

No. 35.

APPENDIX K.

Order for Examination of Witnesses before Trial.

[Heading as in Form No. 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the
 day of _____ 19 _____ and _____

It is ordered that _____ a witness on behalf of the _____ be examined
videlicet (on oath or affirmation) before _____ of the Supreme Court [or before _____,
 esquire, special examiner] the _____ solicitor or agent giving to the _____
 the _____ notice in writing of the time and place where the examination
 is to take place.

And it is further ordered that the examination so taken be filed in the Prothonotary's office
 of the Supreme Court, and that an office copy or copies thereof may be read and given in evidence
 on the trial of this cause, saving all just exceptions, without any further proof of the absence of
 the said witness than the affidavit of the solicitor or agent of the _____ as to his belief
 of _____, and that the costs of this application be _____

Dated the _____ day of _____ 19 _____

No. 36.

Short Order for Issue of Commission to examine Witnesses.

[Heading as in Form No. 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the
 day of _____ 19 _____ and _____

It is ordered that the _____ be at liberty to issue a commission for the examination of
 the witnesses on _____ behalf at _____

And it is further ordered that the trial of this action be stayed until the return of the said com-
 mission, the usual long order to be drawn up, and unless agreed upon by the parties within one week,
 to be settled in chambers, and that the costs of this application be _____

Dated the _____ day of _____ 19 _____

No. 36A.

In the Supreme Court of Victoria _____ No. _____
 Between _____ Plaintiff
 and _____ Defendant.

I (or we) hereby undertake to be responsible for all expenses incurred by His Majesty's Attorney-General
 for Victoria in respect of the letter of Request issued herein on the _____ day of _____ and
 on receiving due notification of the amount of such expenses undertake to pay the same to the
 Attorney-General and to produce the receipt for such payment to the Prothonotary. The following have
 been appointed as agents for the parties in connexion with the execution of the above letter of request

Plaintiff's agent:—

of _____

Defendant's agent:—

of _____

Dated the _____ day of _____ 19 _____

Solicitors for _____

APPENDIX K.

No. 36a. 19. No. Plaintiff

In the Supreme Court of Victoria
Between
and
Defendant.

To the competent judicial Authority of in the
of . . . Whereas a civil [commercial] action is now pending in the Supreme
Court of Victoria in which is plaintiff and is
defendant. And in the said action the plaintiff claims. And whereas it has
been represented to the said Court that it is necessary for the purposes of justice and for the due determination
of the matters in dispute between the parties, that the following persons should be examined as witnesses
upon oath touching such matters, that is to say :— of , and , of

And it appearing that such witnesses are resident within your jurisdiction.

Now I, a Judge of the Supreme Court of Victoria,
have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of
the said Court you will be pleased to summon the said witnesses [and such other witnesses as the agents of
the said Plaintiff and defendant shall humbly request you in writing so to summon] to attend at such time
and place as you shall appoint before you, or such other person as according to your procedure is competent
to take the examination of witnesses, and that you will cause such witnesses to be examined [upon the
interrogatories which accompany this letter of request] *vis à voce* touching the said matters in question in
the presence of the agents of the plaintiff and defendant or such of them as shall, on due notice given, attend
such examination. And I further have the honour to request that you will permit the agents of both the
said plaintiff and defendant or such of them as shall be present to be at liberty to examine [upon interrogatories
and *vis à voce* upon the subject matter thereof or arising out of the answers thereto] such witnesses as may,
after due notice in writing, be produced on their behalf, and give liberty to the other party to cross-examine
the said witnesses [upon cross-interrogatories and *vis à voce*] and the party producing the witness for
examination liberty to re-examine him *vis à voce*.

And I further have the honour to request that you will be pleased to cause [the answers of the said
witnesses and all additional *vis à voce* questions whether on examination, cross-examination, or re-examination]
the evidence of such witnesses to be reduced into writing and all books, letters, papers and documents produced
upon such examination to be duly marked for identification, and that you will be further pleased to
authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your
procedure and to return the same together with [the interrogatories and cross-interrogatories, and] a note
of the charges and expenses payable in respect of the execution of this request, through the British Consul
from whom the same was received for transmission to the Supreme Court of Victoria.

And I further beg to request that you will cause the agents of the parties, if appointed or in default
of appointment will cause me to be informed of the date and place where the examination is to take place.

Dated the day of 19

No. 36c. 19. No. Plaintiff

In the Supreme Court
Between
and
Defendant.

Upon hearing the solicitors on both sides and upon reading the affidavit of

It is ordered that the British Consul or his deputy at be appointed as
special examiner for the purpose of taking the examination, cross-examination and re-examination, *vis à voce*
on oath or affirmation, of witnesses on the part of the at aforesaid.
The examiner shall be at liberty to invite the attendance of the said witnesses and the production
of documents, but shall not exercise any compulsory powers. Otherwise such examination shall be taken
in accordance with the Victorian procedure. The solicitors to give to the
solicitors days' notice in writing of the date on which they propose to send out this
order to for execution, and that days after the service of such
notice the solicitors for the plaintiffs' and defendants respectively do exchange the names of their agents
at to whom notice relating to the examination of the said witnesses may be sent.
And that days (exclusive of Sunday) prior to the examination of any witness hereunder
notice of such examination shall be given by the agent of the party on whose behalf such witness is to be
examined to the agent of the other party (unless such notice be dispensed with). And that the depositions
when so taken, together with any documents referred to therein, or certified copies of such documents, or of

extracts therefrom, be transmitted by the examiner, under seal, to the Prothonotary, The Law Courts, Melbourne, on or before the day of next, or such further or other day as may be ordered, there to be filed in the Prothonotary's Office. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action be stayed until the filing of such depositions. And that the costs of and incidental to this application and such examination be costs in the action. APPENDIX K.

Dated the , day of 19

NOTE.—If the Convention requires that the invitation or notice to the witnesses must expressly state that no compulsory powers may be used, this requirement must be complied with.

No. 37.

Long Order for Commission to examine Witnesses.

[Heading as in Form No. 1.]

Upon hearing and upon reading the affidavit of filed the day of

19 and

It is ordered as follows:

1. A commission may issue directed to of and of commis- sioners named by and on behalf of the and to of and of of commissioners named by and on behalf of the and to of and of commissioners named by and on behalf of the for the examination upon in- terrogatories and *vivâ voce* of witnesses on behalf of the said and respectively at aforesaid before the said commissioners, or any two of them, so that one commissioner only on each side be present and act at the examination.
2. Both the said and shall be at liberty to examine upon interrogatories and *vivâ voce* upon the subject-matter thereof, or arising out of the answers thereto, such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross-interrogatories and *vivâ voce* the party producing the witness for examination being at liberty to re-examine him *vivâ voce*; and all such additional *vivâ voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and, with the answers thereto, re- turned with the said commission.
3. Within days from the date of this order the solicitors or agents of the said and shall exchange the interrogatories they propose to administer to their respective witnesses, and shall also within days from the exchange of such interrogatories exchange copies of the cross-interrogatories intended to be administered to the said witnesses.
4. days previously to the sending out of the said commission the solicitor of the said shall give to the solicitor of the said notice in writing of the mail or other con- veyance by which the commission is to be sent out.
5. days previously to the examination of any witness on behalf of the said or respectively notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally, or by leaving it at their usual place of abode or business; and if the commissioners of that party neglect to attend pursuant to the notice then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.
6. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commis- sioners or commissioner present to be a true and correct copy or extract, shall be annexed to the wit- ness's deposition.
7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the said commissioners or commissioner.
8. If any one or more of the witnesses do not understand the English language (the interroga- tories, cross-interrogatories, and *vivâ voce* questions, if any, being previously translated into the lan- guage with which he or they is or are conversant) then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or com- missioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner, truly to interpret the questions to be put to the witness or wit- nesses and his and their answers thereto.

APPENDIX K. 9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses and by the commissioner or commissioner who shall have taken such depositions

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Prothonotary of the Supreme Court on or before the day of , or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of this action by and on behalf of the said and respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named than an affidavit of the solicitor or agent of the said or respectively, as to his belief of the

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be

Dated the day of 19

No. 37A.

Order for Issue of Request for Commission.

It is ordered that a letter of request do issue directed to the proper tribunal for the examination of the following witnesses, that is to say:—

E.F., of
G.H., of
and I.J., of

And it is ordered that the depositions taken pursuant thereto when received be filed at the Prothonotary's office, and be given in evidence on the trial of this action, saving all just exceptions. And it is further ordered that the trial of this action be stayed until the said depositions have been filed.

No. 37B.

Request for Commission.

Heading:—To the President and Judges of &c., &c., or as the case may be.

Whereas an action is now pending in the Supreme Court of Victoria in the Commonwealth of Australia, in which A.B. is plaintiff and C.D. is defendant. And in the said action the plaintiff claims

(Endorsement upon writ.)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath, touching such matters, that is to say:—

E.F., of
G.H., of
and I.J., of

And it appearing that such witnesses are resident within the jurisdiction of your honorable Court.

Now I, the Chief Justice of the said Supreme Court have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the Supreme Court of Victoria, you as the President and Judge of the said or some one or more of you, will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you, or such other person as according to the procedure of your Court is competent to take the examination of witnesses, that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *visâ voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to His Majesty's Attorney-General for the State of Victoria in the Commonwealth of Australia for transmission to the said Supreme Court of Victoria.

No. 37c.

APPENDIX K.

Certificate of Service of Foreign Process.

I, _____, the Prothonotary of the Supreme Court of the State of Victoria, hereby certify that the documents annexed hereto are as follows:—

- (1) The original Letter of Request for service of process received from the Court or Tribunal at _____ in the _____ of _____ in the matter of _____ versus _____ and _____
- (2) The process received with such Letter of Request; and
- (3) The evidence of service upon _____, the person named in such Letter of Request, together with the verification of a Notary Public.

And I certify that such service so proved and the proof thereof are such as are required by the law and practice of the Victorian Supreme Court regulating the service of Victorian legal process in Victoria and the proof thereof.

And I certify that the cost of effecting such service, as duly certified by the Taxing Master of the Victorian Supreme Court, amounts to the sum of £ _____

Dated this _____ day of _____ 19 _____

No. 37d.

In the Supreme Court of Victoria
Between _____
and _____
19 _____ No. _____
Plaintiff
Defendant.

I [*or we*] hereby request that a notice of a writ of summons [*or as the case may be, describing the document*] in this action to be transmitted through the proper channel to (a) _____ for service (b) _____ on the Defendant at _____ or elsewhere in (a) _____ (c) _____

(a) Name of country.
(b) or substituted service.
(c) If under Order 11 r. 11 add—"Directly through the British Consul" or "by the foreign judicial.

And I [*or we*] hereby personally undertake to be responsible for all expenses incurred by His Majesty's Attorney-General for Victoria in respect of the service hereby requested, and on receiving due notification of the amount of such expenses I [*or we*] undertake to pay the same to the Attorney-General, and to produce the receipt for such payment to the Prothonotary.

Dated the _____ day of _____ 19 _____ Signature of Solicitor.

No. 37e.

In the Supreme Court of Victoria
Between _____
and _____
19 _____ No. _____
Plaintiff
Defendant.

I [*or we*] hereby undertake to be responsible for all expenses incurred by His Majesty's Attorney-General for Victoria in respect of the letter of request issued herein on the _____ day of _____ and on receiving due notification of the amount of such expenses undertake to pay the same to the Attorney-General and to produce the receipt for such payment to the Prothonotary. The following have been appointed as agents for the parties in connexion with the execution of the above letter of request:—

Plaintiff's agent:—
of _____
Defendant's agent:—
of _____

Dated the _____ day of _____ 19 _____ Solicitors for _____

No. 37f.

In the Supreme Court of Victoria
Between _____
and _____
19 _____ No. _____
Plaintiff
Defendant.

To the competent judicial Authority of _____ in the _____
of the Supreme Court of Victoria in which _____ Whereas a civil [commercial] action is now pending in _____ is plaintiff and _____ is defendant. And in the said action the plaintiff claims _____ And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:— _____ of _____ and _____ of _____

And it appearing that such witnesses are resident within your jurisdiction.

APPENDIX K.

Now I, a Judge of the Supreme Court of Victoria have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witnesses [and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon] to attend at such time and place as you shall appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined [upon the interrogatories which accompany this letter of request] viva voce touching the said matters in question in the presence of the agents of the plaintiff and defendant or such of them as shall, on due notice given, attend such examination. And I further have the honour to request that you will permit the agents of both the said plaintiff and defendant or such of them as shall be present to be at liberty to examine [upon interrogatories and viva voce upon the subject-matter thereof or arising out of the answers thereto] such witnesses as may, after due notice in writing, be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses [upon cross-interrogatories and viva voce] and the party producing the witness for examination liberty to re-examine him viva voce.

And I further have the honor to re request that you will be pleased to cause [the answers of the said witnesses and all additional viva voce questions, whether on examination, cross-examination, or re-examination] the evidence of such witnesses to be reduced into writing and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure and to return the same together with [the interrogatories and cross-interrogatories, and] a note of the charges and expenses payable in respect of the execution of this request, through the British Consul from whom the same was received for transmission to the Supreme Court of Victoria.

And I further beg to request that you will cause the agents of the parties if appointed, or in default of appointment will cause me to be informed of the date and place where the examination is to take place.

Dated the _____ day of _____ 19 _____

No. 376.

In the Supreme Court

19

No.

Between

and

Plaintiff.

Defendant.

Upon hearing the solicitors on both sides and upon reading the affidavit of

It is ordered that the British Consul or his Deputy at _____ be appointed as special examiner for the purpose of taking the examination, cross-examination, and re-examination, viva voce, on oath or affirmation, of witnesses on the part of the _____ at _____ aforesaid. The examiner shall be at liberty to invite the attendance of the said witnesses and the production of documents, but shall not exercise any compulsory powers. Otherwise such examination shall be taken in accordance with the Victorian procedure. The _____ solicitors to give to the _____ solicitors _____ days' notice in writing of the date on which they propose to send out this order to _____ for execution, and that _____ days after the service of such notice the solicitors for the plaintiffs and defendants respectively do exchange the names of their agents at _____ to whom notice relating to the examination of the said witnesses may be sent. And that _____ days [exclusive of Sunday] prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party [unless such notice be dispensed with]. And that the depositions when so taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be transmitted by the examiner, under seal, to the Prothonotary, the Law Courts, Melbourne, on or before the _____ day of _____ next, or such further or other day as may be ordered, there to be filed in the Prothonotary's Office. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action be stayed until the filing of such depositions. And that the costs of and incidental to this application and such examination be costs in the action.

Dated the _____ day of _____ 19 _____

NOTE.—If the Convention requires that the invitation or notice to the witnesses must expressly state that no compulsory powers may be used, this requirement must be complied with.

No. 38.

APPENDIX K.

In the Supreme Court. *Order for Examination of Judgment Debtor.* 19 . No.
 Between A.B. - - - - - Judgment Creditor,
 and
 C.D. - - - - - Judgment Debtor.
 Upon hearing and upon reading the affidavit of filed the
 day of 19 and

It is ordered that the above-named judgment debtor attend and be orally examined, as to whether any and what debts are owing to him, and whether he has any and what other property or means of satisfying the judgment or order, before Mr. Justice in Chambers, at such time and place as he may appoint, and that the said judgment debtor produce his [books*] before the said at the time of the examination, and that the costs of this application be

* Or as may be ordered.

Dated the day of 19

No. 39.

Garnishee Order (Attaching Debt).

In the Supreme Court. 19 . No.
 Between A.B. - - - - - Judgment Creditor,
 and
 C.D. - - - - - Judgment Debtor.
 X.Y. - - - - - Garnishee.
 Upon hearing and upon reading the affidavit of filed the
 day of 19 and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the Supreme Court on the day of 19, for the sum of £, together with the costs of the garnishee proceedings on which judgment the said sum of £ remains due and unpaid.

And it is further ordered that the said garnishee attend in Chambers on the day of 19 at o'clock in the noon, on an application by the said judgment creditor that the said garnishee pay the debt due from him to the said judgment debtor or so much thereof as may be sufficient to satisfy the judgment, together with the costs of the garnishee proceedings.

And that the costs of this application be then dealt with

Dated the day of 19

No. 40.

Garnishee Order (Absolute).

[Heading as in Form No. 39.]

Upon hearing and upon reading the affidavit of filed the
 day of 19 and whereby it was ordered that all debts owing or
 accruing due from the above-named garnishee to the above-named judgment debtor should be attached
 to answer a judgment recovered against the said judgment debtor by the above-named judgment
 creditor in the Supreme Court on the day of 19, for the sum of £,
 on which judgment the said sum of £ remained due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due, from him to the said judgment debtor (or so much thereof as may be sufficient to satisfy the judgment debt, together with £, the costs of the garnishee proceedings, and that in default thereof execution may issue for the same, and that the costs of this application be £

Dated the day of 19

APPENDIX K.

No. 41.

Order on Client's Application to tax Solicitor's Bill of Cost.

In the Supreme Court. In the matter of the taxation of costs and in the matter of *A.B.* 19 . No. gentleman,
 one of the solicitors of the Supreme Court.

Upon the application of [hereinafter called "the applicant"]:
 It is ordered that the bill of fees, charges, and disbursements delivered to the applicant by the above-named solicitor be referred to the [Taxing Master] to be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that such taxing officer tax the costs of the reference, and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference to be charged (if payable) according to the event of the taxation, pursuant to the Statute.

And it is further ordered that the said solicitor do not commence or prosecute any action or suit touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power belonging to the applicant.

And it is ordered that the costs of this application be

Dated the day of 19 .

No. 42.

Order on Solicitor's Application to tax Bill of Costs.

In the Supreme Court. In the matter of the taxation of costs and in the matter of *A.B.* 19 . No. gentleman,
 one of the solicitors of the Supreme Court.

Upon hearing and upon reading the affidavit of filed the
 day of 19 and

It is ordered that the above-named solicitor's bill of fees, charges, and disbursements delivered to [hereinafter called "the said client"] be referred to the [Taxing Master] to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that if the said client shall attend on such taxation the taxing officer tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be paid according to the event of the taxation, pursuant to the Statute.

