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PERTH: MONDAY, 6th DECEMBER

[1965

SUPREME COURT ACT, 1935-1964.

THE RULES OF THE SUPREME COURT, 1909.

WE, the Honourable Sir Albert Asher Wolff, K.C.M.G., Chief Justice of Western Australia, the Honourable Sir Lawrence Walter Jackson, Kt., Senior Puisne Judge, and the Honourable John Evenden Virtue, the Honourable Roy Vivian Nevile, the Honourable Gordon Bede D'Arcy, the Honourable John Hale, and the Honourable Oscar Joseph Negus, Puisne Judges of the Supreme Court of Western Australia, acting in pursuance of the powers contained in the Supreme Court Act, 1935-1964, and of every other power enabling us in this behalf, do hereby amend The Rules of the Supreme Court, 1909, in the manner hereinafter mentioned. Such amendments shall come into operation one month following publication thereof in the *Government Gazette*.

Rule 10 of Order XXII of the Rules of the Supreme Court as hereby amended shall not apply in the case of an action commenced before and pending on the coming into operation of such amendments, and in which money has already been paid into court.

1. ORDER XIII.

Rule 2, sub-rule (1), is amended by deleting all words after the word "damages" in line 6 and substituting the following words:—

At least seven days before the day fixed for the assessment of the damages notice of the appointment for hearing shall be served on the party against whom judgment has been given. Where such party has not for the time being an address for service such notice

shall be deemed to be properly served on him if left, or sent by post in a prepaid letter addressed to him, at his usual or last known residence, or where the party is a body corporate, its registered or principal office. If served by post, the notice shall be deemed to have been served at the time at which it would have been delivered in the ordinary course of post. It shall not be necessary to give notice of the appointment to any party upon whom the writ of summons was served by substituted service and whose address is unknown to the plaintiff.

2. NEW ORDER.

A new order is inserted after Order XVI to be numbered Order XVIA as follows:—

XVIA.

PERSONS UNDER DISABILITY—COMPROMISE AND CONTROL OF FUNDS.

1. (1) Where in any action in which an infant or person of unsound mind is a party a settlement or compromise is proposed it shall not be valid unless approved by the Court or a Judge.

(2) Application for approval under this rule may be made by summons returnable before a Judge in Chambers and shall be supported by affidavit and independent counsel's opinion unless the Judge shall see fit to dispense with such opinion.

2. (1) Where a claim is made by or on behalf of or against an infant or person of unsound mind and an agreement is reached for settlement or compromise of the claim without any action having been commenced, a person claiming and qualified under these rules to act as the guardian *ad litem* of the infant or person of unsound mind or the person making the claim against the infant or person of unsound mind 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 claimant; 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.

3. (1) Where in proceedings—
- (a) money is recovered or adjudged or ordered or agreed to be paid to or for the benefit of an infant or of a person of unsound mind;
 - or
 - (b) money in Court is accepted by or on behalf of a plaintiff who is an infant or of unsound mind;

the money shall in the absence of any special order be paid to the Public Trustee for investment on behalf of the infant or person of unsound mind, and if the Court or Judge so orders may be invested by the Public Trustee in investments outside the common fund.

(2) The Court or Judge may by the same order or by any subsequent order give directions for the application of the income or if the Court or Judge thinks necessary the capital and income of the investment for the maintenance welfare advancement or otherwise for the benefit of the infant or of the person of unsound mind.

4. The term "action" used in this Order includes a counterclaim.

3. ORDER XXII.

Order XXII is rescinded and the following Order is inserted in lieu thereof:—

ORDER XXII.

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.

(2) The amount paid into Court may be increased without leave and by leave of the Court or a Judge 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. 3 in Appendix B 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 or a Judge 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 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 or a Judge that the plaintiff is embarrassed by the payment, the Court or a Judge 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.

(8) Where in any action a defence of tender before action is pleaded, the defendant must pay into Court 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.

Payment in
by defendant
who has
counter-
claimed.

2. Where a defendant, who makes by counter-claim 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.

3. (1) Where money is paid into Court under rule 1, then, within fourteen days after receipt of the notice of payment or, where more than one payment has been made or 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—

Acceptance
of money
paid into
Court.

- (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. 4 in Appendix B to every defendant to the action.

(2) On the plaintiff accepting any money paid into Court—

- (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.

(3) (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.

(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.

(4) 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.

(5) A plaintiff who has accepted any sum paid into Court shall, subject to subrule (8) of this rule and rules 3 and 4 of Order XVIA, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

(6) 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 or a Judge 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.

(7) 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 tax and sign judgment for his costs incurred to the time of the receipt of the notice of payment into Court.

