any matter which is scandalous, irrelevant or otherwise oppressive, or may order that the affidavit containing such matter be taken off the file.

8. (1) When in the jurat or body of an affidavit there is any interlineation, erasure, or other alteration—

- (a) the affidavit may nevertheless be filed unless the Court otherwise orders;
- (b) the affidavit shall not, without the leave of the Court, be read or made use of in any proceeding unless the person before whom the affidavit was sworn has initialled the alteration, and in the case of an erasure has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

Alterations in affidavits.  
Cf. W.A. O.XXXVI, R.12.  
Cf. E. O.41, R.7.

(2) In this Rule the term “proceeding” includes action, cause, matter and suit.

9. (1) A document referred to in an affidavit must not be annexed to the affidavit or referred to therein as being annexed, but must be referred to as an exhibit.

Exhibits.  
Cf. E. O.41, R.11.  
H.Ct. O.39, RR.4, 5.

(2) An exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn or taken, and the certificate must have endorsed on it the short title of the cause or matter and its number, if any.

10. (1) Any affidavit required for use in any cause or matter depending in or before the Court, or before any Judge or officer of the Court, and any bond or recognisance required to be filed in the Court, may be sworn or executed within the State before a Judge, a District Court Judge, the Master, a commissioner appointed under section 175 of the Act, or before a justice of the peace for Western Australia or for any part or district of Western Australia.

Affidavits sworn and bonds executed in Western Australia.  
Amended by G.G. 17/12/71, p. 5266;  
G.G. 9/11/73, p. 4162;  
G.G. 7/12/73, p. 4489.  
Cf. W.A. O.XXXVI, R.4;  
M.C.R. R233  
Vide Supreme Court Act, 1935, s.176.

(2) The Court, every Judge, and all officers of the Court shall take judicial notice of the seal or signature, as the case may be, of any person authorised under this Rule to take an affidavit, attached, appended or subscribed to an affidavit.

(3) A person authorised to administer oaths for the purposes of the Court, other than a Justice of the Peace, before whom an affidavit is sworn may charge the fees set out in the following table:—

	\$
1. For each oath or affirmation .....	0.50
2. Where sworn or affirmed at a place more than two kilometres from the Commissioner's office (in addition to reasonable travelling expenses):—	
for the first oath or affirmation .....	2.00
for each subsequent oath or affirmation taken at the same time .....	0.50
3. For marking each exhibit .....	0.10
4. For attesting documents which may be attested by or declared before a Commissioner for Affidavits—the same fees as on administering oaths.	

**ORDERS 37  
and 38.**

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Affidavits  
sworn out of  
Western  
Australia.  
Substituted by  
G.G. 17/12/71,  
p. 5266.  
Cf. W.A.  
O.XXXVI,  
R.6.  
*Vide* Supreme  
Court Act,  
1935, s.177;  
also O.1, R.4  
*supra* for  
Interpretation  
of "Australian  
diplomatic  
or consular  
agent";  
"diplomatic  
agent";  
"consular  
agent".

11. (1) Any affidavit for use in the Court or in any other court, or for any purpose or in any way authorised by law, may be sworn and taken in any place out of the State—

- (a) before a commissioner appointed under section 175 of the Act and authorised to act at that place;
- (b) before—
  - (i) an Australian diplomatic or consular agent; or
  - (ii) a diplomatic agent or a consular agent of any part of Her Majesty's dominions, exercising his function at that place;
- (c) before a judge of a court of that place or a magistrate or justice of the peace of or for that place; or
- (d) before a notary public.

(2) Without limiting the generality of paragraph (1), an affidavit to be sworn in a place under the dominion of Her Majesty may also be sworn before a person having authority to administer an oath at that place.

Affidavit not  
to be sworn  
before a sol-  
icitor or his  
agent, etc.  
Cf. W.A.  
O.XXXVI,  
RR.16, 17.  
Cf. E. O.41,  
R.8.

12. (1) An affidavit is not sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before an agent or correspondent of that solicitor, or before the party himself.

(2) An affidavit which would be insufficient if sworn before the solicitor, agent, correspondent or party himself is insufficient if sworn before his clerk or partner.

Affidavits to  
be filed.  
Cf. W.A.  
O.XXXVI,  
R.10.

13. (1) Every affidavit must be filed before it is used unless otherwise directed by the Court.

(2) There must be endorsed on every affidavit a note stating the name of the deponent, the dates of swearing and filing and on whose behalf it is filed.

Special times  
for filing.  
Cf. W.A.  
O.XXXVI,  
R.18.

14. Where a special time is limited for filing affidavits, an affidavit filed after that time shall not be used except by leave of the Court.

Alterations in  
accounts.  
Cf. W.A.  
O.XXXVI,  
R.23.

15. 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.

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**ORDER 38**

**Evidence by Deposition**

Power to order  
depositions  
to be taken.  
Cf. W.A.  
O.XXXV,  
R.4.  
Cf. E. O.39,  
R.1.

1. (1) The Court may in any cause or matter, if it appears necessary for the purposes of justice, make an order in Form No. 25 for the examination of any witness or person upon oath before a Judge, or an officer of the Court, or any other person, at any place whether in or out of the jurisdiction.

(2) An order under paragraph (1) may be made on such terms as the Court thinks fit.

(3) The Court may give directions as to the procedure to be followed in and in relation to the examination.

2. (1) Where the person for whose examination an order is sought under Rule 1 is out of the jurisdiction the Court may—

Examination  
of wit-  
nesses  
abroad.  
Cf. E. O.39,  
R.2.

- (a) make an order under Rule 1 in Form No. 26 for the issue of a Letter of Request to the judicial authorities of the country in which the evidence of that person is to be taken, or
- (b) if the government of that country permits the examination of a person therein before a person appointed by the Court, make an order under that Rule (in Form No. 27) appointing a special examiner to take the evidence of that person in that country.

(2) If the country in which the evidence is to be taken is one with which there subsists a Convention providing for the taking of the evidence of any person in that country for the assistance of proceedings in the Court, the Court may make an order for the appointment as special examiner, of a British or Australian diplomatic or Consular agent in that country.

3. (1) The procedure to be followed when an order is made under Rule 1 for the issue of a Letter of Request to the judicial authorities of a country, to take or cause to be taken the evidence of any person in that country, is contained in the following paragraphs.

Letters of  
Request.  
Cf. E. O.39,  
R.3.

(2) The party obtaining the order must prepare the Letter of Request (which must be in Form No. 28 with such modifications as the order may require), and lodge it in the Central Office.

(3) If the evidence is to be obtained by interrogatories, a copy of the interrogatories and cross-interrogatories (if any) must be lodged with the Letter of Request.

(4) Each document lodged under paragraphs (2) and (3) must be accompanied by a translation of the document in the language of the country in which the Letter of Request is to be executed.

(5) Every translation required by paragraph (4) must be certified by the person making it to be a correct translation, and the certificate shall state his full name and address and his qualifications for making the translation.

(6) When lodging the documents mentioned in paragraphs (2) to (5) the party obtaining the order must file an undertaking in Form No. 29 in the First Schedule.

4. (1) In this Rule and in Rules 5 to 17 the Judge, officer of the Court, or person before whom the examination of any person pursuant to an order under Rule 1 takes place, is referred to as "the examiner".

Enforcing  
attendance  
of witness.  
Cf. E. O.39,  
R.4.  
Cf. W.A.  
O.XXXV,  
R.19.

(2) When an order has been made under Rule 1

- (a) for the examination of any person before the examiner, or
- (b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by writ of subpoena in like manner as his attendance, or the production by him of a document at a trial may be enforced.

Refusal of  
witness to  
attend or be  
sworn.  
Cf. E. O.39,  
R.5.  
W.A.  
O.XXXV,  
R.12.

5. (1) If any person duly summoned by subpoena to attend before the examiner refuses or fails to attend, or refuses to be sworn for the purpose of the examination, or to answer any lawful question or produce any document therein, a certificate of such refusal or failure signed by the examiner must be filed, and upon the filing of the certificate the party requiring the attendance of the witness may apply to the Court *ex parte* for any order requiring the witness to attend, be sworn, or answer any question or produce any document, as the case may be.

(2) The Court may order any person against whom an order is made under this Rule to pay any costs occasioned by his refusal or failure.

(3) Any person wilfully disobeying any order made against him under paragraph (1) is guilty of contempt of court.

Time and  
place for  
examination.  
Cf. E. O.39,  
R.6.  
Cf. W.A.  
O.XXXV,  
RR.38, 39.

6. (1) On production to him of the order for examination or a duplicate thereof, the examiner must give to the party who obtained the order a notice in writing appointing the time and place at which, subject to any application by the parties, the examination shall be taken.

(2) In fixing the time appointed under paragraph (1) the examiner shall have regard to the reasonable convenience of the persons to be examined and all the circumstances of the case, but subject thereto such time shall be as soon as practicable after the making of the order.

Documents to  
be given to  
examiner.  
Cf. E. O.39,  
R.7.  
Cf. W.A.  
O.XXXV,  
R.9.

7. The party who obtained the order for examination before an examiner must supply to the examiner copies of all such documents in the cause or matter as are necessary to inform the examiner of the questions at issue between the parties.

Practice on  
examination.  
Cf. E. O.35,  
R.8.

8. (1) Subject to any direction contained in the order for examination, the person examined before the examiner may be cross-examined and re-examined and the practice with reference to the examination, cross-examination and re-examination of witnesses at the trial of a cause or matter shall extend and be applicable to the evidence of any person so examined.

(2) The examiner may put questions to any person examined before him as to the meaning of any answer made by that person, or as to any matter arising in the course of the examination.

(3) The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, or such of them as choose to attend.

(4) The examiner may, if necessary, adjourn the examination from time to time or from place to place.

Expenses of  
witnesses.  
W.A.  
O.XXXV,  
R.8.

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

Examination  
of additional  
witnesses.  
W.A.  
O.XXXV,  
R.40.

10. 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.

11. (1) The deposition of any person examined before the examiner must—

Mode of  
taking  
deposition.  
Cf. W.A.  
O.XXXV,  
RR.11, 15, 41.

- (a) be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner, or
- (b) be recorded in the presence of the examiner on tape or by other mechanical means.

(2) Subject to paragraph (3) a deposition taken pursuant to paragraph (1) (a) need not set out every question and answer, but must contain as nearly as may be the statement of the person examined.

(3) The examiner may direct that the exact words of any question and answer thereto be set out in the deposition.

(4) A deposition taken pursuant to paragraph (1) (a) must be read to the person examined and, if any party so requests, the person examined must be asked to sign his deposition.

(5) The examiner must authenticate the deposition by his signature.

(6) Where the deposition is taken pursuant to paragraph (1) (b) it must be transcribed under the supervision of the examiner who must authenticate the transcript by his signature.

(7) The transcript authenticated by the examiner constitutes the deposition of the person examined, and it is not necessary that the deposition be read to or signed by him.

(8) The examiner must indorse on the deposition a note signed by him of the time occupied in taking the examination and the fees received by him in respect thereof.

(9) The deposition authenticated by the examiner shall be sent by him to the Central Office and shall be filed therein.

12. (1) When any person being examined before an examiner objects to answer any question, or objection is taken to any question put to him, that question, the ground for objection, and the answer (if any) to the question objected to, must be set out in the deposition of the person being examined or in a statement annexed to the deposition.

Objection to  
questions.  
Cf. W.A.  
O.XXXV,  
RR.11, 13, 14.  
Cf. E. O.39,  
R.10.

(2) The Court shall decide the validity of the ground for the objection.

(3) If the Court decides against the objector it may order him to pay the costs occasioned by the objection.

13. The examiner may make a special report to the Court touching any examination taken before him, and with regard to the absence or conduct of any person thereat, and the Court may direct such proceedings to be taken or make such order, on the report as it thinks fit.

Special  
report.  
Cf. W.A.  
O. XXXV,  
R.16.  
Cf. E. O.39,  
R.13.

14. Any officer of the Court or other person directed or authorised to take the examination of any witness or person, or any person nominated or appointed to take the examination of a witness or person pursuant to the provisions of a Convention subsisting with a foreign country, may administer oaths.

Oaths.  
Cf. W.A.  
O.XXXV,  
R.18.  
Cf. S.A.  
O.37, R.19.

15. (1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for that purpose.

Perpetuating  
testimony.  
Cf. W.A.  
O.XXXV,  
RR.34-37.  
Cf. E. O.39  
R.15.

- (2) 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 be brought to trial by him before the happening of such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.
- (3) No action to perpetuate the testimony of witnesses shall be set down for trial.

Examiners' fees.  
Amended by G.G. 7/12/73, p. 4489.  
Cf. W.A. O.XXXV, R.43.  
Cf. E. O.39, R.19.

16. (1) Every examiner is entitled to charge the fees set forth in the following table:—

Table of Examiners' Fees		\$
1.	Upon giving an appointment to take an examination	5
2.	Where the examination is taken at a place within five kilometres from the Court—	
	(a) for the first hour	8
	(b) for every hour after the first	6
3.	Where the examination is taken at a place beyond five kilometres from the Court—	
	(a) for the first hour	10
	(b) for every hour after the first	6

- (2) 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 office) where the examination is taken and an allowance of \$6 an hour for the time occupied by the examiner in travelling.
- (3) The fee on appointment may be retained by the examiner whether the examination is taken or not.
- (4) The other fees and the travelling or other expenses shall be paid as soon as the examination has been concluded.
- (5) The Master may authorise the charging of fees at a higher hourly rate than the hourly rate specified in the Table in paragraph (1).
- (6) If any dispute arises as to the amount of fees or expenses payable under this Rule it shall be referred to the Master for his decision which shall be final.

Payment of examiner's fees.  
W.A. O.XXXV, RR.42, 45.  
Cf. E. O.39, R.14.

17. (1) 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.
- (2) The Court 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.

## ORDER 39

**Obtaining Evidence for Foreign Tribunals**

1. (1) Subject to Rule 2 applications for orders under the Foreign Tribunals Evidence Act, 1856, or under that Act as extended by section 24 of the Extradition Act, 1870, or under the Evidence by Commission Act, 1859, must be made *ex parte* by a person shown to be duly authorised to make the application on behalf of the court or tribunal concerned, and must be supported by affidavit.

Procedure.  
Cf. W.A.  
O.XXXV,  
R.46.  
Cf. E. O.70,  
R.2.

(2) An order made under paragraph (1) shall be in Form No. 30.

(3) The Letter of Request, certificate or other document showing that the court or tribunal desires to obtain the testimony in relation to a matter pending before it, of the witness to whom the application relates, or the production of any documents, must be exhibited to the affidavit required by paragraph (1).

(4) If the Letter of Request, certificate or other document required by paragraph (2) to be exhibited to the affidavit is not in the English language, a translation thereof must also be exhibited.

(5) When an application has been made for an order under paragraph (1) in relation to a matter pending before a court or tribunal, any application for a further order or direction in relation to the same matter must be made by summons.

(6) A reference in this Rule to any Imperial Act, shall be read as including a reference to that Act as subsequently amended.

2. Where the Letter of Request, certificate or other document mentioned in Rule 1—

Application  
by Crown  
Solicitor.  
Cf. W.A.  
O.XXXV,  
R.52.  
Cf. E. O.70,  
R.3.

(a) is transmitted to the Court with an intimation that effect be given thereto without the intervention, or in the absence of the parties; or

(b) is received by the Registrar pursuant to the provisions of a Convention providing for the taking of evidence in Western Australia at the request of a judicial authority in a foreign country, and no person is duly authorised to make the application under Rule 1 (1),

the Registrar shall transmit the same to the Crown Solicitor, who may, with the consent of the Attorney-General, apply for an order under the Foreign Tribunals Evidence Act, 1856, and take such other steps as may be necessary to give effect to the Letter of Request, certificate or other document.

3. The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before any officer of the Court, or such other qualified person as to the Court seems fit.

Examiner.  
Cf. W.A.  
O.XXXV,  
R.48.  
Cf. E. O.70,  
R.4(1).

Mode of  
examination.  
Cf. W.A.  
O.XXXV,  
R.50.  
Cf. E. O.70,  
R.4(2).

4. (1) An order made in pursuance of this Order may, if the Court thinks fit, direct the examination to be taken in such manner as is requested by the Letter of Request, certificate or other document from the foreign court or tribunal, or is therein signified to be in accordance with the practice or requirements thereof, or is for the same reason, requested by the applicant for such order.

(2) In the absence of any special directions in the order, the examination shall be taken in the manner prescribed by these Rules and the practice of the Court.

(3) Order 38 Rule 17 applies *mutatis mutandis* in the case of an examination under this Order, and the Court may make an order thereunder for the fees and expenses due to the examiner.

Transmission  
of Deposi-  
tions.  
Cf. W.A.  
O.XXXV,  
R.49.  
Cf. E. O.70,  
R.5.

5. (1) Unless the order for examination of a witness otherwise directs, the examiner before whom the examination is taken must send the deposition of the witness to the Registrar.

(2) On receiving a deposition taken under this Order the Registrar shall give a certificate in Form No. 31 sealed with the seal of the Court annexing thereto and identifying the Letter of Request, certificate or other document from the court or tribunal requesting the examination, the order for examination, and the deposition.

(3) The Registrar shall send the certificate referred to in paragraph (2) with the documents annexed thereto to the Attorney-General for transmission direct to the foreign court or tribunal requesting the examination: provided that if the Letter of Request, certificate or other document was sent direct to the Registrar by some other person pursuant to the Provisions of a Convention, the Registrar shall send the certificate and annexures to that person for transmission to the foreign court or tribunal.

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## ORDER 40.

### Court Experts.

Definitions.  
Cf. E. O.40,  
R.1.  
Cf. H.Ct.  
O.38, R.1.

1. In this Order unless the contrary intention appears—

“Court expert” means an independent expert appointed under Rule 2 to inquire into and report upon a question of fact or opinion;

“expert” in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on that question would be admissible in evidence.

Appointment  
of expert.  
Cf. E. O.40,  
R.1, 3.  
Cf. H.Ct.  
O.38, RR.2, 6.

2. (1) In any cause or matter which is to be tried without a jury and which involves a question for an expert witness the Court may at any time,

- (a) on the application of any party, on terms, appoint an independent expert, or if more than one such question arises, two or more such experts to inquire into and report upon any question of fact or opinion not involving questions of law or of construction;
- (b) direct a Court expert to make a further or supplemental report or inquiry and report; and
- (c) give such instructions in relation to the inquiry and report of a Court expert as the Court thinks fit.

(2) Instructions pursuant to paragraph (1) (c) may make provision concerning any experiment or test necessary to enable the Court expert to make a satisfactory report.

3. (1) The Court expert must send his report to the Court with such copies thereof as the Court requires and the proper officer must send a copy of the report to each party or his solicitor.

Report of  
Court  
expert.  
Cf. E. O.40,  
R.2.

(2) Any part of a Court expert's report which is not accepted by all parties shall be treated as information furnished to the Court, and shall be given such weight as the Court thinks fit.

Cf. H.Ct.  
0.38, R.3.

4. Upon the application of any party made within 14 days after receiving a copy of the Court expert's report, the Court shall make an order for the cross-examination of the Court expert by all parties either—

Cross-exam-  
ination.  
Cf. E. O.40,  
R.4.  
Cf. H.Ct.  
0.38, R.4.

- (a) before the Court at the trial or at some other time; or
- (b) before an examiner at such time and place as the Court directs.

5. (1) The remuneration of the Court expert shall be fixed by the Court and shall include—

Remuneration.  
Cf. E. O.40,  
R.5.  
Cf. H.Ct.  
0.38, R.8.

- (a) a fee for making the report and a fee for making any supplementary report; and
- (b) a proper sum for each day during which his presence is required either in Court or before an examiner.

(2) The parties shall be jointly and severally liable to pay the Court expert's remuneration, without prejudice to the question by whom it shall be paid as part of the costs of the cause or matter.

(3) Where any party opposes the appointment of a Court expert, the Court may, as a condition of making the appointment require the party seeking the appointment to give such security for the Court expert's remuneration as the Court thinks fit.

6. (1) Where a Court expert has made a report pursuant to this Order on any question, any party who gives to the other interested parties a reasonable time before the trial or hearing, notice of his intention to do so, may call one other expert witness to give evidence on the question reported on by the Court expert.

Further  
expert  
witnesses.  
Cf. E. O.40,  
R.6.

(2) Except as provided by paragraph (1) no other expert witness shall be called by any party without the leave of the Court, and such leave shall not be granted unless the Court considers the circumstances of the case to be exceptional.

ORDER 41

Motion for Judgment

Judgment to  
be on motion.  
Cf. W.A.  
O.XXXVIII,  
R.1.  
Cf. H.Ct.  
O.42, R.1.

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

Judgment  
after issues  
tried.  
Cf. W.A.  
XXXVIII,  
R.7.  
Cf. H.Ct.  
O.42, R.2.

2. (1) 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.

(2) If the plaintiff does not set down such a motion, and give notice thereof to the other parties within seven days after his right so to do has arisen, then after the expiration of such seven days any defendant may set down a motion for judgment, and give notice thereof to the other parties.

Where some  
issues only  
determined.  
Cf. W.A.  
O.XXXVIII,  
R.8.  
Cf. H.Ct.  
O.42, R.3.

3. (1) 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 determination 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 for leave to set down a motion for judgment, without waiting for such trial or determination.

(2) The Court 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.

Motion to be  
set down  
within one  
year.  
Cf. W.A.  
O.XXXVIII,  
R.9.  
Cf. H.Ct.  
O.42, R.4.

4. A motion for judgment shall not, except by leave of the Court, 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.

Court may  
draw infer-  
ences and  
determine  
questions.  
Cf. W.A.  
O.XXXVIII,  
R.10.  
Cf. H.Ct.  
O.42, R.5.

5. Upon motions for judgment the Court may draw all inferences of fact, not inconsistent with the finding of the jury, if the trial was with a jury, and if satisfied that it has before it all the material 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 is of opinion that it has not sufficient material 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 thinks fit.

## ORDER 42

## Entry of Judgment

1. (1) Every judgment shall be entered by the Registrar in the book to be kept for that purpose in the Central Office.

Mode and form of entry.

Cf. W.A. O.XXXIX, R.1.

(2) If a form of judgment is prescribed in the Second Schedule the judgment must be in that form.

H.Ct. O.43, RR.1, 2, E. O.42, R.1.

(3) The party entering a judgment shall be entitled to have recited therein a statement of the manner and place in and at which the service of the writ or other originating process by which the cause or matter was begun, was effected.

Forms Nos. 32-44.

2. (1) A judgment or order of the Court takes effect from the day of its date.

Date from which judgment or order takes effect.

Cf. W.A. O.XXXIX, R.3.

(2) Such judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders that it be dated as of some earlier or later day, in which case it shall be dated as of that other day.

H.Ct. O.43, R.3. E. O.42, R.3.

3. Every judgment or order requiring any person to do any act, other than the payment of money, shall state the time, or the time after service of the judgment or order, within which the act is to be done.

Orders to perform any act.

Supreme Court Act 1935, s.135(1)

Cf. W.A. O.XXXIX, R.5.

See Order 46, Rule 4.

4. Where under the 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 proper 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.

Judgment on production of affidavit or document.

Cf. W.A. O.XXXIX, R.6.

5. Where by the 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 proper officer to enter judgment accordingly.

Judgment on production of order or certificate.

Ib. R.7.

6. 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.

Judgment on Master's Certificate.

Ib. R.8.

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

Judgment by consent when party appears by a solicitor.

Ib. R.9.

Consent of  
party in  
person.  
Ib. R.5.

8. 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, or solicitor.

Satisfaction  
of judgments.  
Cf. H.Ct.  
O.43, R.11.

9. (1) A memorandum of satisfaction of a judgment may be entered upon a consent to the entry being filed in the Central Office.

(2) The consent to the entry must be signed by the party entitled to the benefit of the judgment and must be attested, and verified by the affidavit of the attesting witness.

(3) If the attesting witness is not a barrister or solicitor the entry must not be filed without the leave of the Master, which leave may be endorsed on the affidavit.

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**ORDER 43**

**Drawing up Judgments and Orders**

Drawing up  
of judgments,  
etc.  
Cf. W.A.  
O.LXII,  
R.1.

1. (1) Subject to these Rules and to any order of the Court all judgments or orders whether given or made in Court or in Chambers or by default, shall be drawn up under the direction of the Master or other officer to whom such duty may be assigned.

(2) A party having the carriage of the judgment or order shall have the first option to enter or extract it, but any other party affected may do so if such firstmentioned party fail to take steps within three days from the making thereof to have the judgment or order approved, or having taken such steps does not in the opinion of the Master diligently proceed to have the judgment or order approved and entered or extracted.

When  
order need  
not be drawn  
up.  
Cf. W.A.  
O.LI, R.13.  
Cf. H.Ct.  
O.44, R.18.  
Cf. E. O.42,  
R.4.

2. (1) An order which neither imposes any special terms nor includes any special directions other than a direction as to costs, but only—

(a) extends the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act, or

(b) gives leave to do any of the acts mentioned in paragraph (2), need not be drawn up unless the Court otherwise directs.

(2) The acts referred to in paragraph (1) (b) are—

(a) the issue of any writ, other than a writ of summons for service out of the jurisdiction, or a writ of attachment;

(b) the amendment of a writ of summons or other originating process or pleading;

(c) the filing of a document or the taking of a document off the file;

(d) any act to be done by an officer of the Court other than a solicitor;

(e) the correction of a clerical mistake or error appearing in a judgment or order.

(3) When under paragraph (1) it is not necessary to draw up an order—

(a) the person or solicitor of the person on whose application the order is made shall forthwith give notice in writing of the order to the person, if any, who, if this Rule had not been made, would have been required to be served with the order; and

(b) a note or memorandum of such order signed by a Judge or the Master or Registrar shall be sufficient authority for the extension of time, issue, amendment, filing or other act.

3. (1) Every judgment or order shall be marked to show by whom it was made.

Authentication of judgments and orders.  
W.A. O.LXII,  
R.3.

(2) An order is sufficiently authenticated if signed by the Registrar and sealed with a seal of the Court.

4. (1) Every judgment and order shall be kept in the Registry of the Court as a record.

Sealed duplicate to be issued.  
Ib. R.4.

(2) A duplicate of an order shall, on the day it has been entered, be sealed by the Registrar without fee and delivered to the party extracting the order.

(3) When a rule or order or the practice of the Court requires the production of an order, it is sufficient to produce the duplicate.

(4) A further duplicate may be issued at any time, with the sanction of the Registrar, and on payment of the prescribed fee, on the Registrar being satisfied of the loss of the duplicate, and that the person applying is properly entitled to it.

5. An order shall not be amended except on production of the duplicate or the duplicate last issued, which shall, after the original order has been amended and under the direction of the Registrar, be amended in accordance with the amendment of the original order. The amendment in the duplicate shall be sealed under the direction of the Registrar.

Amendment of order.  
Ib. R.5.

6. (1) The party bespeaking a judgment or order shall lodge a draft thereof in the Central Office unless the Master dispenses with the draft and permits lodgment of the engrossment in the first instance, and, if so required by the Master, the party shall leave with the Master his counsel's brief and any other documents which the Master may require for the purpose of drawing up, or settling such judgment or order.

Draft and documents to be lodged.  
Ib. R.6.

(2) If the judgment or order is not bespoken and the draft and any documents required by the Master lodged within seven days after the judgment or order is finally pronounced or disposed of by the Court, the Master may decline to settle or pass the judgment or order without the leave of the Court.

Appointment  
to settle  
draft.  
Ib. R.7.

7. (1) When the Master is of the opinion that any judgment or order should be settled in the presence of the parties, he shall appoint a time and place for settling the same, and notify the party bespeaking the judgment or order thereof.

(2) Such party shall not less than two clear days before the time so appointed, serve notice of the appointment, together with a copy of the draft judgment or order on every other party on the record.

Attendance on  
settling the  
draft.  
Ib. R.8.

8. (1) The party bespeaking the judgment or order and all parties served with notice under the last preceding rule shall attend on the settlement of the judgment or order and shall, if required by the Master so to do, produce to the Master their briefs and such other documents as he may consider necessary to enable him to settle the judgment or order.

(2) Before settling and passing the judgment or order the Master shall satisfy himself in such manner as he shall think fit that the provisions of rule 7 (2) of this Order have been complied with.

(3) The Master may adjourn any such appointment as he may think fit, and the parties shall attend such adjournment without further notice.

Default of  
attendance.  
Ib. R.9.

9. (1) If any party fail to attend the Master's appointment for settling the draft of a judgment or order, or fail to produce his counsel's brief or such other document as may be required by the Master, the Master may proceed to settle and pass the judgment or order in his absence.

(2) Where the Master proceeds under the last preceding paragraph he may dispense with the production of counsel's brief or with the production of such documents, and may act upon such evidence as he may think fit, or may require the matter to be mentioned to the Court.

Dispensing  
with  
appointment.  
Ib. R.10.

10. Notwithstanding the preceding rules of this order, the 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.

Master's  
powers and  
reference to  
the Court.  
Ib. R.11.

11. (1) When settling a draft judgment or order the Master shall have power to make variations to the draft in matters of detail or for the purpose of carrying out the substance or intent of the judgment or order.

(2) In case of dispute or doubt, the Master shall at the request of a party refer the matter to the Court giving the judgment or making the order, and the Court may settle the whole of the terms of the judgment or order or such part thereof as may call for special direction.

(3) On the reference the Court will hear argument covering only what judgment or order was given or made, and if there is any reasonable doubt, leave may be given to relist the cause or action for rehearing. On any such reference the Court may vary or amend any minute, record, or fiat in order to give expression to the intent of the judgment or order and also to include any ancillary details which may have been omitted, and may finally settle the draft.

(4) Nothing herein contained shall derogate from any power or authority of the Court to reconsider any judgment or order before it has been drawn up, passed and entered.

12. A judgment or order when settled and passed shall be engrossed by the party entering or extracting it.

Party to  
engross.  
Ib. R.12.

13. The Master shall at the time of any attendance before him for the purpose of settling and passing any judgment or order, if requested by any party so to do 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 on taxation of costs in respect thereof.

Certificate  
for special  
allowance.  
Ib. R.13.

14. (1) A judgment or order, when settled and passed, shall be filed in the Central Office by the party entering or extracting it and an entry of the filing shall be made in books to be kept for that purpose.

Entry of  
judgments  
and orders.  
Ib. R.14.

(2) A judgment or order when filed shall be deemed to be duly entered, and the date of the filing shall be deemed the date of entry.

(3) An order which is not required to be formally drawn up before being acted upon need not be entered unless it becomes necessary to serve the order for any purpose.

15. A party may, within seven days after a draft judgment or order has been settled by the Master, apply to the Court to add to or alter it for the purpose of making it correspond with the judgment or order as pronounced.

Application  
to vary.  
Ib. R.15.

16. (1) The parties to proceedings or their solicitors may file a written consent to the making of an order in those proceedings.

Consent  
orders.  
Added by  
G.G. 3/10/75,  
pp. 3769-71.  
Cf. M. Ct.  
0.44, R.23.

(2) Upon the written consent being filed, the Registrar shall bring the matter before the Court which may, if it thinks fit and without any other application being made, direct the Registrar to settle, sign, seal the order in accordance with the terms of consent.

(3) The order shall state that it is made by consent and shall be of the same force and validity as if it had been made after a hearing by the Court.

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## **ORDER 44**

### **Foreign Judgments**

1. It is hereby declared pursuant to subsection (2) of section 8 of the Act that these Rules are subject to any provisions contained in the relevant Order in Council made under section 6 of the Foreign Judgments (Reciprocal Enforcement) Act, 1963 (in this Order referred to as "the Act") for giving effect to any agreement in relation to matters with respect to which there is power to make rules of Court for the purpose of Part II of the Act.

Rules to be  
subject to  
provisions  
of Orders in  
Council.  
W.A.  
O.XXXIXA,  
R.1.

Application  
for registra-  
tion.  
Ib. R.2.

2. (a) An application under section 7 of the Act, to have a judgment to which Part II of the Act applies registered in the Supreme Court may be made on motion *ex parte* to the Court.

(b) The motion paper shall be entitled "In the Matter of the Foreign Judgments (Reciprocal Enforcement) Act, 1963, and an Order in Council thereunder made the (date) relating to (country) and in the matter of a judgment of the (describing court) obtained in (describing the cause or matter) and dated the            day of            19   ".

(c) Where the judgment is in respect of different matters, and some, but not all of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the motion paper shall state the provisions in respect of which it is sought to register the judgment.

Evidence in  
support of  
application.  
Ib. R.3.

3. (1) An application for registration shall be supported by an affidavit of the facts—

(a) exhibiting a certified copy of the judgment issued by the original court and authenticated by its seal and where the judgment is not in the English language a translation of the judgment certified by a notary public or authenticated by affidavit;

(b) stating to the best of the information and belief of the deponent—

(i) that the applicant is entitled to enforce the judgment;

(ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or if the judgment has been satisfied in part, the amount in respect of which it remains unsatisfied;

(iii) that at the date of the application the judgment can be enforced by execution in the country of the original court;

(iv) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 9 of the Act; and

(c) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration,

and shall be accompanied by such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order in Council extending the Act to the country of the original court.

(2) Where the sum payable under the judgment is expressed in a currency other than the currency of the Commonwealth of Australia, the affidavit shall also state the amount which that sum represents in the currency of the Commonwealth of Australia calculated at the rate of exchange prevailing at the date of the judgment.

(3) The affidavit shall also state the full name, title, trade or business and the usual or last known place of abode or of business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

4. Save as otherwise provided by any relevant Order in Council the Court may, in respect to an application for registration, order the judgment creditor to find security for the costs of the application and of any proceedings which may thereafter be brought to set aside the registration.

Security for costs.  
Ib. R.4.

5. (1) An order giving leave to register a judgment shall be drawn up by, or on behalf of, the judgment creditor.

Order for registration.  
Ib. R.5.

(2) Such order need not be served on the judgment debtor.

(3) Such order shall state the period after service of the notice prescribed by Rule 7 within which an application may be made to set aside the registration.

(4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

6. There shall be kept in the Central Office of the Supreme Court a register of the judgments ordered to be registered under the Act.

Register to be kept.  
Ib. R.6.

7. (1) Notice in writing of the registration of a judgment shall be served on the judgment debtor. Such service shall be effected in the following manner:—

Notice of registration.  
Ib. R.7.

- (a) if within the jurisdiction, by personal service as in the case of a writ of summons, unless some other mode of service is ordered by the Court;
- (b) if out of the jurisdiction, in accordance with the rule applicable to the service of a writ of summons out of the jurisdiction, save that special leave to serve out of the jurisdiction shall not be required.

(2) The notice of registration shall state—

- (a) full particulars of the judgment registered and the order for registration;
- (b) the name and address of the judgment creditor or his solicitor or agent on whom, and at which, any summons issued by the judgment debtor may be served;
- (c) the right of the judgment debtor to apply on the grounds provided in the Act to have the registration set aside; and
- (d) in accordance with the term of the order giving leave to register, within what period of time from the date of service of the notice an application to set aside the registration, may be made;

- (e) that execution on the judgment will not issue until after the expiration of that period.

Indorsement  
of service.  
Ib. R.8.

8. (1) Within three days from the day of service or within such extended period as may, in special circumstances, be allowed by order of the Court, the notice or a copy or duplicate thereof shall be indorsed by the person serving the same with the day of the month and of the week on which service was effected, and, if the notice is not so indorsed, the judgment creditor shall not be at liberty to issue execution on the judgment without the leave of the Court.

(2) Every affidavit of service of any such notice shall state on what day such indorsement was made.

Application  
to set aside  
registration.  
Ib. R.9.

9. (1) An application to set aside the registration of a judgment shall be made by summons supported by affidavit.

(2) A summons shall be served not less than seven clear days before the return day.

(3) On any such application the Court may direct that an issue between the judgment creditor and the judgment debtor shall be stated and tried and may give such directions in relation to the trial of such issue as may be necessary.

Issue of  
execution.  
Ib. R.10.

10. (1) Execution shall not issue on a registered judgment until after the expiration of the period which in accordance with the provisions of paragraph (3) of Rule 5 of these Rules, is specified in the order giving leave to register as the period within which an application may be made to set aside the registration, or, if an order is made extending the period so specified, until after the expiration of the extended period.

(2) If an application is made to set aside the registration of a judgment, execution shall not issue until such application has been disposed of.

Ib. R.11.

(3) The party desirous of issuing an execution upon a registered judgment shall produce to the proper officer an affidavit of the service of the notice or registration and of any order made by the Court in relation to the judgment registered.

Determina-  
tion of  
certain ques-  
tions.  
Ib. R.12.

11. If, whether under the Act or under these Rules, any question arises whether a judgment can be enforced by execution in the country of the original court, or what interest is payable under the judgment under the law of that country, that question shall be determined in accordance with such provisions, if any, in that behalf, as are contained in the Order in Council extending the Act to that country.

12. (1) An application under section 14 of the Act for a certified copy of a judgment obtained in the Supreme Court shall be made *ex parte* to the Master on an affidavit made by the judgment creditor or his solicitor.

Certified  
copy of  
judgment ob-  
tained in this  
State.  
Ib. R.13.

(2) An affidavit for the purposes of this rule shall—

- (a) give particulars of the proceedings in which the judgment was obtained;
- (b) contain a statement of the grounds on which the judgment was based;
- (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
- (d) show that the judgment is not subject to any stay of execution and that no notice of appeal against it has been entered, and whether the time for appealing has expired; and
- (e) state the rate at which the judgment carries interest.

(3) Where an application for a certified copy of a judgment is duly made under this rule, there shall be issued a copy of the judgment sealed with the seal of the Supreme Court and certified by the Master as follows:—

“I certify that the above copy judgment is a true copy of a judgment obtained in the Supreme Court of Western Australia and this copy is issued in accordance with section fourteen of the Foreign Judgments (Reciprocal Enforcement) Act, 1963.

(Signed)

Master of the Supreme Court  
of Western Australia.”

together with a certificate as to such one or more as may be asked for of the following matters, also under the seal of the Supreme Court and certified by the Master:—

- (a) particulars of the proceedings in which the judgment was obtained having annexed to it a copy of the writ of summons or originating summons, by which the proceedings were instituted;
- (b) the manner in which the writ or summons was served; or that the defendant appeared thereto;
- (c) the objections made to the jurisdiction, if any;
- (d) the pleadings, if any, in the proceedings;
- (e) the grounds on which the judgment was based;
- (f) the rate at which the judgment carried interest;
- (g) such other particulars as it may be necessary to give to the foreign tribunal in which it is sought to obtain execution of the judgment.

## ORDER 45

## Accounts and Inquiries

Summary  
order for  
accounts.  
Cf. W.A.  
O.XV, R.1, 2.  
Cf. E. O.43,  
R.1.

1. (1) Where the statement of claim claims an account or involves the taking of an account the plaintiff may, at any time after the defendant has entered an appearance, or after the time limited for appearing, apply for an order under this Rule.

(2) An application under this Rule must be made by summons and must, unless the Court otherwise directs, be supported by affidavit or other evidence.

(3) On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

Accounts, etc.,  
at any stage.  
Cf. W.A.  
O.XXXII,  
R.2.  
Cf. E. O.43,  
R.2.

2. The Court may at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be taken or made.

Directions to  
be numbered.  
Cf. W.A.  
O.XXXII,  
R.8.

3. 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.

Directions  
as to mode of  
taking  
account.  
Cf. W.A.  
O.XXXII,  
R.3.  
Cf. E. O.43,  
R.3.

4. The Court 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.

Account to be  
verified.  
Cf. W.A.  
O.XXXII,  
R.4.  
Cf. E. O.43,  
R.4.

5. (1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs, verify it by affidavit to which the account must be exhibited.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party must lodge the account at the Central Office, and must notify the other parties forthwith that he has so lodged the account, and of the filing of the affidavit verifying the account, and any supporting affidavit.

Mode of  
vouching  
accounts.  
Cf. W.A.  
O.XXXII,  
R.5.

6. Upon the taking of any account the Court 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.

7. Any party seeking to charge an accounting party with an amount beyond that which he has by his account admitted to have received, or who alleges that any item in his account is erroneous in respect of amount or in any other respect must give him notice thereof, stating so far as he is able, the amount sought to be charged with brief particulars thereof, or as the case may be, the grounds for alleging that the item is erroneous.

Surcharge or error.  
Cf. W.A.  
O.XXXII,  
R.6.  
Cf. E. O.43,  
R.5.

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

Just allow-  
ances.  
W.A.  
O.XXXII,  
R.9.

9. (1) In any case in which there has been undue delay in the proceedings before him, the Master shall report to the Court the fact of such delay in such proceedings, and shall state in his opinion the cause thereof.

Expediting  
proceedings.  
Cf. W.A.  
O.XXXII,  
R.10.  
Cf. Vict.  
O.33,  
RR.9, 10.

(2) If it shall appear to the Court on the report of the Master or otherwise, 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 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 for costs, as the circumstances of the case may require.

(3) For the purposes aforesaid the Court may direct any party or the proper officer to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions that may be given, and the Court may make such order as it thinks fit as to the payment of the proper officer's costs.

10. Where some of the persons entitled to share in property are ascertained and there is, or is likely to be, difficulty in ascertaining the remaining persons entitled, the Court may authorise immediate payment of the shares of the persons ascertained without reserving any part of their shares to answer the costs subsequently to be incurred in ascertaining the remaining persons entitled.

Distribution  
of fund  
before all  
persons en-  
titled are  
ascertained.  
W.A.  
O.LXV,  
R.5.  
Cf. E. O.43,  
R.8.

## **ORDER 46**

### **Enforcement of Judgments and Orders**

(See Supreme Court Act, 1935, Part VII)

1. Where any person is by any judgment or order directed to deliver up or transfer any personal property 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.

No demand  
necessary  
where judg-  
ment directs  
payment of  
money or  
transfer of  
property.  
Amended by  
G.G. 29/3/74,  
p. 1041;  
G.G. 10/1/75,  
p. 51.  
W.A. O.XL,  
R.1.

Conditional judgment—waiver.

Cf. W.A. O.XL, R.2.  
Cf. E. O.45, R.10.

2. A party who has obtained any judgment or order upon condition who does not fulfil that condition is deemed to have abandoned the benefit of such judgment or order, and unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order, or might have been taken if no such judgment or order had been given or made.

Judgment on condition: execution.  
W.A. O.XL, R.9.

3. 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 for leave to issue execution against such party. And the Court 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.

Enforcement of judgments for possession of land.  
Added by G.G. 10/1/75, p. 51.  
Cf. E. O. 45, R. 3.

3A (1) Subject to the provisions of the Act and of these rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say—

- (a) writ of possession;
- (b) writ of sequestration;
- (c) writ of attachment or order of committal;
- (d) writ of restitution.

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was made or given in a mortgage action to which Order 62A applies.

(3) Leave shall not be granted under paragraph (2) unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(5) A writ of possession and a writ of restitution may be executed in the same manner as heretofore.<sup>1</sup>

Cf. Supreme Court Act, 1935, ss. 22, 144 and 160.

When service of copy of judgment etc. necessary before enforcement.

Cf. W.A. O.XXXIX, R.5.  
Cf. E. O.45, R.7.

4. (1) In this Rule references to an order shall be construed as including references to a judgment.

(2) Subject to Order 26, Rule 15 (3) and Order 27, Rule 8 (3) an order shall not be enforced under section 135 of the Act unless—

- (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question, and

<sup>1</sup> See footnote to Order 13, Rule 5.

- (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

(3) Subject to paragraph (2) an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in section 137 (2) of the Act unless—

- (a) a copy of the order has been served on the body corporate,
- (b) a copy of the order has also been served personally on the director or other officer against whose property leave is sought to issue a writ of sequestration, or against whom an order for attachment is sought, and
- (c) where the order requires the body corporate to do an act, the copy has been so served before the expiration of the time within which the body corporate was required to do the act.

(4) In the case of an order requiring a person or body corporate to do an act within a specified time there must be indorsed on the copy of the order served under this Rule a memorandum in the words or to the effect following—

Warning to be indorsed.

“If you the within-named A.B. (or A.B. Ltd.) 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”.

(5) Where an order requires a person or body corporate to abstain from doing an act there must be indorsed on the copy of the order served under this Rule a memorandum in the words or to the effect following—

“If you the within-named A.B. (or A.B. Ltd.) disobey this judgment (or order), you (or the said A.B. Ltd.) will be liable to process of execution for the purpose of compelling you to obey the same”.

(6) Where an order requires a body corporate to do or to abstain from doing an act, but it is sought to take enforcement proceedings against a director or other officer of that body, there must be indorsed on the copy of the order so served a memorandum in the words or to the effect following—

“If A.B. Ltd. neglects to obey this judgment (or order) by the time therein limited (or in the case of an order to abstain from doing an act, If A.B. Ltd. disobey this judgment (or order)) you X.Y. (a director or officer of the said A.B. Ltd.) will be liable to process of execution for the purpose of compelling the said A.B. Ltd. to obey the same”.

(7) Where a copy of an order requiring a person to do an act is required to be served under this Rule, there must be served with it a copy of any order made under Order 3 Rule 5 extending or abridging the time for doing the act.

Execution by  
or against  
person not  
being a party.  
Cf. W.A.  
O.XL,  
R.25.

5. 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; 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.

Matters  
occurring  
after judg-  
ment: Stay of  
execution,  
etc.  
Cf. W.A.  
O.XL,  
R.26.  
Cf. E. O.45,  
R.11.

6. (1) Any party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or for other relief on the ground of matters which have occurred since the date of the judgment or order and the Court may by order give such relief, and on such terms, as it thinks just.

(2) Paragraph (1) does not affect the powers of the Court under Order 47 Rule 13 (which relates to stay of execution by writ of *feri facias*).

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## ORDER 47

### Writs of Execution: General

Interpretation.  
Cf. W.A.  
O.XL, R.8.  
Cf. E. O.46,  
R.1.

1. In this Order unless the context otherwise requires the expression "writ of execution" includes a writ of *feri facias*, a writ of possession, a writ of delivery, a writ of sequestration, a writ of attachment, and any further writ in aid of any of those writs.

Leave required  
for issue of  
writ in aid.  
E. O.46,  
R.3.

2. A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

Application  
for leave to  
issue writ of  
execution.  
Cf. E. O.46,  
R.4.  
See Supreme  
Court Act,  
1935, s.141  
(2) (3).

3. (1) Where it is necessary to obtain leave to issue a writ of execution, the application for leave may be made *ex parte* unless the Court directs that it be made by summons.

(2) An application for leave to issue execution must be supported by an affidavit—

- (a) identifying the judgment or order to which the application relates, and if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;
- (b) stating, where the case falls within section 141 (2) (a) of the Act, the reasons for the delay in enforcing the judgment or order;
- (c) stating where any change has taken place by death or otherwise in the parties entitled or liable to execution, the change which has taken place since the date of the judgment or order;
- (d) showing that the applicant is entitled to proceed to execution on the judgment, and that the person against whom it is sought to issue execution is liable to execution on the judgment.

(3) The Court in granting leave to issue a writ of execution may impose terms.

4. (1) An application for leave to issue a writ of sequestration or a writ of attachment must be made to a Judge by motion.

Application for leave to issue writ of sequestration or writ of attachment.  
Cf. E. O.46, R.5.

(2) An applicant for leave under this Rule must—

(a) file notice of the motion showing the grounds of the application, and

(b) serve the notice and the affidavits proposed to be used in support of the motion personally on the person whose property is sought to be sequestered, or who is sought to be attached.

(3) If the Court thinks it just it may dispense with service under paragraph 2 (b).

(4) An application for leave to issue a writ of attachment may be heard in chambers in any case in which, if the application were for an order of committal, the Judge would be entitled to do so under Order 55 Rule 4 (2), but otherwise the application must be heard in open court.

5. A writ of execution shall be in such of the Forms Nos. 45 to 52 in the Second Schedule as is appropriate in the particular case.

Forms of writs of execution.  
Cf. W.A. O.XL, R.13.

6. (1) A writ of execution is issued on its being sealed by the proper officer.

(2) Every writ of execution shall bear the date of the day on which it is issued.

Issue of writ of execution.  
Cf. W.A. O.XL, RR.10, 11, 13.  
Cf. E. O.46, R.6.

(3) Before such a writ is issued the person presenting it shall file a copy thereof signed by or on behalf of the solicitor of the person entitled to execution, or by the person himself if he is acting in person.

(4) A writ of execution shall not be sealed unless at the time it is presented for sealing—

(a) the person presenting it produces the judgment or order on which the writ of execution is to issue or an office copy thereof, and where leave to issue the writ is required, the order granting such leave or an office copy thereof; and

(b) the officer authorised to seal the writ is satisfied that the proper time has elapsed to allow the writ of execution to issue.

7. 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

Indorsement of name and address.  
Cf. W.A. O.XL, R.12.

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 (if any) and the number of the house (if any) of such plaintiff's or defendant's residence, or otherwise describing the plaintiff's or defendant's place of residence.

Fees and  
expenses.  
Cf. W.A.  
O.XL, R.14.  
Cf. Vict.  
O.42, R.15A.

8. (1) In every case of execution the party entitled to execution may levy the poundage, fees, and expenses (including the fixed charge for costs) of execution, over and above the sum recovered.

(2) In every case of execution against any freehold land or chattel real, or against any land, lease, mortgage or charge the party entitled to execution may, over and above the sum recovered, and in addition to the poundage fees and expenses mentioned in paragraph (1), levy the fees and expenses properly paid on registering the judgment or lodging the writ of *fiery facias* against the freehold land or chattel real, or against the land, lease, mortgage, or charge sought to be affected by the execution.

9. [Deleted by G.G. 15/6/73, p. 2248.]

Duration and  
renewal of  
writ of  
execution.  
Amended by  
G.G. 15/6/73,  
p. 2248.  
Cf. W.A.  
O.XL, R.19.

10. (1) A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner herein-after provided: but such writ may, at any time before its expiration, by leave of the Court, 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 to the sheriff.

(1A) The provisions of paragraph (2) of rule 5 of Order 3 do not apply to an application to extend the time prescribed by paragraph (1) of this rule.

(2) The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as is mentioned in paragraph (1), showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

Return to  
writ of  
execution.  
Cf. E. O.46,  
R.9.

11. (1) A person at whose request a writ of execution is issued may serve a notice on the Sheriff requiring him within the time specified in the notice (being not less than 7 days) to indorse on the writ a statement of the manner in which he has executed the writ and to send to that person a copy of the statement.

(2) If the Sheriff fails to comply with such notice, the person serving it may apply to the Court for an order directing the Sheriff to comply with the notice.

12. (1) The Sheriff or any party may apply to the Court for directions as to any question or matter arising in the enforcement of any order or judgment by a writ of execution, and on such application the Court may give such directions as the Court thinks fit.

Sheriff or party may apply for directions.

(2) The right to apply for directions conferred by paragraph (1) extends to the sequestrators under a writ of sequestration.

13. (1) The Court, if satisfied by the judgment debtor or other person liable to execution under a judgment or order—

Power to stay execution by writ of fieri facias.  
Cf. E. O.47, R.1.

(a) that by reason of special circumstances it is inexpedient to enforce the judgment or order, or

(b) that an appeal against the judgment or order is pending or is contemplated, or

(c) that if the judgment or order is for the payment of money, the applicant is unable from any cause to pay the money,

may stay the execution for such period and on such terms as the Court thinks fit.

(2) An application under this Rule which is not made at the time the judgment is given or the order made, must be made by summons supported by an affidavit of grounds, and may be so made although the applicant did not enter an appearance in the action.

(3) Where the application is made on the ground of the applicant's inability to pay, the affidavit must disclose his income, assets and liabilities.

(4) The summons and a copy of the affidavit in support must be served on the party entitled to enforce the judgment or order 4 clear days before the return day.

(5) The Court by a subsequent order may vary or revoke any order staying execution made under this Rule.

14. (1) 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.