And it is further ordered that the said solicitor do not commence or prosecute any action or suit touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver to the said client, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power belonging to the said client.

And it is ordered that the costs of this application be

Dated the day of 19 .

No. 43.

Order to tax after Action brought.

[Heading as in Form No. 1.]

Upon hearing and upon reading the affidavit of filed the
 day of 19 and

It is ordered that the plaintiff's bill of costs, charges, and disbursements delivered to the defendant, for the recovery of which this action is brought, be referred to the [Taxing Master] to be taxed, and that the plaintiff give credit at the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the taxing officer tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference, pursuant to the Statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the reference.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be

Dated the day of 19 .

No. 44.

APPENDIX K.

Order to try Action in County Court.

[*Heading as in Form No. 1.*]

Upon hearing _____ and upon reading the affidavit of _____ filed the

day of _____ 19____ and
It is ordered that this action be tried before the County Court holden at
and that the costs of this application be _____

Dated the _____ day of _____ 19____

No. 45

Order to give Security or try Action in County Court.

[*Heading as in Form No. 1.*]

Upon hearing _____ and upon reading the affidavit of _____ filed the

day of _____ 19____ and
It is ordered that unless the plaintiff within _____ give full security for the defendant's
costs to the satisfaction of the Prothonotary, or satisfy a Judge that the cause is one fit to be tried in
the Supreme Court, this cause be remitted for trial before the County Court holden at
and that the costs of this application be _____

Dated the _____ day of _____ 19____

No. 50.

Interpleader Order.

No. 1.

In the Supreme Court. _____ 19____ No. _____

Between *A.B.* Plaintiff,
 and
C.D. Defendant,
 and between
E.F. Claimant,
 and
G.H. Respondent.

Upon hearing _____ and upon reading the affidavit of _____ filed the

day of _____ 19____ and
It is ordered that the claimant be barred, that no action be brought against the above-named
[sheriff] and that the costs of this application be _____

Dated the _____ day of _____ 19____

No. 51.

Interpleader Order.

No. 2.

In the Supreme Court. _____ 19____ No. _____

Between *A.B.* Plaintiff,
 and
C.D. Defendant,
 and
E.F. Claimant,

Upon hearing _____ and upon reading the affidavit of _____ filed the

day of _____ 19____ and
It is ordered that the above-mentioned claimant be substituted as defendant in this action in
lieu of the present defendant, and that the costs of this application be _____

Dated the _____ day of _____ 19____

APPENDIX K.

No. 52.

Interpleader Order.

No. 3.

In the Supreme Court. 19 . . . No. . .

Between A.B. Plaintiff,

and

C.D. Defendant,

and between

E.F. Claimant,

and the said execution creditor, and

the sheriff Respondents.

Upon hearing and upon reading the affidavit of filed the

day of 19 and

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of fieri facias issued herein and claimed by the claimant and pay the net proceeds of the sale, after deducting the expenses thereof, into Court in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the Supreme Court, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the said goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at [with a jury of six [or twelve], or without a jury, as the case may be].

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the day of 19

No. 53.

Interpleader Order.

No. 4.

[Heading as in Form No. 52.]

Upon hearing and upon reading the affidavit of filed the

day of 19 and

It is ordered that upon payment of the sum of £ into Court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of the Prothonotary for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of fieri facias herein and claimed by the claimant.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.,

And it is further ordered that this issue, &c.,

And it is further ordered that the question of costs, &c.,

Dated the day of 19

No. 54.

Interpleader Order.

APPENDIX K:

No. 5.

[Heading as in Form No. 52.]

Upon hearing _____ and upon reading the affidavit of _____ filed the
 day of _____ 19____ and _____

It is ordered that upon the payment of the sum of £ _____ [or as the case may be] into Court by the said claimant, or upon his giving security to the satisfaction of the Prothonotary for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of *feri facias* issued therein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.,

And it is further ordered that this issue, &c.,

And it is further ordered that the question of costs, &c.,

Dated the _____ day of _____ 19____

No. 55.

Interpleader Order.

No. 6.

[Heading as in Form No. 52.]

The claimant [or the claimant and the execution creditor] having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing _____ and upon reading the affidavit of _____ filed the
 day of _____ 19____ and _____

It is ordered that _____

And that the costs of this application be _____

Dated the _____ day of _____ 19____

No. 56.

Interpleader Order.

No. 7.

[Heading as in Form No. 52.]

Upon hearing _____ and upon reading the affidavit of _____ filed the
 day of _____ 19____ and _____

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of *feri facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent (if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be _____

Dated the _____ day of _____ 19____

No. 57.

Order Dismissing Summons (Generally).

[Heading as in Form No. 1.]

Upon hearing _____ and upon reading the affidavit of _____ filed the
 day of _____ 19____ and _____

It is ordered that the application of _____ be dismissed *with costs to be taxed and paid by the _____ to the _____ or that the costs of and occasioned by this application be the _____'s in any event.

Dated the _____ day of _____ 19____

* If the dismissal is with costs add these words.

APPENDIX K. In the Supreme Court of Victoria.

No. 73.

In the matter of *Foreign Tribunals Evidence Act 1856* (19 & 20 Vic. c. 113), and in the matter of a (civil, or commercial, or criminal) proceeding now pending before [description of Foreign Tribunal].

Between

Plaintiff,

and

Defendant.

Upon reading the affidavit (if any) of filed the day of 19 , and the certificate of [name and description of the Ambassador, Minister, Diplomatic Agent, or Consul of the Foreign Country] that proceedings are pending in the [description of Foreign Tribunal] in [name of Foreign Country], and that such Court is desirous of obtaining the testimony of [names of witnesses].

It is ordered that the said witness do attend before [name and address of examiner], who is hereby appointed examiner herein, at [place appointed for examination], on the day of 19 , at o'clock, or such other day and time as the said examiner may appoint, and do there submit to be examined on oath or affirmation, touching the testimony so required as aforesaid, and do then and there produce [description of documents, if any, required to be produced].

And it is further ordered that the said examiner do take down in writing the evidence of the said witness, or witnesses, according to the Rules and practice of the Supreme Court pertaining to the examination and cross-examination of witnesses [or as may be otherwise directed], and do cause each and every such witness to sign his or her depositions in his the said examiner's presence; and do sign the depositions taken in pursuance of this Order, and when so completed do transmit the same together with this Order, to the Prothonotary for transmission as provided.

Dated this day of 19 .

No. 74.

I, Prothonotary of the Supreme Court of Victoria, hereby certify that the documents annexed hereto are (1) the original order of the Supreme Court, dated the day of 19 , made in the matter of pending in the at in the of directing the examination of certain witnesses to be taken before ; and (2) the examination and depositions taken by the said pursuant to the said Order, and duly signed and completed by him on the day of 19 .

Dated this day of 19 .

APPENDIX L.

APPENDIX L.

No. 1.

Summons by Chief Clerk.

In the Supreme Court.

In the matter of the estate of A.B., late of in the county of deceased.

between C.D., plaintiff,
and
E.F., defendant.

The defendant E.F. [or G.H. of &c.] is hereby summoned to attend at the office of the Chief Clerk, at The Law Courts, Melbourne, on the day of at o'clock in the noon, to be examined [or to be examined as a witness] on the part of the for the purpose of the proceedings directed by Mr. Justice to be taken before me

Dated this day of 19 .

X.Y.,
Chief Clerk.

This summons was taken out by of solicitors for

No. 2.

APPENDIX L.

Advertisement for Claimants not being Creditors.

Pursuant to an order of the Supreme Court made in the action, 19 , No. , in which *A.B.* is plaintiff and *C.D.* defendant, the persons claiming to be next of kin to [*or as the case may be*] late of who died in or about the month of , are by their solicitors, on or before the day of to come in and prove their claims at the office of the Chief Clerk, Law Courts, Melbourne, or in default thereof they will be peremptorily excluded from the benefit of the said order. The day of at o'clock in the noon, at the said office, is appointed for adjudicating upon the claims.

Dated the day of 19 .

A.B.,
Chief Clerk.

No. 3.

Advertisement for Creditors.

Pursuant to an order of the Supreme Court made in an action, 19 , No. , in which *A.B.* is plaintiff and *C.D.* defendant, the creditors of *A.B.* late of who died in or about the month of 19 , are on or before the day of 19 , to send by post, prepaid, to *E.F.*, of the solicitor of the defendant *C.D.*, the executor [*or administrator*] of the deceased [*or as may be directed*], their full names, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or, in default thereof, they will be peremptorily excluded from the benefit of the said order. Every creditor holding any security is to produce the same at office of the Chief Clerk, situated at Law Courts, Melbourne, on the day of 19 at o'clock in the noon, being the time appointed for adjudicating on the claims.

Dated this day of 19 .

G.H.,
Chief Clerk.

No. 4.

Notice to Creditor to produce Documents.

In the Supreme Court.

19 . No.

Between *A.B.* Plaintiff,

and
C.D. and others Defendants.

You are hereby required to produce, in support of the claim sent in by you against the estate of *X.Y.*, deceased [*describe the several documents required*], at the office of the Chief Clerk, Law Courts, Melbourne, on the day of 19 , at o'clock in the noon.

Dated this day of 19 .

G.R.,
of &c., solicitor for the plaintiff [*or defendant, or as may be*]

To Mr. *S.T.*

No. 5.

Affidavit of Executor or Administrator as to Claims.

In the Supreme Court.

19 . No.

Between *A.B.* Plaintiff,

and
C.D. and others Defendants.

We *C.D.*, of, &c., the above-named plaintiff [*or defendant, or as may be*], the executor [*or administrator*] of *X.Y.*, late of deceased, and *E.F.*, of &c., solicitor, severally make oath and say as follows:—

I, the said *E.F.*, for myself say as follows:—

1. I have in the paper writing now produced and shown to me, and marked A, set forth a list of all the claims the particulars of which have been sent in to me by persons claiming to be creditors of the said *X.Y.*, deceased, pursuant to the advertisement issued in that behalf, dated the day of 19 .

APPENDIX L.

And I, the said C.D., for myself say as follows:—

2. I have examined the particulars of the several claims mentioned in the paper writing now produced and shown to me, and marked A, and I have compared the same with the books, accounts, and documents of the said X.Y. [or as may be, and state any other inquiries or investigations made], in order to ascertain as far as I am able, to which of such claims the estate of the said X.Y. is justly liable.

3. From such examination [and state any other reasons] I am of opinion, and verily believe, that the estate of the said X.Y. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing marked A; and to the best of my knowledge and belief such several amounts are justly due from the estate of the said X.Y., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said X.Y. is not justly liable to the claims set forth in the second part of the said paper writing marked A, and that the same ought not to be allowed without proof by the respective claimants [or, I am not able to state whether the estate of the said X.Y. is justly liable to the claims set forth in the second part of the said paper writing marked A, or whether such claims, or any parts thereof, are proper to be allowed without further evidence].

5. Except as hereinbefore mentioned there are not to the best of my knowledge, information, or belief, any other claims against the estate of the said X.Y.

No. 6.

Exhibit referred to in Affidavit No. 5.

19 No.

Between A.B. Plaintiff,
and
C.D. and others Defendants.

List of claims, the particulars of which have been sent in to E.F., the solicitor of the plaintiff [or defendant, as the case may be], by persons claiming to be creditors of X.Y., deceased, pursuant to the advertisement issued in that behalf, dated the day of

This paper writing marked A was produced and shown to and is the same as is referred to in his affidavit, sworn before me this day of

W.B., &c.

First Part.—Claims proper to be allowed without further evidence.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed. £ s. d.	Amount proper to be allowed. £ s. d.

Second Part.—Claims which ought to be proved by the Claimants.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed. £ s. d.

No. 7.

APPENDIX L.

[Short Title.]

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 19 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, and you are to file such affidavit as you may be advised in support of your claim, and to give notice thereof to me on or before the day of 19 next; and to attend at the office of the Chief Clerk, Law Courts, Melbourne, on the day of 19 at o'clock of the noon, being the time appointed for the adjudicating on the claim.

Dated this day 19
G.R., of &c., solicitor for the plaintiff [or defendant, as case may be].

To Mr. P.R.

No. 8.

Notice to Creditor to prove his Claim.

Between *A.B.* Plaintiff,
and
C.D. and others Defendants.

You are hereby required to prove the claim sent in by you against the estate of *X.Y.*, deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me, on or before the day of next; and to attend at the office of the Chief Clerk, Law Courts, Melbourne, on the day of 19 at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of 19
G.R., of &c., solicitor for the plaintiff [or defendant, or as may be].

To Mr. S.T.

No. 9.

Notice that Cheques may be received.

19 No.

In the Supreme Court.

Between *A.B.*, Plaintiff,
and
C.D. and E.F., Defendants.

The amounts directed to be paid to the creditors of *A.B.*, deceased, by an order made in this [matter and] action dated the day of 19 may be received at the office. on and after the day of 19

G.R., of &c., solicitor for the plaintiff [or defendant, or as may be]

To Mr. W.S.

No. 10.

Certificate of Chief Clerk.

19 No.

In the Supreme Court.

Between *A.B.*, Plaintiff,
and
C.D. and E.F., Defendants.

In pursuance of the directions given to me by Mr. Justice I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment [or order] in this cause dated the day of is as follows:—

1. The defendants the executors of the testator, have received personal estate to the amount of £ and they have paid or are entitled to be allowed on account

APPENDIX I. thereof sums to the amount of £ having a balance due from [or to] them of £ on that account.

The particulars of the above receipts and payments appear in the account marked verified by the affidavit of filed on the day of and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums [state the same here or in a schedule] and except that I have disallowed the items of disbursement in the said account numbered and

[Or in cases where a transcript has been made.]

The defendants have brought in an account verified by the affidavit of filed on the day and which account is marked and is to be filed with this certificate. The account has been altered, and the account marked and which is also to be filed with this certificate is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed are set forth in the Schedule hereto, and with the interest thereon and costs mentioned in the Schedule are due to the persons therein named, and amount altogether to £

3. The funeral expenses of the testator amount to the sum of £ which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the Schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to £

5. The outstanding personal estate of the testator consists of the particulars set forth in the Schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the Schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, &c. [in a form similar to that provided with respect to the personal estate].

8. The incumbrances affecting the said testator's real estate are specified in the Schedule hereto.

9. The real estates of the testator directed to be sold have been sold, and the purchase moneys, amounting altogether to £ have been paid into Court.

N.B.—The above numbers are to correspond with the numbers in the order after each statement, the evidence produced is to be stated as follows:—

The evidence produced on this account [or inquiry] consists of the probate of the testator's will, the affidavit of A.B. filed and paragraph numbered of the affidavit of C.D. filed

No. 11.

Affidavit verifying Accounts and answering usual Inquiries as to Real and Personal Estate.

In the Supreme Court.

No.

Between A.B., Plaintiff,

and

C.D. and E.F., Defendants.

We, A.B., of &c., C.D., of &c., and E.F., of &c., the above-named defendants, severally make oath and say as follows:—

The words in italics to be inserted only where the direction is to take an account of personal estate not specifically bequeathed.

1. We have according to the best of our knowledge, information, and belief, set forth in Schedule I. hereto a full account and inventory of the personal estate of or to which G.H. the testator in the judgment [or order] dated made in this action [or matter] named, who died on the day of was possessed or entitled at the time of his death, and not by him specifically bequeathed.

2. Save what is set forth in the said Schedule I., and what is by the said testator specifically bequeathed, the said testator was not to the best of our knowledge, information, or belief, at the time of his death possessed of or entitled to any debt or sum of money due to him from us or any of us on any account whatsoever nor to any leasehold or other personal estate whatsoever.

3. The said testator's funeral expenses have been paid. The same consists of the items of disbursement numbered _____ and _____ in the account hereinafter referred to [or if not paid, it should be so stated with the amount due and to whom due].

APPENDIX L.

4. We have in the account marked A, now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of the personal estate of the said testator, *not by him specifically bequeathed*, which has come to our hands, or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, with the times when, the names of the persons from whom, and on what account the same has been received, and also a like account of the disbursements, allowances, and payments made by us or any of us on account of the said testator's funeral expenses, debts, and personal estate, together with the times when, the names of the persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

This should
accord with the
order directing
the account.

5. And we, each speaking positively for himself and to the best of his knowledge and belief as to other persons, further say that except as appears in the said account marked A we have not, nor has any of us, nor have nor has any other person or persons by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof, and that the said account marked A does not contain any item of disbursement, allowance, or payment other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

6. To the best of our knowledge, information, and belief, the personal estate of the said testator now outstanding or undisposed of consists of the particulars set forth in Schedule II. hereto.

7. Save what is set forth in Schedule II., there is not to our knowledge, information, or belief any part of the said testator's personal estate now outstanding or undisposed of.

8. We have, according to the best of our knowledge, information, and belief, set forth in Schedule III. hereto the particulars of all the real estate which the said *G.H.* was seized of or entitled to at the date of his death.

9. Save what is set forth in the said Schedule, the said testator was not, to the best of our knowledge, information, or belief, at the time of his death seized of or entitled to any real estate whatsoever.

10. We have, according to the best of our knowledge, information, and belief, set forth in Schedule IV. hereto the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

11. We have, in the account marked B, now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of all the rents and profits of the said testator's real estate which have come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, and the times when the names of the persons from whom, on what account, in respect of what part of such estate, the same have been received, and the times when the same became due, and also a like account of the disbursements, allowances, and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which the same were made.

This should
accord with the
order directing
the account.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that, except as appears in the said account marked B, we have not, nor has any of us, nor has any other person by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof, and that the said account marked B does not contain any item of disbursement, payment, or allowance other than such as has actually been disbursed, paid, or allowed, as above stated.

THE FIRST SCHEDULE above referred to.

1. £50 cash in the house.
2. £100 cash at the testator's bankers, Messrs. *A.* and *B.*
3. £1,000 Government debentures standing in the testator's name.
4. £10 due from John James, for half-year's rent of house at _____ to Michaelmas, 1902.
5. £32 6s. 8d. balance remaining due from John Thomas on account of half-year's rent of farm at _____ to Michaelmas, 1902.
6. £300, a debt due from Samuel Jones on a bond, with interest from _____ at _____ per cent.
7. A leasehold house situate _____ held under a lease for a term of _____ which will expire on _____ at a rent of £ _____ a year, underlet to James Evans for a term which will expire on _____ at a rent of £50 a year.
8. £25, half a year's rent due from the said James Evans to _____

Chapter I.—Civil Proceedings.

