



SUPPLEMENT

TO THE

VICTORIA

GOVERNMENT GAZETTE

OF FRIDAY, NOVEMBER 9, 1900.

Published by Authority.

No. 113.] SATURDAY, NOVEMBER 10. [1900.

RULES OF THE SUPREME COURT.

It is ordered as follows :—

On and after the 20th day of December, 1900, the Rules hereinafter mentioned shall be repealed and of no effect except so far as regards actions, causes, and matters then pending; and on the said 20th day of December, 1900, the Rules hereinafter set out shall come into force and shall apply to all actions, causes, and matters commenced on or after that date.

RULES REPEALED.

JUDICATURE RULES, 1884.

ORDER XIV., Rules 1 and 3.

ORDER XXX.

ORDER XXXI., Rules 1, 25, 26, and 27.

ORDER XXXIX., Rules 1, 3, and 4.

ORDER LIV., Rule 24.

ORDER LVIII., Rules 1, 3, 6, 7, 8, 9, 10, and 15.

ORDER LXIV., Rules 4, 5, and 5* of 29th November, 1886.

ORDER LXV., Rule 27 (48).

NEW RULES UNDER JUDICATURE ACT.

ORDER XIV.

Rule 1.—Where the defendant appears to a writ of summons purporting to be specially indorsed under Order III., Rule 6, the plaintiff may, on affidavit made by any person who can swear positively to the facts verifying the cause of action and the amount claimed (if any), and stating that in his belief there

is no defence to the action, apply to a Judge for liberty to enter final judgment for the amount so indorsed, together with interest (if any), or for recovery of the land (with or without rent or *mesne* profit), as the case may be. The Judge may thereupon, unless the defendant by affidavit or otherwise satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly; and 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.

Rule 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 thinks 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 leases, deeds, books, or documents, or copies of or extracts therefrom.

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

Rule 8.—Where leave, whether conditional or unconditional, is given to defend, the Judge shall have power to 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.

ORDER XIV (A).

Rule 1.—Any defendant to an action may after appearance 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;
- 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.

Rule 2.—

- (a) The plaintiff may show cause against such application by affidavit or by *viva 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.

Rule 3.—When the Judge orders that the action shall proceed to trial without pleadings on a defendant's application, he may further order, if he shall think fit, that either party shall deliver particulars of his claim or defence, and Rule 4 of Order XVIIIa. shall apply, and the defendant shall not be allowed to rely on a set-off or counter-claim, or on the defence of infancy, coverture, fraud, statutory limitation of action, or discharge under the Insolvency Acts, unless he shall have given (within ten days from the date of the order) notice to the plaintiff stating the grounds and particulars upon which he relies.

ORDER XVI.

Rule 22*.—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 the practitioner representing him or to any other person on behalf of such practitioner, and the affidavit required by Rule 24 of this Order shall show compliance with this provision.

Rule 27*.—When a person intends to apply to be admitted to sue or defend as a 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.

Rule 28*.—Rules 22*, 24, 25, 26, 27, 27*; 28, 29, 30, and 31 of this Order shall apply *mutatis mutandis* to proceedings for Divorce and other Matrimonial Causes.

ORDER XVIII.A.

Trial without Pleadings.

A plaintiff may, without pleadings, proceed to trial, subject to the following rules:—

1. The indorsement of the writ of summons shall contain a statement sufficient to give notice of the nature of his claim, or of the relief or remedy required in the action, and shall state that if the defendant appears the plaintiff intends to proceed to trial without pleadings.
2. Within ten days after appearance the plaintiff shall serve 21 days' notice of trial without pleadings, and also serve a copy thereof upon the Prothonotary, who shall, unless a Judge otherwise order, set the case down for trial upon the day mentioned in such notice or as soon thereafter as is practicable. Such notice shall be in Form No. 16 (*a*), Appendix B, with such variations as circumstances may require.
3. The defendant may, within ten days after appearance, apply by summons for the delivery of a statement of claim, and on such summons the Judge may order (1) that a statement of claim shall be delivered, in which case the action shall proceed in the usual manner; or (2) that the action shall proceed to trial without pleadings, in which case it may be further ordered, if the Judge shall think fit, that either party shall deliver particulars of his claim or defence.
4. When the Judge orders that the action shall proceed to trial without pleadings, and makes no order as to particulars, all the defences shall be open at the trial to the defendant. When particulars are ordered to be delivered, the parties shall be bound by such particulars, so far as regards the matters in respect of which the order for particulars was made.
5. When a defendant has not taken out a summons under Rule 3 of this order, he shall not be allowed to rely on a set-off or counter-claim, or on the defence of infancy, coverture, fraud, statutory limitation of actions, or discharge under the Insolvency Acts, unless he shall have given (within ten days after appearance) notice to the plaintiff, stating the grounds and particulars upon which he relies.
6. When a plaintiff indorses the writ of summons with a statement that if the defendant appears he intends to proceed to trial without pleadings, no pleadings shall be required or delivered, except by order of the Judge made under Rule 3 of this Order.
7. Where there are no pleadings nor issues the Judge at the trial may at any stage call upon the defendant to give a concise statement of his defences, and except by leave of the Judge no other defence shall be open to the defendant beyond those so stated.
8. All powers of amendment possessed by the Court or a Judge shall apply to proceedings under this Order.

ORDER XXII.

Rule 18.—Where a cause or matter is tried by a Judge with a jury no communication to the jury shall be made, either of the fact that money has been paid into Court or of the amount paid in. The jury shall be required to find the amount of the debt or damages, as the case may be, without reference to any payment into Court.

ORDER XXX.

Rule 1.—

- (a) Subject as hereinafter mentioned in every action a summons for directions shall be taken out by the plaintiff, returnable in not less than four days.
- (b) Such summons shall be taken out after appearance and before the plaintiff takes any fresh step in the action other than application for an injunction, or for a receiver, or for summary judgment under Order XIV., or to enter judgment in default of defence under Order XXVII., Rule 2.
- (c) The summons shall be in the Form No. 3A, Appendix K, with such variations as circumstances may require, and shall be addressed to and served upon all such parties to the action as may be affected thereby.
- (d) This rule shall not apply to actions coming under Order XVIII.A. or to proceedings commenced by originating summons.
- (e) Where under Order XVIII.A. the defendant applies for a statement of claim, the Judge may deal with such application as if the plaintiff had been entitled to take out and had taken out a summons for directions.

Rule 2.—Upon the hearing of the summons the Judge shall so far as practicable make such order as may be just with respect to all the interlocutory proceedings to be taken in the action before the trial, and as to the costs thereof, and more particularly with respect to the following matters:—Pleadings, or issues in lieu thereof, particulars, admissions, discovery, interrogatories, inspection of documents, inspection of real and personal property, commissions, examination of witnesses, place and mode of trial. Such order shall be in the Form No. 4A, Appendix K, with such variations as circumstances may require.

Rule 2*.—Upon the hearing of the summons the Judge may order the action to be set down for trial forthwith, and may settle the issues that are to be tried.

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

Rule 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.

Rule 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.

Rule 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.

Rule 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.

Rule 8.—In any action to which Rule 1 of this order applies, if the plaintiff does not within fourteen days from the entry of the defendant's appearance take out a summons for directions under this order, or for

summary judgment under Order XIV., the defendant shall be at liberty to apply for an order to dismiss the action, and upon such application the Judge may either dismiss the action on such terms as may be just, or may deal with such application in all respects as if it were a summons for directions under this order.

ORDER XXXI.

Rule 1.—In any action, cause, or matter the plaintiff or defendant, by leave of a Judge, may deliver interrogatories in writing for the examination 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. Provided that 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 cross-examination of a witness.

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

Rule 12*.—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.

ORDER XXXIX.

Rule 1.—Every application for a new trial or to set aside a verdict, finding, or judgment shall be brought by way of appeal to the Full Court by notice to be served within fourteen days after the giving of such verdict, finding, or judgment.

Rule 1*.—Whenever an application is made under this Order, and in the same action, cause, or matter notice of appeal is given under Order LVIII., only one set of appeal books shall be prepared, unless a Judge otherwise orders.

Rule 1**.—Rules 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 14, 15, and 16 of Order LVIII. shall apply to all applications under this Order.

ORDER LIVA.

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.

2. The Court or a Judge may direct such persons to be served with the summons as they or he may think fit.

3. The application shall be supported by such evidence as the Court or a Judge may require.

4. The Court or a Judge shall not be bound to determine any such question of construction if, in their or his opinion, it ought not to be determined on originating summons.

ORDER LV.

Rule 5*.—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 1890* nothing in this Rule shall be construed to give any right to foreclose or to sell otherwise than as by the said Act provided.

Rule 5***.—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.

Rule 10*.—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—

- (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.

ORDER LVIII.

Rule 1.—All appeals to the Full Court from a single Judge, whether sitting in Court or in Chambers, shall be brought by notice. The notice of appeal shall state whether the appellant complains of the whole or of part only and of which part of the decision appealed from, and shall also state specifically and not in general terms but concisely the grounds of complaint.

Rule 1*.—

- (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.

Rule 1**.—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 after such refusal.

Rule 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.

Rule 6.—It shall not under any circumstances be necessary for a respondent to give any notice by way of cross appeal.

Rule 7.—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.

Rule 15.—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.

ORDER LXIV.

Rule 4.—In the computation of the time appointed or allowed by the rules for filing amending or delivering any pleading vacation shall not count unless otherwise ordered by the Court or Judge. In 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* 1890, any applications under Order XIV., 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.

