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# VICTORIA GOVERNMENT GAZETTE.

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## RULES OF THE SUPREME COURT

OF THE

STATE OF VICTORIA.

1937.



## CHAPTER I.

## RULES OF PROCEDURE IN CIVIL PROCEEDINGS.

On and after the first day of April, 1938, all Rules of Procedure in Civil proceedings, including the Rules contained in the Fifth Schedule to the *Supreme Court Act 1928*, shall be repealed and of no effect except so far as regards all causes or matters then pending and on the said first day of April the Rules hereinafter set out shall come into force and shall apply to all causes and matters commenced on and after that date.

Commencement  
of Rules.

## ORDER I.

## FORM AND COMMENCEMENT OF ACTION.

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

Proceedings to  
be by action.

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

Other matters.

## ORDER II.

## WRIT OF SUMMONS.

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

Actions to be  
commenced by  
writ indorsed.

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

Costs of  
prolixity.

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

Form of writ.

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

Writs for  
service out of  
State.  
Form and  
notice.

Actions on bills  
of exchange.

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

Date and teste.

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

#### ORDER III.

##### INDORSEMENTS OF CLAIM.

When to be  
made.

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

Substance and  
amendment.

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

Representative  
character.

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

Special  
indorsement.

4. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (a) upon a contract express or implied (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); or (b) on a bond or contract under seal for payment of a liquidated amount of money; or (c) on a Statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt other than a penalty; or (d) on a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (e) on a trust; or (f) in actions for the recovery of land with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant, or (g) where the plaintiff seeks to recover a specific chattel with or without a claim for the hire thereof or for damages for its detention; or (h) in actions for the specific performance of contracts in writing for sale or purchase of property the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, and of the remedy or relief to which he claims to be entitled. Such special indorsement shall be to the effect of such of the Forms in Appendix C, section IV., as shall be applicable to the case.

In indorsement of  
notice as to  
stay of  
proceedings.

5. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state that upon payment thereof within four days



after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the Form in Appendix A, Part III., section III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

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

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

#### ORDER IV.

##### INDORSEMENT OF ADDRESS.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon the writ of summons and notice in lieu of service of a writ of summons the address of the plaintiff, and also his own name or firm and place of business, which shall be his address for service, if such place of business is not more than three miles from the office of the Prothonotary, and also, if his place of business shall be more than three miles from the office of the Prothonotary, another place, to be his address for service, which shall not be more than three miles from the office of the Prothonotary, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where plaintiff sues by solicitor.

2. A plaintiff suing in person shall indorse upon the writ of summons and notice in lieu of service of a writ of summons his place of residence, his occupation, and a place, to be his address for service, which shall not be more than three miles from the office of the Prothonotary, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. Where plaintiff sues in person.

3. Where a plaintiff sues in person and no person can be found at the place of residence or address for service indorsed by him, all such writs and other documents as are mentioned in the last preceding Rule may be served on him by filing the same in the Prothonotary's Office. Where plaintiff cannot be found.

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

#### ORDER V.

##### ISSUE OF WRITS OF SUMMONS.

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

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

Sealing.

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

Copy to be left with officer.

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

Officer to file copy.

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

#### ORDER VI.

##### CONCURRENT WRITS AND ORIGINATING SUMMONSES.

Issue of concurrent writs.

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

Concurrent originating summons.

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

Concurrent writs within and beyond the jurisdiction.

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

Concurrent originating summons within and beyond the jurisdiction.

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

#### ORDER VII.

##### I.—DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

Solicitor to declare whether writ issued by his authority.

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

## II.—CHANGE OF SOLICITORS.

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

Change of  
solicitor.

3. When a solicitor in any cause or matter has died, or become bankrupt or cannot be found or has been struck off the roll and the party for whom he acted has not given notice of change of solicitor any other party may on notice to be served on the first named party personally or by letter addressed to his last known address or as a Judge may order apply to the Court or a Judge for an order declaring that the solicitor has ceased to be the solicitor acting for the first named party in the cause or matter and the Court or a Judge may make an order accordingly. The party obtaining the order shall serve a notice thereof called "a notice of removal" to the same effect as the order upon every other party and shall file a copy of such notice in the Prothonotary's Office. The first-mentioned party shall upon being so served file in the said office either a notice of appointment of a new solicitor or a notice giving an address for service and in default of his so doing within 7 days any documents of which personal service is not necessary may be served upon the party so in default by being filed with the proper officer.

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

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

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

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

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

Effect of order.

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

"Address for  
service."

Solicitor not to  
act for adverse  
parties.

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

Solicitor or  
clerk not to be  
security.

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

#### ORDER VIII.

##### RENEWAL OF WRIT.

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

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not be served therewith, the plaintiff may, before the expiration of the twelve months, apply to the Court or a Judge for leave to renew the writ; and the Court or Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the Prothonotary's Office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 18 in Appendix A, Part I., with such variations as circumstances may require; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any Statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

Evidence of  
renewal.

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

Lost writ; copy  
may be sealed.

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

#### ORDER IX.

##### SERVICE OF WRIT OF SUMMONS.

##### 1. Mode of Service.

Acceptance of  
service.

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

Service.

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

*2. On Particular Defendants.*

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

4. When an infant is a defendant to the action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on the infant; provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service. Infant defendant.

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

*3. On Corporations and other Bodies.*

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

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

*4. In Particular Actions.*

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

*5. Generally.*

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

ORDER X.

SUBSTITUTED SERVICE.

Application for  
substituted  
service.

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

ORDER XI.

PART I.—SERVICE OUT OF JURISDICTION.

When service  
out of  
jurisdiction  
allowed.

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

- (a) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land within the jurisdiction; or
- (b) any act deed will contract obligation or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed rectified set aside or enforced in the action; or
- (c) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (d) the action is for the administration of the personal estate of any deceased person who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee and which ought to be executed according to the law of Victoria; or
- (e) the action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made which according to the terms thereof ought to be performed within the jurisdiction or is founded on a tort committed within the jurisdiction; or
- (f) any injunction is sought as to anything to be done within the jurisdiction or any nuisance within the jurisdiction is sought to be prevented or removed whether damages are or are not also sought in respect thereof; or
- (g) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction; or
- (h) the action is by a mortgagee or mortgagor in relation to a mortgage of personal property situate within the jurisdiction and seeks relief of the nature or kind following, that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, re-conveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under sub-head (c) of this Rule) any personal judgment or order for payment of any moneys due under the mortgage.

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

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

As to applications for leave to serve out of jurisdiction.

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

Order to fix time for appearance.

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

Notice in lieu of writ.

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

Service of notice.

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

Processes and notices of which service out of jurisdiction allowable.

(a) Originating Summonses under Order LIVA. or Order LV. Rule 3 or 4 in any case where if the proceedings were commenced by Writ of Summons they would be within Rule 1 of this Order.

(b) Any Originating Summons, Petition, Notice of Motion or other Originating proceedings (1) in relation to any infant or lunatic or person of unsound mind or (2) under any Statute under which proceedings can be commenced otherwise than by Writ of Summons or (3) under any Rule of Court or Practice whereunder proceedings can be commenced otherwise than by Writ of Summons.

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

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

PART II.—SERVICE OF FOREIGN PROCESS.

Letters of  
Request.

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

- (1) The Letter of Request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process or citation to be served, and two copies thereof in the English language.
- (2) Service of the process or citation shall be effected through the Sheriff by the process server whom he may appoint from time to time for the purpose or his authorized agent.
- (3) Such service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served and one copy of the translation thereof, in accordance with the Rules and practice of the Supreme Court regulating service of process.
- (4) After service has been effected, the Sheriff shall return to the Prothonotary of the Supreme Court one copy of the process, together with the evidence of service by affidavit, of the person effecting the service, verified by notarial certificate, and particulars of charges for the cost of effecting such service.
- (5) The particulars of charges for the cost of effecting service shall be submitted to the Taxing Master of the Supreme Court, who shall certify the correctness of the charge or such other amount as shall be properly payable for the cost of effecting service. A copy of such charges and certificate shall be forwarded to His Majesty's Attorney-General.
- (6) The Prothonotary shall transmit to His Majesty's Attorney-General the Letter of Request for service received from the foreign country, together with the evidence of service, with a certificate appended thereto duly sealed with the seal of the Supreme Court for use out of the jurisdiction. Such certificate shall be in the Form No. 37c, Appendix K, of these Rules.
- (7) Instead of translated copies of the process or citation being forwarded with the letter of request, it shall be sufficient if each copy of the process or citation is endorsed with an annotation in the English language stating as precisely as possible the name and address of the person upon whom the document is to be served, the nature of the document, and the names of the parties.
- (8) When the process or citation is so annotated it shall not be necessary to leave with the person served a translated copy of the process or citation.
- (9) In all cases where a Judge is satisfied that the requirements of this rule have been complied with substantially, if not literally, he may make all such orders as may be necessary to insure effective service of the process or citation.



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

PART III.—SERVICE UNDER CONVENTION.

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

- (1) The party bespeaking such service shall file in the Office of the Prothonotary a Request in the form set out in Form No. 37D hereto which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used. Such Request shall state the medium through which it is desired the service shall be effected, i.e., whether (a) directly through the British Consul, or (b) through the foreign judicial authority, and shall be accompanied by the original document and a translation thereof in the language of the country in which service is to be effected certified by or on behalf of the person making the request and a copy of each for every person to be served and any further copies which the Convention may require, unless the service is required to be made on a British subject directly through the British Consul in which case the translation and copies thereof need not accompany the Request unless the Convention expressly requires that they should do so.
- (2) The documents to be served shall be sealed with the Seal of the Supreme Court for use out of the Jurisdiction and shall be forwarded by the Prothonotary to His Majesty's Attorney-General for Victoria for transmission through the diplomatic channel to the foreign country.
- (3) An official certificate transmitted through the diplomatic channel by the foreign judicial authority, or by a British Consular authority, to the Victorian Court, establishing the fact and the date of the service of the document shall be deemed to be sufficient proof of such service, and shall be filed of record as and be equivalent to an Affidavit of Service within the requirements of Rules of the Supreme Court in that behalf.
- (4) In cases where a Writ of Summons or notice thereof is served pursuant to this Rule, and an official certificate of such service is produced, no endorsement of Service under Order IX. Rule 15 shall be required.

10. Rule 11 shall not apply to nor render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to Victorian procedure and which is not expressly excluded by the Convention made with such foreign country, and extended to the Commonwealth of Australia or the State of Victoria. Effect of Rule 11.

Service under  
Convention of  
documents in  
Victoria.

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

- (1) The service shall be effected by the delivery of the original or a copy of the document, as indicated in the Request and the copy of the translation, to the party or person to be served in person through the sheriff by the process server whom he may appoint or his authorized agent.
- (2) No Court fees shall be charged in respect of the service. The particulars of charges of the person employed to effect service shall be submitted to the Taxing Master of the Supreme Court who shall certify the amount properly payable in respect thereof.
- (3) The Prothonotary shall transmit to the Consular or other authority making the Request a Certificate establishing the fact and the date of the service in person, or indicating the reasons for which it has not been possible to effect it, and at the same time shall notify to the said Consular or other authority the amount to the charges certified under paragraph (2) hereof.