3548

APPENDIX L.

THE SECOND SCHEDULE above referred to.

[The particulars to be set forth in the same manner as above.]

THE THIRD SCHEDULE above referred to.

[To contain short particulars of the real estate.]

THE FOURTH SCHEDULE above referred to.

[To contain short particulars of the incumbrances, and showing what part of the above real estate is subject to each.]

No. 12.

Account of Personal Estate, being Account A referred to in Form No. 11

In the Supreme Court, 19 . . . No.
 Between A.B., Plaintiff,
 and
 C.D. and E.F., Defendants.

This account marked A was produced and shown to A.B., C.D., and E.F., and is the account referred to in their affidavit sworn this day of

Before me [to be signed here by Commissioner or officer before whom the affidavit is sworn.]

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received.
				£ s. d.
1	1 . .	... ..	Found in house	
2		Evans and Co. ...	Balance at bankers	
3		... ..	Half-year's dividend on £2,000 Government debentures, due	
4		John James ...	Bond debt of £300 and interest from to	
5		Samuel Jones ...	Bond debt of £300 and interest from to	
6		James Evans ...	Half-year's rent of leasehold house, due	
7		William Williams ...	Produce of sale of the above leasehold house	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
				£ s. d.
1	1 . .	James Price ...	Undertaker's bill for funeral	
2		Messrs. A. and B. ...	Expenses of probate	
3		John George ...	A debt due to him for medical attendance	
4		James Price ...	Bond debt of £1,000 and £25 for interest thereon from to	

No. 13.

APPENDIX L.

Account of Rents and Profits, being the Account B Referred to in No. 11.

In the Supreme Court. B. 19 No.
 Between A.B., Plaintiff,
 and
 C.D., Defendant.

This account marked B was produced and shown to A.B. and C.D., and is the account referred to in their affidavit sworn this day of

Before me [to be signed here by Commissioner or officer before whom affidavit sworn.]

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account and in respect of what Part of the Estate received, and when due.	Amount received. £ s. d.
1	1	John James ...	Half-year's rent for farm in parish of due	
2		Thomas James ...	One quarter-year's rent of house at due	
3		John James ...	Same as No. 1, due	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed. £ s. d.
1	1	Sun Insurance Office	One year's insurance against fire, due	
2		Thomas Carpenter ...	Repairs at John James' farm ...	
3		James Francis ...	Land Tax, half-year due 10th October ...	

No. 14.

Receiver's Account.

In the Supreme Court. 19 No.
 Between A.B., Plaintiff,
 and
 C.D. and E.F., Defendants.

(To accord with the Order.) The [] account of G.H., the Receiver, appointed in this cause [or pursuant to an Order made in this cause, dated the day of] to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of X.Y., the testator [or intestate] in this cause named, from the day of to the day of

REAL ESTATE—RECEIPTS.

No. of Item.	Date when received.	Tenants' Names.	Description of Premises.	Annual Rent. £ s. d.	Arrears due at. £ s. d.	Amount due at. £ s. d.	Amount received. £ s. d.	Arrears remaining due. £ s. d.	Observations.
1		John Jones	Home farm in the parish of Norton, in the county of Bourke						
2		Thomas Jones	House at Norton, aforesaid						

APPENDIX L.

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of Item.	Date of Payment or Allowance.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount
				£ s. d.
1		Sun Fire Office ...	One year's insurance of, due	
2		Thomas Carpenter	Bill for repairs at house let to Thomas Jones	
3		James Francis ...	Allowance for a half-year's Land Tax, due	
			Total payments £	

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.					PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.				
No. of Item.	Date when received.	Names of Persons from whom received.	On what account received.	Amount received.	No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed.

SUMMARY.

Amount of balance due from Receiver on account of real estate on last account ...	£ s. d.	£ s. d.
Amount of receipts on the above account of real estate ...	" "	" "
Balance of last account paid into Court ...	£ s. d.	
Amount of payments and allowances on the above account of real estate ...	" "	
Amount of Receiver's costs of passing this account as to real estate ...	" "	

Balance due from the Receiver on account of real estate ... £

Amount of balance due from Receiver on last account of personal estate ...	£ s. d.	
Amount of receipts on the above account of personal estate ...	" "	
Balance of last account paid into Court ...	£ s. d.	
Amount of payments and allowances on the above account of personal estate ...	" "	
Amount of Receiver's costs of passing this account as to personal estate ...	" "	

Balance due from the Receiver on account of personal estate ... £

No. 15.

Ordinary Conditions of Sale.

Conditions of Sale.

1. No person is to advance less than £ at each bidding.
2. The sale is subject to a reserved bidding for each lot which has been fixed by the Judge.
3. Each purchaser is at the time of sale to subscribe his name and address to his bidding, and the abstract of title, and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.
4. Each purchaser is at the time of sale to pay a deposit of £ per cent. on the amount of his purchase money to the person appointed by the Judge to receive the same.

5. The Chief Clerk will after the sale proceed to certify the result, and the day of at of the clock noon is appointed as the time at which the purchasers may, if they think fit, attend by their solicitors at Judges' Chambers to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the purchaser.

APPENDIX L.

6. The vendor or his solicitor will within days after such certificate has become binding produce the title deeds in his possession relating to the property sold for the inspection of the purchaser or his solicitor at his office Melbourne, [if the land is under the Transfer of Land Act 1928, Add the title being under the Transfer of Land Act 1928, no abstract shall be required], land will also, if so required, within days after the certificate has become binding, furnish to the purchaser or his solicitor an abstract of title to the lot purchased by him, the expense of such abstract to be borne by the party requiring the same] and the purchaser of each lot shall make his requisitions and objections (if any) in respect to the title and of all matters in the [abstract] particulars and conditions of sale, and send the same to the office of the purchaser or his solicitor [within — days from the day of the delivery of the abstract or] within — days from the day on which the certificate has become binding (in case no abstract shall have been required), and in this respect time is to be deemed of the essence of the contract; and in default of such requisitions and objections (if none) and subject to such (if any) as shall have been delivered within the time aforesaid, the purchaser shall be deemed to have accepted the title.

7. The production and inspection of all deeds, evidences, and muniments of title which are not in the possession of the vendor or his solicitor, and all certificates, attested office or other copies, or extracts of or from any registers, deeds, wills, or other documents, and all declarations or other evidences [whether required for the verification of the abstract or for any other purpose] shall be procured by and at the expense of the purchaser requiring the same.

8. The property being sold under a decree of the Supreme Court in an action, all office and other copies of the proceedings in the said action, or in any wise relating thereto, shall be obtained by and at the expense of the party requiring the same, who shall also be at the expense of examining and investigating such proceedings and of obtaining the confirmation by the Court of his purchase.

9. Each purchaser is under an order for that purpose to be obtained by him, or in case of his neglect by the vendors at the costs of the purchaser, upon application at Judges' Chambers to pay the amount of his purchase money (after deducting the amount paid as a deposit), into Court to the credit of this cause, on or before the said day of and if the same is not so paid, then the purchaser is to pay interest on his purchase money, at the rate of £ per cent. per annum from the day of to the day on which the same is actually paid. Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits; as from the day of, down to which time all outgoings are to be paid by the vendors.

This is to be in accordance with the order directing the sale.

10. If any error or misstatement shall appear to have been made in the above particulars, such error or misstatement is not to annul the sale or entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser, as the case may be, and the amount of such compensation is to be settled by the Judge at Chambers.

[Add to these such conditions respecting the title and title deeds as shall be necessary or proper.]

Lastly. If the purchaser shall not pay his purchase money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the Judge upon application at Chambers for the resale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency (if any) in the price which may be obtained upon such resale and of all costs and expenses occasioned by such default.

No. 16.

Affidavit of Result of Sale.

In the Supreme Court.

19 No.

Between A.B., Plaintiff,
and
C.D. and E.F., Defendants.

I, G.H., of, &c., auctioneer, the person appointed by the Judge to sell the estates comprised in the particulars hereinafter referred to, do make oath and say as follows:—

1. I did at the time and place, in the lots, and subject to the conditions specified in the particulars and conditions of sale now produced and shown to me, and marked with the letter A, put up for sale by auction the estates described in such particulars. The result of such sale is truly set forth in the bidding paper marked with the letter B now produced and shown to me.

2. The sums set forth in the second column of such bidding paper are the highest sums bid for the respective lots, the numbers of which are set forth in the first column opposite to such respective sums, and the persons whose names are subscribed in the third column of such bidding paper as purchasers were respectively the highest bidders for and became the purchasers of the respective lots, the numbers whereof are set opposite to such respective names in the said first column of the said bidding paper at the prices or sums set opposite to their respective names in the said second column thereof.

3. The several lots opposite to the numbers of which I have in the third column of the said bidding paper written the words "not sold" were not sold, no person having bid a sum equal to or higher than the reserved bidding fixed by the Judge.

4. No person bid any sum whatever for either of the lots opposite the numbers of which I have in the second column of the said bidding paper written the words "no bidding."

5. The said sale was conducted by me in a fair, open, and candid manner, and according to the best of my skill and judgment.

APPENDIX L. 6. I have received the sums set forth in the fourth column of the schedule hereto as deposits from the respective purchasers whose names are set forth in the second column of such schedule opposite the said respective sums in respect of their said respective purchase moneys, leaving due in respect of the said purchase moneys the respective sums set forth in the fifth column of the said schedule.

The SCHEDULE above referred to,

No of Lot.	Name of Purchaser.	Amount of Purchase Money.	Amount of Deposit received.	Amount remaining due.

No. 17.

List of Debts allowed.

James v. Jones.

List of Debts.

No of Entry of Claim.	Names of Creditors.	Addresses.	Amounts allowed for Principal, Inte est. and Costs.	Total Amounts due.
2	James Allen ...	Boston, in the county of Bourke, surgeon ...	£ s. d. 100 0 0 Interest ... 4 0 0 Costs ... 2 2 0	£ s. d. 106 2 0
1	Charles Cohen ...	98 John street, county of Bourke, gentleman, executor of John Thomas ...	67 0 0 Interest from 5th October, 19 , at 25 per cent. ... 4 2 0 Costs ... 2 2 0	73 4 0
5	John Dennis and Owen Thomas	No. Smith-street, Collingwood, grocers and co-partners ...	100 0 0 Interest from the 16th October, 19 , at 25 per cent. ... 5 0 0 Another debt ... 62 0 0 Interest ... 2 10 0 Costs ... 2 4 6	171 14 6

No. 18.

List of Legacies remaining unpaid.

James v. Jones.

List of Legacies.

Name of Legatee.	Description.	Amounts of Principal and Interest.	Total Amounts due.
James Oliver ...	Son of testator, an infant ...	£ s. d. 100 0 0 Interest ... 7 5 6	107 5 6
Mary Russell ...	Of No. Collins-street, Melbourne, widow ...	50 0 0 Interest from 1st January, 19 , the death of testator ... 4 8 0	54 8 0
Jane, the wife of John Williams	Of Sandhurst, Esq. ...	250 0 0 Paid in part ... 50 0 0	200 0 0 Interest ... 14 11 0
Total £			214 11 0

No. 19.
List of Annuities and Arrears due.
List of Annuities.

APPENDIX L.

Names of Annuitants.	Description of Annuitants and Nature of Annuities.	Amounts of Annuities.	Amounts of Arrears due.
Mary Jones ...	Spinster, daughter of testator, during her life ...	£ s. d. 50 0 0	£ s. d. 25 0 0
Maria Williams	Widow of testator, during her life and widowhood ...	200 0 0	
	Arrears due from 7th August, 19... down to which it has been paid ...	...	300 0 0
	Total ...	£	£

No. 20.
List of Apportionments among Creditors or Legatees.
Apportionments among Creditors (or Legatees).

Names of Creditors (or Legatees).	Addresses.	Amounts before certified to be due and subsequent interest.	Totals due.	Amounts Apportioned.
John Jones ...	No. Brown-street, Ballarat, woollen draper ...	£ s. d. 200 0 0	£ s. d.	£ s. d.
	Subsequent interest ...	17 10 0	217 10 0	57 4 8
Thomas Young and Robert Young	Braintree, in the county of Bourke, executors of William Young, deceased ...	200 0 0		
	Subsequent interest ...	17 10 0	217 10 0	57 4 8
	Total ...	£	£	

No. 21.
Receiver's Recognizance.

of and of and of
Before our Sovereign Lord the King in his Supreme Court personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to and
the sum of to be paid to the said and
or one of them, or the executors or administrators of them, or one of them, and unless they do pay the same, they, the said do grant, and each of them doth grant for himself, his heirs, executors, and administrators, that the said sum of shall be levied, recovered, and received of and from them and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods and chattels of them, and each of them wheresoever the same shall or may be found. Witness our said Sovereign Lord George the Sixth, by the Grace of God, of Great Britain Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India, and so forth, at the Supreme Court, the day of 19
Whereas, by an order of the Supreme Court made in a cause wherein are plaintiffs and defendants, and dated the day of
It was ordered that a proper person should be appointed to receive [or that upon the above bounden first giving security he should be appointed receiver of] the rents and profits of the real estate, and to collect and get in the outstanding personal estate of in the said order named. And whereas Mr. Justice hath [approved of the said as a proper person to be such receiver, and hath] approved of the above bounden and as sureties for the said and hath also approved of the above-written recognizance with the underwritten condition as a proper security to be entered into by the said pursuant to the said order and the general orders of the said Court in that behalf, and in testimony of such approbation the Chief Clerk has signed an allowance in the margin hereof.
Now the condition of the above-written recognizance is such that if the said do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said at such periods as the said Judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed or shall hereafter direct, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.
Taken and acknowledged by the above-named, &c.

Mr. Justice
has approved of
and allowed this
recognizance.
Chief Clerk.

APPENDIX L.

NO. 21A.

Receiver's Security by Undertaking.

(Title.)

In the Supreme Court.

I, _____ of _____ the receiver [and manager] appointed by Order dated _____ [or proposed to be appointed] in this action hereby undertake with the Court to duly account for all moneys and property received by me as such receiver [or manager], or for which I may be held liable, and to pay the balances from time to time found due from me, and to deliver any property received by me as such receiver [or manager] at such times and in such manner in all respects as the Court or a Judge shall direct.

And we _____ hereby jointly and severally [in the case of a guarantee or other company, strike out "jointly and severally"] undertake with the Court to be answerable for any default by the said _____ as such receiver [or manager], and upon such default to pay to any person or persons, or otherwise as the Court or a Judge shall direct, any sum or sums not exceeding in the whole £ _____, that may from time to time be certified by the Chief Clerk to be due from the said receiver, and we submit to the jurisdiction of the Court in this action to determine any claim made under this undertaking.

Dated this _____ day of _____ 19 _____

[Signatures of Receiver and his surety or sureties. In the case of a surety being a guarantee or other company the seal of the company must be affixed.]

No. 22.

Affidavit Verifying Receiver's Account.

In the Supreme Court.

Between A.B., Plaintiff,
and
C.D., and E.F., Defendants.

19 _____ No. _____

I, _____ of _____ the receiver appointed in this cause, make oath and say as follows:—

1. The account contained from page _____ to page _____ both inclusive, in each of the two several books marked with the several letters A and B produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of the rents and profits of the real estate and of the outstanding personal estate of _____, the testator [or intestate] in this cause, from the _____ day of _____ 19 _____ to the _____ day of _____ 19 _____ both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order, or to my knowledge or belief, for my use on account or in respect of the said rents and profits accrued due on or before the said _____ day of _____ on account or in respect of the said personal estate, except what is included as received in my former account [or accounts] sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. W.X. and Y.Z. the sureties named in the recognizance dated the _____ of _____ 19 _____ are both alive, and neither of them has become insolvent.

This is to accord with the order appointing the receiver. The date to which the account is made up.

No. 25.

Originating Summons.

In the Supreme Court.

In the matter of the estate of A.B., deceased.
Between C.D., Plaintiff,
and
E.F., Defendant.

19 _____ No. _____

Let E.F., the executor of the said A.B., attend at the chambers of Mr. Justice _____ situate at _____ at the time specified in the margin [or at the foot] hereof, upon the application of C.D., of _____ who claims to be a creditor [or as the case may be] upon the estate of the above-named A.B. for an order for the administration of the personal [or real and personal] estate of the said A.B.

Dated the _____ of _____ 19 _____

This summons was taken out by _____ of _____ (Seal.) solicitors for the above-named C.D.
The following note to be added to the original summons, and when the time is altered by indorsement the indorsement to be referred to as below:—

NOTE.—If you do not attend either in person or by your solicitor at the time and place above-mentioned [or at the place above-mentioned at the time mentioned in the indorsement hereon], such order will be made and proceedings taken as the Judge may think just and expedient.

3555 Chapter I.—Civil Proceedings.

No. 27.

APPENDIX L.

Notice that cause has been set down for further consideration.

In the Supreme Court. 19 . No.

Between A.B., Plaintiff.

and
C.D. and E.F., Defendants.

Take notice that this cause, the further consideration whereof was adjourned by the order of the day of of , was on the of set down for further consideration before Mr. Justice for the day of Dated, &c.,

X.Y.,
[Prothonotary.]

To Mr.
Solicitor for

No. 28.

Form of ordering Accounts and Inquiries.

This Court doth order that the following accounts and inquiry be taken and made, that is to say:

1. An account of the personal estate not specifically bequeathed of A.B., deceased, the testator in the pleadings named, come to the hands of, &c.
2. An account of the testator's debts.
3. An account of the testator's funeral expenses.
4. An account of the testator's legacies and annuities (if any) given by the testator's will.
5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

And it is ordered that the following further inquiries and accounts be made and taken, that is to say:—

6. An inquiry what real estate the testator was seized of or entitled to at the time of his death.
7. An account of the rents and profits of the testator's real estate received by, &c.
8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(If Sale ordered.)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's real estate be sold with the approbation of the Judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised:

No. 29.

Consent to Act.

I, A.B., of , hereby consent to act as a trustee of the [describe the instrument].

Dated the day of 19 .

(Signed) A.B.