ORDER LXV.

Rule 14*.—Rule 14 of this order shall include cases where the set-off arises in independent actions or in different courts.

Rule 27 (48).—As to refresher fees where any cause or matter is to be tried or heard upon *vivâ voce* evidence in open court if the trial 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 for every five working hours subsequent to the expiration of the first seven hours the following fees:—

To the leading counsel not exceeding Ten guineas.

To the second if three counsel not exceeding Seven guineas.

To the third if three counsel or the second if only two not exceeding Five guineas.

The like allowances may be made where the evidence in chief is not taken *vivâ voce* if the trial or hearing shall be substantially prolonged beyond such periods to be so computed as aforesaid by the cross-examination of witnesses whose affidavits or depositions have been used. The final refresher may be allowed for such period less than five hours that the trial may occupy.

Rule 28.—Any person dissatisfied with the decision of the taxing officer in regard to items "Instructions for brief" and "Drawing same," may appeal by summons to the Judge who tried the action, who may review the taxation as to such items 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.

Rule 29.—In all actions where the amount claimed does not exceed £500 the plaintiff may indorse upon the writ or the defendant may indorse upon his entry of appearance a notice that he intends to proceed under the special scale of costs in Appendix N. When such notice is so indorsed by either party all costs in the action between party and party and between solicitor and client shall be taxed under such scale unless a Judge otherwise orders, but subject to any agreement in writing between solicitor and client. In taxation under such scale no item not included therein shall be allowed unless a Judge otherwise orders or unless it is covered by an agreement in writing between solicitor and client.

ORDER LXX.

Rule 1*.—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.

Dated this 1st day of November, 1900.

JOHN MADDEN, C.J.
THOS. A'BECKETT, J.
H. E. A. HODGES, J.
J. H. HOOD, J.

By the Court,
J. W. O'HALLORAN, Prothonotary.

L.S.

APPENDICES.

APPENDIX B.

No. 16A.

Notice of Trial without Pleadings.

In the Supreme Court.

Between Plaintiff;
and
Defendant.

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].

APPENDIX K.

No. 3A.

Summons for Directions.

In the Supreme Court.

Between Plaintiff;
and
Defendant.

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 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. 4A.

Order for Directions.

In the Supreme Court.

Between Plaintiff
and
Defendant.

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, and that the said interrogatories be answered as prescribed by Order Rules of the
 - That the action be tried at
 - That the action be tried with
- Dated the day of 19

APPENDIX N.

Special Scale of Costs.

	Where Amount claimed does not exceed £250.		Over £250 and not exceeding £500.	
	£	s. d.	£	s. d.
1. Letter before action	0	5 0	0	5 0
2. Instructions to solicitor, including preparation of writ and particulars of claim and copy to file, including attendance to issue	1	10 0	2	0 0
3. Each copy writ for service	0	2 0	0	2 0
4. Instructions to defend, including appearance and attending, entering notice thereof, copy and service	0	15 0	1	0 0
5. Summons for directions, including copy for service and attendance to issue	0	10 0	0	13 4
6. If more than one copy for service required—for each such copy	0	1 6	0	1 6
7. Attendance at Judge's Chambers on hearing	0	6 8	0	10 0
8. Instructions for interrogatories or affidavit in answer	0	6 8	0	10 0
9. Drawing interrogatories or affidavit in answer—per folio	0	1 0	0	1 0
10. Copies thereof—at per folio	0	0 6	0	0 6
11. Perusing interrogatories or affidavit answering same	0	6 8	0	6 8
12. Attendance on counsel to settle interrogatories or answers	0	5 0	0	6 8
13. Fee to counsel and clerk—not exceeding	2	4 6	2	4 6
14. Instructions for any other special affidavit	0	6 8	0	10 0
15. Subpœna <i>ad test.</i> for any number of persons, including three copies præcipe and attendance to issue	0	7 6	0	10 0
16. Each necessary copy beyond third	0	0 6	0	0 6
17. Subpœna <i>duces tecum</i> , including copy to serve præcipe and attendance to issue	0	7 6	0	10 0
18. If subpœna <i>duces tecum</i> more than three folios—for each folio beyond three	0	1 0	0	1 0
19. Notice to produce copy and service	0	7 6	0	10 0
20. The like to admit documents or facts—copy and service	0	7 6	0	10 0
21. Instructions for or to defend set-off or counterclaim	0	10 0	0	10 0
22. Preparing notice of special defence, set-off or counterclaim—copy and service	0	10 0	0	15 0
23. Perusing notice to produce or admit	0	7 6	0	10 0
24. Instructions for brief for counsel, including all attendances on the party and his witnesses in connexion with the preparation for hearing—not exceeding	7	7 0	10	10 0
25. Drawing brief for counsel—per folio	0	1 0	0	1 0
Copy thereof—per folio	0	0 6	0	0 6
Copy documents to accompany—per folio	0	0 6	0	0 6
26. Attendance on counsel therewith	0	6 8	0	10 0
27. Fee to counsel and clerk, amount actually paid—not exceeding	7	12 0	11	0 0
28. Attendance, arranging conference with counsel, and attending same	0	6 8	0	10 0
29. Fee to counsel and clerk	1	3 6	2	4 6
30. Attendance at court before trial case in list not reached—for each day	0	10 0	0	10 0
31. Attendance at court on trial with counsel	2	0 0	2	10 0
32. Each day after the first	1	10 0	2	0 0
33. Attendance marking refresher fee to counsel	0	6 8	0	10 0
34. Refresher fee to counsel, for each day after the first—fee actually paid not exceeding	5	10 0	7	12 0
35. Solicitor's managing clerk's fee where there is a trial	0	10 0	0	15 0
36. Drawing costs for taxation, including copy for taxing officer—per folio	3	1 2	0	1 2
37. For each copy	0	0 6	0	0 6
38. Appointment to tax copy and service	0	9 4	0	9 4
39. Attendance taxing	0	10 0	0	15 0
40. Writ of <i>Fieri Facias</i> , including copy præcipe and attending to issue	0	10 0	0	10 0
41. Attending to lodge	0	5 0	0	5 0
42. Attending to return	0	5 0	0	5 0
43. Perusing deeds, correspondence, accounts, affidavits, and other documents not hereinbefore provided for and thought necessary on taxation—at per folio	0	0 4	0	0 4
44. Plans, charts, or models where necessary for use at hearing, not exceeding	2	2 0	3	3 0
45. Letters necessary during progress of action	0	3 6	0	3 6
46. Drawing any necessary document not hereinbefore provided for—per folio	0	1 0	0	1 0
47. Copy thereof—per folio	0	0 6	0	0 6
48. In all cases where carbon copies of documents are used, for each such copy after the first—per folio	0	0 3	0	0 3
49. Any summons to attend at Judge's Chambers other than summons for directions, including copy for service and attending to issue	0	6 8	0	10 0
50. All necessary attendances at the office of the Prothonotary, at Judge's Chambers, on Commissioner for taking Affidavits, on opposite party or his solicitor, and on client	0	5 0	0	6 8
51. Attendance on examination of witness or witnesses before any examiner, officer, or other person	0	10 0	0	13 4
Or, according to circumstances—not to exceed	1	0 0	1	10 0
52. Brief to counsel on examination	0	10 0	0	15 0
53. Attendance on counsel therewith	0	5 0	0	6 8
54. Fee to counsel and clerk	2	4 6	3	5 6
55. Service or filing in lieu of service of any writ, summons, interrogatories, affidavit, order, notice, or other document on a party who has not entered an appearance and is not authorized to be served by post (NOTE.—This involves personal service.)	0	10 0	0	10 0
56. If served at a distance of more than 3 miles from nearest place of business or office of solicitor serving the same—for each mile beyond such 3 miles	0	1 6	0	1 0

Appendix N—continued.

	Where Amount claimed does not exceed £250.	Over £250 and not exceeding £500.
	£ s. d.	£ s. d.
57. Where in consequence of the distance of the party to be served it is proper to effect such service through an agent—for correspondence, in addition	0 7 0	0 7 0
58. Correspondent's charges	1 1 0	1 1 0
59. If authorized to be served by post... ..	0 1 6	0 1 6
60. Service where an appearance has been entered on the solicitor or party	0 3 4	0 3 4
61. For preparing any necessary or proper notice, memorandum, or demand not otherwise provided for	0 3 4	0 3 4
62. Or if special and necessarily exceeding beyond three folios—for each folio beyond three	0 1 0	0 1 0
63. Where counsel employed on any application to Judge in Chambers and certified for by the Judge—brief to counsel in such cases	0 10 0	0 15 0
64. Attendance on counsel therewith	0 5 0	0 6 8
65. Fee to counsel and clerk—not exceeding	2 4 6	2 4 6
66. Term fee for every term in which a proceeding in the cause or matter by or affecting the party other than the issuing and serving the writ of summons shall take place	0 10 0	0 15 0
Where trial adjourned upon payment of costs of day—		
67. Attending court... ..	1 0 0	1 10 0
68. Fee to counsel and clerk—not exceeding	5 10 0	7 12 0

PROBATE AND ADMINISTRATION RULES, 1890.

On and after the 20th day of December, 1900, the Rules hereinafter mentioned shall be repealed and of no effect, except so far as regards matters then pending, and on the said 20th day of December, 1900, the Rules hereinafter set out shall come into force and shall apply to all matters commenced on or after that date.

Rules Repealed.

