

[1893]



SUPPLEMENT

TO THE

VICTORIA GOVERNMENT GAZETTE

OF FRIDAY, SEPTEMBER 10, 1869.

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No. 49.]

WEDNESDAY, SEPTEMBER 15.

[1869.

RULES, ORDERS, AND FORMS, FOR REGULATING THE PRACTICE AND PROCEEDINGS
IN COUNTY COURTS, AND THE FEES AND COSTS ALLOWABLE TO PRACTI-
TIONERS, AND EXPENSES TO BE ALLOWED TO WITNESSES IN SUCH COURTS.

WE, ROBERT WILLIAMS POHLMAN, JOHN WARRINGTON ROGERS, and JOHN GEORGE FORBES, Esquires, being three of the County Court judges, have, under the powers vested in us by the "*County Court Statute 1869*," framed the following rules and orders for regulating the practice and proceedings in the County Courts, and forms of proceedings therein, the following form of cases upon appeal to the Supreme Court, and have framed the following rules and orders for determining the time within which such appeal shall be prosecuted; and have fixed the following scale of fees and costs to be allowed to practitioners in the said County Courts; and have framed the following rules and forms for keeping registers, books, entries, and accounts, by registrars and other officers, in the said Courts; and have fixed the following scale of expenses to be allowed to witnesses in the said courts. And we do hereby certify the same under our hands to a law officer of the Crown, namely, the Honorable JAMES JOSEPH CASEY, Solicitor-General, accordingly.

ROBERT WILLIAMS POHLMAN,
J. WARRINGTON ROGERS,
JOHN GEORGE FORBES.

Submitted to me, and published as directed by the "*County Court Statute 1869*."

J. J. CASEY,
Solicitor-General.

Crown Law Offices,
Melbourne, September 14, 1869.

No. 49.—SEPTEMBER 15, 1869.—1.

ORDER I.

TIME WHEN RULES COME INTO OPERATION.

The rules, orders, and forms now in use in County Courts, and the fees and costs to practitioners, and the expenses to witnesses, and the rules and forms for keeping registers, books, entries, and accounts, by registrars and other officers, in the said courts shall, on and from the first day of October, 1869, cease to be followed, used, charged, and taken; and, in lieu thereof, the following shall, on and from such day, be the rules, orders, and forms, and the fees and costs to practitioners, and the expenses to witnesses in force and to be followed, used, charged, and taken in the said courts.

Interpretation.

In these orders the following words shall have the several meanings hereby assigned to them over and above their ordinary meanings, unless there be something in the subject or context repugnant to such construction, viz.:

The words "The Act" shall mean the "County Court Statute 1869."

The word "party" shall mean a party to an action, suit, or proceeding; and "person" shall mean any person, whether a party to the suit or proceeding or not; and the words "person" or "party" shall include a body politic or corporate.

The word "affidavit" shall include statutable affirmations, and the word "sworn" shall include affirmed according to the Statute.

The word "court" shall mean the County Court having jurisdiction in the action, suit, or proceeding; and the words "judge" and "registrar" shall respectively mean the judge and registrar, and assistant registrar, of that court.

The word "practitioner" shall mean either a barrister or an attorney indifferently.

The word "attorney" shall mean attorney of the Supreme Court.

The word "minister" shall mean the Responsible Minister of the Crown in whose department "the Act" is administered.

ORDER II.

APPLICABLE TO ALL JURISDICTIONS.

Sitting of Court and general order of Business.

RULE 1.—Not later than the first fortnight in the month of December in each year, the several Judges shall forward to the Minister notice of the days fixed by them for holding their several Courts throughout the following year.

RULE 2.—All County Courts shall be opened at such hour, not earlier than nine o'clock a.m., as the judge shall direct, and close as soon after four o'clock p.m. as the cause then being heard shall be ended, unless the convenience of both parties in some particular cause or causes shall induce the judge then presiding to extend the sitting to a later period of the day.

RULE 3.—A separate list of causes and matters in each jurisdiction, viz., common law, equity, and probate, shall be made out by the registrar; and the causes and matters in each list will be called on in the order in which they stand in the list; but defended causes shall be postponed until the undefended causes in the list then before the Court have been disposed of; but this rule may be varied where the convenience of suitors may seem to the judge to render a variance of the rule desirable.

RULE 4.—The lists provided in the foregoing rule will be called on in the following order, viz.:

1. Common Law.
2. Equity.
3. Probate.

Notices.

RULE 5.—Where by these rules any party is required to give notice according to a form mentioned in the Schedule, it shall be sufficient if the notice given complies substantially with such form.

RULE 6.—All letters or process sent by post by or to the officers of the Courts, or by or to parties in a cause or by or to practitioners on their behalf, shall be prepaid.

Registrar's Duties.

RULE 7.—The registrar shall attend the sitting of the Court, and shall also attend the judge when sitting in chambers; unless his attendance be excused by the judge.

RULE 8.—The registrar shall have the custody of the seal of the Court, and, in addition to the register, shall keep a suitors' cash-book, suitors' fund and fee book.

RULE 9.—The register shall be kept in three parts. Part I. Common Law; Part II. Equity; Part III. Probate. And all costs shall be entered in the part of the register in which the cause or proceeding is classed.

RULE 10.—The registrar shall in the suitors' cash-book enter all moneys other than fees of Court payable to the Crown or to the bailiff, received from or on behalf of suitors, and all moneys paid to or on behalf of suitors; and such book shall be kept in such a manner that at the end of the first week in each month the balance of suitors' moneys in Court shall clearly appear.

RULE 11.—The registrar shall in the suitors' fund-book enter all moneys other than fees of Court payable to the Crown or to the bailiff, received from or on behalf of the suitors, and all moneys paid to or on behalf of the suitors in each cause.

RULE 12.—The registrar shall enter in the fee-book all fees of Court (including bailiff's fees), and all fines which he shall receive, and the disposal thereof.

RULE 13.—The registrar shall enter in the register in the part in which the cause, matter, or proceeding is classed, all notices sent by him, and all notices received by him; and notices so sent and received shall be entered by him on the same day on which the same are sent and received.

Bailiff's Duties.

RULE 14.—Every bailiff shall use all dispatch in the execution of warrants placed in his hands, and shall keep a book to be called the warrant-book, in which he shall enter every warrant which he has been required to execute, and shall from time to time state therein what he shall have done under each warrant; and if the same be not executed within one calendar month from the day of its delivery to him, why it was not executed; and shall at all reasonable times give to a suitor, or to the practitioner engaged on his behalf, every information that he may reasonably require, as to the execution or non-execution of any warrants which have been issued at his instance.

RULE 15.—Every bailiff having or receiving any money by virtue of any process issuing out of the Court of which he is bailiff, or by virtue of process which he shall have received for execution out of any other Court, shall, when practicable, within twenty-four hours, or, if not practicable within that time; then within three days of the receipt thereof, pay over the same to the registrar of such Court, and shall return all process to the registrar to be filed by him.

RULE 16.—Every bailiff in whose hands any summons shall be placed for service, shall serve or cause the same to be served with all reasonable dispatch, and shall, when practicable, immediately after the service thereof make or cause to be made the necessary affidavit of service, and forward the summons and affidavit to the party from whom he received the same for filing with the registrar.

Juries.

RULE 17.—Notice that a jury is required to try any action under Part II. of this Act shall be in the form in the Schedule, and must be delivered, together with the fee of Two pounds, to the registrar ten days before the return day of the summons, and the notice must be given to or sent by post to the opposite party three days before such return day; but where the jury is required by the plaintiff, he may insert on the summons "For trial by jury," and in that case no further notice to the defendant will be necessary; and when the defendant requires a jury to try the action, he may insert in the notice of defence or special defence (if any) the words "For trial by a jury," and in that case no further notice to the plaintiff will be necessary; but in every case in which a jury is required by either party, the party requiring a jury must give the notice hereinbefore provided and pay the fee to the registrar.

RULE 18.—The last preceding rule will not apply when the judge, on the application of the party or otherwise, directs any cause or any issue of fact to be tried by a jury, but he will in such case give such directions as the exigency of each case will require.

Affidavits.

RULE 19.—Every affidavit shall be in the first person, and be divided into paragraphs numbered consecutively, and each paragraph shall be, as nearly as may be, confined to a distinct portion of the subject.

RULE 20.—The addition and true place of abode of every person making an affidavit shall be inserted therein; and in every affidavit made by two or more deponents, the names of the several persons making such affidavit shall be written in the jurat, and no affidavit shall be read or made use of in the jurat of which there shall be any interlineation or erasure, or in the body of which any alteration or interlineation shall appear, unless such last mentioned alteration or interlineation shall be initialed by the person before whom the affidavit is sworn.

RULE 21.—Every affidavit intended to be used in Court or before a judge, shall be entitled in the cause, matter, or proceeding, and shall before the same is so used be sealed by the registrar with the seal of the Court.

RULE 22.—Every affidavit made by an illiterate person shall be read over and explained to him by the person taking the same; and when any affidavit is sworn by any person who from his or her signature appears to be illiterate, the officer taking such affidavit shall state in the jurat that he read over and explained the affidavit to the party making the same, and that such party seemed perfectly to understand the same, and also that the said party wrote his or her mark or signature in the presence of the officer taking such affidavit.

RULE 23.—Every affidavit used in Court or before a judge shall be delivered to and filed by the registrar.

Chamber Business.

RULE 24.—Each judge shall notify in the *Gazette* some town within his circuit at which applications for summonses or applications for appointments upon matters disposable in chambers may be made.

RULE 25.—Application for summons returnable before a judge in chambers, shall be made to the registrar, at such town, who under the direction of the judge will fix a day when and a place where the summons may be made returnable.

RULE 26.—Every summons returnable at chambers shall set out in plain and distinct terms the nature of the application to be made, and shall be signed and sealed by the registrar of the court in which the action, suit, or proceeding is pending.

RULE 27.—The grounds of the application shall be stated either upon the face of the summons or in an affidavit.

RULE 28.—Copies of affidavits intended to be used upon the hearing of any judge's summons must be served upon the opposite party before being used, and in sufficient time to enable the party served to answer, on affidavit, any statement which he intends to contest.

RULE 29.—No order made upon affidavits shall be sealed, unless the affidavits used by the party obtaining the order be filed.

Interpleader Business.

RULE 30.—An interpleader summons, under section 92 of the Act, shall be in the form in the Schedule, or to the like effect, and may be made returnable either before the judge sitting in Court at an ordinary or adjourned sitting, or before the judge in chambers.

[See further as to Interpleader Rules in Order III., under head "Interpleader."]

COSTS, FEES, AND EXPENSES.

Costs and Fees to Practitioners.

RULE 31.—The scales of fees and costs as set out in the Schedule shall be the scales of fees and costs to be allowed to practitioners in the County Courts in the various jurisdictions exer-

cised under the Act. To entitle a party to recover against the opposite party the costs of appearing by both barrister and attorney, he must give three clear days notice to the opposite party of his intention to do so.

Witnesses' Expenses.

RULE 32.—The scale specified in the Schedule, shall be the scale of allowances to witnesses.

RULE 33.—If any witness shall, before he is sworn, request the judge to fix the amount to be paid to him as a witness, the judge shall do so, and no witness shall be compelled to give his evidence until the amount so fixed shall have been paid to him.

Forms.

RULE 34.—The several forms set out in the Schedule to those orders, or forms to a like effect, shall be the forms of proceedings in the several courts.

Computation of Time.

RULE 35.—In all cases in which any particular number of days not expressed to be clear days is prescribed by these rules or by the practice of the Court, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall fall on a Sunday or holiday, in which case the time shall be reckoned exclusively of that day also.

RULE 36.—In all cases where anything is required by the rules of practice to be done within a period of twenty-four hours, or within a period of forty-eight hours, no part of Sunday, Christmas Day, Good Friday, the Saturday next after Good Friday, or of any day appointed by His Excellency's proclamation for a public fast, humiliation, or thanksgiving, or any day on which the public offices or offices of the Courts shall be closed by order of the Governor in Council, shall be included in the computation of such period.

ORDER III.

ACTIONS AT LAW AND PROCEEDINGS UNDER PART II. OF ACT.

Plaint and Summons to appear.

RULE 1.—Every action under Part II. of Act shall be commenced by plaint, an entry of which shall be made by the registrar in the register, Part I., upon the application of the person desirous to bring the action or of the practitioner engaged in his behalf; and the entry in such register shall contain the date of the entry, the names and last known places of abode of the parties, the cause of action, and, where the demand is pecuniary, the amount sought to be recovered, and when compensation for trespass to land, or the land itself or a specific chattel, is sought to be recovered, a general description of the land or specific chattel.

RULE 2.—The plaint required by the last preceding rule shall consist of a simple and concise statement of the plaintiff's true cause of action, of which examples are given in the Schedule to these rules, and in actions of ejectment (or in which the remedy by ejectment is sought), and in actions for trespass to land, or in which damages for trespass to land are sought, shall have drawn upon or annexed thereto a plan, distinctly describing, by certain delineation, the land the subject of the action; and such plaint shall be written or printed, or partly written and partly printed, in a summons, bearing the number of the plaint, and hereafter referred to as the "plaint summons;" and such plaint and summons shall be in the form or to the effect of those in the Schedule, according as the circumstances of the case may require, excepting in those actions for money demands in which the plaintiff shall elect to proceed under section 56 of the Act, in which cases the statement of the claim and the summons, as given in Schedule V. to the Act, shall be a sufficient statement of the plaint and sufficient summons.

RULE 3.—Every plaint summons must contain the number of the plaint, and must be dated on the day on which the plaint is entered in the register, and must state the name, address, and occupation of the plaintiff, and of the person intended to be brought before the Court as defendant; and where any person sues or is sued in a representative character, he shall be so described in the summons; and every summons must be sealed with the seal of the Court.

RULE 4.—No misnomer or inaccurate description of any person, cause of action, date, or item of demand, or place in any

plaint or plaint summons, shall vitiate the same if the person, cause of action, date, or item of demand, or place be therein described so as to be reasonably known; and the Court or judge may, at any stage of the cause, make such amendments therein as he shall think just.

RULE 5.—Any erasure or interlineation in a plaint summons at the time of the sealing thereof shall be sealed by the registrar, and after the sealing of the plaint summons no alteration whatever shall be made therein without the leave of the judge, who shall initial any amendment or alteration which he shall make or direct to be made therein.

RULE 6.—In order to secure the due service upon the plaintiff of all notices, the trade, business, or profession of the plaintiff, as well as his address by the post; and also the surname and place of business of the practitioner engaged on his behalf (if any) in the action, must be stated at the foot of every such plaint summons, and every copy thereof; but the omission of such statement shall not invalidate the proceedings or be deemed an irregularity, but shall disentitle the plaintiff to the costs of the plaint summons and of the service.

RULE 7.—Every plaint summons may be made returnable either on the first day of the sitting at the next Court after the entry of the plaint, or by leave of the judge or registrar at any subsequent court to be held within six months; and the plaint in ejectment must be issued thirty-two clear days before the return day, and in all other actions eighteen clear days before the return day.

RULE 8.—When a plaint summons has not been served by the bailiff in any case in which the bailiff may have been required to serve the same, a fresh plaint summons may upon the order of the judge be issued without payment of any further fee for such summons, except a fresh bailiff's fee for service where the same is required to be served by the bailiff, and the failure of the service of the first plaint summons was not occasioned by the negligence of the bailiff; but where the bailiff was guilty of neglect he shall serve the fresh plaint summons without further fee.

Particulars of Demand.

RULE 9.—In all actions for goods bargained and sold and for goods sold and delivered, and in actions in which a special summons shall be issued under section 56 of the Act, and in actions of replevin, detailed particulars of demand, including dates, items, prices, and value, shall be endorsed upon or annexed to the plaint summons, but inaccuracies or omissions of detail in particulars shall not vitiate the same; but in all other actions no detailed particulars beyond the statement of the cause of action and the amount claimed as required by the preceding rules and the forms and examples given in the Schedule to these rules to be stated in plaint summons shall be necessary.

RULE 10.—In the instances in which, under the preceding rule, detailed particulars of the plaintiff's demand are necessary, the same shall be written or printed; or partly written and partly printed, and intitled in the cause, and shall be endorsed upon or annexed to the plaint summons.

RULE 11.—Upon application to the judge in chambers upon summons or to the court upon notice, the judge or court may in every case in which he or it thinks fit, and whether detailed particulars have been delivered or not, order further and better particulars of the plaintiff's claim or demand to be delivered; and such order may be made either with or without terms as to payment of costs by either defendant or plaintiff, or as to adjournment or otherwise, as to the court or judge shall seem just.

Plaint Notes.

RULE 12.—At the time of sealing the plaint summons the registrar shall give to the plaintiff, or to the practitioner engaged for him, a note under his hand and the seal of the Court according to the form in the Schedule; and no money shall be paid out of court to the plaintiff or such practitioner unless on production of the plaint note, or, in the event of the plaint note being lost or destroyed, by order of the judge.

Time for Issuing, Filing, and Serving Plaint Summonses, and Mode of Service.

RULE 13.—Every special plaint summons issued under section 56 of the Act, must be issued at least twenty-three clear days before

the return day thereof, and must be served either by the bailiff of the Court or by the plaintiff's attorney or by a clerk in the permanent employ of such attorney, by delivering a copy to each of the defendants personally twenty-one clear days at least before the return day; and in order to enable the registrar to give the notice required by the 56th section of the Act, the plaintiff must file the plaint summons, with an affidavit of service endorsed thereon, within five days after the plaint summons shall have been served, but the judge may permit the summons to be filed at a later day; but in any case in which the plaintiff neglects to file the plaint summons within five days of the service the plaintiff shall be deemed to have waived his right to notice from the registrar, as to whether the defendant has or has not given notice of his intention to defend.

RULE 14.—Every plaint summons in ejectment must be issued thirty-two clear days before the return day thereof, and be served in the manner prescribed for the general service of plaint summonses, thirty clear days at least before the return day thereof; but if the defendant cannot be found, and his place of abode shall not be known, or admission thereto cannot be obtained for serving the plaint summons, a copy of the summons shall be affixed to the door of the dwelling-house or to some conspicuous part of the property sought to be recovered, and such affixing shall be deemed good service on the defendant.

RULE 15.—Every plaint summons in all other actions must be issued eighteen clear days before the return day thereof, and be served fifteen clear days at least before the return day thereof.

RULE 16.—Every plaint summons, whatever the cause of action, shall be filed with the registrar, with an affidavit of service by the person effecting the service and stating the time and mode of service endorsed thereon or annexed thereto, ten clear days at least before the return day thereof, unless the judge shall direct the registrar to file the same at a later date *nunc pro tunc*; and if the plaint summons be not filed under this rule the plaintiff shall be deemed to have discontinued the action, and the defendant shall be entitled to his costs against the plaintiff upon an order by the judge.

Service of Plaint Summons, other than Special Plaint Summons, under, Section 56 of the Act.

RULE 17.—The service of the plaint summons, except in the cases in these rules specially provided for, shall be either personal, or by delivering the same to some person apparently sixteen years of age, an inmate at the place of dwelling or place of business of the defendant; but no place of business shall be deemed the place of business of the defendant unless he shall be the master or one of the masters thereof.

RULE 18.—Where a defendant is living at a hotel or boarding-house, or living or serving on board of any ship or vessel, it shall be sufficient service to deliver the plaint summons to the person at the hotel or boarding-house, or on board the ship or vessel, who is at the time of such service apparently in charge of such hotel or boarding-house, ship or vessel.

RULE 19.—Where a defendant is residing or quartered in any barracks and serving Her Majesty as a soldier or marine, it shall be sufficient service to deliver the plaint summons at the barracks to the adjutant of the corps, or to any officer or sergeant of the company or troop to which such soldier or marine belongs.

RULE 20.—Where a defendant is a prisoner in a gaol, it shall be sufficient service to deliver the plaint summons at the gaol to the governor or any person appearing to be the head officer in charge thereof.

RULE 21.—Where the defendant is employed and dwells in any lunatic or other public asylum, or in any common gaol or house of correction, it shall be sufficient service to deliver the plaint summons to the gatekeeper or lodgekeeper of the asylum, gaol, or house of correction.

RULE 22.—Service of the plaint summons must be effected on a corporation in the manner prescribed by the charter or Act of incorporation, and when no particular mode is prescribed, then the service may be effected by delivering the same to the secretary or other officer at the office of the corporation.

RULE 23.—Service of the plaint summons may, by leave of the judge obtained upon affidavit stating some difficulty of effecting service under the preceding rules, be substituted by such mode of service as the judge shall think fit.

RULE 24.—If any dispute shall arise, or the judge shall entertain any doubt as to the due service of any summons, the judge shall be at liberty to examine witnesses and to decide whether such service has been good or otherwise, and either to proceed to hear or defer the hearing as he shall think fit, or under special circumstances to order that a person insufficiently served if notice of the plaint summons shall have come to his knowledge, shall be deemed a defendant, and the cause shall proceed as though such defendant had been regularly served.

RULE 25.—Admission in writing of service by the practitioner acting on behalf of defendant will be sufficient, and in that case no affidavit of service will be necessary, but such admission must be filed with the plaint summons.

Service of Summonses generally.

RULE 26.—The above rules as to the mode, but not as to the time of service of plaint summons, shall apply to the mode of service of all summonses whatsoever, except where otherwise directed by statute or by these rules.

Actions by Consent.

RULE 27.—Where the parties in pursuance of section 39 of the Act shall consent to try any action in a County Court, an entry of the plaint shall be made in the register, and a plaint summons shall be issued as in other cases, and all the rules and practice of the Court shall be adopted in such cases as far as the same are applicable; and such consent shall be endorsed upon the plaint summons in the following terms:—"We, A. B., of, &c., and C. D., of, &c., being the plaintiff and defendant named in the within plaint summons, hereby express our consent in writing under the provisions of section 39 of the '*County Court Statute 1869*,' that the causes of action stated in the plaint in the within plaint summons shall be tried in the County Court at [name place where cause is to be heard.]

A.B.
C.D.

Witness to the signatures of the
said A. B. and C. D.
Y. Z."

Actions of Contract sent for Trial by Supreme Court.

RULE 28.—Where a judge of the Supreme Court orders a cause to be tried in a County Court under section 42 of the Act, the plaintiff shall, with the original writ and the judge's order, lodge with the registrar of the County Court named in such order a statement of the name, address, and occupation of himself, and of the defendant, and if the writ has not been specially indorsed, a statement of the particulars of his demand or cause of action, and as many copies of such last mentioned statements as there are defendants; and thereupon the registrar shall appoint a day for the hearing of the cause, and shall indorse on the writ the date of the lodgment thereof and of such statement.

RULE 29.—Unless the judge of the County Court shall otherwise order, any cause so sent by order of a judge of the Supreme Court to be tried in a County Court shall be heard at the next sittings of such County Court for which summonses on plaints are then being made returnable; and the registrar shall give notice of the day to the parties or their attorneys, by post or otherwise, ten days before such day; and where a statement of the particulars of the plaintiff's demand or cause of action shall have been lodged, shall, with the notice, send to the defendant, or to each of the defendants if more than one, a copy thereof, sealed with the seal of the Court.

Action of Tort remitted by the Supreme Court.

RULE 30.—Where any action of tort is remitted by order of a judge of the Supreme Court under section 43 of the Act to be tried in a County Court, the plaintiff shall, at whatever stage of the proceedings such order is made, with the original writ and the judge's order, lodge with the registrar of the County Court named in such order a statement of the names, addresses, and descriptions of himself and of the defendant, and a concise statement in writing, signed by himself or his attorney, of his cause of action, and as many copies thereof as there are defendants, and thereupon the registrar shall appoint a day for the hearing of the cause, and shall indorse on the writ the date of the lodgment thereof and of such statement.

RULE 31.—Unless the judge of the County Court shall otherwise order, any action of tort so remitted by order of a judge of the Supreme Court to be tried in a County Court, shall be heard at the next sittings of such County Court for which summonses on plaints are then being made returnable; and the registrar shall give notice of the day to the parties or their attorneys, by post or otherwise, ten days before such day, and shall, with the notice thereof, send to the defendant, or to each of the defendants, if more than one, a copy of the statement of the plaintiff's cause of action, sealed with the seal of the Court.

RULE 32.—Where, in any action for libel or slander remitted under section 43 of the Act to be tried in the County Court, the defendant intends to avail himself of "*The Statute of Wrongs 1865*,"* he shall give notice in writing of such intention, signed by himself or by a practitioner engaged on his behalf, to the registrar six clear days at least before the day appointed for the trial of the action.

Judgment by Confession.

RULE 33.—In consents to judgment under section 55 of the Act taken before a justice of the peace or before an attorney, the person taking the same shall state in the attestation that he read over and fully explained the consent to the defendant, and that he appeared to understand the same before he signed it; and without this attestation no consent shall be filed or judgment entered upon it, unless it be a consent taken before the registrar.

Judgment by Default.

RULE 34.—In actions brought under section 56 of the Act, the registrar shall, after the plaint summons and affidavit of service shall have been filed, and after the expiration of the period fixed within which the defendant should give notice of his intention to defend, and in default of such notice, upon the application of the plaintiff or the practitioner acting for him, enter up judgment in the register for the plaintiff for the debt and costs as taxed by the registrar and interest (if any) as computed by him, and the time when or within which or by what instalments (if any) the debt and costs are to be paid.

Arbitration.

RULE 35.—The order to refer under section 62 of Act may be made before, upon, or after the return day; and if either party seek to set aside the award he shall, within three days after he has received notice of the award, give notice to the opposite party of his intention to apply to the Court or a judge for that purpose, and in default of such notice judgment shall be forthwith entered up in accordance with the award.

RULE 36.—Where the parties agree to refer any action or other matters to the judge, such reference may be taken either in Court or in chambers, as the judge shall think fit.

Payment into Court.

RULE 37.—Where the defendant is desirous of paying money into Court, it shall, except where otherwise expressly provided, be paid six clear days before the return day, with court fees proportionate to the amount paid in, and the practitioner's costs, if any, which shall be fixed by the registrar; and the registrar shall, within twenty-four hours from the time of such payment, send to the plaintiff notice thereof by post: Provided that, at any time before the return day, the defendant may pay money into Court, with costs, and the registrar shall give notice thereof to the plaintiff as aforesaid; but where money is so paid in less than six clear days before the return day, it shall be lawful for the Court to order the defendant to pay such costs as the plaintiff shall have incurred in preparing for trial before the notice of such payment was received by him or in attending the Court.

RULE 38.—If the plaintiff elect to accept, in full satisfaction of his claim, including costs, such money as shall have been paid into Court by the defendant, and shall send to the registrar and to the defendant by post, or leave at the registrar's office and at the defendant's place of dwelling or place of business, a written notice, stating such acceptance, within such reasonable time before the return day as the time of payment by the defendant has permitted, the action shall abate, and the plaintiff shall not be liable to any

* This Statute enables a defendant to apologize, or to pay money into Court by way of amends, coupled with an apology.

costs; but in default of such notices from the plaintiff, he shall be deemed to have elected to proceed, and the defendant shall be entitled to judgment for his costs incurred subsequently to payment into Court unless the plaintiff shall recover a judgment for a larger amount than the sum paid into Court, and the money paid into Court shall remain till after the hearing as a security for payment thereon of the defendant's costs.

RULE 39.—Payment into court may be made either in respect of the whole of the cause of action, or of such part thereof only as the defendant shall state in his notice.

RULE 40.—Where a defendant, in an action of libel commenced in a County Court or remitted under section 43 to be tried in a County Court, pays money into court under section 54, the last two rules shall apply to and be observed with reference to such payment into court so far as they are applicable.

RULE 41.—Payment into court shall operate as an admission *pro tanto* of the cause of action in respect of which it is paid, but shall not be given in evidence against the defendant at the hearing.

RULE 42.—No money shall be taken out of court by the plaintiff unless on filing the plaint note, or by the defendant unless on filing the summons on the plaint, except by order of the judge. Payment out of court to any person producing and filing such note, summons, or order shall be sufficient.

Defences.

RULE 43.—Where the defendant intends to rely on a set-off, illegality, infancy, coverture of defendant, a statute of limitation, or discharge of defendant under any Insolvent Act, the truth of the libel or slander, or an equitable or statutory defence, his notice shall contain the particulars hereinafter mentioned with reference to such grounds of defence: Provided, that in case of non-compliance with those rules which apply to notice of such defence, and of the plaintiff's not consenting at the hearing to permit the defendant to avail himself of such defence, the judge may, on such terms as he shall think fit, adjourn the hearing of the cause to enable the defendant to give such notice, within a reasonable time to be fixed by the judge before the day of adjournment.

RULE 44.—Where a defendant intends to set-off any debt or demand alleged to be due to him by the plaintiff, he shall give notice thereof in writing to the plaintiff or to his attorney, and deliver to him a statement of the particulars of such set-off, at least six clear days before the return day.

RULE 45.—Where a defendant intends to rely upon the defence of illegality, he shall give notice thereof in writing to the plaintiff or his attorney, and deliver to him a statement of the nature of the illegality, at least six clear days before the return day.

RULE 46.—Where a defendant intends to rely on the defence of infancy, he shall give notice thereof in writing to the plaintiff or to his attorney at least six clear days before the return day, setting forth in such notice, so far as he is able, the place and date of his birth.

RULE 47.—Where a defendant intends to rely on the defence of coverture, she shall give notice thereof in writing to the plaintiff or to his attorney at least six clear days before the return day, setting forth in such notice, so far as she is able, the place and date of marriage, together with the Christian name and surname of her husband.