I, C.D., of , solicitor, hereby certify that the above-written signature is the signature of A.B., the person mentioned in the above-written consent.

(Signed) C.D., solicitor for the said A.B.

APPENDIX N.

APPENDIX N.

ORDINARY SCALE OF COSTS.

Subject Matter.

	£	s.	d.
<i>Writs.</i>			
1. Writ of Summons for the commencement of an action or other writ not specially provided for	0	15	0
2. Indorsement of claim (if special)	0	6	0
3. If more than three folios, for every extra folio	0	2	0
4. Concurrent Writ of Summons	0	8	0
5. Citation in matrimonial causes	0	12	0
6. Writ of <i>Mandamus</i>	0	17	0
7. Writ of <i>Subpœna duces tecum</i>	0	10	0
8. Writ of <i>Subpœna ad testificandum</i>	0	9	0
9. If any of the above writs (except Writs of Summons) exceed four folios, for each extra folio	0	2	0

These fees include all indorsements, and copies, or *præcipes* for the officers sealing them and attendances to issue or seal, but not the Court fees.

Chapter I.—Civil Proceedings. 3556

APPENDIX N.

SCALE OF COSTS—continued.

Subject Matter.	£	s.	d.
<i>Summonses and Warrants.</i>			
10. Summons to attend at Judges' Chambers	0	8	0
11. Or, if special, at Taxing Officer's discretion not exceeding	0	17	0
12. Warrant for proceeding in Master's Office	0	8	0
13. Originating summonses for proceedings in Chambers (including drawing, engrossing, and copy to file)	0	12	0
14. Or, at Taxing Officer's discretion, not exceeding	1	5	0
15. And attending to issue, including attendance to get date of return fixed	0	10	0
No allowance is to be made for <i>præcipes</i> unless special and exceeding three folios.			
<i>Notices and Memoranda.</i>			
16. In proceedings to wind up companies, for preparing or filling up each notice to creditor or to contributories	0	2	0
17. If special, at Taxing Officer's discretion, not exceeding per folio	0	2	0
18. Notice to produce or admit (including preparation and one copy to serve)	0	10	0
19. If more than seven folios, for each extra folio	0	2	0
20. Notice of originating motion	0	12	0
21. Notice of interlocutory motion	0	8	0
22. Or per folio	0	2	0
23. Any necessary or proper notice or memorandum not otherwise provided for, or any demand	0	5	0
This provision shall not apply to short notices or memoranda indorsed on other documents, but the words or folios therein may be allowed as part of the document so indorsed.			
24. If special, or necessarily exceeding three folios, for each folio	0	2	0
The above allowances include preparation of notice and one copy for service.			
When notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed, together.			
<i>Appearances.</i>			
25. Preparing and attending entering appearance	0	10	0
26. If entered at one time for more than one person, for every defendant beyond the first	0	2	0
27. If a person appearing to a Writ of Summons to recover land, limits his defence by his memorandum of appearance, in addition to the above	0	5	0
28. Sealed copy appearance for service	0	1	0
<i>Instructions.</i>			
29. To sue, institute, or defend any action, cause, or matter, including appeals	1	1	0
30. To make or oppose any motion or application to the Court or a Judge in the Lunacy, Probate, or Insolvency Jurisdictions, or in proceedings under the Companies Acts	0	12	0
31. For documents to be brought into Judges' Chambers, or the Office of the Master-in-Equity or Master-in-Lunacy, such as proposals, statements of facts, reports, accounts, and for special affidavits	0	8	0
32. For interrogatories	0	12	0
33. To institute or oppose an interlocutory proceeding not otherwise provided for	0	8	0
34. For Statement of Claim, Special Case, or Petition	1	10	0
35. For indorsement of writ (where no further Statement of Claim), Defence, Counterclaim, Reply, Answer in Matrimonial Cause, any other pleading not otherwise provided for, for particulars in lieu of pleading and for amendments of pleading (if not merely verbal)	0	12	0
Instructions are not to be allowed in cases where the work intended to be included therein is charged for and allowed in detail.			
36. For Counsel to advise on evidence, when the evidence in chief is to be taken orally	0	16	0
37. For Counsel to make an application to the Court where no other brief	0	8	0
38. For brief on hearing of originating motion, summons, or petition, special case or motion for special injunction (if the work done be not allowed for under any other heading in the bill of costs)	0	16	0
39. For brief on hearing or trial of action or cause upon notice of trial, or notice of judgment given, whether such trial be before a Judge, with or without a jury, or before a special referee, or be the trial of an issue of fact before a Judge or referee, or on assessment of damages or on the hearing of an appeal when witnesses are to be examined or cross-examined	1	10	0
Instead of the above fees for Instructions, such larger sum may be allowed as the Taxing Officer may think reasonable having regard to all the circumstances of the case, and to the other allowances made. The fees for instructions for brief are to apply to a hearing on further consideration in Court, when an order for accounts and inquiries has been made without such hearing or trial as above mentioned, but not otherwise.			

SCALE OF COSTS—continued.

APPENDIX N.

Subject Matter.	£ s. d.
<i>Drawing Pleadings and other Documents.</i>	
40. Pleadings, including Petitions (but not including Particulars or Summonses), not exceeding eight folios	0 12 0
41. If exceeding eight folios, for every extra folio	0 1 6
42. Any other necessary document, per folio	0 1 8
Allowance is not to be made to a Solicitor for drawing a document actually drawn by Counsel, but the Taxing Officer shall allow for drawing matter necessary in order to instruct Counsel. In making allowances for drawing the Taxing Officer may disallow anything which, in his opinion, is a repetition or adaptation of matter for the drawing of which allowance has otherwise been made in the same action or matter.	
<i>Copies.</i>	
43. Of documents, where no other provision is made, per folio	0 0 8
44. Carbon or machine-made copies	0 0 4
Where two or more copies could have been made with a typewriter by the same impression, the Taxing Officer may allow for each copy, however made, the same rate only as for carbon copies. This rule may be applied in cases where both or all copies are made by hand. Close copies are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown to and considered by the Taxing Officer.	
<i>Printing.</i>	
45. When, pursuant to Rules of Court, or for any sufficient reason, any document is printed, the Solicitor of the party printing shall be allowed for a copy for the printer (except where made by the Officer of the Court) at per folio	0 0 6
46. And for examining the proof print, at per folio	0 0 2
47. And, for printing, the amount actually and properly paid to the printer, not exceeding per folio	0 2 0
In addition, all necessary attendances on the printer. And, when any part shall properly be printed in a foreign language, or as a <i>fac-simile</i> , or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the Taxing Officer shall think reasonable.	
<i>Attendances.</i>	
48. Personal service of any process or proceeding, where necessary	0 12 0
49. If served at a distance of more than 2 miles from the nearest place of business or office of the Solicitor serving the same, according to the time occupied and fares paid.	
50. Where in consequence of the distance of the party to be served, it is proper to effect such service through an agent other than the Melbourne agent, instead of the allowance for service, for correspondence	0 8 0
51. Correspondent's charges	1 1 0
Or the amount actually and reasonably charged by and paid to the person serving. Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance shall be made as the Taxing Officer shall think reasonable. For service out of the jurisdiction such allowance is to be made as the Taxing Officer shall think reasonable.	
52. Service on the Solicitor for a party who has issued process or entered an appearance, or at the address for service of a party	0 5 0
53. Or, if authorized to be served by post	0 2 0
When any two or more documents have to be, or may be, served together, one fee only for such service may be allowed. On Counsel with brief or other papers or to appoint consultation or conference.	

APPENDIX N.

SCALE OF COSTS—continued.

Subject Matter.	£ s. d.
<i>Attendances—continued.</i>	
54. If Counsel's fee one guinea to four guineas	0 6 0
55. If over four guineas	0 12 0
56. To mark refresher	0 6 0
57. On consultation	1 4 0
58. On conference, if Counsel's fee one guinea	0 12 0
59. If over one guinea	1 4 0
60. If conference or consultation occupies more than one hour, at the discretion of the Taxing Officer, not to exceed per hour, after the first hour	0 12 0
61. Examining Appeal Books, per hour	0 8 0
62. On a Summons or other application in Chambers	0 8 0
63. Or according to circumstances, not to exceed	3 3 0
64. On Motion, Special Case, Petition, Application adjourned from the Judges' Chambers, Appeal, or other application to the Court, when in list or likely to be heard	0 12 0
65. When heard	1 0 0
66. Or according to circumstances, not to exceed	4 4 0
67. To present Petition	0 12 0
68. On hearing or trial of any action, cause, or matter, or issue of fact, whether before a Judge with or without a jury, special referee, or on assessment of damages, when in the list	0 16 0
69. When heard or tried	1 10 0
70. Or according to circumstances, not to exceed	5 5 0
71. For every hour, after the first two hours, including attendance to hear judgment	1 0 0
As to attendances at Court or in Chambers, when the Solicitor has not given personal attendance, the maximum allowances shall be as follows:—	
Applications in Chambers	£2 2 0
Motions or other applications to the Court	3 3 0
Hearing or trial of actions, &c., per hour	0 12 0
or per day	3 3 0
72. When in the opinion of the Taxing Officer it is necessary for two principals, or for a Solicitor and managing clerk to attend the trial, an additional allowance may be made per day of	2 2 0
73. Attending by appointment or on application at Judges' Chambers or before the Chief Clerk, the Prothonotary, the Master-in-Equity or Master-in-Lunacy	0 12 0
74. Or if the Judge, Prothonotary, Chief Clerk, or Master shall certify that a further sum should be allowed, not exceeding	3 3 0
75. On examination of witnesses before an Examiner, Officer, or other person	0 16 0
76. Or according to circumstances, not to exceed per day, if Counsel employed	3 3 0
Or, if without Counsel, at the discretion of the Taxing Officer.	
77. To settle judgment or order, per hour	0 12 0
78. On taxation of costs	0 12 0
79. Or, according to circumstances, not to exceed per day of six hours (including luncheon adjournment)	3 3 0
80. If for any purpose, such as attending a trial, conference with Counsel, taxation of costs, or collection of evidence, it is in the opinion of the Taxing Officer necessary for a Solicitor to leave the town where he resides or carries on business and journey to another place, for each day (except Sunday) that he is necessarily absent from such town	4 4 0
81. And expenses (besides actual reasonable fares or payment for transport), each day (24 hours) of necessary absence	0 15 0
In all such cases the Taxing Officer must be satisfied that the purpose of the journey could not have been satisfactorily accomplished by an agent.	
If the journey be not undertaken solely for purposes of the cause or matter, such proportion of the above fees may be allowed as the Taxing Officer shall think reasonable.	
82. To file, lodge, or deliver any document or other papers (including filing in lieu of service, but not other services), to obtain an appointment from any officer of the Court, to insert advertisement, or other attendance of a similar nature capable of performance by a junior clerk	0 5 0
83. If the attendance is one requiring the personal attendance of the Solicitor or his managing clerk and involving the exercise of skill or legal knowledge, per hour	0 12 0
84. Or such larger amount as the Taxing Officer may think reasonable having regard to the importance or difficulty of the subject-matter of the attendance, not exceeding per hour	1 5 0
85. Any attendance, for which no other provision is made	0 8 0

SCALE OF COSTS—*continued.*

APPENDIX N.

Subject Matter.

Perusal.

86. Of all Pleadings, including Petitions, Amendments of Pleadings (exceeding three folios), and Originating Summonses, Interrogatories, Answers thereto, Special Cases, Statements of Facts, Notices of Defendants' Claim under Order XVI. Rule 49, Special Affidavits or Declarations, Draft Orders submitted for approval by the Solicitor for another party, Drafts of Documents to be settled by an Officer of the Court, Orders (unless an allowance has been made previously for perusal of the draft thereof), Notices of Motion, by the Solicitor for the party to whom the same are delivered, per folio	0 1 0
87. Of Counsel's opinion or advice on evidence, per folio	0 1 0
88. Notices to produce or admit, deeds, correspondence and other documents, including exhibits which are necessary and proper to be perused, per folio	0 0 6
But if the Solicitor is already familiar with the contents of the document or if it is not necessary to carefully read the whole, such smaller sum (if any) as the Taxing Officer may think reasonable.	
No allowance is to be made for perusal of letters received by the Solicitor, nor of notices or summonses except where specially provided.	
89. For perusal of a bill of costs, with a view to taxing the same adversely, at the discretion of the Taxing Officer, not exceeding per folio	0 0 4

Oaths, Exhibits, and Special Ball.

90. Commissioners to take oaths or affidavits, for every oath, declaration, or affirmation	0 1 6
91. The Solicitor for preparing each exhibit	0 1 0
92. The Commissioner for marking each exhibit	0 0 6
93. The Commissioner on taking special ball	1 1 0

Correspondence, Agency, &c.

£ s. d.

94. Letters, if ordinary	0 4 0
95. Letters, if special	0 6 0
96. Circular letters, after the first	0 1 0
Or at the discretion of the Taxing Officer. If the letter be in fact an opinion on a question of law, the Taxing Officer may allow a reasonable fee for work done in order to give such opinion.	
97. In cases where an agent is employed, for correspondence per quarter of the year	0 12 0
to	
	1 5 0

Or, if special or extensive, at the discretion of the Taxing Officer.

These provisions shall apply although the correspondence be not in a cause or matter.

An allowance may also be made, if the circumstances warrant it, for the necessary expense of postage, carriage, and transmission of documents.

98. Solicitor's Managing Clerk's fee, where there is a trial or hearing, at which witnesses are examined or cross-examined	1 4 0
--	-------

SPECIAL SCALE OF COSTS.

	Where Amount	Over £250
	claimed does not exceed £250.	and not exceeding £500.
	£ s. d.	£ s. d.
1. Letter before action	0 6 0	0 6 0
2. Instructions to sue, including preparation of writ and particulars of claim and copy to file, including attendance to issue	1 16 0	2 10 0
3. Each copy writ for service	0 2 0	0 2 0
4. Instructions to defend, including appearance and attending, entering notice thereof, copy and service	1 0 0	1 5 0
5. Summons for directions, including copy for service and attendance to issue	0 12 0	0 16 0
6. If more than one copy for service required—for each such copy	0 1 6	0 1 6
7. Attendance at Judge's Chambers on hearing	0 8 0	0 12 0
8. Instructions for interrogatories or affidavits in answer	0 8 0	0 12 0
9. Drawing interrogatories or affidavit in answer—per folio	0 1 6	0 1 6
10. Copies thereof—at per folio	0 0 6	0 0 6
11. Perusing interrogatories or affidavits answering same	0 8 0	0 8 0
12. Attendance on counsel to settle interrogatories or answers	0 6 0	0 8 0
13. Fee to counsel and clerk—not exceeding	2 4 6	2 4 6
14. Instructions for any other special affidavit	0 8 0	0 12 0
15. Subpœna <i>ad test</i> for any number of persons, including three copies, præcipe, and attendance to issue	0 9 0	0 12 0
16. Each necessary copy beyond third	0 0 6	0 0 6
17. Subpœna <i>duces tecum</i> , including copy to serve præcipe and attendance to issue	0 9 0	0 10 0

	Where Amount claimed does not exceed £250.		Over £250 and not exceeding £500.	
	£	s. d.	£	s. d.
18. If subpoena <i>duces tecum</i> more than three folios—for each folio beyond three	0	1 6	0	1 6
19. Notice to produce copy and service	0	9 0	0	12 0
20. The like to admit documents or facts—copy and service	0	9 0	0	12 0
21. Instructions for or to defend set-off or counterclaim	0	12 0	0	12 0
22. Preparing notice of special defence, set-off or counterclaim—copy and service	0	12 0	0	18 0
23. Perusing notice to produce or admit	0	7 6	0	10 0
24. Instructions for brief for counsel, including all attendances on the party and his witnesses in connexion with the preparation for hearing—not exceeding	10	10 0	15	15 0
25. Drawing brief for counsel—per folio	0	1 6	0	1 6
Copy thereof—per folio	0	0 8	0	0 8
Copy documents to accompany—per folio	0	0 8	0	0 8
26. Attendance on counsel therewith	0	8 0	0	12 0
27. Fee to counsel and clerk, amount actually paid—not exceeding	7	12 0	11	0 0
28. Attendance, arranging conference with counsel, and attending same	0	15 0	1	0 0
29. Fee to counsel and clerk	1	3 6	2	4 6
30. Attendance at court before trial case in list not reached—for each day	0	12 0	0	12 0
31. Attendance at court on trial with counsel	2	10 0	3	0 0
32. Each day after the first	2	0 0	2	10 0
33. Attendance marking refresher to counsel	0	6 0	0	6 0
34. Refresher fee to counsel, for each day after the first—fee actually paid not exceeding	5	10 0	7	12 0
35. Solicitor's managing clerk's fee where there is a trial at which witnesses are examined or cross-examined	0	12 0	0	18 0
36. Drawing costs for taxation, including copy for taxing officer—per folio	0	1 6	0	1 6
37. For each copy	0	0 8	0	0 8
38. Appointment to tax copy and service	0	12 0	0	12 0
39. Attendance taxing	0	12 0	0	18 0
40. Writ of <i>Fieri Facias</i> , including copy præcipe and attending to issue	0	12 0	0	12 0
41. Attending to lodge	0	5 0	0	5 0
42. Attending to return	0	5 0	0	5 0
43. Perusing deeds, correspondence, accounts, affidavits, and other documents not hereinbefore provided for and thought necessary on taxation— <i>at per folio</i>	0	0 6	0	0 6
44. Plans, charts, or models where necessary for use at hearing, not exceeding	2	2 0	3	3 0
45. Letters necessary during progress of action	0	4 0	0	4 0
46. Drawing any necessary document not hereinbefore provided for—per folio	0	1 6	0	1 6
47. Copy thereof—per folio	0	0 8	0	0 8
48. In all cases where carbon copies of documents are used, for each such copy after the first—per folio	0	0 4	0	0 4
49. Any summons to attend at Judge's Chambers other than summons for directions, including copy for service and at ending to issue	0	8 0	0	12 0
50. All necessary attendances at the office of the Prothonotary, at Judge's Chambers, on Commissioner for taking Affidavits, on opposite party or his solicitor, and on client	0	6 0	0	8 0
51. Attendance on examination of witness or witnesses before any examiner, officer, or other person	0	12 0	0	16 0
Or, according to circumstances—not to exceed	1	5 0	1	15 0
52. Brief to counsel on examination	0	12 0	0	18 0
53. Attendance on counsel therewith	0	6 0	0	6 0
54. Fee to counsel and clerk	2	4 6	3	5 6
55. Service or filing in lieu of service of any writ, summons, interrogatories, affidavit, order, notice, or other document on a party who has not entered an appearance and if not authorized to be served by post (NOTE.—This involves personal service.)	0	12 0	0	12 0
56. If served at a distance of more than 2 miles from nearest place of business or office of solicitor serving the same, according to the time occupied and fares paid.				
57. Where in consequence of the distance of the party to be served it is proper to effect such service through an agent—for correspondence, in addition	0	8 0	0	8 0
58. Correspondent's charges	1	1 0	1	1 0
59. If authorized to be served by post	0	2 0	0	2 0
60. Service where an appearance has been entered on the solicitor or party	0	5 0	0	5 0

SCALE OF COSTS—continued.