The Probate and Administration Rules 1873; the Rules of the Supreme Court in Probate Matters of 5th December, 1884, and 28th March, 1890; save as to all matters commenced prior to the 20th December, 1900.

Rule 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* 1890.

APPLICATIONS.

Rule 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.

Applications how made.
Reg.-Gen. 1873, r. 2.

Rule 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 days from the publication of an advertisement by him or some proctor on his behalf in one of the Melbourne newspapers of his intention to apply for the same. Where the deceased was at the time of his death resident in Victoria 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.

Advertisement.
Ib. r. 3.

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

Affidavit in support of application for probate or administration with will annexed.
Ib. r. 4.

- The death of the testator;
- The time of his decease;
- That he has left a will;
- The date thereof;
- The name and residence of each executor and of each of the subscribing witnesses thereto;
- An identification or statement of the contents thereof;
- A statement of the value of the property, distinguishing real and personal;
- 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;

and if such will be executed by the testator by his affixing his mark thereto, then 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; and every such affidavit shall be filed before probate of the will or administration shall be granted.

Application for
letters of
administration by
person not as
creditor.
Reg.-Gen. 1873, r. 5.

Rule 5. Every application for letters of administration to any deceased person by a person applying not as a creditor shall be supported by an affidavit or affidavits setting forth—

- The death of the deceased ;
- The time of his decease ;
- That he died intestate, leaving property in Victoria, specifying its value, distinguishing real and personal ;
- What relatives or next of kin he left surviving him, so far as the same may be known and material by law to the right to administer or share in his property ;
- The character in which the person making the application claims to be entitled, and the truth thereof ;
- That the applicant has carefully inquired if there be a will ;
- A search made in the Registrar-General's office for a will deposited ;
- The publication of advertisements ;
- That no caveat has been lodged up to the morning of the application ;
- That no application for probate or administration in this matter has theretofore been made to or granted by the Court or the Registrar.

Application by
creditor.
Ib. r. 6.

Rule 6. No administration shall be granted to a creditor unless upon an affidavit or affidavits setting forth—

- The death of the person ;
- The time of his decease ;
- That he left property in Victoria, specifying its value, distinguishing real and personal ;
- 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 there has been such, the date of such grant should be set forth.*]

Application under
peculiar circum-
stances.
Ib. r. 18.

Rule 7. 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 1890*.

Applications how
to be dealt with.

Rule 8. All applications for probate or letters of administration shall be dealt with by the Registrar of Probates in the order of and within seven days from the filing thereof ; 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.

Grants in vacation.

Rule 9. Grants of probate and administration shall be made during vacation.

Rule 10. 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 with the Master-in-Equity, such Master shall not issue the same to the person who has obtained such order without the special direction of the Court.

Failure by person obtaining order to take out probate or procure administration.
Reg.-Gen. 1873, r. 13

SURETIES AND BONDS.

Rule 11. 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.

Bond.
Ib. r. 8.

Rule 12. Generally before any letters of administration shall issue to a person procuring the security of individuals he shall attend with each of his sureties before the Master-in-Equity, and they shall each respectively justify as to the amount of value of his property.

Justification by sureties.
Ib. r. 9.

Rule 13. Sureties to administration bonds may also justify by affidavits made in Victoria out of Melbourne before, 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 in Victoria, not being the proctor or clerk of the proctor 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 be laid before the Master-in-Equity, who, if not fully satisfied therewith, may require further information or assurance as to the sufficiency of the security, either by further affidavit made as hereinbefore provided, or by the personal attendance and examination upon oath of the proposed surety. Every such affidavit of justification shall be in the Form No. 4 in the First Schedule hereto.

Justification by affidavit.
Ib. r. 10.

Rule 14. Where the bond of an incorporated company or guarantee society, approved of by the Governor in Council, under the *Administration and Probate Act* 1890, section 16, is received as security 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.

Bond by incorporated company or guarantee society.
Ib. r. 11.

Rule 15. 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.

Price for procuring security.
Ib. r. 12.

INVENTORY AND ACCOUNT.

Rule 16. 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.

Affidavit of due performance.
Ib. r. 7.

Rule 17. All executors and administrators shall make or cause to be made a true and perfect inventory of all and singular the property, lands, and hereditaments, goods, chattels, and credits of the deceased which shall have come to the hands, possession or knowledge of them respectively, or into the hands or possession of any other person or persons for them respectively, and the same so made sign with their proper handwriting (or mark, if illiterate), and exhibit and deposit, or cause to be exhibited and deposited, the same inventory in the office of the Master-in-Equity within three calendar months next ensuing the order granting probate or letters of administration respectively; and

Inventory to be made.
Ib. r. 16.

further shall respectively make or cause to be made a true and just account of the administration of the estate which they have undertaken as to their receipts and disbursements, and as to what portion is retained by them and what portion remains uncollected, and the same so made shall sign with their proper handwriting (or mark, if illiterate), and shall respectively exhibit and deposit, or cause to be exhibited and deposited, the same account in the said office of the Master-in-Equity within fifteen calendar months next ensuing the order granting probate or letters of administration respectively. Provided that this Court may, under special circumstances, by order dispense with the performance of this rule, or excuse the omission to have performed it so far as relates to allowing administration bonds to be put in suit under the *Administration and Probate Act 1890*, section 17.

Orders Nisi.

Return of order
nisi.

Rule 18. On the return of any order *nisi* under section 19 of the *Administration Act 1890*, 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.

Rule 19. 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 Objection 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.

Rule 20. 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.
Reg.-Gen. 1373, r. 14.

Rule 21. Where an order is made fixing a time for showing cause against an order *nisi* under the *Administration and Probate Act 1890*, section 19, both parties may subpoena their witnesses for the hearing in the same manner as in an action, and such subpoena shall be issued by the Master-in-Equity.

Affidavits to be filed
and notice served.
Ib. r. 15.

Rule 22. Either party shall, four clear days before the day appointed for hearing, file in the office of the Master-in-Equity any affidavits he may propose to use at the said hearing, under the *Administration and Probate Act 1890*, section 21, 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.

Rule 23. The fees specified in the Second Schedule hereto may be lawfully demanded by the officers of the Court as the fees payable in respect of matters and proceedings in the Court and the officers thereof in its probate jurisdiction. A folio shall comprise seventy-two words, every figure being counted as one word.

Fees.
Reg.-Gen., 5 Dec.,
1884.

Rule 24. The fees mentioned in the Third Schedule hereto shall be taken by and are hereby made payable to Registrars of the County Courts.

Fees to Registrars
of County Courts.

Rule 25. In all applications for the grant of probate or letters of administration made after these Rules come into operation, the costs shall be taxed according to the scale of costs provided in Appendix N to the Rules of the Supreme Court 1884 so far as the same can be applied.

Costs.

Dated this 1st day of November, 1900.

JOHN MADDEN, C.J.
E. D. HOLROYD, J.
THOS. A'BECKETT, J.
H. E. A. HODGES, J.
J. H. HOOD, J.

By the Court,
J. W. O'HALLORAN, Prothonotary.

L.S.

SCHEDULES.

FIRST SCHEDULE.

FORM 1.

Rule 16.

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

In the Supreme Court.—In the Probate Jurisdiction.

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

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

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

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

Rule 11.

FORM 2.

Administration Bond.

Know all men by these presents that we—

, of
, of
, of

are jointly and severally held and firmly bound to

Chief Justice of the Supreme Court of Victoria,
 his successors and assigns, in the sum of _____ of lawful money of Great
 Britain, to be paid to the said _____ Chief Justice, his successors
 and assigns, for the due payment whereof we hereby bind ourselves and each and any
 two of us, our heirs, executors, and administrators firmly by these presents. Sealed
 with our seals, dated this _____ day of _____ in the year of our
 Lord One thousand nine hundred and _____

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

Rule 11.

FORM 3.

Creditor's Administration Bond.

No. 1599 s. 8.

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

The condition of this obligation is such that if the said C.D., a creditor and adminis-
 trator 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 adminis-
 trator, 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 the 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 a true and perfect inventory of all and singular
 [*and thence as in usual form*].

Rule 13.

FORM 4.

Affidavit of Justification.

In the Supreme Court.—In the Probate Jurisdiction.

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

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

1. That I am after payment of all my just debts and liabilities well and truly worth
 in real and personal property [*or as the case may be*] the sum of *£ _____
2. That the particulars of my property and the values thereof are as follows :—

[NOTE.—*In setting out the property 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.

* The gross value at
 which property of
 deceased was
 sworn.

(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 his affidavit.
- (9) Live stock, number and kind and where depastured or kept.
- (10) Good book debts only.

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

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

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

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

SECOND SCHEDULE.

Rule 23.

PROBATE AND ADMINISTRATION FEES.

