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[1912.]

C.L.D., 3218/12.

THE LOCAL COURTS ACT, 1904.

Crown Law Department,
Perth, 17th April, 1912.

PURSUANT to "The Local Courts Act, 1904," and "The Local Courts Act Amendment Act, 1911," His Excellency the Governor in Executive Council has been pleased to make the following Rules of Court, to take effect at the expiration of one month from the publication thereof in the *Government Gazette*.

H. G. HAMPTON,
Under Secretary for Law.

1. These rules may be cited as the *Local Court Rules, 1912*, and shall be read and construed as one with the *Local Court Rules, 1905*, and the *Local Court Appeal Rules, 1911*; and these rules and the other rules hereinbefore mentioned may be cited together as the *Local Court Rules, 1905 to 1912*.

2. The repeals and alterations indicated in the Schedule hereto are hereby made in the *Local Court Rules, 1905*.

3. The *Local Court Appeal Rules, 1911*, shall be deemed to constitute Order XXXVII. of the *Local Court Rules, 1905 to 1912*.

4. These rules shall not apply to actions, matters, proceedings, and judgments instituted, pending, entered, given or made before the commencement of the *Local Courts Act Amendment Act, 1911*, but such actions, matters, proceedings, and judgments shall be proceeded with and have effect and be enforced as if these rules were not in operation.

5. The following rules are divided into Orders, as follows:—

ORDER XXXVIII. — OBJECTIONS TO JURISDICTION—TRANSFER OF ACTIONS.

ORDER XXXIX.—CHANGE OF VENUE.

ORDER XL. — COMMENCEMENT OF ACTIONS—SUMMONS AND CLAIM.

ORDER XLI.—SERVICE.

ORDER XLII.—DEFENCE, NOTICE OF TRIAL, AND DEFAULT OF DEFENCE.

ORDER XLIII.—CHANGE OF PARTIES BY DEATH, &c.

ORDER XLIV.—JUDGMENTS FOR DELIVERY OF GOODS AND ENFORCEMENT THEREOF.

ORDER XLV.—COSTS AND FEES.

ORDER XLVI.—MISCELLANEOUS.

ORDER XXXVIII. — OBJECTIONS TO JURISDICTION—TRANSFER OF ACTIONS.

1. The notice to be given to the plaintiff by the Clerk of any objection to the jurisdiction of the Court chosen for the commencement of an action may be served personally on the plaintiff or left for him at his address for service with some person of the apparent age of sixteen years, or sent to him at his address for service through the post or by telegraph.

2. The time to be allowed a plaintiff for filing an affidavit justifying his choice of such Court shall be four days from the day of the service of the notice on him; provided that if the distance from the Court to the place where such notice is served exceeds one hundred miles, then an additional day shall be allowed for each one hundred miles and for any fractional part of one hundred miles of the excess.

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

4. When it becomes necessary to transfer an action under section 36A of the Act, the Clerk shall transmit to the Clerk of the Court to which the action is to be transferred a certified copy of the plaint and the originals of all other proceedings in the action, with a memorandum according to the Form B in the Appendix, and a note of such transfer shall be made in the minute book.

5. If there are more defendants than one, and more than one of such defendants objects to the jurisdiction but each of the objectors does not require a transfer to the same Court, then the notice of objection sent by the Clerk to the plaintiff shall be according to the Form C in the Appendix.

ORDER XXXIX.—CHANGE OF VENUE.

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

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

3. The Clerk of the Court from which any action or matter is transferred shall send, with the proceedings or certified copies thereof to be transmitted to the Clerk of the Court to which the action or matter is ordered to be transferred, a memorandum according to the Form D in the Appendix.

4. On receipt of such memorandum, the Clerk of such last-mentioned Court shall give the parties notice of trial.

ORDER XL.—COMMENCEMENT OF ACTIONS.

Summons and Claim.

1. A plaint in a personal action shall be according to the Form E1 or E2 in the Appendix, and a summons in such an action shall bear indorsements and subscriptions as indicated in Form F in the Appendix.

2. Where a Company having an office registered under "The Companies Act, 1893," is a defendant, the claim or summons shall state the situation of such office.

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

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

5. Where a defendant is a female, the claim shall state whether she is married, single, or a widow.

6. The time to be limited in a summons in a personal action for giving notice of defence shall be as follows :—

Where the place of service is	The time shall be
(1.) In Western Australia—	
Not more than 200 miles from the Court	Five days
Above 200 miles but not more than 400 miles	Nine days
Above 400 miles but not more than 600 miles	Thirteen days
Above 600 miles but not more than 1,000 miles	Twenty-one days
Above 1,000 miles	Thirty days
(2.) Outside Western Australia—	
In any other State of the Commonwealth or New Zealand	Forty-five days
Elsewhere	Such time, not less than forty-five days, as the Magistrate may direct

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

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

ORDER XLI.—SERVICE.

1. No summons issued out of a Local Court shall be served outside the King's Dominions.

2. No summons shall be served outside the Commonwealth without the leave of the Magistrate.

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

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

Provided that such bailiff or other person shall, by affidavit (according to Form G in the Appendix) to be filed in the Court, make oath and swear that the place where such summons was so delivered as aforesaid was to his certain knowledge, at the time of such delivery, the actual place of abode or business of the said party,

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

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

6. Proof of service of any summons in a personal action may be given by the certificate of a bailiff or police officer, according to the Form H in the Appendix, or by the affidavit of any other person according to the Form I in the Appendix.