APPENDIX N.

	Where Amount claimed does not exceed £250.	Over £250 and not exceeding £500.
	£ s. d.	£ s. d.
61. For preparing any necessary or proper notice, memorandum, or demand not otherwise provided for	0 5 0	0 5 0
62. Or if special and necessarily exceeding three folios—for each folio beyond three	0 1 6	0 1 6
63. Where counsel employed on any application to Judge in Chambers and certified for by the Judge—brief to counsel in such cases	0 12 0	0 18 0
64. Attendance on counsel therewith	0 6 0	0 6 0
65. Fee to counsel and clerk—not exceeding	2 4 6	2 4 6
66. Attending court Where trial adjourned upon payment of costs of day—	1 0 0	1 10 0
67. Fee to counsel and clerk—not exceeding	5 10 0	7 12 0

Witnesses' Expenses.

Allowance per Day.

Professional men, including—	
Medical practitioners	} From 1 to 3 guineas.
Legal practitioners	
Architects	
Engineers or surveyors	
Dentists	
Veterinary surgeons	
University professors	
Accountants (carrying on business as principals)	
Patent attorneys	
Merchants, auctioneers, estate agents, sharebrokers, bank managers .. .. .		} From 1 to 3 guineas.
Farmers or graziers	} £1.
Master tradesmen	
Persons carrying on business, such as hotelkeepers, shopkeepers, commission agents, &c.	
Gentlemen	} 10s., or the amount of the salary actually lost by the witness, whichever is greater, but not exceeding in any event £1.
Adult persons in receipt of salary, such as clerks, officers employed by companies, &c.	
Adult persons in receipt of wages, such as labourers, artisans, police constables, &c.	} 7s. 6d., or the amount of wages actually lost by the witnesses, whichever is greater, but not exceeding in any event £1.
Female witnesses (not engaged in business or profession, nor in receipt of salary or wages)	} From 5s. to 10s.
Female witnesses (engaged in profession or business, or in receipt of salary or wages)	} Same as male witnesses of similar class.
Persons under 21 years of age in receipt of salary or wages	} 5s., or amount of salary or wages actually lost by witness, whichever is greater, but not exceeding in any event £1.

In addition to the above allowances, witnesses residing at a distance from the place of trial shall be allowed reasonable travelling expenses actually paid, and a reasonable amount for sustenance.

Witnesses attending in more than one action or matter will be entitled to only a proportionate part of their expenses in each action or matter.

Notwithstanding anything in the above scale, the Taxing Officer may allow to expert witnesses a special fee for attendance at Court, if the witness be acting as an expert in assisting Counsel or Solicitor for the party during the trial; nor shall anything in the above scale affect the existing practice of allowing qualifying fees to witnesses.

CHAPTER II.

RULES OF PROCEDURE IN DIVORCE AND MATRIMONIAL CAUSES.

Commencement
of Rules.

1. On and after the first day of April, 1938, all Rules of Procedure in Divorce and Matrimonial Causes shall be repealed and of no effect except so far as regards all proceedings then pending and on the said first day of April, 1938, the Rules hereinafter set out shall come into force, and shall apply to all proceedings commenced on or after that date.

Proceedings to
be commenced
by petition.

2. Proceedings before the Court shall be commenced by filing in the Office of the Prothonotary a petition in the form in the Seventh Schedule to the *Marriage Act 1928*, or to the like effect, together with an affidavit such as is prescribed in the next following Rule.

Affidavit to
accompany
every petition.

3. The affidavit accompanying, and to be filed with every petition to obtain a decree of nullity of marriage, dissolution of marriage, judicial separation, or declaration as to jactitation of marriage, shall be made by the petitioner, and, if necessary, some other person or persons, and shall verify, paragraph by paragraph, the facts, acts, and conduct stated in the petition, distinguishing those within the personal knowledge of the deponent, and those which the deponent can verify only from belief; and also verifying so many of the following acts and circumstances, with dates and all other particulars, fully and distinctly, as are applicable to each case, or assigning explicit reasons for omitting to do so:—

- (1) Age, place of birth, and domicile of husband and wife respectively.
- (2) Condition of life, means of livelihood of husband and wife respectively, both before and after marriage.
- (3) Names, sexes, ages, and places of birth of living children, if any.
- (4) Cohabitation, tracing it clearly from marriage to last determination, showing fully when, why, and under what circumstances it ceased.
- (5) Separation or separations, if any, and causes thereof, and substance of deed of separation, if executed.
- (6) Origin of the acquaintance of the adulterer or adulteress.
- (7) Fact and time of adultery.
- (8) All the occasions on which, within petitioner's knowledge, adultery has been committed.
- (9) The precise occasion when petitioner first suspected any improper or adulterous intercourse.
- (10) Reasons, if any, for not having sooner instituted proceedings.
- (11) Any other facts or circumstances within petitioner's knowledge bearing on the petition.
- (12) Distinct and unequivocal denial of all collusion or connivance, past or present, direct or indirect, with the respondent or any person liable to be made respondent.

CO-RESPONDENTS.

Applications as
to
co-respondents
how made.

4. Applications made to the Court under section 79 of the *Marriage Act 1928* relating to co-respondents shall be made by summons founded on affidavit.

5. If the name of any alleged adulterer should be unknown to the petitioner at the time of filing his petition, the same must be supplied as soon as known, and application must be made forthwith to a Judge to amend the petition by inserting such name therein, and the Judge shall give directions as to such amendment, and such further directions as he may think fit as to the service of the amended petition.

Where name of
alleged
adulterer
unknown.

CITATION.

6. No citation in a suit for dissolution or nullity of marriage shall be issued nor shall any petition in such a suit be filed unless there appear on its face in red letters the words "In case of a decree *nisi* being granted neither party can legally re-marry until such decree *nisi* has been made absolute" or words to the like effect.

Warning against
re-marriage.

7. Every petitioner who files a petition and affidavit as aforesaid shall prepare a citation according to the form in the First Schedule, No. 1, and shall take such citation, together with a præcipe, according to the Form No. 2 to the office of the Prothonotary, and shall file the præcipe, and the citation shall be then signed and sealed.

Form of
citation.

SERVICE OF CITATION.

8. Every citation, within two months after filing of the petition upon which it is issued, shall, together with a copy of the petition sealed with the seal of the Court, be served personally on the person cited by leaving a copy with such person, and producing the original, if required so to do; and a similar citation and copy shall be in like manner served upon every person whom it is intended to make a co-respondent in the cause. No citation shall be served out of the jurisdiction except on leave obtained on application to the Court or a Judge, and such Court or Judge shall fix the time within which an appearance must be entered.

Personal
service of
citation.

9. In cases where personal service cannot be effected, application may be made to the Court or a Judge to substitute some other mode of service, or to dispense with service altogether, and every such application shall be made upon affidavit or affidavits, and may be granted upon such terms and conditions as the Court or a Judge may think fit.

Substitution of
service.

10. After personal service of citation has been effected, the citation, with the certificate of service indorsed thereon, shall be forthwith returned into and filed in the office of the Prothonotary.

Citation to be
filed after
service.

INDORSEMENT OF ADDRESS.

11. Where the petitioner proceeds by a solicitor, every citation and petition shall have indorsed thereon the address of the petitioner, and also the name or firm and place of business of his solicitor, which shall be his address for service, if such place of business is not more than three miles from the office of the Prothonotary, and also, if his place of business shall be more than three miles from the office of the Prothonotary, another place to be his address for service, which shall not be more than three miles from the office of the Prothonotary, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications not requiring personal service may be left for him.

Where
petitioner sues
by solicitor.

And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

Where
petitioner
proceeds in
person.

12. Where the petitioner proceeds in person, he shall indorse upon the citation and petition his place of residence, his occupation, and a place to be his address for service, which shall not be more than three miles from the office of the Prothonotary, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications not requiring personal service may be left for him.

Change of
address.

13. Any petitioner or respondent may from time to time substitute another address for service within the like distance by filing the same in the office of the Prothonotary, and serving a notice thereof upon the opposite party.

APPEARANCE.

Entry of
appearance.

14. Unless service has been dispensed with no further proceedings shall be taken unless with the express leave of the Court or a Judge until an appearance has been entered according to the form in the First Schedule, No. 3, or an affidavit of service of the citation has been filed in the office of the Prothonotary. Where service of the citation has been dispensed with, or any other special order has been made, the order must be filed with the Prothonotary before any further proceedings are taken.

First Schedule,
Form No. 3.

Time for
entering.

15. An appearance to a citation, by or on behalf of the party cited, may by leave of the Court or a Judge or by consent in writing of the petitioner or of petitioner's Solicitor, be entered at any time pending the proceedings of the cause, subject nevertheless to such conditions as may be thought fit.

Address for
service of
solicitor.

16. Every entry of an appearance shall, where the respondent appears by a solicitor, be accompanied by a memorandum of the place of business of such solicitor, which shall be his address for service, if such place of business be not more than three miles from the office of the Prothonotary, and also if his place of business shall be more than three miles from the office of the Prothonotary, another place to be his address for service, which shall not be more than three miles from the office of the Prothonotary; and where any such solicitor is only agent of another solicitor, he shall add to his own name, or firm and place of business the name or firm and place of business of the principal solicitor.

Address for
service of
defendant in
person.

17. When a respondent appears in person, he shall state in such memorandum his address, and a place, to be his address for service, which shall not be more than three miles from the office of the Prothonotary.

Questions of
jurisdiction.

18. If a party cited wishes to raise any question as to the jurisdiction of the Court, he or she must enter an appearance under protest.

Appearance
under
protest.

19. After an appearance has been entered under protest by any party, the said party shall, within eight days thereafter, serve a notice on the petitioner or his or her solicitor, setting forth that he has entered an appearance, and the grounds for disputing the jurisdiction of the Court, such notice to be according to the form in the First Schedule, No. 3A.

Judge to direct
how questions
to be tried.

20. The petitioner shall thereupon apply to the Court or a Judge, by motion or summons, to direct when and in what way the question of jurisdiction shall be determined, and where questions of facts are involved, to direct whether the same shall be heard upon affidavits or oral evidence.

21. If the Court or a Judge should decide the question of jurisdiction against the party raising it, such party may appeal against the same, or may appear absolutely and file an answer within such time as the Judge may direct.

Appeal from Judge on question of jurisdiction.

22. After the entry of an absolute appearance to the citation a party cited cannot raise any objection to the jurisdiction of the Court.

Cannot object after absolute appearance.

SUITS IN FORMA PAUPERIS.

23. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth Twenty-five pounds, his wearing apparel only excepted.

Paupers.

24. The provisions of Rules 22A, 23, 24, 25, 26, 27, 27A, 28, 29, 30, 31, and 31A of Order XVI. of the Rules of Procedure in Civil Proceedings shall apply *mutatis mutandis* to proceedings for divorce and other matrimonial causes.

Application of Order XVI. to Divorce and Matrimonial Causes.

25. The affidavit, if application is made by a wife to prosecute a suit against her husband *in forma pauperis*, shall state, to the best of her knowledge and belief, the amount of income or means of living of her husband.

Affidavit in application by wife.

26. When a husband has been admitted to prosecute a suit against his wife *in forma pauperis*, the wife may apply for an order that she be at liberty to proceed with her defence *in forma pauperis* on production of an affidavit that she has no separate property exceeding Fifty pounds in value after payment of her just debts.

Where husband proceeds *in forma pauperis* wife may be permitted so to defend.

27. When a wife has been permitted to prosecute a suit against her husband *in forma pauperis*, the husband may apply for leave to proceed with his defence *in forma pauperis* on production of an affidavit as to his income and means of living, and proving that besides his wearing apparel he is not worth Fifty pounds after payment of his just debts.

Where wife proceeds *in forma pauperis* husband may be permitted so to defend.

PERSONS OF UNSOUND MIND.

28. A committee duly appointed of a person of unsound mind may take out a citation and prosecute a suit on behalf of such person as a petitioner, or enter an appearance, intervene, or proceed with the defence on behalf of such person as a respondent; but if no committee should have been appointed, application is to be made to a Judge, who will assign a guardian to the person of unsound mind, for the purpose of prosecuting, intervening in, or defending the suit on his or her behalf; provided that, if the opposite party is already before the Court when the application for the assignment of a guardian is made, he or she shall be served with notice by summons of such application.

Proceedings by committee or guardian.

ANSWER.

29. Within twenty-one days, or such further time as may be fixed by a Judge, from the service of the citation and copy of the petition, the respondent shall file his or her answer in the said office according to the Form No. 4, otherwise the petitioner, subject to the compliance with Rule No. 13, shall be at liberty to proceed to proof of the petition.

Form and filing of answers.

30. Every answer shall have indorsed thereon the address for service as required by these Rules.

Indorsement address.

- Verification of. 31. Every answer shall be accompanied by an affidavit made by the respondent, and, if necessary, some other person or persons, verifying fully, paragraph by paragraph, the facts stated in the answer, distinguishing those within the personal knowledge of the deponent and those which the deponent can verify only from belief; provided that in no case shall any respondent be compelled to confess or admit the commission of adultery.
- Denial of collusion. 32. In cases involving a decree of dissolution of marriage, nullity of marriage, or judicial separation, or in a suit of jactitation of marriage, the respondent may, if he or she can, in the affidavit filed with the answer, fully and unequivocally state that there is not, and has never been, any collusion or connivance, direct or indirect, between the deponent and the other party to the marriage.
- Answer to be filed and copy delivered. 33. The respondent shall file, in the office of the Prothonotary, his or her answer, and on the same day deliver to the petitioner or his or her proctor a copy thereof.

FURTHER PLEADINGS.

- Reply. 34. Within fifteen days from the filing and serving of the answer, the petitioner may file a reply thereto, and on the same day deliver to the respondent or his or her solicitor a copy thereof, and the same period shall be allowed for similarly filing and serving any further or subsequent statement and copy thereof.
- Cause as issue. 35. Upon the expiration of fifteen days from the filing and serving of the last pleading, the cause shall be deemed to be at issue.

GENERAL RULES AS TO PLEADING.

- Amendment of proceedings. 36. If either party desire to amend his or her petition, answer, or subsequent statement, it may be done by permission of the Court or a Judge, and in such form and under such terms as the Court or a Judge may approve.
- Time for next proceeding after amendment. 37. Where a petition, answer, or other pleading has been ordered to be altered or amended, the time for filing and delivering a copy of the next pleading shall be reckoned from the time of the order having been complied with.
- Delivery of copy of amended pleading and time for answer to. 38. A copy of every pleading, showing the alterations and amendments made therein, shall be delivered to the opposite parties on the day such alterations and amendments are made in the pleadings filed with the Prothonotary; and the opposite parties, if they have already pleaded in answer, shall be at liberty to amend such answer within four days, or such further time as may be allowed for the purpose.
- Failure to file or deliver pleadings. 39. If either party in the cause fail to file or deliver a copy of the answer, reply, or other pleading, or to alter or amend the same, or to deliver a copy of any altered or amended pleading, within the time allowed for the purpose, the party to whom the copy of such answer, reply, or other pleading, or altered or amended pleading, ought to have been delivered, shall not be bound to receive it if tendered, and such answer, reply, or other pleading shall not be filed, or be treated or considered as having been filed, or be altered or amended, unless by order of a Judge, to be obtained on summons. The expense of obtaining such order shall fall on the party applying for it, unless the Judge shall otherwise direct.
- Applications for further particulars. 40. Applications for further particulars of matters pleaded are to be made by summons, and not by motion.

SERVICE.

41. Where personal service of any pleading, notice, proceeding, or document is required, the provisions of these Rules, so far as they relate to the service of citations, shall apply.

Personal service of pleadings, &c.

42. When it is necessary to serve personally any order or decree of the Court, the original order or decree, or any office copy thereof, under seal of the Court, must be produced to the party served, and annexed to the affidavit of service and marked as an exhibit by the Commissioner or other person before whom the affidavit is sworn.

Personal service of decree.

43. It shall be sufficient to leave all pleadings, notices, proceedings, and documents, which are required to be given or delivered to the opposite parties in the cause, or to their solicitors, and personal service of which is not expressly required, at the address furnished as aforesaid by the petitioner and respondent respectively.

Service at address.

44. If such address be not furnished as aforesaid, or if such address be illusory or fictitious, the opposite party may proceed by filing all such pleadings, notices, proceedings, and documents in the Prothonotary's Office.

Where no address or address illusory.

45. When it is necessary to give notice of any motion to be made to the Court, such notice shall be served on the opposite parties who have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the Prothonotary's Office, but no proof of the service of the notice will be required, unless by direction of the Judge.

Service of notice of motion.

46. If an order be obtained on motion without due notice to the opposite parties, such order will be rescinded on the application of the parties upon whom the notice should have been served; and the expense of and arising from the rescinding of such order shall fall on the party who obtained it, unless the Judge shall otherwise direct.

Order obtained without service.

MODE OF TRIAL.

47. When the proceedings have raised the question of fact necessary to be determined, either party may, within fifteen days from the time the cause is at issue, apply to the Court or a Judge to direct the truth of any question of fact arising in the proceedings to be tried by a jury, and the time and place of such trial; and if no such application be made, the Court or a Judge may direct that such question shall be so tried and the time and place of such trial.

Application to direct issue of fact to be tried by jury.

