VICTORIA

GOVERNMENT GAZETTE.

Published by Authority.

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

No. 892] WEDNESDAY, NOVEMBER 7. [1956

RULES

OF THE

SUPREME COURT

OF THE

STATE OF VICTORIA

1957.

No. 892.—11639/56.

RULES OF THE SUPREME COURT.

IN pursuance of the powers conferred by the Supreme Court Acts and of all other powers hereunto enabling, the following Rules of the Supreme Court are made and shall take effect from the first day of January, One thousand nine hundred and fifty-seven:—

CHAPTER I.

G.G. 27.10.38 p. 3325. Aff.

RULES OF PROCEDURE IN CIVIL PROCEEDINGS.

On and after the first day of January, 1957, all Rules of Procedure in Civil proceedings, including the Rules contained in the Fifth Schedule to the *Supreme Court Act* 1928, shall be repealed and of no effect except so far as regards all causes or matters then pending and on the said first day of January the Rules hereinafter set out shall come into force and shall apply to all causes and matters commenced on and after that date. Commencement of Rules.

ORDER I.

FORM AND COMMENCEMENT OF ACTION.

1. All actions which previously to the commencement of *The Judicature Act* 1883 were commenced by writ, and all suits which previously to the commencement of the said Act were commenced by bill or information in the Supreme Court, shall be instituted by a proceeding to be called an action. Proceedings to be by action.

2. All other proceedings in and applications to the said Court may, subject to these Rules, and notwithstanding the provisions of section 21 of the *Supreme Court Act* 1928, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if *The Judicature Act* 1883 had not been passed. Other matters.

ORDER II.

WRIT OF SUMMONS.

1. Every action in the Supreme Court shall be commenced by a writ of summons, and the plaintiff shall on his writ state the place and mode of trial that he desires, and if he fail to do so, he shall be taken to intend that the action shall be tried in Melbourne without a jury. Any other party desiring to object may do so on the hearing of the summons for directions (if any) or by summons before the close of pleadings or where there are no pleadings within 10 days after appearance. Actions to be commenced by writ indorsed.

2. Any costs occasioned by the use of any more prolix or other forms of writs and of indorsements thereon than the forms hereinafter prescribed shall be borne by the parties using the same, unless the Court or a Judge shall otherwise direct. Costs of prolixity.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in one of the Forms Nos. 1 and 2, in Appendix A, Part I., with such variations as circumstances may require. Form of writ.

Writs for service out of State.

Form and notice.

4. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in one of the Forms Nos. 5 and 6, in Appendix A. Part I., with such variations as circumstances may require. Such notice shall be in Form No. 9 in the same Part, with such variations as circumstances may require.

Actions on bills of exchange.

5. With respect to actions upon a bill of exchange or promissory note, the procedure under Part I. of the *Instruments Act* 1928 may be used.

Date and teste.

6. Every writ of summons and also (unless by any Statute or by these Rules it is otherwise provided) every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Chief Justice, or if the office shall be vacant or he shall be absent from the State in the name of the Acting Chief Justice, or if there be no Acting Chief Justice, in the name of the senior Puisne Judge present therein.

ORDER III.

INDORSEMENTS OF CLAIM.

When to be made.

1. The indorsement of claim shall be made on every writ of summons before it is issued, and shall contain a statement sufficient to give notice of the nature of the claim and the cause thereof and of the relief or remedy required in the action, and, in case of non-compliance with this Rule, the defendant may apply before appearance to set aside or amend the writ or for particulars.

Substance.

2. In the indorsement required by the Rules, it shall not be necessary to ask for general or other relief, which may always be given, as the Court or a Judge may think just, to the same extent as if it had been asked for.

Representative character.

3. If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, the indorsement shall show, in manner appearing by such of the Forms in Appendix A, Part III., section VII., as shall be applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

Special indorsement.

4. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (*a*) upon a contract express or implied (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); or (*b*) on a bond or contract under seal for payment of a liquidated amount of money; or (*c*) on a Statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt other than a penalty; or (*d*) on a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (*e*) on a trust; or (*f*) in actions for the recovery of land with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly

determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant, or (*g*) where the plaintiff seeks to recover a specific chattel with or without a claim for the hire thereof or for damages for its detention; or (*h*) in actions for the specific performance of contracts in writing for sale or purchase of property the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, and of the remedy or relief to which he claims to be entitled. Such special indorsement shall be to the effect of such of the Forms in Appendix C, section IV., as shall be applicable to the case.

Indorsement of notice as to stay of proceedings.

5. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the Form in Appendix A, Part III., section III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed the plaintiff's solicitor shall pay the costs of taxation.

Indorsement claim for account.

6. In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

In actions for libel.

7. In actions for libel the indorsement on the writ shall state sufficient particulars to identify the publications in respect of which the action is brought.

Order IV.

INDORSEMENT OF ADDRESS.

Where plaintiff sues by solicitor.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon the writ of summons and notice in lieu of service of a writ of summons the address of the plaintiff, and also his own name or firm and place of business, 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 may be left for him. 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 plaintiff sues in person.

2. A plaintiff suing in person shall indorse upon the writ of summons and notice in lieu of service of a writ of summons 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 may be left for him.

Where plaintiff cannot be found.

3. Where a plaintiff sues in person and no person can be found at the place of residence or address for service indorsed by him, all such writs and other documents as are mentioned in the last preceding Rule may be served on him by filing the same in the Prothonotary's Office.

Proceedings other than actions.

4. In all cases where proceedings are commenced otherwise than by writ of summons, the preceding Rules of this Order shall apply to the document by which such proceedings shall be originated as if it were a writ of summons.

Order V.

ISSUE OF WRITS OF SUMMONS.

Place of issue.

1. Every writ of summons shall be issued out of the Prothonotary's Office.

Preparation of writ.

2. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be printed, typewritten, or written, either wholly or in part, on paper.

Sealing.

3. Every writ of summons shall be sealed by the Prothonotary, and shall thereupon be deemed to be issued.

Copy to be left with officer.

4. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

Officer to file copy.

5. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, which shall be in such form and kept in such manner as the Chief Justice may from time to time direct, and the action shall be distinguished by the date of the year and a number.

Order VI.

CONCURRENT WRITS AND ORIGINATING SUMMONSES.

Issue of concurrent writs.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "Concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the Prothonotary: Provided always that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

Concurrent originating summons.

1A. A concurrent originating summons may be issued in the same manner, *mutatis mutandis,* as a concurrent writ of summons.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction; and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

Concurrent writs within and beyond the jurisdiction.

2A. An originating summons for service within the jurisdiction may be issued and marked as a concurrent originating summons with one for service out of the jurisdiction; and an originating summons for service out of the jurisdiction may be issued and marked as a concurrent originating summons with one for service within the jurisdiction.

Concurrent originating summons within and beyond the jurisdiction.

ORDER VII.

1.—DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or privity; and if he shall answer in the affirmative, then he shall also, in case the Court or Judge shall so order and direct, declare in writing within a time to be allowed by such Court or Judge, the profession, occupation, or quality, and place of abode of the plaintiff, on pain of being guilty of a contempt of Court; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

Solicitor to declare whether writ issued by his authority.

2.—CHANGE OF SOLICITORS.

2. A party suing or defending by a solicitor shall be at liberty to change his solicitor in any cause or matter, without an order for that purpose, upon notice of such change being filed in the Prothonotary's Office; but until such notice is filed and a copy thereof served, the formed solicitor shall, subject to the provisions of this Order, be considered the solicitor of the party until the final conclusion of the cause or matter including any appeal therein.

Change of solicitor.

3. When a solicitor in any cause or matter has died, or become bankrupt or cannot be found or has been struck off the roll and the party for whom he acted has not given notice of change of solicitor any other party may on notice to be served on the first-named party personally or by letter addressed to his last known address or as a Judge may order apply to the Court or a Judge for an order declaring that the solicitor has ceased to be the solicitor acting for the first-named party in the cause or matter and the Court or a Judge may make an order accordingly. The party obtaining the order shall serve a notice thereof called "a notice of removal" to the same effect as the order upon every

Removal of solicitor from the record at the instance of either party.

other party and shall file a copy of such notice in the Prothonotary's Office. The first-mentioned party shall upon being so served file in the said office either a notice of appointment of a new solicitor or a notice giving an address for service and in default of his so doing within 7 days any documents of which personal service is not necessary may be served upon the party so in default by being filed with the proper officer.

Withdrawal of solicitor who has ceased to act for a party.

4. (1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with the provisions of Rule 2 of this Order, the solicitor may on notice to be served on the party personally or by letter addressed to his last-known place of address, unless the Court or Judge otherwise directs, apply to the Court or Judge for an order to the effect that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court or Judge may make an order accordingly; provided that until and unless the solicitor has complied with the provisions of paragraph (2) of this Rule he shall (subject to the provisions of Rules 2 and 3 of this Order) be considered the solicitor of the party to the final conclusion of the cause or matter including any appeal therein.

(2) A solicitor obtaining such order shall forthwith give a notice called a "notice of withdrawal" to the same effect as the order by serving and filing the same as is directed by Rule 3 in respect to a "notice of removal." The first-mentioned party upon being served with a "notice of withdrawal" shall file in the office of the Prothonotary either a notice of the appointment of a new solicitor or a notice giving an address for service and in default of his so doing within 7 days any documents of which personal service is not necessary may be served upon the party so in default by being filed with the proper officer.

Effect of order.

5. Any order made under this Order shall not affect the rights of the solicitor and the party as between themselves.

"Address for service."

6. In this Order the expression "address for service" means the address for service required by Orders IV. and XII. or by the rules in Divorce and Matrimonial Causes.

Solicitor not to act for adverse parties.

7. No solicitor shall act in any cause or matter for plaintiff and defendant, or for any two or more defendants having adverse interests in a cause or matter.

Solicitor or clerk not to be security.

8. No solicitor or articled or other clerk to a solicitor of the Supreme Court shall be security for any party in any Court without leave of a Judge.

Order VIII.

RENEWAL OF WRIT.

Original writ to be in force for twelve months; may be renewed.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not be served therewith, the plaintiff may, before the expiration of the twelve months, apply to the Court or a Judge for leave to

renew the writ; and the Court or Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the Prothonotary's Office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 18 in Appendix A, Part I., with such variations as circumstances may require; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any Statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

Evidence of renewal.

2. The production of a writ of summons purporting to be marked with the seal of the Court, showing such writ of summons to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

Lost writ: copy may be sealed.

3. Where a writ, of which the production is necessary, has been lost, the Court or a Judge, upon being satisfied of the loss and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ.

ORDER IX.

SERVICE OF WRIT OF SUMMONS.

1. *Mode of Service.*

Acceptance of service.

1. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service, and enters an appearance.

Service.

2. When service is required, the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise as may seem just.

2. *On Particular Defendants.*

On husband and wife.

3. When husband and wife are both defendants to the action, they shall both be served, unless the Court or a Judge shall otherwise order.

Infant defendant.

4. When an infant is a defendant to the action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall,

unless the Court or Judge otherwise orders, be deemed good service on the infant; provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service.

Lunatic defendant.

5. When a lunatic, or person of unsound mind not so found by inquisition, is a defendant to the action, service on the committee of the lunatic or on the person with whom the person of unsound mind resides, or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on such defendant.

3. *On Corporations and other Bodies.*

On corporations and other bodies.

6. In the absence of any statutory provision regulating service of process, every writ of summons issued against a corporation aggregate may be served on the mayor, president, or other head officer, or on the town clerk, clerk, treasurer, manager, inspector or secretary of such corporation; and where by any Statute provision is made for service of any writ of summons, bill, petition, summons, or other process upon any corporation, or upon any society or fellowship, or any body or number of persons, whether corporate or unincorporate, every writ of summons may be served in the manner so provided.

Service on agents.

7. Where a contract has been entered into within the jurisdiction by or through an agent residing or carrying on business within the jurisdiction on behalf of a principal residing or carrying on business out of the jurisdiction, a Writ of Summons in an action relating to or arising out of such contract may by leave of the Court or a Judge given before the determination of such agent's authority or of his business relations with the principal be served on such agent. Notice of the order giving such leave and a copy thereof and of the Writ of Summons shall forthwith be sent by prepaid registered post letter to the defendant or defendants at his or their address out of the jurisdiction. Provided that nothing in this Rule shall invalidate or affect any other mode of service in force at the time this Rule comes into operation.

4. *In Particular Actions.*

To recover vacant land.

8. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

5. *Generally.*

Person serving writ to indorse date of service.

9. The person serving the writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made. This Rule shall apply to substituted as well as other service.

Order X.

SUBSTITUTED SERVICE.

1. Every application to the Court or a Judge or a Master for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

Application for substituted service.
Am. 16.7.56 G.G. 23.5.56 p. 2717.

Order XI.

PART 1.—SERVICE OUT OF JURISDICTION.

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge whenever—

When service out of jurisdiction allowed.

(*a*) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land within the jurisdiction; or

(*b*) any act deed will contract obligation or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed rectified set aside or enforced in the action; or

(*c*) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or

(*d*) the action is for the administration of the personal estate of any deceased person who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee and which ought to be executed according to the law of Victoria; or

(*e*) the action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made which according to the terms thereof ought to be performed within the jurisdiction or is founded on a tort committed within the jurisdiction; or

(*f*) any injunction is sought as to anything to be done within the jurisdiction or any nuisance within the jurisdiction is sought to be prevented or removed whether damages are or are not also sought in respect thereof; or

(*g*) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction; or

(*h*) the action is by a mortgagee or mortgagor in relation to a mortgage of personal property situate within the jurisdiction and seeks relief of the nature or kind following, that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption,

re-conveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under sub-head (*e*) of this Rule) any personal judgment or order for payment of any moneys due under the mortgage.

In this sub-head the expression personal property situate within the jurisdiction means personal property which, on the death of an owner thereof intestate, would form subject-matter for the grant of letters of administration to his estate in Victoria; the expression mortgage means a mortgage charge or lien of any description; the expression mortgagee means a party for the time being entitled to or interested in a mortgage; and the expression mortgagor means a party for the time being entitled to or interested in property subject to a mortgage.

As to application for leave to serve out of jurisdiction.

2. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action and showing in what place or country such defendant is or probably may be found and whether such defendant is a British subject or not and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction under this Order.

Order to fix time for appearance.

3. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance such time to depend on the place or country where or within which the writ is to be served or the notice given.

Notice in lieu of writ.

4. When the defendant is neither a British subject nor in British dominions notice of the writ and not the writ itself is to be served upon him.

Service of notice.

5. Where leave is given under the foregoing Rules 1 and 4 to serve notice of a writ of summons out of the jurisdiction such notice shall (subject to any direction given by the Court or a Judge as to the manner in which such notice shall be served or brought under the notice of the defendant) be served in the manner in which writs of summons are served.

Processes and notices of which service out of jurisdiction allowable.

Am. G.G. 2.6.54 p. 3687.

6. Service out of the jurisdiction may be allowed by the Court or a Judge of the following processes or of notice thereof, that is to say:—

(*a*) Originating Summonses under Order LIV.(A). or Order LV. Part 2 in any case where if the proceedings were commenced by Writ of Summons they would be within Rule 1 of this Order.

(*b*) Any Originating Summons, Petition, Notice of Motion or other Originating proceedings (1) in relation to any infant or lunatic or person of unsound mind or

(2) under any Statute under which proceedings can be commenced otherwise than by Writ of Summons or (3) under any Rule of Court or Practice whereunder proceedings can be commenced otherwise than by Writ of Summons.

(*c*) Without prejudice to the generality of the last foregoing sub-head any Summons, Order or Notice in any Interpleader proceedings or for the appointment of an Arbitrator or Umpire or to remit, set aside or enforce an Award in an Arbitration held or to be held within the jurisdiction.

(*d*) Any Summons Order or Notice in any proceedings duly instituted whether by Writ of Summons or other such originating process as aforesaid.

PART 2.—SERVICE OF FOREIGN PROCESS.

Letters of Request.

7. Where in any civil or commercial matter pending before a Court or Tribunal of a foreign country a Letter of Request from such Court or Tribunal for service on any person in Victoria of any process or citation in such matter is transmitted to the Supreme Court by the Attorney-General with an intimation that it is desirable that effect should be given to the same, the following procedure shall be adopted:—

(1) The Letter of Request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process or citation to be served, and two copies thereof in the English language.

(2) Service of the process or citation shall be effected through the Sheriff by the process server whom he may appoint from time to time for the purpose or his authorized agent.

(3) Such service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served and one copy of the translation thereof, in accordance with the Rules and practice of the Supreme Court regulating service of process.

(4) After service has been effected, the Sheriff shall return to the Prothonotary of the Supreme Court one copy of the process, together with the evidence of service by affidavit, of the person effecting the service, verified by notarial certificate, and particulars of charges for the cost of effecting such service.

(5) The particulars of charges for the cost of effecting service shall be submitted to the Taxing Master of the Supreme Court, who shall certify the correctness of the charge or such other amount as shall be properly payable for the cost of effecting service. A copy of such charges and certificate shall be forwarded to the Attorney-General.

(6) The Prothonotary shall transmit to the Attorney-General the Letter of Request for service received from the foreign country, together with the evidence of service, with a certificate appended thereto duly sealed with the seal of the Supreme Court for use out of the jurisdiction. Such certificate shall be in the Form No. 37c, Appendix K, of these Rules.

(7) Instead of translated copies of the process or citation being forwarded with the Letter of Request, it shall be sufficient if each copy of the process or citation is endorsed with an annotation in the English language stating as precisely as possible the name and address of the person upon whom the document is to be served, the nature of the document, and the names of the parties.

(8) When the process or citation is so annotated it shall not be necessary to leave with the person served a translated copy of the process or citation.

(9) In all cases where a Judge is satisfied that the requirements of this Rule have been complied with substantially, if not literally, he may make all such orders as may be necessary to insure effective service of the process or citation.

Orders.

8. Upon the application of the Crown Solicitor, with the consent of the Attorney-General, the Court or a Judge may make all such orders for substituted service or otherwise as may be necessary to give effect to these Rules.

PART 3.—SERVICE UNDER CONVENTION.

Service under convention.
Am. S.G. 4.10.50 p. 5270.

9. Where leave is given in a civil or commercial cause or matter to serve any writ of summons, originating summons, notice, or other document in any foreign country with which a Convention in that behalf has been or shall be made and extended to the Commonwealth of Australia or the State of Victoria, the following procedure shall, subject to any special provisions contained in the Convention, be adopted:—

Ib.

(1) The party bespeaking such service shall file in the Office of the Prothonotary a Request in the form set out in Form No. 37D in Appendix K hereto which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used. Such Request shall state the medium through which it is desired the service shall be effected, i.e., whether (*a*) directly through the British Consul, or (*b*) through the foreign judicial authority, and shall be accompanied by the original document and a translation thereof in the language of the country in which service is to be effected certified by or on

behalf of the person making the request and a copy of each for every person to be served and any further copies which the Convention may require, unless the service is required to be made on a British subject directly through the British Consul in which case the translation and copies thereof need not accompany the Request unless the Convention expressly requires that they should do so.

(2) The documents to be served shall be sealed with the Seal of the Supreme Court for use out of the Jurisdiction and shall be forwarded by the Prothonotary to the Attorney-General for Victoria for transmission through the diplomatic channel to the foreign country.

(3) An official certificate transmitted through the diplomatic channel by the foreign judicial authority, or by a British Consular authority, to the Victorian Court, establishing the fact and the date of the service of the document shall be deemed to be sufficient proof of such service, and shall be filed of record as and be equivalent to an affidavit of service within the requirements of Rules of the Supreme Court in that behalf.

(4) In cases where a Writ of Summons or notice thereof is served pursuant to this Rule, and an official certificate of such service is produced, no endorsement of service under Order IX. Rule 9 shall be required. Am. G.G. 4.10.50 p. 5270.

10. Rule 9 of this Order shall not apply to nor render invalid or insufficient any mode of the service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to Victorian procedure and which is not expressly excluded by the Convention made with such foreign country, and extended to the Commonwealth of Australia or the State of Victoria. Effect of Rule 9. Ib.

11. Where in any civil or commercial cause or matter pending before a Court or Tribunal in any foreign country with which a Convention in that behalf has been or shall be made and extended to the Commonwealth of Australia or the State of Victoria, a Request for service of any document on a person in the State of Victoria is received by the Prothonotary from the Consular or other authority of such country, the following procedure shall, subject to any special provisions contained in the Convention, be adopted:— Service under Convention of documents in Victoria.

(1) The service shall be effected by the delivery of the original or a copy of the document, as indicated in the Request and the copy of the translation, to the

party or person to be served in person through the Sheriff by the process server whom he may appoint or his authorized agent.

(2) No Court fees shall be charged in respect of the service. The particulars of charges of the person employed to effect service shall be submitted to the Taxing Master of the Supreme Court who shall certify the amount properly payable in respect thereof.

(3) The Prothonotary shall transmit to the Consular or other authority making the Request a Certificate establishing the fact and the date of the service in person, or indicating the reasons for which it has not been possible to effect it, and at the same time shall notify to the said Consular or other authority the amount of the charges certified under paragraph (2) hereof.

ORDER XII.

APPEARANCE.

In the Prothonotary's Office.

1. A defendant shall enter his appearance in the Prothonotary's Office.

Mode of appearance.

2. A defendant shall enter his appearance to a writ of summons by delivering to the Prothonotary a memorandum in writing, dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

Notice of appearance.

3. A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself by serving in the ordinary way at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, the sealed duplicate memorandum.

Address for service of solicitor.

4. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, 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.

5. A defendant appearing in person 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. Address for service of defendant in person.

6. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff, and the plaintiff may be permitted to proceed by filing the proceedings in the Prothonotary's Office without further service. Defective address.

7. The memorandum of appearance shall be in the Form No. 1 in Appendix A, Part II., with such variations as the circumstances of the case may require. Form of appearance.

8. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the Cause Book. Entry in Cause Book.

9. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum. Several defendants.

10. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment. Appearance not entered on undertaking.

11. A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance, he shall on the same day give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the Court or Judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ. Appearance allowed before judgment.

12. Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court or Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant, and the Court or a Judge shall have power to strike out or confine appearances or defences set up by persons not in possession by themselves or their tenants. Person not named may defend for land. Striking out.

13. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord. Landlord to appear as such.

14. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or Judge to appear and defend, he shall enter an appearance according to the foregoing Rules, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action. Person appearing to be named as a defendant.

Defence may be limited.

15. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the cause, and signed by him or his solicitor; such notice shall be served within four days after appearance, and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.

Notice of limitation.

16. The notice mentioned in the last preceding Rule shall be in the Form No. 3, in Appendix A, Part II., with such variations as circumstances may require.

Setting aside service before appearance.

17. A defendant before appearing shall be at liberty, without obtaining an order to enter or entering a conditional appearance, to serve notice of motion to set aside the service upon him of the writ or of notice of the writ or to discharge the order authorizing such service.

Order XIII.

DEFAULT OF APPEARANCE.

Default of appearance by infant or person of unsound mind. Application for guardian.

1. When no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff shall before proceeding with the action against the defendant apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last-mentioned service.

Affidavit of service.

2. Where any defendant fails to appear to a writ of summons and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service (as the case may be).

Final judgment when writs indorsed for liquidated demand.

3. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails or all the defendants (if more than one) fail to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate

specified (if any), or (if no rate be specified) at the rate of eight per cent. per annum, to the date of the judgment and costs.

Where claim for liquidated demand final judgment against defendants not appearing.

4. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ and another or others of them fail to appear, the plaintiff may enter final judgment as in the preceding Rule against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with his action against such as have appeared.

Damages. Detention of goods. Interlocutory judgment.

5. Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant fails, or all the defendants, if more than one, fail, to appear, the plaintiff may enter interlocutory judgment, and the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons shall be ascertained by the Prothonotary unless the Court or Judge otherwise direct.

Several defendants judgment against those not appearing.

6. Where the writ is indorsed as in the last preceding Rule mentioned and there are several defendants, of whom one or more appear to the writ and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and the value of the goods and the damages, or either of them, as the case may be, may be assessed, as against the defendant or defendants suffering judgment by default at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the Court or a Judge shall otherwise direct. Provided that the Court or a Judge may order that the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct.

Memorandum of number of jury required.

6A. Whenever the Court or a Judge has ordered an assessment by jury the plaintiff shall on entering any interlocutory judgment under this Order leave with the Prothonotary a memorandum in writing of the number of jurors by whom he desires the assessment shall be made, and shall pay the proper jury fees thereon.

Calculation of damages.

6B. In actions in which no appearance shall be entered, and in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation, the Court or a Judge may direct that the amount for which final judgment is to be entered shall be ascertained and further proceedings had thereon as hereinafter provided by Order XXXVI., Rule 48, in cases of trial.

Detention of goods damages and liquidated demand. Final and interlocutory judgment.

7. Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails

to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand, interest, and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in such of the preceding Rules of this Order as may be applicable.

Possession of land where no appearance.

8. In case no appearance shall be entered in an action for the recovery of land within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Mesne profits or damages.

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, double value, or damages for breach of contract, or wrong or injury to the premises claimed upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned for the land; and may proceed as in the other preceding Rules of this Order as to such other claim so indorsed.

Judgment may be set aside or varied.

10. Where judgment is entered pursuant to any of the preceding Rules of this Order, it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may be just.

Default of appearance in other cases.

Am. G.G. 26.4.39 p. 1382.

11. In all actions not by the Rules of this Order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and if the writ is not specially indorsed under Order III., Rule 4, of a statement of claim, the action may proceed as if such party had appeared, subject as to actions where an account is claimed to the provisions of Order XV.

Proceedings mentioned on writ may be taken.

12. All such proceedings as are mentioned in or on any writ of summons, capias, or foreign attachment, or in any notice issued under the *Supreme Court Act* 1928 or under any Rules, shall and may be had and taken in default of a defendant's appearance or putting in special bail (or as the case may be).

Suggestion of breaches in action in bond.

13. Where the writ is indorsed with a claim on a bond within the *Instruments Act* 1928, section 25, and the defendant fails to appear thereto, no statement of claim shall be delivered, and the plaintiff may at once suggest breaches by delivering a suggestion thereof to the defendant or his solicitor, and proceed as mentioned in the said Act.

Order XIV.

LEAVE TO SIGN JUDGMENT OR DEFEND WHERE WRIT SPECIALLY INDORSED.

Judgment on writ specially indorsed under O. 3, r. 4.

1. (*a*) Where the defendant appears to a writ of summons specially indorsed with or accompanied by a statement of claim under Order III., Rule 4, the plaintiff may on affidavit made by himself or by any other person who can swear positively to the

facts, verifying the cause of action and the amount claimed (if any liquidated sum is claimed), and stating that in his belief there is no defence to the action except as to the amount of damages claimed if any, apply to a Judge for liberty to enter judgment for such remedy or relief as upon the statement of claim the plaintiff may be entitled to. The Judge thereupon, unless the defendant shall satisfy him that he has a good defence to the action on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief claimed.

On the hearing of any application under this Rule the Judge may if he think fit amend the indorsement on the writ in any manner whether the writ be sufficiently indorsed or not.

(*b*) If on the hearing of any application under this Rule it shall appear that any claim which could not have been specially indorsed under Order III., Rule 4, has been included in the indorsement on the writ, the Judge may, if he shall think fit, forthwith amend the indorsement by striking out such claim, or may deal with the claim specially indorsed as if no other claim had been included in the indorsement, and allow the action to proceed as respects the residue of the claim.

(*c*) Where the plaintiff's claim is for the delivery up of a specific chattel (with or without a claim for the hire thereof or for damages for its detention) the Judge may make an order for the delivery up of the chattel without giving the defendant any option of retaining the same upon paying the assessed value thereof, and such order, if not obeyed, may be enforced by a writ of attachment or a writ of delivery.

By summons.

2. The application by the plaintiff for leave to enter final judgment under the last preceding Rule shall be made within five days after appearance, or at any later time by leave of the Court or a Judge by summons returnable not less than two clear days after service, accompanied by a copy of the affidavit and exhibits referred to therein.

Defendant may show cause.

3. (*a*) The defendant may show cause against such application by affidavit or (except in actions for the recovery of land) by offering to bring into Court the sum indorsed on the writ, or the Judge may allow the defendant or any other person to be examined upon oath.

(*b*) The affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part of the plaintiff's claim.

(*c*) The Judge may, if he think fit, order the plaintiff or the defendant, or, in the case of a corporation, any officer thereof, to attend and be examined and cross-examined upon oath, or to produce any papers, books, or documents, or copies of or extracts therefrom.

Judgment may be for part of claim.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms (if any) as to suspending execution, or the payment of the amount levied or any part thereof into Court by the Sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

Or against one defendant.

5. If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

Leave on terms.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security or time or mode of trial or otherwise as the Judge may think fit.

Summary disposal.

7. The Judge may, with the consent of all parties, dispose of the action finally and without appeal in a summary manner.

Directions as to trial.

8. Where leave, whether conditional or unconditional, is given to defend, the Judge may give all such directions as to the further conduct of the action as might be given on a summons for directions under Order XXX. and may direct that the affidavit filed by the defendant under this Order shall serve in lieu of defence, and may order the action to be forthwith set down for trial, and may define the issues that are to be tried.

Relief from forfeiture.

9. A tenant shall have the same right to relief after a judgment under this Order for the recovery of land on the ground of forfeiture for non-payment of rent, as if the judgment had been given after trial.

Order XIV. (A).

SUMMARY JUDGMENT BY DEFENDANT.

Defendant may apply for summary judgment.

1. Any defendant to an action may within ten days after appearance or at any later time by leave of the Court or a Judge apply to a Judge for summary judgment, and the Judge if satisfied that the action is frivolous or vexatious, that the defendant has a good defence on the merits, or that the action should be disposed of summarily or without pleadings, may order—

that judgment be entered for the defendant with or without costs; or

that the plaintiff shall proceed to trial without pleadings—

or if all parties consent, may dispose of the action finally and without appeal in a summary manner.

Plaintiff may show cause.

2. (*a*) The plaintiff may show cause against such application by affidavit or by *vivâ voce* evidence.

(*b*) The Judge may, if he think fit, order the plaintiff or the defendant or in the case of a corporation any officer thereof to attend and be examined and cross-examined upon oath or to produce any papers, books, or documents, or copies of or extracts therefrom. Attendance for examination.

3. If the Judge directs that the action shall proceed to trial he shall give all such directions as to the further conduct of the action as might be given on a summons for directions under Order XXX., and may order the action to be forthwith set down for trial, and may define the issues that are to be tried. Directions.

ORDER XV.

APPLICATION FOR ACCOUNT.

1. Where a writ of summons has been indorsed for an account, under Order III., Rule 6, or where the indorsement on a writ of summons involves taking an account, if the defendant either fails to appear or does not after appearance by affidavit or otherwise satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions now usual in the Court in similar cases, shall be forthwith made. Order for account.

2. An application for such order as mentioned in the last preceding Rule shall be made by summons, and be supported by an affidavit when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired. Application for it.

ORDER XVI.

PARTIES.

1. *Generally.*

1. All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions any common question of law or fact would arise; provided that, if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial of the action, the Court or a Judge may order separate trials, or may make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court or a Judge in disposing of the costs shall otherwise direct. Persons claiming jointly, severally, or in the alternative may be plaintiffs.

1A. No other action shall be brought against the defendant by any person so joined as plaintiff in respect of the same cause of action unless by leave of the Court or a Judge. No other action to be brought for same claim.

Chapter I.—Civil Proceedings.
Order XVI. 22

Plaintiffs may be substituted or added.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge may, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

Counter-claim or set-off in case of misjoinder.

3. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

Defendants may be sued jointly, severally, or in the alternative.

4. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities, without any amendment.

Defendant having only partial interest.

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

Plaintiff may join parties jointly and severally liable.

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

Plaintiff in doubt may join defendants for alternative redress.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all parties.

Trustee, executors, and representative parties.

8. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties.

This Rule shall apply to trustees, executors, and administrators suing or sued in proceedings to enforce a security by foreclosure or otherwise.

9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court or a Judge to defend in such cause or matter on behalf or for the benefit of all persons so interested. Where parties are numerous.

10. When in proceedings concerning a trust a compromise is proposed, and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the Court and assenting to the compromise, the Court or a Judge, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts. Power to approve compromise in absence of some of the persons interested.

11. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as a next friend of a plaintiff under any disability, without his consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice. Amendment on misjoinder of parties.

12. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion or summons, or at the trial of the action in a summary manner. Application for it.

13. Where a defendant is added or substituted, the writ of summons shall be amended accordingly and the plaintiff shall, unless otherwise ordered by the Court or a Judge, file a copy of the writ as amended, and serve the new defendant with such amended writ or notice in lieu of service thereof in the same manner as original defendants are served, and the proceedings shall be continued as if the new defendant had originally been made a defendant. Where defendant added.

Chapter I.—Civil Proceedings.
Order XVI. 24

Initial letters may be used.

14. In all causes and matters it shall be sufficient to designate any of the parties thereto, or any person referred to in any writ or pleading, by any initial letter or letters or other contractions of the first or other name or names, other than a surname, where the name of the party or person so designated by such initial letter or letters or contraction is averred to be unknown to the party using such initial letter or contraction.

3. *Persons under Disability.*

Infants.

16. Infants may sue as plaintiffs by their next friends in the manner practised in the Court in its Equitable Jurisdiction previously to the commencement of *The Judicature Act* 1883; and infants may, in like manner, defend any action by their guardians appointed for that purpose.

Lunatics and persons of unsound mind.

17. Where lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the *Judicature Act* 1883 have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit they may respectively sue as plaintiffs in any action by their committee or next friend, and may defend any action by their committees or guardians appointed for that purpose.

Appearance of infant.

18. An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance shall make and file an affidavit in the Form No. 8 in Appendix A, Part II., with such variations as circumstances may require.

Guardian *ad litem* in petitions, &c.

19. Every infant served with a petition or notice of motion or summons in a matter shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian *ad litem* shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last Rule mentioned.

Written authority of next friend or relator.

20. Before the name of any person shall be used in any action as next friend of any infant or other party or as relator such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the Prothonotary's Office.

Consent on behalf of infants, &c.

21. In all causes or matters to which an infant or person of unsound mind (whether so found by inquisition or not) or person under any other disability is a party any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court or a Judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Court or a Judge.

4. *Proceedings by or against Paupers.*

22. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth Two hundred and fifty pounds, his wearing apparel household goods and furniture and implements of trade and the subject-matter of the cause or matter only excepted. Paupers.

22A. Except under special circumstances, no person shall be admitted to sue or defend as a pauper who has directly or indirectly paid or agreed to pay any sum of money or who has given or agreed to give any security to any legal practitioner or to any other person for the conduct of his business in the Court. Disqualification.

23. A person desirous of suing or defending as a pauper shall lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding or defending. Case before counsel.

24. No person shall be permitted to sue or defend as a pauper unless the case laid before counsel for his opinion and his opinion thereon, with an affidavit of the party or his solicitor that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, and also distinctly denying that the applicant has directly or indirectly paid or agreed to pay any sum of money or has given or agreed to give any security to any legal practitioner or to any other person for the conduct of his business in the Court or stating fully the special circumstances relied upon in excuse, is produced to the Court or Judge to whom the application is made. Affidavit verifying case.

25. A person admitted to sue or defend as a pauper shall not be liable to any Court fee. Court fees.

26. Where a person is admitted to sue or defend as a pauper the Court or a Judge may, if necessary, assign a counsel or solicitor, or both, to assist him; and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or a Judge that he has some good reason for refusing, and no fee shall be payable by a pauper to his assigned counsel or solicitor. Assignment of counsel. Fees.

27. Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him any fee, profit, or reward for the conduct of his business in the Court; and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward shall be guilty of a contempt of Court. No fees from paupers.

27A. When a person intends to apply to be admitted to sue or defend as pauper, any person who with knowledge of such intention takes, or agrees to take, or seeks to obtain any fee, profit, or reward for the conduct of the business in Court shall be guilty of a contempt of Court. No fees from intending paupers.

28. If any person admitted to sue or defend as a pauper gives or agrees to give any such fee, profit, or reward he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper. Dispaupering.

Notice.

29. No notice of motion shall be served or summons issued, and no petition shall be presented on behalf of any person admitted to sue or defend as a pauper except for the discharge of his solicitor, unless it is signed by his solicitor.

Duty of solicitor.

30. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented without good cause.

Taxation of costs.

31. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or a Judge shall otherwise direct, be taxed as in other cases.

Failure to proceed.

31A. When a person admitted to sue *in formâ pauperis* omits to proceed to trial pursuant to notice, he may be called upon by notice of motion or summons to show cause to the Court or a Judge why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs shall be paid. On the hearing of such notice or summons the Court or the Judge may make such order as shall seem just.

Costs.

A person admitted to sue or defend *in formâ pauperis* shall not in any case be entitled to costs from the opposite party unless by order of the Court or a Judge.

5. *Administration and Execution of Trusts.*

Heir-at-law, next of kin, class.

32. (*a*) In any case in which the right of the next of kin or a class shall depend upon the construction which the Court or a Judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such next of kin or class, and the Court or Judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such next of kin or class shall have been ascertained by means of inquiry or otherwise, the Court or Judge may appoint some one or more person or persons to represent such next of kin or class; and the judgment of the Court or Judge in the presence of such persons shall be binding upon the next of kin or class so represented.

Power to appoint persons to represent absent parties.

(*b*) In any other case in which any next of kin or a class shall be interested in any proceedings, the Court or a Judge may, if having regard to the nature and extent of the interest of such persons, or any of them, it shall appear expedient, on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more persons to represent all or any of such next of kin or class, and the judgment or order of the Court or Judge in the presence of the persons so appointed shall be binding upon the persons so represented.

33. Any residuary legatee devisee or next of kin entitled to a judgment or order for the administration of the estate of a deceased person may have the same without serving the remaining residuary legatees devisees or next of kin. Residuary legatees or next of kin.

34. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, and who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate. Legatees where legacy charged on real estate.

35. Any residuary devisee entitled to the like judgment or order may have the same without serving any co-residuary devisee. Residuary devisee.

36. Any one of several *cestuis que trustent* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument may have the same without serving any other *cestui que trust*. *Cestuis que trustent.*

37. In all cases of actions for the prevention of waste or otherwise for the protection of property one person may sue on behalf of himself and all persons having the same interest. Waste.

38. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or *cestui que trust* for the administration of the estate or the execution of the trusts. Executors, &c.

39. The Court or a Judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may deem just for placing the defendant on the record on the same footing with regard to costs as other parties having a common interest with him in the matters in question. Conduct of action.

40. Whenever in any action for the administration of the estate of a deceased person, or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or order has been pronounced or made— Notice of judgment to be given.

(*a*) under Order XV.;

(*b*) under order XXXIII.; or

(*c*) affecting the rights or interests of persons not parties to the action—

the Court or a Judge may direct that any persons interested in the estate or under the trust or in the hereditaments shall be served with notice of the judgment or order, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties, and shall be at liberty to attend the proceedings under the judgment or order.

Any party so served may, within one month after such service, apply to the Court or Judge to discharge, vary, or add to the judgment or order.

Order to attend unnecessary.

41. It shall not be necessary for any person served with notice of any judgment or order to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the Prothonotary's Office in the same manner and subject to the same provisions as a defendant entering an appearance.

Appearance.

Entry of memorandum of service.

42. A memorandum of the service upon any person of notice of the judgment or order in any action under Rule 40 shall be entered in the Prothonotary's Office upon due proof by affidavit of such service.

Notice of Judgment.

43. Notice of a judgment or order served pursuant to Rule 40 shall be entitled in the action, and there shall be indorsed thereon a memorandum in the Form No. 28, Appendix G.

Service of notice on infant, &c.

44. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action.

Procedure where no personal representative.

46. If in any cause, matter, or other proceeding it shall appear to the Court or a Judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding on such notice to such persons (if any) as the Court or Judge shall think fit, either specially or generally by public advertisement; and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding.

Parties to administration proceedings.

47. In any cause or matter for the administration of the estate of a deceased person no party other than the executor or administrator shall, unless by leave of the Court or a Judge, be entitled to appear either in Court or in Chambers on the claim of any person not a party to the cause against the estate of the deceased in respect of any debt or liability. The Court or a Judge may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he shall think fit.

ORDER XVI. (A).

THIRD PARTY PROCEDURE.

Third party notice.

1. (1) Where in any action a defendant claims as against any person not already a party to the action (in this Order called the third party)—

(*a*) that he is entitled to contribution or indemnity, or

(*b*) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or

(*c*) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them—

the Court or Judge may give leave to the defendant to issue and serve a "third-party notice".

(2) The Court or Judge may give leave to issue and serve a "third-party notice" on an *ex parte* application supported by affidavit, or, where the Court or Judge directs a summons to the plaintiff to be issued, upon the hearing of the summons.

Form and issue of notice.
Am. G.G. 27.5.53 p. 2625.

2. (1) The notice shall state the nature and grounds of the claim or the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed. It shall be in accordance with the Form No. 1 in Appendix B, with such variations as circumstances may require, and shall be sealed and served on the third party in the same manner as a writ of summons is sealed and served and a copy of it shall be filed at the time of sealing.

(2) The notice shall, unless otherwise ordered by the Court or Judge, be served within the time limited for delivering the defence or, where the notice is served by a defendant to a counterclaim, the reply, and with it there shall be served a copy of the writ of summons or originating summons and of any pleadings delivered in the action.

Effect of notice.

3. The third party shall, as from the time of the service upon him of the notice, be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

Appearance.

4. The third party may enter an appearance in the action within eight days from service or within such further time as may be directed by the Court or Judge and specified in the notice:

Provided that a third party failing to appear within such time may apply to the Court or Judge for leave to appear, and

such leave may be given upon such terms, if any, as the Court or Judge shall think fit.

Default by third party.

5. If a third party duly served with a third-party notice does not enter an appearance or makes default in delivering any pleading which he has been ordered to deliver, he shall be deemed to admit the validity of and shall be bound by any judgment given in the action, whether by consent or otherwise, and by any decision therein on any question specified in the notice; and when contribution or indemnity or other relief or remedy is claimed against him in the notice, he shall be deemed to admit his liability in respect of such contribution or indemnity or other relief or remedy.

Rights of defendant suffering judgment by default against third party making default.

6. Where a third party makes default in entering an appearance or delivering any pleading which he has been ordered to deliver and the defendant giving the notice suffers judgment by default, such defendant shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or Judge, to enter judgment against the third party to the extent of any contribution or indemnity claimed in the third-party notice, or by leave of the Court or Judge to enter such judgment in respect of any other relief or remedy claimed as the Court or a Judge shall direct: Provided that it shall be lawful for the Court or Judge to set aside or vary such judgment against the third party upon such terms as may seem just.

Third party directions.

7. (1) If the third party enters an appearance the defendant giving notice may, after serving notice of the intended application upon the plaintiff the third party and any other defendant, apply to the Court or Judge for directions, and the Court or Judge may—

(*a*) where the liability of the third party to the defendant giving the notice is established on the hearing of the application, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant giving the notice, or

(*b*) if satisfied that there is a question or issue proper to be tried as between the plaintiff and the defendant and the third party or between any or either of them as to the liability of the defendant to the plaintiff or as to the liability of the third party to make any contribution or indemnity claimed, in whole or in part, or as to any other relief or remedy claimed in the notice by the defendant or that a question or issue stated in the notice should be determined not only as between the plaintiff and the defendant but as between the plaintiff, the defendant and the third party or any or either of them, order such question or issue to be tried in such manner as the Court or Judge may direct, or

(*c*) dismiss the application.

(2) Any directions given pursuant to this Rule may be given either before or after any judgment has been signed by the plaintiff against the defendant in the action, and may be varied from time to time and may be rescinded.

(3) The third party proceedings may at any time be set aside by the Judge.

Leave to defend.

8. The Court or Judge upon the hearing of the application for directions may, if it shall appear desirable to do so, give the third party liberty to defend the action, either alone or jointly with the original defendant, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, pleadings or documents to be delivered, or amendments to be made, and give such directions as to the Court or Judge shall appear proper for having the question and the rights and liabilities of the parties most conveniently determined and enforced and as to the mode and extent in or to which the third party shall be bound or made liable by the decision or judgment in the action.

At trial.

9. (1) Where the action is tried, the Judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for or against the defendant giving the notice against or for the third party, and may grant to the defendant or to the third party any relief or remedy which might properly have been granted if the third party had been made a defendant to an action duly instituted against him by the defendant:

Provided that execution shall not be issued without leave of the Court or a Judge until after satisfaction by the defendant of the judgment against him.

(2) Where the action is decided otherwise than by trial, the Court or Judge may, on application by motion or summons, make such order as the nature of the case may require, and, where the plaintiff has recovered judgment against the defendant, may order such judgment as may be just to be entered for or against the defendant giving notice against or for the third party.

Costs.

10. The Court or Judge may decide all questions of costs as between a third party and other parties to the action, and may order any one or more of them to pay the costs of any other, or others, or give such directions as to costs as the justice of the case may require.

Fourth and subsequent parties.

11. (1) Where a third party makes as against any person not already a party to the action such a claim as is defined in Rule 1 of this Order, the provisions of this Order regulating the rights and procedure as between the defendant and the third party shall apply *mutatis mutandis* as between the third party and such other person, and the Court or Judge may give leave to such third party to issue a third-party notice, and the preceding Rules of

this Order shall apply *mutatis mutandis,* and the expression "third-party notice" and "third party" shall apply to and include every notice so issued and every person served with such notice respectively.

(2) Where a person served with a notice under this Rule by a third party in turn makes such a claim as is defined in Rule 1 of this Order against another person not already a party to the action, this Order as applied by this Rule shall have effect as regards such further person and any other further person or persons so served and so on successively.

Co-defendants. Am. 27.5.53 p. 2625.

12. (1) Where a defendant claims against another defendant—

(*a*) that he is entitled to contribution or indemnity, or

(*b*) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or

Third party procedure.

(*c*) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant making the claim and should properly be determined not only as between the plaintiff and the defendant making the claim but as between the plaintiff and that defendant and another defendant or between any or either of them,

the defendant making the claim may without any leave serve on such other defendant a notice making such claim or specifying such question or issue. A copy of such notice shall be filed forthwith after service.

(2) No appearance to such notice shall be necessary and the same procedure shall be adopted for the determination of such claim, question or issue between the defendants as would be appropriate under this Order if he were a third party.

(3) Nothing herein contained shall prejudice the rights of the plaintiff against any defendant to the action.

Counter-claim.

13. In this Order the words "plaintiff" and "defendant" respectively shall include a plaintiff and defendant to a counterclaim.

Order XVII.

CHANGE OF PARTIES BY DEATH, ETC.

No abatement by marriage, &c.

1. A cause or matter shall not become abated by reason of the marriage, death, or insolvency of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite;* and whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the

judgment, but judgment may in such case be entered, notwithstanding the death.

Parties may be added.

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

Transfer of estate *pendente lite.*

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

Party added by order on change of interest.

4. Where by reason of marriage, death, or insolvency, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

Service of order.

5. An order obtained as in the last preceding Rule mentioned shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following Rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

Discharge or variation of order.

6. Where any person who is under no disability, or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, shall be served with such order as in Rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the service thereof.

Person under disability.

7. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any order as in Rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the appointment of a guardian *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

Death of party and failure to proceed.

8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant, or as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue, as in the case provided for by Order XLII., Rule 23.

Abatement to be certified and entered.

9. When any cause or matter becomes abated, or in the case of any such change of interest as is by this order provided for, the solicitor for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the Prothonotary, who shall cause an entry thereof to be made in the Cause Book opposite to the name of such cause or matter.

Abated cause to be struck out.

10. Where any cause or matter shall have been standing for one year in the Cause Book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause Book.

ORDER XVIII.

JOINDER OF CAUSES OF ACTION.

Joinder of several causes.

1. Subject to the following Rules of this Order the plaintiff may unite in the same action several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

Not with action for recovery of land.

2. No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same, or any part thereof, are held, or for any wrong or injury to the premises claimed.

Joinder of claim of possession in action for foreclosure or redemption.

Provided that nothing in this Order contained shall prevent any plaintiff in any action for foreclosure or redemption from asking for or obtaining an order against the defendant for

delivery of the possession of the mortgaged property to the plaintiff, on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption, and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these Rules.

Provided also that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may, by motion or summons, apply to the Court or a Judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case shall require.

Claims by trustee in insolvency.

3. Claims by a trustee in insolvency as such shall not, unless by leave of the Court or a Judge, be joined with any claim by him in any other capacity.

Husband and wife.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

Executors.

5. Claims by or against an executor or adminstrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

Joint and separate claims.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

Subject to rules 1, 8, and 9.

7. The last three preceding Rules shall be subject to Rules 1, 8, and 9 of this Order.

Application of defendant to confine action.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of together.

Judge may exclude causes inconvenient to be joined.

9. If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of together, the Court or a Judge may order any of such causes of action to be excluded and consequential amendments to be made, and may make such order as to costs as may be just.

ORDER XVIII. (A).

REQUEST FOR PLEADINGS.

Notice requiring pleadings.

1. The plaintiff may indorse on the writ a notice that he requires pleadings and if he do not do so any other party may, within five days after his appearance, give notice to the plaintiff that such party desires pleadings.

Delivery of pleadings.

2. If such notice be given, pleadings may (subject to Order XX., Rule 1) be delivered between the parties. Such pleadings

shall be subject to the same rules as if they had been delivered pursuant to an order.

Costs.

3. The costs of pleadings shall ultimately be borne by the party giving such notice, unless a Judge shall otherwise order.

If no notice given.

4. If no such notice as aforesaid be given, the action shall proceed to trial without pleadings, unless a Judge shall otherwise order.

Notice by plaintiff.

5. When the plaintiff gives such notice as aforesaid, he shall (subject to Order XX., Rule 1) deliver a statement of claim to each defendant within 21 days after such defendant has entered an appearance, unless a Judge shall otherwise order.

Notice by other party.

6. If any other party gives such notice as aforesaid, the plaintiff shall deliver a statement of claim to each defendant who has appeared within 21 days after receipt of such notice, unless the plaintiff or the party giving such notice states therein that the indorsement on the writ is sufficient, or unless a Judge shall otherwise order.

Indorsement on writ in lieu of statement of claim.

7. If the plaintiff desires that the indorsement on the writ shall stand in place of a statement of claim he shall so state in his notice. In that event no statement of claim shall be delivered unless some other party gives notice that he requires one, when a statement of claim shall be delivered within 21 days after the service of such notice, unless a Judge shall otherwise order.

Delivery of defence.

8. If the indorsement on the writ stands in place of a statement of claim, the statement of defence shall be delivered within ten days after the appearance of the party delivering such defence, unless a Judge shall otherwise order, and all subsequent pleadings, if any, shall be subject to the same rules as if they had been delivered pursuant to an order.

ORDER XIX.

PLEADING GENERALLY.

Pleading Rules.

1. The following rules of pleading shall be used in the Court, except as provided by Order LXVIII.

Pleadings and particulars not to be prolix.

2. Pleadings and particulars shall be as brief as the nature of the case will admit, and the taxing officer in adjusting the costs of the action shall at the instance of any party or may without any request inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

Set-off or counter-claim.

3. A defendant in an action may set off, or set-up by way of counter-claim, against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such

set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Statements in pleadings.

4. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall when necessary be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; but where the pleadings have been settled by counsel they shall be signed by him, and if not so settled they shall be signed by the solicitor, or by the party if he sues or defends in person.

Forms.

5. The Forms in Appendices C, D, and E, when applicable, and where they are not applicable forms of the like character, as near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be.

Prolixity.

Particulars in pleading.

6. In all cases in which the party pleading relies on any contract or on misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading. Upon any taxation of costs the taxing officer shall have regard to the provisions of this Rule when dealing with the costs of any application for particulars or of any further particulars.

Further statement or particulars.

7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

Letters for particulars.

7A. Before applying for particulars by summons or notice a party may apply for them by letter. The costs of the letter and of any particulars delivered pursuant thereto shall be allowable on taxation. In dealing with the costs of any application for particulars by summons or notice, the provisions of this rule shall be taken into consideration by the Court or Judge. No costs shall be allowed on taxation of any request for particulars which is prolix unreasonable or unnecessary.

Particulars before defence.

7B. Particulars of a claim shall not be ordered under Rule 7 to be delivered before defence unless the Court or Judge shall be of opinion that they are necessary or desirable to enable the

defendant to plead or ought for any other special reason to be so delivered.

Time for pleading after particulars.

8. The party at whose instance particulars have been delivered under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this Rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time.

Written or printed.

9. Every pleading may be either printed, type-written, or written.

Mode of delivery.

10. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed in the Prothonotary's office.

Delivery and marking of pleadings.

11. Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, the reference to the number of the action, the title of the action, and the description of the pleading, and shall be indorsed with the name and place of business of the solicitor and agent (if any) delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

Not guilty by statute preserved.

12. Nothing in these Rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence to the same cause of action without the leave of the Court or the Judge.

Allegations not denied, admitted except against infants, &c.

13. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

Conditions precedent.

14. Any condition precedent the performance or occurrence of which is intended to be contested shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and subject thereto an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Special matters to be pleaded.

15. When there are pleadings the defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law and all such grounds of defence or reply (as the case may be) as if not raised

would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality, either by Statute or Common Law, any statutory provision requiring contracts to be in writing.

No departure.

16. No pleading not being a petition or summons shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Denial of allegations to be specific.

17. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth except damages.

Joinder of issue.

18. Subject to the last preceding Rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any) subsequent to reply may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

Denial to be substantial answer.

19. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

Effect of denial of contract.

20. When a contract, promise, or agreement is alleged in any pleading or particulars a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the *Instruments Act* 1928, or otherwise.

Contents of document.

21. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible without setting out the whole or any part thereof unless the precise word of the document or any part thereof are material.

Allegation of malice, intent, or knowledge.

22. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person,

it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Of notice.

23. Wherever it is material to alleged notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred be material.

Of implied contract or relation.

24. Wherever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law.

25. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied. (*E.g.*—Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.)

Actions for trespass.

25A. In action for trespass to land the close or place in which it was committed must be designated in the statement of claim by name or abuttals or other description, or by a plan drawn in the margin.

Technical objection.

26. No technical objection shall be raised to any pleading on the ground of any alleged want of form.

Striking out scandals and matters tending to embarrass or delay.

27. The Court or a Judge may, at any stage of the proceedings, order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and may in any such case, if it or he shall think fit, order the costs of the application to be paid as between solicitor and client.

Preliminary act in actions of collision.

28. In actions for damage by collision between vessels, unless the Court or a Judge shall otherwise order, the solicitor for the plaintiff shall within seven days after the commencement of the action, and the solicitor for the defendant shall within seven days after appearance and before any pleading is delivered, file with the Prothonotary a document which shall be called a "Preliminary Act" and shall be sealed up and shall not be opened until ordered by the Court or a Judge, and which shall contain a statement of the following particulars:—

(*a*) The names of the vessels which came into collision and the names of their masters.

(*b*) The time of the collision.

(*c*) The place of the collision.

(*d*) The direction and force of the wind.
(*e*) The state of the weather.
(*f*) The state and force of the tide.
(*g*) The course and speed of the vessel when the other was first seen.
(*h*) The lights (if any) carried by her.
(*i*) The distance and bearing of the other vessel when first seen.
(*k*) The lights (if any) of the other vessel which were first seen.
(*l*) Whether any lights of the other vessel, other than those first seen, came into view before the collision.
(*m*) What measures were taken, and when, to avoid the collision.
(*n*) The parts of each vessel which first came into contact.
(*o*) What sound signals (if any), and when, were given.
(*p*) What sound signals (if any), and when, were heard from the other vessel.

The Court or a Judge may order the "Preliminary Act" to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings. But in such case if either party intends to rely on the defence of compulsory pilotage he may do so, and shall give notice thereof in writing to the other party within two days from the opening of the Preliminary Act. As soon as such order shall have been made, the pleadings as between the parties shall be deemed to be closed.

Order XX.

STATEMENT OF CLAIM.

Delivery of statement of claim.

Am. G.G. 26.4.39 p. 1382.

1. (*a*) When the writ is specially indorsed under Order III., Rule 4, no further statement of claim shall be delivered unless the Court or a Judge otherwise order, but the indorsement on the writ shall be deemed to be the statement of claim.

Ib.

(*b*) Subject to the provisions of Order XIII., Rule 11, as to filing a statement of claim when there is no appearance, and of Order XVIIIA., no statement of claim shall be delivered, unless the same be ordered.

(*c*) When delivery of a statement of claim is ordered, the same shall be delivered within the time specified in the order, or, if no time be so specified, within twenty-one days from the date of the order, unless in either case the time be extended by the Court or a Judge.

Alteration of claim without amendment of writ.

2. Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ.

Specific relief to be claimed.

3. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for further or other relief, which may always be given, as the Court or a Judge may think just,

to the same extent as if it had been asked for. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his defence.

Several claims and defences.

4. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts.

Account stated.

5. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.

Order XXI.

DEFENCE AND COUNTER-CLAIM.

Denial of debt inadmissible.

1. In actions for a debt or liquidated demand in money comprised in Order III., Rule 4, a mere denial of the debt shall be inadmissible.

Bills of exchange, &c.

2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact; *e.g.*, the drawing, making, indorsing, accepting, presenting, or notice of dishonour of the bill or note.

Simple contracts, bonds, &c.

3. In actions comprised in Order III., Rule 4, classes (*a*) and (*b*), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e.g.*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.

Damages.

4. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted.

Representative capacities specifically traversed.

5. If either party wishes to deny the right of any other party to claim as executor or as trustee, whether in insolvency or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

Time for defence.

6. Where a statement of defence is ordered, the same shall be delivered within the time specified in the order, or, if no time be so specified, within ten days from the delivery of the statement of claim, or the date of the order whichever shall be last, unless such time is extended by the Court or a Judge.

Time for defence.

8. When a statement of claim is delivered pursuant to an order, or filed in default of appearance under Order XIII., r. 11,

the defendant, unless otherwise ordered, shall deliver his defence within such time (if any) as shall be specified in such order, or, if no time be specified, within ten days from the delivery, or filing in default, of the statement of claim, unless in either case the time is extended by the Court or a Judge.

Costs of improper traverse or refusal to admit.

9. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court or Judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

Counter-claim to be so stated.

10. Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall state specifically that he does so by way of counter-claim.

Defence including person not party.

11. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

Service on person not party.

12. Where any such person as in the last preceding Rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same Rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 2 in Appendix B, or to the like effect.

Must appear.

13. Any person not originally a party to the action who is served with a defence and counter-claim as aforesaid must appear thereto, and may be proceeded against as if he had been served with a writ of summons to appear in an action.

May deliver reply.

14. Any person named in a defence as a party to a counter-claim thereby made may without leave deliver a reply within ten days from the service upon him of a copy of the defence or such other time as the Court or a Judge may order.

Counter-claim may be excluded from action.

15. Where a defendant sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may apply before reply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just.

Counter-claim may proceed though action stayed.