RULE 48.—Where a defendant intends to rely on the defence of any statute of limitations, he shall give notice thereof in writing to the plaintiff or to his attorney, at least six clear days before the return day.

RULE 49.—Where a defendant intends to rely on the defence of a discharge under any statute relating to bankrupts or for the relief of insolvent debtors, he shall give notice thereof in writing to the plaintiff or to his attorney at least six clear days before the return day, setting forth in such notice the date of the order of sequestration, certificate, discharge, or final order, and the Court by which such certificate, discharge, or order was granted or made.

RULE 50.—Where in any action for libel or slander the defendant relies as a defence upon the fact that the libel or slander is true, or of any defence or mitigation under, "*The Statute of Wrongs 1865*," he shall give notice thereof in writing to the plaintiff or to his attorney at least six clear days before the return

day, setting forth in such notice that the libel or slander complained of is true in substance.

RULE 51.—Where a defendant intends to rely on an equitable defence, he shall give notice thereof in writing to the plaintiff or to his attorney at least six clear days before the return day, and shall therein state the fact constituting such equitable defence.

RULE 52.—When in any action of tort the defendant relies upon a statutory defence, he shall give notice thereof in writing to the plaintiff or to his attorney at least six clear days before the return day, and shall mention the number and section of the statute on which he relies.

RULE 53.—In all cases mentioned in the last nine rules the party thereby required to give the notice shall, unless otherwise expressly ordered, at least six clear days before the return day, deliver to the registrar of the Court, who shall make an entry thereof, an additional copy to be filed for use of the judge; and the notices required may be sent by post, provided they be posted, prepaid, in time for delivery within the time limited.

RULE 54.—Where the defence is a tender, such defence shall not be available unless, before or at the hearing of the cause, the defendant pays into Court (which may be without costs) the amount alleged to have been tendered.

Evidence, Inspection of Documents, Discovery of Documents, and Admissions.

RULE 55.—Any party requiring a summons to compel the attendance of witnesses shall file a præcipe with the registrar, in the form in the Schedule.

RULE 56.—In a summons containing a clause requiring the production of books or papers, the name of one witness only shall be inserted, excepting in the case of copartners, when all the members of the firm may be included in one summons.

RULE 57.—In other cases any number of witnesses may be inserted in the summons, and in the copy of the summons served the name of the witness to be served only need be inserted.

RULE 58.—The original summons must, in all cases, be signed and sealed by the registrar or assistant registrar.

RULE 59.—Application to the judge for inspection of property or of documents, or to compel the opposite party to disclose what documents are in his possession or under his control, under Part II. of the "Evidence Statute 1864" or under section 66 of the Act, shall be made on summons returnable in chambers, supported by an affidavit disclosing the facts upon which the application is based, and the summons must be served five clear days at least before the day of hearing.

RULE 60.—In exceptional cases the application may be made to the court, upon notice, supported by affidavit disclosing the facts upon which the application is based, and stating the reason for the delay in making the application, and any order made thereon shall be made upon such terms as to postponement of the hearing and costs as to the judge shall seem just.

NOTE.—As to service, see Rule 26, "Service of Summonses generally."

Admission.

RULE 61.—Either party may call upon the other party by notice in writing to admit, saving all just exceptions, any document to be used in any action; and in case of refusal or neglect to admit the same, the cost of proving such document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall be of opinion that the refusal was reasonable. And no costs of proving any document shall be allowed, unless such notice shall have been given, except in cases where the omission to give the notice has in the opinion of the judge saved expense.

RULE 62.—That an affidavit of the party, or of the practitioner engaged in his behalf in the action, or of a clerk to such practitioner, of the due signature of any admission made in pursuance of such notice, and indorsed upon or annexed to the admission, shall be sufficient evidence of such admission.

Proof of Notice to Produce.

RULE 63.—Service of notice to produce in respect of which notice to admit shall have been given, and an admission shall have been refused, may be proved, either orally at the hearing or by affi-

davit of the person who shall have served the same, and the cost of proving the same shall be paid by the party refusing to admit the service.

Discontinuance.

RULE 64.—The plaintiff may discontinue his action at any stage of the proceedings, without an order for that purpose, upon giving the defendant and to the registrar notice in writing to that effect; and the defendant may thereupon file such notice and take out an appointment to have his costs taxed by the registrar, of which he shall give notice by post to the plaintiff; and when the defendant attends the taxation, the defendant shall produce to the registrar the notice of discontinuance, whereupon (whether the plaintiff attends or not) the registrar shall enter in the register "Discontinued," (which shall be equivalent to a nonsuit), and shall proceed to tax the defendant's costs, and enter judgment for the defendant for the amount of the taxed costs; and if the costs be not paid, the defendant may recover the same by execution.

Adjournment of Cause.

RULE 65.—The parties to any cause, at any time before the cause is called on, may, by consent in writing, postpone the hearing to such subsequent court as the judge shall direct.

RULE 66.—When a cause is adjourned, no order of adjournment shall be served on either party, unless by direction of the judge.

RULE 67.—When anything required by the practice of the Court, or by order of the judge, to be done by either party, before or during the hearing, has not been done, the judge may, in his discretion, and on such terms as he may think fit, adjourn the hearing, to enable or to compel the party to comply with the practice or order.

RULE 68.—Applications to adjourn the hearing, upon the ground of the absence of a material witness, shall be made upon affidavit, or, if the judge permit, upon oral examination.

Hearing.

RULE 69.—Any defendant intending to appear by a practitioner at the hearing shall intimate his intention to the registrar, in order that the cause may be placed in the list of defended causes. But this rule will not apply to a practitioner drawing attention to a defective service or defective process.

RULE 70.—Where a plaintiff avails himself of the provisions of section 49 of the Act, and proceeds against one or more of several persons jointly answerable, the defendant or defendants sued or served may avail himself or themselves of any set-off or other defence to which he or they could be entitled if all the persons answerable were made defendants.

RULE 71.—When, at the hearing of any cause, it shall appear that an action for the same cause is pending in any other Court, the judge shall order the cause to be struck out, with costs, and which shall have the effect of a discontinuance by the plaintiff, unless the plaintiff shall undertake to discontinue the action in such other Court before a day to be named, to which the hearing shall be adjourned; and unless, before such adjourned hearing, such action shall have been discontinued, the cause shall then be struck out, with costs, and the registrar shall enter "Discontinued," and an order for costs to the defendant, in the register; and the defendant shall be entitled to execution for his costs, unless paid within twenty-four hours.

Amendment as to Parties.

RULE 72.—Any application by a party sued alone, where others are jointly answerable, to amend by adding co-defendants, under section 49 of the Act, shall be made upon summons, taken out and served six clear days at least before the return day of the plaint summons, and returnable on any day either before or on the return day of the plaint summons as the registrar may appoint, supported by affidavit, in which shall be set out the names and addresses of the several persons whom it is sought to have made co-defendants.

RULE 73.—Where a person other than the defendant appears at the hearing, and admits that he is the person whom the plaintiff intended to charge, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the cause shall proceed, as to set-off and other matters, as if such person had

been originally named in the summons, and the costs of the person originally named as the defendant shall be in the discretion of the judge.

RULE 74.—Where a party sues or is sued in a representative character, but at the hearing it appears that he ought to have sued or been sued in his own right, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly, and thereupon the cause shall proceed, as to set-off and other matters, as if the proper description of the party had been given in the summons.

RULE 75.—Where a party sues or is sued in his own right, but at the hearing it appears that he ought to have sued or been sued in a representative character, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly, and thereupon the cause shall proceed, as to set-off and other matters, as if the proper description of the party had been given in the summons.

RULE 76.—Where the name or description of a *plaintiff* in the summons is insufficient or incorrect, it may at the hearing be amended at the instance of either party by order of the judge, on such terms as he shall think fit, and thereupon the cause shall proceed, as to set-off and other matters, as if the name or description had been originally such as it appears after the amendment has been made.

RULE 77.—Where the name or description of a *defendant* in the summons is insufficient or incorrect, and the defendant appears and objects to the description, it may at the hearing be amended at the instance of either party by order of the judge, on such terms as he shall think fit, and thereupon the cause shall proceed, as to set-off and other matters, as if the name or description had been originally such as it appears after the amendment had been made; but if no objection is taken to the name or description the cause may proceed and in the judgment, and all subsequent proceedings founded thereon the defendant may be named and described in the same manner.

RULE 78.—In actions by or against a husband, if a wife be improperly joined or omitted as a party, the plaint summons may at the hearing be amended at the instance of either party by order of the judge, on such terms as he shall think fit, and thereupon the cause shall proceed, as to set-off and other matters, as if the proper person had been made party to the suit.

RULE 79.—Where it appears at the hearing that a *greater* number of persons have been made *plaintiffs* than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit, and thereupon the cause shall proceed, as to set-off and other matters, as if the proper party or parties had alone been made plaintiffs.

RULE 80.—Where it appears at the hearing that a *less* number of persons have been made *plaintiffs* than by law required, the name of the omitted person may, at the instance of either party, be added, by order of the judge, if such person shall, either at the hearing or at some adjournment thereof, personally or by writing, signed by him or his agent, consent to become a plaintiff, and the judge shall pronounce judgment as if such person had originally been made a plaintiff; but if such person shall not consent to become a plaintiff in manner aforesaid, either at the hearing or at the adjournment thereof, judgment of nonsuit shall be entered.

RULE 81.—Where it appears at the hearing that a *greater* number of persons have been made *defendants* than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit, and thereupon the cause shall proceed, as to set-off and other matters, as if the proper party or parties had alone been made defendants, and the cost of the person improperly joined as a defendant shall be in the discretion of the judge.

RULE 82.—Where two or more persons are made defendants, and some of them have not been served, the name or names of the defendant or defendants who have not been served, may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit; and thereupon the cause shall proceed, as to set-off and other matters, as if the party or parties whose name or names have not been struck out had alone been made defendant or defendants.

Abatement of Action.

RULE 83.—Where one or more of *several* plaintiffs or defendants shall die *before* judgment, the suit shall not abate, if the cause of action survive to or against the surviving parties respectively.

RULE 84.—Where one or more of *several* plaintiffs or defendants shall die *after* judgment, proceedings thereon may be taken by the survivors or survivor, or against the survivors or survivor, without leave of the Court.

RULE 85.—Where a married woman is sued as a *feme sole*, and she obtains judgment on the ground of coverture, proceedings may be taken thereon, in the name of the wife, at the instance of the husband, without leave of the Court.

Execution by Person not a Party to Suit.

RULE 86.—Execution on a judgment may issue on behalf of any person not a party to the suit by leave of the judge, upon proof of title to the benefit of the judgment, and upon substitution of the name of the new plaintiff, together with a statement of his derivative title for that of the original plaintiff; and the registrar shall give notice of such substitution to the defendant by post, and execution shall not issue upon the judgment until the expiration of six clear days after the posting of the notice.

Proceedings in the nature of Scire Facias.

RULE 87.—Execution on a judgment shall not issue against any person not a party to the suit without a plaint summons upon the judgment, the proceedings upon which shall be the same as in ordinary cases.

RULE 88.—Where a judgment has been given against a person deceased, his executors or administrators may in the same manner be sued upon the judgment.

Ejectment.

RULE 89.—Subject to the provisions as to ejectment in the preceding rules and to the following rules, and to the provisions in the "*Common Law Procedure Statute*," Part II., Practice (II.), Ejectment, so far as such provisions are not altered as to County Courts by these orders and rules, the action of ejectment shall be commenced, carried on, and determined in the same manner as other actions in the County Court.

RULE 90.—All the parties in whom the title is alleged to lie shall be plaintiffs, and the persons alleged to be in possession or apparent possession of the property sought to be recovered shall be defendants; and the statement of the cause of action in the plaint as set out in the plaint summons shall contain a full description of the property sought to be recovered, together with a plan drawn thereon or annexed of the property, and a statement of the annual value of the property, and of the rent if there be any fixed or paid in respect thereof (but the value in rent stated need not be proved by the plaintiff), and a statement of the relation in which the plaintiff seeks to recover possession of the same, and if there be two or more relations in which the plaintiff claims title to the property, each may be stated separately; and if the plaintiff seeks "*mesne profits*," he may demand in the plaint summons damages for the wrongful possession of the property, or bring his separate action for the same.

RULE 91.—Any person not named as defendant in a summons in ejectment shall, by leave of the registrar, be allowed to appear and defend, on filing, twelve clear days before the return day, an affidavit, together with as many copies thereof as there are plaintiffs and defendants, showing that he is in possession, either by himself or his tenant, of the property mentioned in the summons, or some part thereof (such part being described in the affidavit with reasonable certainty).

RULE 92.—Upon such affidavit being filed, the registrar shall enter the name, address, and description of the person filing the same in the register as defendant, in addition to the names of the person or persons originally made defendants, and shall forthwith give notice, by post or otherwise, to the plaintiffs and defendants, or the practitioners retained by them, that the person filing the affidavit has filed the same, and will appear and defend at the trial of the action, annexing to each notice a copy of the affidavit.

RULE 93.—Any defendant in ejectment may give notice in writing, signed by himself or his practitioner, to the registrar, twelve clear days before the return day, that he intends to limit his

defence to a part only of the property mentioned in the plaintiff summons, describing that part in such notice with reasonable certainty, and with such notice he shall deliver to the registrar as many copies thereof as there are plaintiffs; and the registrar shall forthwith send the same, sealed with the seal of the Court, by post to each of the plaintiffs or practitioners retained by them.

RULE 94.—Want of "reasonable certainty" in the description of the property or any part of it in any summons or notice shall not nullify it, but the judge may, if he sees fit, order the description to be amended at the hearing, or he may order an amended description to be delivered, subject in either case to such terms as he may think fit.

RULE 95.—Any action of ejectment may, if either party require a jury to be summoned, be tried by a jury in the same manner and subject to the same rules as other actions tried by juries in the County Courts.

RULE 96.—Every action of ejectment shall be tried as actions in the County Courts, and the question at the trial shall, except in the cases hereafter mentioned in Rules 103. and 106, be whether the statement in the plaintiff summons of the title of the plaintiffs is true or false, and if true, then which of the plaintiffs is entitled, and whether to the whole or part, and if to part, then to which part of the property mentioned in the summons; and the judgment shall be in the form in that behalf provided in the Schedule to these rules, or to the like effect, with such modifications as may be necessary to meet the facts.

RULE 97.—Where the title of the plaintiff shall appear to have existed as alleged in the summons, and at the time of the service thereof, but it shall also appear to have expired before the trial, the plaintiff shall be entitled to a judgment according to the fact that he was so entitled; and for his costs of suit, unless the judge shall otherwise order.

RULE 98.—Where at the hearing any defendant appears and the plaintiff does not appear, the case shall be struck out, and the defendant appearing shall have judgment for his costs; and if the plaintiff appears and no defendant appears, the plaintiff, on proof of the service of the summons and of his title, shall be entitled to judgment for the recovery of possession.

RULE 99.—Where all parties to any action of ejectment agree upon the facts, they may, by leave of the registrar, state a case for the opinion of the judge, and the action shall in such case be heard and determined by the judge upon the facts stated in such case: Provided, that if the parties state a case under this rule they shall deliver to the registrar, six clear days before the return day, two copies, signed by the parties or their respective practitioners, of such case, with the points to be argued stated in the margin; and the registrar shall seal both copies, and forthwith send one of such copies to the judge and file the other.

RULE 100.—Where in an action of ejectment judgment is given for the plaintiff, execution may issue upon a day to be named in the judgment, and if no day be named then it may issue after the expiration of fourteen clear days from the day on which judgment shall have been given, unless the judge shall otherwise order.

RULE 101.—Where any judgment in ejectment has been obtained for recovery of possession and costs, or for recovery of possession, damages for mesne profits and costs, there may be either one warrant or separate warrants of execution, for the recovery of possession, and for the costs, or for possession, or for damages for mesne profits and costs, at the election of the plaintiff.

RULE 102.—Where a judgment in ejectment is given for the defendants or any of them, execution may issue for costs against the plaintiffs upon a day to be named in the judgment, and if no day be named then it may issue after the expiration of fourteen clear days from the day on which judgment shall have been given, unless the judge shall otherwise order.

RULE 103.—Where upon the trial of any action of ejectment it shall be proved that the defendant is joint tenant, tenant in common, or coparcener with the plaintiff; then, unless also an actual ouster of the plaintiff shall be proved, the defendant shall be entitled to judgment and costs; but if such ouster be proved, then the plaintiff shall be entitled to judgment for the recovery of possession and costs.

RULE 104.—The death of a plaintiff or defendant shall not cause an action of ejectment to abate, but it may be continued as provided by the following rules.

RULE 105.—Where any party to an action of ejectment dies before the return day, the surviving party or parties thereto shall appear in Court on the return day.

RULE 106.—Where a sole plaintiff or one of several plaintiffs in ejectment claiming otherwise than as joint tenants, dies before the return day, it shall be lawful for the legal representative of such deceased plaintiff, on the return day, to apply to the judge upon filing an affidavit of the death of the deceased plaintiff, and of his own representative character, for leave to continue the action in his own name as plaintiff; and the judge may make an order granting such leave, upon such terms, as to adjournment and payment of costs, as he shall see fit, and thereupon the entry of the plaint in the register shall be amended by substituting for the name of the deceased plaintiff the name of the applicant as legal representative of the deceased plaintiff; and the substituted plaintiff shall not recover unless he shall prove the title of the deceased plaintiff as stated in the summons, and also that he is legal representative of the deceased plaintiff, but upon proof of such title and of his representative character as alleged, he shall be entitled to judgment for the recovery of possession and costs: Provided that if the defendant do not appear on the return day, the cause shall be adjourned, and a copy of the order shall be sent by the registrar by post or otherwise to the defendant.

RULE 107.—Where one of several plaintiffs dies before the return day, and no application be made on the return day by the legal representatives of the deceased plaintiff, the name of the deceased plaintiff shall be struck out, and the action shall proceed and be tried as between the surviving plaintiff and the defendant; and the surviving plaintiff shall have judgment for the recovery of the whole of the property mentioned in the summons if he shall prove himself entitled thereto, or if not, then for the recovery of such part or share thereof as he shall prove himself entitled to, and for costs.

RULE 108.—Where judgment in ejectment is given for two or more plaintiffs, and one or more of such plaintiffs die after judgment and before execution is executed, the surviving plaintiff or plaintiffs may apply to the registrar, upon an affidavit stating the death of the deceased plaintiff or plaintiffs, to make an entry in the register of the death of such plaintiff, and strike out therefrom the name of the deceased plaintiff or plaintiffs, and to issue execution for the recovery of the possession of the entirety of the property and the costs; but nothing herein contained shall affect the right of the legal representatives of the deceased plaintiff or plaintiffs, or the liability of the surviving plaintiff or plaintiffs to such legal representatives; and the entry of possession of such surviving plaintiff or plaintiffs under such execution shall be considered as an entry of possession on behalf of such legal representatives in respect of the property to which they shall be entitled as such representatives.

RULE 109.—Where a sole plaintiff or all the plaintiffs in ejectment shall die after judgment, but before execution executed: any person or persons entitled upon the death of the plaintiff or plaintiffs to the property recovered may issue execution, upon leave of the judge, as provided by Rule 86. ["Execution by person not a party."]]

RULE 110.—Where before or after the return day one or more of several defendants in ejectment who defend jointly shall die, the name of the deceased defendant shall, upon application of either party, and upon proof of the death, be struck out, and the action shall proceed against the surviving defendant or defendants.

RULE 111.—Where a sole defendant or all the defendants in an action of ejectment shall die before the return day, any person or persons claiming to be entitled to the property on the death of the defendant or defendants may apply at the hearing to the judge, upon filing an affidavit stating such death, and the grounds upon which he claims the property, for leave to defend in the place of the deceased defendant or defendants; and the judge may make an order granting such leave upon such terms as to adjournment and payment of costs as he may see fit, and thereupon the entry of the plaint in the register shall be amended by substituting the name of the applicant for that of the deceased defendant, and the action shall proceed as if the applicant had originally been defendant.

Provided, that if no such application be made, the action may proceed and be tried as in the case of the non-appearance of a defendant, and the plaintiff, upon proof of the service of the summons and of his title to the property, shall be entitled to judgment for the recovery of possession.

Provided also, that if no such application be made, any person claiming to be entitled to the property upon the death of the defendant or defendants may apply for a new trial, upon filing an affidavit stating the death of the defendant, the grounds upon which he claims the property, and that he had no notice or knowledge of the summons before the return day thereof: and if the judge orders a new trial, the name of the applicant shall be substituted for that of the deceased defendant in the register and plaint summons, and the action shall proceed as if the applicant had originally been defendant; and if the judge refuses a new trial, he shall have power to order the applicant to pay the costs of the application.

RULE 112.—Where a sole defendant or all the defendants in ejectment shall die after judgment, the plaintiff shall nevertheless be entitled to proceed by execution for the recovery of possession, and to proceed by summons in the nature of *a scire facias* for the recovery of the costs against the legal personal representatives of the deceased defendant or defendants.

RULE 113.—Rule 111 shall apply to the case of the death before the return day in ejectment of one of several defendants who defends separately, whether any other defendant defends for the same property or not.

RULE 114.—Where a plaintiff in ejectment is desirous of not proceeding in the action, he may give notice thereof to the registrar and to the defendant by post, and upon the receipt of such notice the registrar shall enter in the minute book judgment of nonsuit with costs up to that day.

RULE 115.—Where a plaintiff in ejectment is desirous of not proceeding further in the action in respect of any portion of the property, he may give notice thereof by post to the registrar and to the defendant or defendants defending for such portion, describing in the notice such portion, and upon the receipt of such notice the registrar shall make a memorandum thereof in the register, and the action shall proceed for the recovery of the remainder of the property; and the defendant or defendants receiving such notice shall not be entitled to any further costs in respect of the defence for such portion of the property than those incurred up to the receipt of such notice, unless the judge shall otherwise order.

RULE 116.—Where one of several plaintiffs in ejectment is desirous of not proceeding in the action, he may apply to the judge on the return day to have his name struck out of the proceedings, and an order may be made thereupon as to costs or otherwise, as the judge thinks fit, and the action shall proceed at the suit of the other plaintiffs.

RULE 117.—A sole defendant or all the defendants in ejectment may, at any time before the return day, confess the action as to the whole of the property by signing in the presence of the registrar or of an assistant registrar, or of an attorney of the Supreme Court, and attested by the person in whose presence it is signed, an admission of the title of the plaintiff to the property, and of his right to the possession thereof; and the registrar shall upon the receipt of such admission forthwith give notice thereof by post to the plaintiff, and the judge may on the return day, upon proof of the signature of the defendant or defendants to such admission by affidavit or otherwise in case the same is not attested by the registrar or assistant registrar, but if attested by the registrar or assistant registrar then without such proof, and without any proof of the plaintiff's title, give judgment for the plaintiff for the recovery of possession and for costs: Provided that, if the plaintiff receive notice of such admission before the return day, he shall not be entitled to any costs incurred subsequently to the receipt of such notice, except the costs of attending the Court on the return day, unless the judge shall otherwise order.

RULE 118.—Where one of several defendants who defends separately for a portion of the property for which no other defendant defends is desirous of confessing the action as to such portion and admitting the plaintiff's title thereto, he may sign a like admission as is provided for by the last preceding rule, describing in the admission such portion, and similar proceedings shall be taken thereupon as in the case of a confession of the action as to the whole of the property, and the action shall proceed against the other defendants.

RULE 119.—Where an action of ejectment shall be brought by any mortgagee or any person claiming under him for the

recovery of the possession of any mortgaged property, and no suit shall be then depending in any superior Court of Equity, or in any County Court, touching the foreclosure or redemption of such mortgage, a defendant or any of the defendants who shall have the right to redeem such mortgage may, ten clear days at least before the return day, pay into Court such sum of money as may be due for principal and interest on such mortgage, and for costs, and the registrar shall thereupon give notice by post to the plaintiff of such payment into Court; and on the return day if the plaintiff shall not appear, or if he shall appear and agree to accept the sum paid into Court for principal, interest, and costs; or if the judge shall determine that the sum paid into Court is sufficient, the Court shall order the plaintiff within a certain time, at the defendant's expense, to re-convey the mortgaged property, and to deliver up to the defendant all the title deeds and writings relating thereto; but if the judge shall determine that the sum paid into Court is not sufficient, he shall determine what further sum is due to the plaintiff for principal, interest, and costs, and shall order the same to be paid into Court by the defendant on a day to be fixed, and shall further order that upon such further payment into Court the plaintiff shall, within a certain time, at the defendant's expense, re-convey the mortgaged property and deliver up to the defendant all the title deeds and writings relating thereto, and that, upon default being made in payment of such further sum, that execution shall issue for the recovery of possession of the property and costs: Provided that where the judge finds the payment into court insufficient, and the defendant makes default in payment of the further sum found by the judge to be due, and the plaintiff issues execution for the recovery of possession, then the registrar shall, upon the application of the defendant, repay to him the sum before paid into court; provided further, that the registrar shall not pay out to the plaintiff the sum paid into court under this rule, except the costs last mentioned, unless he shall be satisfied by the affidavit of himself or of his practitioner that the plaintiff has re-conveyed the mortgaged property to the defendant, and has delivered up to him all the title deeds and writings relating thereto.

Replevin.

RULE 120.—In actions of replevin no other cause of action shall be joined in the summons.

RULE 121.—On entering a plaint in replevin, the plaintiff must specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken under the distress, and of the taking of which he complains.

RULE 122.—All actions of replevin in cases of distress for rent in arrear, or for damage feasant, shall be tried in the same way as other actions in the County Courts; and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall as near as may be follow the forms set forth in the Schedule.

RULE 123.—Where the distress is for rent, and the defendant succeeds in the action, if the defendant require, the judge shall, if the cause be tried without a jury, and the jury shall, if the cause be tried with a jury, find the value of the goods distrained; and if the value be less than the amount of rent in arrear, judgment shall be given for the amount of such value, but if the amount of rent in arrear be less than the value so found, judgment shall be given for the amount of such rent, and may be enforced in the same manner as any other judgment of the Court.

RULE 124.—Where the distress is for damage feasant, and the defendant is entitled to judgment for a return; if the plaintiff require, the judge shall, if the cause be tried without a jury, and the jury shall, if the cause be tried with a jury, find the amount of the damage sustained by the defendant; and judgment shall then be given in favour of the defendant in the alternative, for a return, or for the amount of the damage so found.

Detinue.

RULE 125.—The judgment in detinue, if for the plaintiff, shall be for the value of the goods detained, together with a sum to be stated in the judgment by way of damages for the detention and costs; but it may be made part of the order that on payment of damages for the detention, and costs, and return of the goods on or before a day to be named, satisfaction shall be entered.

New Trial.

RULE 126.—An application for a new trial, or to set aside proceedings, may be made either to the Court or to a judge in chambers.

RULE 127.—Notice, in writing, of applications under the preceding rule, setting out the grounds thereof, must be served upon the opposite party in actions of ejectment within fourteen clear days, and in all other actions within seven clear days after the day of hearing, or the day upon which the proceedings sought to be set aside was taken.

RULE 128.—No notice of application for a new trial, or to set aside proceedings, shall operate as a stay of proceedings, unless the judge shall so order; but if any money paid into court, under any execution or order in the suit shall not have been paid out when such notice in writing shall be given to the registrar, the registrar shall retain the same, to abide the event of such application, or until the judge shall otherwise order; and if no such application be made, or, if made, be dismissed, the money shall be paid over to the party in whose favour the judgment, verdict, or order had been made.

RULE 129.—If the application be to the Court, it may be made during the same sitting, if both parties be present, or during the next sitting, but not later than the next sitting; and if the application be made before the judge in chambers, then upon such day as the judge or the registrar shall appoint, not being later than the first day of the next sitting of the Court at the place where the judgment, verdict, or order was made.

RULE 130.—If the application be to the Court, it shall be upon notice. If the application be to the judge in chambers, then it shall be made upon summons, in which shall be set out or to which shall be annexed the grounds of the application; and such summons shall be deemed to be notice in writing under the preceding rules, and shall be served within the same time and in the same manner.

RULE 131.—Whether the application be upon notice or upon summons, it shall be supported by an affidavit, setting out the facts upon which the application is based, a copy of which affidavit shall be served upon the opposite party with the notice or summons.

Proceeding on a judgment more than Six Years old.

RULE 132.—No warrant against the goods, or judgment summons, shall issue on a judgment more than six years old, unless some payment has been made into Court under such judgment within twelve calendar months previously, or unless by leave of the judge, if he is satisfied that the judgment creditor has used all due diligence; but no notice to the defendant, previous to applying for such leave, shall be necessary, and such leave shall be expressed on the warrant or summons under the seal of the Court.

Attachment of Debts.

RULE 133.—Where a plaintiff is desirous that the defendant, if the defendant shall have judgment given against him, shall be orally examined, forthwith after the judgment shall have been given, as to what debts are due and owing to him, the plaintiff shall, before the cause is called on, lodge with the registrar a statement in writing of the name, address, and description of the person or persons within the jurisdiction of the Court whom he considers are debtors to the defendant.

RULE 134.—Where such a statement has been lodged by a plaintiff, the defendant, if he shall have had judgment given against him, may be examined before the Court at the request of the plaintiff as to any debts due and owing, or accruing from any person mentioned in the statement to the defendant, and the Court may order such debts to be attached to answer the judgment debt, and if such person be then present, he may be ordered forthwith to show cause why he should not pay into Court, for the benefit of the judgment creditor, such debts or so much thereof as will satisfy the judgment debt, and if such third person admits such debts the Court may make an order for the payment of such debts, or so much thereof as will satisfy the judgment debt, and such order shall be entered in the register, and may be enforced in like manner as any order made in any suit in the Court; and where the garnishee pays the money as ordered, he shall not be liable for any costs; and an entry of the payment shall be made in the register and in the suitors' cash-book.