#### ORDER XII.

##### APPEARANCE.

In the Prothonotary's Office.

Mode of appearance.

General Form.

Notice of appearance.

Address for service of solicitor.

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

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

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

4. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, which shall be his address for service if such place of business be not more than three miles from the office of the Prothonotary, and also, if his place of business shall be more than three miles from the office of the Prothonotary, another place, to be his

address for service, which shall not be more than three miles from the office of the Prothonotary; and where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

5. A defendant appearing in person shall state in such memorandum his address, and a place, to be his address for service, which shall not be more than three miles from the office of the Prothonotary.

Address for service of defendant in person.

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

Defective address.

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

Form of appearance.

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

Entry in Cause Book.

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

Several defendants.

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

Appearance not entered on undertaking.

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

Appearance allowed before judgment.

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

Person not named may defend for land.

Striking out.

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

Landlord to appear as such.

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

Person appearing to be named as a defendant.

15. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the cause, and signed

Defence may be limited.

by him or his solicitor; such notice shall be served within four days after appearance, and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.

Notice of  
limitation.

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

Setting aside  
service before  
appearance.

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

#### ORDER XIII.

##### DEFAULT OF APPEARANCE.

Default of  
appearance by  
infant or person  
of unsound  
mind. Applica-  
tion for  
guardian.

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

Affidavit  
of service.

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

Final judgment  
when writ  
indorsed for  
liquidated  
demand.

3. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails or all the defendants (if more than one) fail to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if no rate be specified) at the rate of eight per cent. per annum, to the date of the judgment and costs.

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

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

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

Damages.  
Detention of  
goods.  
Interlocutory  
judgment.

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

Several  
defendants  
judgment  
against those  
not appearing.

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

Memorandum  
of number of  
jury required.

6B. In actions in which no appearance shall be entered, and in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation, the Court or a Judge may direct that the amount for which final judgment is to be entered shall be ascertained and further proceedings had thereon as hereinafter provided by Order XXXVI., Rule 46, in cases of trial.

Calculation of  
damages.

7. Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand, interest, and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in such of the preceding Rules of this Order as may be applicable.

Detention of  
goods damages,  
and liquidated  
demand. Final  
and interlocu-  
tory judgment.

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

Possession of  
land where no  
appearance.

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, double value, or damages for breach of contract, or wrong or injury to the premises claimed upon a writ for the recovery of land, he may enter

Mesne profits  
or damages.

judgment as in the last preceding Rule mentioned for the land; and may proceed as in the other preceding Rules of this Order as to such other claim so indorsed.

Judgment may  
be set aside or  
varied.

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

Default of  
appearance in  
other cases.

11. In all actions not by the Rules of this Order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and if the writ is not specially indorsed under Order III., Rule 6, of a statement of claim, the action may proceed as if such party had appeared, subject as to actions where an account is claimed to the provisions of Order XV.

Proceedings  
mentioned on  
writ may be  
taken.

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

Suggestion of  
breaches in  
action in bond.

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

#### ORDER XIV.

##### LEAVE TO SIGN JUDGMENT OR DEFEND WHERE WRIT SPECIALLY INDORSED.

Judgment on  
writ specially  
indorsed under  
O. 3, r. 6.

1. (a) Where the defendant appears to a writ of summons specially indorsed with or accompanied by a statement of claim under Order III., Rule 6, the plaintiff may on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any liquidated sum is claimed), and stating that in his belief there is no defence to the action except as to the amount of damages claimed if any, apply to a Judge for liberty to enter judgment for such remedy or relief as upon the statement of claim the plaintiff may be entitled to. The Judge thereupon, unless the defendant shall satisfy him that he has a good defence to the action on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief claimed.

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

(b) If on the hearing of any application under this Rule it shall appear that any claim which could not have been specially indorsed under Order III., Rule 6, has been included in the indorsement on the writ, the Judge may, if he shall think fit, forthwith amend the indorsement by striking out such claim, or may deal with the claim specially indorsed as if no other claim had been included in the indorsement, and allow the action to proceed as respects the residue of the claim.

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

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

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. Defendant may show cause.

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

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

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

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

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

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

8. Where leave, whether conditional or unconditional, is given to defend; the Judge may give all such directions as to the further conduct of the action as might be given on a summons for directions under Order XXX., Directions as to trial.

and may direct that the affidavit filed by the defendant under this Order shall serve in lieu of defence, and may order the action to be forthwith set down for trial, and may define the issues that are to be tried.

Relief from  
forfeiture.

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

#### ORDER XIV (A).

##### SUMMARY JUDGMENT BY DEFENDANT.

Defendant may  
apply for  
summary  
judgment.

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

that judgment be entered for the defendant with or without costs; that the plaintiff shall proceed to trial without pleadings; or if all parties consent, may dispose of the action finally and without appeal in a summary manner.

Plaintiff may  
show cause.

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

Attendance  
for examination.

(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.

Directions.

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

#### ORDER XV.

##### APPLICATION FOR ACCOUNT.

Order for  
account.

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

Application  
for it.

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



## ORDER XVI.

## PARTIES.

1. *Generally.*

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

Persons claiming jointly, severally, or in the alternative may be plaintiffs.

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

No other action to be brought for same claim.

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

Plaintiffs may be substituted or added.

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

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

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

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

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

Defendant having only partial interest.

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

Plaintiff may join parties jointly and severally liable.

Plaintiff in  
doubt may join  
defendants for  
alternative  
redress.

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

Trustees,  
executors, and  
representative  
parties.

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

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

Where parties  
are numerous.

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

Power to  
approve  
compromise in  
absence of some  
of the persons  
interested.

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

Amendment on  
misjoinder of  
parties.

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

Application  
for it.

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

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

Where  
defendant  
added.

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

Initial letters  
may be used.

### 3. Persons under Disability.

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

Infants.

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

Lunatics and  
persons of  
unsound mind.

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

Appearance of  
infant.

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

Guardian *ad litem* in  
petitions &c.

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

Written  
authority of  
next friend  
or relator.

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

Consent on  
behalf of  
infants &c.

*4. Proceedings by or against Paupers.*

- Paupers.** 22. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth Fifty pounds, his wearing apparel and the subject-matter of the cause or matter only excepted.
- Disqualification.** 22A. Except under special circumstances, no person shall be admitted to sue or defend as a pauper who has directly or indirectly paid or agreed to pay any sum of money or who has given or agreed to give any security to any legal practitioner or to any other person for the conduct of his business in the Court.
- Case before counsel.** 23. A person desirous of suing or defending as a pauper shall lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding or defending.
- Affidavit verifying case.** 24. No person shall be permitted to sue or defend as a pauper unless the case laid before counsel for his opinion and his opinion thereon, with an affidavit of the party or his solicitor that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, and also distinctly denying that the applicant has directly or indirectly paid or agreed to pay any sum of money or has given or agreed to give any security to any legal practitioner or to any other person for the conduct of his business in the Court or stating fully the special circumstances relied upon in excuse, is produced to the Court or Judge to whom the application is made.
- Court fees.** 25. A person admitted to sue or defend as a pauper shall not be liable to any Court fee.
- Assignment of counsel.** 26. Where a person is admitted to sue or defend as a pauper the Court or a Judge may, if necessary, assign a counsel or solicitor, or both, to assist him; and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or a Judge that he has some good reason for refusing, and no fee shall be payable by a pauper to his assigned counsel or solicitor.
- Fees.**
- No fees from paupers.** 27. Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him any fee, profit, or reward for the conduct of his business in the Court; and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward shall be guilty of a contempt of Court.
- No fees from intending paupers.** 27A. When a person intends to apply to be admitted to sue or defend as pauper, any person who with knowledge of such intention takes, or agrees to take, or seeks to obtain any fee, profit, or reward for the conduct of the business in Court shall be guilty of a contempt of Court.
- Dispaupering.** 28. If any person admitted to sue or defend as a pauper gives or agrees to give any such fee, profit, or reward he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper.
- Notice** 29. No notice of motion shall be served or summons issued, and no petition shall be presented on behalf of any person admitted to sue or defend as a pauper except for the discharge of his solicitor, unless it is signed by his solicitor.

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

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

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

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

##### 5. Administration and Execution of Trusts.

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

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

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

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

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

- Cestuis que trustent.* 36. Any one of several *cestuis que trustent* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument may have the same without serving any other *cestui que trust*.
- Waste. 37. In all cases of actions for the prevention of waste or otherwise for the protection of property one person may sue on behalf of himself and all persons having the same interest.
- Executors, &c. 38. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or *cestui que trust* for the administration of the estate or the execution of the trusts.
- Conduct of action. 39. The Court or a Judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may deem just for placing the defendant on the record on the same footing with regard to costs as other parties having a common interest with him in the matters in question.
- Notice of judgment to be given. 40. Whenever in any action for the administration of the estate of a deceased person, or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or order has been pronounced or made—  
(a) Under Order XV.;  
(b) Under Order XXXIII.;  
(c) Affecting the rights or interests of persons not parties to the action;
- the Court or a Judge may direct that any persons interested in the estate or under the trust, or in the hereditaments, shall be served with notice of the judgment or order, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties, and shall be at liberty to attend the proceedings under the judgment or order.
- Any party so served may, within one month after such service, apply to the Court or Judge to discharge, vary, or add to the judgment or order.
- Order to attend unnecessary. 41. It shall not be necessary for any person served with notice of any judgment or order to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the Prothonotary's Office in the same manner and subject to the same provisions as a defendant entering an appearance.
- Appearance. 42. A memorandum of the service upon any person of notice of the judgment or order in any action under Rule 40 shall be entered in the Prothonotary's Office upon due proof by affidavit of such service.
- Entry of memorandum of service. 43. Notice of a judgment or order served pursuant to Rule 40 shall be entitled in the action, and there shall be indorsed thereon a memorandum in the Form No. 28, Appendix G.
- Notice of judgment. 44. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action.
- Service of notice on infant &c.

45. In any cause or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him.

Heir-at-law not  
necessary party.

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

Procedure  
where no  
personal  
representative.

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

Parties to  
administration  
proceedings.

#### ORDER XVIIa.

##### THIRD PARTY PROCEDURE.

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

Third party  
notice.

- (a) that he is entitled to contribution or indemnity, or
- (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or
- (c) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them,

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

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

2. (1) The notice shall state the nature and grounds of the claim or the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed. It shall be in accordance with

Form and issue  
of notice.

the Form No. 1 in Appendix B, with such variations as circumstances may require, and shall be sealed and served on the third party in the same manner as a writ of summons is sealed and served.

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

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

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

Provided that a third party failing to appear within such time may apply to the Court or Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or Judge shall think fit.