	£	s.	d.
On every exemplification	1	0	0
On every certificate of taxation	1	0	0
On every writ or summons under Act No. 1261, section 14	0	10	6
On every order other than order granting probate or administration	0	10	6
On every order of the Registrar under Act No. 1261, section 3	0	3	0
On every subpoena <i>duces tecum</i>	0	2	6
On every subpoena <i>ad test.</i>	0	2	6
On every certificate of duty or no duty under the <i>Administration and Probate Act 1890</i> , section 103	0	5	0
On every Master's certificate of transfer of executorship or administration	1	0	0
On every Master's certificate under seal of Court verifying copy, probate, or administration or other document	1	0	0
On sealing foreign probate or administration, Scotch confirmation or exemplification where the value of the estate is sworn over £500	1	0	0
On sealing foreign probate where under £500	0	10	0
On every warrant	0	1	0
On an application to search an index and inspect a pleading, order, or other record other than a caveat, unless otherwise expressly provided for by an Act of Parliament, and to inspect documents deposited for safe custody or production pursuant to an order, for each hour or part of an hour occupied	0	2	6
Not exceeding on one day	0	10	0
On an application to search for caveat or prior grant	0	1	0
For every oath, declaration, or affirmation taken before a Commissioner	0	1	6
The Commissioner signing each exhibit	0	0	6
For examining a copy, and marking same as an office copy, for each folio	0	0	2
For marking a copy, and marking same as an office copy, for each folio	0	0	6
On lodging or exhibiting inventory or account	0	1	0
On lodging præcipe	0	1	0
On filing a caveat	0	5	0
On filing an affidavit or any other document	0	1	0
On the attendance of any officer as a witness, or on the production by him of any record or document to be given in evidence (in addition to the reasonable expenses of the officer), for each day or part of a day he shall necessarily be absent from his office	0	10	0
The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid to him for fees and expenses, and the officer taking such deposit shall thereupon give a memorandum thereof to the party requiring his attendance.			
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.			

TAKING ACCOUNTS.

On taking an account of a receiver, guardian, consignee, bailee, manager, provisional official, or voluntary liquidator, or sequestrator, or of an executor, administrator, trustee, agent, solicitor, mortgagee, co-tenant, co-partner, execution creditor, or other person liable to account, when the amount found to have been received without deducting any payment shall not exceed £200	0	2	0
--	---	---	---

	£	s.	d.
The fee shall not be payable twice on the same money in the same cause or matter, but only upon sums of money for the first time received or collected by the party accounting.			
Where such amount shall exceed £200, for every £50 or fraction of £50 ...	0	0	6
In the case of any such receiver, guardian, consignee, bailee, manager, liquidator, sequestrator, or execution creditor, the fee shall, upon payment, be allowed in the account, unless the Court or Judge shall otherwise direct, and in the case of taking the accounts of such other accounting parties, the fees shall be paid by the party having the conduct of the order under which such account is taken as part of his costs of the cause or matter, unless the Court or Judge shall otherwise direct, and in such case shall be taken upon the certificate of the result of any such account; but the fees shall be due and payable, although no certificate is required, on the account taken, or on such part thereof as may be taken, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the account. The officer taking the account may require a deposit of stamps on account of fees before taking the account, not exceeding the fees on the full amount appearing by the account to have been received, and the officer or his clerk taking such deposit shall make a memorandum thereof on the account.			

TAXATION OF COSTS.

For taxing a bill of costs where the amount allowed does not exceed £8 ...	0	4	0
Where the amount exceeds £8, for every £2 allowed, or a fraction thereof ...	0	1	0
These fees, except where otherwise provided, shall be taken on signing the certificate, or on the allowance of the bill of costs, as taxed, but the fees shall be due and payable if no certificate or allocatur is required on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.			
The taxing officer may require a deposit of stamps on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.			
For a certificate or allocatur of the result, not being a judgment ...	1	0	0

Rule 24.

THIRD SCHEDULE.

Where the whole estate does not exceed £50, the sum of Two shillings and sixpence.
 Where the whole estate exceeds £50, the sum of Two shillings and sixpence, and the further sum of One shilling and threepence for every £50, or fraction of £50, by which the estate exceeds £50.

LUNACY RULES, 1900.

These Rules shall come into force on the 20th day of December, 1900.

COMMISSIONS DE LUNATICO INQUIRENDO.

1. Applications under the *Lunacy Act* 1890 for an Order for Inquisition shall be made by petition in the Form 1 in the Schedule. The petition shall be signed by the petitioner and attested by a solicitor. Petition.
2. Every petition shall be verified by the affidavits of at least two duly qualified medical practitioners in the Form 2 in the Schedule, and also by the affidavit or affidavits of a member or members of the family or other persons to whom the alleged lunatic is known. Affidavits in support.
3. Every petition, and the evidence in support thereof, shall be filed in the Master's Office. Filing, &c.
4. A copy of such petition shall be lodged with the original petition when the same is presented for filing, having thereon an indorsement of notice in the Form 3 in the Schedule. Such copy, after having been examined and sealed with the seal of the Master, shall be delivered out to the party lodging the same for service upon the alleged lunatic. Copy to serve.
5. A notice demanding an inquiry before a jury shall be in the Form 4 in the schedule. Demand for jury.
6. After the expiration of seven clear days from the filing of the affidavit of service of notice upon the alleged lunatic, the Master shall present to the Judge the petition evidence demand for jury (if any) and all other documents filed in the matter, and the Judge shall thereupon fix a day for the hearing thereof. After service, papers to be presented to Judge.
7. Notice of the day appointed for the hearing shall be given by the Master to the alleged lunatic and to the petitioner, and such other parties as the Judge may direct. Notice of hearing.
8. The order made upon such petition shall be in the Form 5 in the Schedule. Form of order for inquisition.
9. The certificate of inquisition found without a jury shall be in the Form 6 in the Schedule. Form of certificate of inquisition found.

PROCEEDINGS AFTER INQUISITION.

10. Subject to the provisions of the *Lunacy Act* 1890, the party having the carriage of the proceedings shall immediately after inquisition found or report made under section 129, or inquisition or finding filed under section 130 of the Act, take out a summons before the Master to inquire into the following matters :—
 - (a) The lunatic's age, position in life, and residence.
 - (b) The nature of his lunacy.
 - (c) Who are his next of kin.
 - (d) Who ought to be appointed committee of his person and committee of his estate, together or separately.
 - (e) Of what his property consists and the particulars thereof.
 - (f) The amount of his income.
 - (g) The particulars of his debts and liabilities and how the same should be paid or provided for.
 - (h) What persons (if any) were dependent upon him and to what extent and whether any and if so what provision should be made for them or any of them and out of what fund.
 - (i) In what manner and at what expense and by whom and where he has been maintained ; what should be allowed for his past maintenance ; what, if anything, is due and to whom in respect thereof ; and to whom and out of what fund the same ought to be paid.Summons for inquiries.

- (j) What should be allowed for his future maintenance, when such maintenance ought to commence, and out of what fund it should be paid.
- (k) What is a proper sum to be from time to time allowed to the committee of the estate by way of remuneration.

Master to report result.

11. The Master shall report the result of his inquiries in the last preceding rule mentioned, and the report shall be in the Form 7 in the schedule so far as applicable.

TRAVERSE.

Application for traverse.

12. Application for a traverse shall be made by petition in the Form 8 in the schedule, and every such petition and the evidence in support thereof shall be filed in the Master's office.

The order granting liberty to traverse shall be in the Form 9 in the schedule.

OTHER APPLICATIONS.

Other applications.

13. All other applications under the *Lunacy Act* 1890 shall, unless the Judge in any particular case otherwise directs, be made by summons in the Form 10 in the Schedule.

PROCEEDINGS UNDER SECTION 105.

Writ, warrant, or order to commence proceedings.

14. The Judge may order the Master to prepare such writ, warrant, or initiatory order in such form and with such particulars as he may direct, and after issue thereof may direct the Master to duly serve the same upon the keeper, superintendent, licensee, manager, or committee.

Subpœnas.

15. The Master shall, if the Judge shall so direct, prepare and issue and cause to be served all subpœnas.

Order disposing of inquiry.

16. Every order shall, if the Judge shall so direct, be drawn up by the Master, and shall be signed and issued by the Master.

APPLICATIONS UNDER SECTION 130.

Application to file, how made.

17. All applications to file the inquisition or finding of lunacy in the United Kingdom or in any colony or dependency thereof shall be made by summons.

Evidence in support.

18. The affidavits in support of the summons shall set out all facts necessary for the Court to make a full and complete order for the administration of the estate of the lunatic as though the Master had inquired and reported after inquisition found, as provided for in Rule 10 hereof.

Form of order.

19. The order of the Court shall be in the Form 11 in the Schedule, or as near thereto as the circumstances of the case will admit.

APPLICATIONS UNDER SECTION 131.

Form of summons.

20. The summons on complaint shall be in the Form 12 in the Schedule, or, according to the facts of each case, as near thereto as the circumstances will admit.

APPLICATIONS UNDER SECTIONS 134 AND 135 AND SECTIONS 213 AND 214.

Applications, how made.

21. All applications under sections 134 and 135, and all applications under sections 213 and 214, shall be made by summons.

Notice to be given to lunatic.

22. Notice of such application shall be given to the lunatic seven clear days before the hearing thereof, and shall be served upon him as hereinafter directed, and shall be in the Form 13 in the Schedule hereto.

Evidence in support.

23. The application shall be supported by affidavits setting forth the report of the Master, or such other documents as may be relied upon in support of the fact of the lunacy, and shall, where not otherwise established, be accompanied by affidavits of two legally qualified medical practitioners regarding the alleged lunacy.

The affidavit shall also set out the particulars of the estate of the lunatic, giving the values of each item thereof, and the gross and net income thence arising. It shall also set forth the other particulars which would be inquired or reported upon after inquisition found, as provided for in Rule 10 hereof.

24. An affidavit of service, stating particularly the time, place, mode of service, and, where there has not been personal service, the grounds of such service not having been made shall be filed in the Master's office. Affidavit of service.

25. The person so served may file a notice of objection to the application. Such notice may be in the Form 14 in the Schedule. Objections by lunatic.