16. If in any case in which a defendant sets up a counter-claim the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with.

and the defendant counter-claiming shall, for all the purposes relating to the trial of the counter-claim, be deemed to be the plaintiff, and the plaintiff or the third party the defendant.

Judgment may be given for defendant for balance.

17. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court or a Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

Marginal reference of general issue by Statute.

19. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of any Act, he shall insert in the margin of his pleading the words "By Statute," together with the year of the reign in which the Act upon which he relies for that purpose was passed, and also the chapter or number (as the case may be) and section of such Act; otherwise such defence shall be taken not to have been pleaded by virtue of any Act.

No pleading in abatement.

20. No plea or defence shall be pleaded in abatement.

Plea of the title unnecessary.

21. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies or does not admit the allegations of fact contained in the plaintiff's statement of claim. And he may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned.

Defence of judgment recovered.

22. Where a defendant in his defence relies on a judgment recovered he shall in the margin of his defence state the date of such judgment, and, if such judgment shall be in a court of record, the number of the roll on which such proceedings are entered (if any); and, in default of his so doing, the plaintiff shall be at liberty to proceed as for default of pleading; and, in case the same be falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer or person having the custody of the records or proceedings of the Court where such judgment is alleged to have been recovered that there is no such record or entry of a judgment as therein stated, shall be at liberty to proceed as for default of pleading.

Issue of *nul tiel* record.

23. On a reply or other pleading denying the existence of a record pleaded by the defendant, a rule for the defendant to produce the record shall not be necessary or used, and instead thereof a four days' notice shall be substituted, requiring the defendant to produce the record, otherwise judgment.

Order XXII.

PAYMENT INTO AND OUT OF COURT AND TENDER.

1. (1) In any action for a debt or damages or in an Admiralty action the defendant may at any time after appearance upon notice to the plaintiff pay into court a sum of money in satisfaction of the claim or (where several causes of action are joined in one action) in satisfaction of one or more of the causes of action; provided that with a defence setting up tender before action the sum of money alleged to have been tendered must be brought into court. Payment into Court.

(2) Where the money is paid into court in satisfaction of one or more of several causes of action the notice shall specify the cause or causes of action in respect of which payment is made and the sum paid in respect of each such cause of action unless the court or a judge otherwise order. Specific causes of action.

(3) The notice shall be in Form 3 or 3A in Appendix B, and shall state whether liability is admitted or denied and receipt of the notice shall be acknowledged in writing by the plaintiff within three days. Notice.

2. (1) Where money is paid into court under Rule 1 the plaintiff may within seven days of the receipt of the notice of payment into court, accept the whole sum or any one or more of the specified sums in satisfaction of the claim or in satisfaction of the cause or causes of action to which the specified sum or sums relate, by giving notice to the defendant in Form 4 in Appendix B; and thereupon he shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid. Plaintiff may take out money.

(2) Payment shall be made to the plaintiff or on his written authority to his solicitor, and thereupon proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall be stayed.

(3) If the plaintiff accepts money paid into court in satisfaction of his claim, or if he accepts a sum or sums paid in respect of one or more of specified causes of action, and gives notice that he abandons the other cause or causes of action, he may, after four days from payment-out and unless the Court or a Judge, otherwise order, tax his costs incurred to the time of payment into Court, and forty-eight hours after taxation may sign judgment for his taxed costs. Plaintiff may tax costs.

(4) A plaintiff in an action for libel or slander who takes money out of court may apply by summons to a judge in chambers for leave to make in open court a statement in terms approved by a Judge.

(5) This rule does not apply to Admiralty actions or to an action or cause of action to which a defence of tender before action is pleaded.

3. If the whole of the money in court is not taken out under Rule 2, the money remaining in court shall not be paid out except Money remaining in Court.

in satisfaction of the claim or specified cause or causes of action in respect of which it was paid in and in pursuance of an order of the Court or a Judge, which may be made at any time before, at or after trial.

Several defendants.

4. (1) Money may be paid into court under Rule 1 by one or more of several defendants sued jointly or in the alternative, upon notice to the other defendant or defendants.

(2) If the plaintiff elects within seven days after receipt of notice of payment into court to accept the sum or sums paid into court, he shall give notice as in Form 4 in Appendix B to each defendant.

(3) Thereupon all further proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall be stayed, and the money shall not be paid out except in pursuance of an order of the Court or a Judge dealing with the whole costs of the action or cause or causes of action (as the case may be).

Counter-claim.

5. A plaintiff or other person made defendant to a counter-claim may pay money into court in accordance with the foregoing Rules, with the necessary modifications.

Non-disclosure of payment into Court.

6. Except in an action to which a defence of tender before action is pleaded or in which a plea under section seven of the *Wrongs Act* 1928 has been filed, no statement of the fact that money has been paid into court under the preceding Rules of this Order shall be inserted in the pleadings and no communication of that fact shall at the trial of any action be made to the Judge or Jury until all questions of liability and amount of debt or damages have been decided, but the Judge shall, in exercising his discretion as to costs, take into account both the fact that money has been paid into Court and the amount of such payment.

Payment in under order.

7. Money paid into Court under an order of the Court or a Judge shall not be paid out of Court except in pursuance of an order of the Court or a Judge. Provided that, where money has been paid into Court by the defendant pursuant to an order under the provisions of Order XIV. or under Part I. of the *Instruments Act* 1928, he may (unless the Court or a Judge shall otherwise order) by his pleading or notice in writing appropriate the whole or any part of such money, and any additional payment if necessary to the whole or any specified portion of the plaintiff's claim; and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding Rules of this Order relating to money paid into Court, and shall be subject in all respects thereto.

Appropriation.

Money recovered by infant, &c., paid into Court to abide order.

8. In any cause or matter in which a sum of money has been awarded to or recovered by or agreed to be paid to or for an infant or person of unsound mind not found so by inquisition the Court or a Judge may at or after the trial order that the whole or any part of such sum shall be paid into Court to the credit of an

account intituled in the cause or matter; and any sum so paid into Court, and any dividend or interest thereon, shall be subject to such orders as may from time to time be made by the Court or a Judge concerning the same, and may either be invested or be paid out of Court or transferred to such persons, to be held and applied upon and for such trust and in such manner as the Court or a Judge shall direct.

8A. In every case in which the Court or a Judge orders that money in Court or to be paid into Court be invested on behalf of an infant, a copy of such order shall be filed in the office of the Prothonotary. Such copy order shall be certified by the Prothonotary and forwarded by him as soon as practicable to the Master. The Prothonotary shall also as soon as practicable after the filing of the copy order forward to the Master a cheque for the amount in Court subject to the order. No fee shall be payable in respect of the filing of such copy order. Ins. G.G. 28.2.51 p. 1569.

9. In matters within the cognizance of the Court in its Equitable Jurisdiction previously to the commencement of the *Judicature Act* 1883 payment into and out of Court, and the mode in which money in Court shall be dealt with, shall be according to the practice heretofore in use. Former practice continued.

10. Notwithstanding anything contained in the foregoing Rules of this Order, except where an infant or a person of unsound mind, or a person suing or being sued on behalf of such a person, is a party to the action, money paid into Court under Rule 1 may be paid out by the Prothonotary upon and in accordance with a written authority signed by all parties to the action or their solicitors, each signature by a party to be verified by affidavit. Payment out of Court. Ins. G.G. 27.10.54 p. 7143.

Order XXIII.

REPLY AND SUBSEQUENT PLEADINGS.

1. No reply or subsequent pleading merely joining issue shall be delivered. No reply, &c., merely joining issue.

2. A plaintiff shall deliver his reply (if any) within the time specified in the order, or, if no time be so specified, within eight days after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge. Time for reply.

3. No pleading subsequent to reply shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit. Every pleading subsequent to reply shall be delivered within the time specified in the order giving leave to deliver the same, or, if no time be so specified, within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge. Subsequent pleadings. Time for pleading after reply.

4. Where a counter-claim is pleaded the answer thereto shall be subject to the Rules applicable to statements of defence. Reply to counter-claim.

5. The pleadings shall be deemed to be closed—(*a*) where any party has made default as mentioned in Order XXVII, Rule 13; Pleadings closed.

(*b*) where no pleading beyond a defence is ordered or delivered at the expiration of eight days after the defence has been delivered; (*c*) where there are pleadings beyond a defence at the expiration of eight days after the last of such pleadings has been delivered.

ORDER XXIV.

MATTERS ARISING PENDING THE ACTION.

Defence arising before statement of defence.

1. (*a*) Where there are pleadings any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply.

(*b*) Where there are no pleadings the defendant shall not, except by leave of a Judge, be allowed to rely on any ground of defence which has arisen after action brought unless he shall have given, within eight days after such ground of defence shall have arisen, notice in writing to the plaintiff stating the particulars thereof.

Defence arising after statement of defence.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the Court or a Judge, deliver a further defence or further reply (as the case may be) setting forth the same.

Confession of defence.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last Rule mentioned, or by notice in writing under Rule 1 (*b*), alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, which confession may be in Form No. 5 in Appendix B, with such variations as circumstances may require; and he may thereupon sign judgment for his costs up to the time of the pleading of such defence, or the giving of such notice, unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order. This rule shall apply *mutatis mutandis* to a reply to a counter-claim.

Costs.

ORDER XXV.

PROCEEDINGS IN LIEU OF DEMURRER.

No demurrer allowed.

1. No demurrer shall be allowed.

Points of law how disposed of.

2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the

Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

Order thereon.

3. If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

Striking out pleadings.

4. The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer; and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

Declaratory judgment.

5. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

Order XXVI.

DISCONTINUANCE.

May be entire or partial.

1. The plaintiff may where there are pleadings at any time before the receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), and where there are no pleadings the plaintiff may, within fifteen days after appearance, by notice in writing, wholly discontinue his action against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal (as the case may be) shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a Judge; but the Court or a Judge may, before, or at or after the hearing or trial, upon such terms as to costs and as to any other action and otherwise as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out; but it shall not be competent to a defendant to withdraw his defence or any part thereof without such leave.

Striking out defence.

Costs.

2. A defendant may enter judgment for the costs of the action if it is wholly discontinued against him, or for the costs occasioned

by the matter withdrawn if the action be not wholly discontinued, in case such respective costs are not paid within four days after taxation.

Subsequent action stayed until costs paid.

3. If any subsequent action shall be brought before payment of the costs of a discontinued action for the same, or substantially the same, cause of action the Court or a Judge may, if they or he think fit, order a stay of such subsequent action until such costs shall have been paid.

Order XXVII.

DEFAULT OF PLEADING.

Non-delivery of statement of claim.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose the defendant may, at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim shall have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or Judge shall seem just.

Judgment by default.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant, being bound to deliver a defence, does not, within the time allowed for that purpose, deliver such defence, the plaintiff subject to Rule 2A of this Order may, at the expiration of such time upon filing an affidavit showing the facts aforesaid, enter final judgment for the amount claimed with costs.

When such judgment may be entered.

2A. No judgment shall be entered in default of pleading without the leave of a Judge in any action in which the plaintiff is claiming payment of moneys secured by a mortgage or charge, and the Judge from whom such leave is sought may require such evidence as he thinks necessary and may require notice of such evidence to be given to the defendant.

Default of one of several defendants.

Am. G.G. 26.4.39 p. 1382.

3. When in any such action as in Rule 2 mentioned there are several defendants, if one of them make default as mentioned in Rule 2 the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

Damages.

Detention of goods.

4. If the plaintiff's claim be for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant, or all the defendants, if more than one, make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, and the value of the goods, and the damages, or the damages only, as the case may be, shall be ascertained by the Prothonotary unless the Court or a Judge otherwise direct.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one or more of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others. And in such case the value and amount of damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct.

On default of one or more of several defendants.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and any defendant make default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand and also enter interlocutory judgment for the value of the goods and the damages, or damages only, as the case may be, and proceed as mentioned in Rules 4 and 5.

Debt or damages and detention of goods or damages.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

Recovery of land.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed or any part of them, or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or (if there be more than one defendant) some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in Rules 4 and 5.

Mesne profits.

9. If the plaintiff's claim be for a debt or liquidated demand, or for pecuniary damages only, or for the detention of goods with or without claim for pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the Court or a Judge enter judgment, final, or interlocutory, as the case may be, for the part unanswered, provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand: provided also that, where there is a counterclaim, execution on any such judgment as above mentioned in respect of the plaintiff's claim shall not issue without leave of the Court or a Judge.

Where a defence is delivered to part of claim only.

11. In all other actions than those in the preceding Rules of this Order mentioned, if the defendant, being bound to deliver a defence, makes default in delivering the same, the plaintiff may apply to the Court or a Judge for judgment; and such judgment

Motion for judgment on default.

shall be given as, upon the writ or statement of claim, the Court or a Judge shall consider the plaintiff to be entitled to.

On default of one of several defendants.

12. Where in any such action as mentioned in the last preceding Rule there are several defendants, then if one of such defendants make such default as aforesaid the plaintiff may either, if the cause of action be severable, apply to the Court or a Judge for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

Default in subsequent pleading.

13. If the plaintiff makes default in delivering a reply or any party does not deliver any subsequent pleading within the period ordered or allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.

Default of any other party to issue.

14. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading which he is bound to deliver the opposite party may apply to the Court or a Judge for such judgment (if any) as upon the pleadings he may appear to be entitled to. And the Court or Judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

Judgment by default may be set aside.

15. Any judgment by default, whether under this Order or under any other of these Rules, may be set aside by the Court or a Judge upon such terms as to costs or otherwise as such Court or Judge may think fit.

Order XXVIII.

AMENDMENT.

Of indorsement or pleadings.

1. The Court or a Judge may at any stage of the proceedings allow either party to alter or amend his indorsement or pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Plaintiff may amend once without leave.

2. The plaintiff may, without any leave, amend his statement of claim whether indorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or where no defence is delivered at any time before the expiration of fifteen days from the appearance of the defendant who shall have last appeared, or where defence is delivered but no order for reply is made within ten days from delivery of the defence or the last of the defences.

Defendant may amend without leave within time limited.

3. A defendant who has set up any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for answering the reply, and before such answer or in case there be no reply, then

at any time before the expiration of fifteen days from the delivery of the defence.

Amended pleading may be disallowed.

4. Where any party has amended his pleading under either of the last two preceding Rules the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment or any part thereof; and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may seem just.

Amended pleading to meet amendment.

5. Where any party has amended his pleading under Rules 2 or 3, the opposite party shall plead to the amended pleading or amend his pleading within the time he then has to plead or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

Amendment by leave.

6. In all cases not provided for by the preceding Rules of this Order application for leave to amend may be made by either party to the Court or a Judge or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just.

Failure to amend within time limited.

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid or of such fourteen days (as the case may be), become *ipso facto* void, unless the time is extended by the Court or a Judge.

Mode of amendment.

Am. G.G. 26.4.39 p. 1382.

8. An indorsement or a pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place or are so numerous or of such a nature that the making them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a copy of the document as amended.

Marking amendment.

9. Whenever any indorsement or pleading is amended the same when amended shall be marked with the date of the order (if any) under which the same is so amended, and of the day on which such amendment is made, in manner following, viz:—
"Amended the day of
19 , pursuant to order dated the ."

Delivery of amended pleading.

10. Whenever any indorsement or pleading is amended such amended document shall be delivered to the opposite party within the time allowed for amending the same.

Clerical mistakes in judgments.

11. Clerical mistakes in judgments or orders or errors arising therein from any accidental slip or omission may at any time be

corrected by the Court or a Judge on motion or summons without an appeal.

Amendment of proceedings.

12. The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

Costs.

13. The costs of and occasioned by any amendment made pursuant to Rules 2 and 3 of this Order shall be borne by the party making the same, unless the Court or a Judge shall otherwise order.

Order XXX.

SUMMONS FOR DIRECTIONS.

Summons for directions.

1. Any party to an action other than an action commenced by originating summons may at any stage after appearance take out a summons for any necessary directions.

Hearing of summons.

2. Upon the hearing of the summons the Judge shall give such directions as may be just with respect to all or any interlocutory proceedings before trial and as to place time and mode of trial and may order the action to be set down forthwith and may settle the issues to be tried.

No affidavit to be used.

3. No affidavit shall be made or used on the hearing of the said summons except by special order of the Judge.

Parties to apply for directions.

4. On the hearing of the summons any party to whom the summons is addressed shall, so far as practicable, apply for any order or directions as to any interlocutory matter or thing in the action which he may desire.

Subsequent applications.

5. Any application subsequently to the original summons for any directions as to any interlocutory matter or thing by any party shall be made under the summons by two clear days' notice to the other party, stating the grounds of the application.

Costs of subsequent applications.

6. Any application by any party which might have been made at the hearing of the original summons shall, if granted on any subsequent application, be granted at the costs of the party applying, unless the Judge shall be of opinion that the application could not properly have been made at the hearing of the original summons.

Evidence.

7. On the hearing of the summons the Judge may order that evidence of any particular fact, to be specified in the order, shall be given at the trial by statement on oath of information and belief, or by production of documents or entries in books, or by copies of documents or entries, or otherwise as the Judge may direct.

Interlocutory proceedings when no summons for directions.

8. Where no summons for directions has been taken out, the Judge may, on an ordinary summons, make an order respecting any matter that might have been dealt with under a summons for directions.

Order XXXI.

DISCOVERY AND INSPECTION.

Subst. G.G. 1.6.49 p. 3143.

Discovery by interrogations.

1. In any action commenced by Writ of Summons any party may once, without leave, and in any other cause or matter may, by leave of a Judge, deliver interrogatories in writing for the examination of any one or more of the opposite parties and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer. Further interrogatories may be delivered, by leave of a Judge, on such terms as to costs or otherwise as he may order.

Who may answer.

1A. A Judge may order that all or any of such interrogatories may be answered by some person on behalf of any party and in such case the answers of such person shall be as effective and binding in all respects as if made by the party interrogated.

When irrelevant.

1B. Interrogatories which do not relate to any matters in question in the action, cause or matter shall be deemed irrelevant notwithstanding that they might be admissible on the oral examination of a witness.

Offer to discover to be considered.

2. In deciding upon any application for leave to deliver interrogatories the Court or Judge shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the matter in question and any leave shall be given as to such only of the interrogatories as shall be considered necessary either for disposing fairly of the cause or matter or for saving costs. Instead of giving leave to administer any specified interrogatories the Judge may grant leave generally or limited to a particular subject of inquiry.

Costs of interrogatories or discovery.

3. The costs of interrogatories and answers thereto or of discovery shall, unless the Court or a Judge shall otherwise order, ultimately be borne by the party requiring the same.

Form of interrogatories.

4. Interrogatories shall be in the Form No. 6 in Appendix B, with such variations as circumstances may require.

Interrogatories to Corporation or Company.

5. The affidavit of discovery and the affidavit in answer to interrogatories in the case of a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, shall be made by the secretary or other proper officer of such corporation, company or body. Provided however that any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company or body, and an order may by made accordingly.

Objections may be taken in answer.

6. Any objection to answering any one or more of several interrogatories, on the ground that it or they is or are scandalous or irrelevant or not bona fide for the purpose of the cause or

matter or are unreasonable, oppressive or unnecessay, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer notwithstanding that such interrogatories may have been delivered pursuant to leave.

Answer.

8. Interrogatories shall be answered by affidavit to be filed within ten days of their delivery or within such other time as a Judge may allow.

Form.

9. An affidavit in answer to interrogatories shall be in the Form No. 7 in Appendix B, with such variations as circumstances may require.

Order for further answer.

11. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further (as the case may be). And an order may be made requiring him to answer, or answer further, either by affidavit or by *viva voce* examination, as the Court or a Judge may direct.

Discovery of documents.

12. In any action commenced by Writ of Summons any party may serve upon any opposite party a notice for discovery in accordance with the Form 7A in Appendix B. In any other cause or matter any party may, without filing an affidavit, apply to the Court or a Judge for an order directing any other party to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein. On the hearing of such application the Court or Judge may either refuse or adjourn the same if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in its or his discretion, be thought fit.

Affidavit in opposition.

13. The party served with a notice or an order for discovery shall, in the affidavit in compliance therewith, specify which, if any, of the documents therein mentioned he objects to produce, and such affidavit shall be in the Form No. 8 Appendix B, with such variations as circumstances may require.

Neglect to make discovery.

13A. If any party neglect or refuse to make discovery within the time limited or shall make insufficient discovery, a Judge may order compliance with such discovery upon such terms as he shall think fit.

Production of documents.

14. It shall be lawful for the Court or a Judge at any time during the pendency of any cause or matter to order the production by any party thereto, upon oath, of such of the documents in his possession or power relating to any matter in question in such cause or matter as the Court or Judge shall think right; and the Court or Judge may deal with such documents, when produced in such manner as shall appear just.

Inspection of documents.

15. Every party to a cause or matter shall be entitled at any time, by notice in writing, to give notice to any other party, in whose writ, pleading, particulars, or affidavit reference is made

to any document, to produce such document for the inspection of the party giving such notice or of his solicitor and to permit him to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter unless he shall satisfy the Court or a Judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge shall deem sufficient for not complying with such notice, in which case the Court or Judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge shall think fit.

Notice to produce.

16. Notice to any party to produce any documents referred to in his writ, pleading, particulars, or affidavit shall be in the Form No. 9 Appendix B, with such variations as circumstances may require.

Appointment for inspection.

17. The party to whom such notice is given shall, within two days from the receipt of such notice, if all documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or, if he appear in person, at some office not more than three miles from the office of the Prothonotary, or, in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in the Form No. 10 in Appendix B, with such variations as circumstances may require.

Order for inspection.

18. If the party served with the notice under Rule 15 omits to give such notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the Judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit. And any Application to inspect documents except such as are referred to in the writ, pleadings, particulars, or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

Application for it.

Verified copies.

19. (1) Where inspection of any business books is applied for, the Court or a Judge may, if it or he should think fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some

person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original books any and what erasures, interlineations, or alterations. Provided that notwithstanding that such copy has been supplied, the Court or a Judge may order inspection of the books from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court or a Judge to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court or a Judge may, on the application of any party to a cause or matter at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power, and, if not then in his possession, when he parted with the same, and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the cause or matter, or to some of them.

Question of discovering or inspection may be reserved.

20. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Attachment on failure to comply with order.

21. If any party fails to comply with an order for interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if he fails to comply with such an order or to answer interrogatories duly delivered for his examination or to comply with a notice for discovery, be liable, if a plaintiff, to have his action dismissed for want of prosecution and, if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not defended; and the party interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

Service on solicitor.

22. Service of an order for interrogatories or discovery or inspection on the Solicitor for the party against whom such order is made shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against

whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

Notice to client.

23. A solicitor for any party to whom interrogatories are delivered or upon whom an order for interrogatories, or a notice or order for discovery, or an order for inspection is served, who neglects, without reasonable excuse, to give notice thereof to his client shall be liable to attachment.

One answered part may be used without the rest.

24. Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them he may direct them to be put in.

Action against or by Sheriff.

25. In any action against or by the Sheriff in respect of any matters connected with the execution of his office the Court or a Judge may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to a notice or an order for discovery shall be made by the officer actually concerned.

Order to apply to infants.

26. This order shall apply to infant plaintiffs and defendants, and to their next friends and guardians *ad litem*.

Order XXXII.

ADMISSIONS AND NOTICES TO PRODUCE.

Party may admit opposite case.

1. Any party to a cause or matter may give notice, by his pleading or otherwise, in writing, that he admits the truth of the whole or any part of the case of any other party.

Admission of facts and documents.

2. Either party may call upon the other party to admit within a reasonable time before the trial any specific fact or document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the cost of proving the fact or document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless the Court or a Judge certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Form of notice.

3. Such notice to admit may be in the Form No. 11 in Appendix B, with such variations as circumstances may require.

Form of admission of facts.

5. An admission of facts pursuant to notice shall be in the Form No. 13 in Appendix B, with such variations as circumstances may require.

Order of Court during action.

6. Any party may at any stage of a cause or matter, where admissions of facts have been made, either on the pleadings or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties. The Court or a Judge may, on any such application, make such order or give such judgment as the Court or Judge may think just.

Evidence of admission.

7. An affidavit of the solicitor or his clerk of the due signature of any admissions made in pursuance of any notice to admit documents or facts shall be *primâ facie* evidence of such admissions if evidence thereof be required.

Notice to produce.

8. Notice to produce documents shall be in the Form No. 14 in Appendix B, with such variations as circumstances may require.

Evidence of service.

An affidavit of the solicitor or his clerk of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be *primâ facie* evidence of the service of the notice and of the time when it was served.

Costs.

9. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

Order XXXIII.

ISSUES, INQUIRIES, AND ACCOUNTS.

Preparation of issues.

1. Where in any cause or matter it appears to the Court or a Judge that the issues of fact in dispute are not sufficiently defined the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court or a Judge.

Inquiry or account at any stage.

2. The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

Where account ordered, Court may give special directions as to mode of taking same.

3. The Court or a Judge may, either by the judgment or order directing such account, or by any subsequent order, give special directions with respect to the mode in which the account is to be taken or vouched; and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *primâ facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

4. Where any account is directed to be taken the accounting party, unless the Court or a Judge shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit, and be left in the Judge's Chambers or with the referee (as the case may be). Accounts to be verified by affidavit.

4A. Upon the taking of any account the Court or a Judge may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged shall be brought before the Judge in Chambers. Mode of vouching accounts.

5. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating so far as he is able the amount sought to be charged and the particulars thereof in a short and succinct manner. Surcharge.

6. Every judgment or order for a general account of the estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such estate are outstanding or undisposed of, unless the Court or a Judge shall otherwise direct. Inquiry as to outstanding estate.

7. Whenever by any judgment or order, whether made in Court or in Chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number; and such judgment or order shall be in the Form No. 28 in Appendix L, with such variations as the circumstances of the case may require. Directions to be numbered.

8. In taking any account directed by any judgment or order all just allowances shall be made without any direction for that purpose. Just allowances.

9. In any case in which there has been undue delay in the proceedings before him the Master shall report to the Court or Judge by whom any account or inquiry was directed or any matter or thing referred the fact of such delay in such proceedings, and shall state, in his opinion, the cause thereof. Master to report. Am. G.G. 4.10.50 p. 5270.

10. If it shall appear to the Court or a Judge, on the representation of the Master or otherwise, that there is any undue delay in the prosecution of any accounts or inquiries or any other proceedings under any judgment or order the Court or a Judge may require the party having the conduct of the proceedings or any other party to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require. Delay in prosecution of accounts. Ib.

ORDER XXXIV.

1.—SPECIAL CASE.

Questions of law.

1. The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

Power to draw inferences.

Preliminary question of law.

2. If it appear to the Court or a Judge that there is in any cause or matter a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or a Judge may deem expedient; and all such other or further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

Stay of proceedings.

Special case.

3. Every special case shall, subject to Order LXVI., Rule 2A, be printed by the plaintiff and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff.

Copies for the Judges.

3A. Four clear days before the day appointed for argument the plaintiff shall deliver copies of the special case for the use of the Judges, and in default thereof the other party may on the day following deliver such copies and the costs thereof shall be costs in the cause unless otherwise ordered.

Married woman, infant, or person of unsound mind.

4. No special case in a cause or matter to which a married woman (not being a party thereto in respect of her property or of any right of action by or against her), infant, or person of unsound mind (not so found by inquisition) is a party shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind are true.

Entry of special case for argument.

5. Either party may enter a special case for argument by delivering to the Prothonotary a memorandum of entry, in the Form No. 25 in Appendix G, and also if any married woman (except in the cases specially provided for by Rule 4), infant, or person of unsound mind (not so found by inquisition) be a party to the cause or matter producing a copy of the order giving leave to enter the same for argument.

6. The parties to a special case may, if they think fit, enter into an agreement in writing that, upon the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by the special case, a sum of money, fixed by the parties or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs (as the case may be), and execution may issue forthwith upon such judgment unless otherwise agreed or unless stayed on appeal. Agreement of damages and costs.

7. This Order shall apply to every special case stated in a cause or matter or in any proceeding incidental thereto. Application of order.

2.—ISSUES OF FACT WITHOUT PLEADINGS.

9. When the parties to a cause or matter are agreed as to the question of fact to be decided between them they may, after writ issued and before judgment, by consent and order of the Court or a Judge proceed to the trial of any such questions of fact and in such mode and with such number of jurors (if any) as may be agreed upon without formal pleadings; and such questions may be stated for trial in an issue in the Form No. 15 in Appendix B, with such variations as circumstances may require. Such issue shall be filed in the Prothonotary's office by the plaintiff within four days after the making of such order, and the proper fees and jury fees payable by him shall be paid, and thereupon the like proceedings shall be had and taken as in the case of an ordinary action after notice of the close of pleadings shall have been filed. If the plaintiff fail to file such issue within the prescribed time and pay such fees the cause or matter shall, unless the Court or a Judge shall order otherwise, be wholly discontinued, and the plaintiff shall pay the defendant's costs of such cause or matter. Trial of questions of fact by consent.

10. The Court or a Judge may by consent of the parties order that, upon the finding of the affirmative or negative of such issue, as in the last preceding Rule mentioned, a sum of money fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, either with or without the costs of the cause or matter. Amount agreed to be paid.

11. Upon the finding of any such issue as in Rule 9 mentioned judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs (as the case may be); and execution may issue upon such judgment forthwith unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the purpose of giving either party an opportunity of moving to set aside the finding or for a new trial. Judgment and execution.

12. The proceedings upon such issue as in Rule 9 mentioned may be recorded at the instance of either party; and the judgment, Proceedings may be recorded.

whether recorded or not, shall have the same effect as any other judgment in a contested action.

ORDER XXXVI.

TRIAL.

1. *Place.*

Place of trial.

1. There shall be no local venue for the trial of any action, except where otherwise provided by statute, but every action shall, unless the Court or a Judge otherwise order be tried in the place stated in the writ, and if no place is so stated, or ordered, in Melbourne.

2. *Mode of Trial.*

Actions of slander, &c.

2. Subject to any order to be made on a summons for directions, in actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage the plaintiff may in his writ or the defendant may by written notice to the plaintiff and to the Prothonotary within ten days after the last appearance signify his desire to have the issues of fact tried by a Judge with a jury and upon payment of the proper jury fees the same shall be so tried.

Equitable jurisdiction.

3. Causes or matters within the cognizance of the Court in its Equitable Jurisdiction previously to the commencement of *The Judicature Act* 1883 shall be tried by a Judge without a jury, unless the Court or a Judge shall otherwise order.

Without jury.

4. The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of *The Judicature Act* 1883 could, without any consent of parties, have been tried without a jury.

Accounts &c.

5. Notwithstanding anything contained in Rule 2, the Court or a Judge may direct the trial without a jury of any cause, matter, or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot in their or his opinion conveniently be made with a jury.

Trial as fixed by writ.
Am. G.G. 26.4.39 p. 1382.

6. Unless otherwise ordered the mode of trial shall be that fixed by the writ or in cases within Rule 2 by the defendant's written notice; but in any cause or matter not included in Rules 2, 3, 4, or 5, upon the application within ten days after appearance of any party thereto for a trial with a jury of the cause or matter or any issue of fact, an order shall be made for a trial with a jury.

Mode of trial.

7. (*a*) In every cause or matter, unless under the provisions of Rule 6 of this Order a trial with a jury has been fixed or ordered, or under Rule 2 of this Order either party has signified a desire to have a trial with a jury, the mode of trial shall be by a Judge without a jury: Provided that in any such case the Court or a Judge may at any time order any cause, matter, or issue to be tried by Judge with a jury, or by a Judge sitting with assessors, or by a special referee with or without assessors.

(*b*) The plaintiff in any cause or matter in which he is entitled to a jury may have the issues tried by a jury of twelve or six by stating in his notice of trial which mode he desires and on payment of the proper fees.

(*c*) The defendant in any cause or matter in which he is entitled to a jury may have the issues tried by a jury of twelve or six on giving notice in writing to the Prothonotary and to the plaintiff to that effect within four days after receiving notice of trial (unless the plaintiff has already stated in his notice that he desires a jury of twelve), and on paying the proper jury fees payable on entering the cause for trial.

(*d*) Provided that a Judge may at any time make an order for a jury of twelve upon such terms (if any) as to costs and otherwise as may be just.

Questions of fact.

8. Subject to the provisions of the preceding Rules of this Order, the Court or a Judge may, in any cause or matter at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place for such trials, and in all cases may order that one or more issues of fact be tried before any other or others.

Jury for questions of fact.

9. Every trial of any question or issue of fact with a jury shall be held before a single Judge (unless such trial be specially ordered to be held before two or more Judges), with a jury of twelve or six (as the case may be).

10. Nothing in this Order shall affect any proceeding under any of the provisons of the *Arbitration Act* 1928.

3. *Notice and Entry for Trial.*

Notice of trial by plaintiff.

11. Notice of trial may be given by the plaintiff in any action at any time after the close of pleadings or where there are no pleadings at the expiration of ten days after appearance.

Notice of trial by defendant.

12. If the plaintiff does not within four weeks after the close of pleadings or where there are no pleadings within fourteen days after the time allowed by the preceding Rule or in either case within such extended time as the Court may allow give notice of trial the defendant may before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or a Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or make such other order, and on such terms, as to the Court or a Judge may seem just.

Setting down of case for hearing.

13. The party giving notice of trial may set the case down for hearing by filing a copy of the notice with the Prothonotary. If he fails to do so within two days after giving notice of trial the party to whom it is given may do so. Unless within six days after notice of trial is given the case is set down by one party or the other the notice of trial shall be no longer in force.

Form of notice trial.

14. Notice of trial shall state whether it is for the trial of the cause or matter or of issues therein; and the place and day for which it is to be entered for trial. It shall be in the Form No. 16 in Appendix B, with such variations as circumstances may require.

Length of notice of trial.

15. Ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms or has been ordered to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge. Short notice of trial shall be four days' notice, unless otherwise ordered.

Entry of case in list for trial.

16. Upon the filing of the copy of notice of trial the Prothonotary shall unless a Judge otherwise orders enter the case in the list for trial upon the day mentioned in the notice or as soon thereafter as is practicable.

For sittings in Melbourne.

17. Entry of trial for Melbourne shall not be or operate as for any particular sittings, but shall be deemed to be for any day on which the action may come on for trial in its order upon the list.

For sittings out of Melbourne.

18. Entry of trial elsewhere than in Melbourne shall be deemed to be for the next sitting of the Court at the place for which it is entered for trial.

Further consideration.
Am. G.G. 4.10.50 p. 5270.

19. When any cause or matter shall have been adjourned for further consideration, after accounts or inquiries the same shall, after the expiration of eight clear days, and within fourteen days from the filing of the Master's certificate, if no application to discharge or vary the same shall have been made, be set down by the proper officer in the Cause Book for further consideration. The cause or matter when so set down shall not be put into the paper for further consideration until after the expiration of ten days from the day on which the same was so set down, and shall be marked in the Cause Book accordingly. Notice thereof shall be given by the Prothonotary to the other parties in the action at least six days before the day for which the same may be so marked for further consideration. Such notice may be in the Form No. 27 in Appendix L.

Trial in Melbourne.

20. Separate lists of trials with juries and trials without juries respectively to be tried at the sittings in Melbourne shall be prepared and the trials on each list shall be allotted for trial with reference to their early determination. Upon a request in writing signed by the plaintiff and all other parties who have appeared that a cause entered for hearing be withdrawn from the next list or the next two lists of causes for trial the Prothonotary may comply with such request subject to any order of the Court or a Judge.

4. *Papers for Judge.*

Delivery of copies of pleadings on entering action.

21. The plaintiff shall within seven days after the cause or issue has been entered for trial deliver to the Prothonotary two copies of the whole of the pleadings, or of the issue one of which shall be for the use of the Judge at the trial. Such copies shall be in print or typed, except as to such parts (if any) of the documents as are by these Rules permitted to be written.

5. *Proceedings at Trial.*

22. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim so far as the burden of proof lies upon him. Non-appearance of defendant at trial.

23. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him. Of plaintiff.

24. If when a trial is called on, neither the plaintiff nor the defendant appears, the cause may be struck out, and shall thereupon, unless the Court or a Judge shall otherwise order, be wholly discontinued, and neither party shall be entitled to costs. Of plaintiff and defendant.

25. Where there are no pleadings or issues, the defendant shall not, except by leave of the Court or a Judge, be allowed to rely on a set-off or a counter-claim or on the defence of infancy, coverture, fraud, illegality, truth in an action of defamation or facts in mitigation of damages in such action, not guilty by statute, defence on equitable grounds, statutory limitation of actions, or discharge under any Bankruptcy Act, unless he shall have given, within twenty days after appearance, notice to the plaintiff stating the grounds and the particulars upon which he relies. A copy of any such notice shall be filed by the plaintiff with the Prothonotary for the use of the Judge at the trial. Special defence where no pleadings. Am. G.G. 26.4.39 p. 1382.

26. Where there are no pleadings or issues the Judge at the trial may at any stage call upon the defendant to give a concise statement of his defence, and, except by leave of the Judge, no other defence shall be open to the defendant beyond those so stated. Judge may call on defendant for defence in certain cases.

27. Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a Judge upon such terms as may seem fit, upon an application made within seven days after the trial. Setting aside verdict obtained on party not appearing.

28. The Judge may, if he think it expedient for the interests of justice, postpone or adjourn the trial for such time and upon such terms (if any) as he shall think fit. Judge may postpone trial.

29. Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus* duly issued, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus* may be issued for such future day, if the Court or a Judge shall so direct. *Habeas corpus* where adjournment.

30. Upon a trial with a jury, the addresses to the jury shall be regulated as follows:—The party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury Addresses to jury.

a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his case, and also to sum up the evidence (if any), and the right to reply shall be the same as heretofore.

Evidence in mitigation of damages in libel and slander.

31. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

Judgment at or after trial.

32. The Judge shall at or after trial give judgment for any party or adjourn the case for further consideration or leave any party to move for judgment.

Note of time occupied.

33. The Associate or officer present at any hearing or trial shall make a note of the times at which such hearing or trial shall commence and terminate respectively, on each day on which the same shall take place, for communication to the taxing officer if required.

Associate may enter findings.

34. Upon every trial where the officer present at the trial is not the officer by whom judgments ought to be entered, the Associate shall enter all such findings of fact as the Judge may direct to be entered, and the directions (if any) of the Judge as to judgment, and the certificates (if any) granted by the Judge, in a book to be kept for the purpose.

Authority for judgment.

35. If the Judge shall direct that any judgment be entered for any party absolutely, the certificate of the Associate or other officer to that effect shall be a sufficient authority for entering judgment accordingly. The certificate may be in the Form No. 17 in Appendix B hereto, with such variations as circumstances may require.

6. *Assessors, Referees, &c.*

Trial with assessors.

36. Trials with assessors shall take place in such manner and upon such terms as the Court or a Judge shall direct.

Trial before referee.

Place.

View.

Sitting *de die in diem.*

37. Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any) which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem* in a similar manner as in actions tried with a jury.

Evidence before referee.

38. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a

referee, and the attendance of witnesses may be enforced by subpœna, and every such trial shall be conducted in the same manner as nearly as circumstances will admit as trials are conducted before a Judge.

Authority of referee.

39. Subject to any such order as last aforesaid, the referee shall have the same authority with respect to discovery and production of documents and in the conduct of any reference or trial and the same power to direct that judgment be entered for any or either party as a Judge of the Court.

No power in referee to imprison.

40. Nothing in these Rules contained shall authorize any referee to commit any person to prison, or to enforce any order by attachment or otherwise.

Referee may submit question to Court.

41. The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reason from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the Court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence as the Court may direct.

Powers of Court.

Notice of report of referee.

42. Whenever a report shall be made by a referee, he shall on the same day cause notice thereof to be given to all the parties to the trial or the reference before him by prepaid post letter directed to the address for service of each party, who shall in due course of post be deemed to have notice of such report.

Application to adopt or vary report where further consideration adjourned.

43. Where under the *Arbitration Act* 1928 the report of the referee has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the Court or Judge to adopt the report, or without leave of the Court or a Judge to give not less than four days' notice of motion, to come on with the further consideration, to vary the report or to remit the cause or matter or any part thereof for rehearing or further consideration to the same or any other referee.

When not adjourned.

44. Where under the *Arbitration Act* 1928 the report of the referee has been made in a cause or matter, the further consideration of which has not been adjourned, it shall be lawful for any party by an eight days' notice of motion to apply to the Court to adopt and carry into effect the report of the referee, or to vary the report, or to remit the cause or matter or any part thereof for rehearing or further consideration to the same or any other referee.

Remuneration of assessors and referees.

45. (*a*) The Court or Judge shall determine the remuneration to be paid to any referee or to any assessor, and by what party or parties and in what proportion the same shall be paid either in the first instance or finally.

(*b*) In all cases of reference under the *Arbitration Act* 1928 and in all cases under sections 123, 125, and 126 of the *Supreme Court Act* 1928, the Court or Judge may order any party or parties to pay a sum of money into Court as security for any remuneration or allowances payable under any of the said sections or to give any other security for the same, and may order that until such order is complied with all further proceedings be stayed.

7. *Inquiry and Reference as to Damages.*

Writ of trials and inquiry abolished.

46. No writ of trial or inquiry as to damages shall be used but such trial or inquiry shall be made as the Court or a Judge may direct.

Procedure on inquiry.

47. The provisions of Rules 26, 27, 28, and 29 of this Order shall, with the necessary modifications, apply to an inquiry for the assessment of damages.

Calculation of damages.
Am. G.G. 4.10.50 p. 5270.

48. In every action or proceeding in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to have an inquiry, but the Court or a Judge may direct that the amount for which final judgment is to be entered shall be ascertained by the Master or Prothonotary, and the Master or Prothonotary shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to the person entitled to the damages; and for the purposes of this Rule the Prothonotary shall have and exercise all the powers of the Master, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise as upon the finding of a jury upon an inquiry.

Continuing cause of action.

49. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

ORDER XXXVII.

EVIDENCE.

1. *Generally.*

Examination of witnesses at trial.

1. In the absence of any agreement in writing between the parties or their solicitors and subject to these Rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *viva voce* and in open court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witnesses whose attendance in Court ought for some

sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner. Provided that where it appears to the Court or Judge that the other party *bonâ fide* desires the production of a witness for cross examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Evidence in another cause.

3. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the Court or a Judge, to be obtained at the time of making any such applications and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence.

Office copies.

4. Office copies of all writs, records, pleadings, and documents filed in the Court shall be admissible in evidence in all causes and matters and between all persons or parties to the same extent as the original would be admissible.

2. *Examination of Witnesses.*

Order for examination of witnesses.

5. The Court or a Judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before the Court or Judge or any officer of the Court, or any other person and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms (if any) as the Court or a Judge may direct.

Forms.

6. An order for a commission to examine witnesses shall be in the Form No. 36 in Appendix K, and the writ of commission shall be in the Form No. 13 in Appendix J, with such variations as circumstances may require.

Letters of request.

6A. If in any case the Court or a Judge shall so order, there shall be issued a request to examine witnesses in lieu of a commission. The Forms 37A and 37B in Appendix K shall be used for such order and request respectively, with such variation as circumstances may require.

6B. Where an order is made for the issue of a Request to examine a witness or witnesses in any foreign country with which a Convention in that behalf has been or shall be made and extended to the Commonwealth of Australia or the State of Victoria, the following procedure shall be adopted:—

(1) The party obtaining such order shall file in the Prothonotary's Office an undertaking in the Form No. 36A in Appendix K, which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used.

(2) Such undertaking shall be accompanied by—

(*a*) A Request in the Form No. 36B in Appendix K with such variation as may be directed in

Chapter I.—Civil Proceedings.
Order XXXVII. 72

the order for the issue thereof together with a translation of such request in the language of the country in which the same is to be executed.

(*b*) A copy of the interrogatories (if any) to accompany the Request and a translation thereof.

(*c*) A copy of the cross-interrogatories (if any), and a translation thereof.

6c. Where an order is made for the examination of a witness or witnesses before the British Consular authority in any foreign country with which a Convention in that behalf has been or shall be made and extended to the Commonwealth of Australia or the State of Victoria, such order shall be in the Form No. 36c in Appendix K, which form of order may be varied as may be necessary to meet the circumstances of the particular case in which it is to be used.

Production of documents.

7. The Court or a Judge may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or Judge may think fit to be produced: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

Disobedience of order.

8. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of Court, and may be dealt with accordingly.

Expenses of witnesses.

9. Any person required to attend for the purpose of being examined or of producing any document shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

Documents to be furnished to examiner.

10. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings (if any) or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

Examination in presence of parties.

11. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination.

Mode of examination.

12. The depositions taken before an officer of the Court or before any other person appointed to take the examination shall be taken down in writing by or in the presence of the examiner not ordinarily by question and answer but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence

Signing depositions.

of the parties or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, then the examiner shall sign the same. The examiner may put down any particular question and answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall note the objection taken, but such examiner shall not have power to decide upon the materiality or relevancy of such question.

Questions objected to.

13. If any person duly summoned by subpœna to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed at the Prothonotary's office, and thereupon the party requiring the attendance of the witness may apply to the Court or a Judge *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be.

Refusal of witness to attend or be sworn.

14. If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner and transmitted by him to the Prothonotary's office to be there filed, and the validity of the objection shall be decided by the Court or a Judge.

Objection of witness to answer.

15. In any case under the last two preceding Rules, the Court or a Judge shall have power to order the witness to pay any costs occasioned by his refusal or objection.

Costs.

16. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Prothonotary's office, and there filed.

Transmission of depositions.

17. The person taking the examination of a witness under these Rules may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon, and the Court or a Judge may direct such proceedings and make such order as upon the report they or he may think just.

Special report.

18. Except where by this Order otherwise provided, or directed by the Court or a Judge, no depositions shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Court or Judge is satisfied that the deponent is dead, or beyond the jurisdiction of the Court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence saving all just exceptions without proof of the signature to such certificate.

Depositions when may be used.

Chapter I.—Civil Proceedings.
Order XXXVII. 74

Oaths.

19. Any officer of the Court, or other person directed to take the examination of any witness or person, may administer oaths.

Subpœna for attendance of witness.

20. Any party in any cause or matter may by *subpœna ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the Court, or other person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such subpœna to attend before such officer or person for cross-examination.

Evidence taken after trial.

21. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial.

Practice on examination.

22. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage.

Special directions as to evidence after trial.

23. The practice of the Court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case.

Notice to use evidence taken before trial.

24. No affidavit or deposition filed or made before issue joined in any cause or matter shall without leave of the Court or a Judge be received at the hearing or trial thereof, unless within one month after issue joined, or within such longer time as may be allowed by leave of the Court or a Judge, notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf.

Evidence in subsequent proceedings.

25. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

3. *Subpœna.*

Præcipe for subpœna.

26. Where it is intended to sue out a subpœna, a *præcipe* for that purpose in the Form No. 21 in Appendix G, and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm and place of business or residence of the principal solicitor, shall in all cases be delivered and filed at the Prothonotary's office.

Form of writ.

27. A writ of subpœna shall be in one of the Forms 1 to 7 in Appendix J, with such variations as circumstances may require.

Issue.

28. Where a subpœna is required for the attendance of a witness for the purpose of proceedings in Chambers, such subpœna shall issue from the Prothonotary's office.

29. Every subpœna other than a *subpœna duces tecum* may contain any number of names, and names of witnesses may be inserted therein after the issue of the writ of subpœna without rescaling in any case in which the subpœna contains the name of at least one witness and the words "and others." Number of names.

30. No more than three persons shall be included in one *subpœna duces tecum;* and the party suing out the same shall be at liberty to sue out a subpœna for each person if it shall be deemed necessary or desirable. Number in *subpœna duces tecum.*

31. In the interval between the suing out and service of any subpœna the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ resealed upon leaving a corrected *præcipe* of such subpœna marked with the words "altered and resealed," and signed with the name and address of the solicitor or party suing out the same. Correction.

32. The service of a subpœna shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ. Service.

33. Affidavits filed for the purpose of proving the service of a subpœna upon any defendant must state when, where, and how, and by whom, such service was effected. Affidavit of service.

34. The service of any subpœna shall be of no validity if not made within twelve weeks after the *teste* of the writ. Time for.

34A. Any *subpœna* shall remain in force from the date of issue until the trial of the action or matter in which it is issued. Duration of *subpœna.*

4. *Perpetuating Testimony*

35. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim. Action to perpetuate testimony.

36. In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney-General may be made a defendant, and in all proceedings in which the depositions taken in any such action, in which the Attorney-General was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such deposition were taken. Where Crown interested.

37. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose. Action necessary.

38. No action to perpetuate the testimony of witnesses shall be entered for trial. Not to be entered for trial.

Chapter I.—Civil Proceedings.
Order XXXVII. 76

5. *Obtaining Evidence for Foreign Tribunals.*

Letters of Request.

54. Where under the *Foreign Tribunals Evidence Act* 1856, or the *Extradition Act* 1870, section 24, any civil or commercial matter or any criminal matter is pending before a Court or Tribunal of a foreign country and it is made to appear to the Court or a Judge, by Commission Rogatoire or Letter of Request, or other evidence as hereinafter provided, that such Court or Tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction, the Court or a Judge may, on the *ex parte* application of any person shown to be duly authorized to make the application on behalf of such foreign Court or Tribunal, and on production of the Commission Rogatoire or Letter of Request, or of a certificate signed in the manner, and certifying to the effect mentioned in section 2 of the *Foreign Tribunals Evidence Act* 1856, or such other evidence as the Court or a Judge may require, make such order or orders as may be necessary to give effect to the intention of the Acts above-mentioned in conformity with section 1 of the said *Foreign Tribunals Evidence Act* 1856.

Form of Order.

55. An order made under the last preceding Rule shall be in Form No. 73 in Appendix K, with such variations as circumstances may require.

Examiner.

56. The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before any officer of the Court, or such other qualified person as to the Court or a Judge may seem fit.

Transmission of depositions.

57. Unless otherwise provided in the order for examination the person before whom the examination is taken shall, on its completion, forward the same to the Prothonotary, and on receipt thereof the Prothonotary shall append thereto a certificate, in Form No. 74 in Appendix K, with such variations as circumstances may require, duly sealed with the seal of the Supreme Court, and shall forward the depositions so certified, and the Commission Rogatoire or Letter of Request, if any, to the Attorney-General for transmission to Her Majesty's Secretary of State for the Dominions.

Transmission direct to Foreign Tribunal.

57A. The Court or a Judge may in any case and at any time order that the certified depositions and the Commission Rogatoire or Letter of Request (if any) shall be forwarded to the Attorney-General for transmission direct to the Foreign Court or Tribunal desirous of obtaining the said testimony.

Mode of examination.

58. An order made under Rule 54 of this Order may, if the Court or a Judge think fit, direct the said examination to be taken in such manner as may be requested by the Commission Rogatoire or Letter of Request from the Foreign Court, or therein signified to be in accordance with the practice or requirements of such Court or Tribunal, or which may, for the same reason, be requested by

the applicant for such order. But, in the absence of any such special directions, the examination shall be taken in the manner prescribed by the Rules and practice of the Court.

Application by Crown Solicitor.

60. Where a Commission Rogatoire or Letter of Request, as mentioned in Rule 54 of this Order, is transmitted to the Supreme Court by His Excellency the Governor, with an intimation that it is desirable that effect should be given to the same without requiring an application to be made to the Court by the agent in Victoria of any of the parties to the action or matter in the foreign country, the Prothonotary shall transmit the same to the Crown Solicitor, who may thereupon, with the consent of the Attorney-General, make such applications and take such steps as may be necessary to give effect to such Commission Rogatoire or Letter of Request, in accordance with Rules 54 to 58 of this Order.

Order XXXVIII.

1.—Affidavits and Depositions.

Evidence by affidavit.

1. Upon any motion, petition, or summons, evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

Title of.

2. Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there is more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer.

Matter of affidavit.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

Costs.

Before whom sworn.
Am. G.G. 4.10.50 p. 5270; G.G. 26.4.50 p. 2374.

4. Affidavits sworn in Victoria shall be sworn before a Judge, Master of the Supreme Court, commissioner or officer empowered to administer oaths and each separate sheet thereof shall be signed by the person before whom the affidavit is sworn.

Time or place to be stated.

5. Every person administering oaths shall express the time when, and the place where, he shall take any affidavit or the acknowledgment of any deed or recognizance; otherwise the same shall not be held authentic nor be admitted to be filed or enrolled without the leave of the Court or a Judge, and every such person shall express the time when and the place where he shall do any other act incident to his office.

Chapter I.—Civil Proceedings.
Order XXXVIII. 78

Form of affidavits.

7. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall have indorsed on the outside thereof the name of the deponent or deponents and the date or dates of swearing. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this Rule.

Description of deponent.

8. Every affidavit shall state the description and true place of abode of the deponent.

To bear number of action.

8A. Every affidavit sworn in a cause shall bear the number of the action.

Affidavits by two or more deponents.

9. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that, if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Affidavits to be filed.

10. Every affidavit shall be filed in the Prothonotary's office. There shall be indorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note unless the Court or a Judge shall otherwise direct.

Filing before using.

10A. Every affidavit to be used before the Court must be filed before it is used.

Scandal.

11. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous or irrelevant, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

Alterations in affidavits.

12. No affidavit having in the jurat or body thereof any interlineations, alteration, or erasure shall without leave of the Court or a Judge be read or made use of in any matter depending in Court, unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or if taken at any office of the Court, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialed in the margin of the affidavit by the officer taking it.

Affidavit by illiterate person.

13. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her mark or signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

14. The Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by mis-description of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. May be received though defective.

15. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper fee stamp, and shall at the time when it is used be delivered to and left with the proper officer in Court or in Chambers, who shall send it to be filed. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office. Stamping affidavits.

16. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself; but this enactment shall not extend to affidavits to hold to bail. Before whom sworn.

17. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner. Before clerk when insufficient.

18. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used unless by leave of the Court or a Judge. Filing after time.

19. Except by leave of the Court or a Judge no order made *ex parte* in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion. On *ex parte* order.

19A. The consent of a new trustee to act shall be sufficiently evidenced by a written consent signed by him and verified by the signature of his solicitor. Form No. 29 in Appendix L shall be used with such variations as circumstances may require. Verification of new trustee's consent to act.

2.—AFFIDAVITS AND EVIDENCE IN CHAMBERS.

20. The party intending to use any affidavit in support of any application made by him in Chambers shall give notice to the other parties concerned of his intention in that behalf. Notice of intention to use affidavit.

21. All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before a Judge in Chambers. Affidavits used in Court may be used in Chambers.

22. Every alteration in an account verified by affidavit to be left at Chambers shall be marked with the initials of the commissioner or officer before whom the affidavit is sworn, and such alteration shall not be made by erasure. Alterations in accounts.

Exhibits.

23. Accounts, extracts from registers, particulars of creditors' debts, and other documents referred to by affidavit shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits.

Certificate on exhibit how marked.

24. Every certificate on an exhibit referred to in an affidavit signed by the commissioner or officer before whom the affidavit is sworn shall be marked with the short title of the cause or matter.

3.—TRIAL ON AFFIDAVIT.

Evidence on affidavit by consent.

25. At any time before notice of trial is served upon the Prothonotary the parties may consent that the evidence to be adduced on the trial shall be taken by affidavit; provided that notwithstanding such consent the Court or a Judge at the trial may order the whole or any part of the evidence to be taken *vivâ voce*.

Affidavits of plaintiff.

25A. Within seven days after such notice of trial has been served upon the Prothonotary, or within such time as the Court or a Judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

Of defendant.

26. The defendant within seven days after delivery of such list, or within such time as the Court or a Judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

Of plaintiff in reply.

27. Within four days after the expiration of the last-mentioned seven days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

Cross-examination of deponent.

28. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of seven days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a Judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

Compelling attendance of deponent.

29. The party to whom such notice as is mentioned in the last preceding Rule is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

ORDER XL.

MOTION FOR JUDGMENT.

Judgment to be on motion.

1. Except where by any Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion to the Court for judgment.

Judgment after issues tried.

2. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties.

Where certain issues only determined.

3. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms (if any) as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues or questions of fact.

None after a year without leave.

4. No motion for judgment shall, except by leave of the Court or a Judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

Court may draw inferences and determine questions.

5. Upon motions for judgment the Court may draw all inferences of fact not inconsistent with the finding of a jury, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

ORDER XLI.

ENTRY OF JUDGMENT.

Mode and form of entry of judgment.

1. Every judgment shall be entered by the Prothonotary in the book to be kept for the purpose in the Prothonotary's office. The forms of judgment in Appendix F shall be used, with such variations as circumstances may require.

Preparation of judgments and orders.

2. Every judgment and order shall be prepared by the party entitled thereto or by such party as the Court or a Judge may direct.

Where judgment pronounced in Court.

3. Every judgment shall be dated as of the day on which such judgment is pronounced or ordered to be entered, unless the Court or Judge shall otherwise order, and the judgment shall take effect from that date. Provided that by leave of the Court or a Judge a judgment may be antedated or postdated.

In other cases.

4. In all cases not within the last preceding Rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

Orders for performance of acts to state time.

5. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time or the time after service of the judgment or order within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same, there shall be indorsed a memorandum in the words or to the effect following, viz., "If you, the within-named A. B, neglect to obey this judgment (or order) by the time therein limited; you will be liable to process of execution for the purpose of compelling you to obey the said judgment (or order)."

Examination of documents by officer.

6. Where under any Act or these Rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly.

Judgment pursuant to order or certificate.

7. Where under any Act or these Rules any judgment may be entered pursuant to any order or certificate or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

Certificate to be filed.
Am. G.G. 4.10.50 p. 5270.

8. Where reference is made to the Master or Prothonotary to ascertain the amount for which final judgment is to be entered, such officer's certificate shall be filed in the Prothonotary's office when judgment is entered.

Judgment by consent where defendant appears by a solicitor.

9. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent.

Where consent of defendant required in person.

10. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a Judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, conveyancer, special pleader, or solicitor.

ORDER XLI. (A).

REGISTRATION OF JUDGMENTS.

Application.

1. Any application under Section 181 (1) of the *Supreme Court Act* 1928 for leave to have a judgment obtained in a superior Court in England or Scotland or any Court in Ireland which may be declared by the Governor in Council to be a superior Court within the meaning of the Act registered in the Supreme Court shall be made to a Judge on summons.

The affidavit.

2. The application shall be supported by an affidavit of the facts exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof and stating that to the best of the information and belief of the deponent the judgment creditor is entitled to enforce the judgment and the judgment does not fall within any of the cases in which under Section 181 (2) of the Act a judgment cannot properly be ordered to be registered. The affidavit must also so far as the deponent can do so give the full name, title, trade or business and usual or last known place of abode or business of the judgment creditor and judgment debtor respectively. The affidavit shall set out where necessary the calculations by which the amount of the judgment has been arrived at.

Title of affidavit and summons.

3. The affidavit and the summons shall be intituled:—"In the matter of the *Supreme Court Act* 1928 and In the matter of a judgment of the.....(describing the court) obtained in.....(describing the cause or matter) and dated the.....day of.....19....."

Service of summons.

4. The summons for leave to register shall (unless otherwise ordered by a Judge) be served in the same manner as a writ of summons is required to be served.