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

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

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

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



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

(c) dismiss the application.

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

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

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

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

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

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

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

Chapter I.—Civil Proceedings.  
Orders XVI. (A), XVII.

3920

Fourth and  
subsequent  
parties.

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

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

Co-defendants.

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

- (a) that he is entitled to contribution or indemnity, or
- (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or
- (c) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant making the claim and should properly be determined not only as between the plaintiff and the defendant making the claim but as between the plaintiff and that defendant and another defendant or between any or either of them,

Third Party  
procedure.

the defendant making the claim may without any leave issue and serve on such other defendant a notice making such claim or specifying such question or issue.

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

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

Counterclaim.

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

ORDER XVII.

CHANGE OF PARTIES BY DEATH, ETC.

No abatement  
by marriage,  
&c.

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

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

Parties may be added.

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

Transfer of estate *pendente lite*.

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

Party added by order on change of interest.

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

Service of order

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

Discharge or variation of order.

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

Person under disability.

8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default

Death of party and failure to proceed.

of such proceeding, judgment may be entered for the defendant, or as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue, as in the case provided for by Order XLII., Rule 23.

Abatement to  
be certified  
and entered.

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

Abated cause to  
be struck out.

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

#### ORDER XVIII.

##### JOINDER OF CAUSES OF ACTION.

Joinder of  
several causes.

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

Not with action  
for recovery of  
land.

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

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

Provided that nothing in this Order contained shall prevent any plaintiff in any action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff, on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption, and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these Rules.

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

Claims by  
trustee in  
insolvency.

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

Husband and  
wife.

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

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

Executors.

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

Joint and separate claims.

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

Subject to rules 1, 8, and 9.

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

Application of defendant to confine action.

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

Judge may exclude causes inconvenient to be joined.

## ORDER XVIIIA.

## REQUEST FOR PLEADINGS.

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

Notice requiring pleadings.

2. If such notice be given, pleadings may (subject to Order XX., Rule 1) be delivered between the parties. Such pleadings shall be subject to the same rules as if they had been delivered pursuant to an order.

Delivery of pleadings.

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

Costs.

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

If no notice given.

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

Notice by plaintiff.

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

Notice by other party.

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

Indorsement on writ in lieu of statement of claim.

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

Delivery of defence.

ORDER XIX.

PLEADING GENERALLY.

- Pleading Rules. 1. The following rules of pleading shall be used in the Court, except as provided by Order LXVIII.
- Pleadings and particulars not to be prolix. 2. Pleadings and particulars shall be as brief as the nature of the case will admit, and the taxing officer in adjusting the costs of the action shall at the instance of any party or may without any request inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.
- Set-off or counter-claim. 3. A defendant in an action may set off, or set-up by way of counter-claim, against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.
- Statements in pleadings. 4. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall when necessary be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; but where the pleadings have been settled by counsel they shall be signed by him, and if not so settled they shall be signed by the solicitor, or by the party if he sues or defends in person.
- Forms. 5. The Forms in Appendices C, D, and E, when applicable, and where they are not applicable forms of the like character, as near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be.
- Prolixity. 6. In all cases in which the party pleading relies on any contract or on misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading. Upon any taxation of costs the taxing officer shall have regard to the provisions of this Rule when dealing with the costs of any application for particulars or of any further particulars.
- Particulars in pleading. 7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars; may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.
- Further statement or particulars.

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

Letters for  
particulars.

7B. Particulars of a claim shall not be ordered under Rule 7 to be delivered before defence unless the Court or Judge shall be of opinion that they are necessary or desirable to enable the defendant to plead or ought for any other special reason to be so delivered.

Particulars  
before defence.

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

Time for  
pleading after  
particulars.

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

Written or  
printed.

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

Mode of  
delivery.

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

Delivery and  
marking of  
pleadings

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

Not guilty by  
statute  
preserved.

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

Allegations not  
denied,  
admitted except  
against infants  
&c.

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

Conditions  
precedent.

Special matters  
to be pleaded.

15. When there are pleadings the defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law and all such grounds of defence or reply (as the case may be) as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality, either by Statute or Common Law, any statutory provision requiring contracts to be in writing.

No departure.

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

Denial of  
allegations to be  
specific.

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

Joinder of issue.

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

Denial to be  
substantial  
answer.

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

Effect of denial  
of contract.

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

Contents of  
document.

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

Allegation of  
malice, intent,  
or knowledge.

22. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.



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

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

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

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

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

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

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

- (a) The names of the vessels which came into collision and the names of their masters.
- (b) The time of the collision.
- (c) The place of the collision.
- (d) The direction and force of the wind.
- (e) The state of the weather.
- (f) The state and force of the tide.
- (g) The course and speed of the vessel when the other was first seen.
- (h) The lights (if any) carried by her.
- (i) The distance and bearing of the other vessel when first seen.
- (k) The lights (if any) of the other vessel which were first seen.
- (l) Whether any lights of the other vessel, other than those first seen, came into view before the collision.

- (m) What measures were taken, and when, to avoid the collision.
- (n) The parts of each vessel which first came into contact.
- (o) What sound signals (if any), and when, were given.
- (p) What sound signals (if any), and when, were heard from the other vessel.

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

#### ORDER XX.

##### STATEMENT OF CLAIM.

Delivery of  
statement of  
claim.

1. (a) When the writ is specially indorsed under Order III., Rule 6, no further statement of claim shall be delivered unless the Court or a Judge otherwise order, but the indorsement on the writ shall be deemed to be the statement of claim.

(b) Subject to the provisions of Order XIII., Rule 12, as to filing a statement of claim when there is no appearance, and of Order XVIII., no statement of claim shall be delivered, unless the same be ordered.

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

Alteration of  
claim without  
amendment of  
writ.

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

Specific relief to  
be claimed.

3. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for further or other relief, which may always be given, as the Court or a Judge may think just, to the same extent as if it had been asked for. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his defence.

Several claims  
and defences.

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

Account stated.

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

## ORDER XXI.

## DEFENCE AND COUNTER-CLAIM.

1. In actions for a debt or liquidated demand in money comprised in Order III., Rule 4, a mere denial of the debt shall be inadmissible. Denial of debt inadmissible.
2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact; *e.g.*, the drawing, making, indorsing, accepting, presenting, or notice of dishonour of the bill or note. Bills of exchange, &c.
3. In actions comprised in Order III., Rule 4, classes (a) and (b), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e.g.*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff. Simple contracts, bonds, &c.
4. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted. Damages.
5. If either party wishes to deny the right of any other party to claim as executor or as trustee, whether in insolvency or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically. Representative capacities specifically traversed.
6. Where a statement of defence is ordered, the same shall be delivered within the time specified in the order, or, if no time be so specified, within ten days from the delivery of the statement of claim, or the date of the order whichever shall be last, unless such time is extended by the Court or a Judge. Time for defence.
8. When a statement of claim is delivered pursuant to an order, or filed in default of appearance under Order XIII., r. 11, the defendant, unless otherwise ordered, shall deliver his defence within such time (if any) as shall be specified in such order, or, if no time be specified, within ten days from the delivery, or filing in default, of the statement of claim, unless in either case the time is extended by the Court or a Judge. Time for defence.
9. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court or Judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted. Costs of improper traverse or refusal to admit.
10. Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall state specifically that he does so by way of counter-claim. Counter-claim to be so stated.
11. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff. Defence including person not party.

- Service on person not party. 12. Where any such person as in the last preceding Rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same Rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 2 in Appendix B, or to the like effect.
- Must appear. 13. Any person not originally a party to the action who is served with a defence and counter-claim as aforesaid must appear thereto, and may be proceeded against as if he had been served with a writ of summons to appear in an action.
- May deliver reply. 14. Any person named in a defence as a party to a counter-claim thereby made may without leave deliver a reply within ten days from the service upon him of a copy of the defence or such other time as the Court or a Judge may order.
- Counter-claim may be excluded from action. 15. Where a defendant sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may apply before reply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just.
- Counter-claim may proceed though action stayed. 16. If in any case in which a defendant sets up a counter-claim the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with, and the defendant counter-claiming shall, for all the purposes relating to the trial of the counter-claim, be deemed to be the plaintiff, and the plaintiff or the third party the defendant.
- Judgment may be given for defendant for balance. 17. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court or a Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.
- Marginal reference of general issue by Statute. 19. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of any Act, he shall insert in the margin of his pleading the words "By Statute," together with the year of the reign in which the Act upon which he relies for that purpose was passed, and also the chapter or number (as the case may be) and section of such Act; otherwise such defence shall be taken not to have been pleaded by virtue of any Act.
- No pleading in abatement. 20. No plea or defence shall be pleaded in abatement.
- Plea of the title unnecessary. 21. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies or does not admit the allegations of fact contained in the plaintiff's statement of claim. And he may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned.

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

Defence of  
judgment  
recovered.

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

Issue of nul  
tiet  
record.

## ORDER XXII.

### PAYMENT INTO AND OUT OF COURT AND TENDER.

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

Payment  
into court.

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

Specific causes  
of action.

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

Notice.

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

Plaintiff may  
take out money.

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

Chapter I.—Civil Proceedings.  
Order XXII.

3932

Plaintiff may  
tax costs.

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

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

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

Money  
remaining  
in Court.

3. If the whole of the money in court is not taken out under Rule 2, the money remaining in court shall not be paid out except in satisfaction of the claim or specified cause or causes of action in respect of which it was paid in and in pursuance of an order of the Court or a Judge, which may be made at any time before, at or after trial.

Several  
defendants.

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

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

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

Counter-claim.

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

Non-disclosure  
of payment  
into court.

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

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

Payment in  
under order.

Appropriation.

8. In any cause or matter in which a sum of money has been awarded to or recovered by or agreed to be paid to or for an infant or person of unsound mind not found so by inquisition the Court or a Judge may at or after the trial order that the whole or any part of such sum shall be paid into Court to the credit of an account intituled in the cause or matter; and any sum so paid into Court, and any dividend or interest thereon, shall be subject to such orders as may from time to time be made by the Court or a Judge concerning the same, and may either be invested or be paid out of Court or transferred to such persons, to be held and applied upon and for such trust and in such manner as the Court or a Judge shall direct.

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

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

Former  
practice  
continued.

## ORDER XXIII.

### I.—REPLY AND SUBSEQUENT PLEADINGS.

1. No reply or subsequent pleading merely joining issue shall be delivered.
2. A plaintiff shall deliver his reply (if any) within the time specified in the order, or, if no time be so specified, within eight days after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge.
3. No pleading subsequent to reply shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit. Every pleading subsequent to reply shall be delivered within the time specified in the order giving leave to deliver the same, or, if no time be so specified, within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge.
4. Where a counter-claim is pleaded the answer thereto shall be subject to the Rules applicable to statements of defence.

No reply, etc.,  
merely joining  
issue.

Time for reply.