Separate writs for money and costs.  
Cf. W.A. O.XL, R.17; O.XLV, R.3; O.XLVI, R.2.  
Cf. E. O.47, R.3.

(2) A party entitled to enforce a judgment or order for the recovery of or for the delivery of possession of any property (other than money) may if he so elects issue a separate writ of *feri facias* to enforce payment of any damages or costs awarded to him by the judgment or order and interest.

Cf. Supreme Court Act, 1935, s.130(3).

15. (1) An application for an order under section 124 of the Act that a sale under an execution may be made otherwise than by public auction may be made by the person at whose instance the writ of execution under which the sale is to be made was issued, or the person against whom the writ was issued (in this Rule called "the Judgment debtor"), or the Sheriff.

Order for sale otherwise than by auction.  
Cf. W.A. O.XLI, RR.6-12.  
Cf. E. O.47, R.6.

(2) The application must be made by summons and must be supported by an affidavit stating the grounds of the application and the evidence necessary to substantiate them.

(3) The Sheriff (if he is not the applicant) must on the request of the applicant send to him a list (in this Rule called "the Sheriff's list") of the names and addresses of every person at whose instance any other writ of execution against the goods of the Judgment debtor has been issued and delivered to the Sheriff.

(4) Where the Sheriff is the applicant he must prepare the list mentioned in paragraph (3).

(5) Not less than 4 clear days before the summons is returnable, the applicant must serve the summons and a copy of the supporting affidavit on each of the other persons by whom the application might have been made, and on every person named in the Sheriff's list.

(6) On the hearing of the application the applicant must produce to the Court the Sheriff's list.

(7) Every person on whom the summons has been served may attend and be heard on the hearing of the application.

(8) The Court at the hearing of the summons may make such order as to the mode of sale as may be just.

(9) In this Rule the term "Sheriff" includes any officer charged with the execution of any writ of execution.

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## ORDER 48

### Examination of Judgment Debtors, etc.

Order for  
examination.  
Cf. W.A.  
O.XL, R.32.  
Cf. E. O.48,  
R.1.  
Supreme  
Court Act  
1935,  
s.126(2).

1. (1) Where a judgment or order is for the payment of money, the party entitled to enforce it may apply *ex parte* to the Court for an order that the debtor liable under the judgment or order, or if the debtor is a body corporate, an officer thereof, attend before a Judge or an officer of the Court and be orally examined as to the questions—

(a) whether any and, if so, what debts are owing to the debtor; and

(b) whether the debtor has any and what other property or means of satisfying the judgment or order,

and the Court may make an order for the attendance and examination of the debtor or any other person, and for the production or impounding of any books or documents in the possession of the debtor relevant to the questions aforesaid at the time and place appointed for the examination.

(2) An order made under this Rule must be served personally on the debtor and on any officer of a body corporate ordered to attend for examination.

(3) Any difficulty arising under an examination under this Rule before an officer of the Court, including any dispute as to the obligation of the person being examined to answer any questions put to him, may be summarily referred to a Judge who may determine it or give such directions for determining it as he thinks fit.

(4) In this Rule the term "Officer" in relation to a body corporate includes a former officer of the body corporate.

2. Where, in the case of a judgment or order, other than a judgment or order for the payment of money, a difficulty arises in or about its execution or enforcement, the Court may make an order under Rule 1 for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and Rule 1 shall apply accordingly with the necessary modifications.

Difficulty in  
enforcing  
judgment.  
Cf. W.A.  
O.XL, R.33.  
Cf. E. O.48,  
R.2.

3. It is the duty of the officer conducting the examination to take down, or cause to be taken down, in writing the statement made by the debtor or other person at an examination under this Order, and to read it to him, and request him to sign it, and if he refuses to sign the statement the officer shall sign it.

Examination  
to be  
recorded.  
Cf. E. O.48,  
R.3.

4. The costs of any application under Rules 1 and 2 and of any proceedings arising therefrom or incidental thereto shall be in the discretion of the Court, or in the discretion of the officer conducting the examination, if the Court shall so direct.

Costs.  
Cf. W.A.  
O.XL, R.35.

## ORDER 49

### Attachment of Debts

1. Save as appears in these Rules the practice and procedure relating to the attachment of debts is contained in section 126 of the Act.

Section 126  
of the Su-  
preme Court  
Act 1935 to be  
referred to.

2. An order nisi under section 126 (3) of the Act ordering a garnishee to appear to show cause shall be in Form No. 53 and must at least 7 days before the time appointed thereby for the further consideration of the matter, be served—

Service of  
order to show  
cause.  
Cf. E. O.49,  
R.3.

(a) on the garnishee personally, and

(b) unless the Court otherwise directs, on the judgment debtor.

3. (1) Garnishee proceedings shall not be taken against money standing to the credit of a judgment debtor in court, but in such case the judgment creditor may apply to the Court by summons for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application, be paid to the judgment creditor.

Money in  
court.  
Cf. E. O.49,  
R.9.

(2) A copy of any summons issued under this Rule must be served on the Accountant, and the money to which the application relates shall not be paid out of court until after the determination of the application.

(3) Unless the Court otherwise directs a summons issued under this Rule must be served on the judgment debtor 7 days at least before the day fixed therein for the hearing of the summons.

(4) The Court on an application under this Rule may make such order with respect to the money in court as it thinks just.

(5) Where an application is dismissed the applicant must forthwith serve notice of the dismissal on the Accountant.

Order  
absolute—  
form.

4. A garnishee order absolute under section 126 (5) of the Act shall be in such of Forms Nos. 54 or 55 as is appropriate in the particular case.

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## ORDER 50

### Charging Orders and Stop Orders

Order  
charging  
stocks and  
shares.  
Amended by  
G.G. 9/11/73,  
p. 4164.  
See Supreme  
Court Act  
1935,  
ss.128, 129.

1. (1) An order charging stocks or shares may be made by the Court, and the procedure for obtaining such an order shall be such as is directed, and the effect of such an order shall be such as is provided, by the Act.

(2) An order nisi charging stocks or shares shall be in Form No. 56 and an order absolute shall be in Form No. 57.

Meaning of  
"Company"  
and "stock".  
W.A.  
O.XLIV, R.5.

2. 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.

Stop notice  
as to stock.  
Ib. R.6.

3. 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 Form No. 58 with such variations as circumstances may require, and on filing the same in the Central Office with a notice in Form No. 59 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.

Claimants  
address to  
be stated.  
Ib. R.7.

4. 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, and that address, subject to Rule 5, shall be his address for service.

Change of  
address.  
Ib. R.9.  
Cf. E. O.50,  
R.11(4).

5. The address stated under Rule 4 may from time to time be changed by the person by or on whose behalf the affidavit is filed by serving on the Company concerned, a notice to that effect, and as from the date of such notice the address stated therein shall for the purpose of that Rule be the address for service of that person.

6. (1) Where the duplicate of the notice filed under Rule 3 has been served on a Company, then so long as the notice is in force the Company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the notice was filed at his address for service, a notice informing him of the request for such transfer or payment.

Effect of stop notice.  
Cf. W.A. O.XLIV, R.12.  
Cf. E. O.50, R.12.

(2) Where a company receives a request for such a transfer or payment as is mentioned in paragraph (1) made by or on behalf of the person in whose name the stock specified in the notice is standing, the Company shall not by reason only of that notice refuse to register the transfer or make the payment for more than 8 days after receipt of the request except under the authority of an order of the Court.

7. If the person who files a notice under Rule 3 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.

Amendment of stop notice.  
Cf. W.A. O.XLIV, R.13.

8. (1) The person by whom or on whose behalf a notice under Rule 3 was filed may withdraw it by serving a written request for its withdrawal on the Company on which the notice was served.

Withdrawal or discharge of notice.  
Cf. W.A. O.XLIV, R.11.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be attested by a practitioner.

Cf. E. O.50, R.14.

(3) The Court, on the application of any person claiming to be interested in the stock to which a notice under Rule 3 relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made by originating summons which must be served on the person on whose behalf the notice under Rule 3 was filed, but no appearance need be entered to the summons.

9. (1) When any person—

(a) has a mortgage or charge on the interest of any person in funds in court, or

(b) is the assignee of any such interest, or

(c) is a judgment creditor of the person entitled to that interest,

the Court on the application of such firstmentioned person may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds or any part therefrom, without notice to the applicant.

Stop order where funds in Court.  
Cf. W.A. O.XLIV, RR.14, 15.  
Cf. E. O.50, R.10.

(2) If there is a cause or matter relating to the funds in court, an application for an order under this Rule must be made by summons, but otherwise the application must be made by originating summons.

(3) The summons must be served on every person whose interest might be affected by the order sought, and on the Accountant.

(4) Without prejudice to the powers and discretion of the Court as to costs, the Court may order the applicant for an order under this Rule to pay the costs of any party to such cause or matter, or of any person interested in those funds, occasioned by the application.

Cf. H.Ct.  
O.47, R.1(a).

(5) In this Rule "funds in court" means any money, government security, or annuity, or other securities, including shares, or a part of them, standing or to be placed to the credit of an account in the books of the Court.

Order prohib-  
iting transfer  
of stock.  
Cf. E. O.50,  
R.15.

10. (1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any stock of any Company, may by order prohibit that company from registering any transfer of such part of that stock as may be specified in the order or from paying any dividend or interest arising therefrom.

(2) An application for an order under this Rule may be made by originating summons, and no appearance thereto need be entered.

(3) The Court may vary or discharge an order made under this Rule on such terms as to costs as it thinks fit.

Charging  
order on  
money in  
court.  
Cf. E. O.50,  
R.8.

11. (1) For the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person, the Court may by order impose on any interest to which the judgment debtor is beneficially entitled to any money in court identified in the order, a charge for securing payment of the amount due under the judgment or order and interest thereon.

(2) Such order shall in the first instance be an order to show cause, stating the time and place for the further consideration of the matter and imposing the charge until that time in any event.

(3) An application for an order under this Rule must be made *ex parte* supported by an affidavit.

(4) Unless the Court otherwise directs a copy of the order to show cause must at least 7 days before the time fixed thereby for the further consideration of the matter, be served on the judgment debtor, and if he does not attend on such further consideration proof of service must be given.

(5) A copy of the order to show cause must as soon as practicable after the making thereof be served on the Accountant.

(6) No disposition by the judgment debtor of his interest to any money in court to which an order to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

(7) Until such order is discharged or made absolute the Accountant shall not pay to any person the money in court to which such order relates, except with the authority of the Court.

(8) On the further consideration of the matter the Court may make the order absolute with or without modifications, or may discharge the order.

12. The Court on the application of the judgment debtor or any other person interested in the money in court to which an order under Rule 11 relates, may at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs as it thinks fit.

Discharge of  
charging  
order.  
Cf. E. O. 50,  
R.7.

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## ORDER 51

### Receivers

1. (1) An application for the appointment of a receiver may be made by summons (Form No. 60) or motion.

Application  
for receiver  
and injunc-  
tion.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for an order under paragraph (1).

Cf. E. O. 30,  
R.1.

(3) In special circumstances the application for such injunction may be made *ex parte* on affidavit.

(4) On the hearing of an application under paragraph (3) the Court may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver, and may direct that such summons be issued, returnable on a date fixed by the Court (Form No. 61 or No. 62).

2. Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount which may probably be obtained by the receiver and to the probable costs of his appointment, and may direct an inquiry on any of these matters or any other matter before making the appointment.

Appointment  
of receiver  
by way of  
equitable  
execution.  
Cf. W.A.  
O. XLIX,  
R.17.  
Cf. E. O. 51,  
R.1.

3. (1) Where a judgment is given or order made, directing the appointment of a receiver, then unless the judgment or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this Rule.

Receiver's  
security.  
Cf. W.A.  
O. XLIX, R.18.  
Cf. E. O. 30,  
R.2.

(2) Where a person is required to give security in accordance with this Rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) The security referred to in paragraph (2) shall, unless the Court otherwise directs, be by recognisance in Form No. 63 taken before a person authorised to administer oaths for the purposes of the Court, or if the amount for which security is to be given does not exceed \$2,000, by an undertaking.

(4) The recognisance or undertaking must be filed in the Central Office, and shall be kept as of record until duly vacated.

Remuneration of Receiver.  
Cf. W.A. O. XLIX, R. 18.  
Cf. E. O. 30, R. 3.

4. A person appointed receiver shall be allowed such remuneration, if any, as may be fixed by the Court.

Accounts.  
Cf. W.A. O. XLIX, RR. 20, 22, 24.  
Cf. E. O. 30, R. 4.

5. (1) A receiver must file accounts at such intervals or on such dates as the Court may direct, and each such account must be verified by affidavit.

(2) The receiver on filing an account must thereupon obtain an appointment for the purpose of passing such account, and serve the account with a note of the appointment on each party interested who has an address for service in the proceedings.

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

Payment of balances by receiver.  
Cf. W.A. O. XLIX, R. 20.  
Cf. E. O. 30, R. 5.

6. The Court shall fix the days upon which the receiver must pay into court the amount shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him.

Default by receiver.  
Cf. W.A. O. XLIX, R. 23.  
Cf. E. O. 30, R. 6.

7. (1) Where a receiver fails—

- (a) to file an account or affidavit;
- (b) to attend for the passing of any account of his;
- (c) to make any payment; or
- (d) to perform any duty,

he, and any or all of the parties to the cause or matter in which he was appointed, may be required on a summons taken out by the Master or any party, to attend before a Judge to show cause for the failure, and the Judge may, either in chambers or after adjournment into court, give such directions as he thinks proper including, if necessary, the discharge of the receiver, and the appointment of another and the payment of costs.

(2) Without limiting paragraph (1) where a receiver fails to attend for the passing of any account of his, or fails to file any account or fails to pay into court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account, and may where he has failed to pay any such sum into court charge him with interest at the rate of 5 per cent. per annum on that sum while in his possession as receiver.

Books to be deposited.

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

## ORDER 52

**Interlocutory Injunctions, Interim Preservation of Property**

1. (1) An application for the grant of an injunction may be made by any party to a cause or matter either before at or after the hearing of the cause or matter, whether or not the injunction was claimed in the party's writ, originating summons, counterclaim or third party notice, as the case may be.

Application for injunction.  
Cf. W.A. O.XLIX, RR.6, 13.  
Cf. E. O.29, R.1.

(2) If the case is one of urgency the plaintiff may make the application *ex parte* on affidavit, but otherwise the application must be made by motion or summons.

(3) In the case of urgency a person who intends to begin proceedings may make an application for the grant of an injunction before the issue of the writ or originating summons by which the cause or matter is to be begun, and the Court may grant the application on terms providing for the issue of the writ or originating summons, and such other terms, if any, as the Court thinks fit.

2. (1) The Court may, on the application of any party to a cause or matter, make an order for the detention, custody, preservation or inspection of any property which is the subject-matter of a cause or matter, or as to which any question may arise therein.

Detention, preservation or inspection of property.  
Cf. W.A. O.XLIX, RR.1, 4, 7.  
Cf. E. O.29, R.2.

(2) For the purpose of enabling an order under paragraph (1) to be carried out the Court may by order authorise a person to enter upon or into any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a fund is in dispute in a cause or matter, the Court may order that the fund be paid into court or otherwise secured.

(4) An order under this Rule shall be subject to such terms, if any, as the Court thinks just.

(5) Applications for orders under this Rule must be made by summons or by notice under Order 29, Rules 5 or 6.

3. (1) The Court may for the purpose of enabling the proper determination of any cause or matter or of any question arising therein, make orders on terms for—

Power to order taking of samples, etc.  
Cf. W.A. O.XLIX, R.4.  
Cf. E. O.29, R.3.

- (a) the taking of samples of any property;
- (b) the making of any observation of any property;
- (c) the trying of any experiment on or with any property; or
- (d) the observation of any process.

(2) An order under paragraph (1) may authorise any person to enter upon or into any land or building in the possession of any party, or to do any other thing for the purpose of getting access to the property.

(3) Rule 2 (5) applies in relation to an application for an order under this Rule as it applies to an application for an order under that Rule.

Disposal of  
perishable  
property  
etc.  
Cf. W.A.  
O.XLIX, R.3.  
Cf. E. O.29,  
R.4.  
Cf. H.Ct.  
O.49, R.2.

4. (1) The Court may on the application of a party make an order for the sale or other disposal by a person named in the order and in such manner and on such terms (if any), as the Court thinks fit, of—

- (a) any property of a perishable nature;
- (b) any shares or securities which appear likely to depreciate in value; or
- (c) any personal property whatever which for any just and sufficient reason it is desirable to sell at once.

(2) This Rule applies to goods, wares, merchandise, shares, securities, and personal property which are the subject of a cause or matter or as to which a question arises in a cause or matter.

(3) Rule 2 (5) applies in relation to an application for an application under this Rule as it applies in relation to an application for an order under that Rule.

Order for  
early trial.  
Cf. W.A.  
O.XLIX,  
R.2.  
Cf. E. O.29,  
R.5.

5. Where on the hearing of an application made before the trial of a cause or matter, for an injunction, or appointment of a receiver, or an order under Rule 2, 3 or 4, it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly, and may direct that such trial be held at such place and time as the Court thinks fit, and as respects the period before trial, may make such order as the justice of the case requires.

Recovery of  
personal  
property  
subject to lien.  
Cf. W.A.  
O.XLIX,  
R.9.  
Cf. E. O.29,  
R.6.

6. Where—

- (a) the plaintiff, or the defendant by way of counterclaim, seeks to recover specific property other than land; and
- (b) the party from whom the recovery is sought does not dispute the title of the party making the claim, but claims to be entitled to retain the property by virtue of a lien, or otherwise as security for a sum of money,

the Court at any time after the claim to be so entitled appears from the pleadings (if any), or by affidavit or otherwise to its satisfaction, order that the party seeking to recover the property be at liberty to pay into Court to abide the event of the action, the amount of money in respect of which the security is claimed, and such further sum (if any) for interest and costs as the Court directs, and that upon such payment being made, the property claimed be given up to the party claiming it.

Directions.  
Cf. E. O.29,  
R.7.

7. (1) The Court, on the hearing of an application made under any of the foregoing provisions of this Order, may give directions as to the further proceedings in the cause or matter.

(2) Where the application is in an action begun by writ the Court may order that the action be before the Court for directions under Order 29 either forthwith, or upon such date as the Court may appoint, and, if it thinks fit, may dispense with the issuing of a summons under that Order.

8. Where—

- (a) any real or personal property forms the subject-matter of any proceedings in the Court; and
- (b) the Court is satisfied that it will be more than sufficient to answer all the claims on it which ought to be provided for in the proceedings;

Allowance of income or transfer of property *pendente lite*.

Cf. W.A. O.LXIX, R.10.

Cf. E. O.29, R.8.

the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein, or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

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**ORDER 53**

**Sales of Land by the Court**

1. In this Order "land" includes any interest in, or right over, land.

Interpretation.  
Cf. E. O.31, R.1.

2. If in any cause or matter relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, shall deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

Power to order sale of land.  
Cf. W.A. O.L, R.1.

3. (1) Where an order is made directing that land be sold the Court may appoint a party or some other person to have the conduct of the sale and may permit that party or person to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or under Rule 4 direct for the best price that can be obtained.

Manner of sale.  
Cf. W.A. O.L, R.2.  
Cf. E. O.31, R.2.

(2) The Court may direct any party to join in the sale and conveyance or transfer, or in any other matter relating to the sale.

4. (1) The Court may either on the making of the order for sale, or on a subsequent application give such further directions as it thinks fit for the purpose of effecting the sale, including directions—

Directions.  
Cf. E. O.31, R.2.

- (a) appointing the party or person who is to have the conduct of the sale;
- (b) fixing the manner of sale, that is to say, whether the sale is to be by contract conditional on the approval of the Court, by private treaty, by public auction, by tender, or by some other manner;

- (c) fixing a reserve or minimum price;
- (d) requiring payment of the purchase money into court or to trustees or other persons;
- (e) for settling the particulars and conditions of sale;
- (f) for obtaining evidence of value;
- (g) fixing the remuneration to be allowed to any auctioneer, real estate agent, or other person.

(2) An application under paragraph (1) which is made subsequent to the order for sale may be made by summons.

Certificate of sale.  
Cf. W.A.  
O.L. R.7.  
Cf. E. O.31,  
R.3.

5. (1) Where land is sold pursuant to this Order the result of the sale must be certified—

- (a) in the case of a sale by public auction, by the auctioneer who conducted the sale, and
- (b) in any other case, by the solicitor of the party or person having the conduct of the sale,

unless in either case the Court otherwise orders.

(2) The Court may require that the certificate be verified by the affidavit of the auctioneer or solicitor, as the case may be.

(3) The solicitor of the party or person having the conduct of the sale must file the certificate and any affidavit verifying it.

Mortgage, exchange, or partition.  
Cf. E. O.31,  
R.4.

6. Rules 3, 4 and 5 apply so far as applicable and with the necessary modifications, to the mortgage, exchange or partition of any land under an order of the Court, as they apply to a sale of any land pursuant to this Order.

Reference of matters to counsel.  
Cf. W.A.  
O.L. R.9.  
Cf. E. O.31,  
R.5.

7. The Court may refer to counsel—

- (a) any matter relating to the investigation of the title to any land with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof,
- (b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement, conditions of sale or other instrument, and
- (c) any other matter the Court thinks fit,

and may act upon the opinion given by counsel in the matter referred.

Objection to counsel's opinion.  
Cf. W.A.  
O.L. R.10.  
Cf. E. O.31,  
R.6.

8. Any party may object to any opinion given by counsel on a reference under Rule 7, and thereupon the point in dispute shall be determined by the Judge either in chambers or in court as he thinks fit.

## ORDER 54

**Originating and other Motions**

1. This Order applies to all motions, subject however, to any special provisions contained in these Rules or made by or under any Act.

Application of Order.  
Cf. E. O.8, R.1.

2. Where by these Rules any application is authorised to be made to the Court, such application if made in court, must be made by motion.

Application by motion.  
Cf. W.A. O.LI, R.1.

3. (1) Except where an application by motion may properly be made *ex parte*, a motion shall not be made without previous notice to the party to be affected thereby, but the Court, if satisfied that the delay caused by giving notice would or might entail irreparable or serious mischief, may make an order *ex parte* on such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court thinks just.

Notice of motion.  
Cf. W.A. O.LI, R.3.  
Cf. E. O.8, R.2.

(2) Any party affected by such an order may apply to the Court to set it aside.

4. Unless upon application, which may be made *ex parte*, the Court otherwise orders, there must be at least 2 clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

Length of notice of motion.  
Cf. W.A. O.LI, R.5.  
Cf. E. O.8, R.2(2).

5. (1) The form of the notice of an originating motion must be in Form No. 64 and the notice of any other motion in Form No. 65.

Form of notice of motion.

(2) Where leave has been given under Rule 4 to serve short notice of motion, that fact must be stated in the notice.

(3) The notice of a motion must contain a concise statement of the nature of the claim made or the relief or remedy sought.

6. (1) The notice of motion by which proceedings are begun must be issued out of the Central Office.

Issue of notice of motion.

(2) The notice is issued upon its being sealed by the proper officer.

(3) Every other notice must be filed before service.

7. (1) The plaintiff may serve a notice of a motion to be made in an action upon a defendant with the writ or other originating process, or at any time after service of such writ or other originating process, whether or not the defendant has entered an appearance in the action.

Service of notice of motion with writ.  
Cf. W.A. O.LI, R.9.  
Cf. E. O.8, R.4.

(2) Where notice of a motion is to be served on a person who has not entered an appearance, and is not in default of appearance the notice must be served personally.

Adjournment,  
etc.  
Amended by  
G.G. 9/11/73,  
p. 4164.  
Cf. W.A.  
O.L.I.  
RR.6, 7.

8. (1) If on the hearing of a motion or other application the Court is of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court 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 may think fit to impose.

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

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**ORDER 55**

**Committal and Attachment**

Interpretation.

1. In this Order—

“Contemnor” means a person guilty or alleged to be guilty of contempt of court.

Committal  
for contempt  
of court.  
Cf. E. O.52,  
R.1.

2. (1) Subject to the Act the power of the Court or Full Court to punish for contempt of Court may be exercised by an order of committal.

(2) Subject to paragraph (3) an order of committal may be made only by the Full Court.

(3) Where contempt of court is committed in the face of the Court or in the hearing of the Court, or consists of disobedience to a judgment or order of the Court or a breach of an undertaking to the Court, an order of committal may be made by a single Judge.

Contempt in  
the face of the  
Court.  
Cf. H.Ct.  
O.56, R.1.

3. (1) When it is alleged or appears to the Court on its own view that a person is guilty of contempt of court committed in the face of the Court or in the hearing of the Court, the presiding Judge may, by oral order, direct that the contemnor be arrested and brought before the Court as soon thereafter as the business of the Court permits, or may issue a warrant under his hand for the arrest of the contemnor.

(2) When the contemnor is brought before the Court, the Court shall—

- (a) cause him to be informed orally of the contempt with which he is charged;
- (b) require him to make his defence to the charge;
- (c) after hearing him proceed, either forthwith or after adjournment, to determine the matter of the charge; and
- (d) make an order for the punishment or discharge of the contemnor.

(3) The Court may, pending disposal of the charge—

- (a) direct that the contemnor be detained in such custody as the Court directs; or
- (b) direct that the contemnor be released on bail.

(4) The powers given by this Rule are exercisable, *mutatis mutandis*, by a Judge sitting in chambers except that the contemnor must be brought before the Court sitting in court, and the Court shall hear and determine the charge and make the order.

4. (1) In a case to which the last preceding Rule does not apply, and subject to paragraph (2), application for punishment for contempt of court must be made by motion on notice to the contemnor, for an order that he be committed to prison for his contempt.

Other cases  
of contempt.  
Cf. H.Ct.  
O.56, R.2.  
Cf. S.A.  
O.44, R.5.

(2) Applications for committal for contempt of court consisting of disobedience to judgments or orders of the Court made by a Judge, or orders of the Court made by the Master, may be made by summons to a Judge in chambers.

5. (1) The notice of motion or summons (as the case may be) must specify the contempt of which the contemnor is alleged to be guilty, and be entitled in the proceeding, if any, with reference to which the contempt is alleged to have been committed or if it is not alleged to have been committed with reference to a particular proceeding, shall be entitled "The Queen against" the contemnor (naming him) *ex parte* the applicant.

Form of  
notice and  
service.  
Cf. H.Ct.  
O.56,  
RR. 3, 4, 5.

(2) Unless the Court otherwise orders, the notice of motion or summons accompanied by a copy of the affidavit in support of the application must be served personally on the contemnor.

6. Where—

- (a) notice of motion for punishment for contempt of court has been filed, or proceedings for punishment of a contempt have been commenced; and
- (b) it appears to the Court that the contemnor is likely to abscond or otherwise withdraw himself from the jurisdiction of the Court,

Arrest.  
Cf. H.Ct.  
O.56, R.6.

the Court may issue a warrant for the arrest of the contemnor and his detention in custody until he is brought before the Court to answer the charge unless he, in the meantime, gives security in such manner and in such sum as the Court directs for his appearance in person to answer the charge and to submit to the judgment or order of the Court.

7. (1) The Court may punish contempt of court by committal of the contemnor to prison, or by imposing a fine on him, or by both committal and fine.

Punishment.  
Ib. RR.9, 10.

(2) When the Court imposes a fine, it may order that the contemnor be imprisoned, or further imprisoned, until the fine is paid.

(3) Where the contemnor is a corporation the Court may punish contempt of court by sequestration, or fine or both.

(4) An order of committal may be in Form No. 66.

Power to  
suspend  
execution of  
committal  
order.  
Cf. E. O.52,  
R.7.

8. The Court making an order of committal may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as the Court thinks fit.

Discharge.  
Cf. H.Ct.  
O.56, R.11.  
Cf. E. O.52,  
R.8.

9. The Court may, on the application of any person committed to prison for contempt of court, discharge him, notwithstanding that the term for which he may have been ordered to be committed has not expired.

Saving for  
other  
powers.  
Cf. E. O.52,  
R.9.

10. (1) Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court—

(a) on an application for an order that a contemnor be required to pay a fine or give security, to make such an order; or

(b) to enforce orders and judgments by writ of attachment in the cases provided for in the Act.

Supreme  
Court Act,  
1935,  
ss. 117(1)(g),  
135.

(2) The provisions of this Order so far as applicable, and with the necessary modifications apply in relation to an application for an order that a contemnor pay a fine or give security, as they apply in relation to an application for an order of committal.

Court may  
make  
peremptory  
order in first  
instance.  
Amended by  
G.G. 9/11/73,  
p. 4164.  
Cf. H.Ct.  
O.45, R.15.

11. Where there has been non-performance of an undertaking given to the Court, the Court may, in the first instance, instead of directing the issue of a writ of attachment or ordering committal, make a peremptory order for the performance of the act undertaken to be done.

Application  
of Rules  
to attach-  
ment.  
Cf. H.Ct.  
O.45, R.16.

12. Rules 6 to 9 of this Order apply in the case of applications for attachment or committal for disobedience to judgments or orders, or for failure to perform or observe any such undertaking as is mentioned in Rule 11.

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## ORDER 56

### Mandamns, Certiorari, Prohibition, Quo Warranto

#### 1.—General

Application  
*ex parte*.  
Amended by  
G.G. 9/11/73,  
p. 4164.  
Cf. H.Ct.  
O.55,  
RR.1, 8.  
Cf. Vict.  
O.53, RR.1, 4

1. (1) An application for—

(a) a writ of *Mandamus*, *Certiorari* or Prohibition, or for leave to exhibit an information of *Quo Warranto*; or

(b) relief of like nature to *Mandamus* or *Quo Warranto*,

may be made *ex parte* to the Court, and must be supported by affidavit.

(2) The motion for an order to show cause and all subsequent proceedings shall be entitled—

Title of  
proceedings.

“In the matter of an application for (description of the writ or order sought, *e.g.*, a writ of Prohibition) against (name of every person or authority against whom the relief is sought) *EX PARTE* (name of the applicant) applicant”.

(3) (a) Where a writ of *Mandamus*, *Certiorari* or Prohibition is sought against a judicial or public authority or officer, the authority or officer shall be described by his or their name, and the name of his or their office.

(b) In all other cases a party respondent may be described in the title by his name or the name of his office or both, or, in the case of a magistrate or justice in a court of summary jurisdiction, as the magistrate or justice at the place where the court is held.

(4) The applicant shall in all cases of applications under this Rule be called “the applicant”.

(5) Subject to paragraph (6) the application shall, in the first instance, be for an order calling upon the parties interested in resisting the application to show cause why the writ should not be issued, or the information filed, or the relief of like nature to *Mandamus* or *Quo Warranto* given.

Order to show  
cause.

(6) Where it appears necessary for the advancement of justice, the Court may in its discretion, grant an order absolute in the first instance for a writ of *Mandamus*, *Certiorari*, or Prohibition, or for leave to exhibit an information of *Quo Warranto*.

Order may be  
absolute in  
certain cases.

2. When application to show cause is made to a Judge in chambers or otherwise he may, if he thinks fit, direct that the application be made by notice of motion to a Judge sitting in court, or to the Full Court, and may adjourn the application so that notice of the application may be given.

Judge may  
direct appli-  
cation in  
Court or to  
Full Court.  
Cf. H.Ct.  
O.55, R.2.

3. An order to show cause shall be to show cause before the Full Court, unless the matter appears to be one of urgency, in which case the Court may make the order returnable before the Court in court or chambers.

Order return-  
able before  
Full Court  
except in  
special cases.  
Amended by  
G.G. 9/11/73,  
p. 4164.  
Cf. H.Ct.  
O.55, R.4.

4. (1) The order to show cause, or notice of motion must be served on such persons and in such manner as the Court directs, and unless the Court otherwise directs, there must be at least 7 clear days between service of the order to show cause or the notice, and the date named therein for the hearing of the application.

Service of  
order to  
show cause or  
notice of  
motion.  
Amended by  
G.G. 9/11/73,  
p. 4164.  
Cf. H.Ct.  
O.55, R.5.

(2) Where the application relates to any proceedings in or before a court, and the object is either to compel the court or an officer of the court to do an act in relation to the proceedings or to quash the proceedings or any order made therein, the order to show cause or notice of motion must be served on the clerk or registrar of the court, the other parties to the proceedings, and where an objection to the conduct of the judge or magistrate or justices constituting the court is to be made, on the judge, magistrate or justices.

(3) An affidavit of service must be filed before the order to show cause or notice of motion is placed in the list for hearing, and if any person who ought to be served under this Rule has not been served, the affidavit must state that fact and the reason why service has not been effected.

(4) If on the application for the order absolute or the hearing of the motion, the Court is of opinion that any person who ought to have had notice of the application has not been served, whether or not he is a person who ought to have been served under or pursuant to the foregoing provisions of this Rule, the Court may direct service on that person, and adjourn the hearing in the meantime on such terms, if any, as it or he may direct.

Terms, stay of proceedings.  
Amended by G.G. 9/11/73, p. 4164.  
Cf. H.Ct. O.55, RR.9, 10.

5. (1) The Court may grant the order to show cause upon such terms as to costs, and as to giving security, or otherwise, as it or he thinks fit.

(2) An order *nisi* for *Certiorari* or Prohibition, shall, if the Court so directs, operate as a stay of the proceedings in question until the determination of the application, or until the Court otherwise orders.

Applicant limited to grounds etc. in order *nisi*.  
Amended by G.G. 9/11/73, p. 4164.  
Cf. H.Ct. O.55, R.11.

6. (1) The grounds of the application and the relief sought must be set out in the order *nisi* or notice of motion, if any, and if the applicant intends to ask for any amendment at the hearing he must give notice of his intention and of the proposed amendment.

(2) The Court may allow any amendment which it thinks necessary for the advancement of justice, but except by leave of the Court a ground shall not be relied on or relief sought on the hearing other than a ground set out or relief sought in the order *nisi* or notice of motion.

Right to be heard in opposition.  
Amended by G.G. 9/11/73, p. 4164.  
Ib. R.12.

7. (1) On the hearing of the application the Court shall hear any person who desires to oppose it, and appears to the Court to be a proper person to be heard, notwithstanding that he has not been served with the order *nisi* or notice of motion.

(2) A person who is served with the order *nisi* or notice of motion or who is heard under this Rule, may, in the discretion of the Court, be ordered to pay costs.

Additional affidavits, determination of issue etc.  
Amended by G.G. 9/11/73, p. 4164;  
G.G. 2/4/76, p. 1041.  
Ib. R.13.

8. (1) On the hearing of the application the Court may allow the applicant to use further affidavits upon such terms as to adjournment or costs as the Court thinks fit.

(2) Where the applicant intends to ask to be allowed to use further affidavits, he must give reasonable notice of his intention to every other party.

(3) When any question or issue of fact arises upon the affidavits the Court may give such directions as it thinks fit for the determination of the question or issue by trial or inquiry.

9. (1) An order absolute must be served.

Order absolute, costs.  
Amended by G.G. 9/11/73, p. 4164.  
Cf. Vict. O.53, RR.5, 6.

(2) When an order *nisi* is made absolute the Court may dispose of the costs of the proceedings either by the final judgment or by a separate order.

10. (1) A writ issued in proceedings to which this Order relates shall be issued out of the Central Office and must be prepared by the solicitor or party seeking to issue it, and shall, before being sealed, be indorsed with the name and address of that solicitor or party, and if issued out by the solicitor as agent, with the name and address of the principal also.

Issue and filing of writs.  
Ib. R.16.

(2) Upon presentation of every such writ for sealing, a copy thereof signed by or on behalf of the solicitor for the party issuing it, or by the party, if he is proceeding in person, must be filed.

(3) Every such writ must be filed in the Central Office together with the return thereto and a copy of any order made thereon.

## 2.—*Certiorari*.

11. (1) An order *nisi* for a writ of *Certiorari* to remove a judgment, order, conviction or other proceeding of an inferior court or tribunal, or of a magistrate or justices, for the purpose of its being quashed, shall not be granted unless the application for the order is made within 6 months after the date of the judgment, order, conviction or other proceeding, or within such other period as may be prescribed by any enactment, or except where a period is so prescribed, the delay is accounted for to the satisfaction of the Court to which the application is made.

Time for application.  
Amended by G.G. 9/11/73, p. 4165.  
Cf. H.Ct. O.55, R.17.  
Cf. E. O.53, R.2(2).

(2) Where the judgment, order, conviction or other proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Court may adjourn the application for the order *nisi* until the appeal is determined or the time for appealing has expired.

12. An order *nisi* for a writ of *Certiorari* to remove any proceedings for the purpose of their being quashed, shall not be granted unless a copy of the warrant, order, conviction, inquisition or record, verified by affidavit has been filed, or the failure of the applicant to do so is accounted for to the satisfaction of the Court hearing the application.

Copy of warrant, order etc. to be produced.  
Amended by G.G. 9/11/73, p. 4165.

Order to  
quash in the  
first instance.  
Cf. Vict. O.53,  
R.11.

13. Where on the return of any order *nisi* the Court directs a writ of *Certiorari* to issue, or where an order absolute for a writ of *Certiorari* is granted in the first instance, the Court may by the same order, direct that the judgment, order, conviction or decision of the inferior court or tribunal shall be quashed on the return without further order, and in that case the judgment, order, conviction, or decision is quashed upon the return without further order.

Forms.

14. A writ of *Certiorari* must be in Form No. 67 or Form No. 68, with such variations as the circumstances may require.

### 3.—*Mandamus*

Prosecutor to  
show interest.  
Cf. H.Ct.  
O.55, R.18.

15. (1) An order *nisi* for a writ of *Mandamus*, or for relief of a like nature shall be granted only on the application of a person who is interested in the relief sought.

(2) Subject to paragraph (3), the applicant must state by affidavit that the application is made at his instance as applicant.

(3) When the applicant is a corporation an officer or agent of the corporation must state by affidavit that the application is to be made by the corporation as applicant.

Form of writ.  
Amended by  
G.G. 9/11/73,  
p. 4165.  
Cf. H.Ct.  
O.55, R.19.

16. (1) Unless otherwise ordered by the Court, a writ of *Mandamus* shall command the person to whom it is addressed to do the act in question, or show cause why he has not done it.

(2) The Court may direct that the command shall be peremptory in the first instance.

(3) A writ of *Mandamus* must be in Form No. 69 with such variations as the circumstances may require.

Time for  
return of  
writ.  
Amended by  
G.G. 9/11/73,  
p. 4165.  
Ib. R.20.

17. Unless otherwise ordered by the Court, the writ shall be returnable within the same time after service as is allowed for appearance in the case of a writ of summons.

Service.  
Amended by  
G.G. 9/11/73,  
p. 4165.  
Ib. R.21.

18. Unless the Court otherwise directs—

(a) Where a writ of *Mandamus* is directed to one person only, the original writ shall be personally served upon him by delivering it to him; and

(b) Where the writ is directed to two or more persons, it shall be personally served upon all of them but one in the manner prescribed for personal service of a writ of summons, and shall be served upon the remaining one by delivering the original writ to him.

19. Unless otherwise directed by the Court, when a writ of *Mandamus* is directed to justices, or to a corporation, or a company, or a public authority, it shall be served on so many of the justices, or of the officers or members of the corporation or company or public authority as are competent to do the act commanded, unless by law some other mode of service is sufficient.

Service on corporate body, or justices.  
Amended by G.G. 9/11/73, p. 4165.  
Cf. Vict. O.53, R.18.  
Cf. H.Ct. O.55, R.22.

20. (1) The persons to whom a writ of *Mandamus* is directed shall, within the time allowed by the writ, file the writ or a copy of the writ in the Central Office, together with a certificate indorsed thereon or annexed thereto and signed by them, stating that they have done the act commanded by the writ, or stating the reason why they have not done so.

Return and service.  
Cf. H.Ct. O.55, RR.23, 24.  
Cf. Vict. O.53, RR.19, 20.

(2) A copy of the return must be served on the applicant on the day on which it is filed.

21. If the return does not certify that the act commanded has been done, the same proceedings shall be had and taken, and within the same time as if the return were a defence in an action in which the applicant was the plaintiff, and the persons to whom the writ is directed were the defendants and had pleaded the return as their defence.

Pleading to return.  
Cf. H.Ct. O.55, R.25.

22. When a point of law is raised in answer to a return or another 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 a motion for judgment being made or required.

No motion for judgment.  
Ib. R.26.  
Cf. W.A. O.LII, R.10.

23. If the questions of fact and law, if any, raised by the return are determined in favour of the applicant by judgment of the Court or otherwise, the applicant shall be entitled to a peremptory writ of *Mandamus* commanding the persons to whom the first writ was directed to do the act commanded therein and the peremptory writ shall be awarded by the judgment or if there is no judgment, by a separate order.

Peremptory writ.  
Cf. H.Ct. O.55, R.27.

24. (1) Where a peremptory writ is awarded in the first instance, the Court shall, at the time of granting the writ, direct by and to whom the costs of the proceedings shall be paid.

Costs where peremptory writ awarded in first instance, or on obedience.

(2) Where a peremptory writ is not awarded in the first instance, and the return to the writ certifies that the person to whom it is addressed has done the act commanded by the writ, an application for an order for the costs of the proceedings may be made at any time within one month after the return is filed.

Amended by G.G. 9/11/73, p. 4165.  
Ib. R.28.

(3) The application shall be made to the Court and, if it is reasonably possible, to the Judge by whom the writ was awarded.

Proceedings  
in nature of  
interpleader.  
Amended by  
G.G. 9/11/73,  
p. 4165.  
Cf. H.Ct.  
O.55, R.29.

25. When upon an application for a writ of *Mandamus* it appears that some person other than the applicant claims that the person to whom it is proposed to direct the writ shall do some act inconsistent with the act which the applicant claims to have done, the person to whom the order *nisi* or writ is directed may apply to the Court for an order that the last-named person be substituted for him or joined with him in all subsequent proceedings up to the issue of a peremptory writ of *Mandamus*, and the Court may make such order on the application as is just.

Proceedings  
not to abate.  
Ib. R.29(3).

26. Proceedings upon an application for a writ of *Mandamus* shall not abate or be discontinued by reason of the death, resignation, retirement or removal from office of the person to whom the notice of motion, order *nisi* or writ is directed, but may be continued and carried on either in his name or otherwise, and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

Time.  
Amended by  
G.G. 9/11/73,  
p. 4165.  
Ib. R.30.

27. An application for a writ of *Mandamus*, or an order in the nature of *Mandamus*, to a judicial tribunal to hear and determine a matter must be made within 2 months after the date of the refusal to hear, or within such further time as is, under special circumstances, allowed by the Court.

*Mandamus* by  
order.  
Ib. R.31.

28. In any case in which the Court directs the issue of a peremptory writ of *Mandamus* in the first instance, the command may be expressed in an order of the Court without the issue of a writ, and the order shall have the same effect as a peremptory writ of *Mandamus*.

No action  
against  
party obeying  
writ or order.  
Amended by  
G.G. 9/11/73,  
p. 4165.  
Ib. R.32.  
Cf. W.A.  
O.LII, R.12.

29. An action or proceeding shall not be commenced or prosecuted against any person in respect of anything done in obedience to a writ of *Mandamus* or an order of the Court for relief of the like nature issued by the Court.

#### 4.—*Prohibition.*

Pleadings in  
Prohibition.  
Amended by  
G.G. 9/11/73,  
p. 4165.  
Cf. H.Ct.  
O.55, R.34.

30. The Court may in any case, instead of directing the issue of a writ of Prohibition, direct the applicant to deliver to the opposite party a statement of claim setting forth the facts upon which his claim to the writ is founded, and thereupon the same proceedings shall be had and taken in all respects as in an action.

Proceedings  
on judgment.  
Ib. R.35.

31. If judgment is given for the applicant, the judgment shall include a direction that a writ of Prohibition shall issue.

Writ of  
*Procedendo*.  
Amended by  
G.G. 9/11/73,  
p. 4165.  
Ib. R.36.

32. (1) Where a writ of Prohibition has been issued and it is afterwards made to appear to the Court that relief ought to be given against the judgment or order by which the writ was awarded on a ground on which relief might be given against a judgment in an action, the Court may direct that a writ of *Procedendo* shall be issued commanding the judicial tribunal to which the writ of Prohibition was issued to proceed to hear or determine the matter in question or otherwise proceed therein as if the writ of Prohibition had not been issued.

(2) A writ of *Procedendo* shall be in Form No. 70.

33. (1) The prohibition may be expressed in an order of the Court without the issue of a writ, and such order shall have the same effect as a writ of Prohibition.

Prohibition  
by order.  
1b. R.37.

(2) A writ of Prohibition shall be in Form No. 71.

#### 5.—*Quo Warranto*.

34. Subject to this Order, and to any direction as to practice or procedure given by the Court, the Rules of the Supreme Court apply, so far as they are relevant, to informations of *Quo Warranto*.

Rules of  
Court  
applicable.  
Amended by  
G.G. 9/11/73,  
p. 4165.

35. (1) The information shall be in the name of the Attorney-General or the applicant, as the case may be, on behalf of Her Majesty, and shall be signed by the Attorney-General or the applicant.

Signature and  
service of  
information.  
Cf. H.Ct.  
O.55, R.49.

(2) A copy of the information must be served upon the defendant, or, if at the return of the order *nisi* he appeared by solicitor, then upon his solicitor.

### ORDER 57

#### **Habeas Corpus**

1. (1) An application for a writ of *habeas corpus ad subjiciendum* may be made in the first instance to the Full Court, or to a Judge sitting in court or in chambers, unless the application is made on behalf of an infant, in which case it must be made in the first instance to a Judge sitting in chambers.

Application  
for writ of  
*habeas corpus*.  
Cf. E. O.54,  
R.1.  
Cf. S.A.  
O.60, RR.1, 2.

(2) The application may be made *ex parte*, and subject to paragraph (3) must be supported by an affidavit by the person restrained showing that the application is made at his instance and setting out the nature of the restraint.

(3) Paragraph (2) does not apply—

- (a) to an application made on behalf of an infant; or
- (b) when the person restrained is unable to make the affidavit.

(4) Where the person restrained is unable to make the affidavit required by paragraph (2) the affidavit may be made by some other person on his behalf and must state that the person restrained is unable to make the affidavit himself and for what reason.

2. (1) The Court or Judge to whom an application under Rule 1 is made *ex parte* may—

- (a) make an order forthwith for the writ to issue; or
- (b) where the application is made to a Judge otherwise than in Court, direct that a summons for the writ be issued or that an application be made by originating motion to the Full Court or to a Judge in court;

Power of  
Court when  
*ex parte*  
application  
made.  
Cf. E. O.54,  
R.2.  
Cf. S.A.  
O.60, RR.3, 4.

(c) where the application is made to a Judge in court, adjourn the application so that notice thereof may be given, or direct that application be made by originating motion to the Full Court;

(d) where the application is made to the Full Court, adjourn the application so that notice thereof may be given.

(2) The summons or notice of motion must be served on the person against whom the issue of the writ is sought, and on such other persons as the Court or Judge may direct, and unless the Court or Judge otherwise directs, there must be at least 4 clear days between the service of the summons or notice and the date named therein for the hearing of the application.

Copies of affidavits to be supplied.  
Cf. E. O.54, R.3.

3. Every party to an application under Rule 1 must supply to every other party on demand and on payment of the proper charges, copies of the affidavits which he proposes to use at the hearing of the application.

Power to order release of person restrained.  
Cf. E. O.54, R.4.

4. (1) Without prejudice to Rule 2 (1) the Court or Judge hearing an application for a writ of *habeas corpus ad subjiciendum* may, in its or his discretion, order that the person restrained be released, and such order shall be a sufficient warrant to any gaoler, constable or other person for the release of the person under restraint.

(2) Where such an application in a criminal cause or matter is heard by a Judge, and the Judge does not order the release of the person restrained, he shall direct that the application be made by originating motion to the Full Court.

Signed copy of writ to be filed.  
Cf. Vict. O.53, R.41.

5. When a writ of *habeas corpus* is presented for sealing, the person presenting it must at the same time file a copy of the writ signed by or on behalf of the solicitor for the party issuing it, or by the party himself if he is proceeding in person.

Directions as to return of writ.  
Cf. E. O.54, R.5.

6. Where a writ of *habeas corpus* is ordered to issue, the Court or Judge by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which, the writ is returnable.

Service of writ and notice.  
Cf. E. O.54, R.6.

7. (1) Subject to paragraphs (2) and (3) a writ of *habeas corpus ad subjiciendum* must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to the superintendent or keeper of a prison, or other government official, it must be served by leaving it with a servant, officer, or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in the manner provided by this Rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) Together with the writ there must be served a notice (in Form 72) stating the Court or Judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

8. (1) The person to whom a writ of *habeas corpus ad subjiciendum* is directed must at the time and place specified in the writ, make his return to the writ.

Return to writ  
of *habeas*  
*corpus*.  
Cf. H.Ct.  
O.55, R.42.  
Cf. E. O.54,  
R.7.

(2) The return must be indorsed on or attached to the writ and must state all the causes of the detention of the person restrained.

(3) The return must be filed.

(4) The return may be amended, or another return substituted for it, by leave of the Court or a Judge.

9. (1) Upon the return of a writ of *habeas corpus ad subjiciendum*, the return shall first be read, and a motion shall then be made for discharging or remanding the person restrained or for amending or quashing the return.

Procedure  
on hearing.  
Cf. E. O.54,  
R.8.

(2) Where the person restrained is brought up in accordance with the writ, he or his counsel shall first be heard, then the person denying his right to be discharged, or his counsel, and then the person restrained, or his counsel in reply.

10. A writ of *habeas corpus* must be in Form No. 73.

Form of writ.

## ORDER 58

### Proceedings by Originating Summons

#### 1.—Introductory.

1. Subject to the provisions of any Act and of these Rules, civil proceedings between parties, which may be heard in chambers, must be commenced by originating summons.

Proceedings  
to be heard  
in chambers  
to be com-  
menced by  
originating  
summons.

#### 2.—Administration and Trusts.

2. 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 or next of kin 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 chambers for such relief of the nature or kind following, as

Originating  
summons for  
relief without  
administra-  
tion.  
Cf. W.A.  
O.LV, R.4.

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 *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.

Summons for  
administra-  
tion.  
Ib. R.5.

3. 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 estate of the deceased;
- (b) the administration of the trust.

Service.  
Ib. R.6.

4. 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—

- (a) for the determination of any question, under subparagraphs (a), (e), (f) or (g) of Rule 2, the persons, or one of the persons, whose rights or interests are sought to be affected;
- (b) for the determination of any question, under subparagraph (b) of Rule 2, any member or alleged member of the class;
- (c) for the determination of any question, under subparagraph (c) of Rule 2, any person interested in taking such accounts;
- (d) for the determination of any question, under subparagraph (d) of Rule 2, any person interested in such money;
- (e) for relief under subparagraph (a) of Rule 3, the residuary beneficiaries, or next of kin, or some of them;
- (f) for relief under subparagraph (b) of Rule 3, the *cestuis que trustent*, or some of them;

- (g) 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.

5. It shall not be obligatory on the Court 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.

Decision without judgment for administration.  
Ib. R.13.

6. 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 may, in addition to the powers already existing—

Orders which may be made on application for administration or execution of trusts.  
Ib. R.14.

- (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.

7. The issue of a summons under Rule 2 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.

Interference with discretion of trustee, etc.  
Ib. R.16.

8. Where 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 shall otherwise direct.

Conduct of sale of trust property.  
Cf. W.A. O.XLIX, R.11.  
Cf. E. O.85, R.6.

9. [*Deleted by G.G. 10/1/75, p. 51.*]

#### 4.—*Declaration on Originating Summons.*

10. 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.

Construction of written instruments.  
W.A. O.LIV, R.1.

Construction  
or validity of  
statutes, etc.  
Ib. R.1A.

11. (1) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of a statute, or of a regulation, rule, by-law or instrument made or purporting to be made under a statute, or of the validity of any such regulation, rule, by-law, or instrument, may apply by originating summons for the determination of such question of construction or validity, and for a declaration as to the right claimed.