The order.

5. Any order giving leave to register shall be drawn up by or on behalf of the judgment creditor.

Form of order.

6. The order giving leave to register the judgment shall state the time within which the judgment debtor is to be entitled to apply to set aside the registration. Such time where the judgment debtor is or is ordinarily resident within the jurisdiction of the Supreme Court shall ordinarily be fourteen days after service of the notice of registration hereinafter mentioned and when the judgment debtor is or is ordinarily resident out of the jurisdiction of the Supreme Court shall depend on the distance from Melbourne of the place where the judgment debtor resides, and the postal facilities between Melbourne and that place and shall ordinarily be the same time as is limited for entering appearance after service out of the jurisdiction of a writ of summons or notice thereof.

Chapter I.—Civil Proceedings.
Order XLI. (A). 84

The register.

7. The register of judgments ordered to be registered under the Act shall be kept in the Prothonotary's office by or under the direction of the Prothonotary. The judgment shall be registered therein in accordance with the order giving leave to register it.

Form of register.

8. The register shall be arranged in alphabetical order in the surname of the judgment debtor and there shall be entered in the register the date of the order for registration and of the registration the name, title, trade or business and usual or last known place of abode or business of the judgment debtor and judgment creditor and the amount for which the judgment is signed and any special directions in the order for registration as to such registration or execution thereon and the particulars of any execution issued thereon.

Notice of registration.

9. Notice in writing of the registration of the judgment together with a copy of the order giving leave to register must be served on the judgment debtor within a reasonable time after such registration. Such service shall be in such manner as the Judge may at any time direct and the Judge may direct service out of the jurisdiction or substituted service either within or without the jurisdiction. If there be no direction by the Judge service shall be personal.

Form of notice.

10. The notice of registration shall contain full particulars of the judgment registered and of the order for such registration and shall state the name and address of the judgment creditor or of his solicitor or agent on whom and at which service of any summons issued by the judgment debtor may be served. The notice shall state that the defendant is entitled if he has grounds for doing so to apply to set aside the registration and shall also state the number of days for applying to set aside the registration limited by the order giving leave to register.

Indorsement of service.

11. The party serving the notice shall within three days at most after such service indorse on the notice or a copy or duplicate thereof the day of the month and week of the service thereof otherwise the judgment creditor shall not be at liberty to issue execution on the judgment; and every affidavit of service of such notice shall mention the day on which such indorsement was made. This rule shall apply to substituted as well as other service. The three days limited by this rule may under special circumstances be extended by order of a Judge.

Application to set aside registration.

12. The judgment debtor may at any time within the time limited by the order apply by summons to a Judge to set aside the registration or to suspend execution on the judgment and the Judge on such application if satisfied that the case comes within one of the cases in which under Section 181 (2) of the Act no judgment can be ordered to be registered or that it is not just or convenient that the judgment should be enforced in Victoria or for other sufficient reason may order that the registration be set aside or execution on the judgment suspended

either unconditionally or on such terms as he thinks fit and either altogether or until such time as he shall direct: Provided that the Judge may allow the application to be made at any time after the expiration of the time herein mentioned.

Summons to set aside.

13. The summons referred to in Rule 12 shall be intituled in the same manner as the affidavit referred to in Rule 3.

Execution.

14. No execution shall issue on a judgment registered under the Act until after the expiration of the time limited for applying to set aside the registration: Provided that the Judge who makes the order for such registration or a Judge at Chambers may at any time order that the execution shall be suspended for a longer time.

Affidavit of service.

15. Any party desirous of issuing execution on a judgment registered under the Act must file in the Prothonotary's office an affidavit of the service of the notice of registration and of a copy of the order authorizing registration.

Form of writ of execution.

16. A writ of execution on a judgment registered under the Act may be thus varied:—Instead of "which said sum of money and interest were lately before us in our Supreme Court," &c., insert "which said sum of money and interest were lately in ..... (describing the court in which judgment was obtained)," &c., "and which judgment has been duly registered in our Supreme Court pursuant to the *Supreme Court Act* 1928."

Certified copy of judgment.

17. Any application under Section 182 of the Act for a certified copy of a judgment obtained in the Supreme Court shall be made *ex parte* to a Judge on an affidavit made by the judgment creditor or his solicitor giving the particulars of the judgment and showing that the judgment debtor is resident in some (stating what) part of Her Majesty's Dominions outside Victoria to which the Act extends and stating to the best of his information and belief the title, trade, business or occupation of the judgment creditor and judgment debtor respectively and their respective usual or last known places of abode or business.

Form of certificate.

18. The certified copy of the judgment shall be an office copy and shall be sealed with the seal of the Supreme Court and shall be certified by the Prothonotary as follows:—

"I certify that the above copy judgment is a true copy of a judgment obtained in the Supreme Court of the State of Victoria and this copy is issued in accordance with section 182 of the *Supreme Court Act* 1928.

(Signed).

Prothonotary of the Supreme Court.
of the State of Victoria.

Definitions.

19. In this Order the expression "the Act" means the *Supreme Court Act* 1928 and the definitions contained in Section 179 (1) of the Act shall apply.

ORDER XLII.

EXECUTION.

No demand necessary when judgment directs money to be paid or property transferred.

1. Whenever any person is by any judgment or order directed to pay any money or deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand.

Waiver of judgment on condition.

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may on breach or non-performance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a Judge shall otherwise direct.

Judgment may be enforced as heretofore.

3. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money might have been enforced in the Court at the time of the passing of *The Judicature Act* 1883.

Judgment for payment into Court.

4. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment.

For recovery of land.

5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

For recovery of other property.

6. A judgment for the recovery of any property other than land or money may be enforced:—

(*a*) By writ for delivery of the property:

(*b*) By writ of attachment:

(*c*) By writ of sequestration.

For any other matter.

7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by a writ of attachment, or by committal.

Meaning of "writ of execution," and "issuing execution."

8. In these Rules the term "writ of execution" shall include writs of *fieri facias, capias,* sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding Rules of this Order shall be applicable to the case.

Judgment on condition, execution.

9. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the

fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

Production of judgment

11. No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the party to execution.

Præcipe.

12. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order (if any) directing the execution to be issued, the names of the parties against whom, or of the firm against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix G shall be used, with such variations as circumstances may require.

Indorsement of name and address.

13. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, shire, parish, or borough, and also the name of the street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

Form of writ of execution.

14. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix H shall be used, with such variations as circumstances may require.

Fees and expenses.

15. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

Additional fees and expenses.

15A. In every case of execution against any freehold land or chattel real, or against any land, lease, mortgage, or charge the party entitled to execution may, over and above the sum recovered, and in addition to the poundage, fees and expenses

mentioned in Rule 15, levy the fees and expenses properly paid on registering the judgment, or lodging the writ of *fieri facias* against the freehold land or chattel real, or against the land, lease, mortgage, or charge sought to be affected by the execution, together with the sum of One pound one shilling for the costs thereof.

Direction to Sheriff to levy.

15B. The party or his solicitor requiring the Sheriff to levy for fees, expenses, and costs under the last preceding Rule shall file with the Sheriff a specific direction in writing requiring him so to levy, together with a receipt from the Comptroller of Stamps under the *Stamps Act* 1946 or other proper officer showing the amount of the fees which have been paid, and for which in addition to the fixed charge for costs the levy is so to be made.

Amount to be indorsed.

16. Every writ of execution for the recovery of money shall be indorsed with a direction to the Sheriff or other officer or person to whom the writ is directed to levy the amount really due and payable and sought to be recovered under the judgment, or order, stating the amount, and also to levy interest thereon at the rate of £8 per cent. per annum from the time when the judgment or order was entered or made; provided that in cases where there is an agreement between the parties as to the rate of interest that shall be secured by the judgment or order then the indorsement may be accordingly to levy the amount of interest so agreed.

Form of indorsement.

16A. Every writ of *fi. fa.* shall be indorsed as follows:—

Levy £ , and £ for costs of execution and also interest on £ at 8 per cent. per annum [*or other agreed rate*] from the day of till payment, besides Sheriff's poundage, officer's fees, costs of levying, the fees, expenses, and costs mentioned in Order XLII., Rule 15A, if and when incurred, and all other legal incidental expenses.

Execution for money or costs on entry of judgment.

17. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall as soon as the money or costs shall be payable be entitled to sue out one or more writ or writs of *fieri facias* to enforce payment thereof, subject nevertheless as follows:—

Time for issue.

(*a*) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.

Stay.

(*b*) The Court or Judge may at or after the time of giving judgment or making an order stay execution until such time as it or he shall think fit.

Separate writs for money and costs.

18. Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of

execution for the recovery of the sum and for the recovery of the costs, but a second writ shall be only for costs, and shall be issued not less than eight days after the first writ.

Time for execution in other cases.

19. A party who has obtained judgment or an order not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the Court or a Judge shall order execution to issue at an earlier or later date with or without terms.

Affidavit of debt.

19A. In all cases in which judgment shall have been entered up in pursuance of any warrant of attorney or *cognovit actionem*, the plaintiff, his agent or solicitor, shall, before he sue out execution thereon, file an affidavit setting forth the amount actually due and payable to the plaintiff under such judgment.

Costs on a cognovit, or Judge's order.

19B. When any judgment is signed on a cognovit or Judge's order authorizing the plaintiff to sign judgment, no declaration to ground such judgment shall be necessary or allowed on taxation of costs.

Writ in force for one year with power to renew.

20. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

Evidence of renewal.

21. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding Rule mentioned, showing the same to have been renewed, shall be *primâ facie* evidence of its having been so renewed.

Execution within six years.

22. As between the original parties to a judgment or order execution may issue at any time within six years from the recovery of the judgment or the date of the order.

Execution by leave of Court.

23. In the following cases, viz.:—

After six years or change of parties.

(*a*) Where six years have elapsed since the judgment or date of the order or any change has taken place by death or otherwise in the parties entitled or liable to execution:

By or against husband.

(*b*) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife:

Assets *in futuro*.

(*c*) Where a party is entitled to execution upon a judgment of assets *in futuro*:

Chapter I.—Civil Proceedings.
Order XLII. 90

Against shareholder.

(*d*) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company—

the party alleging himself to be entitled to execution may apply on summons for leave to issue execution accordingly. And the Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case the Judge may impose such terms, as to costs or otherwise, as shall be just.

Order.

Terms.

Order enforceable as judgment.

24. Every order of the Court or a Judge, in any cause or matter, may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

Execution by or against person not party.

26. Any person not being a party to any cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter, and any person, not being a party to a cause or matter against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter.

Audita querela abolished.

27. No proceeding by *auditâ querelâ* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just.

Stay of execution.

Former rights reserved.

28. Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

Order of issue of writs.

29. Nothing in this Order shall affect the order in which writs of execution may be issued.

Enforcement of mandatory judgment, &c.

30. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract be not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained, and costs.

31. Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property. Corporation wilfully disobeying order.

31A. An award may with the leave of the Court or a Judge and on such terms as may be just, be enforced at any time though the time for moving to set it aside has not elapsed. Enforcing award.

32. Where a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order before a Judge or before an officer of the Court, as the Court or Judge shall appoint; and the Court or Judge may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents. Oral examination of judgment debtor.

33. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a Judge, and the Court or Judge may make such order thereon for the attendance and examination of any party or otherwise as may be just. In case of difficulty party may apply.

34. The costs of any application under the last two preceding Rules or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the Court or a Judge, or in the discretion of such officer as in Rule 32 mentioned, if the Court or a Judge shall so direct. Costs.

35. Upon a satisfaction piece, duly signed and attested in accordance with section 178 of the *Supreme Court Act* 1928, being presented to the Prothonotary he shall file the same and enter satisfaction in the action-book against the entry of the said judgment, and no roll shall be required to be carried in for the purpose of entering satisfaction on a judgment. Satisfaction piece to be filed.

36. For the purpose of obtaining a Judge's order for the entry of a memorandum of satisfaction on a bill of sale or copy thereof, it shall be requisite only to produce to the Judge a satisfaction piece in the form hereinafter prescribed, and such satisfaction piece shall be signed by the party or parties acknowledging the same, or their personal representatives, and such signature or signatures shall be witnessed by a practising solicitor of this Court expressly named by him or them and attending at his or their request to inform him or them of the Signature of satisfaction piece.

nature and effect of such satisfaction piece before the same is signed, which solicitor shall declare himself in the attestation thereto to be the solicitor for the person or persons so signing the same, and state he is witness as such solicitor; and in cases where the satisfaction piece is signed by the personal representatives of the deceased, his representative character shall be proved in such manner as the Judge may direct.

Form of satisfaction piece.

37. Every such satisfaction piece and Judge's order respectively shall be on the same piece of paper and in the forms following (that is to say):—

Satisfaction is hereby acknowledged by me [*O.P.*, executor of the last will and testament of] *A.B.* of a bill of sale dated the day of One thousand nine hundred and and made between *C.D.* of the one part and the said *A.B.* of the other part, and numbered in the office of the Registrar-General; and I do hereby expressly nominate and appoint *E.F.* solicitor to witness and attest my execution of this acknowledgment of satisfaction.

Signed by the said *A.B.* in the presence of *E.F.*, of &c., one of the solicitors of the Supreme Court of Victoria; and I hereby declare myself to be solicitor for and on behalf of the said *A.B.*, expressly named by him and attending at his request to inform him of the nature and effect of this acknowledgment of satisfaction (which I accordingly did before the same was signed by him), and I also declare that I subscribe my name hereto as such solicitor } *Signature*— *Date*—

Signature of solicitor—

Upon reading the foregoing satisfaction piece I do order that a memorandum of satisfaction be written upon the bill of sale therein described or copy thereof.

Dated this day of

Signed—

Consequences of not following prescribed form.

38. If the form of satisfaction piece hereinbefore prescribed shall not be followed, no order will be made that a memorandum of satisfaction be written on the bill of sale or copy thereof without a previous summons to show cause, and no costs shall be allowed for any memorandum of satisfaction not in substance in compliance with this form without the special order of a Judge.

Satisfaction piece by company. Am. G.G. 26.4.39 p. 1382.

39. A satisfaction piece by a corporation or company shall be under the seal of such corporation or company, and in the form prescribed by Rule 37, with such variations as circumstances may require.

Order XLIII.

WRITS OF FIERI FACIAS AND SEQUESTRATION.

1. A writ of *fieri facias* shall have the same force and effect as the like writ has heretofore had, and shall be executed in the same manner in which the like writ has heretofore been executed. **Effect of *fi. fa.***

2. Where it appears, upon the return of any writ of *fieri facias,* that the Sheriff or other officer has by virtue of such writ seized, but not sold, any goods of the person directed to pay a sum of money or costs, the person to whom such sum of money or costs is payable shall, immediately after such writ with such return shall have been filed as of record, be at liberty to sue out a writ of *venditioni exponas.* **Writ of *venditioni exponas.***

3. Writs of *venditioni exponas, distringas nuper vice comitem,* and all other writs in aid of a writ of *fieri facias,* may be issued and executed in the same cases and in the same manner as heretofore. **Other writs in aid.**

4. Where any person is by any judgment or order directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall, at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration issued out of the Court in its Equitable Jurisdiction previously to the commencement of *The Judicature Act* 1883 had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court. **Against estate of disobedient person.** **Writ of sequestration.**

5. No subpœna for the payment of costs, and, unless by leave of the Court or a Judge, no sequestration to enforce such payment, shall be issued. **No subpœna or, without leave, sequestration for costs.**

Order XLIV.

ATTACHMENT.

1. A writ of atachment shall have the same effect as a writ of attachment issued out of the Court in its Equitable Jurisdiction previously to the commencement of *The Judicature Act* 1883 had. **As heretofore.**

2. No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued. **Not to issue without leave.**

Order XLV.

ATTACHMENT OF DEBTS.

1. The Court or a Judge may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral **Order for attachment of debts.**

examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, or the order made, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor shall be attached to answer the judgment or order, together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid. At least seven days before the day of hearing the order *nisi* shall be served on the garnishee or his solicitor, and, unless otherwise ordered, on the judgment debtor or his solicitor, at least seven days before the day of hearing. Service on the judgment debtor may be made in manner provided by Order LXVII., Rule 2, either at the address for service, if the judgment debtor has appeared in the action and given an address for service, or on his solicitor, if he has appeared by solicitor, or if there has been no appearance then at his usual residence or place of business, or in such other manner as the Court or Judge may direct.

Service of order binds debts.

2. Service of an order that debts due or accruing to a debtor liable under a judgment or order shall be attached, or notice thereof to the garnishee in such manner as the Court or Judge shall direct, shall bind such debts in his hands.

Execution against garnishee.

3. If the garnishee does not forthwith pay into Court the amount due from him to the debtor, liable under a judgment or order, or an amount equal to the judgment or order, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, then the Court or Judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

Trial of liability of garnishee.
Am. G.G. 4.10.50 p. 5270.

4. If the garnishee disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined, or may refer the matter to the Master or the Prothonotary.

Lien of third person on debt of garnishee.

5. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien

or charge upon it, the Court or Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

Trial of claim of third person and order thereon or on non-appearance.

6. After hearing the allegations of any third person under such order, as in Rule 5 mentioned, and of any other person whom by the same or any subsequent order the Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, together with the costs of the garnishee proceedings, or any issue or question to be tried or determined according to the preceding Rules of this Order, and may bar the claim of such third person, or make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs as the Court or Judge shall think just and reasonable.

Discharge of garnishee.

7. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor liable under a judgment or order to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

Debt-attachment book.

8. There shall be kept by the Prothonotary a debt-attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered and otherwise; and copies of any entries made therein may be taken by any person upon application to the Prothonotary.

Costs of proceedings.

9. The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge, and as regards the costs of the judgment creditor shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order, and in priority to the amount of the judgment debt.

Order XLVI.

CHARGING ORDERS AND STOP ORDERS.

Order charging stock or shares.

1. An order charging stock or shares may be made by the Court or a Judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by the *Supreme Court Act* 1928.

Charge on partnership property.

1A. Every summons by a separate judgment creditor of a partner for an order charging his interest in the partnership property and profits under section 27 of the *Partnership Act* 1928, and for such other orders as are thereby authorized to be made, shall be served on the judgment debtor and on his partners, or

Chapter I.—Civil Proceedings.
Order XLVI. 96

such of them as are within the jurisdiction; and such service shall be good service on all the partners, and all orders made on such summons shall be similarily served.

Application by partner of judgment debtor.

1B. Every application which shall be made by any partner under the same section shall be made by summons and such summons shall be served on the judgment creditor and on the judgment debtor, and on such of the other partners as shall not concur in the application and as shall be within the jurisdiction. Such service shall be good service on all the partners and all orders made on such summons shall be similarly served.

Meaning of company and stock.

3. In the following Rules of this Order the expression "company" includes every public company, whether incorporated or not, and the expression "stock" includes shares, securities, and dividends thereon.

Filing and service of affidavit and notice as to stock.

4. Any person claiming to be interested in any stock standing in the books of a company may, on an affidavit by himself or his solicitor in the Form No. 27 in Appendix B, with such variations as circumstances may require, and on filing the same in the Prothonotary's office with a notice in the Form No. 22 in the same Appendix, with such variations as circumstances may require, and on procuring an office copy of the affidavit and a duplicate of the filed notice, authenticated by the seal of such office, serve the office copy and duplicate notice on the company.

Affidavit to state address of claimant.

5. There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent.

Service by post.

6. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated, or at any such substituted address as hereinafter mentioned, whether the person to whom the notice is sent is living or not.

Alteration of address.

7. The address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but no notice sent by post before the alteration to the address originally given or for the time being substituted therefor shall be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the company in the manner required for service of a notice under this order.

Service of affidavit and filed notice to have same effect as writ of distringas.

8. The service of the office copy of the affidavit and of the duplicate of the filed notice shall have the same force and effect as if these Rules had not been made and a writ of distringas in respect of the stock had been duly issued.

Withdrawal or discharge of notice.

9. A notice filed under Rule 4 of this Order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him or its operation may be made to cease by an order to be obtained by motion on

notice or by summons at chambers duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

Effect of notice on transfer of stock or payment of dividend.

10. If, whilst a notice filed under Rule 4 of this Order continues in force, the company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred or to pay the dividends thereon, the company shall not by force or in consequence of the service of the notice, be authorized without the order of the Court or a Judge, to refuse to permit the transfer to be made or to withhold the payment of the dividends for more than eight days after the date of the request.

Amendment of notice.

11. If the person who files a notice under Rule 4 of this Order desires to correct the description of the stock referred to in the filed notice, he may file an amended notice and serve on the company a duplicate thereof sealed with the seal of the Prothonotary's office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

Costs of stop order.

12. Where any moneys or securities are in Court to the general credit of any cause or matter, or to the account of any class of persons, and an order is made to prevent the transfer or payment of such moneys or securities or any part thereof, without notice to the assignee of any person entitled in expectancy or otherwise to any share or portion of such moneys or securities, the person by whom any such order shall be obtained on the shares of such moneys or securities affected by such order shall be liable at the discretion of the Court or a Judge, to pay any costs, charges, and expenses which, by reason of any such order having been obtained, shall be occasioned to any party to the cause or matter, or any persons interested in any such moneys or securities.

Service.

13. Any person moving on notice, or taking out a summons for any such order as aforesaid, shall not be required to serve such notice or summons upon the parties to the cause or matter, or upon the persons interested in such parts of the moneys or securities as are not sought to be affected by any such order.

Order XLVII.

WRIT OF POSSESSION.

On a Judgment for land.

1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession in manner before the commencement of *The Judicature Act* 1883 used in actions of ejectment in the Court.

Affidavit of service and disobedience.

2. Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment or order

shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order and that the same has not been obeyed.

One or separate writs for possession.

3. Upon any judgment or order for the recovery of any land and costs there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the successful party.

Writ of assistance

4. Upon due service of a judgment or order that a party do recover possession of any land, the person prosecuting the same shall be entitled to an order for a writ of assistance.

Order XLVIII.

WRIT OF DELIVERY.

Absolute order for.

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a Judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property upon paying the value assessed (if any), and that if the property cannot be found, and unless the Court or a Judge shall otherwise order, the Sheriff shall distrain the defendant by all his lands and chattels till the defendant deliver the property; or, at the option of the plaintiff, that the Sheriff cause to be made of the defendant's goods the assessed value (if any) of the property.

Form.
Execution for damages and costs.

2. A writ of delivery shall be in the Form No. 10 in Appendix H; and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest.

Order XLVIII. (A).

ACTIONS BY AND AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

Disclosure of partners' names.

1. Any two or more persons claiming or being liable as co-partners and carrying on business within the jurisdiction may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a Judge for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing, by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all the proceedings shall, nevertheless, continue in the name of the firm. Disclosure of partners' names.

3. Where persons are sued as partners in the name of their firm under Rule 1, the writ shall be served either upon any one or more of the partners or at the principal place, within the jurisdiction, of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to these Rules, such service shall be deemed good service upon the firm so sued, whether any of the members thereof are out of the jurisdiction or not, and no leave to issue a writ against them shall be necessary. Provided that in the case of a co-partnership, which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ of summons shall be served upon every person within the jurisdiction sought to be made liable. Service.

4. Where a writ is issued against a firm, and is served as directed by Rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice, the person served shall be deemed to be served as a partner. Notice in what capacity served.

5. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm. Appearance of partners.

6. Where a writ is served under Rule 3 upon any person having the control or management of the partnership business no appearance by him shall be necessary unless he is a member of the firm sued. No appearance except by partners.

7. Any person served as a partner under Rule 3 may enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form. Appearance under protest of person served as partner.

Chapter I.—Civil Proceedings.
Order XLVIII. (A). 100

Execution of judgment against a firm.

8. Where a judgment or order is against a firm, execution may issue—

(a) against any property of the partnership within the jurisdiction;

(b) against any person who has appeared in his own name under Rule 5 or 6, or who has admitted on the pleadings that he is, or who has been adjudged to be a partner;

(c) against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed may order that the liability of such person be tried and determined in any manner in which any issue or question in action may be tried and determined. But except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of the jurisdiction when the writ was issued, and who has not appeared to the writ unless he has been made a party to the action under the law relating to the service of writs and notices out of the jurisdiction, or has been served within the jurisdiction after the writ in the action was issued.

Attachment of debts owing from a firm.

9. Debts owing from a firm carrying on business within the jurisdiction may be attached under Order XLV., although one or more members of such firm may be resident abroad. Provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order. An appearance by any member pursuant to an order shall be a sufficient appearance by the firm.

Application of Rules to actions between co-partners.

10. The above rules shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided such firm or firms carry on business within the jurisdiction, but no execution shall be issued in such actions without leave of the Court or a Judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just.

Application of Rules to person trading as a firm.

11. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules relating to proceedings against firms shall apply.

ORDER XLIX.

1.—ARRANGEMENT OF BUSINESS.

1. All such arrangements as may be necessary or proper for the transaction or distribution of the business from time to time pending before the Court shall be made by and under the direction of the Judges of the Court, and in case of difference among them, in such manner as the majority of the said Judges shall determine.

Arrangement of business by Judges.

2.—TRANSFERS AND CONSOLIDATION.

2. Any cause or matter may at any stage be transferred from one Judge to another Judge by an order of the Chief Justice.

Action may be transferred.

3. Causes or matters may be consolidated by order of the Court or a Judge.

Actions may be consolidated.

ORDER L.

1.—INTERLOCUTORY ORDERS AS TO MANDAMUS INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY, ETC.

1. When by any contract a *primâ facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

Interim order for preservation of subject of action.

2. It shall be lawful for the Court or a Judge, on the application of any party to any cause or matter, to make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

Order for sale of perishable or other property.

3. It shall be lawful for the Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid, to authorize any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid, to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

Order for detention preservation, or inspection of property.

4. It shall be lawful for any Judge by whom any cause or matter may be heard or tried with or without a jury, or before whom as a member of the Full Court any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.

Judge may inspect.

Chapter I.—Civil Proceedings.
Order L. 102

Jury may inspect.

5. The provisions of Rule 3 of this Order shall apply to inspection by a jury, and in such case the Court or a Judge may make all such orders upon the Sheriff or other person as may be necessary to procure the attendance of a jury at such time and place and in such manner as they or he may think fit.

Application for order.

6. An application for an order under section 62, sub-section (3), of the *Supreme Court Act* 1928, or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said sub-section (3), it may be made either *ex parte* or with notice, and if for an order under the said Rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

Application by plaintiff under R. 1.

7. An application for an order under Rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge.

Payment into Court in discharge of lien.

8. Where an action is brought to recover, or a defendant in his defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

Court may allow whole or part of income.

9. Where any real or personal property shall form the subject of any proceedings in the Court, and the Court or Judge shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such action, it shall be lawful for the Court or Judge at any time after the commencement of such proceedings to allow the parties interested therein, or any one or more of them, the whole or part of the annual income of such real property, or a part of such personal property, or the whole or part of the income thereof, up to such time as the Court or Judge shall direct, and for that purpose to make such orders as may appear to the Court or Judge necessary or expedient.

10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge shall otherwise direct. Conduct of sale.

11. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had. Writ of injunction abolished.

12. In any cause or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Judge may grant the injunction, either upon or without terms, as may be just. Injunction to restrain repetition or commission of acts of like kind.

13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer. Leave to compound penal action.

14. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action. Order for.

15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Crown's half of the composition shall be paid into the hands of the Prothonotary for use of the Crown. Crown's half of penalty.

2.—RECEIVERS.

15A. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court or a Judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable cost of his appointment, and may, if it or he shall think fit, direct any inquiries on these or other matters before making the appointment. Appointment of receiver by way of equitable execution.

16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a Judge, and taken before a person authorized to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct; and the person so to To give security.

be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the Form No. 21 in Appendix L, unless the Court or a Judge shall otherwise order.

Salary.

Form.

Security where not exceeding £500.

16A. Where the amount for which security is to be given does not exceed £500, such security may be given by an undertaking in Form No. 21A in Appendix L. Such undertaking shall be signed by the receiver and his surety or sureties, or, in the case of a guarantee or other company, shall be sealed with the seal of such company, or otherwise duly executed. The undertaking shall be filed in the office of the Prothonotary, and kept as of record until the same shall have been duly vacated.

Adjournment to Chambers.

17. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a Judge may adjourn to Chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding Rule mentioned, and may thereupon direct such judgment or order to be drawn up.

Receiver to pass accounts.

Neglect.

18. When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge shall fix the days upon which he shall (annually, or at longer or shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be paid by him, and, with respect to any such receiver as shall neglect to leave and pass his accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the Judge, before whom any such receiver is to account, may from time to time when his subsequent accounts are produced to be examined and passed disallow the salary therein claimed by such receiver; and may also, if he shall think fit, charge him with interest at the rate of £8 per cent. per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver.

Form.

19. Receivers' accounts shall be in the Form No. 14 in Appendix L, with such variations as circumstances may require.

Affidavit verifying account.

20. Every receiver shall leave in Chambers his account, together with an affidavit verifying the same in the Form No. 22 in Appendix L, with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account.

Neglect of duty.

21. In case of any receiver failing to leave any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at Chambers to show cause why such account

or affidavit has not been left, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at Chambers or by adjournment into Court, including the discharge of any receiver and appointment of another, and payment of costs.

22. When a receivership has been completed, the book containing the accounts shall be deposited in the Prothonotary's office. Books to be deposited.

3.—LIQUIDATORS, GUARDIANS, AND COMMITTEES.

23. The accounts of liquidators shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts. Liquidators.

24. The accounts of guardians and of committees of persons of unsound mind shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts. Passing of accounts of guardians and committees.

ORDER LI.

SALES BY THE COURT.

1. If in any cause or matter relating to any real estate it shall appear necessary or expedient that the real estate or any part thereof should be sold, the Court or a Judge may order the same to be sold, and any party bound by the order and in possession of such estate, or in receipt of the rents or profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed. Sale of real estate may be directed any time after action.

1A. In all cases where a sale, mortgage, partition, or exchange is ordered, the Court or a Judge shall have power, in addition to the power already existing, with a view to avoiding expense or delay, or for other good reason, to authorize the same to be carried out, either— Mode of carrying out sale, mortgage, partition, or exchange when ordered by Court.

(*a*) by laying proposals before the Judge in Chambers for his sanction; or

(*b*) by proceedings altogether out of Court, any moneys produced thereby being paid into Court or to trustees, or otherwise dealt with as the Judge in Chambers may order.

Provided always, that the Judge shall not authorize the said proceedings altogether out of the Court, unless and until he is satisfied, by such evidence as he shall deem sufficient, that all persons interested in the estate to be sold, mortgaged, partitioned, or exchanged are before the Court, or are bound by the order for sale, mortgage, partition, or exchange, and every order authorizing the said proceedings altogether out of Court shall be prefaced by a declaration that the Judge is so satisfied as aforesaid, and a statement of the evidence upon which such declaration is made.

Power to make order for sale in debenture-holders' actions at any time.

1B. In debenture-holders' actions, where the debenture-holders are entitled to a charge by virtue of the debentures, or of a trust deed, or otherwise, and the plaintiff is suing on behalf of himself and other debenture-holders, and where the Judge is of opinion that there must eventually be a sale, he may in his discretion direct a sale before judgment, and also after judgment, before all the persons interested are ascertained, whether served or not.

Sale under order.

3. Where a judgment or order is given or made, whether in Court or in Chambers, directing any property to be sold, unless otherwise ordered, the same shall be sold with the approbation of the Judge to the best purchaser that can be got for the same, to be allowed by the Judge; and all proper parties shall join in the sale and conveyance as the Judge shall direct.

Reserved biddings.

4. Affidavits for the purpose of enabling the Judge to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed.

Particulars and conditions of sale.

5. As soon as particulars and conditions of sale settled at Chambers have been printed, two prints thereof, certified by the solicitor to be correct prints of the particulars and conditions settled at the Judge's Chambers, shall be left at Chambers.

Affidavit of result of sale.

6. An office copy of the affidavit of the person appointed to sell of the result of the sale, with the bidding paper and particulars therein referred to, shall be left at Chambers at least one clear day before the day appointed for settling the certificate of the result of the sale.

Opinion of counsel.

7. The Court or a Judge may require or receive the opinion of counsel for his aid and assistance in the investigation of the title to an estate with a view to an investment of money in the purchase, or on mortgage thereof, or with a view to the sale thereof, or to the settlement of a draft of a conveyance, mortgage, settlement, conditions of sale, or other instrument, or any other matter which the Court or a Judge may think fit to refer.

Subject to objection.

8. Any party may object to any opinion of any such counsel and thereupon the point in dispute shall be disposed of by the Court or by the Judge according to the nature of the case.

Order LII.

MOTIONS AND OTHER APPLICATIONS.

Application by motion.

1. Where by these Rules any application is authorized to be made to the Court or a Judge, such application, if made in Court, shall be made by motion, and no petition shall be presented except where expressly required by Act of Parliament.

2. No motion or application for a rule *nisi* or order to show cause shall hereafter be made in any action, or (*a*) to set aside, remit, or enforce an award, or (*b*) for attachment, or (*c*) to answer the matters in an affidavit, or (*d*) to strike off the rolls, or (*e*) against a Sheriff to pay money levied under an execution.

Rule to show cause.

3. Except where according to the practice existing at the time of the passing of *The Judicature Act* 1883 any order or rule might be made absolute *ex parte* in the first instance, and except where, notwithstanding Rule 2, a motion, or application, may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking (if any) as the Court or Judge may think just; and any party affected by such order may move to set it aside.

Previous notice of motion required.

Except in certain cases.

4. Every notice of motion to set aside, remit, or enforce an award or for attachment or committal, or to strike off the rolls, shall state in general terms the grounds of the application; and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

Notice of motion to set aside award, &c.

5. Unless the Court or Judge give leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion and a copy of the notice shall, before the hearing of the motion, be filed in the Office of the Prothonotary by the party moving or his solicitor. Provided that in applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion.

Two clear days between notice and hearing.

Am. G.G. 11.5.51 p. 3368.

6. If on the hearing of a motion or other application the Court or Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms (if any) as the Court or Judge may think fit to impose.

Motion dismissed or adjourned for notice on other persons.

7. The hearing of any motion or application may from time to time be adjourned upon such terms (if any) as the Court or Judge shall think fit. With the consent of all parties concerned the Associate of a Judge may record upon the Court file that the hearing of a motion or other application has been adjourned by consent to a specified date or for a specified period or *sine die,* as the case may be, and a record so made shall have the same operation as an order of a Judge to the same effect.

Hearing adjourned.

Am. G.G. 24.3.54 p. 1490.

Chapter I.—Civil Proceedings.
Order LII. 108

Notice of motion to defendant not appearing.

8. The plaintiff shall, without any leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose.

By leave with writ and before appearances.

9. The plaintiff may, by leave of the Court or a Judge, to be obtained *ex parte,* serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.

No order for return of writ, &c., necessary.

11. No order shall issue for the return of any writ or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the Sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such Sheriff.

Notice to Sheriff, out of office.

12. When any Sheriff shall, before going out of office, arrest any defendant, and render return of *cepi corpus,* he may be called upon by a notice, as provided by the last preceding Rule, to bring in the body within the time allowed by law, although he may be out of office before such notice is given.

Order to bear date of making.

13. Every order if and when drawn up shall be dated the day of the week, month, and year, on which the same was made unless the Court or a Judge shall otherwise direct, and shall take effect accordingly.

Order need not be drawn up in certain cases.

14. Where an order has been made not embodying any special terms nor including any special directions, but simply enlarging time for taking any proceeding, or doing any act, or giving leave (*a*) for the issue of any writ other than a writ of attachment, (*b*) for the amendment of a writ or pleadings, (*c*) for the filing of any document, or (*d*) for any act to be done by any officer of the Court, it shall not be necessary to draw up such order unless the Court or a Judge shall otherwise direct; but the production of a note or memorandum of such order signed by a Judge or Master where any such matter has been referred to him shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this Rule. The person or solicitor of the person on whose application such order is made shall forthwith give notice in writing thereof to such person (if any) as would if this rule had not been made have been required to be served with such order.

Note or memorandum sufficient.

Am. G.G. 4.10.50 p. 5270.

Notice of order.

Petition to state parties to be served.

16. At the foot of every petition (not being a petition of course) presented to the Court, and of every copy thereof, a statement shall be made of the persons (if any) intended to be

served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof.

17. Unless the Court or a Judge gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition. Two clear days between service and hearing.

18. In the case of applications under Acts of Parliament directing the purchase money of any property sold to be paid into Court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same. Affidavit of claim to purchase money paid into Court.

25. Where the relationship of solicitor and client exists, or has existed, a summons may be issued by the client or his representatives for the delivery of a cash account, or the payment of moneys, or the delivery of securities, and the Court or a Judge may from time to time order the respondent to deliver to the applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant, or to bring into Court the whole, or any part of the same, within such time as the Court or a Judge may order. In the event of the respondent alleging that he has a claim for costs, the Court or a Judge may make such provision for the payment or security thereof or the protection of the respondents lien (if any) as the Court or Judge may think fit. Account by solicitor.

26. If, during the taxation of any bill of costs, or the taking of any account between solicitor and client, it shall appear to the Taxing Master that there must in any event be moneys due from the solicitor to the client, the Taxing Master may from time to time make an interim certificate as to the amount so payable by the solicitor. Upon the filing of such certificate, the Court or a Judge may order the moneys so certified to be forthwith paid to the client or brought into Court. Interim certificate.

Order LIII.

Certiorari: Mandamus: Prohibition: Quo Warranto: Habeas Corpus.

1. *General.*

1. Applications for writs of Certiorari, Mandamus, or Prohibition, or for leave to exhibit informations of Quo Warranto, or for relief of like nature to Mandamus or Quo Warranto, may be made to the Court or a Judge. The application shall be, in the first instance, for an order calling on the parties interested Application how made.

Chapter I.—Civil Proceedings.
Order LIII. 110

in resisting the application to show cause why the writ should not be issued, or the information filed, or other relief given, except in the case of application by a law officer *ex officio* for a writ of Certiorari or leave to file an information of Quo Warranto, in which case the order shall, if asked, be absolute in the first instance. Provided that the Court or Judge may, in its or his discretion, in any case in which it appears necessary for the advancement of justice, grant an order absolute in the first instance for a writ of Certiorari, Mandamus, or Prohibition.

Order to be returnable before the Court.

2. Orders to show cause shall be to show cause before the Court.

Title of affidavits.

3. Affidavits intended to be used on the application shall be entitled "In the Supreme Court," without any other title.

Title of proceedings.

4. The order to show cause and all subsequent proceedings shall be entitled "The Queen against" the judicial or other authority or other person to whom the writ is proposed to be directed, or against whom the information is proposed to be exhibited, "*ex parte*" the applicant.

In the case of a writ of Certiorari, Mandamus, or Prohibition, which is proposed to be directed to a judicial or public authority, the authority shall be described by his or their name of office, and, in the case of justices of the peace in a Court of Petty Sessions, they shall be described as the justices of the peace at the place where the Court is held. . The applicant shall, in the cases of applications for writs of Mandamus or relief of like nature, and of applications for writs of Prohibition, be called the prosecutor, and, in the case of applications for informations of Quo Warranto or relief of like nature, the relator.

Order absolute.

5. An order absolute need not be served, but the costs of service thereof may be allowed in the discretion of the Taxing Officer, if the writ is not actually issued or the information is not actually exhibited.

Costs.

6. When the order is made absolute the Court or a Judge may, except as otherwise provided by these Rules, dispose of the costs of the proceedings either by the final judgment or by a separate order.

2. CERTIORARI.

Time of notice.

7. An order *nisi* for a writ of Certiorari to remove a judgment order or other proceeding of an inferior Court or tribunal, or of justices of the peace, shall not be granted unless it is made within six months after the date of the judgment, order, or other proceeding, nor unless it is proved upon affidavit that the applicant has given six days' notice of the intended application to the Court, justice of the peace, or other person or persons by or before whom the judgment, order, or other proceeding was made or taken, or to two of them if more than one.

7A. An order *nisi* for a writ of Certiorari to remove any warrant, order, conviction, inquisition, or record shall not be granted unless at the time of the application a copy of the warrant, order, conviction, inquisition, or record, verified by affidavit, is produced, or its non-production accounted for to the satisfaction of the Court or Judge.

Copy, warrant, order, &c., to be produced on application.

8. Any mistake or omission in any judgment, order, or other proceeding, which is intended to be relied upon as a ground for quashing the judgment, order, or proceeding, shall be stated in the order *nisi*, otherwise an objection on account of the omission or mistake shall not be allowed.

Objections to be stated in order.

9. In the case of orders to show cause why a writ of Certiorari should not be issued addressed to justices of the peace in a Court of Petty Sessions, service of the order on the Clerk of the Court shall be sufficient.

Service.

10. A writ of Certiorari to remove a judgment or order of any Court or tribunal shall not be issued, except on the application of a law officer, until the applicant has given security to the satisfaction of the Prothonotary in the sum of £50, conditioned to prosecute the writ with effect at his own cost without delay, and to pay to the party in whose favour the judgment or order was given or made, in the event of its being confirmed, such costs, if any, as the Court shall order him to pay.

Security for costs.

11. When cause is shown against an order *nisi* for a writ of Certiorari to bring up a judgment or order, the Court, if it directs the writ to issue, may by the same order direct that the judgment or order shall be quashed on return without further order; and in that case no security need be given as required by the last preceding Rule, and a memorandum to that effect shall be indorsed upon the writ by the officer by whom it is issued.

Order to quash in first instance.

In any such case the judgment or order shall be quashed upon being returned to the Court without further order.

12. When cause is not shown against an order *nisi* for a writ of Certiorari to bring up a judgment or order, or when the order is absolute in the first instance, the applicant shall apply to the Court or a Judge for an order to quash the judgment or order. Such application shall be made upon notice to the parties interested in supporting the judgment or order.

When no cause shown.

12A. A writ of Certiorari shall be in any of the Forms Nos. 9 or 10 in Appendix J, with such variations as circumstances may require.

Forms.

Chapter I.—Civil Proceedings.
Order LIII. 112

3. MANDAMUS.

Prosecutor to be named.

13. An order *nisi* for a writ of Mandamus or for relief of a like nature shall not be granted except upon the application of some person who is interested in the relief sought, and the applicant must state by affidavit that the application is to be made at his instance as prosecutor.

Persons to show cause.

14. The Court or Judge may direct that the order *nisi* shall be addressed to, and served upon, any person who, in the opinion of the Court or Judge, ought to have notice thereof; and any person who, in the opinion of the Court or Judge, would be affected by the issue of the peremptory writ may show cause against the order *nisi,* and, if he does so, shall be liable to costs as if the order had been addressed to him.

Form of writ.

15. Unless otherwise ordered by the Court or Judge, every writ of Mandamus shall command the person to whom it is addressed to do the act in question, or show cause why he has not done it. But the Court or Judge may direct that the command shall be peremptory in the first instance. Every writ of Mandamus shall be in the Form No. 12 in Appendix J, with such variations as circumstances may require, and shall bear date of the day on which it is issued, and shall be tested in the name of the Chief Justice.

Time for return of writ.

16. Unless otherwise ordered by the Court or Judge, the writ shall be returnable within the same time after service as is allowed for appearance in the case of a writ of summons.

Service.

17. When a writ of Mandamus is directed to one person only, the original writ must be personally served upon him by delivering it to him. When the writ is directed to two or more persons, it shall be personally served upon all of them but one in the manner prescribed for personal service of a writ of summons, and shall be served upon the remaining one by delivering the original writ to him.

Service on justices or corporate bodies.

18. When a writ of Mandamus is directed to justices of the peace, or to a corporation, or to a company, or to public authorities, it shall be served on so many of the justices or of the officers or members of the corporation or company or public authority as are competent to do the act commanded, unless by law some other mode of service is sufficient.

Return.

19. The persons to whom a writ of Mandamus is directed shall, within the time allowed by the writ, file the writ in the Prothonotary's office, together with a certificate, written thereon or annexed thereto, and signed by them, setting forth that they have done the act commanded by the writ, or else setting forth the reason why they have not done so.

20. A copy of the return shall be served upon the prosecutor on the same day on which it is filed. Service.

21. If the return does not certify that the act commanded has been done, the same proceedings shall be had and taken, and within the same time, as if the return were a defence in an action in which the prosecutor was the plaintiff and the person to whom the writ is directed was the defendant, and had pleaded this return as his defence. Pleading to return.

22. If the question of fact and law, if any, raised by the return is determined in favour of the prosecutor by judgment of the Court or otherwise, the prosecutor shall be entitled to a peremptory writ of Mandamus, commanding the persons to whom the first writ was directed to do the act therein commanded; and such writ shall be awarded by the judgment, if any, or, if there is no judgment, by a separate order. Peremptory. writ.

23. When a peremptory writ is awarded in the first instance, the Court or Judge shall, at the time of granting the writ, direct by and to whom the costs of the proceedings shall be paid. When a peremptory writ is not awarded in the first instance, and the return to the writ certifies that the person to whom it is addressed has done the act commanded by the writ, an application for an order for the costs of the proceedings may be made at any time after the return is filed, not being later than the fourth day of the Sittings of the Full Court held next after the day on which the return is filed. The application shall be made to the Court or Judge by whom the writ was awarded. Costs when peremptory writ awarded in the first instance or on obedience.

24. When upon an application for a writ of Mandamus it appears that some person other than the prosecutor claims that the person to whom it is proposed to direct the writ shall do some act inconsistent with the act which the prosecutor claims to have done, the person to whom the order *nisi* or writ is directed may apply to the Court or a Judge for an order that the last-named person be substituted for him in all subsequent proceedings up to the issue of a peremptory writ of Mandamus; and the Court or a Judge may make such order on the application as is just. Proceedings in nature of interpleader.

25. An application for a writ of Mandamus, or an order in the nature of a Mandamus, to a judicial tribunal to enter a minute of adjournment and hear a matter, shall be made within two months of the date of the refusal to hear, or within such further time as is, under special circumstances, allowed by the Court or Judge. Time.

26. In any case in which the Court may direct the issue of a peremptory writ of Mandamus, the command may be expressed in an order of the Court without the issue of a writ, which order shall have the same effect as a peremptory writ of Mandamus. Mandamus by order.

No action against party obeying writ or order.

26A. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of Mandamus or an order of the Court for relief of the like nature issued by the Court or any Judge thereof.

4. PROHIBITION.

Pleadings in Prohibition.

27. The Court or a Judge may in any case, instead of directing the issue of a writ of Prohibition, direct the prosecutor to deliver to the opposite party a statement of claim setting forth the facts upon which his claim to the writ is founded, and thereupon the same proceedings shall be had and taken in all respects as in an action.

Proceedings on judgment.

28. If judgment is given for the prosecutor, the judgment shall include a direction that a writ of Prohibition shall issue.

Writ of Procedendo.

29. When a writ of Prohibition has been issued, and it is afterwards made to appear to the Court or a Judge that relief ought to be given against the judgment or order by which the writ was awarded on any ground on which relief might be given against a judgment in an action, the Court or Judge may direct that a writ, called a writ of Procedendo, shall be issued commanding the judicial tribunal to which the writ of Prohibition was issued to proceed to hear or determine the matter in question or otherwise proceed therein as if the writ of Prohibition had not been issued.

Prohibition by order.

30. The Prohibition may be expressed in an order of the Court without the issue of a writ, which order shall have the same effect as a writ of Prohibition. A writ of Prohibition shall be in the Form No. 11 in Appendix J, with such variations as circumstances may require.

5. QUO WARRANTO.

Relator to be named.

31. Upon an application for an order for leave to exhibit an information of Quo Warranto, or for relief of a like nature, the applicant must state by affidavit that the application is to be made at his instance as relator. The Court or a Judge may allow a new relator to be substituted for the original relator, on such terms as to costs or otherwise as are just.

Objections to be stated in order *nisi*.

32. Every objection intended to be made to the title of the defendant or person called on to show cause shall be stated in the order *nisi*, and no objection not so stated shall be raised on the return of the order *nisi*, or in the information, without the leave of a Court or a Judge.

Security for costs.

33. An information shall not, without the leave of the Court or a Judge, be filed until the applicant has given security in the sum of £50 conditioned to file the information in the Prothonotary's office and prosecute the same with effect, and to pay to the defendant such costs, if any, as the Court or a Judge shall order.

Form of information.

34. The information shall set forth the facts relied on by the relator as invalidating the title of the defendant to the office in question in the same manner as in a statement of claim.

Signature of service of information.

35. The information shall be in the name of the Attorney-General or the relator, as the case may be, on behalf of Her Majesty, and shall be signed by the Attorney-General or relator. A copy of the information shall be served upon the defendants, or, if at the return of the order *nisi* he appeared by solicitor, then upon his solicitor.

Defence and subsequent proceedings.

36. The defendant shall plead to the information within the same time and in the same manner as if the information were a statement of claim in an action to which a statement of defence was ordered, and thereupon the same proceedings shall be taken in all respects as if the proceeding by information were an action in which the relator was plaintiff and the defendant was defendant.

Judgment costs.

37. If judgment is given for the Crown, the judgment shall award that the defendant be ousted from the office usurped by him.

Disclaimer.

38. The defendant may, if he thinks fit, disclaim the office in question. Such disclaimer shall be signed by the defendant and attested by a commissioner for affidavits, and shall be filed in the Prothonotary's office, and a copy thereof shall be served on the relator within the time allowed for delivering a defence. The relator shall thereupon, unless the Court or a Judge otherwise orders, be entitled to enter judgment of ouster with costs, including the costs of the order giving leave to exhibit the information.

Consolidation.

39. When proceedings by information of Quo Warranto, or for relief of a like nature, are pending against several persons for usurpation of offices of the same nature, and upon the same grounds of objection, the Court or a Judge may direct the proceedings to be consolidated, as in the case of actions, and for that purpose may make such orders as are just. But an order for consolidation or stay of proceedings against any defendant shall not be made upon the application of a defendant, unless he undertakes to enter a disclaimer in the event of judgment being given for the relator in the proceeding which is not stayed.

Chapter I.—Civil Proceedings.
Order LIII. 116

6. HABEAS CORPUS.

How applied for.

40. Applications for writs of Habeas Corpus, or for orders for the production of persons in confinement for the purpose of examination or trial, may be made to the Court or a Judge *ex parte*. The affidavits upon which the application is made shall be entitled "In the Supreme Court," without other title, except in the case of applications for orders for the production of persons for examination as witnesses in causes or matters pending in the Court, in which case they shall also be entitled in the cause or matter.

How granted.

41. The Court or a Judge may make an order absolute in the first instance for the issue of the writ or production of the person, or may make an order calling upon the person who would be required to obey the writ or order, if granted, to show cause why it should not be issued or made. The order and all subsequent proceedings shall be entitled "The King against" the person to whom the writ or order is directed, except in the case of orders for the production of persons as witnesses, which shall be entitled in the cause or matter.

Service.

42. Writs of Habeas Corpus, and orders for production directed to persons charged by law with the custody of persons in lawful custody or confinement, may be served either personally, or by leaving the original with a servant or officer of the person to whom the writ or order is directed at the place where the person in question is confined or detained. Other writs of Habeas Corpus must be served personally unless an order for substituted service is made as provided for by Order X. When a writ of Habeas Corpus is directed to more persons than one, it shall be served in the same manner as a writ of Mandamus directed to several persons. Together with the writ there shall be served a notice, directed to the person to whom the writ is addressed, and pointing out the acts to be done by him in obedience to the writ, and the consequences of making default.

Return to writ of Habeas Corpus.

43. The person to whom a writ of Habeas Corpus is directed shall, at the time and place specified therein, make his return to the writ, which shall be indorsed upon or attached to the writ, and shall set out all the causes of the detention of the person named in the writ. The return shall be filed in the office of the Prothonotary.

Amendment of return.

44. The return may be amended by leave of the Court or a Judge.

Proceedings on return.

45. Upon the return of the writ the return shall be read, and a motion shall then be made for the disposition of the person therein named, or for amending or questioning the return.

46. When an order to show cause has been made, the Court or Judge may, on the return of the order, direct the discharge or other disposition of the person in question without the issue of a writ of Habeas Corpus; and any such order shall be as effectual as if it had been made on the return of a writ. Discharging without writ.

Order LIV.

Subst. 16.7.56. G.G. 23.5.56 p. 2717.

APPLICATIONS AND PROCEEDINGS AT CHAMBERS.

1. Every application at Chambers not made *ex parte* shall be made by summons. Summons.

1A. The office of a Master shall be deemed to be Judge's Chambers for the purposes of any matter referred to or ordered by or under these Rules to be dealt with by a Master. Office of Master deemed Judge's Chambers.

1B. The Masters are authorized to hear and determine all applications and may exercise any of the powers conferred on the Court or a Judge under any of the following Orders or Rules:— Authority of Masters.

Order III. Rule 1, Orders VII., VIII. and IX., Order XII. except Rule 10, Order XIII. Rule 1, Order XVI. except Rules 10, 21, 32, 39, 40, 47, Order XVI. (A), except Rules 6, 7 and 9 (2), Orders XVII., XVIII., XVIII. (A)., Order XIX. except Rule 27, Orders XX., XXI., Order XXII. except Rule 8, Orders XXIII., XXIV., XXVI., XXVIII., XXX., Order XXXI. except Rules 21 and 23, Order XXXVIII. Rules 1, 12, 13, 14, 18, 19, 21, Orders XLI. (A)., XLV., XLVIII. (A)., Order LIV. Rules 5, 6, 7, 8 and 9, Order LV. Rules 1 (1), (2), (3), (14), Order LXIV. Rule 6, Order IXV. Rule 1, 6, 6A, 7, 27 (16), (20), Order LXVII. Rule 6.

1C. If any matter arising under the Rules specified in Rule 1B of this Order appears to a Master proper for the decision of a Judge the Master may refer such matter to a Judge and the Judge may either dispose of the matter or refer it back to the Master with such directions as he may think fit. Reference by Master to Judge.

1D. Any person affected by any order or decision of a Master made under the rules specified in Rule 1B of this Order may appeal therefrom to a Judge in Chambers. Such appeal shall be by notice in writing to attend before the Judge, without a fresh summons, within five days after the decision complained of or such further time as may be allowed by a Judge or the Master. Unless otherwise ordered there shall be at least one clear day between service of the notice of appeal and the day of hearing. An appeal from the decision of a Master shall not operate as a stay of proceedings unless so ordered by a Judge or the Master. Appeal from Master to Judge.

Chapter I.—Civil Proceedings.
Order LIV. 118

When matters allotted to Master may be brought before Judge.

1E. No matter which is authorized by or under this Order to be dealt with by a Master shall be brought before a Judge or the Court except—

(i) on a reference from the Master; or

(ii) on an appeal under this Order; or

(iii) by special leave of the Court or a Judge.

Form of originating summons.

2. An originating summons issued under Order LIV. (A) or under Order LV., Part 2, shall be in the Form No. 1B in Appendix K, with such variations as circumstances require. It shall be prepared by the applicant or his solicitor, and shall be sealed at the Prothonotary's Office, and when so sealed shall be deemed to be issued. The person obtaining the summons shall leave at such office a copy thereof, which shall be duly filed.

Appearances to be entered.

4A. The parties served with an originating summons under Order LIV. (A) or under LV., Part 2, shall, before they are heard in Chambers, enter appearances in the Prothonotary's Office and give notice thereof. So far as applicable, the provision of Order XII., and of Order XVI., Rule 18 and the forms in Appendix A, Part II., shall apply *mutatis mutandis* to the entry of such appearances.

Time for service of summons.

4C. Every summons, other than an originating summons, shall be served within a reasonable time before the return thereof, and in no case later than Two o'clock of the day previous to its being made attendable, or in the case of any such summons attendable on a Monday not later than Two o'clock in the afternoon of the preceding Friday, and shall operate as a stay of proceedings from the hour at which it is attendable. Provided that it shall be lawful for a Judge, if under special circumstances he shall see fit, to order that any such summons operate as a stay of proceedings from the time of service, when it shall be drawn up accordingly and signed by such Judge.

Proceedings *ex parte* when party summoned fails to attend.

5. Where any of the parties to a summons fails to attend, whether upon the return of the summons (not being an originating summons issued under Order LIV. (A) or Order LV., Part 2), or at the time and place fixed for the hearing of the summons (being an originating summons issued under Order LIV. (A) or Order LV., Part 2), as the case may be, or at any time appointed for the consideration or further consideration of the matter, the Judge may proceed *ex parte,* if considering the nature of the case he thinks it expedient so to do. No affidavit of non-attendance shall be required or allowed, but the Judge may require such evidence of service as he may think just.

6. Where the Judge has proceeded *ex parte*, such proceedings shall not in any manner be reconsidered in the Judge's Chambers, unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same at the time and direct them to be paid by the party or his solicitors before he shall be permitted to have such proceedings reconsidered or make such other order as to such costs as he may think just.

Reconsideration of *ex parte* proceedings.

7. Where a proceeding in Chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally.

Non-attendance.

Costs.

8. Where matters in respect of which a summons has been issued are not disposed of upon the return of the summons (not being an originating summons issued under Order LIV. (A) or Order LV., Part 2), or at the time and place fixed for the hearing of the summons (being an originating summons issued under Order LIV. (A) or Order LV., Part 2), as the case may be, the parties shall attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter.

Further attendance on summons.

9. In every cause or matter where any party thereto makes any application at Chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court or Judge; and upon the hearing of such application it shall be lawful for the Court or Judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the Judge thinks fit, be adjourned from Chambers into Court, or from Court into Chambers.

Summons may include all matters.

9A. On the application of any party to a matter any Master may, and if the circumstances require it shall, hear and dispose of such matter on behalf of any other Master by whom the application would otherwise have been heard.

Master acting for another Master.

10. A summons, other than an originating summons issued under Order LIV. (A) or Order LV., Part 2, shall be in the form No. 1 in Appendix K, with such variations as circumstances may require, and shall be addressed to all the persons on whom it is to be served.

Form of summons.

Chapter I.—Civil Proceedings.
Order LIV. 120

10A. The business to be disposed of in Chambers shall consist of the following matters in addition to those which under any other Rule or by any Act may be disposed of in Chambers:— Business at Chambers.

(a) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all applications relating to the conduct of any cause or matter.

(b) Such other matters as the Judge may think fit to dispose of at Chambers.

11. In the case of every application in Chambers other than— Issue of summons.

(a) an application made *ex parte*, and

(b) an application made by way of originating summons issued under Order LIV. (A) or Order LV., Part 2,

a summons shall be prepared by the applicant or his solicitor, and shall be issued either—

(a) by being sealed at the Prothonotary's Office, or

(b) by being signed by a Judge or by an Associate or, in the case of a summons returnable before a Master, by a Master.

If it is issued by being sealed at the Prothonotary's Office, the person obtaining the summons shall leave at such office a copy thereof, which shall be duly filed. If it is issued by being signed by a Judge or an Associate or a Master the person obtaining the summons shall leave with the Judge or the Associate or the Master a copy thereof, which after the signing of the summons shall be forwarded to the Prothonotary's Office to be duly filed.