RULE 135.—Where a plaintiff has not lodged such statement, or where having lodged such statement the person named in such statement shall not be present in Court or shall not admit such debt to be due, owing, or accruing as aforesaid, the plaintiff may, at any time after the judgment, upon lodging with the registrar of the Court in which the judgment was given an affidavit stating the fact of the judgment, and of its being unsatisfied, and that a third person (hereinafter called the garnishee) is within the jurisdiction and is indebted to the judgment debtor, make an *ex parte* application to the judge for an order to attach such debts to answer the judgment debt and for an order for a summons calling upon the garnishee to show cause at a time and place to be named in such order why he should not pay the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt, and if the judgment debtor shall not attend to show cause against such order, or attending shall not admit the debt, the judge shall make an order that execution shall issue without further process, unless the garnishee shall pay the said debt or so much thereof as may be sufficient to satisfy the judgment debt into Court within a time to be named in such order, and such costs, if any, as the judge may order. But if the garnishee shall appear to show cause against such order and shall dispute such debt, then the judge may give leave to the judgment creditor to enter a plaint in the nature of a *scire facias* for the amount of the debts alleged to be due to the judgment debtor from the garnishee.

RULE 136.—The summons on such plaint shall be personally served on the garnishee, and when so served it shall attach in the hands of the garnishee all debts due, owing, or accruing from him to the judgment debtor.

RULE 137.—Where the garnishee shall pay the money into Court five clear days before the return day, he shall not be liable for any costs incurred by the judgment creditor.

RULE 138.—Upon the return day the Court shall determine as to the liability of the garnishee, and as to the party by whom the costs of the proceeding by plaint shall be paid, and make an order or orders in accordance with such determination.

Warrants of Execution against the Goods.

RULE 139.—Where a defendant has made default in payment of the whole amount awarded by the judgment, or of an instalment thereof, a warrant of execution, without leave of the Court, may issue against his goods; and such execution shall be for the whole amount of the judgment and costs then remaining unsatisfied, unless in the case of instalments, the judge shall otherwise specially direct in each case at the time of giving judgment.

RULE 140.—The registrar shall, on issuing a warrant of execution against the goods, indorse on such warrant the amount to be levied, distinguishing the amount adjudged to be paid, and the amount of the fee for issuing the warrant.

Interpleader.

RULE 141.—Where any claim is made to or in respect of any goods or chattels taken in execution under the process of any County Court, or in respect of the proceeds or value thereof, the claimant shall forthwith or within twenty-four hours after making his claim deliver to the bailiff, or leave at the office of the registrar of the Court a particular of any goods and chattels alleged to be the property of the claimant, and the grounds of his claim, or in the case of a claim for rent of the demand thereof, and for what period and in respect of what premises the same is claimed to be due, and the name, address, and description of the claimant, shall be fully set forth in such particular; and money paid into Court (if any) under the execution shall be retained by the registrar until the claim shall have been adjudicated upon, and by leave of the judge such particulars may, at any stage of the case, be amended, or by consent may be altogether dispensed with.

RULE 142.—Interpleader summonses other than interpleader summonses returnable before justices of the peace shall be issued by the registrar on the application of the bailiff without leave of the Court, and may be made returnable before the judge sitting either in Court or in chambers, on any day fixed by the registrar, not being less than three clear days before the return day, and shall be served in the same manner as a plaint summons not less than

two clear days before the return day, but by consent in writing, indorsed on the summons, the same may be made returnable forthwith so soon as the same can be heard and service may by like consent be dispensed with.

RULE 143.—Where the claim to any goods or chattels taken in execution, or the proceeds or value thereof, shall be decided against the claimant, the costs of the bailiff allowed by the judge shall be retained by him out of the amount levied, if the judge shall so order, but without prejudice to the right of the execution creditor against the claimant for the sum so retained, if the judge shall order the same to be paid by the claimant to the execution creditor.

Judgment Summons.

RULE 144.—When an application is made by a judgment creditor for the issue of a judgment summons, the applicant shall be asked to state the ground or grounds upon which he relies to obtain the committal of the judgment debtor, and after the registrar shall have struck from the form of application for the summons in the Schedule all the grounds therein mentioned, upon which the applicant does not rely, the form shall be handed to the applicant, and he shall be required to read and sign the same; and where the ground relied on is not that the judgment debtor has had since the judgment the means and ability to satisfy the judgment, then the undertaking in reference to such ground shall be struck out.

RULE 145.—Every judgment summons shall be supported by affidavit, and shall be issued six clear days at least before the day on which the judgment debtor is required to appear to it, unless the person entering the summons shall at the time of issuing it inform the registrar that the plaintiff will be prepared at the hearing to prove one of the facts mentioned in the following rule, as grounds for short service.

RULE 146.—A judgment summons can issue at any time, without leave of the Court, except in the case provided for in Rule 132, and shall be forthwith delivered by the registrar to the bailiff or to the plaintiff's attorney for service by a bailiff or by the attorney or by a clerk in the permanent employ of such attorney, and shall be served personally not less than five clear days before the day on which the party is required to appear to such summons, unless at the hearing the judge is satisfied, on the evidence on oath before him, that such party was about to remove from his dwelling or place of business, or was keeping out of the way to avoid service, in either of which cases service upon the party at any time before the time appointed for the appearance of such party shall be sufficient.

RULE 147.—The hearing of judgment summonses may be adjourned from time to time.

RULE 148.—Upon the issue of a judgment summons against a party the bailiff shall return into Court any warrant of execution against the goods of such party which may have been issued upon a judgment in the cause.

Commitment.

RULE 149.—In cases of commitment upon judgment summons, the amount remaining due or ordered to be paid on the judgment, and all costs payable by the defendant, shall be indorsed on the warrant, and the period of imprisonment named in the order shall be inserted therein and indorsed thereon.

RULE 150.—When a warrant of commitment for non-payment of money is issued, the defendant may, at any time before his body is delivered into the custody of the gaoler, pay to the bailiff the amount indorsed on the warrant as that, on the payment of which, he may be discharged; and on receiving such amount, the bailiff shall discharge the defendant [and shall within twenty-four hours, if possible, and if not then within three days after receiving such amount pay over the same to the registrar].

INFANTS.

Infant Plaintiffs.

RULE 151.—Where an infant applies to enter a plaint for any cause of action (other than for wages or piece-work, or for work as a servant) he shall procure the attendance of a next friend, at the office of the registrar, at the time of entering the plaint; and no plaint shall be entered until the next friend has undertaken, in

the form set forth in the Schedule, to be responsible for costs, who, on entering into such undertaking, shall be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary action; and the cause shall proceed in the name of the infant by such next friend, and the undertaking shall be filed by the registrar; but no order of the Court shall be necessary for the appointment of such next friend. If the plaintiff fail in, or discontinue his suit, and do not pay the amount of costs awarded by the Court to be paid by him to the defendant, proceedings may be taken for the recovery of such amount from the next friend as for the recovery of any debt ordered to be paid by the Court.

Infant Defendants.

RULE 152.—Where an infant defendant appears at the hearing, and names a person willing to act as guardian, and who then assents so to act, such person shall be appointed guardian accordingly; but if the defendant do not name a guardian, the judge may appoint any person in court willing to become guardian, or in default of such person the judge shall appoint the registrar of the court to be guardian, and the cause shall proceed thereupon as if another person had been appointed guardian, and the name of the guardian appointed shall be entered in the register, with statement whether guardian appointed at the instance of the court or not; and no responsibility shall attach to the person so appointed guardian at the instance of the court.

Proceedings by and against Executors and Administrators.

RULE 153.—In actions by executors or administrators, if the plaintiff fail, the costs shall, unless the Court shall otherwise order, be awarded in favour of the defendant, and shall be levied *de bonis propriis*.

RULE 154.—Where an executor or administrator, plaintiff or defendant, shall not appear on the day of hearing, the provisions of sections 68 and 69, 70 and 71, of the Act, shall apply respectively, subject to the rules applicable to executors or administrators suing or sued.

RULE 155.—A party suing an executor or administrator may charge in the plaint summons that the defendant has had assets and has wasted them.

RULE 156.—In all cases where the defendant is so charged in the summons, if the Court shall be of opinion that the defendant has wasted the assets, the judgment shall be, that the debt or damage and costs shall be levied *de bonis testatoris, si, etc., et si non, de bonis propriis*; and, the non-payment of the amount of the demand immediately on the Court finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

RULE 157.—Where a defendant, sued as an executor or administrator, does not appear, or where the defendant appearing denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, if the judgment of the Court be in favour of the plaintiff, the judgment shall be that the amount found to be due and costs shall be levied *de bonis testatoris, si, etc., et si non, de bonis propriis*.

RULE 158.—Where a defendant sued as an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the judgment shall be that the demand and costs shall be levied *de bonis testatoris, si, etc., et si non* as to the costs, *de bonis propriis*.

RULE 159.—Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be to levy the costs of proving the demand *de bonis testatoris, si, etc., et si non, de bonis propriis*; and as to the whole or residue of the demand, judgment of assets, *quando acciderint*; and the plaintiff shall pay the defendant's costs of proving the administration of assets.

RULE 160.—Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does not prove the administration alleged, the judgment shall be to levy the amount of the demand if such

amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, etc., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

RULE 161.—Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the judgment shall be for assets *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets.

RULE 162.—Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, but does not prove the administration alleged, and has not established any other ground of defence, the judgment shall be to levy the amount of the demand, if so much assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, etc., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

RULE 163.—Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff or his personal representative may issue a summons in the form set forth in the Schedule, and if it shall appear that assets have come to the hands of the executor or administrator since the judgment, the Court may order that the debt, damages, and costs be levied *de bonis testatoris, si, etc., et si non*, as to the costs, *de bonis propriis*; provided that it shall be competent for the party applying to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in Rule 155, and the provision of Rule 156 shall apply to such inquiry; and the Courts may, if it appear that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si, etc., et si non, de bonis propriis*.

RULE 164.—Where a defendant admits his representative character, and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into court, subject to the rules relating to payment into court in other cases.

RULE 165.—In actions against executors or administrators for which provision is not hereinbefore specially made, if the defendant fail as to any of his defences, the judgments shall be for the plaintiff as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris, si, etc., et si non, de bonis propriis*.

ORDER IV.

PROCEEDINGS IN EQUITY.

Commencement of Suit by Plaintiff and Plaintiff Summons.

RULE 1.—All suits in equity under the 1st, 2nd, 3rd, 4th, or 7th clauses (or paragraphs) of section 100 of the Act shall be commenced by plaintiff, an entry of which shall be made by the registrar in the register, Part II., the application of the person desirous to bring the suit, or of a practitioner on his behalf, and the entry in such register shall contain the date of the entry, the names, and last known places of abode of the parties, and when any party sues or is sued in a representative character he shall be so described, and the nature of the suit, and in general terms the nature of the relief sought.

RULE 2.—The plaintiff in equity required by the last preceding rule shall consist of a simple and compendious statement of the material facts and circumstances on which the plaintiff relies, being divided into separate paragraphs, numbered consecutively, each containing, as near as may be, a distinct allegation (examples of which are given in the Schedule hereto), and shall ask for the specific relief to which the plaintiff conceives himself entitled, and also for general relief; and such plaintiff shall be written or printed, or partly written and partly printed, in a summons, bearing the number of the plaintiff, and hereinafter referred to as the plaintiff summons; and such plaintiff and summons shall be in the form or to the effect of those in the Schedule to this order, according as the circumstances of the case may require.

RULE 3.—The preceding rules, excepting those as to ejectment and special summonses, under section 56 of Act, as to the issuing and the return day of the plaint summons, the service of it, the filing of it, as to misnomer or other inaccurate description in it, as to substituted service, and as to the plaint note, shall apply to all suits in equity commenced under the two last preceding rules.

Parties.

Supreme Court
Rules, 1864.

RULE 4.—Any one or more of the persons or parties herein-after mentioned may commence a suit on behalf of himself or themselves, and all others having a common interest with him or them, and proceed to obtain a decree of the Court; and it shall not be competent to any defendant in any suit to object to the omission of such others as parties in any of such cases:—

1. Any heir, devisee, or legatee, or any creditor seeking to obtain administration of the real or personal estate, or both, of a deceased person.
2. Any one of several "*cestuisque* trusts" seeking an execution of the trusts in any deed or instrument.
3. Any one executor, administrator, or trustee seeking an administration of an estate or execution of trusts against any one legatee, next of kin, or "*cestuisque* trust."
4. Any one of several persons seeking protection of property pending litigation or exposed to waste.

And in any such case the Court or a judge may, before, at, or after the hearing, order that any other person necessary to the suit be made a party, and make such order for placing the original and added parties on the same footing, with regard to costs, as the Court or judge may deem fit: Provided that in order to prevent multiplicity of suits all persons who, but for these rules, would be necessary parties to the suit shall be served with notice of the decree, and after such notice such person shall be bound by the proceedings as if they had been originally parties to the suit, and they may, by leave obtained from a judge on summons, attend the proceedings under the decree, or apply to the Court that such decree be added to, varied, or altered.

RULE 5.—In suits to execute the trusts of a will it shall not be necessary to make the heir-at-law party, unless the plaintiff desires to have the plaint established against him.

RULE 6.—In all cases in which a plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court as parties to the suit concerning such demand all the persons liable thereto, but the plaintiff may proceed against any one or more of the parties severally liable.

RULE 7.—In all suits concerning real or personal estates vested in trustees under a will, settlement, or otherwise, such trustees shall represent the parties beneficially interested in the same manner and to the same extent as executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estates, and in such cases it shall not be necessary to make the person beneficially interested under the trusts parties to the suit: Provided that in any such case the court or judge may before, at, or after the hearing order any or all of such persons to be made parties.

Want of parties.

RULE 8.—If any defendant shall consider that the suit is defective by reason of the absence of any party, he may, within six clear days after he shall have been served with the plaint summons, serve a notice on the plaintiff requiring him to show cause before a judge of the Court in which such suit shall be pending why such person should not be made a party to the suit, and the judge shall have power to direct that such person shall be made a party to such suit, by amendment, on such terms as the judge shall think proper.

Misjoinder.

RULE 9.—No suit shall be dismissed on the ground of any misjoinder; but if the Court at the hearing or re-hearing of the suit shall deem that no injustice would be thereby done to any of the parties, it shall, in the case of a misjoinder of a plaintiff, forthwith order all such amendments to be made as shall be necessary to rectify such misjoinder; and in the case of a misjoinder of a defendant, the Court shall dismiss the suit as against such defendant upon such terms as it shall think proper.

Defect of parties.

RULE 10.—In case of a defect of parties the Court may cause such defect to be amended upon such terms as it shall think proper.

[And see post, rule "*Absent parties*," following Rules under title "*Carrying out Decretal Order*."]]

Proceedings after Service.

RULE 11.—Where any defendant desires to admit the truth of the allegations in the plaint, and to submit to the judgment of the Court, he may, at any time before the return day of the original summons, in the presence of a registrar of a County Court, or in the presence of an assistant registrar or of a practitioner, sign an admission in the form contained in the Schedule; and the signature of the defendant thereto shall be verified by affidavit, unless signed in the presence of the registrar or assistant registrar of the Court in which the suit is pending.

Admission.

RULE 12.—The admission shall be delivered to the registrar, together with a copy thereof for each of the plaintiffs, or, where the plaint is filed by a practitioner, with a copy for such practitioner only; and the registrar shall forthwith file the same, and transmit a copy by post to each plaintiff, or the practitioner, as the case may be; and after the receipt of such copy the plaintiff shall be entitled to the costs then already incurred, and to the further costs of attending the Court and obtaining the decree or order to be made upon such admission, but to no other costs.

Notice of admission.

RULE 13.—The defendant may, within ten clear days after the service of the summons, by a statement in writing signed by him, disclaim any interest in the subject matter of the suit, or admit or deny any of the statements in the plaint, or raise any question of law on such statements without admitting the truth thereof; or he may state concisely any new fact or document upon which he intends to rely as a defence at the hearing, or which he thinks advisable to bring to the notice of the Court: Provided always, that in exercising his discretion as to costs, the judge shall consider the fact of a defendant having or not having availed himself of the powers given by this rule.

Statement in the nature of a disclaimer or answer may be filed by defendant.

RULE 14.—The statement under the last foregoing rule shall be delivered to the registrar, together with a copy thereof for each of the plaintiffs, or where the plaint is filed by a practitioner, with a copy for such practitioner only; and the registrar shall forthwith file the same, and transmit a copy by post to each plaintiff or the practitioner, as the case may be.

Statement to be filed.

RULE 15.—Where the statement is filed by a practitioner he shall indorse thereon his name and place of business, and that the defendant defends by him; and where it is not filed by a practitioner the defendant who actually files the same shall indorse thereon his name and address.

Statement filed by attorney.

RULE 16.—The plaintiff may, at any time before the return day of the summons, by notice in writing delivered at the office of the registrar, require the plaint to be dismissed as against all or any of the defendants, with costs, without prejudice to further proceedings or suits, and such notice shall operate as an order to dismiss accordingly; and the registrar shall forthwith file such notice, and forward a copy thereof by post or otherwise to each of the defendants, who shall be thereupon entitled to execution for their costs, the amount of costs to be fixed by the registrar.*

Dismissal of suit.

Evidence.

RULE 17.—Except where otherwise provided by these orders, the evidence of witnesses shall be taken *viva voce* on oath, and such evidence of each witness as shall be deemed by the judge to be material shall be taken down in writing by the judge.

Evidence to be taken.

RULE 18.—Where a party desires to give in evidence any document, he may, not less than five clear days before the hearing, give notice to any other party in the cause who is competent to make admissions, requiring him to inspect and admit such document; and if such other party shall not within a reasonable time make such admission, any expense of proving the same at the hearing shall be paid by him, whatever be the result of the cause, unless the Court shall otherwise order; and no costs of proving any document shall be allowed unless such notice shall be given, except in cases where, in the opinion of the judge, the omission to give such notice has been a saving of expense.

As to admission of documents.

RULE 19.—Where a party desires to inspect any document in the possession or under the control of any other party, he may, not less than five clear days before the hearing, give notice to such other party that he or his practitioner desires to inspect the same at any place to be appointed by such other party; and if such other party shall not appoint a convenient place, or allow the party

Inspection of documents in possession or control of an opposite party.

* For rule requiring defendant to state his defence at close of plaintiff's case, see post-title "Hearing" rule.

giving such notice, or his practitioner, to inspect such document within three clear days after receiving such notice, the judge may adjourn the hearing, and make such order as to costs as he shall think fit.

Summons to witness.

RULE 20.—Where a party requires the attendance of any other party, or of any witness, either to give evidence or to produce documents, he shall apply to the registrar to issue a summons requiring such other party or witness to attend the Court, the judge, or the registrar, as the case may, or to attend and produce documents; and such summonses shall respectively be drawn up by the registrar, be signed and sealed by him, and be issued by him to the bailiff, or to the party, for service, and the same shall be served in the same manner as a plaint summons; and in every summons to produce documents the registrar shall insert a description of the documents required.

Compulsory production of documents by parties to suit.

RULE 21.—Where a party served with a summons under the last rule shall not at the hearing produce the documents required, the Court or the judge may, upon admission or proof of the service of such summons within a reasonable time, and that such documents are in the possession of the party so served, and that they relate to the matter then pending before the Court, the judge, or the registrar, as the case may be, make an order for their production by him, and the Court or judge may deal with them, when so produced, and with all costs occasioned by their non-production, as may appear just: Provided that nothing herein shall prevent the Court, the judge, or the registrar from receiving secondary evidence of any document of which notice to produce has been given.

Documents unobjectioned to received without formal proof.

RULE 22.—Where any documents are produced to the Court from proper custody, they will be read without further proof, if they appear genuine, and if no objection be taken thereto; and if the admission of any document so produced be objected to, the judge may adjourn the hearing for the proof of the documents, and the party objecting shall pay the costs caused by such objection, in case the documents shall afterwards be proved, unless the judge shall otherwise order.

Examination de bene esse.

RULE 23.—Where it shall be necessary to examine a witness *de bene esse*, application upon affidavit shall be made to the judge to appoint an examiner for that purpose.

How examination conducted.

RULE 24.—Where any witness is examined by a registrar he shall be examined on oath, and the registrar shall transcribe the answers of such witness, and the deposition shall be subscribed by the witness and the registrar who shall have so examined him, and shall then be transmitted by post to the registrar of the Court in which the suit or proceeding is pending.

Allowance to witnesses.

RULE 25.—The allowance to be made to witnesses for attendance either before the Court or registrar shall in no case exceed the highest rate of the allowance in actions under Part II. of Act.

Hearing.

RULE 26.—Whenever the judge shall exercise the powers conferred by section 112 of the Act, of removing to or from any other County Court of which he is judge any suit the registrar shall give notice, by the post, to all the parties of such removal, and shall make an entry of the order in the register; and the subsequent proceedings in the suit so removed shall be taken and issue from the Court to which the cause has been so removed until the judge shall otherwise order.

How parties to come prepared.

RULE 27.—Upon the day on which the summons is returnable all parties shall come to the Court prepared, so far as the nature of the case will admit, with evidence to enable the judge to try the whole matter of the suit upon the merits, and then to determine the same by a final decree, or to make such decretal order, or give such directions for adding parties to the suit, for making inquiries, taking accounts, realizing assets, or doing any act which the judge may consider necessary to enable him to make a final decree upon a day to which the hearing may be adjourned.

Hearing.

RULE 28.—At the close of the opening of the plaintiff's case, and before any evidence is taken, the defendant shall, if called upon by the judge to do so, by himself or the practitioner appearing for him, give a concise statement of his defence to the suit, and of the points upon which he relies, and he shall not, except by leave of the judge, be at liberty to enter upon or to give evidence as to any other matters than those included in the defence and points so stated.

RULE 29.—Upon the hearing the Court may dismiss the ^{Decree or decretal order.} suit, or grant the relief asked by the plaintiff, or any part thereof, or may grant any other relief consistent with the case made by the plaintiff or amended plaintiff, or make any order giving directions for, or with respect to, the prosecution of the suit, either at the same or at any other Court under section 112 of the Act, as the circumstances of the case may require, and also make such order as to costs as the Court may think fit.

RULE 30.—Where the Court shall order any question of fact, or any question as to the amount of damages, to be tried by a jury, the Court shall adjourn the hearing, and appoint a day for the trial of such question by a jury; and thereupon the practice shall be in all respects the same as in actions where either party has required a jury; including the power to direct a new trial when necessary.

RULE 31.—Where the Court shall order any question of fact, or any question as to the amount of damages, to be tried by a jury, the judge shall reduce the question into writing, and the same shall be called the "Record for Trial." ^{Record for trial.}

Decretal Orders.

RULE 32.—Where the Court makes any decretal order, the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order. ^{Registrar to draw order.}

RULE 33.—Where a decretal order directs any deed to be prepared and executed, it shall state by what party the said deed shall be prepared, and to whom it shall be submitted for approval. ^{Preparation of a deed.}

RULE 34.—Where upon the hearing it appears to the Court expedient that a receiver be appointed, such appointment shall be made by the decretal order, whether the same be asked as part of the relief in the plaintiff or not. ^{Receiver.}

RULE 35.—Where real property is ordered to be sold, the decretal order shall direct who shall have the conduct of the sale, and by whom the conditions and contracts of sale, and the abstract of title, shall be prepared. And where any conditions or contracts are ordered to be settled by a conveyancing counsel, it shall name the counsel to whom they are to be submitted. ^{Sale of real property.}

RULE 36.—Where a decretal order directs any personal property to be sold, the same shall be sold under the superintendence of the bailiff, by public auction, unless the Court shall otherwise order. ^{Sale of personal property.}

RULE 37.—Where any decretal order directs any accounts or inquiries to be taken or made, or any acts to be done, by the registrar, bailiff, receiver, or parties, it shall name a day within which all such acts shall be done, and accounts and inquiries completed, and shall also name a day, not less than fourteen clear days after that day, on which the registrar shall certify the result of the accounts and inquiries, and what has been done under such decretal order, and on which the cause will be further heard, and, if practicable, a final decree made. But the Court or judge may enlarge the time under this rule. ^{Accounts or inquiries.}

Carrying out of Decretal Order.

RULE 38.—Where a deed is ordered to be prepared, and the parties cannot agree upon the form thereof, the judge may, upon the application of either party, settle the same himself, or name a conveyancing counsel by whom the same shall be settled, subject to the final approval of the judge. ^{Deed how settled.}

RULE 39.—Where a decretal order directs that any account be taken or inquiry made, such account shall be taken and inquiry made by the registrar unless the decretal order shall direct the same to be taken before the Court or the judge, and the registrar shall for that purpose have all the powers and discharge all the duties of the Master-in-Equity; and all parties prosecuting any accounts or inquiries shall have the same power of summoning witnesses, including as witnesses any parties in the cause, and of examining them on such accounts or inquiries, and of compelling the production of documents, as they had on the original hearing; and all rules as to the summoning, swearing, and examining of witnesses, and the production of documents at the hearing, shall be applicable (as far as may be) to such summoning, swearing, examining, and production on taking any such accounts, or prosecuting any such inquiries. ^{In taking accounts, &c., registrar to act as Master in Equity.}

Rule 40.—Where a decretal order directs accounts to be taken, any books of account in which the accounts required to be taken, or any of them, have been kept, shall, unless the judge shall otherwise direct, be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Rule 41.—Every advertisement for creditors or other persons having any claim upon or interest in the distribution of any assets to be administered by the Court, which shall be issued pursuant to any decretal order, shall direct every such creditor or other person, by a time to be thereby limited, to send to the registrar his name and address, and the full particulars of his claim or interest, and a statement of his account, and the nature of the security (if any) held by him, and at the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

Rule 42.—Every such claim shall be accompanied by an affidavit in support of such claim, but no such creditor or other person need make any affidavit, or attend in support of his claim, unless he is served with a notice requiring him to do so, as hereinafter provided.

Rule 43.—Every creditor shall produce or transmit to the registrar any security held by him, at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims; and every creditor shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar all other deeds and documents necessary to substantiate his claim before the registrar at his office at such time as shall be specified in such notice.

Rule 44.—Every person claiming as heir-at-law, devisee, next of kin, or legatee shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar any pedigree or proof mentioned in such notice within such time as shall be therein specified.

Rule 45.—In case any creditor or other person shall neglect or refuse to comply with the two last preceding rules, he shall not be allowed any costs of proving his claim unless the judge or the registrar shall otherwise direct.

Rule 46.—At the time appointed for adjudication upon the debts or claims, the judge or the registrar, as the case may be, shall take the evidence of the executor, administrator, or other accounting party upon such debts or claims, and may thereupon, in his discretion, allow any of such debts or claims without further proof, and may direct such investigation of all or any of the debts or claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor or other person to attend and prove his claim, or any part thereof; and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

Rule 47.—Notice of allowance shall be given by the registrar to every creditor or other person whose claim, or any part thereof, has been allowed, and notice shall also be given by him to every such creditor or other person as he shall think fit, or as he may be directed by the judge to do, to attend and prove his claim or such part thereof as is not allowed, by a time to be named in such notice, not being less than seven clear days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned; and in case any such creditor or other person shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed.

Rule 48.—Any such creditor or other person who has not before sent in the particulars of his claim pursuant to the advertisement may do so two days previous to any day to which the adjudication is adjourned.

Rule 49.—If any claim be sent in after the time fixed by the advertisement (except as before provided in case of an adjournment) the judge or registrar may, upon special application, entertain the same, upon such terms and conditions as to costs and otherwise as he thinks fit.

Rule 50.—In taking any account directed by any decretal order, all just allowances shall be made without any directions for that purpose in such order.

RULE 51.—Where the registrar, bailiff, receiver, or any party has by any decretal order been directed to do any act for doing which it may be found necessary to have further directions or an order of the Court, the registrar shall apply to the judge for such direction or order, and upon such application the judge may give such direction or make such order as he may think fit, or may appoint a time to hear all parties upon the application so made by the registrar; and if the judge shall make such appointment for hearing, the same shall operate as a stay of proceedings in the suit until the day so appointed, if he shall so direct.

*Application to judge for further directions
mero motu.*

Absent Parties.

RULE 52.—Where any matter is referred to the court or judge, or to the registrar by a decretal order, the court judge or registrar, as the case may be, shall, as soon as conveniently may be, ascertain if there are any parties who, if the decretal order had been made in a suit pending in the Supreme Court, ought to be served with notice.

Inquiry as to parties.

RULE 53.—Where it shall be necessary to serve any parties with the notice mentioned in the foregoing rule, the same shall be prepared by the registrar, and signed and sealed by him, and issued by him to the bailiff, who shall serve the same, and upon such notice the party served therewith may attend the proceedings under the decretal order.

Notice to parties.

RULE 54.—Any party who shall be served with a notice under the last foregoing rule, may apply to the Court at the next sitting, or by leave of the judge at any subsequent sitting, to vary or add to the decretal order.

Application to vary or add to decretal order.

Registrar's Certificate.

RULE 55.—Where a registrar has been ordered to certify to the Court upon any matter, he shall present to the Court a certificate in writing signed by him.

Registrar's certificate.