7. The provisions in the Act or made by any Rules of Court, applicable or relating to service or to proof of service of summonses in personal actions, shall extend and apply to every other process of a Local Court; provided that a judgment summons must be served personally.

ORDER XLII.—DEFENCE, NOTICE OF TRIAL, AND DEFAULT OF DEFENCE.

1. Notice of Defence shall be according to the form of notice of defence appearing on Form F in the Appendix, and may be given by post, telegram, or personal delivery.

2. Notice of trial shall be according to Form J in the Appendix, and shall be at least a six days' notice. Provided that if the distance from the Court to

the place where such notice is served on any party exceeds one hundred miles, then the length of notice shall be increased by an additional day for each one hundred miles and for any fractional part of one hundred miles of the excess.

3. Notice of defence and of trial may be given or served by post or telegram.

4. Subject to the Act, if the defendant makes default in giving notice of defence, the plaintiff may set the action down for trial, and notice of trial shall be given to the defendant, and such judgment shall be given as the Court shall consider the plaintiff entitled to.

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

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

ORDER XLIII.—CHANGE OF PARTIES BY DEATH, &c.

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

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

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

4. Where by reason of marriage, death, insolvency, or statutory assignment, or by any other event occurring after the commencement of a cause or matter, and causing a change, transfer,

or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action or matter, it becomes necessary or desirable that any person not already a party should be made a party or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained *ex parte* on application to the Magistrate, upon an allegation of such change, transfer, or transmission of interest or liability, or of such person interested having come into existence.

5. An order obtained as in the last preceding rule mentioned may be according to Form K in the Appendix and shall, unless the Magistrate shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith. Such order may limit the time for objecting thereto or for giving notice of defence, fix the time for the trial or for the continuation of any proceedings, provide for any adjournment that may be advisable, and may make such other provision for the disposal of the action or matter as may be just.

6. Where any person not already a party to the action or matter is served with such order as is mentioned in the two last preceding rules, such person may, within the time limited in that behalf, apply to the Magistrate to discharge or vary such order.

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

8. No person shall be added or substituted as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability except with his own consent.

9. Where a plaintiff or defendant is substituted or added under any of the Rules of this Order, the minute book shall be altered, and all subsequent proceedings shall be carried on under the altered title.

ORDER XLIV. — JUDGMENT FOR DELIVERY OF GOODS AND ENFORCEMENT THEREOF.

1. A judgment for delivery of goods shall be according to the Form L in the Appendix.
2. When such judgment has been obtained in default of defence, the plaintiff may have the value of the goods or any of them assessed in the same manner as damages are assessed, and Rules 5 and 6 of Order XLII. shall apply in respect of such assessment.
3. When the judgment has been obtained at the trial, the value of the goods shall be thereupon assessed by the Magistrate.
4. Where it is sought to enforce a judgment for the delivery of goods, the plaintiff may obtain the issue of a warrant of delivery in the Form M in the Appendix, and such warrant shall have effect and confer authority in accordance with its tenor.
5. Such warrant may issue without any assessment of value having been made.
6. The plaintiff shall, by the same warrant or a separate warrant of execution, be entitled to have made of the plaintiff's goods and land any damages for detention or trespass of or against the goods and any costs awarded by the judgment, as well as the costs of any assessment of the value of the goods, and the expenses of executing the warrant, and also all costs and expenses of or incidental to the issue of the same.
7. After the assessment of the value of the goods or any of them, the plaintiff may (subject to any order made by the magistrate under the Act) require the bailiff to enforce delivery of all or any specified goods still undelivered, or payment of their value, at the sole option of the plaintiff.
8. If an assessment or order under Section 91A of the Act has been made after the issue of a warrant of delivery, the clerk shall certify such assessment and any such order and the costs of such assessment to the bailiff.

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

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

ORDER XLV. — COSTS AND FEES.

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

2. The fees set out in the Table of Court fees in the Appendix shall be paid and taken in Local Courts in respect of the various matters and proceedings therein mentioned.

3. The costs to be allowed on a judgment for delivery of goods shall be calculated on the assessed value thereof, or, if the value has not been assessed, on the value put upon them by the plaintiff; provided that where the value put upon them by the plaintiff exceeds £10, it shall be verified by the affidavit of the plaintiff, his solicitor or agent.

4. When the value put upon goods by the plaintiff exceeds the amount of the assessment thereof, the Magistrate shall make such order for the reduction and refund of costs previously allowed as shall be just.

5. No fee or costs of or incidental to the attendance of any practitioner as counsel shall be allowed unless the Magistrate shall certify that the case was a fit one for counsel to attend.

6. The costs to be allowed a practitioner for an assessment of damages or of the value of goods, when not made at the trial, shall be the same as are allowable for a trial of an action.