Subsequent  
pleadings.  
Time for  
pleading after  
reply.

Reply to  
counter-claim.

ORDER XXIV.

MATTERS ARISING PENDING THE ACTION.

Defence arising  
before  
statement of  
defence.

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

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

Defence arising  
after statement  
of defence.

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

Confession of  
defence.

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

Costs.

ORDER XXV.

PROCEEDINGS IN LIEU OF DEMURRER.

No demurrer  
allowed.  
Points of law  
how disposed  
of.

1. No demurrer shall be allowed.

2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.



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

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

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

#### ORDER XXVI.

##### DISCONTINUANCE.

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

2. A defendant may enter judgment for the costs of the action if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn if the action be not wholly discontinued, in case such respective costs are not paid within four days after taxation. Costs.

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

ORDER XXVII.

DEFAULT OF PLEADING.

Non-delivery  
of statement  
of claim.

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

Judgment by  
default.

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

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

Default of one  
of several  
defendants.

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

Damages.  
Detention of  
goods.

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

On default of  
one or more of  
several  
defendants.

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

Debt or  
damages and  
detention of  
goods or  
damages.

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

demand, and also enter interlocutory judgment for the value of the goods and the damages, or damages only, as the case may be, and proceed as mentioned in Rules 4 and 5.

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

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

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

11. In all other actions than those in the preceding Rules of this Order mentioned, if the defendant, being bound to deliver a defence, makes default in delivering the same, the plaintiff may apply to the Court or a Judge for judgment; and such judgment shall be given as, upon the writ or statement of claim, the Court or a Judge shall consider the plaintiff to be entitled to. Motion for judgment on default.

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

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

14. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in Default of any other party to issue.

delivering any pleading which he is bound to deliver the opposite party may apply to the Court or a Judge for such judgment (if any) as upon the pleadings he may appear to be entitled to. And the Court or Judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

Judgment by  
default may be  
set aside.

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

#### ORDER XXVIII.

##### AMENDMENT.

Of indorsement  
or pleadings.

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

Plaintiff may  
amend once  
without leave.

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

Defendant may  
amend without  
leave within  
time limited.

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

Amended  
pleading may  
be disallowed.

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

Amended  
pleading to  
meet  
amendment.

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

Amendment by  
leave.

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

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

Failure to  
amend within  
time limited.

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

Mode of  
amendment.

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

Marking  
amendment.

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

Delivery of  
amended  
pleading.

11. Clerical mistakes in judgments or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court or a Judge on motion or summons without an appeal.

Clerical  
mistakes in  
judgments.

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

Amendment of  
proceedings.

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

Costs.

### ORDER XXX.

#### SUMMONS FOR DIRECTIONS.

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

Summons for  
directions.

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

Hearing of  
summons.

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

No affidavit to  
be used.

Chapter I.—Civil Proceedings.  
Orders XXX., XXXI.

3940

Parties to apply  
for directions.

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

Subsequent  
applications.

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

Costs of  
subsequent  
applications.

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

Evidence.

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

Interlocutory  
proceedings  
when no  
summons for  
directions.

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

ORDER XXXI.

DISCOVERY AND INSPECTION.

Discovery by  
interrogations.

1. In any cause or matter the plaintiff or defendant, by leave of a Judge, may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such 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 the Judge may order that any or all of such interrogatories may be answered by some person on behalf of any party and in such case the answers of such person shall be as effective and binding in all respects as if made by the party interrogated. 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.

When *ex parte*.

1A. Where no summons for directions has been taken out, orders for interrogatories, discovery, and inspection may be made *ex parte*.

1B. Upon an application for leave to deliver interrogatories a copy of the interrogatories which it is proposed to deliver shall be submitted to the Judge, unless in any special case he shall think fit to dispense with this requirement.

Offer to  
discover to be  
considered.

2. In deciding upon any application for leave to exhibit interrogatories the Court or Judge shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make

admissions, or to produce documents relating to the matter in question and any leave shall be given as to such only of the interrogatories as shall be considered necessary either for disposing fairly of the cause or matter or for saving costs. Instead of giving leave to administer any specified interrogatories the Judge may grant leave generally or limited to a particular subject of inquiry.

3. The costs of interrogatories and answers thereto shall, unless the Court or a Judge shall otherwise order, ultimately be borne by the party requiring the same notwithstanding that such interrogatories may have been delivered pursuant to leave. Costs of unreasonable vexatious interrogatories.

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

5. If any party to a cause or matter be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly. Interrogatories to corporation or company.

6. Any objection to answering any one or more of several interrogatories, on the ground that it or they is or are scandalous or irrelevant or not *bonâ fide* for the purpose of the cause or matter or are unreasonable, oppressive or unnecessary, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer notwithstanding that such interrogatories may have been delivered pursuant to leave. Objections may be taken in answer.

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

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

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a Judge on motion or summons. Sufficiency of answer.

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

12. Any party may, without filing an affidavit, apply to the Court or a Judge for an order directing any other party to the cause or matter to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein. On the hearing of such application the Court or Judge may either refuse or adjourn the Discovery of documents.

same if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in their or his discretion, be thought fit.

**Affidavit in  
opposition.**

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding Rule has been made shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in the Form No. 8 in Appendix B, with such variations as circumstances may require.

**Neglect to make  
discovery.**

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

**Production of  
documents.**

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

**Inspection of  
documents.**

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

**Notice to  
produce.**

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

**Appointment  
for inspection.**

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



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

Order for inspection.

Application for it.

19. (1) Where inspection of any business books is applied for, the Court or a Judge may, if they or he shall think fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original books any and what erasures, interlineations, or alterations. Provided that notwithstanding that such copy has been supplied, the Court or a Judge may order inspection of the books from which the copy was made.

Verified copies.

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

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

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

Question of discovering or inspection may be reserved.

21. If any party fails to comply with an order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution and, if a defendant, to have his defence (if any) struck out,

Attachment on failure to comply with order.

and to be placed in the same position as if he had not defended; and the party interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

Service on  
solicitor.

22. Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

Notice to  
client.

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

One answered  
part may be  
used without  
the rest.

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

Action against  
or by Sheriff.

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

Order to apply  
to infants.

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

#### ORDER XXXII.

##### ADMISSIONS AND NOTICES TO PRODUCE.

Party may  
admit opposite  
case.

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

Admission of  
facts and  
documents.

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

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

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

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

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

8. Notice to produce documents shall be in the Form No. 14 in Appendix B, with such variations as circumstances may require. An affidavit of the solicitor or his clerk of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be *prima facie* evidence of the service of the notice and of the time when it was served. Notice to produce. Evidence of service.

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

### ORDER XXXIII.

#### ISSUES, INQUIRIES, AND ACCOUNTS.

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

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

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

Chapter I.—Civil Proceedings.  
Orders XXXIII., XXXIV.

3946

Accounts to be  
verified by  
affidavit.

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

Mode of  
vouching  
accounts.

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

Surcharge.

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

Inquiry as to  
outstanding  
estate.

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

Directions to be  
numbered.

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

Just allowances.

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

Chief clerk  
to report.

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

Delay in  
prosecution of  
accounts.

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

ORDER XXXIV.

I.—SPECIAL CASE.

Questions of  
law.

1. The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall

be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

Power to  
draw inferences.

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

Preliminary  
question of law.

Stay of  
proceedings.

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

Special case.

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

Copies for the  
Judges.

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

Married woman,  
infant, or  
person of  
unsound mind.

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

Entry of  
special case for  
argument.

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

Agreement of  
damages and  
costs.

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

Application of  
order.

II.—ISSUES OF FACT WITHOUT PLEADINGS.

Trial of  
questions of  
fact by consent.

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

Amount agreed  
to be paid.

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

Judgment and  
execution.

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

Proceedings  
may be  
recorded.

12. The proceedings upon such issue as in Rule 9 mentioned may be recorded at the instance of either party; and the judgment, whether recorded or not, shall have the same effect as any other judgment in a contested action:

ORDER XXXVI.

TRIAL.

1. *Place.*

Place of trial

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

2. *Mode of Trial.*

Actions of  
slander, &c.

2. In actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage if the plaintiff in his writ or if the defendant by notice to the plaintiff and to the Prothonotary within ten days after appearance signifies his desire to have the issues of fact tried with a jury the same shall, upon payment of the proper jury fees, be so tried; provided that if the Court or a Judge shall be of opinion that the trial thereof requires any prolonged examination of documents or accounts or any scientific investigation which cannot conveniently be made with a jury an order may be made for trial without a jury.

3. Save as provided in Rule 2 any cause or matter may in the discretion of the Court or a Judge be tried either with or without a jury. The Court or a Judge may at any time order accordingly.

4. In every cause or matter unless a trial by jury is ordered or in a case under Rule 2 of this Order either party has signified his desire to have a trial with a jury or in other cases unless the plaintiff on his writ has signified his desire that the action be tried with a jury and no other party has objected thereto as provided in Order 2, Rule 1, the mode of trial shall be by a Judge without a jury.

5. In any cause or matter the Court or a Judge may at any time order that different questions of fact arising therein be tried by different modes of trial, and where any such order is made the provisions of Rule 2 of this Order shall apply only to questions arising under the causes of action therein mentioned.

6. In any cause or matter the Court or a Judge may order that one or more issues of fact be tried before any other or others.

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

Jury of twelve or six, at plaintiff's option.

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

Jury of twelve or six, at defendant's option.

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

Order for jury.

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

Trial by jury before a single Judge.

### 3. *Notice and Entry for Trial.*

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

Notice of trial by plaintiff.

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

Notice of trial by defendant.

Setting down  
of case for  
hearing.

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

Form of  
notice trial.

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

Length of  
notice of trial.

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

Entry of case  
in list for trial.

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

For sittings  
in Melbourne.

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

For sittings out  
of Melbourne.

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

Further  
consideration.

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

Trial in  
Melbourne.

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

#### 4. *Papers for Judge.*

Delivery of  
copies of  
pleadings on  
entering action.

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



5. *Proceedings at Trial.*

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

Non-appearance  
of defendant at  
trial.

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

Of plaintiff.

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

Of plaintiff and  
defendant.

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

Special defences  
where no  
pleadings.

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

Judge may call  
on defendant  
for defence  
in certain cases.

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

Setting aside  
verdict obtained  
on party not  
appearing.

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

Judge may  
postpone trial.

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

*Habeas corpus*  
where  
adjournment.

28. Upon a trial with a jury, the addresses to the jury shall be regulated as follows:—The party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his case, and also to sum up the evidence (if any), and the right to reply shall be the same as heretofore.

Addresses to  
jury.

29. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to

Evidence in  
mitigation of  
damages in  
libel and  
slander.

mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

Judgment at  
or after trial.

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

Note of time  
occupied.

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

Associate may  
enter findings.

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

Authority for  
judgment.

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

#### 6. Assessors, Referees, &c.

Trial with  
assessors.

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

Trial before  
referee.