RULE 56.—The registrar shall prepare his certificate seven days before the day appointed for presenting the same, and shall give notice by post to all parties to the suit that the same lies in his office for the inspection of any parties interested therein or affected thereby; and he shall deliver a copy thereof to any person requiring the same, upon payment of the costs of such copy.

Registrar's certificate to lie in office.

RULE 57.—Where any party interested in, or affected by, the registrar's certificate desires to have the same varied, he shall apply by himself, or the practitioner engaged on his behalf, at the Court on the day appointed for presenting the same, and the judge shall thereupon hear and determine such application, and shall confirm or vary the certificate, and make such further order thereupon as he may think fit.

Variation of registrar's certificate.

RULE 58.—If no application shall be made to vary the certificate, it shall be taken as confirmed, unless the judge shall otherwise order.

Confirmation of certificate.

Final Decree.

RULE 59.—When the court has determined all the questions raised between the parties, the registrar shall, as soon thereafter as conveniently may be, draw up a final decree in accordance with the judgment of the Court, and seal and file the same.

Final decree.

Revivor and Supplement.

RULE 60.—Upon any suit becoming abated by death, marriage, or otherwise, or defective in consequence of any change or transmission of interest or liability, the judge shall, on application of any person having a right so to apply, make an order reviving the said suit, or such supplementary decree or order as may have become necessary in consequence of any such matters as aforesaid.

Order under.

RULE 61.—An order under the foregoing rule shall be drawn up by the registrar and sealed with the seal of the Court, and issued to the bailiff, who shall serve the same upon such person or persons as the Court shall direct.

Order to be served.

RULE 62.—After service of such order, the suit shall, as between the party by whom the order has been obtained and the party on whom it has been served, be in the same plight and condition as it was in before it had become abated or defective as aforesaid; provided that the person so served may move the Court at the next sitting, or by leave of the judge at any

Person served to be bound thereby, and may appeal.

subsequent sitting, to discharge such order; and such motion shall be made upon affidavit of the facts relied upon to support the same.

PROCEEDINGS UNDER THE 5TH, 6TH, AND 8TH CLAUSES OF SECTION 100 OF THE ACT, AND SECTION 106 OF ACT.

Petition.

RULE 63.—All proceedings under the 5th and 6th clauses of section 100 of the Act shall be by petition, and such petition need not show title except so far as is provided by the rules in this order.

Petitions by trustees.

RULE 64.—Where a trustee petitions under the said 5th clause for an order in any matter relating to the trust, he shall file his petition at the office of the registrar, and leave thereat as many copies thereof as there are persons beneficially interested in the due execution of the trust, and he shall state in such petition his own name, address, and description, and also the names, addresses, and descriptions of the persons beneficially interested, so far as he is able, and the nature of the trust, and how created, the property or money to which the same relates, and the substance of the order which he seeks to obtain.

Petitions by guardian or trustee of infant or next friend.

RULE 65.—Where any guardian or trustee of any infant petitions for an order relating to the maintenance or advancement of such infant he shall file his petition at the office of the registrar, and where any person, as next friend of an infant, petitions on behalf of such infant for an order upon or against the guardian or trustee of such infant, he shall file his petition at the office of the registrar, and leave thereat as many copies thereof as there are guardians or trustees. And in such petition shall be stated the names, addresses, and descriptions of the petitioner, and of all the persons to whom such order is intended to relate, and shall also state the nature of the guardianship or trust, and how created, of the property to which the trust relates, and the substance of the order which the petitioner seeks to obtain.

Application for injunction.

RULE 66.—Where any person intends to apply under the 8th clause of the section 100 of the Act, for an order in the nature of an injunction (except as is provided in the following rules under the head of "*Ex parte Applications*"), he shall deliver at the office of the registrar a notice of his intention to apply for the same, together with as many copies thereof as there are persons upon or against whom such order is intended to be obtained, and he shall state in such notice his own name, addresses, and description, and, so far as he can, the names, addresses, and descriptions of all such persons, and also the substance of the order which the petitioner seeks to obtain.

Sec. 106 of Act.

RULE 67.—Any person desiring to pay money, transfer stock, or deposit security in trust to attend the orders of any County Court, under section 106 of the Act, shall file with the registrar of the County Court having jurisdiction in the matter an affidavit, entitled in the matter of the Act, and of the particular trust, and setting forth:

1. His own name, address, and description:
2. The place where he is to be served with any petition or summons, or any notice of any proceeding or order of the Court relating to the trust fund:
3. The amount of money, stock, or security which he proposes to pay, transfer, or deposit in trust to attend the orders of the Court:
4. A short description of the trust or of the instrument creating it:
5. The names, addresses, and descriptions of the persons interested in or entitled to, or claiming to be interested in or entitled to, the fund, to the best of the knowledge and belief of the trustee:
6. The submission of the trustee to answer all such inquiries relating to the application of the money or stock paid in or transferred or security deposited as the Court may think proper to make or direct.

Form of affidavit.

RULE 68.—The affidavit may be in the form set out in the Schedule to these orders, with such variations as each particular case may require.

Endorsement on affidavit.

RULE 69.—Immediately on the receipt by the registrar of the affidavit, he shall indorse thereon a memorandum of the day on which the same was received by him, and when such affidavit shall be so indorsed, it shall be taken for all purposes to have been duly filed on the date so indorsed thereon.

RULE 70.—The persons filing the affidavit, or any of them, may apply to the registrar to give to them a certificate entitled in the matter of the Act and of the particular trust, and under the seal of the Court, certifying that the affidavit has been filed, and such certificate may be in the form set out in the Schedule to these orders, with such variation as each particular case may require.

Certificate of registrar.

RULE 71.—In the case of money, the persons filing the affidavit, or any of them, may, upon the receipt of the before-mentioned certificate, pay the money into a post office savings bank or a chartered or incorporated banking company to be named by the registrar (in the town in which the County Court is held) under section 106 of the Act, and obtain from the officer of the bank a receipt for the same, and shall forthwith leave the said receipt with the registrar, who shall give him an acknowledgment for the same in the form in the Schedule, and the registrar shall accordingly indorse thereupon a memorandum of the day on which the same was received by him, and when such receipt shall be so indorsed, it shall be taken for all purposes to have been duly recorded on the date so indorsed thereon.

Payment of money.

RULE 72.—In the case of stocks, the persons filing the affidavit, or any of them, may, upon the receipt of the before-mentioned certificate, transfer the stocks into the names of the registrar of the County Court mentioned in the said certificate, in trust to attend the orders of the Court, and shall forthwith leave the transfer ticket with the registrar, and the registrar shall immediately indorse thereon a memorandum of the day on which the same was received by him, and when such transfer ticket shall be so indorsed, it shall be taken for all purposes to have been duly recorded on the day so indorsed thereon.

Transfer of stock.

RULE 73.—In the case of security the person filing the affidavit may forthwith deposit the security with the registrar in the name of the registrar, in trust to attend the orders of the Court, and the registrar shall immediately indorse on the affidavit a memorandum of the day on which the security was deposited with him.

Deposit of security.

RULE 74.—The registrar shall, within twenty-four hours after the payment into the bank of the transfer of stock or of the deposit of the security, as the case may be, send notice thereof by post to the Minister and the Treasurer of Victoria, stating therein the particulars of the payment, transfer, or deposit, as the case may be, which notice may be in the form in the Schedule, with such variations each particular case may require.

Notice of to treasurer of deposit.

RULE 75.—Immediately after the recording of the receipt or transfer ticket, or the deposit of the security, the registrar shall give to the persons paying in the said money, or transferring the said stocks or depositing the security, an acknowledgment or certificate of such payment, or transfer, or deposit, and such acknowledgment or certificate may be in the form set out in the Schedule to these rules, with such variations as each particular case may require.

Acknowledgment of payment.

RULE 76.—Immediately after the recording of the receipt or transfer ticket, or giving a certificate of deposit of security, the registrar shall cause the necessary entry to be made in the Register, Part II., and also in the Suitors' Fund Book, including the title of the particular trust, and the amount of money or stock paid or transferred, or security deposited, and the names and addresses of the person or persons making such payment, transfer, or deposit, and the names of every person stated in the affidavit to be, or to claim to be interested in or entitled to such money or stock, and their addresses and descriptions, as given in the affidavit; and the registrar shall forthwith, by post, send to each of such last-mentioned persons, to the addresses given in the affidavit, a notice of the said payment, transfer, or deposit, which notice shall be under seal of the Court, and may be in the form set out in the Schedule to these rules, with such variations as each particular case may require.

Entries in books, &c.

RULE 77.—Any person interested in or entitled to the fund, or (if need be, but not otherwise) the trustee, may apply by petition, respecting the investment, paying out, or distribution of the fund or income thereof, and the petition shall be filed at the office of the registrar; and the petitioner shall leave thereat, where the petition relates to the income only of the fund, as many copies thereof as there are trustees and persons, other than the petitioner, interested in the due execution of the trust, so far as regards the income only, and in all other cases as many copies thereof as there

Who may petition for order as to fund.

are trustees and persons, other than the petitioner, interested in the due execution of the trust, and he shall state in such petition his own name, address, and description, and a place where he may be served with any petition or notice of any proceeding or order of the Court, relating to the said fund, and also the names, addresses, and description of the other persons interested, so far as he is able, the nature of the trust, and how executed, the trust property, and the substance of the order which he seeks to obtain.

Notice to trustees. RULE 78.—Unless the judge shall otherwise direct, the trustee shall be served with notice of every application made to the Court respecting the fund or the income, by any person beneficially entitled thereto.

When trustee to pay costs. RULE 79.—Where a trustee shall have availed himself of the provisions of section 106 of the Act without sufficient reason, the judge may direct such trustee to bear his own costs, and pay the costs of any other parties, or to bear and pay any part of such respective costs as the judge shall think fit.

Time of filing petitions and giving notices. RULE 80.—Under this order petitions shall be filed, and notices shall be delivered at the office of the registrar seven days before the sitting of the Court at which the petition is to be heard or application made.

Registrar to issue notices. RULE 81.—The registrar, upon receiving any such petition or notice and the copies thereof, shall issue the copies under the seal of the Court to the bailiff for service upon the respective persons to whom they are addressed, together with a notice, signed by himself, and under the seal of the Court, informing them of the day and hour on which the petition or application will be heard, and that if they do not attend, either in person or by their attorneys or counsel, such order will be made and proceedings taken as the judge may think just and expedient.

Service of petitions and notices. RULE 82.—The bailiff of the Court shall, four clear days at least before the hearing, serve all copies of such petitions and notices.

Facts may be supported by affidavit. RULE 83.—Upon the hearing of any petition or application under this order, unless the judge shall otherwise direct, the facts relied upon in support of or in opposition to such petition or application shall be proved by affidavit.

Registrar to draw up order. RULE 84.—Where the judge makes an order upon such petition or application, the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order.

Orders as to suits to extend to proceedings. RULE 85.—The preceding orders relating to suits shall, in all cases where they are applicable, be construed as extending to proceedings under this order.

Ex parte Applications.

Peremptory motions. RULE 86.—Wherever in any suit or proceeding it shall become necessary to secure the possession of any property, or to obtain security from any person for any moneys in his possession, or to enforce the deposit or the payment into Court thereof pending litigation, or the immediate sale of any goods or chattels, and the deposit or payment into Court of the purchase-money thereof, or to obtain an order in the nature of an injunction, any party may apply *ex parte* to the judge, either in or out of Court, upon affidavits setting forth the facts, rendering such order immediately necessary, and upon such application the judge may either make an order absolute in the first instance, or make an order to be absolute at any time to be ordered by him, unless cause be shown to the contrary, or may make such other order or give such directions in the matter as the judge may think fit, and may order immediate execution.

Orders, how drawn and executed. RULE 87.—The order, when signed by the judge, shall be transmitted by the applicant to the registrar of the Court in which the suit or proceeding is pending, who shall seal and file the same, and issue a copy thereof under the seal of the Court to the bailiff for service, and execution shall be issued thereon, as by the order is directed.

Amendments.

Amendments. RULE 88.—The judge may, at or during the hearing, and before a final decree or order be made in any suit or proceeding under the Act, exercise all powers of amendment mentioned in section 119 of the Act, and also all the powers and authorities of a judge of the Supreme Court sitting in equity, and the rules relating to amendment in actions shall apply, so far as they are applicable, to all suits and proceedings in Equity.

[And see the preceding rules under head "*Parties.*"]

Rehearing.

RULE 89.—No decree or order once made shall be reheard unless in any case in which the judge, on special grounds, shall think such rehearing necessary, and then only on such terms as the judge may think just.

Rehearing to be allowed on special grounds only.

Enforcement of Decrees and Orders.

RULE 90.—On the application of the party entitled to the benefit of the decree or order, the registrar shall issue to the bailiff a copy of such decree or order, under the seal of the Court, with a notice to the party to be bound indorsed thereon, and the bailiff shall forthwith serve the same upon the party to whom such notice is addressed.

Service of decree or order.

RULE 91.—No process shall issue to enforce any decree or order, unless by leave of the judge, until three days after a copy thereof, under the seal of the Court, shall have been served upon the party to be bound thereby.

When execution may issue.

RULE 92.—Where any decree or order is made for the payment of money into Court or by one party to another, the registrar shall, after the expiration of the time, if any, appointed by the decree or order for the payment thereof, and after the expiration of the time limited by this order, upon application by the person having the conduct of the suit, or by the payee, issue to the bailiff of the court a warrant of execution, as provided by section 81 of the Act.

Warrant of *fi. fa.*

RULE 93.—Where a decree or order made in any suit or proceeding for the delivery up to any person of lands or tenements, goods or chattels, either as owner thereof, or to be sold, or to be held in possession until an order is made as to the disposition thereof, the registrar shall, upon the application of the person entitled to such possession, issue to the bailiff either a warrant of possession or warrant of assistance, as the case may require.

Warrant of possession or assistance.

RULE 94.—Where an order in the nature of an injunction has been made, whether made *ex parte* or not, the registrar shall, if the party by whom it was obtained desires to have the same served by his attorney, issue for service a copy of such order, under the seal of the Court, to such party.

Service of orders in the nature of an injunction.

RULE 95.—Where any breach of an order in the nature of an injunction shall have been made, the registrar shall, upon the application by the person having the conduct of the suit, issue to the bailiff, or to such person for service by his attorney, a notice, under the seal of the Court, requiring the person who shall have been guilty of the breach of the said order to appear at a Court, to be held on a day to be named therein, to show cause why he should not be committed for contempt for having disobeyed the said order.

Where a person makes a breach of an order in the nature of an injunction, notice to be served upon him to show cause why he should not be committed.

RULE 96.—Where any person is required by any decree or order to pay money or do an act within a certain number of days after service of the copy of the decree or order, and such person shall not have paid such money or done such act within the time mentioned therein, the registrar shall, upon application by the person having the conduct of the suit, issue to the bailiff, or to such person for service by his attorney, a notice, under the seal of the Court, requiring the person who shall have neglected to obey the decree or order to appear at a Court, to be held on a day to be named therein, to show cause why he should not be committed for contempt in having neglected to obey such decree or order. Provided always, a party shall not, by proceeding under this rule, be precluded from enforcing the order by warrant of execution or any other process of the Court.

Where a person neglects to obey a decree or order, notice to be served on him to show cause why he should not be committed.

Funds in Court.

RULE 97.—The accounts of a registrar in equitable proceedings shall be examined and audited in the same manner as his accounts in other proceedings are now or shall be examined and audited.

Registrar's accounts to be audited.

RULE 98.—Where a party is directed to pay money into Court he shall attend and pay the same into the office of the registrar before the hour of two o'clock in the afternoon, and on Saturdays before the hour of eleven in the forenoon; and obtain a receipt for the amount; and the registrar shall, unless otherwise ordered by the judge, pay the same into such bank as the judge shall direct.

Payment into Court.

Entry of payment into court and payment of interest. RULE 99.—The registrar shall enter in the "suits' cash book," and in the "suits' fund book" all sums so paid to the account of the suit or matter in which it is paid.

Married women. RULE 100.—Where any married woman is interested in any principal money, stocks, shares, or securities exceeding in value £200, or £10 in annual payments, she shall be examined by the judge apart from her husband, to ascertain whether the same shall be paid to him or made the subject matter of a settlement, but if she be under age the Court shall order a proper settlement to be made.

Transfer of Proceedings to or from the Supreme Court.

Transfer to Supreme Court where subject matter exceeds the amount to which jurisdiction is given by Act. RULE 101.—If during the progress of an inquiry under order of the Court it shall be made to appear that the subject matter of the suit or proceeding exceeds the amount to which the jurisdiction of the Court is limited, the registrar may proceed with the particular account or inquiry which is then before him, unless he thinks it inexpedient so to do, but he shall at the next sitting of the Court present a certificate of the state of the suit and proceedings, and if the judge shall be of opinion that such excess exists, he shall make an order for the transfer of the suit or matter to the Supreme Court; and the registrar shall make and file with the record a copy of such certificate and order, and shall transmit the original, together with the order of the judge thereupon, under the seal of the Court, by post or otherwise, to the office of the Master-in-Equity, or other office or officer as their Honors the Judges of the Supreme Court may by general order direct, and shall also send notice, by post or otherwise, of the fact, to all parties and persons entitled to be served with a copy of the decree.

Transfer from Supreme Court. RULE 102.—Where any suit or proceeding is transferred under section 103 of the Act, to a County Court, the plaintiff shall lodge with the registrar thereof the order of transfer, together with all original documents in the suit or proceeding in his possession, and also a statement of the names and addresses of the several parties to the suit, and their attorneys, and the defendant shall lodge all original documents in the suit or proceeding in his possession, and either party shall from time to time lodge office copies of any further documents the judge or registrar may require.

Indorsement. RULE 103.—The registrar shall forthwith indorse on the order of transfer the date on which the same was lodged.

Registrar to apply to judge for instructions. RULE 104.—When the order of transfer is lodged, the registrar shall forthwith apply to the judge for directions as to the further steps in the suit or proceeding, and thereupon the judge may give such directions for carrying on the suit or proceeding as he may think fit, or he may appoint a time to hear and determine any matters in such suit or proceeding, and direct the registrar to summon all parties to appear on the day so appointed. And the judge shall also, if he think fit, order the registrar to give notice to the parties to the suit or proceeding, or any of them, that the order of transfer has been lodged.

Special Duties of Registrar.

Summons, &c., to be sealed. RULE 105.—Before any summons, notice, or other document, or any copy thereof, shall be issued by the registrar, the same shall be sealed with the seal of the Court.

Registrar to appoint time and place for inquiries and taking accounts. RULE 106.—Where the registrar is required by any decretal order to make inquiries or to take accounts, he shall appoint some day, being not less than fifteen clear days from the date of such order, to sit in his office or at the Court to hear and determine all matters relating to such inquiry and accounts, and he shall forthwith prepare and insert advertisements in conformity with such order, stating the time, place, and purpose of such sitting, and shall insert the same ten days previous to such sitting.

Hearing before registrar. RULE 107.—Upon the day so appointed the registrar shall sit at the time and place appointed, and shall hear all parties interested, and the practitioners engaged in their behalf.

Further time for certificate. RULE 108.—Where a registrar is not prepared to certify to the Court on the day mentioned in the order he shall apply to the judge for an extension of time, and state the reason for making the application, and he shall give notice, by post or otherwise, to the parties of the enlargement of the time and of the day on which he is to certify.

Registrar to retain money to abide result of appeal. RULE 109.—Whenever a notice for appeal is given, the registrar shall detain the proceeds of any execution which may then be in or may come into his hands pending such appeal, to abide the event of such appeal, unless the judge shall otherwise order.

Special Duties of Bailiff.

RULE 110.—Where any personal property is directed to be sold by auction, the bailiff shall superintend the sale; and where the property is to be sold by private contract he shall carry out the directions of the Court in respect of such sale. As to sale of personal property.

RULE 111.—Where a warrant shall direct the bailiff to take possession of, without selling or delivering to a party, any goods or chattels, he shall make or cause to be made an inventory or appraisal of the goods or chattels which he may take into his possession, and may, upon receiving as a deposit the amount of such appraisal or sufficient security, to be approved by the registrar, for the safe custody, and for the delivery up of possession upon request, of such goods and chattels, relinquish the possession thereof on condition that the same shall be re-delivered to him or held to abide the order of the Court. Possession.

Duties of Receiver.

RULE 112.—Every receiver appointed by the Court, other than the bailiff, shall give such security by bond to the registrar for the faithful discharge of his duties, and the payment over of money, as the Court shall direct. Receiver to give security.

RULE 113.—The receiver shall submit to the registrar, and the registrar shall audit, the accounts of the receiver, which need not be in any particular form, as soon as conveniently may be after the receipt or realization of the assets, and immediately after such audit shall pay over to the registrar the balance found thereby to be in his hands. His accounts to be audited by registrar and when.

RULE 114.—The registrar may require any receiver to produce any receipt, accounts, and vouchers necessary for verifying the accounts, and may disallow any item not proved to his satisfaction, and may, if he shall think fit, require any receiver to verify such accounts and vouchers upon oath. To produce voucher and if required verify on oath.

RULE 115.—The receiver shall, at any time before the complete realization of the assets, produce his accounts to be audited in manner provided by this order, upon receiving seven days' notice in writing from the registrar so to do, and such notice may be sent by post or otherwise to the address of the receiver. To produce account for audit upon notice.

RULE 116.—Where the duties of the receiver are continuous, no longer period than one year shall in any case be allowed to intervene between each audit. Audit once a year.

RULE 117.—In no case shall it be necessary for any party to attend at the audit of the receiver's account; but where a party is dissatisfied with a receiver's account, he may apply to the Court or registrar for a revision of the registrar's allowances. Parties need not attend audit.

RULE 118.—The Court may order the receiver to pay over, at such time or from time to time as it shall see fit, to the party entitled to the beneficial interest therein, or to the guardian of any infant, any yearly or other accruing rents or interest instead of paying the same into Court, and to take credit for such payments in his accounts when audited. Court may order income to be paid direct to parties.

Practice.

RULE 119.—All plaint summonses, petitions, statements, and documents whatsoever in any suits or matter under this order which are required to be filed should, for convenience of filing, be on foolscap paper, and may be wholly or partly printed or written, and dates and sums occurring therein may be expressed in figures. Proceedings may be wholly or partly printed.

RULE 120.—All judicial or official documents in any suit or proceeding, issued by the Court, shall be stamped by the registrar with the seal of the Court. Documents to be sealed.

RULE 121.—Every document the mode of serving which is not specially defined by these rules, may be served, and the service thereof may be proved in conformity with the rule as to the service of summonses, excepting so far as the same relates to the time of service. Service.

RULE 122.—Where any party to a suit or proceeding changes the practitioner he may have engaged, he shall give notice in writing of such change to the registrar, stating the name or firm and place of business of the new practitioner, and the registrar shall file the notice. Change of attorney.

RULE 123.—On the entry of a plaint or filing of a petition, the registrar shall set down the suit or matter for hearing by; in the case of a plaint, making the plaint summons returnable on a day certain, and, in the case of a petition, inserting in the notice the Setting down for hearing.

day on which the matter is to be heard. But the suit or matter may be heard on any other day directed by the judge.

Days for equity sittings.

RULE 124.—The times of the sitting of a County Court in matters of equity shall be those appointed for the transaction of the general business of the Court, unless the judge shall otherwise order and shall appoint a special day or days for a sitting of the Court in matters of equity.

Where Christian name unknown.

RULE 125.—Where any party to any suit or proceeding is unacquainted with the Christian name of any person whose name he desires to insert in any plaint summons, proceeding, or document, he may describe such person by his surname or by his surname and the initial of his Christian name, or by such name as he is generally known by.

Copy of documents for use of judge.

RULE 126.—Where any proceedings or documents are filed an extra copy, in addition to the copies to be delivered under these orders, shall be left with the registrar for the use of the judge, *præcipes* and plaint summonses excepted.

Copies of proceedings to be forwarded to judge.

RULE 127.—The registrar shall, if so desired by the judge, transmit by post, prepaid, to the judge, five days before the sitting of the Court, all copies of proceedings and documents left for his use under these rules.

Acts may be done by counsel or attorney.

RULE 128.—Where by these orders any act is to be or may be done by any party to a suit or proceeding, such act may be done either in person, or by his counsel, or by his attorney.

Substituted service.

RULE 129.—Where by reason of the absence of any party, or from any other sufficient cause, the service of any summons, notice, proceeding, or document cannot be made, or ought in the opinion of the judge to be dispensed with, the judge may wholly dispense with such service, or may, at his discretion, order, any substituted service or notice by advertisement or otherwise in lieu of such service.

Judge to order in what newspapers advertisements to be inserted and costs thereof to be prepaid.

RULE 130.—The judge shall order in what newspaper any advertisements which may from time to time be ordered in any suit or proceeding shall be inserted; and when there is no fund in Court applicable, the expense of such advertisement shall be paid to the registrar by the party requiring the same before they are inserted.

Conduct of suit.

RULE 131.—The judge may order what party shall have the conduct of any suit or proceeding, or any part thereof, and may rescind or alter such order, or make new orders in that behalf, from time to time, as he shall think fit.

Court may enlarge or abridge periods mentioned in these orders.

RULE 132.—The judge may, if he think fit, enlarge or abridge any of the times fixed by these orders for taking any step, or filing any document, or giving any notice, in any suit or proceeding.

Undertaking by next friend to pay costs.

RULE 133.—Before the name of any person shall be used in any suit or proceeding as next friend of any infant, married woman, or other party, such person shall sign an undertaking to be responsible for any costs for which the plaintiff or applicant may become liable in the course of the suit or proceeding, and such undertaking shall be annexed by the registrar to the plaint summons or petition.

Transfer of suits or proceedings from one Court to another in certain cases.

RULE 134.—If suits or proceedings shall be commenced in different Courts by parties in the same interest, such suits or proceedings shall be transferred to the Court in which the first plaint or petition was filed, and shall there be proceeded with in the same way in all respects as if they had been commenced in that Court.

Taxing costs.

RULE 135.—The registrar shall, if so ordered by the judge, tax costs, but in the absence of such order the judge shall tax costs.

Interest on debts.

RULE 136.—Creditors are to be entitled to interest in respect of debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of £5 per cent. per annum, from the date of the decretal order, and to costs of successfully proving such debts according to the scale of costs in that behalf.

Interest on legacies.

RULE 137.—Interest is to be computed on legacies after the rate of £5 per cent. per annum, from the end of one year from the date of the testator's death, unless otherwise ordered, or a different rate is directed by the will.

RULE 138.—Any person who may be in custody may apply to the judge for his discharge therefrom, upon giving to the party at whose suit he was committed notice of his intention so to apply two days previous to his applying.

RULE 139.—The rules and forms and practice in actions in the County Courts shall, subject to the rules under this order, be adopted with reference to suits and proceedings in equity, so far as they shall be respectively applicable. General practice rule.

ORDER V.

APPEAL.

Preparation of Case.

RULE 1.—The party desirous of appealing in any action at law or suit in equity, shall, so soon as he shall have taken the steps necessary under the Act to enable him to appeal, prepare the case for the appeal, which shall be in the form in the Schedule, Sec. 122. and he shall deliver the same to the opposite party, or to the practitioner engaged on his behalf, and if there be several such parties appearing separately or by separate practitioners, then a copy to each of such parties or to each of the practitioners so engaged within fourteen days after the decision appealed from; and such parties, hereinafter called the respondent, shall return the case to the appellant indorsed as either agreed to or dissented from within fourteen days after the respondent shall have received the same.

RULE 2.—If the respondent do not return the case to the appellant within the time fixed by the last preceding rule, the appellant shall forthwith take out a summons, returnable before the judge, calling upon the respondent to show cause why he should not agree to the case, or why the judge should not treat the case as one upon which the parties cannot agree; and if the respondent upon the return of the summons shall not agree to the case so sent to him, and shall not satisfy the judge that he should be allowed further time for considering the case, the parties shall be considered to have disagreed, and a note to that effect shall be indorsed on the summons; and the respondent shall hand the case to the judge, who shall, so soon as he shall have settled the case, sign the same with a statement thereon that the parties have disagreed, and it shall then be sealed by the registrar.

RULE 3.—If the judge, on perusing the case and the respondent's emendation, thinks fit, he may strike out the whole or any part of the statements of the case and evidence by both parties, and substitute copies of his own notes of the evidence, with such remarks (if any) upon the evidence and the demeanor and conduct of the witnesses in giving their evidence in the course of the hearing as he may think fit.

Time for transmitting Case.

RULE 4.—Except as provided in the next rule, every case shall be transmitted to the proper officer of the Supreme Court in accordance with section 120 of the Act, within two months from the date of the judgment decree or order appealed from. Sec. 122.

RULE 5.—If the case should not be returned by the judge settled and signed, within fourteen clear days after he shall have received the same, then he shall indorse upon the case an enlargement of the time for transmitting the case to the proper officer of the Supreme Court, of fourteen days from the day upon which he shall return the case so settled and signed to the appellants.

Time within which Appeal must be Prosecuted.

RULE 6.—Every appeal must be prosecuted at the next available sitting of the Court after the case shall have been transmitted to the proper officer. Sec. 122.

Copy of Judge's Notes.

RULE 7.—Any party to the suit may obtain a copy of the judge's notes of the evidence at the hearing from the registrar upon payment to the registrar, for his own use, of a reasonable compensation for copying the same, such compensation not to exceed 2s. a folio.

ORDER VI.

PROBATE AND ADMINISTRATION.

Probate.