12. Unless a Judge, or in the case of a summons returnable before a Master, the Master otherwise directs, summonses shall be returnable at half-past Ten o'clock in the forenoon. Hour of return.

13. An order shall be in the Form No. 2 in Appendix K, with such variations as circumstances require. It shall be prepared by the party entitled to the order, and signed by the Judge by whom it is made or (in the case of Orders pronounced after the 1st December, 1949) in the event of such Judge being unable through death retirement or any other sufficient cause to sign the same by any other Judge of the Court upon his being satisfied that the Order as drawn conforms to the Order pronounced by the Judge who made it. An order made by a Master shall be signed by him. Form of order.

14. Whenever any order is made on any originating summons or on any application originating in Chambers and in any other case of an order made in Chambers where the Judge or, in the case of an order made by a Master, the Master does not before the signing of the Order direct otherwise there shall be left with the Associate or, in the case of an order made by the Master, with the Master a copy of such order which shall be forwarded to the Prothonotary to be duly filed. Copy of certain orders to be left with Associate.

15. Every order *nisi* to review a decision of Justices or of a Court of Petty Sessions and every order to show cause shall be filed in the office of the Prothonotary not less than two days before the day on which the same is returnable. Time for filing order *nisi* &c.

16. Save where otherwise expressly provided, every Order made in Chambers which is presented to the Judge for signature shall be left with his Associate or, in the case of an Order made by a Master, with the Master within one month after the day on which which such Order was pronounced. Order in Chambers for signature.

ORDER LIV. (A).

DECLARATION ON ORIGINATING SUMMONS.

1. Any person claiming to be interested under a deed, will, or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested. Summons for construction of instruments.

2. Any person claiming any legal or equitable right in a case where the right depends upon the construction of a statute may apply by originating summons for the determination of the question of construction and for a declaration as to the right claimed. Summons for construction of statute.

3. The Court or a Judge may direct such persons to be served with the summons as they or he may think fit. Service.

4. The application shall be supported by such evidence as the Court or a Judge may require. Evidence.

5. The Court or a Judge shall not be bound to determine any such question of construction if, in its or his opinion, it ought not to be determined on originating summons. Direction of Court.

ORDER LV.

CHAMBERS IN MATTERS WITHIN THE COGNIZANCE OF THE COURT IN ITS EQUITABLE JURISDICTION PREVIOUSLY TO THE COMMENCEMENT OF THE JUDICATURE ACT 1883.

1. *Introductory.*

Business to be disposed of in Chambers.

1. The business to be disposed of in Chambers by a Judge shall, unless otherwise ordered by such Judge, consist of the following matters, in addition to the matters which under any other Rule or by Statute may be disposed of in Chambers:—

(1) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights, or where the title depends only upon proof of the identity or the birth, marriage, or death of any person.

(2) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter, where the cash does not exceed £1,000, or the securities do not exceed £1,000 nominal value.

Payment of dividends.

(3) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise.

Statute of Trusts, under £1,000.

Am. G.G. 26.4.39 p. 1382.

(5) Applications under the *Trustee Act* 1953, or any Act amending the same, in all cases where the money or securities in Court do not exceed £1,000 or £1,000 nominal value.

Lands Compensation Act 1928.

(7) Applications under the *Lands Compensation Act* 1928, or any Act amending the same.

After judgment for sale.

Ib.

(8) Applications under the *Trustee Act* 1953, or any Act amending the same, in all cases where a judgment or order has been given or made for the sale, conveyance, or transfer of any stock, or of any hereditaments, whatever may be the estate or interest therein.

Guardianship.

(12) Applications as to guardianship and maintenance or advancement of infants.

Management of property.

(13) Applications connected with the management of property.

Sale of property.

(14) Applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into Court and investment of the purchase money.

(15) All applications (not being applications for orders of course) for the taxation and delivery of bills of costs, and for the delivery by any solicitor of deeds, documents, and papers. Taxation of costs and delivery of deeds.

(16) Applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of the estate of an intestate, or for the distribution of a fund among creditors. Orders on further consideration for distribution of estate.

(17) Such other matters as the Judge may think fit to dispose of in Chambers. Other matters.

2. All other powers and authorities which at the commencement of *The Judicature Act* 1883 were exercisable by the Master-in-Equity, under or by virtue of any general order or orders of the Court in relation to any reference made by the Court to him, may be exercised by the Judge in Chambers. Judge in Chambers to have powers formerly exercisable by Master.

2. *Administration and Trusts.*

3. The executors or administrators of a deceased person or any of them and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee or next of kin of a deceased person, or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid may take out, as of course, an originating summons returnable in the Chambers of a Judge of the Court for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require, that is to say, the determination without an administration of the estate or trust of any of the following questions or matters:— Originating summons for relief without administration.

(*a*) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin or *cestui que trust*. Rights of creditor, &c.

(*b*) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others. Ascertainment of class.

(*c*) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts. Accounts of executors, &c.

(*d*) The payment into Court of any money in the hands of the executors, administrators, or trustees. Payment into Court by executors, &c.

(*e*) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors, administrators, or trustees. Direction to executors, &c.

Chapter I.—Civil Proceedings.
Order LV. 124

Approval of sale, &c.

(*f*) The approval of any sale, purchase, compromise, or other transaction.

Questions in administration.

(*g*) The determination of any question arising in the administration of the estate or trust.

Summons for administration.

4. Any of the persons named in the last preceding Rule may in like manner apply for and obtain an order for—

(*a*) The administration of the estate of the deceased.

Trusts.

(*b*) The administration of the trust.

Service.

5. The persons to be served with the summons under the last two preceding Rules in the first instance shall be the following (that is to say):—

Where summons by executor, &c.

A. Where the summons is taken out by an executor or administrator or trustee—

(*a*) For the determination of any question under sub-sections (*a*), (*e*), (*f*), or (*g*) of Rule 3, the persons, or one of the persons, whose rights or interests are sought to be affected.

(*b*) For the determination of any question, under sub-section (*b*) of Rule 3, any member or alleged member of the class.

(*c*) For the determination of any question under sub-section (*c*) of Rule 3, any person interested in taking such accounts.

(*d*) For the determination of any question under sub-section (*d*) of Rule 3, any person interested in such money.

(*e*) For relief under sub-section (*a*) of Rule 4, the residuary legatees, or next of kin, or some of them.

(*f*) For relief under sub-section (*b*) of Rule 4, the residuary devisees or next of kin, or some of them.

(*g*) For relief under sub-section (*c*) of Rule 4, the *cestuis que trustent* or some of them.

(*h*) If there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.

Where summons by other parties.

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

5A. Any mortgagee or mortgagor whether legal or equitable or any person entitled to or having property subject to a legal or equitable charge or any person having the right to foreclose or redeem any mortgage whether legal or equitable may take out as of course an originating summons for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee; but as to any land under the *Transfer of Land Act* 1954, nothing in this Rule shall be construed to give any right to foreclose or to sell otherwise than as by the said Act provided.

Originating summons for foreclosure, &c.

5B. The persons to be served with the summons under the last preceding Rule shall be such persons as under the existing practice of the Supreme Court would be proper defendants to an action for the like relief as that specified by the summons.

Persons to be served with summons for foreclosure.

6. The Court or a Judge may direct such other persons to be served with the summons as it or he may think fit.

Service on other persons.

7. The application shall be supported by such evidence as the Court or a Judge may require, and directions may be given as it or he may think just for the trial of any questions arising thereout.

Evidence and directions as to trial.

8. It shall be lawful for the Court or a Judge upon such summons to pronounce such judgment as the nature of the case may require.

Judgment.

9. The Court or a Judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as it or he may think just.

Special directions.

10. It shall not be obligatory on the Court or a Judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

Decision without judgment for administration.

11. Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust where no accounts or insufficient accounts have been rendered, the Court or a Judge may, in addition to the powers already existing—

Orders which may be made on application for administration or execution of trusts.

(*a*) order that the application shall stand over for a certain time and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings;

(*b*) when necessary to prevent proceedings by other creditors or by persons beneficially interested, make the usual judgment or order of administration with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge.

Not to affect power of trustees.

12. The issue of a summons under Rule 3 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

3. *Powers and Duties of Master.*

Powers of Master.
Am. G.G. 4.10.50 p. 5270; Am. 16.7.56. G.G. 23.5.56 p. 2717.

16. The Master shall, for the purpose of any proceedings before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to require production of documents, to take affidavits and acknowledgments, to receive affirmations, and to examine parties and witnesses *vivâ voce,* and to receive evidence upon affidavit.

Parties not attending liable to process, &c.
Ib.

17. Parties and witnesses summoned to attend before the Master shall be bound to attend in pursuance of the summons, and shall be liable to process of contempt in like manner as parties or witnesses are liable thereto in case of disobedience to any order of the Court, or in case of default in attendance, in pursuance of any order of the Court or of any writ of *subpœna ad testificandum,* and all persons swearing or affirming before the Master shall be liable to all such penalties, punishments, and consequences, for any wilful and corrupt false swearing or affirming, as if the matters sworn or affirmed had been sworn or affirmed before any other person by law authorized to administer oaths, to take affidavits, and to receive affirmations.

Interest and apportionment.
Am. G.G. 4.10.50 p. 5270.

18. The Court or a Judge may direct any computation of interest or the apportionment of any fund to be certified by the Master, and to be acted upon by any officer or other person without any further order.

4. *Assistance of Experts.*

Accountants, merchants, &c.

19. The Judge in Chambers may, in such way as he thinks fit, obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, the better to enable such Judge to determine any matter at issue in any action or proceeding, and may act upon the certificate of any such person, and may make such order as to the costs thereof as he shall think fit.

5. *Summonses in Chambers.*

Summons by Master.
Form.
Ib.

24. The summons by the Master requiring the attendance of parties witnesses, or others, shall be in the Form No. 1 in Appendix L, with such variations as the circumstances of the case may require.

6. *Proceedings relating to Infants, &c.*

25. Upon applications for the appointment of guardians of infants and allowance for maintenance the evidence shall show—

Evidence on application to appoint guardian, &c.

(*a*) the ages of the infants;

(*b*) the nature and amount of the infants' fortunes and incomes;

(*c*) what relatives the infants have.

27. At any time during the proceedings at Judge's Chambers under any judgment or order, the Judge may, if he shall think fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition, who has been served with notice of such judgment or order.

Appointment of guardian *ad litem*.

7. *Documents to be left at Chambers.*

28. In all cases of proceedings in Chambers under any judgment or order the party prosecuting the same shall leave the original or a copy of such judgment or order at the Judge's Chambers unless the original judgment or order shall have been previously filed in the Prothonotary's office and in the case of a copy shall certify the same to be a true copy of the judgment or order as made by the Judge.

Proceedings under judgment.

29. Whenever any matter is adjourned from the Court to Chambers, or any directions are given in Court to be acted upon at Chambers, whether upon a matter adjourned into Court from Chambers, or upon any other occasion, without an order being drawn up, a note signed by the Judge, stating for what purpose such matter is adjourned to Chambers, or the directions given, shall be sufficient.

Adjournment to Chambers without order drawn, note sufficient.

30. A note stating the names of the solicitors for all the parties, and showing for which of the parties such solicitors are concerned, shall be left at Chambers with every judgment or order.

Names of solicitors.

8. *Summonses to Proceed.*

33. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed; and, upon the return of such summons, the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken: And a day or days may be appointed for the further

Summons to proceed with accounts or inquiries.

attendance of the parties, and all such directions may afterwards be varied by addition thereto or otherwise as may be found necessary.

Settling deed under judgment, &c., in case parties differ.

34. Where by a judgment or order a deed is directed to be settled by the Judge in Chambers in case the parties differ, a summons to proceed shall be issued; and upon the return of such summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall think fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within eight days after the delivery of such copy; and the proceedings shall be adjourned until after the expiration of the said period of eight days.

Service of notice of judgment or order, where dispensed with.

35. Where upon the hearing of the summons to proceed it appears to the Judge that by reason of absence or for any other sufficient cause the service of notice of the judgment or order upon any party cannot be made, or ought to be dispensed with, the Judge may, if he shall think fit, wholly dispense with such service, or may, at his discretion, order any substituted service or notice by advertisement or otherwise in lieu of such service.

Power to bind persons, service on whom is dispensed with.

35A. Where service of notice of a judgment or order for accounts and inquiries is dispensed with, the Judge may at any time, if he thinks fit, order that the persons as to whom service is dispensed with shall be bound as if served, and they shall be bound accordingly, except where the judgment or order has been obtained by fraud or non-disclosure of material facts.

Advertisements for the creditors may be issued before appearance of all parties.

36. If on the hearing of the summons to proceed, it shall appear that all necessary parties are not parties to the action, or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors and for leaving the accounts in Chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken except for the purpose of ascertaining the parties to be served until all necessary parties shall have been served and are bound, or service shall have been dispensed with, and until directions shall have been given as to the parties who are to attend on the proceedings.

Course of proceeding.
Am. G.G. 4.10.50 p. 5270.

37. The course of proceeding in Chambers shall ordinarily be the same as the course of proceeding in Court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall if directed be supplied for the use of the Judge and the Master, and where so directed copies shall be handed over to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in unless the Judge shall otherwise direct.

10. *Attendances.*

40. Where upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the Judge with respect to the whole or any portion of the proceedings that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon a solicitor to represent them, the Judge may nominate such solicitor for the purpose of the proceedings before him; and where any of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the Judge with respect to which such nomination shall have been made and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated.

Judge may nominate one solicitor for a class.

41. Whenever in any proceeding before a Judge in Chambers the same solicitor is employed for two or more parties the Judge may, at his discretion, require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceeding until such party is so represented.

Judge may require distinct solicitors to represent parties.

42. Any of the parties other than those who shall have been directed to attend may attend at their own expense, and upon paying the costs (if any) occasioned by such attendance; or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

Attendance of parties other than those directed to attend.

43. An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who shall have been directed to attend and such of them (if any) as shall have elected to attend at their own expense, and such order is to be recited in the Master's certificate.

Order to state parties to attend.

Am. G.G. 4.10.50 p. 5270.

11. *Advertisements for Creditors and Claimants.*

44. Where a judgment or order is given or made, whether in Court or in Chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement shall be excluded from the benefit of the judgment or order.

Claimants not coming in to prove excluded.

45. Where an advertisement is required for the purpose of any proceeding in Chambers a peremptory advertisement and only one shall be issued, unless for any special reason it may be

Peremptory advertisement.

thought necessary to issue a second advertisement or further advertisements; and any advertisement may be repeated as many times and in such papers as may be directed.

Advertisements to be signed by Master.
Am. G.G. 4.10.50 p. 5270.

46. The advertisement shall be prepared by the party prosecuting the judgment or order, and submitted to the Master for approval, and when approved shall be signed by him, and such signature shall be sufficient authority to the printer of the *Government Gazette* to insert the same.

Advertisements for creditors and other claimants.

47. Advertisements for creditors and other claimants shall fix a time within which each claimant not being a creditor is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased, or to such other party as the Judge shall direct, or to his solicitor to be named and described in the advertisement, the name and address of such creditor, and the full particulars of his claim, and a statement of his account, and the nature of the security (if any) held by him; and such advertisement shall be in one of the Forms Nos. 2 and 3 in Appendix L hereto, with such variations as the circumstances of the case may require; and at the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

Form.

Office copies of affidavits.

48. Claimants filing affidavits shall not be required to take office copies, but the person who examines the claims shall take office copies and produce the same at the hearing unless the Judge shall otherwise direct.

Creditor need not make affidavit or attend unless required.

49. No creditor need make any affidavit nor attend in support of his claim (except to produce his security) unless he is served with a notice requiring him to do so as is hereinafter provided.

Notices to creditors to produce security, &c.

50. Every creditor shall produce the security (if any) held by him before the Judge at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims; and every creditor shall, if required by notice in writing (Form No. 4 in Appendix L) to be given by the executor or administrator of the deceased, or by such other party as the Judge shall direct, produce all other deeds and documents necessary to substantiate his claim before the Judge at his Chambers at such time as shall be specified in such notice.

Form.

Creditor neglecting notice not allowed costs of proving.

51. In case any creditor shall neglect or refuse to comply with the last preceding Rule he shall not be allowed any costs of proving his claim, unless the Judge shall otherwise direct.

Claim to be examined and result verified by affidavit of executor.

52. The executor or administrator of the deceased, or such other party as the Judge shall direct, shall examine the claims sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable; and he shall, at least seven clear days prior to the time appointed for adjudication, file an affidavit (Form No. 5

Form.

in Appendix L) to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor, or other competent person, or otherwise as the Judge shall direct, verifying a list of the claims (Form No. 6 in Appendix L) the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is, in the opinion of the deponent, justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief.

Form.

53. In case the Judge shall think fit so to direct, the making of the affidavit referred to in the last preceding Rule shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the Judge may give.

Affidavits may be postponed.

54. Where on the day appointed for hearing the claims any of them remain undisposed of, an adjournment day for hearing such claims shall be fixed, and where further evidence is to be adduced a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced.

Adjournment and further evidence.

55. At the time appointed for adjudicating upon the claims of creditors or at any adjournment thereof, the Judge may, in his discretion, allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor to attend and prove his claim, or any part thereof; and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

Adjudication on claims.

56. Notice (Form No. 7, Appendix L) shall be given by the executor or administrator, or such other party as the Judge shall direct, to every creditor whose claim, or any part thereof, has been allowed, without proof by the creditor of such allowance, and to every such creditor as the Judge shall direct, to attend and prove his claim, or such part thereof as is not allowed, by a time to be named in such notice (Form No. 8, Appendix L), not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned; and, in case any creditor shall not comply with such notice, his claim or such part thereof as aforesaid shall be disallowed.

Notice to creditors of claims allowed or disallowed.

57. After the time fixed by the advertisement no claims shall be received unless the Judge at Chambers shall think fit to give special leave upon application made by summons upon such terms and conditions as to costs and otherwise as the Judge shall think fit.

Claims excluded after time prescribed.

Costs.

58. A creditor who has come in and established his debt in the Judge's Chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the Judge unless he shall think fit to direct the taxation thereof; and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established.

List of claims allowed.

59. A list of all claims allowed shall, when required by the Judge, be made out and left in the Judge's Chambers by the person who examines the claims.

Notice to creditor of payment.

60. Where any judgment or order is made for payments to creditors, the party whose duty it is to prosecute such judgment or order shall send to each such creditor or his solicitor (if any) a notice (Form No. 9, Appendix L) that the amount of his claim is payable; and such party shall, when required, produce such judgment or order, and any other papers necessary to enable such creditors to receive such payments.

Notice by post sufficient.

61. Every notice by this Order required to be given to creditors or other claimants shall, unless the Judge shall otherwise direct, be deemed sufficiently given and served if transmitted by the post (prepaid) to the creditor or other claimant to be served, according to the address given in the claim sent in by him pursuant to the advertisement, or, in case such creditor or other claimant shall have employed a solicitor, to such solicitor, according to the address given by him.

12. *Interest.*

Rate of interest on debts.

62. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum from the date of the judgment or order.

Interest payable out of surplus assets.

63. A creditor whose debt does not carry interest, who comes in and establishes the same before the Judge in Chambers under a judgment or order of the Court or of the Judge in Chambers, shall, unless otherwise ordered, be entitled to interest upon his debt at the rate of four per cent. per annum from the date of the judgment or order out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest.

Interest on legacies.

64. Where a judgment or order is made directing an account of legacies interest shall be computed on such legacies after the rate of four per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

13. *Certificates of the Master.*

65. The directions to be given by a Judge for or touching any proceedings before the Master shall require no particular form, but the result of such proceedings shall be stated in the shape of a short certificate to the Judge, and shall not be embodied in a formal report unless in any case the Judge shall see fit so to direct.

Directions to be in no particular form. Am. G.G. 4.10.50 p. 5270.

66. The certificate of the Master shall not, unless the circumstances of the case render it necessary, set out the judgment or order, or any document, or evidence, or reasons, but shall refer to the judgment or order, document and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded.

Not to set out documents, &c. Ib.

67. The certificate of the Master shall be in the Form No. 10, Appendix L, with such variations as the circumstances may require; and when prepared and settled it shall be transcribed by the solicitor prosecuting the proceedings in such form and within such time as the Master shall require, and shall be signed by the Master either then or (if necessary) at an adjournment to be made for the purpose; and, when the Judge shall approve of such certificate or report, he shall sign the same in testimony of his adopting the same.

Form of certificate. Ib.

68. When an account is directed the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which (if any) of such items have been disallowed or varied, and shall state what additions (if any) have been made by way of surcharge or otherwise; and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be filed therewith or retained in Chambers, and subsequently filed as the Judge in Chambers may direct. No copy of any such account shall be required to be taken by any party.

Where accounts are directed.

69. No exceptions shall lie to any certificate or report of the Master, although signed and adopted by the Judge; but any party shall, either during the proceedings before such Master, or within such time after such proceedings shall have been concluded, and before such certificate or report shall have been signed and adopted, as is hereinafter prescribed, be at liberty to take the opinion of the Judge upon any particular point or matter arising in the course of the proceedings or upon the result of the whole proceeding when it is brought by the Master to a conclusion.

No exceptions to lie to certificate.

Parties may take opinion of Judge on any particular point. Am. G.G. 4.10.50 p. 5270.

Chapter I.—Civil Proceedings.
Order LV. 134

Proceedings to take opinion of Judge not a stay of proceedings. Am. G.G. 4.10.50 p. 5270.

69A.—Taking the opinion of a Judge, as hereinbefore provided, shall not operate as a stay of proceedings before the Master, but he may at his discretion either continue the proceeding in the course of which the point or matter has arisen or defer further proceeding until such opinion has been obtained.

Certificate signed and adopted by Judge binding on all parties unless discharged or varied. Ib.

70. When any certificate or report of the Master shall have been signed and adopted by the Judge the same shall be transmitted by the Master to the Prothonotary's office to be there filed, and shall thenceforth be binding on all parties unless discharged or varied either at Chambers or in Court, according to the nature of the case, upon application by summons or motion; and nothing herein contained shall prejudice or affect the power of the Court at any time to open any such certificate or report upon the same or like grounds as any report of the Master-in-Equity which has been absolutely confirmed may have been opened prior to *The Judicature Act* 1883.

Time for taking opinion of Judge before certificate signed by him. Ib.

70A. The time within which any party is to be at liberty to take the opinion of the Judge upon any proceeding which shall have been concluded, but as to which the certificate of the Master shall not have been signed and adopted by the Judge, shall be four clear days after the certificate shall have been signed by the Master.

Summons for taking opinion of Judge. Ib.

70B. Any party desiring to take the opinion of the Judge, as mentioned in the last preceding Rule, shall within four clear days after the certificate shall have been signed by the Master obtain a summons for such purpose.

Time for signature of certificate of Judge. Ib.

70C. At the expiration of four clear days after the certificate shall have been signed by the Master, if no party has in the meantime obtained a summons to take the opinion of the Judge thereon, the Master shall submit the certificate to the Judge for his approval; and the Judge may thereupon, if he approve the same, sign such certificate in testimony of his adoption thereof, as follows:—" Approved this day of ."

Time for applying to discharge or vary certificate signed.

71. The time within which an application may be made by summons or motion to discharge or vary any certificate which has been signed and adopted by the Judge in Chambers shall be eight clear days after the filing of such certificate.

14. *Further Consideration.*

Further consideration. Am. G.G. 4.10.50 p. 5270.

72. Where any matter originating in Chambers shall, at the original or any subsequent hearing, have been adjourned for further consideration in Chambers, such matter may, after the expiration of eight days and within fourteen days from the filing of the Master's certificate, be brought on for further consideration by a summons to be taken out by the party having the conduct of

the matter, and after the expiration of such fourteen days by a summons to be taken out by any other party. Such summons shall be in the form following:—

"That this matter, the further consideration whereof was adjourned by the order of the day of 19 , may be further considered"—

and shall be served six clear days before the return: Provided that this Rule shall not apply to any matter the further consideration whereof shall, at the original or any subsequent hearing, have been adjourned into Court.

15. *Registering and Drawing up of Orders in Chambers.*

73. Notes shall be kept of all proceedings in the Judge's Chambers, with proper dates, so that all such proceedings in each cause or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at every hearing. Notes of proceedings.

74. The Judge may direct that any order made in Chambers shall be drawn up by the Master, and all such orders shall be entered in the same manner as orders made in open Court. Drawing up orders in Chambers. Am. G.G. 4.10.50 p. 5270.

75. The Forms Nos. 11 to 22 in Appendix L shall be used for the respective purposes therein mentioned, with such variations as circumstances may require. Forms.

Order LVII.

Interpleader.

1. Relief by way of interpleader may be granted— When granted.

(*a*) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto: Where liability to be sued by two parties.

(*b*) Where the applicant is the Sheriff or other officer charged with the execution of process by or under the authority of the Court and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the persons against whom the process issued. Sheriff.

2. The applicant must satisfy the Court or a Judge by affidavit or otherwise— Affidavit.

(*a*) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and

Chapter I.—Civil Proceedings.
Order LVII. 136

(*b*) That the applicant does not collude with any of the claimants; and

(*c*) That the applicant, except where he is the Sheriff or other officer charged with the execution of process by or under the authority of the Court who has seized goods and who has withdrawn from possession in consequence of the execution creditor admitting the claims of the claimant under Rule 16 of this Order, is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a Judge may direct.

Where claims adverse.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another.

Time defendant may apply.

4. Where the applicant is a defendant application for relief may be made at any time after service of the writ of summons.

Summons to state claim.

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

Stay of proceedings.

6. If the application is made by a defendant in an action, the Court or a Judge may stay all further proceedings in the action.

Order on summons.

7. If the claimants appear in pursuance of the summons the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant, and the mode in which and the number of jurors (if any) with which such trial shall be had.

On consent or request of claimant Court may decide.

8. The Court or a Judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.

Question of law.

9. Where the question is a question of law, and the facts are not in dispute, the Court or a Judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court. If a special case is stated Order XXXIV. shall, as far as applicable, apply thereto.

Claimant failing to appear, &c., barred.

10. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a Judge may make an order

declaring him, and all persons claiming under him, for ever barred against the applicant and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

Issue to be filed.

11. The plaintiff in an interpleader issue shall file such issue in the Prothonotary's office within four days after the making of the order under Rule 7 of this Order, and shall thereupon pay the fees and jury fees (if any) payable on entering a cause for trial. If the plaintiff make default in so doing the order shall be deemed to be abandoned, and the Court or a Judge may make such further order on the applicant's summons, and as to the costs of the issue directed, as may be just and reasonable.

Goods seized in execution.

Order for sale.

12. When goods or chattels have been seized in execution by a Sheriff or other officer charged with the execution of process of the Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

Trial of issue.

13. Orders XXXI. and XXXVI. shall, with the necessary modifications, apply to an interpleader issue; and the Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

Where several causes pending.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending in the Court, such order may be made by the Court or Judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

Costs.

15. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

Sheriff's costs.

16. Where a claim is made to or in respect of any goods or chattels taken in execution under the process of the Court it shall be in writing, and upon the receipt of the claim the Sheriff or his officer shall forthwith give notice thereof to the execution creditor according to Form 28 in Appendix B or to the like effect, and the execution creditor shall, within four days after receiving the notice, give notice to the Sheriff or his officer that he admits or disputes the claim, according to Form 29 in Appendix B or to the like effect. If the execution creditor admits the title of the claimant, and gives notice as directed by this Rule, he shall only be liable to such Sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Withdrawal by Sheriff.

16A. When the execution creditor has given notice to the Sheriff or his officer that he admits the claim of the claimant, the Sheriff may thereupon withdraw from possession of the goods claimed, and may apply for an order protecting him from any action in respect of the said seizure and possession of the said goods, and the Judge may make any such order as may be just and reasonable in respect of the same: Provided always, that the claimant shall receive notice of such intended application, and, if he desires it, may attend the hearing of the same, and if he attend, the Judge may, in and for the purposes of such application, make all such orders as to costs as may be just and reasonable.

Costs in interpleader.

17. When the execution creditor does not in due time, as directed by the preceding Rules, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the Sheriff or his officer, the Sheriff may apply for an interpleader summons to be issued, and should the claimant withdraw his claim by notice in writing to the Sheriff or his officer, or the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such summons, and at the same time give notice of such admission to the claimant, the Judge may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges, and expenses as may be just and reasonable.

ORDER LVIII.

APPEALS TO THE FULL COURT, NEW TRIALS, ETC.

Appeals by notice.

1. All appeals to the Full Court from a single Judge, whether sitting in Court or in Chambers, and every application to the Full Court for a new trial or to set aside a verdict, finding, or judgment shall be brought by notice. The notice shall state whether the whole or part only and which part of the decision is complained of, and shall also state specifically and not in general terms but concisely the grounds of complaint.

Contents of.

In the following Rules of this Order, unless the context otherwise requires the word "appeal" shall include an application for a new trial or to set aside a verdict finding or judgment and the word "appellant" shall include the person making such application.

1A.—

Time.

(*a*) Every notice of appeal from any decision of the Court shall be served within fourteen days after the pronouncing of such decision unless a Judge otherwise orders;

(*b*) Every notice of appeal from any decision in Chambers shall be served within seven days after the pronouncing of such decision unless a Judge otherwise orders.

1B. Every appeal from the refusal of any *ex parte* application shall be made by a fresh application to the Full Court not later than the first seven days of the next sittings of the Full Court for hearing civil appeals after such refusal. Appeals in *ex parte* applications.

2. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct notice of the appeal to be served on all or any parties to the action or other proceeding or upon any person not a party and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Full Court may think fit. Notice of appeal. Service. Adjournment. Amendment of notice.

2A. Where a party who has been duly served with a notice of appeal does not appear, then on proof by affidavit of such service such order shall be made on the appeal as under the circumstances of the case shall appear to be just. Party served not appearing.

3. Within four days after service of the notice of appeal the appellant shall deliver a copy thereof to the Prothonotary, who shall thereupon enter the appeal for hearing on the first available day, and shall forthwith give notice thereof to the parties. Provided that no appeal shall be set down for hearing earlier than four days after the service of such notice upon the parties. Copy of notice to Prothonotary.

4. The Full Court shall have all the powers and duties as to amendment and otherwise as the Court of the first instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or a Commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits such further evidence (save as to matters subsequent as aforesaid) shall be admitted upon special grounds only, and not without special leave of the Court. The Full Court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court notwithstanding that the notice of appeal may be that part only Full Court may receive further evidence on special grounds. Special leave. Varying judgment for parties not appearing.

of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have appealed from or complained of the decision. The said Court shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

Costs.

New trial may be directed.

5. If upon hearing of an appeal it shall appear to the Full Court that a new trial ought to be had, it shall be lawful for the said Full Court, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

No new trial for misdirection, &c., unless substantially wrong.

6. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them unless in the opinion of the Full Court some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy or some or one only of the parties, the said Court may give final judgment as to part thereof or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties.

New trial as to part.

7. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

Ruling as to stamp.

8. A new trial shall not be granted by reason of the ruling of a Judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

Order to provide for further proceedings.

9. The Court shall in the order granting a new trial give all necessary directions for further proceedings in the cause.

No notice by way of cross appeal.

10. It shall not under any circumstances be necessary for a respondent to give any notice by way of cross appeal.

Preparation of appeal book.

11. Every appellant from any judgment shall submit a note of what he proposes to insert in the appeal book to the Judge from whose decision the appeal is made within fourteen days after the pronouncing of such decision, and the Judge may alter, add to, or vary the same in such way as he may think fit, and may make such order as to the costs of such note and the settling thereof as may be just. Every appeal book when settled shall be printed unless a Judge shall otherwise order, and three copies thereof forthwith delivered without charge to each respondent, and one copy thereof to each member of the Full Court. The costs of the appeal book shall be costs in the cause unless the Full Court shall otherwise order.

12. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such questions shall, subject to any special order, be brought before the Full Court, as follows:— Evidence of questions of fact on appeal.

(*a*) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed and office copies of such of them as have not been printed.

(*b*) As to any evidence given orally, by the production of a copy of the Judge's notes or such other materials as the Full Court may deem expedient.

13. Where evidence has not been printed in the Court below, the Court below or a Judge, or the Full Court may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Full Court or a Judge shall otherwise order. Order for printing evidence.

14. If upon the hearing of an appeal a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence and to such other materials as the Court may deem expedient. Direction of Judge. Verified notes.

15. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Full Court from giving such decision upon the appeal as may be just. Interlocutory order not to prejudice order on appeal.

16. No appeal shall be heard except by special leave of the Full Court, unless notice of appeal has been given within the prescribed time and the copy duly lodged with the Prothonotary. Such deposit or other security for the costs of any appeal shall be made or given as may be directed under special circumstances by the Full Court. Appeal by special leave. Security for costs.

17. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court or a Judge may so order; and no intermediate act or proceeding shall be invalidated except so far as the Court or Judge appealed from may direct. Stay of proceedings.

ORDER LVIII. (A).

CROWN CASES RESERVED.

1. Where any case shall be transmitted by any Court of Criminal Jurisdiction for the consideration of the Full Court, the original case (signed by the Judge or other person presiding in such first-mentioned Court) reserving the question of law shall be delivered or sent by the general post to the Prothonotary. Case reserved.

What to be stated in.

2. Every such case shall briefly state the question or questions of law reserved, and such facts only as raise the question or questions submitted. If the question turns upon the presentment, or upon any count thereof, then the case must set forth the presentment or the particular count.

Case to state if judgment passed, &c.

3. Every such case shall state whether judgment on the conviction was passed, or postponed, or the execution of the judgment respited, and whether the person convicted be in prison or has been discharged on recognizance of bail to appear and receive judgment, or to render himself in execution.

Copies of case to be left at Chambers.

4. The Prothonotary, as soon as possible after the receipt of such case, shall cause to be made a sufficient number of printed copies thereof, and shall cause one of such copies to be forthwith left at the Chambers of each of the Judges, who will sit for the consideration of such case.

No new trial for misdirection, &c., unless substantial wrong.

5. Upon the reservation of a question of law for the consideration and determination of the Full Court under section 477 or section 481 of the *Crimes Act* 1928, a judgment shall not be reversed or avoided, nor shall a new trial be directed to be had on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Full Court some substantial wrong or miscarriage has been thereby occasioned at the trial.

ORDER LVIII. (B).

APPEALS TO PRIVY COUNCIL.

Transcript of evidence and proceedings to be prepared and delivered to Prothonotary.

1. When any person or persons feeling aggrieved by any judgment, decree, order, or sentence of this Court shall apply to the said Court by motion or petition for leave to appeal therefrom to the Privy Council, the party or parties appellant shall, in the event of leave being granted, prepare and deliver to the Prothonotary a transcript or copy of the evidence, proceedings, judgment, decree, or order so far as the same have relation to the matters of appeal, in order that the same may be certified and sent or transmitted to England, and if such transcript or copy shall not be so prepared and delivered within three months from the date of such motion or petition, or within such further time as may be allowed by the Court or a Judge or by consent, the appeal shall be deemed to have been abandoned.

Appeal may be discontinued.

2. The party or parties appellant may at any time before the transcript or copy of the evidence, proceedings, judgment, decree, or order shall have been despatched to England discontinue the appeal by giving to the respondent or his solicitors a notice headed in the Court and cause stating that he discontinues such appeal.

3. If the security required by law shall not be entered into by the party or parties appellant within three months from the date of the motion or petition for leave to appeal, or if the appeal shall be abandoned or discontinued as hereinbefore mentioned, the respondent's costs of and occasioned by the motion or petition for leave to appeal and all subsequent costs *bonâ fide* incurred by him and rendered useless by the failure to enter into the said security or by the abandonment or discontinuance of the appeal shall be taxed in like manner as the costs of an action, and in case of non-payment thereof within two days after such taxation the respondent may apply by summons to a Judge in Chambers for an order that the party or parties appellant shall pay the amounts so taxed to the respondent, and such Judge may make an order accordingly with or without costs.

If security not entered into within three months respondent's costs to be taxed.

Order LIX.

APPEALS FROM INFERIOR JURISDICTIONS.

1. Where a compulsory reference to arbitration has been ordered any party to such reference may appeal from the award or certificate of the arbitrator or referee upon any question of law; and on the application of any party the Court may set aside the award on any ground on which the Court might set aside the verdict of a jury. Such appeal shall be to the Full Court, which shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just.

Appeal from arbitrator where reference compulsory

2. An application to set aside or remit an award may be made at any time within six weeks after such award has been made and made available to the parties: Provided that the Court or a Judge may by order extend the said time either before or after the same has elapsed.

Time for setting aside award.

3. Four clear days before the day appointed for hearing the appeal the appellant shall deliver copies of the appeal case as provided by Order XXXIV., Rule 3A, with reference to special cases.

Copies for the Judges.

4. In every appeal from a County Court the case or appeal book shall be printed or typewritten and three copies thereof forthwith delivered without charge to each respondent and one copy thereof to each member of the Full Court. The costs of the case or appeal book shall be costs in the appeal unless the Full Court shall otherwise order.

Appeals from County Court.

5. Upon receipt of any notice of appeal from the County Court the Prothonotary shall proceed as directed by Order LVIII., Rule 3, with reference to appeals from a Judge of the Supreme Court.

Appeals from inferior Courts.
Ins. G.G. 21.5.52, p.2484.

6. Save where otherwise provided by Statute—

(*a*) all appeals from inferior Courts of civil jurisdiction or from other tribunals from whose orders, decisions, or determinations a right of appeal to the Supreme Court is conferred by Statute, shall be heard by a single Judge.

(*b*) all such appeals shall be brought by notice of motion and the notice shall state the grounds of the appeal, and whether all or part only of the judgment, order, decision, or determination is complained of.

(*c*) the notice of motion shall be served on all parties directly affected by the appeal and on the registrar or other proper officer of the Court or tribunal from which the appeal is brought, and there shall be at least eight clear days between the day of service of any such notice and the day named therein for the hearing.

(*d*) the notice of motion shall be served and set down for hearing within twenty-one days from the date of the judgment, order, decision, or determination complained of.

(*e*) The appeal shall not operate as a stay of proceedings unless the inferior Court or tribunal or a Judge in Chambers so orders.

(*f*) the Supreme Court may amend the grounds of appeal or make any other order on such terms as the Court thinks just to ensure the proper determination according to law of the rights of the parties.

Order LX.

OFFICERS.

Duties.

1. All officers who at the time when these Rules come into force were discharging duties relating to the business of the Court in its several jurisdictions shall, unless otherwise provided by any Act or these Rules, continue to discharge the same or duties analogous to those which they respectively performed previous to the passing of the said Rules.

Absence of Prothonotary.
Am. G.G. 4.10.50 p. 5270.

2. In the absence of the Prothonotary from his office all acts which he is required or empowered to do may be done by such person as may be appointed for that purpose by the Judges of the Court or if no such person is appointed or available then by the first or second clerk in the office of the Prothonotary.

Clerk may perform merely ministerial duties.

3. Where by any of these rules the Prothonotary is required to do any act of a merely ministerial nature it shall be sufficient if such act be done by a clerk in his office.

ORDER LXI.

PROTHONOTARY'S OFFICE.

6. The official seal to be used in the Prothonotary's office shall be the seal heretofore used by the Prothonotary or such as the Chief Justice shall from time to time direct. Seal of office.

6A. The filing stamp to be used in every Deputy Prothonotary's office shall have inscribed thereon the name of the city, town, or other place in which his office is situated, as "Ballarat," "Bendigo," and the like, but otherwise shall be such as the Chief Justice may from time to time direct. Filing stamp of Deputy Prothonotary's office.

7. All copies, certificates, and other documents appearing to be sealed with a seal of the Prothonotary's office shall be presumed to be office copies or certificates or other documents issued from such office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Prothonotary's office, shall be required for the authentication of any such copy, certificate, or other document. Office copies, &c.

15. No order made on petition, and no order to make a submission to arbitration or an award an order of the Court, and no judgment or order wherein any written admissions of evidence are entered as read shall be passed until the original petition, submission to arbitration or award, or written admission of evidence shall have been filed in the Prothonotary's office and a note thereof made on the judgment or order by the proper officer. Petitions, &c., to be filed before judgment, &c., passed.

16. Upon every pleading or other proceeding which is filed in the Prothonotary's office the date of filing the same shall be printed, typewritten, or written. Date of filing.

17. Proper indexes or calendars to the files or bundles of all documents filed in the Prothonotary's office shall be kept, so that the same may be conveniently referred to when required, and such indexes or calendars and documents shall at all times during office hours be accessible to the public on payment of the usual fee. Indexes.

18. There shall be indorsed on every document delivered at the Prothonotary's office to be filed, the date and time of the filing thereof. Entries on filing documents.

19. Every judgment, order, certificate, petition, affidavit, or document made, presented, filed or used in any cause or matter shall be distinguished by having plainly written or stamped on the first page thereof the year and the number by which the cause or matter is distinguished in the books kept at the Prothonotary's office. Distinguishing marks on documents.

20. There shall also be entered in the Cause Books the date of every judgment, order, and certificate made in every cause or matter. Entry of date of judgment.

Chapter I.—Civil Proceedings.
Order LXI. 146

Searches.

23. The Prothonotary shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes or calendars under his custody, and issue a certificate of the result of the search.

Certificate of state of cause.

24. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the Prothonotary shall, at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the usual fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter in the Prothonotary's office.

Production of records.

28. No order of a Judge shall be necessary for taking out of any office of the Court any affidavit or record of the Court. The same may in any cause or matter be produced upon notice to the proper officer by the person requiring the same.

Deposit for officer's expenses.

29. Any officer being required to attend with any record or document at any Court or place out of the Supreme Court at Melbourne shall be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which may not be fully answered by such deposit.

Deposit of deeds.

30. Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in Chambers, or otherwise, the same shall be left or deposited in the Prothonotary's office, and shall be subject to such directions as may be given for the production thereof.

Impounded documents.

30A. Impounded documents, while in the custody of the Court, are not to be parted with; and are not to be inspected, except on a written order signed by the Judge on whose order they were impounded; or in case of documents impounded on the order of the Full Court by an order of that Court or a Judge thereof. Such documents shall not be delivered out of the custody of the Court except upon an order made by a Judge of the Court.

Certificate, &c., to be filed.

Am. G.G. 4.10.50 p. 5270.

31. All certificates of the Master, and all petitions and written admissions of evidence whereon any order is founded, and all submissions to arbitration made orders of the Court, shall be transmitted to and left at the Prothonotary's offices, to be there filed or preserved. And all office copies thereof, or of any part thereof that may be required, shall be ready to be delivered to the party requiring the same within forty-eight hours after the same shall have been bespoken.

Forms.

32. The Forms contained in the Appendices shall be used in or for the purposes of any office of the Court, with such variations as circumstances may require.

33. All papers left at the office of the Prothonotary to be filed shall be written, typewritten, or printed on not less than half-a-sheet of foolscap paper, folded lengthways.

Foolscap to be used and folded lengthways.

34. Every copy of a case transmitted by any Court of Criminal Jurisdiction, and every copy of an appeal case, or of any case stated for the consideration of the Court, shall be written, typewritten, or printed on foolscap paper, folded lengthways.

Crown cases reserved and appeal cases to be on foolscap and folded lengthways.

35. The Prothonotary may from time to time prescribe the use in and for the purpose of his office of such modified or additional forms as may be deemed expedient.

New forms.

36. Every Deputy Prothonotary appointed under the provisions of section 228 of the *Supreme Court Act* 1928 may issue all such process and discharge all such duties as the Prothonotary may lawfully issue or discharge.

Deputy Prothonotary.

37. All documents and proceedings in an action or matter commenced in the office of a Deputy Prothonotary shall be lodged or filed in the office of such Deputy Prothonotary, and, subject to any order that may be made by the Court or a Judge, shall remain in the custody of such Deputy Prothonotary.

Documents filed or lodged in office of Deputy Prothonotary.

38. All proceedings in actions or matters commenced in the office of a Deputy Prothonotary, including payment of money into Court, shall be taken in the office of such Deputy Prothonotary.

Proceedings in office of Deputy Prothonotary.

39. Money received by a Deputy Prothonotary by way of payment into Court shall remain in the hands of such Deputy Prothonotary, and shall be dealt with by such Deputy Prothonotary in the same manner in all respects as money so received by the Prothonotary would be dealt with by him.

Payment of money into office of Deputy Prothonotary.

40. The Court or a Judge may, if under the special circumstances of any case it appear advisable, make an order for the removal of papers in the office of a Deputy Prothonotary to the office of another Deputy Prothonotary or to the office of the Prothonotary, or for the removal of papers in the office of the Prothonotary to the office of a Deputy Prothonotary, and may by the same order or by any later order give directions as to the retention or return of such papers, and such order may be made upon such terms, if any, as may appear to be just.

Removal, &c., of papers in office of Deputy Prothonotary.

41. Every Deputy Prothonotary shall keep the same books, showing the business transacted in his office, as are kept from time to time by the Prothonotary.

Books in office of Deputy Prothonotary.

42. Every Deputy Prothonotary shall, when forwarding papers to the Prothonotary, send with such papers a list specifying each document sent therewith, and a pressed copy of every such list shall be kept by the Deputy Prothonotary.

List of documents forwarded by Deputy Prothonotary.

Reports by Deputy Prothonotary.

43. Every Deputy Prothonotary shall forward to the Prothonotary quarterly, in the first week in February, May, August, and November in each year, or at any intermediate date if required, a report containing an account of the nature and extent of the business in his office.

Order LXII.

SETTLING AND PASSING JUDGMENTS AND ORDERS IN MATTERS WITHIN THE COGNIZANCE OF THE COURT IN ITS EQUITABLE JURISDICTION PREVIOUSLY TO THE JUDICATURE ACT 1883.

Mode of entry of judgments.
Am. G.G. 4.10.50 p. 5270; 3.12.45 G.G. 12.12.45 p. 2929.

1. All judgments and orders settled by the Master, and all præcipes for attachments, and such other documents (if any) as, according to the present practice or the practice for the time being, ought to be entered, shall be entered without abbreviations, * * * * * under the direction of the Prothonotary, and all such entries shall be examined by the clerk entering the same, and be marked with his initials to denote such examination.

Indexes of entries.

2. Proper calendars or indexes of such entries shall be made, so that the same may be conveniently referred to when required, and the calendars or indexes and the books in which the entries are made shall, when completed, be preserved, and shall at all times during office hours be accessible to the public on payment of the proper fee.

No minutes. Attendance to settle order.
Am. G.G. 4.10.50 p. 5270.

3. No minute of any judgment or order shall be necessary, and no attendance on the Master to settle or draw up any such judgment or order shall be allowed unless the Master require the same.

Draft judgment.

4. Within seven days after the judgment or order is pronounced or finally disposed of by the Court or a Judge, any party may prepare and leave with the Master a draft of the judgment or order to which he considers himself entitled, and shall deliver a copy thereof to the other parties.

Master may proceed without appointment.
Ib.

5. The Master shall be at liberty, in any case in which he may think it expedient so to do, to settle and pass any judgment or order, without making any appointment for such purpose and without notice to any party, or may require the attendance of the parties before him.

Appointment to settle.
Ib.

6. Where the Master requires the attendance of the parties before him to settle the draft judgment or order, he shall deliver out to the party on whose behalf the draft has been prepared an appointment in writing of a time for so settling the same.

Service of notice on other party.
Ib.

7. A notice of the appointment shall be served on the opposite party one clear day at least before the time fixed thereby for settling the draft judgment or order, and the party serving the

notice, and the party so served, shall attend the appointment, and produce to the Master their briefs and such other documents as may be necessary to enable him to settle the draft.

Mode of service.

8. Service of the notice of appointment shall be effected by leaving it at the address for service of the party to be served, or by transmitting it by post to such party at such address for service.

Proof of service and settlement of draft.
Am. G.G. 4.10.50 p. 5270.

9. At the time fixed for settling the draft, the Master shall satisfy himself in such manner as he may think fit that service of the notice of appointment has been duly effected, and thereupon settle the same.

Failure to attend or produce documents.
Ib.

10. If any party fails to attend the Master's appointment for settling the draft of any judgment or order, or fails to produce his briefs and such other documents as the Master may require to enable him to settle such draft judgment or order, the Master may proceed to settle the draft judgment or order in his absence, and the Master shall be at liberty to dispense with the production of counsel's briefs, and to act upon such evidence as he may think fit of the actual appearance by counsel of the party failing to attend, or to produce such documents or papers as aforesaid, or may require the matter to be mentioned to the Court or Judge.

Adjournment.
Ib.

11. The Master may adjourn any appointment for settling the draft of or passing any judgment or order to such time as he may think fit, and the parties who attend the appointment shall be bound to attend such adjournment without further notice.

Where no draft prepared within prescribed time.
Ib.

12. In case no draft of the judgment or order has been prepared and left with the Master within the prescribed time he may decline to draw up the judgment or order without the leave of the Court or Judge.

Passing and entering.
Ib.

13. A fair copy of the draft judgment or order as settled by the Master shall be prepared by the party entitled thereto, and left by him, together with the original draft, at the Prothonotary's office to be passed and entered. Such fair copy shall be compared with the draft by a clerk in such office, and be marked with his initials to denote such examination; and the Prothonotary shall obtain the signature of the Master thereto as passed, and shall, after the expiration of eight days, if no application to add to or alter the same shall have been made, cause the same to be entered. Such fair copy when passed and entered shall be re-delivered to the party entitled thereto, and the draft retained in the office.

Application to add to or vary.
Ib.

14. Any party shall be at liberty within seven days after the draft judgment or order has been settled by the Master to apply to the Court or Judge to add to or alter the same for the purpose of making the same correspond with the judgment or order of the Court as pronounced.

Certificate for taxing officer.
Am. G.G. 4.10.50 p. 5270.

15. The Master shall, at the time of any attendance before him for the purpose of settling and passing any judgment or order, if requested to do so by any party, on the ground that it is of a special nature or of unusual length or difficulty, certify, for the information of the taxing officer, whether in his opinion any special allowance ought to be made in taxation of costs in respect thereof.

ORDER LXIII.

SITTINGS AND VACATIONS.

Sittings of Court.

1. The sittings of the Full Court and of the Court shall be held at such times as the Judges shall direct.

Urgent business.

2. One of the Judges of the Court shall be accessible for the hearing in Melbourne, at all times, of all such applications as may require to be immediately or promptly heard.

Offices.
Am. 3.12.45 G.G. 12.12.45 p. 2929.

3. The sittings of the several offices of the Supreme Court shall extend over the whole year, except upon Sundays, Saturdays, and holidays.

Vacation.

Ib.

4. The vacations to be observed in the Court shall be in every year from the twentieth day of December to the first day of February following, and from the first to the fifteenth day of July. The Court shall not sit during vacations nor upon any Sunday, Saturday or any of the days specified in the next following rule unless the Court deems the exigency of public business requiries it.

Holidays.

Ib.

5. The following and no other days shall be observed and kept as holidays in the offices of the Court (that is to say):—New Year's Day, Christmas Day and the following day, Good Friday, and the following Saturday, Monday, and Tuesday, and every day duly appointed for a general public holiday.

Office hours.

Ib.
Am. 6.12.49 G.G. 21.12.49 p. 7108.

6. The office hours in the several offices of the Court shall be from ten o'clock in the forenoon to three o'clock in the afternoon, except for that period of the Long Vacation which falls between the twenty-fourth day of December in one year and the tenth day of January in the next, when the offices shall close at noon.

Vacation Judge.

7. One of the Judges of the Court shall be selected at the commencement of vacation for the hearing in Melbourne during vacation of all such applications as may require to be immediately or promptly heard.

Order LXIV.

TIME.

1. Where by these rules, or by any judgment or order given or made after the commencement of *The Judicature Act* 1883, time for doing any act or taking any proceeding is limited by months, and where the word month occurs in any document which is part of any legal procedure under these rules, such time shall be computed by calendar months unless otherwise expressed.

Months are calendar months.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Saturday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

Certain days not reckoned.
Am. 3.12.45 G.G. 12.12.45 p. 2929.

3. Where the time for doing any act or taking any proceeding expires on any day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time for doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

Time expiring on Sunday or when offices closed.
Ib.

4. In the computation of the time appointed or allowed by the rules for filing, amending, or delivering any pleading, the long vacation shall not count unless otherwise ordered by the Court or Judge. In the long vacation no pleading shall be delivered nor subject to the proviso hereinafter contained shall any ordinary proceedings be carried on in the Court, nor shall time run for the return of any process or doing any act unless otherwise ordered by the Court or a Judge. Provided that this rule shall not prevent the issuing of any initiatory or *mesne* process, the entry of appearance to a writ of summons, the entry of judgment in default of appearance to a writ of summons, the entry of judgment pursuant to an order, any proceedings under the *Instruments Act* 1928, any applications under Order XIV. or Order XIVA., the application for and granting of any writ of *capias, ne exeat,* execution, injunction, *habeas corpus,* prohibition, mandamus, *certiorari,* sequestration, or other writ or process of a like nature rendered necessary by the special exigency of any particular case, the granting and disposing of orders *nisi* to review, making orders by consent, entering orders, obtaining and entering orders for default of pleading, or issuing execution or the hearing of probate or insolvency applications.

Vacation not reckoned.
Am. G.G. 26.4.39 p. 1382.
Process in vacation.

5. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter.

Time for proceedings where security ordered.

Enlargement or abridgement of time.

6. The Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

Enlargement time by consent.

7. The time for delivering, amending, or filing any pleading or document may be enlarged by consent in writing, without application to the Court or a Judge.

Time for service.

Subst. 1.12.48 G.G. 8.12.48 p. 7368.

8. Service of pleadings notices summonses orders rules and other proceedings shall be effected not later than the hour of Four in the afternoon on week-days except Saturdays, provided however that service effected after the hour of four in the afternoon on any week-day except Friday or Saturday shall for the purpose of computing any period of time subsequent to such service be deemed to have been effected on the following day, and that for such purpose service effected after the hour of four on Friday and service effected on Saturday shall be deemed to have been effected on the following Monday.

Time to be reckoned exclusive of first day and inclusive of last day.

9. In any case in which any particular number of days not expressed to be clear days is prescribed by these Rules the same shall be reckoned exclusively of the first day and inclusively of the last day.

Proceedings after a year.

10. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this Rule.

Order LXV.

1.—costs.

Costs, with certain exceptions, to be in the discretion of the Court.

Trustees, &c.

1. Subject to the provisions of any Act and these Rules, the costs of and incident to all proceedings in the Court and in Chambers including the administration of estates and trusts shall be in the discretion of the Court or Judge. Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity.

Cost of issues.

2. An order, giving a party costs, except so far as they have been occasioned or incurred by or relate to some particular issue or part of his proceedings shall be read and construed as excluding only the amount by which the costs have been increased by such

issue or proceedings, but the Court or Judge, if the whole costs of the action are not intended to be given to the party, may, by the order direct taxation of the whole costs, and payment of such proportion thereof as the Court or Judge shall determine.

Where cause removed.

3. If a cause be removed from an inferior Court, having jurisdiction in the cause, the costs in the Court below shall be costs in the cause.

Solicitor personally liable for costs.

5. Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or Judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award.

Security for costs.

6. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such time or times and in such manner and form as the Court or a Judge shall direct.

Security by plaintiff temporarily within jurisdiction.

6A. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

Security for costs where given by bond.

7. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the Court.

Scope of order.

8. Except when otherwise provided, the provisions of this Order shall apply to all causes, matters, and proceedings in all jurisdictions of the Supreme Court, except that the scale of witnesses' expenses in Appendix N shall not apply in criminal proceedings by the Crown.

Scale of costs.

9. Except when otherwise ordered, solicitors shall be entitled to charge and be allowed the fees set forth in Appendix N, and no higher fees shall be allowed in any case except such as are by this Order otherwise provided for.

Increased scale.

Am. 28.5.46 G.G. 12.6.46 p. 1732.

10. There may be allowed an increase not exceeding 30 per cent. on the fees set forth in Appendix N either generally in any cause, matter, or proceeding, or as to the costs of any particular application made, or business done if, on special grounds arising out of the nature and importance or the difficulty or urgency of the case, the Court or a Judge shall, at the trial or hearing, or further consideration, or at the hearing of any application, whether the cause, matter or proceeding shall or shall not be brought to trial or hearing, or to further consideration (as the case may be) so order; or if the taxing officer, under directions given to him for that purpose by the Court or Judge, shall think that such allowance ought to be so made upon such special grounds as aforesaid.

Chapter I.—Civil Proceedings.
Order LXV. 154

Costs improperly incurred, &c.

11. If in any case it shall appear to the Court or a Judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or Judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or Judge may, if it or he thinks fit, refer the matter to a taxing officer for inquiry and report, and direct the solicitor to show cause before such taxing officer. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or Judge may direct.

Costs where judgment for small amount.

Subst. G.G. 14.10.53 p. 4887.

12. In actions of contract or of tort in which the plaintiff recovers, by judgment or otherwise, a sum (exclusive of costs) not exceeding one-fifth of the limit in point of amount to which the jurisdiction of the County Court is limited, he shall be entitled to no more costs than he would have been entitled to had he brought his action in a County Court, unless the Court or a Judge otherwise orders.

Where solicitor appointed guardian *ad litem*.

13. Where the Court or a Judge appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court or Judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties of some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment of allowance of such costs as the justice and circumstances of the case may require.

Set-off notwithstanding lien for costs.

14. A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought. This Rule shall include cases where the set-off arises in independent actions or in different Courts.

Costs out of estate.

14A. The costs occasioned by any unsuccessful claim or unsuccessful resistance to any claim to any property shall not be paid out of the estate unless the Judge shall otherwise direct.

Costs as regards particular shares.

14B. The costs of inquiries to ascertain the person entitled to any legacy, money, or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money, or share, unless the Judge shall otherwise direct.

14c. Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the Court or a Judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in all such cases such order may be made for ascertaining and payment of the costs incurred down to and including such payment as the Court or Judge shall think reasonable.

Distribution not to be delayed by difficulties as to some shares.

14D. In any action in which it is ordered that any costs shall be paid out of the estate, the Judge making such order may direct out of what portion or portions of the estate such costs shall be paid, and such costs shall be paid accordingly.

Costs may be ordered out of portion of an estate.

15. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

On award.

16. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the party or the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary.

Notice to tax.

17. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian.

Where no appearance.

19. The taxing officers shall be respectively assistant to each other, and in the discharge of their duties, and, for the better despatch of the business of their respective offices, any taxing officer may tax or assist in the taxation of a bill of costs which has been referred to any other taxing officer for taxation, and for ascertaining what is due in respect of such costs, and in such case shall certify accordingly.

Taxing officers to assist each other.

20. The solicitor having the carriage of any order directing a taxation of costs shall, when obtaining an appointment to tax, leave with the taxing officer the original or a copy of such order, unless he shall have previously filed such original in the Prothonotary's office. In every bill of costs the professional charges shall be entered in a separate column from the disbursements, and every column therein shall be cast before the bill is left for taxation.

Order to tax to be left with taxing officer.

Bill of costs.

22. Where in pursuance of any direction by the Court or a Judge in Chambers drafts are settled by any counsel, the expense of procuring such drafts to be previously or subsequently settled by other counsel, on behalf of the same parties, shall not be allowed on taxation as between party and party, or as between solicitor and client, unless the Court or a Judge shall otherwise direct.