(2) This Rule is subject to any special statutory provision for the determination of any such matters.

Discretion of  
Court.  
Ib. R.4.

12. The Court shall not be bound to determine any such question of construction if in the opinion of the Court it ought not to be determined on originating summons.

Application  
by vendor or  
purchaser of  
land.  
Sale of Land  
Act, 1970,  
s.20.

13. A vendor or purchaser of land or any interest in land or their personal representatives may apply to the Court by originating summons in respect of any requisitions or objections or any claim for compensation or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract) and the Court may make such order upon the application as to the Court may appear just, and may order how and by whom all or any of the costs of and incidental to the application are to be borne and paid.

#### 5.—General.

Form and  
issue of  
originating  
summons.  
Cf. W.A.  
O.LIII,  
RR.4, 5A.  
Cf. H.Ct.  
O.52, R.7.  
Cf. E. O.7,  
RR.2, 5.

14. (1) An originating summons must be in Form No. 74 or 75 as the case may require and must be prepared by the applicant or his solicitor.

(2) The party taking out an originating summons shall be described as a plaintiff, and the other parties shall be described as defendants.

(3) Issue of an originating summons takes place upon its being sealed in the Central Office.

(4) The person presenting the summons for sealing must file a copy thereof at the time the summons is issued.

(5) An originating summons shall be entitled in the matter of the Act (if any) and the section thereof, under which the application is made and of the estate or trust, or of the property, person or matters, to which or to whom it relates.

(6) Where appearance to an originating summons is not required, the summons must state the persons upon whom it is intended to be served, or that it is not intended to be served on any person.

Duration  
and  
renewal:  
Concurrent  
summons.  
Cf. E. O.7,  
RR.4, 6.

15. Order 7 applies in relation to an originating summons as it applies in relation to a writ.

16. Unless otherwise directed by the Court, the time to be limited for appearance to an originating summons to which an appearance is required to be entered shall be calculated in accordance with the table contained in Order 5 Rule 11 as if the writ were an originating summons.

Time for appearance.  
Substituted by  
*G.G.* 3/10/75,  
pp. 3769-71.  
Cf. *W.A.*  
*O.L.H.*, R.6.

17. (1) Except as otherwise provided, a party served with an originating summons must before he is heard enter an appearance and give notice thereof to the other parties.

Entry of appearance.  
Cf. *H.Ct.*  
*O.52*, R.8.

(2) A party served with an originating summons may appear at any time before the hearing of the summons.

(3) If the party served appears at any time after the time limited by the summons for appearance he shall not, unless the Court otherwise orders, be entitled to any further time for any purpose, than if he had appeared according to the summons.

(4) The Court, if it sees fit so to do, may permit a party served with an originating summons to be heard on the summons although that party has not entered an appearance, on the undertaking of the solicitor of that party, or of the party himself, if he appears in person, to enter an appearance forthwith.

(5) The provisions of Order 12 apply, with the necessary modifications, in relation to an originating summons to which an appearance is required to be entered, as they apply in relation to a writ.

18. A respondent shall not be required to enter an appearance to an originating summons—

Where appearance not required.  
Cf. *S.A.*  
*O.54*, R.7.

- (a) for the taxation and delivery of bills of costs or for the delivery by any solicitor of a cash account or deeds, documents or papers, or for a solicitor to pay money;
- (b) under The Arbitration Act, 1895;
- (c) under Order 17 for interpleader relief;
- (d) in any other case where it is so provided by these Rules.

18A. (1) Unless otherwise directed by the Court, the plaintiff must serve an originating summons to which an appearance is not required to be entered, and a copy of every affidavit in support thereof, at least 10 clear days before the return day of the summons.

Time for service where appearance is not required.  
Added by  
*G.G.* 3/10/75,  
pp. 3769-71.

(2) Where the originating summons is not heard on the return day, a further day and time for the hearing may be fixed on the application of the plaintiff or, the applicant, as the case may be.

19. (1) Where any defendant served with an originating summons to which an appearance is required to be entered, has entered, or, within the time limited for appearing has failed to enter, an appearance, the plaintiff may, subject to the following paragraphs, obtain an appointment for the attendance of the parties for the hearing of the summons and a day and time shall be fixed by a notice in Form No. 76 which shall be sealed in the Central Office.

Fixing time for hearing.  
Substituted by  
*G.G.* 3/10/75,  
pp. 3769-71.

(2) At least 14 days before the time fixed for the hearing of the originating summons, the plaintiff must serve upon each defendant who has entered an appearance a copy of every affidavit in support thereof, not being an affidavit in reply to an affidavit filed by a defendant.

(3) A plaintiff shall not obtain a date of hearing under this rule unless he is ready to proceed and has filed a certificate of readiness.

(4) The certificate referred to in paragraph (3) —

(a) shall be in such form and contain such information as the Chief Justice shall direct from time to time; and

(b) shall be signed personally by the plaintiff's solicitor, or by the plaintiff where he is not represented by a solicitor.

(5) A copy of the certificate shall be served with the notice of appointment.

(6) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant who has entered an appearance may, with the leave of the Court, and on such terms as the Court may order, obtain an appointment for the hearing of the originating summons.

Notice of  
hearing.  
Substituted by  
G.G. 3/10/75,  
pp. 3769-71.  
Ib. R.3(1)(2).

20. At least 10 days before the day fixed under Rule 19 for the hearing of an originating summons, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has entered an appearance, and if the firstmentioned party is a defendant, on the plaintiff.

Evidence.  
Substituted by  
G.G. 3/10/75,  
pp. 3769-71.  
Cf. O.36, R.2,  
O.58, R.27.

21. Unless the Court otherwise orders, evidence at the hearing of an originating summons shall be adduced by affidavit.

Proceeding  
where a  
party fails to  
attend.  
Cf. W.A.  
O.LIII,  
RR. 10, 11.  
Cf. E. O.32,  
R.5.

22. (1) Where any party to an originating summons fails to attend at the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the originating summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing an originating summons has proceeded in the absence of a party, then provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may rehear the originating summons.

(4) Where an application made by originating summons has been dismissed without a hearing by reason of the failure of the party who took out such summons to attend the hearing, the Court if satisfied that it is just to do so, may allow such summons to be restored to the list, and again brought on for hearing.

Order made  
*ex parte* may  
be set aside.  
Cf. E. O.32,  
R.6.

23. The Court may set aside any order which has been made *ex parte*.

24. Where a proceeding in chambers fails by reason of the non-attendance of any party, and the Court does not think it expedient to proceed in his absence, the Court 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.

Costs thrown away by non-attendance of party.  
Amended by G.G. 9/11/73, p. 4165  
Cf. W.A. O.LIII, R.12.

25. Where matters in respect of which an originating summons has 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.

Further attendance where summons not fully disposed of.  
Ib. R.13.

26. In every cause or matter where any party thereto makes any application at chambers, either by way of originating summons, 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, and upon the hearing of such application it shall be lawful for the Court 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 Court thinks fit, be adjourned from chambers into court, or from court into chambers.

What matters may be included in the same summons.  
Amended by G.G. 9/11/73, p. 4165.  
Ib. R.14.

27. (1) If an originating summons is not disposed of altogether on the first hearing thereof, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to securing the just, expeditious, and economical disposal thereof.

Directions, etc.  
Cf. E. O.28, R.4.(2)(3).

(2) The Court shall, as early in the proceedings, as appears to it to be practicable, consider whether there is or may be a dispute as to fact, and whether it is expedient to hear the summons on oral evidence or mainly on oral evidence, and if it thinks fit may order that no further affidavits shall be filed and that the summons shall be heard on oral evidence, or partly on oral evidence and partly on evidence by affidavit with or without cross-examination of any deponent, as it may direct.

28. (1) The Court may from time to time adjourn the hearing of an originating summons, either generally or to a particular date, as may appear to it to be appropriate, and the powers of the Court under Rules 26 and 27 may be exercised at any resumed hearing.

Adjournment of summons.  
Amended by G.G. 3/10/75, p.p. 3769-71.  
Cf. E. O.28, R.5.

(2) Where the hearing of an originating summons is adjourned generally, the party who obtained the appointment for the hearing, may bring the summons on for further hearing on two days' notice in writing to the Registrar and to all the other parties, and any of those parties may bring the matter on with the leave of the Court.

(3) Notice under paragraph (2) need not be given to a party who is in default as to appearance.

Further provisions as to powers and procedure.  
Cf. W.A.  
O.LX,  
RR.8-12.  
Cf. S.A.  
O.54, R.9.

29. Upon every application by originating summons—

- (a) the Court may direct such persons to be served with the summons or with a notice in lieu of service of the summons as it may think fit;
- (b) the Court may appoint representative defendants;
- (c) all persons served shall be entitled to adduce evidence either for or against the application;
- (d) directions may be given as the Court thinks just for the trial of any questions arising out of the evidence;
- (e) it shall be lawful for the Court upon such summons to pronounce such judgment as the nature of the case may require;
- (f) the Court may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as it may think just.

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**ORDER 59**

**Applications and Proceedings in Chambers**

Business at chambers.  
Cf. W.A.  
O.LV, R.3.  
Cf. H.Ct.  
O.52, R.1.  
Cf. Vict.  
O.54, R.1.

1. The business to be disposed of in chambers shall consist of—

- (1) Applications for time to plead, for leave to amend pleadings, for discovery and inspection of documents, and generally all applications relating to the conduct of any cause or matter;
- (2) Subject to Rule 2, civil proceedings commenced by originating summons;
- (3) Applications which by these Rules or any Act may be heard in chambers;
- (4) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter;
- (5) Applications for the investment or change of investment of any funds in court;
- (6) 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;
- (7) 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;
- (8) Applications on behalf of an infant where the infant is a ward of Court, or where the administration of the estate of an infant, or the maintenance of an infant, is under the direction of the Court;

- (9) Applications for the settlement of any property of any infant on marriage;
- (10) Applications as to the guardianship, custody, maintenance or advancement of infants;
- (11) Applications connected with the management of property;
- (12) 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;
- (13) Applications for the taxation and delivery of bills of costs and for the delivery by any solicitor of deeds, documents, and papers;
- (14) Applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of the estate of an intestate, or for the distribution of a fund among creditors;
- (15) Such other matters as the Judge may think fit to dispose of at chambers.

2. (1) Where in any cause or matter commenced by originating summons it appears to the Court at any stage of the proceedings, that the proceedings should for any reason be heard in open court, the Court may order that the hearing or further hearing of the proceedings shall be so held, and may give all necessary directions for the further conduct of the cause or matter.

Hearing of proceedings in open court.  
Cf. E. O.28, R.8.  
Cf. H.Ct. O.52, RR.2, 3.

(2) Proceedings commenced by originating summons which are brought on for hearing or further hearing in open court, may, if the Court thinks fit, be adjourned into chambers.

3. (1) Every application at chambers, not being an application made by originating summons or *ex parte*, must, unless required or authorised by these Rules to be made otherwise, be made by summons.

Form of application at chambers.  
Amended by G.G. 9/11/73, p. 4165.  
Cf. W.A. O.LIII, RR.1, 2.

(2) An application made *ex parte* shall be made by motion.

(3) Where the Court thinks fit so to require, notice of a motion made *ex parte* shall be served upon such persons as the Court directs.

4. (1) A summons other than an originating summons must be in Form No. 77 and must be addressed to all the persons on whom it is to be served.

Form and issue of summons.  
Cf. W.A. O.LIII, RR.3, 15, 16.

(2) A summons is issued by being sealed in the Central Office.

(3) At the time the summons is issued the person presenting it for sealing must file a copy of the summons.

(4) A summons shall not be amended after issue except with the leave of the Court.

Service of  
summons.  
Amended by  
*G.G.* 3/10/75,  
p.p. 3769-71.  
Cf. *W.A.*  
*O.LIII*, R.9.  
Cf. *E. O.32*,  
R.3.

5. (1) Subject to paragraph (2) a summons (other than an originating summons) must be served 7 days before the return day of the summons, unless the Court or these Rules allow a shorter period of service.

(2) A summons asking only for the extension or abridgment of any period of time may be served on the day previous to its return.

(3) Unless the Court otherwise orders—

(a) an affidavit in opposition to a summons must be filed and a copy served upon the applicant not less than 2 days before the return day of the summons; and

(b) a party who wishes to bring on for further hearing a summons that has been adjourned must give 2 days' written notice to the Registrar and to all other parties.

Obtaining  
assistance of  
experts.  
Cf. *W.A.*  
*O.LV*, R.21.  
Cf. *E. O.32*,  
R.16.

6. (1) The Court may, if it thinks it expedient in order to enable it the better to determine any matter arising in any proceedings in chambers, obtain the assistance of any person specially qualified to advise on that matter and may act upon his opinion.

(2) The Court may make such order as to the costs of obtaining such assistance as it shall think fit.

Application  
of certain  
Rules in  
*O.58*.

7. Rules 22 to 28, both inclusive, of Order 58 apply in relation to an application made by summons or motion as they apply in relation to an application made by originating summons.

Summons  
operating as  
stay of  
proceedings.  
Cf. *H.Ct.*  
*O.52*,  
R.10(3).

8. A Judge may, if under special circumstances he think fit, order that a summons shall operate as a stay of proceedings from the time of service of the summons, and the summons shall be drawn up accordingly and shall be signed by the Judge.

Appeals from  
Judge at  
chambers.  
*W.A.*  
*O.LIII*, R.24.

9. Subject to the provisions of the Act and of these Rules, an appeal from a judgment, order or decision of a Judge at chambers shall be by motion to the Full Court.

Form of  
order.  
Substituted by  
*G.G.* 10/1/75,  
p. 51.  
*Ib.* R.25.

10. (1) Subject to paragraph (2), an order shall be in accordance with Form No. 78 or with such other form as is applicable in the circumstances, and shall be prepared by the party entitled to the order.

(2) Notwithstanding the provisions of the prescribed forms, it shall not be necessary for an order to recite any affidavit filed in support of the summons on which the order is made.

## ORDER 60

## Jurisdiction of the Master

1. (1) Subject to paragraph (2), the Master may transact all such business, and exercise all such authority and jurisdiction in respect of the same as under the Supreme Court Act, 1935, or these Rules may be transacted or exercised by a Judge at chambers, except in respect of the following proceedings and matters, that is to say:—

Powers of the Master.  
Cf. W.A.  
O.LIII, R.17.

- (a) Proceedings on the Crown side of the Court, and all matters relating to criminal proceedings or to the liberty of the subject.
- (b) Injunctions and other orders under paragraph (9) of section 25 of the Supreme Court Act, 1935, other than orders for the appointment of receivers by way of equitable execution and injunctions so far, and so far only, as the same are ancillary or incidental to equitable execution and charging orders.
- (c) Reviewing taxation of costs.
- (d) Proceedings in which an originating summons raises for the determination of the Court a question as to the construction of a statute or document or a question of law or a question arising out of or connected with a contract between a vendor or purchaser of land or an interest in land;
- (e) Such business, authority, and jurisdiction as the Chief Justice may from time to time direct to be transacted or exercised by a Judge in person or as may by these Rules be expressly directed to be transacted or exercised by a Judge in person.

(2) On the taking of any accounts or the making of any inquiries, any party shall have the right to have an adjournment from the Master to a Judge in person without any further summons for that purpose.

Adjournment to Judge in certain cases.  
Cf. W.A.  
O.LV,  
R.17(1).

2. Without prejudice to the power, authority and jurisdiction conferred on the Master by Rule 1, the Master or other proper officer shall, if the Court so directs take such accounts and make such inquiries as have usually been taken and made by the Master; and the Court shall give such aid and directions in every such account or inquiry as it may think fit.

Master to take accounts and make inquiries.  
Amended by G.G. 9/11/73, p. 4165.  
Cf. W.A.  
O.LV,  
R.17(2).

3. (1) The Master may refer any application or matter to a single Judge or to the Full Court, and the Full Court or the Judge may either dispose of the application or matter or refer it back to the Master with such directions as it or he may think fit.

Reference by Master to a Judge or the Full Court.  
Cf. W.A.  
O.LIII,  
R.18.

(2) Pending the final disposal of the application or matter the Master may make such interim order as he shall think just.

Office of  
Master  
deemed  
Judge's  
Chambers.  
Amended by  
G.G. 9/11/73,  
p. 4165.  
Cf. Vict.  
O.54, R.13.

4. The office of the Master shall be deemed to be Judge's Chambers for the purpose of any matter which is authorised by or under these Rules to be dealt with by the Master, and in reference to such matters references in these Rules to the Court shall be deemed to be references also to the Master.

Power to  
issue adver-  
tisements and  
summon  
witnesses.  
Cf. W.A.  
O.LV, R.18.  
Cf. E. O.32,  
R.15.

5. The Master 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, and to examine parties and witnesses either upon interrogatories or *viva voce*.

Duty of  
persons  
summoned to  
attend.  
Cf. W.A.  
O.LV, R.19.

6. Parties and witnesses summoned to attend before the Master 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 shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming before him as if the matter sworn or affirmed had been sworn or affirmed before any other person by law authorised to administer oaths, to take affidavits, and to receive affirmations.

Form—  
Master's  
Summons.  
Ib. R.22.

7. The summons by the Master requiring the attendance of parties, witnesses, or others, shall be in Form No. 79.

Interest and  
apportion-  
ment.  
Ib. R.20.

8. The Court may direct any computation of interest, or the apportionment of any fund, to be certified by the Master and to be acted upon by the Accountant or any other person without further order.

Appeal from  
the Master.  
W.A. O.LIII,  
RR.19, 20.

9. (1) Any person affected by any order or decision of the Master may, except in cases provided for in Rule 10 appeal therefrom to a Judge in chambers.

(2) Such appeal shall be by notice in writing to attend before a Judge without a fresh summons within 5 days after the decision complained of, or such further time as may be allowed by a Judge or by the Master.

(3) Unless otherwise ordered there shall be at least 2 clear days between service of the notice of appeal and the day of hearing.

(4) An appeal from the decision of the Master shall not operate as a stay of proceedings unless so ordered by a Judge or the Master.

10. (1) An appeal shall lie to the Full Court from any decision, order or judgment of the Master made or given—

Appeal to be  
to Full Court  
in certain  
matters.  
Ib. R.21.

- (a) on the hearing or determination of any cause, matter, question or issue tried by or referred to him, whether by consent or otherwise;
- (b) on an assessment of damages; or
- (c) on the hearing or determination of any interpleader or garnishee matter or issue, whether by consent or otherwise, and whether by way of summary decision or adjournment of the interpleader or garnishee summons or order *nisi* or on an issue directed or otherwise.

(2) The provisions of Order 63 apply *mutatis mutandis* to appeals under this rule.

## ORDER 61

### Proceedings under Judgments and Orders

#### 1.—*Application of Order.*

1. This Order applies with the necessary modifications to proceedings under an order as it applies in relation to proceedings under a judgment, and references therein to a judgment include references to an order.

Application  
to proceedings  
under an  
order.  
Cf. E. O.44,  
R.1.

#### 2.—*Summons to proceed.*

2. (1) Where in order to carry out any directions contained in a judgment given in any cause or matter it is necessary to proceed in chambers under the judgment, the party entitled to prosecute the judgment must, within 10 days after entry of the judgment, take out a summons to proceed under the judgment.

Summons to  
proceed and  
directions.  
Cf. W.A.  
O.L.V.,  
RR.30, 31.  
Cf. E. O.44,  
RR.2, 4.

(2) If the party entitled to prosecute the judgment fails to comply with paragraph (1) any other party to the cause or matter shall thereupon, unless the Court otherwise directs, become entitled to prosecute the judgment.

(3) On the return of the summons to proceed the Court shall give directions with respect to the proceedings to be taken under the judgment and the conduct thereof, including, in particular, directions with respect to—

- (a) the manner in which any account or inquiry is to be prosecuted,
- (b) the evidence to be adduced in support thereof,
- (c) the parties who are required to attend all or any part of the proceedings, and,
- (d) the time within which each proceeding is to be taken,

and the Court may fix a day or days for the further attendance of the parties.

(4) The Court may revoke or vary any directions given under this Rule.

Notice of judgment to be served on certain persons.  
Cf. W.A. O.XVI, R.28.  
Cf. E. O.44. R.3.

3. (1) Where in any cause or matter the Court has tried or determined any issue relating to—

(a) the administration of the estate of a deceased person, or

(b) the execution of any trust, or

(c) any transaction or proposed transaction relating to property,

and has given or proposes to give, a judgment which appears to affect the rights or interests of persons not parties to the action, or directs any account to be taken or inquiry made, the Court may, when giving judgment, or directing that the minutes of the proposed judgment stand for further consideration, or at any stage of the proceedings under the judgment, direct that notice of the judgment or proposed judgment be served on any person interested in the estate, or under the trust, or in the property, as the case may be.

(2) Any person duly served with notice of a judgment or proposed judgment in accordance with this Rule shall, subject to paragraph (5), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the cause or matter.

(3) The notice of a judgment or proposed judgment to be served pursuant to paragraph (1) must be indorsed with a memorandum in Form No. 80.

(4) Where the Court dispenses with service of a notice on any person it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly, except where the judgment has been obtained by fraud or non-disclosure of material facts.

(5) A person served with notice of a judgment or proposed judgment may within one month after service of the notice on him, and without entering an appearance, apply to the Court to discharge the notice to him or to discharge, vary, or add to the judgment.

(6) A person served with notice of a judgment or proposed judgment may, after entering an appearance to the notice, attend the proceedings in the same manner and subject to the same provisions as a defendant entering an appearance.

(7) Order 12, Rules 1 to 4 shall apply in relation to the entry of an appearance to a notice of judgment or proposed judgment as if the notice were a writ and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

Settling deed if parties differ.  
Cf. W.A. O.LV, R.32.  
Cf. E. O.44. R.8.

4. Where by a judgment a deed is directed to be settled by the Judge in chambers or by the Master, 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, or within such period as a Judge may direct, after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of the said period of eight days.

5. 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 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.

When service of notice of judgment may be dispensed with.  
Cf. W.A.  
O.L.V, R.33.

6. Where service of notice of a judgment 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 has been obtained by fraud or non-disclosure of material facts.

Power to bind where service dispensed with.  
Ib. R.34.

7. 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, 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.

Procedure where some parties not served.  
Ib. R.35.

8. 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.

Course of proceedings in chambers.  
Ib. R.36.

### 3.—*Attendances.*

9. (1) Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment, 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.

Classifying interests of parties.  
Cf. W.A.  
O.L.V, R.40.

(2) 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.

Costs of party appearing separately.

Judge may require distinct solicitor to represent parties.  
Ib. R.41.

10. 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.

Attendance of parties not directed to attend.  
Ib. R.42.

11. 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.

Order stating parties directed to attend.  
Ib. R.43.

12. 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.

#### 4.—*Claims of Creditors and other Claimants.*

Advertisements may be directed.  
Cf. W.A.  
O.L.V.  
RR.44, 45.  
Cf. S.A.  
O.57, R.12.  
Cf. E. O.44,  
R.10.

13. Where a judgment is given, 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, the Judge or the Master may direct an advertisement for creditors or other claimants to be issued, and in deciding whether to do so shall have regard to any advertisement previously issued by the personal representatives or trustees concerned.

By whom prepared and signed.  
Cf. W.A.  
O.L.V.  
RR.46, 47.

14. Every such advertisement shall be prepared by the party prosecuting the judgment, and—

- (a) in the case of an advertisement for creditors shall be signed by the party's solicitor, or, if he has no solicitor, by the Master, and
- (b) in the case of an advertisement for other claimants, shall be submitted to the Master and, if approved by the Master, shall be signed by him,

and such signature shall be sufficient authority to the printer of the *Government Gazette* to print the same.

Form of advertisements.  
Cf. W.A.  
O.L.V., R.48.  
Cf. E. O.44,  
R.10(2).

15. (1) The Court shall fix the time within which, and the person to whom each claimant is to send his name and address and full particulars of his claim, and that time and the name and address of that person must be stated in the advertisement.

(2) Such advertisement must be in one of the Forms Nos. 81 and 82 with such variations as the circumstances of the case may require.

Failure to claim within specified time.  
Cf. W.A.  
O.L.V., R.44.  
Cf. E. O.44,  
R.11.

16. A claimant who does not send full particulars of his claim to the person named in the advertisement within the time therein specified shall not be entitled to prove his claim except with the leave of the Court, and in granting such leave the Court may impose such terms as to costs and otherwise as it thinks just.

17. (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—

Examination  
and verifica-  
tion of claims.  
Cf. W.A.  
O.L.V, R.53.  
Cf. E. O.44,  
R.12.

- (a) examine the claims of persons claiming to be creditors of the estate and determine, as far as he is able, to which of such claims the estate is liable, and
- (b) at least 7 clear days before the time appointed for adjudicating on claims make an affidavit verifying lists of—
  - (i) claims sent in pursuance of any advertisement,
  - (ii) claims received by any of the personal representatives otherwise than in pursuance of an advertisement, and
  - (iii) debts of the deceased at the time of his death in respect of which no claim has been received, but which are or may still be due and which have come to the knowledge of any of the personal representatives.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—

- (a) examine the claims and determine, so far as he is able, which of them are valid claims, and
- (b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—
  - (i) claims sent in pursuance of any advertisement, and
  - (ii) claims received by any of the personal representatives or trustees, otherwise than in pursuance of an advertisement, or which have come to his knowledge.

(3) The affidavit referred to in paragraphs (1) or (2) must, as the circumstances of the case require, specify, in relation to the claims of creditors, the claims and debts which in the belief of the deponent are liabilities of the estate of the deceased and ought to be allowed in whole or in part, and in relation to the claims of persons other than creditors, the claims which in the belief of the deponent are valid claims, with, in either case, the reasons for such belief.

(4) Where the personal representatives or trustees are not the parties directed by the Court to examine claims they must join with the party directed to examine them in making the affidavit required by this Rule.

18. (1) When adjudicating on the claims the Court—

Adjudication  
on claims.  
Cf. W.A.  
O.L.V, R.56.  
Cf. E. O.44,  
R.13.

- (a) may allow any of such claims without proof thereof;
- (b) may direct all or any of such claims to be investigated in such manner as it thinks fit;
- (c) may require any claimant to attend and prove his claim or to furnish further particulars, information or evidence of it.

(2) Where the Court exercises the power conferred on it by paragraph (1) (c) in relation to any claimant such party as the Court may direct must serve on that claimant a notice requiring him—

- (a) to file an affidavit in support of his claim within such time, being not less than 7 days after service of the notice, as may be specified in the notice, and to attend before the Court for adjudication on the claim at such time as may be specified in such notice, or
- (b) to produce to the Court at such time as may be so specified such documents in support of his claim as may be so specified or described.

(3) If a claimant does not comply with a notice served on him under paragraph (2) his claim may be disallowed.

(4) A claimant who files an affidavit in compliance with a notice served on him under paragraph (2) must serve notice of the filing on the party by whom the first-mentioned notice was served.

(5) Unless he has been served with a notice under paragraph (2) (a) a person claiming to be a creditor need not make an affidavit or attend in support of his claim, except to produce any documents which he is required to produce.

(6) Unless the Court otherwise directs, a person claiming to be a secured creditor must produce his security to the Master.

(7) In this Rule references to a claim include references to a part of a claim.

Adjournment  
—further  
evidence.  
Cf. W.A.  
O.L.V, R.55.  
Cf. E. O.44,  
R.14.

19. Where upon the day appointed for adjudicating upon the claims, any claim is not then disposed of, the adjudication shall be adjourned to a day appointed by the Court, and the Court may fix the time within which any evidence in support of or in opposition to the claim is to be filed.

Service of  
notice of  
judgment on  
certain  
claimants.  
Cf. E. O.44,  
R.15.

20. (1) Where a claimant other than a creditor has established his claim then, unless he is a party to the cause or matter or has previously been served with notice of the judgment or the Court otherwise directs, the party having the conduct of the cause or matter must serve notice of the judgment on him.

(2) A person duly served with notice of a judgment under this Rule shall, subject to Rule 3 (5) as applied by paragraph (4), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(3) Where the Court directs under paragraph (1) that notice of a judgment shall not be served on a person, the Court may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and unless the judgment has been obtained by fraud or non-disclosure of material facts, he shall be bound accordingly.

(4) Rule 3 (5), (6) and (7) apply in relation to a person served with notice of a judgment under this Rule as they apply in relation to a person served with notice of a judgment under that Rule.

21. (1) Such party as the Court may direct must serve on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of such allowance or disallowance.

Notice of claims allowed or disallowed.  
Cf. W.A.  
O.L.V, R.57.  
Cf. E. O.44,  
R.16.

(2) Such party as the Court shall direct must make out a list of the creditors' claims, and a list of any other claims, allowed and leave it in the Master's Office.

22. For the purpose of Order 72 Rule 5 in its application to the service of a notice under this Order on a claimant, the proper address of that claimant shall be the address stated in his claim, or, if a solicitor is acting for him in connection with the claim, the business address of that solicitor.

Service of notices.  
Cf. W.A.  
O.L.V, R.62.  
Cf. E. O.44,  
R.17.

#### 5.—*Interest.*

23. (1) Where a judgment directs an account of the debts of a deceased person then, unless the Court otherwise orders, interest shall be allowed—

Interest on debts.  
Cf. W.A.  
O.L.V,  
RR.63, 64.  
Cf. E. O.44,  
R.18.

(a) on any such debt as carries interest, at the rate it carries, and

(b) on any other debt, at the rate of 5 per cent. per annum from the date of the judgment.

(2) A creditor who has established his debt under the judgment, and whose debt does not carry interest, shall be entitled to interest upon his debt at the rate of 5 per cent. per annum from the date of the judgment out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest on such of those debts as by law carry interest.

24.

Where a judgment directs an account of legacies then, subject to any directions contained in the will or codicil in question, and to any order made by the Court, interest shall be allowed on each legacy at the rate of 5 per cent. per annum beginning at the expiration of one year after the death of the testator.

Interest on legacies.  
Cf. W.A.  
O.L.V, R.65.  
Cf. E. O.44,  
R.19.

#### 6.—*Certificates of the Master.*

25. (1) The result of proceedings before the Master under a judgment shall be stated in a certificate signed by the Master.

Master's certificate.  
Cf. W.A.  
O.L.V,  
RR.66, 67, 70.  
Cf. E. O.44,  
R.21.

(2) The certificate of the Master shall refer to so much of the judgment, to such documents or parts thereof, and to such of the evidence as will make it clear upon what the result stated in the certificate is founded.

(3) Where the judgment requires the taking of an account the certificate must state the result of the account, and not set the same out by way of schedule, but must refer to the account verified by filed affidavit, and must specify by reference to the numbered items in the account which, if any, of such items have been disallowed, or varied, and the additions, if any, which have been made by way of surcharge or otherwise.

(4) Where by reason of the alterations made in the account verified by filed affidavit the Court has directed a fresh account incorporating the alterations to be made, the reference in paragraph (3) to the account so verified shall be construed as a reference to the fresh account.

Settling and  
filing of  
Master's  
certificate.  
Cf. W.A.  
O.L.V.,  
RR.68, 69, 70.  
Cf. E. O.44,  
R.22.

26. (1) A draft of the Master's certificate shall be drawn up in the Master's chambers unless the Master directs that it be drawn up by a party to the proceedings.

(2) The draft shall be settled by the parties before the Master on an appointment given by him for such purpose.

(3) The certificate signed by the Master and any account referred to therein shall be sent by the Master to the Central Office and filed there.

Parties may  
take opinion  
of the Judge.  
Cf. W.A.  
O.L.V., R.71.  
Cf. E. O.44,  
R.20.

27. (1) Any party may, before the proceedings before the Master are concluded, apply to the Judge for the determination of any question arising in the course of the proceedings.

(2) Unless the Court otherwise directs, a fresh summons shall not be issued for the purpose of an application under paragraph (1).

(3) The order or directions made or given by the Judge on the determination of such question need not be drawn up, except in the event of an appeal to the Full Court, but the Master shall refer to such order or directions in his certificate under Rule 25.

Cf. Vict.  
O.55, R.69.

(4) If the Judge so directs or is not available, the question may be determined by any Judge who is for the time being sitting in chambers.

Discharge or  
variation of  
certificate.  
Cf. W.A.  
O.L.V.,  
RR.72, 73.  
Cf. E. O.44,  
R.23.

28. (1) Any party to proceedings under a judgment may, not later than—

- (a) 8 clear days after the filing of the Master's certificate therein, or
- (b) if the certificate is to be acted upon by the Accountant without further order, or is a certificate passing a Receiver's account, 2 clear days after the filing thereof,

apply by summons for an order of a Judge discharging or varying the certificate.

(2) A copy of a summons to discharge or vary a certificate to be acted upon by the Accountant without further order must be served on the Accountant as soon as practicable after the issue thereof.

(3) Subject to paragraph (4) the Master's certificate shall, upon the expiry of the period specified in relation to it in paragraph (1) be binding on the parties to the proceedings unless discharged or varied by order under paragraph (1).

(4) A Judge may, in special circumstances, upon application by summons or motion, by order discharge or vary the certificate of a Master, notwithstanding that the certificate has become binding on the parties.

7.—*Further consideration.*

Cf. W.A.  
O.LV., R.74.

29. (1) 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.

(2) This Rule does not apply to any matter the further consideration whereof is, at the original or any subsequent hearing, adjourned into court.

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ORDER 62

**Proceeding under the Trustees Act 1962**

Mode of  
application.  
Amended by  
G.G. 15/6/73,  
p. 2249.  
Cf. W.A.  
O.LVI, R.1.

1. (1) Subject to paragraph (2) and these Rules, applications under the Trustees Act, 1962 (in this Order referred to as "the said Act") shall be made by originating summons or originating motion.

(2) Such applications under the said Act as the Chief Justice may from time to time direct as being proper to be made by summons, may be made by summons.

(3) The Chief Justice may vary or revoke any direction given under paragraph (2).

Titles of  
proceedings.  
Cf. W.A.  
O.LVI,  
RR.2(3),3.

2. All applications under the said Act not made in any pending cause or matter, must be entitled in the matter of the said Act, and in the matter of the trust, described so as to identify it.

Payment into  
Court under  
section 99.  
Cf. W.A.  
O.LVI,  
R.2(1).  
Cf. E. O.92,  
R.2.

3. A trustee wishing to pay money or securities into court under Section 99 of the said Act, must make and file an affidavit entitled in the manner specified in Rule 2, setting out—

- (a) a short description of the trust and of the instrument creating it, or, as the case may be, of the circumstances in which the trust arose,
- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him,
- (c) his submission to answer all such inquiries relating to the application of the money or securities paid into court, as the Court may make or direct, and
- (d) an address where he may be served with any summons or order, or notice of any proceedings relating to the money or securities paid into court.

Notice of  
payment in,  
etc.  
Cf. W.A.  
O.L.VI,  
R.2(2)(a).

4. The person who has made the payment into court under the said Act must forthwith give notice thereof by pre-paid letter through the post, to the several persons whose names and addresses are stated in his affidavit as interested in or entitled to the moneys or securities paid into court.

Applications  
in respect of  
money etc.  
and notice  
thereof.  
Cf. W.A.  
O.L.VI,  
R.2(2)(b)(c).

5. (1) No summons relating to the money or securities paid into court under the said Act shall be issued unless the applicant has named therein an address for service of any summons, or notice of proceeding or order relating to the moneys or securities or the dividends thereof.

(2) Any application in respect of money or securities paid into court under the said Act must, unless otherwise directed by the Court, be served on the trustee, and on the person named in his affidavit as interested in or entitled to the same, and on such other persons as the Court may direct.

Order 62A  
added by  
G.G. 10/1/75,  
pp. 51-4.

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**ORDER 62A.<sup>1</sup>**

**Mortgage Actions.**

Application  
and inter-  
pretation.  
Added by  
G.G. 10/1/75,  
pp. 51-2.  
Cf. E.  
O. 88, R. 1.

1. (1) This Order applies to any proceedings (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being proceedings in which there is a claim for relief of any of the following kinds, namely—

- (a) payment of moneys secured by the mortgage;
- (b) sale of the mortgaged property;
- (c) foreclosure;
- (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property;
- (e) redemption;
- (f) reconveyance of the property or its release from the security;  
or
- (g) delivery of possession by the mortgagee.

(2) In this Order “mortgage” includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) In this Order “mortgage” and “charge” also include mortgages and charges registered under the provisions of the Transfer of Land Act, 1893; but nothing in the Order extends or affects the powers of sale or foreclosure conferred by Division 3 of Part IV of that Act, and proceedings claiming possession of land pursuant to such a mortgage or charge shall be commenced by writ of summons and not otherwise.

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<sup>1</sup> See footnote to Order 13, Rule 5.

(4) Proceedings to which this Order applies are referred to in this Order as a mortgage action.

(5) These rules apply to mortgage actions subject to the following provisions by this Order.

2. (1) Where in a mortgage action begun by originating summons, being an action in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to enter an appearance the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.

Claim for  
possession:  
non-appear-  
ance by a  
defendant.  
Added by  
G.G. 10/1/75,  
pp. 52-3.  
Ib. R. 5.

(2) This rule does not affect Rule 20 or Rule 28(2) of Order 58 in so far as either of those rules require any document to be served on, or notice given to, a defendant who has entered an appearance in the action.

(3) Not less than four clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the affidavit in support of the summons.

(4) Where the plaintiff claims delivery of possession there must be indorsed on the outside fold of the copy of the affidavit served on the defendant a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the mortgaged property and for such other relief (if any) claimed by the originating summons as the plaintiff intends to apply for at the hearing.

(5) Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than two clear days before the day fixed for the hearing.

(6) A copy of any affidavit served under paragraph (5) must be indorsed in accordance with paragraph (4).

(7) Service under paragraph (3) or (5) and the manner in which it was effected, may be proved by a certificate signed by the plaintiff, if he sues in person, and otherwise by his solicitor.

(8) A certificate of the kind mentioned in paragraph (7) may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.

(9) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (3) or (5).

(10) Where the plaintiff gives notice to the defendant under Order 3, Rule 7 of his intention to proceed, service of the notice, and the manner in which it was effected, may be proved by a certificate signed as mentioned in paragraphs (7) and (8).

**ORDER  
62A.**

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Evidence in support of originating summons for possession or payment.  
Added by G.G. 10/1/75, pp. 53-4.  
Ib. R. 6.

3. (1) This rule applies to a mortgage action begun by originating summons in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

(2) The affidavit in support of the originating summons by which an action to which this rule applies is begun must comply with the following provisions of this rule.

(3) The affidavit must exhibit the original mortgage or a true copy of it.

(4) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of—

- (a) the amount of the advance;
- (b) the amount of the repayments;
- (c) the amount of any interest or instalments in arrear at the date of issue of the originating summons and at the date of the affidavit, and
- (d) the amount remaining due under the mortgage.

(5) Where the plaintiff claims delivery of possession, the affidavit must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property.

(6) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.

(7) Where the plaintiff claims payment of moneys secured by the mortgage, the affidavit must prove that the money is due and payable and give the particulars mentioned in paragraph (4).

(8) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.

Action by writ:  
judgment in default.  
Added by G.G. 10/1/75, p. 54.  
Ib. R. 7.

4. (1) Notwithstanding anything in Order 13 or Order 22, in a mortgage action begun by writ judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding anything in Order 72 Rule 8, be served on the defendant.

(3) Where a summons for leave under this rule is issued, paragraphs (3) to (10) inclusive of Rule 2 shall apply in relation to the action subject to the modification that for references therein to the originating summons, and for the reference in paragraph (3) to the notice of appointment, there shall be substituted references to the summons.

(4) Where a summons for leave under this rule is issued in an action to which Rule 3 would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that rule.

5. Where foreclosure has taken place by reason of the failure of the plaintiff in a mortgage action for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply by motion or summons for an order for delivery to him of possession of the mortgaged property, and the court may make such order thereon as it thinks fit.

Foreclosure  
in redemption  
action.  
Added by  
G.G. 10/1/75,  
p. 54.  
Ib. R. 8.

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### ORDER 63

#### Appeals to the Full Court, New Trials

1. Subject to section 59 of the Act this Order (except so much of Rule 2(1) as provides that an appeal shall be by way of rehearing, and except Rule 12(1)) applies, unless the context otherwise requires, to an application to the Full Court for a new trial, or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

Application  
of Order to  
applications  
for new trial.  
Cf. E. O.59,  
R.2.  
Cf. Vict.  
O.58, R.1.

2. (1) All appeals to the Full Court from the judgment or order of a Judge, whether in court or in chambers, shall be by way of re-hearing, and shall be instituted by notice of motion which must be served and filed as hereinafter provided.

Notice of  
appeal.  
Cf. W.A.  
O.LVIII,  
R.1.

(2) The appellant may, by notice of motion, appeal from the whole or any part of any judgment or order, and the notice of motion must state whether the whole or part only of such judgment or order is complained of, and in the latter case must specify such part. It must also state briefly, but specifically, the grounds relied upon in support of the appeal, and what judgment the appellant seeks in lieu of that appealed from.

(3) Without affecting the specific provisions of the foregoing sub-rules, it is not sufficient to allege that a judgment or order is against the evidence or the weight of evidence or that it is wrong in law; the notice must specify the particulars relied on to demonstrate that it is against the evidence and the weight of evidence and the specific reasons why it is alleged to be wrong in law.

(4) Where the notice of grounds of appeal does not in the opinion of the Registrar comply with this Rule the Registrar shall before listing the appeal for hearing, refer the question to a Judge for his direction, and notify the parties that he has done so.

(5) A notice of motion may be amended by order of a Judge before the appeal is listed for hearing on such terms (if any) as the Judge thinks fit.

Service.  
Amendment.  
Cf. W.A.  
O.LVIII,  
R.2.

3. The notice of motion by way of appeal must 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 notice had been originally parties. Any notice of motion may be amended at any time as the Full Court may think fit.

Time for  
appealing.  
Amended by  
G.G. 15/6/73,  
p. 2249;  
G.G. 9/11/73,  
p. 4165.  
Cf. W.A.  
O.LVIII,  
R.3.  
Cf. E. O.59,  
R.4.

4. (1) A notice of motion by way of appeal must be served within 21 days from the date of the judgment, order or verdict, or within such extended time as the Full Court or a Judge may allow.

(2) Where a summons to vary a certificate and the further consideration of an action are heard together, the time for appealing against the order made on the summons to vary the certificate shall be the same as the time for appealing against the order made on further consideration.

Calculation  
of period.  
Amended by  
G.G. 15/6/73,  
p. 2249.  
Cf. W.A.  
O.LVIII,  
R.4.  
Cf. W.A.  
O.XXXVII,  
R.3.

5. The period mentioned in Rule 4 shall be calculated—

- (a) from the date when the judgment or order was made;
- (b) in the case of a refusal of an application, from the date of the refusal;
- (c) in the case of an application for a new trial, from the date on which the verdict was found.

Mode of  
instituting  
appeals.  
Cf. W.A.  
O.LVIII,  
R.5.

6. The appellant must, within the time prescribed by Rule 4 for serving the notice of appeal, file a copy of the notice. Upon such service and filing the appeal is instituted.

Entry for  
hearing and  
lodging of  
appeal  
books.  
Ib. R.6.

7. (1) Unless the Full Court or a Judge otherwise orders, an appeal must be entered for hearing for the first sittings of the Full Court appointed to be held after the expiration of six weeks from the institution of the appeal.

(2) An appeal, not being an application by way of renewal of an *ex parte* application that has been refused, must be entered for hearing at least fourteen days before the day appointed for the commencement of the sittings.

(3) Unless the Full Court or a Judge otherwise orders, an appeal shall not be entered for hearing unless the appellant has lodged at the Central Office five copies of the appeal book and such other copies (if any) as the Registrar may require.

(4) On the day on which an appeal is entered for hearing the appellant shall serve each respondent separately represented with notice of the entry and with two copies of the appeal book.

(5) Where the appellant does not enter the appeal for hearing as prescribed by this Rule, any respondent may apply to the Full Court, by motion upon notice, for an order dismissing the appeal for want of prosecution.

8. Where an *ex parte* application has been refused by a Judge, an application for a similar purpose may be made to the Full Court *ex parte* at the next sittings of the Full Court for hearing civil appeals after such refusal, or within such enlarged time as a Judge or the Full Court may allow.

Appeals in  
*ex parte*  
applications.  
Cf. W.A.  
O.LVIII,  
R.8.  
Cf. Vict.  
O.58, R.1B.

9. (1) A respondent who, not having appealed from the decision of the court below, desires to contend on the appeal that the decision of that court should be varied, either in any event or in the event of the appeal being allowed in whole or in part, must give notice to that effect, specifying particulars of the grounds of his contention and the precise form of the order which he intends to ask the Full Court to make, or to make in that event, as the case may be.

Cross-appeal  
etc.—Respon-  
dent's notice.  
Cf. W.A.  
O.LVIII,  
RR.11, 12.  
Cf. E. O.59,  
R.6.

(2) If the respondent desires to contend on the appeal that the decision of the court below should be affirmed on grounds other than those relied upon by that court, he must give notice to that effect specifying particulars of the grounds of that contention.

Affirmation  
on grounds  
not relied  
upon by  
Court below.

(3) Except with the leave of the Full Court, a respondent shall not be entitled on the hearing of the appeal to contend that the decision of the court below should be varied upon grounds not specified in a notice given under this Rule, to apply for any relief not so specified, or to support the decision of the court below upon any grounds not relied upon by that court or specified in such a notice.

(4) A notice given by a respondent under this Rule must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent and must be served within 21 days after the service of the notice of appeal on the respondent.

(5) A respondent by whom a notice is given under this Rule must, within 2 days after service of the notice, file a copy of the notice, and if the list and index of documents has been settled, lodge 5 copies of the notice at the Central Office.

10. (1) The Full Court on any appeal shall have all the powers and duties as to amendment and otherwise of the court or Judge appealed from 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

General  
powers of the  
Court.  
Cf. W.A.  
O.LVIII,  
R.9.  
Cf. E. O.59,  
R.10.

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.

(2) 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.

(3) The powers of the Full Court under the foregoing provisions of this Rule may be exercised notwithstanding that no notice of appeal or Respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Full Court may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(4) The powers of the Full Court in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

(5) The Full Court may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

(6) The Full Court shall have power to make such order as to the whole or any part of the costs of an appeal as may be just.

Documents  
impounded  
by Full  
Court.  
Cf. E. O.59,  
R.10(7), (8).

11. (1) Subject to paragraph (2), documents impounded by order of the Full Court shall not be delivered out of the custody of that Court except by order of that Court.

(2) Documents impounded by order of the Full Court, while in the custody of that Court shall not be inspected except by a person authorised to do so by an order of that Court.

Powers of the  
Full Court  
as to new  
trial.  
Cf. W.A.  
O.XXXVII,  
RR.5, 6, 7.  
Ib. LVIII,  
R.10.  
Cf. E. O.59,  
R.11.  
Supreme  
Court Act,  
1935, s.59.

12. (1) 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 that 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.

(2) 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 Full Court some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to that Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, that 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.

(3) 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.

W.A.  
O.XXXVII,  
R.7.  
Vict. O.58,  
R.9.

(4) The Full Court shall in the order granting a new trial give all necessary directions for further proceedings in the cause.

13. (1) As soon as is practicable after the notice of appeal has been served and filed, the practitioner acting for the appellant shall make out a list and index of the documents which shall constitute the record before the Full Court, and shall file the list and index in the Central Office and at the same time take out an appointment to settle the same before the Registrar. Forthwith after the appointment has been obtained a copy thereof and of the list and index shall be served on the other parties to the appeal.

Preparation  
of the  
transcript.  
W.A.  
O.LVIII,  
R.13.

(2) The Registrar may vary the list and index as he thinks proper and may, if he thinks necessary, obtain the direction of the Chief Justice, or of the senior Judge available.

(3) The transcript for use upon the hearing of an appeal shall, unless the Court or a Judge otherwise orders, be prepared in accordance with the provisions of Order 69 and every tenth line in each page shall be numbered, or letters placed beside the printed matter in each page at 2 inch intervals.

(4) The thickness of any one volume of the transcript shall not exceed one and a half inches.

(5) The title page shall give the full and correct title of the proceedings, and the names of the solicitors for each party and their addresses for service.

(6) After the title page there shall follow an index consisting of a complete list of the documents contained in the record before the Full Court as settled by the Registrar stating in the case of each document whether it is copied or not, and if copied, indicating at what page of the transcript it appears.

(7) The index shall give the date of each document and, in the case of exhibits, the exhibit mark.

(8) In the index the exhibits shall be arranged in the order in which they have been lettered or numbered.

(9) The documents shall be arranged in the transcript in the following order:—

- (a) The notice of appeal, and of cross-appeal (if any).
- (b) The formal judgment or order of the primary Judge or Court.
- (c) The reasons for judgment of the primary Judge or Court.
- (d) Process and pleadings.
- (e) Evidence, oral or affidavit.
- (f) Testimony taken on commission or before an examiner and put in or used as evidence.

## (g) Exhibits:—

- (i) Exhibits shall be arranged not in the order in which they have been lettered or numbered as exhibits, but in chronological order according to the date borne by the documents, or in the case of manifestly or admittedly misdated documents, their known dates.
  - (ii) If a document is undated it shall be placed in the sequence contended for by the appellant, but the appellant shall inform the respondent of the position or order proposed for the document, and the respondent may require that a note “Date and order disputed” be inserted in the transcript at the head of the document.
  - (iii) If the exhibits include a correspondence between or among two or more persons, or a group of documents which should be read consecutively and not interspersed among other documents, the letters forming the correspondence or the group of documents may be arranged in order of their dates and given a position together at a convenient place in relation to the other exhibits.
- (h) The certificate that the transcript has been examined and is correct.
- (10) The date and a short description of each document shall precede it, but formal headings shall not be printed or copied, and jurats, formal identification of exhibits and the like shall be omitted.
- (11) Interrogatories and Answers, and affidavits of documents must not be copied except so far as they were put in evidence.
- (12) A copy of the transcript shall be examined with the original documents, and all copies shall be corrected.
- (13) The examined copy of the transcript shall be filed in the Central Office with a certificate by the parties or their solicitors that it has been examined and is correct.
- (14) The transcript shall be prepared and produced in a manner satisfactory to the Registrar.
- (15) The costs of the Appeal Book shall be costs in the cause unless the Full Court shall otherwise order.
- (16) When the evidence of witnesses is transcribed, there shall appear at the bottom of each page of such evidence the name of the witness, and whether he is examined, cross-examined, re-examined, or re-called.
- (17) Only such documents as are relevant or necessary shall be included in the appeal book. The costs of copies of unnecessary documents or of documents copied at unnecessary length will not be allowed.

(18) Not less than two days before the first day of the sittings at which the appeal or application is set down for hearing, each of the parties shall lodge at the Central Office five copies, and such other copies as the Registrar may require, of the list of cases which it is intended will be cited.

14. 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 direction of a Judge or the Full Court, be brought before that Court in the manner prescribed by Rule 13.

Evidence on appeal.  
Cf. W.A.  
O.LVIII,  
R.14.  
Cf. E. O.59,  
R.12.

15. (1) Except so far as the Full Court or a Judge may direct—

(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;

(b) no intermediate act or proceeding shall be invalidated by an appeal.

Stay of proceedings.  
Cf. E. O.59,  
R.13.  
Cf. Vict.  
O.58, R.17.

(2) On an appeal from a Judge, interest for such time as execution has been delayed by the appeal shall be allowed unless the Full Court otherwise orders.

16. Every application to the Full Court must be by motion, and the provisions of Order 54 shall apply thereto.

Applications to the Full Court.  
Cf. E. O.59,  
R.14(1).

17. (1) Where the respondent has not appealed from the decision of the court below, and has not given notice under Rule 9, and the appeal has not been entered for hearing, the appellant, by filing a notice of discontinuance and serving such notice on the respondent, may discontinue the appeal without leave, and in such case the appellant, unless there is an agreement to the contrary between the parties to the appeal, must pay the respondent's costs of the appeal to be taxed.