RULE 1.—That every application for probate of a will, or for letters of administration, shall be made by motion to the Court during an ordinary sitting, or upon any day, whether during an ordinary sitting or not, appointed by the judge for hearing applications for probate.

RULE 2.—That no probate of any will or administration of any intestate's effects shall be granted to any person except after the expiration of fourteen days after the publication of an advertisement by him, or some practitioner on his behalf, in a newspaper circulating in the neighborhood of the residence of the deceased testator or intestate, or in some Melbourne newspaper, of his or her intention to apply for the same.

Ex parte.

RULE 3.—That every *ex parte* application for probate of a will shall be supported by an affidavit setting forth—

1. The death of the testator and the time of his decease;
2. That he has left a will and the date thereof;
3. The name and residence of each executor;
4. The names and residences of the subscribing witnesses thereto;
5. That no caveat has been lodged, and that application for probate has not been made to the Supreme Court or to any other County Court;
6. That the property of the deceased, exclusive of what he may have been possessed of or entitled to as a trustee and without beneficially, but not deducting anything on account of the debts due and owing from the deceased, was at the time of his death under the value of £300;
7. The facts which constitute the County Court to which the application is made the proper County Court to entertain the application, namely either that it is the County Court holden nearest to the place in which the deceased had at the time of his or her death a fixed place of abode, or in which any portion of the property of the deceased may be, or in which the executors or any of them has a fixed place of abode.

And if the will be executed by the testator by his affixing his mark thereto, that an affidavit of the due execution thereof shall also, if possible, be made by one or more of the subscribing witnesses thereto. And every such affidavit, together with a further affidavit of the executor or executors, that he or they will administer, shall be filed, before probate of the will shall be issued. The affidavits required by this rule shall be as nearly as may be in the forms in the Schedules.

Administration.

RULE 4.—That every *ex parte* application for letter of administration to the widow or next of kin of any deceased person shall be supported by an affidavit setting forth—

1. The death of the party and the time of his decease.
2. That he died intestate, leaving property in Victoria under the value of £300, exclusive of what he may have been possessed of or entitled to as a trustee and not beneficially, but without deducting anything on account of the debts due and owing from the deceased.
3. What relation or next of kin he left surviving him, so far as the same may be stated.
4. That the party making such application is the widow or next of kin of such deceased person, and entitled by law, as he or she believes, to such administration;
5. That no caveat has been lodged, and that application for administration has not been made to the Supreme Court or to any other County Court.
6. The facts which constitute the County Court to which the application is made the proper County Court to entertain the application, namely, either that it is the County Court holden nearest to the place in which the deceased had at the time of his or her death a fixed place of abode, or in which any portion of the property of the deceased may be, or in which the persons seeking letters of administration or any of them has a fixed place of abode.

Administration at suit of a Creditor.

RULE 5.—That in all cases where a creditor shall intend to apply for letters of administration, he shall, previous to such application, go before the judge, either in or out of Court, and

prove his debt by affidavit, and the judge shall admit or reject proof of such debt, and indorse upon the affidavit whether he admits or rejects the proof; and if the judge admits the debt he may order, which order may be indorsed upon the affidavit of debt, that a plaint summons do issue, calling on the widow and next of kin of the deceased person, or such of them as may be known to the creditor, to appear before the Court, on a day to be named in such summons, not being less than fourteen days after the first day of the publication of the plaint summons, to show cause why administration of the goods of the deceased shall not be granted to such creditor; and such plaint summons shall be made returnable not less than fourteen days from the first publication thereof, and shall be published once in each of two consecutive weeks in two newspapers to be named in the order directing the issue of such plaint summons; and no administration shall, except in cases where the defendant or caveator appears upon the return day, be granted to such creditor, unless upon an affidavit setting forth—

1. The death of the party and the time of his decease.
2. That he died intestate, leaving property in Victoria under the value of £300, exclusive of what he may have been possessed of or entitled to as a trustee and not beneficially, but without deducting anything on account of the debts due and owing from the deceased.
3. What relations or next of kin he left surviving him, so far as the same can be stated.
4. That the party making the application is a creditor, and to what amount.
5. That he has proved his debt.
6. That he has duly published the plaint summons.
7. That no caveat has been lodged, or that a caveat has been lodged but that the caveator has not appeared upon the return day to support his caveat, and that the applicant has not previously made application for administration, either to the Supreme Court or to any other County Court.
8. The facts which constitute the County Court to which the application is made the proper County Court to entertain the application, namely, either that it is the County Court holden nearest to the place in which the deceased had at the time of his or her death a fixed place of abode, or in which any portion of the property of the deceased may be, or in which the persons seeking letters of administration or any of them has a fixed place of abode.

RULE 6.—That upon the return day of such plaint summons any person named as defendant in such plaint summons, or any person applying to be made a defendant, shall be heard against the issuing of such letters of administration, and although no caveat shall have been entered; but if a caveat shall have been entered, then the person who has entered the same shall be heard as a defendant to such plaint summons without any fresh plaint summons being issued, and although no grounds of defence have been delivered under the following rules.

Administration Bond.

RULE 7.—That before any letters of administration shall issue the judge may, if he think fit, require, in addition to an administration bond by the person to whom the letters may be granted, that two approved sureties shall join him in such bond.

RULE 8.—That the proposed administrator and his sureties (if any ordered) shall attend before the registrar and justify upon affidavit, which affidavit shall specify the particulars of the property of the person or persons making the same, and the value of such particulars over and above his just debts and liabilities respectively and such affidavits shall be filed with the registrar, who if not fully satisfied therewith may require further information or assurance as to the sufficiency of the security, either by further affidavit or by examination before him upon oath.

RULE 9.—When the registrar shall be satisfied with the sufficiency of the security an administration bond, in the form or to the effect in Schedule, shall be executed in the presence of the registrar who shall attest and file the same.

Caveat and other Proceedings in Administration Suits.

RULE 10.—That every caveat against an application for probate of a will or letters of administration shall be filed in the office of the registrar by a practitioner within fourteen days next after the first publication of notice of the intention to apply for probate or letters of administration, and such practitioner shall at the same time file with the registrar his authority in writing for lodging the same, together with an undertaking signed either by the party in whose name such caveat is lodged or by such practitioner to appear to any suit that may be instituted by the party applying for such probate or letters of administration, and no service of the plaint summons in such suit shall be required.

RULE 11.—That in any case where a caveat shall have been lodged the party applying for probate or letters of administration (who shall be deemed to be the plaintiff in the suit) shall by an attorney or by a barrister duly authorized in writing (whose authority shall be filed with the registrar) deliver either personally or through the post to the person against whom he intends to proceed (who shall be deemed to be the defendant in the suit) a plaint summons, in the form or to the effect in Schedule, returnable upon a day to be named therein; and such plaint summons shall set forth, in a simple and compendious manner, the names of all the defendants, and the true ground of the plaintiff's cause of suit; and every such plaint summons shall be entered in the register, Part III., and shall be sealed by the registrar in the same manner as plaint summonses under Parts II. and III. of Act; and every such plaint summons shall be delivered or sent by the post to each of the defendants in such times as that in the course of post it shall be received by the defendants fourteen days before the return day thereof.

RULE 12.—That every defendant shall, within ten clear days after he shall have received such plaint summons, deliver to the plaintiff, or to the practitioner whose authority shall have been filed, either personally or through the post, notice of defence, setting forth, in a simple and compendious manner, the points of law or matters of fact, or both, on which he rests his defence, and the issues thus raised shall be deemed the issues to be tried. But if the judge thinks fit he may, either before or upon the return day, relax this rule in favour of defendants who have omitted to give the notice in sufficient time.

RULE 13.—That if the defendant or defendants to whom a plaint summons has been duly delivered shall not give notice of defence within the required time, or, having given such notice, shall not appear upon the return day of the plaint summons, his or their caveat shall be considered as abandoned, and the judge may, upon the return day, or upon such other day as he shall think fit, without any further notice being given to the defendant, make a decree for probate or letters of administration, as though no caveat had been entered.

RULE 14.—That if, upon the return day of the plaint summons, the defendants shall attend and the plaintiff shall not attend, or if both parties attend and the plaintiff shall fail to obtain a decree for probate or for letters of administration, the defendants shall be absolved from the suit, but shall have judgment for their costs, the amount of which the judge shall ascertain, and which costs may be recovered as upon a judgment under Part II. of the Act; and the payment of such costs shall be a condition precedent to the institution of any new suit by the plaintiff.

RULE 15.—That if both parties appear on the return day of the plaint summons the cause shall be heard and determined (subject to such adjournments and to such interlocutory orders or sentences and references as the judge may think necessary), as near as may be in the same manner as a cause under Part II. or under Part III. of the Act.

RULE 16.—That in case of an interlocutory sentence referring any matter to the registrar, he shall appoint an early day for the parties to attend him, and a copy of such appointment being served, within such time and in such manner as the registrar shall direct, on all the other parties. The registrar, upon affidavit of the service thereof, may proceed as he may deem expedient until he shall have completed his investigation; and in all cases where, in consequence of any such reference, it shall be necessary for the registrar to examine any parties, claimants or witnesses, he may examine them, or any of them, upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may require; and if evidence be given *viva voce* he shall take down

the examination of the witness in writing, in order that the same may be used by the Court if necessary; and the registrar shall issue summonses for the attendance of such witnesses before him as he shall deem necessary, at the expense of the party on whose behalf such witness shall be required.

RULE 17.—That "sentences," which may be indifferently called judgments, decrees, or orders, shall be carried into execution in like manner as any judgment or order under the Act.

RULE 18.—That, in suits for the revocation or cancellation of probate or letters of administration, the person seeking sentence of revocation or cancellation shall be the plaintiff, and the executor or administrator (as the case may be) shall be defendants; and such suits shall be instituted, carried on, and determined in the same manner or as near as may be as suits for obtaining probate or letters of administration are directed by these rules to be instituted, carried on, or determined.

Inventory by Executors and Administrators.

RULE 19.—That all executors and administrators do and shall make or cause to be made a true and perfect inventory of all and singular the lands, goods, chattels, and credits of the deceased which have or shall come to the hands, possession, or knowledge of them respectively, or into the hands or possession of any other person or persons for them respectively, and the same so made to sign with their proper handwriting (or mark if illiterate), and do and shall exhibit and deposit or cause to be exhibited and deposited the same inventory to the office of the registrar within three calendar months next ensuing the order granting probate or letters of administration respectively; and further do and shall respectively make or cause to be made a true and just account of their administration of the estate which they have undertaken as to their receipts and disbursements, and as to what portion is retained by them and what portion remains uncollected, and the same so made to sign with their proper handwriting (or mark if illiterate); and do and shall respectively exhibit and deposit or cause to be exhibited and deposited the same account to the said office of the registrar, within fifteen calendar months next ensuing the order granting probate or letters of administration respectively. Provided that the Court may, under special circumstances, by order dispense with the performance of this rule, or excuse the omission to have performed it, as to allowing administration bonds to be put in suit.

NOTICE REQUIRING JURY.

In the County Court at

A.B., Plaintiff.
C.D., Defendant.Take notice that this cause is required to be tried by a jury.
To the Registrar of the said Court and to the Defendant.

INTERPLEADER SUMMONS.

[In Law, Equity, or Probate, as the case may be.]

Plaint No.

In the County Court at

To _____, of _____,
and _____, of _____.

Whereas at the instance of you, the said _____, certain goods and chattels have been taken in execution under the process of this court, and a claim has been made in respect of such* by you the said _____

This is therefore to require you, the persons above-named, to attend before the judge of the said court, at _____, at _____ of the clock in the _____ noon, in order that the said judge may adjudicate upon such claim, and make such order in respect thereof and of the costs incidental thereto as to him shall seem fit.

Given under my hand and the seal of the said court this _____ day of _____

Registrar of the said Court.

* Goods and chattels, or the proceeds or value thereof.

SCALE OF FEES AND COSTS ALLOWABLE TO PRACTITIONERS UNDER
PART II.—COMMON LAW.

	In actions for goods sold, &c., and for wages, not exceeding £20.	Not exceeding £50.	Over £50 and not exceeding £150.	Over £150.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Advising before action, preparing and issuing plaint summons, or advising on defence and preparing notice of special defence when necessary ...	0 10 0	1 0 0	1 10 0	2 0 0
Advising previous to and conducting cause at the hearing ...	0 10 0	1 0 0	3 0 0	5 0 0
Clerk's fee ...	0 5 0	0 10 0	0 10 0	0 10 0

The above fees will be allowed indifferently to barrister or attorney; but if the cause be conducted by a barrister instructed by an attorney, the fees to counsel and attorney will be as under:—

	Under £50, excepting actions for goods sold and wages under £20.	Over £50 and not exceeding £150.	Over £150.
	£ s. d.	£ s. d.	£ s. d.
To attorney—			
Advising before action, preparing and issuing plaint summons, or advising on defence and preparing notice of special defence when necessary ...	1 0 0	1 10 0	2 0 0
Preparing brief, not to exceed ...	1 0 0	2 10 0	4 0 0
Attending hearing ...	1 0 0	1 10 0	2 0 0
Clerk's fee ...	0 10 0	0 10 0	0 10 0
Fee to barrister with his brief ...	2 4 6	3 5 6	5 10 6
Consultation fee to counsel where judge considers necessary	1 3 6	1 3 6
To attorney—attending consultation	0 10 0	0 10 0

In interlocutory proceedings fees proportional to the above.

In actions of ejectment, when the rent or annual value is under £10, the scale over £50 and not exceeding £150; and when the rent or annual value exceeds £10, the scale "Over £150."

IN SUITS AND PROCEEDINGS UNDER PART III. OF THE ACT.—EQUITY.

	In cases in which, in opinion of judge, the value of matter in litigation does not exceed £100.	In cases in which, in opinion of judge, the value of the matter in litigation exceeds £100.
	£ s. d.	£ s. d.
Advising before suit and preparing and issuing plaint summons or advising on defence ...	2 0 0	2 10 0
Advising previously to and conducting cause at the hearing ...	3 0 0	5 10 0
Clerk's fee ...	0 10 0	0 10 0

The above fees will be allowed indifferently to barrister or attorney; but if the cause be conducted by a barrister instructed by an attorney, the fees to counsel and attorney will be as under:—

	In cases in which, in opinion of judge, the value of matter in litigation does not exceed £100.	In cases in which, in opinion of judge, the value of the matter in litigation exceeds £100.
To attorney—	£ s. d.	£ s. d.
Advising before suit, preparing and issuing plaint summons or advising on defence ...	2 0 0	2 10 0
Preparing brief, not to exceed ...	3 0 0	5 0 0
Attending hearing ...	1 10 0	2 0 0
Clerk's fee ...	0 10 0	0 10 0
To barrister—fee with his brief ...	3 5 6	5 10 0
Consultation fee to counsel when judge considers necessary ...	1 3 6	1. 3. 6
To attorney—attending consultation ...	0 10 0	0 10 0

In *ex parte* and interlocutory proceedings, including proceedings under decretal orders, fees proportionate to the above.

IN PROCEEDINGS AND SUITS UNDER PART IV. OF THE ACT.—PROBATE AND ADMINISTRATION.

	£ s. d.
For preparing affidavit and filing, and all other steps preliminary to application to the court for probate, letters of or rule for administration ...	1 10 0
Attending in court to make application ...	1 0 0
Attending to enter <i>caveat</i> ...	0 10 0

The above fees will be allowed indifferently to barrister or attorney. In administration suits, if contested, the scale of costs in equity in suits under £100, and if not contested one-third less.

EXPENSES TO WITNESSES.

	If resident at place of hearing or within four miles.	If resident beyond four miles from place of hearing.
	Per diem.	Per diem.
	£ s. d.	£ s. d.
Laborers and other common witnesses ...	0 7 0	0 10 0
Mechanics and clerks ...	0 10 0	0 15 0
Master tradesmen, yeomen, farmers ...	0 10 0	0 15 0
Engineers, surveyors, accountants, and auctioneers, if carrying on business on their own account ...	1 0 0	1 10 0
Bankers, bank managers, merchants, professional men, esquires ...	1 0 0	1 10 0
Females, but not to exceed per diem ...	0 7 0	0 10 0
Police and constabulary ...	Amount of pay lost, and if stationed out of the town 2s. 6d. extra.	

Travelling expenses, if witness resident more than four miles from place of hearing, the sum reasonably and actually paid.

Witnesses attending in more than one cause will be entitled to a proportionate part only in each cause.

FORMS IN ACTIONS AND PROCEEDINGS UNDER PART II. OF THE ACT.—COMMON LAW.

EXAMPLES OF "STATEMENTS OF CAUSES OF ACTION."

On Contracts.

Work and materials.	Good sold and delivered, particulars of which are annexed.
and the day of	Work done and materials provided between the day of
Money lent.	Money lent on the day of , or between the day
of	and the day of
Money paid.	Money paid at your request on the day of , or between
the	day of and the day of
Money received.	Money received for the use of the plaintiff.
Account stated.	Money found to be due from the defendant to the plaintiff on accounts stated on or about the day of
For an estate sold.	A messuage and lands sold and conveyed by the plaintiff to the defendant on the day of
For goodwill.	The goodwill of a business, and given up by the plaintiff to you.
For the use of a house and land.	The defendant's use of messuages and lands of the plaintiff from the day of to the day of
For hire of goods &c.	The hire of [as the case may be] by the plaintiff, let to hire to the defendant.
For freight.	Freight for the conveyance of goods in ships.

The demurrage of a ship of the plaintiff kept on demurrage by you. For demurrage.
 Money due on the following promissory note [*copy the note*], of which promissory note you are maker [*or endorser*] [and plaintiff is payee (*or endorsee*)].
 Money due on the following bill of exchange [*copy the bill, together with all the endorsements on it*], of which bill of exchange you are acceptor [*or drawer or endorser*], and of which plaintiff is drawer [*or endorsee or holder*].
 That you by warranting a horse to be then sound and quiet to ride sold the said horse to the plaintiff, yet the said horse was not then sound and quiet to ride. Warranty of a horse.
 That the plaintiff let to you a house at _____ for seven years, to hold from the _____ day of _____, A.D. _____, at £ _____ a year, payable quarterly, of which rent _____ quarters are now due and unpaid. Upon a lease for rent.
 That the plaintiff by deed let to you a house No. _____, to hold for seven years from the _____ day of _____, A.D. _____, and that you by the said deed covenanted with the plaintiff well and substantially to repair the said house during the said term (according to the covenant), yet the said house was during the said term out of good and substantial repair. Upon a covenant to repair.

For Wrong or Injury.

That you, on or about the _____ day of _____, A.D. 18____, assaulted and beat the plaintiff. For an assault.
 That you, on or about the _____ day of _____, A.D. 18____, wrongfully deprived the plaintiff of the use and possession of a horse, value £ _____. Trove.
 That you detained from the plaintiff his title deeds of land called _____ in the county of _____, that is to say [*describe the deeds*]. For a horse.
 That, on or about the _____ day of _____, A.D. 18____, one A.B., your servant, in driving a carriage drove the same so improperly that it was forced against the plaintiff's cart, which was thereby greatly damaged. Detinue.
 That you, on the _____ day of _____, A.D. 18____, wrongfully caused to be impounded ten oxen and one hundred sheep of the plaintiff, and kept them impounded for _____ days. Injury by improper driving.
 That the plaintiff has a right to pass and repass on foot and with horses, carriages, and carts, along a certain road from _____ to _____, as set out in the plan hereunto annexed, yet you, on or about the _____ day of _____, A.D. 18____, obstructed the plaintiff in the enjoyment of such road. Wrongful impounding cattle.
 That you, on or about the _____ day of _____, A.D. 18____, trespassed on the close of the plaintiff, situate at _____, and now in his occupation, and described on the plan hereunto annexed, and then and since that time with cattle and horses occupied the same, and destroyed the grass and herbage therein [*or drove off the cattle of the plaintiff then being thereon, or broke down a fence thereon and put up another and ploughed _____ acres of the soil, or cut down and carried away a crop of oats then growing thereon, or caused injury to the same by sludge*]. For obstructing a right of road.
 That you, on or about the _____ day of _____, A.D. 18____, intending to injure the plaintiff, maliciously published in the presence and hearing of divers persons [*or in a certain letter or newspaper*] the following false and scandalous or libellous words of and concerning the plaintiff as follow :— [*Here set out the words complained of*]. Trespass to land.
 That you, on or about the _____ day of _____, A.D. 18____, wrongfully seized divers goods of the plaintiff [*set out the actual number of each-class of goods taken*], twenty tables value £ _____, twenty beds value £ _____, twenty chairs value £ _____, twenty boxes value £ _____, &c., of the value of £ _____, under the pretence that the plaintiff was then indebted to the defendant in the sum of £ _____ as rent arrear, for certain premises held by the plaintiff as tenant thereof to the defendant, and wrongfully sold the same [*or wrongfully kept possession of the same until the plaintiff, in order to recover the said goods, paid you your pretended claim and alleged costs and charges, amounting to £ _____, yet the sum of £ _____ was not at the time of making the said distress due by the plaintiff for the said rent, but a small part only, namely £ _____ was so due*]. Slander or libel.
 That, on or about the _____ day of _____, A.D. 18____, plaintiff delivered to you divers goods [*set them out*] of the value of £ _____, to be carried from _____ to _____, and there to be safely delivered to one _____ for the plaintiff within a reasonable time, for reward paid [*or to be paid*] by the plaintiff, yet you so negligently performed your duty that the said goods were lost to the plaintiff. Distress for more rent than due.
 That you, on the _____ day of _____, assaulted and imprisoned the plaintiff without lawful authority. Against carrier by land for negligence.
 That you, on the _____ day of _____, wrongfully seized the goods of plaintiff, which are set out in the statement of particulars annexed hereto and which goods the plaintiff is proceeding to recover by warrant of replevin. False imprisonment.
Statement of seizure in action of replevin.

[And as to Ejectment see post Form and post Rules "Ejectment."]

PLAINT SUMMONS [EXCEPT IN EJECTMENT].

For trial by _____ Plaintiff No-
 In the County Court at _____
 To [insert defendant's name, address, and occupation].

You are hereby summoned to appear in the County Court at _____, on the _____ day of _____, 18____, at ten o'clock in the forenoon of the same day precisely, to answer the plaint of _____, who resides at _____, by which plaint he seeks to recover from you the sum of _____ pounds _____ shillings and _____ pence. For [*here state cause of action, as in "Examples of statement of causes of action."*] If upon the day named you do not attend and show good cause to the contrary, judgment will be given against you, together with such costs as the court may think fit to award.

Bring this summons with you when you come to the court or to my office.

Given under my hand and the seal of the said court this
day of 18

The plaintiff and his address
by the post is to the care of his practitioner
[barrister or attorney] who is
carrying on business at

Registrar of the said Court.

Notice.—If you admit the whole or any part of the plaintiff's claim, you may pay into court such sum of money as you may think a full satisfaction for the demand of the plaintiff, together with the costs incurred in this matter, six clear days before the time at which you are hereby required to appear, and by so doing you will avoid any further expense, unless the plaintiff at the hearing shall prove a demand against you exceeding the sum so paid into court.

If you have any defence to the demand by way of set-off, or if you wish to set up by way of defence, and to have the benefit of illegality, infancy, coverture, any statute of limitation, or of your discharge under any Act relating to insolvent debtors, of an equitable or statutory defence, the same cannot be admitted unless you give notice in writing to plaintiff or his attorney, either by post or by causing the same to be delivered six clear days at least before the hearing.

You may have a summons to compel the attendance of any witness for the production of any books or documents on applying at my office.

[To be endorsed on or annexed to summons:—]

In the County Court,

Plaint No.

Between

and

Plaintiff,

Defendant.

I, of , in the Colony of Victoria, do make oath and say that I served a true copy of the within summons and particulars of demand thereto annexed on the within named defendant by delivering such true copy to , on the day of One thousand eight hundred and Sworn at , in the Colony of Victoria, this day of , in the year of our Lord One thousand eight hundred and

Before me

A Commissioner of the Supreme Court of the Colony of Victoria for taking Affidavits.

COUNTY COURT—PLAINT SUMMONS IN EJECTMENT.

For trial by

To , of , in the Colony of Victoria, and to all persons entitled to defend the possession of the property herein described.

You are hereby summoned to appear in the County Court at , on the day of 18 , at ten o'clock in the forenoon of the same day precisely, to answer the plaint of A.B., who resides at , by which plaint he seeks to recover possession of [here describe the land], the annual value whereof is £20, and a plan whereof is hereto annexed, and the plaintiff seeks to recover upon [here state estate and title as the title in fee-simple which he declares to be in himself as granted from the Crown, or in fee simple which he declares to be in himself as purchaser from M.N., or his title as mortgagee in fee.] [Insert if plaintiff seeks to recover for mesne profits, And the plaintiff seeks also to recover £ , as the profits of the said land of which he has been deprived by you.]

And take notice that unless you appear judgment may be given and you turned out of possession.

Dated the , day of 18

Registrar of the Court.

Take Notice.—If you, the defendants, or any of you, being tenants of the property, you must, upon being served with this summons, or if this summons shall come to your knowledge, forthwith give notice thereof to your immediate landlord, or to his bailiff or receiver, and if you do not give such notice you will be liable under section 176 of 28 Vic., No. 274, and the County Courts Statute 1869, to forfeit to your landlord three years' rack-rent of the premises demised to you or holden in your possession of him in respect of which this summons has issued.

If you seek to avail yourself of any of the defences enumerated in Section 58 of the Act, you must give notice in writing to the plaintiff, or to his attorney, either by post or by causing the same to be delivered six clear days at least before the hearing.

PLAINT NOTE.

In the County Court at

Plaintiff,

Defendant.

} Plaintiff No.

This note must be kept by the plaintiff or his attorney, and must be produced whenever required by the registrar, and no money can be taken out of court at any stage of the cause unless on production hereof.

Dated this , day of

Registrar of the Court.

NOTICE BY REGISTRAR UNDER SECTION 56 OF THE ACT.
In the County Court at

A.B., Plaintiff, }
C.D., Defendant. } Plaintiff No.

Take notice.—The defendant in this action has [or has not] given notice of his intention to defend.

Dated this _____ day of _____

G.F.B.,
Registrar.

To Mr. A.B., the plaintiff [or to
Mr. X.Y., plaintiff's attorney].

NOTICE OF PAYMENT INTO COURT.

In the County Court at

A.B., Plaintiff, }
C.D., Defendant. } Plaintiff No.

The defendant has paid into court the sum of _____ for [debt], and _____ for costs.

If you think the same a full satisfaction for your demand in this action, the same may be paid to you after filing your plaint note at my office, but if you elect to proceed, you may do so; in which case, if you recover no further sum, you will have to pay the defendant all costs which he will incur by reason of your further proceeding.

Dated this _____ day of _____

Registrar of the said Court.

NOTICE OF SPECIAL OR EQUITABLE DEFENCE.

In the County Court at

A.B., Plaintiff, }
and } Plaintiff No.
C.D., Defendant. }

The defendant on the trial of this cause intends to claim and have the benefit of the following defences:—[These must be set out in accordance with the Rules.]

Dated this _____ day of _____

18 _____ Defendant's

To Mr. _____
the abovenamed plaintiff's attorney,
and to the Registrar of the said court.

PRECIPE FOR SUMMONS FOR WITNESSES.

In the County Court at

A.B., Plaintiff, }
and } Plaintiff No.
C.D., Defendant. }

The plaintiff or defendant [as the case may be] requires summons for witnesses in this action.

Dated the _____ day of _____

SUMMONS TO WITNESS.

In the County Court at

A.B., Plaintiff, }
C.D., Defendant. } Plaintiff No.

To _____
You are hereby severally required to appear personally at the County Court at _____ on the _____ day of _____

at the hour of _____ o'clock in the forenoon, to give evidence on behalf of the abovenamed _____ and then and there to produce and all other books, papers, writings, and other documents relating to the said action which may be in your custody, possession, or power.

In default of such attendance you will be liable to be punished in a summary way by fine and imprisonment, and also to be sued for damages.

Given under my hand and the seal of the said court this _____ day of _____

18 _____ Registrar of the said Court.

NOTICE OF DISCONTINUANCE.

In the County Court at

A.B., Plaintiff, }
C.D., Defendant. } Plaintiff No.

The plaintiff hereby gives notice of discontinuance in this action.
Dated this _____ day of _____

18 _____ A.B., Plaintiff.

[or]

Y.Z., Attorney for Plaintiff.

To C.D., the defendant, and to the Registrar of the said court.

EJECTMENT.

PLAINT SUMMONS IN EJECTMENT.

[See Form given ante.]

Notice of Withdrawal of Action as to the whole or part of Property.

Take notice that I the above-named plaintiff will not proceed in this action [or in respect of that portion of the property hereinafter described, that is to say here describe the said portion of property].

Plaintiff

Notice in Ejectment that a person not originally made a Defendant will appear and defend.

Take notice that M.N. has filed the affidavit, a copy of which is hereto annexed, and that by leave of the registrar he will appear at the trial as a defendant.

To the plaintiffs.

Notice in Ejectment that a Defendant will limit his Defence to part of the Property.

Take notice that the above-named defendant K.L. will at the trial of this action limit his defence to a part only of the property mentioned in the statement annexed to the summons; that is to say [here describe the part to which the defence is limited with reasonable certainty].

To the registrar of the court
and to the plaintiffs.

Judgment in Ejectment for all the Plaintiffs for the whole Property.