Place.  
View.

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

Sitting *de die*  
*in diem*.

Evidence before  
referee.

36. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpoena, and every such trial shall be conducted in the same manner as nearly as circumstances will admit as trials are conducted before a Judge.

Authority of  
referee.

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

No power in  
reference to  
imprison.

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

Referee may  
submit question  
to Court.

39. The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially with power

to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reason from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the Court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence as the Court may direct.

Powers of  
Court.

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

Notice of  
report of  
referee.

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

Application to  
adopt or vary  
report where  
further  
consideration  
adjourned.

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

When not  
adjourned.

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

Remuneration  
of assessors  
and referees.

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

#### 7. *Inquiry and Reference as to Damages.*

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

Writ of trials  
and inquiry  
abolished.

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

Procedure on  
inquiry.

46. In every action or proceeding in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to have an inquiry, but the Court or a Judge may direct that the amount for which final judgment is to be entered shall be ascertained by the Chief Clerk or Prothonotary, and

Calculation of  
damages.

the Chief Clerk or Prothonotary shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to the person entitled to the damages; and for the purposes of this Rule the Prothonotary shall have and exercise all the powers of the Chief Clerk, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise as upon the finding of a jury upon an inquiry.

Continuing  
cause of  
action.

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

#### ORDER XXXVII.

##### EVIDENCE.

##### 1. *Generally.*

Examination  
of witnesses  
at trial.

1. In the absence of any agreement in writing between the parties or their solicitors and subject to these Rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *viva voce* and in open court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witnesses whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner. Provided that where it appears to the Court or Judge that the other party *bonâ fide* desires the production of a witness for cross examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Evidence in  
another  
cause.

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

Office copies.

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

##### 2. *Examination of Witnesses.*

Order for  
examination of  
witnesses.

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

Forms.

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

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

Letters of request.

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

Production of documents.

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

Disobedience of order.

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

Expenses of witnesses.

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

Documents to be furnished to examiner.

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

Examination in presence of parties.

12. The depositions taken before an officer of the Court or before any other person appointed to take the examination shall be taken down in writing by or in the presence of the examiner not ordinarily by question and answer but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, then the examiner shall sign the same. The examiner may put down any particular question and answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall note the objection taken, but such examiner shall not have power to decide upon the materiality or relevancy of such question.

Mode of examination.

Signing depositions.

Questions objected to.

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

Refusal of witness to attend or to be sworn.

- Objection of witness to answer. 14. If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner and transmitted by him to the Prothonotary's office to be there filed, and the validity of the objection shall be decided by the Court or a Judge.
- Costs. 15. In any case under the last two preceding Rules, the Court or a Judge shall have power to order the witness to pay any costs occasioned by his refusal or objection.
- Transmission of depositions. 16. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Prothonotary's office, and there filed.
- Special report. 17. The person taking the examination of a witness under these Rules may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon, and the Court or a Judge may direct such proceedings and make such order as upon the report they or he may think just.
- Depositions when may be used. 18. Except where by this Order otherwise provided, or directed by the Court or a Judge, no depositions shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Court or Judge is satisfied that the deponent is dead, or beyond the jurisdiction of the Court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence saving all just exceptions without proof of the signature to such certificate.
- Oaths. 19. Any officer of the Court, or other person directed to take the examination of any witness or person, may administer oaths.
- Subpoena for attendance of witness. 20. Any party in any cause or matter may by *subpoena ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the Court, or other person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such subpoena to attend before such officer or person for cross-examination.
- Evidence taken after trial. 21. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial.
- Practice on examination. 22. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage.
- Special directions as to evidence after trial. 23. The practice of the Court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case.

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

Notice to use  
evidence taken  
before trial.

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

Evidence in  
subsequent  
proceedings.

### 3. Subpœna.

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

*Præcipe* for  
subpœna.

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

Form of writ.

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

Issue.

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

Number of  
names.

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

Number in  
*subpœna duces  
tecum*.

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

Correction.

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

Service.

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

Affidavit of  
service.

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

Time for.

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

Duration of  
*subpœna*.

4. *Perpetuating Testimony.*

Action to  
perpetuate  
testimony.

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

Where Crown  
interested.

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

Action  
necessary.

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

Not to be  
entered for trial.

38. No action to perpetuate the testimony of witnesses shall be entered for trial.

5. *Obtaining Evidence for Foreign Tribunals.*

Letters of  
Request.

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

Form of Order

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

Examiner.

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

Transmission of  
Depositions.

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



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

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

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

### ORDER XXXVIII.

#### I.—AFFIDAVITS AND DEPOSITIONS.

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

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

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

4. Affidavits sworn in Victoria shall be sworn before a Judge, Master-in-Equity, commissioner or officer empowered to administer oaths. Before whom sworn.

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

Form of affidavits.	7. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.
Description of deponent.	8. Every affidavit shall state the description and true place of abode of the deponent.
To bear number of action.	8A. Every affidavit sworn in a cause shall bear the number of the action.
Affidavits by two or more deponents.	9. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that, if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.
Affidavits to be filed.	10. Every affidavit shall be filed in the Prothonotary's office. There shall be indorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note unless the Court or a Judge shall otherwise direct.
Filing before using.	10A. Every affidavit to be used before the Court must be filed before it is used.
Scandal.	11. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous or irrelevant, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.
Alterations in affidavits.	12. No affidavit having in the jurat or body thereof any interlineations, alteration, or erasure shall without leave of the Court or a Judge be read or made use of in any matter depending in Court, unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or if taken at any office of the Court, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialed in the margin of the affidavit by the officer taking it.
Affidavit by illiterate person.	13. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her mark or signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.
May be received though defective.	14. The Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received
Stamping affidavits.	15. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper fee stamp, and shall at the time when it is used be delivered to and left with the

proper officer in Court or in Chambers, who shall send it to be filed. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office.

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

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

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

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

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

## II.—AFFIDAVITS AND EVIDENCE IN CHAMBERS.

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

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

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

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

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

## III.—TRIAL ON AFFIDAVIT.

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

Chapter I.—Civil Proceedings.  
Orders XXXVIII., XL.

3962

- Affidavits of plaintiff.** 25A. Within seven days after such notice of trial has been served upon the Prothonotary, or within such time as the Court or a Judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.
- Of defendant.** 26. The defendant within seven days after delivery of such list, or within such time as the Court or a Judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.
- Of plaintiff in reply.** 27. Within four days after the expiration of the last-mentioned seven days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.
- Cross-examination of deponent.** 28. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of seven days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a Judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.
- Compelling attendance of deponent.** 29. The party to whom such notice as is mentioned in the last preceding Rule is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

ORDER XXXIX.

NEW TRIAL, ETC.

(*See Order LVIII.*).

ORDER XL.

MOTION FOR JUDGMENT.

- Judgment to be on motion.** 1. Except where by any Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion to the Court for judgment.
- Judgment after issues tried.** 2. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties.
- Where certain issues only determined.** 3. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for

leave to set down a motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms (if any) as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues or questions of fact.

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

None after a year without leave.

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

Court may draw inferences and determine questions.

#### ORDER XLI.

##### ENTRY OF JUDGMENT.

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

Mode and form of entry of judgment.

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

Preparation of judgments and orders.

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

Where judgment pronounced in Court.

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

In other cases.

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

Orders for performance of acts to state time.

Chapter I.—Civil Proceedings.  
Orders XLI., XLI. (A)

3964

- Examination documents by officer.
6. Where under any Act or these Rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly.
- Judgment pursuant to order or certificate.
7. Where under any Act or these Rules any judgment may be entered pursuant to any order or certificate or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.
- Certificate to be filed.
8. Where reference is made to the Chief Clerk or Prothonotary to ascertain the amount for which final judgment is to be entered, such officer's certificate shall be filed in the Prothonotary's office when judgment is entered.
- Judgment by consent where defendant appears by a solicitor.
9. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent.
- Where consent of defendant person.
10. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a Judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, conveyancer, special pleader, or solicitor.

ORDER XLI. (A).

REGISTRATION OF JUDGMENTS.

- The application.
1. Any application under Section 181 (1) of the *Supreme Court Act* 1928 for leave to have a judgment obtained in a superior Court in England or Scotland or any Court in Ireland which may be declared by the Governor in Council to be a superior Court within the meaning of the Act registered in the Supreme Court shall be made to a Judge on summons.
- The affidavit.
2. The application shall be supported by an affidavit of the facts exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof and stating that to the best of the information and belief of the deponent the judgment creditor is entitled to enforce the judgment and the judgment does not fall within any of the cases in which under Section 181 (2) of the Act a judgment cannot properly be ordered to be registered. The affidavit must also so far as the deponent can do so give the full name, title, trade or business and usual or last known place of abode or business of the judgment creditor and judgment debtor respectively. The affidavit shall set out where necessary the calculations by which the amount of the judgment has been arrived at.
- Title of affidavit and summons.
3. The affidavit and the summons shall be intituled:—"In the matter of the *Supreme Court Act* 1928 and In the matter of a judgment of the.....(describing the court) obtained in .....(describing the cause or matter) and dated the .....day of.....19....."
- Service of summons.
4. The summons for leave to register shall (unless otherwise ordered by a judge) be served in the same manner as a writ of summons is required to be served.
- The order.
5. Any order giving leave to register shall be drawn up by or on behalf of the judgment creditor.

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

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

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

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

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

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

12. The judgment debtor may at any time within the time limited by the order apply by summons to a judge to set aside the registration or to suspend execution on the judgment and the judge on such application Application to set aside registration.

if satisfied that the case comes within one of the cases in which under Section 181 (2) of the Act no judgment can be ordered to be registered or that it is not just or convenient that the judgment should be enforced in Victoria or for other sufficient reason may order that the registration be set aside or execution on the judgment suspended either unconditionally or on such terms as he thinks fit and either altogether or until such time as he shall direct: Provided that the Judge may allow the application to be made at any time after the expiration of the time herein mentioned.

Summons to  
set aside.

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

Execution.

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

Affidavit of  
service.

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

Form of writ  
of execution.

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

Certified copy  
of judgment.

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

Form of  
Certificate.

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

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

(Signed)

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

Definitions.

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



## ORDER XLII.

## EXECUTION.

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

<sup>3</sup>No demand necessary when judgment directs money to be paid or property transferred.

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

Waiver of judgment on condition.

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

Judgment may be enforced as heretofore.

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

Judgment for payment in Court.

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

For recovery of land.

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

For recovery of other property.

- (a) By writ for delivery of the property :
- (b) By writ of attachment :
- (c) By writ of sequestration.

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

For any other matter.

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

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

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

Judgment on condition, execution.

Production of  
judgment.

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

*Præcipe.*

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

Indorsement of  
name and  
address.

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

Form of writ  
of execution.

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

Fees and  
expenses.

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

Additional fees  
and expenses.

