



Government Gazette

OF

WESTERN AUSTRALIA

(Published by Authority at 3.30 p.m.)

(REGISTERED AT THE GENERAL POST OFFICE, PERTH, FOR TRANSMISSION BY POST AS A NEWSPAPER)

No. 119]

PERTH: MONDAY, 1st DECEMBER

[1969

SUPREME COURT ACT, 1935-1964.

PURSUANT to the powers conferred by the Supreme Court Act, 1935-1964, and all other powers hereunto enabling, the majority of the Judges of the Supreme Court hereby make the following rules:—

1. In these rules The Rules of the Supreme Court, 1909, as amended from time to time, are referred to as the principal rules. Principal rules.
2. These rules shall come into operation on the first day of January, 1970. Commencement.
3. Order 5, rule 5 of the principal rules is amended by deleting all words after the words, "Cause Book" in line 3, and substituting the words, "and a distinguishing number shall be allocated to the action". O. 5. Rule 5 amended.
4. Order 30 of the principal rules is amended by adding after rule 1 the following rule:— O. 30. Rule 1A added.

1A. Where the cause or issue has been entered for trial, a notice of the kind mentioned in rule 1 of this Order shall not be given without leave of the Court or a Judge.

O. 34
amended.

5. Order 34 of the principal rules is amended—

- (1) by rescinding rules 10 to 16 inclusive, rule 22 and the heading, "IV. Lists for Perth."; and
- (2) by adding after the heading, "III—Entry for Trial and Notice of Trial.", the following rules to stand as rules 10 to 22 inclusive:—

10. Subject to rule 17 of this Order, a cause, matter or issue may be entered for trial by the plaintiff—

- (a) when the pleadings are closed;
- (b) at any time after the issues of fact have been stated; or
- (c) in the case of trial on affidavit, after the time for closing the evidence has expired.

11. (1) Where the plaintiff neglects to enter the cause, matter or issue for trial, any party on the record who is entitled to be heard generally or on any issue may—

- (a) subject to rule 17 of this Order, enter the cause, matter or issue for trial; or
- (b) apply to the Court or a Judge for an order dismissing the cause or matter for want of prosecution so far as concerns the plaintiff's claim or the issue raised by the plaintiff against the party so applying.

(2) On an application to dismiss the cause or matter for want of prosecution, the Court or Judge may make such order as may be just either dismissing the claim or striking out the issue or permitting it to go to trial with or without the imposition of terms.

(3) For the purpose of this rule, the plaintiff has neglected to enter a cause, matter or issue for trial where he does not make the entry within four weeks after the requirements of paragraphs (a), (b) or (c) of rule 10 of this Order (whichever shall be applicable) have been satisfied.

12. (1) A party who has entered a cause, matter or issue for trial shall on the day of entry give notice thereof in writing to every party on the record who is entitled to be heard generally or on any issue.

(2) This rule does not affect the provisions of Order 13, rule 2 (1).

13. (1) The entry for trial and notice of trial shall state whether it is for the trial of the cause or matter or of an issue therein and shall state the place of trial.

(2) Entry for trial and notice of trial shall be in such form and contain such information as the Chief Justice shall direct from time to time.

14. A cause, matter or issue shall not be tried before the expiration of fourteen days from the day of entry unless the party to whom notice of trial is given has consented or is under terms to accept shorter notice of trial, or the Court or a Judge otherwise orders.

15. Entry for trial at the civil sittings in Perth shall not operate for any particular sittings, but shall be deemed to be for the day fixed by the proper officer, or by order of the Court or a Judge.

16. Entry for trial in a circuit court shall be for the first sittings to be held fourteen days next after the entry is made, unless the Court or a Judge otherwise orders.

17. (1) A party shall not enter a cause or issue for trial unless he is ready for trial and has filed a certificate of readiness.

(2) The certificate referred to in subrule (1) of this rule—

(a) shall be in such form and contain such information as the Chief Justice shall direct from time to time; and

(b) shall be signed personally and in his own name by the solicitor for the party making the entry or by that party where he is not represented by a solicitor.