Drafts directed to be settled by counsel.

Chapter I.—Civil Proceedings.
Order LXV. 156

Gross sum costs.

23. In any case where the Court or a Judge shall think fit to award costs to any party, the Court or Judge may by the order direct taxation of the costs of such party, and payment of a proportion thereof, or payment of the taxed costs less a specified sum in gross to be deducted therefrom, or direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such proportion, or taxed costs, or sum shall be paid. Nothing in this Rule contained shall derogate from the discretion of the Court or Judge as to costs.

2.—SPECIAL ALLOWANCES AND GENERAL REGULATIONS.

27. The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court:—

Allowance for work in preparation of documents.

(1) As to writs of summons requiring special indorsement, and as to special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, and admissions under Order XXXII., Rule 2, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing and attendances, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

Fees to include copy for use.

(2) As to drawing any pleading or other documents, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

Further allowance on special grounds.

(3) As to instructions to sue or defend or the preparation of briefs, if the taxing officer shall on special grounds consider the fee in either scale provided inadequate he may make such further allowance as he shall in his discretion consider reasonable.

And on affidavit of several deponents.

(4) As to affidavits, when there are several deponents to be sworn or it is necessary for the purpose of an affidavit being sworn to go to a distance or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

Allowance on affidavits to include attendances.

(5) The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponents to settle and read over.

Where same solicitor for both parties.

(6) As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

(6A) When two or more writs, summonses, orders, or notices in the same cause or matter can be served at the same time on any party, they shall be so served, and, when such is the case, fees shall be allowed for the service of one only. Mileage on several writs, &c.

(7) As to perusals, the fees are not to apply where the same solicitor is for both parties. Perusals.

(8) Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed. Separate pleadings where same solicitor.

(9) As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed. Procuring evidence.

(10) As to agency correspondence in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special or extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper. Agency correspondence.

(11) As to the attendance of solicitors upon the Master for the purpose of settling the terms of and passing judgments or orders, the taxing officer may, in such cases as are provided for by Order LXII., Rule 15, make such special allowances in respect thereof as he shall consider reasonable. Settling and passing judgments. Am. G.G. 4.10.50 p. 5270.

(12) As to attendance at the Judge's Chambers, where, from the length of the attendance, or from the difficulty of the case, the Judge shall think the highest of the fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the Judge, shall have required skill and labour for which no fee has been allowed, the Judge may allow such fee in lieu of the fee provided, not exceeding £10 10s., as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a Judge in Chambers on a Higher remuneration may be allowed on special circumstances in attendance at Chambers.

summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the Judge, specifying distinctly the grounds of such allowance, such fee, not exceeding £21, as in his discretion he may think fit, instead of the fee of £10 10s.

On non-attendance or neglect by party at Chambers, Judge may order costs.

(13) As to attendances at the Judge's Chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Folios.

(14) A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

Costs of procuring advice of counsel.

(15) Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

Counsel attending Chambers.

(16) As to counsel attending at Judge's Chambers, no cost thereof shall in any case be allowed unless the Judge certifies it to be a proper case for counsel to attend.

Allowance for notice to inspect.

(17) (*a*) The cost of inspection of documents shall be in the discretion of the taxing officer, but no allowance is to be made for any inspection unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for making such inspection.

(*b*) The taxing officers of the Supreme Court shall have power and authority to make one or more interim certificate or certificates, allocatur or allocaturs, in any taxation for any portion or portions of the taxed costs directed to be taxed without waiting until a certificate for the full amount can be made.

Power to make an interim certificate.

(18) As to taking copies of documents in possession of another party, or extracts therefrom, under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may by writing require at the rate of 6d. per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same the solicitor requiring the copy or extract is to be at liberty to make it and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

Rate of payment for copies of documents.

(19) Where a petition in any cause or matter within the cognizance of the Court in its Equitable Jurisdiction prior to *The Judicature Act* 1883 is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and acompanied by a tender of costs for perusing the same, the amount to be tendered shall be £2 2s. The party making such payment shall be allowed the same in his costs provided that such service was proper, but not otherwise; but this Order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon he is to be allowed a fee not exceeding the amount aforesaid.

Tender of costs for perusing petition where notice that appearance not required.

(20) The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion

Court or Judge may disallow costs of pleading or matter improper or unnecessary.

or summons, or other proceeding, or any part thereof, which is improper, vexatious unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the Court or Judge it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any judgment or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

Duty of taxing officer.

Costs may be set-off or adjusted between parties.

(21) In any case in which, under the last preceding regulation or any other Rule of Court, or by the order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and direct payment, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Note for taxing officer.
Am. G.G. 4.10.50 p. 5270.

(22) Where any question as to any costs is, under Regulation 20, dealt with at Chambers, the Judge or Master is to make a note thereof and state the same on his allowance of the fees for attendances at Chambers or otherwise as may be convenient for the information of the taxing officer.

Disallowance where party not interested, &c.

(23) Where any party appears upon any application or proceeding in Court or at Chambers in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or Judge shall expressly direct such costs to be allowed.

(24) The costs of an application to extend the time for taking any proceeding shall be in the discretion of the taxing officer, unless the Court or a Judge shall have specially directed how such costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary and could not with due diligence have been avoided. The costs of a summons to extend time shall not be allowed in cases to which Rule 6 of Order LXIV. applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application; and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment or deal with such costs in the manner provided by Regulation 21.

Extension of time.

Am. G.G. 26.4.39 p. 1382.

(25) The taxing officers of the Court shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as prior to the *Judicature Act* 1883 were performed by the Master-in-Equity or Prothonotary; and shall, in respect thereof, have such powers and authorities as previous to the commencement of such Act were vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge.

Taxing officers may adminster oaths.

(25A) The taxing officers of the Court shall be the Master, the Prothonotary, the Taxing Master, and the officers who at the time of the coming into operation of these rules shall be performing the duties of taxing officers of the Court.

Who may tax.

Am. G.G. 4.10.50 p. 5270.

The first or second clerk in the Prothonotary's office, or such other persons as the Chief Justice shall direct, may tax any bill of costs, and give his allocatur at the foot of such bill.

Chapter I.—Civil Proceedings.
Order LXV. 162

Taxing officer regulates the attendance of parties on taxation.

(27) On the taxation of costs to be borne by any fund or estate the taxing officer shall have authority to arrange and direct what parties are to attend and what parties are to be served with appointments to tax and copies of bills of costs, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary.

On neglect of party to tax costs, taxing officer may prevent prejudice to other party.

(28) When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

Costs to be allowed on taxation.

(29) On every taxation the taxing officer shall allow all such costs, charges, and expenses as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party: Provided that in taxations as between party and party no costs shall be allowed which have been incurred or increased through over caution or by payment of special fees to Counsel or special charges or expenses to witnesses or other persons or by other unusual expenses.

Disbursements in bills brought in for taxation under the *Supreme Court Act* 1928, s. 104.

(29A) In taxations under or pursuant to Section 104 of the *Supreme Court Act* 1928 of a solicitor's fees, charges and disbursements, no such disbursements shall be allowed which have not been actually made before the delivery of the bill of costs, unless the bill shall expressly state that they have not then been made, and shall set out such unpaid items of disbursements under a separate heading in the bill, in which case they may be allowed by the taxing master if they are actually made before the commencement of the proceedings in which the taxation takes place, and are made in discharge of an antecedent liability of the solicitor (including counsel's fees) properly incurred on behalf of the client. For the purposes of computation of one-sixth thereof, such bill shall be deemed to include such unpaid items as part of the bill:

Provided also that if the proceedings for taxation shall have been commenced by the client or a third party, payments made by the solicitor pending such proceedings in discharge of any such antecedent liability so set out in the bill (including counsel's

fees) may be allowed by the taxing master if actually made before the commencement of the taxation, if it appears to him that such payments have been properly made and that no injustice is done thereby.

The provisions as to the review of taxations shall apply to anything done by the taxing master pursuant to this Rule.

Fes for work and labour.

(30) As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

Costs in the cause.

(31) Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to the defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment.

Costs of amendments.

(32) Where upon taxation a plaintiff, who has obtained a judgment with costs, is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

Taxation without order to refer.

(33) Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the Court or a Judge, upon the application of the party alleging himself to be aggrieved, prohibits the taxation of such costs.

Where parties differ.

(34) Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper taxing officer, and give notice of his having so done to the other party, and at any time within eight days after such notice such other party shall have liberty to inspect the same without fee, if he thinks fit. And at or before the expiration of the eight days, or such further time as the taxing officer shall in his discretion allow, such other party

shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs.

Costs out of fund.

(35) Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

Costs in jurisdictions transferred.

(37) The rules, orders, and practice of any Court whose jurisdiction is transferred to the Court, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of *The Judicature Act* 1883 shall, in so far as they are not inconsistent with the said Act and these rules, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the Court.

Discretionary fees.

(38) As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel (if any) in respect of the work to which such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances; and, when a party is entitled to sign judgment for his costs, the taxing officer in taxing the costs may allow a fixed sum for the costs of the judgment.

Fixed sum on judgment for costs.

Power to taxing officer to assess costs at a gross sum.

(38A) If upon any taxation it shall appear that the costs have been increased by unnecessary delay or by improper, vexatious, prolix, or unnecessary proceedings, or by other misconduct or negligence, or that from any other cause the amount of the costs is excessive, having regard to the nature of the business transacted or the interests involved,

or the money or value of the property to which the costs relate, or to the other circumstances of the case, the taxing officer shall allow only such an amount of costs as may be reasonable and proper, and may assess the same at a gross sum, and shall (if necessary) apportion the amount among the parties if more than one, or may report the matter to the Judge who may make such order as he shall think fit.

The provisions as to review of taxation shall apply to allowances and certificates of the taxing officer under this rule.

Disallowances where bill reduced by a sixth.

(38B) If on the taxation of a bill of costs payable out of a fund or estate (real or personal), or out of the assets of a company in liquidation, the amount of the professional charges and disbursements contained in the bill is reduced by a sixth part, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, nor for attending the taxation.

Party dissatisfied with taxation may object.

(39) Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any items may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items or parts thereof objected to, and the grounds and reasons for such objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same. The taxing officer may, if he shall think fit, issue, pending the consideration of such objections, a certificate of taxation or allocatur for or on account of the remainder of the bill of costs, and such further certificate or allocatur as may be necessary shall be issued by the taxing officer after his decision upon such objections.

Taxing officer may review taxation.

(40) Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by any party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon and any special facts or circumstances relating thereto.

Party dissatisfied with taxing officer may apply to Judge.

(41) Any party who may be dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item which may have been objected to as aforesaid, may, within fourteen days from the date of the certificate or allocatur, or such other time as the Court or Judge, or the taxing officer at the time he signs his certificate or allocatur, may allow, apply to a Judge at Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as the Judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

Evidence thereon.

(42) Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof unless the Judge shall otherwise direct.

Retainer of counsel.

(44) No retaining fee to counsel shall be allowed on taxation as between party and party.

Conferences.

(45) Fees for conferences are not to be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it shall appear to the taxing officer for some special reason that a conference was necessary or proper.

Counsel where County Court scale applicable.

(46) In any case in which under Rule 12 of this Order the scale of costs in County Courts is applicable, the costs of briefing more than one counsel shall not be allowed, unless the taxing officer shall, for special reasons, be of opinion that briefing more than one counsel was proper.

Allowances of two junior counsel.

(47) Where the costs of retaining two counsel may properly be allowed such allowance may be made, although both such counsel may have been selected from the outer bar.

Refreshers.

Am. G.G. 14.10.53 p. 4887.

(48) In any cause or matter whether witnesses are examined or not, if the trial or hearing shall occupy either on the first day only or partly on the first day and partly on a subsequent day or days more than six working hours without being concluded, the taxing officer may allow a refresher fee for every five working hours subsequent to the expiration of the first six hours.

The final refresher may be allowed for such period less than five hours that the trial of hearing may occupy.

(49) Where a cause or matter shall not be brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed if the taxing officer shall be of opinion that such costs were prematurely incurred. Brief where cause not tried.

(50) Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter. Where set down again after being struck out.

(51) The following fees are to be allowed to counsel's clerks:— Clerk's fees.

	£	s.	d.
Upon a fee under 5 guineas ..	0	2	6
5 guineas and under 10 guineas ..	0	5	0
10 guineas and under 20 guineas ..	0	10	0
20 guineas and under 30 guineas ..	0	15	0
30 guineas and under 50 guineas ..	1	0	0
50 guineas and upwards, per cent. ..	2	10	0
On consultations, senior's clerk ..	0	5	0
On consultations, junior's clerk ..	0	2	6
On conferences	0	5	0
On retainers (where allowed):			
General retainer	0	10	6
Common retainer	0	2	6

(52) No fee to counsel shall be allowed on taxation unless vouched by his signature. Provided that a voucher shall not be required in the case of counsel who is briefed by the Crown Solicitor of Victoria or by the Crown Solicitor or a Deputy Crown Solicitor of the Commonwealth of Australia and who is a salaried officer of the Crown and is remunerated for his appearance only by the salary appertaining to his office. Counsel's signature. Am. G.G. 6.1.54 p. 62.

(53) In cases in which an original affidavit can be used, and to which Order XXXVIII., Rule 15, applies, it shall not be necessary to take an office copy. Office copy affidavit.

(54) It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used against such party. Of affidavit of discovery.

Chapter I.—Civil Proceedings.
Order LXV. 168

Delay before taxing officer.

(55) Where in proceedings before the taxing officer any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under Regulation 21.

Where costs out of fund bill to be sent to clients.

(56) Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill or any part thereof previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address, for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

Taxing officer may limit or extend time.

(57) The taxing officer shall have power to limit or extend the time for any proceeding before him; and where, by any general order or any order of the Court or a Judge, a time is appointed for any proceeding before or by a taxing officer, unless the Court or a Judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and, although the application for the same is not made till after the expiration of the time appointed, it shall not be necessary to make a certificate or order for the purpose, unless required for any special purpose.

Indorsement of name and address of solicitor.

(58) Every bill of costs which shall be left for taxation shall be indorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor (if any) for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed.

Fees to barristers and solicitors.

30. In actions where a barrister and solicitor acts in both capacities or appears as a barrister, instructed by his partner acting as solicitor, neither he nor his partner shall be entitled to make any charge for "instructions for brief," nor for "drawing" or "engrossing brief"; but, in lieu of all such charges, such barrister and solicitor, or partner, as the case may be, shall be entitled to such fees as may be allowed by the taxing officer for

"preparing for trial," and for "preparing brief notes for use on trial." Any person dissatisfied with the decision of the taxing officer in regard to such allowance may appeal within fourteen days of such decision by summons to the Judge who tried the action, who may review the taxation as to such item without being bound by the discretion of the taxing officer. This appeal may be had in addition to any other application to review the taxation.

ORDER LXVI.

NOTICES, PRINTING, PAPER, COPIES, OFFICE COPIES, ETC.

Notices to be in writing.

1. All notices and consents required or allowed by these Rules shall be in writing, unless expressly authorized by a Court or Judge to be given orally.

Foolscap paper. Am. G.G. 4.10.50 p. 5270.

2. Subject to the following Rules all documents left at Chambers and intended for the use of a Judge or of the Master or any other officer of the Court shall, whenever practicable, be written upon foolscap paper.

Where copies of documents may be printed or type-written.

2A. When five or more copies of any document containing more than ten folios are required in any cause or matter, or where the parties consent, the copies may be printed or type-written

Paper, type, and margin.

3. Proceedings required to be printed or type-written shall be printed or typed on foolscap folio paper, with an inner margin about three-quarters of an inch wide and an outer margin about two inches and a half wide, and, if printed, in pica type leaded.

Affidavits.

4. Any affidavit may be wholly or partly in print, type-writing or manuscript.

Depositions to be printed or type-written.

5. Where any written deposition of a witness has been filed, such deposition shall, subject to Rule 2A, be printed or type-written unless otherwise ordered.

Where affidavits, &c., previously used.

6. The Rules as to printing or typewriting depositions and affidavits to be used in a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed or type-written.

Regulations as to printed copies.

7. Where any document is to be printed or type-written, and where any printed or other office copy thereof is to be taken, the following regulations shall be observed:—

Party filing affidavit to print.

(*a*) The party on whose behalf the deposition or affidavit is taken and filed is to print or type-write the same in the manner provided by Rule 3 of this Order.

Copy for printing.

(*b*) To enable the party printing or type-writing to print or type-write any deposition or affidavit, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only.

Chapter I.—Civil Proceedings.
Order LXVI. 170

Printed copies to be furnished.

(*c*) The party printing or type-writing shall, on demand in writing, furnish to any other party any number of printed or type-written copies, not exceeding ten, upon payment therefor at the rate of 1s. per folio for one copy and 8d. per folio for every other copy.

Credit for copies.

(*d*) As between a solicitor delivering any printed or type-written copies and his client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed or type-written copies.

No costs of written copy.

(*e*) The party entitled to be furnished with a print or type-written copy shall not be allowed any charge in respect of a written copy unless the Court or Judge shall otherwise direct.

Office copy.

(*f*) Except as provided by Order LV., Rule 48, a party by or on whose behalf any deposition, affidavit or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original, and mark it as an office copy; such copy shall be a copy printed or type-written as above provided where such deposition or affidavit is to be printed or type-written.

Production of office copy by party taking it.

(*g*) The party or solicitor who has taken any printed type-written or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates.

Copies of pleadings.

(*ga*) Either party may obtain from the other party a copy of any pleading already pleaded by such other party on payment or tender of the cost thereof.

Party filing document not required to be printed to furnish copy.

(*h*) Where any party is entitled to a copy of any deposition, affidavit, proceeding or document filed or prepared by or on behalf of another party which is not required to be printed or type-written, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared.

Mode and time of application and delivery.

(*i*) The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or Judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges.

And on certain *ex parte* applications.

(*j*) In the case of an *ex parte* application for an injunction or writ of *capias* or *ne exeat coloniâ,* the party making such application is to furnish copies of the affidavits

upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court or a Judge.

(*k*) It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed or type-written on every printed or type-written copy of an affidavit or set of affidavits and copied on every office copy and copy furnished to a party.

Affidavit to show on whose behalf filed.

(*l*) The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy (as the case may be).

Indorsements on copies furnished.

(*m*) The folios of all printed type-written and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed or type-written copies.

Numbering of folios and written copies to be legibly written.

(*n*) In case any party or solicitor who shall be required to furnish any such written copy aforesaid shall either refuse, or for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for.

Consequence of not furnishing copies.

(*o*) Where, by any order of the Court or a Judge, any document is ordered to be printed or type-written, or where the evidence has been directed to be taken in shorthand the Court or Judge may order the expense of printing or type-writing or of the shorthand writer to be borne and allowed, and printed, type-written or transcribed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

Direction of Court as to cost of printing, type-writing, or shorthand.

8. Whenever any action or matter is commenced in the office of a Deputy Prothonotary every pleading served upon or delivered to any party, and every document filed or lodged in the office of such Deputy Prothonotary or left with him in the course of such action or matter shall bear on its face immediately after the title

When action commenced in office of Deputy Prothonotary how documents to be distinguished.

of the action or matter the name of the city, town, or other place in which the office of such Deputy Prothonotary is situated as " Ballarat " " Bendigo " and the like.

What document may be filed or lodged with Deputy Prothonotary.

9. No document shall be filed or lodged in the office of any Deputy Prothonotary or left with him unless in an action or matter commenced in the office of such Deputy Prothonotary.

Illegible documents.

Ins. G.G. 9.12.53 p. 6003.

10. Notwithstanding anything contained in these Rules if any document filed or put in evidence or placed before the Court or a Judge by a party in any proceedings is not in the opinion of the Court or Judge in a neat and clearly legible condition, or if any substantial part of any such document, other than the date thereof and the signature thereto, is in handwriting, the Court or Judge may, if he thinks fit, order that the party shall not be entitled to make any use of it or rely upon it in any manner until a neat and clearly legible printed or type-written copy of it has been filed or otherwise made available for the use of the Court or Judge and in such case that party shall not be so entitled until such a copy has been so made available.

Order LXVII.

SERVICE OF ORDERS, ETC.

Office copy instead of original.

1. It shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited.

Where service not required to be personal.

2. All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours at the address for service of the person to be served as defined by Orders IV. and XII., with any person resident at or belonging to such place.

Notices from office of Court by post.

3. Notices sent from any office of the Court may be sent by post, and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

Where no appearance or address, service by filing.

4. Where no appearance has been entered for a party, or where a party or his solicitor (as the case may be), has omitted to give an address for service as required by Orders IV. and XII., all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them in the Prothonotary's office.

Personal service.

5. Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons.

6. Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, and it is made to appear to the Court or a Judge that prompt personal service cannot be effected, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just. Substituted service.

7. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor. On solicitor after appearance in person.

8. Where a person who is not a party appears in any proceeding either before the Court or in Chambers, service upon the solicitor in Melbourne by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service. On solicitor appearing for person not party.

9. Affidavits of service shall state when, where, and how and by whom such service was effected. Affidavit of service.

Order LXVII. (A).

SHERIFF'S RULES.

1. When the Sheriff shall take in execution both real and personal estate belonging to the same party, he shall, unless a Judge shall otherwise direct, cause the personal estate to be first sold; and in case the proceeds be not sufficient to satisfy the execution, he shall then sell the real estate. Personal estate to be sold first.

2. When the property, either real or personal, of any person is taken in execution under a writ of *fieri facias* such person may point out what portion thereof respectively he will have sold first, and the portion so pointed out shall be sold first unless a Judge shall otherwise order. Portion of property sold first.

3. When personal property is taken in execution by the Sheriff under a writ indorsed to levy a sum less than £50, he shall cause the same to be sold as soon as reasonably convenient after twenty-four hours from the levy thereof, subject to the provisions of the next Rule. Under £50, time of sale.

4. When the Sheriff intends to put up for sale any property taken in execution, he shall give due publicity to the time, place, and particulars of the intended sale by advertisement, and, when the property is intended to be sold at the place of levy, by affixing notices in and about the place of levy. Publicity of sale.

Chapter I.—Civil Proceedings.
Order LXVII. (A). 174

Advertising sale of land under No. 5842. Ins. G.G. 24.8.55 p. 4516.

4A. The Sheriff shall not advertise the sale of any real estate which is under the operation of the *Transfer of Land Act* 1954 until the party who has lodged with him the writ of *fieri facias* or judgment decree or order has first lodged with him evidence to his satisfaction that a copy of such writ or judgment decree or order has been served on the Registrar of Titles and that a memorandum thereof has been entered in the Register Book.

Place of sale.

5. The Sheriff shall cause any property taken in execution to be sold at the place of levy or elsewhere as he may deem most advantageous. Provided that all property real and personal taken in execution shall be offered for sale by the Sheriff by public auction and shall not be offered for sale in any licensed house or premises.

How Sheriff to pay moneys received in certain cases.

6. Subject to the provisions of the Commonwealth *Bankruptcy Act* 1924-1954 and any amendments thereof when the Sheriff shall, by virtue of any writ to him directed, receive any moneys, he shall pay them on demand to the party entitled to receive the same or his solicitor (deducting all lawful charges therefrom) whether such writ be then returnable or not, unless he shall have received from some person claiming to be interested therein notice to retain the same.

Notice to Sheriff not to pay money to execution creditor.

7. When the Sheriff shall, by virtue of any writ to him directed, receive any moneys, and shall have been served with notice by any person claiming to be interested therein not to pay over the same, the Sheriff may retain such moneys in his hands, to abide the order of the Court or a Judge thereon; and if no application be made by the party giving such notice to the Court or a Judge, within four days next after the date of such notice, the Sheriff may pay over such moneys in pursuance of the writ, without regard to the notice.

Suspension of execution.

8. The Sheriff shall not suspend the execution of any writ or process directed to him, except upon an absolute order in writing to that effect lodged with him by the person entitled to the benefit of the same, or his solicitor or agent. Any such person may at any time afterwards withdraw such order, and lodge with the Sheriff a written instruction to execute the said writ or process.

Judge's order in vacation to enforce performance of duty.

9. Where the Sheriff shall not execute or return a writ directed to him, according to the exigency thereof, or shall not pay over money received, or deliver possession of the premises taken by him, or bring in the body of a party he is directed to arrest or attach, or otherwise neglect or omit to perform any duty incumbent upon him, an order may be obtained from a Judge in vacation on summons to enforce the performance of such duty.

Persons arrested to be lodged in nearest gaol.

10. When any person shall be arrested by any Sheriff on any civil process of the Court, he shall be lodged in the gaol nearest to the place of his arrest, and be there detained until the Court or a Judge shall order his discharge.

11. In the execution of process poundage shall be chargeable under a writ of *fieri facias* or a writ of *venditioni exponas* on the money obtained by the seizure at the rate of 5 per centum up to £100, and at the rate of 2½ per centum for the excess when the money so obtained exceeds £100, and under a writ of possession at the rate of 5 per centum on the annual value of the property delivered up to £100, and at the rate of 2½ per centum for the excess when the annual value exceeds £100. The Sheriff shall, as far as practicable, levy the poundage and other fees and the expenses of the execution in addition to the amount directed to be recovered. Rate of poundage. Am. G.G. 6.1.56 p. 10. Levy of poundage &c.

For the purposes of this Rule the word "seizure" shall include the advertisement by the Sheriff of a sale of an interest in land.

12. In every action against the Sheriff for anything done or omitted to be done by him in the intended execution of his duty, the plaintiff shall be compelled to give security for costs. Security for costs.

13. Save as herein appears, all duties discharged in the Chancery Division of the High Court of Justice in England in respect of process issued out of the said Court or otherwise by a Serjeant-at-Arms shall be discharged within Victoria by the Sheriff. Duties discharged by Serjeant-at-Arms in England to be discharged by Sheriff.

14. The Rules of this Order shall apply to the Sheriff and his Deputy Sheriff. Deputy Sheriff.

Order LXVIII.

APPLICATION OF RULES.

1. Nothing in these Rules, save as expressly provided, shall affect the practice or procedure in any criminal proceedings. Rules not to affect criminal procedure.

Order LXX.

EFFECT OF NON-COMPLIANCE.

1. Non-compliance with any of these Rules or with any rule of practice for the time being in force shall not render any proceedings void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit. Not to avoid proceedings. May be set aside.

1A. The Court or a Judge may at any time upon such terms as may be just relieve any party from the consequences of non-compliance with any of these Rules or with any rule of practice for the time being in force. Court may relieve from consequences of non-compliance.

Time for application to set aside.

2. No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, or if the party applying has taken any fresh step after knowledge of the irregularity.

Objections to be stated.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

ORDER LXXI.

INTERPRETATION OF TERMS.

Interpretation.
Am. G.G. 2.6.54 p. 3687.

1. In the construction of these Rules unless there is anything in the subject or context repugnant thereto the words defined in section three of the *Supreme Court Act* 1928 and in section sixteen of the *Acts Interpretation Act* 1928 respectively shall when used in these rules have or include the meanings therein set forth and the words "pleading," "claim," "statement of claim," "defence," "statement of defence," and "counterclaim" shall include particulars ordered in lieu thereof, and the several words hereinafter mentioned or referred to shall have or include the meanings following:—

Am. G.G. 23.5.56 p. 2717.

"Master" means one of the Masters of the Supreme Court and includes an acting Master appointed by the Governor in Council.

"Originating Summons" means every summons other than a summons in a pending cause or matter.

Person.

"Person" shall include a body corporate or politic:

Proper officer.

"Proper officer" shall mean an officer to be ascertained as follows:—

(*a*) Where any duty to be discharged under any Act or these Rules is a duty which has heretofore been discharged by any officer, such officer shall unless otherwise provided by these Rules continue to be the proper officer to discharge the same:

(*b*) Where any new duty is under any Act or these Rules to be discharged, the proper officer to discharge the same shall be the officer directed by these Rules (such officer having previously discharged analogous duties), or, if no such officer, such other officer as may from time to time be directed by the Chief Justice to discharge the same:

(*c*) Where any doubt shall arise as to who is the proper officer to discharge any new duty, the Chief Justice may direct by what officer such duty is to be discharged.

"Prothonotary," so far as regards actions or matters commenced in the office of any Deputy Prothonotary, means Deputy Prothonotary in whose office the action or matter was commenced. Prothonotary.

"Receiver" includes consignee or manager appointed by or under an order of the Court. Receiver.

"Solicitor" shall include attorney, solicitor, and proctor. Solicitor.

"The Act" shall mean the *Supreme Court Act* 1928. The Act.

Order LXXII.

GENERAL RULES.

1. No Order or Rule annulled by any former Order shall be revived by any of these Rules unless expressly so declared. Non-revival of former rules.

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

3. When a judgment or order is pronounced in any proceeding, either by the Full Court or by a single Judge, and the reasons of a Judge have been reduced to writing, it shall be sufficient to state orally the conclusion of the Judge without stating the reasons therefor, but his written reasons shall be then and there published by delivering the same to the Associate in open Court who shall allow the same to be perused by any party to the proceeding or his counsel or solicitor. Statement of reasons for judgment. Ins. 8.7.53 p. 3249.

THE APPENDICES ABOVE REFERRED TO.

APPENDIX A.

PART I.

FORMS OF WRITS OF SUMMONS, ETC.

No. 1.

Writ for Service within the Jurisdiction.

19 . No.

In the Supreme Court. Between *A.B.* Plaintiff,
and
C.D. and *E.F.* Defendants.

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

To *C.D.* of and *E.F.* of

We command you, That within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Supreme Court in an action at the suit of *A.B.*; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness Chief Justice, at [Melbourne], the day of

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [or defendants] may appear hereto by entering an appearance [or appearances] either personally or by solicitor at [*the Prothonotary's office in The Law Courts, Melbourne, or, in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be*].

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c.

Place of trial

Mode of trial

This writ was issued by the plaintiff in person, who is a* and resides at ; *or*, This writ was issued by *G.H.*, of solicitor for the said plaintiff, who resides at ; *or*, This writ was issued by *J.K.*, of whose address for service is agent for of solicitor for the said plaintiff, who resides at [*mention the city, town, borough, or place, and also the name of the street and number of the house of the plaintiff's residence, if any*].

* State plaintiff's occupation.

Indorsement to be made on the writ after service thereof.

This writ was served by me at on [the defendant, *or* one of the defendants] on day the day of 19 .

(Signed) X.Y.

Indorsed the day of 19

(Signed)

(Address)

APPENDIX A.
Part I.

No. 2.

Specially Indorsed Writ (Order III., Rule 4).

[*Title as in No. 1.*]

ELIZABETH THE SECOND, by the Grace of God, &c.—[*as in No. 1.*]

To of

We command you, That within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness Chief Justice, at [Melbourne] the day of in the year of our Lord One thousand nine hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at [*the Prothonotary's office in The Law Courts, Melbourne, or, in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be*].

Statement of Claim.

The plaintiff's claim is

Particulars.

Place of trial

Mode of trial

(Signed)

And the sum of £ [*or* such sum as may be allowed on taxation], for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued by the said plaintiff, who is a* and resides at ; [*or*] This writ was issued by *G.H.*, of whose address for service is solicitor for the said plaintiff, who resides at ; [*or*] This writ was issued by *J.K.*, of whose address for service is agent for of solicitor for the said plaintiff, who resides at

* State plaintiff's occupation.

This writ was served by me at on the defendant on the day of 19

Indorsed the day of 19

(Signed)

(Address)

No. 5.

Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Jurisdiction.

[*Title as in No. 1.*]

ELIZABETH THE SECOND, by the Grace of God, &c.—[*as in No. 1.*]

To *C.D.*, of

We command you, *C.D.*, that within* after the service† of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in Our Supreme Court in an action at the suit of *A.B.*; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness Chief Justice, &c.

Memoranda and Indorsements as in Form No. 1.

Indorsement to be made on the writ before the issue thereof:

N.B.—*This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is residing out of the jurisdiction of the Court, notice of the writ, and not the writ itself, is to be served upon him.*

* Insert number of days directed by Court or Judge.

† If notice of the writ is to be served, insert here "of notice."

No. 6.

Specially Indorsed Writ for Service out of the Jurisdiction.

[*Title as in No. 1.*]

ELIZABETH THE SECOND, by the Grace of God, &c.—[*as in No. 1.*]

To of

We command you, That within* days after service† of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in action at the suit of And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness : Chief Justice, at [Melbourne] the day of , in the year of our Lord One thousand nine hundred and

* Insert number of days directed by Court or Judge.

† If notice of the writ is to be served, insert here "of notice."

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at [*the Prothonotary's office in The Law Courts, Melbourne, or, in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be*].

Statement of Claim.

The plaintiff's claim is

Particulars.

Place of trial

Mode of trial

(Signed)

And £ [*or* such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within* days from service† hereof, further proceedings will be stayed.

* Insert number of days limited for appearance.

† If notice to be served insert here "of notice."

This writ was issued, &c.

This writ [*or* notice of this writ] was served, &c.

N.B.—*This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is resident out of the jurisdiction of the Court, notice of the writ, and not the writ itself, is to be served upon him.*

No. 9.

Notice of Writ in lieu of Service to be given out of the Jurisdiction.

[*Title, &c., as in No. 1.*]

To *G.H.*, of

Take notice, that *A.B.* of has commenced an action against you, *G.H.*, in Her Majesty's Supreme Court at Melbourne in the State of Victoria, in the Commonwealth of Australia, by writ of that Court, dated the day of A.D., 19 ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said *A.B.* may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at [*the Prothonotary's office in the Law Courts, Melbourne,* or, *in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be*].

(Signed) *A.B.* of &c.
[*or*]
X.Y. of &c.
solicitor for *A.B.*

APPENDIX A.
Parts I. & II.

No. 18.

Form of Memorandum for Renewed Writ.

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

Seal renewed writ of summons in this action indorsed as follows:—

[*Copy original writ and the indorsements.*]

PART II.

FORMS OF ENTRY OF APPEARANCE.

No. 1.

Memorandum of Appearance in General.

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

Enter an appearance for in this action.

Dated this day of

(Signed) *X.Y.*, of
agent for
of

The place of business of *X.Y.* is*
His address for service is

(*or*) *C.D.*, defendant in person.

The address of *C.D.* is*
His address for service is

* If this address be beyond three miles from the office of the Prothonotary, an address for service within three miles thereof must be given.

No. 3.

Notice limiting Defence.

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

Take notice that the [*above-named*] defendant *C.D.* limits his defence to part only of the property mentioned in the writ of summons, that is to say, to the close called "the Big field."

Dated the day of 19 .

(Signed) *G.H.*,
of
agent for
of
solicitor for the said defendant *C.D.*
[*or*] *C.D.*, defendant in person.

To Mr. *X.Y.*, plaintiff's solicitor.

No. 4.

Entry of Appearance limiting Defence.

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

Enter an appearance for the defendant in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "the Big field." The address of is

Dated the day of 19 .

(Signed)
of*
agent for
of
[*or*] *C.D.*, defendant in person.

* If this address be beyond three miles from the office of the Prothonotary, an address for service within three miles thereof must be given.

No. 5.

Entry of Appearance.

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

Enter an appearance for to the notice issued in this action on the day of 19 by the defendant under the Rules of the Supreme Court.

Dated the day of 19 .

(Signed)
of*
agent for
of

* If this address be beyond three miles from the office of the Prothonotary, an address for service within three miles thereof must be given.

No. 6.

Entry of Appearance.

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

Enter an appearance for who has been served with an order dated the day of , to carry on and prosecute the proceedings in this action.

Dated the day of 19

(Signed)
of*
agent for
of

* If this address be beyond three miles from the office of the Prothonotary, an address for service within three miles thereof must be given.

No. 7.

Entry of Appearance to Counter-claim.

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

Enter an appearance for to the counter-claim of the above-named defendant in this action.

Dated the day of 19

(Signed)
of*
agent for
of

* If this address be beyond three miles from the office of the Prothonotary, an address for service within three miles thereof must be given.

No. 8.

Affidavit for Entry of Appearance as Guardian.

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

I, of make oath and say as follows:—

A.B., of is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action [matter] adverse to that of the said infant, and the consent of the said *A.B.* to act as such guardian is hereto annexed.

Sworn, &c.

[*To this Affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.*]

APPENDIX A.
Part III.

PART III.

Section III.

INDORSEMENT FOR COSTS [ADD TO THE ABOVE FORMS].

And £ for costs; and if the amount claimed be paid to the plaintiff or his solicitor within for days [*or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time limited for appearance*] from the service hereof, further proceedings will be stayed.

INDORSEMENTS ON WRITS OF SUMMONS. SECTION VII.

Indorsement of Character of Parties.

The plaintiff's claim is as executor [*or* administrator] of *C.D.*, deceased, for, *&c.*

Executors. The plaintiff's claim is against the defendant *A.B.* as executor [*or, &c.*] of *C.D.*, deceased, for, *&c.*

The plaintiff's claim is against the defendant *A.B.*, as executor of *X.Y.*, deceased, for, *&c.*, and against the defendant *C.D.*, in his personal capacity, for, *&c.*

Trustees. The plaintiff's claim is as trustee under the bankruptcy of *A.B.* for

The plaintiff's claim is as [*or* is against the defendant as] trustee under the will of *A.B.* [*or* under the settlement upon the marriage of *A.B.* and *X.Y.*, his wife].

Public officer. The plaintiff's claim is as public officer of the Bank for

The plaintiff's claim is against the defendant as public officer of the Bank for

Principal and surety. The plaintiff's claim is against the defendant *A.B.* as principal, and against the defendant *C.D.* as surety for

Qui tam action. The plaintiff's claim is as well for the Queen as for himself, for

---

APPENDIX B.

APPENDIX B.

NOTICES, ETC.

No. 1.

Third Party Notice.

19 No.

In the Supreme Court.

Notice filed 19

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

To Mr. *X.Y.*

Take notice that this action has been brought by the plaintiff against the defendant [as surety for *M.N.*, upon a bond conditioned for payment of £2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, *or*, also surety for the said *M.N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of A.D.)].

Or [as acceptor of a bill of exchange for £500, dated the day of A.D. drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C.D.*, or your liability to the defendant *C.D.*, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant *C.D.*, and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court.

(Signed) *E.T.*
[*or*] *X.Y.*,
solicitor for the defendant,
E.T.

Appearance to be entered at the [*Prothonotary's office, in the Law Courts, Melbourne*, or, *in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be*].

No. 2.

Notice of Counter-claim.

In the Supreme Court. 19 . No.

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

To the within-named *X.Y.*

Take notice that if you do not appear to the within counter-claim of the within-named *C.D.* within eight days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

Appearances are to be entered at the [*Prothonotary's office, in the Law Courts, Melbourne,* or, *in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be*].

No. 3.

Notice of Payment into Court.

In the Supreme Court. 19 . No.

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

Take notice that the defendant has paid into Court £ and says that that sum is enough to satisfy the plaintiff's claim [*or* the plaintiff's claim for, *&c.*]

To Mr. *X.Y.*, the plaintiff's solicitor. *W.Z.*, defendant's solicitor.

[*Note.*—If a defendant to an action in which there are to be no pleadings pays money in with a defence of tender, he should add "which amount is paid in with the defence of tender before action brought, but without delivery of defence, there being no pleadings in this action."]

No. 3A.

Notice of Payment into Court with denial of liability.

[*Heading as in Form No.* 3.]

Take notice that the defendant has paid into Court £ with denial of liability, and says that that sum is enough to satisfy the plaintiff's claim [*or* the plaintiff's claim for, &c.]

To Mr. *X.Y.*, the plaintiff's solicitor. *W.Z.*, defendant's solicitor.

No. 4.

Acceptance of Sum paid into Court.

[*Heading as in Form No.* 3.]

Take notice that the plaintiff accepts the sum of £ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

No. 5.

Confession of Defence.

[*Heading as in Form No.* 3.]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [*or* of the defendant's further defence, *or* in his notice in writing, dated, &c.]

No. 6.

Interrogatories.

In the Supreme Court. 19 . No.

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

Interrogatories on behalf of the above-named [plaintiff, *or* defendant *C.D.*], for the examination of the above-named [defendants *E.F.* and *G.H.*, *or* plaintiff].

1. Did not, &c.
2. Has not, &c.

&c., &c., &c.

[*The defendant E.F. is required to answer the interrogatories numbered* .]
[*The defendant G.H. is required to answer the interrogatories numbered* .]

APPENDIX B.

No. 7.

Answer to Interrogatories.

[*Heading as in No. 6 supra.*]

The answer of the above-named defendant *E.F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E.F.*, make oath and say as follows:—

.....

.....

No. 7A.

Ins. G.G. 1.6.49 p. 3143.

In the Supreme Court of Victoria. 19 . No.

Between

A.B. Plaintiff.

and

C.D., E.F., & G.H. Defendants.

Notice for Discovery.

You are required within ten days after service of this Notice to answer on affidavit, stating what documents are or have been in your possession or power relating to the matters in dispute in this action and what you know as to the custody of such as have been but no longer are in your possession or power, and whether you object and, if so, on what grounds, to the production of such as are in your possession or power.

To

Solicitors for

No. 8.

Affidavit as to Documents.

[*Heading as in No. 3 supra.*]

I, the above-named defendant *C.D.*, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the First Schedule hereto.

2. I object to produce the said documents set forth in the second part of the said First Schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the Second Schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*]

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had, in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said First and Second Schedules hereto.

No. 9.

Notice to produce Documents.

[*Heading as in No. 3 supra.*]

Take notice that the [plaintiff *or* defendant] requires you to produce for his inspection the following documents referred to in your [writ, *or* pleading, *or* particulars, *or* affidavit] dated the day of A.D. :—

Describe documents required.

To Mr. *W.Z.*, solicitor for

X.Y., solicitor to the

No. 10.

Notice to inspect Documents.

[*Heading as in No. 3 supra.*]

Take notice that you can inspect the documents mentioned in your notice of the day of A.D. [except the deed numbered in that notice] at my office on Thursday next the instant, between the hours of 12 and 4 o'clock.

Or that the [plaintiff *or* defendant] objects to giving you inspection of the documents mentioned in your notice of the day of A.D. on the ground that [*state the ground*]:—

No. 11.

Notice to admit.

[*Heading as in No. 2 supra.*]

Take notice that the plaintiff [*or* defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or* plaintiff], his solicitor or agent, at on between the hours of ; and the defendant [*or* plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and that such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

[*Here describe the documents, the manner of doing which may be as follows:*—]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between *A.B.* and *C.D.*, first part, and *E.F.*, second part..	January 1, 1956.
Indenture of lease from *A.B.* to *C.D.*	February 1, 1956.
Indenture of release between *A.B.*, *C.D.*, first part, &c.	February 2, 1956.
Letter, defendant to plaintiff	March 1, 1956.
Policy of insurance on goods by ship *Isabella*, on voyage from Oporto to London	December 3, 1955.
Memorandum of agreement between *C.D.*, captain of said ship, and *E.F.* ..	January 1, 1956.
Bill of exchange for £100 at three months, drawn by *A.B.* on and accepted by *C.D.*, indorsed by *E.F.* and *G.H.*	May 1, 1956.

COPIES.

Description of Documents.	Date.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of baptism of *A.B.*, in the parish of *X*.	January 1, 1956. ..	
Letter—plaintiff to defendant	February 1, 1956. ...	Sent by General Post, February 2, 1956.
Notice to produce papers	March 1, 1956. ..	Served March 2, 1956, on defendant's solicitor by *E.F.*, of———
Record of a judgment of the Court of Queen's Bench at Dublin, in an action *J.S.* v. *J.N.*	Trinity Term, 10th Vic.	
Letters Patent of King Charles II.	January 1, 1680.	

and

or

Take notice that the plaintiff [*or* defendant] in this cause requires the defendant [*or* plaintiff] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [*or* plaintiff] is hereby required, within [ ] days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

APPENDIX B.

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1950.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1956.
5. That Julius Smith never was married.

Dated, &c.

C.D., solicitor [*or* agent] for the plaintiff [*or* defendant].

To *E.F.*, solicitor [*or* agent] for the defendant [*or* plaintiff].

(Signed)

No. 13.

Admission of Facts, pursuant to Notice.

[*Heading as in No.* 3 *supra.*]

The defendant [*or* plaintiff] in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [*or* plaintiff] on any other occasion, or by any one other than the plaintiff [*or* defendant *or party requiring the admission*].

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1950.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1956.
5. That Julius Smith never was married.	5.

(Signed)

Delivered, &c.

E.F., solicitor [*or* agent] for the defendant [*or* plaintiff].

To *G.H.*, solicitor [*or* agent] for the plaintiff [*or* defendant].

No. 14.

Notice to Produce (General Form).

[*Heading as in No.* 3 *supra.*]

Take notice, that you are hereby required to produce and show to the Court on the trial of this all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this and particularly

Dated the day of 19

To the above-named

h solicitor or agent { (Signed) of agent for solicitor for the above-named

---

No. 15.

Issue.

[*Heading as in No.* 3 *supra.*]

Whereas *A.B.* affirms, and *C.D.* denies [*here state the question or questions of fact to be tried*], and it has been ordered by His Honour Mr. Justice that the said question shall be tried [*here state mode of trial, whether with or without a jury, if with a jury whether of six or twelve*]; therefore let the same be tried accordingly.

No. 16.

Notice of Trial.

[*Heading as in No. 3 supra.*]

Take notice of trial of this [*or* of the issues in this ordered to be tried] [*or* inquiry for the assessment of damages in this] by a Judge [and jury of] [*or as the case may be*] for the next assizes [*or sittings*] at

Dated

A.B.,
[*Plaintiff's Solicitor*].

To Mr. *W.Z.*, defendant's solicitor [*or as the case may be*].

No. 16A.

Notice of Trial without Pleading.

[*Heading as in No. 3 supra.*]

Take notice of trial of this cause without pleadings in Melbourne [*or as the case may be*] for the day of next.

X.Y., plaintiff's solicitor [*or as the case may be*].

Dated

To *Z.*, defendant's solicitor [*or as the case may be*].

No. 17.

Certificate of Officer after Trial with a Jury.

[*Heading as in No. 3 supra.*]

I certify that this was tried before His Honour Mr. Justice and a jury of at on the 12th and 13th days of November 19

The jury found [*state findings*].

The Judge directed that judgment shall be entered for the plaintiff for £ with costs [*or as the case may be*].

A.B.,
[*Title of officer*].

No. 18.

Notice of Motion.

[*Heading as in No. 3 supra.*]

Take notice, that the Court will be moved on the day of 19 , at o'clock in the forenoon, or so soon thereafter as counsel can be heard, by that

Dated the day of 19 .

(Signed) of

agent for solicitor for the

To

No. 19.

Notice of Discontinuance.

[*Heading as in No. 3 supra.*]

Take notice, that the plaintiff hereby* †

Dated the day of 19 .

(Signed) of

agent for solicitor for the plaintiff.

To

* "wholly discontinues this action" or "withdraws so much of h claim in this action as relates to," &c.

† If not against all the defendants add "as against the defendant," &c.

APPENDIX B.

No. 20.

Notice of Cross-examination of Deponents at Trial.

[*Heading as in No. 3 supra.*]

Take notice, that the intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice, that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the day of 19 .

(Signed) agent for
solicitor for the

To

THE SCHEDULE above referred to.

Name of Deponent.	Address and Description.	Date when Affidavit Filed.

No. 21.

Notice of Renewal of Writ of Execution.

[*Heading as in No. 3 supra.*]

Take notice, that the writ of issued in this action directed to the sheriff and bearing date the day of 19 has been renewed for one year from the day of 19 .

Dated the day of 19 .

(Signed) of
agent for solicitor for the
To the Sheriff.

No. 22.

Notice as to Stock under Order XLVI.

To the [*here add the name of the company*].

Take notice that the stock comprised in and now subject to the trusts of the [settlement, will, *&c.*] referred to in the affidavit to which this notice is annexed consists of the following (that is to say) [*here specify the stock*].

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends [*or*, the receipt of the dividends on the stock as well as the transfer of the stock].

(Signed) *A.B.*

No. 23.

Affidavit of Service of Summons.

[*Heading as in No. 3 supra.*]

I, of solicitor for the above-named [*or as the case may be*] make oath and say as follows:—

I did on the day of 19 before the hour of in the noon, serve the above-named in this action with a true copy duly stamped of the summons hereto annexed marked A. by leaving it at the of the said situate with there

Sworn at this day of 19 . }

Before me—

This affidavit is filed on behalf of the

APPENDIX B.

No. 25.

Affidavit in support of Garnishee Order.

In the Supreme Court. 19 . No.

Between *A.B.*, Judgment Creditor,
and
C.D., Judgment Debtor.

I, of the above-named judgment creditor [*or* solicitor for the above-named judgment creditor] make oath and say as follows:—

1. By a judgment of the Court given in this action, and dated the day of 19 , it was adjudged that I [*or* the above-named judgment creditor] should recover against the above-named judgment debtor the sum of £ , and costs to be taxed, and the said costs were by a taxing officer's certificate dated the day of 19 allowed at £

2. The said still remains unsatisfied to the extent of and interest amounting to £

3. * is indebted to the judgment debtor in the sum of £ or thereabouts.

4. The said is within the jurisdiction of this Court.

Sworn at the day of 19 .

Before me—

This affidavit is filed on behalf of the

* Name, address, and description of garnishee.

No. 26.

Affidavit on Interpleader.

[*Heading as in No. 3 supra.*]

I, of the defendant in the above action, make oath and say as follows:—

1. The writ of summons herein was issued on the day of 19 and was served on me on the day of 19 .

2. The action is brought to recover . The said * in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed† by one who‡

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said in such manner as the Court may order or direct.

Sworn at the day of 19 .

Before me—

This affidavit is filed on behalf of the

* "is" or "are."

† If claim in writing, make the writing an exhibit.

‡ State expectation of suit, or that he has already sued.

No. 27.

Affidavit as to Stock under Order XLVI.

In the matter of [*here state the nature of the document comprising the stock, and add the date and other particulars, so far as known to the deponent sufficiently to identify the document*].

I, of make oath and say that according to the best of my knowledge, information, and belief, I am [*or if the affidavit is made by the solicitor, A.B.* of is] beneficially interested in the stock comprised in the [settlement, will, &c.] above-mentioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

This affidavit is filed on behalf of *A.B.*, whose address is [*state address for service*].

No. 28.

NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION.

Take notice that *A.B.* has claimed the goods (*or* certain goods) [*where only certain goods are claimed here enumerate them*] taken in execution by the Sheriff under the warrant of execution issued in this action. You are hereby required to admit or dispute the title of the said *A.B.* to the said goods, and give notice thereof in writing to the said sheriff within four days of the receipt of this notice, failing which the said sheriff may issue an interpleader summons. If you admit the title of the said *A.B.* to the said goods, and give notice thereof in manner aforesaid to the said sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, &c.

(Signed)

To the plaintiff. Sheriff.

APPENDIX B.

No. 29.

NOTICE OF PLAINTIFF OF ADMISSION OR DISPUTE OF TITLE OF CLAIMANT.

Take notice that I admit (*or*, dispute) the title of *A.B.* to the goods [*or*, to certain of the goods, namely (*set them out*)] seized by you under the execution issued under the judgment of this action.

(Signed)
Plaintiff
or
Solicitor.

To the Sheriff and his officers.

APPENDIX C.
Secs. I. & II.

APPENDIX C.

FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT TO ORDER XIX., RULE 5.

SECTION I.

General.

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

Statement of Claim.

The plaintiff, &c.
[*or*]
The plaintiff's claim is, &c.
[*To be filled up in manner exemplified in the following forms.*]
The plaintiff claims [*as in the following forms*].
Place of trial, (Signed)
Delivered the day of 19 .

SECTION II.

ACTIONS IN MATTERS WITHIN THE COGNIZANCE OF THE COURT IN ITS EQUITABLE JURISDICTION PREVIOUSLY TO THE COMMENCEMENT OF THE JUDICATURE ACT 1883.

No. 1.

Administration.

The plaintiff is a creditor of *X.Y.*, deceased, of whom the defendant *C.D.* is executor [*or* administrator] and the defendant *E.F.* is devisee.

Particulars of the claim:—

	£	s.	d.
Principal due on the bond of the testator [*or* intestate] dated the of 19	2,000	0	0
Interest from the of at 5 per cent. ..	250	0	0
	2,250	0	0

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said *X.Y.* administered.

(Signed)
Delivered

No. 2.

Wilful default.

1. The plaintiff is residuary legatee of *A.B.* of the city of Ballarat, who died March 3rd, 19 having made his will dated March 2nd, 19 , and appointed the defendants his executors, who proved his will April 6th, 19 .

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows:—

C.D. owed to the testator £1,000, in respect of which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to *C.D.* for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims:—

(1.) Account of testator's estate on footing of wilful default.
(2.) Administration of the testator's estate.

(Signed)
Delivered

No. 3.

Dissolution of partnership.

1. The plaintiff, on December 20th, 19 , entered into partnership articles with the defendant for ten years.

2. The defendant has broken the partnership articles as follows:—

(*a.*)
(*b.*)
(*c.*)

The plaintiff claims:—

(1.) Dissolution.
(2.) Accounts and inquiries.
(3.) A receiver and manager.

(Signed)
Delivered

No. 4.

For accounts.

1. The plaintiffs are executors of *A.*, deceased.

2. From the year 19 until his death *A.* employed the defendant as his confidential agent in the management of a large building estate at *X.*

3. The defendant as such agent received large sums of money for the said *A.*, for which he refuses to account.

The plaintiffs claim:—

(1.) Accounts of all sums received and paid by the defendant as agent of *A.*
(2.) Payment of the amount found due.

(Signed)
Delivered

No. 5.

Foreclosure or sale.

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:—

(*a.*) [*Date and names of mortgagor and mortgagee.*]
(*b.*) [*Sum secured.*]
(*c.*) [*Rate of interest.*]
(*d.*) [*Property subject to mortgage.*]
(*e.*) [*Amount now due.*]

[*If the plaintiff's title is a derivative title, state shortly the assignments under which he claims.*]

[*If the plaintiff is mortgagee in possession add:*]

3. The plaintiff took possession of the mortgaged property on the of and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure [and possession.]

(Signed)
Delivered

[NOTE.—If a judgment for personal payment against the mortgagor is sought, the claim should set out the usual mortgagor's covenant for payment of the mortgagee debt and interest.]

No. 6.

Redemption.

1. The plaintiff is mortgagor of lands, of which the defandant is mortgagee.

2. The following are the particulars of the mortgage:—

(*a.*) [*Date.*]
(*b.*) [*Sum secured.*]
(*c.*) [*Rate of interest.*]
(*d.*) [*Property subject to mortgage.*]

[*If the plaintiff's title is derivative, state shortly the deeds under which he claims.*]

[*If the defendant is mortgagee in possession add:*]

3. The defendant has taken possession [*or* has received the rents] of the mortgaged property.

The plaintiff claims to redeem the said premises, and to have the same reconveyed to him [and to have possession thereof].

(Signed)
Delivered

APPENDIX C.
Sect. II.

For raising portions or other charges on land.

No. 7.

1. By a settlement on the marriage of *A.B.* and *C.B.* dated January 10, 1920, Whiteacre was demised to trustees for 1,000 years on trust after the deaths of *A.B.* and *C.B.* to raise £5,000 for the younger children of the marriage who should attain 21.

2. *A.B.* died February 15, 1950.

C.B. died June 10, 1955.

4. There were five children only of the marriage of *A.B.* and *C.B.*, all of whom are now living and have attained 21. The plaintiff is the second born child.

5. The defendants were on April 5, 1956, appointed trustees of the settlement.

The plaintiff claims:—

(1) To have £5,000 raised by sale or mortgage and distributed among the persons entitled.

(Signed)
Delivered

No. 8.

Sale and distribution of proceeds of property subject to any lien or charge.

1. On November 12, 1950, *A.* and the defendant *B.* deposited with the plaintiff 2,000 Government debentures as security for a debt of £3,000 and interest at 4 per cent. due from *A.* and the defendant *B.* to the plaintiff.

2. *A.* died March 12, 1956.

3. On March 30, 1956, the administration of the estate of *A.* was granted to the defendant *C.*

4. £1,500 and £30 for interest is owing to the plaintiff on the security of the said debentures.

The plaintiff claims:—

(1.) Sale of the said debentures.

(2.) Application of the proceeds in payment of his debt.

(3.) Distribution of the surplus among the parties entitled.

(Signed)
Delivered

No. 9.

Breach of trust.

1. By a settlement dated July 3, 1945, on the marriage of the plaintiff's father and mother, of which the defendant *A.B.* and one *C.D.* were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On August 5, 1950, *C.D.* died, and the defendant *E.F.* was appointed in his place.

3. On December 1, 1955, the plaintiff's father died.

4. On January 1, 1956, the plaintiff's mother died.

5. The defendants have committed the following breaches of trust by:—

(*a*) Sale of £3,000 bank shares and investment of the proceeds in the business of the defendant *A.B.*

(*b*) Sale of leasehold property worth £5,000 to *G.H.* for £1,000 [without taking any proper steps to ascertain its value or to obtain such value].

The plaintiff's claim:—

(1) The replacement of £3,000 bank shares and £5 per cent. interest on the proceeds of the bank shares sold from the date of sale till replacement.

(2) Payment of £4,000 and interest at 5 per cent. per annum from the date of the sale.

(Signed)
Delivered

No. 10.

Execution of trust.

1. By a settlement dated June 10, 1945, upon trust for *A.B.* and *C.B.* successively for life with remainder for their children who should attain 21, the following property was assured:—

(*a*) A sum of £5,000 Government debentures.

(*b*) £4,000 invested on mortgage of land at *X.*

(*c*) One-fifth of the residuary estate of *D*, deceased, subject to a prior life interest.

2. On August 15, 1950, *C.B.* died.

3. On February 18, 1952, *A.B.* died.

4. On September 10, 1955, *D.* died.

5. *A.B.* and *C.B.* had five children only, of whom the plaintiff is one.

6. The defendants are the present trustees of the settlement.

The plaintiff claims:—

(1) Execution of the trusts of the settlement.

(2) All necessary accounts and inquiries.

(3) A receiver.

(Signed)
Delivered

No. 11.

For rectification, &c., of instruments.

1. In 1940 a marriage was arranged between *A.B.* and the plaintiff.

2. By an agreement contained in two letters, dated February 10 and 12, 1940, it was agreed between *C.B.*, the father of *A.B.*, and *D.*, the father of the plaintiff, that each should settle £10,000 on trust for *A.B.*, and the plaintiff successively for life, with the remainder on the usual trusts for the children of the marriage.

3. By letter, dated March 7, 1940, from *D.* to Messrs. *E. & Co.*, his solicitors, he instructed them to prepare a settlement.

4. A settlement dated April 25, 1940, was executed upon the marriage of *A.B.* and the plaintiff, accidentally omitting to give a life interest to the plaintiff after the life interest of *A.B.*

5. On May 20, 1956, *A.B.* died.

6. The defendants, *H.* and *K.*, are the present trustees of the settlement.

7. The defendants, *L.*, *M.*, and *N.*, are the only children of the marriage.

The plaintiff claims:—

Rectification of the settlement.