48. All issues of fact for trial before a jury shall be tried before six or twelve special jurors at any sittings of the Supreme Court.

Issues to be tried by special jury of twelve.

QUESTIONS OF FACT FOR THE JURY.

49. Whenever a cause is to be tried before a jury, the Court or a Judge shall direct the question at issue to be stated according to the Form No. 5, and the terms in which such question shall be stated shall, on the application of either party, be settled by the Court or a Judge.

Issue for trial. First Schedule, Form No. 5.

SETTING DOWN THE CAUSE FOR TRIAL OR HEARING.

Questions of fact to be filed and cause set down.

50. In causes to be tried by a jury, the petitioner shall, within fifteen days after the questions of fact have been settled, file such questions in the Prothonotary's Office, and at the same time set down the cause as ready for trial, and on the same day give notice of his having done so to each party for whom an appearance has been entered.

Where cause to be heard without jury.

51. In causes to be heard without a jury, the petitioner shall, within fifteen days from the time the cause is at issue, set the cause down for hearing, and on the same day give notice of his having done so to each party in the cause for whom an appearance has been entered.

Respondent may proceed where petitioner fails.

52. If the petitioner fail to file the questions of fact for the jury or set down the cause for trial or hearing or to give due notice thereof, for the space of one month after the question of fact might have been filed or the cause might have been set down, any respondent entitled to be heard at such trial or hearing may file the questions for the jury, and set the cause down for trial or hearing, and shall on the same day give notice of his having done so to the petitioner and to each of the other parties to the cause for whom an appearance has been entered.

TRIAL OR HEARING.

Time for hearing.

53. All causes shall be heard at such times as the Court or a Judge shall direct.

Time for hearing not before twenty-one days.

54. No cause shall be called on for trial or hearing until after the expiration of twenty-one days from the day when the same has been set down for trial or hearing and notice thereof has been given, save with the consent of all parties to the suit. Causes may be set down during any vacation.

Decree to be entered.

55. The Associate or other officer shall enter in the Court book the finding of the jury and the decree of the Court, and shall sign the same.

Respondent may be heard as to costs and custody of children.

56. After appearance so entered as aforesaid by or on behalf of any respondent, he or she may be heard in respect of any question as to costs of suit, and may also be heard in respect of any question as to custody of children, although he or she may have filed no answer to the petition in the cause, but may not file affidavits touching matters in issue in the cause, and no such affidavit can be read or made use of as evidence in the cause.

Jury how summoned and other proceedings.

57. The practice and procedure as to summoning, attendance, and challenging of jurors; summoning and attendance of witnesses; orders made or commissions or letters of request issued for the examination of witnesses; admission of documents; hearing and addresses of counsel; and all other proceedings with reference to the hearing or to the trial of any issue, shall, unless otherwise provided, be as nearly as may be according to the practice and procedure of the Supreme Court in civil proceedings.

EVIDENCE TAKEN BY AFFIDAVIT.

Time for filing.

58. Where any party intends on the hearing or trial of any issue to verify his or her case in whole or in part by his or her own affidavits, such affidavits shall be filed within eight days from the filing of the last proceeding.

59. Counter affidavits to any facts stated in such affidavits may be filed by either party within fifteen days from the filing of the affidavits which they are intended to answer.

Counter affidavits.

60. Copies of all such affidavits and counter affidavits shall, on the day the same are filed, be delivered to the other parties entitled or to their proctors.

Copies to be delivered.

61. Affidavits in reply to counter affidavits cannot be filed without permission of a Judge.

Affidavits in reply.

62. Application for an order for the attendance of a deponent for the purpose of being cross-examined in open Court shall be made to a Judge on summons.

Cross-examination of deponent.

SUMMONSES.

63. A summons to attend before a Judge at Chambers may be taken out by any person in any matter pending in the Court, and the practice and procedure thereon in all respects shall, unless otherwise provided for by these rules, be, as nearly as may be, according to the practice and procedure in Chambers of the Supreme Court in civil proceedings, but all orders made on such summonses shall be filed in the office of the Prothonotary within seven days after the pronouncing thereof, or in default thereof shall be deemed to have lapsed.

Practice on summons; order to be filed.

64. All applications to the Court, except those expressly required to be made by motion or petition, shall be made by summons; but the Judge before whom such summons shall be heard may, at the request of either party, or without such request, direct that it shall be heard in open Court.

Applications to be by summons.

NEW TRIAL AND RE-HEARING.

65. An application to the Judge for a new trial of issues of fact tried by a jury, or for the re-hearing of a cause, may be made by motion within fourteen days from the day on which the issues were tried or the cause was heard if the Judge be then sitting to hear motions; if not, on the first day appointed by the Judge for hearing motions after the expiration of fourteen days.

Motion for new trial.

REVERSAL OF DECREE FOR JUDICIAL SEPARATION.

66. Petitions for the reversal of a decree of judicial separation must set out the grounds upon which the petitioner relies according to Form No. 6.

Form of petition. First Schedule Form No. 6. Appearance.

67. Before such a petition can be filed, an appearance on behalf of the party praying for a reversal of the decree of judicial separation must be entered in the cause in which the decree has been pronounced.

68. A certified copy of such petition, under seal of the Court, shall be delivered personally to the party in the cause in whose favour the decree has been made, who may, within fourteen days, file an answer thereto in the Prothonotary's Office, and shall on the day on which the answer is filed deliver a copy thereof to the other party in the cause, or to his or her proctor.

Answer.

69. All subsequent pleadings and proceedings arising from such petition and answer shall be filed and carried on in the same manner as before directed in respect of an original petition for judicial separation and answer thereto, so far as such directions are applicable.

Further pleadings.

INTERVENERS.

70. Every party intervening must join in the proceedings at the stage in which he finds them unless it is otherwise ordered by the Court.

Time for intervention.

INTERVENTION, ETC., BY THE ATTORNEY-GENERAL.

Application to
intervene.

71. Application for leave to intervene by the Attorney-General in any cause must be made to the Court or a Judge by motion supported by affidavit.

Appearance by
Attorney-
General.

72. The Attorney-General shall, within fourteen days after he has obtained leave to intervene in any cause, enter an appearance and plead to the petition; and on the day he files his plea in the Prothonotary's Office shall deliver a copy thereof to the petitioner or to his proctor.

Subsequent
pleadings.

73. All subsequent pleadings and proceedings in respect to the Attorney-General's intervention in a cause shall be filed and carried on in the same manner as before directed in respect of the pleadings and proceedings of the original parties to the cause.

Where
Attorney-
General shows
cause by plea.

74. When the Attorney-General desires to show cause against making absolute a decree *nisi* for dissolution or nullity of marriage, he shall enter an appearance in the cause in which such decree *nisi* has been pronounced, and shall within fourteen days after entering appearance file his plea in the Prothonotary's Office, setting forth the grounds upon which he desires to show cause as aforesaid; and on the day he files his plea shall deliver a copy thereof to the person in whose favour such decree has been pronounced or to his or her solicitor; and all subsequent pleadings and proceedings in respect to such plea shall be filed and carried on in the same manner as directed by the two last preceding rules and regulations.

SHOWING CAUSE AGAINST A DECREE.

Appearance.

75. Any person other than the Attorney-General wishing to show cause against making absolute a decree *nisi* for dissolution or nullity of marriage shall enter an appearance in the cause in which such decree *nisi* has been pronounced.

Affidavits to be
filed.

76. Every such person shall at the time of entering an appearance, or within four days thereafter, file affidavits setting forth the facts upon which he relies.

Copy to be
delivered.

77. Upon the same day on which such person files his affidavit he shall deliver a copy of the same to the party in the cause in whose favour the decree *nisi* has been pronounced.

Answering
affidavits.

78. The party in the cause in whose favour the decree *nisi* has been pronounced may, within eight days after the delivery of the affidavits, file affidavits in answer, and shall, upon the day such affidavits are filed, deliver a copy thereof to the person showing cause against the decree being made absolute.

Affidavits in
reply.

79. The person showing cause against the decree *nisi* being made absolute may, within eight days, file affidavits in reply, and shall upon the same day deliver copies thereof to the party supporting the decree *nisi*.

No rejoinder
without leave.

80. No affidavits are to be filed in rejoinder to the affidavits in reply without permission of a Judge.

Questions how
tried.

81. The questions raised on such affidavits shall be argued in such manner and at such time as the Judge may on application by motion direct; and if he thinks fit to direct any controverted questions of fact to be tried by a jury, the same shall be settled and tried in the same manner and subject to the same rules as any other issue tried in the Court.

DECREE ABSOLUTE.

82. In every case where a decree *nisi* for dissolution of marriage or a decree *nisi* or absolute of nullity of marriage is pronounced a draft thereof shall be lodged with the chief clerk within fourteen days of such pronouncement and a fair copy (duly stamped) of the draft decree, as settled by the chief clerk together with the original draft shall be lodged at the Prothonotary's Office within seven days after such decree has been settled and such times shall be deemed to be the times prescribed under Section 132 of the *Marriage Act* 1928. In case of non-compliance with the foregoing provisions within the time prescribed the chief clerk or the Prothonotary (as the case may be) may permit a subsequent lodging to be made and shall permit subsequent lodging which has been ordered by a Judge.

Draft decree and fair copy to be lodged.

83. No decree *nisi* for dissolution or nullity of marriage shall be made absolute till after the expiration of three months from the pronouncing thereof.

Decree nisi when made absolute.

DISMISSAL OF PETITION.

84. When an order has been made for the dismissal of a petition on payment of costs, the cause will not be removed from the list of causes in the Court books without an order of the proper officer, to obtain which it must be shown to his satisfaction that the costs have been paid.

Removal from list.

APPEALS TO THE FULL COURT.

85. The provisions contained in Order LVIII. of the Rules of Procedure in Civil Proceedings shall, subject to the provisions of section 130 of the *Marriage Act* 1928, apply to appeals from the decision of a single Judge so far as the same are applicable.

Practice on appeals.

86. All appeals to the Full Court shall be heard at such times during any sitting of the Full Court as that Court may direct.

Time for hearing.

ALIMONY.

87. The wife being petitioner in a cause may apply for alimony at any time after personal service of the citation on the husband, or after service in some other mode substituted by order of the Court, or after service on the husband has been dispensed with, provided that the fact of marriage between the parties is established by affidavit filed in the cause:

Application by wife after citation.

88. The wife being the respondent in a cause after having entered an appearance to the citation may also apply for alimony.

Appearance.

89. Upon any such application any party may require the production of documents and the attendance of the husband or wife or of any witnesses for the purpose of being examined or cross-examined upon the hearing thereof.

Evidence.

90. A wife who has obtained a decree of judicial separation, on such decree being affirmed on appeal, or after the expiration of the time for appealing against the decree if no appeal be then pending, may apply for an allotment of permanent alimony though no alimony shall have been allotted to her, pending suit, provided that she shall, eight days at least before making such application, give notice to the husband or to his solicitor of her intention

Permanent alimony.

so to do; and the preceding Rules relating to applications for alimony *pendente lite* shall, so far as the same are applicable, be observed in respect to the proceedings upon such application for permanent alimony.

Application for increase.

91. A wife may at any time after alimony has been allotted to her, whether alimony *pendente lite* or permanent alimony, apply for an increase of the alimony allotted by reason of the increased faculties of the husband, or the husband may apply for a diminution of the alimony allotted by reason of reduced faculties; and the course of proceeding in such cases shall be the same as required by these Rules in respect to the original application for alimony and the allotment thereof, so far as the same are applicable.

Time for commencement for permanent alimony.

92. Permanent alimony shall, unless otherwise ordered, commence and be computed from the date of the final decree of the Judge, or of the Full Court on appeal, as the case may be.

To whom payable.

93. Alimony *pendente lite*, and also permanent alimony, shall be paid to the wife, or to some person or persons to be nominated in writing by her, and approved by the Court, as trustee or trustees on her behalf.

MAINTENANCE AND SETTLEMENTS.

Application how made.

94. Application to the Court to exercise the authority given by sections 95, 96, 106, or 107 of the *Marriage Act* 1928 shall be made by summons.

Time.

95. In case of application under section 95 or 96 of the *Marriage Act* 1928, such application may be made as soon as the decree *nisi* has been pronounced, but not before.

Service on other party.

96. A certified copy of such summons shall be personally served on the husband or wife (as the case may be), and on the person or persons who may have any legal or beneficial interest in the property in respect of which the application is made, unless the Judge shall direct any other mode of service, or dispense with the service of the same on them or any of them.

Costs of wife when allowed.

97. The costs of a wife of and arising from the application shall not be allowed on taxation of costs against the husband before the final decree in the principal cause, without direction of the Judge.

CUSTODY, MAINTENANCE, AND EDUCATION OF CHILDREN.

Service on other party.

98. A certified copy of a summons or petition under Part VII. of the *Marriage Act* 1928, or under section 105 of the said Act, shall be personally served on the husband or wife (as the case may be), and on any trustee, guardian, or person having or claiming the custody or control of the children, unless a Judge shall direct any other mode of service, or dispense with the service of the same.

Answer.

99. The husband or wife (as the case may be), and the other person or persons (if any) who are served with a petition, within fourteen days after service, may file his, her, or their answer on oath to the said petition, and shall on the same day deliver a copy thereof to the opposite party, or to his proctor.

Appearance.

100. Any person served with a petition, not being a party to the principal cause, must enter an appearance before he or she can file an answer thereto.

101. Within fourteen days from the filing of the answer, the opposite party may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder.

Reply.

102. After such pleadings have been completed, the petitioner shall proceed to examine witnesses in support of the petition, and apply by motion for an order thereon; notice of the motion and of the intention to examine witnesses being given to the opposite party four days previously to the motion being heard and the witnesses examined, unless the Judge shall dispense with such service.

Evidence and hearing.

103. Before the trial or hearing of a cause, a husband or wife who is a party to it may apply on affidavit to a Judge for an order with respect to the custody, maintenance, or education of or for access to children, issue of the marriage.

Application by husband or wife.

GUARDIANS TO MINORS.

104. A minor above the age of seven years may elect any one or more of his next of kin as guardian for the purpose of proceeding on his or her behalf as petitioner, respondent, or intervener in a cause.

Infant may elect.

105. The form of an instrument of election is given in Form No. 8.

First Schedule, Form No. 8.

106. The necessary instrument of election must be filed in the Prothonotary's Office before the guardian elected can be permitted to extract a citation or to enter an appearance on behalf of the minor.

Election to be filed.

107. When a minor shall desire to elect some person or persons other than his or her next of kin as guardian for the purposes of a suit, or when an infant (under the age of seven years) becomes a party to a suit, application, founded on affidavit, is to be made to a Judge, who will assign a guardian to the minor or infant for such suit.

When Judge to elect.

108. It shall not be necessary for a minor who, as an alleged adulterer, is made a co-respondent in a suit, to elect a guardian or to have a guardian assigned to him for the purpose of conducting his defence.

A minor co-respondent need not elect.

NOTICES AND CONSENTS.

109. Whenever it becomes necessary to give a notice to the opposite party in the cause, or to enter into a consent, such notice and consent shall, unless otherwise ordered, be in writing, signed by the party or by his or her proctors.

Notices to be in writing.

OFFICE COPIES, EXTRACTS, ETC.

110. Office copies of documents furnished from the office of the Prothonotary will not be collated with the originals from which the same are copied unless specially required. Every copy so required to be examined shall be certified under the hand of the Prothonotary or other officer to be an examined copy.

How made.

AMENDMENT.

111. It shall be lawful for the Court or a Judge sitting in Chambers or at the hearing or trial of any cause or issue, if such Court or Judge shall see fit so to do, to amend all defects and errors in any proceeding in any cause whether there is anything in writing to amend by or not and whether the defect or error be that of the party applying to amend or not; and all

General powers of.

such amendments may be made with or without costs and upon such terms as to the Court or Judge may seem fit, and all such amendments as may be necessary for the purpose of determining in the existing suit the real question of controversy between the parties shall be so made.

BOND NOT REQUIRED.

No bond
against
re-marriage.

112. Where a decree of judicial separation has been pronounced, it shall not be necessary for either party to enter into a bond conditional against marrying again.

CHANGE OF SOLICITOR.

Order for
change.

113. A party may obtain an order to change his or her solicitor upon application by summons to a Judge.

Costs of
former solicitor.

114. In case the former solicitor neglects to file his bill of costs for taxation at the time required by the order served upon him, the party may, with the sanction and by order of a Judge, proceed in the cause by the new solicitor without previous payment of such costs.

COSTS.

Appointment to
tax.

115. In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, the solicitor of the party to whom such costs are to be paid may forthwith obtain an appointment for the taxation of his bill of costs, provided that such taxation shall not take place before the time allowed for moving for a new trial or re-hearing shall have expired, or, in case a motion should have been made, until it is disposed of, unless a Judge shall, for cause shown, direct a more speedy taxation.

Who may tax.

116. All bills of costs shall be referred to the taxing officers of the Court for taxation, and may be taxed by them without any special order for that purpose.

Order for
taxation how
obtained.

117. If an order for payment of costs is required, the same may be obtained by summons, on the amount of such costs being certified by the taxing officer.

Order for
payment before
decree absolute.

118. The order for payment of costs of suit in which a respondent or co-respondent has been condemned by a decree *nisi* shall, if applied for before the decree *nisi* is made absolute, direct the payment thereof to the Prothonotary, and such costs shall not be paid out to the party entitled to receive them under the decree *nisi* until the decree absolute has been obtained.

CUSTODY OF DOCUMENTS.

Prothonotary.

119. The Prothonotary shall, except where these Rules otherwise provide, have the custody of all pleadings and other documents now or hereafter to be brought in and filed in any matter or suit pending in the said Court in its Divorce and Matrimonial Causes Jurisdiction, and all orders and fees payable in respect of searches for an inspection or copies of and extracts from and attendances with documents filed in the office of the Prothonotary shall extend to such pleadings and other documents filed in the said Court in its Divorce and Matrimonial Causes Jurisdiction.

120. The Prothonotary and the clerks and other officers of the Supreme Court shall discharge similar duties in the said Court in its Divorce and Matrimonial Causes Jurisdiction, and in the registry thereof, as they discharge in the other jurisdictions of the said Court. Officers.

SETTLING AND PASSING DECREES AND ORDERS.