Discontinuance of an appeal.  
(New.)

(2) Where the respondent has also appealed, or has given notice under Rule 9, and the appeal has not been entered for hearing, the appellant may with the consent of the respondent, or with the leave of the Court, discontinue the appeal, and where the appeal has been discontinued with the consent of the respondent, a notice of discontinuance indorsed with such consent must be filed, and the appellant, unless there is an agreement to the contrary between the parties, must pay the respondent's costs of the appeal to be taxed.

(3) When an appeal has been entered for hearing it may be discontinued only by leave of the Full Court.

(4) Upon the discontinuance of an appeal any moneys paid into court as security for the respondent's costs of the appeal shall be paid out of court in accordance with a memorandum of agreement signed by the parties to the appeal, or as directed by an order of the Court or the Full Court.

## ORDER 64\*

**Appeals from Courts of Inferior Jurisdiction and from Arbitrators**

Interpretation.  
Amended by  
G.G. 29/3/74,  
p. 1041.

**1. In this Order—**

- (a) “the District Court” means The District Court of Western Australia;
- (b) “Local Court” means a Local Court established or deemed to be established under the Local Courts Act, 1904, as from time to time amended.

Appeal from  
arbitrator  
where refer-  
ence is com-  
pulsory.  
Cf. W.A.  
O.LIX, R.2.  
Cf. Vict.  
O.59, RR.1, 2.

2. (1) 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.

(2) An appeal under this Rule shall be to the Full Court, which 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) An application to set aside or remit an award must be made within 21 days after such award has been made and made available to the parties, but the Full Court or a Judge may by order extend the said time either before or after it has elapsed.

Appeals from  
the District  
Court or the  
Tribunal.  
Amended by  
G.G. 7/12/73,  
p. 4489;  
G.G. 29/3/74,  
p. 1041.  
Cf. W.A.  
O.LIX, R.11.

3. (1) Subject to this Rule, the provisions of these Rules relating to appeals to the Full Court from a Judge shall apply so far as is practicable to and in relation to appeals to the Full Court from the District Court.

(2) An appeal from the District Court shall be instituted by notice of motion which must be filed and served on all parties directly affected by the appeal, and on the Registrar of the District Court within 21 days from the date of the judgment, decision, determination, or order appealed from, or within such extended time as may be fixed by the Full Court or a Judge.

(3) When an appeal from the District Court is instituted, the Registrar of the District Court shall forthwith upon a request being made by the Registrar transmit to the Registrar—

- (a) a certified copy of the pleadings and other documents (not being exhibits) that were before the District Court in the proceedings out of which the appeal arises;
- (b) certified copies of the record of evidence and of the reasons for judgment in those proceedings;
- (c) a certified copy of the decision, determination or judgment appealed from; and
- (d) a list of the exhibits adduced in evidence and, so far as is practicable, the original exhibits.

\* This order has been amended by Rules published in the *Government Gazette* on 14th May, 1976. Extracts containing the amendments are available separately.

(4) Every party served with the notice of motion on an appeal must at least 4 clear days before the expiry of the time allowed to the appellant for entering the appeal for hearing, serve on the appellant a notice of address for service not more than three kilometres from the Supreme Court at Perth at which all notices and documents, not required to be served personally, may be served.

4. (1) Save as otherwise provided by statute the following provisions of this Rule shall apply to appeals from a Local Court.

Appeals  
from Local  
Courts.  
Amended by  
G.G. 15/6/73,  
p. 2249;  
G.G. 29/3/74,  
p. 1041.

(2) All such appeals shall be heard and determined by the Full Court.

(3) An appeal from a Local Court shall be brought by notice of motion, and Rule 2 (2), (3) and (4) and Rule 3 of Order 63 apply to such notice as they apply to a notice of motion on an appeal from the judgment or order of a Judge.

(4) The notice of motion must be filed and served, and security given in accordance with paragraph (5) within 21 days from the date of the judgment, order or decision complained of, or within such extended time as the Full Court or a Judge may allow, and upon such filing, service, and giving of security the appeal shall be deemed to be instituted.

(5) An office copy of the notice of motion must be served on all parties directly affected by the appeal, and on the clerk of the Local Court appealed from, and security to answer the costs of the appeal in the event of the appeal being unsuccessful must be given by the appellant by payment into the Central Office, of the sum of 60 dollars.

(6) No office copy of the notice of motion shall be issued until security has been given by the appellant.

(7) Unless the Full Court or a Judge otherwise orders the appeal must be entered for hearing for the first sittings of the Full Court to be held after the expiration of 6 weeks from the institution of the appeal, and must be entered for hearing at least 14 days before the day appointed for the commencement of the sittings.

(8) When an appeal has been instituted the clerk of the Local Court appealed from shall forthwith upon request being made by the Registrar, transmit to the Registrar—

- (a) a certified copy of the proceedings in the action or matter;
- (b) a certified copy of the magistrate's notes of evidence, and of the addresses of counsel;
- (c) a certified statement of the judgment, order or decision complained of, and of the magistrate's reasons;
- (d) a list of the exhibits in the case, and, so far as is practicable, the original exhibits.

(9) The Magistrate shall make available to the clerk the notes of evidence and addresses, and the statements referred to in paragraph (8), and those documents, and such other documents as are relevant must be included in the record before the Full Court.

(10) Rule 3 (4) applies in the case of appeals from a Local Court as it applies to appeals from the District Court.

(11) Subject to this Rule, the provisions of Order 63 relating to appeals from a Judge apply, as far as is practicable, to and in relation to appeals from Local Courts.

(12) When an appeal has been instituted any party shall be entitled on payment of the proper fee, to obtain from the clerk of the Local Court or (if the documents have been received by the Registrar) from the Registrar, an office copy of the proceedings, notes of evidence and addresses, and statements referred to in paragraph (8) or any part thereof.

(13) Unless the Registrar otherwise directs, the transcript shall include the addresses of counsel at the trial or hearing before the Magistrate.

Order of  
Full Court  
to be sent to  
court, etc.,  
appealed  
from.  
Amended by  
G.G. 29/3/74,  
p. 1041.

5. (1) When an appeal to which this Order applies is determined by the Full Court, the Registrar shall send to the registrar or other officer of the court from which the appeal was brought a copy of the order of the Full Court on the appeal and a copy of the reasons given by that Court for the determination.

(2) The party extracting the order on appeal must, when filing the order, lodge at the Central Office for the purposes of paragraph (1) a copy of the order.

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#### **ORDER 65.**

#### **Appeals from the Licensing Court, and Certain Statutory Boards and Tribunals**

1. In this Order—

“decision” includes a direction, order, finding, or other determination (including the granting or refusal of an application);

“tribunal” includes the Licensing Court, and a board, authority or person;

“Licensing Court” means the Licensing Court of Western Australia established under the Liquor Act, 1970.

Application  
of Order.

2. (1) This Order applies to appeals to the Court

(a) by a person aggrieved by a decision of the Licensing Court;

(b) from a decision of the Medical Board under the Medical Act, 1894;

(c) from a decision of the Minister under section 21 or section 70 of the State Housing Act, 1946;

- (d) where under the provisions of any Act, an appeal to the Court lies from a decision of any tribunal, and the procedure to be followed in the conduct of the appeal is not otherwise prescribed.

(2) This Order is subject to the provisions of the particular Act under which the right of appeal is conferred.

3. (1) Every appeal to which this Order applies shall be instituted by filing, within 21 days from the date of the decision against which the appeal is made, a notice of motion complying with Rule 4, and serving within the same time a copy of the notice of motion on each party or person on whom the notice of motion is by this Rule required to be served.

Amended by  
G.G. 7/12/73,  
p. 4489.

(2) A copy of the notice of motion must be served on the tribunal from which the appeal is brought, and subject to paragraph (3) on any person (other than the appellant or a person heard as a witness only) who appeared before or was heard by the tribunal on the hearing of the application or other proceeding in which the decision, which is the subject of the appeal, was made or given.

(3) On any appeal to which this Order applies, a Judge may, either before or on the hearing of the appeal, dispense with the service of the notice of the appeal on any person who appeared before or was heard by the tribunal on the hearing of the said application or other proceeding, or direct that notice of the appeal be given to any other person.

(4) A person served with notice of the appeal who desires to be heard at the hearing of the appeal, must forthwith after being served, file and serve on the appellant a notice of address for service not more than three kilometres from the Supreme Court at Perth at which all notices and documents not required to be served personally, may be served.

4. The notice of motion must set out—

- (a) the substance of the decision complained of;
- (b) briefly, but specifically, the grounds on which the appeal is brought; and
- (c) an address for service not more than three kilometres from the Supreme Court at Perth, at which notices and documents relating to the appeal may be served on the appellant.

Contents of  
Notice of  
Motion.  
Amended by  
G.G. 7/12/73,  
p. 4489.

5. The notice of motion and all subsequent proceedings on appeals to which this Order applies, shall be entitled "In the Supreme Court of Western Australia", "On appeal from (naming the tribunal from which the appeal is brought), and in the matter of the Act under which the decision the subject of the appeal was given, and in the matter of the application or other proceeding in which such decision was given".

Title of  
notice of  
appeal, etc.

6. (1) Subject to paragraphs (2), (3) and (4) and the provisions of the Act under which the appeal is brought, the appeal shall be heard by a Judge sitting in court.

Hearing.

(2) Except in the case of an appeal from a decision of the Licensing Court, a Judge may, at any time before the hearing of an appeal, direct that the appeal shall be heard by a Judge sitting in chambers.

(3) The Judge hearing an appeal in court may direct that the further hearing of the appeal be adjourned into chambers.

(4) An appeal from a decision of the Medical Board under section 12 (8) of the Medical Act, 1894, shall be heard by a Judge sitting in chambers.

(5) An appeal directed pursuant to paragraphs (2), (3) or (4) to be heard or further heard in chambers may be adjourned from chambers into court.

Date for  
hearing.

7. (1) Unless a Judge otherwise orders, an appeal to which this Order applies shall not be heard before the expiration of 21 days from the date when the appeal was instituted.

(2) Any party may apply to a Judge for an order fixing the date for hearing of the appeal.

(3) Unless an order under paragraph (2) has been made, the day for hearing of the appeal shall be fixed by the proper officer in accordance with the practice of the Court, and the proper officer shall send to the appellant, the tribunal appealed from, and each person on whom the notice of motion has been served and who has filed a notice of address for service, notice of the day fixed for the hearing of the appeal.

(4) Where the day for hearing of the appeal is fixed by the proper officer it shall not be earlier than 7 days after notice has been sent by him in accordance with paragraph (3).

Record of  
proceedings  
to be sup-  
plied.

8. The registrar or other officer of the tribunal appealed from shall within 7 days after service of the notice of motion pursuant to Rule 3 (2) send to the Registrar—

- (a) a copy of the proceedings before the tribunal and of the notes of evidence in those proceedings and of the decision of the tribunal to which the appeal relates, all of which must be certified by the registrar or other officer of the tribunal as being a correct record or copy thereof; and
- (b) all the original exhibits produced as evidence in those proceedings.

Appeal book.

9. (1) The appellant must not less than six clear days immediately preceding the day fixed for the hearing of the appeal—

- (a) prepare to the satisfaction of the Registrar an appeal book containing all material relevant to the hearing of the appeal;
- (b) lodge at the Central Office two copies of the appeal book so prepared, for the use of the Judge upon the hearing;
- (c) serve upon each other party separately represented one copy of such appeal book.

(2) Unless the Court otherwise orders, the costs of complying with this Rule shall be costs in the cause.

10. (1) Subject to paragraphs (2) and (3), the appeal shall be in the nature of a rehearing, and the Judge hearing the appeal may confirm, quash or vary the decision of the tribunal against which the appeal is made or remit the matter to the tribunal for rehearing, with or without directions.

Appeal to be  
in nature of  
rehearing.

(2) The Judge may determine the appeal on the material that was before the tribunal when it gave its decision or, by special order given before or at the hearing, on such additional or fresh evidence, either oral or by affidavit, as may be allowed, or partly in the one way and partly in the other, and the Judge may rehear the testimony of any witness, whether by way of examination or cross-examination, and any party to the appeal may be represented by counsel.

(3) This Rule does not apply to an appeal from the decision of the Licensing Court.

11. (1) The result of the appeal shall be embodied in a formal order, which shall be filed in the Central Office.

Order.

(2) Except where the formal order is filed by or on behalf of the tribunal, the Registrar shall send to the registrar or other officer of the tribunal from which the appeal was brought, a memorandum of the result of the appeal.

(3) Where the appeal is from a decision of the Medical Board a minute of the formal order must be entered by the registrar of the Board in the Register of medical practitioners kept pursuant to the Medical Act, 1894.

Minute of  
order on  
Medical  
Register.

12. In so far as the ordinary practice of the Court and the Rules of Court are not inconsistent with the provisions of this Order, they shall apply to proceedings under this Order with such modifications as the circumstances require.

Application  
of Rules of  
Court.

13. The costs of every appeal instituted under this Order, and of any proceedings incidental thereto are in the discretion of the Judge hearing the appeal.

Costs.

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## ORDER 66

### Costs

1. (1) Subject to the express provisions of any statute and of these Rules the costs of and incidental to all proceedings including the administration of estates and trusts shall be in the discretion of the Court but, without limiting the general discretion conferred on the Court by the Act, and subject to this Order, the Court will generally order that the successful party to any action or matter recover his costs.

General  
rules as to  
costs.  
Cf. W.A.  
O.LXV,  
R.I(I).  
Vide  
Supreme  
Court Act,  
1935, s.37.

(2) If the Court is of opinion that the conduct of a party either before or after the commencement of the litigation or that a claim by a party for an unreasonably excessive amount has resulted in costs being unnecessarily or unreasonably incurred it may deprive that party of costs wholly or in part, and may further order him to pay the costs of an unsuccessful party either wholly or in part.

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

(4) Where a plaintiff obtains a judgment or order against a defendant who has been joined in order that all parties interested in the *lis* shall be bound by the judgment or order, no order for costs shall be made against such defendant if he is not in default, or if he does not contest the plaintiff's claim, and has not made any claim or asserted any right in the *lis*, but in such case the Court may grant that defendant such sum for costs as will compensate him for expenses necessarily incurred by him and may in doing so exercise the powers hereinafter conferred on it to order costs out of any property or fund with or without a right of recourse against any other party to the action or matter.

Costs where  
several causes  
of action or  
several defend-  
ants, etc.  
Ib. R.1(2).

2. In the absence of any special order—

- (a) where the statement of claim contains more than one cause of action and the plaintiff succeeds on one or more causes of action and the defendant succeeds on another or others, costs shall be allowed to the plaintiff on the cause or causes of action on which he succeeds and to the defendant on that or those on which he succeeds, in the same manner as if separate actions had been brought;
- (b) where there is judgment for one party on the claim with costs and judgment for the other party on the counterclaim with costs, the costs shall be assessed as if each party had succeeded in an independent action and charges which cover without discrimination, work referable to the claim and work referable to the counterclaim, shall be divided between the claim and the counterclaim in the proportion in which the work covered by such charge is properly attributable to the claim and to the counterclaim;
- (c) where a party succeeds on both the claim and the counterclaim, the costs of the counterclaim shall be the amount only by which the costs of the proceedings have been increased by the counterclaim, and in the absence of directions by the Court as to the manner in which those costs are to be assessed such amounts shall be allowed as the taxing officer considers reasonable;
- (d) where several defendants defend an action separately and it appears that the defendants or any of them might have joined in their defence, the Court may allow only one set of costs to those defendants as to whom it appears a joint defence might have been conducted and separate costs to any other or others who in the opinion of the Court were properly separately represented;
- (e) if there are several defendants and the plaintiff has a verdict against them, each of them shall be liable to the plaintiff for the entire costs although they defend separately: *Provided*

that the Court may from time to time make an order or orders as between several defendants apportioning the liability as between themselves and the recovery of contribution;

- (f) a plaintiff suing in a representative character shall personally be liable to pay costs to the defendant in case of a non-suit or of a judgment for the defendant.

3. (1) The costs of and occasioned by any amendment made without leave in the writ or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

Costs of amendment without leave: non-admission of facts or documents. Cf. E. O. 62, R.3(2)(5).

(2) If a party on whom a notice to admit facts is served under Order 30 Rule 2, refuses or neglects to admit the facts within 7 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.

(3) If a party

(a) on whom a list of documents is served in pursuance of any provision of Order 26, or

(b) on whom a notice to admit documents is served under Order 30 Rule 5,

gives notice of non-admission of any of the documents in accordance with Order 30 Rule 4 (2) or 5 (2), as the case may be, the costs of proving that document shall be paid by him, unless the Court otherwise orders.

4. (1) Where property is the subject of any action or matter, or where any question arising therein will affect any right or claim to property, the Court may make an order that the costs of any party may be recovered out of the property with or without recourse against any other party: Provided that no such order shall be made unless the Court is satisfied that the party seeking the order had a genuine interest to protect, or that it was reasonable in the circumstances that he should appear.

Costs out of fund or property. Cf. W.A. O.LXV, R.4. RR. 2, 3, 4.

(2) Where the Court orders payment of costs out of any property it shall direct out of what portion or portions the costs shall be paid.

(3) The costs of inquiries to ascertain the person entitled to any share or interest in property shall be paid from such share or interest unless the Court shall otherwise direct.

5. (1) Where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default the Court may make against any solicitor whom it considers to be responsible (whether personally or through a servant or agent) an order—

Liability of solicitor. Cf. W.A. O.LXV, R.6. Cf. E. O. 62, R.8.

- (a) disallowing the costs as between the solicitor and his client;
- (b) directing the solicitor to repay to his client costs which the client has been ordered to pay to any other party to the proceedings; and
- (c) directing the solicitor personally to indemnify any party other than his client against costs payable by the party indemnified.

(2) No order under this Rule shall be made against a solicitor unless he has been given a reasonable opportunity to appear before the Court and show cause why the order should not be made, except where any proceeding in court or in chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made—

- (a) because of the failure of the solicitor to attend in person or by a proper representative; or
- (b) because of the failure of the solicitor to deliver any document for the use of the Court which ought to have been delivered, or to be prepared with any proper evidence or account, or otherwise to proceed.

(3) The Court may before making an order under this Rule refer the matter to the Taxing Officer for inquiry and report.

(4) The Court may direct that notice of any proceedings or order against a solicitor under this Rule shall be given to his client in such manner as may be specified in the direction.

Costs of  
solicitor  
guardian *ad*  
*litem*.  
Cf. W.A.  
O.LXV, R.7.  
Cf. S.A.  
O.65, R.9.  
Cf. Tas.  
O.80, R.5.

6. (1) Where the Court appoints a solicitor to be guardian *ad litem* of a person under disability, in any cause or matter, the Court 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 by some one or more of the parties, to the cause or matter, or out of any fund in court in which the person under disability is interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

(2) When a solicitor acts as guardian *ad litem* without an order of the Court appointing him as such guardian, the costs incurred in the performance of the duties of such office shall be in the discretion of the Court.

Set-off.  
W.A. O.LXV,  
R.8.

7. A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular action in which the set-off is sought.

Costs of Law  
Officers.  
Amended by  
G.G. 19/12/75,  
p. 4571.  
Ib. R.9.

8. In all actions or matters in which a Law Officer or other solicitor employed by the Crown or any instrumentality of the Crown shall act in his official capacity the party for whom he acts shall be entitled to recover costs in the same manner and to the same extent as if the Law Officer or other solicitor were a private practitioner engaged by such party.

Restriction  
of discretion  
to order  
costs.  
Cf. W.A.  
O.XXI, R.18.  
Cf. E. O.62,  
R.6(1)(d).

9. (1) In a probate action to which Order 73 Rule 15 applies a party who only cross-examines the witnesses produced to support the will shall not be liable to pay the costs of the party propounding the will unless the Court considers that there was no reasonable ground for opposing the will.

Cf. E. O.62,  
R.6(2).

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any

other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably, or in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

10. (1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings, and any order of the Court for the payment of costs may require the costs to be paid forthwith notwithstanding that the proceedings are not concluded.

Stage at which costs may be dealt with.  
Cf. E. O. 62, R.4.

(2) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and where proceedings have been transferred or removed to the Court from any other court or tribunal the costs of the whole proceedings, both before and after the transfer or removal, may (subject to any order of the court or tribunal ordering the transfer or removal) be dealt with by the Court.

Costs in other courts.

(3) Where on an appeal or in proceedings transferred or removed to the Court, the Court makes an order as to the costs of proceedings before another court or tribunal, the Court may—

- (a) specify the amount of the costs to be allowed;
- (b) order that the costs be taxed by the Taxing Officer; or
- (c) order that the costs be ascertained by taxation or otherwise in that other court or tribunal.

11. (1) Except when otherwise ordered, solicitors are, subject to these Rules, entitled to charge and be allowed the fees set forth in the Fourth Schedule in respect of the matters referred to in that Schedule and higher fees shall not be allowed in any case, except such as are by this Order otherwise provided for.

Scale of Costs.  
Fourth Schedule.  
Amended by  
G.G. 15/6/73,  
p. 2249;  
G.G. 19/12/75,  
p. 4571.  
Cf. W.A.  
O.LXV, R.17.

(2) Subject to the provisions of the Legal Practitioners Act, 1893, permitting a solicitor to make a written agreement as to costs with his client, and to the provisions of these rules, the fees allowed under the scale in the Fourth Schedule shall apply both as between party and party, and solicitor and client; but where costs (including expenses and counsel fees) have been incurred which in the opinion of the Taxing Officer are not properly recoverable against the party liable under the judgment or order to pay costs, but have nevertheless been properly incurred, or where costs have been incurred at the special request of the client, or in contesting and reducing a claim, those costs shall be recoverable from the client; and the Taxing Officer is hereby authorised to fix such sum as he thinks reasonable to cover the additional costs.

(3) Subject to the provisions of this Order, and to any order made by the Court, the fees prescribed by items 19 to 23 (inclusive) in the scale in the Fourth Schedule cover all work done, whether by the solicitor or by counsel.

(4) An allowance to a witness for his attendance at a trial or hearing shall be calculated in accordance with the scale of witness fees in force at the time of the trial or hearing.

Costs in particular cases.  
Cf. W.A.  
O.LXV,  
R.18.

12. (1) Where the Court is of opinion that a Special Order as to costs should be made by reason of the unusual complexity or importance of the case or for any other good or sufficient reason the Court may order that any particular allowances in the scale in the Fourth Schedule be increased or may certify for the whole of the costs in accordance with the details of the said scale irrespective of the limits in Rule 16 of this Order or may direct the Taxing Officer to tax the costs on a higher scale and in giving any such direction the Court may fix a limit within which the Taxing Officer may allow such costs.

(2) In regard to any particular item or section of costs where the quantum of work performed does not justify the allowance of a fee according to the said scale or a fee equal to the minimum fee prescribed, the Court or Taxing Officer may fix such fee as in the opinion of the Court or Taxing Officer is just and reasonable.

(3) The Court may award a lump sum by way of costs or may direct that a party entitled to costs shall recover only a proportion of the costs under the said scale.

(4) Where on an appeal, or on an appeal and cross-appeal, it is desirable that costs be apportioned as between any of the parties, the Court may itself make the apportionment or may refer the matter to the Taxing Officer for his determination, with such directions as it considers necessary.

(5) On a reference to the Master or a referee of any question for inquiry or report, or of any cause, matter, question, or issue for trial or determination, the order of reference may direct the basis on which the costs of the reference are to be taxed and allowed, and in the absence of such direction the costs (other than the costs of a reference for inquiry or report) shall be in the discretion of the Master or referee who may give any direction necessary for the taxation thereof. If the order of reference for inquiry or report does not direct the basis on which the costs are to be assessed, the question shall be reserved to the Judge.

Costs where scale does not apply.  
Ib. R.18A.

13. In any matter or case to which the scale in the Fourth Schedule does not apply, the Court may—

- (a) award a lump sum by way of costs;
- (b) direct the Taxing Officer to tax or allow costs analogous to those allowable under the said scale;
- (c) direct the Taxing Officer to tax and allow reasonable costs.

14. (1) Where it appears to the Court making a lump sum award for costs that some item or section of costs incurred by a party may be justified, but that it cannot be substantiated in detail or in quantum without considerable delay, the Court may make an interim award, and reserve the item or section in question for later consideration.

Lump sum—  
interim  
award.  
Ib. R.18B.

(2) Such interim award may be enforced as a judgment of the Court, and any award made on further consideration shall be enforceable in like manner.

(3) This Rule shall apply to any cause or matter in which the question of costs has not been disposed of, whether commenced before or after these Rules come into force.

15. [*Revoked by G.G. 19/12/75, p. 4572.*]

16. Subject to the provisions of this Order:—

Limits  
to costs.  
Substituted by  
G.G. 19/12/75,  
p. 4572.  
Ib. R.20.

(1) the costs of or in relation to a party to an action or other proceeding (inclusive of counsel fees but exclusive of other disbursements)—

- (a) recoverable by one party from another party; or
- (b) payable by a party to his own solicitor,  
shall not exceed—
  - (i) the sum of \$3 000.00 where the action or other proceeding is commenced on or after the 1st day of January, 1954, but before the 7th day of April, 1960;
  - (ii) the sum of \$4 500.00 where the action or other proceeding is commenced on or after the 7th day of April, 1960, but before the 1st day of February, 1967;
  - (iii) the sum of \$5 000.00 where the action or other proceeding is commenced on or after the 1st day of February, 1967, but before the 1st day of June, 1975;
  - (iv) the sum of \$7 500.00 where the action or other proceeding is commenced on or after the 1st day of June, 1975, but before the 1st day of January, 1976;  
or
  - (v) the sum of \$10 000.00 where the action or other proceeding is commenced on or after the first day of January, 1976;

(2) where the action or issue is one in which a claim is made for damages for death or bodily injury caused by or arising out of the use of any motor vehicle as defined in subsection (3) of section 50 of the District Court of Western Australia Act, 1969, the total costs shall not exceed the costs that could have been allowed if the amount recovered were:—

- (a) the sum of \$10 000.00 where the action is commenced on or after the 7th day of April, 1960, but before the 15th day of June, 1973; or
- (b) the sum of \$20 000.00 where the action is commenced on or after the 15th day of June, 1973.

Costs in  
small claims.  
Ib. R.21.

17. (1) If an action is brought in the Supreme Court which could have been brought in a Local Court without the special consent of the defendant, the plaintiff shall recover no greater sum by way of costs than he could have recovered had the action been brought in a Local Court, unless the Court certifies that by reason of some important principle of law being involved, or of the complexity of the issues or of the facts, the action was properly brought in the Supreme Court.

(2) Where this Rule applies a solicitor acting for a plaintiff shall not be entitled to charge his client any sum by way of costs in excess of that properly payable on a party and party basis in a Local Court, unless the client has agreed in writing, before the proceedings are commenced, to pay on a higher scale, or the Court has certified that the action was properly brought in the Supreme Court.

Matters not  
provided for  
in the scale.  
Substituted by  
G.G. 19/12/75,  
p.p. 4572-3.  
Ib. R.22.

18. (1) In any matter not specially provided for in the scale in the Fourth Schedule, the Court or the Taxing Officer may allow costs by way of analogy according to the item in the scale which is most nearly applicable thereto; or if in the opinion of the Court or the Taxing Officer, there is no such item, the costs shall be fixed at such sum as in the opinion of the Court or the Taxing Master is adequate in the circumstances;

(2) Without limiting the generality of paragraph (1), the Taxing Officer may allow such fees as he considers reasonable:—

- (a) in connexion with the compromise of a claim by or against a person under a disability; or
- (b) for a conference or consultation where and to the extent that the conference or consultation was necessary.

Allowances  
on taxation.  
Ib. R.23.

19. In addition to the items of costs allowable under the scale in the Fourth Schedule and such counsel fees as may be allowed, all disbursements for fees of court, fees of officers, witness expenses actually paid according to the scale of allowances fixed in the said scale in that regard, agency charges, if specially allowed by the Court or by the Taxing Officer, the reasonable expenses as fixed by the Taxing Officer of the typing, printing and binding of appeal books, and other necessary payments and expenses incurred in the conduct of the litigation shall be allowable.

Basis for  
calculation  
of costs.  
Ib. R.24.

20. (1) Where the claim is for a liquidated sum costs are to be calculated on the amount recovered by the plaintiff if he succeeds, and on the amount claimed if the defendant succeeds.

(2) Where relief other than a liquidated sum is claimed, either alone or in addition to a liquidated sum, the Court in giving judgment shall fix the value of the subject matter for the purpose of determining the basis on which the party and party costs and the solicitor and client costs of each party shall be calculated. The value so fixed need not necessarily be the same for each party.

(3) If judgment is entered before trial without application to a Judge or the Master, the Taxing Officer shall determine the value of the subject matter for the purpose of this Rule, or may fix a lump sum for costs, and in the case of difficulty may refer the matter to a Judge.

(4) The costs of the solicitor for the unsuccessful party as against his client shall be on the same basis as the costs of the successful party unless the Judge at the trial or in chambers orders otherwise: Provided that the client or the solicitor may, at any time within six calendar months from the date of judgment, apply to a Judge for an order that such costs be fixed on some other basis.

21. Items 13, 14(a) and 14(f) in the scale in the Fourth Schedule apply only where there is a substantial trial. Where for any reason there is no substantial trial, the Judge or the Taxing Officer may make such allowance in lieu of the fees prescribed by any of such items as he considers to be merited in the circumstances.

Costs where  
no substantial  
trial.  
Amended by  
G.G. 19/12/75,  
p. 4573.  
Ib. R.25.

22. [Revoked by G.G. 19/12/75, p. 4573.]

23. If it is shown to the satisfaction of the Taxing Officer that by reason of special circumstances, a fee in the scale in the Fourth Schedule which includes the drawing or settling of a pleading or other document is inadequate, the Taxing Officer may allow such additional sum as he thinks proper, whether the pleading or document has been drawn or settled by counsel or by the solicitor.

Certain fees  
may be in-  
creased in  
special cir-  
cumstances.  
Amended by  
G.G. 19/12/75,  
p. 4573.  
Ib. R.27.

24. (1) In this Rule the term "person under disability" has the same meaning as in Order 70.

(2) This Rule applies to—

(a) any proceedings (including an action under the Fatal Accidents Act, 1959) in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability or in which money paid into court is accepted by or on behalf of such a person, and

(b) any proceedings before the Full Court on an application or appeal made in connection with any proceedings to which this Rule applies by virtue of sub-paragraph (a).

Costs of  
solicitor  
when money  
recovered by  
or on behalf  
of infant, etc.  
Cf. E. O.62,  
R.30.

(3) Except as provided by paragraph (4) the costs payable to his solicitor by or on behalf of a plaintiff who is a person under disability or from any money recovered by or on behalf of a person under disability in any proceedings to which this Rule applies being the costs of or incidental to those proceedings or consequent thereon, must be taxed; and no costs shall be charged or retained by the solicitor of any plaintiff in respect of those proceedings except the amount of such taxed costs.

(4) This Rule does not apply where the plaintiff's solicitor does not claim additional costs against his client over and above the party and party costs, as ascertained by taxation or the agreement of the defendant, payable to the client in the proceedings.

(5) Paragraph (3) applies in relation to any proceedings to which this Rule applies by virtue of paragraph 2(b) as if for references to a plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings in the court below.

(6) Nothing in the foregoing provisions of this Rule shall prejudice a solicitor's lien for costs.

(7) The foregoing provisions of this Rule apply in relation to a counterclaim by or on behalf or for the benefit of a person under disability, as if for references to a plaintiff there were substituted references to a defendant.

25-31. [*Revoked by G.G. 19/12/75, p. 4573.*]

#### Taxation of Costs.

Bills of  
costs to be  
taxed.  
Ib. R.35.

32. (1) Unless the Court in a particular case otherwise directs, bills of costs and fees which are payable to practitioners admitted and entitled to practise in the Court in respect of business transacted by them in the Court or its offices, and which have been directed by judgment or order to be taxed, shall be taxed, allowed and certified by the Taxing Officer who shall appoint a time for taxation on the application of the party claiming taxation.

Cf. E. O.62,  
R.11(1).

(2) Where an action, summons or other proceeding is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled under these Rules to tax his costs, then subject to Rule 49, those costs may be taxed without any order in that behalf being made.

Indorsements  
on bill of  
costs.  
Cf. W.A.  
O.LXV, R.37.

33. Every bill of costs which is left for taxation shall have indorsed therein a notice of appointment, and 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 taxed.

When notice  
of taxation  
need not be  
given.  
Cf. W.A.  
O.LXV, R.36.  
Cf. E. O.62,  
R.22(3).

34. Notice of taxing costs need not be given to any party who has not entered an appearance or taken any part in the proceedings to which the costs relate.

35. (1) Where notice is required two clear days' notice of taxing costs together with a copy of the bill of costs, and of any affidavit of increase which may be necessary, shall be given to the other party by the party whose costs are to be taxed.

Notice of taxation.  
W.A. O.LXV,  
R.38.

(2) In cases of urgency the Taxing Officer may direct that one clear days' notice only shall be given.

36. A party leaving a bill of costs for taxation must lodge with the bill vouchers for the payment of all disbursements (other than court fees) included in the bill; and where the vouchers are numerous they must be marked with the corresponding number in the bill.

Vouchers to be lodged.  
Substituted by  
G.G. 19/12/75,  
p. 4573.

37. Where any solicitor fails to leave his bill with the necessary papers and vouchers within the time or extended time fixed by the Taxing Officer, or in any way delays or impedes the taxation he shall, unless the Taxing Officer otherwise directs, forfeit the fees to which he would be entitled for preparing his bill of costs and attending on taxation.

Solicitor delaying taxation.  
Ib. R.39.

38. The appointment made by the Taxing Officer shall be peremptory, and he shall proceed thereon *ex parte* on proof that due notice has been given to the opposite party, unless sufficient cause appears for postponement.

Appointment to be peremptory.  
Ib. R.40.

39. When an order directing the taxation of any costs in a proceeding has been made, the Taxing Officer may of his own motion give notice to a party to carry in his bills of costs for taxation and may limit a time for that purpose.

Taxing Officer may direct bills of costs to be brought in.  
Ib. R.41.

40. When a party entitled to costs refuses or neglects to bring in his costs for taxation within any period limited under Rule 39, the Taxing Officer may—

Default by party in taxing costs.  
Ib. R.42.

- (a) certify the costs of the other parties and the refusal or neglect; or
- (b) allow a nominal or other sum to the party refusing or neglecting, for his costs.

41. Where in any action 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, previously to completing the taxation, 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, 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 for taxation and that the taxation will be proceeded with at the time the Taxing Officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

Where costs payable out of property notice to clients may be directed.  
Ib. R.43.

Form of bills  
of costs.  
Substituted by  
G.G. 30/8/74,  
p. 3242.  
Amended by  
G.G. 19/12/75,  
p. 4573.  
Cf. H. Ct.  
O.71 R.35.

42. (1) A bill of costs for taxation shall be prepared so as to show clearly—

- (a) items consecutively numbered, together with a reference to the item in the scale to which the item in the bill relates;
- (b) dates of items (specifying years, months and days);
- (c) where necessary, particulars of the services charged for;
- (d) disbursements; and
- (e) professional charges.

(2) Professional charges and disbursements shall be entered in separate columns and each column shall be added before the bill is filed.

Taxing Officer  
determines  
questions of  
fact.  
Ib. R.45.

43. The decision of the Taxing Officer on all questions of fact shall be final.

Power of  
Taxing  
Officer.  
Ib. R.46.

44. The Taxing Officer may, for the purposes of taxation of costs—

- (a) summon and examine witnesses either orally or upon affidavit;
- (b) administer oaths;
- (c) direct or require the production of books, papers, and documents;
- (d) issue subpoenas;
- (e) make separate or interim certificates or allocators;
- (f) require a party to be represented by a separate solicitor.

Reference to  
Court.

45. The Taxing Officer may, of his own motion, refer any question arising in the course of a taxation for the direction of the Court.

Where pro-  
ceedings ad-  
journed into  
Court.  
W.A. O.LXV,  
R.47.

46. Where a Judge directs that any matter shall be adjourned into court the same fees shall, if the Judge so orders, be payable and the same costs shall be allowed in respect of proceedings subsequent to the adjournment as would have been payable if the matter had been commenced in court.

Costs of  
interrogator-  
ies, discovery.  
Ib. R.48.

47. (1) The costs of interrogatories shall be reserved for consideration of the Judge at the trial. Where there is no trial such costs shall be in the discretion of the Taxing Officer.

(2) In considering whether any order or allowance should be made for the costs of interrogatories, the Judge or the Taxing Officer shall consider whether the party requesting answers to interrogatories has by his conduct in connection with the request, unnecessarily increased the costs and whether the results achieved have justified wholly or in part the additional costs involved.

(3) The party against whom an order for discovery or to answer or further answer interrogatories is made must pay the costs of the application, unless the Court otherwise orders.

(4) Subject to these Rules, and to any order of the Court, the costs of obtaining discovery including inspection of documents is in the discretion of the Taxing Officer, but no allowance shall be made if it is shown to his satisfaction that there were not good and sufficient grounds for obtaining discovery and making the inspection.

48. (1) Unless the Court otherwise orders, the costs of a motion or application in an action shall be deemed to be part of the costs of the action of the party in whose favour the motion or application is determined unless the motion or application is unopposed.

Costs of motion etc. following event.  
Ib. R.49.

(2) When the motion or application is unopposed, the costs of both parties shall be deemed to be part of their costs of the action, unless the Court otherwise orders.

49. When a motion, application or other proceeding is ordered to stand over to the trial and no order is made at the trial as to the costs of the motion, application or proceeding, the costs of both parties of the motion, application or proceeding shall be deemed to be part of their costs of the action.

Where motion etc. stood over to trial and no order made as to costs.  
Ib. R.50.

50. When the costs of a motion, application, or other proceeding are reserved by the Court or a Judge, costs of the motion, application, or proceedings shall not be allowed to a party without an order of the Court or a Judge.

Costs reserved.  
Ib. R.51.

51. (1) Where in any action or matter taxation of costs is not ordered, or any special costs are by these Rules or by any order reserved for the consideration of the Court at trial, the Court may fix the amount of costs payable, or the amount of such special costs, and in every judgment or order of the Court where the question of costs is not specifically dealt with there shall be deemed to be reserved to any party interested liberty to apply within 30 days.

Where Court may fix costs.  
Ib. R.52.

(2) Where under these Rules a party is required to obtain some special certificate for costs, there shall be deemed to be reserved to such party liberty to apply within 30 days.

52. Where taxation of costs is ordered and by the terms of the order or by the effect of the order, the costs are to be apportioned as between the parties, or a party is entitled to receive the costs applicable to any part of the action or matter, or where the costs of a counter-claim are concerned, then in case of any doubt or difficulty arising on taxation there shall be deemed to be reserved in every such order an authority to the Taxing Officer or any party to refer the question to a Judge.

Leave to refer to Judge where costs to be apportioned, etc.  
Ib. R.53.

## Review of Taxation.

Party dissatisfied with taxation may object.  
1b. R.54.

53. (1) A party who contends that the Taxing Officer has made an error in principle in allowing or disallowing any item or part of an item in a bill of costs taxed by him may, at any time before a certificate of taxation dealing finally with that item is signed, or at such earlier time as may, in any case, be fixed by the Taxing Officer—

(a) deliver to the other party interested in the allowance or disallowance and carry in before the Taxing Officer, an objection in writing to the allowance or disallowance specifying in the objection by a list, in a short and concise form, the items or parts of items objected to, and the grounds and reasons for the objections; and

(b) thereupon apply to the Taxing Officer to review the taxation in respect of those items or parts.

(2) Pending the consideration and determination of the objection, the Taxing Officer may if he thinks fit issue a certificate of taxation for or on account of the remainder or of part of the bill of costs. Any further certificate which may be necessary shall be issued by the Taxing Officer after his decision upon the objections.

Taxing Officer may review taxation.  
1b. R.55.

54. (1) Upon an application under the last preceding Rule to review the taxation, the Taxing Officer shall reconsider and review his taxation in relation to the objections, and he may, if he thinks fit, receive further evidence in respect of the objections.

(2) If so required by a party, the Taxing Officer shall state in his certificate of taxation or by reference to the objection, the ground and reason of his decision on the objection, and any special facts or circumstances relating to his decision.

(3) The Taxing Officer may tax the costs of the objections and add them to or deduct them from, any sum payable by or to a party to the taxation.

(4) Except as provided by this Rule, the Taxing Officer shall not, after a certificate of taxation is signed, review his taxation or amend his certificate, except to correct a clerical or manifest error before payment or process issued for recovery of the costs.

Taxation may be reviewed by a Judge.  
1b. R.56.

55. (1) If a party is dissatisfied with the certificate of the Taxing Officer as to any item or part of an item objected to under Rule 53 of this Order, he may, within fourteen days from the date of the certificate, or such other time as the Court, or the Taxing Officer at the time he signs his certificate, allows, apply to a Judge in chambers for an order to review the taxation as to that item or part of an item.

(2) The Judge, if of opinion that the Taxing Officer has made an error in principle, may thereupon make such order to rectify the error as the Judge thinks just.

(3) The certificate of the Taxing Officer is final and conclusive as to all matters which have not been objected to in accordance with these Rules.

56. An application under the last preceding Rule to a Judge to review the taxation shall be heard and determined by the Judge upon the evidence which has been brought in before the Taxing Officer, and further evidence shall not be received upon the hearing of the application unless the Judge otherwise directs.

No further evidence on review except with leave.  
Ib. R.57.

#### Miscellaneous.

57. The costs allowed by the Taxing Officer on any interim or final certificate of taxation shall be deemed to be a judgment of the Court, and shall be recoverable accordingly.

Taxing Officer's certificate enforceable as a judgment.  
Ib. R.58.

58. A party who has required the Taxing Officer to state the ground and reason of his decision on an objection for the purpose of applying to a Judge to review the taxation, may request the Taxing Officer to grant a stay of proceedings either wholly or limited to the item or part of an item which is the subject of the objection, and in the event of the Taxing Officer refusing such stay may apply to a Judge.

Stay on review.  
Ib. R.59.

59. Where a party who is entitled to be paid costs is also liable to pay costs, the Taxing Officer may, subject to any direction of the Court,—

Power of Taxing Officer where party liable to be paid and to pay costs.  
Cf. E. O.62, R.18.

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance, or
- (b) delay the issue of a certificate of taxation for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

60. (1) Where on the taking of accounts, the accounts consist in part of a bill of costs, the Taxing Officer shall assist in settling the costs, not being the ordinary costs of passing the accounts of a Receiver.

Taxing Officer to assist in settling costs on taking of accounts.  
W.A. O.LXV, R.60.

(2) On a bill of costs being referred under this Rule, the Taxing Officer shall proceed to tax the costs, and shall have the same powers, and the same fees shall be payable in respect of the taxation, as if those costs had been referred to the Taxing Officer for taxation by an order.

(3) The Taxing Officer shall report and certify the costs to the Master or other officer taking the accounts.

61. 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 Officer that there must in any event be moneys due from the solicitor to the client, the Taxing Officer 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 may order the moneys so certified to be forthwith paid to the client or brought into court.

Interim certificate in matters of account.  
Ib. O.LI, R.19.

## ORDER 67

## Central Office, Officers

Duties.  
Cf. W.A.  
O.LXI,  
R.1.  
Cf. Vict.  
O.60, R.1.

1. All officers who at the date of commencement of these Rules were discharging duties relating to the business of the Court in its several jurisdictions shall unless otherwise provided by any enactment or by these Rules, continue to discharge the same, or duties analogous to, the duties which they respectively performed previous to the commencement of the said Rules.

Master to  
be present at  
Central  
Office.  
Cf. W.A.  
O.LXI,  
R.2.  
Cf. E. O.63,  
R.2.

2. A Master shall be present at the Central Office on every day on which that office is open for business for the purpose of superintending the business performed there and giving any directions which may be required on questions of practice and procedure.

Taking of  
oaths and  
affidavits.  
Cf. W.A.  
O.LXI,  
R.4.

3. A Master shall by virtue of his office, have authority to take oaths and affidavits in the Supreme Court.

Seals.  
Ib. R.5.

4. The official seals to be used in the Central Office shall be such as the Chief Justice from time to time directs.

Abuse of  
process:  
reference by  
Registrar to  
Judge.  
Ib. R.5A.

5. If any writ, process, motion, application or commission, which is presented for filing or issue, appears to the Registrar to be an abuse of the process of the Court or a frivolous or vexatious proceeding, the Registrar shall seek the direction of a Judge who may direct him to file or issue it, or to refuse to file or issue it without the leave of a Judge first had and obtained by the party seeking to file or issue it.

Office  
copies, etc.  
Ib. R.6.

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.

Petition,  
award, etc.,  
to be filed  
before judg-  
ment etc.  
passed.  
Cf. W.A.  
O.LXI,  
R.11.

7. 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, and a note thereof made on the judgment or order by the proper officer.

Indexes.  
Ib. R.13.

8. 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.

Date of  
filing to be  
marked, etc.  
Ib. RR.12, 14.  
Cf. E. O.63,  
R.3.

9. (1) All documents filed in the Central Office in any proceedings must be sealed with a seal showing the date on which the document was filed.

(2) There shall be entered in books kept in the Central Office for the purpose particulars of the date of delivery at the Central Office of every document for filing, the date of the document and the title of the cause or matter of which the document forms part of the record.

10. The Registrar 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.

Searches.  
Cf. W.A.  
O.LXI, R.18.

11. (1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Central Office, namely—

Inspection.  
Cf. W.A.  
O.LXI, R.13.  
Cf. E. O.63,  
R.4.

(a) the copy of any writ, and the statement of claim (if any) indorsed thereon under Order 6 Rule 3,

Cf. Matrimonial Causes Rules (Clth) R.299.

(b) the copy of any petition under the Companies Act, 1961,

(c) any judgment or order given or made in court or the copy of any such judgment or order, and

(d) with the leave of the Court, any other document.

(2) An application under paragraph (1) (d) may be made *ex parte*.

(3) Nothing contained in this Rule shall be construed as preventing any party to a cause or matter searching for, inspecting, and taking or bespeaking a copy of any affidavit or other document filed in the Central Office in that cause or matter or filed therein before the commencement of that cause or matter, but made with a view to its commencement.

12. 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.

Deposit of documents.  
W.A. O.LXI, R.22.

13. (1) No document filed in or in the custody of any office of the Supreme Court shall be taken out of that office without leave of the Court unless the document is to be sent to a Circuit Court.

Restriction on removal of documents.

Cf. W.A.  
O.LXI, R.20.  
Cf. E. O.63,  
R.9.

(2) No subpoena for the production of any such document shall be issued.

14. Any officer 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.

Deposit for officer's expenses.  
Cf. W.A.  
O.LXI, R.21.

Admissions,  
awards, etc.  
to be filed.  
Cf. W.A.  
O.LXI,  
R.23.

15. All petitions and written admissions of evidence whereon any order is founded, and all awards on 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.

New forms.  
Cf. W.A.  
O.LXI,  
R.35.

16. The Master may from time to time prescribe the use in or for the purpose of the Central Office of such additional forms to those contained in the Second Schedule, or of such modified forms, as may be deemed expedient.

Reference in  
judgment to  
Master in-  
cludes deputy.  
Cf. W.A.  
O.LX, R.3.

17. A reference in any judgment, decree, or order to the Master or the Registrar shall, unless otherwise directed by the Court, include a Deputy Master, or a Deputy Registrar, as the case may be.

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## ORDER 68

### Sittings, Vacations and Office Hours

Full Court  
and civil  
sittings.  
W.A.  
O.LXIII,  
R.1.

1. (1) The sittings of the Full Court and the civil sittings of the Court shall be held at times fixed by Rule of Court, from year to year.

(2) If the day appointed for the commencement of sittings is a day on which the offices of the Court are closed, the sittings shall commence upon the next day on which the offices are open.

Criminal  
Sittings.  
Ib. R.2.

2. The Criminal Sittings of the Supreme Court to be held at Perth, shall commence in each month on a day to be fixed, from year to year, by Rule of Court; provided that the day of commencement of any such monthly sittings may, at any time prior to such date, be altered to any other day in the month of such sittings by order of the Chief Justice published in the *Government Gazette*.

Vacations.  
Ib. R.4.

3. The vacations to be observed in the Supreme Court shall be the Christmas Vacation, the Easter Vacation, and the Winter Vacation. The Christmas Vacation shall commence on the 24th day of December and terminate on the 11th day of February; the Easter Vacation shall commence on Good Friday and terminate on Easter Tuesday, and the Winter Vacation shall commence on a day in June, July or August fixed by Rule of Court, from year to year, and terminate on a day fourteen days after the day so fixed.

(Note: This rule is merely declaratory of an Order in Council dated 24th July, 1963, and gazetted 2nd August, 1963, whereby the vacations of the Supreme Court are regulated.)

Days includ-  
ed in sitting  
and vacation.  
Ib. R 5.

4. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

5. The several offices of the Supreme Court shall be open on every day of the year, except Saturdays and Sundays, Good Friday, Monday and Tuesday in Easter week, Christmas Day and the next following working day and all Public Service holidays.

Offices.  
Days on  
which open.  
Amended by  
G.G. 9/11/73,  
p. 4165.  
Ib. R.6.

6. The office hours of the several offices of the Court shall be from ten o'clock in the forenoon to four o'clock in the afternoon; provided that the Chief Justice may direct that the offices or any office of the Court shall not be open between 1 p.m. and 2 p.m.

Office hours.

7. (1) One or more of the Judges shall be selected before the commencement of each vacation for the hearing during the vacation of all such applications as may require to be heard.

Vacation  
Judge.  
Cf. W.A.  
O.LXIII,  
RR.9, 10.  
Cf. S.A.  
O.63, R.3.

(2) Any other Judge may sit in vacation for the transaction of judicial business in addition to, or in substitution for, the Vacation Judge.

## ORDER 69

### **Paper, Printing, Notice, and Copies**

1. (1) Where by any provisions of these Rules a document is required or allowed to be printed, that document must be produced, subject to the provisions of Rule 2, by means of printing or type-writing (otherwise than by means of a carbon).

Regulations  
as to printing  
and photo-  
graphy.  
Cf. W.A.  
O.LXVI, R.2.  
Cf. E. O.66,  
R.2.

(2) For the purpose of these Rules a document shall be deemed to be printed if it is produced by lithography, stencil duplicating or any other mechanical means, except typewriting or photography, giving uniform facsimile pages of clear sharp and legible type.

(3) Any document produced by a photographic or similar process giving a positive, clear, and permanent representation free from blemishes, shall to the extent that it contains a facsimile of any printed or typewritten matter be treated for the purpose of these Rules as if it were printed.

2. (1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Supreme Court shall, subject to any directions given from time to time by the Master—

Requirements  
as to docu-  
ments.  
Amended by  
G.G. 7/12/73,  
p. 4489.  
Cf. W.A.  
O.LXVI, R.4.  
Cf. Vict.  
O.66, R.2.

- (a) be legibly and clearly typewritten or printed without blotting, erasure or such alterations as cause material disfigurement;
- (b) have a space of not less than six millimetres between each line;
- (c) be upon white paper of good and durable quality and capable of receiving ink writing and of such size as the Master from time to time directs;
- (d) be upon one side only of the paper with a quarter margin upon the left hand side of each sheet;
- (e) have each page numbered;

- (f) have a cover sheet upon which appears the number and a short title of the proceedings, a short description of the document (including, in the case of an affidavit, the name of the deponent and the date of swearing) and the name, address and telephone number of the solicitor (if any) filing, delivering or serving the document or, if the person on whose behalf the document is filed, delivered or served is not represented by a solicitor, the name, address for service and telephone number (if any) of that person.