It is adjudged that the plaintiffs were on the [the day on which the summons issued, or the day stated in the summons on which the title of plaintiffs accrued] day of 18 , and still are entitled to the possession of the property mentioned in the statement in the plaint-summons in this action; that is to say [describe the property as set out in the statement]; and it is ordered that the defendants do give the plaintiffs possession of the said above-mentioned property forthwith [or on the day of 18]; and it is adjudged that the plaintiffs do recover against the defendants £ for costs, to be paid on or before the day of 18 .

To the defendants.

Take notice that if possession be not given and payment made as above ordered, a warrant may issue requiring the bailiff of the court to give possession of the said property to the plaintiffs, and to levy the sum above mentioned, together with further costs.

Judgment in Ejectment for all the Plaintiffs for part of the Property against one of the Defendants, and for the other Defendants as to the residue of the Property.

It is adjudged that the plaintiffs were, on the day of 18 , and still are entitled to the possession of part of the property mentioned in the statement in the plaint-summons in this action; that is to say [describe the part the plaintiffs are adjudged entitled to], and for which part the defendant G.H. defended separately; but that the plaintiffs were not nor are entitled to the possession of the residue of the property described in the statement in the plaint-summons for which the defendants I.J. and K.L. defended; and it is ordered that the defendant G.H. do give the plaintiffs possession of the said part of the said property for which the said G.H. defended separately forthwith [or on the day of 18]; and it is adjudged that the plaintiffs do recover against the defendant G.H. £ for costs, and that the defendants I.J. and K.L. do recover against the plaintiffs £ for costs, the costs to be paid on or before the day of 18 .

To the defendant, G.H., and to the plaintiffs.

Take notice, that unless possession be given and payment made as above ordered, a warrant or warrants may issue requiring the bailiff of the court to give possession of the said property to the plaintiffs, and to levy the sums above mentioned from the parties ordered to pay the same respectively, together with further costs.

Judgment in Ejectment for one of the Plaintiffs for all the Property against all the Defendants.

It is adjudged that the plaintiff A.B. was, on the day of 18 , and still is, entitled to the possession of the property mentioned in the statement in the plaint-summons in this action; that is to say [describe the property as set out in the statement annexed to the summons]; and it is ordered that the defendants do give the said plaintiff A.B. possession of the said above-mentioned property forthwith [or on the day of 18], and it is adjudged that the said plaintiff A.B. do recover against the defendants £ for costs, to be paid on or before the day of 18 .

To the defendants.

Take notice that unless possession be given and payment made as above ordered a warrant may issue, requiring the bailiff of the court to give possession of the said property to the plaintiff A.B., and to levy the sum above mentioned, together with further costs.

Judgment in Ejectment for Plaintiff whose Title has expired before Trial.

In the County Court at
(Seal)

No. of Plaint.

Between A.B., Plaintiff,
and
C.D., Defendant.

It is adjudged that the plaintiff was, on the day of 18 , and thence until and at the time of the entry of the plaint and of the service of the summons in this action, entitled to the possession of the property mentioned in the plaint-summons in this action, that is to say [here describe the property as set out in the statement], but his title to the same has since that time and before this day expired;

and it is further adjudged that the plaintiff do recover against the defendant
 £ for costs, to be paid on or before the day
 of 18

Given under the seal of the court this day of
 18

By the court.

Registrar of the Court.

To the defendant.

Heading and Conclusion for Special Case in Ejectment.

No. of Plaintiff.

In the County Court of
 (Seal.)

Between A.B., plaintiff,
 and
 C.D., defendant.

Whereas an action of ejectment was commenced by the plaintiff against the defendant, and is still pending in this court for the recovery of [here describe the property sought to be recovered as set out in the statement annexed to the summons], and the parties have agreed upon the facts: now, by leave of the registrar, they state for the opinion of the court the following case.
 [Here set out the facts, and any deeds or documents, or so much thereof as may be material, numbering each paragraph of the case as in an affidavit, and conclude thus:]

If the court shall be of opinion that the plaintiff is entitled to recover the whole or part of the property, then judgment shall be given accordingly for the plaintiff with costs, but if the court shall be of a contrary opinion then judgment shall be entered for the defendant, or judgment of nonsuit shall be given, with costs, as to the court shall seem fit.

A.B., plaintiff,

or

E.F., plaintiff's attorney.

C.D., defendant,

or

G.H., defendant's attorney.

Judgment in Ejectment for Defendant.

It is adjudged that the plaintiff was not on the day
 of 18, nor thence hitherto hath been nor is he now
 entitled to the possession of the property, or of any part of the property
 mentioned in the statement in the plaint-summons in this action; that is to
 say [here describe the property as set out in the statement]; and it is further
 adjudged that judgment be entered for the defendant [or that judgment of
 nonsuit be entered], and that the defendant do recover against the plaintiff
 £ for costs, to be paid on or before the
 day of 18

To the plaintiff.

Judgment in Ejectment for Plaintiff where Defendant is Joint Tenant, Tenant in Common, or Coparcener with Plaintiff, and an actual ouster is proved.

It is adjudged that the plaintiff and defendant were on the
 day of 18, and still are entitled to the joint possession of the
 property mentioned in the statement annexed to the summons in this
 action as joint tenants [or as tenants in common or as coparceners]; that is
 to say [describe the property as set out in the statement], and it having been
 proved to the satisfaction of the court that the defendant did before the
 commencement of this action actually oust the plaintiff from the pos-
 session of the said property, and thence hitherto hath kept and still keeps
 the plaintiff ousted therefrom, it is adjudged and ordered that judgment
 be entered for the plaintiff, and that the defendant do give the plain-
 tiff jointly with him, the defendant, possession of the said above-mentioned
 property forthwith [or on the day of], and that
 the plaintiff do recover against the defendant the sum of £ for costs.

And it is ordered that the defendant do pay to the registrar of this court
 the sum above mentioned, on or before the day of
 18

To the defendant.

Take notice, that if possession be not given, and payment made as
 above ordered, a warrant may issue requiring the bailiff of the court to give
 possession of the said property to the plaintiff, and to levy the sum above
 mentioned, with further costs.

Judgment in Ejectment for Defendant where Defendant is Joint Tenant, Tenant in Common, or Coparcener with the Plaintiff, and no actual ouster is proved.

It is adjudged that the plaintiff and the defendant were, on the
 day of 18, and still are entitled, as joint tenants [or as
 tenants in common, or as coparceners] to the joint possession of, that is to
 say [describe the property as set out in the statement], mentioned in the state-
 ment annexed to the summons in this action; and it not having been proved
 to the satisfaction of the court that the defendant has actually ousted the
 plaintiff from the possession of the said property, or of any part thereof, it
 is adjudged and ordered that judgment be entered for the defendant, and
 that the defendant do recover against the plaintiff the sum of £ for
 costs, to be paid on or before the day of 18

To the plaintiff.

Order in Ejectment for the Substitution of the Heir or other representative of a sole Plaintiff who dies before the return day for such deceased Plaintiff, and for the continuation of the action in the name of the Heir or other Representative.

Upon reading the affidavit of E.F., and upon hearing the attorneys of
 the said E.F., and of the defendant, and it appearing to the court that the

plaintiff, A.B., died on the day of , now last past, and since the commencement of this action, and that the said E.F. is the heir-at-law of the said A.B., and as such heir entitled to whatever estate or interest the said A.B. had in the property sought to be recovered in this action [or that the said E.F. is entitled as devisee under the will of the said A.B. to whatever estate or interest the said A.B. had in the property sought to be recovered in this action, or as the case may be], it is ordered that the name of the said E.F., as heir-at-law [or as devisee under the will, or as the case may be], of A.B., deceased, be substituted in the proceedings in this action for the name of the said A.B., deceased, as plaintiff in this action, and that the said E.F. be at liberty to continue this action in his own name as plaintiff, and to proceed therein as if he had been originally the plaintiff therein, and that the said E.F. do pay to the registrar of this court, on or before the day of , 18 , the sum of £ for the costs occasioned to the defendant by this application, and that the trial of this action be forthwith proceeded with [or be adjourned to the day of , 18].

To the defendant.

N.B.—In explanation of this form it may be mentioned that after the amendment the title of the cause will stand thus:—

Between E.F. (the heir-at-law of A.B., the original plaintiff, deceased)
plaintiff,
and
C.D., defendant.

Or,
Between E.F. (the devisee under the will of A.B., the original plaintiff, deceased), plaintiff,
and
C.D., defendant.

Order in Ejectment for the substitution of the Heir or other Representative of one of several Plaintiffs who dies before the Return Day for such deceased Plaintiff, and for the continuation of the action in the names of the surviving Plaintiff and of the Heir or other Representative of the deceased Plaintiff.

Upon reading the affidavit of K.L., and upon hearing the attorneys of the said K.L. and of the defendants, and it appearing to the court that the plaintiff C.D. died on the day of , now last past, and since the commencement of this action, and that the said K.L. is the heir-at-law [or as the case may be] of the said C.D., and as such heir [or as the case may be] is entitled to whatever estate or interest the said C.D. had in the property sought to be recovered in this action; it is ordered that the name of the said K.L. as heir-at-law [or as the case may be] of C.D. deceased be substituted in the proceedings in this action for the name of the said C.D. deceased as one of the plaintiffs, and that the action be continued and proceeded with in the names of A.B. and K.L. as plaintiffs as if the said A.B. and K.L. had been originally the plaintiffs therein, and that the said K.L. do pay to the registrar of this court on or before the day of , 186 , the sum of £ , for the costs occasioned to the defendants by this application, and that the trial of this action be forthwith proceeded with [or be adjourned to the day of , 186].

To the defendants.

Judgment in Ejectment for substituted Plaintiff.

In the County Court at
(Seal)

No. of Plaintiff.

Between E.F. (the heir-at-law of A.B., the original plaintiff, deceased)
plaintiff,
and
C.D., defendant.

Or,
Between E.F. (the devisee under the will of A.B., the original plaintiff, deceased) plaintiff,
and
C.D., defendant.

Whereas the plaintiff A.B. died after the commencement of this action, and before the return day of the summons therein, and by an order of the court made this day [or on the day of , last] it was ordered, amongst other things, that the name of the said E.F., as heir-at-law of A.B. deceased, should be substituted in the proceedings in this action for the name of the said A.B. deceased as plaintiff, and that the action should be continued in the name of the said E.F. as plaintiff as aforesaid.

Now, upon the hearing thereof at a court holden this day, it is adjudged that the said A.B. on the day of , 18 , and thence until the day of his death, was entitled to the possession of the property mentioned in the statement in the plaint-summons in this action; that is to say [describe the property as set out in the statement]; and that the said plaintiff E.F. is the heir-at-law of the said A.B., and as such heir became on the death of the said A.B. and still is entitled to the possession of the said above-mentioned property; and it is ordered that the defendant do give the plaintiff E.F. possession of the said above-mentioned property, forthwith [or on the day of , 18], and it is adjudged that the plaintiff E.F. do recover against the defendant the sum of £ for costs, to be paid on or before the day of , 18 .

Given under the seal of the court this day of , 18 .
By the court,

Registrar of the Court.

To the defendant.

Take notice that if possession be not given and payment made as above ordered a warrant may issue requiring the bailiff of the court to give pos-

session of the said property to the plaintiff, and to levy the sum above mentioned, together with further costs.

[N.B.—If E.F. be entitled as devisee under the will of A.B., the original plaintiff, or if A.B. be one of several joint plaintiffs, the above form must be altered accordingly.]

Judgment in Ejectment for surviving and substituted Plaintiffs.

No. of Plaintiff.

In the County Court at
(Seal.)

Between A.B. and K.L. the heir-at-law of C.D. (one of the original plaintiffs),
deceased, plaintiffs,
and
E.F. and G.H., defendants.

Whereas one of the plaintiffs, C.D., died after the commencement of this action and before the return day of the summons therein, and by an order of this court made this day [or on the day of last], it was ordered (amongst other things) that the name of the said "K.L., as heir-at-law of C.D., deceased," should be substituted in the proceedings in this action for the name of the said C.D., deceased, together with the name of the said A.B., as plaintiffs, and that the action should be continued in the names of the said A.B. and K.L., as plaintiffs, as aforesaid.

Now upon the hearing thereof at a court this day holden, it is adjudged that the said A.B. and C.D., deceased, were on the day of 18, and thence until the day of the death of the said C.D., entitled to the possession of [describe the property as in the statement in the plaint-summons], mentioned in the statement in the plaint-summons in this action, and that the said plaintiff, K.L., is the heir-at-law of the said C.D., deceased; and that on the death of the said C.D., the said A.B. and K.L. became and still are entitled to the possession of the property in the said statement mentioned, and it is ordered that the defendants do give the plaintiffs, A.B. and K.L., possession of the property above-mentioned, and described forthwith [or on the day of 18]; and it is adjudged that the plaintiffs, A.B. and K.L., do recover against the defendants the sum of £ for costs.

And it is ordered that the defendants do pay to the registrar of this court the sum above-mentioned on or before the day of 18.

Given under the seal of the court this day of 18.
To the defendants.

[If K.L. be entitled as devisee under the will of C.D., one of the original plaintiffs, this form must be altered accordingly.]

Order in Ejectment, giving leave to a party claiming the property on the death of Defendant, who dies before the return day, to appear and defend in the place of such deceased Defendant.

Upon reading the affidavit of E.F., and upon hearing the attorneys of the said E.F., and of the plaintiff, and it appearing to the court that the defendant has died since the commencement of the action, and that upon the death of the defendant the said E.F. became entitled to whatever estate or interest the defendant, C.D., had in the property sought to be recovered in this action; it is ordered that the said E.F. be at liberty to appear and defend the said property above-mentioned and described in the place of the said C.D., deceased, and that the name of the said E.F. be substituted for that of the said C.D., deceased, as defendant in the proceedings in this action, and that this action be continued as if the said E.F. had been originally made defendant therein; and that the said E.F. do pay to the registrar of this court on or before the day of 18, the sum of £ for the costs occasioned to plaintiff by this application, and that the trial of this action be forthwith proceeded with [or be adjourned to the day of 18].

To the plaintiff.

[N.B.—In explanation of this form it may be mentioned that after the amendment the title of the cause will stand thus:—

Between A.B., plaintiff,
and
E.F. (substituted for C.D., deceased), defendant.
and all the subsequent proceedings will be against E.F. as if he had been originally defendant.]

Summons in Ejectment in the nature of a scire facias for Costs against the representatives of a deceased Defendant.

No. of Plaintiff.

In the County Court at
(Seal.)

Between A.B., plaintiff [address, description],
and
C.D., defendant [address, description].

Whereas the plaintiff at a court holden at on the day of 18, obtained a judgment against C.D., of for the recovery of the possession of [here describe the property as in the judgment], and for the sum of £ for costs, which judgment remains unsatisfied so far as relates to the said costs; and whereas the said C.D. has since died, and you are his executor [or state other representative character], you are hereby summoned to appear at a court to be holden at on the day of 18, at o'clock in the noon, to show cause why judgment

should not be entered up against you at the suit of the plaintiff on the judgment so obtained for the said sum of £ for costs, and why execution should not issue thereon for the same.

To the defendant.

Due on judgment for costs £

[N.B.—Judgments can easily be framed from the ordinary form of judgment, on scire facias summons.]

Judgment in Ejectment for Plaintiff who has withdrawn the action as to part of the Property.

Whereas the plaintiff has withdrawn this action as to part of the property mentioned in the statement annexed to the summons in this action; that is to say [describe the part of the property as set out in plaintiff's notice], and the action has proceeded for the recovery of the remainder of the said property; now upon the hearing thereof this day it is adjudged that the plaintiff was on the day of , 18 , and still is entitled to the possession of the remainder of the property mentioned in the statement annexed to the summons in this action; that is to say [describe the remainder of the property]; and it is ordered that the defendant do give the plaintiff possession of the said lastly above-mentioned property forthwith [or on the day of]; and it is adjudged that the plaintiff do recover against the defendant the sum of £ for costs:

And it is ordered that the defendant do pay to the registrar of this court the sum above-mentioned on or before the day of 18 .

To the defendant.

[N.B.—If the judgment be that plaintiff recover part only of the remainder of the property, or be for the defendant, this form must be altered accordingly].

Confession in Ejectment by Defendant of Plaintiff's title to the Property.
No. of Plaintiff.

In the County Court at

Between A.B., plaintiff,
and
C.D., defendant.

I, the above-named defendant, hereby confess and admit the plaintiff's title to the property mentioned in the statement in the plaint-summons in this action, and sought to be recovered therein, and that the plaintiff is entitled to the immediate possession thereof.

Dated this day of , 18 .

Defendant.

Signed by the defendant in the presence of
To the registrar of the court.

Confession in Ejectment by Defendant defending separately for part of the Property of Plaintiff's Title to such part.
No. of Plaintiff.

In the County Court at

Between A.B., plaintiff,
and
C.D. and E.F., defendant.

I, C.D., one of the above-named defendants, defending separately for [here describe the part for which C.D. defends], being part of the property mentioned in the statement annexed to the summons in this action, and for which no other person defends, do hereby confess and admit the plaintiff's title to the above-mentioned part of the said property, and that he is entitled to the immediate possession thereof.

Dated this day of , 18 .

C.D., one of defendants.

Signed by C.D. one of the defendants,
in presence of
To the registrar of the court.

Judgment in Ejectment for Plaintiff, where a Defendant defending separately for part of the Property, admits Plaintiff's title to such part, and the action proceeds for the recovery of the remainder of the Property.

Whereas C.D., one of the defendants defending separately for [here describe the part for which C.D. defends], being part of the property mentioned in the statement annexed to the summons in this action, and for which no other person defends, hath confessed and admitted the plaintiff's title to the said part of the said property, and that the plaintiff is entitled to the possession thereof; and whereas the action has proceeded for the recovery of the remainder of the said property; now, upon the hearing thereof at a court holden this day, it is adjudged that the plaintiff was on the day of , 18 , and still is entitled to the possession of the remainder of the property mentioned in the statement in the plaint summons in this action; and it is ordered that the defendant C.D. do give the plaintiff possession of the said [describe the part defended by C.D.] forthwith [or on the day of , 18], and that the defendant E.F. do give the plaintiff possession of the said [the remainder of the property] forthwith [or on the day of , 18]; and it is adjudged that the plaintiff do recover against the defendant C.D. the sum of £ for costs, and against the defendant E.F. the sum of £ for costs.

And it is ordered that the defendants do respectively pay the said sums above mentioned to the registrar of this court on or before the day of , 18 .

To the defendants.

Take notice, that unless possession be given and payment made as above ordered a warrant may issue requiring the bailiff of the court to give possession of the said property to the plaintiff, and to levy the sums above mentioned, together with further costs.

N.B.—If the judgment be that plaintiff recover part only of the remainder of the property, or be for the defendant, the above form must be altered accordingly.

Notice in Ejectment by Mortgagee against Mortgagor that Defendant has paid into court a sum of money for principal, interest, and costs.

Take notice, that the defendant has paid into court the sum of £ as being all that is due for principal and interest upon the mortgage upon which this action is brought, and for costs; and further take notice, that if you are willing to accept the said sum so paid into court you need not appear on the return day of the summons; but if you do not agree to accept the said sum so paid in as aforesaid, you should appear at the court on that day, as the court will then proceed to determine whether the said sum of £ so paid into court as aforesaid is sufficient to satisfy all such principal, interest, and costs and fees as aforesaid, and will in either case make such order in the matter as to the court shall seem fit.

Dated this day of , 18 Registrar of the Court.
To the plaintiff.

Order in Ejectment by Mortgagee against Mortgagor (all money due for principal, interest, and costs having been paid into court), upon Plaintiff to reconvey to the Defendant the Mortgaged Property.

Whereas this action is brought to recover possession of certain property mortgaged by the defendant to the plaintiff, and the defendant has paid into court the sum of £ for principal, interest, and costs due upon or in respect of the said mortgage; now upon the hearing thereof at a court this day holden, the plaintiff not appearing [or the plaintiff agreeing to accept the said sum of £ for such principal, interest, and costs as aforesaid, or the plaintiff alleging that the said sum of £ is not sufficient to satisfy such principal, interest, and costs, as aforesaid, it is adjudged that the said sum is sufficient to satisfy such principal, interest, and costs as aforesaid, and] it is ordered that within days from this day the plaintiff shall, at the costs and charges of the defendant, re-convey to the defendant the mortgaged property for the recovery of which this action is brought, and shall deliver up to the defendant all title deeds and writings relating to the said property.

To the plaintiff and to the defendant.

Order in Ejectment by Mortgagee against Mortgagor (a certain sum having been paid into Court for principal, interest, and costs), that Defendant shall pay a further sum into court, and that upon such Payment being made the Plaintiff shall reconvey the Mortgaged Property to the Defendant.

Whereas this action is brought to recover possession of certain property mortgaged by the defendant to the plaintiff, and the defendant has paid into court the sum of £ for principal, interest, and costs due upon or in respect of the said mortgage; now, upon the hearing thereof, at a court this day holden, the plaintiff refusing to accept the said sum so paid into court as aforesaid, it is adjudged that the said sum of £ is not sufficient to satisfy the principal, interest, and costs due upon or in respect of the said mortgage, and that the further sum of £ is due from the defendant to the plaintiff for the same; and it is ordered that the defendant shall on or before the day of , 18 , pay to the registrar of this court the said last-mentioned sum, together with £ for the plaintiff's costs in this action, and that upon the said sums of £ and £, amounting together to the sum of £, being paid into court on or before the said day of , 18 , the plaintiff shall, within days from the said last-mentioned day, at the costs and charges of the defendant, reconvey to the defendant the mortgaged property for the recovery of which this action is brought, and deliver up to him all title deeds and writings relating thereto; and it is further ordered, that if the defendant shall not, before or on the said day of , 18 , pay the said last-mentioned sum, then execution shall forthwith issue on the application of the plaintiff for the recovery of the possession of the property described in the plaint summons in this action, and for the sum of £ [the costs of this action], together with the costs of the execution; and the registrar shall return the money paid into court to the defendant.

To the plaintiff and to the defendant.

Warrant of Execution in Ejectment for Possession and Costs.

Whereas at a court holden at , on the day of , 18 , it was adjudged that the plaintiffs were on the day of , 18 , and still are entitled to the possession of the property mentioned in the statement in the plaint-summons in this action; that is to say [describe the property as set out in the statement]; and it was ordered that the defendants should give the plaintiffs possession of the said above-mentioned property forthwith [or on the day of], and it was adjudged that the plaintiffs should recover against the defendants the sum of £ for costs, and it was ordered that the defendants should pay the said sum forthwith [or on the day of]:

And whereas the defendants have not obeyed the said order: These are therefore to authorize and require you to forthwith give possession of the said hereinbefore mentioned property to the plaintiff: And these are therefore further to require and order you forthwith to make and levy by distress and

sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum and costs of this warrant and execution; and also to seize and take any money or bank notes, and cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendant, which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay the amount so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

To the bailiff of the said court.

Special Warrant of Execution in Ejectment for Possession and Costs where one of several Plaintiffs has died after judgment and before execution executed.

Whereas at a court holden at _____, on the _____ day of _____, 18____, it was adjudged that the plaintiffs were on the _____ day of _____, 18____, and still are entitled to the possession of [describe the property as in the statement in the plaint-summons], mentioned in the statement in the plaint-summons in this action, and it was ordered that the defendants should give the plaintiffs possession of the same forthwith [or as in the judgment]; and it was adjudged that the plaintiffs should recover against the defendants the sum of £_____ for costs, and it was ordered that the defendants should pay the said sum to the registrar of this court forthwith [or as in the judgment]:

And whereas the defendants have not obeyed the said order:

And whereas C.D. one of the plaintiffs has died since judgment was given and before execution executed:

These are therefore to authorize and require you to forthwith give possession of the said herein-before mentioned premises to the surviving plaintiffs A.B. and E.F. on behalf of themselves and of the legal representatives of the deceased plaintiff C.D. And these are therefore further, &c. [conclude as in last form.]

JUDGMENT IN REPLEVIN FOR PLAINTIFF.

It is adjudged that the plaintiff do recover against the defendant the sum of _____ for damages, and _____ for costs, amounting together to the sum of _____

JUDGMENT FOR DEFENDANT IN REPLEVIN FOR RENT.

It is adjudged that the plaintiff do return to the defendant the goods and chattels [or cattle, stating the particulars thereof], and pay to the registrar of the court forthwith [or on the _____ day of _____] the sum of _____ for costs of suit; [or It is adjudged that the amount due for rent in arrear from the plaintiff to the defendant is _____, and that the goods and chattels [or cattle] were of the value _____, and that the plaintiff do forthwith [or on the _____ day of _____] pay to the registrar of the court, at his office, the said sum of _____, and also the sum of _____ for costs of suit].

JUDGMENT FOR DEFENDANT IN REPLEVIN OF CATTLE DAMAGE FEASANT.

It is adjudged that the plaintiff do return to the defendant [here specify the cattle], or do pay to the registrar of this court forthwith, or on the _____ day of _____, the sum of _____ pounds, which is now adjudged to be the amount of damages so sustained by the defendant. It is also adjudged that the plaintiff do pay to the registrar of the court, on the day and year aforesaid, the sum of _____ for costs.

ATTACHMENT OF DEBTS.

Notice of desire to examine Defendant as to certain debts due to him.

I, the above-named plaintiff, am desirous, should I succeed in obtaining a judgment against the defendant, of having him examined forthwith after I have obtained such judgment, as to whether or not the following debts are due to him from the following persons, viz:—

E.F., of _____, for goods sold and delivered.
G.H., of _____, for work done.

(Signed) A.B., Plaintiff.

To the Registrar of the above Court.

Order when Garnishee present.

In the County Court at _____

No. of Plaintiff,

Between A.B., Plaintiff,
and
C.D., Defendant.

Whereas the plaintiff has obtained a judgment against the defendant for the sum of £_____ [here insert the amount of judgment]:

Upon examination of the defendant and E.F., of _____, the said E.F. having in open court admitted himself indebted to the said defendant in the sum of £_____, it is ordered that all debts due and owing or accruing due from the said E.F. to the above-named defendant shall be attached to answer the said judgment debt.

And it is further ordered that the said E.F. do pay into court the sum of _____, being the amount of the debt due from him to the above-named defendant [or being so much of the debt due from him to the above-

named defendant as is sufficient to satisfy the said judgment debt], on the day of

Note.—This order must be varied to meet the case of the garnishee disputing the debt, and also varied to meet the case of an *ex parte* application where no statement has been filed with the registrar.

Summons in nature of Scire Facias upon a Garnishee.

In the County Court at

No. of Plaintiff,

(Seal.)

Between A.B., Plaintiff, [address and description].

and

C.D., Defendant, [address and description].

Whereas the plaintiff, at a court holden at , on the day of , 18 , obtained a judgment against C.D., of [name, address, and description], for the sum of , for and costs, which judgment remains unsatisfied: And whereas the plaintiff having filed an affidavit stating that you are indebted to the said C.D., you are hereby summoned to appear at a court holden at , on the day of , 18 , at the hour of in the noon, to show cause why an order should not be made upon you for the payment of the amount of the said judgment, or so much thereof as shall equal the amount of the debts due and owing and accruing from you to the said C.D.

And take notice, that from and after the service of the summons upon you all such debts are attached to answer the said judgment.

And further take notice, that if you shall pay to the registrar of this court the amount of such debts, or so much thereof as will satisfy the judgment debt, you will incur no costs.

Registrar of the Court.

To the Defendant.

Judgment against Garnishee who disputes the Debt.

No. of Plaintiff,

In the County Court at

(Seal.)

Between A.B., Plaintiff, [address and description].

and

C.D., Defendant, [address and description].

Whereas the plaintiff, at a court holden at , on the day of , 18 , obtained a judgment against C.D., of , for the sum of £ , for and for costs, and which judgment remains now unsatisfied: And whereas the plaintiff having filed an affidavit stating that the defendant was indebted to the said E.F., the defendant was summoned to show cause why he should not be ordered to pay the amount of the said judgment, or so much thereof as should equal the amount of the debts due and owing and accruing from him to the said E.F.; and the defendant having failed to appear before the court this day [or appeared before the court this day, and having failed to show cause why he should not be ordered to pay such debts, or having shown sufficient cause why he should not be ordered to pay such debts]:

It is ordered that the plaintiff do recover against the defendant the sum of £ [here insert the amount of the judgment debt, or so much thereof as the debts amount to when the same are less than the judgment debt], and £ for costs, amounting together to the sum of £ [or that the plaintiff do pay the sum of £ for defendant's costs].

It is ordered that the defendant [or plaintiff] do pay the same to the registrar of the court on the day of , 18 , [or, where judgment for plaintiff, and the judge so order, by instalments of for every days; the first instalment to be paid on the day of , 18].

Given under the seal of the court this day of , 18

By the Court,

Registrar of the Court.

Execution against Garnishee.

Whereas on the day of , 18 , it was ordered that E.F. should pay into court the sum of £ , being the [or so much of the] amount of debts found due from him to C.D., of [here insert address and description], a judgment debtor of A.B. [or as is sufficient to satisfy the judgment of the said A.B.]; and whereas default has been made in payment according to the said order: These are therefore [the same as in ordinary executions].

[This form is to be issued by inserting the word "unless" after the word "that," in the second line, to meet the case of an order where no plaintiff summons has been necessary].

Application for Judgment Summons.

No. of Plaintiff;

In the County Court at

A.B., Plaintiff.

C.D., Defendant.

I apply for the issue of a judgment summons against the said defendant, and I state that I rely upon the following grounds for obtaining an order of committal of the judgment debtor; that is to say:—

That the judgment debtor contracted the said debt by means of any fraud or breach of trust.