26. The order made upon such application shall be in the Form 15 in the Schedule, or as near thereto as the circumstances of the case will admit. Form of order.

SERVICE.

27. Every notice shall be served on a lunatic or an alleged lunatic by being delivered to him personally, or, where personal service cannot be effected or is inexpedient, then by being delivered to some adult inmate at the dwelling-house or usual or last-known place of abode of such lunatic or alleged lunatic within the jurisdiction; and where such lunatic is an inmate of any asylum, hospital, or licensed house, notice shall be served on the lunatic by being delivered to him personally, and also by being delivered to the superintendent or licensee thereof. An affidavit of service, stating particularly the time, place, and mode of service, and, where there has not been any personal service, the grounds of such service not having been made shall be filed in the Master's office. Service on lunatic.

28. The Judge and Master respectively may direct any person to be served with notice of any application, and may dispense with service on any person. Power to order or dispense with service.

COMMITTEE.

29. The committee of the estate shall at least annually, or at such shorter periods as the Master shall direct, file his accounts in the Master's office substantiated by affidavit, and shall attend before the Master at such time as the Master may fix, and have his accounts taken and passed. And the Master shall make to him all just allowances, including the allowance for his commission as fixed by the Court, and his reasonable and proper costs, charges, and expenses of passing the accounts, and also those of the next of kin or other persons allowed to attend on the passing of such accounts at the cost of the estate. Accounts.

30. The Master shall approve the security to be given by the committee of the estate. Such security may be reduced, on request, to an amount corresponding, in the judgment of the Master, with the condition of the property of the lunatic and the income thereof. The Master may also require the security of the committee of the estate to be increased if, in his judgment, the circumstances of the case render it desirable. Master to approve security.

31. The committee of the estate shall on each occasion of passing his accounts, and also, whenever the Master so requires, satisfy the Master that his sureties are living, and that neither of them has been adjudicated insolvent or compounded with his creditors; and, in default thereof, the Master shall require him to enter into fresh security within such time as he may fix. Committee to satisfy Master that sureties are living and solvent.

32. The balances certified by the Master to be due from the committee of the estate on passing his accounts, or so much thereof as the Master certifies to be proper to be paid by him, shall, unless the Master otherwise direct, be paid by him at or within such time as the Master shall fix, into Court to the credit of the matter, or shall within such time be invested by him, with the approbation of the Master, in the name of the committee as such committee. Balance at passing of committee's accounts to be invested, &c.

33. Where it is ordered that the committee of the estate do receive or be at liberty to receive any money on account of the lunatic or his estate, he shall give credit for the same on passing his accounts before the Master, as provided for in Rule 29; and where any sum is ordered to be allowed for the maintenance of the lunatic or to be expended for any other purpose out of his estate, the committee of the estate shall be allowed the amount of the allowance for maintenance or the amount to be expended, as the case may be, on passing his accounts before the Master. Committee to give and be allowed credit for sums received or paid by him.

Default by
committee.

34. Where a committee makes default in bringing in his account or in having the same passed, or in paying the balance certified to be due by him, or in causing the same or any sum of cash under his control to be laid out pursuant to any order or report in that behalf, the Master shall, unless good cause be shown to him, not only disallow any salary or commission claimed by him or his representatives, but also charge him with interest at the rate of 8 per cent. per annum upon any balance or cash for the time which the same respectively appears to have improperly remained in hand or uninvested, as the case may be.

Maintenance and
costs, how paid.

35. Where it is ordered that the committee of the estate do pay any sums of money for maintenance, he shall pay the same out of income unless otherwise ordered; and where it is ordered that he do pay any costs he shall, unless otherwise ordered, pay the same when taxed out of any money coming to his hands after providing for the maintenance.

Accounts, how dealt
with and passed in
case of death of
committee or death
or supersedeas of
lunatic.

36. Upon the death or discharge of a committee of an estate, or upon the issue of a supersedeas or the death of the lunatic, the Master shall take and pass the account of the committee from the date of his appointment or from the foot of his then last account. If a balance is certified to be due from the committee or from the estate, he or his legal personal representative shall pay the same into Court by virtue of the certificate or otherwise within such time as the Master may direct, or, in the case of a supersedeas, shall pay the same to the person whose lunacy has been superseded, or, in the case of the death of a lunatic, shall pay the same to the legal personal representatives of the lunatic. If the Master finds a balance to be due to the committee or his estate, the same shall be paid to the committee or to his legal personal representative by the new committee out of the lunatic's estate, or, in the case of a supersedeas, by the person whose lunacy has been superseded, or, in the case of the death of a lunatic, by his legal personal representative. Upon payment of the balance, if any, or, if no balance is found to be due, or the taking of the account is not required, and may, in the opinion of the Master, be properly dispensed with, the security of the committee shall be discharged.

Delivery up of bond.

37. Where under these rules, or any special order, the security of a committee of the estate is to be discharged, then, in the case of a bond, the Master shall deliver up the same to be cancelled.

Old security
discharged on new
being perfected.

38. Where a committee enters into a fresh security upon the same being duly perfected, and upon the balance then due by the committee being paid or secured to the satisfaction of the Master, the former security shall be discharged.

Consent of
committee how
evidenced.

39. The consent of a committee to act shall be sufficiently evidenced by a written consent signed by him, and verified by his solicitor, in the Form 16 of the Schedule.

When new
committees to be
appointed, and
how.

40. The Master shall in each of the following cases, without special order, inquire and report whether or not it is expedient that a committee, or a new committee of the person, or of the estate, should be appointed, and, if so, who is the proper person to be appointed, that is to say:—

- (a) On default of a person approved to be committee of the estate in duly perfecting his security, or in duly perfecting a fresh security when required by the Master.
- (b) On the death or discharge of a committee, or one of several committees, where the custody does not survive.
- (c) If a committee is declared insolvent, files his schedule, or in any way compounds with his creditors.
- (d) If a committee absconds, or goes to reside permanently abroad.

Master may receive
deed or security.

41. The Master may receive any deed or security belonging to a lunatic, and retain such deed or security at his discretion.

Master may receive
will for safe
custody.

42. Any person in whose custody or control any testamentary paper of a lunatic is shall be at liberty to deposit the same in the Master's office for safe custody.

43. On the death of a lunatic, or upon the issue of a supersedeas, the Master shall ascertain and certify who is entitled to receive any deeds, securities, or effects relating to or forming part of the estate of such lunatic which have been deposited in his office for safe custody, and may deliver such deeds, securities, or effects to such person or persons thereto entitled.

Upon death of lunatic or supersedeas Master to hand deeds, &c., over to proper persons.

RECEIVERS.

44. Where a receiver is appointed the person appointed shall, unless otherwise ordered, first give security to be allowed by the Master duly to account for what he shall receive as such receiver, and to pay the same as the Judge or Master may direct, and the person so appointed shall, unless otherwise ordered, be allowed by the Master a proper salary or allowance.

Appointment of receiver.

45. The provisions of these rules respecting the committee of the estate, his accounts, payments, allowances, and matters of the like nature shall extend so far as applicable with the necessary modifications to the case of a receiver.

Provisions as to committees to apply.

CONSTRUCTION OF, AND PROCEEDINGS UNDER, ORDERS.

46. Orders made in Lunacy shall be drawn up and signed by the Master.

Orders to be drawn up by Master.

47. All orders for the appointment of committees, and for the allowance of maintenance or remuneration to the committee shall be deemed to take effect only until further order.

Orders to take effect until further order.

48. Where it is ordered that a person named be appointed committee of the estate of a lunatic, the order shall be deemed to take effect only on the Master certifying that the person so named has given such security as the Master has approved for answering the estate and accounting for the rents, profits, and produce thereof once in every year, or oftener if required, before the Master, and such security shall be perfected at or within such time as the Master appoints, and, until such security has been perfected, the person so named shall not, unless otherwise ordered, interfere in any manner with the affairs of the lunatic as the committee of his estate or otherwise.

Order appointing committee to date from Master's certificate.

49. Where it is ordered that the committee of the estate, or of the person, be at liberty to retain any furniture or effects of the lunatic, he is to sign an inventory thereof, and an undertaking to deliver up the same when required to do so, and such inventory and undertaking shall be deposited in the office of the Master.

Inventory of furniture and effects.

50. Where an order is made authorizing a lease of a lunatic's property, the Master shall settle a proper lease in pursuance of the order, and shall sign his allowance of the lease when settled, and the committee shall, in the name and on behalf of the lunatic, execute the lease when allowed upon the intending lessee executing a counterpart thereof, and such lease shall be duly registered as by law provided.

Master to settle lease, and same to be registered.

51. Where it is ordered that the committee be at liberty to raise, by mortgage of any part of a lunatic's estate, a sum of money for any purpose, the Master shall settle and approve a proper mortgage, and the committee, upon payment to him, or as may be directed, of the amount to be raised shall in the name and on behalf of the lunatic execute the mortgage when so settled and approved, and do all such other acts as are necessary to effectuate the same, and the committee shall, out of the income of the lunatic's estate, pay and keep down the interest on such mortgage.

Master to settle mortgage of lunatic's estate, &c.