7. The following costs shall, subject to Rule 10 of this order, be payable to solicitors in actions and matters, as well between party and party as between solicitor and client, where (in the case of a plaintiff) the amount recovered and (in the case of a defendant) the amount claimed does not exceed £10:—

	Under £2.	£2 and under £5.	£5 and not exceeding £10.
	s. d.	s. d.	£ s. d.
For instructions to sue, letter before action, claim, and summons	3 0	5 0	8 0
For instructions to defend and notice of defence, including objection to jurisdiction	2 6	4 0	6 8
For affidavit, justifying choice of Court	2 6	4 0	6 8
Getting up case for trial	3 0	5 0	10 0
Attending trial	5 0	10 0	13 4
Counsel's fee	1 3 6
Attending entering up judgment by default, or on an award, or setting down for trial or assessment of damages or value	1 6	3 4	3 4
Attending on application for new trial	3 0	7 0	10 0

NOTE.—The charges set out herein shall cover all services performed to which they are respectively applicable and all incidental work and attendances, and no costs shall in the absence of express agreement be payable to any practitioner in actions or matters to which this scale applies which are not provided for in the scale or by a Rule of Court.

In cases referred to arbitration the allowance for attending Court when action or matter is referred shall be one-half the fee for attending trial, and the fee for attending the hearing before the arbitrators shall be the same as attending trial.

Counsel's fee and a fee for attending trial shall not both be allowed in the same action or matter.

No counsel's fee shall be allowed for attending before an arbitrator.

When a trial or hearing is on any day adjourned by the Court or arbitrator for want of time, one-half of the fee for attending the trial or hearing may be allowed in respect of the day's attendance if the magistrate or arbitrator so directs.

The amount allowed for instructions to sue, etc., shall be entered by the clerk on the summons on the issue thereof.

8. Fees and expenses properly disbursed shall in all cases be allowed on taxation, but at such amount only as shall be authorised by the scale governing the taxation.

9. Notwithstanding anything to the contrary in any Rule of Court or scale of charges, a solicitor shall be allowed for service of any summons the same fee as would be allowed if the summons had been served by a bailiff.

10. The taxation of a bill against a party as between solicitor and client shall be on the scale applicable to the amount claimed.

11. Subject to any other Rule of Court the taxation of costs as against a plaintiff shall be on the scale applicable to the amount claimed, and as against a defendant on the scale applicable to the amount recovered.

12. Subject to the Act and to any Rule of Court, the costs incurred prior to transfer in any action or matter transferred from one Court to another shall be in the discretion of the Magistrate of the Court to which the action or matter is transferred, and may be taxed and payment thereof enforced as if incurred in or about proceedings in that Court.

ORDER XLVI.—MISCELLANEOUS.

1. When under any Rule of Court it is permissible to send, give, or serve any notice, process, or other document by telegraph, then it shall be sufficient to transmit the substance of the document; provided that enough is transmitted to render the telegram clearly intelligible.

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

3. A summons on an interlocutory application shall be according to the Form N in the Appendix.

4. It shall not be necessary to designate any Local Court as a "Local Court of Western Australia," but process and documents for service out of the jurisdiction shall have the words "Western Australia" written at the head thereof.

5. The prescribed forms may be varied to suit any particular case.

APPENDIX.

Form A.

AFFIDAVIT JUSTIFYING A PLAINTIFF'S CHOICE OF COURT.

IN THE LOCAL COURT AT

No. OF 191

Between A.B.

Plaintiff.

and C.D. and E.F.,

Defendants.

I, [here state name, residence, and occupation of deponent] make oath and say as follows:—

1. That of _____ and _____ are justly and truly indebted to me or to [here state name, residence, and occupation of the proposed plaintiff] in the sum of £ _____, for [the price of goods sold, or money lent, or as the case may be.]*

2. That this Court is the nearest local court to [here state with particularity the place of residence or business] the place where the defendant (or _____ one of the defendants) reside (s) (or carries (y) on business, or

3. That the defendants (or _____ one of the defendants) within six months from the date hereof dwelt or carried on business at [when residence, etc., within six months relied on] [or That the cause of action in respect of which the defendants have been sued arose wholly or in part at _____] [when cause of action or part relied on] to which place this is the nearest Court [or set out any other facts justifying the plaintiff's choice of Court.]

4. That the facts relied on as constituting the alleged cause of action or a part thereof are [here set out the facts relied on.] [This paragraph need only be used when the plaintiff wishes to prove that the action has been commenced in the court nearest to the place where the cause of action wholly or in part arose.]

5. And I further say that the matters herein deposed to are within my personal knowledge.

Sworn at _____, this _____ day of _____ 19 _____, before me,

Clerk of the Court,
or Commissioner or J.P.

(Filed on behalf of the plaintiff).

Form B.

NOTICE TRANSFERRING ACTION UNDER SECTION 36A.

[Heading as in preceding Form.]

To the Clerk of the Local Court at

WHEREAS the defendant has objected to the jurisdiction of this Court and has required the action to be transferred to your Court and the plaintiff has failed to justify to my satisfaction his choice of this Court for the commencement of this action, and it has been decided that this action shall be transferred to your Court. I do therefore transmit to you here-

with a certified copy of the plaint and the originals of all other proceedings in this action, and do transfer the said action to your Court.

Dated the _____ day of _____ 191 .
Clerk.

Form C.

NOTICE OF OBJECTION TO JURISDICTION BY TWO OR MORE DEFENDANTS.

[Heading.]