(2) The Registrar may refuse to file or accept a document to which paragraph (1) applies if it does not comply with the provisions of that paragraph, and the costs of the document may be disallowed upon taxation.

(3) A typewritten copy of a document to which paragraph (1) applies shall not be filed, registered or marked as an office copy unless it is a first black ink copy.

(4) Any notice, request or consent required or allowed by these Rules may not be given orally except with the leave of the Court.

(5) The Court may require any document required for use in the Supreme Court to be printed or otherwise produced in any particular manner that it thinks fit.

Direction  
of Court as to  
cost of  
printing,  
shorthand,  
recording.  
Cf. Vict.  
O.66,  
R.2(5).

3. Where, by any order of the Court any document is ordered to be printed or typewritten or otherwise produced, or where any part of the proceedings is taken in shorthand or is recorded, the Court may order the expense thereof to be borne and allowed and copies or transcripts thereof to be furnished, by and to such parties and upon such terms as shall be thought fit.

Copies of  
documents for  
the other  
parties.  
Cf. W.A.  
O.LXVI,  
R.7.  
Cf. E. O.66,  
R.3.  
Cf. Vict.  
O.66, R.3.

4. (1) Where a document prepared by a party for use in the Court is printed the party by whom it was prepared must, on receiving a request from any other party entitled to a copy of that document and on payment of the proper charges, supply him with such number of copies thereof not exceeding ten, as may be specified in the request.

(2) The proper charges for printed copies shall be calculated at the rate of fifty cents (\$0.50) per page.

(3) Where a document prepared by a party for use in the Court is typewritten the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it or the relevant extract therefrom.

(4) The copy must be ready for delivery within 48 hours after a request for it, together with an undertaking to pay the proper charges, is received, and must be supplied thereafter on payment of those charges.

5. (1) Before a copy of a document is supplied to a party under this Order, it must be indorsed with the name and address of the party or solicitor by whom it was supplied.

Requirements  
as to copies.

Cf. W.A.  
O.LXVI,  
R.7(5).

Cf. E. O.66,  
R.4.(2), (3).

(2) The party by whom a copy is supplied under this Order, or if he sues or appears by a solicitor, his solicitor shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

6. (1) Where upon an *ex parte* application an order is made against or affecting the rights of a person, that person may obtain a copy of the affidavits filed by the applicant in support of his application upon making a written application to the party by whom the copies are to be furnished or his solicitor, with an undertaking to pay the proper charges.

Copies of  
affidavits on  
certain  
*ex parte*  
applications.

Cf. W.A.  
O.LXVI,  
R.8.

(2) The party who made the application must furnish the copies upon payment of the proper charges forthwith after receiving the written request and undertaking mentioned in paragraph (1) or within such time as may be specified in the request or may be directed by the Court.

## ORDER 70

### Disability

1. In this Order—

“the Act” means the Mental Health Act, 1962;

Interpretation.  
Cf. E. O.80,  
R.1.

“patient” includes an incapable person within the meaning of the Act, and any person who, by reason of mental illness, defect or infirmity, however occasioned, is declared by the Court to be incapable of managing his affairs in respect of any proceedings to which the declaration relates, and any person who is an incapable patient or an infirm person within the meaning of the Public Trustee Act, 1941;

“person under disability” means a person who is an infant or a patient.

2. (1) Subject to paragraph (4) a person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order, notice of which has been served on him, except by his guardian *ad litem*.

Persons  
under dis-  
ability suing  
or defending.  
Ib. R.2.  
Cf. W.A.  
O.XVI, R.20.

(2) Subject to the provisions of these Rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these Rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian *ad litem*.

(3) A next friend or guardian *ad litem* of a person under disability must act by a solicitor.

(4) A Judge may by order permit an infant to sue or defend or take part in any proceedings to which the order relates, without a next friend or guardian *ad litem* on being satisfied that in the circumstances of the case it is proper to do so.

Appointment  
of next  
friend or  
guardian  
*ad litem*.  
Cf. E. O. 80,  
R.3.

3. (1) This Rule does not apply in relation to a probate action.

(2) Save as provided by paragraphs (5) and (6) or by Rule 5, an order appointing a person next friend or guardian *ad litem* of a person under disability is not necessary.

(3) Where a person is authorised under Part VI of the Act to conduct legal proceedings in the name of the patient or on his behalf, that person shall be the next friend or guardian *ad litem* as the case may be, of the patient in any proceedings to which his authority extends unless, in a case to which paragraph (5) or (6) or Rule 6 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian *ad litem*, as the case may be, of the patient in those proceedings.

(4) In respect of an incapable patient or an infirm person within the meaning of the Public Trustee Act, 1941, the Public Trustee shall be the next friend or guardian *ad litem* as the case may be.

(5) Where a person has been or is next friend or guardian *ad litem* of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

(6) Where, after the commencement of any proceedings, a party thereto becomes a patient, an application shall be made to the Court for the appointment of a next friend or guardian *ad litem*, as the case may be, of that party.

(7) Unless the next friend or guardian *ad litem* of a person under disability has been appointed by the Court or is the Public Trustee—

(a) the name of any person shall not be used in a cause or matter as next friend of a person under disability,

(b) an appearance shall not be entered in a cause or matter for a person under disability; and

(c) a person under disability shall not be entitled to appear by his guardian *ad litem* on the hearing of a petition, summons or motion, which, or notice of which has been served on him,

unless and until the documents specified in paragraph (8) have been filed.

(8) The documents referred to in paragraph (7) are as follows—

(a) a written consent to be next friend or guardian *ad litem*, as the case may be, of the person under disability, signed by the person proposing to act as such friend or guardian;

- (b) where the person proposing to be the next friend or guardian *ad litem*, as the case may be, of a patient is authorised under Part VI of the Act to conduct proceedings in the cause or matter in question in the name of the patient or on his behalf, an office copy of the order under the said Part VI giving such authority; and
- (c) except where the person proposing to be such friend or guardian of a patient is so authorised under Part VI of the Act, an affidavit by the solicitor for the person under disability deposing—
  - (i) that he knows or believes, as the case may be, that the person to whom the affidavit relates is an infant or a patient, stating (in the case of a patient) the grounds of his knowledge or belief; and
  - (ii) where the person under disability is a patient, that there is no person authorised as aforesaid; and
  - (iii) that the person named in the affidavit as next friend or guardian, as the case may be, has no interest in the cause or matter in question adverse to that of the person under disability.
  - (iv) that in the case of an infant (who is not a patient) who has attained the age of 14 years, the infant consents to the person named in the affidavit acting as such next friend or guardian, as the case may be.

4. (1) This Rule applies in relation to a probate action.

Probate  
actions:  
Special  
provisions.  
Cf. E. O. 80,  
RR. 4, 5.

(2) Save as provided in paragraph (3) a person shall not act in a probate action as next friend or guardian *ad litem* of a person under disability unless he has been appointed to so act by the Court.

(3) A person may act as next friend or guardian *ad litem* in a probate action without an order of the Court where—

- (a) in the case of a patient, he is the person allowed under Part VI of the Act to conduct legal proceedings in the name of the patient or is the Public Trustee acting in respect of an incapable patient or an infirm person within the meaning of the Public Trustee Act, 1941.
- (b) in the case of an infant (who is not also a patient) he is the statutory or testamentary guardian of the infant;
- (c) in the case of an infant who has attained the age of 16 years (who is not a patient) nobody is qualified to be such next friend or guardian by virtue of sub-paragraph (b) and the person is one of the next of kin of the infant or if the infant is a married woman, is her husband, and has been appointed by him or her to act as his or her next friend or guardian *ad litem*.

(4) Where a person not being the Public Trustee, is entitled to act as next friend or guardian *ad litem* of a person under disability without an order of the Court the writ beginning the action (where such person is the plaintiff) must not be issued, and an appearance must not be entered for him in the action (where he is a defendant, intervener or person cited) without the consent of the Master.

(5) On the application for a consent under paragraph (4) there must be produced to the Master, in the case of a patient an office copy of the order under Part VI of the Act authorising the next friend or guardian *ad litem* to conduct legal proceedings in the name of the patient, and in the case of an infant—

- (a) where the next friend or guardian *ad litem* is the statutory or testamentary guardian of the infant, an affidavit deposing to the guardianship, and the age of the infant, and showing that the guardian has no interest in the action adverse to that of the infant;
- (b) where sub-paragraph (a) does not apply
  - (i) the appointment by the infant;
  - (ii) the written consent to act as next friend or guardian *ad litem*, as the case may be, of the person so appointed;
  - (iii) an affidavit deposing to the age of the infant and proving the fitness and willingness of the proposed next friend or guardian *ad litem* to act as such and that he has no interest in the action adverse to that of the infant, and is a next-of-kin of the infant, or is her husband.

Where person  
under dis-  
ability does  
not appear.  
Cf. E. O. 80,  
R.6.

5. (1) Where—

- (a) in an action against a person under disability begun by writ, or by originating summons to which an appearance is required to be entered, no appearance is entered for that person, or
  - (b) the defendant in an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no appearance is entered for that person,
- the plaintiff or defendant, as the case may be, before proceeding further with the action or counterclaim must, after the time limited (as respects the person under disability) for appearing, make an application to the Court for an order appointing a guardian *ad litem* of that person, and giving consequential directions.

(2) Where a party to an action has served on a person under disability who is not already a party to the action, a third party notice within the meaning of Order 19 and no appearance is entered by that person to the notice, the party serving the notice before proceeding further with the third party proceedings must make an application to the Court after the time limited (as respects that person) for appearing for an order appointing a guardian *ad litem* of that person and giving consequential directions.

(3) Where in any proceedings against a person under disability begun by motion or by originating summons to which no appearance need be entered, that person does not appear by a guardian *ad litem* at the hearing of the motion or summons, the Court hearing it may appoint a guardian *ad litem* of that person in the proceedings, or direct that an application be made for the appointment of such a guardian.

(4) At any stage in proceedings under any judgment or order, notice of which has been served on a person under disability, the Court may, if no appearance is entered for that person, appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made for the appointment of such a guardian.

(5) An application under paragraphs (1) or (2) must be supported by evidence proving—

- (a) that the person to whom the application relates is a person under disability,
- (b) that the person proposed as guardian *ad litem* consents and is a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability,
- (c) that the writ, originating summons, defence and counterclaim, or third party notice, as the case may be, was duly served on the person under disability, and
- (d) subject to paragraph (6) that notice of the application was, after the expiration of the time limited for appearance, and at least seven days before the day named in the notice for hearing the application, duly served on him.

(6) The Court may order that notice of an application under paragraphs (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian *ad litem* pursuant to a direction of the Court under paragraph (3) or (4) must be supported by evidence proving the matters referred to in paragraph 5 (b).

6. An application to the Court on behalf of a person under disability on whom an order made *ex parte* under Order 18 Rule 7 has been served, for the discharge or variation of the order must be made—

Discharge or  
variation of  
certain  
orders.  
E. O. 80,  
R. 7.

- (a) if a next friend or guardian *ad litem* is acting for that person in the cause or matter in which the order is made, within fourteen days after the service of the order on that person;
- (b) if there is no next friend or guardian *ad litem* acting for that person in that cause or matter, within fourteen days after the appointment of such friend or guardian to act for him.

7. (1) The Court may of its own motion or on the application of a party to any proceedings or of any other person remove a next friend or guardian *ad litem*, and may stay proceedings until a next friend or guardian *ad litem* in place of the one removed has been appointed.

Removal of  
next friend  
or guardian.  
(New.)

(2) An application under this Rule shall be by summons which, unless the Court otherwise orders, must be served on the next friend or guardian *ad litem* whose removal is sought and on the person under disability.

No implied admission from pleading.  
E. O. 80,  
R. 8.

8. Notwithstanding anything in Order 20 Rule 14 (1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

Discovery and interrogatories.  
Ib. R. 9.

9. Orders 26 and 27 shall apply to a person under disability and to his next friend or guardian *ad litem*.

Compromise by infant or patient.  
Amended by G.G. 15/6/73, p. 2249.  
Cf. W.A. O.XVIA, R.1(1).  
Cf. E. O. 80, R. 10.

10. (1) No settlement, compromise, or payment, and no acceptance of money paid into court, whenever entered into or made, in any cause or matter in which there is a claim by or on behalf of or against a person under disability, shall be valid, unless it is approved by the Court or if an appeal is pending in the cause or matter, by the Full Court.

Cf. W.A. O.XVIA, R.1(2).

(2) An application for approval under paragraph (1)—

- (a) if made to the Full Court, shall be on motion;
- (b) if made before the hearing of a cause or matter, other than an appeal to the Full Court, shall be by summons returnable before a Judge in chambers;
- (c) if made during the trial of an action or issue, shall be on motion,

and shall be supported by affidavit and by the opinion of an independent counsel; but the Judge or the Full Court may dispense with the necessity of obtaining counsel's opinion.

(3) In this Rule "settlement" includes an acceptance of an offer to consent to judgment.

Compromise before action.  
Cf. W.A. O.XVIA, R. 2.  
Cf. E. O. 80, R. 11.

11. (1) Where a claim which is enforceable by proceedings in the Court is made by or on behalf of or against a person under disability, and before proceedings to enforce the claim are commenced an agreement is reached for settlement or compromise of the claim, and it is desired to obtain the Court's approval to the agreement for settlement or compromise the next friend of the person under disability or the person making the claim against the person under disability may issue an originating summons for—

- (a) approval of the settlement or compromise, and for such orders and directions as may appear necessary for the protection and investment of any property or funds relating to the settlement or compromise and the application of the income and/or capital for the benefit of the person under disability; or
- (b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this Rule an application is made in respect of a claim under the Fatal Accidents Act, 1959, the originating summons must include the particulars mentioned in section 8 of that Act.

## 12. (1) Where—

- (a) in any proceedings money is recovered by or on behalf of or is adjudged or ordered or agreed to be paid to or for the benefit of a person under disability, or
- (b) in any proceedings money paid into court is accepted by or on behalf of a plaintiff who is a person under disability; or
- (c) in an application under Rule 11 (1) the Court has ordered the payment into Court or investment of any moneys relating to a settlement or compromise,

Control of  
money  
recovered.  
Cf. W.A.  
O.XVIA,  
R.12.  
Cf. E. O.80,  
R.12.

the money shall, unless otherwise ordered by the Court, be paid to the Public Trustee for investment on behalf of the person under disability, and if the Court so orders may be invested by the Public Trustee in investments outside the Common Fund.

(2) The Court may at any time, and from time to time, give directions for the application of the income or of the capital and income of the investment for the maintenance, welfare, advancement, or otherwise for the benefit of the person under disability.

13. (1) Where in any proceedings, a document is required to be served personally on any person and that person is a person under disability then, subject to Order 26 Rule 15 (3) and Order 27 Rule 8 (3) personal service must be effected in accordance with this Rule.

Personal  
service on  
person  
under  
disability.  
Amended by  
G.G. 15/6/73,  
p. 2250.  
Cf. E. O.80,  
R.16.

(2) Where the person under disability has a next friend or guardian *ad litem* in the proceedings the document may be served on such next friend or guardian.

(3) Where the person to be served is an infant (who is not also a patient) and has no next friend or guardian *ad litem* in the proceedings, the document may be served—

- (a) if he is aged 16 years or upwards, on him;
- (b) on one of his parents or his guardian;
- (c) if he has no parent or guardian, on the person with whom he resides or in whose care he is.

(4) Where the person to be served is a patient and has no next friend or guardian *ad litem* in the proceedings, the document may be served—

- (a) on the person (if any) who is authorised under Part VI of the Act to conduct the proceedings in the name of the patient or on his behalf; or
- (b) on the Public Trustee, if the patient is an incapable patient or an infirm person within the meaning of the Public Trustee Act, 1941; or
- (c) if sub-paragraphs (a) or (b) do not apply, on the person with whom the patient resides or in whose care he is.

(5) Notwithstanding anything in paragraphs (2), (3) and (4) the Court may order that a document which has been, or is to be, served on the person under disability, or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(6) A document served pursuant to any of paragraphs (2) to (5) must be served in the manner required by these Rules with respect to the document.

(7) A judgment or order requiring a person under disability to do, or refrain from doing any act, a notice of motion or summons for the committal of any person under disability, and a writ of subpoena against any such person, must notwithstanding anything contained in paragraphs (2) to (5), be served personally on him, unless the Court otherwise orders.

(8) Paragraph (7) does not apply to an order for interrogatories or for discovery or inspection of documents.

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## **ORDER 71**

### **Partners, Business Names**

Partners may  
sue or be  
sued in the  
firm name.  
Cf. W.A.  
O.XVI,  
R.24(1).  
Cf. E. O.81,  
R.1.

Disclosure of  
partners'  
names.  
Cf. W.A.  
O.XVI,  
R.24(2),  
(3).  
Cf. E. O.81,  
R.2.

1. Subject to the provisions of any enactment, partners may sue or be sued in the name of the firm (if any) of which they were partners when the cause of action accrued, and an action by or against a firm in the firm name shall be sufficient to include all partners constituting the firm.

2. (1) A defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners of the firm at the time when the cause of action accrued.

(2) If such notice is not complied with, the Court may order the plaintiffs or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that all proceedings in the action be stayed on such terms as the Court may direct.

(3) When the names of the partners have been declared, the proceedings shall continue in the name of the firm, but with the same consequences as would have ensued if the persons whose names had been so declared had been named as plaintiffs in the writ.

(4) Where an action is brought against partners in the name of the firm paragraphs (1) and (2) shall have effect in relation to that action as they have effect to an action brought by partners in the name of a firm, but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively and with the deletion of the power of the Court to stay proceedings, and the substitution therefor of a power to the Court to strike out any defence by the firm in its firm name.

3. (1) Where parties are sued in the name of a firm under Rule 1, the writ may, except in the case mentioned in paragraph (2), be served—

Service.  
Cf. W.A.  
O.XLVII,  
R.3.

- (a) on any one or more of the partners, or
- (b) at the principal place of business of the partnership within the jurisdiction, on 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 or not any member of the firm is out of the jurisdiction, and no leave to issue a writ against that member shall be necessary.

(2) Where a partnership has to the knowledge of the plaintiff been dissolved before an action against the firm is begun, the writ must be served on every person within the jurisdiction sought to be made liable in the action.

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.

Notice of  
capacity in  
which person  
is served.  
W.A.  
O.XLVII,  
R.4.

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.

Appearance  
of partners.  
Ib. R.5.  
Cf. E. O.81,  
R.4(1).

6. When a writ is served under Rule 3 upon a person apparently having the control or management of the partnership business, that person may not enter an appearance in the action unless he is a member of the firm sued.

No appear-  
ance except  
by partners.  
Cf. E. O.81,  
R.4(5).  
H.Ct. O.48,  
R.6.

7. (1) When a person served as a partner under Rule 3 denies that he was a partner or liable as such at any material time, he may enter an appearance which states that he does so as a person served as a partner in the defendant firm, but who denies that he was a partner at any material time.

Appearance  
under protest  
of person  
served as a  
partner.  
Cf. W.A.  
O.XLVII, R.7.  
Cf. E. O.81,  
R.4.

(2) Where an appearance is so entered it shall not preclude the plaintiff from otherwise serving the firm, and obtaining judgment against the firm in default of appearance, if no party has entered an appearance in the ordinary form.

Cf. Vict.  
O.48A,  
R.7.

(3) Where an appearance to which this Rule applies is entered—

- (a) the plaintiff may either apply to set it aside on the ground that the person entering it was a partner or liable as a partner, or may leave that question to be determined at a later stage of the proceedings; or
- (b) the person entering the appearance may apply to set aside the service on him on the ground that he was not a partner or liable as such at a material time, or he may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

(4) Where a defendant has entered an appearance in accordance with paragraph (1), the Court may order on the application of the plaintiff or of that defendant, and at any stage of the proceedings, that any question as to the liability of that defendant or as to the liability of the defendant firm, be tried in such manner and at such time as the Court thinks fit.

Execution of  
judgment  
against a  
firm  
Cf. W.A.  
O.XLVII,  
R.8.  
Cf. E. O.81,  
R.5.  
Cf. H.Ct.  
O.48, R.8.

8. (1) Where a judgment is given or an order made against a firm execution to enforce the judgment or order may subject to Rule 9 issue—

- (a) against any property of the partnership within the jurisdiction; and
- (b) against a person
  - (i) who has entered an appearance in the action as a partner, or
  - (ii) who has admitted in his pleading that he is a partner, or
  - (iii) who has been adjudged to be a partner, or
  - (iv) who has been served as a partner with the writ and has failed to enter an appearance in the action.

(2) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ was issued unless he—

- (a) entered an appearance in the action as a partner, or
- (b) was served within the jurisdiction with the writ as a partner; or
- (c) was with the leave of the Court given under Order 10, served out of the jurisdiction with the writ or notice of the writ as a partner;

and except as provided by paragraph (1) (a) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm does not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(3) If the party who has obtained judgment or an order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this Rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person and the Court—

- (a) if the liability is not disputed, may, subject to paragraph (2), give that leave; or
- (b) if the liability is disputed, may order that the liability of that person be tried and determined in any manner in which an issue or question may be tried and determined.

(4) An application under paragraph (3) must be made by summons which must be served personally on the person against whom it is sought to issue execution.

9. (1) The preceding rules of this Order 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, if the firm or firms carry on business within the jurisdiction.

Enforcing judgment in action between partners.  
Cf. W.A. O.XLVII, R.10.  
Cf. E. O.81, R.6.  
Cf. H.Ct. O.48, R.10.

(2) Execution shall not be issued in any action to which paragraph (1) applies without the leave of the Court, and on an application for such leave such accounts and inquiries may be directed to be taken and made, and such directions given, as may be just.

10. (1) A debt owing or accruing from a firm carrying on business within the jurisdiction may be attached under section 126 of the Act notwithstanding that one or more members of the firm may be resident out of the jurisdiction, if some person apparently having the control or management of the partnership business, or some member of the firm within the jurisdiction is served with the garnishee order.

Attachment of debts owing from a firm.  
Cf. W.A. O.XLVII, R.9.  
Cf. E. O.81, R.7.  
Cf. H.Ct. O.48, R.9.

(2) An appearance by a member of the firm pursuant to a garnishee order is a sufficient appearance by the firm.

11. Rules 2 to 10 apply with the necessary modifications to causes by or against partners in the name of their firm which are begun by originating summons as they apply in relation to actions begun by writ.

Proceedings begun by originating summons.  
Cf. E. O.81, R.8.

12. An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and Rules 2 to 11, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

Application to person using a business name.  
Cf. W.A. O.XLVII, R.11.  
Cf. E. O.81, R.9.

13. (1) Every application to the Court by a 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, and for such other orders as are thereby authorised to be made, and every application to the Court by a partner of the judgment debtor made in consequence of the first mentioned application must be made by summons.

Charge on partner's interest in partnership.  
Cf. W.A. O.XLIV, RR.2, 3.  
Cf. E. O.81, R.10.

(2) A summons issued by a judgment creditor under this Rule and an order made on such summons must be served on the judgment debtor and on such of his partners as are within the jurisdiction.

(3) A summons issued by a partner of a judgment debtor under this Rule and an order made on such summons must be served—

(a) on the judgment creditor, and

(b) on the judgment debtor, and

(c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction.

(4) A summons or order served in accordance with this Rule on some only of the partners of the judgment debtor shall be deemed to have been served on all the partners of the partnership.

## ORDER 72\*

## Service of Documents

When personal  
service  
required.  
Cf. E. O. 65,  
R.1.

1. (1) Any document which by virtue of these Rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these Rules or by order of the Court is required to be so served.

(2) Paragraph (1) shall not affect the power of the Court under any provision of these Rules to dispense with the requirement for personal service.

Personal  
service—how  
effected.  
Cf. W.A.  
O.IX, R.2.  
Cf. E. O. 65,  
R.2.

2. Personal service of a document is effected by leaving a copy of the document with the person to be served, and if so requested by him at the time when it is left, showing him—

(a) in the case where the document is a writ or other originating process, the original, and

(b) in any other case the original or an office copy.

Personal  
service on  
body  
corporate.  
Cf. E. O. 65,  
R.3.  
W.A. O.IX,  
R.8.

3. Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any Act, be effected by serving it in accordance with Rule 2 on the mayor, president or other head officer of the body, or on the town clerk, clerk, treasurer, manager, secretary or other similar officer thereof.

Substituted  
service.  
Cf. E. O. 65,  
R.4.  
Cf. W.A.  
O.LXVII,  
R.6.

4. (1) Where by these Rules personal service of a document is required and it appears to the Court that personal service of such document on a person required to be served is impracticable, the Court may order that the document be served on that person by substituted service.

(2) An application for an order for substituted service shall be made by summons supported by an affidavit stating the facts on which the application is founded.

(3) Substituted service pursuant to an order under this Rule is effected by taking such steps as the Court directs to bring the document to the notice of the person to be served, and has the same operation as personal service.

Ordinary  
service—how  
effected.  
Cf. E. O. 65,  
R.5.  
Cf. W.A.  
O.LXVII,  
R.2.

5. (1) Service of any document not being a document which by virtue of these Rules is required to be served personally may be effected—

(a) by leaving the document at the proper address of the person to be served, or

(b) by sending the document by post addressed to the person to be served at his proper address, or

(c) in such manner as the Court may direct.

\* This order has been amended by Rules published in the *Government Gazette* on 14th May, 1976. Extracts containing the amendments are available separately.

(2) For the purposes of this Rule, the proper address of any person on whom a document is to be served in accordance with this Rule shall be the address for service of that person, but if at the time when service is effected that person has no address for service his proper address for the purposes aforesaid shall be—

- (a) in any case, the business address of the solicitor (if any) who is acting for him in the proceedings in connection with which the service of the document in question is to be effected, or
- (b) in the case of an individual his usual or last known address, or
- (c) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction, or
- (d) in the case of a body corporate the registered or principal office of the body.

(3) Nothing in this Rule shall be taken as prohibiting the personal service of any document or as affecting any Act which provides for the manner in which documents may be served on bodies corporate.

6. Notices sent from any office of the 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.

Notices from  
Office of the  
Court by  
post.  
W.A.  
O.LXVII,  
R.3.

7. An affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how.

Affidavit of  
Service.  
E. O.65,  
R.8.  
Cf. W.A.  
O.XLVII,  
R.9.

8. Where by virtue of these Rules any document is required to be served on any person but is not required to be served personally, and at the time at which service is to be effected that person is in default as to entry of appearance or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these Rules otherwise provides.

No service  
required in  
certain cases.  
E. O.65,  
R.9.

## ORDER 73

### Probate Proceedings

1. (1) This Order applies to probate causes and matters, and the Rules of Court generally apply to those causes and matters subject to the provisions of this Order.

Application  
and interpre-  
tation.  
Cf. E. O.76,  
R.1.

(2) In these Rules "probate action" means an action for the grant of probate of the will, or letters of administration of the estate of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

## (3) In this Order—

“Registry” means the Probate Office of the Supreme Court;

“testamentary script” means a will or draft thereof, written in instructions for a will made by or at the request or under the instructions of the testator, and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed;

“will” has the same meaning as in the Administration Act 1903.

Issue of writ.  
Ib. R.2.

2. (1) A probate action must be begun by writ issued out of the Central Office.

(2) A writ beginning an action for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person shall not be issued unless a citation under Rule 8 has been issued or the probate or letters of administration, as the case may be, has or have been lodged in the Court.

Service out of the jurisdiction.  
Ib. R.3.

3. (1) Subject to paragraph (2) service out of the jurisdiction of a writ or notice of a writ in a probate action is permissible with the leave of the Court.

(2) Order 10 Rules 3, 4 and 5 apply in relation to an application for the grant of leave under this Rule as they apply to an application for the grant of leave under Rule 1 or 2 of that Order.

Intervention  
Ib. R.4.  
Cf. W.A.  
O.XII, R.9.

4. (1) A person who is not named as a defendant in the writ in a probate action may apply to the Court for leave to intervene in the action.

(2) An application under this Rule must be made by summons supported by an affidavit showing the interest of the applicant in the estate of the deceased.

(3) An applicant who obtains leave to intervene in a probate action is not entitled to be heard in the action unless he enters an appearance therein.

(4) Where the Court grants leave to intervene, it may give such directions as to the filing and service of pleadings, the filing of an affidavit of testamentary scripts, or other matters as it thinks necessary.

Citation to see proceedings.  
Cf. E. O.76,  
R.5(1).

5. On the application of the plaintiff, or of any other party who has pleaded in a probate action, a citation may be issued against any person not a party to the action who has an interest adverse to the applicant notifying him that if he does not enter an appearance in the action judgment may be given therein without further notice to him.

Person cited failing to appear.  
Ib. R.5(2).

6. Where a person on whom a citation under Rule 5 is served fails to enter an appearance in the action, the party on whose application the citation was issued shall not be entitled to be heard at the trial of the action without the leave of the Court unless he has filed an affidavit proving due service of the citation on that person.

7. An appearance in a probate action must be entered in the Central Office and Order 12 Rules 1 to 7 apply to an entry of appearance by a person authorised to intervene in such an action, and by a person cited under Rule 5, as if—

Entry of appearance.  
Cf. E. O. 76, R.6.

- (a) that person were a defendant, and
- (b) the parties to an action (in the case of an intervener) or the party at whose instance the citation was issued (in the case of a person cited) were the plaintiff.

8. In an action for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person, a citation may, on the application of the plaintiff, be issued against the person to whom the grant of probate or letters of administration was made requiring him to bring into and leave at the Central Office the probate or letters of administration, as the case may be.

Citation to bring in grant.  
Cf. E. O. 76, R.7.

9. (1) A citation must be issued out of the Central Office but shall not be issued unless—

Citations.  
Cf. E. O. 76, R.8(1) (2) (3).

- (a) the citation is settled by the Court; and
  - (b) the applicant, or in special circumstances by leave of the Court the applicant's solicitor, has sworn an affidavit verifying the statements of fact to be made in the citation.
- (2) A citation is issued upon its being sealed by the proper officer.

10. (1) Without prejudice to Order 72 Rule 4, a citation must be served personally on the person cited.

Service of citations.  
Cf. E. O. 76, R.8(4).  
*et seq.*

(2) A citation may be served out of the jurisdiction but, if it is issued pursuant to Rule 8, only with the leave of the Court.

(3) Order 10 Rule 4 applies to an application for leave under paragraph (2) as it applies to an application for leave under Rules 1 or 2 of that Order.

(4) The order granting leave must fix the time within which the person to be served must comply with the citation.

(5) Order 10, Rules 6, 9, 10 and 11 apply to a citation issued pursuant to Rule 8 as they apply to notice of a writ.

11. (1) Subject to any direction by the Court the plaintiff and every defendant who has entered an appearance in a probate action must swear an affidavit—

Affidavit of scripts.  
Cf. E. O. 76, R.9(1)(2).

- (a) describing any testamentary script of the deceased person whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he does not know of any such script; and

- (b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person,

and shall exhibit to the affidavit any such script which is in his possession or control.

(2) An affidavit required by this Rule and any testamentary script exhibited thereto must be filed within 14 days after the entry of appearance by a defendant, or if no defendant enters an appearance and the Court does not otherwise direct, before the action is set down for trial.

Where  
script in  
pencil.  
Cf. E. O.76,  
R.9(3).

12. (1) Where a testamentary script required by Rule 11 to be filed or any part of it is written in pencil, the person filing it shall also, except where the Court otherwise directs, file a typed facsimile copy of the script or the page or pages of it containing the part written in pencil showing underlined in red ink the words which appear in pencil in the original.

No inspection  
by party  
until his  
affidavit  
filed.  
Ib. R.9(4).

(2) A party to a probate action shall not, except by leave of the Court, be allowed to inspect an affidavit filed pursuant to Rule 11 by any other party to the action or any testamentary script exhibited thereto, unless and until he has complied with the requirements of Rule 11 so far as they apply to him.

Default of  
appearance.  
Ib. R.10.

13. (1) Order 13 does not apply to a probate action.

(2) Where any of several defendants to a probate action fails to enter an appearance, and the plaintiff has filed an affidavit proving due service of the writ or notice of the writ on that defendant, the plaintiff may, after the time limited for appearing by the defendant, proceed with the action as if that defendant had entered an appearance.

(3) Where the defendant or none of the defendants in a probate action and none of the persons (if any) cited under Rule 5, enters an appearance, and the Court has not, on the application of the plaintiff, ordered discontinuance of the action, the plaintiff may, after the time limited for appearance, apply to the Court for leave to set down the action for trial.

(4) Before applying for leave under paragraph (3) the plaintiff must file an affidavit proving due service of the writ, notice of writ, and of the citation (if any).

(5) The Court granting leave under paragraph (3) may order the plaintiff to file an affidavit of testamentary scripts.

Counterclaim  
Cf. E. O.76,  
R.12.

14. Where a defendant alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate of the deceased person which is the subject of the action he must, notwithstanding anything in Order 18, Rule 2 (1), add to his defence a counterclaim in respect of that matter.

15. In a probate action a party opposing a will may, with his defence, give notice to the party propounding the will that he merely insists on the will being proved in solemn form, and only intends to cross-examine the witnesses produced to support the will and he may thereupon do so and, if he does not participate further in the action, he shall not be liable to pay the costs of that other party unless the Court considers that there was no reasonable ground for opposing the will.

Party may give notice that he only requires proof in solemn form.  
Cf. W.A. O.XXI, R.18.  
Cf. E. O.62, R.6(1)(d).

16. (1) Where a plaintiff disputes the interest of a defendant he shall so allege in his claim.

Pleadings.  
Cf. E. O.76, R.13.  
Cf. W.A. O.XX, R.8.

(2) Where by virtue of an interest a party claims to be entitled to a grant of letters of administration another party shall not dispute that interest unless he shows in his pleading that if the allegations in it are proved he would be entitled to an interest in the estate.

(3) Without prejudice to Order 20, Rule 8 a party shall not plead that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents unless he specifies the nature of the case on which he intends to rely and shall not make any allegation in support of such a plea which would be relevant to any other plea that—

Cf. W.A. O.XIX, R.26.

(a) the will was not duly executed;

(b) at the time of the execution of the will the testator was not of sound mind, memory and understanding; or

(c) the execution of the will was obtained by undue influence or fraud,

unless he also makes that other plea.

17. (1) Order 22 does not apply to a probate action.

Default of pleadings.  
Cf. E. O.76, R.14.

(2) Where a party to a probate action fails to serve on another party a pleading which he is required by these Rules to so serve, and the Court has not ordered discontinuance of the action, the other party may, after the expiration of the time fixed by or pursuant to these Rules for service of that pleading, apply to the Court for leave to set down the action for trial.

18. (1) Order 23 does not apply to a probate action.

Discontinuance.  
Cf. E. O.76, R.15.

(2) Where at any stage of the proceedings in a probate action the plaintiff or any party who has entered an appearance therein applies by summons for an order for discontinuance of the action, the Court may so order on such terms as to costs and otherwise as it thinks just and may further order that a grant of probate of the will or letters of administration of the estate of the deceased person, which is the subject of the action be made to the person entitled thereto.

Compromise.  
Ib. R.16.

19. Where at any stage of the proceedings in a probate action the parties agree to a compromise, the action may, with the leave of the Court, be set down for trial.

Orders etc.  
to bring in  
testamentary  
papers.  
Cf. E. O.76,  
R.19.

20. (1) An application for an order requiring a person to bring into the Registry, or otherwise as the Court may direct, a will or other testamentary paper or to attend in court for examination may be made to a Judge by summons which must be served on the person against whom the order is sought.

Court of  
Probate Act  
1858 (Imp.),  
s.23.

(2) An application for the issue by the Master of a subpoena requiring a person to bring into the Registry, or otherwise as in the said subpoena may be directed, a will or other testamentary paper must be supported by an affidavit showing that such will or testamentary paper is in the possession, within the power, or under the control of such person.

(3) Where the person against whom a subpoena referred to in paragraph (2) is issued denies that the will or other testamentary paper referred to in the subpoena is in his possession, within his power, or under his control, he may file in the Registry an affidavit to that effect.

Applications  
to the  
Court.  
Cf. E. O.76,  
R.21.

21. (1) Except where these Rules otherwise provide and subject to paragraph (2) applications to the Court in a probate cause or matter may be made by summons.

(2) The Court may direct that an application in a probate cause or matter be made to the Court by motion.

Case for  
motion.  
Ib. R.20.

(3) Where an application is to be made to the Court by motion, the applicant must not less than 7 clear days before the day fixed for the hearing of the motion file a case for motion together with an affidavit verifying the statement of facts made in the case, and serve a copy of the case and of every affidavit in support of the motion on any person entitled to be heard in opposition to the motion.

(4) A case for motion must set out any prior proceedings in the cause or matter with the dates thereof and the relevant facts in summary form, and must state the relief or remedy sought.

Administra-  
tion pending  
litigation.  
Cf. E. O.76,  
R.24.

22. (1) An application under section 35 of the Administration Act 1903 for the appointment of an administrator and receiver may be made to the Master by summons.

(2) Subject to any order of the Court, an administrator and receiver appointed under section 35 of the said Act must file and pass accounts at such intervals or at such times as the Court may direct, and the provisions of Order 51 Rule 5 apply with such modifications as may be necessary, to such administrator and receiver and to his accounts.

(3) Except where the remuneration of the administrator or receiver has been fixed by a Judge, the Master may, on the passing of the accounts of the administrator and receiver, assess and provide for his remuneration in accordance with Section 35 of the said Act.

## ORDER 74

## Admiralty Proceedings

1. (1) The provisions of this Order apply only to Admiralty actions and subject thereto the Rules of Court apply to such actions, *mutatis mutandis*, and any reference to the Master or to the Central Office shall be read as a reference to the Registrar or the Registry, as the case may be.

Interpre-  
tation.  
Cf. S.A.  
O.39, R.1.

(2) In this Order—

“Admiralty action” or “action” means any action, cause or matter instituted in the Court in the exercise of the jurisdiction conferred on it by or under the Colonial Courts of Admiralty Act, 1890;

“Caveat Book” means the book kept in the Registry in which caveats issued under this Order are entered;

“Marshal” means the Marshal in Admiralty of the Court;

“Registrar” means the Registrar in Admiralty of the Court, and includes the Deputy Registrar;

“Registry” means the Central Office.

2. (1) The writ of summons in an action in rem shall be in Form No. 83.

Writ of  
summons.  
Ib. R.2.

(2) A statement of the nature of the claim and of the relief or remedy required, and of the amount claimed, if any, must be indorsed on a writ of summons in an Admiralty action.

*Arrest of Property.*

3. (1) In an action in rem, a warrant for the arrest of property shall be in Form No. 84 and may be issued by the Registrar at the instance of either the plaintiff or the defendant at any time after the writ of summons has issued.

Arrest by  
warrant.  
Cf. H.C.  
O.5, R.8.

(2) Except by leave of the Court, a warrant of arrest shall not be issued until an affidavit by the party or his agent has been filed and the provisions of paragraphs (3), (4) and (5) of this Rule complied with.

Affidavit to be  
filed.

(3) The affidavit shall state—

- (a) the name and description of the party at whose instance the warrant is to be issued;
- (b) the nature of the claim or counterclaim;
- (c) the name and nature of the property to be arrested;
- (d) that the claim or counterclaim has not been satisfied;
- (e) that the aid of the Court is required to enforce it;
- (f) in an action of wages or of possession, the national character of the vessel proceeded against and, if against a foreign vessel, that notice (a copy of which shall be exhibited to the affidavit) of the commencement of the action has been given to a consular officer of the State to which the vessel belongs, if there be one resident in Western Australia; and

- (g) in an action of distribution of salvage, the amount of salvage money awarded or agreed to be accepted and the name, address and description of the party holding the salvage money.

(4) In an action of bottomry, the bottomry bond, and if it is in a foreign language, a notarial translation of the bond, shall be produced for the inspection and perusal of the Registrar and a copy of the bond, or of the translation of the bond, certified to be correct, shall be exhibited to the affidavit.

(5) The solicitor who applies for the issue of the warrant shall lodge an undertaking to pay the fees and expenses of the Marshal.

Special circumstances.  
Cf. H.Ct.  
O.5, R.9.

4. The Court may, if it thinks fit—

- (a) allow a warrant of arrest to issue although the affidavit referred to in the last preceding rule does not contain all the required particulars;
- (b) in an action of wages against a foreign ship, waive the service of the notice; and
- (c) in an action of bottomry, waive the production of the bond.

Action in rem.  
Cf. H.Ct.  
O.9, R.9.

5. In an action in rem, service of a writ or warrant is not required where the solicitor of the defendant agrees in writing to accept service and to put in bail, or to pay money into Court in lieu of bail.

Service of  
warrant of  
arrest.  
Cf. H.Ct.  
O.9, R.10.  
Cf. E. O.75,  
R.10.

6. (1) In an action in rem, the warrant of arrest shall be served only by the Marshal or his Officer.

(2) The Marshal shall, within 7 days from its service, file the warrant, endorsed with a certificate of service, in the Registry.

(3) A warrant of arrest shall not be served until an undertaking in writing, satisfactory to the Marshal, to pay the fees and expenses of the Marshal has been lodged in the Marshal's office.

(4) A warrant of arrest shall not be served if the party at whose instance it was issued lodges a written request to that effect with the Marshal.

(5) A warrant of arrest is valid for 12 months beginning with the date of its issue.

Service of  
writ or  
warrant  
how effected.  
Cf. H.Ct.  
O.9, R.11.  
Cf. E. O.75,  
R.11.

7. In an Admiralty action in rem, service of a writ of summons or warrant against a ship, freight or cargo on board shall be effected by affixing the original writ or warrant for a short time on any mast of the vessel or on some other conspicuous part of the vessel, and, on removing the process, leaving a true copy of it fixed in its place.

When cargo  
landed.  
Cf. H.Ct.  
O.9, R.12.

8. Where cargo has been landed or transhipped, service of the writ of summons or warrant to arrest the cargo and freight shall be effected by placing the writ or warrant for a short time on the cargo, and, on removing the process, by leaving a true copy upon the cargo.

9. Where cargo is in the custody of a person who will not permit access to it, service of the writ or warrant may be made upon that person.

Where no access to cargo.  
Ib. O.9, R.13.

10. In an action in rem, the service of a writ of summons or warrant upon proceeds in court shall be effected by showing the original writ to the Registrar and leaving with him a copy of it, which service shall be a sufficient arrest of the proceeds.

Proceeds in court.  
Ib. O.9, R.14.

11. Where a writ by which an action in rem is brought is amended under Order 21 Rule 1, after service thereof, Order 21 Rule 1 (2) shall not apply and, unless the Court otherwise directs on an application made *ex parte*, the amended writ must be served on any defendant who has entered an appearance in the action, or if no defendant has entered an appearance therein, on the property against which the action is brought, or the cargo, as the case may require, or in the case of the proceeds in court, on the Registrar.

Service of amended writ.  
Cf. E. O.75, R.8(5).

12. Where a solicitor fails to enter an appearance or to put in bail or to pay money into court in lieu of bail in an action in rem in pursuance of his written undertaking so to do on behalf of a party, he is liable to attachment.

Solicitor not entering appearance.  
Cf. H.Ct. O.11, R.16.

#### *Bail.*

13. (1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 85.

Bail bond.  
Cf. E. O.75, R.16.

(2) The sureties to the bond must enter into the bond before a person before whom affidavits for use in the Court may be sworn, not being a person who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given, or before the Registrar.

Cf. H.Ct. O.11, R.17.  
Cf. S.A. O.39, RR.15, 16, 18.

(3) A surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given, and where a corporation is a surety the affidavit must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the person before whom the bail bond was entered into; and subject to Rule 14, after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits made under paragraph (3), and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

14. (1) If the opposite party is not satisfied with the sufficiency of any surety, he may file a notice in the Registry objecting to such surety and the Registrar shall thereupon give an appointment for that surety to be cross-examined on his affidavit before the Registrar.

Opposite party may object.

(2) The party objecting must serve notice of the appointment on the solicitor for the party on whose behalf bail is required to be given at least 24 hours before the time appointed for the examination.

(3) At the time appointed or at any adjournment the Registrar shall take the cross-examination of the proposed surety and determine his sufficiency, and the bail bond shall not be filed until the Registrar has determined that the surety is sufficient.

(4) If the Registrar determines that the surety is sufficient, the costs of and incidental to the cross-examination shall be paid by the party objecting to the sufficiency of the surety.

*Applications by the Marshal.*

Marshal may  
apply for  
directions.  
Cf. E. O. 75,  
R. 12.

15. (1) The Marshal may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall give notice of the application to any or all of the parties to every action against the property.

(2) The Marshal shall send a copy of any order made under paragraph (1) to all the parties to every action against the property to which the order relates.

*Release from Arrest.*

Release.  
Cf. E. O. 75,  
R. 13.

16. (1) Property arrested by warrant in an Admiralty action shall not be released except under the authority of an instrument, to be called "a Release", in Form No. 86 issued from the Registry.

(2) A party, or the solicitor of a party, at whose instance property has been arrested may, before an appearance has been entered, file a notice withdrawing the warrant of arrest and, if he does so, a Release shall, subject to paragraphs (3) and (5), be issued with respect to that property.

(3) Unless the Court otherwise orders, a Release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A Release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Before a Release is issued the party entitled to its issue must—

(a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his solicitor requiring the caveat to be withdrawn, and

(b) file a Praecipe in Form No. 87 requesting the issue of a Release.

(6) Before property under arrest is released in compliance with a Release issued under this Rule, the party at whose instance it was issued must, in accordance with the directions of the Marshal, pay the costs, charges, and expenses due in connection with the care and custody of the property while under arrest.

*Caveat against Release.*

17. (1) Where a person desires to prevent the release of any property under arrest in an action in rem and the payment out of any money in court representing the proceeds of sale of that property he must file in the Registry a Praecipe in Form No. 88 and on the filing of the Praecipe a caveat against the issue of a Release with respect to that property and the payment out of court of that money shall be entered in the Caveat Book.

Caveat against release and payment.  
Cf. E. O.75, R.14.  
Cf. H.Ct. O.30, RR.9, 17, etc.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this Rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

*Caveat against Arrest.*

18. (1) Where a party desires to prevent the arrest of any property he must file in the Registry a Praecipe in Form No. 89 signed by him or his solicitor undertaking—

Caveat against warrant of arrest.  
Cf. E. O.75, R.6.  
Cf. H.Ct. O.30, RR.1, 2, 18.

- (a) to enter an appearance in any action that may be commenced against the property described in the Praecipe; and
- (b) within 3 days after receiving notice that such an action has been commenced, to give bail in the action in a sum not exceeding an amount specified in the Praecipe or to pay the amount so specified into court;

and on the filing of the Praecipe a caveat against the issue of a warrant to arrest the property described in the Praecipe shall be entered in the Caveat Book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

(3) Where the plaintiff in an action in rem, or his solicitor, becomes aware that there is in force a caveat against arrest with respect to property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

19. (1) Within 3 days after receiving notice that an action has been commenced against the property described in the Praecipe the party on whose behalf the caveat against arrest has been entered must (if the sum in respect of which the action is commenced does not exceed the amount for which he has undertaken) give bail in such sum, or pay the same into the Registry.

Party served to give bail.  
Cf. H.Ct. O.30, R.5.

(2) Where, after the expiration of 3 days after receiving such notice, the party on whose behalf the caveat has been entered has not given bail in such sum or paid the same into the Registry, the plaintiff's solicitor may proceed with the action as upon default of appearance.

(3) If when the action comes before the Court, the Court is satisfied that the claim is well-founded, it may pronounce for the amount which appears to be due, and may enforce payment of that amount by attachment against the party on whose behalf the caveat has been entered, as well as by the arrest of the property, if it then is, or thereafter comes, within the jurisdiction of the Court.

Arrest notwithstanding caveat, at risk of costs, etc.  
Cf. E. O.75, R.7.  
Cf. H.Ct. O.30, R.18(2).

20. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this Rule, and on the hearing of the application the Court may by order discharge the warrant and may also condemn the party procuring the arrest of the property in costs and damages, unless he shows to the satisfaction of the Court that he had good and sufficient reason for having so done.

#### *Caveats generally.*

Caveator to give address for service.  
Cf. H.Ct. O.30, R.22.  
Cf. S.A. O.39, R.37.

21. If any caveat is entered in contemplation of an action, or on behalf of any person who has not entered an appearance in the action, the notice must give an address for service.

Withdrawal of caveats.  
Cf. H.Ct. O.30, R.23.

22. A caveat may at any time be withdrawn by the person at whose instance it has been filed on his filing a Praecipe in Form No. 90 withdrawing it.

Caveats may be overruled.  
Ib. O.30, R.24.

23. The Court may set aside a caveat.

Caveats in force for six months.  
Cf. H.Ct. O.30, R.25.  
Cf. E. O.75, R.15.

24. (1) In an Admiralty action, a caveat, whether against the issue of a warrant, the release of property or the payment of money out of court, shall not remain in force for more than 6 months from the date of its entry in the Caveat Book.

(2) The period of validity of a caveat shall not be extended, but this provision shall not be taken as preventing the entry of successive caveats.

#### *Intervention and Pleadings.*

Intervention.  
Cf. E. O.75, R.17.  
Cf. S.A. O.39, R.40.

25. (1) In an action in rem any person not named in the writ may intervene and appear on filing an affidavit showing that he is interested in the res under arrest or in the fund in court.

(2) Order 12 Rules 1 to 4 shall apply with the necessary modifications in relation to the entry of an appearance by an intervener as if he were a defendant named in the writ.

Pleadings.  
Cf. S.A. O.39, R.41.  
Cf. V.A. R.56.

26. In an action in rem, unless otherwise ordered by the Court—

- (a) the plaintiff must file and serve his statement of claim within 14 days from the entry of appearance by the defendant; and
- (b) the defendant must file, and serve his defence on the plaintiff, within 14 days from the filing and service of the statement of claim.

*Tender.*

27. (1) A party desiring to make a tender in satisfaction of the whole or any part of the adverse party's claim must pay into court the amount tendered by him, and file and serve a notice of the terms on which the tender is made.

Payment into court.  
Cf. V.A.  
R.79-81.  
Cf. S.A.  
O.39, R.43.

(2) Within 8 days after the service of the notice, the adverse party must file a notice stating whether he accepts or rejects the tender, and if he does not do so, he shall be deemed to have rejected it.

(3) Pending the acceptance or rejection of a tender the proceedings in the action shall be suspended.

(4) If a tender is rejected, but is afterwards accepted, or is held by the Court to be sufficient, the party rejecting the tender shall, unless the Court otherwise orders, pay the costs incurred after the tender is made.

28. Money paid into court shall not be paid out of court except under an order of the Court.

Payment out to be under order.  
Cf. V.A.  
R.158.  
Cf. S.A.  
O.39, R.44.

*Default Trial.*

29. An action in rem may be set down for judgment by default—

- (a) if the defendant does not appear within the time limited for appearance, then on the expiration of 21 days from the service of the writ, and upon the filing of an affidavit of service, and of a statement of claim and of a certificate of non-appearance;
- (b) if the defendant makes default in filing and serving a defence, then on the expiration of 21 days from the filing and service of the statement of claim, and on filing an affidavit of non-service of a defence.

Setting down for judgment by default.  
Cf. H.Ct.  
O.12, R.14  
and O.28,  
R.10.  
Cf. S.A.  
O.39, R.45.

30. Where an action in rem comes for hearing upon the motion for judgment by default, if the Judge is satisfied that the plaintiff's claim is well founded he may—

- (a) pronounce for the claim with or without a reference to the Registrar, or to the Registrar assisted by merchants or other assessors;
- (b) order the property to be appraised and sold, with or without previous notice, and the proceeds to be paid into court; or
- (c) make such order as he thinks just.

Judgment by default.  
Cf. H.Ct.  
O.12, R.15.  
Cf. S.A.  
O.39, R.46.

31. (1) Where in an action to which Order 20 Rule 23 applies, being an action in rem, a defendant fails to lodge a Preliminary Act within the period prescribed for that purpose by that rule or by any order of the Court, the plaintiff if he has lodged a Preliminary Act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

Failure to lodge Preliminary Act in action in rem.  
Cf. E. O.75,  
R.19.