52. Where an order for the sale of a lunatic's real or leasehold estate shall be made, the purchaser shall, within such time as the Master may appoint, pay the purchase money, or a deposit on such purchase money, into Court, or otherwise as the Master shall direct, and, in case of payment into Court, to such account as the Master may direct, and upon such payment, the purchaser shall be let into possession or receipt of the rents and profits as from such day as the Master may appoint, and the committee of the estate shall forthwith, and in the name and on behalf of

Where lunatic's property sold deposit to be made, &c.

the lunatic, execute all proper assurances of the property sold to the purchaser, or as he directs to be settled by the Master, and due notice of attending the Master shall be given to all parties interested.

MASTER'S REPORTS.

53. The Master shall so far as possible prepare his report without the attendance of solicitors or parties.
54. Every draft report shall be signed by the Master at an adjournment to be made for that purpose, notice of which shall be given to the parties in cases where the report has been prepared without any attendance.
55. Where objections to the draft report have been made and not allowed, the party objecting may take the opinion of the Judge thereon by summons to be issued within eight days after the signature of the Master of the report.
56. Where no objections have been made the report shall be submitted to the Judge without attendance of parties.
57. Every report shall be signed by the Judge and shall thenceforth be binding on all the parties to the proceedings, and shall have the force and effect of an order of the Court. No order confirming the report shall be necessary or allowed.
58. Where the Master is of opinion that by reason of the smallness of the property of a lunatic and the expenses consequent on an order "*de Lunatico Inquirendo*," or for any other reason, an inquisition should be deferred or carried on to a limited extent only he shall report accordingly, or if he is of opinion that any application ought not to be granted, or that an inquiry was unnecessary, he shall decide whether the application or inquiry was proper, and if he decides in the affirmative the proper costs of the application or inquiry shall be allowed on the passing of the account, but if he decides in the negative no costs shall be chargeable to the estate of the lunatic.
- Miscellaneous.*
59. Subject to the provisions hereinbefore contained percentage shall be paid by cheque or cash, and the Master shall give notice in writing to the committee of the estate or other proper person of the amount to be paid by him according to the certificate of the Master and of the time within which such amount is to be paid, and the committee or other person shall within such time pay the amount stated in such notice out of the first moneys of the lunatic coming to his hands.
60. For the purpose of any inquiry before him relating to the alleged insanity of a person or relating to the property of a person not found lunatic by inquisition the Master may, if he thinks fit, visit such person or require him to be produced before him as he may direct.
61. The Master may, if he consider it desirable for the care of the person or for the management of the estate or otherwise in the interest of any lunatic or alleged lunatic, direct such person as he thinks fit to present a petition for an order for inquisition or to make other application to the Court for an order touching the person or estate of the lunatic or alleged lunatic, and if such direction be not complied with within ten days, or such further time as the Master may allow, the Master may direct such petition to be presented or other application to be made by the Crown Solicitor, and the Crown Solicitor shall present the same or apply accordingly.
62. Any costs incurred by any person or by the Crown Solicitor under the last preceding rule pursuant to the directions of the Master shall be paid by such parties and out of such funds as the Court or the Master may direct.
63. All matters which require to be brought before the Judge shall be brought before him in Chambers. The Judge may make an order upon any summons or petition without attendance of counsel, solicitors, or parties, or after such attendance, or may adjourn the summons or petition into Court or for inquiry or further inquiry upon any matter. Any matter may be adjourned from Court for consideration by the Judge out of Court.

Reports to be prepared without attendances.

Settlement of reports.

Objections to report.

Where no objections.

Report signed by Judge.

Master to certify whether inquiry necessary, and whether costs shall be allowed.

Percentage fees, how payable.

Master may visit alleged lunatic.

Master may direct a petition for inquisition to be presented.

Costs under last rule, how paid.

Matters to be before Judge out of Court.

64. The Master may communicate personally with the Judge with regard to any matter pending before him when any point appearing to him to be novel or difficult arises, and he shall when requested by the Judge so to do attend to give any information or assistance he may require.

Master may communicate with Judge.

65. The summons to be used by the Master shall be in the Form 17 in the Schedule.

66. Every committee of the person of a lunatic so found by inquisition shall within three days after any change shall have taken place in the residence of himself or of the lunatic send by post to the Master at his Chambers notice thereof with the address of the place to which he or the lunatic have removed.

Change of address of lunatic or committee to be sent to Master.

67. The provisions of these rules relating to lunatics so found by inquisition and the other general provisions of these rules shall in the discretion of the Judge or Master apply to all lunatics and lunatic patients under the *Lunacy Act* 1890 and to their property and to all applications relating thereto.

These rules to apply to "lunatic patients" as well as to lunatics.

68. Where not otherwise herein specially provided for the Judge or Master may in his discretion adopt such of the rules of the Supreme Court under the Judicature Act as he shall deem convenient applicable and proper.

Judicature rules to apply.

69. The forms set out in the Schedule hereto shall be followed with such variations as the nature and circumstances of each particular case may require.

Forms.

COSTS AND TAXATION.

70. The Master shall be at liberty by memorandum in writing to allow to a solicitor for attending on any appointment before him such a sum not exceeding Two guineas as having regard to the special nature of the case he thinks reasonable.

Master may allow fixed sum for attendances.

71. In all cases not herein otherwise specially provided for solicitors shall be entitled to charge and be allowed such costs and fees as they would be entitled to charge and be allowed for work and labour of a similar character in the Supreme Court under the Judicature Act.

Solicitors to be allowed costs under Judicature Act.

72. Costs in lunacy shall be taxed by such taxing officer as the Judge or Master may direct.

Who to tax.

73. Subject to these rules all the provisions of the rules of the Supreme Court for the time being in force relating to taxation of costs shall be applicable to the taxation of costs in lunacy proceedings.

Rules as to taxation.

74. The scale of costs to be allowed to solicitors in reference to proceedings in lunacy shall be those set forth in the Schedule hereto.

Scale of costs specially provided for.

Dated this 1st day of November, 1900.

JOHN MADDEN, C.J.

E. D. HOLROYD, J.

THOS. A'BECKETT, J.

H. E. A. HODGES, J.

J. H. HOOD, J.

By the Court,
J. W. O'HALLORAN, Prothonotary.



SCHEDULE.

No. 1.

Petition for Inquisition.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A.B.*, a person alleged to be a Lunatic,
and

In the matter of the *Lunacy Act 1890.*

To their Honours the Judges of the Supreme Court.

The humble petition of *C.D.*, of
sheweth as follows:—

1. *A.B.*, now residing at _____ is now and for _____ months last past has been of unsound mind and incapable of managing himself or his affairs.
2. The said *A.B.* is a [married man, bachelor, or widower as the case may be] and is now of the age of _____ years.
3. [Here state the name and address of wife and particulars of the children, their addresses, ages, and occupations, if any; if none, state the names, addresses, and occupations, of father or other near relatives.]
4. Your petitioner is the [state relationship] of the said *A.B.*
5. The estate of the said *A.B.* is of the value of £ _____, and the annual income of the said *A.B.* does not exceed the sum of £ _____

Your petitioner therefore humbly prays that the Master-in-Lunacy may be directed to inquire concerning the alleged lunacy of the said *A.B.*

And your petitioner will ever pray, &c.

Dated this _____ day of _____ 19 _____

(Signed) *C.D.*

Witness to the signature of the said *C.D.*—*E.F.*, solicitor.

FORM 2.

Affidavit Medical Practitioner in support of Petition.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A.B.*, a person alleged to be a Lunatic,
and

In the matter of the *Lunacy Act 1890.*

I, *X.Y.*, of [address] [medical qualification], &c., make oath and say as follows:—

1. I am a duly qualified medical practitioner of this colony practising at _____
2. On the _____ day of _____ I visited the said *A.B.*, at _____ and saw and conversed with him, and carefully examined him to ascertain his then mental condition, and found him to be, according to the best of my skill and opinion, of unsound mind.

[Here state grounds of opinion, distinguishing between facts indicating insanity observed by deponent himself and other facts (if any) indicating insanity communicated to deponent by others, naming them.]

Sworn at _____ in Victoria _____ this _____ day of _____ before me
a Commissioner, &c.

NOTE.—If more than one visit or examination be made this paragraph should be repeated for each.

State also opinion as to nature of lunacy and probability of recovery or duration of attack.

FORM 3.

Notice to alleged Lunatic of Application for Inquisition.

To Mr. *A.B.* [address, occupation].

Take notice that a petition, of which a copy is within written, has been presented to the Supreme Court by me, and that by virtue of and under the same an inquiry may be ordered to take place before the Master-in-Lunacy as to whether you are or are not of unsound mind and incapable of managing yourself and your affairs, but that you may, in case you think fit, demand that such inquiry may, if ordered, be had before a jury; in which case a notice of such your desire must be signed by you and attested by your solicitor and filed at the office of the Master-in-Lunacy, Law Courts, Melbourne, within seven clear days after your receipt of this notice.

Dated this _____ day of _____

C.D.
[or *R.S.*, solicitor to the said *C.D.*]

FORM 4.

Notice Demanding an Inquiry before a Jury.

Reg. 5.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A.B.*, a person alleged to be a Lunatic,
and

In the matter of the *Lunacy Act 1890.*

I, the above-named *A.B.*, having been on the _____ day of _____ served with a notice of a petition for an order for an inquiry whether or not I am of unsound mind and incapable of managing myself and my affairs, do hereby demand that, in the event of such inquiry as aforesaid being ordered, the same be had before a jury.

Witness—*R.S.*, of _____ solicitor for the above-named *A.B.*

Signed *A.B.*

FORM 5.