(8) 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 or a Judge 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 or a Judge 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 XVIA 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 subrule (2) or in pursuance of an order of the Court or a Judge 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 or a Judge is required by reason only of subrule (1) paragraph (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 or a Judge.

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 or a Judge 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.

Money
remaining
in Court.

6. (1) Where liability is admitted 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 subrule (8) of rule 1 hereof, any defendant may at any time before trial file and serve on all the parties to the action a notice (Form 4B, Appendix B), 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 or a Judge, 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 4C, Appendix B); and thereupon, unless otherwise ordered by the Court or a Judge—

- (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 by leave of the Court or a Judge, withdraw an offer to consent to judgment at any time before the filing by the plaintiff of a notice of acceptance.

(2) This rule applies *mutatis mutandis* to a counterclaim by a defendant against the plaintiff for a debt or damages and the notice offering to consent to judgment must state, if it be the case, that in making the offer 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.

Contribution
between
parties.

7. A party to an action who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, might be held liable in the action to another party to contribute towards any debt or damages which may be recovered by the plaintiff in the action, and who, at any time before the trial of the action, makes a written offer to that other party (whether absolute or conditional and whether limited or not as to time for acceptance

thereof) to contribute to a specified extent to the debt or damages, may, in making that offer, while stipulating that it is to be without prejudice to his defence (whether as against the plaintiff or as against the party to whom the offer is made or as against any other party to the action) nevertheless reserve the right to bring the offer to the attention of the Judge at the trial as if it were a payment into Court (that is to say, after all questions of liability and amount of debt or damages have been decided).

8. 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, 4 and 5 shall apply with the necessary modification and so far as they may be applicable.

Counter-claim.

9. Where in an action for personal injuries, a notice is served on or given to a defendant pursuant to sections 12 or 13 of the Motor Vehicle (Third Party Insurance) Act, 1943-1964, or to section 17 of the Commonwealth Employees' Compensation Act, 1930-1964, or section 115 of the Social Services Act, 1947-1964, of the Commonwealth, or pursuant to any statutory provisions of the like nature, that defendant may, in addition to or without any payment into Court, pay to the person giving or serving the notice, the amount claimed by that person. Such payment shall not be deemed to be an admission of liability as between the parties to the action and shall, to the extent to which the person giving or serving the notice was entitled to claim the moneys therein referred to, be deemed to be a payment into Court for all purposes relating to costs. Notice of payment shall be given within seven days of the amount being paid.

Payment may be made direct to creditors in certain cases and treated as though payment into Court.

10. 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 7 has been made and is brought to his attention in pursuance of a reserved right to do so.

Payment in or offer to consent to judgment not to be disclosed.

In certain cases no payment out without order.

11. Money paid into Court under an order of the Court or a Judge, or certificate of the Master, shall not be paid out of Court except in pursuance of an order of the Court or a Judge.

Parties under disability.

12. (1) Where in any action by or on behalf of an infant or a person of unsound mind or where a claim has been made by or on behalf of an infant or person of unsound mind 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 or a Judge approves the proposal under the provisions of rule 1 or rule 2 of order XVIA the sum of money (if not already paid into Court or to the extent that it has not already been paid into Court) shall 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 or a Judge pursuant to rule 3 of order XVIA.

Amounts under £500 may be paid without administration.

13. 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 £500, and it is proved to the satisfaction of the Court or a Judge—

- (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 £500 including the amount of the fund or share to which the estate of such deceased person is entitled,

the Court or Judge 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.

4. ORDER XXXIV.

Rule 48 is rescinded and the following rule is substituted:—

48. No writ of inquiry shall be issued in any cause or matter.

Rule 49 is amended—

- (a) by deleting the passage "it shall not be necessary to issue a writ of inquiry, but" in line four;
- (b) by adding a sub-rule as follows:—

- (2) The directions as to service on the defendant of notice of the day fixed for the assessment of damages contained in Order XIII, rule 2, shall apply *mutatis mutandis* to an assessment or inquiry pursuant to this rule.

5. ORDER LIII.

Order LIII is amended—

- (1) by rescinding rules 17, 18 and 19, and substituting the following rules:—

17. 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, 1935-1964, as from time to time amended, 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.

- (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, 1935-1964, 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.

18. (1) The Master may refer any application or matter to a single Judge or to the Full Court, and the Court or 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.

(2) Pending the final disposal of the application or matter the Master may make such interim order as he shall think just.