(3) Copy of the certificate shall be served with notice of trial.

18. (1) Within seven days after a party has entered a cause, matter or issue for trial and has served notice of trial, any other party on the record who is entitled to be heard generally or on any issue may apply by summons to the Master on two clear days' notice to the party who has made the entry for an order countermanding the entry.

(2) Unless otherwise ordered, it shall not be necessary for an affidavit in support of the summons to be filed if the summons states the grounds of the application.

(3) A party entitled to apply for an order under subrule (1) of this rule who has failed to apply for such an order within the time limited thereby shall be deemed to be ready for trial.

(4) Where a party (whether applicant or respondent) is represented by a solicitor, that solicitor, or another practitioner who is conversant with the matter, shall attend personally on the return of the summons; it shall not be sufficient for a clerk in the solicitor's employment to attend on his behalf.

(5) On the return of the summons the Master may countermand the entry or allow it to stand, or direct that the entry take effect upon the happening of certain events or at the expiration of such period as he may fix; or he may make such other order or give such other direction as he thinks proper.

(6) Unless otherwise ordered the costs of the summons shall be costs in the cause.

(7) This rule does not affect the provisions of subrule (1) of rule 20 of this Order.

19. (1) Where a cause, matter or issue has been entered for trial, no further interlocutory applications shall be made by a party for or in relation to any of the following matters:—

- (a) amendment of pleadings or filing of further pleadings;
- (b) joinder or substitution of parties;
- (c) particulars;
- (d) interrogatories, discovery or inspection; or
- (e) taking of evidence before a special examiner or on commission,

without leave of the Court or a Judge.

(2) Subrule 1 of this rule does not limit the power of the Judge at the trial to make orders for or in relation to any of the matters referred to in that subrule.

20. (1) At any time before a date of trial has been fixed, entry for trial may be countermanded by consent of the parties or by leave of the Court or a Judge on terms as to costs or otherwise as may appear just.

(2) Once a date of trial has been fixed, no withdrawal from the list or adjournment shall be made except by order of the Court or a Judge; but an action that has been settled may be withdrawn from the list upon production to the proper officer before the trial commences of a consent in writing signed by the parties.

21. (1) Subject to subrule (2) of this rule and to any order of the Court or a Judge, dates of hearing of all causes, matters and issues shall be fixed by the proper officer in accordance with the practice of the Court.

(2) An entry for trial of a cause, matter or issue shall lapse unless a date of trial is fixed within one month next after the entry is made or the Court or a Judge otherwise orders or the Master otherwise directs under rule 18 of this Order.

(3) Nothing in this Order shall prejudice any powers of the Chief Justice to give directions—

- (a) specifying the lists in which causes, matters or issues or causes, matters or issues of any class or description, are to be entered for trial; and providing for the keeping and publication of the lists;
- (b) providing for the fixing of a date for the trial of any cause, matter or issue that has been entered;
- (c) as to the making of applications (whether to a Court or a Judge or to an officer of the Court) to fix, vacate or alter any such date and, in particular,

requiring any such application to be supported by an estimate of the length of the trial and any other relevant information; and

- (d) providing for the holding of callovers of causes, matters and issues which have been entered for trial but in respect of which dates of hearing have not been fixed.

22. (1) Any trial adjourned for further consideration may be re-listed for hearing on the written request of the party having the conduct thereof or of any other party entitled to bring the same on for hearing, or on the order of a Judge.

(2) Where the further consideration is requested by a party he shall on the day of making such request obtain an appointment for further consideration not less than ten days ahead and on the same day shall give notice thereof to the other parties on the record.

(3) Any such request may be in Form No. 26 in Appendix L and any such notice may be in Form No. 27 in Appendix L with such variations as the circumstances may require.

6. Order 58 of the principal rules is amended—

O. 58
amended.

(1) by rescinding rule 6 and substituting the following rule:—

6. (1) Unless the Court or a Judge otherwise orders, an appeal shall be entered for hearing for the first sittings of the Full Court appointed to be held after the expiration of six weeks from the institution of the appeal.