Order for Inquisition.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A. B.*, a person alleged to be a Lunatic,
and
In the matter of the *Lunacy Act 1890.*

Before His Honour Mr. Justice
day the day of 19

Upon petition preferred to this Honorable Court [and upon hearing Mr. of counsel for *C. D.*, the petitioner herein]. And upon reading the said petition of the said *C. D.*, the several affidavits of *G. D.*, *J. S.*, *H. H.*, and [insert the other affidavits filed] respectively sworn and filed herein on the day of 19, no one appearing for the above-named *A. B.*, although duly served with the said petition and notice of the hearing of the said petition, as appears by the affidavit of *F. K. G.*, sworn and filed herein this day. This Court doth order that *T. P. W.*, Esquire, the Master-in-Lunacy, do [with a jury of six special jurors] in pursuance of his general commission under the seal of the Supreme Court to him for that purpose given, inquire whether the said *A. B.* is a person of unsound mind and incapable of managing himself and his affairs, and do certify the result of such inquiry to this Honorable Court. And it is further ordered that the said inquiry be held at such time and place as the said Master-in-Lunacy may appoint. Where jury is demanded.

By the Court.

T. P. W.,
Master-in-Lunacy.

FORM 6.

Certificate of Inquisition.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A. B.*, a person alleged to be a Lunatic,
and
In the matter of the *Lunacy Act 1890.*

Central Bailiwick,
Melbourne, to wit.

An Inquisition taken at* the Law Courts, William-street, in the City of Melbourne, in Victoria, by *T. P. W.*, Esquire, the Master-in-Lunacy, the day of 189, by virtue of the general Commission under the seal of the Supreme Court of Victoria bearing date the day of 19, issued to the said *T. P. W.*, Esquire, the Master-in-Lunacy, directed and under an Order of this Honorable Court in this matter, made by His Honour Mr. Justice and bearing date the day of 19, and which said Order is to this Inquisition annexed to inquire of the lunacy of the above-named *A. B.*, and he the said *T. P. W.*, having personally examined the said *A. B.*, and taken evidence and called for information to ascertain whether or not the said *A. B.* is of unsound mind and incapable of managing himself and his affairs, finds that the said *A. B.* is of sound mind and capable of managing himself and his affairs, and the said *T. P. W.* certifies the same accordingly. * Or such other place as may be.

Dated the day of 19

In testimony whereof the said *T. P. W.* has to this Inquisition set his hand and seal the day and year first above written.

T. P. W.,
Master-in-Lunacy.

FORM 7.

Report of Master after Inquisition.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A. B.*, a Lunatic so found,
and
In the matter of the *Lunacy Act 1890.*

The day of

I, *T. P. W.*, Master-in-Lunacy, do hereby report that I have been attended by the petitioner, *C. D.*, in the above matter, and his solicitor and I have made inquiry into the several matters hereafter set forth, and I find and report thereon as follows, that is to say:—

1. That by Inquisition taken by me at on the day of the said *A. B.* was found of unsound mind, and incapable of managing himself or his affairs.

2. That the above-mentioned lunatic, *A. B.*, is of the age of or thereabouts, and that he has prior to his said lunacy followed the occupation of a at in where he has of late resided.

3. That the said *A. B.* is affected with paralysis of the brain, and is unable to understand what is said to him or to express himself intelligently.

4. The persons who would be entitled to his estate if he were now dead intestate are—

5. *X. Y.*, of , is the proper person to be appointed committee of the person of the said *A. B.*, and *Y. Z.*, of , is the proper person to be appointed committee of the estate of the said *A. B.*

6. I have set forth in the first part of the First Schedule hereto the particulars of the personal estate of the said *A. B.*, and in the second part of the said schedule the particulars of his real estate.

7. The gross annual income of the said *A. B.* is £ or thereabouts; his net annual income is £ or thereabouts.

8. The debts and liabilities of the said *A. B.* are set forth in the Second Schedule hereto, and should be paid or provided for in manner following and out of the funds specified [here set out findings].

9. The persons dependent on the said *A. B.* are [here set out the names and degrees of relationship], and the following provision should be made for the said as follows, and be paid out of [specify fund and set out findings].

10. The said *A. B.* has prior to the Inquisition herein been maintained by *L. M.*, at a cost of per , and there is now due to the said *L. M.* the sum of £ in respect thereof, and the sum of £ is the proper sum to be allowed to the said *L. M.* out of the estate of the said *A. B.* for his past maintenance.

11. The sum of £ per annum is a proper sum to be allowed to the said *X. Y.* out of [the rents and profits, the income, &c.: or where insufficient, out of the corpus of the estate] of the said *A. B.* for his future maintenance as from the day of according to the following scheme [set it out shortly].

12. The sum of £ per centum is a proper sum to be allowed to the said *Y. Z.* upon the passing of his accounts upon the corpus of the estate collected by or coming under his hands, and the sum of £ per centum upon the income of the estate received or collected by him.

T. P. W.,
Master-in-Lunacy.

First Schedule.

Second Schedule.

FORM 8.

Petition for Traverse.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A. B.*, a Lunatic so found,
and
In the matter of the *Lunacy Act 1890.*

To their Honours the Judges of the Supreme Court of Victoria.

The humble petition of , of , in the colony of Victoria, sheweth—

1. By an Order for Inquiry made in this matter by His Honour Mr. Justice , on the day of , 19 , it was ordered that *T. P. W.*, Esquire, the Master-in-Lunacy, should inquire whether the said was of unsound mind, and incapable of managing self or h affairs, and, if so, from what date he was of unsound mind, and incapable of managing self or h affairs.

2. By the Inquisition taken on the said order, it was found by the said Master-in-Lunacy that the said was a person of unsound mind, and incapable of managing self or h affairs, and further that the said had been of unsound mind, and incapable of managing self or h affairs.

3. Your petitioner is , of the said
[Here state shortly any reasons for asking for a traverse.]

4. The said Master-in-Lunacy gave your petitioner liberty to attend the said inquiry.

5. Your petitioner is advised, and believe, that the said finding that the said has been of unsound mind, and incapable of managing self or h affairs, from the year 189 , is contrary to the evidence adduced upon the said inquiry.

Your petitioner therefore humbly prays your Honours that he may be at liberty to traverse the said Inquisition, and that your Honours will in the meantime stay all further proceedings in the said matter, or that your Honours may make such other order in the premises as to your Honours shall seem fit.

And your petitioner will ever pray, &c.

(Sgn.) *L. M.*

It is intended to serve this petition on the following persons:—

E. F.
G. H.

FORM 9.

Order for Liberty to Traverse.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A. B.*, a Lunatic, so found,
and
In the matter of the *Lunacy Act 1890.*

day the day of 19 .

Before His Honour Mr. Justice

* Here state relationship.

Whereas of in the said colony the* of the above-named lunatic, has preferred h petition in this matter, stating as therein is stated, and praying that h might be at liberty to traverse the inquisition taken and filed therein bearing date the day of 19 so far as the finding thereon that the above-named has been of unsound mind and incapable of managing self or h affairs

And upon reading the said petition of the said , the joint and several affidavits of and verifying the petition, and sworn the day of 19 , the joint and several affidavits of and sworn the day of 19 , the several affidavits of &c., respectively sworn the days of And upon hearing Mr. of counsel for the petitioner for the inquiry and Mr. of counsel for the petitioner for the inquiry as to the lunacy of the said It is ordered that the said be at liberty to traverse the said inquisition on giving security to the satisfaction of the Master-in-Lunacy of this Honorable Court within days from the date hereof for the costs of the said the petitioner for the inquiry as to the lunacy. And it is further ordered that such traverse shall be tried [before a Special Jury of six men] at the sittings of this Honorable Court, commencing on the day of 19 , and be returned within fourteen days after trial. And that the said do, within three weeks from this date, give sufficient security to and to the satisfaction of the Master-in-Lunacy proceeding to trial of the said traverse, within the time aforesaid. And this Court doth reserve the question as to the costs of all parties of and incidental to this order and the said traverse.

By the Court,

T. P. W.,
Master-in-Lunacy.

FORM 10.
Summons.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A. B.*, a Lunatic,
and
In the matter of the *Lunacy Act 1890*.

Let all parties concerned attend me at the Law Courts, William-street, Melbourne, on _____ day,
the _____ day of _____ 19____, on the hearing of an application on the part of [*here state on whose*
behalf the application is made and its object].

Dated the _____ day of _____ 19____.

Judge.

This summons was taken out by
_____ solicitor for
To [*insert the names of the persons to be served with the summons*].

FORM 11.
Order under Section 130.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A. B.*, of _____, a Lunatic,
and
In the matter of the *Lunacy Act 1890*.

Before His Honour Mr. Justice _____
the _____ day of _____ 19____.

Upon motion this day made unto this Court by Mr. *W.* of counsel for (*applicant*), and upon reading (*the affidavits and other evidence of finding of foreign Court*). And this Court being satisfied that the said *A. B.* has been found of unsound mind and incapable of managing himself and his affairs by (*Commission de Lunatico Inquirendo or other legal inquiry*) in [*state where*]. This Court doth direct that a copy of the said (*order or document finding him lunatic*) be filed of record in this Court; and this Court doth thereupon appoint *X. Y.* committee of the estate of the said *A. B.* And this Court doth order that the said *X. Y.* do forthwith enter into the usual Bond, with two approved sureties, to the amount of £____. And this Court doth further order that the said *X. Y.* do, at such times as the Master shall appoint, pass his accounts before the Master, and shall be allowed therein as a disbursement [*here fix the remuneration*]. And this Court doth direct that the balance appearing by such account be [*invested or otherwise disposed of*]. And this Court doth further order that it be referred to the proper officer to tax the costs of [*applicant*] of and incidental to this application, and that such costs, when so taxed, be paid out of the estate of the lunatic to the [*applicant*] or *M. N.*, his solicitor, and that the said *X. Y.* be allowed such payment in passing his accounts before the Master.