That the judgment debtor has made a gift, delivery, or transfer of part of his property with intent to defraud his creditors.

That the judgment debtor has changed, or removed, or concealed part of his property, with intent to defraud his creditors.

That the judgment debtor is about to leave the colony, or to leave his present residence, with intent to evade payment.

That the judgment debtor has had, since the judgment was obtained against him, sufficient means and ability to pay the sums directed to be paid under the judgment.

And I undertake to prove to the satisfaction of the judge at the hearing, that the judgment debtor has been able since the judgment to pay the amount ordered by the court as it became due.

I am aware that if I do not prove the same accordingly that I shall have to pay the costs of this summons.

A.B., Judgment Creditor.

or
X.Y., Practitioner appearing for Judgment Creditor.

ORDER FOR SPECIAL COMMITMENT ON EX PARTE APPLICATION.

In the County Court at

A.B., Plaintiff, {
C.D., Defendant. } Plaintiff No.

Whereas the said court did on the day of order that the said defendant C.D. should pay to said plaintiff A.B. the sum of , and the said sum is wholly due and unpaid: And whereas the said A.B. hath this day made proof by affidavit [*here state the special emergency*]

Now therefore I, the judge of the said court, do order that unless the said shall pay into the said court forthwith, he shall be committed to prison for the the sum of period of

Given under my hand and the seal of the said court this day of One thousand eight hundred and Judge of the said Court.

CERTIFICATE FOR DISCHARGE.

To the Keeper of the Gaol at

Whereas by virtue of a warrant issued out of the County Court at , and dated the day of was committed to the said gaol, to be therein kept by you according to the exigency of the said warrant:

This is therefore to certify that the said has paid the moneys mentioned in the said warrant and all subsequent costs, and is now entitled to be discharged out of custody.

Given under my hand and the seal of the said court this day of

Registrar of the said Court.

ORDER FOR DISCHARGE.

[*Law, Equity, or Probate, as case may be.*]

Plaint No.

To the Keeper of the Gaol at

Whereas by virtue of a warrant issued out of the County Court at , and dated the day of was committed to the said gaol, to be kept therein by you, according to the exigency of the said warrant:

Now therefore, under the special circumstances of this particular case, I do direct that the said shall be forthwith discharged from custody under the said warrant.

Given under my hand and the seal of the said court this day of

Judge of the said Court.

INFANT PLAINTIFFS.

Undertaking of next Friend of Infant to be responsible for Defendant's Costs.

No. of Plaintiff

In the County Court at

I, the undersigned , being the next friend of A.B., who is an infant, and who is desirous of entering a plaint in this court against C.D. of *gc.*, hereby undertake to be responsible for the costs of the said C.D. of *gc.*, in such cause, and that, if the said A.B. fail to pay to the said C.D. when and in such manner as the court shall order, all such costs of such cause as the court shall direct him to pay to the said C.D., I will forthwith pay the same registrar of the court.

Dated this day of , 18

JUDGMENT AGAINST EXECUTOR.

The nature of the levy to be made under judgment shall be entered in general terms in the register, as for example, "*de bonis testatoris, si, &c., et si non de bonis propriis*," [or] "as to the costs, *de bonis testatoris, si, &c., et si non de bonis propriis*, and as to the whole or residue of demand judgment of assets *quando acciderint*."

SUMMONS TO AN EXECUTOR OF PLAINTIFF'S INTENTION TO APPLY TO THE COURT WHERE ASSETS HAVE COME TO DEFENDANT'S HANDS SINCE JUDGMENT.

No. of Plaintiff,

In the County Court at
(Seal.)

Between A.B., plaintiff, [address and description]
and

C.D., Executor [or Administrator] of deceased, defendant, [address and description].

The plaintiff having learnt that property of the deceased has come to your (the defendant's) hands as executor [or administrator] since the judg-

ment herein to be administered [and that you have withholden and wasted the same], intends to apply to the court to be holden on the day of , 18 , at the hour of in the noon, for an order that the debt [or damages], and costs shall be levied of the goods and chattels of the said deceased, if you have so much thereof to be administered [and that if you have not, then that it shall be levied of your proper goods and chattels], and that the costs be levied of your proper goods and chattels.

You are therefore hereby summoned to appear at the said court at the time and place aforesaid, to answer touching the matters aforesaid.
To the Executor or Administrator of the deceased.

WARRANTS OF EXECUTION IN ACTIONS AGAINST EXECUTORS.

The form of warrant given in Schedule VI. of the Act is to be used, varied to meet each case in accordance with the particular judgment as to the nature of the levy to be made.

FORMS IN SUITS AND PROCEEDINGS UNDER PART III. OF THE ACT.—EQUITY.

GENERAL FORM OF HEADING AND CONCLUSION FOR PETITIONS AND PROCEEDINGS IN EQUITY.

In the County Court at

In the matter of the petition of A.B., of &c. [address and description].
This petition was filed by , of , practitioner
engaged on behalf of the plaintiff , or by

GENERAL FORM OF HEADING FOR AND CONCLUSION FOR DECREEAL ORDER, OR DECREE OR ORDER, OR ORDERS OF COMMITTAL.

No. of Plaint or Proceeding

In the County Court at , on the day of

Upon the hearing this day of Mr. , for the plaintiff, and upon the hearing of Mr. , for the defendant [or, if some of the defendants do not appear, then, for the defendants C.D., &c., and no one appearing for the defendants E. and F.] it is ordered * * *

Given under the seal of the court this day of

By the Court, G.F.B., Registrar.

Take Notice—That unless you obey the directions contained in this order, obedience thereto will be enforced in such manner as the law provides.

PLAINT SUMMONS IN EQUITY.

No.

In the County Court at

To C.D., of, &c. [insert defendant's name, address, and occupation; and, if sued in representative character, state character in which sued].

You are hereby summoned to appear at the County Court at on the day of , 18 , at ten o'clock in the forenoon of the same day precisely, to answer the plaint of A.B. [insert name of plaintiff], who resides at [insert place of residence and occupation, and, if suing in representative character, the character in which he sues], to show cause why the relief prayed for in the following plaint should not be granted [here insert the plaint, examples of which follow this form, to all of which add prayer for general relief]. And take notice that if you do not attend, either in person or by a barrister or attorney retained by you, at the time and place above mentioned, such decree or order will be made and proceedings taken as the judge may think just.

Dated the day of , 18

Registrar of the Court.

EXAMPLES OF PLAINTS.

ADMINISTRATION.

[Clause 1 of Section 100 of the Act.]

By Creditor.

The plaintiff, states as follows :—

1. E.F., late of , was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of [here insert nature of debt and security, if any].

2. The said E.F. duly made his last will, dated the day of , and thereof appointed C.D. executor [or devised his estate in trust, &c., or died intestate, as the case may be].

3. The said will was duly proved by the said C.D. [or letters of administration were granted, &c.]

4. The defendant has possessed himself of the personal [and real or the proceeds of the real] estate of the said E.F., and has not paid the plaintiff his said debt.

5. The said E.F. died on or about the day of

6. The whole of the personal [and real] estate of the said E.F. does not exceed in amount [or value] the sum of £500.

7. The plaintiff prays that an account may be taken of the personal [and real] estate of the said E.F., deceased, and that the same may be duly administered under the decree of the court, and for such further or other relief as the court may think fit.

By Legatees (Specific).

Omit paragraph 1, and commence paragraph 2—

E.F., late of

will, dated the

day of

, duly made his last , and thereof

appointed C.D. executor, "and by such will bequeathed to the plaintiff [here state the specific legacy]."

For paragraph 4 substitute—

The defendant is in possession of the personal estate of the said E.F., and, *inter alia*, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 7 substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, &c.

By Legatees (Pecuniary).

Omit paragraph 1, and substitute for paragraph 2—

E.F., late of _____, day of _____, duly made his last will, dated the _____ day of _____, and thereof appointed C.D. executor, and by such will bequeathed to the plaintiff a legacy of £ _____

In paragraph 4 substitute "legacy" for "debt."

By Legatees (Residuary).

Omit paragraph 1, and substitute for paragraph 2—

E.F., late of _____, day of _____, duly made his last will, dated the _____ day of _____, and thereof appointed C.D. executor, and by such will bequeathed to the plaintiff the residue [or a part of the residue] of his personal [or and the proceeds of his real] estate.

In paragraph 4, substitute "the residue [or share of residue] so bequeathed" for "said debt."

Next of Kin.

For paragraphs 1, 2, 3, and 4, substitute—

1. E.F., late of _____, was at the time of his death possessed and entitled of personal estate.

2. He died on or about the _____ day of _____, intestate.

3. Letters of administration were duly granted to the defendant, and he has possessed himself of the personal estate of the deceased [leave out "letters of administration were duly granted to the defendant and that" if none have been granted].

4. That the plaintiff is next of kin [or one of the next of kin] of the said E.F.

EXECUTION OF TRUSTS.

[Clause 2 of Section 100 of the Act.]

In a Suit by a Trustee to have Trust administered by the Court.

The plaintiff states as follows:—

1. He is one of the trustees under a deed of settlement, bearing date on or about the _____ day of _____, made upon the marriage of the said E.F. and G.H., the father and mother of the defendant [or a deed of assignment of the estate and effects of E.F. for the benefit of C.D., the defendant, and other the creditors of E.F.].

2. The said A.B. has taken upon himself the burden of the said trust, and is seized of [or in possession of or of the proceeds of] the lands, tenements, and hereditaments [goods and chattels], conveyed [or assigned] by the before-mentioned deed.

3. The trust estate does not exceed in amount [or value] the sum of £500.

4. The said C.D. claims to be entitled to a beneficial interest under the before-mentioned deed.

5. The plaintiff is desirous to account for all the rents and profits of the said lands, tenements, and hereditaments [and the proceeds of the sale of the said or part of the said lands, tenements, and hereditaments, or goods and chattels, or the proceeds of the sale of, or part of the said goods and chattels, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]: and he prays that the court will take the accounts of the said trust, and also that the whole of said trust estate may be administered in the court for the benefit of the said C.D., the defendant, and all other persons who may be interested in such administration, in the presence of the said C.D., and such other persons so interested as the court may direct, or that the said C.D. may show good cause to the contrary.

[N.B.—Where the suit is by a *cestui-que trust* the plaint may be modelled, *mutatis mutandis*, on the plaint by a legatee, and if breach of trust is alleged by way of wilful default or otherwise, the plaints shall shortly state the circumstances and pray for consequential relief.]

FORECLOSURE.

[Clause 3 of Section 100 of the Act.]

The plaintiff states as follows:—

1. By an indenture of mortgage bearing date on or about the _____ day of _____, 18____, a freehold [copyhold or leasehold] cottage, with the garden and appurtenances, at _____ [give general description] were conveyed [or assigned] by the defendant to him the plaintiff, his heirs [or executors, administrators] and assigns, for securing the principal sum of £ _____, together with interest thereon after the rate of £5 per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of £ _____ for principal and interest on the said mortgage.

3. The plaintiff prays that the court will order the defendant to pay him the said sum of £ _____, with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the court, and in default that the equity of redemption of the said mortgaged premises may be foreclosed, or that the said premises may be sold, and the proceeds applied in and towards the payment of the said principal, interest, and costs; and he prays that for that purpose all proper directions may be given and account taken by the court.

Redemption.

Transpose parties and also the facts in paragraph 1.

For paragraph 2 substitute—

2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of £ , which the plaintiff is ready and willing to pay to the defendant, of which the defendant before filing this plaint had notice.

For paragraph 3 substitute—

The defendant prays that he may redeem the said premises, and that the defendant may be ordered to re-convey [or re-assign] the same to him upon payment of the said sum of £ and interest, with such costs as the court may order (if any), upon a day to be named by the court, and that the court will give all proper directions for the preparation and execution of such re-conveyance [or assignment], and doing such other acts as may be necessary to put him into possession of the said premises freed from the said mortgage.

SPECIFIC PERFORMANCE.

[Clause 4. of section 100 of the Act.]

The plaintiff states as follows:—

1. By an agreement dated the day of and signed by the above-named defendant, C.D., he the said C.D. contracted to buy of [or sell to] him certain property, therein described and referred to, for the sum of £

2. He has applied to the said C.D. specifically to perform the said agreement on his part, but that he has not done so.

3. The said A.B. has been and still is ready and willing specifically to perform the agreement on his part, of which the said C.D. has had notice.

4. The plaintiff prays that the court will order the said A.B. specifically to perform the said agreement, and to do all acts necessary to put the said A.B. in full possession of the said property [or to accept a conveyance and possession of the said property], and to pay the costs of the suit.

[N.B.—In suit for delivery up to be cancelled of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled, such as that the plaintiff signed it by mistake, under distress, or by the fraud of the defendant, and alter the prayer according to the relief sought.]

PARTNERSHIP.

[Clause vii. of Section 100 of the Act.]

The plaintiff states as follows:—

1. He and the said C.D., the defendant, have been for the space of years [or months] last past carrying on business together at , under certain articles of partnership in writing, signed by them respectively [or under a certain deed sealed and executed by them respectively, or under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The whole of the property, stock, and credits of such partnership do not exceed in value the sum of £500.

4. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [deed or agreement].

5. The plaintiff prays the court to decree a dissolution of the said partnership, and that the accounts of the said partnership trading may be taken by the court, and the assets thereof realised, and that each party may be ordered to pay into court any balance due from him upon such partnership account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid out of the partnership assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles [deed or agreement], or that if the said assets shall prove insufficient, he the plaintiff, and the said defendant, may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment of and discharge of such debts, liabilities, and costs, and to give such other relief as the court shall think fit.

[N.B.—In suits for winding-up of any partnership, omit the prayer for dissolution; but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.]

DEFENDANT'S ADMISSION.

I, the undersigned defendant, admit the truth of the allegations in the plaint, and hereby submit to the judgment of the court thereon.

(Signed) C.D., Defendant.

Signed in the presence of

[This paper marked A is the paper referred to in annexed affidavit.]

AFFIDAVIT OF SIGNATURE TO DEFENDANT'S ADMISSION.

I, of , an attorney or barrister of the Supreme Court, make oath and say, that I was present on the day of One thousand eight hundred and sixty- and did see the above-named C.D., the defendant, sign the statement hereunto annexed, marked with the letter A, and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as the witness attesting the same is in my handwriting.

DECRETAL ORDER.—ADMINISTRATION SUIT.

It is ordered that the following accounts and inquiries be taken and made [state whether by court, judges, or registrar], that is to say—

In Creditor's Suit.

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In Suits by Legatees.

An account be taken of the legacies given by the testator's will.

In Suits by Next of Kin.

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next of kin [or one of the next of kin] of the intestate.

[After the first paragraph, the decretal order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, devisees, heirs-at-law, and next of kin. In suits by claimants other than creditors, after the first paragraph, in all cases an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

3. An account of the funeral and testamentary expenses.

4. An account of the personal estate of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the personal estate of the deceased are outstanding and undisposed of.

6. And it is further ordered that the defendant do, on or before the day of next, pay into court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the registrar shall find it necessary for carrying out the objects of the suit to sell any part of the personal estate of the deceased, that the same be sold accordingly.

8. And that Mr. be receiver in the suit [or proceeding], and receive and get in all outstanding debts and outstanding personal estate of the deceased, and pay the same into the hands of the registrar [and shall give security by bond for the due performance of his duties to the amount of £ 1].

9. And it is further ordered that, if the personal estate of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken; that is to say—

10. That an inquiry be made what real estate the deceased was seized of or entitled to at the time of his death.

11. What are the incumbrances (if any) affecting the real estate of the deceased, or any part thereof.

12. An account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

13. And that the real estate of the deceased, or so much thereof as shall be necessary to make up the fund in court sufficient to carry out the object of the suit, be sold, with the approbation of the judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

14. And it is ordered that shall have the conduct of the sale of the real estate, and shall prepare the conditions and contracts of sale, and the abstract of title, subject to the approval of the registrar; and that in case any doubt or difficulty shall arise, the papers shall, with the like approval, be submitted to Esquire, to settle.

15. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the registrar shall advertise in the newspapers according to the practice of the court, or shall make such inquiries in any other way which shall appear to the registrar to give the most useful publicity to such inquiries.

16. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the registrar do certify the result of the inquiries and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

17. And lastly it is ordered that this suit [or matter] stand adjourned for making a final decree to the day of

[This decretal order will be varied to suit each particular case.]

DECRETAL ORDER FOR REFERENCE IN FORECLOSURE SUIT BY LEGAL MORTGAGEE.

It is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage mentioned in the plaint (making allowance on one side or the other for any rents or profits received by the plaintiff, and for any sums of money lawfully expended by the plaintiff about the mortgaged premises), and to tax the plaintiff's costs of this suit, and that the registrar do certify to the court, on the day of , what he shall find to be due for principal and interest as aforesaid, and for costs: And upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within [one month] after the registrar shall have presented his certificate, it is ordered that the plaintiff do re-convey the said mortgaged premises, free and clear from all incumbrances done by him, or any claiming by, from, or under him, and do deliver up to the registrar all deeds and writings in his custody or power relating thereto, and that upon such re-conveyance being made, and deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the defendant do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said premises, and the registrar is to settle the conveyance if the parties differ about the same; and it is further

ordered that, after the expiration of the said [one month], the plaintiff shall be at liberty to apply to the court for a final decree for the foreclosure of the said mortgage.

[N.B.—Where the state of the account is ascertained at the first hearing, instead of the order of reference to the registrar, begin—It is declared that the sum of £ is now due to the plaintiff for principal and interest on the mortgage mentioned in the plaint, and it is ordered that the registrar do tax the plaintiff's costs of this suit, and that]

DECRETAL ORDER OF SALE IN A SUIT BY A LEGAL OR EQUITABLE MORTGAGEE OR PERSON ENTITLED TO A LIEN.

It is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage [or equitable mortgage or lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the registrar do certify to the court on the day of , what he shall find to be due for principal and interest as aforesaid, and for costs : And upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within [one month] after the registrar shall have presented his certificate, it is ordered that the plaintiff [do re-convey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under him, and] do deliver up to the registrar all deeds and writings in his custody or power relating thereto, and that upon such re-conveyance being made, and deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs ; but in default of the defendant paying into court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [or the premises subject to the said equitable mortgage or lien] be sold with the approbation of the registrar : And it is ordered that the money to arise by such sale be paid into court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant.

DECRETAL ORDER.—DISSOLUTION OF PARTNERSHIP.

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the *Government Gazette*, &c.

And it is ordered that be the receiver of the partnership estate and effects in this suit, and do get in all the outstanding book debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property, and effects now belonging to the said partnership.
2. An account of the debts and liabilities of the said partnership.
3. An account of all dealings and transactions between the plaintiff and defendant from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties are to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And lastly it is ordered that this suit stand adjourned for making a final decree to the day of .

FINAL DECREE FOR FORECLOSURE.

Whereas it appears to the court that the defendant has not paid into court the sum , which was on the day of last certified by the registrar to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the decretal order made in this suit on the day of last, and that the period of [one month] has elapsed since the said day of :

It is ordered that the defendant do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises.

PARTNERSHIP.

Final Decree.

It is ordered that the fund now in court, amounting to the sum of £ , be applied as follows :—

1. In payment of the debts due by the partnership set forth in the registrar's certificate, amounting in the whole to £
2. In payment of the costs of all parties in this suit, amounting to £ . [These costs must be ascertained before the decree is drawn up.]
3. In payment of the sum of £ to the plaintiff as his share of the partnership assets, and of the sum of £ , being the residue of the said sum of £ now in court, to the defendant as his share of the partnership assets.

[Or, And that the remainder of the said sum of £ be paid to the said plaintiff [or defendant] in part payment of the sum of £ certified to be due to him in respect of the partnership accounts.

And that the defendant [or plaintiff] do, on or before the day of , pay to the plaintiff [or defendant] the sum of £ , being the balance of the said sum of £ due to him which will then remain due.]

NOTICE OF DECRETAL ORDER TO ABSENT PARTY.

Take notice that, on the day of , the decree of which a copy is hereunto annexed was made in this cause, and that from the service of this notice you will be bound by the proceedings in the above cause in the same manner as if you had been originally made a party to the suit, and that you may attend the proceedings under the said decretal order, and that you may apply to the court to add to the decretal order.

Dated this day of , 18

Registrar.

To

NOTICE TO CREDITOR TO PROVE HIS CLAIM.

You are hereby required to prove the claim sent in by you against the estate of A.B., deceased, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me, on or before the day of next, and by attending at my office on the day of 18, at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of , 18

Registrar.

To

NOTICE TO CREDITOR OF ALLOWANCE OF CLAIM.

The claim sent in by you against the estate of A.B., deceased, has been allowed at the sum of , with interest thereon at per cent. per annum, from the day of 18, and for costs.

[If part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to prove such further claim, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me on or before the day of next, and by attending at my office on the day of 18, at o'clock in the noon.

Dated this day of , 18

Registrar.

REGISTRAR'S CERTIFICATE.

In obedience to the decretal order of this court made in the above suit, I hereby certify that the result of the accounts and inquiries [or of the sale and apportionment] which have been taken and made in pursuance of the made in this , dated the day of 18, is as follows:

The plaintiffs and defendants have attended by themselves or by their respective attorneys.

Notice of Decretal Order.

Notice of the said decretal order of the day of 18, has been served upon

The persons so served include all the now living and the personal representatives of such of them as are dead, except such as are parties to this suit, and except hereinafter named

Service of notice of the said decretal order upon the said was dispensed with.

Personal Estate Account.

The defendant , the executor [or administrator] of the testator [or intestate] named in the said , have received personal estate to the amount of £ , and they have paid or are entitled to be allowed on account thereof sums to the amount of £ , leaving a balance due from [or to] them of £ on that account.

References to Account.

The particulars of the above receipts and payments appear in the account marked A, verified by the affidavit of the said defendant filed the day of , and the account marked B, verified by the affidavit of filed the day of , and which accounts are to be filed with this certificate.

Variations from Accounts.

Except that in addition to the sums appearing in such account to have been received, the said defendant [or plaintiff] is [or are] charged with the following sums (that is to say), £ , and except that of the items of disbursement in the said account I have disallowed those numbered , and I have deducted from the item numbered the sum of £ , and from the item numbered the sum of £ , and in addition to the disbursements appearing in such account the said defendant has paid and been allowed the sum of £

Special Allowances in Accounts.

The payments allowed to the said defendant [or plaintiff] in the said account include the sum of £ paid into court to the credit of this cause, on the day of , 18

Reference to Transcript of Account.

The before-mentioned account, marked A, has been altered, and the account marked A B, and which is also to be filed with the certificate, is a transcript of the said account marked A as altered and passed.

No Personal Estate received.

The defendant, the executor [or administrator] of the testator [or intestate] named in the said, have not, nor hath any or either of them, or any person or persons by their or any or either of their order, or for their or any or either of their use, received any part of the personal estate of the said testator [or intestate].

Funeral Expenses.

The funeral expenses of the testator [or intestate], amounting to the sum of £, have been paid and are allowed the defendant [or plaintiff], the executor [or administrator] of the said testator [or intestate], in the said account of personal estate [hereinafter mentioned].

Debts.

The debts of the testator [or intestate], including the plaintiff's] which have been allowed are set forth in the schedule hereto, and, with the interest thereon and costs mentioned in the said schedule, are due to the plaintiff and the other persons named therein, and amount altogether to. No other person has been allowed, or come in and proved, any debt against the estate of the said testator [or intestate], and the time fixed by advertisement for that purpose has expired.

Such of the said debts as are specially are set forth in the first part of the said schedule, and amount to £; such as are simple contract are set forth in the second part of said schedule, and amount to £.

Interest on Debts.

The interest on such debts is computed down to the date of this certificate, and after the rate of £4 per centum per annum, from the day of, 18, the date of the said decretal order, unless otherwise specified in the said schedule.

Legacies and Annuities.

The legacies given by the testator, other than annuities, are set forth in the first part of the schedule hereto, and, with the interest therein mentioned, remain due to the persons therein named, and amount altogether to £.

The annuities given by the testator, with the arrears due thereon, are set forth in the second part of the said schedule. Such arrears amount to £.

Interest on Legacies.

The interest on such legacies is computed down to the date of this certificate, and after the rate of £4 per centum per annum, from the day of, 18, the end of one year after the testator's death, unless otherwise specified in the said schedule.

The arrears of the annuities are computed to the date of this certificate, and from the testator's death, unless otherwise specified in the said schedule.

Outstanding Estate.

The personal estate of the said testator [or intestate] [not specifically bequeathed] outstanding or undisposed of consists of the particulars set forth in the schedule hereto.

Real Estate.

The real estate which the said testator [or intestate] was seized of or entitled to or consists of the particulars set forth in the schedule hereto.

Incumbrances on Real Estate.

The incumbrances affecting the testator's [or intestate's] real estate are specified in the schedule hereto.

Rents and Profits Account.

The defendants [or plaintiff], the trustee named in the said decretal order, have received rents and profits of the testator's real estate to the amount of £, and they have paid or are entitled to be allowed on account thereof sums to the amount of £, leaving a balance due from [or to] them of £ on that account.

No Rents and Profits received.

The defendants [or plaintiff], the trustees named in the said decretal order, have not, nor hath any or either of them, or any person or persons by their or any or either of their order, or for their or any or either of their use, received any sum or sums of money on account of the rents and profits of the testator's [or intestate's] real estate.

Next of Kin.

The next of kin, according to the statutes for the distribution of the effects of intestates, of the intestate named in the said, living at the time of his death were, of whom the said have since died.

The legal personal representative of the said
The legal personal representative of the said
The legal personal representative of the said
Dated this day of

Registrar.

NOTICE THAT REGISTRAR'S CERTIFICATE MAY BE INSPECTED.

Take notice that the certificate of the result of the inquiries made and accounts taken by me under the decretal order of this court made on the day of, in this cause, lies in my office, and can be inspected by you up to and inclusive of the day of [here insert the day before the cause is to be further heard].

Registrar.

To

BOND TO BE GIVEN BY RECEIVER.

Know all men by these presents that we, A.B., of, &c., and C.D., of, &c., and E.F., of, &c., are jointly and severally held and firmly bound to G.H., Registrar of the County Court of _____, holden at _____, in _____, to be paid to the said G.H., or his certain attorney, executors, administrators, or assigns: For which payment to be made we bind ourselves, and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this _____ day of _____, One thousand eight hundred and _____

And whereas a plaint in equity has been filed in this court by A.B. against C.D. for the purpose of [here insert object of suit]:

And whereas the said A.B. has been appointed, by order of the above-mentioned court, to receive the rents and profits of the real [or freehold or copyhold or leasehold] estate [or estates] [and to get in the outstanding personal estate] of C.D., the testator in the said plaint named:

Now the condition of this obligation is such, that if the above-bounden A.B. do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estates, and in respect of the personal estate, of the said C.D. [or as may be] at such periods as the said court shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said court hath directed or shall hereafter direct, then this obligation shall be void and of none effect, otherwise shall remain in full force and virtue.

A.B. (L.s.)
C.D. (L.s.)

Signed, sealed, and delivered by the above-bounden in the presence of _____

NOTE.—If deposit of money be made the memorandum thereof should follow the terms of the condition of the bond.

WARRANT OF ASSISTANCE.

Whereas, according to the tenor and true meaning of a decree [or an order] bearing date the _____ day of _____, 18____, made in the matter of this suit, the said defendant, C.D., was ordered to deliver up possession to A.B. in the said order named of all that, &c. [as in order]: And whereas a copy of such decree [or order] was duly served upon the said C.D., yet nevertheless he the said C.D., and other ill-disposed persons, his accomplices, have refused to pay obedience thereto, and detain and keep the possession of the said house [or tenement and premises]: These are, therefore, to authorize and require you to forthwith enter into and upon the said messuage [or tenement and premises], and that you do remove, eject, and expel the said C.D., his tenants, servants, and accomplices, each and every of them, out of and from the said messuage [or tenement and premises] and every part and parcel thereof, and that you do place and put the said A.B. and his assigns into the full, peaceable, and quiet possession thereof, and defend and keep him and his said assigns in such peaceable and quiet possession when and as often as any interruption may or shall from time to time be given or offered to them or any of them, according to the true intent and meaning of the said order; and herein you are not in anywise to fail.

Given under the seal of the court, this _____ day of _____, 18____

By the Court,

Registrar.

To the Bailiff of the said Court.

WARRANT OF POSSESSION.

Whereas, on the _____ day of _____, 18____, this court did in the matter of this suit, decree [or order] that you, the bailiff of this court, should [or that A.B. should] take possession of the goods and chattels of E.F., deceased, in the said suit mentioned, and which at the date of the said order were in the possession of the defendant [and sell and convert the same into money or keep and hold the same to abide the further order of the court, as the case may be].

These are therefore by virtue of the said decree [or order] and the statute in such case made and provided to will and require, authorize and empower, you and every one of you to whom this warrant is directed forthwith to enter into and upon the house and houses of the said C.D., and also in all other place or places belonging to the said C.D. where any of the goods or chattels, part of the estate of the said E.F., deceased, are suspected to be, and there to seize all the goods and chattels whatsoever belonging to the estate of the said E.F., deceased.

And in case of resistance, or of not having the key or keys of any door, or lock of any premises belonging to the said C.D., where any of the goods or chattels part of the estate of the said E.F. are suspected to be, you shall break open or cause the same to be broken open, for the better execution of this warrant.

Given under the seal of the court this _____ day of _____, 18____

By the Court,

Registrar.

To the Bailiff of the said Court.

ORDER OF REVIVOR.