121. All decrees and orders of the Court shall be settled and passed and entered as nearly as may be in the same manner as is provided by Order LXII. of The Rules of Procedure in Civil Proceedings, as to judgments and orders.

SUPPLEMENTARY.

122. The Rules, practice, and mode of procedure now or hereafter in force in the Court in its civil jurisdiction shall, so far as applicable, and where no provision is made by these Rules, be adopted and be in force in the Court in its Divorce and Matrimonial Causes Jurisdiction. Practice where none provided.

INTERPRETATION.

123. In the construction of these Rules, unless there is something in the subject or context repugnant thereto, the several words hereinafter mentioned shall have or include the meanings following:— Meaning of words.

“Respondent” shall include all co-respondents so far as the same is applicable to them.

A “folio” shall comprise seventy-two words, every figure being counted as one word.

“Prothonotary” shall include Deputy-Prothonotary.

124. In all matters not hereinbefore provided for, the previous practice of the Court shall be followed or if there be no such practice, then the practice, if any, prevailing in the High Court in England. Practice in matters not provided for.

SCHEDULES.

FIRST SCHEDULE.

FORMS.

FORM 1.

Citation.

In the Supreme Court of Victoria.

*Divorce and Matrimonial Causes.*A.B., Petitioner,
againstC.B., Respondent,
and

E.F., Co-respondent.

GEORGE THE SIXTH, by the Grace of God of Great Britain, Ireland, and the British
Dominions beyond the Seas King, Defender of the Faith, Emperor of India.

To C.B. and E.F., of

These are to command you that within eight days of the service hereof on you, inclusive of the day of such service, if you intend to defend this suit, you do cause an appearance to be entered at the office of the Prothonotary of this Court, in Melbourne, and take notice that, in default of so doing, the Court may proceed to hear this suit in your absence. If you intend to defend this suit you must also file an answer in the said office within twenty-one days from the service of this citation.

(L.S.) (Signed) the day of 19 X.Y., Prothonotary.

Supreme Court,
William-street, Melbourne.*Indorsement to be made after service.*This citation was duly served by me, G.H. of for a judicial separation for cause of
at on the day of 19

(Signed) G.H..

NOTE.—This form must be altered to suit when the citation is issued by a deputy-prothonotary.

FORM 2.

Præcipe for Citation.

In the Supreme Court of Victoria.

*Divorce and Matrimonial Causes Jurisdiction.*A.B., Petitioner,
againstC.B., Respondent,
and

E.F., Co-respondent.

Citation for A.B., of
adultery [or as the case may be].

against C.B. of

for a judicial separation for cause of

(Signed) P.A., Solicitor for the said A.B.
[or A.B. in person.]

[Here insert the address required within three miles from the office of the Prothonotary.]

FIRST SCHEDULE—*continued.*

FORM 3.

Entry of Appearance.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,
 against
 C.B., Respondent,
 and
 E.F., Co-respondent.

The respondent, C.B., appears in person [or G.H., solicitor, appears for the respondent]

[Here insert the address required by Rule 15 or 16.]

Entered this day of 19

Note.—If the appearance is under protest, the fact must be so stated.

FORM 3A.

Rule 19.

Notice of an Appearance under protest having been entered.

[Heading and title as in Form No. 1.]

To A.B., the above-named petitioner.

Take notice that an appearance under protest was entered herein on the day of
 , on behalf of the above-named respondent, and that the said respondent disputes the
 jurisdiction of the Court on the following ground (or grounds), that is to say:—That the petitioner
 is not at the present time, nor has she at any time been, domiciled in Victoria.

The day of

(Signed) C.D., [or G.H., Solicitor for C.D.]

FORM 4.

Rule 39.

Answer.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,
 against
 C.B., Respondent,
 and
 E.F., Co-respondent.

The day of 19

The respondent, C.B., by C.D., her solicitor, or [in person] saith [here admit, deny, or refute
 the statements contained in the petition, paragraph by paragraph, and state fully and distinctly
 connivance, condonation, or other matters relied on as a ground for dismissing the petition, and, if
 respondent can truthfully do so, here deny fully and unequivocally past or present connivance or
 collusion direct or indirect with the petitioner].

Wherefore the respondent humbly prays that your honorable Court will be pleased to reject the
 prayer of the said petition, &c.

FIRST SCHEDULE—*continued.*

FORM 5.

Rule 49.

Questions of Fact for the Jury.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,
 against
 C.B., Respondent,
 and
 R.S., Co-respondent

Questions for the Jury.

1. Whether C.B., the respondent, committed adultery with R.S., the co-respondent.
2. Whether A.B., the petitioner, has condoned the adultery (if any) committed by C.B., the respondent.
3. Whether A.B., the petitioner, has been guilty of cruelty towards C.B., the respondent.
 [Here set forth in the same form all the questions at issue between the parties.]
4. What amount of damages should be paid by R.S., the co-respondent, in respect of the adultery (if any) by him committed.

Rule 56.

FORM 6.

Petition for Reversal of Decree.

In the Supreme Court of Victoria.

The day of 19

Divorce and Matrimonial Causes Jurisdiction.

To the Supreme Court of Victoria.

The petition of A.B., of

Showeth,—

1. That your petitioner was on the day of lawfully married to C.B., then C.D., spinster [or widow], at the parish of, &c. [here state where the marriage took place].
2. That on the day of the said Court, by final decree pronounced in a cause then depending in the Court, entitled C.B. against A.B., decreed as follows, to wit,
 [Here set out the decree.]
3. That the aforesaid decree was obtained in the absence of your petitioner, who was then residing at

[State facts tending to show that the petitioner did not know of the proceedings; and further, that had he known of them he might have offered a sufficient defence.]

or

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife

[Here state any legal grounds justifying the petitioner's separation from his wife]

Your petitioner therefore humbly prays—

That Your Honours will be pleased to reverse the said decree.

FIRST SCHEDULE—*continued.*

FORM 8.

Rule 105.

*Election of a Guardian.**By a Petitioner.*

Whereas a suit is about to be instituted in the Supreme Court, in the Divorce and Matrimonial Causes Jurisdiction, on behalf of *A.B.*, against *C.B.* (the wife of the said *A.B.*) and *R.S.*: And whereas the said *A.B.* is now a minor of the age of _____ years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in his own name:

Now I, the said *A.B.*, do hereby make choice and elect *G.H.*, my natural and lawful father and next of kin, to be my guardian for the purpose of instituting the said suit, and for the purpose of carrying on and prosecuting the same until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years; and I hereby appoint *C.D.*, of _____ &c., my proctor, to file or cause to be filed this my election for me in the office of the Prothonotary.

In witness whereof I have hereunto set my hand and seal this _____ day of _____ in the year 19 _____

(Signed _____ *A.B.* (l.s.))

Signed, sealed, and delivered by the within-
named *A.B.*, in the presence of
[One attesting witness.]

By a Respondent.

Whereas a citation bearing date the _____ day of _____ 19 _____ has issued under seal of the Supreme Court at the instance of *A.B.*, claiming to have been lawfully married to *C.B.*, citing the said *C.B.* to appear in the said Court, and then and there to make answer to a certain petition of the said *A.B.* filed in the Prothonotary's Office: And whereas the said *C.B.* is now a minor of the age of _____ years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in her own name:

Now I, the said *C.B.*, do hereby make choice of and elect *G.H.*, my lawful and natural father and next of kin, to be my guardian for the purpose of entering an appearance for me and on my behalf in the said Court, and for the purpose of making answer for me to the said petition, and of defending me in the said cause, and to abide for me in judgment until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years; and I hereby appoint, &c.

CHAPTER III.

PROBATE AND ADMINISTRATION RULES.

Repeal.

On and after the first day of April, 1938, the Probate and Administration Rules of 1916 shall be repealed and of no effect, except so far as regards matters then pending, and on the said first day of April, 1938, the Rules hereinafter set out shall come into force and shall apply to all matters commenced on or after that date.

Application of Rules.

1. These rules shall so far as applicable regulate the practice to be observed in applications to the Registrar of Probates, and shall apply to all applications for sealing under Part III. of the *Administration and Probate Act 1928*.

APPLICATIONS.

Applications how made.

2. Every application to the Court in its probate jurisdiction shall be made by motion on Thursday, or on any other day appointed for hearing the same.

Advertisement.

3. No probate of any will or administration of the estate of any deceased person shall be granted to any person, except after the expiration of fourteen clear days from the publication of an advertisement by him or some proctor on his behalf in one of the Melbourne daily newspapers of his intention to apply for the same, stating the date or dates of any will and codicil, if any, in such advertisement referred to. Where the deceased was at the time of his death resident in Victoria 25 miles or more out of Melbourne, such advertisement may be so published in a newspaper published and circulating in the district in which the deceased was so resident. In such last-mentioned case the Registrar of Probates may require such further advertisements as he may deem necessary.

Affidavit in support of application for probate.

4. Every application for probate of a will shall be supported by an affidavit or affidavits setting forth—

That the applicant, being a person, is of the full age of twenty-one years

The death of the testator;

The date of his decease;

That he has left a will and that such will is unrevoked (if such be the fact);

The date thereof;

That the testator was of the full age of twenty-one years at the date of the execution of the will, and has not married since that date;

The name of each executor and of each of the subscribing witnesses thereto, and the residence of each of the same at the time the affidavit in support is sworn (if known);

An identification or statement of the contents of the will;

An inventory of the estate of deceased in Victoria, distinguishing real and personal property, and setting out the value of each item of the estate provided that the Court or a Judge or the Registrar may in special cases dispense with full compliance with this paragraph;

A search in the Registrar-General's office for any other will deposited;

The publication of advertisements;

That no caveat has been lodged up to the morning of the application;

That no application for probate or administration in this matter has theretofore been made to or been granted by the Court or the Registrar; or if any previous application has been made the full particulars thereof.

5. Every application for administration with the will annexed shall be supported by an affidavit or affidavits setting forth the particulars required by the last preceding rule so far as practicable, and also stating the character in which the person making the application claims to be entitled, and the truth thereof.

Affidavit in support of applications for administration with will annexed.

6. Every applicant for probate of a will or administration with the will annexed shall on the grant being made and prior to the issue thereof cause to be prepared in typewriting on durable foolscap a fair copy of the original will and codicils (if any) as admitted to probate or annexed to the letters of administration, and shall cause the same to be examined at the same time as the original probate or letters of administration with the will annexed in the office of the Master-in-Equity. Such copy, on being so examined, shall be lodged in the said office of the Master-in-Equity for record purposes. Provided, however, that this Rule shall not apply to applications under Part II. of the *Administration and Probate Act 1928*.

Examined copy to be lodged.

7. When a will is executed by a testator by his affixing his mark thereto an affidavit of the due execution thereof and of the cause of it being by mark shall also, if possible, be made by one or more of the subscribing witnesses thereto.

Where testator a marksman.

8. When a will is believed to be wholly or in part inoperative or not to dispose of the whole estate of the deceased, the Court or the Registrar may require from the applicant a statement on oath showing what relatives or next of kin deceased left surviving him so far as may be known and material by law to the right to administer or share in his property.

When will inoperative.

9. Every application for administration by a person applying not as a creditor shall be supported by an affidavit or affidavits setting forth—

Application for administration by person not as creditor.

That the applicant, being a person, is of the full age of twenty-one years;
The death of the deceased, and the status of the deceased, that is, whether leaving a wife or husband, or dying a bachelor, widower, spinster, widow, or divorced person;

The date of his decease;

That he died intestate, leaving property in Victoria;

An inventory of the estate of the deceased in Victoria distinguishing real and personal property and setting out the value of each item of the estate provided that the Court or a Judge or the Registrar may in special cases dispense with full compliance with this paragraph;

What relatives or next of kin he left surviving him, so far as the same may be known and material by law to the right to administer or share in his property;

The character in which the person making the application claims to be entitled, and the truth thereof;

That the applicant has carefully inquired if there be a will;

A search made in the Registrar-General's office for a will deposited;

The publication of advertisements;

That no caveat has been lodged up to the morning of the application.

That no application for probate or administration in this matter has theretofore been made to or granted by the Court or the Registrar, or if any previous application has been made, the full particulars thereof.

10. The affidavit in support of an application for any form of administration shall show such facts as establish the applicant's right to have the administration.

Prior rights be cleared off.

Application
by creditor.

11. No administration shall be granted to a creditor unless upon an affidavit or affidavits setting forth—

That the applicant, being a person, is of the full age of twenty-one years;
The death of the person, and the status of the deceased, that is, whether leaving a wife or husband, or dying a bachelor, widower, spinster, widow, or divorced person;

The date of his decease;

That he left property in Victoria;

An inventory of the estate of deceased in Victoria distinguishing real and personal property and setting out the value of each item of the estate provided that the Court or a Judge or the Registrar may in special cases dispense with full compliance with this paragraph;

Whether he died intestate, or left any and what will;

That the applicant has carefully inquired if there be a will;

A search made in the Registrar-General's office for a will deposited;

What relatives or next of kin the deceased left surviving him, so far as the same may be known and material in law to the right to administer or share in his estate;

That the applicant is a creditor, and to what amount;

The particulars of his debt, and the evidence in support thereof;

The publication of advertisements;

That no caveat has been lodged up to the morning of the application;

That no application for probate or administration in this estate has theretofore been made to or granted by the Court or Registrar, or if any previous application has been made the full particulars thereof.

Supreme Court
Rules as to
affidavits to
apply.

12. The provisions of Order XXXVIII. of the Rules of the Supreme Court in civil proceedings shall as far as practicable apply to all applications for probate or administration.

Affidavit of
searches; by
whom to be
made.

12A. In all applications for probate or for administration, the person making searches must be:—

(a) The solicitor acting generally in the application;

(b) A clerk in the sole and permanent employ of such solicitor only;

(c) The Melbourne agent of such solicitor being himself a solicitor;

(d) A clerk in the sole and permanent employ of such town agent only;

(e) The applicant in person.

The affidavit of searches and of notice of intention to apply must show compliance with this rule.

Delay.

13. In every case where probate or administration with or without the will annexed is for the first time applied for after the lapse of three years from the death of the deceased, or in the case of an application for administration *de bonis non* after three years from the death of the last administrator, the reason of the delay is to be explained by affidavit to the Court or Registrar. Should the explanation be unsatisfactory the Court or Registrar may require such proof of the alleged cause of delay as either may think fit.

Proof of
identity of
party applicant.

14. The Court or Registrar may in cases where either deem it necessary require proof in addition to the oath of the executor or administrator of the identity of the deceased or of the party applying for the grant.

15. The Court or Registrar may require such further affidavits relating to the execution or attestation of any will or codicil as the Court or Registrar may think fit.

Further affidavits.

16. Grants of administration *durante minore aetate* may be made to guardians of infants for their use and benefit, subject to such limitations or conditions as the Court or a Judge or the Registrar of Probates may order.

Grants of administration to guardians.

Infants above the age of seven years may elect a guardian, but in other cases a guardian must be assigned by the Court or a Judge or the Registrar of Probates founded on an affidavit showing that the proposed guardian is either *de facto* next of kin of the infants, or that their next of kin *de facto* has renounced his right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship; and upon any application for administration by such guardian evidence of his election or assignment must be produced.

In a family where there are infants both above and under the age of seven years, an elected guardian may act for all the infants without special assignment.

17. Applications for probate or administration under peculiar circumstances, not expressly referred to herein, shall be made upon such grounds and materials as have been heretofore acted upon by the Court, or as near thereto as circumstances permit, and the forms of affidavits, orders, and documents heretofore in use shall be followed in all matters not expressly hereby provided for and not inconsistent herewith or with the *Administration and Probate Act 1928*.

Application under peculiar circumstances.

18. All applications for probate or letters of administration shall be dealt with by the Registrar of Probates in the order of and within ten days from the filing thereof; but in urgent cases on an affidavit setting out the urgency to the satisfaction of the Registrar, the application may be dealt with earlier by the Registrar; and the Registrar shall within such time legibly indorse upon the *præcipe* his grant thereof or the short particulars of his objections, if any, to such grant being made; and in cases of doubt or difficulty within section 7 of the *Administration and Probate Act 1928* shall refer the matter to the Court.

Applications how to be dealt with.

19. Grants of probate and administration shall be made during vacation.

20. If the person obtaining an order for probate or administration shall not take out such probate or procure such administration to be issued within three months of the making of such order, any other person having claim thereto may proceed to obtain administration *cum testamento annexo* or other administration, as the case may be, notwithstanding such order; and if such last-mentioned person, after the expiration of the said three months, lodge a caveat against the issuing of such probate or administration respectively the same shall not issue to the person who has obtained such order without the special direction of the Court.

Grants in vacation. Failure by person obtaining order to take out probate or procure administration.

21. Every order made under section 29 of the *Administration and Probate Act 1928* shall contain a condition providing that the substituted administrator shall give a bond with proper sureties to the satisfaction of the Master-in-Equity. Provided that a Judge may in granting the order dispense with this condition if he think fit. Such order shall not be issued by the Associate unless and until the probate or letters of administration or any previous order made under such section be brought into the Master's office to have

Substituted representatives.

an indorsement made thereon and on the copy thereof in the Master's office as to such order having been made unless a Judge shall otherwise order. A copy of such order when issued shall be filed in the Master-in-Equity's office.

Deceased
citizens of
United States.

22. Pursuant to clause III. of a Convention between the United Kingdom and the United States of America relative to the disposal of real and personal property signed at Washington on 2nd March, 1899, and acceded to by the Commonwealth on 3rd April, 1902: Upon any application to the Court or Registrar for the administration of the estate of a deceased person, if it shall appear that such deceased person was a citizen of the United States of America and that he died in Victoria without leaving any executor or known next of kin in Victoria, the applicant shall give notice of the application to the Chief Consular Officer of the United States of America in Victoria. The said Chief Consular Officer shall have the right to appear personally or by delegate in any proceedings relating to the said application and to be heard in the interests of any next of kin or creditors who may be in the United States of America or be citizens of that country until they are otherwise represented.

SURETIES AND BONDS.

Bond.

23. The bond of an ordinary administrator and his sureties shall be in the Form No. 2 in the First Schedule hereto, and the bond of an administrator to whom administration has been granted as a creditor of the deceased shall be in the Form No. 3 in the First Schedule hereto.