19. Any person affected by any order or decision of the Master may except in cases provided for in rule 21 appeal therefrom to a Judge at Chambers. Such appeal shall be by notice in writing to attend before a Judge without a fresh summons within five days after the decision

Appeal from
Master.

complained of, or such further time as may be allowed by a Judge or by the Master. There shall be at least two clear days between service of the notice of appeal and the day of hearing.

(2) by adding after rule 20 the following rules:—

In certain
matters
appeal to be
to the Full
Court.

21. (1) An appeal shall lie to the Full Court from any decision, order or judgment of the Master made or given—

- (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 LVIII apply *mutatis mutandis* to appeals under this rule.

22. Rules 17 to 21 (inclusive) of this Order do not apply to proceedings in Equity.

6. ORDER LV.

Order LV is amended by rescinding rule 17 and substituting the following rule:—

17. (1) In Equity the Master shall, subject to the right of any party to have an adjournment to the Judge in person without any further summons for that purpose, have power to transact all such business and exercise all such authority and jurisdiction as under the Supreme Court Act, 1935-1964, as from time to time amended, or these rules may be transacted and exercised by a Judge at Chambers, except such business, authority and jurisdiction as the Chief Justice may from time to time direct to be transacted by a

Judge in person or as may by any of these rules be expressly directed to be transacted or exercised by a Judge in person.

Provided that where 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, nothing in this rule shall authorise the Master to determine that question.

(2) Without prejudice to the power, authority and jurisdiction conferred on the Master by sub-rule (1) of this Rule, the Master or other proper officer shall, if the Court or a Judge in Equity shall so direct, take such accounts and make such inquiries as have usually been taken and made by the Master; and the Judge shall give such aid and directions in every such account or inquiry as he may think fit.

7. ORDER LIX.

Rule 1 is amended by adding after paragraph (j) the following paragraph:—

(k) Appeals from the Master under Order LIII, rule 21.

8. ORDER LX.

A new rule is inserted after rule 2 as follows:—

3. A reference in any judgment, decree, or order to the Master or the Registrar shall, unless otherwise directed by the Court or Judge, include a Deputy Master, or a Deputy Registrar, as the case may be.

9. ORDER LXII.

Order LXII is rescinded and the following Order is inserted in lieu thereof:—

ORDER LXII.

(0.62).

DRAWING UP JUDGMENTS AND ORDERS.

1. (1) Unless otherwise ordered by the Court or a Judge 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.

Drawing up
of judgments
and orders.

(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.

Date of
judgments
and orders.

2. Subject to these rules, every judgment or order shall be dated as of the day on which it was made, unless the Court or a Judge shall otherwise direct, and shall take effect accordingly.

Authentica-
tion of
judgments
and orders.

3. (1) Every judgment or order shall be marked to show by whom it was made.

(2) An order is sufficiently authenticated if signed by the Registrar and sealed with a seal of the Court.

Sealed
duplicate to
be issued.

4. (1) Every judgment and order shall be kept in the Registry of the Court as a record.

(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.

Draft and all
necessary
documents
to be lodged.

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.

(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 or Judge, the Master may decline to settle or pass the judgment or order without the leave of the Court or a Judge.

Appointment
to settle
draft.

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. Such notice and draft may be served by post.

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.

Attendance
on settling
of draft.

(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.

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.

Default of
attendance.

(2) Where the Master proceeds under the last preceding sub-rule 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 or Judge.

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.

Judgments
and orders
may be
settled
without
appointment.

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.

Master's
powers and
reference to
the Court.

(2) In case of dispute or doubt, the Master shall at the request of a party refer the matter to the Court or Judge giving the judgment or making the order, and the Court or Judge 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 or Judge 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 or Judge 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 or Judge to reconsider any judgment or order before it has been drawn up, passed and entered.

Party to engross.

12. A judgment or order when settled and passed shall be engrossed by the party entering or extracting it.

Certificate for special allowance.

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 in taxation of costs in respect thereof.

Entry of judgments and orders.

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.

(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) In the case of a procedure order drawn up in chambers, entry of the order is not necessary before an attachment can be issued for disobedience of it.

(4) 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.

Application to vary.

15. A party may, within seven days after a draft judgment or order has been settled by the Master, apply to the Court or Judge to add to or alter it for the purpose of making it correspond with the judgment or order as pronounced.

10. ORDER LXV.

(1) Rule 18 is amended by adding after sub-rule (4) a sub-rule as follows:—

(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.

(2) A new rule is inserted after rule 18A to be numbered 18B as follows:—

18B. (1) Whenever some item or section of costs incurred by a party appears to be justified but cannot be substantiated in detail or in quantum without undue delay, the court or a judge making an award of a lump sum for costs may make an interim award, and reserve the item or section in question for later consideration.