(2) On the hearing of a motion under paragraph (1) the Court may make such order as it thinks just, and where the defendant does not appear at the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case the Court shall order the plaintiff's Preliminary Act to be opened and require the plaintiff to satisfy the Court that his claim is well founded. The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(3) Where the plaintiff in accordance with a requirement under paragraph (2) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar, and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(4) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this Rule.

#### *Interlocutory.*

32. (1) Upon a motion for judgment by default, and upon any reference, evidence may be given by affidavit.

(2) Notice of motion, together with any affidavits in support thereof, must be filed in the Registry and copies must be served on the adverse party or his solicitors 4 days at least before the hearing of any motion, unless the Court gives leave to the contrary.

Notice of  
motion and  
affidavits in  
support.  
Cf. S.A.  
O.39, RR.47,  
48.

33. An agreement in writing between the solicitors of both parties, dated and signed by the solicitors, may, if the Registrar thinks it reasonable and such as the Judge would under the circumstances allow, be filed and shall thereupon become an order of the Court and have the same effect as if such order had been made by the Judge in person.

Agreement  
filed as order  
of the Court.  
Ib. R.49.

#### *References to the Registrar.*

34. (1) This Rule and Rules 35 to 43 inclusive apply to a reference to the Registrar, whether the reference is to the Registrar alone, or to the Registrar assisted by one or more merchants or other assessors.

(2) The Court may refer the assessment of damages and the taking of any account to the Registrar, either alone or assisted as mentioned in paragraph (1).

Application  
of Rules 34 to  
43.  
Cf. H.Ct.  
O.53, R.1.

Reference to  
Registrar and  
merchants.  
Cf. H.Ct.  
O.53, R.2.

35. (1) Within 14 days from the day when the order for the reference is made, the claimant must file his claim and his affidavits verifying it.

(2) Within 14 days from the day when the claim and affidavits are filed, the opposite party must file his affidavits in answer.

Filing of  
claim and  
affidavits.  
Cf. H.Ct.  
O.53, R.3.

36. After the filing of the answering affidavits, 7 days shall be allowed to the parties for filing further affidavits, and, after that period, further affidavits shall not be filed except by order of the Court or by permission of the Registrar.

Filing of  
further  
affidavits.  
Cf. H. Ct.  
O.53, R.4.

37. Within 3 days from the expiration of the time allowed for filing the last affidavits, the claimant must file in the Registry a notice asking to have the reference set down for hearing, and, if he does not do so, the opposite party may apply to the Court to have the claim dismissed with costs.

Time for hearing.  
Cf. H.Ct.  
O.53, R.5.

38. At the time appointed for the reference, if the counsel or solicitor for any party is present, the reference may be proceeded with, but the Registrar may adjourn the reference from time to time as he deems proper.

Hearing.  
Cf. H.Ct.  
O.53, R.6.

39. Facts may be proved upon a reference by viva voce evidence or by affidavit.

Evidence on reference.  
Cf. H.Ct.  
O.53, R.7.

40. Counsel may attend the hearing of a reference but the expenses attending the employment of counsel shall not be allowed on taxation unless the Registrar is of opinion that the attendance of counsel was proper.

Counsel.  
Cf. H.Ct.  
O.53, R.8.

41. (1) When the hearing of a reference has been concluded the Registrar shall make a report in writing of the result in the form of a certificate showing the amount, if any, found due, and to whom, together with any other particulars that may be necessary.

Report by Registrar and notice to parties.  
Ib. O.53,  
RR.9-11.

(2) The Registrar may, if he thinks fit, report whether any and what part of the costs of the reference shall be allowed, and to whom.

(3) When the report is ready, notice shall be sent to the parties and either party may thereupon take up and file the report.

(4) The party taking up the report shall upon the filing of the report, forthwith serve notice of such filing, and of the date thereof, on the opposite party.

42. (1) Within 14 days from the date of the filing of the Registrar's report, a party may give notice of motion to vary the report, specifying the items objected to.

Motion to vary.  
Ib. O.53,  
RR.12, 13.

(2) At the hearing of the motion, the Judge may make such order on the motion as he thinks just, or may remit the matter to the Registrar for further inquiry or report.

Order on the motion.

43. If notice of motion to vary the report is not filed within 14 days from the date of the filing of the Registrar's report, the report shall stand confirmed.

Confirmation if no motion to vary.  
Ib. O.53, R.14.

#### *Appraisement and Sale, etc.*

44. (1) The Court may, either before or after final judgment order any property under the arrest of the Court to be appraised, or to be sold with or without appraisement, and either by public auction or by private contract.

Order for appraisement or sale.  
Cf. V.A.  
R.138-140.

(2) If the property is deteriorating in value the Court may order it to be sold forthwith.

(3) If the property sold is of small value, the Court may if it thinks fit, order it to be sold without a commission of sale being issued.

Removal of  
property.  
Cf. V.A.  
R.141.  
Cf. S.A.  
O.39, R.64.

45. The Court may, either before or after final judgment, order any property under arrest of the Court to be removed, or any cargo under arrest on board ship to be discharged.

Appraisement  
or sale of  
property.  
Cf. H.Ct.  
O.50, R.10.

46. (1) A commission for the appraisement or sale or the appraisement and sale of property under the order of the Court shall be in such of Form Nos. 91, 92 or 93 as the case may require, and unless the Court or a Judge otherwise orders, shall be executed by the Marshal or his officers.

(2) A solicitor who takes out a commission mentioned in paragraph (1) shall file an undertaking to pay the fees and expenses of the Marshal if and when they are demanded.

Payment into  
Court of  
gross proceeds  
of sale.  
Ib. O.50,  
R.11.

47. (1) The Marshal shall pay into Court the gross proceeds of any property which has been sold by him.

(2) The Marshal shall at the same time bring into court the account of sale, with vouchers in support of the account, for taxation by the Registrar.

Taxation of  
Marshal's  
expenses.  
Ib. O.50,  
R.12.

48. (1) A person interested in the proceeds may be heard before the Registrar on the taxation of the Marshal's account of expenses.

(2) An objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs.

Minute  
book.  
Ib. O.61,  
R.11.

49. In Admiralty actions, a record of all actions commenced and appearances entered, of all instruments and documents issued or filed, of all acts done, and of all judgments and orders made in the action, whether made by the Court or by consent of the parties, shall be entered, in order of date under the head of each Admiralty action, and on a page numbered with the number of the action, in a book to be kept in the Central Office called the "Admiralty Minute Book".

Registrar to  
sign warrants,  
etc.  
Cf. V.A.  
R.175.

50. Every warrant, release, commission, attachment, and other instrument to be executed by any officer of, or commissioner acting under the authority of, the Court shall be signed by the Registrar, and shall be issued under the seal of the Court.

Date of  
instruments.  
Ib. R. 176.  
Cf. S.A.  
O.39, R.71.  
Service of  
instrument.  
Cf. H.Ct.  
O.62, R.10.

51. Every document issued under the seal of the Court shall bear date on the day it was issued.

52. An instrument requiring to be served shall be served within 12 months from the day on which it bears date, otherwise the service of the instrument is not valid.

Service of  
warrants,  
etc. by  
Marshal.  
Cf. H.Ct.  
O.62, R.11.

53. A warrant or other instrument required to be served or executed by the Marshal must be left by the party taking it out in the Registry with written instructions for its service or execution.

54. (1) The service or execution of an instrument by the Marshal or any other officer charged with the service or execution of process, shall be verified by his certificate.

Verification  
of service.  
Cf. H.Ct.  
O.62, R.12.

(2) The certificate shall state by whom the instrument has been served or executed and the date and mode of service or execution, and shall be signed by the Marshal or that other officer, as the case may be.

(3) The service of an instrument by a solicitor, or by his clerk or agent, or by any other person, shall be verified by an affidavit.

55. Order 66, with such modifications as may be necessary, and the costs allowable thereunder, shall apply to Admiralty actions.

Costs.

### **ORDER 75**

#### **Proceedings under the Inheritance (Family and Dependants Provision) Act, 1972.**

**ORDER 75.**  
Substituted by  
G.G. 15/6/73,  
pp. 2250-1.

1. In this Order unless the contrary intention appears—

Interpretation.

“grant” means a grant of probate or administration, or an order to administer made under section 10 or section 12 of the Public Trustee Act, 1941;

“Registry” means the Probate Office of the Supreme Court;

“the Act” means the Inheritance (Family and Dependants Provision) Act, 1972; and

words defined in section 4 of the Act and used in this Order have the same respective meanings as in the Act.

2. (1) An application for an order under the Act (other than an application in pending proceedings) shall be commenced by originating summons.

Mode of  
application.

(2) The applicant shall be the plaintiff and, subject to any order made under subsection (1) of section 12 of the Act, the Administrator shall be the defendant.

(3) All proceedings to which this Order relates shall be intitled in the matter of the Inheritance (Family and Dependants Provision) Act, 1972, and in the matter of the will or estate of the deceased person to which the proceedings relate.

3. (1) Upon the issue of an originating summons under this Order, the person presenting the summons for sealing must, when filing a copy of the summons as required by paragraph (4) of Rule 14 of Order 58, lodge with the Registrar—

Copy of  
summons to  
be placed on  
probate file.

(a) an additional copy of the summons; and

(b) a copy of the will of the testator as admitted to probate or annexed to letters of administration of his estate.

(2) The Registrar shall cause the additional copy of the summons to be placed on the probate file in the Registry.

Summons for directions.

4. (1) Within 7 days after the time limited for appearance, the plaintiff must apply on summons to the Court for directions.

(2) Where the plaintiff fails to make the application for directions within the time limited for that purpose, the defendant may apply.

5. On the hearing of the summons for directions or upon later application the Court may—

(a) inquire as to—

- (i) the nature of the relief that the plaintiff seeks; and
- (ii) the persons or classes of persons who will be affected by that relief if granted;

(b) for the purpose of the inquiry, direct the plaintiff and defendant to supply such information as the Court may require;

(c) give directions as to the persons to be added as defendants as being interested in the relief claimed, or to represent classes of persons so interested;

(d) make an order under Rule 7;

(e) direct that notice of the application be served on any person;

(f) give such other directions as the Court thinks fit as to the evidence to be filed, the persons to be served and the hearing of the application.

Parties may be added.

6. At any stage of the proceedings the Court may direct that any person be made a party or that notice of the application be served on any person.

Representative defendant.

7. Where a person has been added as a defendant and other persons have the same or a similar interest as that defendant, the Court may order that that defendant be authorized to defend the proceedings on behalf of or for the benefit of all persons so interested, and that all persons so interested shall be bound by any order made in the proceedings.

Probate, etc. to be lodged at Registry.  
*Vide R. 35 (4) of the Non-contentious Probate Rules. 1967.*

8. (1) Where an order under the Act is made in favour of a plaintiff, the Administrator shall forthwith after the order has been entered lodge at the Registry the grant with a copy of the order endorsed thereon, and two photographic copies of the order.

(2) When the endorsement on the grant has been certified in accordance with section 14 (4) of the Act, the grant shall be returned to the Administrator.

(3) This rule does not apply to an order made upon the hearing of an originating summons of the kind referred to in rule 9.

Appearance to originating summons for extension of time not required.

9. An appearance is not required to an originating summons in which the only relief sought is an extension of time for making an application for an order under the Act.

## ORDER 76

**Proceedings Under the Guardianship of Children Act, 1972.**

## 1. In this Order—

“clerk” means a clerk of the Summary Relief Court;

“Summary Relief Court” means the court established under that name by the Married Persons and Children (Summary Relief) Act, 1965.

“the Act” means the Guardianship of Children Act, 1972.

Heading substituted by G.G. 15/6/73, p. 2251.

Interpretation. Amended by G.G. 15/6/73, p. 2251.

2. An application to the Court under the Act (other than an application in pending proceedings) shall be commenced by originating summons.

Mode of application. Substituted by G.G. 15/6/73, p. 2252.

3. (1) Registration pursuant to section 20 of the Act of an order in the Summary Relief Court shall be effected by the clerk of that Court entering the particulars of the order in a register kept for that purpose.

Registration in Summary Relief Court of order for maintenance. Amended by G.G. 15/6/73, p. 2252.

(2) The clerk shall not register an order in the Summary Relief Court, pursuant to this rule, unless—

(a) an office copy of the order has been filed in the Summary Relief Court and an additional office copy, for service in accordance with these rules, has been lodged in that court;

(b) he is satisfied, by an affidavit filed in that court,—

(i) that the order has not ceased to have effect, by reason of the mother having, for a period of three months after the order was made, continued to reside with the father;

(ii) that no proceedings are pending in the Supreme Court for the enforcement of the order; and

(iii) that no process issued out of the Supreme Court for the enforcement of the order is in force.

4. Upon registration of an order pursuant to Rule 3, the clerk shall—

Amended by G.G. 15/6/73, p. 2252.

(a) post to the parent against whom the order was made, at his last known address, an office copy of the order, together with notice of its registration; and

(b) give to the Registrar notice of the registration of the order.

4A. An order that is registered in the Summary Relief Court pursuant to section 20 of the Act may be enforced as though it were an order for the maintenance of a child made by that Court upon complaint by a parent of the child; and the provisions of the Married Persons and Children (Summary Relief) Act, 1965, shall apply to and in relation to the enforcement of such an order.

Mode of enforcement. Added by G.G. 15/6/73, p. 2252.

**ORDERS 76  
and 77.**

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Payment of  
moneys under  
order.

5. Where moneys are paid into the Summary Relief Court under an order registered pursuant to Rule 3, the clerk shall transmit those moneys to the person to whom they are directed to be paid by the order.

Notice of  
variation,  
discharge,  
etc. of order  
to be given  
by Registrar.

6. (1) Where an order that is registered in the Summary Relief Court pursuant to Rule 3 is discharged, varied or revived, or the effect of the order is modified, or the operation of the order is suspended, by the Supreme Court, the Registrar shall forthwith cause notice in writing of that event to be given to the clerk at the place where the order was registered.

(2) On receipt of a notice given under paragraph (1) the clerk shall cause particulars of the discharge, variation, revival, modification or suspension to be entered in the register kept pursuant to Rule 3.

Cancellation  
of registration  
of order.

7. (1) Where no proceedings for the enforcement of an order registered in the Summary Relief Court pursuant to Rule 3 are pending and no warrant or process for the enforcement of the order is in force, the person who caused the order to be registered may, by a request in writing, require the clerk to cancel the registration and the clerk shall, upon receipt of the request, cancel the registration accordingly.

(2) Where the clerk cancels the registration of an order pursuant to this Rule, he shall forthwith cause a notice in writing of that event, signed by him, to be given to the Registrar.

Order not to  
be enforced  
in Supreme  
Court until  
registration  
cancelled.

8. An order that has been registered in the Summary Relief Court pursuant to Rule 3 shall not be enforced in the Supreme Court unless and until the registration is cancelled as provided by Rule 7.

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**ORDER 77**

**Appeals under the Administration Act, 1903, from Decisions of the  
Commissioner of State Taxation**

Interpretation.

1. In this Order—

“Commissioner” means the person holding the office of Commissioner of State Taxation under the Public Service Act, 1904, and includes the deputy of the Commissioner while acting in the place of the Commissioner;

“the said Act” means the Administration Act, 1903.

Mode of  
application.  
Time for  
appeal.

2. (1) Every appeal against a decision of the Commissioner pursuant to section 107 of the said Act must be by originating summons which must be issued and served on the Commissioner within one month after the date of the decision complained of.

(2) The originating summons must set forth the grounds of the appeal.

(3) An appearance to the originating summons is not required.

3. Notwithstanding anything contained in Order 58 Rules 19 and 20, the day and time fixed for the hearing of the originating summons shall not be less than 14 days after the day on which such summons was served on the Commissioner.

Time for  
hearing.

4. The Judge may decide the appeal on oral evidence or by affidavit, or by both such kinds of evidence.

Evidence.

5. The Judge may state a case for the opinion of the Full Court on any question of law and the Full Court shall have power to decide the question submitted, and may either remit the case back to the Judge with a note of the Full Court's decision or, without remitting the case, dispose of the appeal in such manner as shall be just and consistent with such decision.

Judge may  
state case to  
Full Court.

### **ORDER 78**

#### **Applications under the Vexatious Proceedings Restriction Act, 1930**

1. (1) An application under the Vexatious Proceedings Restriction Act, 1930, (in this Order referred to as "the said Act") shall be made—

Mode of  
application.

- (a) by originating motion if it is intended to be heard in court;
- (b) by originating summons if it is intended to be heard in chambers.

(2) A notice of motion may be in Form No. 94.

(3) An appearance to an originating summons issued under this Rule is not required.

2. Upon the copy of the originating summons which is served there shall be endorsed a notice to the effect following:—

Notice to be  
endorsed on  
summons.

"You are required to attend before the Judge at the time mentioned herein, and you may lay before him any material evidence which you are able to produce.

In the event of the Judge directing the application to be set down for hearing before the Full Court or a Judge in court, you will be able to ascertain from the Central Office of the Court the date for which it is listed for hearing.

You should serve on the applicant a copy of any affidavit which you intend to use on the hearing."

3. The interval between the date of service of any notice of motion or originating summons and the date of hearing shall be not less than the time that would be properly limited for appearance in a writ of summons served at the same place.

Time for  
hearing.

4. If the party against whom an order is sought fails to attend at the hearing, the Court, after receiving proof of the due service of the notice of motion or summons, may proceed to hear and determine the application in the absence of such party.

Hearing may  
proceed if  
respondent  
fails to  
appear.

Service on  
Attorney-  
General of  
notice of  
application  
for leave not  
necessary.

5. (1) It shall not be necessary to serve the Attorney-General with the notice of motion or originating summons where the application is for leave to institute legal proceedings, but it shall be sufficient if the person against whom the proceedings are proposed to be instituted has been served with the notice of motion or originating summons.

(2) The Court may, if it shall think fit, deal with any such application *ex parte*.

Judge may  
refer appli-  
cation to open  
court or to  
Full Court.

6. The Judge before whom any application comes on for hearing in chambers may, instead of hearing and determining the matter himself, order it to be set down for hearing before the next sittings of the Full Court or a Judge in court, and it shall be so set down accordingly.

Evidence.

7. (1) Subject to paragraph (2), evidence on the hearing of any application may be given by affidavit or by witnesses to be called and examined orally.

(2) Any evidence to be given on an application by the Attorney General shall be by affidavit, and a copy of any affidavit to be used shall be served with the notice of motion or summons, but the Court hearing the application may at any time allow the Attorney General to adduce additional evidence, either oral or by affidavit, subject to such terms (if any) as may be deemed to be just.

Costs.

8. The Court hearing any application under the said Act may make such order as may be just for the payment of costs by any party. The order may direct payment of a fixed sum or of costs to be taxed.

Orders to be  
gazetted by  
Registrar.

9. All orders made under the provisions of section 3 of the said Act shall be gazetted by the Registrar.

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## **ORDER 79**

### **Proceedings under the Juries Act, 1957**

Interpretation.

1. In this Order—

“the said Act” means the Juries Act, 1957.

Application of  
Order.

2. This Order applies to criminal as well as civil proceedings.

Precepts.

3. A precept for a jury pursuant to section 20 of the said Act shall—

(a) in the case of a precept in respect of any criminal trial or trials, be in Form No. 95;

(b) in the case of a precept in respect of any civil trial or trials, be in Form No. 96,

with such modifications as the circumstances may require.

Summons to  
Juror.

4. The summons required by subsection (5) of section 26 and by section 31 of the said Act to be issued to jurors named in the panel of jurors shall be in Form No. 97.

5. A summons issued pursuant to section 56 of the said Act, calling on a juror to show cause why execution should not issue for a fine imposed on him for non-attendance at a Court, shall be in Form No. 98.

Summons to  
show cause.  
s.56.

6. A summons list referred to in section 33 of the said Act shall be in Form No. 98A.

Summons  
List: S.33.  
Added by  
G.G. 9/11/73,  
p. 4162.

## ORDER 80

### Applications under the Escheat (Procedure) Act, 1940

1. In this Order the Escheat (Procedure) Act, 1940, is referred to as "the said Act".

Definition.

2. (1) Subject to paragraph (2) of this rule, an application for an Order of Escheat shall be commenced by originating motion.

Mode of  
application.  
Substituted by  
G.G. 15/6/73,  
p. 2252.

(2) Where a person has claimed title to property the subject of the application, application for an Order of Escheat shall be commenced by originating summons which shall be served upon every such person.

Vide s.6 of  
Act No. 45  
of 1940.

(3) An application for an Order of Escheat, however commenced, shall be intituled "In the matter of..... deceased, *Ex parte* the Crown" and shall be supported by an affidavit of the facts relied on.

3. The notice referred to in section 5 of the said Act shall be in Form No. 99.

Notice.  
Ib. R.3.

4. (1) Upon the hearing of an application for an Order of Escheat, such evidence shall be adduced as the Judge may require.

Evidence:  
Judge may  
direct  
inquiry.  
Ib. R.4.

(2) The Judge may direct an inquiry to be held into all such matters as he may consider necessary, and may prescribe the steps to be taken for that purpose.

5. Any person claiming title to or any lawful interest in or right to the property or premises the subject of the application must file an affidavit verifying his claim, and may attend on the return day of the summons and be heard either personally or by his solicitor or counsel.

Affidavit  
verifying  
claim to be  
filed.  
Ib. R.5.

6. If it appears to the Judge on reading the affidavit verifying the claim, that *prima facie* the claimant has an interest in the property concerned, he may order that an issue be tried in court, but otherwise the Judge may make an Order of Escheat, or such other order as the justice of the case may require.

Judge may  
order issue  
to be tried.  
Ib. R.5.

7. An Order of Escheat shall be in Form No. 100, and shall be sealed and marked with the name of the Judge by whom it is made.

Form of  
Order.  
Ib. R.6.

**ORDERS  
80, 81 and  
81A.**

Costs.  
Ib. R.8.

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8. On the hearing of an application the Judge may make an order for payment of costs out of the property concerned, but no costs shall be allowed to any person making an unsuccessful claim to the property unless the Judge certifies that there were substantial grounds for making the claim.

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**ORDER 81**

**Arrest in Pending Actions, and Proceedings under "The Debtors Act, 1871."**

Form of  
order to  
arrest.  
Cf. W.A.  
O.LXIX,  
R.1.

1. An order to arrest under section 63 (2) of the Supreme Court Act, 1935, shall be in Form No. 101.

Judgment  
summons  
not to issue  
without leave.  
Ib. R.8.

2. No summons under section 3 of "The Debtors Act, 1871", shall be issued by the Supreme Court unless the judgment creditor shall first apply for and obtain an order of a Judge under the said section for the issue of such summons.

Duration of  
order of  
commitment.  
Cf. W.A.  
O.XL, R.24.

3. An order of commitment under section 3 of "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 Order 47 Rule 10.

**ORDER 81A.**  
Added by  
G.G. 7/6/72,  
p. 1703.

Definition.

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**ORDER 81 A.**

**References under the Environmental Protection Act, 1971.**

1. In this Order the Environmental Protection Act, 1971 is referred to as the Act.

2. (1) An application under section 42 of the Act to refer a matter to the Court or a Judge for the opinion of the Court shall be made by originating motion returnable in open court.

(2) The applicant shall be the plaintiff in the proceedings and, subject to any order made under rule 3, the Environmental Protection Authority established under section 9 of the Act shall be the defendant.

Directions to  
be sought.

3. (1) When the notice of motion has been filed, the plaintiff shall apply by summons to a Judge in Chambers for directions regarding the persons to be served or joined as parties, the representation of persons affected by the proceedings, the time for appearance, the date and mode of hearing, and any other necessary matters.

(2) The summons shall set out precisely the directions sought.

Application  
of O. 54.

4. Subject to this Order, the provisions of Order 54 shall apply to and in relation to applications of the kind mentioned in rule 2.

## ORDER 81B.

**Proceedings under the Service and Execution of  
Process Act 1901 (Commonwealth).**ORDER 81B.  
Added by  
G.G. 29/3/74,  
pp. 1037-9.1.—*Introductory.*

1. In this Order unless the contrary intention appears—  
 “register” means the Australian Register of Judgments;  
 “the Act” means the Service and Execution of Process Act 1901  
 of the Commonwealth as amended from time to time; and  
 words defined in section 3 of the Act and used in this Order have the  
 same respective meanings as in the Act.

Interpretation.

2. Unless the contrary intention appears, this Order applies to  
 every Court of Record of the State.

Application.

3. Proceedings under Part IV of the Act shall be intituled in  
 accordance with Form No. 102.

Title of  
proceedings.2.—*Execution of Warrants.*

4. Where a person has been apprehended under section 18 of the  
 Act, and a Magistrate or a Justice of the Peace orders him to be  
 returned to the State or part of the Commonwealth in which the  
 warrant was issued, the Magistrate or Justice shall, if so required by  
 that person, make such order fixing the time when he is to be so  
 returned as in the opinion of the Magistrate or Justice will allow him  
 reasonable opportunity to apply under that section to the Supreme  
 Court of the State for his discharge or for such other order as the  
 Court may think fit.

Magistrate or  
Justice of the  
Peace may  
make order  
fixing time.

5. The Supreme Court may, on application *ex parte* by or on  
 behalf of a person who has been ordered to be returned to another  
 State or a part of the Commonwealth, make an order fixing the time  
 when that person is to be so returned.

Supreme Court  
may make  
like order.3.—*Service of Western Australian Process and Enforcement of  
Western Australian Judgments.*

6. Personal service under the Act of the process of a Court of  
 the State may be effected in the same manner as if the process were  
 served within the State.

Mode of  
service.

7. (1) A person who has obtained a certificate of judgment under  
 section 20 of the Act shall thereupon file a copy of the certificate.

Copy certifi-  
cate to be  
filed.

- (2) The officer who has supplied the certificate shall thereupon  
 enter a note thereof in the appropriate process register.

8. A notice received from a Court of another State or a part of  
 the Commonwealth relating to a certificate shall be filed with the  
 papers in the cause; and a note thereof shall be entered in the process  
 register.

Notices from  
other States.

When  
execution  
issued,  
Registrar to  
notify  
Registrar of  
Court in  
which  
judgment  
registered.

9. Where—

- (a) a certificate of a judgment of a Court of the State has been registered in a Court of another State or a part of the Commonwealth; and
- (b) execution is issued or other proceedings are taken in the Court of the State upon the judgment,

the Registrar shall forthwith notify the same in writing under the seal of the Court to the Registrar or other proper officer of the Court in which the certificate has been registered and shall give the like notification of the result of the execution or proceedings.

Form of  
notices.

10. Notices under section 26 of the Act or under Rule 9 shall be in Form No. 103.

Creditor to  
notify  
Registrar of  
execution.

11. A person on whose behalf execution is issued or other proceedings are taken on a judgment of a Court of the State shall forthwith notify the same in writing to the Registrar or other proper officer of the Court in which the judgment was given and also advise him of the result of the execution or proceedings.

4.—*Enforcement of Judgments of the Courts of Other States.*

Australian  
Register of  
Judgments.

12. (1) A book, to be called "the Australian Register of Judgments", shall be kept by the Registrar of the Supreme Court, and also by the Registrar or other proper officer of every inferior Court of Record having civil jurisdiction in the State.

(2) The book shall be in Form No. 104.

Mode of  
registration.

13. A party to a judgment of a Court of another State or of a part of the Commonwealth desiring to register the judgment in a Court of the State shall file the prescribed certificate of judgment and pay the prescribed fees.\*

Entry in  
register.

14. Upon the filing of a certificate of judgment as provided by Rule 13, the Registrar shall assign a number to it, enter the particulars in the register and indorse the certificate with the words, "judgment entered herein on the                      day of                      19                     ".

Copy of  
notice to be  
filed.

15. Where a notice is given under section 26 of the Act, a copy of the notice shall be filed.

Copy of  
certificate  
may issue.

16. (1) A person who has registered a certificate of a judgment may obtain from the proper officer a copy of the certificate certified under the hand of the officer and sealed with a seal of the Court.

(2) The copy so issued shall have the same force and effect as a certified copy of a judgment of the Court.

\* Item 20 of the Fifth Schedule is in the following terms:—

Proceedings under the Service and Execution of Process Act 1901 of the Commonwealth—

(a) on registering a certificate of judgment—\$10.00.

(b) for the service of process and for the execution and enforcement of process and judgments—the fees prescribed by Part III of this Schedule.

17. (1) Execution shall not be issued or other proceedings taken upon a certificate registered in a Court unless execution is issued or the proceedings are taken within thirty days next after the making of the affidavit required by section 23 of the Act, or within such further time as the Court may order.

Affidavit of liability.

(2) Application for an order under paragraph (1) may be made *ex parte*.

18. A person on whose behalf execution is issued or other proceedings are taken upon a certificate shall forthwith notify the same in writing to the Registrar or other proper officer of the Court in which the certificate is registered and shall also give the like notification of the result of the execution or proceedings.

Creditor to notify Registrar of execution, etc.

19. The Sheriff or other person charged with the execution of a writ or of other proceedings issued out of a Court of the State for the execution or enforcement of a judgment registered under the Act, shall notify in writing to the Registrar or proper officer of that Court the result of the execution or other proceedings.

Sheriff to notify Registrar of execution, etc.

20. Where any execution is issued or other proceedings are taken or satisfaction is entered, or a notice is given or received relating to a certificate registered under the Act, a note thereof shall be entered in the register.

Satisfaction, etc. to be noted in register.

#### 5.—Execution of Writs of Attachment.

21. An application under section 19C. of the Act for leave to execute a writ of attachment shall be supported by an affidavit of the facts relied on.

Application for leave.

22. An application of the kind referred to in Rule 21 may be granted *ex parte* if the Judge thinks fit.

Application *ex parte*.

#### 6.—Fees and Costs.

23. The fees to be paid in connection with the service of the process of the Courts of the State under the Act, and the execution and enforcement by those Courts of the process and judgments of the Courts of other States and parts of the Commonwealth, are those set forth in the Fifth Schedule.\*

Service and execution fees.

24. Where proceedings are taken to enforce a judgment a certificate of which has been registered under the Act in a Court of the State, the same costs shall be allowed as upon similar proceedings to enforce a like judgment of that Court.

Costs of execution.

25. The costs that may be allowed under section 22A of the Act shall not exceed the sum of one hundred dollars.

Costs of registration.

\* See footnote to Order 81B, Rule 13.

Added by  
G.G. 2/4/76,  
pp. 1039-41.

**ORDER 81C.**

**Applications under Sections 76 and 78 of the  
Road Traffic Act, 1974.**

Interpre-  
tation.

1. In this Order unless the contrary intention appears—

“the Act” means the Road Traffic Act, 1974;

“the Authority” means the Road Traffic Authority established under section 6 of the Act and includes an officer of that Authority acting on its behalf.

Application  
by notice of  
motion.

2. An application under subsection (1) or (7) of section 76 of the Act or under section 78 of the Act shall be made to the Court by filing a notice of motion setting out clearly and concisely the grounds upon which the application is made.

Return of  
motion and  
date of  
hearing.

3. The motion shall be made returnable in open court at such civil, criminal, or circuit sittings as the Court directs, and shall be heard on such date as is fixed in accordance with this Order and with the practice of the Court by the proper officer.

Applications  
pursuant to  
ss. 76(1),  
76(7) (a) or  
78.

4. In the case of an application under subsection (1) or paragraph (a) of subsection (7) of section 76 of the Act or under section 78 of the Act—

- (a) the date fixed for the hearing of the application shall not be less than twenty-one clear days after the day the notice of motion is filed unless—

(i) the Authority consents, in writing, to the hearing being held within that period and that consent is filed with the notice of motion; or

(ii) the Court orders that the hearing be held within that period;

- (b) as soon as practicable after the date for the hearing has been fixed by the proper officer the applicant shall give notice thereof to the Crown Prosecutor and the Authority;

- (c) there shall be filed with the notice of motion affidavits setting out the facts relied on to support the application, including such an affidavit by the applicant;

- (d) on the day the notice of motion is filed or on the next day thereafter the applicant shall serve a copy of the notice of motion and of each affidavit filed therewith, as required by this Rule, on the Crown Prosecutor and the Authority, each of whom—

(i) shall be entitled to be heard on the application and to file affidavits in answer to those so filed with the notice of motion;

(ii) shall, if intending to be heard on the application, file a notice to that effect on which shall be endorsed an address for service in Perth;

(iii) shall serve on the applicant a copy of any affidavit or notice of intention to be heard filed under this paragraph on the day it is filed or on the next day thereafter;

(e) the applicant shall be present in the Court on the hearing of his application and if so required by the Court shall give oral evidence in support of the application and submit himself to cross-examination, unless his presence is excused by the Court.

5. In the case of an application under paragraph (b) of subsection (7) of section 76 of the Act—

Applications  
pursuant to  
s.76(7) (b).

(a) the date fixed for the hearing of the application shall not be less than twenty-one clear days after the day the notice of motion is filed unless the Court orders that the hearing be held within that period;

(b) as soon as practicable after the date for the hearing has been fixed by the proper officer the Authority shall give notice thereof to the holder of the extraordinary licence to which the application relates;

(c) there shall be filed with the notice of motion affidavits setting out the facts relied on to support the application;

(d) on the day the notice of motion is filed or on the next day thereafter the Authority shall serve a copy of the notice of motion and of each affidavit filed therewith, as required by this Rule, on the holder of the extraordinary licence to which the application relates, who—

(i) shall be entitled to be heard on the application and to file affidavits in answer to those so filed with the notice of motion;

(ii) shall, if he intends to be heard on the application, file a notice to that effect on which notice shall be endorsed an address for service in Perth;

(iii) shall serve on the Authority a copy of any affidavit or notice of intention to be heard filed under this paragraph, on the day it is so filed or on the next day thereafter.

6. (1) Subject to paragraph (2), where an affidavit has been filed under this Order, the party on whose behalf the affidavit was filed shall produce the deponent for cross-examination if so required by another party, and if the deponent does not attend for cross-examination the affidavit shall not be used as evidence unless by special leave of the Court.

Deponent to  
be produced  
for cross-  
examination.

(2) In the case of an application referred to in Rule 4, paragraph (1) does not apply to or in relation to an affidavit made by the applicant.

## ORDER 82

## Sheriff's Rules

Publicity of  
sale.  
W.A.  
O.LXVIII.A,  
R.1.

1. Subject to the Act, where the Sheriff intends to put up for sale any property taken in execution, he shall cause notice of the time and place and particulars of the property to be given in such manner as appears to him best calculated to give due publicity to such sale.

Place of  
sale.  
Ib. R.2.

2. The Sheriff may cause any property taken in execution to be sold at the place of levy, or elsewhere, as he deems most advantageous.

Mode of  
sale.  
Cf. W.A.  
O.LXVIII.A,  
R.3.

3. (1) Property, whether real or personal, offered for sale by the Sheriff by public auction may be sold in one lot or in several lots. Subject to paragraph (2) the sale shall be of the estate, right, title or interest only of the party against whom the writ of execution had been issued in the chattels or land put up for sale.

(2) With the consent in writing of any other person having estate, right, title or interest in the chattels or land offered for sale by the Sheriff, the sale may be also of such estate, right, title or interest if the Sheriff is of opinion that such course is desirable in order to obtain a more satisfactory sale under the writ, and such other person, and the judgment creditor, and the judgment debtor have agreed in writing upon the proportion in which the net proceeds of the sale are to be divided.

Notice to  
Sheriff not  
to pay money  
to execution  
creditor.  
Ib. R.4.

4. (1) Where the Sheriff has, by virtue of any writ directed to him, received any moneys, and any person claiming to be interested in those moneys has served on the Sheriff a notice requiring him not to pay over those moneys, the Sheriff may retain such moneys in his hands, to abide the order of the Court thereon.

(2) The Sheriff may, at the expiration of four days next after service of such notice on him, pay over such moneys in pursuance of the writ, unless in the meantime application is made by the party giving such notice to the Court or a Judge, and notice thereof is served on the Sheriff.

Suspension  
of execution.  
Ib. R.5.

5. The Sheriff shall not suspend the execution of any writ or process directed to him, except upon an absolute order in writing to that effect lodged with him by the person entitled to the benefit of the same, or his solicitor. Any such person may at any time afterwards withdraw such order, and lodge with the Sheriff a written instruction to execute the writ or process.

Execution of  
writs of  
attachment  
etc.  
Substituted by  
G.G. 29/3/74,  
pp. 1041-2.  
Erratum  
G.G. 5/4/74,  
p. 1195.  
Cf. M.C.R.  
R. 263.

6. (1) Where a person has been arrested by the Sheriff on a writ of attachment, the Sheriff shall cause that person to be brought before the Court as soon as practicable to be dealt with as the Court may order.

(2) Until the person arrested is brought before the Court as required by paragraph (1), he shall be lodged in such prison as the Sheriff may direct or shall be otherwise kept in custody by the Sheriff.

(3) The Sheriff shall give notice—

(a) of the arrest; and

(b) of the time and place at which the person arrested is to be dealt with by the Court,

to the party by whom the writ was issued; but this paragraph does not affect the obligation of the Sheriff under paragraph (1) to bring the person arrested before the Court as soon as practicable.

(4) Where a person has been arrested by the Sheriff on a civil process, other than a writ of attachment or a warrant issued under section 16 of the Evidence Act, 1906, the Sheriff shall cause that person to be lodged in the prison nearest to the place of his arrest; and subject to any order of the Court, he shall be detained there until discharged in due course of law.

(5) In this rule the word "prison" has the same meaning as it has in section 4 of the Prisons Act, 1903 as extended by section 8 of that Act.

7. (1) The Sheriff shall, if requested so to do by any party or his solicitor, serve or cause to be served in Western Australia any writ, notice, order, summons or other document issued, made or prepared in or in relation to any cause or matter in respect of which personal service is required by statute or by any rule or practice of the Court.

Service of  
process by  
Sheriff.  
Ib. R.7.

(2) Such request shall be in writing, and shall contain the instructions for service.

(3) The service of any such document may be proved by the affidavit of the bailiff or officer effecting service, and no subpoena to compel the attendance of the Sheriff or any bailiff or officer in respect of any matter arising out of such service shall be issued except by leave of a Judge or the Master, which may be obtained *ex parte*.

8. Where process is directed to any fit person appointed by the Court pursuant to section 164 of the Act, the fees payable in ordinary cases to the Sheriff by the person against whom such process is sued out shall be due and payable to the person to whom such process is directed, except the fees for registering the warrant and returning the same.

Fees where  
Sheriff does  
not execute  
process.  
Ib. R.8.

9. In case the Sheriff and the person liable or claimed to be liable to pay the amount of any fees and charges payable to the Sheriff differ as to the liability to pay the same or as to the amount thereof, the question of liability shall be decided by the Master or the Master shall tax such fees or charges as the case may be.

Taxation of  
fees.  
Ib. R.9.

10. Where property taken in execution is sold through an auctioneer or agent, the gross proceeds of the sale shall, if the sheriff so requires, be paid over to him by the auctioneer or agent, and the Sheriff shall after receipt thereof, or, in case the Sheriff and the person liable to pay the fees and charges payable to the Sheriff in respect of the execution differ as to the amount of such fees and charges, after such fees and charges have been taxed, pay to the auctioneer or agent the proper charges and expenses due to him in connection with the sale.

Expenses of  
sale.  
Ib. R.10.

Deposit on  
account of  
fees.  
Ib. R.11.

11. (1) Upon request being made for the execution or service of any process or document, or for any work for which fees are properly chargeable in the Sheriff's office, the Sheriff may require a deposit of money to meet such fees except poundage. He may also require an undertaking in writing from the solicitor or if no solicitor is acting, from the party making the request, to pay any further fees or charges which may become payable beyond the amount so deposited.

(2) Where any person has deposited an amount in excess of the fees which are found to be payable, the Sheriff shall, upon the amount actually payable being ascertained, return the amount so deposited in excess.

Fees where  
execution not  
proceeded  
with.  
Ib. R.12.

12. Where an execution is withdrawn, satisfied or stopped, the fees payable in respect thereof, including poundage if chargeable, shall be paid by the person issuing the execution or the person at whose instance the sale was stopped, as the case may be.

Particulars  
of arrange-  
ment where  
execution is  
discontinued.  
Ib. R.13.

13. Notwithstanding anything contained in the last preceding rule, where execution has been levied upon any property and the Sheriff upon request has withdrawn from such property, the poundage upon the full amount which the Sheriff has been required to levy under the Writ of Execution lodged with him shall become forthwith due and payable by the execution creditor (or his solicitor, as the case may be), unless full particulars of any arrangement reached between the execution creditor and the execution debtor or with any person on behalf of such debtor or of any other circumstances which render the sale unnecessary have been furnished to the Sheriff within 14 days of the request to withdraw.

Service at  
a distance.  
Amended by  
G.G. 7/12/73,  
p. 4489.  
Ib. R.14.

14. No Sheriff's officer shall be compellable to go more than sixty-five kilometres by the shortest route usually used in travelling from his office or residence for the service of any writ of summons, notice, order, summons or other document, nor shall an allowance for more than 150 kilometres be made under item 52 of the Fifth Schedule in any case without the order of a Judge or the Master.

Execution of  
process at a  
distance.  
Amended by  
G.G. 7/12/73,  
p. 4489.  
Ib. R.15.

15. No greater expense shall be chargeable against any party, respecting whom or whose property the execution of process is made, for the extra cost of executing the same at a distance from Perth, than the cost of transmitting the same by the least expensive mode to and from the office or residence of the nearest Sheriff's officer, and the prescribed allowance according to the distance of the place where the same is made from the office or residence of such officer; and no such allowance shall be made to any such officer unless he states in his return to the Sheriff the number of kilometres that the place of execution is from his office or residence.

Default in  
payment of  
fees.  
Ib. R.16.

16. If any solicitor, who has made a request for the execution or service of any process or document, or for any work for which fees are properly chargeable in the Sheriff's office, makes default in payment of any of the fees or charges properly chargeable, for a period of seven days after demand in writing by the Sheriff, the Sheriff may report to the Court the name of the solicitor so making default, and the Court may thereupon make all necessary orders to enforce payment by the solicitor of such fees or charges.

**ORDER 83****Consolidation of Pending Causes and Matters**

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

Causes may be consolidated.  
W.A.  
O.XVII B.  
R.1.

2. In the exercise of jurisdiction under this Order the Court may order the consolidation with any action pending in the Supreme Court of any action remitted or removed to the Supreme Court from any other court.

Consolidation with Local Court action.  
Ib. R.2.

3. The Court shall make all necessary directions for the pre-trial procedure, and for the trial or determination of such consolidated causes or matters.

Directions.  
Ib. R.3.

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**ORDER 83A.****Fees.**

ORDER 83A.  
Added by  
G.G. 10/9/73,  
pp. 3428-29.

1. (1) Subject to this Order, the fees specified in the Fifth Schedule shall be charged in respect of the matters in relation to which they are specified.

Fees to be charged.

(2) Except as provided in the Fifth Schedule, a fee shall not be charged in respect of any of the following matters:—

- (a) filing an affidavit;
- (b) filing a pleading;
- (c) search by a party;
- (d) sealing a copy of a document;
- (e) drawing up, settling or signing a judgment, order or decree;
- (f) amending a pleading;
- (g) making a request under these rules; or
- (h) filing, depositing, giving, issuing or serving any other document required or permitted by these rules to be filed, deposited, given, issued or served in connection with proceedings.

(3) A note to an item in the Fifth Schedule shall have effect according to its tenor as if it were a provision of these rules.

(4) Where a fee is payable, the proper officer shall mark the fee on the document filed or, where no document is filed, he shall note on a schedule sufficient particulars of the fee and of the matter to which it relates.

## Exemptions.

2. The provisions of this Order shall apply to all proceedings in the Supreme Court in any jurisdiction inherent in or conferred on the Court or a Judge other than—

- (a) criminal proceedings, or appeals under section 183 of the Justices Act, 1902;
- (b) proceedings under the Matrimonial Causes Act 1959 or the Bankruptcy Act 1966 of the Commonwealth;
- (c) proceedings under the Adoption of Children Act, 1896;
- (d) proceedings in the Court of Disputed Returns;
- (e) applications for appointment as public notaries;
- (f) returns and copies of, or searches for, returns under the Newspaper Libel and Registration Act, 1884; or
- (g) proceedings in Prize Courts.

## Fees to be paid before documents etc., filed.

3. Subject to the provisions of this Order, a pleading, application or other document shall not be filed, issued or otherwise dealt with; and no other matter or thing shall be done in the Court or by an officer of the Court, unless the fee (if any) payable upon or in respect of filing, sealing, issuing or otherwise dealing with that pleading, application or other document or upon or in respect of the doing of that matter or thing, has been paid or unless an undertaking to pay the fee has been given to the Court or to the officer, as the case may be.

## Master to decide disputed fees.

4. If a question arises as to the fee payable or applicable in a particular case, that question shall be determined by the Master; but any person affected by the determination of the Master may have it reviewed by a Judge in a summary manner.

## Court may remit fees.

5. The Court may, in a particular case for special reasons, direct—

- (a) that a fee shall not be taken, or that part only of a fee shall be taken, or, if taken, that the whole or part of the fee be remitted; or
- (b) that the payment of the whole or a part of a fee be postponed until such time, and upon such conditions, if any, as the Court thinks fit.

## Conventions.

6. Where, by a Convention that applies to the State, it is provided that a fee is not required to be paid in respect of any proceedings, the fees referred to in rule 1 shall not be taken in respect of those proceedings.

## ORDER 84

## General Rules

1. No order or Rule annulled by any former Order shall be revived by any of these Rules, unless expressly so declared.

Repealed  
Orders not  
revived.  
W.A.  
O.LXXII,  
R.1.

2. (1) Where no provision is made by law or by these Rules, the previous practice of this Court shall be followed or if there be no such practice, or if there is doubt as to what is the correct procedure, the Court may direct (and *ex parte* if it thinks fit) what shall be done in each particular instance, or that the procedure that has been adopted shall be sufficient.

Cases not  
provided for.  
Cf. Ib. R.2.  
Cf. S.A. O.72,  
R.2.  
Cf. H.Ct.  
O.72, R.1.

(2) A step taken in accordance with a direction given under paragraph (1) shall be deemed to be regular and sufficient.

(3) A direction given under paragraph (1) is subject to review at any time by the Court, and such further or other directions may be given as the Court thinks necessary or proper in the interests of justice.

3. Where a judgment is pronounced in a cause or matter, either by the Full Court or a single Judge, and the reasons and opinion of a Judge are reduced to writing, it is sufficient to state orally the opinion of the Judge without stating the reasons for the opinion, but his written reasons and opinion shall be then published by delivering them to the proper officer.

Publication of  
written  
reasons for  
judgment.  
W.A.  
O.LXXII,  
R.3A.

4. (1) The Registrar in Bankruptcy for the District of the State of Western Australia appointed pursuant to the provisions of the Bankruptcy Act, 1966, shall keep a seal, called the Bankruptcy Seal, bearing a representation of the Royal Arms, and the words "The Supreme Court of Western Australia exercising Federal Jurisdiction in Bankruptcy" which shall be affixed to all documents which are authorised or required to be sealed by the provisions of the said Bankruptcy Act or by the Bankruptcy Rules. Whenever for any reason any such seal is replaced or superseded by another seal, the seal replaced or superseded shall be delivered forthwith by the said Registrar in Bankruptcy to the Registrar of the Supreme Court, to be held or disposed of by him in accordance with the directions of the Chief Justice.

Seal and  
Records in  
Federal  
Jurisdiction  
in Bankruptcy.  
Cf. W.A.  
O.LXXII,  
RR. 4, 5.

(2) The said Registrar in Bankruptcy shall have the custody of all the records of the Court in the exercise of its Federal Jurisdiction in Bankruptcy, and of all documents filed in the Federal Bankruptcy Registry or ordered to be deposited therein in pursuance of the provisions of any enactment of the Commonwealth relating to Bankruptcy or any Rules made thereunder.

5. Claims and complaints under section 28 of the Public Trustee Act shall be brought by summons before a Judge in Chambers and must be supported by affidavit. All parties interested must be served with a copy of such summons and affidavit, and such parties may appear in opposition, either personally or by counsel, or solicitor.

Summary  
proceedings  
under s.28 of  
the Public  
Trustee Act.

Affidavit of  
claim to pur-  
chase money  
paid into  
court.  
Cf. W.A.  
O.L.I., R.17.

6. 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.

Account by  
solicitor.  
Ib. R.18.

7. Where the relationship of solicitor and client exists, or has existed, an originating 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 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 may order. In the event of the respondent alleging that he has a claim for costs, the Court may make such provision for the payment or security thereof or the protection of the respondent's lien (if any) as the Court may think fit.

Appeals  
under Jus-  
tices Act,  
1902—notifi-  
cation of de-  
termination.

8. (1) When an appeal under section 183 of the Justices Act 1902 or an appeal by way of Order to Review under that Act has been determined by the Court or the Full Court, as the case may be, the proper officer shall send to the clerk of the court from whose decision the appeal was made a copy of the order made on the determination of the appeal, and a copy of any reasons given by the Court or Full Court for its decision.

(2) The party extracting the order on appeal, must, when filing the order, lodge at the Central Office for the purposes of paragraph (1), an additional copy of such order.

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THE FIRST SCHEDULE.

**RULES REVOKED.**

1. The Rules of the Supreme Court, 1909.
2. The Orders and Rules amending the Supreme Court Rules, 1909.
3. Estate and Succession Duties Appeal Rules, 1921.
4. Rules made under the Vexatious Proceedings Restriction Act, 1930 and published in the *Government Gazette* on 20 March, 1931, pages 886/7.
5. State Housing Act 1946-1950 (Appeal) Rules, 1951.
6. Medical Act, 1894, Appeal Rules, 1964.
7. Supreme Court (Guardianship of Infants) Rules, 1966.

Amended by  
G.G. 9/11/73,  
pp. 4165-6;  
G.G. 29/3/74,  
pp. 1040-  
1042;  
G.G. 10/1/75,  
pp. 50-55.  
O.5, R.1.

## THE SECOND SCHEDULE.

## FORMS.

No. 1.

## GENERAL FORM OF WRIT OF SUMMONS.

In the Supreme Court  
of Western Australia.

No. of 19 .

Between

A.B., Plaintiff,  
and  
C.D., Defendant.

Elizabeth the Second, by the Grace of God, Queen of Australia and Her other  
Realms and Territories, Head of the Commonwealth.

To C.D. of in the State of  
Western Australia.

We command you, that within days after the  
service of this writ on you, exclusive of the day of such service, you cause an  
appearance to be entered for you in our Supreme Court in an action at the  
suit of the abovenamed plaintiff; 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 19 .

Memoranda to be subscribed on 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.

A defendant may appear to this writ by entering an appearance either  
personally or by solicitor at the Central Office of the Supreme Court at  
Perth.

*Indorsement of Claim.*

The plaintiff's claim is for

Place of trial

(Where the plaintiff's claim is for a debt or liquidated demand only the  
following indorsement must be added):—

If, within the time allowed for entering an appearance, the defendant pays  
to the plaintiff or to his solicitor or into Court the amount claimed, together with  
the sum of \$ being the costs incurred by the plaintiff up to and  
including the service of this writ, further proceedings will be stayed: Provided  
that the defendant may notwithstanding the payment of such costs have the  
same taxed by the Taxing Officer of the Court and if more than one sixth  
be disallowed the plaintiff shall pay the costs of taxation.

(If the plaintiff sues or the defendant or any of the defendants is sued in a  
representative capacity this must be shown in the indorsement of claim.)

\*state  
plaintiff's  
occupation.

This writ was issued by the plaintiff in person who is a \*  
and resides at and whose address for service is  
[or]

This writ was issued by of  
whose address for service is solicitor for  
the plaintiff, who resides at

[or]  
This writ was issued by of  
whose address for service is and who is  
agent for ot solicitor  
for the plaintiff, who resides at

*Indorsement as to service.*

This writ was served by me at  
on [the defendant or one of  
the defendants] on the day  
of 19 .