TAKE notice that the defendants C.D. and E.F. object to the jurisdiction of this Court and say that they reside, the said C.D. at _____ and the said E.F. at _____, and that the said C.D. requires the action to be transferred to the Court nearest to _____, and the said E.F. to the Court nearest to _____. And further take notice that, unless you shall within [the prescribed time] file in this Court an affidavit to my satisfaction, according to the prescribed form, justifying your choice of Court or discontinue this action, I shall transfer the action to such one of the Courts to which a transfer has been required as you shall, within one week after the receipt by you of this notice, select, or in default of such selection as I shall determine.

Dated the _____ day of _____ 191 .
Clerk.

Form D.

NOTICE TO BE SENT TO CLERK OF COURT TO WHICH ACTION TRANSFERRED BY JUDGE.

[Heading.]

To the Clerk of the Local Court at _____

WHEREAS His Honor Mr. Justice _____ has ordered this action to be transferred to your Court. Now, therefore, I do transmit to you herewith a certified copy of the plaint and the originals (or certified copies) of all other proceedings in this action, together with a copy of the order of the said Mr. Justice _____

Dated the _____ day of _____, 191 .
Clerk.

Form E1.

PLAINT IN PERSONAL ACTION.

Plaint No. _____ of 191 .

Christian and Surnames and places of abode or business of parties	} Plaintiff.....	Place of abode [or business]....
		Defendant.....
	} Defendant.....	Place of abode [or business]....

General nature of cause of action.....
Amount or value of claim.....

[SEAL OF COURT].

[SEAL OF COURT.]		Amount Claimed or Value of Subject Matter.	£ s. d.
		General Nature of Cause of Action.	
		Miles from Court-house.	
Names and Places of Abode or Business of Parties.		Trade or Occupation of Defendant.	
		Place of Business.	
		Residence.	
		Defendant.	
		Place of Business.	
		Residence.	
		Plaintiff.	
		Number.	
		Date of entry of Plaint.	

Form E2.

Form F.

SUMMONS.

In the Local Court at _____

No. _____ of 191

Between _____

A.B. of _____, Plaintiff

and _____

C.D. of _____, Defendant

To the Defendant

You are hereby summoned to answer the plaintiff's claim indorsed hereon (or annexed hereto), and take notice that unless within _____ days after service of this summons upon you, you give notice to the Clerk of this Court that you intend to defend this action, the plaintiff may proceed therein and judgment may be given in your absence.

	£ s. d.
Amount or Value of Claim	...
Court Fees	...
Service Fees	...
Solicitor's Costs..
Total	£

Dated the _____ day of _____, 191 .

Clerk of Court.

Notice of defence must be according to the following form and may be given by post, telegraph, or personal delivery.

In the Local Court at
No. of 191

A.B. v. C.D.

I INTEND to defend this action.

Dated this day of , 191

.....Defendant.

.....Place of Residence.

If you intend to rely on a *Set-off, Counter-claim, Infancy, Coverture, the Statute of Frauds, any Statute of Limitations, or a discharge under any statute relating to bankruptcy*, as a defence, you must, with the notice of intention to defend, give to the Clerk notice of such special defence, and such last-mentioned notice must contain the particulars required by the rules of the Court; and you must deliver to the Clerk as many copies of such notice as there are plaintiffs, and an additional copy for the use of the Court. If your defence is a *set-off or counterclaim*, you must, with the notice thereof, also deliver to the Clerk a statement of the particulars thereof. If your defence is a *tender*, you must pay into Court the amount tendered.

IF YOU HAVE NO DEFENCE TO THIS ACTION YOU SHOULD NOT GIVE NOTICE OF DEFENCE, AS YOU WILL BY SO DOING INCREASE THE COSTS AND EXPENSES PAYABLE BY YOU.

[See back.

[Indorsements.]

The plaintiff's claim is as follows, or hereunto annexed.

If you satisfy the plaintiff's claim and also pay the costs, as per margin on the other side, into the Clerk's office, before the expiration of days from the date of service of this summons, inclusive of the day of such service, without giving notice of defence, you will avoid further costs.

If you admit the debt or demand claimed by the plaintiff you should, unless you pay the amount, give to the Clerk of the Court within days after the service of this summons an admission signed by you and witnessed by a clerk of court, solicitor or justice of the peace.

If you admit a part only of the debt or damages you should give notice of intention to defend within the specified time; and you may, by paying into the Clerk's office the amount so admitted, together with costs proportionate to the amount you pay in, within days after the service of this summons, avoid further costs, unless the plaintiff at the hearing shall prove a claim against you exceeding the sum so paid.

A defendant who has been sued in a court which is not the nearest to his place of residence may, if he contends that the action has not been commenced in a proper court, object to the jurisdiction by adding to his notice of defence words to the effect following: "I object to the jurisdiction of this court and say that I reside at (naming the place) and I require this action to be transferred to the court nearest to that place."

The following are proper courts for the commencement of an action:—

- (i.) The court nearest to the place where the defendant or one of the defendants resides or carries on business, or, within the six months next before the commencement of the action, resided or carried on business.
- (ii.) The court nearest to the place where the cause of action wholly or in part arose.

If any such objection is taken by you without reasonable grounds you may be ordered

to pay the costs thereby occasioned, whatever the result of the action may be.