Justification by
affidavit.

24. Sureties to administration bonds shall justify by affidavits, and such bonds may be executed by all or any of the parties thereto in the presence of and attested by any Commissioner of the Court for taking Affidavits not being the solicitor, or clerk of the solicitor, of the person applying for such administration. Provided always that every such affidavit shall specify the particulars of the property of the person making the same, and the value of such particulars over and above his just debts and liabilities respectively, and such affidavits shall be filed in the office of and laid before the Master-in-Equity, who, if not fully satisfied therewith, may require further information or assurance as to the sufficiency of the security, either by further affidavit made as hereinbefore provided, or by the personal attendance and examination upon oath of the proposed surety. Every such affidavit of justification shall be in the Form No. 4 in the First Schedule hereto.

Bond by
incorporated
company or
guarantee
society.

25. Where the bond of an incorporated company or guarantee society approved by the Governor in Council is received as security, under the *Administration and Probate Act 1928*, section 51, instead of the security of individuals, such bond and condition shall be in the same form, substituting the name of such company or society for those of the individuals, and the Master, before the issue of the letters of administration, shall satisfy himself of the due execution of such bond.

Price for
procuring
security.

26. No administrator shall be allowed the price he may pay for procuring the security either of individuals or of such company or society as an expense of administration.

INVENTORY AND ACCOUNT.

Affidavit of due
performance.

27. In all cases of probate and administration there shall be filed with the affidavits in support of the application an oath of the proposed executors and administrators in the Form No. 1 in the First Schedule hereto promising the due performance of their duties.

28. All executors and administrators shall respectively make or cause to be made a true and just account of the 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 shall sign with their proper handwriting (or mark, if illiterate), and shall respectively exhibit and deposit, or cause to be exhibited and deposited, the same account in the said office of the Master-in-Equity within fifteen calendar months next ensuing the order granting probate or letters of administration respectively: Provided that this Court may, under special circumstances, by order dispense with the performance of this rule, or excuse the omission to have performed it so far as relates to allowing administration bonds to be put in suit under the *Administration and Probate Act 1928*, section 51. Inventory to be made.

ORDERS *Nisi*.

29. Every caveat shall bear date of the day it is entered, and shall remain in force for the space of six months only and then expire; but a caveat may be renewed from time to time by lodging a new caveat. Every caveat and withdrawal of caveat must be signed, either by the caveator or his solicitor with his proper handwriting. Caveats.

30. On the return of any order *nisi* under section 53 of the *Administration Act 1928*, it shall not be necessary for either party to prove his case by witnesses in the first instance, but the caveator shall state generally his ground of objection to the grant of probate or administration, and unless it be such as can be disposed of summarily the Court shall fix a day for hearing or direct the case to be entered on a list of causes for hearing. Return of order nisi.

31. Within four days from such direction unless the Court shall otherwise order the caveator shall deliver to the party seeking probate or administration particulars of objection in the form hereinafter set forth, according to the circumstances of the case. Particulars of objection.

Particulars of Objection to Will.

- (a) Later will or act of revocation and date thereof.
- (b) Not executed by testator.
- (c) Not executed in conformity with the Wills Act.
- (d) Want of testamentary capacity—
 - (1) confined to the period shortly before and at the time of execution;
 - (2) existing before such period, and due to insanity or imbecility of which the symptoms first manifested themselves at a date to be set out.
- (e) Undue influence and by whom exercised.

Particulars of Objections to Grant of Administration on Intestacy.

- (a) A will and date thereof.
- (b) That the person applying does not fill the capacity or stand in the relationship in which he seeks administration.
- (c) That the caveator or some other person seeking administration has a better right, stating the nature thereof.
- (d) That the proposed administrator is disqualified, and, if so, how.

Special grounds
of objection.

32. The caveator shall also state in the particulars any special ground of objection not included in those above specified, and shall not without the leave of the Court raise any objection not stated in the particulars. The Court shall at its discretion direct the mode of proceeding at the hearing as to right to begin rebutting case and otherwise.

Witnesses.

33. Where an order is made fixing a time for showing cause against an order *nisi* under the *Administration and Probate Act 1928*, section 53, both parties may subpoena their witnesses for the hearing in the same manner as in an action, and such subpoena shall be issued by the Master-in-Equity.

Affidavits to be
filed and notice
served.

34. Either party shall, four clear days before the day appointed for hearing, file in the office of the Master-in-Equity any affidavits he may propose to use at the said hearing, and serve notice of the filing thereof upon the opposite party; and the opposite party, desiring to cross-examine a deponent, shall, two clear days before the said day appointed for hearing, serve a notice requiring the production of such deponent for cross-examination; but the Court may at its discretion, specially order variations from this rule.

Discovery and
inspection of
documents.

35. On the return of any order *nisi* under the *Administration and Probate Act 1928*, the Court may, in its discretion, order that the parties, or either of them, shall make discovery upon oath of all documents which are or have been in their or his possession, power, custody, or control, or which were in the possession, power, custody, or control of the testator or intestate at the time of his death relating to any matter in dispute in the cause and inspection thereof or make any other order for the conduct of the hearing that the Court may in its discretion think fit.

FEEs, COSTS, ETC.

Fees to
Registrars of
County Courts.

36. The fees mentioned in the Second Schedule hereto shall be taken by and are hereby made payable to Registrars of the County Courts.

Costs.

37. Subject to the provisions of the *Administration and Probate Act 1928*, sections 60, 61, and 62, and of any Act amending the same, in all applications for the grant of probate or letters of administration made after these Rules come into operation, the costs shall be taxed according to the scale of costs provided in Appendix N to the Rules of the Supreme Court in civil proceedings.

38. The Rules, practice, and mode of procedure now or hereafter in force in the Court in its civil jurisdiction shall, so far as applicable, and where no provision is made by these Rules, be adopted and be in force in the Court in its Probate jurisdiction.

39. In all matters not hereinbefore provided for the previous practice of the Court shall be followed, or if there be no such practice then the practice prevailing in the High Court in England.

SCHEDULES

FIRST SCHEDULE

FORM 1.

Affidavit of Executor or Administrator promising the due Performance of Duties.

In the Supreme Court.—In the Probate Jurisdiction.

In the estate of _____, late of _____, deceased.

I, _____, of _____, make oath and say:—

That I am seeking to obtain probate of the will [*or* administration of the estate] of _____, late of _____, deceased.

That if I obtain probate [*or* administration] I will well and truly collect and administer according to law, to the best of my knowledge and ability, the property, lands, and hereditaments, goods, chattels, and credits of the said deceased at the time of his death, which at any time after shall come to the power or control, hands, or possession of me as his executor [*or* administrator], or of any other person or persons for me; that I will make or cause to be made a true and just account of the administration of the estate which I have undertaken as to my receipts and disbursements, and as to what portion is retained by me, and what portion remains uncollected, and the same so made will sign with my proper handwriting [*or* mark], and will exhibit and deposit, or cause to be exhibited and deposited, the same account in the said office of the Master-in-Equity within fifteen calendar months next ensuing the order granting probate [*or* administration].

FORM 2.

Administration Bond

Know all men by these presents that we—

, of
, of
, of

are jointly and severally held and firmly bound to the Registrar of Probates and Administrations of the Supreme Court of Victoria, his successors and assigns, in the sum of _____ of lawful money of the Commonwealth of Australia, to be paid to the said

Registrar, his successors and assigns, for the due payment whereof we hereby bind ourselves and each and any two of us, our heirs, executors, and administrators firmly by these presents. Sealed with our seals, dated this _____ day of _____ in the year of our Lord One thousand nine hundred and _____

The condition of this obligation is such that if the said _____ the administrator of all and singular the property of _____ late of _____ deceased, do and shall well and truly collect and administer according to law the property, lands, and hereditaments, goods, chattels, and credits of the said deceased at the time of his death which shall come to the power or control, hands, or possession of him as his administrator, or of any other person or persons for him, and do and shall make or cause to be made a true and just account of the administration of the estate which he shall have undertaken as to his receipts and disbursements, and as to what portion shall be retained by him, and what portion shall remain uncollected, and the same so made do and shall sign with his proper handwriting [*or* mark], and do and shall exhibit and deposit, or cause to be exhibited and deposited, the same account in the said office of the Master-in-Equity within fifteen calendar months next ensuing the order granting letters of administration; then this obligation to be void and of none effect, or else to remain in full force and virtue.

FORM 3.

Creditor's Administration Bond.

Know all men [*&c.*, as in usual form]—

The condition of this obligation is such that if the said C.D., a creditor and administrator of all and singular the property of A.B., late of _____ who died at _____ aforesaid, on the _____ day of _____ 19____, do and shall well and truly collect and administer according to law the property, lands, and hereditaments, goods, chattels, and credits of the said deceased at the time of his death which shall come to the power or control, hands, or possession of him as such administrator, or of any other person or persons for him, and do and shall out of the said property, lands, and hereditaments, goods, chattels, and credits of the said deceased, and so far as the same shall thereto extend pay and satisfy all and singular the just debts of the said deceased in a due course of administration rateably and proportionably and according to the priority required by law, and not unduly preferring his own debt or debts of any other of the creditors of the said deceased by reason of his being administrator as aforesaid, and do and shall make or cause to be made [and then as in usual form].

FORM 4.

Affidavit of Justification.

In the Supreme Court.—In the Probate Jurisdiction.

In the estate of _____ late of _____ in Victoria,
deceased intestate.

I, _____ of _____ in Victoria, make oath and say—

1. That I am after payment of all my just debts and liabilities well and truly worth in real and personal property [*or as the case may be*] the sum of £*

2. That the particulars of my property and the values thereof are as follows:—

[NOTE.—*In setting out the property really must be distinguished from personally, and a separate gross value for each particular parcel or item thereof must be stated.*]

(a) When realty, the allotment, parish, street, &c., the area of the land, whether there are buildings on the land, should be stated with sufficient accuracy to identify the land.

(b) When personally, the following particulars should be given, for example:—

- (1) Description of lease and number of years to run.
- (2) Number of shares in bank, building society, trading company, &c.
- (3) Money on deposit or current account, giving name and address of bank, society, &c.
- (4) Money lent on mortgage and registered number of same.
- (5) Household furniture and where kept.
- (6) Stock in trade of a business and premises wherein kept.
- (7) Farming implements, &c., where kept, and grain, quantity and where stored.
- (8) Policy of life insurance, number of years in force with surrender value, and age of surety at time of making his affidavit.
- (9) Live stock, number and kind and where depastured or kept.
- (10) Good book debts only.

[*Cash in hand or in house or a licence for land under any Land Act will not be accepted as sufficient.*]

3. That I am not surety in any other matter [*or if a surety in any other matter state in what matter and to what amount*].

Sworn at _____ in Victoria this _____ day of _____ One thousand nine hundred and _____ before me

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

SECOND SCHEDULE.

Where the whole estate does not exceed Fifty pounds—Five shillings.

Where the whole estate exceeds Fifty pounds—The sum of Five shillings, and the further sum of Two shillings and sixpence for every Fifty pounds, or fraction of Fifty pounds, by which the estate exceeds Fifty pounds.

Dated this 21st day of October, 1938.

F. W. MANN, C.J.
J. R. MACFARLAN, J.
CHARLES J. LOWE, J.
C. GAVAN DUFFY, J.
RUSSELL MARTIN, J.

[3589]



VICTORIA
GOVERNMENT GAZETTE.

Published by Authority.

[Registered at the General Post Office, Melbourne, for transmission by post as a newspaper.]

No. 275]

FRIDAY, OCTOBER 28.

[1938

MINING NOTICES.

KONG MENG GOLD REEFS NO LIABILITY.

NOTICE.—All shares in the above-named company (included in Nos. 1 to 47,000), on which the 15th Call of One penny per share remains unpaid, will be sold by public auction at the Stock Exchange, Bendigo, on Tuesday, 8th November, 1938.

J. J. STANISTREET
7685 (McColl, Rankin, and Stanistreet), Manager.

CENTRAL BLUE GOLD MINES NO LIABILITY.

NOTICE is hereby given that all shares forfeited for non-payment of the 8th (October) Call of Three pence per share will be sold by public auction at the Stock Exchange Hall, 428 Little Collins-street, Melbourne, on Tuesday, 8th November, 1938, at a quarter to Twelve o'clock a.m., unless previously redeemed.

F. L. SMYTH, Manager.
Commercial Union Buildings, 413 Collins-street, Melbourne.
7686

By Authority: H. J. GREEN, Government Printer, Melbourne.

No. 275.—13851.



(3) PROHIBITION OF EMPLOYMENT.—The Board determines that no person shall be employed as an apprentice.

(4) WEEKLY HOURS.—That the number of hours to constitute an ordinary week's work shall be 44.

(5) TIMES OF BEGINNING AND ENDING WORK.—That the times of beginning and ending work shall be:—

	Time of Beginning (not earlier than).		Time of Ending (not later than).
7.30 a.m. . . . .	.. .. .	.. .. .	12 noon on Saturday.
7.30 a.m. . . . .	.. .. .	.. .. .	5.30 p.m. on the other working days of the week.

(6) OVERTIME.—That all time worked—

(a) Outside the times of beginning and ending work prescribed in clause (5); or

(b) Within such prescribed times, but in excess of 44 hours in any one week—

shall be paid for at the rate of time and a half for the first four hours' work, and double time thereafter. Provided that, in computing overtime, each day's work shall stand alone.

(7) HOLIDAYS.—(a) All employees, whether in a city or elsewhere, shall be granted the following holidays without deduction of pay:—The days observed as New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Labour Day, Anzac Day, King's Birthday, Christmas Day, and Boxing Day.

(b) If any of the above holidays occurs on a Sunday or Saturday and is not observed on any other day, then employees shall not be paid for such Sunday, and shall be paid for such Saturday as for a half day only when the working week consists of five and a half days.

(c) All employees, whether in a city or elsewhere, shall be paid for the above holidays an amount for each holiday based on the actual weekly wage paid to them by the employer.

(d) Any employee absenting himself or herself from work on any portion of the working day preceding, or any portion of the working day succeeding a holiday provided for herein, other than Boxing Day and New Year's Day, without permission from the employer or without having reasonable cause for having absented himself or herself from work, shall not be entitled to payment for such holiday.

(e) Any person who is employed on a Sunday or any holiday provided for herein shall receive a minimum payment for four hours' work at the rate of double time, which hours shall be worked continuously. In the event of more than four hours being worked such person shall be paid for a minimum of eight hours' work at the rate of double time.

(8) TERMS OF EMPLOYMENT.—(a) That notice equivalent to 44 working hours shall be given on either side to terminate employment. Such notice may be given at any time. This shall not affect the right of the employer to dismiss any employee without notice for malingering, inefficiency, neglect of duty, or misconduct (in which case wages shall be paid up to time of dismissal only), or to deduct payment for any day the employee cannot be usefully employed because of any strike, or through any breakdown of machinery, or any stoppage of work, or any cause for which the employer cannot be reasonably held responsible.

(b) In lieu of such 44 working hours' notice, except in circumstances referred to above, the employer may pay 44 hours' wages: and vice versa the employee leaving his employment without notice shall forfeit 44 hours' wages, which may be deducted from any wages due.

(c) Provided that any notice determining the employment solely for the purpose of evading payment for prescribed holidays, and not to determine finally the engagement, shall not deprive the employee of payment for any prescribed holidays occurring or observed between such notice to terminate and the re-engagement, if any.

(9) REST ROOM.—A rest room shall be provided by every employer. Such room shall contain a suitable couch and seating accommodation, and shall be properly lighted and ventilated.

(10) REST PERIOD FOR FEMALES.—Except on Saturday, a rest period of ten minutes (to be counted as part of time worked) shall be allowed females during each morning or afternoon. Whether the rest period shall be taken during the morning or afternoon shall be determined by a majority of the female employees in the establishment concerned.

(11) PERIODICAL ADJUSTMENT OF WAGES.—The wages rates for males set out in clause (2) (b) are based upon the following basic wage, and pursuant to and in accordance with the provisions of section 21 of the *Factories and Shops Act 1934*, the Board hereby determines that such rates shall be automatically increased or decreased by the same amount, and at the same time as such basic wage. Provided that the wages of improvers and of females shall be adjusted proportionately to adjustments of the basic wage, such adjustments to be to the nearest 3d., half or less than half of 3d. to be disregarded.

The basic wage shown hereunder shall be adjusted as prescribed in clause (12).

Basic Wage.

Place.	Basic Wage.	Index Number Set Assigned.
Within the area to which this Determination applies	£ s. d. 3 12 0	Melbourne

(12) ADJUSTMENT OF BASIC WAGE.—(a) Until the beginning of the first pay period to commence in December, 1938, the amount of the basic wage shall be as prescribed in clause (11).

(b) During each future successive period beginning with the first pay period to commence in a December, a March, a June, or a September, the amount of the basic wage shall be adjusted by the following method according to the position and fluctuations (if any) of the Commonwealth Statistician's "All Items" retail price index numbers.

For the purposes of this Determination the expression "Commonwealth Statistician's retail price index numbers" or any like expression means the numbers stated to be such index numbers in any document purporting, and not proved to be wrongly so purporting, to be printed by the Commonwealth Government Printer or to be signed by or on behalf of the Commonwealth Statistician:—

(1) The index number set to be applied is that assigned to Melbourne.

(2) The index number for the calendar quarter next preceding the period of thirteen weeks for which the adjustment is made is to be ascertained.

(3) The amount assigned in the following table (or in any extension thereof) to the index number division comprising that number is to be ascertained.

(4) The basic wage shall be of that assigned amount during such successive period.

Table.

Index Number Divisions.	Basic Wage.	Index Number Divisions.	Basic Wage.
	£ s. d.		£ s. d.
735-746	3 0 0	834-845	3 8 0
747-759	3 1 0	846-858	3 9 0
760-771	3 2 0	859-870	3 10 0
772-783	3 3 0	871-882	3 11 0
784-796	3 4 0	883-895	3 12 0
797-808	3 5 0	896-907	3 13 0
809-820	3 6 0	908-919	3 14 0
821-833	3 7 0	920-932	3 15 0

D. GRANT, Chairman.

R. L. CECIL, Secretary.

Melbourne, 14th October, 1938.