(Signed)
Delivered

No. 12.

Specific performance.

1. By an agreement [*or* letters] dated [*or* made verbally at intervals on or about] the day of the plaintiff agreed to sell to the defendant the Home Farm, Brighton, for £ . The sale was to be completed on the of

[*If the agreement was verbal, add*—]

2. The agreement so entered into has been part performed as follows [*state how*].

The plaintiff claims specific performance of the above agreement and that the defendant may be ordered to execute a proper conveyance of the premises [*stating in each case what the defendant is required specifically to do*].

(Signed)
Delivered

No. 13.

Partition or sale of real estates.

1. By will dated January 5, 1894, *A.* devised Whiteacre to *B.*, *C.*, and *D.*, as tenants in common.

2. On March 10, 1948, *A.* died.

3. On March 20, 1948, *A.'s* will was proved.

4. On June 25, 1950, *B.* conveyed to the plaintiff his share of Whiteacre.

5. On July 30, 1952, *C.* conveyed his share to the defendants on trust for sale.

6. By will, dated November 5, 1955, *D.* devised his share among his children equally.

7. On December 2, 1955, *D.* died.

8. On December 15, 1955, *D.'s* will was proved.

9. There were 10 children of *D.* living at his decease, some of whom have since died.

10. Whiteacre consists of a mansion, house, and grounds.

11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property.

The plaintiff claims:—

A division of Whiteacre among the parties interested [*or* a sale of Whiteacre and distribution of the proceeds among the parties interested].

(Signed)
Delivered

No. 14.

Wardship of infants and care of infants' estates.

1. By will, dated August 10, 1950, *A.* devised Whiteacre and £10,000 to defendant on trust for plaintiff.

2. On August 15, 1955, *A.* died.

3. On August 30, 1955, probate was granted to the defendant, the sole executor.

4. The plaintiff is an infant 12 years old.

The plaintiff claims:—

(1) That the plaintiff may become a ward of court.

(2) Administration of the trusts of the will of *A.* so far as necessary.

(Signed)
Delivered

Chapter I.—Civil Proceedings. 196

APPENDIX C.
Sect. IV.

SECTION IV.

Actions included in Order III., Rule 4, Classes A, B, C, D, E, and F.

No. 1.

Goods sold and delivered.

Am. G.G. 26.4.39 p. 1382.

The plaintiff's claim is for the price of goods sold and delivered.

Particulars:—

	£	s.	d.
1955—31st December—			
Balance of account for butcher's meat to this date ..	535	10	0
1956—1st January to 31st March—			
Butcher's meat	874	5	0
	1,409	15	0
1956—1st February.—Paid	45	0	0
Balance due	1,364	15	0

Place of trial, Melbourne.

(Signed)

No. 2.

Money had and received.

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars:—

	£	s.	d.
1956—1st January—			
To amount of rents of No. 5 Smith-street, collected by the defendant	272	10	0
To deposit on intended sale of Eva Villa	800	0	0
Amount due	1,072	10	0

Place of trial, Melbourne.

(Signed)

No. 3.

Payee against maker of a promissory note.

The plaintiff's claim is against the defendant as maker of a promissory note for £2,500, dated 1st January, 1956, payable four months after date.

Particulars:—

	£	s.	d.
Principal	2,500	0	0
Interest	100	0	0
Amount due	2,600	0	0

Place of trial, Bendigo.

(Signed)

No. 4.

Indorsee against acceptor of a bill of exchange.

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for £4,000 dated 1st January, 1956, drawn by *A.B.*, payable three months after date to the order of *E.F.*, and indorsed to the plaintiff.

Particulars:—

	£	s.	d.
Principal due	4,000	0	0
Interest	160	0	0
Amount due	4,160	0	0

Place of trial, Port Fairy.

(Signed)

No. 5.

Indorsee against acceptor and drawer of a bill of exchange severally.

The plaintiff's claim is against the defendant *A.B.* as acceptor, and against the defendant *C.D.* as drawer, of a bill of exchange for £5,000, dated 1st January, 1956, payable three months after date, and indorsed by the defendant *C.D.* to the plaintiff, of the dishonour of which on presentation the defendant *C.D.* had notice.

Particulars:—

	£
Principal	5,000
Interest	200
Amount due	5,200

Place of trial, Ballarat.

(Signed)

No. 6.

Payee against drawer of a bill of exchange excusing notice of dishonour.

The plaintiff's claim is against the defendant as a drawer of a bill of exchange for £600 dated 1st March, 1956, drawn upon *A.B.*, payable to plaintiff three months after date, which was duly presented for payment and dishonoured, but *A.B.* had no effects of the defendant, nor was there any consideration for the payment of the said bill by the said *A.B.*

Particulars [*as in Form* 4].

Place of trial, Melbourne.

(Signed)

No. 7.

Obligee against obligor of a money bond.

The plaintiff's claim is for principal and interest due upon the defendant's bond to the plaintiff dated 1st January, 1955, conditioned for payment of £2,000 on the 26th December, 1955.

Particulars:—

	£
Principal	1,000
Interest	20
Amount due	1,020

Place of trial, Beechworth.

(Signed)

No. 8.

Covenantee against covenantor on a covenant to pay money.

The plaintiff's claim is for principal and interest due under a covenant in a deed dated the 1st of January, 1956.

Particulars:—

	£
Principal	2,000
Paid	200
Principal due	1,800
Interest	30
Amount due	1,830

Place of trial, Melbourne.

(Signed)

No. 9.

Against shareholder for allotment money and calls by a company.

The plaintiff's claim is for money in which the defendant, as a member of the company, is indebted to the plaintiffs (being a company incorporated under *The Companies Act* 1938) for allotment money of per share on shares in the company allotted to the defendant as such member at his request, and for calls of £ each upon shares in the company, of which the defendant is a holder, whereby an action has accrued to the plaintiffs.

Particulars:—

19 —Allotment of	shares to the defendant at £ per share	£
19 —[1*st*] call at £	per share	£
[2*nd*] call at £	per share	£
Amount due	.. ..	£

Place of trial, Bendigo.

(Signed)

APPENDIX C. Secs. IV. & V.

On a guarantee for the price of goods setting out the guarantee.

No. 10.

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to *E.F.* under the following guarantee:—

SIR, 2nd February, 1956.

In consideration of your supplying goods to *E.F.*, I undertake to see you paid.

Yours, &c.,
C.D. (defendant.)

To Mr. *A.B.* (plaintiff.)

Particulars:—

1956.

25 March, 555 tons of coal, at £5	£2,775	0	0
Amount due	£2,775	0	0

Place of trial, Sale.

(Signed)

Creditor against principal debtor and his surety severally on a guarantee of goods sold.

No. 11.

The plaintiff's claim is against the defendant *A.B.* as principal and against the defendant *C.D.* as surety, for the price of goods sold and delivered by the plaintiff to *A.B.* on the guarantee by *C.D.*, dated the 2nd of February, 1956.

Particulars:—

	£	s.	d.
2nd February—Goods	147	15	0
3rd March—Goods	1,105	14	0
17th March—Goods	114	12	0
5th April—Goods	134	0	0
Amount due	2,502	1	0

Place of trial, Maryborough.

(Signed)

Debt upon a trust.

No. 12.

The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of *A.B.* and *X.Y.*, dated January 1st, 1950, whereby £100,000 invested on mortgage of land at *Z*, was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Particulars:—

1955, December 25th, half-a-year's income £2,000

Place of trial.

Landlord against tenant whose term has expired or has been determined by notice to quit.

No. 13.

See Section VII., Form No. 1.

SECTION V.

ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY ARISING OUT OF CONTRACT.

No. 1.

Buyer against seller of goods for not delivering.

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons of Scotch pig iron at £5 per ton to be delivered on rail at Ararat on the 15th of March, 1956.

2. The defendant did not deliver and [*or* tons, *as the case may be*] of the said iron.

Particulars of contract:—

The contract was [*here state whether in writing or how otherwise made and the date*].

Particulars of damage:—

Loss of profit at £2 per ton on 1,000 tons £2,000

The plaintiff claims £2,000.

Place of trial, Ararat.

(Signed)
Delivered

No. 2.

Buyer against seller of goods for delivering them inferior to contract.

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant for sale and delivery of 2,000 sacks of flour known as seconds at £3 per sack.

2. 1,800 sacks delivered were inferior to seconds, and 200 sacks were not delivered.

Particulars of contract:—

The contract was [*here state whether in writing or how otherwise made and the date*].

Particulars of damage:—

	£
1,800 sacks at £1	1,800
200 sacks at 25s.	250
	2,050

The plaintiff claims £2,050.
Place of trial, Beechworth.

(Signed)
Delivered

No. 3.

Ship-owner against charterer for detention beyond the demurrage days.

1. The plaintiff has suffered damage by breach of a charter-party dated the 10th of March, 1955, between the plaintiff and the defendant of the ship *Mary*.

2. The ship was detained at the port of loading.

Particulars of damage:—

1956, Jan. 1 to Jan. 10 } 10 days' detention beyond the demurrage days at £250 per day, £2,500

(Signed)
Delivered

The plaintiff claims, £2,500.
Place of trial, Geelong.

No. 4.

Shipper against master on a bill of lading for damage to goods.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the *Jane* signed by defendant, dated the 1st of January, 1956.

2. 500 bales of cotton were delivered in a damaged condition.

Particulars of damage:—

500 bales of £10 .. .. £5,000

(Signed)
Delivered

The plaintiff claims £5,000.
Place of trial, Geelong.

No. 5.

Shipper against ship-owner or a bill of lading for damage and short delivery.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff signed by the master of the ship *Mary* as the defendant's agent, dated the 1st of January, 1956.

2. 1,000 bags of wheat were delivered in a damaged condition, and 200 bags were not delivered.

Particulars of damage:—

	£
1,000 bags at £1	1,000
200 bags at £3	600
	1,600

The plaintiff claims £1,600
Place of trial, Geelong.

(Signed)
Delivered

Chapter I.—Civil Proceedings. 200

APPENDIX C.
Sect. V.

On a marine policy against underwriter.

No. 6.

The plaintiff was interested to the amount of £ under a marine policy of insurance for that amount, dated the of 19 , on the ship *Hero*, subscribed by the defendant for £ .

Particulars:—

1. Valued or open:—Valued at £20,000.
2. Voyage:—At and from Melbourne to Valparaiso.
3. [*Or* Time:—From noon of 1st January, 19 , to noon of 1st January, 19 .]
4. Premium to defendant:—£ per cent.
5. Perils insured against causing loss:—of the seas.
6. Loss:—Total [*or* exceeding 3 per cent.]

The plaintiff claims £
Place of trial, Melbourne.

(Signed)
Delivered

Passenger against Railways Commissioners for negligence.

No. 7.

The plaintiff has suffered damage from the defendant's negligence in carrying the plaintiff as a passenger by railway from Melbourne to Collingwood, causing personal injuries to the plaintiff in a collision near Jolimont on the 15th January, 1956.

Particulars of expenses, &c.:—

	£	s.	d.
Loss of 10 weeks' salary as clerk at £18 per week ..	180	0	0
Dr. Smith	21	0	0
Nurse for 3 weeks	45	0	0
	246	0	0

The plaintiff claims £2,500
Place of trial, Melbourne.

(Signed)
Delivered

Client against solicitor for negligence.

No. 8.

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.

2. The negligence was in making an application under Order XIV., Rule I., in the case of *A.B.* (the plaintiff) *v. C.D.*, where the case was one of unliquidated damages and not of debt.

Particulars of damage:—

Taxed costs paid to defendant on dismissal of summons, £

The plaintiff claims £
Place of trial,

(Signed)
Delivered

Landlord against tenant for breach of covenant to repair.

No. 9.

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 19 , of a house No. , Collins-street, for seven years from the 25th day of December, 19 , the defendant covenanted to keep the premises in such repair and condition as therein mentioned.

2. The premises were during the term out of such repair as was required by the covenant.

3. They were yielded up out of such repair at the expiration of the term.

4. Particulars of dilapidations were delivered to the defendant's solicitor on the of 19 , and exceed three folios.

The plaintiff claims £
Place of trial,

(Signed)
Delivered

Breach of promise of marriage.

No. 10.

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the of [or within a reasonable time, which elapsed before action] [or on the death of *A.B.*, which happened before action.]

2. The defendant refused to marry the plaintiff on the of [or within a reasonable time] [or on the death of *A.B.*].

Particulars of special damage.

[*As the case may be, if any.*]

The plaintiff claims £
Place of trial,

(Signed)
Delivered

SECTION VI.

Actions claiming Injunctions, Damages, or Declarations of Right founded on Wrongs.

No. 1.

Conversion of goods.

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of 200 drums of oil by refusing to give them up on demand [or throwing them overboard out of a boat in the Yarra, &c.].

[*If any special damage is claimed, add*]—

Particulars [*fill them in*].

The plaintiff claims £2,000.

Place of trial, Melbourne.

(Signed)
Delivered

No. 2.

Detinue.

The defendant detained from the plaintiff the plaintiff's goods and chattels—that is to say, a Daimler motor car.

The plaintiff claims a return of the said goods and chattels or their value, and £2,000 for their detention.

Place of trial, Bendigo.

(Signed)
Delivered

No. 3.

Negligent driving.

The plaintiff has suffered damage from personal injuries to the plaintiff, and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1956, negligently driving a motor car in Bourke-street.

Particulars of expenses, &c.:—

	£	s.	d.
Charges of Mr. Smith, surgeon	100	10	0
Charges of J. Jones Pty. Ltd., motor mechanics	140	5	6
	240	15	6

The plaintiff claims £4,000.

Place of trial, Melbourne.

(Signed)
Delivered

No. 4.

The *Wrongs Act* 1928.

The plaintiff, as executor of *C.D.*, deceased, brings this action for the benefit of Eva, the wife, and William and Margaret and Dorothea, the children of *C.D.* [*as the case may be*], who have suffered damage from the defendant's negligence in carrying the said *C.D.* by omnibus, whereby the said *C.D.* was killed in Collins-street, Melbourne, on the 15th of January, 1956.

Particulars pursuant to the *Wrongs Act* 1928 are delivered herewith.

The plaintiff claims £5,000.

Place of trial, Melbourne.

(Signed)
Delivered

No. 5.

Collision of ships.

The plaintiff has suffered damage from injuries to his ship, the *Betsy*, and the cargo on board thereof, by a collision with the ship the *Jane*, caused by the negligent navigation thereof by the defendant or his servants on the river Yarra, on the 1st of February, 1956.

Particulars of loss and expenses:—

1. Charges of Jones & Co., shipwrights, £4,500.
2. Loss of use of ship from 1st of February, 1903, to 1st of March, 1903, £2,800.

Particulars of damage to cargo:—
[*Insert them.*]

The plaintiff claims £

Place of trial, Melbourne.

(Signed)
Delivered

APPENDIX C. Sect. VI.

Injunction, &c., for infringement of patent.

No. 6.

The defendant has infringed the plaintiff's patent, No. 14084, granted for the term of fourteen years, from the 21st of May, 1900, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

The plaintiff claims an injunction to restrain the defendant from further infringement and £1,000 damages.

Particulars of breaches are delivered herewith.

Place of trial, Beechworth. (Signed)
Delivered

No. 7.

Damages for infringement of copyright.

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the day of

Particulars of special damage are as follows:—

	£
Loss of sale of 500 copies	500
Loss of profit in the copyright	500
	1,000

The plaintiff claims £1,000.

Place of trial, Geelong. (Signed)
Delivered

No. 8.

Injunction, &c., for infringement of trade mark.

1. The defendant has infringed the plaintiff's trade mark.
2. The trade mark is [*describe it*].
   [*If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.*]
3. The following are the acts complained of, viz.:—
   [*Set them out.*]

The plaintiff claims an injunction to restrain the defendant his servants and agents from infringing the plaintiff's said trade mark, and in particular from [*stating any particular injunction sought*].

The plaintiff also claims an account or damages.

Place of trial. (Signed)
Delivered

No. 9.

Seduction.

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of *G.H.* [the daughter and] servant of the plaintiff.

Particulars of special damage are as follows:—

	£	s.	d.
Loss of service from the 1st of March to the 30th November, 1956	400	0	0
Nursing and medical attendance	100	10	0
	500	10	0

The plaintiff claims £2,000.

Place of trial, Hamilton. (Signed)
Delivered

No. 10.

Obstruction of lights.

1. The plaintiff is the owner [*or* lessee] and occupier of a house, No. Swanston-street, and is entitled to the following lights therein:—
   (1) The kitchen window in the basement on the south side.
   (2) The two back dining-room windows on the ground floor on the south side.
   (3) The landing window and back drawing-room window on the south side.
2. The defendant is erecting a building which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants, and workmen, from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain if the same is completed and not pulled down.

Place of trial. (Signed)
Delivered

No. 11.

Nuisance by smells.

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling house, No. James-street, Bendigo.

The plaintiff claims:—

(1) £1,000.

(2) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind in respect of the same property.

Place of trial, Bendigo.

(Signed)
Delivered

No. 12.

Nuisance by pollution of water.

1. The plaintiff is the owner [*or* lessee] and occupier of a farm known as through which there runs a river known as

2. The defendant or persons in his employ pollute the water in the said river by passing into the same the refuse of the defendant's dye works, situated higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants, and agents, from sending from the said dye works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff [*or as the case may be*].

The plaintiff will also claim damages in respect of the said nuisance.

Place of trial,

(Signed)
Delivered

No. 13.

Fraudulent prospectus.

1. On 31st January, 1956, the defendant issued a prospectus to the public relating to the *A.B.* Company Limited.

2. On February 1st, 1956, the plaintiff received a copy of this prospectus.

3. The plaintiff subscribed for 100 shares in the company on the faith of this prospectus.

4. The prospectus contained misrepresentations, of which the following are particulars:—

(*a*) The prospectus stated " . . . . whereas in fact . . . .

(*b*) The prospectus stated " . . . . whereas in fact . . . .

(*c*) The prospectus stated " . . . . whereas in fact . . . .

5. The defendant knew of the real facts as to the above particulars.

6. The following facts, which were within the knowledge of the defendant, are material, and were not stated in the prospectus:—

(*a*)

(*b*)

7. The plaintiff has paid calls to the company to the extent of £1,000. The plaintiff claims:—

(1) Repayment of £1,000 and interest.

(2) Indemnity.

Place of trial,

(Signed)
Delivered

No. 14.

Fraudulent sale of lease.

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the George public-house, Portland, by fraudulently representing to the plaintiff that the takings of the said public-house were £400 a week, whereas in fact they were much less, to the defendant's knowledge.

Particulars of special damage:—

[*Fill them in.*]

The plaintiff claims £

Place of trial,

(Signed)
Delivered

APPENDIX C. Sects. VI. & VII. and APPENDIX D. Sect. I.

Malicious prosecution.

No. 15.

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a justice of the peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted at the Melbourne General Sessions, where the plaintiff was acquitted.

Particulars of special damage:—

Messrs. *L.* and *L.'s* bill of costs, £65.

Loss in business from January 1, 1905, to February 18, 1905, £100. The plaintiff claims £1,000.

Place of trial,

(Signed)
Delivered

SECTION VII.

Actions for Recovery of Land, &c.

No. 1.

Landlord against tenant whose term has expired, &c.

1. The plaintiff is entitled to the possession of a farm and premises called Church Farm, situate at , which was let by the plaintiff to the defendant for the term of three years from the 29th of September, 19 , which term has expired [*or* as tenant from year to year from the 29th September, 19 , which said tenancy was duly determined by notice to quit expiring on the 29th September, 19 .]

The plaintiff claims possession and £1,000 for mesne profits.

Place of trial,

(Signed)
Delivered

No. 2.

Executor against stranger.

1. The plaintiff is entitled to the possession of Blackacre, situate at [*or* of No. Bridge-street, Ballarat].

2. On and before the of 19 *A.B.* was seised in fee and in possession of the premises.

3. On the of 19 the said *A.B.* died, having by will dated appointed plaintiff his executor.

4. On the day of 19 probate was granted to the plaintiff.

5. After the death of the said *A.B.* the defendant wrongfully took possession of the premises.

The plaintiff claims:—

(1) Possession of the premises.

(2) Mesne profits from the of

Place of trial,

(Signed)
Delivered

APPENDIX D.

APPENDIX D. Sect. I.

FORMS OF DEFENCE TO BE USED PURSUANT TO ORDER XIX, RULE 5.

SECTION I.

(1) *General Form.*

In the Supreme Court. 19 . No.

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

Defence.

The defendant says that:—

1.
2.
3.
} [*To be filled up in the manner exemplified in the following forms.*]

(Signed)
Delivered

Counter-claim.

The defendant says that:—

1.
2. } [*To be filled up in the manner exemplified in the following forms.*]

The defendant counter-claims:—

(Signed)
Delivered

Defence and Counter-claim.

Defence.

The defendant says:—

1.
2. } [*To be filled up.*]

Counter-claim.

The defendant repeats paragraph 2 of his defence, and says that—

3.
4. } [*To be filled up.*]

The defendant counter-claims:—

(Signed)
Delivered

---

(2) *Form of Title where new Party brought in.*

In the Supreme Court. 19 . No.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.
(By original action.)
And between the said *C.D.*, Plaintiff,
and
The said *A.B.* and *E.F.*, Defendants.
(By Counter-claim.)

SECTION II.

To Actions in matters within the cognizance of the Court in its Equitable Jurisdiction prior to the Judicature Act 1883. *Appendix C, Sect. II.*

To actions for administration.

1. The defendants do not admit the plaintiff's claim.

[*or*]

The defendant *A.B.* admits the plaintiff's claim, but not assets.

[*or*]

The defendant *C.D.* admits assets, but not the plaintiff's claim.

2. The claim is barred by the *Limitation of Actions Act* 1955.

[State *relevant provision.*]

3. Payment was made by deceased.
4. The claim is fraudulent in the following particulars:—

[*Set out particulars.*]

5. The defendant is entitled to a set-off, of which the following are the particulars:—

[*Set out particulars.*]

6. The claim was released by deed dated the of
7. Notice was given and assets distributed under the *Trustee Act* 1953.

Am. 26.4.39
G.G. 26.4.39
p. 1382.

Particulars of the Notice.

Advertisements in the *Times* of 1 January, 1956.
" " " *New York Herald*, February, 1956.
" " " *Bombay Gazette* of 25 January, 1956.

[*Giving the titles of the newspapers and the dates of those in which the advertisement appeared.*]

8. The estate of the testator is sufficient to pay the plaintiff his debt if established.
9. The defendant is not devisee of the deceased.

(Signed)
Delivered

Chapter I.—Civil Proceedings. 206

APPENDIX D.
Sect. II.

To actions for foreclosure by mortagee.

No. 1.

1. The defendant did not execute the mortgage.
2. The mortgage was not assigned to the plaintiff [*if more than one assignment is alleged say which is denied.*]
3. The debt is barred by the *Limitation of Actions Act* 1955. [*State relevant provision.*]
4. Payments have been made, viz.:—
   10 July, 1953, £1,000.
   18 October, 1955, £500.
5. The plaintiff took possession on the of and has received the rents ever since.
6. The plaintiff released the debt by deed, dated 1 June, 1954.
7. The defendant conveyed all his interest to *A.B.* by deed, dated 25 November, 1956.

The defendant claims—
(1) Account.
(2) Re-conveyance.

(Signed)
Delivered

No. 2.

To same by alleged second incumbrancer who claims priority.

1.
2.
3.
4.
5.
6.
[As *in preceding form.*]

7. By a deed dated 1 June, 19 , the mortgagor *A.B.* mortgaged the property in question to the defendant to secure £5,000 and interest at 5 per cent. per annum.

The defendant claims—
(1) A declaration of priority and foreclosure [and a receiver].

(Signed)
Delivered

[*If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so, as in other cases of debt; or he can claim indemnity against the owner of the Equity of Redemption under Order XVIA., Rule I.*]

To actions for redemption.

1. The plaintiff's right to redeem is barred by the *Limitation of Actions Act* 1953. [*State relevant provision.*]
2. The plaintiff assigned all interest in the property to *A.B.*
3. The defendant, by deed, dated the day of assigned all his interest in the mortgage debt, and property comprised in the mortgage to *A.B.*
4. The defendant never took possession of the mortgaged property, or received the rents thereof.

[*If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.*]

(Signed)
Delivered

To actions for specific performance.

1. The defendant did not enter into the agreement.
2. *A.B.* was not the agent of the defendant [*if alleged by plaintiff*].
3. The plaintiff has not performed the following conditions:—[*Conditions.*]
4. The defendants did not—[*Alleged acts of past performance.*]
5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters:—[*State why.*]
6. The *Instruments Act* 1928, sec. 128 has not been complied with.
7. The agreement is uncertain in the following respects:—[*State them.*]
8. [*or*] The plaintiff has been guilty of delay;
9. [*or*] The plaintiff has been guilty of fraud [*or*] misrepresentation;
10. [*or*] The agreement is unfair;
11. [*or*] The agreement was entered into by mistake;

The following are particulars of (8), (9), (10), (11), [*or as the case may be*].

12. The agreement was rescinded under Conditions of Sale No. 11 [*or* by mutual agreement].

(Signed)
Delivered

[*In cases where damages are claimed and the defendant disputes his liability to damages he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., Statute of Limitations, accord and satisfaction, release, fraud, &c.*].

APPENDIX D.
Sect. IV.

SECTION IV.

To Actions included in Order III., Rule 4, Classes A, B, C, D, E, and F.

To actions on bills of exchange, promissory notes or cheques.

Am. G.G. 26.4.39 p. 1382.

1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the cheque.
4. The defendant did not indorse to *A.B.*
5. The defendant [*or A.B.*] did not indorse to the plaintiff.
6. The bill was not presented for payment.
7. The defendant had not due notice of dishonour.
8. The plaintiff was not the holder at the commencement of the action.
9. The bill was accepted [*or* the note was made] for the accommodation of the defendant without consideration.
10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.
11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant and contrary to the said purpose, indorsed the bill to the plaintiff without consideration [*or* with notice of the said fraud *or* overdue].
12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration [*or* with notice of the fraud, *or* overdue].

Particulars of the fraud are as follows:—The drawer on or about the 15th May, 1954, falsely and fraudulently stated to the defendant that he had shipped 20 tons of pig iron for the defendant on board the *Ajax* which he had not done.

13. The defendant accepted the bill [*or* made the note] for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1956, and the plaintiff failed to deliver the goods.
14. The Bill [*or* note, *or* cheque] was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st January to the 2nd of January.

(Signed)
Delivered

To actions for any simple contract debts other than bills, notes, or cheque.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not £ [*or*]
4.
5. } Except as to £ *same as* {1.
6. {2.
{3.
7. The defendant [*or A.B.*, the defendant's agent] satisfied the claim by payment before action to the plaintiff [*or* to *C.D.*, the plaintiff's agent] on the of 19 .
8. The defendant satisfied the claim by payment after action to the plaintiff on the of 19 .

(Signed)
Delivered

To actions on bonds or contracts under seal for the payment of a liquidated amount in money.

1. The bond [*or* deed] is not the defendant's bond [*or* deed].
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before action of the principal and interest mentioned in the bond.

(Signed)
Delivered

In actions on guarantees, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only.

1. The principal satisfied the claim by payment before action.
2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

(Signed)
Delivered

APPENDIX D. Sects. IV. & V.

To any action debt.

1. As to £50 parcel of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff. Particulars are as follows:—

			£	s.	d.
19 .—Jan. 25.	To 20 tons of Silkstone coal at £1	..	20	0	0
,, Feb. 1.	To 30 tons of Silkstone coal at £1	..	30	0	0
	Total	..	50	0	0

2. As to the whole [*or* as to £ , parcel of the money claimed], the defendant made tender before action [*or* on the day on which it fell due] of , and has paid the same into court.

(Signed)
Delivered

General Defences.

Accord and satisfaction.

1. On 5th April, 19 , a brown horse was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action;

[*or* on 5th April, 19 , an agreement between the plaintiff and the defendant, whereby it was agreed between the plaintiff and the defendant that the defendant should deliver the cargo of the *Mary* at the Surrey Commercial Docks instead of at Hull as per charter-party of 1st March, 19 , was accepted in discharge of the alleged cause of action].

Insolvency, &c.

2. The defendant became insolvent.

3. The plaintiff became insolvent before action, and the cause of action vested in the trustees of his property.

4. The defendant was discharged under a liquidation by arrangement pursuant to the Commonwealth Bankruptcy Act.

5. The defendant compounded with his creditors under the Commonwealth Bankruptcy Act, and duly paid to the plaintiff the composition on the day appointed.

Coverture.

6. The defendant was covert at the time of making the alleged contract [*or* contracting the alleged debt].

Infancy.

7. The defendant was an infant at the time of making the alleged contract [*or* contracting the alleged debt].

Payment into Court.

8. The defendant as to the whole action [*or* as to £ , parcel of the money claimed, *or* as to the plaintiff's claim on the guarantee of the of 19 , *or as the case may be*], has paid into court £ , and says that sum is enough to satisfy the plaintiff's claim [*or* the plaintiff's claim herein pleaded to].

Release.

9. The causes of action were released by deed dated the 1st May, 19 , between the plaintiff of the first part and the defendant of the second part.

Rescission before breach.

10. The contract was rescinded [*or* the defendant was exonerated by the plaintiff] before breach. Particulars are as follows:—An arrangement between the plaintiff and the defendant, made verbally on the 15th of April, 19 [*or* by letter from the defendant to the plaintiff, and answer of the plaintiff dated the 14th and 15th of April, 19 .]

Statute of Limitations.

11. The debt was barred by the *Limitation of Actions Act* 1955 [*state relevant provision*].

Statute of Frauds.

12. Section nine of the *Goods Act* 1928 has not been complied with.

(Signed)
Delivered

SECTION V.

To Actions for Damages for Breach of Contract or Duty. Appendix C, Sect. V.

Denials.

1. The defendant did not contract [*or* promise, *or* agree] as alleged.

2. The defendant did not receive the goods for the alleged purpose [*or* on the alleged terms].

3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.

4. The defendant did not [*insert breaches denied*].

5. The defendant was not ready and willing to accept and pay for the goods [*or* to deliver the goods, *or as the case may be*].

Contributory negligence.

6. There was contributory negligence on the part of the plaintiff.

7. The plaintiff did not pay or tender the money for the carriage.

8. The damage or loss occurred from the inherent vice [*or* bad condition when received] of the goods [*or* horse, *or as the case may be*].

Carriers.

9. The loss occurred by reason of the excepted perils mentioned in the charter-party [*or* bill of lading], that is to say, the perils of the seas [*or* fire, *or as the case may be*].

10. The goods were above the value of £10, and consisted of articles mentioned in section three of the *Carriers and Innkeepers Act* 1928, that is to say, silks [*or* as the case may be], and their value and nature was not declared or any increased charge paid, &c.

Charter-parties.

11. The charter-party was cancelled pursuant to cancelling clause therein, the ships not having arrived at port of loading on or before 1st May, 19 .

12. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.

Insurance.

13. The loss was not by the perils insured against.

14. The plaintiff was not interested in the subject-matter of the insurance.

15. The ship was not seaworthy at commencement of risk [*or* voyage].

Breach of promise.

16. The plaintiff was not ready and willing to marry the defendant.

(Signed)
Delivered

SECTION VI.

To Actions claiming Injunctions, Damages, or Declarations of Right, founded upon Wrongs: Appendix C, Sec. VI.

To all action wrongs.

1. Denial of the several acts [*or* matters] complained of.

(Signed)
Delivered

To actions for detention or conversion of chattels.

1. The goods [*or* chattels, *as the case may be*] were not the plaintiff's.

2. The goods were detained for a lien to which the defendant was entitled. Particulars are as follows:—

1956—May 3. To carriage of the goods claimed from Melbourne to Beechworth:—

	£	s.	d.
45 tons at 2s.	4	10	0

(Signed)
Delivered

To actions for personal bodily injuries or injuries to carriages, goods, or animals by trespass or negligence.

1. The defendant did the acts complained of in necessary self-defence.

2. There was contributory negligence on the part of the plaintiff [*or* the plaintiff's servant].

(Signed)
Delivered

To actions for infringement of a patent.

1. The defendant did not infringe the patent.

2. The invention was not new.

3. The plaintiff was not the first or true inventor.

4. The invention was not useful.

5. [*Denial of any other matter of fact affecting the validity of the patent.*]

6. The patent was not assigned to the plaintiff.

(Signed)
Delivered

Chapter I.—Civil Proceedings. 210

APPENDIX D. Secs. VI., VII. & VIII.

Copyright.

1. The plaintiff is not the author [assignee, &c., *as the case may be*].
2. The book was not registered.
3. The defendant did not infringe.

(Signed)
Delivered

Trade mark.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

(Signed)
Delivered

Light

1. The plaintiff is not entitled as alleged [*or deny his other alleged rights*].
2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

Nuisance.

3. The defendant denies that he or his servants pollute the water [*or* do what is complained of].

[*If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of his claim, i.e., whether by prescription, grant, or what.*]

4. The plaintiff has been guilty of laches, of which the following are particulars:—
   1940. Plaintiff's mill began to work.
   1941. Plaintiff came into possession.
   1953. First complaint.

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [*If other grounds are relied on they must be stated, e.g., the Statute of Limitations as to past damage.*]

(Signed)
Delivered

To actions for seduction.

1. The said *A.B.* was not the servant of the plaintiff.
2. The defendant did not seduce and carnally know the said *A.B.*

(Signed)
Delivered

SECTION VII.

To Actions for Recovery of Land. Appendix C. Sec. VII.

1. The defendant is in possession of the premises by himself or his tenant.
2. The defendant had no notice to quit.

(Signed)
Delivered

SECTION VIII.

Counter-claims.

The defendant lent £500 to the plaintiff on 1st May, 19 .

The defendant counter-claims £500.

1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of Merthyr steam coal at 18s. 6d. per ton f.o.b. at Cardiff by equal monthly deliveries over the first five months of 19 .

2. The April and May instalments were not delivered.

Particulars of the Damages.

	£	s.	d.
Difference between market price in April and May, and the contract price, 2s. 6d. per ton on 2,000 tons	250	0	0

The defendant counter-claims £250

(Signed)
Delivered

APPENDIX E.

FORMS OF REPLY, ETC., TO BE USED PURSUANT TO ORDER XIX., RULE 5.

SECTION I.

General form.

In the Supreme Court. 19 . No.

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

Reply.

The plaintiff as to the defence says that—
1.
2.

The plaintiff as to the counter-claim says that—
1.
2.

(Signed)
Delivered.

Reply.

The plaintiff as to the defence says that—
1. He joins issue.
2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff as to the counter-claim says that—
1. The defendant was not ready and willing to accept and pay for the goods.

(Signed)
Delivered

To actions on a guarantee to which defence raised of time given to the principal and counter-claim for non-delivery of goods.

SECTION II.

Example of a Statement of Claim, Defence, and Reply.

In the Supreme Court. 19 . No.

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

Statement of Claim.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

Particulars—

	£	s.	d.
19 . January 1 to 31st May. To rebuilding house at Hamilton, as per contract dated the 24th December, 19 ..	3,400	0	0
To extras as per account delivered	243	0	0
	3,643	0	0
Paid on account	2,000	0	0
Balance due	1,643	0	0

The plaintiff also seeks to recover interest on the above balance from the 31st May, 19 , till payment or judgment.

Place of trial,

(Signed)
Delivered the 1st of January, 19

In the Supreme Court. .. 19 . No.

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

Defence and Counter-claim.

Defence.

The defendant says that—
1. Except as to £200, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.
2. As to £200, parcel of the money claimed, the defendant brings [or has brought] into court £200, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

APPENDIX E. Secs. II. & III.

Counter-claim.

The defendant says that—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st of March, 19 , or in default pay to the defendant £1 a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for 61 days to the 31st May.

The defendant counter-claims £61.

(Signed)
Delivered the 22nd of January, 19 .

In the Supreme Court. 19 . No.

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

Reply.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue.
2. As to the second paragraph thereof, the plaintiff accepts the £ in satisfaction.

The plaintiff as to the counter-claim says that—

3. The liquidated damages were waived by ordering extras and material alterations in the works.
4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed)
Delivered the 5th of February, 19 .

SECTION III.

Defence including an Objection in Point of Law.

No. 1.

In the Supreme Court. 19 . No.

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

Defence.

The defendant says that—

To action on a guarantee for price of goods.

1. The goods were not supplied to *E.F.* on the guarantee.
2. The defendant will object that the guarantee discloses a past consideration on the face of it.

(Signed)
Delivered

No. 2.

In the Supreme Court. 19 . No.

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

Defence.

The defendant says that—

To action for slander actionable only by reason of special damage.

1. The defendant did not speak or publish the words.
2. The words did not refer to the plaintiff.
3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

(Signed)
Delivered

No. 3.

In the Supreme Court. 19 . No.

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

Defence.

The defendant says that—

1. The defendant did not make the policy.
2. The loss was not by the perils insured against.
3. The defendant will object that the policy was avoided by section 15 of the *Instruments Act* 1928 [s. 10 of the Commonwealth *Marine Insurance Act* 1909].

To action on a marine policy stated to contain clauses that the policy was to be proof of interest and without benefit of salvage.

(Signed)
Delivered

APPENDIX F.

FORMS OF JUDGMENT.

No. 1.

Default of Appearance and Defence in case of Liquidated Demand.

In the Supreme Court. 19 . No.

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

The day of 19 .

The defendants [*or* the defendant *C.D.*] not having appeared to the writ of summons herein [*or* not having delivered any defence], it is this day adjudged that the plaintiff recover against the said defendant £ , and costs to be taxed.

No. 2.

Interlocutory Judgment in default of Appearance or Defence where demand Unliquidated.

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

The day of 19 .

No appearance having been entered to the writ of summons [*or* no defence having been delivered by the defendant herein].

It is this day adjudged that the plaintiff recover against the defendant the value of the goods [*or* damages *or both, as the case may be*] to be ascertained.

The amount found due to the plaintiff under this judgment having been ascertained at the sum of £ as appears by [the Prothonotary's certificate, *or as the case may be*] filed the day of 19 .

It is adjudged that the plaintiff recover against the defendant £ and costs to be taxed.

No. 3.

Judgment in default of Appearance in Action for Recovery of Land.

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

The day of 19 .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the indorsement on the writ described as

APPENDIX F.

No. 5.

Judgment after Appearance and Order under Order XIV., Rule 1.

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

The day of 19 .

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of , dated the day of 19 , obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV, Rule 1, for [*recite order*]:

It is this day adjudged that the plaintiff recover against defendant £ [*or* possession of the land in the indorsement on the writ described as], and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a [Taxing Officer's] Certificate, dated the day of 19 .

No. 6.

Judgment at Trial by Judge without a Jury.

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

This action coming on for trial [the day of and] this day before in the presence of counsel for the plaintiff and the defendants [*or* if *some of the defendants do not appear*, for the plaintiff and the defendant *C.D.*, no one appearing for the defendants *E.F.* and *G.H.*, although they were duly served with notice of trial as by the affidavit of filed the day of appears] upon hearing the probate of the will of the answers of the defendants *C.D.*, *E.F.*, and *G.H.*, to interrogatories, the admission in writing, dated and signed by [Mr. the solicitor for] the plaintiff *A.B.*, and by [Mr. the solicitor for] the defendant *C.D.*, the affidavit of filed the day of the affidavit of filed the day of the evidence of taken on their oral examination at the trial, and an exhibit marked X, being an indenture dated, &c., and made between [*parties*], and what was alleged by counsel on both sides. This Court doth declare, &c.

And this Court doth order and adjudge, &c.

No. 7.

Judgment after Trial with a Jury.

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

The day of 19 .

This action having on the day of 19 , been tried before His Honour, Mr. Justice with a jury of [six *or*] twelve, of the bailiwick, and the jury having found [*state findings as in officer's certificate*], and the said Mr. Justice having ordered that judgment be entered for the plaintiff for £ and costs [*or as the case may be*]: Therefore it is adjudged that the plaintiff recover against the defendant £ and £ for his costs [*or* that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff £ for his costs of defence, *or as the case may be*].

No. 8.

Judgment after Trial before Referee.

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

The day of 19 .

The action having on the day of 19 , been tried before *X.Y.*, Esq., a referee and the said *X.Y.* having found [or having ordered that judgment be entered] [*state substance of referee's certificate*], it is this day adjudged that

No. 9.

Judgment after Trial of Questions of Account by Referee.

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

The day of 19 .

The questions of account in this action having been referred to , and he having found that there is due from the to the the sum of £ and directed that the do pay the cost of the reference:

It is this day adjudged that the recover against the said £ and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's Certificate dated the day of 19 .

No. 10.

Judgment upon Motion for Judgment.

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

The day of 19 .

This day before Mr. *X.*, of counsel for the plaintiff [*or as the case may be*], moved on behalf of the said [*state judgment moved for*], and the said Mr. *X.* having been heard of counsel for and Mr. *Y.* of counsel for the Court adjudged.

No. 11.

Judgment after Trial by Court without Jury.

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

This action having on the day of 19 , been tried before and the said on the day of 19 , having ordered that judgment be entered for the for £ :

It is this day adjudged that the recover from the £ and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's Certificate dated the day of 19 .

Judgment entered the day of 19 .

No. 11A.

Judgment of Dismissal.

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

The day of 19 .

This action having on the day of , 19 , been called on for hearing before , and the plaintiff having failed to appear, and the defendant having thereupon become entitled under Order XXXVI., Rule 23, to judgment dismissing the action and the said having ordered that judgment be entered accordingly.

Am. G.G. 26.4.39 p. 1382.

Therefore it is adjudged that this action do stand dismissed out of this court with costs.

And it is further adjudged that the defendant recover against the plaintiff his costs to be taxed.

The above costs have been taxed, &c.

No. 12.

Judgment in pursuance of Order.

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

Pursuant of the Order of dated 19 , whereby it was ordered, and default having been made:

It is this day adjudged that the plaintiff recover against the said defendant £ and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's Certificate dated the day of 19 .

No. 14.

Judgment for Defendant's Costs on Discontinuance.

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

The day of 19 .

The plaintiff having by a notice in writing dated the day of 19 , "wholly discontinued this action," or "withdrawn his claim in this action for," or "withdrawn so much of his claim in this action as relates to," or as the case may be:

Am. G.G. 4.10.50 p. 5270.

It is this day adjudged that the defendant recover against the plaintiff, costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's Certificate dated the day of 19 .

APPENDIX F.

No. 15.

Judgment for Plaintiff's Costs after Confession of Defence.

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

The day of 19 .

The defendant in his statement of defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of 19 delivered a confession of that defence:

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's Certificate dated the day of 19 .

No. 16.

Judgment for Costs after Acceptance of Money paid into Court.

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

The day of 19 .

The defendant having paid into Court in this action the sum of £ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day 19 accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation:

It is this day adjudged that the plaintiff recover against the defendant, costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's Certificate dated the day of 19 .

No. 17.

Judgment where no Judgment entered at Trial by Jury.

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

The day of 19 .

This action having on the 19 , been tried before and a jury of [six *or* twelve] of the bailiwick, and the jury having found and the not having thought fit to order any judgment to be entered: Now on motion before the Court for judgment on behalf of the the Court having

It is this day adjudged that the recover against the the sum of £ and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's Certificate dated the day of 19 .

Judgment entered the day of 19 .

No. 18.

Judgment on Motion after Trial of Issue.

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

The day of 19 .

* "Issues" or "questions."

The* of fact arising in this action [*or* cause *or* matter] by the order dated the day of ordered to be tried before having on the day of been tried before and the having found : Now on motion before the Court for judgment on behalf of the the Court having

It is this day adjudged that the recover against the the sum of £ and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's Certificate dated the day of 19 .

Judgment entered the day of 19 .

No. 19A.

Judgment after Motion on leave reserved.

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

The day of 19 .

This action having on 19 , been tried before and a jury of the and the jury having found and having ordered that judgment be entered for subject to leave to the to move to set aside the judgment : Now on motion before the Court for judgment on behalf of the the Court having

It is this day adjudged that the said judgment†

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's Certificate dated the day of 19 .

Judgment entered the day of 19 .

† "do stand" or "be set aside and that the recover against the the sum of £ and costs to be taxed."

APPENDIX G.

FORMS OF PRÆCIPE.

No. 1.

Fieri Facias.

In the Supreme Court. 19 . No.

Between *A.B.* .. .. Plaintiff,

and

C.D. and others .. Defendants.

Seal a writ of *fieri facias* directed to the sheriff to levy against *C.D.* the sum of £ and interest thereon at the rate of £ per cent. per annum from the day of to the day of [and costs] Judgment [*or* order] dated the day of .

[Taxing officer's certificate, dated day of .]

X.Y., solicitor for [*party on whose behalf writ is to issue*].

No. 3.

Venditioni Exponas.

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

Seal a writ of *venditioni exponas* directed to the sheriff to sell the real and personal estate of *C.D.* taken under a writ of *fieri facias* in this action tested day of .

X.Y., solicitor for

No. 6.

Writ of Sequestration.

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

Seal a writ of sequestration against *C.D.* for not at the suit of *A.B.* directed to [*names of Commissioners*].

Order dated day of

No. 7.

Writ of Possession.

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

Seal a writ of possession directed to the sheriff to deliver possession to *A.B.* of

Judgment dated day of

No. 8.

Writ of Delivery.

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

Seal a writ of delivery directed to the sheriff to make delivery to *A.B.* of

APPENDIX G.

No. 10.

Writ of Attachment.

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

Seal in pursuance of order dated the day of an attachment directed to the sheriff against *C.D.* for not delivering to *A.B.*

No. 11.

Distringas against Ex-Sheriff.

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

Seal a writ of *distringas nuper vicecomitem quod venditioni exponat,* directed to the sheriff to sell the real and personal estate of taken under a writ of *fieri facias* in this action tested the day of 19 .

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

No. 13.

Certiorari.

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

Seal in pursuance of order dated a writ of *certiorari* directed to

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

No. 14.

Prohibition.

In the Supreme Court. 19 . No.

In the matter of a certain now depending in the Court.

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

Seal a writ of prohibition directed to a Judge of the above-named Court and to the above-named plaintiff to prohibit them from further proceeding in the said

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

No. 15.

Mandamus.

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

Seal in pursuance of order dated a writ of mandamus directed to commanding to returnable

Dated the day of 19 .

(Signed)
(Address).
Solicitor for the

No. 16.

Habeas Corpus ad Testificandum.

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

Seal in pursuance of order dated a writ of *habeas corpus ad testificandum* directed to the to bring before

Dated the day of 19 .

19 .

(Signed)
(Address)
Solicitor for the

No. 17.

Commission to Examine Witnesses.

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

Seal in pursuance of order dated a writ in the nature of a mandamus or commission to examine witnesses directed to

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

No. 18.

Commission of Partition.

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

Seal in pursuance of order dated
a commission of partition directed to returnable

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

No. 19.

Amended Summons.

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

Amend in pursuance of order [*or* fiat] dated the writ of summons in this action by*

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

* Set out amendments when required.

No. 20.

Renewed Summons.

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

Seal in pursuance of order dated a renewed writ of summons in this action, indorsed as follows:—

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

No. 21.

Subpœna.

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

Seal writ of subpœna on behalf of the directed to returnable

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

No. 23.

Entry of Appeal.

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

Enter this appeal from the order [*or* judgment] of in this action, dated the day of 19 .

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

APPENDIX G.

No. 24.

Entry for Argument generally.

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

Set down for argument the

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

No. 25.

Entry of Special Case.

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

Set down the dated the day of 19 , of Mr. the referee in this for hearing as a special case.

Dated the day of 19 .

(Signed)
(Address)
Solicitor for the

No. 26.

Memorandum of Service of Notice of Judgment.

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

Enter memorandum of service of notice of judgment made in this action, and dated the day of 19 , on the undermentioned persons, viz.:—

Name of Party Served.	Date of Service.

Dated the day of 19 .

(Signed)
(Address)

No. 27.

Search.

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

Search for

Dated the day of 19 .

(Signed)
(Address)
Agent for
Solicitor for

No. 28.

Memorandum on Notice of Judgment.

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

To *X.Y.* of

Take notice that from the time of the service of this notice you [*or, as the case may be,* the infant *or* person of unsound mind] will be bound by the proceedings in the above cause in the same manner as if you [*or* the said infant *or* person of unsound mind] had been originally made a party, and that you [*or* the said infant, &c.] may, on entering an appearance at the Prothonotary's office, have liberty to attend the proceedings under the within-mentioned judgment [*or* order]: And that you [*or* the said infant, &c.] may within one month after the service of this notice apply to the Court or a Judge to discharge vary or add to the judgment [*or* order].

APPENDIX H.

FORMS OF WRITS.

No. 1.

Writ of Fieri Facias.

In the Supreme Court. 19 . No.

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

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith:

To the Sheriff, Greeting:

We command you that of the real and personal estate of *C.D.* you cause to be made the sum of £ and also interest thereon at the rate of £ per centum per annum from the day of * which said sum of money and interest were lately before us in our Supreme Court in a certain action [*or*, certain actions, *as the case may be*] wherein *A.B.* is plaintiff and *C.D.* and others are defendants [*or* in a certain matter there depending intituled "In the matter of *E.F.*" *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court, bearing date the day of adjudged [*or* ordered, *as the case may be*] to be paid by the said *C.D.* to *A.B.*, together with certain costs in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed at the sum of £ as appears by the certificate of the taxing officer, dated the day of . And that of the real and personal estate of the said *C.D.*, you further cause to be made the said sum of £ [costs] together with interest thereon at the rate of £ per centum per annum from the day of * and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said *A.B.* in pursuance of the said judgment [*or* order, *as the case may be*]: And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof; and have there then this writ.

Am. G.G. 26.4.39 p. 1382.

Witness Chief Justice, at Melbourne, the day of

**Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.*

No. 2.

Fieri Facias on Order for Costs.

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

ELIZABETH THE SECOND, by the Grace of God &c. [*as in Form No.* 1].

To the Sheriff, Greeting:

We command you that of the real and personal estate of you cause to be made the sum of for certain costs which by an order of our Supreme Court dated the day 19 were ordered to be paid by the said to and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of £ per centum per annum from the day 19 and that you have the said sum and interest before us in our said Court, immediately after the execution hereof, to be rendered to the said . And in what manner you shall have executed this our writ make appear to us immediately after the execution hereof; and have there then this writ.

Witness Chief Justice, the day of 19 , at Melbourne.

Levy £ and £ for costs of execution, &c., and also interest on £ at £ per centum per annum from the day of 19 , until payment; besides sheriff's poundage, officer's fees, costs of levying, and all other legal incidental expenses.

This writ was issued by of agent for of . solicitor for the

The is a and resides at

APPENDIX H.

No. 4.

Writ of Venditioni Exponas.

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

ELIZABETH THE SECOND, by the Grace of God &c. [*as in Form No.* 1].

To the Sheriff, Greeting:

Whereas by our writ we lately commanded you that of the real and personal estate of *C.D.* [*here recite the fieri facias to the end*]: And on the day of you returned to us in our said Court, that by virtue of the said writ to you directed you had taken real and personal estate of the said *C.D.* to the value of the money and interest aforesaid, which said real and personal estate remained in your hands unsold for want of buyers: Therefore we, being desirous that the said *A.B.* should be satisfied his money and interest aforesaid, command you that you expose to sale, and sell or cause to be sold, the real and personal estate of the said *C.D.* by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court immediately after the execution hereof, to be paid to the said *A.B.;* and have there then this writ.

Witness Chief Justice, at Melbourne, the day of

[*Indorsement:* This writ was issued by, &c.]

No. 8.

Writ of Possession.

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

ELIZABETH THE SECOND, by the Grace of God &c. [*as in Form No.* 1].

To the Sheriff, Greeting:

Whereas lately in our Supreme Court, by a judgment of the same Court [*A.B.* recovered] *or* [*E.F.* was ordered to deliver to *A.B.*] possession of all that with the appurtenances: Therefore we command you that you enter the same and, without delay, you cause the said *A.B.* to have possession of the said land and premises with the appurtenances: And in what manner you have executed this our writ make appear to us in our said Court immediately after the execution hereof; and have you there then this writ. Witness, &c.

[*Indorsement:* This writ was issued by, &c.]

No. 10.

Writ of Delivery.

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

ELIZABETH THE SECOND, by the Grace of God &c. [*as in Form No.* 1].

To the Sheriff, Greeting:

We command you that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue*] to be returned to *A.B.*, which the said *A.B.* lately in our Supreme Court recovered against *C.D.* [*or C.D.* was ordered to deliver to the said *A.B.*] in an action in our said Court: And we further command you that if the said chattels cannot be found† you distrain the said *C.D.* by all his lands and chattels, so that neither the said *C.D.* nor any one for him do lay hands on the same until the said *C.D.* render to the said *A.B.* the said chattels*: And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof; and have you there then this writ. Witness, &c.

[*Indorsement:* This writ was issued by, &c.]

No. 11.

The Like, in another form.

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

[*Proceed as in the preceding form until thet and then thus*:] of the goods and chattels of the said *C.D.* you cause to be made £ [*the assessed value of the chattels*]: And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof; and have you there then this writ. Witness, &c.

[*If in either of the preceding forms it is wished to include damages, costs, and interest, proceed to the* and continue thus*]:—

And we further command you that of the real and personal estate of the said *C.D.*, you cause to be made the sum of £ [*damages*]. And also interest thereon at the rate of £ per centum per annum, from the day of which said sum of money and interest were in the said action by the judgment therein [*or* by order] dated the day of adjudged [*or* ordered] to be paid by the said *C.D.* to *A.B.*, together with certain costs in the said judgment [*or* order] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of £ as appears by the certificate of the said taxing officer dated the day of . And that of the real and personal estate of the said *C.D.* you further cause to be made the said sum of £ [costs] together with interest thereon at the rate of £ per centum per annum from the day of and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said *A.B.* in pursuance of the judgment [*or* order].

And in what manner, &c.

And have you there this writ.

Witness, &c.

[*Indorsement:* This writ was issued by, &c.]

No. 12.

Writ of Attachment.

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

ELIZABETH THE SECOND, by the Grace of God &c. [*as in Form No.* 1].

To the Sheriff, Greeting:

We command you to attach *C.D.*, so as to have him before us in our Supreme Court, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf; and hereof fail not, and bring this writ with you.

Witness, &c.

No. 13.

Writ of Sequestration.

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

ELIZABETH THE SECOND, by the Grace of God &c. [*as in Form No.* 1].

To [*names of not less than four commissioners*] greeting:

Whereas lately in our Supreme Court, in a certain action there depending, wherein *A.B.* is plaintiff and *C.D.* and others are defendants [*or* in a certain matter then depending, intituled "In the matter of *E.F.*," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court, made in the said action [*or* matter], and bearing date the day of 19 , it was ordered that the said *C.D.* should [pay into Court to the credit of the said action the sum of £ *or as the case may be*]: Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said *C.D.*, and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever;

APPENDIX H and J.

and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours go to and enter upon all the messuages, lands, tenements, and real estates of the said *C.D.*, and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C.D.* shall [pay into Court to the credit of the said action the sum of £ *or, as the case may be*] clear his contempt and our said Court make other order to the contrary. Witness, &c.

[*Indorsement:* This writ was issued, &c.]

No. 14.

Distringas against Ex-Sheriff.

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

ELIZABETH THE SECOND, by the Grace of God &c. [*as in Form No.* 1].

To the Sheriff, Greeting:

We command you that you distrain late sheriff, by all his land and chattels, so that neither he nor any one by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said expose for sale and sell or cause to be sold for the best price that can be gotten for the same those lands and chattels which were of , to the value of £ ,* the sum of £ which lately before us in our Supreme Court in a certain action wherein plaintiff and defendant , by a† of our said Court bearing date the day of was‡ to be paid by the said to the said , and of the sum of £ , the amount at which the costs in the said† mentioned have been taxed and allowed, and of interest on the said sum of £ at the rate of £ per centum per annum from the day of , and on the said sum of £ at the same rate from the day of , which lands and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late sheriff hath lately returned to us in our said Court. And have the money arising from such sale before us in our said Court immediately after the execution hereof, to be paid to the said And have there then this writ.

* The "amount of" or "part of."
† "Judgment" or "order."
‡ "Adjudged" or "ordered."

Witness Chief Justice, the day of in the year of Our Lord One thousand nine hundred and at Melbourne.

This writ was issued by of agent for of solicitor for the who reside at

---

The defendant is a and resides at

APPENDIX J.

FORMS OF SUBPŒNA, &C.

No. 1.

Subpœna ad testificandum (General Form).

In the Supreme Court. 19 . No.

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

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith:

To [*A.B.* and others] greeting:

We command you to attend before at on day the day of 19 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the†

† "plaintiff" "defendant."

Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and at Melbourne.

No. 2.

Habeas corpus ad testificandum.

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

ELIZABETH THE SECOND, by the Grace of God &c.:

To the [keeper of our prison at]

We command you that you bring who it is said is detained in our prison under your custody before at on day the day of 19 , at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the . And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and at Melbourne.

The writ was issued by
of
agent for
of
solicitor for the who reside at

No. 3.

Subpœna duces tecum (General Form).

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

ELIZABETH THE SECOND, by the Grace of God &c.:

To* greeting:

We command you to attend before at on day the day of 19 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid†

Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and at Melbourne.

* The names of three witnesses may be inserted.

† Specify documents to be produced.

No. 6.

Subpœna ad testificandum at Sittings of the Supreme Court.

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

ELIZABETH THE SECOND, by the Grace of God &c.:

To greeting:

We command you to attend at the sittings of our Supreme Court to be holden at on day the day of 19 , at the hour of in the noon and so from day to day during the said sittings until the above cause is tried to give evidence on behalf of the

Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and at Melbourne.

No. 7.

Subpœna duces tecum at Sittings of Supreme Court.

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

ELIZABETH THE SECOND, by the Grace of God &c.:

To* greeting:

We command you to attend at the sittings of our Supreme Court to be holden at on day the day of 19 , at the hour of o'clock in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and to produce at the time and place aforesaid†

Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and at Melbourne.

* The names of three witnesses may be inserted.

† Specify documents to be produced.

Chapter I.—Civil Proceedings. 226

APPENDIX J.

No. 9.

Certiorari to County Court.

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

ELIZABETH THE SECOND, by the Grace of God &c.:

To the Judge of the County Court holden at greeting:

We, willing for certain causes to be certified of a plaint levied in our Court before you against at the suit of command you that you send to us forthwith in our Supreme Court the said plaint with all things touching the same, as fully and entirely as the same remain in our said Court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and at Melbourne.

This writ was issued by of agent for of solicitor for the who reside at

---

No. 10.

Certiorari (General).

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

ELIZABETH THE SECOND, by the Grace of God &c.:

To the greeting:

We, willing for certain causes to be certified of command you that you send to us in our Supreme Court on the day of the aforesaid, with all things touching the same, as fully and entirely as they remain in together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and at Melbourne.

This writ was issued by of agent for of solicitor for the who reside at

---

No. 11.

Prohibition.