Hours of attendance at the office of the Clerk of this Court at from to , except on Saturdays and during vacation, when the office will be closed at twelve noon.

Form G.

AFFIDAVIT OF ABODE OR PLACE OF BUSINESS OF DEFENDANT SERVED UNDER OR. XLI. R. 4.

[Heading.]

Commence as in Form I.

1. Service on C.D. the defendant (or one of the defendants) herein of the summons in this action was effected by me pursuant to Order XLI., Rule 4, at (here describe with particularity the place where the service was effected).

2 The said place where service was so effected was to my certain knowledge, at the time of such service, the actual place of abode of the said C.D. (or the place of business of the said C.D., of which place of business he was then the master, or one of the masters).

(Jurat, etc., as in Form I.)

Form H.

CERTIFICATE OF SERVICE.

[Heading.]

I, [Insert name, address, and description of deponent, and, if Police Officer, state where stationed and, if Bailiff, state of what Court.] do hereby certify that I did, on the day of , 191 , at [state where.] serve the above-named defendant (or one of the above-named defendants) with the summons in this action (numbered of 191) which summons appeared to me to have been regularly issued out of the Local Court at at the suit of the above-named plaintiff, and which was dated the day of , 191 , and I further certify that such service was effected by delivering the said summons to the said defendant personally (or state how otherwise), and that I had necessarily to travel miles to effect such service.

Form I.

AFFIDAVIT OF SERVICE.

[Heading.]

I, [insert name, address, and description of deponent] make oath and say as follows:—

1. I did, on the day of 191 at [state where] serve the above-named defendant (or one of the above-named defendants) with the summons in

this action (numbered of 191), which summons appeared to me to have been regularly issued out of the Local Court at at the suit of the above-named plaintiff, and which was dated the day of , 191 .

2. Such service was effected by delivering the said summons to the said defendant personally (or state how otherwise).

3. I had necessarily to travel miles to effect such service.

Sworn at in the State of Western Australia this day of 191 .
Before me

(This Affidavit is filed on behalf of the Plaintiff.)

Form J.

[Heading.]

TO THE PLAINTIFF (OR DEFENDANT).

TAKE NOTICE that this action is set down for trial on the day of 191 , at o'clock in the noon.

Dated the day of 191 .
Clerk of Court.

Form K.

ORDER TO CONTINUE PROCEEDINGS AGAINST A NEW PARTY.

[Heading.]

UPON HEARING who alleged [state circumstances rendering the order necessary], it is ordered that the proceedings in this action between the plaintiffs [name the continuing plaintiffs] and the defendants [name the continuing defendants] and A.B., who is hereby added as defendant.

And it is further ordered that the said A.B. may, within days from the service of this order on him, apply to the Magistrate by summons served on the plaintiffs for an order to discharge or vary this order, and that [here set out any other order made by the Magistrate].

Dated the day of , 191 .
Magistrate.

Form L.

JUDGMENT FOR DELIVERY OF GOODS.

[Heading.]

It is adjudged that the defendant do forthwith deliver to the plaintiff the following goods of the plaintiff; that is to say (here specify the goods), [and also that the plaintiff recover against the defendant the sum of £ for damages for the detention of (or trespass against) the said goods], and the sum of £ for costs [or costs to be taxed].

And it is ordered that the defendant do pay the said sums of £ , and £ for damages and costs to the Clerk of the Court forthwith (or as the case may be).

Form M.

WARRANT OF DELIVERY.

[Heading.]

To the Bailiff of the Local Court at .
WHEREAS lately in the Local Court at by a judgment of the said court it was adjudged that (C.D.) of should deliver to (A.B.) of certain goods that is to say (here enumerate the goods : These are therefore to require and order you that you do (subject to any order of the Magistrate made under the Act) seize the said goods and forthwith deliver them into the possession of the said A.B. and if the said goods or any of them cannot be found that you do distrain all the goods of the defendant and them hold till the defendant shall deliver such unfound goods to you: Provided that you shall (subject as aforesaid), at the request of the plaintiff, cause to be made by distress and sale of the goods and land of the defendant the assessed value of the said goods or any of them specified by the plaintiff in lieu of seizing or causing delivery of the same as aforesaid: And these are further to require you that you do by distress and sale of the defendant's goods and land cause to be made the sum of £ , which said sum was adjudged to be paid by the said C.D. to the said A.B. for damages for detention (or trespass) of (or against) the said goods: And that you also cause to be made by distress and sale of the defendant's goods and land the costs awarded by the said judgment; and the costs of the assessment of the value of the said goods or any of them, as well as the expenses of executing this warrant, and all expenses of and incidental to the issue of the same, and that you make return of what you shall have done under this warrant as soon as practicable after the issue thereof.

The costs awarded by the said judgment are £

The costs of the said assessment are £ (or will hereafter be certified to you by me if and when the said assessment is made).

The expenses of and incidental to the issue of this warrant are £

The assessed value of the goods (or of certain of them) is as follows:—(or will be certified by me to you if and when made).

Given under the seal of the Court this day of , 191 .

By the Court,

Clerk of Court.

Note.—This warrant does not authorise the seizure or sale of property protected by section 126 of the Act.

Form N.

INTERLOCUTORY SUMMONS.

[Heading.]