Upon application of [here state by whom the application is made and the events which have happened rendering it necessary to apply], I do order that this suit stand revived and be in the same plight and condition as the same was in at the time of the said abatement.

Dated this _____ day of _____

J.S., Judge.

ORDER IN THE NATURE OF AN INJUNCTION.

The plaintiff undertaking [by his counsel or attorney] to abide by any order this court may make as to damages, in case this court shall hereafter be of opinion that the defendant shall have sustained any, by reason of this order, which the plaintiff ought to pay: Now, therefore, C.D., the defendant in this cause, his servants, agents, and workmen, are hereby strictly enjoined and restrained from pulling down or suffering to be pulled down the house being [Number 16, Wardell street, Collingwood], and from selling the materials whereof the said house is composed [or from entering into any contract or contracts, and from accepting, drawing, indorsing, or negotiating any bills or bill of exchange, notes or note, or written securities or security, in the name of the partnership firm of , and from contracting any debts or debt, and buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing or causing to be done any acts or act in the name or on the credit of the said partnership firm, or whereby the said partnership firm can or may in any manner become or be made liable to or for the payment of any sums or sum of money, or for the performance of any contract, promise, or undertaking, or, as the case may be] until the day after the day upon which the cause shall be heard, or until further order [or until the day of , upon which day this court will consider whether this order shall be further continued].

Dated this day of

J.S., Judge.

If you, the said C.D. [your servants, agents, or workmen], act in disobedience to this order, you, the said C.D., will be liable to be committed by this court, and also be liable to have your estate sequestered.

NOTICE OF APPLICATION FOR COMMITTAL.

Take notice that the plaintiff, A.B., will on the day of , 18 , apply to this court for an order for your committal to prison for having disobeyed the order of this court made on the day of , 18 , enjoining and restraining you [or for having neglected to obey the decree or order made on the day of , 18 , requiring you] [here set out the mandatory part of the decree or order]; and further take notice that you are hereby required to attend the court on the first-mentioned day, to show cause why an order for your committal should not be made.

Dated this day of , 18

E.F., Registrar.

To C.D., the Defendant.

ORDER OF COMMITTAL FOR BREACH OF AN ORDER IN THE NATURE OF AN INJUNCTION.

Whereas by an order of this court, dated the day of , 18 , [here recite the order]: Now, upon the application of the plaintiff, and upon hearing the defendant [or, if the defendant does not appear, reading the affidavit of X.Y., or, where service has been by bailiff, of L.M., a bailiff of this court or of the county court holden at , showing, or being satisfied on oath, that a copy of the said order and notice of this application have been severally served upon the defendant, C.D.], and upon reading the affidavit of, &c. [enter evidence], the court being of opinion, upon consideration of the facts disclosed by the said affidavit [or affidavits], that the said defendant, C.D., has been guilty of a contempt of this court by a breach of the said order, doth order that the said defendant, C.D., do stand committed to [here insert prison used by the court] for his said contempt.

ORDER OF COMMITTAL FOR NEGLECT TO OBEY DECREE OR ORDER.

Whereas by a decree [or order] of this court dated the day of , 18 , [here recite the decree or order]: Now, upon the application of the plaintiff, and upon hearing the defendant [or, if the defendant does not appear, reading the affidavit of X.Y., or, where service has been by bailiff, of L.M., a bailiff of this court or the county court of holden at , showing, or being satisfied on oath that a copy of the said decree [or order] and notice of this application have been severally served upon the defendant, C.D.], and upon reading the affidavit of &c. [enter evidence], the court being of opinion, upon consideration of the facts disclosed by the said affidavit [or affidavits], that the said defendant, C.D., has been guilty of a contempt of this court by neglecting to obey the said decree [or order], doth order that the said defendant, C.D., do stand committed to [here insert prison used by the court] for his said contempt.

WARRANT OF COMMITTAL.

To the bailiff of the said court and all peace officers within the jurisdiction of the said court, and to the governor or keeper of the [here insert prison used by the court].

Whereas by an order bearing date the day of , it was ordered that the defendant, C.D., should stand committed to prison for contempt of this court:

These are therefore to require you forthwith to arrest and apprehend the defendant, C.D., and him safely convey and deliver to the governor or keeper of the [prison used by this court], and you, the said governor or keeper, to receive the defendant, C.D., until further order of this court.

Dated this day of , 18

E.F., Registrar of the Court.

NOTICE OF APPLICATION FOR DISCHARGE FROM CUSTODY.

Take notice, that I intend, on the day of , 18 , to apply to this court [or the registrar of this court] to discharge me from custody, I being desirous of clearing my contempt.

Dated this day of , 18 ,
C.D., Defendant.

To A.B., Plaintiff.

ORDER OF DISCHARGE FROM CUSTODY.

Upon application made this day of by for the defendant, who was committed to prison for contempt, by order of this court dated the day of , 18 , and upon reading the affidavit of the defendant filed the day of , 18 , showing that he is desirous of clearing his contempt, and upon bearing the plaintiff [or, if no one appears for plaintiff, then upon being satisfied that notice of this application has been duly served upon the plaintiff], this court [or I, the judge of this court] do hereby order that the said defendant be discharged out of the custody of the governor [or keeper] of [here insert name of prison] as to the said contempt, but not as to the costs of the said contempt.

Dated this day of , 18 .

PETITION.

[Under Clause v. of Section 100 of the Act.]

In the County Court holden at

In the matter of

The petition of A.B., of &c. [address and description],

Showeth—

1. That by a deed of settlement bearing date the day of , made upon the marriage of C.D. with E.F., certain freehold property in the settlement mentioned was conveyed to [or that C.D., deceased, by his will, bearing date day of , and proved on the day of , by your petitioner and G.H., in the Supreme Court of this colony, certain freehold property in the will mentioned was devised to] the petitioner, together with G.H., upon certain trusts, *inter alia* [here set out the clause or portion of the trust deed or will upon which the order of the court is required].

2. That the said G.H. died on or about the day of , leaving the petitioner surviving trustee.

3. That disputes and doubts have arisen under the clause before set out as to whether [here set out the specific question upon which the opinion, advice, or direction of the court is required].

4. That the trust estate [or fund] to which this proceeding relates does not exceed in value the sum of £500.

5. That the persons interested in this application are I.J., of &c. [address and description], K.L., of &c.

6. Your petitioner prays the court to declare its opinion, advice, or direction whether [here state specific question which the court is asked to determine].

This petition was filed by , of ,
for the plaintiff [or by].

In the County Court holden at

In the matter of

The petition of A.B., of &c. [address and description],

Showeth—

1. That C.D., deceased, by his will, bearing date the day of , and proved on the day of , by your petitioner and G.H. in the Supreme Court, certain freehold property in the will mentioned was devised to [or, that by a deed of settlement bearing date the day of , made upon the marriage of C.D. with E.F., certain freehold property in the settlement mentioned was conveyed to] the petitioner together with G.H., upon certain trusts.

2. That the said G.H. died on or about the day of , leaving the petitioner surviving trustee.

3. That the said trusts are still unexecuted, and that the petitioner is unable, by reason of having left the neighborhood [or his bodily infirmity, or any cause for relinquishing trust], further to execute the said trusts; that it is for the advantage of the parties beneficially interested in the due execution of the trust that new trustees be appointed by the court in the place of the petitioner.

4. That and , of &c. [address and description] are proper persons to appoint as such trustees.

5. That I.J., of &c. [address and description] and L.M., of &c. [address and description], are the persons beneficially interested in the said trust.

6. Your petitioner prays that the said and , or some or other persons to be named by the court, be appointed trustees in his place and stead, and that the cost of the proceeding be ordered to be paid out of the trust fund, and to give such directions as may be necessary for executing such order.

This petition was filed by , of ,
for the plaintiff, [or by].

PETITION.

[Under Clause vi. of Section 100 of the Act.]

*In the County Court holden at**In the matter of*

The petition of A.B., of &c. [address and description],

Sheweth—

1. That he is guardian [or trustee] of C.D., an infant, and that by the will of E.F. a sum of £ . . . was bequeathed to the petitioner, upon trust, to apply the income thereof to the maintenance and education of the said C.D. during his minority, and to pay the said principal sum of £ . . . to the said C.D. upon his attaining the age of twenty-one years.

2. That the said C.D. is now of the age of fourteen years or thereabouts, and is now resident within the jurisdiction of this court, and the petitioner has heretofore spent the whole of the accruing interest upon his maintenance and education.

3. That in the opinion of your petitioner it would be greatly to the interest and advancement of the said C.D. if a sum of £ . . . part of the said principal money of £ . . . was now expended by the petitioner in payment to G.H. of . . . saddler, as a premium to the said G.H. to take and receive the said C.D. as his indoor apprentice.

4. The petitioner prays that he may direct him to use and appropriate the said sum of £ . . . part of the said principal trust money or sum of £ . . . for the apprenticeship of the said infant accordingly.

This petition was filed by . . . of . . . for the plaintiff [or by . . .].

AFFIDAVIT.

[Under Section 106 of the Act.]

In the County Court holden at

In the matter of "The County Courts Statute 1869," and of [add the title of the particular trust, as "the trusts of a certain indenture of mortgage, dated the . . . day of . . . and made between A.B. and C.D."]

I, C.D., of [address and description], make oath and say, as follows—

1. *State place for service, as—*My house being . . . is the place where I am to be served with any notice or application relating to the trust fund hereinafter mentioned.

2. *State the amount of money or stock proposed to be paid, or transferred, or security deposited in trust to attend the orders of the court, as—*Under the provisions of the said Act, I desire to pay into the Post Office Savings Bank the sum of . . . hereinafter mentioned.

3. *Set out a short description of the trust and of the instrument creating it, as—*By the indenture before mentioned a certain messuage situate at . . . with the appurtenances, was mortgaged by the said A.B. to me, my heirs and assigns, for securing to me the repayment, on the day of . . . 18 . . . of the sum of £ . . . with interest for the same at the rate of £ . . . per cent. per annum; and the said indenture contained a power of sale in case of default in payment, and it was by the said indenture declared that the moneys to arise from any such sale should, after retaining thereout the expenses of executing the said power and the said principal money and interest, be paid to the said A.B., his heirs or assigns.

The said A.B. died on or about the . . . day of . . . and by his will, dated the . . . day of . . . appointed E.F. of * . . . executor thereof, and devised the said hereditaments, subject to the said mortgage, unto G.H. of * . . . and J.K. of * . . . in trust for the said E.F., for his life, and after his death upon certain trusts for sale, and for the division of the proceeds amongst the following persons, namely, the testator's son, M.N., of * . . . and his children or child, and the testator's daughter, O., the wife of P.Q., of * . . . and her children or child.

The said E.F. proved the said will in [state in what court], and is still living.

The said G.H. never acted in the trusts of the said will, &c.
On or about the . . . day of . . . I sold the said hereditaments by public auction to X.Y., of [address and description], at the price of £ . . .

After retaining out of the said £ . . . the costs of sale, and the sum of . . . being the total amount of principal moneys and interest due upon the said mortgage, and the sum of £ . . . being the costs of paying the fund into court, a balance of £ . . . now remains in my hands, and the sum of £ . . . which I desire to pay into the Post Office Savings Bank, in trust, to attend the orders of this court, is the said balance of £ . . .

4. *State the names of the persons interested in or entitled to the fund, to the best of the trustee's knowledge or belief, as—*

To the best of my knowledge and belief, the said G.H. and J.K., as such trustees as aforesaid, and the said E.F., M.N., and his children or child [stating, if known, their names], and O.P. and her children or child [stating, if known, their names], are the only persons interested in the said fund.

5. *Add submission to answer inquiries, as—*
I submit to answer all such inquiries relating to the application of the said fund of £ . . . as the court may think proper to make or direct.

Sworn at, &c.

* Here insert present address and description. If the address of any person interested be unknown to the trustee, this fact must be set forth in the affidavit.

CERTIFICATE IN CASE OF MONEY.

In the County Court holden at
(Seal.)

In the matter of the "County Courts Statute 1869."

In the matter of the [trusts of
I hereby certify that [state name, address, and description of party
making the application] has this day filed with me, the registrar of this
court, an affidavit entitled as above-mentioned, with reference to a trust
fund or sum of therein mentioned, which sum, as therein
stated, he desires to pay into my name as such registrar as aforesaid into
Bank, as provided by the above Statute.

Dated this day of Registrar of the Court.

CERTIFICATE IN CASE OF TRANSFER OF STOCK.

In the County Court holden at
(Seal.)

In the matter of "The County Courts Statute 1869."

In the matter of this
I hereby certify that [state name, address, and description of party
making application] has this day filed with me, the registrar of this court,
an affidavit entitled as above-mentioned, with reference to a trust fund of
£ [describe the stock], which, as therein stated, he desires to transfer
into the name of the registrar of this court, in the matter of the particular
trust, to attend the order of the court, as provided by the above Act.

Dated this day of 18 Registrar of the Court.

ACKNOWLEDGMENT OF FILING OF RECEIPT OR TRANSFER TICKET.

In the County Court at
(Seal.)

In the matter of "The County Courts Statute 1869,"
and

In the matter of this
I hereby acknowledge that [state the name, address, and description of
the party giving to the registrar the receipt of the Post Office Savings Bank or
chartered bank, in the case of money, or the transfer ticket in the case of stock]
has this day delivered to me, the registrar of the court, a receipt dated [name
of officer of the Post Office Savings Bank or manager of bank] for the sum
of £ , which receipt is in words and figures following—
Registrar of the Court.

CERTIFICATE OF DEPOSIT OF SECURITY.

In the County Court holden at
(Seal.)

In the matter of "The County Courts Statute 1869,"
and

In the matter of this
I hereby certify that [state the name, address, and description of the party
depositing with the registrar the security] has this day deposited with me, the
registrar of this court, in the name of myself, in the matter of [here state
particular trust and then state the nature of the security deposited].
Registrar of the Court.

NOTICE TO THE MINISTER AND TREASURER.

No.
In the County Court holden at
(Seal.)

In the matter of "The County Courts Statute 1869,"
and

In the matter of this
Take notice that, on the day of
[state name, address, and description of party who has deposited the security]
under the said Act deposited with the registrar of this court, in the name of
myself, in trust, to attend the orders of this court [here describe security].
Registrar of the Court.

To the Honorable the &c.

NOTICE OF PAYMENT INTO POST OFFICE SAVINGS BANK OR CHARTERED
BANK OR OF TRANSFER OF STOCK OR DEPOSIT OF SECURITY.

No.
In the County Court holden at
(Seal.)

In the matter of "The County Courts Statute 1869,"
and

In the matter of this
Take notice that, on the day of
[state name, address, and description of party who has paid in the money] under
the said Act paid into the Post Office Savings Bank or into the [describe
chartered bank] at , in the name of me, the registrar
of this court, the sum of £ , and in his affidavit
filed in this court on the day of ,
shortly described the instrument creating the trust, and stated the names
of the persons interested in or entitled to the fund to the best of
his knowledge and belief, as follows, that is to say [state from the
affidavit the paragraph containing the names of the persons interested]

or entitled] [or, "transferred into the name of the registrar of this court [describe stock], in trust, to attend the orders of this court, or deposited with me in the names of _____, of _____, and of me the registrar of this court, in trust, to attend the orders of this court [here describe security]."]

And further, Take notice that any person interested in or entitled to the said fund may apply to this court respecting the investment, payment out, or distribution of the fund, or of the income thereof, according to the practice of the court.

Registrar of the Court.

NOTICE TO PERSONS INTERESTED IN MONEY STOCK OR SECURITIES
DEPOSITED WITH REGISTRAR.

[Heading as in last form.]

Take notice that, on the _____ day of _____, [state name, address, and description of party who has deposited the security] under the said Act deposited with the registrar of this court, in my name, in trust, to attend the orders of this court [here describe security], in which fund you are stated on the affidavit filed in this matter to be interested.

Registrar of the Court.

To Mr. _____, of _____.

CASE UPON APPEAL IN LAW OR EQUITY.

[Law or Equity, as the case may be.]

In the County Court at _____

A.B., Plaintiff, }
C.D., Defendant. } Plaintiff No. _____

The plaint in this cause is as follows [here insert the plaint as set out in the plaint summons].

[If the cause has proceeded to a hearing, here state generally such interlocutory proceedings as may have relation to the cause at the hearing.]

The cause came on for hearing at _____, the _____ day of _____, before the judge [or before the judge and a jury, or _____, and the following issue of fact was directed by the judge to be tried before jury], when [here state the course taken by the parties at the hearing and the result].

The following is the evidence given at the hearing [here state the evidence either as agreed to by the parties or as taken from the judge's notes, in the latter case with such comments (if any) as the judge, under Rule 3 of Order V. shall think necessary].

The plaintiff [or defendant, as the case may be] being dissatisfied with the said decision, has given notice of appeal to the Supreme Court, the grounds of such appeal being as follows [here insert the grounds of appeal as served upon the opposite party].

We, the parties [or the counsel or attorneys of the respective parties] to this suit have agreed upon this case [or the parties, their counsel or attorneys, being unable to agree upon a case to be submitted to the Supreme Court].

I, the judge who heard the cause, have settled and signed this case, in accordance with the provisions of section 120 of the "County Court Statute 1869."

Note.—When appeal is against an interlocutory order, the statements in the case should be altered accordingly, the affidavits used being set out instead of the oral evidence at the hearing.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR PROBATE.

In the County Court at _____, in its Probate and Administration

Jurisdiction.

In the will of C.D., late of _____, in the Colony of Victoria, deceased.

I, A.B., of _____, in the Colony of Victoria, make oath and say—

[here set forth particulars as required under Order VI.]

Sworn at _____, this _____ day of _____, A.D. _____,

before me—

Commissioner for taking Affidavits
[or as the case may be].

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ADMINISTRATION FOR A
WIDOW OR NEXT OF KIN.

In the County Court at _____, in its Probate and Administration

Jurisdiction.

In the estate of C.D., late of _____, deceased.

I, A.B., of _____, in the Colony of Victoria, widow of _____,

[or as the case may be] make oath and say—

[here set forth particulars as required under Order VI.]

Sworn at _____, this _____ day of _____, A.D. _____,

before me—

A Commissioner for taking Affidavits
[or as the case may be].

AFFIDAVIT IN SUPPORT OF CREDITORS' APPLICATION FOR ADMINISTRATION.

In the County Court at _____, in its Probate and Administration

Jurisdiction.

In the estate of C.D., late of _____, deceased.

I, A.B., of _____, in the Colony of Victoria, make
oath and say—

[here set forth particulars as required under Order VI.]

Sworn at _____, this _____ day of _____, A.D. _____,

before me—

A Commissioner for taking Affidavits
[or as the case may be].

EXECUTOR'S AFFIDAVIT THAT HE WILL ADMINISTER.

In the County Court at _____—In its Probate and Administration
Jurisdiction.

In the will of C.D., late of _____, deceased.
I, A.B., of _____, in the Colony of Victoria, make
oath and say—

1. That I believe the annexed paper (or parchment) writing to be the true last will of C.D., late of _____, deceased.
2. That I will pay all his debts and legacies, as far as the property left by him will extend, and the law bind me so to do.
3. That I will exhibit and deposit in the office of the registrar a true and perfect inventory of the estate, goods, chattels, and credits of the deceased within three months of the order for probate, and a true and just account of my administration of the said estate of the deceased within fifteen months of the said order, pursuant to the rules of the said court.
4. That I believe his property does not exceed in value _____ pounds.

Sworn at _____, this _____ day of _____, A.D.
before me—

A Commissioner for taking Affidavits
[or as the case may be].

ADMINISTRATOR'S AFFIDAVIT THAT HE WILL ADMINISTER.

In the County Court at _____—In its Probate and Administration
Jurisdiction.

In the estate of C.D., late of _____, in the Colony of
Victoria, deceased, intestate.
I, A.B., of _____, in the Colony of Victoria, make
oath and say—

1. That I will well and truly collect and administer the property of C.D., late of _____, deceased, intestate, so far as the same will extend and the law bind me so to do.
2. That I will exhibit and deposit in the office of the registrar a true and perfect inventory of the estate, goods, chattels, and credits of the deceased within three months of the order for administration, and a true and just account of my administration of the said estate of the deceased within fifteen months of the said order, pursuant to the rules of the said court.
3. That I believe the property of the said C.D. does not exceed in value _____ pounds.

Sworn at _____, this _____ day of _____, A.D.
before me—

A Commissioner for taking Affidavits
[or otherwise as the case may be].

AFFIDAVIT OF ADMINISTRATION WITH THE WILL ANNEXED THAT HE WILL ADMINISTER.

In the County Court at _____—In its Probate and Administration
Jurisdiction.

In the will of C.D., late of _____, in the Colony of
Victoria, deceased.

I, A. B., of _____, in the Colony of Victoria, make
oath and say—

1. That the writing hereunto annexed contains the true last will of C.D., late of _____, deceased, as far as I know or believe.
2. That I am the residuary legatee therein named.
3. That I will faithfully administer, according to the tenor of the said will, all the property of the said C.D. so far as the same will extend and the law bind me so to do.
4. That I will exhibit and deposit in the office of the registrar a true and perfect inventory of the estate, goods, chattels, and credits of the deceased within three months of the order for administration, and a true and just account of my administration of the said estate of the deceased within fifteen months of the said order, pursuant to the rules of the said court.
5. That I believe the property of the said C.D. does not exceed _____ pounds.

Sworn at _____, this _____ day of _____, A.D.
before me—

A Commissioner for taking Affidavits
[or otherwise as the case may be].

AFFIDAVIT WHERE EXECUTOR HAS REFUSED TO PROVE WILL.

In the County Court at _____—In its Probate and Administration
Jurisdiction.

In the will of C.D., late of _____, deceased.
I, A.B., of _____, make oath and say—

1. That C.D., late of _____, departed this life on the _____ day of _____, A.D.
2. That he left a will, bearing date the _____ day of _____, A.D., which is, as I believe, unrevoked.
3. That he thereby named _____ executrix and executor thereof.
4. That they have each refused to prove the same.
5. That I have this day searched in the proper office and found that no caveat has been lodged in this matter.

Sworn at _____, this _____ day of _____, A.D.
before me—

A Commissioner for taking Affidavits.

PLAINT SUMMONS TO EXECUTORS TO PROVE WILL.

In the County Court at _____—In its Probate and Administration
Jurisdiction.

In the matter of the will of C.D., late of _____, deceased.
To A.B., E.F., and G.H.

You are hereby summoned to appear in the County Court at
on the _____ day of _____, 18____, at ten
o'clock of the same day, to show cause why you or some or one of you
should not bring into _____ and leave therein the true original
last will of the said C.D., late of _____, deceased, and accept
or refuse the burden of probate and execution thereof, or otherwise why
letters of administration, with the said will annexed, of all the property
of the said C.D. should not be granted according to law.

Given under my hand and the seal of the said court, this
day of _____, 18____.

(Seal)

Registrar of the said Court.

CREDITOR'S AFFIDAVIT OF DEBT DUE BY DECEASED.

In the County Court at _____—In its Probate and Administration
Jurisdiction.

In the goods of C.D., late of _____, in the Colony of Victoria,
deceased.

I, A.B., of _____, make oath and say—

1. That C.D., late of _____, in the colony aforesaid, was at the
time of his decease and his estate still is justly and truly indebted to me
in the sum of _____ pounds, for [here set out the nature of the
claim] according to the particulars hereunto annexed. [If necessary add—]

2. That the prices charged are fair and reasonable.

3. That I have not, nor has any person by my order or to my know-
ledge for my use, received the said sum of _____ pounds or any part
thereof, or any security or satisfaction for the same or any part thereof.

Sworn at _____ aforesaid, this _____ day of _____, A.D. 18____.

before me—

A Commissioner for taking Affidavits
[or otherwise as the case may be].

REGISTRAR'S CERTIFICATE OF PROOF OF CREDITOR'S CLAIM.

In the County Court at _____—In its Probate and Administration
Jurisdiction.

In the goods of C.D., late of _____, deceased.

I hereby certify that A.B., of _____, attended before me on
the _____ day of _____, A.D. 18____, in person [or as the
case may be], and proved to my satisfaction—

That C.D., late of _____, in his lifetime owed to the said A.B.
the sum of _____ pounds for [as the case may be], and that the said
sum remains wholly unpaid.

Dated this _____ day of _____, A.D. 18____.

Registrar.

AFFIDAVIT IN SUPPORT OF CREDITOR'S APPLICATION FOR ADMINISTRATION.

In the County Court at _____—In its Probate and Administration
Jurisdiction.

In the goods of C.D., late of _____, deceased.

I, A.B., of _____, make oath and say—

1. That C.D., late of _____, in the colony aforesaid, departed
this life on the _____ day of _____, A.D. 18____, intestate.

2. That E.D., his lawful widow, and C.D., I.D., E.D., M.D., and E.D.,
his children, and O.P., R.S., and T.V., are, as far as I can state, his only
surviving next of kin.

3. That the said C.D. was at the time of his death indebted to me in
the sum of pounds for [here insert the nature of the debt].

4. That I have proved before the judge of this honorable court that the
said sum of _____ pounds is still due and owing to me, as by his
certificate hereunto annexed appears.

5. That I have published in two newspapers, called the _____
and the _____, published in _____, in the said colony, once
in each of two consecutive weeks, a plaint-summons calling on the widow
and next of kin of the said C.D. to show cause why adminis-
tration of his property should not be granted to me.

6. That I have this day searched in the proper office and found that no
caveat has been lodged in this matter.

Sworn at _____, in the Colony of Victoria, this _____ day
of _____, A.D. 18____, before me—

A Commissioner for taking Affidavits
[or otherwise as the case may be].

PLAINT SUMMONS TO WIDOW AND NEXT OF KIN TO TAKE OUT LETTERS OF ADMINISTRATION.

In the County Court at _____—In its Probate and Administration
Jurisdiction.

In the goods of C.D., late of _____, deceased.

To E.D., widow, and to the next of kin of _____, deceased.

You are hereby summoned to appear in the County Court at
on the _____ day of _____, 18____, at ten o'clock of the same
day, to show cause why you, or some or one of you, should not take out
or refuse letters of administration of the property of C.D., late of _____,
deceased, or otherwise why such letters should not be granted to me, a
creditor of the said C.D.

Given under my hand and the seal of the said court this

day of _____, 18____.

(Seal)

Registrar of the said Court.

CAVEAT.

In the County Court at — *In its Probate and Administration Jurisdiction.*

In the will [or goods] of C.D., late of , deceased.
 Let nothing be done in the will [or goods] of C.D., late of , deceased, without notice to G.H. having an interest in the property [or widow, or next of kin, or a creditor] of the deceased.
 Dated this day of , A.D. 18 .

A.B.

PLAINT SUMMONS IN PURSUANCE OF CAVEAT.

In the County Court at — *In its Probate and Administration Jurisdiction.*

In the goods of C.D., late of , deceased, intestate.

A. D. says—

1. That C.D., late of , departed this life on day of , A.D. 18 , intestate.
2. That the said A.D. applied for letters of administration of the property of the said C.D., deceased, intestate, as his lawful widow and next of kin.
3. That the said defendant caused a caveat to be lodged in this matter on the day of , A.D. 18 .
4. That the said A.D. is the lawful widow of the said C.D., and was married to him at , on the day of , A.D. 18 , and is entitled to take out letters of administration of his property.

The said A.D. therefore prays that the said G.D. may answer the foregoing allegations as if specifically interrogated thereon, and that letters of administration may be granted in this matter to the plaintiff.

In the County Court at

Ecclesiastical Jurisdiction.

Know all men by these presents that we,

are jointly and severally held and firmly bound to our Sovereign Lady Queen Victoria, in the sum of , of lawful money of Great Britain, to be paid to our said Lady the Queen or her successors, for the due payment whereof we jointly and severally bind ourselves, and each of us, and any two of us, our and each of our, and any two of our heirs, executors, and administrators, firmly, by these presents. Sealed with our respective seals. Dated this day of , One thousand eight hundred and

The condition of the above written bond or obligation is such, that if the above bounden , to whom the county court at , hath granted administration of the goods, chattels, credits, and effects, within the Colony of Victoria, of , late of , do and

shall make or cause to be made a true and perfect inventory of all and singular the goods, chattels, credits, and effects of the said deceased, which have or shall come to the hands, possession, or knowledge of , the said , or

to the hands or possession of any other person or persons for , and the same so made do sign with , proper handwriting, and do and shall exhibit and deposit or cause to be exhibited and deposited the same inventory to or in the office of the Registrar of the County Court at , within three calendar months next ensuing the order granting letters of administration herein, and shall faithfully administer the same according to law ; and further do and shall make or cause to be made a true and just account of administration of the estate which has undertaken to administer as to receipts and disbursements, and as to what portion is retained by , and what portion remains uncollected, and the same so made do sign with , proper handwriting, and do and shall exhibit and deposit or cause to be exhibited and deposited the same account to and in the said office of the Registrar of the said County Court within fifteen calendar months next ensuing the order granting letters of administration herein, and all the rest and residue of the personal estate and effects of the said deceased shall deliver and pay unto such person or persons as shall be by law entitled thereto or as the said county court by decree or sentence shall direct, then this obligation to be void and of no effect, otherwise to remain in force and virtue.

Signed, sealed, and delivered by the said

ROBERT WILLIAMS POHLMAN,
 J. WARRINGTON ROGERS,
 JOHN GEORGE FORBES.

Submitted to me, and published as directed by the "*County Court Statute 1869.*"

J. J. CASEY,
 Solicitor-General.

Crown Law Offices,
 Melbourne, September 14, 1869.