(2) An appeal, not being an application by way of renewal of an *ex parte* application that has been refused, shall be entered for hearing at least fourteen days before the day appointed for the commencement of the sittings.

(3) Unless the Court or a Judge otherwise orders, an appeal shall not be entered for hearing unless the appellant has lodged at the Central Office five copies of the appeal book and such other copies (if any) as the Registrar may require.

(4) On the day on which an appeal is entered for hearing the appellant shall serve each respondent separately represented with notice of the entry and with two copies of the appeal book.

(5) Where the appellant does not enter the appeal for hearing as prescribed by this rule, any respondent may apply to the Full Court, by motion upon notice, for an order dismissing the appeal for want of prosecution.;

(2) by rescinding rule 7; and

(3) by rescinding subrules (4) and (16) of rule 13.

O. 59
amended.

7. Order 59 of the principal rules is amended—

(1) by adding after rule 5 the following rule:—

5A. An appeal from a Local Court shall not be entered for hearing unless the appellant has applied to the Registrar for an appointment to settle the list and index of documents to constitute the record for the purpose of the appeal.;

(2) by rescinding rule 9 and substituting the following rule:—

9. (1) An appellant in an appeal from a Local Court shall, not less than fourteen days before the commencement of the sittings for which the appeal has been entered, lodge at the Central Office five copies of the appeal book and such other copies (if any) as the Registrar may require and shall serve each respondent separately represented with two copies of the appeal book.

(2) Where the appellant fails or neglects to comply with subrule 1 of this rule—

(a) the appeal shall not be listed for hearing except upon the direction of the Chief Justice; and

(b) any respondent may apply to the Full Court, by motion upon notice, for an order dismissing the appeal for want of prosecution.; and

(3) by rescinding rule 10 and substituting the following rule:—

10. Subject to this Order, the provisions of these rules relating to appeals from a Judge shall apply so far as is practicable to and in relation to appeals from Local Courts.

Form No. 1
in App. A,
Part I and
certain
other forms
amended.

8. Each of the following forms in the appendices to the principal rules, namely:—

Form No. 1 in Appendix A, Part I;

Form No. 1 in Appendix B;

Form No. 1 in Appendix C, Section I;

Form No. 1 and Form No. 2 in Appendix D, Section I;

the first Form in Appendix E, Section I;

the first Form in Appendix E, Section II;

Form No. 1 in Appendix F;

Form No. 1 and Form No. 10 in Appendix G;

Form No. 1 in Appendix H;

Form No. 1 in Appendix J;

Form No. 1, Form No. 30, Form No. 40, Form No. 41, Form No. 43, Form No. 44, Form No. 48, Form No. 52, Form No. 54 in Appendix K; and

Form No. 1 in Appendix L,

is amended by deleting the passage, “, 19 [here put the letter and number] .” and substituting the passage, “No. of 19 .”.

Form No. 16
in App. B
rescinded.
Application.

9. Form No. 16 in Appendix B to the principal rules is rescinded.

10. (1) The amendments to the principal rules effected by rules 3 and 8 of these rules do not apply to causes commenced before the first day of January 1970.

(2) The amendments to the principal rules effected by rules 4, 5, 6, 7 and 9 of these rules (other than the amendments relating to the manner of fixing dates of trial) do not apply to causes, matters and issues in respect of which entries for trial or hearing were made before the first day of January, 1970.

(3) Except as provided by subrules (1) and (2) of this rule, the amendments to the principal rules effected by these rules apply, after the first day of January 1970, to and in relation to causes and matters commenced before or after that date.

Dated the 17th day of November, 1969.

L. W. JACKSON,
Chief Justice.

J. E. VIRTUE,
Senior Puisne Judge.

R. V. NEVILE,
Puisne Judge.

JOHN HALE,
Puisne Judge.

FRANCIS BURT,
Puisne Judge.

JOHN WICKHAM,
Puisne Judge.