LET ALL PARTIES concerned attend the Magistrate (or Clerk) in Chambers (or in Court) at the Local Court on the day of , 191 , at the hour of o'clock in the noon on the hearing of an application on the part of the plaintiff [or as the case may be] for an order [here state the substance of the order desired].

Dated the day of , 191

Clerk of Court.

This summons was taken out by ,
Perth, Solicitor for the

To
and his Solicitor.

TABLE OF COURT FEES.

	Not exceeding £5.	Over £5 and not exceeding £10.	Over £10 and not exceeding £50.	Over £50.
	s. d.	s. d.	s. d.	s. d.
1 Entry of plaint or entry or filing of any other originating proceeding and summons thereon	1 0	4 0	5 0	10 0
2 Hearing fee or assessment of damages, or value of goods (when not made at trial) including entry of judgment	2 0	8 0	10 0	20 0
3 Hearing fee (set off or counter claim) [To be paid by defendant on the amount (if any) exceeding the amount of plaintiff's claim.]	2 0	8 0	10 0	20 0
4 Entry of judgment in default of appearance, or where notice of defence not given	1 0	4 0	5 0	10 0
5 (On summons to witness (not exceeding three names)	1 0	1 0	1 0	2 0
6 Filing affidavits, notices, and other documents required to be filed (except notices of defence to summonses, confessions of claim, or special defences)	1 0	1 0	1 0	2 0
7 Application for new trial	1 0	2 0	2 6	5 0
8 Hearing fee, new trial	1 0	4 0	5 0	10 0
9 Warrant of any kind	1 0	2 6	2 6	5 0
10 Judgment summons	1 0	2 0	2 6	5 0
11 Summons not otherwise specified	1 0	2 0	2 6	5 0
12 Plaint and summons for recovery of possession of land	2 6	5 0	5 0	10 0
13 Hearing fee, including entry of judgment, in action for recovery of possession of land	5 0	10 0	10 0	20 0
14 Search (within one year)	1 0	1 0	1 0	1 0
15 " (after one year)	2 0	2 0	2 0	2 0
16 Certificate of judgment (issuing)	2 0	2 0	2 0	2 0
17 " " (registering)	1 0	1 0	1 0	1 0
18 Taking bond of any kind	1 0	1 0	1 0	1 0
19 Appointment to tax costs	2 0	2 0
20 Transfer of action from one Court to another under Section 36A or 38A (including transmission of documents)	2 0	4 0	8 0	10 0

21. *Interpleader*.—A hearing fee shall be prepaid by claimant, according to Item 2, calculated on the amount of the money in Court or in the hands of bailiff, or the amount of money claimed, or the assessed value of the goods claimed, or if the value has not been assessed, the value put upon them by the claimant; and the magistrate, at the hearing, shall direct by whom such fee shall ultimately be borne.
22. *Garnishee Proceedings*.—Poundage shall be payable, according to Item 1, on the amount of debt sought to be attached.
23. Examination of witness *de bene esse* before clerk—For the first hour, or part thereof, 6s. 8d., and for every subsequent hour, or part thereof, 3s. 4d.
24. Copies of documents, 3d. per folio.
25. Taxing costs, 3d. in the £1 on amount of filed bill.

NOTE.—Items 1 to 8, inclusive, and item 11, are payable on the amount or value of the claim. Items 9, 10, are payable on the sum in respect of which the warrant or judgment summons is issued. Items 12-13 are payable on the annual value, or where the tenancy is for a less term than a year, or is by the week, month, or other period less than a year, then on the value for such term or period. Item No. 2 is payable before the action is called on. If when the action is called on judgment is given in default of appearance, half the hearing fee to be returned. No fee is payable on entry of judgment on confession. No hearing fee is payable on a judgment summons. A warrant of delivery of specific goods shall be charged for according to the assessed value of the goods or, if the value has not been assessed, according to the value put upon them by the plaintiff; provided that there shall be added to this value the amount of any moneys (other than costs) to be levied under the warrant.

SCHEDULE.

REPEALS AND ALTERATIONS.

Order I.

Add to the definition of "The Act" the words "and all amendments thereof."
Strike out definitions of "Default Summons" and "Ordinary Summons."

Order II.

Strike out Rule 7.
Strike out, in Rule 8, the words "and a copy thereof."
Strike out, in Rule 12, the words "as is prescribed by Order IX., rule 16," and substitute therefor the words "as he shall deem sufficient," and strike out the words "and to be printed or written on the plaint note." Add to the Rule the words following:—

"The clerk may before paying out money to any suitor require the production in the case of a plaintiff of the receipt given for the fees paid on the commencement of the action or matter, and in the case of a defendant of the summons or other originating proceeding served on him."

In rule 19, strike out all words after "open"
Strike out rules 21 to 27 (both inclusive).
Strike out rules 29, 30, and 31.
In rule 34, strike out "twenty-one" and substitute "fourteen."
Strike out rule 41.

Order III.

In rule 8 insert after "Appendix," in the 22nd line, the words "together with a notice of trial."
In rule 11 substitute "The Lunacy Act, 1903," for "The Lunacy Act, 1904."
In rule 16, insert the words "sue or" before the words "be sued," and the words "by or" before the word "against."

Order V.