15A. In every case of execution against any freehold land or chattel real, or against any land, lease, mortgage, or charge the party entitled to execution may, over and above the sum recovered, and in addition to the poundage, fees and expenses mentioned in Rule 15, levy the fees and expenses properly paid on registering the judgment, or lodging the writ of *fiery facias* against the freehold land or chattel real, or against the land, lease, mortgage, or charge sought to be affected by the execution, together with the sum of One pound one shilling for the costs thereof.

Direction to  
Sheriff to levy.

15B. The party or his solicitor requiring the Sheriff to levy for fees, expenses, and costs under the last preceding Rule shall file with the Sheriff a specific direction in writing requiring him so to levy, together with a receipt from the Collector of Imposts under the *Stamps Act* 1928 or other proper officer showing the amount of the fees which have been paid, and for which in addition to the fixed charge for costs the levy is so to be made.

Amount to be  
indorsed.

16. Every writ of execution for the recovery of money shall be indorsed with a direction to the Sheriff or other officer or person to whom the writ is directed to levy the amount really due and payable and sought to be recovered under the judgment, or order, stating the amount, and also to levy interest thereon at the rate of £8 per cent. per annum from the time when the judgment

or order was entered or made ; provided that in cases where there is an agreement between the parties as to the rate of interest that shall be secured by the judgment or order then the indorsement may be accordingly to levy the amount of interest so agreed.

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

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

Form of  
Indorsement.

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

Execution for  
money or costs  
on entry of  
judgment.

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

Time for issue.

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

Stay.

18. Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall be only for costs, and shall be issued not less than eight days after the first writ.

Separate writs  
for money and  
costs.

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

Time for in  
other cases.

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

Affidavit of  
debt.

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

Costs on a  
cognovit, or  
Judge's order.

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

Writ in force  
for one year ;  
with power to  
renew.

Evidence of renewal.	21. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding Rule mentioned, showing the same to have been renewed, shall be <i>prima facie</i> evidence of its having been so renewed.
Execution within six years.	22. As between the original parties to a judgment or order execution may issue at any time within six years from the recovery of the judgment or the date of the order.
Execution by leave of Court. After six years or change of parties.	23. In the following cases, viz. :— (a) Where six years have elapsed since the judgment or date of the order or any change has taken place by death or otherwise in the parties entitled or liable to execution :
By or against husband.	(b) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife :
Assets in futuro	(c) Where a party is entitled to execution upon a judgment of assets <i>in futuro</i> :
Against shareholder.	(d) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company—
Order.	the party alleging himself to be entitled to execution may apply on summons for leave to issue execution accordingly. And the Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case the Judge may
Terms.	impose such terms, as to costs or otherwise, as shall be just.
Order enforceable as judgment.	24. Every order of the Court or a Judge, in any cause or matter, may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.
Execution by or against person not party.	26. Any person not being a party to any cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter, and any person not being a party to a cause or matter against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter.
Audita querela abolished.	27. No proceeding by <i>audita querela</i> shall hereafter be used ; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded ; and the Court or Judge may give such relief and upon such terms as may be just.
Stay of execution.	
Former rights reserved.	28. Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.
Order of issue of writs.	29. Nothing in this Order shall affect the order in which writs of execution may be issued.

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

Enforcement of  
mandatory  
judgment, &c.

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

Corporation  
wilfully  
disobeying  
order.

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

Enforcing  
award.

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

Oral  
examination of  
judgment  
debtor.

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

In case of  
difficulty party  
may apply.

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

Costs.

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

Satisfaction  
piece to be  
filed.

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

Signature to  
satisfaction  
piece.

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

Form of  
satisfaction  
piece.

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

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

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

Signature—

Date—

Signature of solicitor—

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

Dated this day of

Signed—

Consequences of  
not following  
prescribed form.

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

Satisfaction  
piece by  
company.

39. A satisfaction piece by a corporation or company shall be under the seal of such corporation or company, and in the form prescribed by Rule 35c, with such variations as circumstances may require.

#### ORDER XLIII.

##### WRITS OF FIERI FACIAS AND SEQUESTRATION.

Effect of *fi. fa.*

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

Writ of  
venditionis  
exponas.

2. Where it appears, upon the return of any writ of *feri facias*, that the sheriff or other officer has by virtue of such writ seized, but not sold, any goods of the person directed to pay a sum of money or costs, the

person to whom such sum of money or costs is payable shall, immediately after such writ with such return shall have been filed as of record, be at liberty to sue out a writ of *venditioni exponas*.

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

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

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

#### ORDER XLIV.

##### ATTACHMENT.

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

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

#### ORDER XLV.

##### ATTACHMENT OF DEBTS.

1. The Court or a Judge may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, or the order made, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor shall be attached to answer the judgment or order, together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid. At least seven days before the day of hearing the Order for attachment of debts.

order *nisi* shall be served on the garnishee or his solicitor, and, unless otherwise ordered, on the judgment debtor or his solicitor, at least seven days before the day of hearing. Service on the judgment debtor may be made in manner provided by Order LXVII., Rule 2, either at the address for service, if the judgment debtor has appeared in the action and given an address for service, or on his solicitor, if he has appeared by solicitor, or if there has been no appearance then at his usual residence or place of business, or in such other manner as the Court or Judge may direct.

Service of order  
binds debts.

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

Execution  
against  
garnishee.

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

Trial of  
liability of  
garnishee.

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

Lien of third  
person on debt  
of garnishee.

5. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

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

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

Discharge of  
garnishee.

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

Debt-  
attachment  
book.

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



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

Costs of proceedings.

### ORDER XLVI.

#### CHARGING ORDERS AND STOP ORDERS.

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

Order charging stock or shares.

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

Charge on partnership property.

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

Application by partner of judgment debtor.

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

Meaning of company and stock.

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

Filing and service of affidavit and notice as to stock.

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

Affidavit to state address of claimant.

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

Service by post

7. The address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but no notice sent by post before the alteration to the address originally given or for the time being substituted therefor shall be affected by any subsequent alteration. Any

Alteration of address.

such alteration of address may be made by service of a memorandum thereof on the company in the manner required for service of a notice under this order.

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

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

Withdrawal or discharge of notice.

9. A notice filed under Rule 4 of this Order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him or its operation may be made to cease by an order to be obtained by motion on notice or by summons at chambers duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

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

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

Amendment of notice.

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

Costs of stop order.

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

Service.

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

#### ORDER XLVII.

##### WRIT OF POSSESSION.

On a judgment for land.

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

2. Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order and that the same has not been obeyed.

Affidavit of service and disobedience.

3. Upon any judgment or order for the recovery of any land and costs there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the successful party.

One or separate writs for possession.

4. Upon due service of a judgment or order that a party do recover possession of any land, the person prosecuting the same shall be entitled to an order for a writ of assistance.

Writ of assistance.

#### ORDER XLVIII.

##### WRIT OF DELIVERY.

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a Judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property upon paying the value assessed (if any), and that if the property cannot be found, and unless the Court or a Judge shall otherwise order, the sheriff shall distrain the defendant by all his lands and chattels till the defendant deliver the property; or, at the option of the plaintiff, that the sheriff cause to be made of the defendant's goods the assessed value (if any) of the property.

Absolute order for.

2. A writ of delivery shall be in the Form No. 10 in Appendix H; and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest.

Form. Execution for damages and costs.

#### ORDER XLVIII. (A).

##### ACTIONS BY AND AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

1. Any two or more persons claiming or being liable as co-partners and carrying on business within the jurisdiction may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a Judge for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

Disclosure of partners' names.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing, by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be

Disclosure of partners' names.

stayed upon such terms as the Court or a Judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all the proceedings shall, nevertheless, continue in the name of the firm.

Service.

3. Where persons are sued as partners in the name of their firm under Rule 1, the writ shall be served either upon any one or more of the partners or at the principal place, within the jurisdiction, of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to these rules, such service shall be deemed good service upon the firm so sued, whether any of the members thereof are out of the jurisdiction or not, and no leave to issue a writ against them shall be necessary. Provided that in the case of a co-partnership, which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ of summons shall be served upon every person within the jurisdiction sought to be made liable.

Notice in  
what capacity  
served.

4. Where a writ is issued against a firm, and is served as directed by Rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice, the person served shall be deemed to be served as a partner.

Appearance of  
partners.

5. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No appearance  
except by  
partners.

6. Where a writ is served under Rule 3 upon any person having the control or management of the partnership business no appearance by him shall be necessary unless he is a member of the firm sued.

Appearance  
under protest of  
person served as  
partner.

7. Any person served as a partner under Rule 3 may enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form.

Execution of  
judgment  
against a firm.

8. Where a judgment or order is against a firm, execution may issue—

- (a) against any property of the partnership within the jurisdiction;
- (b) against any person who has appeared in his own name under Rule 5 or 6, or who has admitted on the pleadings that he is, or who has been adjudged to be a partner;
- (c) against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. But except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise

affect any member thereof who was out of the jurisdiction when the writ was issued, and who has not appeared to the writ unless he has been made a party to the action under the law relating to the service of writs and notices out of the jurisdiction, or has been served within the jurisdiction after the writ in the action was issued.

9. Debts owing from a firm carrying on business within the jurisdiction may be attached under Order XLV., although one or more members of such firm may be resident abroad. Provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order. An appearance by any member pursuant to an order shall be a sufficient appearance by the firm.

Attachment of  
debts owing  
from a firm.

10. The above rules shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided such firm or firms carry on business within the jurisdiction, but no execution shall be issued in such actions without leave of the Court or a Judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just.

Application of  
Rules to  
actions between  
co-partners.

11. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules relating to proceedings against firms shall apply.

Application of  
Rules to person  
trading as a  
firm.

## ORDER XLIX.

### I.—ARRANGEMENT OF BUSINESS.

1. All such arrangements as may be necessary or proper for the transaction or distribution of the business from time to time pending before the Court shall be made by and under the direction of the Judges of the Court, and in case of difference among them, in such manner as the majority of the said Judges shall determine.

Arrangement of  
business by  
Judges.

### II.—TRANSFERS AND CONSOLIDATION.

2. Any cause or matter may at any stage be transferred from one Judge to another Judge by an order of the Chief Justice.

Action may be  
transferred.

3. Causes or matters may be consolidated by order of the Court or a Judge.

Actions may be  
consolidated.

## ORDER L.

### I.—INTERLOCUTORY ORDERS AS TO MANDAMUS INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY, ETC.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

Interim order  
for preservation  
of subject of  
action.

Order for sale  
of perishable or  
other property.

2. It shall be lawful for the Court or a Judge, on the application of any party to any cause or matter, to make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

Order for  
detention,  
preservation, or  
inspection of  
property.

3. It shall be lawful for the Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid, to authorize any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid, to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

Judge may  
inspect.

4. It shall be lawful for any Judge by whom any cause or matter may be heard or tried with or without a jury, or before whom as a member of the Full Court any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.

Jury may  
inspect.