Indorsed the day of 19 .  
(Signed)  
(Address)

## WRIT OF SUMMONS INDORSED WITH STATEMENT OF CLAIM.

*[As in No. 1 except that the following note shall be inserted after the directions for entering an appearance and that a statement of claim shall be substituted for the indorsement of claim.]*

**NOTE:** If the defendant enters an appearance, then unless a summons for judgment is served on him in the meantime, he must also file a defence at the Central Office of the Supreme Court at Perth, and serve such defence on the solicitor for the plaintiff, within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

*Statement of claim.*

Place of trial.

*[If the plaintiff's claim is for a debt or liquidated demand only, the indorsement in Form No. 1 beginning "If within the time allowed for entering an appearance" must be added.]*

WRIT OF SUMMONS WHICH, OR NOTICE OF WHICH, IS  
TO BE SERVED OUT OF THE JURISDICTION.

*(Headings as in No. 1.)*

Elizabeth the Second, etc. *(as in No. 1.)*

To C.D. of

We command you, that within \* days after service† of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in our Supreme Court in an action at the suit of the abovenamed plaintiff; and take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence.

\*Insert number of days limited for appearance.

†If notice of the writ is to be served insert here "of notice".

Witness *(as in No. 1.)*

*[Memoranda and Indorsements as in No. 1. If the writ is indorsed with a statement of claim the form should be modified to comply with the directions given in No. 2.]*

*Further indorsement to be made on the writ before the issue thereof:*

*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 outside the Commonwealth of Australia notice of the writ, and not the writ itself, is to be served upon him.*

O.5, R.2.

No. 4.

NOTICE OF WRIT OF SUMMONS FOR SERVICE OUT  
OF THE JURISDICTION.

[*Heading as in action.*]

To C.D. of

Take notice that \_\_\_\_\_ of  
has commenced an action against you in the Supreme Court of Western  
Australia by writ of summons of that Court issued on the  
day of \_\_\_\_\_ 19\_\_\_\_, which writ is indorsed as follows:—

[*Copy the Indorsements.*]

And you are required within \_\_\_\_\_ days after the  
receipt of this notice, exclusive of the day of such receipt, to cause an appearance  
to be entered for you in the said Court to the said action; and take notice that  
in default of your so doing the plaintiff 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.

[*If the writ is indorsed with a statement of claim add:*

If you enter an appearance then, unless a summons for judgment is served  
on you in the meantime, you must also file a defence at the Central Office of  
the Supreme Court at Perth aforesaid, and serve such defence on [the solicitor  
for] the plaintiff within 14 days after the last day of the time limited for entering  
an appearance, otherwise judgment may be entered against you without notice.]

(Signed) A.B. of \_\_\_\_\_ etc.

or X.Y. of \_\_\_\_\_ etc.

Solicitor for A.B.

This notice was served by me at \_\_\_\_\_  
on the defendant C.D. on \_\_\_\_\_ the \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_\_\_.

(Signed)

(Address)

O.6, R.5.

No. 5.

INDORSEMENTS OF REPRESENTATIVE CAPACITY OF PARTIES.

The plaintiff's claim is as executor (*or* administrator) of C.D., deceased,  
for, etc.

The plaintiff's claim is against the defendant A.B. as executor (*or* etc.) of  
C.D., deceased, for etc.

The plaintiff's claim is against the defendant A.B. as executor of X.Y., deceased,  
for, etc. and against the defendant C.D., in his personal capacity, for, etc.

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].

The plaintiff's claim is against the defendant A.B. as principal, and against  
the defendant C.D. as surety, for

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No. 6.

O.12, R.2(2).

MEMORANDUM OF APPEARANCE.

*(Heading as in action)*

Enter an appearance for  
in this action.

Dated this                      day of                      19                      .

(Signed) X.Y. of  
Agent for  
of

(or) C.D., defendant in  
person.

The place of business of X.Y. is \*

His address for service is

The address of C.D. is \*

His address for service is

\*If this  
address is  
beyond  
3 kilometres  
from the  
Supreme  
Court at  
Perth an  
address for  
service within  
3 kilometres  
thereof must  
be given.

\*If the writ  
carries the  
indorsements  
required by  
the Service  
and Execu-  
tion of Pro-  
cess Act  
(Clth.) the  
address must  
comply with  
such indorse-  
ments.

No. 7.

O.12, R.10.

NOTICE LIMITING DEFENCE.

*(Heading as in action)*

Take notice that the [*abovenamed*] defendant A.B. limits his defence to the part  
only of the property mentioned in the statement of claim, namely, [to the  
close called "The Big Field"].

Dated the                      day of                      19                      .

(Signed)                      of                      Agent for  
of  
Solicitor for the said  
defendant C.D.

(or) C.D., defendant in person.

O.17, R. 12 (2).

No. 8.

## NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION.

*(Heading as in action)*

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 under the writ 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, etc.

(Signed)

Sheriff.

To the plaintiff

O.17, R. 12 (2).

No. 9.

NOTICE OF PLAINTIFF OF ADMISSION OR DISPUTE  
OF TITLE OF CLAIMANT.*(Heading as in action)*

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 and his officers.

## (1) NOTICE TO BE INDORSED ON COPY OF COUNTERCLAIM.

To X.Y.

Take notice that, if you intend to defend this Counterclaim, an appearance must be entered to the Counterclaim on your behalf within \* days after the service of this defence and counterclaim on you, exclusive of the day of service, otherwise judgment may be given against you without further notice.

\*Insert number of days limited for appearance.

The person served with this Counterclaim may enter an appearance either personally or by a solicitor at the Central Office of the Supreme Court at Perth.

O.18, R.3.

## (2) MEMORANDUM OF APPEARANCE TO COUNTERCLAIM

[As in No. 6 but substituting for the title of the action the following:— ]

Between

Plaintiff(s)

and

Defendant(s)

(by original action)

And between  
the said

Plaintiff(s)

and

the said

Defendant(s)

(by counterclaim)

[and substituting for the request to enter appearance the following:— ]

Enter an appearance for [full name of defendant to counterclaim wishing to appear] to the Counterclaim of the abovenamed defendant in this action.

## (3) MEMORANDUM OF APPEARANCE OF PERSON ADDED AS DEFENDANT.

O.18, R.8.

[As in No. 6 but substituting for the title of the action the following:— ]

Between

Plaintiff(s)

and

Defendant(s)

And between

Plaintiff(s)

and

Defendant(s)

(By original writ and by order)

[and substituting for the request to enter appearance the following:— ]

Enter an appearance for [full name of added defendant] who has been served with an order dated the day of 19 , making him a defendant to the action.

O.19, R.1.

No. 11

## THIRD PARTY NOTICE (GENERAL FORM).

In the Supreme Court  
of Western Australia.

19 . No.

Between

A.B., Plaintiff,  
and

C.D., Defendant,  
and

E.F., Third Party

## THIRD PARTY NOTICE.

[Issued pursuant to the order of

dated the

day of

]

To E.F. of

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant [*here state concisely the nature of the plaintiff's claim*] as appears from the writ of summons [*and statement of claim*] a copy [*copies*] whereof is [*are*] served herewith.

The defendant claims against you [*here state concisely the nature of the claim against the third party, as for instance*] to be indemnified against the plaintiff's claim and the costs of the action, [*or*] contribution to the extent of [*one-half*] of the plaintiff's claim [*or*] the following relief or remedy, namely  
on the grounds that [*state concisely the grounds of the claim against the third party*].

And take notice that if you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, you must cause an appearance to be entered for you within [10]\* days after the service of this notice upon you, otherwise you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to [indemnify the defendant, or to contribute to the extent claimed, or to  
(*stating the relief or remedy sought*)] and will be bound by any judgment or decision given in the action, and the judgment may be enforced against you in accordance with Order 19 of the Rules of the Supreme Court.

Dated, etc.

(Signed)

Solicitor for the defendant.

Appearance is to be entered at the Central Office, Supreme Court, Perth.

\*If another  
period has  
been fixed  
insert that  
period.

O.19, R.1.

No. 12.

## THIRD PARTY NOTICE WHERE QUESTION OR ISSUE TO BE DETERMINED.

[*As in Form No. 11 down to "a copy whereof is served herewith" and proceed:—*]

The defendant requires that the following question or issue, viz. [*here state the question or issue required to be determined*] should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself.

And take notice that if you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant, you must cause an appearance to be entered for you within [10] days after the service of this notice on you, otherwise you will be bound by any judgment or decision given in the action in so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with Order 19 of the Rules of the Supreme Court.

Dated, etc. [*as in Form No. 11*].

## NOTICE OF PAYMENT INTO COURT.

*(Heading as in action.)*

Take notice that the defendant \_\_\_\_\_ has  
paid \$ \_\_\_\_\_ into court.

The said \$ \_\_\_\_\_ is in satisfaction of  
[the cause of action] [all causes of action] in respect of which the plaintiff claims  
[and after taking into account and satisfying the abovenamed defendant's cause  
of action for \_\_\_\_\_ in respect of which he  
counterclaims].

*or*

The said \$ \_\_\_\_\_ is in satisfaction of the following causes of action in  
respect of which the plaintiff claims, namely, \_\_\_\_\_ [and after  
taking into account, as above]

*or*

Of the said \$ \_\_\_\_\_, \$ \_\_\_\_\_ is in satisfaction of the plaintiff's  
cause(s) of action for \_\_\_\_\_ [and  
after taking into account, as above] and \$ \_\_\_\_\_ is in satisfaction of  
the plaintiff's cause(s) of action for  
[and after taking into account, as above].

Dated, etc.

(Signed)

Solicitor for the defendant  
C.D.

To Mr. X.Y.

Solicitor for the plaintiff.

*(To be filled in by the Registrar's Office)*

Received the above sum of \$ \_\_\_\_\_ into court in this  
action.

Dated, etc.

(Signed)

Accountant.

## NOTICE OF ACCEPTANCE OF SUM PAID INTO COURT.

*(Heading as in action.)*

Take notice that the plaintiff accepts the sum of \$ \_\_\_\_\_  
paid by the defendant (C.D.) into Court in satisfaction of the cause(s) of action  
in respect of which it was paid in and in respect of which the plaintiff claims  
[against the defendant] [and abandons the other causes of action in respect of  
which he claims in this action].

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
X.Y. plaintiff's solicitor.

To Mr. P.Q. solicitor for the defendant C.D. (and Mr. R.S. solicitor for the  
defendant E.F.)

## NOTICE OF OFFER TO CONSENT TO JUDGMENT.

*(Heading as in action.)*

Take notice that the defendant admits liability but disputes the amount of  
his liability for debt (or for damages) and offers to consent to judgment for the  
sum of \$ \_\_\_\_\_ which the defendant claims will satisfy the plaintiff's  
cause(s) of action for (specify the cause or causes of action in respect of which  
the offer is made, and where there is more than one cause of action the amount  
offered in satisfaction of each).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
P.Q. solicitor for the  
defendant C.D.

To Mr. X.Y. the plaintiff's solicitor (and to Mr. R.S. solicitor for the  
defendant E.F.).

O.24,  
R.6(1)(e).

No. 16.

NOTICE OF ACCEPTANCE OF OFFER TO CONSENT  
TO JUDGMENT.

(Heading as in action.)

Take notice that the plaintiff accepts the offer of the defendant to consent to judgment for \$ \_\_\_\_\_ in satisfaction of the plaintiff's cause of action for (specify the cause or causes of action in respect of which the offer or part of the offer is accepted).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
X.Y. plaintiff's solicitor.

To Mr. P.Q. solicitor for the defendant C.D. (and Mr. R.S. solicitor for the defendant E.F.).

O.26, R.4(1).

No. 17.

LIST OF DOCUMENTS.

(Heading as in cause or matter.)

List of Documents.

The following is a list of the documents relating to the matters in question in this action which are or have been in the possession, custody or power of the abovenamed plaintiff (or defendant) A.B. and which is served in compliance with Order 26 Rule 1(3) [or, the order herein dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_]:—

1. The plaintiff (or defendant) has in his possession, custody or power the documents relating to the matters in question in this action enumerated in Part 1 of the First Schedule hereto.

2. The plaintiff [or defendant] objects to produce the documents enumerated in Part 2 of the said First Schedule on the ground that [stating the ground of objection].

3. The plaintiff [or defendant] has had, but has not now, in his possession, custody or power the documents relating to the matters in question in this action enumerated in the Second Schedule hereto.

4. Of the documents in the said Second Schedule, those numbered \_\_\_\_\_ in that Schedule were last in the plaintiff's (or defendant's) possession, custody or power on (stating when) and the remainder on (stating when).

5. That [here state what has become of the last mentioned documents, and in whose possession they are now].

6. Neither the plaintiff [or defendant], nor his solicitor nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to any matter in question in this action, other than the documents enumerated in the First and Second Schedules hereto.

[The Schedules.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .

O.26, R.8.

Notice to inspect.

Take notice that the documents in the above list, other than those listed in Part 2 of the First Schedule [and the Second Schedule] may be inspected at [the office of the solicitor of the abovenamed [plaintiff] [defendant] (insert address or as may be)] on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ , between the hours of \_\_\_\_\_ and \_\_\_\_\_ .

To the defendant [or plaintiff] C.D.  
and his Solicitor.

Served the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ ,  
by \_\_\_\_\_ of \_\_\_\_\_ solicitor for  
[plaintiff] [defendant].

No. 18.

O.26, R.4(3).

## AFFIDAVIT VERIFYING A LIST OF DOCUMENTS.

*(Heading as in cause or matter.)*

I the abovenamed plaintiff [or defendant] A.B., make oath and say as follows:—

1. The statements made by me in paragraphs 1, 3, 4 and 5 of the list of documents now produced and shown to me marked are true.
2. The statements of fact made by me in paragraph 2 of the said list are true.
3. The statements made by me in paragraph 6 of the said list are true to the best of my knowledge, information and belief.

Sworn, etc.

Filed on behalf of the [plaintiff] [or defendant].

No. 19.

O.33, R.13(3).

REQUEST TO SET DOWN CAUSE FOR FURTHER  
CONSIDERATION.

In the Supreme Court  
of 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.

No. 20.

O.33, R.13(3).

NOTICE THAT CAUSE HAS BEEN SET DOWN FOR  
FURTHER CONSIDERATION.

In the Supreme Court  
of 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, etc.

C. D.,  
Solicitor for

To Mr.  
Solicitor for

No. 21.

O.34, R.12 (1).

## ASSOCIATE'S CERTIFICATE.

*(Heading as in action.)*

I certify that this [with a jury] on was tried before His Honour Mr. Justice and occupied the time of the Court as follows:—

[The jury found (state findings) ]

The Judge directed that judgment should be entered for the plaintiff for \$ with costs to be taxed [or as the case may be].

Dated, etc.

Associate.

O.36, R.12.

No. 22.

WRIT OF SUBPOENA.

(Heading as in cause or matter).

Elizabeth the Second, by the Grace of God, etc.

To [names of witnesses]:

We command you to attend before  
at \_\_\_\_\_ on \_\_\_\_\_ day the \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_  
noon, and from day to day thereafter until the end of the trial, to give evidence  
on behalf of the plaintiff [or defendant]. †

Witness \_\_\_\_\_ Chief Justice  
of Western Australia the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.  
Issued on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, by  
[agent for] \_\_\_\_\_ solicitor for the \_\_\_\_\_

† If *duces tecum* add: And we also command you to bring with you and produce  
at the time and place aforesaid [here describe the documents or things to be  
produced].

O.36, R.12(1).

No. 23.

WRIT OF SUBPOENA: PROCEEDINGS IN CHAMBERS.

(Heading as in cause or matter).

Elizabeth the Second (as in No. 22).

To [names of witnesses]

We command you to attend before [Mr. Justice \_\_\_\_\_]  
in Chambers, Supreme Court, Barrack Street, Perth, on \_\_\_\_\_ ]  
day the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_  
and so from day to day until your evidence shall have been taken, to give  
evidence on behalf of the [plaintiff] [or defendant] in the abovenamed cause  
[and we also command you to bring with you and produce at the time and place  
aforesaid (describe the documents or things to be produced)].

Witness [as in No. 22].

Issued [as in No. 22].

O.36, R.12(2).

No. 24.

PRAECIPE OF SUBPOENA.

(Heading as in cause or matter.)

Seal writ of subpoena  
on behalf of the \_\_\_\_\_

directed to \_\_\_\_\_

\*Insert  
number of  
names in writ  
of subpoena.

[ \_\_\_\_\_\*] witnesses returnable

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed)

(Address)

[Agent for \_\_\_\_\_ of \_\_\_\_\_]  
Solicitor for the [plaintiff]  
[or defendant].

## ORDER FOR EXAMINATION OF WITNESS BEFORE TRIAL.

*(Heading as in cause of matter).*

Before the Hon. Mr. Justice [or the Master]  
in Chambers.

On hearing [the solicitors on both sides] and on reading the affidavit of  
filed herein the  
day of 19 ,

It is ordered that E.F. of a witness  
on behalf of the be examined *viva voce* (on oath or affirmation)  
before the Master [or before esquire, special examiner,  
or an examiner to be agreed upon], the plaintiff's [or defendant's] solicitor giving  
to the defendant's [or plaintiff's] solicitor days notice in writing  
of the time and place where the examination is to take place.

And it is further ordered that the depositions taken at the examination be filed  
in the Central Office of the Supreme Court, and that office 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 solicitor of the party using the same, as to his belief, and that the  
costs of this application [and of the examination] be [costs in the cause, or as the  
case may be].

Dated the                      day of                      19 .

## ORDER FOR ISSUE OF LETTER OF REQUEST.

*(Heading as in cause or matter.)**[Commence as in Form No. 25].*

It is ordered that a letter of request do issue directed to the proper judicial  
authority for the examination of the following witnesses, namely:

E.F. of

G.H. of

And it is further ordered that the depositions taken pursuant thereto when  
received be filed in the Central Office of the Supreme Court, and may be read  
and given in evidence on the trial of this action, saving all just exceptions,  
without any further proof of the absence of the said witnesses than the affidavit  
of the solicitor of the party using the same as to his belief.

And it is further ordered that [the trial of this action be stayed until the  
said depositions have been filed and that] the costs of and incidental to the  
application for this order and the said letter of request and examination be  
[costs in the cause].

Dated the                      day of                      19 .

O.38,  
R.2(1)(b).

No. 27.

ORDER FOR APPOINTMENT OF SPECIAL EXAMINER TO TAKE  
EVIDENCE ABROAD.*(Heading as in cause or matter.)**[Commence as in Form No. 25.]*

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, *viva voce*, on oath or affirmation, of witnesses on the part of \_\_\_\_\_ at \_\_\_\_\_ in [name of country]. The examiner shall be at liberty to invite the attendance of the witnesses and the production of documents, but shall not exercise any compulsory powers. Otherwise such examination shall be taken in accordance with Western Australian procedure. The \_\_\_\_\_ solicitors to give to \_\_\_\_\_ 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 depositions when so taken, together with any documents 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 incidental to the application for this order and such examination be costs in the action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

O.38, R.3.

No. 28.

## LETTER OF REQUEST.

*[Heading as in cause or matter.]*

To the Competent Judicial Authority of \_\_\_\_\_  
in the \_\_\_\_\_ of \_\_\_\_\_

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 \_\_\_\_\_

And whereas it has been represented to the said Court that it is necessary, for the purpose 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 \_\_\_\_\_  
and \_\_\_\_\_ of \_\_\_\_\_

And it appearing that such witnesses are resident within your jurisdiction.

Now I, \_\_\_\_\_, the Master of the Supreme Court of Western Australia, hereby request that for the reasons aforesaid and for the assistance of the said Court 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 you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined *viva voce* [or upon the interrogatories which accompany this letter of request] touching the said matters in question, in the presence of the agents of the plaintiff and defendant or such of them as shall, on due notice given, attend such examination.

And I further request that you will permit the agents of both the said plaintiff and defendant, or such of them as shall be present, to examine [upon interrogatories and *viva voce* upon the subject-matter thereof or arising out of the answers thereof] such witnesses as may, after due notice in writing, be produced on their behalf, and the other party to cross-examine the said witnesses [upon cross-interrogatories and *viva voce*], and the party producing the witness for examination to re-examine him *viva voce*.

And I further request that you will be pleased to cause the evidence of the said witnesses [or the answers of the said witnesses and all additional *viva voce* questions, whether on examination, cross-examination, or re-examination] to be reduced into writing, and all 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 is in accordance with your procedure, and to return the same together with [the interrogatories and cross-interrogatories, and] a note of the charges and expenses payable in respect of the execution of this request, through the [British] [Australian] Consul from whom the same was received for transmission to the Supreme Court of Western Australia.

And I further request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

No. 29.

O.38, R.3(6).

#### UNDERTAKING AS TO COSTS OF LETTER OF REQUEST.

[Heading as in cause or matter.]

I [or we] hereby undertake to be responsible for all expenses incurred by Her Majesty's Attorney-General for the State of Western Australia in respect of the letter of request issued herein on the \_\_\_\_\_, and on receiving due notification of the amount of such expenses undertake to pay the same to the Attorney-General. The following have been appointed as agents for the parties in connection with the execution of the above letter of request:—

\_\_\_\_\_, Plaintiff's agent, of  
\_\_\_\_\_, Defendant's agent, of

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

Solicitor for

No. 30.

O.39, R.1(2).

#### ORDER UNDER THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856.

In the Supreme Court  
of Western Australia.

In the matter of "The Foreign Tribunals Evidence Act, 1856" (19 and 20 Vict. C. 113), and in the matter of a (Civil or Commercial or Criminal) proceeding now pending before (description of Foreign Tribunal) intituled as follows:—  
Between

and

\_\_\_\_\_, Plaintiff,

\_\_\_\_\_, Defendant.  
in Chambers.

Before the Honourable Mr. Justice

Upon reading the affidavit (if any) of \_\_\_\_\_  
 filed the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
 and the Commission Rogatoire or Letter of Request of \_\_\_\_\_  
 and the Certificate of (name and description of the Ambassador, Minister, Diplo-  
 matic Agent, or Consul of the Foreign Country) that proceedings are pending in  
 the (description of Foreign Tribunal) in (name of Foreign Country), and that such  
 Court is desirous of obtaining the testimony of (name of witnesses) (or any other  
 evidence as the Court may require).

It is ordered that the said witness  
 do attend before (name and address of examiner) who is hereby appointed  
 examiner herein at (place appointed for examination) on the  
 day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock, or such other  
 day and time as the said examiner may appoint, and do there submit to be  
 examined upon oath or affirmation touching the testimony so required as afore-  
 said, and do then and there produce (description of documents, if any, required  
 to be produced).

And it is further ordered that the said examiner do take down in writing the  
 evidence of the said witness, or witnesses, according to the Rules and Practice  
 of the Supreme Court of Western Australia pertaining to the examination and  
 cross-examination of witnesses (or as may be otherwise directed); and do cause  
 each and every such witness to sign his or her depositions in his the said  
 examiner's presence; and do sign the depositions taken in pursuance of this order,  
 and when so completed, do transmit the same, together with this order, to the  
 Master of the Supreme Court, Perth.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

O.39, R.5(2).

No. 31.

CERTIFICATE UNDER THE FOREIGN TRIBUNALS  
 EVIDENCE ACT, 1856.

I,  
 Registrar of the Supreme Court of Western Australia, hereby certify that the  
 documents annexed hereto are (1) the Letter of Request (or as the case may be),  
 (2) the original order of the Supreme Court of Western Australia, dated the  
 day of \_\_\_\_\_, 19\_\_\_\_, made in  
 the matter of \_\_\_\_\_  
 pending in the \_\_\_\_\_ at \_\_\_\_\_  
 in the \_\_\_\_\_ of \_\_\_\_\_  
 directing the examination of certain witnesses to be taken before \_\_\_\_\_,  
 and (3) the examination and depositions taken by the said \_\_\_\_\_  
 pursuant to the said order, and duly signed and completed by him on the  
 day of \_\_\_\_\_, 19\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

[L.S.]

Registrar.

O.13, R.2;  
 O.22, R.2;  
 O.42, R.1.

No. 32.

DEFAULT JUDGMENT IN ACTION FOR LIQUIDATED DEMAND

[Heading as in action.]

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

No appearance having been entered [or no defence having been served] by  
 the defendant herein, it is this day adjudged that the defendant do pay the  
 plaintiff \$ \_\_\_\_\_ and \$ \_\_\_\_\_ costs [or costs to be taxed].

The above costs have been taxed and allowed at \$ \_\_\_\_\_ as appears  
 by the Taxing Officer's certificate dated the \_\_\_\_\_ day of  
 19\_\_\_\_.

[*Heading as in action.*]

No. 34.

DEFAULT JUDGMENT WHERE DEMAND UNLIQUIDATED.

**O.13, R.7;  
O.22, R.3;  
O.42, R.1.**

*Note: This is a combined form of interlocutory and final judgment. The plaintiff may at his option enter interlocutory judgment by omitting paragraphs 3, 4 and 5 in this form and entering a separate final judgment in Form No. 37.*

[*Heading as in action.*]

**O.13, R.4;  
O.22, R.4;  
O.42, R.1.**

*Note: This is a combined form of interlocutory and final judgment. The plaintiff may at his option enter interlocutory judgment by omitting paragraphs 5, 6 and 7 in this form and entering a separate final judgment in Form No. 37.*

## DEFAULT JUDGMENT IN ACTION FOR POSSESSION OF LAND.

The \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

[or costs to be taxed]. and pay the plaintiff \$ costs

**O.42, R.1.**

### FINAL JUDGMENT AFTER ASSESSMENT OF DAMAGES, ETC.

The                      day of                      19     .

It is this day adjudged that the defendant do pay to the plaintiff \$  
and costs to be taxed.

**O.14, R.3.**

JUDGMENT UNDER ORDER 14.

The                      day of                      19       .

It is this day adjudged that the defendant do pay to the plaintiff \$  
and \$ costs (or costs to be taxed),

or

deliver to the plaintiff the goods described in the statement of claim as  
or pay to the plaintiff the value of

as <sup>or</sup> give the plaintiff possession of the land described in the statement of claim and costs to be taxed.

The above costs, etc. (as in No. 32).

Dated and entered the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

This action having been tried *[insert dates of trial]* before His Honour Mr. Justice \_\_\_\_\_ at the Supreme Court, Perth *[or as the case may be]* in the presence of Mr. \_\_\_\_\_ of counsel for the plaintiff and Mr. \_\_\_\_\_ of counsel for the defendant *[or as the case may be]* and the Judge having on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ ordered that judgment as hereinafter provided be entered for the plaintiff *[or defendant]*,

It is adjudged that the defendant do pay to the plaintiff \$ \_\_\_\_\_ and his costs of action to be taxed [or that the plaintiff do pay to the defendant his costs of defence to be taxed] [or as may be the case according to the Judge's order].  
The above costs, etc. (as in No. 32).

No. 40.

Dated and entered the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

This action having been tried [insert dates of trial] before His Honour Mr. Justice \_\_\_\_\_ with a jury at the Supreme Court, Perth [or as the case may be] in the presence of Mr. \_\_\_\_\_ of counsel for the plaintiff and Mr. \_\_\_\_\_ of counsel for the defendant [or as the case may be] and the jury having found [state findings as in officer's certificate] and the said Mr. Justice \_\_\_\_\_ having on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ ordered that judgment as hereinafter provided be entered for the plaintiff [or defendant].

It is adjudged [*etc. as in No. 39*].

No. 41.

Dated and entered the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

This action by an order dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_,  
having been ordered to be tried before \_\_\_\_\_ Esq., the Master of the  
Supreme Court [or special referee or arbitrator] and the said Master [or special  
referee or arbitrator] having [insert dates of trial] tried the said action and having  
by his certificate dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
directed that judgment as hereinafter provided be entered for the plaintiff [or  
defendant].

It is adjudged that [as in No. 39, according to the Master's or special referee's certificate].

No. 42.

Dated and entered the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

The issue [or question] arising in this cause [or matter] by the order dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, ordered to be tried before \_\_\_\_\_ having on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ been tried before the said \_\_\_\_\_ and the said \_\_\_\_\_ having found \_\_\_\_\_ and having ordered that judgment as hereinafter provided be entered for the \_\_\_\_\_ [or having dismissed the cause or matter].

It is adjudged that [the defendant do pay to the plaintiff \$                      and his costs of action to be taxed] [the plaintiff do pay to the defendant his costs of defence to be taxed] *or as the case may be according to the order made.*

**JUDGMENT FOR DEFENDANT'S COSTS ON DISCONTINUANCE.**

The day of 19

It is this day adjudged that the plaintiff do pay to the defendant \$                    the said taxed costs, and \$                    the costs of entering judgment for such taxed costs.

**O.24, R.3(8).**

JUDGMENT FOR COSTS AFTER ACCEPTANCE OF MONEY  
PAID INTO COURT.

The                      day of                      19     .

It is this day adjudged that the defendant do pay to the plaintiff \$                      the said taxed costs.

**O.47, R.5.**

WRIT OF *FIERI FACIAS*.

Elizabeth the Second, by the Grace of God, Queen of Australia and Her other  
Realms and Territories, Head of the Commonwealth.  
To the Sheriff, Greeting:

We command you that of the real and personal estate of C.D. authorised by law to be seized in execution you cause to be made the sums of \$ \_\_\_\_\_ and \$ \_\_\_\_\_ for costs of execution and also interest on \$ \_\_\_\_\_ at the rate of \$ \_\_\_\_\_ per cent. per annum from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ until payment [together with Sheriff's poundage, officers' fees, costs of levying and all other legal, incidental expenses] and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment [or order] the amount levied in respect of the said sums and interest.

And we also command you that you indorse on this writ immediately after execution thereof a statement of the manner in which you have executed it and send a copy of the statement to A.B.

Witness                      Chief Justice of Western Australia, the  
day of                      19 .

This writ was issued by \_\_\_\_\_ of \_\_\_\_\_  
[agent for \_\_\_\_\_ of \_\_\_\_\_] solicitor for the [plaintiff] who  
resides at \_\_\_\_\_

The [defendant] is a \_\_\_\_\_ and  
resides at \_\_\_\_\_

No. 46.

O.47, R.5.

*FIERI FACIAS ON ORDER FOR COSTS.**[Heading as in cause or matter.]*Elizabeth the Second (*as in No. 45*).

To the Sheriff, Greeting:

Whereas in the above named cause [*or matter*] it was on the  
 day of 19 ordered that the C.D. do pay the  
 A.B. costs to be taxed, which costs have been taxed  
 and allowed at \$ as appears by the Taxing Officer's certificate  
 dated the day of 19,

We command you that of the real and personal estate of C.D. authorised  
 by law to be seized in execution you cause to be made the sum of \$  
 and \$ for costs of execution, and also interest on \$  
 at the rate of \$ per cent. per annum from the  
 day of 19 until payment together with Sheriff's  
 poundage, officers' fees, costs of levying and all other legal incidental expenses  
 and that immediately after execution of this writ you pay A.B. in pursuance  
 of the said order the amount levied in respect of the said sum and interest.

And we also (*as in Form No. 45*.)Witness (*as in Form No. 45*.)This writ was issued (*as in Form No. 45*.)

No. 47.

O.47, R.5.

*WRIT OF VENDITIONI EXPONAS.**[Heading as in action.]*Elizabeth the Second (*as in Form No. 45*.)

To the Sheriff, Greeting:

Whereas by our writ we lately commanded you that of the real and personal  
 estate of C.D. [*here recite the fieri facias to the end*]. And on the  
 day of 19 you made a return that  
 by virtue of the said writ to you directed you had taken real and personal  
 estate of the said C.D. to the value of the money and interest aforesaid, which  
 said real and personal estate 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 real and personal estate 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 that you pay A.B. the money arising  
 from such sale.

Witness, etc. (*As in Form No. 45*.)This writ was issued (*as in Form No. 45*.)

No. 48.

O.47, R.5.

*WRIT OF POSSESSION.**[Heading as in action.]*Elizabeth the Second (*as in Form No. 45*.)

To the Sheriff, Greeting:

Whereas in the above named action it was on the  
 day of 19 adjudged [*or ordered*] that the  
 defendant C.D. do give the plaintiff A.B. possession of [*describe the land*  
*delivery of which has been adjudged or ordered*] and do pay him [\$  
 and] \$ costs [*or costs to be taxed, which costs have been taxed and*  
 allowed at \$ as appears by the Taxing Officer's certificate dated the  
 day of 19 ]:

We command you that you enter the said land and, without delay, you  
 cause the said A.B. to have possession of it

And we also command you that of the real and personal estate of C.D.  
 [*remainder as in Form No. 45*].

O.47, R.5.

No. 49.

## WRIT OF DELIVERY (DELIVERY OF GOODS, DAMAGES AND COSTS).

*[Heading as in action.]*

Elizabeth the Second (as in Form No. 45).

To the Sheriff. Greeting:

Whereas in the above named action it was on the day of 19 adjudged [or ordered] that the defendant C.D. do deliver to the plaintiff A.B. the following goods, namely [describe the goods delivery of which has been adjudged or ordered] [and \$ damages] and \$ costs [or costs to be taxed, which costs have been taxed and allowed at \$ as appears by the certificate of the Taxing Officer dated the 19 day of ]:

We command you that without delay you cause the said goods to be delivered to A.B. and that of the real and personal estate of C.D. authorised by law to be seized in execution you cause to be made the sums of \$ and \$ for costs of execution and also interest on \$ at the rate of \$ per cent. per annum from the day of 19 until payment together with Sheriff's poundage, officers' fees, costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment [or order] the amount levied in respect of the said sums and interest.

And we also command you that you indorse  
(remainder as in Form No. 45).

O.47, R.5.

No. 50

## WRIT OF DELIVERY (DELIVERY OF GOODS OR VALUE, DAMAGES, ETC.)

*[Heading as in action.]*

Elizabeth the Second (as in Form No. 45).

To the Sheriff, Greeting:

Whereas in the above named action it was on the day of 19 adjudged [or ordered] that the defendant C.D. do deliver to the plaintiff A.B. the following goods namely [describe the goods delivery of which has been adjudged or ordered] or do pay him \$ being the assessed value of the said goods, [and \$ damages] and \$ costs [or costs to be taxed, which costs have been taxed and allowed at \$ as appears by the certificate of the Taxing Officer dated the 19 day of ]:

We command you that without delay you cause the said goods to be delivered to A.B. and that if possession of the said goods cannot be obtained by you, you cause to be made of the real and personal estate of C.D. authorised by law to be seized in execution \$ the assessed value of the said goods and pay it to A.B.

And we also command you that of the said real and personal estate of C.D. you cause to be made the sums of \$ for [damages and] costs and \$ for costs of execution and also interest on \$ at the rate of \$ per cent. per annum from the day of 19 until payment together with Sheriff's poundage, officers' fees, costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment [or order] the amount levied in respect of the said sums and interest.

And we also command you that you indorse  
(remainder as in Form No. 45).

WRIT OF ATTACHMENT.

Elizabeth the Second (as in Form No. 45).

To the Sheriff, 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 (as in Form No. 45).

This writ was issued (*as in Form No. 45*).

No. 52.

**0.47. R.5.**

WRIT OF SEQUESTRATION.

[Heading as in cause or matter.]

Elizabeth the Second (*as in Form No. 45*).

To [names of not less than four commissioners], Greetings:

Whereas in the above named action [or matter] in our Supreme Court it was  
on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ adjudged [or ordered]  
that C.D. should [pay into Court the sum of \$ \_\_\_\_\_ or as the case may be]:

Know ye, therefore, that we, in confidence of your prudence and fidelity, do by this writ authorise and command you, or any two or three of you, to enter upon and take possession of all the real and personal estate of the said C.D. and to collect, receive and get into your hands the rents and profits of his real estate and all his personal estate 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 [or matter] the sum of \$ \_\_\_\_\_ or as the case may be] and clear his contempt and our said Court make other order to the contrary.

Witness (as in Form No. 45).

This writ was issued (*as in Form No. 45*).

No. 53.

**O.49, R.2.**

GARNISHEE ORDER NISI.

In the Supreme Court  
of Western Australia.

No. of 19

Between

A.B.

Judgment Creditor

and

C.D.

### Judgment Debtor

E.F.

Garnishee

Before

in Chambers.

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 Master] 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 do pay the said judgment creditor the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment together with the costs of the garnishee proceedings.

And that the costs of this application be then dealt with.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

O.49, R.4.

No. 54.

GARNISHEE ORDER ABSOLUTE WHERE GARNISHEE OWES MORE  
THAN JUDGMENT DEBT.

[Heading as in Form No. 53.]

Before

in Chambers.

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 to 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 \_\_\_\_.

O.49, R.4.

No. 55.

GARNISHEE ORDER ABSOLUTE WHERE GARNISHEE OWES LESS THAN  
JUDGMENT DEBT.

[Heading as in Form No. 53.]

Before

in Chambers.

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 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 \_\_\_\_.

## ORDER NISI CHARGING STOCK OR SHARES.

[Heading as in cause or matter.]

Before \_\_\_\_\_, in Chambers.

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed herein the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, whereby it appears that the plaintiff recovered a judgment against the defendant on \_\_\_\_\_ 19\_\_\_\_, for the sum of \$ \_\_\_\_\_ and \$ \_\_\_\_\_ costs, that the said defendant is still indebted to the plaintiff in the said sums so recovered and that the defendant is possessed of [set out the stock or shares sought to be charged]:

It is ordered that unless sufficient cause to the contrary be shown before a Judge in Chambers at the Supreme Court, Barrack Street, Perth, on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, the defendant's interest in the said stock [or shares] shall and that it in the meantime do, stand charged with the payment of the above mentioned amount due on the said judgment together with the costs of this application.

And it is further ordered and directed that the defendant be restrained and an injunction is hereby granted restraining him until this order shall be discharged or until the sums above mentioned shall be paid or satisfied, from selling, transferring or otherwise dealing with the property hereby charged.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

## ORDER ABSOLUTE CHARGING STOCK OR SHARES.

[Heading as in cause or matter.]

Before \_\_\_\_\_, in Chambers.

Upon hearing \_\_\_\_\_ and upon reading the affidavits of \_\_\_\_\_ filed herein the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and the order nisi made herein on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_:

It is ordered that the interest of the defendant C.D. in the sum of \$ \_\_\_\_\_ stock [or shares in the \_\_\_\_\_ Co. Ltd., or as the case may be] now standing in the name of the said defendant [or as the case may be] stand charged with the payment of \$ \_\_\_\_\_ the amount due from the defendant to the plaintiff on the judgment of the Supreme Court of Western Australia dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ [and interest thereon at the rate of \$ \_\_\_\_\_ per cent. per annum from the said date until payment] together with \$ \_\_\_\_\_ the costs of this application, the said costs to be added to the judgment debt.

And it is further ordered [as in Form No. 56 above.]

O.50, R.3.

No. 58.

## AFFIDAVIT AS TO STOCK UNDER ORDER 50.

In the matter of [state the will, settlement or other document under which the deponent's interest arises giving the date and other particulars sufficient to identify the document]

and

In the matter of Order 50 Rule 3 of the Rules of the Supreme Court, 1971.

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, etc.] 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, etc.

This affidavit is filed on behalf of A.B., whose address is [state address for service].

O.50, R.3.

No. 59.

## NOTICE AS TO STOCK UNDER ORDER 50.

[Heading as in Form No. 58.]

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, etc.] 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 receipts of dividends [or, the receipt of the dividends on the stock as well as the transfer of the stock].

(Signed) A.B.

whose address for service is

*Note: This notice and the affidavit (Form No. 58) must be signed by the same person. Where shares in more than one company are concerned a separate notice and affidavit must be filed in respect of each company. An address for service within three kilometres from the Supreme Court at Perth must be given.*

O.51, R.1.

No. 60.

## SUMMONS FOR APPOINTMENT OF RECEIVER.

(Heading as in action.)

Let the defendant C.D. attend [the Master in Chambers, Supreme Court, Barrack Street, 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 an order that a receiver be appointed [or that E.F. be appointed receiver] in this action to receive the rents, profits, and moneys receivable in respect of the interest of the defendant C.D. in the following property, namely [describe the property] in or towards satisfaction of the moneys and interest due to the plaintiff under the judgment in this action dated the \_\_\_\_\_ day of 19 \_\_\_\_\_ and for an order as to the costs of this application.

Dated, etc.

This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_  
To the above named \_\_\_\_\_  
[and his solicitor].

ORDER DIRECTING SUMMONS FOR APPOINTMENT OF RECEIVER  
AND GRANTING INJUNCTION MEANWHILE.

[Heading as in action.]

Before \_\_\_\_\_ in Chambers.  
Upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_ 19 \_\_\_\_\_ :

Let the defendant C.D. attend [the Master in Chambers, Supreme Court, Barrack Street, 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 E.F. as receiver in this action, on the usual terms, to receive the rents, profits, and moneys receivable in respect of the said defendant's interest in the following property namely [describe the property] in or towards satisfaction of the sum of \$ \_\_\_\_\_ debt and \$ \_\_\_\_\_ costs, and interest on the said sums at the rate of \$ \_\_\_\_\_ per cent. per annum from the day of \_\_\_\_\_ 19 \_\_\_\_\_ due under the judgment in this action dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ .

And the plaintiff [by his solicitor] hereby undertaking to abide by any order the Court may hereafter make should it decide that the said defendant has sustained damage by reason of this order and is entitled to damages which the plaintiff ought to pay, it is ordered that the said defendant by himself, his agents or servants, or otherwise, be restrained, and an injunction is hereby granted restraining him, until after the hearing of the above application, from assigning charging or otherwise dealing with the said property.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ .

RECEIVER ORDER (INTERIM).

[Heading as in action.]

Before \_\_\_\_\_ in Chambers.  
Upon hearing \_\_\_\_\_ and upon reading the affidavit  
of \_\_\_\_\_ filed the \_\_\_\_\_ day of  
\_\_\_\_\_ 19 \_\_\_\_\_ .

And upon the plaintiff undertaking to be answerable for all sums to be received by the receiver hereinafter named, [or as the case may be]

It is ordered that \_\_\_\_\_ be appointed [without security] until the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ next inclusive or further order to receive the rents, profits, and moneys receivable in respect of the above named defendant's interest in the following property namely [describe the property], but without prejudice to the rights of any prior incumbrancer or his possession (if any), and the tenants of premises comprised in the said property 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.

[And the plaintiff [by his solicitor]] hereby undertaking to abide by any order the Court may hereafter make [continue as in Form No. 61 if an interim injunction has been granted.]

Defendant to be at liberty to apply in the meantime.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ .

## RECEIVER'S RECOGNIZANCE.

A.B., of  
and E.F., of

, C.D., of

7.

Mr. Justice  
and allowed this recognizance.

Before our Sovereign Lady, the Queen in Her Supreme Court personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to our Sovereign Lady the sum of

to be paid to our said Sovereign Lady or her 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 Lady Elizabeth the Second, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, at the Supreme Court the day of

, 19 .

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, etc.

No. of 19 .

In the matter of

and

In the matter of

TAKE notice that the [Full Court of the] Supreme Court will be moved [before His Honour Mr. Justice \_\_\_\_\_] at [Perth] on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, or so soon thereafter as counsel can be heard, by counsel on behalf of A.B. for an order that [\_\_\_\_\_, for the following relief, namely \_\_\_\_\_].

And that the costs of and incidental to this [application] may be paid by

[And further take notice that the grounds of this [application] are : ]

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

(Signed)

C.D. of

[agent for

of

] Solicitor for the

above named [applicant].

This notice was taken out by

of

Solicitor for A.B. of  
, whose address for service is

## NOTICE OF MOTION.

[Heading as in cause or matter.]

TAKE notice that [pursuant to the leave of  
given on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_ ] the  
Court [or Mr. Justice \_\_\_\_\_] will be moved on the  
day of \_\_\_\_\_ 19\_\_ at \_\_\_\_\_ o'clock in the  
noon, or so soon thereafter as counsel can be heard, by counsel for the  
above named [plaintiff] [or defendant] for an order that  
and that the costs of the application be \_\_\_\_\_.

Dated the                      day of                      19     .

(Signed)

of

[agent for

of

Solicitor for the

To Solicitor for the

O.55, R.7(4).

No. 66.

## ORDER OF COMMITTAL

[Heading as in action.]

UPON motion this day made unto this Court by counsel for the plaintiff and upon reading [an affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of 19 \_\_\_\_\_ of service on the defendant C.D. of a copy of the order of the Court dated the \_\_\_\_\_ day of 19 \_\_\_\_\_ and of notice of this motion]:

And it appearing to the satisfaction of the Court that the defendant C.D. has been guilty of contempt of court in [state the contempt]:

It is ordered that for his said contempt the defendant do stand committed to Prison to be there imprisoned [until further order].  
[It is further ordered that this order shall not be executed if the defendant C.D. complies with the following terms, namely, \_\_\_\_\_.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

O.56, R.14.

No. 67.

## CERTIORARI (GENERAL)

No. \_\_\_\_\_ of 19 \_\_\_\_.

In the Supreme Court  
of Western Australia.

The Queen against A.B., Stipendiary Magistrate  
sitting as a Court of Summary Jurisdiction at  
Perth [or as the case may be].

Ex parte C.D.

Elizabeth the Second, etc.

To \_\_\_\_\_ . 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, etc.

This writ was issued by, etc.

O.56, R.14.  
Local  
Courts Act  
1904,  
s.114.

No. 68.

## CERTIORARI TO LOCAL COURT.

[Heading as in Form No. 67.]

Elizabeth the Second, etc.

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, etc.

This writ was issued by, etc.

No. 69.

O.56, R.16.

## MANDAMUS.

[Heading as in Form No. 67]

Elizabeth the Second, etc.

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, \_\_\_\_\_ Chief Justice, the \_\_\_\_\_ day  
 of \_\_\_\_\_ in the \_\_\_\_\_ year of Our reign.  
 By the Court,  
 (Signed) \_\_\_\_\_

No. 70.

O.56, R.32(2).

## WRIT OF PROCEDENDO.

[Heading as in Form No. 67.]

Elizabeth the Second, etc.

To [*the persons to whom the writ of prohibition is directed*].  
 Greeting:

Whereas by Our Writ we lately commanded you [*recite writ of prohibition*]:  
 We do now command you that you do proceed in the said cause [*or as the case may be*] with the expedition which to you shall seem right, notwithstanding Our Writ so sent to you as aforesaid.

Witness, etc.

This Writ was issued by, etc.

No. 71.

O.56, R.33(2).

## PROHIBITION.

[Heading as in Form No. 67.]

Elizabeth the Second, by the Grace of God, etc.

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, etc.

This writ was issued by, etc.

## NOTICE TO BE SERVED WITH WRIT OF HABEAS CORPUS.

In the Supreme Court  
of Western Australia.

[If in a cause already begun, here insert the title, not otherwise].

Whereas this Court [or the Honourable Mr. Justice ]  
has granted a writ of habeas corpus directed to [or other  
person having the custody of , if so] commanding  
him to have the body of A.B. before the said Court [or before a Judge in  
Chambers] at the Supreme Court House, Barrack Street, Perth, on the day and  
at the time specified in the notice together with the day and cause of his  
being taken and detained.

Take notice that you are required by the said writ to have the body of the  
said A.B. before this Court [or before the Judge aforesaid] on  
day the day of 19 at  
o'clock in the noon and to make a return to the said writ. In  
default thereof the said Court will then, or so soon thereafter as counsel can  
be heard, be moved to commit you to prison for your contempt in not obeying  
the said writ [or if in vacation application will then be made to one of the  
Judges of the said Court for a warrant for your arrest in order that you may  
be held to bail to answer for your contempt in not obeying the said writ].

Dated, etc.

(Signed)

Solicitor for

To [the persons to whom the writ is directed and any other person upon  
whom it may be deemed necessary to serve the writ].

## WRIT OF HABEAS CORPUS AD SUBJICIENDUM.

In the Supreme Court  
of Western Australia.

The Queen against C.D.  
Ex parte A.B.

Elizabeth the Second, etc.

To C.D. of , Greeting:

We command you that you have in the Supreme Court [or before a Judge  
in Chambers at the Supreme Court] at Perth on the day and at the time  
specified in the notice served with this writ, the body of A.B. being taken  
and detained under your custody as is said, together with the day and cause  
of his being taken and detained, by whatsoever name he may be called therein,  
that Our said Court [or Judge] may then and there examine and determine  
whether such cause is legal, and have you there then this writ.

Witness, etc.

Registrar.

Indorsement.

By order of the Court [or of the Hon. Mr. Justice

] dated

This writ was issued by, etc.

## No. of 19 .

[In the matter of ]

Let C.D. of \_\_\_\_\_ within (7)\* clear days from the day  
of service of this summons on him cause an appearance to be entered for  
him to this summons and thereafter attend before the Judge sitting to hear  
such summons at such time and place as shall hereafter be fixed for such  
hearing.

\*or such other time as is directed by the Court.

Dated, etc.

Note: If the defendant does not enter an appearance at the Central Office, Supreme Court, Barrack Street, Perth, within the time above mentioned, and thereafter attend before the Judge sitting to hear such summons at such time and place as shall hereafter be fixed for such hearing, such order will be made and proceedings taken as the Judge may think just and expedient.

No. 75.

**O.58, R.14.**

[Heading as in Form No. 74].

Let C.D. of \_\_\_\_\_ attend before the Judge in Chambers  
at the Supreme Court, Barrack Street, Perth, on the \_\_\_\_\_  
day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock in the  
\_\_\_\_\_ noon on the hearing of an application by the plaintiff that  
[state the nature of the claim].

Dated, etc.

It is intended to serve this summons on C.D. [and E.F. of \_\_\_\_\_.]

This summons was taken out, etc. [*as in Form No. 74*].

Note: If a defendant does not attend personally or by his counsel or solicitor at the time and place above mentioned such order will be made as the Judge may think just and expedient.

No. 76.

**O.58, R.19.**

[Heading as in Form No. 74.]

To [name of defendant] of

Take notice that the originating summons issued herein on the  
day of \_\_\_\_\_ 19\_\_\_\_, will be heard by the Judge in Chambers  
at the Supreme Court, Barrack Street, Perth, on the \_\_\_\_\_ day of  
19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.

If you do not attend in person or by your Solicitor or counsel at the time and place mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

Dated, etc.

(Signed)  
Solicitor for the plaintiff.

O.59, R.4(1).

No. 77.

## SUMMONS (GENERAL FORM).

In the Supreme Court  
of Western Australia.  
Between

19 . No.

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 \_\_\_\_\_

O.59, R.10.

No. 78.

## ORDER (GENERAL FORM).

In the Supreme Court  
of Western Australia.

No. \_\_\_\_\_ of 19\_\_\_\_.

Between

A.B.

Plaintiff,

and

C.D.

Defendant.

Before the Honourable Mr. Justice  
[or the Master] in Chambers.

UPON THE APPLICATION of the \_\_\_\_\_ by  
summons dated \_\_\_\_\_ and UPON HEARING \_\_\_\_\_  
and UPON READING the affidavit of \_\_\_\_\_ filed  
herein \_\_\_\_\_ IT IS ORDERED that  
AND that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

D.60, R.7.

No. 79.

## SUMMONS BY MASTER.

In the Supreme Court  
of Western Australia.

No. \_\_\_\_\_ of 19\_\_\_\_.

In the matter of the estate of A.B. late of, etc.

or  
Between  
C.D.

Plaintiff

and

E.F.

Defendant.

The defendant E.F., [or G.H., of, etc.] 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

## NOTICE OF JUDGMENT OR ORDER.

[Heading as in cause or matter.]