(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 this rule comes into force.

11. ORDER LXVII.

Rule 4 is amended by adding a paragraph as follows:—

This rule shall not apply to the notice of assessment of damages required to be given pursuant to rule 2 (1) of Order XIII and rule 49 (2) of Order XXXIV.

12. ORDER LXVIII A.

A new Order is inserted after Order LXVIII to be numbered LXVIII A as follows:—

ORDER LXVIII A.

SHERIFF'S RULES.

1. Subject to the Supreme Court Act, 1935-1964, 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. Publicity
of sale.

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. Place of
sale.

3. Property, whether real or personal, offered for sale by the Sheriff by public auction may be sold in one lot or in several lots. The sale shall be of the Mode of
sale

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.

Provided that, with the consent in writing of any other person having estate, right, title or interest in the chattels or land, 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.

Provided further that 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.

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 or a Judge 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.

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.

Persons
arrested
to be lodged
in nearest
gaol.

6. When any person has been arrested by the Sheriff on any civil process of the Court, he shall be lodged in the gaol nearest to the place of his arrest, and, subject to any order by the Court or a Judge, he shall be there detained until discharged in due course of law.

Service of
process by
Sheriff.

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.

(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 or a Judge 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.

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.

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.

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.

Deposits on account of fees.

(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.

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.

Fees where execution not proceeded with.

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

Particulars of arrangement where execution discontinued.

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.

14. No Sheriff's officer shall be compellable to go more than 40 miles 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 more than 100 miles of mileage be allowed in any case without the order of a Judge or the Master.

Execution of process at a distance.

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 mileage according to the distance of the place where the same is made from the office or residence of such officer; and no mileage shall be allowed to any such officer unless he states in his return to the Sheriff the number of miles that the place of execution is from his office or residence.

Default in payment of fees.

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 or a Judge the name of the solicitor so making default, and the Court or Judge may thereupon make all necessary orders to enforce payment by the solicitor of such fees or charges.

13. ORDER LXXII.

A new rule is inserted after rule 3 to be numbered 3A as follows:—

Publication of written reasons for judgment.

3A. 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.

14. APPENDIX B.

(1) Forms Nos. 3 and 4 are deleted and the following forms are substituted:—

No. 3.

NOTICE OF PAYMENT INTO COURT.

(Heading as in Form No. 1.)

Take notice that the defendant has paid into Court £ and says that (£ part of) that sum is enough to satisfy the plaintiff's cause of action (for and £ the other part of that sum is enough to satisfy the plaintiff's cause of action for).

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.)

(To be filled in by the Registrar's Office.)
Received the above sum of pounds
 shillings and pence into
Court in this action.

Dated etc.

Accountant.

No. 4.

ACCEPTANCE OF SUM PAID INTO COURT.

(Heading as in Form No. 1.)

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 abandons his other causes of 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.)

(2) New forms to be numbered 4A, 4B and 4C are inserted as follows:—

No. 4A.

ACCEPTANCE OF SUM PAID INTO COURT
BY ONE OF SEVERAL DEFENDANTS

(Heading as in Form No. 1.)

Take notice that the plaintiff accepts the sum of £ paid by the defendant C.D. into Court in satisfaction of his cause of action against that defendant.

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.).

No. 4B.

NOTICE OF OFFER TO CONSENT TO
JUDGMENT.

(Heading as in Form No. 1.)

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.).

No. 4C.

NOTICE OF ACCEPTANCE OF OFFER TO
CONSENT TO JUDGMENT.

(Heading as in Form No. 1.)

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.).

15. APPENDIX M.

Appendix M is rescinded and the following Appendix is substituted:—

APPENDIX M.

PAYMENT INTO AND OUT OF COURT.

1. In this Appendix, "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. 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 rule 3 of Order XXII 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 XXII 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 Supreme Court, and after having been examined by the Master must be filed in the Supreme Court. An office copy of the order or authority shall also be lodged with the Accountant.

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 XXII, rule 3 (8), 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 Appendix.

16. APPENDIX N.

Item 36 of the scale of costs is amended by deleting the note to that item and substituting a note as follows:—

The basis on which the costs are to be assessed will be fixed pursuant to Order LXV, rule 18 (5).

Dated the 24th day of November, 1965.

A. A. WOLFF,
Chief Justice.

L. W. JACKSON,
Senior Puisne Judge.

J. E. VIRTUE,
Puisne Judge.

R. V. NEVILLE,
Puisne Judge.

G. B. D'ARCY,
Puisne Judge.

JOHN HALE,
Puisne Judge.

OSCAR NEGUS,
Puisne Judge.