5. The provisions of Rule 3 of this Order shall apply to inspection by a jury, and in such case the Court or a Judge may make all such orders upon the Sheriff or other person as may be necessary to procure the attendance of a jury at such time and place and in such manner as they or he may think fit.

Application for  
order.

6. An application for an order under section 62, sub-section (3), of the *Supreme Court Act* 1928, or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said sub-section (3), it may be made either *ex parte* or with notice, and if for an order under the said Rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

Application by  
plaintiff under  
R. 1.

7. An application for an order under Rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge.

Payment into  
Court in  
discharge of  
lien.

8. Where an action is brought to recover, or a defendant in his defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the

amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

9. Where any real or personal property shall form the subject of any proceedings in the Court, and the Court or Judge shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such action, it shall be lawful for the Court or Judge at any time after the commencement of such proceedings to allow the parties interested therein, or any one or more of them, the whole or part of the annual income of such real property, or a part of such personal property, or the whole or part of the income thereof, up to such time as the Court or Judge shall direct, and for that purpose to make such orders as may appear to the Court or Judge necessary or expedient.

Court may allow whole of part of income.

10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge shall otherwise direct.

Conduct of sale

11. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had.

Writ of injunction abolished.

12. In any cause or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Judge may grant the injunction, either upon or without terms, as may be just.

Injunction to restrain repetition or commission of acts of like kind.

13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer.

Leave to compound penal action.

14. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action.

Order for.

15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the King's half of the composition shall be paid into the hands of the Prothonotary for the use of His Majesty.

King's half of penalty.

## II.—RECEIVERS.

15A. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court or a Judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable cost of his appointment, and may, if they or he shall think fit, direct any inquiries on these or other matters before making the appointment.

Appointment of receiver by way of equitable execution.

To give  
security.

16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a Judge, and taken before a person authorized to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the Form No. 21 in Appendix L, unless the Court or a Judge shall otherwise order.

Salary.  
Form.

Security where  
not exceeding  
£500.

16A. Where the amount for which security is to be given does not exceed £500, such security may be given by an undertaking in the form specified in the Appendix to these Rules, which may be cited as Form No. 21A of Appendix L of the Rules of the Supreme Court. Such undertaking shall be signed by the receiver and his surety or sureties, or, in the case of a guarantee or other company, shall be sealed with the seal of such company, or otherwise duly executed. The undertaking shall be filed in the office of the Prothonotary, and kept as of record until the same shall have been duly vacated.

Adjournment to  
Chambers.

17. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a Judge may adjourn to Chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding Rule mentioned, and may thereupon direct such judgment or order to be drawn up.

Receiver to pass  
accounts.

Neglect.

18. When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge shall fix the days upon which he shall (annually, or at longer or shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be paid by him, and, with respect to any such receiver as shall neglect to leave and pass his accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the Judge, before whom any such receiver is to account, may from time to time when his subsequent accounts are produced to be examined and passed disallow the salary therein claimed by such receiver; and may also, if he shall think fit, charge him with interest at the rate of £8 per cent. per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver.

Form.

19. Receivers' accounts shall be in the Form No. 14 in Appendix L, with such variations as circumstances may require.

Affidavit  
verifying  
account.

20. Every receiver shall leave in Chambers his account, together with an affidavit verifying the same in the Form No. 22 in Appendix L, with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account.

Neglect of duty.

21. In case of any receiver failing to leave any account or affidavit, or to pass such account, or to make any payment, or otherwise; the receiver or the parties, or any of them, may be required to attend at Chambers to show cause why such account or affidavit has not been left, or such account



passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at Chambers or by adjournment into Court, including the discharge of any receiver and appointment of another, and payment of costs.

22. When a receivership has been completed, the book containing the accounts shall be deposited in the Prothonotary's office. Books to be deposited.

### III.—LIQUIDATORS, GUARDIANS, AND COMMITTEES.

23. The accounts of liquidators shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts. Liquidators.

24. The accounts of guardians and of committees of persons of unsound mind shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts. Passing of accounts of guardians and committees.

### ORDER LI.

#### SALES BY THE COURT.

1. If in any cause or matter relating to any real estate it shall appear necessary or expedient that the real estate or any part thereof should be sold, the Court or a Judge may order the same to be sold, and any party bound by the order and in possession of such estate, or in receipt of the rents or profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed. Sale of real estate may be directed any time after action.

1A. In all cases where a sale, mortgage, partition or exchange is ordered, the Court or a Judge shall have power, in addition to the power already existing, with a view to avoiding expense or delay, or for other good reason, to authorize the same to be carried out, either as at present— Mode of carrying out sale, mortgage, partition, or exchange when ordered by Court.

(a) by laying proposals before the Judge in Chambers for his sanction ; or

(b) by proceedings altogether out of Court, any moneys produced thereby being paid into Court or to trustees, or otherwise dealt with as the Judge in Chambers may order.

Provided always, that the Judge shall not authorize the said proceedings altogether out of the Court, unless and until he is satisfied, by such evidence as he shall deem sufficient, that all persons interested in the estate to be sold, mortgaged, partitioned, or exchanged are before the Court, or are bound by the order for sale, mortgage, partition, or exchange, and every order authorizing the said proceedings altogether out of Court shall be prefaced by a declaration that the Judge is so satisfied as aforesaid, and a statement of the evidence upon which such declaration is made.

1B. In debenture-holders' actions, where the debenture-holders are entitled to a charge by virtue of the debentures, or of a trust deed, or otherwise, and the plaintiff is suing on behalf of himself and other debenture-holders, and where the Judge is of opinion that there must eventually be a sale, he may in his discretion direct a sale before judgment, and also after judgment, before all the persons interested are ascertained, whether served or not. Power to make order for sale in debenture-holders' actions at any time.

Sale under order.	3. Where a judgment or order is given or made, whether in Court or in Chambers, directing any property to be sold, unless otherwise ordered, the same shall be sold with the approbation of the Judge to the best purchaser that can be got for the same, to be allowed by the Judge; and all proper parties shall join in the sale and conveyance as the Judge shall direct.
Reserved biddings.	4. Affidavits for the purpose of enabling the Judge to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed.
Particulars and conditions of sale.	5. As soon as particulars and conditions of sale settled at Chambers have been printed, two prints thereof, certified by the solicitor to be correct prints of the particulars and conditions settled at the Judge's Chambers, shall be left at Chambers.
Affidavit of result of sale.	6. An office copy of the affidavit of the person appointed to sell of the result of the sale, with the bidding paper and particulars therein referred to, shall be left at Chambers at least one clear day before the day appointed for settling the certificate of the result of the sale.
Opinion of counsel.	7. The Court or a Judge may require or receive the opinion of counsel for his aid and assistance in the investigation of the title to an estate with a view to an investment of money in the purchase, or on mortgage thereof, or with a view to the sale thereof, or to the settlement of a draft of a conveyance, mortgage, settlement, conditions of sale, or other instrument, or any other matter which the Court or a Judge may think fit to refer.
Subject to objection.	8. Any party may object to any opinion of any such counsel and thereupon the point in dispute shall be disposed of by the Court or by the Judge according to the nature of the case.

#### ORDER LII.

##### MOTIONS AND OTHER APPLICATIONS.

Application by motion.	1. Where by these Rules any application is authorized to be made to the Court or a Judge, such application, if made in Court, shall be made by motion, and no petition shall be presented except where expressly required by Act of Parliament.
Rule to show cause.	2. No motion or application for a rule <i>nisi</i> or order to show cause shall hereafter be made in any action, or (a) to set aside, remit, or enforce an award, or (b) for attachment, or (c) to answer the matters in an affidavit, or (d) to strike off the rolls, or (e) against a sheriff to pay money levied under an execution.
Previous notice of motion required.	3. Except where according to the practice existing at the time of the passing of <i>The Judicature Act 1883</i> any order or rule might be made absolute <i>ex parte</i> in the first instance, and except where, notwithstanding Rule 2, a motion, or application, may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order <i>ex parte</i> upon such terms as to costs or otherwise, and subject to such undertaking (if any) as the Court or Judge may think just; and any party affected by such order may move to set it aside.
Except in certain cases.	

4. Every notice of motion to set aside, remit, or enforce an award or for attachment or committal, or to strike off the rolls, shall state in general terms the grounds of the application; and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

Notice of motion to set aside award, &c.

5. Unless the Court or Judge give leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion. Provided that in applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion.

Two clear days between notice and hearing.

6. If on the hearing of a motion or other application the Court or Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms (if any) as the Court or Judge may think fit to impose.

Motion dismissed or adjourned for notice on other persons.

7. The hearing of any motion or application may from time to time be adjourned upon such terms (if any) as the Court or Judge shall think fit.

Hearing adjourned.

8. The plaintiff shall, without any leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose.

Notice of motion to defendant not appearing.

9. The plaintiff may, by leave of the Court or a Judge, to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.

By leave with writ and before appearances.

11. No order shall issue for the return of any writ or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff.

No order for return of writ, &c., necessary.

12. When any sheriff shall, before going out of office, arrest any defendant, and render return of *capit corpus*, he may be called upon by a notice, as provided by the last preceding Rule, to bring in the body within the time allowed by law, although he may be out of office before such notice is given.

Notice to sheriff, out of office.

13. Every order if and when drawn up shall be dated the day of the week, month, and year, on which the same was made unless the Court or a Judge shall otherwise direct, and shall take effect accordingly.

Order to bear date of making.

14. Where an order has been made not embodying any special terms nor including any special directions, but simply enlarging time for taking any proceeding, or doing any act, or giving leave (a) for the issue of any writ other than a writ of attachment, (b) for the amendment of a writ or pleadings, (c) for the filing of any document, or (d) for any act to be done

Order need not be drawn up in certain cases.

Chapter I.—Civil Proceedings.  
Order LII.

3986

Note or  
the memorandum  
sufficient.

Notice of order.

Petition to  
state parties  
to be served.

Two clear days  
between service  
and hearing.

Affidavit of  
claim to  
purchase money  
paid into  
Court.

Account by  
solicitor.

Interim  
certificate.

by any officer of the Court, it shall not be necessary to draw up such order unless the Court or a Judge shall otherwise direct; but the production of a note or memorandum of such order signed by a Judge or Chief Clerk where any such matter has been referred to him shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this Rule. The person or solicitor of the person on whose application such order is made shall forthwith give notice in writing thereof to such person (if any) as would if this rule had not been made have been required to be served with such order.

16. At the foot of every petition (not being a petition of course) presented to the Court, and of every copy thereof, a statement shall be made of the persons (if any) intended to be served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof.

17. Unless the Court or a Judge gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition.

18. In the case of applications under Acts of Parliament directing the purchase money of any property sold to be paid into Court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same.