By the Court,
T. P. W.,
Master-in-Lunacy.

FORM 12.
Summons on Complaint under Section 181.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of the *Lunacy Act 1890*, Section 181,

and
In the matter of _____ at _____ a lunatic patient now in the Asylum for Insane
in the said colony.

To _____ of _____ in Victoria.

Whereas complaint hath this day been made to me by *T. P. W.*, Esquire, the Master-in-Lunacy of Victoria, that the sum of £____ is due and owing by you to the above-named [*here set out*] or Claim.

These are therefore to command you, and you are hereby summoned to be appear and attend before me or such other Judge who may be sitting in Chambers at the Supreme Court, William-street, Melbourne, on _____ day the _____ day of _____ next at the hour of _____ o'clock in the _____ noon to answer the said complaint, and to show cause why you should not pay to the said *T. P. W.*, as such Master-in-Lunacy, the said sum of £____ and the costs of and incidental hereto.

Given under my hand this _____ day of _____ 19____.

J. H.
A Judge of the Supreme Court of Victoria.

FORM 13.

Notice to Lunatic of Application under Sections 134, 135, 213, or 214.

Mr. *A. B.* [*address and occupation*].

Take notice that an application will be made by *C. D.* of _____ to the Supreme Court at the Law Courts, William-street, Melbourne, on _____ the _____ day of _____ for an order directing that [*here follow the terms proposed*] and that if you desire to be heard thereon, you may attend personally or by your solicitor at the said Supreme Court on that day, or may give notice of your desire to be heard or to oppose the said motion addressed to the Master-in-Lunacy, Law Courts, Melbourne, on or before that day.

Dated the _____ day of _____ 19____.

C. D., Applicant, or
R. S., Solicitor to the said *C. D.*

FORM 14.

Notice of Objection by Lunatic to Application under Sections 134, 135, 213, or 214.

I, *A. B.*, of _____, having been served with notice of the application for an order respecting my property under the *Lunacy Act 1890*, hereby give notice of my intention to object to such order being made.

Dated the _____ day of _____ 19____.

A. B.

Witness—*C. D.*, Solicitor for the above-named *A. B.*

November 10, 1900.

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FORM 15.

Order under Sections 134, 135, 213, or 214.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A.B.*, of _____, and _____, an alleged Lunatic,

In the matter of the *Lunacy Act 1890*.

The _____ day of _____ 19 _____.

Before His Honour Mr. Justice _____.

Dated the _____ day of _____ 19 _____.

Upon motion this day made by Mr. _____, of counsel for [*C.D.* of the applicant] and upon reading the [here set out the evidence] and this Court being satisfied that the said *A.B.* is a lunatic and that his property does not exceed One thousand pounds in value [or that the income of his property does not exceed One hundred pounds per annum, or as the case may be], doth hereby order [here set out the order as directed pursuant to sections 134 and 135 or sections 213 or 214].

And this Court doth order that it be referred to the proper officer to tax the costs of the said [*C.D.*], of this application, and that when so taxed such costs be paid out of the estate of the said [*A.B.*] to the said [*C.D.*] or to *M.N.*, his solicitor.

By the Court,

T.P.W.,
Master-in-Lunacy.

FORM 16.

Consent of Committee to act.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A.B.*, a Lunatic so found,

In the matter of the *Lunacy Act 1890*.

I, *E.F.*, of _____, do hereby consent to be appointed and to act as committee of the estate of *A.B.* of _____ a lunatic, and to accept such remuneration as the Court may from time to time order. And I undertake to enter into the usual security as may be directed by the Master.

Dated this _____ day of _____ 19 _____.

(Signed) *E.F.*

I, *M.N.*, of _____, solicitor to _____ hereby certify that the above-written signature is the signature of *E.F.* the person mentioned in the above-written consent.

Dated this _____ day of _____ 19 _____.

(Signed) *M.N.*

FORM 17.

Summons by Master.

In the Supreme Court of Victoria.
In Lunacy.

In the matter of *A.B.*, a Lunatic so found,

In the matter of the *Lunacy Act 1890*.

To _____ of _____

I, *T.P.W.*, the Master-in-Lunacy, do hereby summon and require you personally to appear before me at my Chambers at the Law Courts, Melbourne, in the said colony on _____ day next the _____ day of _____ 19 _____ at the hour of _____ o'clock in the _____ noon of the same day and then and there to be examined and to testify the truth concerning certain matters relating to the estate of the said _____ and particularly with reference to certain transactions of the said _____ and to produce all books papers and documents in your custody or control or in the custody or control of any person on your behalf relating to the said matters and transactions.

Given under my hand and seal this _____ day of _____ 19 _____.

T.P.W.,
Master-in-Lunacy.

Costs.

<i>Instructions.</i>	<i>£ s. d.</i>
For petitions and documents to be brought into the Master's office, such as proposals, statements of facts, reports, accounts, &c.	0 10 0
For affidavits	0 6 8
For or in opposition to any motion to be made in Court	0 10 0
For or in opposition to any motion to be made in Chambers	0 6 8
For brief on hearing of petition	0 13 4
For brief on motion or summons, or on further consideration, or on any other application in Court or in Chambers or before the Master	0 10 0

Drawing Documents and Pleadings.

Petitions, inquisitions, minutes, orders, per folio	0 1 0
Accounts, statements, proposals, and other documents for use in the Master's office, and fair copy to leave, per folio	0 0 8
Briefs, per folio	0 0 8
Advertisements to be signed by the Master, including attendance therefor	0 6 8
Bill of costs for taxation, including copy for taxing officer, per folio	0 0 9
For each copy	0 0 6

Copies.

Of all documents where no other provision is made, per folio	0 0 6
Of briefs, per folio	0 0 4
Engrossment on parchment (including skin) of any document, per folio	0 0 8

<i>Perusals.</i>		<i>£ s. d.</i>
At per folio ... ..	...	0 0 4
Of special affidavits by the solicitor of the party against whom the same can be read ... ..	...	0 0 6

Writs and Summonses.

Writ of subpoena <i>duces tecum</i> , including præcipe and attending to issue ... ..	...	0 10 0
All other writs, drawing and engrossing, per folio ... ..	...	0 1 4

Services and Notices.

Service of petition, order, or other document on a party personally ... ..	...	0 5 0
If served at a distance of more than 2 miles from the office of the solicitor serving the same, for each mile beyond such 2 miles therefrom ... ..	...	0 1 0
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), for correspondence in addition ... ..	...	0 7 0
Correspondent's charges ... ..	...	1 10 0
Where more than one attendance is necessary to effect service, such further allowance may be made as the Taxing Officer shall think fit.		
Service on a solicitor ... ..	...	0 5 0
In preparing notice of motion ... ..	...	0 2 6
Or per folio ... ..	...	0 1 0
Copy for service ... ..	...	0 1 0
Or per folio ... ..	...	0 0 6
For service of notice of motion, summons in chambers, or appointment on solicitor of other party ... ..	...	0 2 6
For preparing any necessary or proper notice or memorandum not otherwise provided for or any demand ... ..	...	0 2 6
Or if special and necessarily exceeding three folios, for preparing same, for each folio beyond three ... ..	...	0 1 0

Attendances.

To file any petition, affidavit, or other document ... ..	...	0 2 6
Where more than two ... ..	...	0 5 0
The Taxing Officer shall satisfy himself that all documents ready for filing shall be filed on the one attendance, and that no unnecessary attendances are charged.		
To obtain an appointment ... ..	...	0 2 6
On examination before the Master, Commissioner, or other person ... ..	...	0 13 4
For every hour after the first ... ..	...	0 6 8

If examination more than 2 miles from place of business of the solicitor, such additional allowance as the Taxing Officer may deem reasonable.

For attending summons or other appointment before the Master, each day a fee of 6s. 8d., 13s. 4d., or 21s., according to circumstances, each attendance to be allowed by the Master

On Master to settle drafts ... ..	...	0 6 8
To take accounts, consider proposals, or on any inquiry ... ..	...	0 10 0
For every hour after the first ... ..	...	0 6 8
For any other purpose whatsoever necessary and proper ... ..	...	0 5 0
On summons or hearing with counsel ... ..	...	0 10 0
If without counsel, not exceeding ... ..	...	1 10 0
On counsel with brief or other papers, if counsel's fee two guineas ... ..	...	0 3 4
If more ... ..	...	0 6 8
On counsel to mark refresher or to appoint consultation ... ..	...	0 5 0
On consultation or conference with counsel ... ..	...	0 13 4
In court on hearing ... ..	...	0 13 4
To obtain or give any necessary consent ... ..	...	0 6 8
On deponent to read over and with him to be sworn to affidavit ... ..	...	0 5 0
On taxation of bill of costs ... ..	...	0 6 8

Unless the same shall necessarily occupy so much time that the Taxing Officer shall consider such amount inadequate, in which case he may allow such further fee as he may deem just.

Term Fee, Letters, &c.

No term fee shall be allowed, but an allowance is to be made for special letters and for the necessary expense of postages, carriage, and transmission of documents.

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