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

ELIZABETH THE SECOND, by the Grace of God &c.:

To the [Judge of the County Court holden at] and to [*name of plaintiff*] of greeting:

Whereas we have been given to understand that you the said have [entered a plaint against] *C.D.* in the said Court, and that the said Court has no jurisdiction in the said [cause], or to hear and determine the said [plaint] by reason that [*state facts showing want of jurisdiction*].

We therefore hereby prohibit you from further proceeding in the said [action] in the said Court.

Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and at Melbourne.

This writ was issued by of agent for of solicitor for the who reside at

No. 12.

Mandamus.

ELIZABETH THE SECOND, by the Grace of God &c.:

To of Greeting:

Whereas by [*here recite Act of Parliament or Charter if the act required to be done is founded on either one or the other*]. And whereas we have been given to understand and be informed in our Supreme Court before us that [*insert necessary inducement and averments*]. And you the said were then and there required by [*insert demand*] but that you the said then and there wholly neglected and refused to [*insert refusal*] nor have you or any of you at any time since as we have been informed. Whereupon we, being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every one of you firmly enjoining you that you [*insert command*] or that you show us cause to the contrary thereof, lest by your default the same complaint should be repeated to us, and how you shall have executed this our writ made known to us in our said Court forthwith then returning to us this our said writ, and this you are not to omit.

Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and

By the Court,
(Signed)

No. 13.

Commission to Examine Witnesses.

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

ELIZABETH THE SECOND, by the Grace of God &c.:

To of and of commissioners named by and on behalf of the and to of and of commissioners named by and on behalf of the greeting:

Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *vivâ voce* as hereinafter mentioned witnesses on behalf of the said and respectively at before you or any two of you, so that one commissioner only on each side be present and act at the examination. And we command you as follows:—

1. Both the said and the said shall be at liberty to examine on interrogatories and *vivâ voce* on the subject-matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *vivâ voce*, the parties producing any 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 shall be returned with the said commission.

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, 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 to be examined, shall be given to the commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business; and if the commissioners or commissioner of that party neglect to attend pursuant to the notice, then one of you, 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.

3. 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 commissioners or commissioner present and acting to be a true and correct copy or extract shall be annexed to the witness's deposition.

4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the commissioners or commissioner present at the examination.

Chapter I.—Civil Proceedings. 228

APPENDIX J.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language 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 commissioner present at the examination, 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 and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses and by the commissioners or commissioner who shall have taken the depositions.

7. 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 enclosed in a cover under the seals or seal of the commissioners or commissioner.

8. Before you or any of you in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other commissioner, a commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the others or others of you.

Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and at Melbourne.

This writ was issued by
of
agent for
of
solicitor for the
who reside at

Witness's Oath.

I swear by Almighty God that I will true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I will speak the truth, the whole truth, and nothing but the truth.

Commissioner's Oath.

I swear by Almighty God that I will according to the best of my skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written.

Interpreter's Oath.

I swear by Almighty God that I will truly and faithfully, and without partiality to any or either of the parties in this cause and to the best of my ability, interpret and translate the oath or oaths, affirmation or affirmations, which shall be administered to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as I am directed and employed by the said commissioners to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language.

Clerk's Oath.

I swear by Almighty God that I will truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as I am directed and employed by the commissioners to take, write down, transcribe, or engross the said questions and depositions.

Direction of Interrogatories, &c., when returned by the Commissioners.

The Prothonotary of the Supreme Court, Melbourne.

APPENDIX K.

SUMMONSES AND ORDERS.

No. 1.

Summons (General Form).

In the Supreme Court. 19 . No.

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

Let all parties concerned attend the Judge in Chambers on day the day of 19 , at o'clock in the noon, on the hearing of an application on the part of

Dated the day of 19 .

This summons was taken out by of solicitor for

To

No. 1A.

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

Upon reading the affidavit of [the plaintiff *or as may be*].

Let all parties concerned attend the Judge in Chambers, Law Courts, William-street, Melbourne, on the day of , 19 , at o'clock in the noon on the hearing of an application on the part of the plaintiff that he be at liberty to sign final judgment in this action against the defendant [*or if against one or some of several insert names*] for the amount indorsed on the writ, with interest, if any [*or* for recovery of the land in the indorsement on the writ mentioned and the arrears of rent and mesne profits therein claimed] and costs.

Dated the day of 19 .

This summons was taken out by of solicitor for

To

No. 1B.

Originating Summons under Order LIV. (A) or Order LV., Part 2.

Ins. G.G. 2.6.54 p. 3687.

In the Supreme Court. 19 . No.

In the matter of

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

Let *C.D.*, of , within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, and thereafter attend before the Judge sitting to hear such summons at such time and place as shall hereafter be fixed for such hearing.

This summons is issued upon the application of *A.B.*, of , who claims (state nature of claim)

Dated the day of 19 .

(SEAL)

This summons was taken out by , solicitor for the above-named.

NOTE.—If the defendant does not enter an appearance at the Prothonotary's Office, Law Courts, William-street, Melbourne, within the time above mentioned, and thereafter attend before the Judge sitting to hear such summons at such time and place as shall hereafter be fixed for such hearing, such order will be made and proceedings taken as the Judge may think just and expedient.

Information as to the fixing of a time and place for the hearing of this summons may be obtained by any party on application at the Prothonotary's Office.

No. 2.

Order (General Form).

In the Supreme Court. 19 . No.

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

*Judge [*or* Master] in Chambers.

* Insert name of Judge.

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

It is ordered and that the costs of this application be

Dated the day of 19 .

APPENDIX K.

No. 3A.

Summons for Directions.

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

Let all parties concerned attend the Judge [*or* Master] in Chambers, at the Law Courts, William-street, Melbourne, on the day of 19 , at o'clock in the noon, on the hearing of an application on the part of to show cause why an order for directions should not be made in this action as follows:—

Pleadings.

Particulars—[That the deliver within days particulars of and that in default all further proceedings in this action be stayed until such particulars are delivered [*or* that the defendant be precluded from giving evidence in support thereof on the trial of the action], and that the have days to deliver his after delivery of such particulars.]

Admissions.

Discovery—[That the file an affidavit of documents in ten days.]

Interrogatories—[For leave to interrogate the answers to be filed within ten days.]

Inspection of documents.

Inspection of real and personal property.

Commissions

Examinations of witnesses.

Place of trial.

Mode of trial.

Any other interlocutory matter or thing.

Dated the day of

This summons was taken out by solicitor for

To

No. 4B.

Order for Directions.

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

Upon hearing the solicitors on both sides, the following directions are hereby given, and it is ordered—

That there be pleadings in the action.

That the deliver to the an account in writing of the particulars of and that unless such particulars be delivered within days from the date of this order all further proceedings be stayed until the delivery thereof, and that the defendant have days after delivery of said particulars to deliver his defence.

That the plaintiff and defendant do respectively within ten days from the date of this order answer on affidavit stating what documents are or have been in their possession or power relating to the matters in question in this action.

That the plaintiff be at liberty to deliver to the defendant and that the defendant be at liberty to deliver to the plaintiff interrogatories in writing [*as approved by the Judge, or limited to* (particular subject-matter to be specified) or *generally*] and that the said interrogatories be answered as prescribed by Order XXXI. of the Rules of the Supreme Court.

That the action be tried at

That the action be tried with

Dated the day of 19 .

No. 4E.

SUMMONS FOR THIRD PARTY DIRECTIONS.

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

Let all parties concerned attend the Judge in Chambers, at the Law Courts, William-street, Melbourne, on the day of 19 , at o'clock in the noon on the hearing of an application on the part of for an order for third party directions, as follows:—That the defendant deliver a statement of his claim to the said third party within days from this date, who shall plead thereto within days. And that the said third party be at liberty to appear at the trial of this action and take such part as the Judge shall direct, and be bound by the result of the trial.

And that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto.

Dated the day of 19 .

This summons was taken out by of the solicitor for

To

No. 4F.

ORDER FOR THIRD PARTY DIRECTIONS.

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

Upon hearing the solicitor for the plaintiff, defendant, and third party,

It is ordered that the defendant deliver a statement of his claim to the said third party within days from this date, who shall plead thereto within days. And that the said third party be at liberty to appear at the trial of this action, and take such part as the Judge shall direct, and be bound by the result of the trial. And that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto,

And that the costs of this application be

Dated the day of 19 .

No. 5.

Order for Time.

[*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 shall have time and that the costs of this application be

Dated the day of 19 .

No. 6.

Order under Order XIV.

No. 1.

[*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 may sign final judgment in this action for the amount indorsed on the writ, with interest, if any [*or* possession of the land in the indorsement of the writ described as], and costs to be taxed, and that the costs of this application be

Dated the day of 19 .

No. 7.

Order under Order XIV.

No. 2.

[*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 defendant be at liberty to defend this action, and the following directions are hereby given, and it is ordered that [*fill in directions*], and that the costs of this application be

Dated the day of 19 .

APPENDIX K.

No. 8.

Order under Order XIV.

No. 3.

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

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

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of £ he be at liberty to defend this action, but that if that sum be not so paid the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons, with interest, if any, and costs, and that in either event the costs of this application be

Dated the day of 19 .

No. 9.

Order under Order XIV.

No. 4.

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

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

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of £ he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid the plaintiff be at liberty to sign judgment for that sum and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim.

And that the costs of this application be

Dated the day of 19 .

No. 10.

Order to Amend.

[*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 be at liberty to amend the writ of summons in this action by and that the costs of this application be

Dated the day of 19 .

No. 11.

Order for Particulars (Partnership).

[*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 furnish the with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the Rules of the Supreme Court, and that the costs of this application be

Dated the day of 19 .

No. 12.

Order for Particulars (General).

[*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 deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this action, and that unless such particulars be delivered within days from the date of this order all further proceedings be stayed until the delivery thereof, and that the costs of this application be

Dated the day of 19 .

No. 13.

Order for Particulars (Accident Case).

[*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 deliver to the defendant an account in writing of the particulars of the injuries and expenses mentioned in the statement of claim, together with the time and place of the accident, and the particular acts of negligence complained of, and that unless such particulars be delivered within days from the date of this order all further proceedings in this action be stayed until the delivery thereof, and that the costs of this application be

Dated the day of 19 .

No. 14.

Order to Discharge or Vary on Application by Third Party.

[*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 order of in this action dated the day of 19 , be discharged [*or* varied by], and that the costs of this application be

Dated the day of 19 .

No. 15.

Order to Dismiss for Want of Prosecution.

[*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, for want of prosecution, dismissed with costs to be taxed and paid to the defendant by the plaintiff, and that the costs of this application be

Dated the day of 19 .

No. 16.

Order for Delivery of Interrogatories.

[*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 deliver to the interrogatories in writing [*generally or limited to* (a particular subject-matter of inquiry to be specified) or *to be first approved by the Judge before delivery thereof*], and that the said do answer the interrogatories, as prescribed by Order XXXI. of the Rules of the Supreme Court, and that the costs of this application be

Dated the day of 19 .

No. 17.

Order for Affidavit as to Documents.

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

Upon hearing

It is ordered that the do, within days from the date of this order, answer on affidavit stating what documents are or have been in possession or power relating to the matters in question in this action, and that the costs of this application be

Dated the day of 19 .

APPENDIX K.

No. 18.

Order to Produce Documents for Inspection.

[*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 do, at all reasonable times, on reasonable notice produce at [*insert place of inspection*] situate at the following documents namely and that the be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom at expense, and that in the meantime all further proceedings be stayed, and the costs of this application be

Dated the day of 19 .

No. 19.

Order for Production (Underwriters).

[*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 do produce and show to the upon oath all insurance slips, policies, letters of instruction, or other orders for effecting such slips or policies, or relating to the insurance or the subject-matter of the insurance on the ship or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship the cargo on board thereof, and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence papers, and writings (whether originals, duplicates, or copies respectively), which now are in the custody, possession, or power of the his brokers, solicitors, or agents, in any way relating or referring to the matters in question in this action, with liberty for the to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated the day of 19 .

No. 21.

Order for Substituted Service.

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

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

It is ordered that service of a copy of this order, and of a copy of the writ of summons in this action, by sending the same by a prepaid post letter, addressed to the defendant at [*or such other substituted service as may be ordered,*] shall be good and sufficient service of the writ.

Dated the day of 19 .

No. 22.

Order for Renewal of Writ.

[*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 writ in this action be renewed for six months from the date of its renewal, pursuant to the Rules of the Supreme Court.

Dated the day of 19 .

No. 23.

Order for Issue of Notice Claiming Contribution.

[*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 defendant be at liberty to issue a notice claiming over against pursuant to the Rules of the Supreme Court, and that such notice may be served upon the said within days of this order.

Dated the day of 19 .

No. 24.

Order of Reference.

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

Upon hearing and by consent

It is ordered as follows:—

1. [*State matters to be referred*] shall be referred to the award of

2. The arbitrator shall have all the powers as to certifying and amending of a Judge of the Supreme Court.

3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives if either of the said parties die before the making of the award) on or before the next or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.

4. The said parties shall in all things abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be

6. The arbitrator may (if he think fit) examine the said parties to this cause and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as may think reasonable and just.

10. In the event or either of the said parties disputing the validity of the said award, or moving the to set it aside, the said shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or, if they cannot agree, a Judge of the Supreme Court may, on application by either side, appoint a new arbitrator.

12. Unless restrained by any order of the Supreme Court, or of any Judge thereof, the party or parties in whose favour the award shall be made shall be at liberty within days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the day of 19 .

APPENDIX K.

No. 25.

Order for Examination of Witnesses before Arbitrator.

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

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

It is ordered that attend before the aribtrator herein on the day of 19 at and then and there submit to be examined on oath or affirmation on behalf of the touching the matters referred to the said arbitrator.

Dated the day of 19 .

No. 26.

Order for Examination of Witnesses and Production of Documents.

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

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

It is ordered that attend before the arbitrator herein on the day of 19 at and then and there submit to be examined on oath or affirmation on behalf of the touching the matters referred to the said arbitrator.

And it is further ordered that the said do at the time and place aforesaid produce and deliver to the said arbitrator the papers, documents, and writings hereafter mentioned, that is to say.*

* Specify documents to be produced.

Dated the day of 19 .

No. 27.

Order Charging Stock—Nisi.

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

Upon hearing and upon reading the affidavit of filed the day of 19 whereby it appears that the plaintiff recovered a judgment against the defendant on the day of 19 for the sum of £ and £ costs, that the said defendant is still indebted to the plaintiff in the sum of £ , and that there is standing in

It is ordered that unless sufficient cause be shown to the contrary before on day the day of 19 at o'clock in the forenoon, the defendant's interest in the so standing as aforesaid shall, and that it in the meantime do, stand charged with the payment of the above-mentioned amount due on the said judgment, together with the costs of this application.

Dated the day of 19 .

No. 28.

Order Charging Stock—Absolute.

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

Upon hearing and upon reading the affidavit of filed the day of 19 and an order *nisi* made herein on the day of 19 reciting the affidavit of whereby it appeared that the plaintiff recovered a judgment against the defendant on the day of 19 for the sum of £ and £ costs, that the said defendant is still indebted to the plaintiff in the said sums so recovered, and that there is standing in

It is ordered that the defendant's interest in the so standing as aforesaid stand charged with the payment of the above-mentioned amount due on the said judgment, together with the costs of this application.

Dated the day of 19 .

No. 32.

Order of Reference.

[*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 following question arising in this action, namely be referred for inquiry and report to and that the cost of this application be

Dated the day of 19 .

No. 33.

Order of Reference.

[*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 [*state whether all or some, and, if so, which of the questions are to be tried*] in this action be tried by , who shall have all the powers as to certifying and amending of a Judge of the Supreme Court, and shall make his report of and concerning the matters ordered to be tried as aforesaid pursuant to Statute [or direct judgment to be entered and otherwise deal with the whole action pursuant to Order XXXVI., Rule 37]. And it is further ordered that the said referee may, if he thinks fit, examine the parties to this action and their respective witnesses upon oath or affirmation, and that the said parties shall produce before the said referee all books, papers, and writings in their or either of their custody or power relating to the matters so ordered to be tried.

And it is further ordered that neither the plaintiff nor the defendant shall bring or prosecute any action against the referee, or against each other, of or concerning the matters so ordered to be tried; and that if either party by affected delay or otherwise wilfully prevent the said referee from making his report he or they shall pay such costs to the other as the Court or any Judge thereof may think reasonable or just.

And it is further ordered that in the event of the said referee declining to act, or dying before he has made his report, the said parties may, or if they cannot agree one of the Judges of the Court may upon application by either party, appoint a new referee. And it is ordered that the costs of this application be

Dated the day of 19 .

No. 34.

Order of Reference to Master or Prothonotary.

[*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 [*or* the matters of account in this action, *or* the following questions in this action being matters of account, namely, *stating them*] be referred to the Master [*or* Prothonotary], with all the powers as to certifying and amending of a Judge of the Supreme Court, and that the costs of the and of the reference be in the discretion of the Master [*or* Prothonotary], and the costs of this application be

Am. G.G. 4.10.50 p. 5270.

Dated the day of 19 .

APPENDIX K.

No. 35.

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 *viva voce* (on oath or affirmation) before of the Supreme Court [*or* before , esquire, special examiner] the solicitor or agent giving to the solicitor or agent 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 commission, 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 19 No.

Between Plaintiff

and Defendant.

I (*or* we) hereby undertake to be responsible for all expenses incurred by Her 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. 36B.

In the Supreme Court of Victoria 19 No.

Between Plaintiff

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 , 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] *vivâ 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 *vivâ 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 *vivâ voce*] and the party producing the witness for examination liberty to re-examine him *vivâ 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 *vivâ 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.

In the Supreme Court 19 No.

Between Plaintiff

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 a special examiner for the purpose of taking the examination, cross-examination, and re-examination, *vivâ 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.*

Chapter I.—Civil Proceedings. 240

APPENDIX K.

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 commissioners named by and on behalf of the and to of and 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 interrogatories and *vivâ voce* of witnesses on behalf of the said and 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, returned 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 conveyance 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 commissioners or commissioner present to be a true and correct copy or extract, shall be annexed to the witness'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 interrogatories, cross-interrogatories, and *vivâ voce* questions, if any, being previously translated into the language 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 commissioner, 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 witnesses and his and their answers thereto.

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 commissioners 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 of 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 *vivâ 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 Her Majesty's Attorney-General for the State of Victoria in the Commonwealth of Australia for transmission to the said Supreme Court of Victoria.

APPENDIX K.

No. 37C.

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.

Am. G.G. 4.10.50 p. 5270.

In the Supreme Court of Victoria 19 . No.

Between Plaintiff,

and

Defendant.

(a) Name of country.
(b) or substituted service.
(c) If under Order 11 r. 9 add— "Directly through the British Consul" or "by the foreign judical authority".

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*)

And I [*or we*] hereby personally undertake to be responsible for all expenses incurred by Her 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 19 . No.

Between Plaintiff,

and

Defendant.

I [*or we*] hereby undertake to be responsible for all expenses incurred by Her 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 19 . No.

Between Plaintiff,

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 , , 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] *vivâ 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 *vivâ 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 *vivâ 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 vivâ 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. 37G.

In the Supreme Court 19 . No.

Between Plaintiff,

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, *vivâ 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.*

APPENDIX K.

No. 38.

Order for Examination of Judgment Debtor.

In the Supreme Court. 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 .

No. 41.

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

In the Supreme Court. 19 , No.

In the matter of the taxation of costs and in the matter of *A.B.* - - 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 [*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. 19 , No.

In the matter of the taxation of costs and in the matter of *A.B.* - - 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 .

APPENDIX K.

No. 44.

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 .

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 .

APPENDIX K.

No. 54.

Interpleader Order.

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 *fieri 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 *fieri 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.

No. 73.

In the Supreme Court of Victoria.

In the matter of *Foreign Tribunals Evidence Act* 1856 (19 and 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 the 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 the day of 19 .

APPENDIX L.

No. 1.

Summons by Master.

In the Supreme Court.

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

Or

between *C.D.*, plaintiff,

and

E.F., defendant.

Am. G.G. 4.10.50 p. 5270.

The defendant *E.F.* [*or G.H.* of *&c.*] is hereby summoned to attend at the office of the Master, 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.,

Master.

This summons was taken out by of solicitors for

APPENDIX I.

Am. G.G. 4.10.50 p. 5270.

No. 2.

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 Master, 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.,
Master.

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 Master, 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.

Ib.

Dated this day of 19 .

G.H.,
Master.

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 Master, Law Courts, Melbourne, on the day of 19 , at o'clock in the noon.

Ib.

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 .

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.

A.

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.	Amount proper to be allowed.
				£ s. d.	£ 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.

Chapter I.—Civil Proceedings. 252

APPENDIX L.

No. 7.

[*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 Master, Law Courts, Melbourne, on the day of 19 , at o'clock of the noon, being the time appointed for the adjudicating on the claim.

Am. G.G. 4.10.50 p. 5270.

Dated this day of 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 Master, Law Courts, Melbourne, on the day of 19 at o'clock in the noon, being the time appointed for adjudicating on the claim.

Ib.

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.

In the Supreme Court. 19 . No.

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 Master.

In the Supreme Court. 19 . No.

Ib.

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 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 defandants 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. 19 . 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:—

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.*

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

This should accord with the order directing the account.

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.

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.

This should accord with the order directing the account.

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.

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, 1956.

5. £32 6s. 8d. balance remaining due from John Thomas on account of half-year's rent of farm at to Michaelmas, 1956.

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

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.

A.

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.
	1 .			£ s. d.
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.
	1 .			£ s. d.
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	

APPENDIX L.

No. 13.

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

B.

In the Supreme Court. 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.
	1 .			£ s. d.
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.
	1 .			£ s. d.
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.	Arrears due at.	Amount due at.	Amount received.	Arrears remaining due.	Observations.
				£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
1		John Jones	Home farm in the parish of Norton, in the county of Bourke						
2		Thomas Jones	House at Norton, aforesaid						

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.

	£ s. d.	£ s. d.	£ s. d.
Amount of balance due from receiver on account of real estate on last account		" "	
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 .. £

	£ s. d.		
Amount of balance due from Receiver on last account of personal estate			
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.

APPENDIX L.

Am. G.G. 4.10.50 p. 5270.

5. The Master 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.

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* 1954, *Add.* the title being under the *Transfer of Land Act* 1954, no abstract shall be required], [and 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.

APPENDIX L.

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.

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 first 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, Interest and Costs.	Total Amounts due.
			£ s. d.	£ s. d.
2	James Allen	Boston, in the county of Bourke, surgeon	100 0 0	
		Interest	4 0 0	
		Costs	2 2 0	
				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 £5 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 £5 per cent:	5 0 0	
		Another debt	62 0 0	
		Interest	2 10 0	
		Costs	2 4 6	
				171 4 6

Chapter I.—Civil Proceedings. 260

APPENDIX L.

No. 18.

List of Legacies remaining unpaid.

James *v.* Jones.

List of Legacies.

Name of Legatees.	Descriptions.	Amounts of Principal and Interest.	Total Amounts due.
		£ s. d.	£ s. d.
James Oliver ..	Son of testator, an infant	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	214 11 0
		Total £	

No. 19.

List of Annuities and Arrears due.

List of Annuities.

Names of Annuitants.	Description of Annuitants and Nature of Annuities.	Amounts of Annuities.	Amounts of Arrears due.
		£ s. d.	£ s. d.
Mary Jones ..	Spinster, daughter of testator, during her life ..	50 0 0	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.

Apportionment among Creditors (or Legatees).

Names of Creditors (or Legatees).	Addresses.	Amounts before certified to be due and subsequent Interest.	Totals due.	Amounts Apportioned.
		£ s. d.	£ s. d.	£ s. d.
John Jones ..	No. Brown-street, Ballarat, woollen draper	200 0 0		
	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 .. £	

APPENDIX L.

No. 21.

Receiver's Recognizance.

of and of and of

v.

Mr. Justice has approved of and allowed this recognizance.

Master.

Am. G.G. 4.10.50 p. 5270.

Before our Sovereign Lady the Queen in Her 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 Lady Elizabeth the Second, by the Grace of God, of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, 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 and pursuant to the said order and the general orders of the said Court in that behalf, and in testimony of such approbation the Master 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.

No. 21A.

Receiver's Security by Undertaking.

In the Supreme Court. (Title.)

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 Master 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.

Am. G.G. 4.10.50 p. 5270.

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.*]

APPENDIX L.

No. 22.

Affidavit Verifying Receiver's Account.

In the Supreme Court. 19 . No.

Between *A.B.*, Plaintiff,

and

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

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.

This is to accord with the order appointing the receiver.

The date to which the account is made up.

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.

Form 25 rep. G.G. 2.6.54 p. 3687.

* * * * * * * *

No. 27.

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 , 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.

ORDINARY SCALE OF COSTS.

Subject Matter.

	£	s.	d.
Writs.			
1. Writ of Summons for the commencement of an action or other writ not specially provided for	1	10	0
2. Indorsement of claim (if special)	0	12	0
3. If more than three folios, for every extra folio	0	3	0
4. Concurrent Writ of Summons	0	15	0
5. Citation in matrimonial causes	1	1	0
6. Writ of *Mandamus*	1	5	0
7. Writ of Subpœna *duces tecum*	0	15	0
8. Writ of Subpœna *ad testificandum*	0	12	0
9. If any of the above writs (except Writs of Summons) exceed four folios, for each extra folio	0	3	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.			
Summonses and Warrants.			
10. Summons to attend at Judges' Chambers	0	15	0
11. Or, if special, at Taxing Officer's discretion not exceeding	1	5	0
12. Warrant for proceeding in Master's Office	0	15	0
13. Originating summonses for proceedings in Chambers (including drawing, engrossing, and copy to file)	1	5	0
14. Or, at Taxing Officer's discretion, not exceeding	2	2	0
15. And attending to issue, including attendance to get date of return fixed	0	15	0
No allowance is to be made for *præcipes* unless special and exceeding three folios.			

Chapter I.—Civil Proceedings. 264

APPENDIX N.

SCALE OF COSTS—*continued.*

Subject Matter.

Notices and Memoranda.

	£	s.	d.
16. In proceedings to wind up companies, for preparing or filling up each notice to creditor or to contributories	0	3	0
17. If special, at Taxing Officer's discretion, not exceeding per folio	0	3	0
18. Notice to produce or admit (including preparation and one copy to serve)	0	15	0
19. If more than seven folios, for each extra folio	0	3	0
20. Notice of originating motion	1	1	0
21. Notice of interlocutory motion	0	15	0
22. Or per folio	0	3	0
23. Any necessary or proper notice or memorandum not otherwise provided for, or any demand	0	10	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	3	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.			

Appearances.

25. Preparing and attending entering appearance	0	15	0
26. If entered at one time for more than one person, for every defendant beyond the first	0	3	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	10	0
28. Sealed copy appearance for service	0	2	0

Instructions.

29. To sue, institute, or defend any action, cause, or matter, including appeals	1	11	6
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	1	5	0
Am. G.G. 4.10.50 p. 5270. 31. For documents to be brought into Judges' Chambers, or the Office of the Master, such as proposals, statements of facts, reports, accounts, and for special affidavits	0	15	0
32. For interrogatories	1	5	0
33. To institute or oppose an interlocutory proceeding not otherwise provided for	0	15	0
34. For Statement of Claim, Special Case, or Petition	3	0	0
35. For indorsement of writ (where no further Statement of Claim), 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)	1	1	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	1	10	0
37. For Counsel to make an application to the Court where no other brief	0	15	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)	1	10	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	3	0	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.
Drawing Pleadings and other Documents.			
40. Pleadings, including Petitions (but not including Particulars or Summonses), not exceeding eight folios	1	4	0
41. If exceeding eight folios, for every extra folio	0	3	0
42. Any other necessary document, per folio	0	3	0
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.			
Copies.			
43. Of documents, where no other provision is made, per folio	0	1	0
44. Carbon or machine-made copies	0	0	8
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.			
Printing.			
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	1	0
46. And for examining the proof print, at per folio	0	0	6
47. And, for printing, the amount actually and properly paid to the printer.			
In addition, all necessary attendances on the printer.			
And, when any part shall properly be printed in a foreign language, or as a *fac-simile*, 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.			
Attendances.			
48. Personal service of any process or proceeding, where necessary ..	1	5	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 expenses properly incurred.			
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	16	0
51. Correspondent's charges	2	2	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	10	0
53. Or, if authorized to be served by post	0	4	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.
Attendances—continued.			
54. If Counsel's fee under £10 10s.	0	10	6
55. If £10 10s. or over	1	1	0
56. To mark refresher	0	10	6
57. On consultation	2	10	0
58. On conference, if Counsel's fee does not exceed £2 2s.	1	1	0
59. If over £2 2s.	2	2	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	1	1	0
61. Examining Appeal Books, per hour	0	15	0
62. On a Summons or other application in Chambers	0	15	0
63. Or according to circumstances, not to exceed	5	5	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	1	1	0
65. When heard	2	2	0
66. Or according to circumstances, not to exceed	6	6	0
67. To present Petition	1	1	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	1	1	0
69. When heard or tried	2	2	0
70. Or according to circumstances, not to exceed	8	8	0
71. For every hour, after the first two hours, including attendance to hear judgment	1	11	6

As to attendances at Court or in Chambers, when the Solicitor has not given personal attendance, the maximum allowances shall be as follows:—

	£	s.	d.
Applications in Chambers	3	13	6
Motions or other applications to the Court	5	5	0
Hearing or trial of actions, &c., per hour	1	1	0
or per day	5	5	0

	£	s.	d.
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	3	3	0
73. Attending by appointment or on application at Judges' Chambers or before the Master or the Prothonotary	0	18	0
74. Or if the Judge, Prothonotary, or Master shall certify that a further sum should be allowed, not exceeding	5	5	0
75. On examination of witnesses before an Examiner, officer or other person, if attended by principal	1	11	6
If attended by clerk	1	4	0
76. Or, according to circumstances, not to exceed per day if Counsel employed and attended by principal	5	5	0
If Counsel employed and attended by Clerk	4	14	6
Or, if without Counsel, at the discretion of the Taxing Master.			
77. To settle judgment or order, per hour	1	1	0
78. On taxation of costs	1	0	0
79. Or, according to circumstances, not to exceed per day of six hours (including luncheon adjournment)	6	6	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	6	6	0
81. And expenses (besides actual reasonable fares or payment for transport), each day (24 hours) of necessary absence	2	0	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.

SCALE OF COSTS—*continued.* APPENDIX N.

Subject Matter.	£	s.	d.
Attendances—continued.			
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	10	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	1	5	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	2	2	0
85. Any attendance, for which no other provision is made	0	15	0
Perusals.			
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.A. Rule 1, 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	6
87. Of Counsel's opinion or advice on evidence, per folio	0	1	6
88. Notices to produce or admit, deeds, correspondence and other documents, including exhibits which are necessary and proper to be perused, per folio	0	1	0
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 sum adversely, at the discretion of the Taxing Officer, not exceeding per folio ..	0	0	8
Oaths, Exhibits, and Special Bail.			
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 bail	1	1	0
Correspondence, Agency, &c.			
94. Letters, if ordinary	0	6	0
95. Letters, if special	0	10	6
96. Circular letters, after the first	0	1	6
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	1	1	0
		to	
	2	10	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	2	2	0

APPENDIX N.

Am. G.G. 5.5.54 p. 3042.

SCALE OF COSTS—*continued.*

Witnesses' Expenses.

Witnesses.	*Allowance per day.*
Professional men or women, including medical practitioners, legal practitioners, architects, engineers or surveyors, dentists, veterinary surgeons, university professors, accountants (carrying on business as principals), patent attorneys, and also merchants, auctioneers, estate agents, share-brokers, bank managers, (whether male or female)	From 3 to 6 guineas.
Other adult witnesses, whether male or female	£1 10s. or the amount of the salary or wage actually lost by the witness, whichever is the greater, but not exceeding in any event £3.
Persons under 21 years of age in receipt of salary or wages	£1 or the amount of salary or wages actually lost by the witness, whichever is the greater, but not exceeding in any event £2.
Persons under 21 years of age not in receipt of salary or wages	The amount of any loss in respect of which the Taxing Officer thinks he should be indemnified, but not exceeding in any event £2.

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 in Court if the witness is acting as an expert in assisting counsel or a solicitor for a 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.

Subst. 1.4.49 G.G. 23.3.49 p. 1825.

Commencement of Rules.

1. On and after the first day of January, 1957, 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 January, the Rules hereinafter set out shall come into force, and shall apply to all proceedings commenced on or after that date whether pursuant to the *Matrimonial Causes Act* 1945 (No. 22 of 1945) of the Commonwealth of Australia or under the law of the State of Victoria.

PETITION AND VERIFYING AFFIDAVIT.

Petitions.

2. (1) Proceedings before the Court to obtain a decree of nullity of marriage, dissolution of marriage, judicial separation or declaration as to jactitation of marriage 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. Every such petition shall be intituled with the number of the suit and the names of the parties and shall state as distinctly as the nature of the case permits the facts upon which the claim to relief is founded, the name, if known, of the person with whom adultery is charged and, unless otherwise directed by a Judge, shall be signed by the petitioner, or in the case of a person of unsound mind by such person's committee or guardian and shall be filed within thirty days of the signing thereof.

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

(3) No supplemental petition shall be filed, and no petition shall be amended, without leave. An affidavit in support of the application for leave shall, unless otherwise directed, be made by the petitioner and, if necessary, some other person or persons and shall verify any new facts which are alleged and distinctly and unequivocally deny that there has been any collusion or connivance past or present, direct or indirect with the respondent or any person liable to be made respondent.

(4) No deputy Prothonotary shall allow a petition to be filed in a suit for dissolution or nullity of marriage without an order of the Court or a Judge where the Petitioner resides nearer to the office of the Prothonotary than to his office.

Am. G.G. 7.12.55 p. 6585; G.G. 15.2.56 p. 1048.

(5) With every petition shall be filed a copy of the certificate of marriage or, where it is intended to prove the marriage without any certificate, the reasons for that course shall be stated in the affidavit verifying the petition. If the certificate is in a foreign language, a translation must also be filed.

Chapter II.—Divorce. 270

Affidavit verifying petition.

3. Every petition commencing proceedings shall be accompanied by and have filed with it an affidavit, made by the petitioner, and, if necessary, an affidavit or affidavits by some other person or persons, verifying, 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 in the latter case stating the grounds for such belief, and stating the grounds on which the allegation of the domicile of the petitioner and the respondent is based; and also verifying fully and distinctly with dates and all other particulars so many of the following acts and circumstances as are applicable to each case, or assigning explicit reasons for omitting to do so:—

(1) Age, and 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, dates, and places of birth of children, living or dead, 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 any 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) The result of any previous proceedings between the parties with reference to the marriage.

(12) Any other facts or circumstances within petitioner's knowledge bearing on the petition.

(13) 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.

Title of petition for nullity of marriage.

4. In every petition for nullity of marriage the female party thereto shall be described in the title thereof both by the surname acquired by her as a result of going through the ceremony of marriage the subject of the proceedings and by that possessed by her immediately prior to such ceremony, the latter surname being preceded by the expression "otherwise."

CITATION.

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

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

7. No deputy Prothonotary shall issue any citation in a suit for dissolution or nullity of marriage without an order of the Court or a Judge where the petitioner resides nearer to the office of the Prothonotary than to his office.

INDORSEMENT OF ADDRESS.

8. 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 3 miles from the office of the Prothonotary, and also, if his place of business shall be more than 3 miles from the office of the Prothonotary, another place to be his address for service, which shall not be more than 3 miles from the office of the Prothonotary, where writs, notices, pleadings, petitions, orders, summonses, and other documents, proceedings and written communications not requiring personal service may be left for him. 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 sues by solicitor.

9. 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 3 miles from the office of the Prothonotary, where writs, notices, pleadings, petitions, orders, summonses, and other documents, proceedings, and written communications not requiring personal service may be left for him. Where petitioner proceeds in person.

10. Any petitioner 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 every opposite party. Change of address.

SERVICE OF CITATION, ETC.

Personal service of citation.
Subst. G.G. 25.8.54 p. 5638; Am. G.G. 2.3.55 p. 845.

11. (1) 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 and a copy of any affidavit verifying the petition (such copy affidavit having thereon, where the petitioner proceeds by a solicitor, a certificate signed by such solicitor that the said copy affidavit is a true copy of the original) be served personally on the respondent and every co-respondent, by leaving a copy with such person and producing the original citation if required to do so.

(2) Unless the Court or a Judge otherwise orders where a petition presented by a wife charges adultery with a named person or persons, notice according to Form 10 in the Schedule together with a copy of any affidavit verifying such petition or counter-petition (such copy affidavit having thereon, where the wife proceeds by a solicitor, a certificate as in sub-rule (1) mentioned) shall at least ten days before the cause is set down for trial be served personally upon each such person with whom the husband is alleged to have committed adultery, and a copy of such notice, together with an affidavit of such service, shall be forthwith filed in the office of the Prothonotary.

(3) If the name of the alleged adulterer shall be unknown at the time of filing the petition or counter-petition, and afterwards become known to the petitioner or respondent, as the case may be, the notice and copy affidavit or affidavits as prescribed in sub-rule (2) shall be served upon her within 30 days of her name becoming known as aforesaid unless the Court or a Judge shall otherwise order and the suit shall not be heard until after the expiration of fourteen days from the date of such service.

(4) The time for service of any citation, petition, answer, notice or other process or document may be enlarged at any time and notwithstanding that the prescribed time has expired.

(5) Where service has taken place irregularly it may be set aside and re-service ordered, or the Court or a Judge may order upon such terms as it or he thinks fit that further service be dispensed with.

Petitioner not to effect service.

12. Personal service shall in no case be effected by the petitioner or counter-petitioner.

Service out of jurisdiction.
Am. G.G. 25.8.54 p. 5638; G.G. 2.3.55 p. 845.

13. (1) No citation shall be served out of the jurisdiction except by leave of the Court or a Judge, and such Court or Judge shall fix the time within which an appearance must be entered, and in addition to the documents required by Rule 11 (1) to be personally served there shall be served a copy of the order giving such leave. Such order shall be according to the Form No. 13 in the Schedule.

(2) Where an order is made giving leave to effect service outside the British dominions, no copy of the citation shall be served, but in lieu thereof there shall be served, without producing the original citation, a notice that such citation has been issued; and every order giving such leave shall so provide. Such order shall be according to the Form No. 14 in the Schedule.

Service of amended and supplemental petitions.
Subst. G.G. 25.8.54 p. 5638; Am. G.G. 2.3.55 p. 845.

14. (1) Except by leave of the Court or a Judge no petition shall be amended.

(2) Unless it is otherwise ordered by the Court or a Judge, where leave is given to amend a petition, a copy of the order giving leave, a copy of such amended petition sealed with the seal of the Court, and a copy of any supporting affidavit not already so served (such copy affidavit having thereon, where the petitioner proceeds by a solicitor, a certificate signed by such solicitor that the said copy affidavit is a true copy of the original) shall be served personally on the respondent and every co-respondent affected thereby, together, in the case of service upon any co-respondent not previously a party, with a copy of the citation citing him as such.

Undetermined petitions.
Ins. GG. 2.3.55 p. 845.

15. (1) While there is on the file of the Court any undetermined petition, no further petition shall, except by leave of the Court or a Judge, be filed by the same petitioner against the same respondent.

(2) An application for leave to issue a supplemental petition, any affidavit in support of such application, and any order made on such application shall be intituled and numbered as in the suit to which the proposed petition is to be supplemental, and shall be filed in the office of the Prothonotary, with the papers in that suit.

(3) If leave is granted to issue a supplemental petition, the supplemental petition shall receive a new file number, shall become the initial document on a new file in the office of the Prothonotary, and shall be endorsed—

"This petition is supplemental to the petition" (or "counter-petition" as the case may be) "No. of 19 ."

(4) If an application for leave to issue a supplemental petition is refused, the order refusing it shall be filed in the suit to which the proposed petition was to be supplemental.

Service on infants.
Subst. G.G. 25.8.54 p. 5638.

16. Personal service of an infant shall be sufficient unless the Court or a Judge otherwise orders.

Service on lunatics.
Am. G.G. 25.8.54 p. 5638; G.G. 2.3.55 p. 845.

17. (1) When the ground for any petition for dissolution of marriage or judicial separation is the lunacy or unsoundness of mind of the respondent the petitioner shall on the issue of the citation serve a copy of the petition sealed with the seal of the Court, a copy of the citation, and a copy of any affidavit verifying

the petition (such copy affidavit having thereon, where the petitioner proceeds by a solicitor, a certificate signed by such solicitor that the said copy affidavit is a true copy of the original)—

(*a*) where the respondent is resident in Victoria—on the Public Trustee; or

(*b*) where the respondent is resident outside Victoria—on such person as the Court or a Judge may order;

and no further service on the respondent shall be necessary.

(2) In all other cases service on the committee of a person of unsound mind or on the person with whom he or she resides or under whose care he or she is, shall, unless the Court or a Judge otherwise orders, be deemed good service on the person of unsound mind, provided that if such person be detained in Victoria in a mental hospital, hospital for the criminal insane, receiving house, receiving ward, private mental home or mental treatment institution within the meaning of the Mental Hygiene Acts a copy of the documents so served shall forthwith be delivered to the Public Trustee.

Citation to be filed after service.

18. After personal service of a 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. Save by leave of a Judge a citation may not be filed unless a certificate of service is indorsed thereon.

Substituted service.

19. 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. Every such application shall be made upon affidavit, and may be granted upon such terms and conditions as the Court or a Judge may think fit; or in the case of a co-respondent an order may be made dismissing him from the suit.

Taking of further proceedings.

20. Unless service has been dispensed with no further proceedings shall be taken save with the leave of the Court or a Judge until an appearance has been entered or an affidavit of service of the citation has been filed in the office of the Prothonotary.

Appearance.

Entry of appearance.

21. Appearance shall be entered within the time stated in the citation or in any order dispensing with personal service of the citation, provided that an appearance may, by consent in writing of the opposite party or such party's solicitor or pursuant to order of the Court or a Judge, be entered at any time before decree absolute subject nevertheless to compliance with such conditions as may appear in such consent or order.

22. (1) Entry of appearance shall be made by delivering to the Prothonotary a memorandum in writing in accordance with Form No. 3 of the Schedule hereto. Where such an appearance is entered by a solicitor the memorandum shall be signed by the solicitor personally. Form and notice of appearance.

(2) Notice of appearance in accordance with Form No. 4 of the Schedule shall on the day on which appearance is entered be given to the opposite party or his solicitor.

23. Every entry and notice of appearance shall, where the respondent or other party appears by a solicitor, state the place of business of such solicitor, which shall be his address for service, if such place of business be not more than 3 miles from the office of the Prothonotary, and also if his place of business shall be more than 3 miles from the office of the Prothonotary, another place to be his address for service, which shall not be more than 3 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 solicitor.

24. When a respondent or other party appears in person, his entry and notice of appearance shall state his address, and a place, to be his address for service, which shall not be more than 3 miles from the office of the Prothonotary. Address for service of party in person.

25. Any respondent or other party 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 every other party. Change of address.

26. If a party wishes to raise any question as to the jurisdiction of the Court, he or she shall enter an appearance under protest. Question of jurisdiction.

27. An appearance under protest shall state concisely the grounds for disputing the jurisdiction of the Court and the party so appearing under protest shall before the expiration of the time allowed for filing an answer apply to a Judge by summons for directions as to the determination of the questions arising by reason for such appearance under protest and, in default of making any such application, such appearance shall be deemed to be an unconditional appearance. Any such directions may provide for the trial upon affidavits or oral evidence of a preliminary issue, with or without a stay of proceedings, or for the determination of the matters in question at the hearing of the cause and for any interlocutory matters incidental thereto. Appearance under protest.

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

Objection to jurisdiction after unconditional appearance.

29. Notwithstanding that appearance is or has become unconditional, the Court or a Judge shall have power to give leave to a party to raise a question of jurisdiction at any stage of the proceedings. Such leave, if given, shall be on such terms as to costs as the Court or Judge may think fit.

Default of appearance.

30. On default of appearance the petitioner may set the cause down for trial.

CO-RESPONDENTS, ETC.

Applications for dispensing orders.

31. (1) Application to excuse a husband petitioner making the alleged adulterer a co-respondent shall, unless the Court or a Judge otherwise directs, be made by summons supported by affidavit.

(2) Except by leave of the Court or a Judge such application shall not be made at the trial.

Death of co-respondent.
Subst. G.G. 25.8.54 p. 5638.

32. (1) Where an alleged adulterer who has been made a co-respondent or cited as a party is dead or dies *pendente lite* application may be made to the Court or a Judge for leave to strike his name out of the title to the proceedings and to insert the words " since deceased " after his name in the body of the petition.

(2) Whenever by the order of the Court or a Judge a person named as a co-respondent or cited as a party ceases to be a party his name shall be struck out of the title to the proceedings.

Where name of alleged adulterer unknown.
Subst. G.G. 25.8.54 p. 5638.

33. If the name of any alleged adulterer should be unknown to the petitioner or respondent at the time of filing his petition or counter-petition and afterwards becomes known to him, application must be made forthwith to the Court or a Judge to amend the petition or counter-petition by inserting such name therein and for further directions, and the Court or the Judge shall give directions as to such amendment, and such further directions as it or he may think fit as to the service of the amended petition or counter-petition.

SUITS IN " FORMA PAUPERIS."

Paupers.

34. Any person may, on application to a Judge, be admitted to sue or defend as a pauper on proof that he has not property exceeding Two hundred and fifty pounds in value after payment of his just debts, his wearing apparel, household goods and furniture and tools and implements of trade only excepted.

Application of Order XVI. to divorce and matrimonial causes.

35. The provision 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.

36. The affidavit, in support of an application 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 and means of living of her husband.

Affidavit in application by wife.

37. 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* upon affidavit that she has not property exceeding Two hundred and fifty pounds in value after payment of her just debts her household goods and furniture and tools and implements of trade only excepted.

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

38. Where 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* upon affidavit as to his income and means of living, and proving that beside his wearing apparel he has not property exceeding Two hundred and fifty pounds in value after payment of his just debts his household goods and furniture and tools and implements of trade only excepted.

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

Persons of Unsound Mind.

39. A committee duly appointed of a person of unsound mind may file a petition, 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 and statutory provisions enabling entry of appearance as guardian *ad litem* of a respondent to a petition for dissolution of marriage or judicial separation on the ground of lunacy or unsoundness of mind be inapplicable, application shall be made on summons to the Court or a Judge, who shall 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; and shall give such directions as it or he thinks proper with regard to service of the summons. The affidavit in support of an application to assign a guardian shall contain adequate material relating to the mental condition of the party for whom a guardian is sought, and shall state that the proposed guardian is a suitable person to be so appointed and consents to being appointed.

Proceedings by committee or guardian.

Infants.

40. An infant above the age of sixteen years may elect any one or more of his next of kin as guardian, for the purpose of proceeding on his behalf as petitioner, respondent, or intervener in a cause, and shall file in the Prothonotary's office an instrument of election in accordance with Form No. 5 of the Schedule.

Infant may elect guardian.

41. Until the necessary instrument of election is filed no citation shall issue or appearance be entered on behalf of the infant.

Election to be filed.

When Judge to elect guardian.

42. Where an infant has not elected a guardian pursuant to Rule 39 or when an infant under the age of sixteen years becomes a party to a cause the Court or a Judge may, on application supported by affidavit, setting out the age of the infant and that the person proposed as guardian is suitable as such and consents to be appointed, appoint the said person or such other person as it or he may approve to be guardian. The Court or a Judge may at any time cancel an election or appointment of the guardian of an infant and in either such case appoint a new guardian.

Proceedings by infant.

43. An infant may commence, prosecute, defend, intervene or take any proceedings in a cause by his guardian, provided that it shall not be necessary for an infant, who is joined as a co-respondent, to have a guardian for the purpose of conducting his defence.

Guardian to infant respondent.

44. When the respondent, being the husband or wife of the petitioner, is an infant and has not entered an appearance within the time limited therefor, the petitioner shall, before proceeding further with the cause, apply to the Court or a Judge for an order that some proper person be assigned guardian of the infant for the purpose of the cause, and the Court or the Judge may make such order and give such directions as may be necessary.

Answer and Further Pleadings.

Form and filing of answer.
Subst. G.G. 25.8.54 p. 5638.

45. Within 21 days from the service of the citation the sealed copy of the petition and the copy affidavit or affidavits, or such further or other time as may be fixed by a Judge, the respondent, having entered an appearance, shall file his or her answer in the office of the Prothonotary according to Form No. 6 in the Schedule, otherwise the petitioner may set the cause down for trial.

Affidavit verifying answer.

46. There shall accompany every answer or subsequent pleading which contains matter other than a simple denial of the facts stated in the petition, an affidavit by the person filing the answer or subsequent pleading verifying such other matter so far as he has personal cognizance thereof and deposing to his belief in the truth of the rest of such other matter, provided that in no case shall any respondent be compelled to confess the commission of adultery.

Denial of collusion.

47. The respondent, if the husband or the wife, shall, if he or she can, in an affidavit accompanying 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.

Filing and delivery of answer.
Subst. G.G. 25.8.54 p. 5638; Am. G.G. 2.3.55 p. 845.

48. The respondent shall file in the office of the Prothonotary his or her answer together with any affidavit accompanying such answer, and on the same day deliver to the petitioner or his or her solicitor a copy of the answer and of any such affidavit (such copy affidavit having thereon, where the respondent defends by a solicitor, a certificate signed by such solicitor that the said copy affidavit is a true copy of the original).

Counter-petition.

49. (1) A respondent may include with his or her answer a petition for cross-relief. Such petition shall bear a heading "Counter-Petition", and shall be divided into paragraphs numbered separately from the paragraphs of the answer.

(2) No counter-petition seeking dissolution or nullity of marriage shall be filed unless there appear on its face in red letters the words, "In case of a decree *nisi* being granted neither the petitioner nor the respondent may legally re-marry until such decree *nisi* has been made absolute," or words to the like effect.

Affidavit verifying counter-petition.

50. A petition included by the respondent with his or her answer shall, as regards pleading and otherwise, be governed by the same rules as apply to petitions generally so far as they may be applicable, but, with respect to the affidavit or affidavits required to be filed with the petition, it shall be a sufficient reason for not verifying any of the acts and circumstances numbered (1), (2), (3), (4), and (5) in Rule 3 of these Rules that it has been truly and sufficiently verified by the affidavit or affidavits filed by the petitioner with his or her petition.

Party cited. Subst. G.G. 25.8.54 p. 5638; Am. G.G. 2.3.55 p. 845.

51. Where the answer of a husband includes a counter-petition on the ground of adultery, unless it is otherwise ordered, the name of the alleged adulterer shall be added to the title of the cause as "party cited", a citation to him according to Form 11 in the Schedule shall be issued and he shall within 21 days of the filing of the answer be served personally with a sealed copy of the answer, a copy of the citation and a copy of any affidavit accompanying the answer (such copy affidavit having thereon, where the respondent proceeds by a solicitor, a certificate signed by such solicitor that the said copy affidavit is a true copy of the original).

Reply.

52. Within eight days from the filing and serving of the answer, or if there is included therein a petition for cross relief within 21 days, the petitioner may file a reply thereto, and shall on the same day deliver to the respondent or his or her solicitor a copy thereof.

53. No pleading subsequent to reply may be pleaded without leave of the Court or a Judge and then on such terms as the Court or Judge shall think fit. Any pleading subsequent to reply shall be delivered within the time specified in the order giving leave to deliver the same, or if no time be so specified, within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge.

Cause at issue. Subst. G.G. 25.8.54 p. 5638.

54. At the expiration of eight days from the last day provided by the Rules for filing a reply or, if further pleadings are allowed, then at the expiration of eight days from the last day for filing the last of such pleadings the cause shall be at issue.

General Rules as to Pleading.

Amendment of pleadings.

55. Any party may, by leave of the Court or a Judge, and in such form and upon such terms as the Court or Judge may think fit, amend his or her petition, answer, or subsequent pleading.

Time for next proceeding after amendment.

56. Unless otherwise ordered, where a petition, answer or other pleading has been ordered to be 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 amended pleading and time for answer thereto.

57. Unless it is otherwise ordered, a copy of every pleading, showing the amendments made therein, shall be delivered to the opposite parties on the day such 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 pleading within four days, or such further time as may be allowed for the purpose.

Failure to file or deliver pleadings.

58. If either party in the cause fail to file or deliver a copy of the answer, reply, or other pleading, or to amend the same, or to deliver a copy of any amended pleading, within the time allowed for the purpose, the party to whom the copy of such answer, reply, or other pleading, 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 amended, unless by order of a Judge. The expense of obtaining such order shall fall on the party applying for it, unless the Judge shall otherwise direct.

Further particulars.

59. Applications for further particulars of matters pleaded shall be made by summons.

General Rules as to Service.

Personal service of pleadings, &c.

60. 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, unless in any particular case the Court or a Judge otherwise orders.

Personal service of decree.

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

Address for service.

62. (1) It shall be sufficient to leave all pleadings, notices, notices of appeal, 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 respective addresses furnished as aforesaid by or on behalf of the parties.

(2) 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, notices of appeal, proceedings, and documents in the Prothonotary's office.

Service of notice of motion.

63. When it is necessary to give notice of any motion to be made to the Court, such notice shall be served 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.

Order obtained without service.

64. If an order be obtained on motion without due notice to the opposite parties, such order may be rescinded on the application of the parties upon whom the notice should have been served; and the costs of and incidental to the rescinding of such order shall be borne by the party who obtained the order unless the Court or a Judge shall otherwise direct.

Mode of Trial.

Trial by Judge.

65. Except as otherwise provided by these rules all Matrimonial Causes shall be tried by a Judge without a Jury.

Petition charging adultery.

66. When a petition for dissolution of marriage is presented charging adultery any party may at any time before the cause is at issue give written notice to the Prothonotary and to all other parties that he or she requires the contested matters of fact in relation to any charge of adultery to be tried by a jury and upon payment of the proper jury fees by the party giving such notice the same shall be so tried.

Damages.

67. When a petition for dissolution of marriage or for judicial separation contains a claim by a husband for damages on the ground that some person has committed adultery with the petitioner's wife the petitioner shall set down for trial before a jury the assessment of such damages and shall pay the proper jury fees for such trial.

Trial by jury.

68. The petitioner or any party who has entered an appearance may within eight days from the time the cause is at issue apply to the Court or a Judge for an order under section 116 of the *Marriage Act* 1928 or any similar statutory provision for the time being in force directing that the truth of any question of fact arising in the proceedings 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.

Jurors.

69. Issues of fact for trial before a jury shall be tried before six or twelve jurors at any sittings of the Supreme Court.

Issue for trial.

70. When the only questions at issue are adultery or damages the questions shall unless the Court or a Judge shall otherwise order be stated as in Form No. 7 in the Schedule. In all other cases in which a cause is to be tried before a jury the terms in which the questions at issue are to be stated shall on the application of either party be settled by the Court or a Judge.

SETTING DOWN FOR TRIAL.

Questions of fact to be filed and cause set down.

71. In causes to be tried by a jury the petitioner shall, when the issues relate to adultery or damages only, within fifteen days of the cause being at issue, and in all other cases within eight days after the questions of fact have been settled, file the questions stated in the Prothonotary's office and at the same time set down the cause for trial and on the same day serve notice of his having done so and a copy of the said questions on each party for whom an appearance has been entered.

Where cause to be heard without jury.

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

Respondents may proceed where petitioner fails.

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

TRIAL.

Time and place of hearing.

74. All causes shall be tried at such times as the court or a Judge shall direct. Every cause shall, unless the Court or a Judge otherwise order, be tried in the place stated in the citation issued on behalf of the petitioner, and if no place is so stated, or ordered, in Melbourne.

Time for hearing not before twenty-one days.

75. No cause shall be called on for trial until after the expiration of 21 days from the day when the same has been set down for trial and notice thereof has been given, save with the consent of all parties to the suit or by order of the Court or a Judge. Causes may be set down during any vacation.

Decree to be entered.

76. 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.

Hearing respondents where no answer filed.

77. After appearance has been entered by or on behalf of any party, he or she may be heard in respect of any question as to costs of suit, and a respondent being the husband or wife of the petitioner may also be heard in respect to any question as to custody of or access to children, alimony, maintenance, or settlement of property, 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 shall be read or made use of as evidence in the cause.

78. 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 trial of any cause or 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. Procedure in general.

EVIDENCE TAKEN BY AFFIDAVIT.

79. Where any party intends on the trial of any cause or any issue to verify his or her case in whole or in part by affidavits, such affidavits shall be filed within eight days after the cause has been set down for trial. Time for filing.

80. Affidavits in answer to 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.

81. Copies of all such affidavits and affidavits in answer shall, on the day the same are filed, be served on each other party who has appeared and where the affidavits are filed by a party other than the petitioner on the petitioner. Copies to be delivered.

82. Affidavits in reply to affidavits in answer shall not be filed without leave of the Court or a Judge. Affidavits in reply.

APPLICATIONS.

83. A summons to attend before a Judge at Chambers or a Master 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. Practice on summons. Am. 16.7.56. G.G. 23.5.56 p. 2717.

84. The Masters are authorized and required to hear and determine all applications and may exercise any of the powers conferred on the Court or a Judge under any of the Rules specified hereunder that is to say:— Authority of Masters. Ins. 16.7.56. G.G. 23.5.56 p. 2717.

Rules 2, 7, 11 (2), and (4), 13, 14, 15, 16, 17, 18, 19, 20, 21, 31, 32, 33, 34, 37, 38, 39, 42, 44, 45, 55, 56, 57, 58, 60, 75, 82, 100, 116, 117, 118, 119, 120, 122, 123 (so far as it relates to the making of weekly or monthly payments), 137, 138, 140, 142, 143, 144.

85. If any matter appears to a Master proper for the decision of a Judge the Master may refer such matter to a Judge and the Judge may either dispose of the matter or refer it back to the Master with such directions as he may think fit. Reference by Master to Judge.

86. Any person affected by any order or decision of a Master may appeal therefrom to a Judge in Chambers. Such appeal shall be by notice in writing to attend before the Judge, without a fresh summons, within five days after the decision complained Appeal from Master to Judge.

of or such further time as may be allowed by a Judge or the Master. Unless otherwise ordered there shall be at least one clear day between service of the notice of appeal and the day of hearing. An appeal from the decision of a Master shall not operate as a stay of proceedings unless so ordered by a Judge or the Master.

When matters for Master may be brought before Judge.

87. No matter which is authorized by or under Rule 84 to be dealt with by a Master shall be brought before a Judge or the Court except—

(i) on a reference from the Master; or

(ii) on an appeal under Rule 86; or

(iii) by special leave of the Court or a Judge.

Master acting for another Master.

88. On the application of any party to a matter any Master may, and if the circumstances require it shall, hear and dispose of such matter on behalf of any other Master by whom the application would otherwise have been heard.

Applications to court.

89. 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 direct that it shall be heard in open Court.

Orders to be filed.
Subst. G.G. 25.8.54 p. 5638.

90. All orders upon *ex parte* applications or on summonses shall be filed in the office of the Prothonotary within fourteen days after the pronouncing thereof, and, unless the Court or a Judge otherwise orders, in default thereof shall be deemed to have lapsed.