Take notice that a judgment [or order] of this Court was given [or made] on the \_\_\_\_\_ day of 19\_\_\_\_, by which it was [state substance of judgment or order]

And also take notice that from the time of the service of this notice you [or the infant \_\_\_\_\_ or the patient \_\_\_\_\_ as may be] will be bound by the said judgment [or order] to the same extent as you [or he] would have been if you [or he] had originally been made a party.

And also take notice that without entering an appearance you [or the said infant or patient] may within one month after the service of this notice apply to the Court to discharge, vary or add to the said judgment [or order] and that after entering an appearance at the Central Office, Supreme Court, Barrack Street, Perth, you [or the said infant or patient] may attend the proceedings under the said judgment [or order].

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

(Signed)

To \_\_\_\_\_

## ADVERTISEMENT FOR CREDITORS.

A.B. Deceased. By judgment [or order] of the Supreme Court of Western Australia, dated \_\_\_\_\_ and made in an action No. \_\_\_\_\_

of 19\_\_\_\_,

In the matter of the estate of A.B. deceased, S. against P., the creditors of A.B., late of \_\_\_\_\_, who died on \_\_\_\_\_, are to send by post prepaid to \_\_\_\_\_ of \_\_\_\_\_

so as to reach that address on or before \_\_\_\_\_ 19\_\_\_\_, their full names, 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 excluded from the benefit of the said judgment [or order] unless the Court on application otherwise orders.

Every creditor holding any security is to produce the same at the office of the Master at the Supreme Court, Barrack Street, Perth, on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock in the noon, being the time appointed for adjudicating upon the claims.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

(Signature and address of the solicitor of the party prosecuting the judgment or order).

O.61,  
R.15(2).

No. 82.

## ADVERTISEMENT FOR CLAIMANTS OTHER THAN CREDITORS.

A.B. Deceased. By judgment [or order] of the Supreme Court of Western Australia dated and made in an action No. \_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_, In the matter of the estate of A.B. deceased (late of \_\_\_\_\_) who died on the \_\_\_\_\_, S. against P. the following inquiry was [or inquiries were] directed, viz.:

[Set out inquiry or inquiries.]

Notice is hereby given that all persons claiming to be entitled under the said inquiry [or inquiries] are to send by post prepaid to \_\_\_\_\_ of \_\_\_\_\_ so as to reach that address on or before \_\_\_\_\_ 19\_\_\_\_, their full names, addresses and descriptions, and full particulars of their claims or in default thereof they will be excluded from the benefit of the said judgment [or order] unless the Court on application otherwise orders. Claimants are to attend personally or by their solicitor before the Master in his Chambers, Supreme Court, Barrack Street, Perth, on \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, being the time appointed for adjudicating upon the claims.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.  
Master.

[Add name and address of the solicitor of the party prosecuting the judgment or order and state on whose behalf he is acting.]

O.74, R.2.

No. 83.

## WRIT OF SUMMONS IN ADMIRALTY ACTION IN REM.

In the Supreme Court  
of Western Australia.  
Admiralty Jurisdiction.  
A.B.

No. \_\_\_\_\_ of 19\_\_\_\_.

Plaintiff  
against

- (a) The ship "X"
- or (b) The ship "X" and freight.
- or (c) The ship "X" her cargo and freight.
- or (if the action is against the cargo only),
- (d) The cargo *ex* the ship "X".
- or (if the action is against the proceeds realised by the sale of the ship or cargo),
- (e) The proceeds of the ship "X".
- or (f) The proceeds of the cargo *ex* the ship "X".
- or as the case may be.

Action for [state nature of action, whether for damage by collision, wages, bottomry, etc., as the case may be].

Elizabeth the Second, by the Grace of God, of the United Kingdom, Australia and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the owners and all others interested in the Ship X, her cargo and freight [or as the case may be, describing the subject matter of the action]:

WE command you that within \_\_\_\_\_ days after the service of this writ, exclusive of the day of such service, you do cause an appearance to be entered for you in Our Supreme Court of Western Australia 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 \_\_\_\_\_ 19 \_\_\_\_\_.

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.

Appearance (or appearances) to this writ may be entered by the defendant (or defendants) either personally or by solicitor at the Central Office of the Supreme Court at Perth.

---

Indorsements to be made on the writ before issue.

The plaintiff's claim is, etc. [*state briefly the nature of the relief claimed in the action*].

This writ was issued by the plaintiff in person, who resides at \_\_\_\_\_, and whose address for service is at the same place (or at \_\_\_\_\_).  
or,

This writ was issued by X.Y., of \_\_\_\_\_, whose address for service is at \_\_\_\_\_, solicitor for the plaintiff, who resides at \_\_\_\_\_.  
or,

This writ was issued by V.W., of \_\_\_\_\_, whose address for service is \_\_\_\_\_, agent for X.Y., of \_\_\_\_\_, solicitor for the plaintiff, who resides at \_\_\_\_\_.

[*Mention the locality and situation of the plaintiff's residence in such a manner as to enable it to be easily discovered.*]

This writ was served by me by [*state mode of service*] on the defendant at \_\_\_\_\_ on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

(Signed)

(Address)

NOTE: If the action is by the Crown, instead of the plaintiff's name put "Our Sovereign Lady the Queen" adding if necessary, "in Her Office of Admiralty".

For forms of indorsement of claim in Admiralty actions refer to Form No. 7 of the Vice-Admiralty Rules.

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#### WRIT OF SUMMONS IN ADMIRALTY ACTION IN PERSONAM.

NOTE: Subject to Order 74 Rule 2, Form No. 1 should be used, inserting in the heading after the words "In the Supreme Court of Western Australia" the words "Admiralty Jurisdiction".

O.74, R.3(1).

No. 84.

## (1) WARRANT OF ARREST IN ADMIRALTY ACTION IN REM.

*[Heading as in action.]*Elizabeth the Second, etc. *[as in Form No. 1]*

TO the Marshal in Admiralty of Our Supreme Court of Western Australia, and to all and singular his substitutes, Greeting:

We hereby command you to arrest the ship  
 of the port of \_\_\_\_\_ [and the cargo now  
 or lately laden therein, together with the freight due for the transportation  
 thereof,] or [and the freight due for the transportation of the cargo now or  
 lately laden therein,] and to keep the same under safe arrest until you shall  
 receive further orders from Us.

Witness *[as in Form No. 1.]*

Registrar.

The plaintiff's claim is for *[copy from the writ]*.

Taken out by \_\_\_\_\_ (solicitors for) the \_\_\_\_\_.

## CERTIFICATE OF SERVICE.

This warrant was served by *[state by whom and in what mode service was  
 effected]* on \_\_\_\_\_ the \_\_\_\_\_ day of  
 19 \_\_\_\_\_

(Signed)

\_\_\_\_\_  
Marshal.

## (2) PRAECIPE FOR WARRANT OF ARREST.

*[Heading as in action.]*

We \_\_\_\_\_ of \_\_\_\_\_ (solicitors for)  
 the plaintiffs request a warrant to arrest *[description of property, giving name,  
 if a ship]*.

Dated the \_\_\_\_\_

day of \_\_\_\_\_

19 \_\_\_\_\_

(Signed)

O.74, R.13.

No. 85.

## BAIL BOND.

*[Heading as in action.]*

Whereas this Admiralty action in rem against the above mentioned property  
 is pending in the Supreme Court of Western Australia and the parties to the  
 above action are the above mentioned plaintiffs and defendants.

Now, therefore, We, A.B. of \_\_\_\_\_ and C.D. of \_\_\_\_\_  
 hereby jointly and severally submit ourselves to the  
 jurisdiction of the said Court and consent that if they, the above mentioned  
 defendants *[or plaintiffs, in the case of a counterclaim]* do not pay what may  
 be adjudged against them in this action, with costs, or do not pay any sum  
 due to be paid by them in consequence of any admission or liability therein or  
 under any agreement by which this action is settled before judgment and  
 which is filed in the said Court, execution may issue against us, our executors  
 or administrators, goods and chattels, for the amount unpaid or an amount  
 of \_\_\_\_\_ dollars whichever is the less.

(Signed)

This bail bond was signed by the said A.B. and C.D., the sureties, the  
 day of \_\_\_\_\_ 19 \_\_\_\_\_

Before me

A Commissioner for Affidavits in the  
Supreme Court of Western Australia.

285

No. 86.

O.74, R.16(1).

RELEASE.

[Heading as in action.]

Elizabeth the Second, etc. [as in Form No. 1.]

To the Marshal in Admiralty of Our Supreme Court of Western Australia, and to all and singular his substitutes, Greeting:

Whereas in this action we did command you to arrest [state name and nature of property arrested] and to keep the same under safe arrest until you should receive further orders from us.

Now we do hereby command you to release the said from the arrest effected by virtue of Our warrant in this action upon payment being made to you of all costs, charges, and expenses due in connection with the care and custody of the property while under arrest.

Witness [as in Form No. 1.]

Registrar.  
(Solicitors for)

Taken out by  
the

\_\_\_\_\_  
Marshal's indorsement.

On the                      day of                      19                      , the  
Instrument.                      was released from arrest pursuant to this

(Signed)  
Substitute of Marshal in Admiralty.

\_\_\_\_\_  
No. 87.

O.74, R.16(5).

PRAECIPE FOR ISSUE OF RELEASE.

[Heading as in action.]

We                      of  
(solicitors for) the plaintiffs [or defendants] in this action against [describe property giving name, if a ship], now under arrest by virtue of a warrant issued out of the Supreme Court of Western Australia in its Admiralty Jurisdiction, request the issue of a release with respect to the said

Dated the                      day of                      19                      .  
(Signed)

\_\_\_\_\_  
No. 88.

O.74, R.17.

PRAECIPE FOR CAVEAT AGAINST RELEASE AND PAYMENT.

[Description of property giving name, if a ship.]

We                      of                      (solicitors  
for)                      of                      request a caveat  
against the issue of a release with respect to [describe property giving name, if a ship] now under arrest and, in the event of the said property being sold by order of the Court, a caveat against payment out of court of the proceeds of sale.

Dated the                      day of                      19                      .

O.74, R.18.

No. 89.

## PRAECIPE FOR CAVEAT AGAINST ARREST.

[Description of property giving name, if a ship.]

We \_\_\_\_\_ of \_\_\_\_\_ [solicitors  
for \_\_\_\_\_ of \_\_\_\_\_]  
request a caveat against the arrest of [describe property giving name, if a ship]  
and hereby undertake to enter an appearance in any action that may be com-  
menced in the Supreme Court of Western Australia in its Admiralty Jurisdiction  
against the said \_\_\_\_\_ and, within 3 days after  
receiving notice that such an action has been commenced, to give bail in the  
action in a sum not exceeding \_\_\_\_\_ dollars or to pay  
that sum into court. We consent that the writ of summons and any other docu-  
ment in the action may be left for us at \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .

O.74, R.22.

No. 90.

## PRAECIPE FOR WITHDRAWAL OF CAVEAT.

[Description of property giving name, if a ship.]

We \_\_\_\_\_ of \_\_\_\_\_ [solicitors for]  
\_\_\_\_\_ of \_\_\_\_\_ request that  
the caveat [state nature of caveat] entered on the \_\_\_\_\_ day of  
19 \_\_\_\_ on behalf of \_\_\_\_\_  
be withdrawn.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
(Signed)

O.74, R.46.

No. 91.

## COMMISSION OF APPRAISEMENT.

[Heading as in action.]

Elizabeth the Second, etc. [as in Form No. 1.]

To the Marshal in Admiralty of Our Supreme Court of Western Australia, and  
to all and singular his substitutes, Greeting:

Whereas in this action the Court has ordered [describe property giving name,  
if a ship] to be appraised.

We, therefore, hereby authorise and command you to reduce into writing  
an inventory of the said [ship or cargo, etc., as the case may be], and having  
chosen one or more experienced person or persons, to swear him or them to  
appraise the same according to the true value thereof, and upon a certificate of  
such value having been reduced into writing, and signed by yourself and by the  
appraiser or appraisers, to file the same in the Registry of Our said Court, together  
with this commission.

Witness [as in Form No. 1].

Taken out by \_\_\_\_\_

Registrar.  
(solicitors for) the \_\_\_\_\_

## COMMISSION OF SALE.

[Heading as in action.]

Elizabeth the Second, etc. [as in Form No. 1].

To the Marshal in Admiralty of Our Supreme Court of Western Australia,  
and to all and singular his substitutes, Greeting:

Whereas in this action the Court has ordered [*describe property giving name, if a ship*] to be sold,

We, therefore, hereby authorise and command you to reduce into writing an inventory of the said [*ship or cargo, etc., as the case may be*], and to cause the said [*ship or cargo, etc.*] to be sold by public auction for the highest price that can be obtained for the same.

And we further command you, as soon as the sale has been completed, to pay the proceeds arising therefrom into Our said Court, and to file an account of the sale signed by you, together with this commission.

Witness [as in Form No. 1.]

Registrar.

Taken out by \_\_\_\_\_ (solicitors for) the \_\_\_\_\_

## COMMISSION OF APPRAISEMENT AND SALE.

[Heading as in action.]

Elizabeth the Second, etc. [as in Form No. 1].

To the Marshal in Admiralty of Our Supreme Court of Western Australia,  
and to all and singular his substitutes, Greeting:

Whereas in this action the Court has ordered [*describe property giving name, if a ship*] to be appraised and sold.

We, therefore, hereby authorise and command you to reduce into writing an inventory of the said [*ship or cargo, etc., as the case may be*], and having chosen one or more experienced person or persons to swear him or them to appraise the same according to the true value thereof, and when a certificate of such value has been reduced into writing and signed by yourself and by the appraiser or appraisers, to cause the said [*ship or cargo, etc., as the case may be*] to be sold by [*private treaty*] [*public auction*] for the highest price that can be obtained for it, but not for less than the appraised value, unless the Court on your application allows it to be sold for less.

And we further command you, as soon as the sale has been completed, to pay the proceeds arising therefrom into Our said Court, and to file the said certificate of appraisement signed by you and the appraiser or appraisers and an account of the sale signed by you, together with this commission.

Witness [as in Form No. 1.]

Registrar.

Taken out by \_\_\_\_\_ (solicitors for)  
the \_\_\_\_\_

## NOTICE OF ORIGINATING MOTION.

(The Vexatious Proceedings Restriction Act, 1930)

No.            of 19 .

In the Supreme Court  
of Western Australia.

In the matter of "The Vexatious Proceedings Restriction Act, 1930",  
and

In the matter of A. B.

TAKE notice that the Full Court (*or the Court*) will be moved by the Attorney General (*or A.B.*), or by counsel on his behalf, on            day the            day of            , 19            , at            o'clock in the            noon, or so soon thereafter as the parties or their counsel can be heard—for an order that no legal proceeding shall be instituted by A.B. of            in the Supreme Court, or in any inferior Court, unless the said A.B. shall first obtain the leave of the Supreme Court, or of some Judge thereof, after satisfying it or him that the proposed proceeding will not be an abuse of the process of the Court in which it is intended to be instituted and that there is *prima facie* ground for such proceeding; [*or for an order giving A.B. of            leave to institute a legal proceeding, that is to say (here state nature of proceeding) for (here state ground of the proceeding) against X.Y. of            in the (here specify the Court in which it is proposed to institute the proceeding).*]

You are required to attend before the Court at the time mentioned herein, and you may lay before it any material evidence which you are able to produce.

You should serve on the applicant a copy of any affidavit which you intend to use on the hearing.

Dated the            day of            , 19            .

.....  
(*to be signed by Applicant or  
his Solicitor*).

To A.B. *or* X.Y.

This notice was issued by  
of  
is  
applicant who resides at

whose address for service  
solicitor for the

*or*

This notice was issued by the applicant in person who resides at  
and whose address for service is

Juries Act, 1957

## PRECEPT FOR JURY.

Western Australia.

The Honourable (*or* His Honour)  
of Western Australia.To Esquire,  
of the said State: Greeting:On behalf of our Lady the Queen, I command you to cause to come before  
the Court [*or* before the Supreme Court and the Dis-  
trict Court]\* at on theday of 19, at  
the hour of o'clock in the noon of the same day, not less  
than nor more than Jurors, by whom thetruth of the several matters brought before them may be better known and in-  
quired into, and who are of no affinity to any of the prisoners in custody for trial:  
And that you yourself or your deputy with your officers be then there to do  
those things which to you and their offices appertain: And have you then and  
there the names of the Jurors and this precept.Dated at Perth, this day of  
in the year of Our Lord, one thousand nine hundred and  
in the year of the reign of Her present Majesty Queen  
Elizabeth.

By the Court,

Judge.  
(*or* Judge of the District Court.)

Juries Act, 1957.

## PRECEPT FOR JURY (CIVIL).

(Heading as in action).

Western Australia.

The Honourable (*or* His Honour)  
of Western Australia.To Esquire  
of the said State: Greeting:On behalf of Our Lady the Queen, I command you to cause to come before  
the Court at on  
day the day ofat the hour of o'clock in the  
noon of the same day six Jurors by whom the truth of the matters brought before  
them may be better known and inquired into, and who are of no affinity to any  
of the abovenamed parties in this action: And that you yourself or your deputy  
with your officers be then there to do those things which to you and their officers  
appertain: And have you then and there the names of the Jurors and this pre-  
cept.Dated at Perth this day of  
in the year of Our Lord, One thousand nine hundred and  
in the year of the reign of Her present Majesty Queen  
Elizabeth.

By the Court,

Judge.  
(*or* Judge of the District Court.)

**O.79, R.4.**

No. 97.

Juries Act, 1957.

## SUMMONS TO JUROR.

To \_\_\_\_\_,  
 of \_\_\_\_\_,  
 You are hereby summoned to appear as a Juror at the  
 Sittings of the \_\_\_\_\_ Court, to be held at the  
 at \_\_\_\_\_, on \_\_\_\_\_ the  
 day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock in the  
 noon, and there to attend from day to day until you shall be  
 discharged.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
 Sheriff (or Summoning Officer).

---

**O.79, R.5.**

No. 98.

Juries Act, 1957 (s.56).

SUMMONS TO JUROR TO SHOW CAUSE WHY EXECUTION SHOULD  
NOT ISSUE FOR FINE IMPOSED FOR NON-ATTENDANCE.

To \_\_\_\_\_,  
 of \_\_\_\_\_,  
 Whereas by reason of your non-attendance as a juror at the  
 at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_,  
 19\_\_\_\_, the Court did impose on you a fine of \$ \_\_\_\_\_:  
 Take notice that you are hereby summoned pursuant to section 56 of the  
 Juries Act, 1957 to show cause\* to the \_\_\_\_\_ Court at  
 on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at  
 \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon why execution should not issue for  
 the said fine.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
 Judge.

\*Note.—You may show cause to the Court either by—

- (a) attending personally before the Court and giving your explanation; or
  - (b) transmitting by post or delivering to the Registrar or to the Judge of the Court which imposed the fine an affidavit sworn before a Commissioner for Affidavits or a Justice of the Peace.
-

*Juries Act, 1957*

## SUMMONS LIST

CRIMINAL SITTINGS OF THE SUPREME COURT/DISTRICT COURT  
TO BE HELD AT:—

Commencing on.....the.....day of....., 19.....

Sum- mons No.	Name of Juror on Summons (N.B. If name now changed also show present name)	Present Address	Occu- pation	Whether Summons served or unserved (N.B. Return all unserved summonses)	Date of Service, if served	Reasons for non- service, e.g. (a) deceased, †(b) left address, (c) absent from Jury District, (d) address unknown.

I (full name),.....  
being a \* {member of the Police Force of the rank of..... No..... stationed at.....  
              {Sheriffs Officer at.....  
hereby certify that the foregoing information in this Summons List is true and  
correct.

Dated this.....day of.....19.....

(Signature).....

† If new address is known and the juror still resides within the Jury District  
the summons should be forwarded to the appropriate officer for service at  
that address.

\* Strike out whichever is inapplicable.

NOTICE OF APPLICATION UNDER THE ESCHEAT (PROCEDURE)  
ACT, 1940.IN THE SUPREME COURT  
OF WESTERN AUSTRALIA.

In the matter of

deceased

*Ex parte*

The Crown.

Notice of Application for Order of Escheat.

TAKE NOTICE that an application will be made on the  
day of....., 19....., at.....o'clock in the  
noon, to the Judge in Chambers at the Supreme Court, Barrack  
Street, Perth, for an Order that the property mentioned hereunder, viz:  
shall be and become the property of the Crown by way of Escheat.

Any person claiming title to the abovementioned property or premises may  
appear at the time and place abovementioned in support of the claim.

Crown Solicitor.

O.80, R.7.

No. 100.

## ORDER OF ESCHEAT UNDER THE ESCHEAT (PROCEDURE) ACT, 1940.

IN THE SUPREME COURT  
OF WESTERN AUSTRALIA.

In the matter of

deceased.

*Ex parte*The Crown.  
in Chambers.

Before His Honour

UPON hearing  
affidavit ofand upon reading the  
day of, filed the  
19 , and having taken into consideration the  
application of the Crown Solicitor dated the day of19 , it is ordered that the property mentioned in the said  
application, viz.: shall be and become the  
property of the Crown by way of Escheat [or as the case may be].

Dated this

day of

19 .

O.81, R.1.

No. 101.

ORDER FOR ARREST OF ABSCONDING DEBTOR (SUPREME COURT  
ACT, 1935, s. 63 (2).)*[Heading as in cause or matter.]*

Before His Honour

in Chambers.

Upon hearing  
affidavit ofand upon reading the  
day offiled the  
, 19 , and

It is ordered that the defendant be arrested and imprisoned until further order of this Court or a Judge thereof, 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 he will not go out of Western Australia without the leave of the Court or a Judge.

And it is further ordered that the Sheriff 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.

Dated the

day of

, 19 .

This order was obtained by E.F., of  
whose address for service is

solicitor for the plaintiff A.B. who resides at

*[Indorsement of date of arrest: see s.68]*

No. 102

0.81B. R.3.

General Title of Proceedings

In the Supreme Court of Western Australia (or as the case may be)

Australian Register of Judgments,

No.....of 19 .

A.B. v C.D.

(as the title is entered in Register)

No. 103

0.81B. R.10.

Notice under S. 26 or R. 9

WESTERN AUSTRALIA

In the Supreme Court of Western Australia (or as the case may be).

Court in which judgment given	Title of suit and date of commencement	Date of judgment	Date of Certificate	Registration number in this Court

A certificate of the above judgment has this day been registered in “The Australian Register of Judgments” in this Court; (or)

A writ of Fieri Facias has this day been issued out of this Court upon the above judgment endorsed to levy \$.....; (or)

Satisfaction of the above judgment (as to \$....., part thereof) has this day been entered upon the certificate thereof in this Court; (or)

The notice, a copy of which is hereunto annexed, has this day been filed in this Court (or as the case may be).

Dated this.....day of....., 19 .

To the Registrar (or as the case may be) of the.....Court of.....

(L.S.)

Registrar.

No. 104

0.81B. R.16.

Australian Register of Judgments

Registration number in this Court.....  
Title of suit and date of commencement.....  
Form and nature of suit.....  
Name and addition of party to whom payment is to be made, or in whose favour judgment is given or made.....  
Name and addition of party ordered to pay money or to do or not to do any act.....  
Date of judgment.....  
Abstract of judgment, stating amount (if any) ordered to be paid, and particulars of any act ordered to be done or not to be done.....  
Date of trial and amount of verdict, if any.....  
Date of certificate.....  
From what Court received.....  
Date of Registration in this Court.....  
Date of notification of registration.....  
Subsequent proceedings, notifications to and from other Courts, &c.....

## THE THIRD SCHEDULE.

**PAYMENT INTO AND OUT OF COURT.**

1. In this Schedule, "Accountant" means the Accountant, Crown Law Department.

2. When any party intends to pay money into court the provisions of regulation 15 hereof shall be complied with. The Accountant, on receiving the money, shall give an official receipt for the money, setting out the particulars. Where the money is paid in upon a notice or pleading, a signed copy of such notice or pleading must first have been filed.

3. Money paid into court shall be paid by the Accountant to the Treasurer, except when the money is to be invested by the Public Trustee, in which case it shall be transferred to the Public Trustee.

4. Where money is paid into court under a judgment or order, an office copy of the judgment or order shall be lodged with the Accountant forthwith by the person or party making the payment in or his solicitor. If the money or any part of the money is transferred to the Public Trustee for investment the office copy of the judgment or order shall be forwarded by the Accountant to the Public Trustee.

5. Where under Order 24 Rule 3 the plaintiff accepts the whole sum or any one or more of the specified sums in satisfaction of the cause or causes of action to which the specified sum or sums relate, he or his solicitor shall file with the Registrar, and lodge with the Accountant, a signed copy of the notice required to be served on the defendant.

Such signed copy of the notice shall be sufficient evidence to the Registrar and the Accountant of compliance by the plaintiff with all the conditions entitling him under Order 24 to have the sum in question paid out to him.

6. Where money is paid into court as security for costs, if after the cause or matter has been finally disposed of, the party who paid the money in is entitled to have the money paid out to him, the taxing officer shall on the taxation of costs give to such a party a certificate that he is so entitled. Upon production of such certificate to the Accountant, unless an order restraining the payment out has previously been lodged with the Accountant, 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. In all other cases money paid into court as security for costs will not be paid out except on production to the Accountant of an order of the Court or a Judge.

7. On bespeaking payment out of court of money paid in on a notice or pleading, an office copy of the original receipted notice or pleading must be lodged at the office of the Accountant.

8. 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 Central Office, and after having been examined by the Master must be filed. An office copy of the order or authority shall also be lodged with the Accountant by the solicitor or party seeking the payment out.

9. Where the money to be paid out has been transferred to the Public Trustee for investment, the documents required under the last two preceding regulations to be lodged with the Accountant, shall be lodged instead with the Public Trustee, and the Public Trustee shall pay such money to the person entitled thereto.

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. Subject to Order 24 Rule 3 (10), all payments out of court shall be made by the Accountant or Public Trustee as the case may be, in favour of the party claiming to receive the money on the production by him of a form of request signed by the party entitled to receive the money or his solicitor, and duly marked by the Master as approved as set out in regulation 15 hereof. On the written authority of the party, the payment out may be made to his solicitor.

13. Whenever the order is required to be drawn in favour of any person not a solicitor of the Supreme Court, the Accountant or Public Trustee as the case may be, 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 Public Trustee shall make the investment.

15. (1) In all cases in which it is desired to pay money into court or to receive money out of court, a form of request signed by the party so desiring or his solicitor, shall be presented to the Master and be by him examined, and if he shall be of opinion that such request may be legally complied with, he shall mark his approval thereof.

(2) The request so marked shall then be presented by such party or his solicitor to the Accountant by whom the money mentioned in such request shall be received, or (if it is not money which has been invested by the Public Trustee) paid out, as the case may require.

(3) The Accountant shall then endorse on the request a short note to the effect that the said money has been received or paid by him, as the case may be, and the request so endorsed shall be forthwith returned to the Central Office and filed there.

(4) If the money which it is desired to receive out of court has been invested by the Public Trustee, the request marked by the Master shall be presented to the Public Trustee, who upon payment shall endorse the request accordingly, and forthwith forward it to the Central Office to be filed there.

16. The Master shall furnish to the Accountant or Public Trustee, free of charge, an office copy of any document filed with the Master, which the Accountant or Public Trustee may reasonably require for the purpose of carrying out his duties under this Schedule.

Substituted by  
G.G. 19/12/75,  
pp. 4574-7.

0.66, R.11(1).

# THE FOURTH SCHEDULE.

## SCALE OF COSTS.

		\$	
1.	(a) Writ of summons, whether generally or specially indorsed, including instructions but excluding statement of claim ....	40	
	(b) For each additional defendant ....	10	
2.	Next friend or guardian <i>ad litem</i> ....	25	
3.	Entry of judgment by default or pursuant to order (without trial), or pursuant to acceptance of offer to consent to judgment (including notice of acceptance) ....	25	
4.	(a) Payment into or out of Court ....	25	
	(b) Notice of offer to consent to judgment ....	15	
5.	Appearance and notice ....	15	
6.	<i>Pleadings:</i>		
	(a) Statement of claim ....	25-100	
	(b) Defence (including instructions) ....	25-100	
	If with counterclaim or set-off, an additional ....	25-100	
	(c) Reply ( <i>if necessary</i> ), defence to counterclaim, or any other pleading (excluding application for leave) ....	25-100	
7.	Third party notice and pleadings in third party proceedings ....		Allowances calculated in accordance with items 1 and 6
8.	Requesting particulars of a pleading ( <i>where and to the extent necessary</i> ) ....	\$ 10-100	
9.	(a) Notice requiring discovery ....	15	
	(b) Giving discovery of documents ....	25-150	
	(c) Inspection and giving inspection—per hour	15-40	
10.	(a) Delivery of interrogatories ....	20-100	
	(b) Answers to interrogatories ....	20-100	
11.	Examination of witness before trial by counsel or solicitor, pursuant to order ....		An allowance calculated in accordance with item 14 (b)
12.	Application for and striking jury ....	\$ 60	
		Lower Scale (to and including \$10 000)	Higher Scale (over \$10 000)
13.	Getting up case for trial ( <i>subject to item 14(f)</i> )	\$ 150-950	\$ 250-950 for the first \$10 000; 4% for the balance to \$15 000 then 2%

## FOURTH SCHEDULE—continued.

14. Counsel fees:	\$	\$
(a) Counsel fee on trial .....	150-550	250-950
For Queen's Counsel ( <i>where two or more counsel are certified for</i> ), add 50%		
(b) Counsel fee for the second and each successive day of hearing ( <i>not exceeding</i> ) .....	250	300
For Queen's Counsel ( <i>where two or more counsel are certified for</i> ), add 50%		
(c) Counsel fee on trial for second counsel ( <i>if certified for</i> )—an allowance <i>not exceeding</i> two-thirds of the amounts that would have been allowed under item 14(a) or item 14(b) if he had appeared alone		
(d) Solicitor attending trial, per hour, <i>not exceeding</i> .....	40	45
Note: a suitable allowance may be made for the attendance of a clerk.		
(e) Attending on a reserved judgment or at a callover, <i>not exceeding</i> .....	50	50
(f) Where the only issue tried is the assessment of damages, three-quarters of the amounts prescribed by items 13, 14(a), 14(b), 14(c) and 14(d) shall be allowable, unless otherwise directed by the Court		
15. Settling and extracting judgment after trial:	\$	
(a) with appointment, <i>not exceeding</i> .....	40	
(b) without appointment, <i>not exceeding</i> .....	25	
16. Drawing bill of costs, copies and service .....	25-100	
17. Taking accounts; inquiries; taxation of costs; and the like—per hour .....	10-40	
18. Re-trial or Re-hearing		
(a) Getting up case for re-trial or re-hearing	Such amounts as are reasonable in the circumstances	
(b) Re-trial or re-hearing .....		
19. (a) Special case, case stated (otherwise than by way of appeal) or trial of an issue (not covered by item 14 (f)) .....	\$	
	150-750;	
	but the Court may direct that the costs be taxed as in an action	
(b) For the second and each successive day of the trial or hearing .....	An allowance calculated in accordance with item 14 (b).	
20. Appeals to Judge or to the Full Court ( <i>including appeals by way of case stated</i> ):		
(a) Notice of appeal, motion for order nisi to review, and the like .....	\$	
	25-100	
(b) Getting up appeal for hearing, (including settling index to transcript) .....	50-300	
(c) Counsel fee on hearing .....	50-600	
For Queen's Counsel ( <i>where two or more counsel are certified for</i> ), add 50%.		
(d) Counsel fee for the second and each successive day of hearing, <i>not exceeding</i> .....	300	
For Queen's Counsel ( <i>where two or more counsel are certified for</i> ), add 50%.		
(e) Counsel fee on hearing for second Counsel ( <i>if certified for</i> )—an allowance <i>not exceeding</i> two-thirds of the amounts that would have been allowed under item 20 (c) or 20 (d) if he had appeared alone.		
(f) Attending on reserved decision, <i>not exceeding</i> .....	50	
(g) Settling and extracting order disposing of the appeal—		
(i) with appointment, <i>not exceeding</i> .....	40	
(ii) without appointment, <i>not exceeding</i> .....	25	

FOURTH SCHEDULE—*continued.*

21. Originating motion or originating summons or petition	\$ 50-750; but the Court may direct that the cost of the parties or any of them be taxed as in an action.
22. Motions in Court not otherwise provided for	\$ 25-200
23. Proceedings in Chambers other than proceedings to which item 21 applies	20-200
24. Arbitration proceedings	The same costs as in an action.
25. Proceedings, whether by action or otherwise, for the recovery of compensation for the taking or resumption of land or any other property by the Crown in right of the State or of the Commonwealth or by any other person, body or instrumentality pursuant to any statutory power	The same costs <i>mutatis mutandis</i> as allowed in civil actions, but the Court or tribunal shall determine what is a just and equitable basis for the taxation.
26. Proceedings by way of prerogative writ	Allowances calculated in accordance with item 20.
27. (a) Execution	\$ 40
(b) If against land, an additional	30
28. <i>Service of process:</i>	
(a) Personal service where service in another manner is not authorized	5·00
(b) Service by post or at an address for service	2·50
(c) Where the process is served at a place more than one kilometre from the nearest office of the solicitor effecting service, for each kilometre (one way) from the solicitor's office	0·18
(d) Where the process cannot be served after reasonable inquiry (in addition to the allowance prescribed by paragraph (c) of this item)	2·00
(e) Where the process is subsequently served at another address, for attempted service <i>in the discretion of the Taxing Officer</i> (in addition to the allowance prescribed by paragraph (c) of this item)	2·00
(f) Where more than one attendance is necessary to ground an application for substituted service, such further allowance may be made as the Taxing Officer thinks fit.	
(g) Where it is proper to effect service through an agent, such allowance may be made as the Taxing Officer thinks fit.	

*Notes:*

- (1) Where a person has or could have been served with more than one process at the one time, one service fee only shall be allowed.
- (2) One allowance only under paragraph (c) of this item shall be made where two or more processes are served at the one time, whether on one person or on more than one person.
- (3) An allowance under paragraph (c) of this item shall not exceed the cost of service by the nearest Sheriff's officer or bailiff of a Local Court.
- (4) In this item, "*process*" means a writ, notice of motion, summons, petition, judgment or order.

## FOURTH SCHEDULE—continued.

	\$
29. Photocopying of documents ( <i>where necessary</i> ), not exceeding—per page ....	0.30
30. Allowances to witnesses	
(1) (a) Persons carrying on a profession or business as principals, a daily allow- ance not exceeding ....	50
(b) Other persons, a daily allowance not exceeding ....	35
(2) In fixing the allowance to be made under subparagraph (b) of paragraph (1) of this item, the Taxing Officer may have regard to the amount of salary or wages (if any) actually lost by the witness.	
(3) In addition to the foregoing allowances, a witness residing at a distance from the place of trial or hearing may be allowed reasonable travelling expenses actually paid, and a reasonable amount for maintenance or sustenance.	
(4) The Taxing Officer may also allow such amount as has been reasonably and properly incurred and paid to a witness for qualifying to give skilled evidence.	
(5) Except by special order of the trial judge, an allowance shall not be made to an expert witness for his attendance at Court in assisting or advising counsel or the solicitor for a party during a trial or hearing.	
(6) In the case of a person giving evidence as an expert, the foregoing allowances may be increased in the discretion of the Taxing Officer.	

## THE FIFTH SCHEDULE.

## FEES.

## Part I.

Fifth Sched.  
added by  
G.G.  
10/9/73;  
pp. 3429-36.  
**0.83A. R.1.**

## FEES TO BE TAKEN IN THE CENTRAL OFFICE.

Item	Matter.	Fee. \$
1.	(a) Commencing an appeal, cause or matter other than a pro- ceeding of the kind referred to in items 2, 3 or 22, (b) Filing a counterclaim or (c) Issuing a third party notice against a person not already a party	15.00
2.	Commencing a cause or matter that is— (a) an application to extend a period of time fixed by law includ- ing an application to extend time before proceedings are com- menced; (b) an application to limit a period of time within which pro- ceedings may be taken; (c) an application for leave to serve a writ or notice of a writ out of jurisdiction; or (d) an application to swear to the death of a person ....	5.00
3.	(a) Commencing an appeal from a local court or (b) making application for an order to review under s.197 of the Justices Act, 1902 ....	10.00
4.	Entering an appearance, whether for one person or for more than one person ....	5.00
5.	Entering for hearing an appeal, cause, matter, issue or case, except where item 6 applies ....	20.00

THE FIFTH SCHEDULE—*continued.*

Item	Matter.	Fee. \$
6.	Entering for hearing— (a) an appeal from a local court; (b) an order to review under s.197 of the Justices Act, 1902; or (c) a case stated under s.29 of the Workers' Compensation Act, 1912 .. .. .	10.00
7.	On an application in a pending cause or matter, whether by summons or on motion, other than an application under item 16 .. .. . Note: No fee is payable on an application— (a) for a certificate under the Suitors Fund Act, 1964; or (b) for the remission or postponement of a fee.	5.00
8.	On an appointment to settle the index of a transcript for use upon the hearing of an appeal .. .. .	5.00
9.	On an appointment before the Master— (a) on a reference for trial or for inquiry and report; (b) to pass accounts; or (c) to settle a list of creditors under the Supreme Court (Companies) Rules, 1963 .. .. .	10.00
10.	On an appointment to tax a bill of costs in a cause or matter— (a) where the amount claimed is under \$100 .. .. . (b) Where the amount claimed is \$100 or more—for every \$4 or part thereof of the amount at which the bill is drawn .. .. . Note: The Taxing Officer shall allow against the person chargeable with the costs as taxed, taxing fees at the rate of .10c for every \$4 or part thereof of the amount found due on taxation.	1.00 0.10
11.	On an appointment to tax a bill of costs under the Legal Practitioners Act, 1893— (a) where the amount claimed is under \$100 .. .. . (b) Where the amount claimed is \$100 or more—for every \$4 or part thereof of the amount at which the bill is drawn .. .. .	1.00 0.10
12.	(a) For a certificate of the Master or Registrar (b) Settling or approving a security, notice, advertisement deed or other instrument or (c) On an appointment for an examination in aid of execution .. .. . Note: No fee is payable for a certificate of taxation or search, or when a fee prescribed by items 9, 22 or 27 is payable.	5.00
13.	(a) Entering or sealing a judgment given or entered before the cause has been set down for trial or hearing. (b) Sealing an order made upon the hearing of an originating summons or originating motion (other than an application of the kind referred to in item 2) or a petition .. .. .	10.00
14.	On payment into court under s. 99 of the Trustees Act, 1962 .. .. .	2.00
15.	(a) For searching any proceeding, other than a search made by or on behalf of a party to the proceeding—for every half-hour or part .. .. . (b) Where an inquiry is made through the post—for making the search and answering the inquiry .. .. .	0.50 1.00

## THE FIFTH SCHEDULE—continued.

Item	Matter.	Fee. \$
16.	On an application for the production of records or documents that are required to be produced to any court or tribunal (including an umpire or arbitrator) ....	2.00
	AND where an officer is required to attend at any court or place out of the Supreme Court building, his reasonable expenses and, in addition, for each hour or part of an hour when he is necessarily absent from his office ....	2.00
17.	Sealing a writ of execution or any other writ except a writ of summons or a writ of subpoena ....	5.00
18.	Settling and sealing a citation in a probate action ....	2.00
19.	Admiralty proceedings: Registry fees not otherwise prescribed—	
	(a) Sealing a warrant of arrest, release, commission for the appraisalment or sale of property or for the appraisalment and sale of property ....	5.00
	(b) Filing a bail bond or notice of objection to sufficiency of surety, or a caveat against arrest or release ....	2.00
	(c) On an application in a pending cause or matter whether by summons or on motion, other than an application by the Marshal ....	5.00
	(d) Entry for hearing of a reference to the Registrar ....	10.00
	Note:	
	(1) Where the Registrar is assisted by one or more merchants or other assessors, such daily fee shall be payable for each assessor or merchant as a Judge or the Registrar may consider reasonable.	
	(2) The fees payable to assessors or merchants shall become due <i>de die in diem</i> as the reference proceeds and shall be payable in the first instance by the claimant.	
20.	Proceedings under the Service and Execution of Process Act 1901 of the Commonwealth—	
	(a) on registering a certificate of judgment ....	10.00
	(b) for the service of process and for the execution and enforcement of process and judgments—the fees prescribed by Part III of this Schedule.	
21.	Sealing a commission to take affidavits (including motion) or sealing any other commission—unless otherwise prescribed ....	5.00
22.	On an application for admission as a practitioner ....	10.00
23.	(a) For making a plain or office copy—for each page or part thereof ....	1.00
	(b) For each additional copy ....	0.50
	Note: For copies of exhibits etc., required for use on an appeal, see item 29.	
24.	For examining a plain copy not bespoken including marking as an office copy if required—for each page or part thereof ....	0.50
25.	For a copy in a foreign language and for a copy of a plan, map, section drawing, photograph or diagram—the reasonable cost thereof as certified by the Master.	
26.	For reasons for judgment given by the Court or Master in a proceeding—for each copy issued to a person not a party to the proceeding and for each copy in excess of one copy issued to a party to the proceeding—for each page ....	1.00
27.	For certifying under seal that a document is a true copy—an additional fee ....	1.00

## THE FIFTH SCHEDULE—continued.

Item	Matter.	Fee. \$
28.	For a photographic copy of a document of any kind and of any plan, map, drawing, or diagram including marking as an office copy if required—for each page or part thereof ....	1.00
29.	For photographic copies of exhibits or other documents (other than evidence or reasons for judgment) required for use on an appeal—for each page ....	0.20
30.	For examining the transcript on an appeal or the documents for inclusion therein or copies of pleadings required to be certified under O.70 R.19 of the High Court Rules—for each page ..	0.20

Note: This fee is not payable where item 29 applies.

## Part II.

## FEES TO BE TAKEN IN THE PROBATE OFFICE.

31.	On application for an original grant or to reseal a foreign grant ....	15.00
Notes:		
(1) This fee covers:		
(a) all documents filed in support of the application;		
(b) preparation of the necessary photographic copies of documents including will (if any) required for the grant and Court file; but where the will consists of more than one page any additional pages shall be charged for under item 39; and		
(c) the issue of the grant.		
(2) This fee is not chargeable on a grant <i>pendente lite</i> or <i>ad colligenda bona</i> , as to which see item 33.		
(3) In this item and in subsequent items in this Part, "grant" means a grant of probate or administration with or without the will, or an order to administer.		
32.	On application for a second or subsequent grant in relation to the same deceased person ....	4.00
Notes:		
(1) Where the first grant was a grant <i>pendente lite</i> or <i>ad colligenda bona</i> , the fee on application for the second grant shall be calculated in accordance with item 31.		
(2) This fee is in addition to item 39.		
33.	On application for a grant <i>pendente lite</i> or <i>ad colligenda bona</i> ....	4.00
Note: This fee is in addition to item 39.		
34.	For filing an election by the Public Trustee ....	1.00
35.	For noting on a grant that the deceased died domiciled in Western Australia (if not so noted when the grant was issued), or for noting on the record that an executor to whom power was reserved has renounced ....	2.00
36.	For amendment or revocation of a grant (including Master's order and noting grant or record) ....	4.00
37.	For annexing to a grant a certified photographic copy of an order under the Inheritance (Family and Dependents Provision) Act, 1972 and for noting the grant and record, and filing copy order ....	2.00

THE FIFTH SCHEDULE—*continued.*

Item	Matter.	Fee. \$
38.	For impounding a grant or releasing an impounded grant ....	2.00
39.	For photographic copies of a will or other document and marking as an office copy if required—for each page ....	1.00
	Note: This fee is subject to Note (1) to item 31.	
40.	For a plain or office copy of a will or other document—for each page or part thereof ....	1.00
41.	For collating a copy with the original document and marking as an office copy if required—for each page or part thereof ....	0.50
	Note: This fee is not payable where the copy is a photographic copy or where item 40 is payable.	
42.	For a duplicate or triplicate probate or letters of administration with or without the will, or for certifying an exemplification or a copy of a grant ....	4.00
	Note: This fee is in addition to item 39.	
43.	For drawing and engrossing a grant in a personal application (other than an application under s. 55 of the Administration Act, 1903) including collating but excluding fee for photographic copies ....	4.00
44.	For the entry or subduction of a caveat or for settling and sealing a citation or a subpoena ....	2.00
45.	(a) For a search for and inspection of a document or file of documents ....	0.50
	(b) Where an inquiry is made through the post—for making the search and answering the inquiry ....	1.00
46.	For depositing a will of a deceased person in the Registry, (including renunciation of executor) or for depositing the will of a living person for safe custody ..	2.00
47.	On an appointment to pass accounts ....	10.00

## Part III.

## FEES TO BE TAKEN BY THE SHERIFF AND THE MARSHAL.

## Fees to be taken by the Sheriff.

48.	Receiving and entering a writ or order for execution, including issuing warrant and statement under O.47, R. 11 ....	5.00
49.	Receiving and entering a writ or other process for service ....	2.00
50.	(a) Service of a writ, petition or other process or document ....	5.00
	(b) Where the process or other document cannot be served (in addition to mileage) ....	2.00
	(c) Where the process or document is subsequently served at another address, for attempted service in the discretion of the Master or Sheriff (in addition to mileage) ....	2.00

Note: Where a person is or could have been served with more than one document at the one time, one fee only shall be allowed.

## THE FIFTH SCHEDULE—continued.

Item	Matter.	Fee. \$
51.	(a) For executing a writ or other process or for an arrest ....	10.00
	(b) For the release from arrest of any person ....	5.00
	(c) For enquiries concerning judgment debtor's property or for attempted execution (item 51 (a) is not payable) ....	5.00
52.	Mileage on execution of a warrant or other process, or on service of a writ, process or other document, or on making an arrest or attending a view, for each kilometre (one way) from the Sheriff's office or Bailiff's office ....	0.18
	Note: Where more than one process or document is executed or served at the same time on the same person or on different persons at the same address, one mileage only shall be chargeable.	
53.	(a) Poundage on executing a writ of <i>feri facias</i> or other process under or by reason of which money is received by the Sheriff or by the judgment creditor, after seizure, five per cent on the first \$1,000.00 and two and a half per cent on the balance above that amount.	
	(b) Where the sale of land, interest in land, or goods or chattels is conducted by a licensed auctioneer instructed by the Sheriff, poundage shall be charged at one-half the abovementioned rates.	
	Note: In the case of land, or an interest in land, service of the writ of <i>feri facias</i> on the Registrar of Titles under s.133 of the Transfer of Land Act, 1893 shall be deemed to be "seizure" for the purpose of this item.	
54.	Where the sale, whether by public auction or otherwise, is conducted by the Sheriff or his officer without the intervention of an auctioneer or agent, the rates of poundage specified in paragraph (a) of item 53 shall be increased by one per cent for the first \$3,000.00	
55.	Poundage on executing a writ of possession: five per cent on the first \$1,000.00 and two and a half per cent on balance of the annual rental value of the property as fixed by the Sheriff.	
56.	For auctioneer's or agent's commission, advertising and sundry expenses on account of sale by auction or otherwise of goods or chattels, or land or any interest in land, whether a sale does or does not take place ....	A fee fixed in accordance with the recognised scale of charges for auctioneers and agents in the State of Western Australia, or such other fee as the Sheriff may allow.
57.	Where a sale takes place by auction or private contract, or when no sale takes place—	
	(a) for advertising and giving publicity to any sale, or intended sale, printing catalogues and bills, and distributing and posting the same ....	The sums actually and reasonably paid.
	(b) for labour (if any) employed in lotting and showing goods or chattels, preparing catalogue, and where a sale takes place by auction attending the sale and superintending the removal of goods or chattels by purchaser ....	
	(c) Travelling expenses ....	

THE FIFTH SCHEDULE—*continued.*

Item	Matter.	Fee. \$
58.	(a) Assistants required to execute a writ of possession ....	
	(b) Man in possession ....	
	(c) Out-of-pocket expenses incurred by the Bailiff or officer while executing any process including postage, telegraphic and telephonic messages, and travelling expenses of himself and assistants ....	
	(d) Clerical assistance when necessary ....	
	(e) Warehousing or storage of goods or vehicles which are being or are about to be, or have been removed, and insurance thereof against fire, damage, and in the case of motor vehicles, accident and third party risk ....	
	(f) Removal or cartage expenses ....	
	(g) Where animals or other livestock have been removed, for taking charge of same and for their keep while in the custody of the Sheriff whether before or after removal ....	
	The sums actually and reasonably paid.	
59.	Drawing inventory ....	5.00
60.	Preparing for the sale of real or personal property, including drawing advertisements and particulars and conditions of sale but excluding actual disbursements (see items 56, 57 and 58) ....	5.00
61.	Keeping office open after hours—as directed by the Sheriff ....	5.00 to 10.00
62.	Where an officer is required to attend Court in charge of any person including a prisoner ordered to attend for examination pursuant to a Judge's order, the reasonable travelling and other expenses of the officer and the person or prisoner, and in addition for each hour or part of an hour when the officer is necessarily engaged ....	2.00
63.	Fee to the Sheriff for attending a view—	
	(a) within fifteen kilometres of his office ....	5.00
	(b) if at a greater distance than fifteen kilometres ....	10.00
64.	Striking a jury and preparing jury panel ....	10.00
65.	Summoning a juror or serving a notice to a juror ....	3.00
66.	Mileage on the service of a jury summons—the allowances prescribed by item 52. Note: Where more than one juror in the same cause is, or could be, served at the same time in the same locality, one-half only of the fees for mileage shall be allowed.	
67.	Where a Sheriff's officer, or other person employed under the Sheriff shall be necessarily put to and incur extra trouble and expense in the discharge of any duty incidental to his office or employment or for any duty or service not herein provided, such sum or such additional sum, as the case may be, as the Sheriff may allow.	
Fees to be taken by the Marshal in Admiralty.		
68.	Receiving and entering a writ of summons, warrant, release, decree, order, commission or other instrument under the seal of the Court	2.00
69.	For service of a writ of summons ....	10.00
70.	For executing a warrant for the arrest of a ship or other property	25.00

THE FIFTH SCHEDULE—*continued.*

Item	Matter.	Fee. \$
71.	Where a writ of summons is served at the same time as a warrant of arrest is executed, in lieu of items 69 and 70, a fee of ....	30.00
72.	For the execution of an attachment—For each person ....	10.00
73.	For the release from arrest of a vessel, goods, or person ....	5.00
74.	For attending the discharge of cargo, or removal of a vessel or goods, per hour ....	2.00
75.	For the execution of a commission of appraisement or sale, or appraisement and sale, in addition to the fees paid to the appraiser or auctioneer ....	10.00
76.	For the execution of a decree or order, commission, or other instrument other than those herein provided ....	10.00
77.	On the gross proceeds of a vessel or goods, etc., sold— For every \$100.00 or part thereof up to \$10,000.00 .... For each additional \$100.00 or part thereof ....	2.00 1.00
78.	(a) For retaining possession of a vessel with or without cargo, or of a cargo without a vessel, the expenses per day actually paid in respect of a shipkeeper or shipkeepers, and in addition per day .... Note: Where the possession is for a lengthy period this fee may be reduced at the discretion of the Marshal. (b) Other actual and necessary payments made by the Marshal for the safe custody of property under arrest may be also allowed. Note: No fee shall be payable for the custody and possession of property under arrest if it consists of money in a bank, or of goods stored in a bonded warehouse, or if it is in the custody of a customs house officer, or other authorised person.	5.00
79.	The Marshal or any of his officers, if required to travel for the purpose of discharging his duty shall be entitled to his reasonable expenses for travelling, board and maintenance, in addition to the foregoing fees.	
80.	For any duty or service not provided for in this Part, or where the fee prescribed is insufficient having regard to the circumstances of the case, such sum, or such additional sum, as the Marshal, upon special application, may allow. Note: The Marshal may require a deposit of money on account of the fees applicable to any proceedings before the proceedings are commenced. He may also require an undertaking in writing to pay any further fees or charges which may become payable beyond the amount so deposited.	