Strike out Rules 3, 4, 5, and 6.
In Rule 7, strike out all words down to and including "clerk," and substitute the following:—
"No person who is not resident in the Commonwealth shall commence or having commenced shall take any step or proceeding in an action unless or until he shall have given security for costs by deposit of money or otherwise to the satisfaction of the clerk."
In Rule 9, strike out paragraph (1) and insert in lieu thereof the following:—
"(1) A memorandum setting forth the names and places of abode or business of the proposed parties to the action and the amount claimed and general nature of the cause of action."
Strike out Rule 10.
In Rule 11, strike out the word "præcipe" and insert in lieu thereof the words "summons or claim."
In Rule 14, strike out the words "requiring a default summons."
In Rule 15, insert after the words "for service" the words "and a plaintiff's solicitor shall be allowed such service fee as is hereinafter provided for and a plaintiff," and add to the rule the following proviso:—
"Provided that in lieu of giving such notice the plaintiff or his solicitor may write in the margin of one copy of the summons the words "Service by plaintiff (or plaintiff's solicitor)."

Order VI.

Strike out Rule 1, and insert in lieu thereof the following rule:—

1. (1) The plaintiff shall annex to or indorse on the summons a claim containing particulars in accordance with the Act, or such particulars as shall be reasonably sufficient to inform the defendant of the demand intended to be made against him.

(2) If the plaintiff's particulars have been previously rendered to the defendant, it shall be sufficient, subject to the Act, to state the nature and amount or value of the claim, with the addition of the words "particulars whereof have been rendered."

(3) The Magistrate may in any case order delivery of further and better particulars, on such terms (if any) as he shall think fit.

Order VII.

Strike out Rules 1 to 8 (both inclusive), and also Rules 24 and 25, and Rules 27 to 35 (both inclusive) and rule 35
In Rule 39 insert after the words "summons and" in paragraph 1 the words "in personal actions not later than two clear days before the expiry of the time limited for giving notice of defence and in other cases;" and insert after "shall" in paragraph 3 the words "in personal actions before the expiry of the time limited for giving notice of defence and in other cases."

Order IX.

Strike out in Rule 3 the words "five clear days at least before the return day," and substitute the words "before the expiry of the time limited for giving notice of defence or before a proceeding in default has been taken."
Strike out paragraph 1 of Rule 8 and substitute therefor the following rule:—

"(1) A defendant who desires to pay money into Court pursuant to section forty-nine of the Act shall pay the same before the expiry of the time for giving notice of defence or before a proceeding in default has been taken. Every such payment shall be taken to admit *pro tanto* the claim or cause of action in respect of which the payment is made, unless it is made with notice of defence and is accompanied by a notice in accordance with the Form 49 in the Appendix. When any money is so paid in, the defendant must also pay in a sum sufficient to cover the costs incurred by the plaintiff up to the time of payment, in so far as such costs are sanctioned by the scale applicable to the amount paid in, unless the payment is made with a plea of tender, in which case it may be made without costs."

In paragraphs 3 and 4 of Rule 8 strike out "less than five clear days before the return day" and substitute "after the prescribed time."

In paragraph 3 of Rule 9 strike out the words "in any such case" and substitute "in any case in which the payment has been made after the prescribed time."

Strike out Rule 10.

Strike out rule 16.

Order X.

In Rule 10, insert between "duplicate" and "a notice" the words "with his notice of defence," and strike out the words "five clear days at least before the return day."

In Rule 20, strike out all words after "except that" and insert in lieu thereof the words "such notice shall be deemed to be duly given if filed in duplicate at least three clear days before the return day."

Order XI.

Strike out rule 1, and substitute therefor the following rule:—

"(1.) Where a defendant claims to be entitled to contribution or indemnity against any person not a party to the action, he may by leave of the Magistrate or Clerk file with his notice of defence a notice in duplicate of such claim, according to the form in the appendix, and the clerk shall seal such notice and retain one copy and deliver the other, together with a copy of the summons and claim in the action and a notice of trial, to the defendant, and the defendant shall at least four clear days before the return day serve the documents so delivered to him on the person against whom he has made his claim hereunder."

In Rule 2, strike out the words "mentioned in the summons (or in case the original action is commenced by default summons on the day mentioned in the notice of trial)."

In Rule 6, insert after "Magistrate" the words "or clerk."

Order XII.

In Rule 9, strike out "or place of business" and insert in lieu thereof the words "as well as the place of business (if any);" and strike out the words "not later than five clear days at least before the return day of the summons thereon," and insert in lieu thereof the words "with his notice of defence."

Add a paragraph as follows:—"This rule shall apply *mutatis mutandis* in favor of a third party as against a defendant."

In Rule 10, insert after '1884' the words "or the Bills of Exchange Act, 1909 (Commonwealth)."

In Rule 11, paragraph 1, strike out "notice in writing; when made on notice the notice shall be," and insert in lieu thereof the words "summons according to the prescribed form; when made on summons the summons shall be."

Order XVI.

Order XVI. (change of parties) is annulled.

Order XVII.

In Rule 5 strike out "ordinary."

Order XVIII.

In Rule 8 substitute "any person" for "a Commissioner."

Order XIX.

Strike out the word "default," and substitute "Magistrate" for "Judge."

Order XXI.

Strike out Rule 5.

In Rule 7 strike out the words "or under Rule 5 of this order" and the words "or Rule 5."