New Trial and Re-hearing.

Motion for new trial.

91. 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, shall, unless the Judge otherwise directs, be made by motion within fourteen days from the day on which the issues were tried or the cause was heard.

Reversal of Petition for Judicial Separation.

Form of petition.

92. Petitions for the reversal of a decree of judicial separation must set out the grounds upon which the petitioner relies according to Form No. 8 of the Schedule.

Appearance.

93. 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.

Service of petition and filing of answer.

94. A copy of such petition, under seal of the Court, shall be served personally upon 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 serve a copy thereof upon the other party, or upon his or her solicitor.

95. All subsequent pleading 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.

INTERVENTION, ETC., BY THE ATTORNEY-GENERAL AND OTHERS.

96. Application for leave to intervene in any cause pursuant to section 118 of the *Marriage Act* 1928 or any statutory provision amending or replacing such section may be made at any stage of the proceedings, and shall be made to the Court by motion supported by affidavit, and leave may be given with such directions as to appearance and otherwise as the Court shall think fit. Application for leave to intervene.

97. When any person intervening in a cause enters an appearance, the title of the cause shall be amended by adding the name of such person as "Intervener." Interveners.

98. Every person intervening shall join in the proceedings at the stage in which he finds them unless it is otherwise ordered by the Court. Pleadings.

99. If in discharge of its or his duties under the Marriage Acts the Court or a Judge requests the assistance of the Attorney-General, the Attorney-General may apply *ex parte* to the Judge hearing the petition for directions as to what part the Attorney-General shall take in the further hearing of the petition, and upon such application the Court or Judge may direct what notices shall be given to the parties or any of them and may generally give such directions as may be just, necessary, or convenient with relation to the further hearing of the petition. At request of court.

100. The Court may make such order for the costs incurred by the Attorney-General, pursuant to such request as to it seems just, including an order that his costs be paid by any party to the petition. Costs.

101. When the Attorney-General intends to intervene to oppose the making of a decree *nisi* for dissolution of marriage he shall give to the petitioner written notice of such intention. By Attorney-General against decree *nisi*.

102. Application for leave to intervene by any person other than the Attorney-General to oppose the making of a decree *nisi* for dissolution of marriage on any ground involving adultery shall be made to the Court by motion supported by affidavit. By individual.

103. The Attorney-General shall within fourteen days after he has given notice of his intention to intervene, and any other person shall within fourteen days after he has obtained leave to intervene, enter an appearance and plead to the petition, which plea need not be verified by affidavit; and on the day after he files his plea in the Prothonotary's office he shall deliver a copy thereof to the petitioner or to his solicitor. Procedure upon intervention.

Subsequent pleadings.

104. All subsequent pleadings and proceedings in respect of such intervention of the Attorney-General or other person 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.

Showing Cause Against a Decree.

Form of application for leave. Am. 1.12.49 G.G. 21.12.49 p. 7106.

105. Applications for leave to show cause why a decree *nisi* for dissolution or nullity of marriage should be reversed shall be made to the Court or a Judge supported by affidavit.

Appearance and plea.

106. Within eight days after obtaining such leave the Attorney-General or other person desiring to show cause against a decree *nisi* for dissolution or nullity of marriage being made absolute shall enter an appearance in the cause in which such decree *nisi* has been pronounced and shall within eight days after appearance file in the Prothonotary's office his plea setting forth the grounds upon which he desires to show cause as aforesaid and on the day he files his plea he shall cause a copy thereof to be served on the party in whose favour the decree *nisi* has been pronounced.

Verification of plea.

107. The plea of the Attorney-General pursuant to the last preceding rule need not be verified by affidavit, but the plea of any other person pursuant to such rule shall be so verified.

Subsequent pleadings.

108. All subsequent pleadings and proceedings in respect of such intervention to show cause shall be filed and carried on in the manner prescribed by these Rules in respect of the pleadings and proceedings of the original parties to the suit.

Questions how tried.

109. The questions raised on such pleadings shall be heard and determined in the same manner as any other issue tried in the Court.

Decrees.

Draft to be lodged. Am. G.G. 4.10.50 p. 5270.

110. 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 Master within twenty-eight days of such pronouncement and an office copy of the decree as settled by the Master together with the original draft shall be lodged at the Prothonotary's office within fourteen days after such decree has been settled and such times shall be deemed to be the times prescribed by the statutory provisions for the time being in force relating to the lodging, settling, passing, and entering of such decree. In case of non-compliance with the foregoing provisions within the time prescribed the Master 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.

111. On every copy of a decree *nisi* for dissolution of marriage the Prothonotary shall indorse a notice that if the petitioner or respondent shall contract marriage before such decree has been made absolute he or she will be guilty of bigamy. Indorsement on decree *nisi*.

112. 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.

113. 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.

114. The provisions contained in Order LVIII. of the Rules of Procedure in Civil Proceedings shall, subject to any statutory provisions relating to appeals to the Full Court, apply to appeals from the decision of a single Judge so far as the same are applicable. Practice on appeals.

115. 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.

116. 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 petitioner.

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

118. Every such application shall be by summons returnable before a Judge in Chambers and upon the application either 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 their affidavits. Alimony *pendente lite* shall, unless otherwise ordered, commence from the date of the service of the petition instituting the suit. Procedure.

119. Upon a decree of judicial separation being affirmed on appeal, or after the expiration of the time for appealing against the decree if no appeal be then pending, a wife may apply for an allotment of permanent alimony, whether or not alimony shall have been allotted to her *pendente lite*. Such application shall be made by summons to a Judge in Chambers whether or not alimony has been reserved by the decree and such summons shall Permanent alimony.

be served on the husband or upon his solicitor on the record eight days at least before the date of hearing of such summons and shall be supported by affidavit. Upon any such application either party may require the production of documents, and the attendance upon the hearing thereof of the husband or wife or of any witnesses for the purpose of being examined or cross-examined.

Variation of order.

120. Application by wife or husband for an increase or decrease of alimony, whether alimony *pendente lite* or permanent alimony, may be made at any time; and the course of proceeding in such case shall be the same as required by these Rules in respect of the original application for alimony and the allotment thereof, so far as the same are applicable.

Commencement of permanent alimony.

121. 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.

122. Alimony *pendente lite* and permanent alimony shall be paid to the wife or to some person or persons nominated in writing by her and approved by the Court, as trustee or trustees on her behalf. Application for the discharge of a trustee or the appointment of a new trustee shall be made by summons supported by affidavit.

MAINTENANCE AND SETTLEMENTS.

Application how made.

123. Application (whether pursuant to leave reserved or otherwise) for securing a sum of money or making weekly or monthly payments after decree *nisi* for dissolution of marriage, for variation of marriage settlements after decree *nisi* for nullity or dissolution of marriage, or for the settlement of the property of a wife after a decree of judicial separation or decree *nisi* for dissolution of marriage on the ground of her adultery, shall be made by summons to a Judge in Chambers, and application for the variation or discharge of any order for security or for weekly or monthly payments shall be likewise made.

Service.

124. A 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, provided that service upon the solicitor on the record of the party to be served shall, on his undertaking in writing to appear on the hearing of the summons, be deemed sufficient service.

Costs.

125. 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.

Application and evidence.

126. (1) Applications for interim orders with respect to the custody, maintenance, and education of children may be made to a Judge by summons supported by affidavit.

(2) Where a petition contains a prayer for custody or maintenance of children or a decree *nisi* or final decree contains an order for, or an order thereafter has been made for, custody or maintenance of children, application with respect to custody or maintenance may (whether or not any such decree or order reserves liberty to apply with respect thereto) be made after decree *nisi*, final decree or such order to the Court or a Judge, by summons supported by affidavit, and upon such application such order as to custody, access or maintenance shall be pronounced as may be just.

(3) Unless otherwise directed, service of any such summons shall be personal, provided that service upon the solicitor on the record of the party to be served may on his undertaking in writing to appear on the hearing of the summons be deemed sufficient service.

(4) Upon such application any party may file affidavits and 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.

Service of originating proceedings.

127. A copy of a summons under Part VII. of the Marriage Act, or of a petition 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.

128. The husband or wife (as the case may be) and the other person or persons (if any) who are served with a petition under section 105 as aforesaid may, within fourteen days after service, file his, her, or their answer to the said petition together with an affidavit verifying such answer and shall on the same day deliver a copy thereof to the opposite party, or to his solicitor.

Appearance.

129. 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.

Subsequent pleadings.

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

Evidence and hearing.

131. After such pleadings have been completed, the petitioner shall apply by motion for an order thereon, and notice of the motion shall be given to the opposite party four days previously to the motion being heard, unless the Judge shall dispense with such notice.

NOTICES AND CONSENTS.

Notices to be in writing.

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

OFFICE COPIES, EXTRACTS, ETC.

How made.

133. Office copies and extracts of documents, the originals of which are retained in the office of the Prothonotary will, if required, be examined with the originals from which the same are copies. Every copy so required to be examined shall be certified under the hand of the Prothonotary or other officer to be an examined copy.

AMENDMENT.

General powers of.

134. It shall be lawful for the Court or a Judge sitting in Chambers or at the 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 the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs and upon such terms as to the Court or Judge may seem fit.

DAMAGES.

Sanction of compromise.

135. When an agreement for the compromise of a claim for damages has been arrived at, application may be made to the Court or a Judge to sanction the compromise, and for an order amending the petition, by striking out the claim for damages and the prayer to have such claim determined by a jury, discharging any jury which may have been summoned, and directing that the cause be heard by a Judge without a jury, and upon such application such order shall be made as to the Court or Judge appears fit.

Apportionment.

136. Application for the apportionment of damages, if made subsequently to the trial of a cause, shall be made to the Court or Judge by summons.

DISCONTINUANCE.

Leave to discontinue.

137. A petitioner may at any time prior to the hearing, or at the hearing, of a petition apply to the Court or a Judge upon motion or summons for leave to discontinue the petition, and the Court or Judge may grant such leave subject to such terms and conditions as may be thought fit. No order for discontinuance shall be effective unless such order and a notice of discontinuance is filed within fourteen days of the making of such order or within such time as may be prescribed.

WANT OF PROSECUTION.

138. Application to dismiss a petition for want of prosecution may be made by motion to the Court or upon summons to a Judge in Chambers, and on the hearing of such application the Court or Judge may order the petition to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just. Application to dismiss for want of prosecution.

MEDICAL INSPECTION.

139. (1) In proceedings for nullity of marriage on the ground of impotence or incapacity of the petitioner or the respondent no medical inspection of the petitioner or of the respondent shall be necessary unless the Court or a Judge shall otherwise order. Application and subsequent proceedings. Subst. G.G. 25.8.54 p. 5638.

(2) In any case where it shall appear desirable to do so the Court or a Judge may at any stage of the proceedings upon the application of the opposite party or without any such application make an order for the appointment of a medical inspector or medical inspectors to examine the parties or either of them and may order that one or two duly qualified medical practitioners, to be nominated as the Court or a Judge may direct, be appointed as inspector or inspectors to examine the parties or either of them and report to the Court the result of the examination and may order the attendance of the inspectors and the parties or either of them before the Prothonotary or other officer so that the former may be sworn and the latter identified to the former as the parties or party in the cause. Such report shall, as far as practicable, be in the Form No. 12 in the Schedule.

(3) A copy of the order endorsed with notice of the time and place of attendance of the inspectors and the parties or either of them before the Prothonotary or other officer as determined by him shall, unless it is otherwise directed, be served upon each party to be examined pursuant to such order. Such service shall be made personally or at the address for service (if any) of such party.

(4) The report or reports of the inspector or inspectors shall be delivered to the Prothonotary and each party may make copies thereof.

CHANGE OF SOLICITOR.

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

141. No order for change of solicitor shall be necessary if the former solicitor consents to the change and such consent is filed. Consent for change.

142. 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, by leave of a Judge, proceed in the cause by the new solicitor without previous payment of such costs. Costs of former solicitor.

Costs.

Preliminary costs in nullity suits.

143. (1) In any proceeding for nullity of marriage when a female, if a petitioner, has duly filed her petition or, if a respondent, has duly entered an appearance, a Judge in Chambers if he considers she has not sufficient separate estate may order—

(*a*) that the other party to the proceedings shall pay into Court a sum of money sufficient to enable her to have the merits of her case investigated by a solicitor and that such sum or part thereof shall on the taxing officer being satisfied that such sum or part has been properly incurred or spent in ascertaining whether she has a good cause of suit or defence on the merits and giving his certificate accordingly be paid to her or her solicitor; and

(*b*) that if after investigating the case her solicitor is of opinion that she has a good cause of suit or defence on the merits and files a certificate to that effect in the office of the Prothonotary the other party to the proceedings shall thereupon pay into Court a sum of Twenty pounds.

(2) An order in respect of the matters referred to in clauses (*a*) and (*b*) of paragraph (1) hereof, or an order in respect of the matters referred to in clause (*b*) alone, may be made.

(3) No order shall be made for the taxation and payment of costs *de die in diem*, or for the payment before hearing or trial of any costs of or incidental to the hearing of the cause or for the giving of security for such costs.

Application for preliminary costs.

144. An application in a suit for judicial separation or for dissolution or nullity of marriage for costs of investigation or payment of £20 costs into Court shall be made by summons supported by affidavit.

Appointment to tax.

145. In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, such costs shall unless otherwise ordered include all costs reserved for the trial Judge and the solicitor of the party to whom the 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 rehearing shall have expired, or, in case a motion for a new trial or rehearing shall have been made, until it is disposed of, unless the Court or a Judge, for cause shown, direct a more speedy taxation.

Taxation.

146. Where costs are to be taxed all bills of costs shall be referred to the taxing officer of the Court for taxation, and may be taxed by him without any special order for that purpose.

Order for payment, how obtained.

147. 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.

148. 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. Order for payment before decree absolute.

CUSTODY OF DOCUMENTS.

149. 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 Court in its Divorce and Matrimonial Causes Jurisdiction, and all orders and fees payable in respect of searches or 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 Court in its Divorce and Matrimonial Causes Jurisdiction. General provision.

150. 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 Court. Officers.

SPECIAL PROVISIONS RELATING TO PROCEEDINGS UNDER THE MATRIMONIAL CAUSES ACT 1945 OF THE COMMONWEALTH.

151. A claim for relief under the Act may be made alternatively with a claim for relief under the law of the State of Victoria. Alternative relief.

152. All applications under the Act for decrees of nullity of marriage, dissolution of marriage, judicial separation, declaration as to jactitation of marriage, or restitution of conjugal rights shall be made by petition in accordance with Form No. 9 of the Schedule where applicable, or where not applicable, forms of the like character, with such variations as the circumstances may require, shall be used. Petition.

153. The provisions of Rule 3 hereof shall apply in respect of every petition under the last preceding Rule and in addition the following acts and circumstances shall be verified:— Verifying affidavit.

Domicile of petitioner and respondent immediately before marriage and residence of each party since marriage.

154. Cross-relief claimed by a respondent in his or her answer may include a petition for nullity of marriage, dissolution of marriage, judicial separation, declaration as to jactitation of marriage, or restitution of conjugal rights. The provisions of Rule 50 shall apply to such a petition and the affidavit required to be filed therewith. Counter-petition and verifying affidavit.

Stay of proceedings.

155. Where any proceedings instituted under the Commonwealth Act are pending in Court any party interested may apply by summons to a Judge who may make such order continuing or staying the proceedings on such terms as he may think just.

Indorsement of petition and counter-petition.

156. Every petition or answer wherein any relief is asked against the petitioner shall bear an indorsement stating in accordance with the law of what State relief is sought.

Restitution of conjugal rights.

Ins. G.G. 25.8.54 p. 5638.

157. When the petitioner seeks a decree of restitution of conjugal rights in accordance with the law of the State of New South Wales the practice and procedure of the Supreme Court of New South Wales in respect of petitions seeking such relief shall be followed, except in so far as a Judge may otherwise order.

SETTLING AND PASSING DECREES AND ORDERS.

Procedure.

158. 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.

Practice where none provided.

159. 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.

INTERPRETATION.

Meaning of words.

Am. 16.7.56. G.G. 23.5.56 p. 2717.

160. 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:—

(i) "Co-respondent" shall include a party cited under Rule 51;

(ii) "Petition" shall include counter-petition; and "Petitioner" shall include counter-petitioner;

(iii) "Prothonotary" shall include Deputy-Prothonotary;

(iv) "Respondent" shall include all co-respondents so far as the same is applicable to them;

(v) "Answer" shall include answer to counter-petition; and

(vi) "Master" means one of the Masters of the Supreme Court and includes an acting Master appointed by the Governor in Council.

Practice in matters not provided for.

161. 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.

SCHEDULE

FORMS.

FORM 1.

Rule 5.

CITATION.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

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

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

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.

Place of trial:

(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, *or as the case may be*] 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.

Rule 5.

PRAECIPE FOR CITATION.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

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

Citation for *A.B.*, of against *C.B.*, of for a [judicial separation for cause of adultery *or as the case may be*].

(*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.*]

Rule 22.

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* 23 *or* 24.]

Entered this day of , 19 .

(*Signed*) *G.H., of ; solicitor for the respondent of ; or C.B., respondent in person of*

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

Rule 22.

FORM 4.

NOTICE 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.

Take notice that an appearance [*or* 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].

[*Here insert the address required by Rule* 23 *or* 24.]

The day of 19 .

(*Signed*) *C.B., (or G.H., Solicitor for C.B.)*

Rule 40.

FORM 5.

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.B.*, my natural and lawful father and next of kin, to be my guardian 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 solicitor, 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, sealed and delivered by the within-named *A.B.*, in the presence of } (*Signed*) *A.B.*, (L.S.)
[*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.

FORM 6. Rule 45.

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.

FORM 7. Rule 70.

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 *R.S.*, the co-respondent, committed adultery with *C.B.*, the respondent.
3. What amount of damages should be paid by *R.S.*, the co-respondent, in respect of the adultery (if any) by him committed.

FORM 8. Rule 92.

PETITION FOR REVERSAL OF DECREE.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

To the Supreme Court of Victoria.

The day of 19 .

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

[*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.

Rule 152.

FORM 9.

PETITION.

(Under Part II. of the Matrimonial Causes Act 1945.)

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

The day of 19 . The petition of *A.B.*, of showeth—

1. Your petitioner was on the day of lawfully married to *C.B.* (if respondent is the wife, state her name prior to marriage) at (here state where the marriage took place, including the State or Territory).

2. (If the petitioner is the wife). Your petitioner was immediately before marriage domiciled in (here set out the State or Territory). The respondent is domiciled in (here state the present domicil of the respondent).

(If the petitioner is the husband). Your petitioner is domiciled in (here state present domicil). The respondent was immediately before marriage domiciled in (here set out State or Territory).

3. Your petitioner is resident in the State of Victoria.

4. Your petitioner and the respondent have not since the marriage resided together in any country outside Australia in which the respondent (if the respondent is the husband or "the petitioner" if the petitioner is the husband) was then domiciled.

5. The last (or only) matrimonial home of your petitioner and the respondent was in the State (or Territory) of (here set out State or Territory);

Or,

"The last (or only) matrimonial home of your petitioner and the respondent was not in any State or Territory of the Commonwealth."

Or,

"Your petitioner and the respondent have not at any time had a matrimonial home."

(As the case may be.)

7. On the day of 19 , and on other days between that day and the day of 19 , the said *C.B.* committed adultery with of (or state other facts or conduct for which relief is sought.)

Your petitioner therefore prays that Your Honours will be pleased to decree (here set out the relief sought) consonant with the law of (here set out State or Territory the law of which is sought to be applied) and that your petitioner may have such further or other relief in the premises as to Your Honours may seem meet.

Petitioner's Signature.

PETITION.

(Under Part III. of the Matrimonial Causes Act 1945.)

1. Your petitioner was on the day of lawfully married to *C.B.*, (if the respondent is the wife state her name prior to marriage) at (here state where the marriage took place.)

2. Your petitioner is domiciled in (here set out the State or Territory.)

3. Your petitioner is resident in the State of Victoria and has been so resident for not less than one year immediately preceding the date of this petition.

4. On the day of 19 , and on the other days between that day and the day of 19 , the said *C.B.* committed adultery with

(Or state other facts or conduct for which relief is sought).

Your petitioner therefore prays that Your Honours will be pleased to decree (here set out the relief sought) consonant with the law of (here set out the State or Territory the law of which is sought to be applied) and that your petitioner may have such further or other relief in the premises as to Your Honours may seem meet.

Signature of Petitioner.

FORM 10.

NOTICE TO WOMAN NAMED IN PETITION OR COUNTER PETITION.

Rule 11 (2). Ins. G.G. 25.8.54 p. 5638.

In the Supreme Court of Victoria.

19 No.

DIVORCE AND MATRIMONIAL CAUSES JURISDICTION.

Petitioner

against

Respondent

To (name of woman) at

Take notice that of in the State of Victoria married woman has filed her Petition in the Supreme Court of Victoria for a dissolution of her marriage with of in the State of Victoria the Respondent, claiming that since the celebration of the said marriage the said Respondent has been guilty of Adultery with you (name of woman), (or take notice that the Petitioner of has filed his Petition in the Supreme Court of Victoria for a dissolution of his marriage with of married woman the Respondent and the Respondent has by her Counter Petition claimed that the Petitioner has been guilty of Adultery with you (name of woman)) and the said Petition (or Counter Petition) may after the expiration of ten days from the date of service of this Notice on you be set down for trial: And further take notice that you are entitled to apply to the Court or a Judge thereof for leave to intervene in this Cause upon such terms (if any) as the Court or Judge thinks fit and thereafter to make answer to the charges in the Petition (or Counter Petition) and in default of your obtaining such leave to intervene and making such answer the Court will proceed to hear the evidence concerning such charges and will pronounce judgment notwithstanding your absence.

Dated this day of 19 .

The Petition (or Counter Petition) was filed and this Notice is issued by of Solicitors for the above-named Petitioner (or Respondent).

I certify that I have this day accepted service of a copy of the within Notice and admit that I am the person named therein.

Dated this day of 19 .

FORM 11.

(CITATION TO PARTY CITED.)

Rule 51. Ins. G.G. 25.8.54 p. 5638.

In the Supreme Court of Victoria.

19 No.

DIVORCE AND MATRIMONIAL CAUSES JURISDICTION.

Petitioner

against

Respondent

and

Party Cited

Elizabeth the Second by the Grace of God, of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

To: (Party Cited) of

Whereas the above-named Petitioner claiming to have been lawfully married to the above-named Respondent has filed a petition in this Court praying that her said marriage may be dissolved on the ground that (Set out grounds)

And whereas the said Respondent has filed his answer to the said petition wherein he alleges that you have been guilty of adultery with the said Petitioner and prays for a dissolution of the said marriage: Now this is 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 in 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.

Place of Trial:

Dated this day of 19 .

Prothonotary.

FORM 12.

Rule 189 (2). Ins. G.G. 25.8.54 p. 5638.

In the Supreme Court of Victoria. 19 No.

DIVORCE AND MATRIMONIAL CAUSES JURISDICTION.

REPORT OF MEDICAL INSPECTOR.

Petitioner

against

Respondent

I, A.B. of a duly qualified medical practitioner appointed pursuant to the Order of His Honour Mr. Justice made herein and dated the day of 19 as the medical inspector or one of the medical inspectors to examine and inspect X.Y. the petitioner in this cause (and M.N. the respondent in this cause) and to report, in writing, whether she (or he) is capable of performing the act of generation and if incapable of so doing whether such impotency can or cannot be relieved or removed by art or skill and whether she (or he) has or has not any impediment on her (or his) part to prevent the consummation of marriage: Do hereby report to the Prothonotary of the Supreme Court of Victoria that I have faithfully and to the best of my skill and ability inspected and examined the said X.Y. the petitioner in this cause (and M.N. the respondent in this cause) and report on such inspection and examination:—

(That the said X.Y. (and M.N.) is (or are) quite capable of performing the act of generation and hath (or have) not any impediment on her (or his (or their) part to prevent the consummation of marriage or as the case may be).

(I do further report that I have not inspected or examined M.N. the respondent in this cause as the said respondent did not submit herself (or himself) for my inspection and examination).

The matters upon which I have relied in making this report are as follows:—

(Here set out the substance of the matters relied on, including mental state and physical condition of each party examined, statements made to the Inspector, results of tests carried out and other relevant matters).

Given under my hand this day of 19 } A.B.

FORM 13.

Rule 18 (1). Ins. G.G. 2.3.55 p. 845.

ORDER FOR LEAVE TO SERVE CITATION OUT OF THE JURISDICTION BUT WITHIN THE BRITISH DOMINIONS.

In the Supreme Court of Victoria. 19 No.

Petitioner

against

Respondent

Upon hearing and

Upon reading

It is ordered that the petitioner have leave to serve the citation herein on the respondent (or as the case may be) out of the State of Victoria and in by leaving within two months of the filing of the petition (*or*, on or before the , 19 , *if an order has been or is made extending the time for service*) with the respondent (*or as the case may be*) a copy of such petition sealed with the seal of the Court, a copy of the citation, a copy of the affidavit verifying the petition (such copy affidavit having thereon the certificate required by the Rules of Court), and a copy of this order, and, if the person to be served so requires, producing to such person the original citation.

And it is further ordered that the respondent (*or as the case may be*) shall have from the date of such service days to enter an appearance herein and from the date of such service days to file an answer to the said petition (inclusive in each case of the day of such service).

(*Here insert any order as to costs*).

Dated the day of 19 .

FORM 14.

ORDER FOR LEAVE TO SERVE CITATION OUTSIDE THE BRITISH DOMINIONS.

Rule 13 (2). Ins. G.G. 2.3.55 p. 845.

In the Supreme Court of Victoria.

19 No.

Petitioner

against

Respondent

Upon hearing and upon reading

It is ordered that the petitioner may, on or before the day of , 19 , serve the respondent (*or as the case may be*) in , with a notice that a citation has been issued in this suit, together with a copy of the petition sealed with the seal of the Court, a copy of the affidavit verifying such petition (such copy affidavit having the certificate required by the Rules of Court), and a copy of this order.

And it is further ordered that the respondent (*or as the case may be*) shall have from the date of such service days to enter an appearance herein and from the date of such service days to file an answer to the said petition (inclusive in each case of the day of such service).

(*Here insert any order as to costs*).

Dated the day of 19 .

G.G. 27.10.38, p. 3580 ff.
Am. 1.3.49 G.G. 9.3.49 p. 1645.

CHAPTER III.

PROBATE AND ADMINISTRATION RULES.

PART I.

Repeal.

On and after the first day of January, 1957, 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 January, 1957, the Rules hereinafter set out shall come into force and shall apply to all matters commenced on or after that date.

Am. G.G. 23.11.38 p. 3823.

Application of Rules.

1. (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.

"Master." Ins. 16.7.56. G.G. 23.5.56 p. 2717.

(2) In this Chapter "Master" means one of the Masters of the Supreme Court and includes an acting Master appointed by the Governor in Council.

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 solicitor 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.

Am. G.G. 26.4.39 p. 1382.

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 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;

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.

Affidavit in support of applications for administration with will annexed.

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.

Examined copy to be lodged.

Subst. G.G. 24.11.54 p. 7538.

6. (1) Every applicant for probate of a will or administration with the will annexed shall, on lodging in the office of the Master the parchment copy of the grant, lodge for annexing thereto a copy of the original will and codicils (if any) as admitted to probate or annexed to the letters of administration and also, for record purposes, two copies of such wills and codicils (if any). Provided however that this rule shall not apply to applications under Part II. of the *Administration and Probate Act* 1928.

(2) The copies by this Rule required to be lodged and all certified and office copies of grants and of documents on the file and all exemplifications shall unless otherwise directed by the Master be photographic copies made in the office of the Master.

Where testator a marksman.

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.

When will inoperative.

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.

Application for administration by person not as creditor.

9. Every application for administration by a person applying not as a creditor 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 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 in 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.

Applicant's right to be established.

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.

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 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 left 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;

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. (1) The provision 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.

(2) 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; or

(*f*) When the Public Trustee is the applicant, a clerk employed in the office of the Public Trustee.

Am. G.G. 14.2.40 p. 702.

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

Further affidavits.

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.

Grants of administration to guardians.

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.

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.

Application under peculiar circumstances.

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.

Applications now to be dealt with.

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.

Grants in vacation.

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

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

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.

Substituted representatives.

Am. G.G. 4.10.50 p. 5270.

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. 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 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'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.
Am. G.G. 4.10.50 p. 5270.

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, 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.

Inventory to be made.
Am. 1.3.49. G.G. 9.3.49 p. 1645.

28. All executors and administrators shall respectively make or cause to be made in the Form No. 5 in the First Schedule hereto 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 (folded in four and indorsed) in the said office of the Master 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.

Am. G.G. 4.10.50 p. 5270.

ORDERS *Nisi.*

Caveats.

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.

Return of order *nisi*.

30. On the return of any order *nisi* under section 53 of the *Administration and Probate 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.

Particulars of objection.

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 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. Am. G.G. 4.10.50 p. 5270.

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 subpœna their witnesses for the hearing in the same manner as in an action, and such subpœna shall be issued by the Master.

Affidavits to be filed and notice served. Ib.

34. Either party shall, four clear days before the day appointed for hearing, file in the office of the Master 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.
Ins. 1.3.49
G.G. 9.3.49
p. 1589.
Am.
G.G. 21.12.49
p. 7106.

37. (1) The charges which may be paid and allowed out of the estate of any deceased person for professional services rendered by any barrister and solicitor shall where no contention has arisen be as follows:—

Where the Property Left does not Exceed.	For the Obtaining of a Grant of Probate of a Will or the Resealing in Victoria of a Probate Granted in another State or Country.	For the Obtaining of Letters of Administration or the Resealing in Victoria of Letters of Administration Granted in another State or Country.
£	£ s. d.	£ s. d.
800	8 0 0	11 0 0
900	9 0 0	12 0 0
1,000	10 0 0	13 0 0
1,100	11 0 0	15 0 0
1,200	12 0 0	16 0 0
1,300	13 0 0	17 0 0
1,400	14 0 0	18 0 0
1,500	15 0 0	19 0 0
1,600	15 10 0	19 10 0
1,700	16 0 0	20 0 0
1,800	16 10 0	20 10 0
1,900	17 0 0	21 0 0
2,000	17 10 0	21 10 0
2,500	20 0 0	24 0 0
3,000	22 10 0	26 10 0
3,500	23 15 0	27 15 0
4,000	25 0 0	29 0 0
4,500	26 5 0	30 5 0
5,000	27 10 0	31 10 0
6,000	28 15 0	32 15 0
7,000	30 0 0	34 0 0
8,000	31 5 0	35 5 0
9,000	32 10 0	36 10 0
10,000	33 15 0	37 15 0
20,000	38 15 0	42 15 0
30,000	43 15 0	47 15 0
40,000	48 15 0	52 15 0
Where the property left exceeds 40,000	52 10 0	56 10 0

(2) If the probate or letters of administration are obtained by a barrister and solicitor who has no office within fifteen miles of the office of The Registrar of Probates and who employs a barrister and solicitor as his agent to obtain such probate or letters of administration the following additional charge may be made:—

	£	s.	d.
Where the property left does not exceed £800	1	1	0
Where the property left exceeds £800 ..	2	2	0

(3) The aforesaid charges do not include the cost of necessary advertising or fees necessarily paid or the cost of preparing and passing the statement for duty or the payment of duty nor do they include the cost of engrossing or copying any will to an extent beyond five folios.

Extra costs.
Ins. 1.3.49. G.G. 9.3.49.

38. (1) Notwithstanding the provisions of the last preceding Rule in any case where in respect of special or unusual work in obtaining probate or letters of administration the barrister and solicitor claims extra costs beyond the limits authorized by the said Rule the bill of costs shall be taxed and settled by a taxing officer of the Court.

(2) In taxing and settling such bill of costs the said taxing officer shall allow the sum provided in the said Rule for the work done other than the special or unusual work and shall tax and settle such extra costs pursuant to the provisions of this Rule.

Current Rules to apply.

39. (1) Subject to the provisions of the last preceding Rule the Rules of the Court for the time being in force relating to the taxation of bills of costs shall so far as practicable apply to bills of costs taxed and settled by a taxing officer as aforesaid.

(2) Subject to Rules 37 and 38 in all applications for the grant of probate or letters of administration the costs shall be taxed according to the Rules of the Court for the time being in force in civil proceedings so far as applicable and to the scales of costs prescribed thereby.

Application of Civil Rules.

40. 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.

Application of English Rules.

41. 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.

PART II.

Ins. 1.3.49. G.G. 9.3.49, p. 1645

GENERAL PROCEDURE IN APPLICATIONS FOR ALLOWANCE OF COMMISSION UNDER SECTION 59 OF THE ADMINISTRATION AND PROBATE ACT 1928 (SUMMARY PROCEDURE).

PRELIMINARY.

1. In this Part:—

Definition.
Am. 16.7.56. G.G. 23.5.56 p. 2717.

"The Act" means the *Administration and Probate Act* 1928 and any amendments thereof in force from time to time.

"The Court" means the Supreme Court or any Judge thereof sitting in Chambers.

"The Judge" means the Judge referred to in Rule 4 of this Part.

2. The Rules under this Part shall not apply to proceedings under Sections 18 and 115 of the *Supreme Court Act* 1928.

Rules not to apply on the passing or taking of accounts.

GENERAL.

3. Every petition and summons, and all notices and other proceedings in any application to which this Part relates shall be dated and the same and all affidavits shall be headed "In the Supreme Court, Probate Jurisdiction and intituled "In the matter of section 59 of the *Administration and Probate Act* 1928" and "In the matter of the trusts of the Will of" or "In the matter of the Estate of" (the testator or intestate described by name, late address and occupation or addition) and shall be folded in four and indorsed.

Title, &c., of proceedings.

APPLICATIONS.

4. Every application for the allowance of commission under this Part shall be made by petition lodged in the office of the Master. Upon the lodgment of the petition the Master shall endorse thereon the name of the Judge for the time being sitting in the Practice Court and thereupon the Petition shall be deemed to have been presented to that Judge and by him referred to the Master for consideration and shall proceed accordingly. For the purposes of such consideration the office of the Master shall be deemed to be Judges' Chambers.

Petition to be lodged in the office of the Master.

5. Before lodging the petition the applicant shall deposit in the office of the Master and, in the Form No. 5 in the First Schedule hereto or to the like effect, the account referred to in Rule 28 of Part I. of these Rules.

Administration account in the estate to be deposited.

6. The petition shall be in the Form No. 6 in the First Schedule hereto and contain the note thereto and shall state whether any previous application for the allowance of commission has been made to the Court relating to the same estate or trust and shall be verified by an affidavit of the applicant and his co-executors or co-trustees, if any, referring thereto, in the Form No. 7 in the First Schedule hereto with such variations as circumstances may require.

Form of Petition.

7. Upon the lodgment of the petition, or at some convenient time thereafter, the Master shall, by indorsement thereon, appoint a date for the consideration of the application, such date, where notice of the appointment has to be served upon any person, being not less than twenty-one days from the date of such lodgment, and shall give such directions as he may think fit in connexion with the consideration of the application and, in particular, regarding all or any of the following matters:—

Master to appoint date for consideration and give directions.

(*a*) Where the consent, in or to the effect of Form No. 8 in the First Schedule hereto, of all persons beneficially interested in the estate or trust and of the sureties to the bond (if any) to the acceptance as prima facie

true and correct of the account relating to the estate or trust is not lodged, the verification of that account, or the vouching of any item therein.

(*b*) The furnishing of particulars of the pains and trouble of the applicant in the administration of the estate or trust.

(*c*) The service of a copy of the petition, or of any application pursuant to liberty reserved as provided for in Rule 18 of this Part, and of the notice of appointment indorsed thereon upon the persons beneficially interested in the estate or trust (or, where any of such persons is an infant or unascertained or resident out of the jurisdiction, upon some person on his behalf to be nominated by the Master) and upon the sureties to the bond (if any).

(*d*) The furnishing by the applicant of a scheme of distribution of the moneys and assets of the estate or trust still remaining therein.

(*e*) The bringing up to date by a further account of the figures and particulars set out in the account referred to in Rule 5 of this Part and the verification of such further account or the vouching of any item therein.

(*f*) The service of notice of appointment for consideration of the application upon any person who has lodged a notice of objection pursuant to Rule 15 of this Part.

Applicant to file affidavit of service, &c.

8. The applicant shall, on the date fixed for consideration of the application, file in the office of the Master and in the Form No. 12 in the First Schedule hereto or to like effect an affidavit of service of a copy of the petition and of the notice of appointment indorsed thereon and of search for any notice appearance or statement of objections filed in the application.

Statements on oath to be prima facie evidence.

9. Upon consideration of the application the Master shall be at liberty to accept the statement on oath of the applicant and his co-executors or co-trustees, if any, of the assets of the estate of the deceased which have come to his or their hands and of the disbursements thereof as prima facie evidence in respect of such receipts and disbursements as to all entries contained therein.

Master to determine and allow commission.

10. Upon consideration of the application the Master shall determine, and may allow to the applicant out of the assets of the deceased person for his pains, and trouble, such commission or percentage not exceeding Five pounds per centum as is just and reasonable.

Appearance and statement of objections to be filed and notice given by persons desirous of appearing or objecting.

11. No person other than the applicant shall be entitled to attend before the Master on consideration of the application unless, not less than four clear days before the day fixed for consideration of the application, he shall have filed in the office of the Master an appearance in the Form No. 9 in the First Schedule hereto

and forthwith, after such entry, given notice thereof to the applicant and, if desirous of objecting to the account filed or to the granting of commission, shall have filed in that office a statement of objections verified by affidavit (in or to the effect of Form No. 10 in the First Schedule hereto) and served a copy of such objections and affidavit upon the applicant.

Master may adjourn proceedings or refuse to proceed.

12. The Master may at any stage adjourn the proceedings pending the course of further administration or to permit the filing of an appearance or objections by or on behalf of any person interested in the estate of the deceased person, or may refuse to proceed with the consideration of the application, but such refusal shall be without prejudice to the right of the applicant to obtain commission in the proceedings referred to in Rule 2 of this Part.

Certificate of Master.

13. The result of the consideration by the Master of the application shall be stated in a certificate, to be indorsed upon the petition, in the form or to the effect set out in the Form No. 13 in the First Schedule hereto, with such variations as the circumstances may require and when the Judge shall approve of such certificate he shall sign the same in testimony of his adopting the same.

Certain Rules of Procedure in Civil Proceedings to apply.

14. The provisions of the Rules of Procedure in Civil Proceedings so far as they relate to proceedings before the Master shall apply to proceedings under this Part save that the certificate of the Master and all documents shall be filed in the office of the Master.

Notice requiring notification of application for commission may be lodged.

15. Any person being a beneficiary or claiming an interest in the estate of any deceased person, or purporting to act on behalf of a beneficiary or claimant therein who is an infant or resident out of the jurisdiction, may at any time file a notice (in the Form No. 11 in the First Schedule hereto, which shall be entered in a book to be kept for the purpose in the Office of the Master, and shall serve a copy thereof within seven days from the date of such filing upon the executor administrator or trustee of such estate or upon his solicitor. Such person shall thereupon, and until the filing by him of a withdrawal of such notice, be entitled to be served by the applicant with, and the applicant shall serve upon such person notice of every application under this Part relating to such estate and such person shall on compliance with Rule 11 of this Part be entitled to file objections and to attend before the Master on the consideration of such application.

Costs of frivolous or vexatious objections.

16. If the Court is of the opinion that any costs occasioned to the applicant by the filing of frivolous or vexatious objections by any person or by the attendance of the person objecting upon any proceedings, should not be borne by the estate or the trust fund, the Judge may direct that such costs, to be taxed, or a sum in lieu thereof, shall be paid by such person to the estate or the trust and, if not so paid, be retained by the applicant out of the share (if any) of such person in the estate or trust fund.

Costs of applicant.

17. The costs of the applicant and of any other person represented or appearing therein, of and incidental to the proceedings before the Master, may be allowed by the Master out of the estate or trust fund and shall be fixed by the Master and embodied in his certificate.

Liberty to apply further.

18. Whenever an allowance of commission is made to an applicant under this Part there shall be deemed to be reserved to the applicant, or his legal personal representative, or the executor, administrator or trustee for the time being of the estate being administered, liberty to apply from time to time, on notice given, for commission in respect of his pains and trouble in the administration of the estate subsequent to the period in respect to which such allowance has been made. Such notice shall be in the Form No. 14 in the First Schedule hereto and shall be verified by an affidavit of the applicant and his co-executors or co-trustees, if any, in the Form No. 15 in the said Schedule, and such notice and affidavit shall be filed in the office of the Master, and in all proceedings following upon such notice the Rules of this Part shall, so far as applicable, apply as if those proceedings were by way of, or in connexion with, a petition lodged under this Part.

Service of notices, &c.

19. All notices and other documents required under this Part to be served upon any person may, unless otherwise directed by the Master, be sent by registered letter addressed to such person at his address appearing on the file in the office of the Master or, in the absence of any such address, at his last known address and the posting thereof shall be a sufficient service and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service.

SCHEDULES.

FIRST SCHEDULE.

FORM 1.

Affidavit of Executor or Administrator promising the due Performance of Duties. Rule 27 of Part I.

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 office of the Master of the Supreme Court within fifteen calendar months next ensuing the order granting probate [*or* administration]. Am. G.G. 4.10.50 p. 5270.

FORM 2.

Administration Bond Rule 23 of Part I.

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 us, our 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 of the Supreme Court 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.

Chapter III.—Probate. 318

FORM 3.

Rule 23 of Part I.

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.

Rule 24 of Part I.

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 £*

* The gross value at which property of deceased was sworn.

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

[NOTE.—*In setting out the property realty must be distinguished from personalty, 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 personalty, 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 this 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.

FORM 5.

Administration Account.

In the Supreme Court of Victoria. In the Will [or Estate] of
Probate Jurisdiction. deceased [intestate].

Rule 28 of Part I. and Rule 5 of Part II.

Ins. 1.3.49 G.G. 9.3.49 p. 1645.

THE ACCOUNT of the administration of the estate of the above-named deceased by the Executor(s) [or Administrator] to the day of 19 , deposited pursuant to Rule 28 of the Probate and Administration Rules Part I.

Part A.

CORPUS ACCOUNT.

Receipts.

Numberof Item.	Date.	Particulars.		£ s. d.
		Total		£

Disbursements.

			£ s. d.	
		Balance		
		Totals .. £		

Part B.

INCOME ACCOUNT.

[*Set out Receipts, Disbursements, and Balance as in Part A.*]

Part C.

PORTION OF ESTATE DISTRIBUTED IN SPECIE.

[*Set out briefly, with particulars of value for purposes of Probate Duty.*]

Part D.

PORTION OF ESTATE RETAINED OR REMAINING UNCOLLECTED.

[*Set out briefly, with particulars of value for purposes of Probate Duty.*]

Part E.

STATEMENT OF MONEYS AND SECURITIES HELD BY THE EXECUTOR(S) [or ADMINISTRATOR.]

[*Set out particulars of moneys now in hand and investments made since date of death.*]

Dated the day of 19 .

Signature(s) of Executor(s) [Administrator.]

Ins. 1.3.49 G.G. 9.3.49 p. 1645.

SCHEDULE OF FORMS.

Form 6.

Rule 6 of Part II.

Petition.

In the Supreme Court of Victoria.

Probate Jurisdiction.

In the Matter of Section 59 of the *Administration and Probate Act* 1928
and
In the Matter of the Estate [*or* of the Trusts of the Will] of
late of deceased.

The day of 19 .

THE PETITION of showeth as follows:—

1. That on the day of 19 Probate of the Will [*or* Letters of Administration of the Estate] of the above-named deceased who died [intestate] on the day of 19 were granted to the Petitioner [and of] hereinafter referred to as the Executor(s) [*or* Administrator].

2. That a true and just account of the administration of the estate of the said deceased as to his [their] receipts and disbursements up to the day of 19 has been deposited by the Executor(s) [*or* Administrator] in the office of the Master pursuant to the provision of Rule 28 of Part I. of the Probate and Administration Rules.

3. That all debts and liabilities, funeral and testamentary expenses and Probate and Estate Duties payable or owing by the said estate have been paid or discharged [save and except].

4. That the balance of the said estate now in the hands of the Executor(s) [*or* Administrator] and available for distribution as disclosed by the said account consists of real estate of the value of £ and personal estate and moneys of the value of £ .

Am. G.G. 6.8.52 p. 4122.

5. That the assets of the said estate were situated in

6. That the scheme of distribution of the balance of the said estate now in the hands of the Executor(s) [*or* Administrator] proposed is as follows:—[*or* "in accordance with the provisions of the said Will" *or set out shortly proposed division of balance*].

7. That no previous application for the allowance of commission in respect of the said estate has been made [*or as the case may be*].

YOUR PETITIONER(S) THEREFORE PRAYS [PRAY]:—

That commission or percentage be allowed to the Petitioner(s) for his [their] pains and trouble in his [their] administration of the said estate.

Witness: Signature(s) of Petitioner(s):

NOTE.—It is intended to serve this Petition on the persons beneficially interested in the above-mentioned estate and on the sureties to the Administration bond (if any) who may appear hereto by entering appearance not less than four clear days before the day fixed for consideration of this Petition either personally or by their solicitor at the Master's Office, Supreme Court, Melbourne.

Form 7.

Rule 6 of Part II.

Affidavit Verifying Petition.

In the Supreme Court of Victoria.

Probate Jurisdiction.

In the Matter of Section 59 of the *Administration and Probate Act* 1928
and
In the Matter of the Estate [*or* of the Trusts of the Will] of
late of deceased.

I [We], of in the State of Victoria [jointly and severally] make oath and say:—

1. That I am [we are] the Executor(s) of the will [*or* Administrator [*or* Trustee(s)] of the Estate] of the above-named deceased.

2. That the statements contained in the Petition of filed in this matter and dated are true and correct in every particular.

3. That set out in the First Schedule hereto [*or* exhibited hereto marked "A"] is a statement of the assets and liabilities disclosed to the Office of the Commissioner of Taxes for the purpose of the assessment of Probate Duty in the estate up to the date of swearing this affidavit.

4. Save as set forth in the said last-mentioned statement the said deceased was not to the best of my [our] knowledge information or belief at the time of his death possessed of or entitled to any debts or sum of money due to him from me [us or any of us] on any account whatsoever nor to any real or personal estate whatsoever.

5. The account referred to in the said Petition according to the best of my [our] knowledge information and belief, sets forth a full account of the corpus of the real and personal estate of the said deceased and of the rents profits and income of such estate which have come to my [our] hands [or to the hands of any of us] or to the hands of any person or persons by my [our] order or authority [or the order or authority of any of us] or for my [our] use [or the use of any of us] and 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 distribution in specie of, and of the disbursements allowances and payments made by me [us or any of us] on account of, the said corpus or in respect of the said rents profits and income and the times when, the names of the persons to whom, and the purposes for which the same were made.

6. And I [we, each] speaking positively for myself [himself] and to the best of my [his] knowledge and belief as to other persons, further say that except as appears in the said account I [we] have not [nor has any of us] nor has any other person by my [our] order or authority [or the order or authority of any of us] or for my [our] use [or the use of any of us] possessed received or got in any part of the corpus rents profits and income of the estate of the said deceased nor any money in respect thereof, and that the said account does not contain any item of disbursement, allowance or payment other than such as has actually been disbursed, allowed or paid on account of the said corpus or in respect of the said rents profits and income.

7. Particulars of the real and personal estate of the said deceased retained or remaining uncollected at the date thereof are set forth in the said account and there was at such date no other part of the estate outstanding or undisposed of. The said real and personal estate and all moneys derived from the realization of the estate of the said deceased and all investments made thereout now held by me [us] as such executor[s] [*or as may be*] are vested in [the joint names of] and are under the sole control of myself [ourselves].

8. That the names and addresses of all persons beneficially interested in the said estate [and of the sureties to the Administration bond] are as follows:—
and the consent in writing of all such persons (other than) to the acceptance of the said account as true and correct and to the consideration of the said Petition without notice to them is exhibited hereto and marked "C" and is to be filed herein.

And I [we] being the Petitioner(s) herein do hereby [jointly and severally] make oath and say:—

9. That I [we] have incurred the following pains and trouble in the administration of the said estate [*set out such clearly*].

SCHEDULE.

STATEMENT OF ASSETS AND LIABILITIES.

[*Here set out a summary of the figures appearing in the Statement lodged in the office of the Commissioner of Taxes and of assets subsequently disclosed to that office with particulars sufficient to identify each asset. Lengthy descriptions and lists of furniture, jewellery, &c., should not be set out.*]

Sworn at Melbourne in Victoria this
day of One thousand nine
hundred and

Before me,

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

[*Note.—(a) Bank Pass Book must be produced showing the deposit of any moneys forming part of the estate of the deceased.*

(b) This affidavit is to be made by all the Executors or Trustees.]

Form 8.

Rule 7 of Part II.

Consent of Person Beneficially Interested or of sureties to Administration bond.

In the Supreme Court of Victoria.

In the Probate Jurisdiction.

In the Matter of Section 59 of the *Administration and Probate Act* 1928

and

In the Matter of the Estate [*or* of the Trusts of the Will] of late of deceased.

I, [We] of being a person [*or* persons] beneficially interested in the estate of deceased [*or* sureties to the Administration bond herein] hereby consent to the acceptance by the Court of the account of the Executor(s) [*or* Administrator] of his [their] administration of the estate of the said deceased [deposited in the office of the Master *or as the case may be*] and dated the day of 19 as being prima facie true and correct [*insert where desired* and consent to consideration of the application of the said for the allowance of commission proceeding without service upon me [us] of a copy of the petition herein and of notice of appointment for such consideration].

Dated the day of 19 .

Signature(s).

Form 9.

Rule 11 of Part II.

Appearance.

In the Supreme Court of Victoria.

In the Probate Jurisdiction.

In the Matter of Section 59 of the *Administration and Probate Act* 1928

and

In the Matter of the Estate [*or* of the Trusts of the Will] of late of deceased.

of being [*or* Solicitor for] a beneficiary under the Will [*or* in the estate] of the above-named deceased appears on the application of for allowance of commission herein.

Dated the day of 19 .

Signature.

Form 10.

Rule 11 of Part II.

Objections and Affidavit Verifying.

In the Supreme Court of Victoria.

In the Probate Jurisdiction.

In the Matter of Section 59 of the *Administration and Probate Act* 1928

and

In the Matter of the Estate [*or* of the Trusts of the Will] of late of deceased.

THE OBJECTIONS of of [on behalf of of an infant] being a beneficiary under the Will [*or* claiming an interest as in the estate] of the above-named deceased to the allowance of commission to the Petitioner(s) for his [their] pains and trouble in administering the estate of the said deceased.

I, of in the State of make oath and say:—

1. That I am the above-named objector [on behalf of an infant who was born on the day of and am the of the said infant].

2. That the nature and extent of my interest [*or* the interest of the said an infant] in the estate of the said deceased is as follows:—

3. [*Omit if account is not objected to.*] That I object to the account of the said estate filed by the Petitioner(s) herein in the following respects [*objections to be set out and numbered*].

4. That I object to the allowance of commission to the Petitioner(s) [on the ground that the statement of the Petitioner(s) as to his [their] pains and trouble is incorrect *or as the case may be*].

Sworn at Melbourne in Victoria this
day of One thousand nine
hundred and

Before me,
A Commissioner of the Supreme Court of the State of Victoria for taking Affidavits.

Form 11.

Notice Requiring Notification of Petition or Application.

Rule 15 of Part II.

In the Supreme Court of Victoria.

In the Probate Jurisdiction.

In the Matter of Section 59 of the *Administration and Probate Act* 1928
and
In the Matter of the Estate [*or* of the Trusts of the Will] of
late of deceased.

TAKE NOTICE that I of [*full name and address*] [on behalf of of an infant [*or* a person resident out of the State of Victoria] being a beneficiary under the Will [*or* a person claiming an interest as [*state relationship or particulars of interest*] in the estate] of the above-named deceased hereby require notice of any petition under Part II. of the Probate and Administration Rules or application for the allowance of commission to the executors(s) [administrator] or trustee(s) of such Will or Estate to be given to me at the address set out hereunder.

Dated the day of 19 .

Signature of Beneficiary [*or* Claimant] [*or Signature of Solicitor*].

Address for service of notice.

Form 12.

Affidavit of Service and of Search.

Rule 8 of Part II.

In the Supreme Court of Victoria.

In the Probate Jurisdiction.

In the Matter of Section 59 of the *Administration and Probate Act* 1928
and
In the Matter of the Estate [*or* of the Trusts of the Will] of
late of deceased.

I, of in the State of hereby make oath and say:—

1. That on the day of 19 I served a copy of the Petition of [*or* Notice of further application by] filed herein and of the Notice of appointment indorsed thereon on—

(*a*) Each of the persons mentioned in the Schedule hereto being all the persons beneficially interested in the said Estate [and the sureties to the Administration bond] and

(*b*) of a person who has filed a notice under the provisions of Rule 15 of Part II. of the Probate and Administration Rules and

(*c*) of a person nominated by the Master to be served on behalf of an infant [*or as the case may be*]

by registered letter addressed to each of such persons at their respective addresses set out in the said Schedule [and as above].

2. That I have this day searched in the Probate Office of this Honorable Court and find that no appearance has been entered herein and that no objections or notice have or has been filed pursuant to Rules 11 or 15 of Part II. of the said Probate and Administration Rules [*or as the case may be*].

SCHEDULE.

Sworn at Melbourne in Victoria this
day of One thousand nine
hundred and

Before me,
A Commissioner of the Supreme Court of the State of Victoria for taking Affidavits.

[*Note.—This affidavit is to be sworn on the date fixed for consideration of the application.*]

Form 13.

Rule 13 of Part II.

Certificate of Master.

COMMISSION ALLOWED:—

On Corpus Receipts:— .. .. £
Percentage thereof .. .. £

On property dealt with pursuant to devise or legacy or in specie:—
Value thereof .. .. £
Percentage thereof .. .. £

On Income receipts .. .. £
Percentage thereof .. .. £

Total .. .. £

Costs of Petitioner fixed at £ [and of at £].

DATED the day of 19 .
Master.

APPROVED the day of 19 .
Judge.

FILED in the office of the Master this day of 19 .

[*Note.—This certificate is to be indorsed upon the Petition or Notice of further application.*]

Form 14.

Rule 18 of Part II.

Notice of Further Application.

In the Supreme Court of Victoria.

Probate Jurisdiction.

In the Matter of Section 59 of the *Administration and Probate Act* 1928
and
In the Matter of the Estate [*or* of the Trusts of the Will] of
late of deceased.

TAKE NOTICE that pursuant to liberty reserved of the applicant(s) on the Petition dated the day of 19 lodged herein will apply to the Court for the allowance to him (them) of commission for his (their) pains and trouble in his (their) administration of the estate of the above-named deceased since the day of 19 .

DATED this day of 19 .

Signature(s) of Applicant(s)
[*or of Solicitor*].

[*Note.—This Notice must bear an indorsement of appointment of date for consideration of this application. See Part II. Rule 7.*]

Form 15.

Affidavit in Support of Application for Allowance of Further Commission.

Rule 18 of Part II.

In the Supreme Court of Victoria.

In the Probate Jurisdiction.

In the Matter of Section 59 of the *Administration and Probate Act* 1928

and

In the Matter of the Estate [*or* of the Trusts of the Will] of late of deceased.

I [We] of in the State of Victoria [jointly and severally] make oath and say:—

1. That I am [we are] the Executor(s) of the Will [*or* Administrator [*or* Trustee(s)] of the Estate] of the above-named deceased.

2. That set out in the Schedule hereto [*or* exhibited hereto marked " " and to be filed herein] is a true and just account of the administration of the estate of the said deceased during the period from the day of 19 (*the date to which the Administration Account referred to in the Petition herein was made up*) to the day of 19 .

3. That since the date of the said Petition no further assets or liabilities of the said deceased have been disclosed to me [us *or* any of us]. [save and except].

4. The said account according to the best of my [our] knowledge information and belief, sets forth a full account of the corpus of the real and personal estate of the said deceased and of the rents profits and income of such estate which during the said period have come to my [our] hands [or to the hands of any of us] or to the hands of any person or persons by my [our] order or authority [*or* the order or authority of any of us] or for my [our] use [or the use of any of us] and 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 distribution in specie of, and of the disbursements allowances and payments made during the said period by me [us] [or any of us] on account of, the said corpus or in respect of the said rents profits and income and the times when, the names of the persons to whom, and the purposes for which the same were made.

5. And I [we, each] speaking positively for myself [himself] and to the best of my [his] knowledge and belief as to other persons, further say that except as appears in the said account I [we] have not [nor has any of us] nor has any other person by my [our] order or authority [or the order or authority of any of us] or for my [our] use [or the use of any of us] during the said period possessed received or got in any part of the corpus rents profits and income of the estate of the said deceased nor any money in respect thereof, and that the said account does not contain any item of disbursement, allowance or payment other than such as has actually been disbursed, allowed or paid on account of the said corpus or in respect of the said rents profits and income.

6. Particulars of the real and personal estate of the said deceased retained or remaining uncollected at the date thereof are set forth in the said account and there was at such date no other part of the estate outstanding or undisposed of. The said real and personal estate and all moneys derived from the realization of the estate of the said deceased and all investments made thereout now held by me [us] as such executor(s) [*or as may be*] are vested in [the joint names of] and are under the sole control of myself [ourselves].

7. That the names and addresses of all persons beneficially interested in the said estate [and of the sureties to the Administration bond] are as follows:—
and the consent in writing of all such persons (other than) to the acceptance of the said account as true and correct and to the consideration of the application of for further commission without notice to them is exhibited hereto and marked " " and is to be filed herein.

And I [we] being the Petitioner(s) herein [*or as the case may be*] and with liberty to apply for an allowance of further commission herein do hereby [jointly and severally] make oath and say:—

8. That I [we] have incurred the following pains and trouble in the administration of the said estate during the said period [*set out such clearly*].

Chapter III.—Probate. 326

SCHEDULE.

SUPPLEMENTARY STATEMENT OF ACCOUNT.

[*Here set out under separate headings as in the Administration Account (Form 5 in the First Schedule to these Rules) particulars of Receipts Disbursements and Balances and Portions of Estate distributed in specie or retained or remaining uncollected and Statement of moneys and securities held.*]

Sworn at Melbourne in Victoria this
day of One thousand nine
hundred and

Before me,

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

[*Note.—(a) Bank Pass Book must be produced showing the deposit of any moneys forming part of the estate of the deceased.*

(b) This affidavit is to be made by all the Executors or Trustees.]

SECOND SCHEDULE.

Rule 36 of Part I.

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 the 22nd day of October, 1956, at Judge's Chambers, Supreme Court, Melbourne.

E. F. HERRING, *C.J.*
CHARLES J. LOWE, *J.*
C. GAVAN DUFFY, *J.*
NORMAN O'BRYAN, *J.*
JOHN V. BARRY, *J.*
R. R. SHOLL, *J.*
T. W. SMITH, *J.*
R. V. MONAHAN, *J.*

By Authority: W. M. HOUSTON, Government Printer, Melbourne.