Order XXII.

In Rule 8, paragraph (2), strike out "the plaint note or the duplicate mentioned in Order VII, Rule 1, or where a defendant is entitled to enforce a judgment or order by the summons issued in the action or the duplicate mentioned in Order XXXV., Rule 21, and;" and strike out the words "return such note summons or duplicate," and insert in lieu thereof the words "forward the party notice thereof."

Order XXIV.

Strike out, in Rule 6, the words "to produce the plaint note or summons issued in the action or a duplicate thereof and."

In Rule 18 add a proviso as follows:—

"Provided that this rule shall not (except in so far as it provides that the sale shall be public) apply to land of which an actual seizure has not been made."

In Rule 27 strike out all words from "provided" to the word "either" (both inclusive), in the second paragraph, and substitute "Provided that such affidavit may be dispensed with at the discretion of the Magistrate or Clerk if the person requiring a judgment summons to be issued either."

Rule 29, strike out the proviso, and substitute the words "Provided that such affidavit may at the discretion of the Magistrate or Clerk be dispensed with, if the person requiring a judgment summons to be issued complies with condition (a) or (b) set out in rule 27 of this order."

Rule 31, strike out words from "nearest" to "employed" (both inclusive).

Rule 32, strike out the first sentence in paragraph (2), and substitute "A judgment summons shall be personally served."

Rule 34, after "bailiff" in line 2, insert "or other person authorised to serve such summons."

Strike out Rules 69 and 70.

Order XXV.

In rule 1 insert after "Magistrate" the words "or clerk."

Order XXXIV.

Add a proviso to Rule 1 as follows:—

"Provided that on entry of a judgment by default, or on confession, the Clerk may without formal taxation allow such costs as are warranted by the Act and the rules made thereunder."

Order XXXV.

Strike out Rule 1, and insert the following rule in lieu thereof:—

"1. (1) Whenever by any Rule of Court any act is required to be done by or to or with reference to a party, then in the case of a party who is represented by a solicitor, such act shall be done by or to or with reference to such solicitor, unless it appears expressly or by necessary implication that it is to be done by or to or with reference to the party in person. (2) By leave of the magistrate or clerk the foregoing provision may be applied in respect of any agent not being a solicitor."

In Rule 20, insert after the word "irregularity" the words "whether under these Rules or any Act," and substitute the word "summons" for the word "notice" whenever occurring.

In Rule 21, insert after "warrant" the words "original or duplicate summons."

Order XXXVI.

Strike out Rule 1, and substitute the following:—

"Every proceeding under section 8 of the Workers' Compensation Act, 1902, shall be commenced by the filing of a praecipe for a summons and the issue of a summons, and the special forms in Part II. of the Appendix shall be used so far as the same are applicable. Provided that, subject to the provisions of this Order, the foregoing rules and orders shall so far as applicable apply, *mutatis mutandis*, to all matters commenced as in this Order provided."

In Rule 2, strike out paragraph 1 and substitute the following:—

(1.) (a.) A proceeding on behalf of the dependants of a deceased worker for the settlement by the Court of the amount payable as compensation to such dependants shall be brought by the legal personal representative (if any) of the deceased worker. (b.) If there is no legal personal representative, the proceeding may be instituted by the dependants them-

selves. (c.) If there is any conflict of interest between the dependants themselves, the matter may be instituted by the legal personal representative on behalf of some only of such dependants; or if there is no legal personal representative, then by some only of such dependants, the other dependants in either case being made defendants. (d.) In this rule "dependants" includes persons claiming to be dependants.

In Rule 5, after the words "Part IV. of the Appendix," insert the words "or Order XLV., as the case may require."

The Forms in Part I. of the Appendix, numbered respectively as follows are hereby annulled, that is to say: Nos. 5, 6, 7, 8, 13, 14, 15, 19, 20, 21, 22, 61, 78, 79, 80, 81, 82, 83, 198, 199, 200, 201.

In Form 55, strike out the seventh paragraph and substitute the following: "A copy of the summons and claim and a notice of trial is served on you herewith, and if you wish to dispute the plaintiff's claim in this action as against the defendant or your liability to the defendant, you must appear at the Court on the trial."

In Form 56 in the said Appendix, substitute for the words "or place of business" the words "as well as his place of business (if any)."

In Part II. of the Appendix strike out references to "plaints" and strike out form 5

The scale of Court fees in Part III. of the Appendix is hereby repealed.

That portion of Part IV. of the Appendix which relates to costs on the lower scale is hereby repealed.

In that portion of the said Part IV. which relates to costs on the higher scale, the following alterations are made:—

In Item 34, strike out "under section 41 or"

Insert a new item as follows:—

	s.	d.	s.	d.	s.	d.
"34A. Affidavit justifying choice of Court	6	8	6	8	6	8
Or per folio	0	6	1	0	1	0

Add to Item 56: or to set down action for assessment of damages or assessment of value."

That portion of Part IV. of the Appendix comprised under the heading, "*Total of items of costs to be entered on summonses for amounts exceeding £10 where the particulars and copies are signed by the solicitor.*" is hereby repealed.

Approved by His Excellency the Governor in Executive Council, this 17th day of April, 1912.

BERNARD PARKER,

Clerk of the Council.