25. Where the relationship of solicitor and client exists, or has existed, a summons may be issued by the client or his representatives for the delivery of a cash account, or the payment of moneys, or the delivery of securities, and the Court or a Judge may from time to time order the respondent to deliver to the applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant, or to bring into Court the whole, or any part of the same, within such time as the Court or a Judge may order. In the event of the respondent alleging that he has a claim for costs, the Court or a Judge may make such provision for the payment or security thereof or the protection of the respondents' lien (if any) as the Court or Judge may think fit.

26. If, during the taxation of any bill of costs, or the taking of any account between solicitor and client, it shall appear to the Taxing Master that there must in any event be moneys due from the solicitor to the client, the Taxing Master may from time to time make an interim certificate as to the amount so payable by the solicitor. Upon the filing of such certificate, the Court or a Judge may order the moneys so certified to be forthwith paid to the client or brought into Court.

## ORDER LIII.

CERTIORARI: MANDAMUS: PROHIBITION: QUO WARRANTO: HABEAS  
CORPUS.1. *General.*

1. Applications for writs of Certiorari, Mandamus, or Prohibition, or for leave to exhibit informations of Quo Warranto, or for relief of like nature to Mandamus or Quo Warranto, may be made to the Court or a Judge. The application shall be, in the first instance, for an order calling on the parties interested in resisting the application to show cause why the writ should not be issued, or the information filed, or other relief given, except in the case of application by a law officer *ex officio* for a writ of Certiorari or leave to file an information of Quo Warranto, in which case the order shall, if asked, be absolute in the first instance. Provided that the Court or Judge may, in its or his discretion, in any case in which it appears necessary for the advancement of justice, grant an order absolute in the first instance for a writ of Certiorari, Mandamus, or Prohibition.

Application,  
how made.

2. Orders to show cause shall be to show cause before the Court.

Order to be  
returnable  
before the  
Court.  
Title of  
affidavits.

3. Affidavits intended to be used on the application shall be entitled "In the Supreme Court," without any other title.

4. The order to show cause and all subsequent proceedings shall be entitled "The King against" the judicial or other authority or other person to whom the writ is proposed to be directed, or against whom the information is proposed to be exhibited, "*ex parte*" the applicant.

Title of  
proceedings.

In the case of a writ of Certiorari, Mandamus, or Prohibition, which is proposed to be directed to a judicial or public authority, the authority shall be described by his or their name of office, and, in the case of justices of the peace in a Court of Petty Sessions, they shall be described as the justices of the peace at the place where the Court is held. The applicant shall, in the cases of applications for writs of Mandamus or relief of like nature, and of applications for writs of Prohibition, be called the prosecutor, and, in the case of applications for informations of Quo Warranto or relief of like nature, the relator.

5. An order absolute need not be served, but the costs of service thereof may be allowed in the discretion of the Taxing Officer, if the writ is not actually issued or the information is not actually exhibited.

Order absolute.

6. When the order is made absolute the Court or a Judge may, except as otherwise provided by these Rules, dispose of the costs of the proceedings either by the final judgment or by a separate order.

Costs.

## 2. CERTIORARI.

7. An order *nisi* for a writ of Certiorari to remove a judgment order or other proceeding of an inferior Court or tribunal, or of justices of the peace, shall not be granted unless it is made within six months after the date of the judgment, order, or other proceeding, nor unless it is proved upon affidavit that the applicant has given six days' notice of the intended application to

Time of notice.

the Court, justice of the peace, or other person or persons by or before whom the judgment, order, or other proceeding was made or taken, or to two of them if more than one.

Copy, warrant,  
order, &c., to  
be produced on  
application.

7A. An order *nisi* for a writ of Certiorari to remove any warrant, order, conviction, inquisition, or record shall not be granted unless at the time of the application a copy of the warrant, order, conviction, inquisition, or record, verified by affidavit, is produced, or its non-production accounted for to the satisfaction of the Court or Judge.

Objections to be  
stated in order.

8. Any mistake or omission in any judgment, order, or other proceeding, which is intended to be relied upon as a ground for quashing the judgment, order, or proceeding, shall be stated in the order *nisi*, otherwise an objection on account of the omission or mistake shall not be allowed.

Service.

9. In the case of orders to show cause why a writ of Certiorari should not be issued addressed to justices of the peace in a Court of Petty Sessions, service of the order on the Clerk of the Court shall be sufficient.

Security for  
costs.

10. A writ of Certiorari to remove a judgment or order of any Court or tribunal shall not be issued, except on the application of a law officer, until the applicant has given security to the satisfaction of the Prothonotary in the sum of £50, conditioned to prosecute the writ with effect at his own cost without delay, and to pay to the party in whose favour the judgment or order was given or made, in the event of its being confirmed, such costs, if any, as the Court shall order him to pay.

Order to quash  
in first instance.

11. When cause is shown against an order *nisi* for a writ of Certiorari to bring up a judgment or order, the Court, if it directs the writ to issue, may by the same order direct that the judgment or order shall be quashed on return without further order; and in that case no security need be given as required by the last preceding Rule, and a memorandum to that effect shall be indorsed upon the writ by the officer by whom it is issued.

In any such case the judgment or order shall be quashed upon being returned to the Court without further order.

When no cause  
shown.

12. When cause is not shown against an order *nisi* for a writ of Certiorari to bring up a judgment or order, or when the order is absolute in the first instance, the applicant shall apply to the Court or a Judge for an order to quash the judgment or order. Such application shall be made upon notice to the parties interested in supporting the judgment or order.

Forms.

12A. A writ of Certiorari shall be in any of the Forms Nos. 9 or 10 in Appendix J, with such variations as circumstances may require.

### 3. MANDAMUS.

Prosecutor to  
be named.

13. An order *nisi* for a writ of Mandamus or for relief of a like nature shall not be granted except upon the application of some person who is interested in the relief sought, and the applicant must state by affidavit that the application is to be made at his instance as prosecutor.

Persons to show  
cause.

14. The Court or Judge may direct that the order *nisi* shall be addressed to, and served upon, any person who, in the opinion of the Court or Judge, ought to have notice thereof; and any person who, in the opinion of the Court or Judge, would be affected by the issue of the peremptory writ may show cause against the order *nisi*, and, if he does so, shall be liable to costs as if the order had been addressed to him.

15. Unless otherwise ordered by the Court or Judge, every writ of Mandamus shall command the person to whom it is addressed to do the act in question, or show cause why he has not done it. But the Court or Judge may direct that the command shall be peremptory in the first instance. Every writ of Mandamus shall be in the Form No. 12 in Appendix J, with such variations as circumstances may require, and shall bear date of the day on which it is issued, and shall be tested in the name of the Chief Justice.

Form of writ.

16. Unless otherwise ordered by the Court or Judge, the writ shall be returnable within the same time after service as is allowed for appearance in the case of a writ of summons.

Time for return of writ.

17. When a writ of Mandamus is directed to one person only, the original writ must be personally served upon him by delivering it to him. When the writ is directed to two or more persons, it shall be personally served upon all of them but one in the manner prescribed for personal service of a writ of summons, and shall be served upon the remaining one by delivering the original writ to him.

Service.

18. When a writ of Mandamus is directed to justices of the peace, or to a corporation, or to a company, or to public authorities, it shall be served on so many of the justices or of the officers or members of the corporation or company or public authority as are competent to do the act commanded, unless by law some other mode of service is sufficient.

Service on justices or corporate bodies.

19. The persons to whom a writ of Mandamus is directed shall, within the time allowed by the writ, file the writ in the Prothonotary's office, together with a certificate, written thereon or annexed thereto, and signed by them, setting forth that they have done the act commanded by the writ, or else setting forth the reason why they have not done so.

Return.

20. A copy of the return shall be served upon the prosecutor on the same day on which it is filed.

Service.

21. If the return does not certify that the act commanded has been done, the same proceedings shall be had and taken, and within the same time, as if the return were a defence in an action in which the prosecutor was the plaintiff and the person to whom the writ is directed was the defendant, and had pleaded this return as his defence.

Pleading to return.

22. If the question of fact and law, if any, raised by the return is determined in favour of the prosecutor by judgment of the Court or otherwise, the prosecutor shall be entitled to a peremptory writ of Mandamus, commanding the persons to whom the first writ was directed to do the act therein commanded; and such writ shall be awarded by the judgment, if any, or, if there is no judgment, by a separate order.

Peremptory writ.

23. When a peremptory writ is awarded in the first instance, the Court or Judge shall, at the time of granting the writ, direct by and to whom the costs of the proceedings shall be paid. When a peremptory writ is not awarded in the first instance, and the return to the writ certifies that the person to whom it is addressed has done the act commanded by the writ, an application for an order for the costs of the proceedings may be made at any time after the return is filed, not being later than the fourth day of the Sittings of the Full Court held next after the day on which the return is filed. The application shall be made to the Court or Judge by whom the writ was awarded.

Costs when peremptory writ awarded in the first instance or on obedience.

Proceedings in  
nature of  
interpleader.

24. When upon an application for a writ of Mandamus it appears that some person other than the prosecutor claims that the person to whom it is proposed to direct the writ shall do some act inconsistent with the act which the prosecutor claims to have done, the person to whom the order *nisi* or writ is directed may apply to the Court or a Judge for an order that the last-named person be substituted for him in all subsequent proceedings up to the issue of a peremptory writ of Mandamus ; and the Court or a Judge may make such order on the application as is just.

Time.

25. An application for a writ of Mandamus, or an order in the nature of a Mandamus, to a judicial tribunal to enter a minute of adjournment and hear a matter, shall be made within two months of the date of the refusal to hear, or within such further time as is, under special circumstances, allowed by the Court or Judge.

Mandamus by  
order.

26. In any case in which the Court may direct the issue of a peremptory writ of Mandamus, the command may be expressed in an order of the Court without the issue of a writ, which order shall have the same effect as a peremptory writ of Mandamus.

No action  
against party  
obeying writ or  
order.

26A. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of Mandamus or an order of the Court for relief of the like nature issued by the Court or any Judge thereof.

#### 4. PROHIBITION.

Pleadings in  
Prohibition.

27. The Court or a Judge may in any case, instead of directing the issue of a writ of Prohibition, direct the prosecutor to deliver to the opposite party a statement of claim setting forth the facts upon which his claim to the writ is founded, and thereupon the same proceedings shall be had and taken in all respects as in an action.

Proceedings on  
Judgment.

28. If judgment is given for the prosecutor, the judgment shall include a direction that a writ of Prohibition shall issue.

Writ of  
Procedendo.

29. When a writ of Prohibition has been issued, and it is afterwards made to appear to the Court or a Judge that relief ought to be given against the judgment or order by which the writ was awarded on any ground on which relief might be given against a judgment in an action, the Court or Judge may direct that a writ, called a writ of Procedendo, shall be issued commanding the judicial tribunal to which the writ of Prohibition was issued to proceed to hear or determine the matter in question or otherwise proceed therein as if the writ of Prohibition had not been issued.

Prohibition by  
order.

30. The Prohibition may be expressed in an order of the Court without the issue of a writ, which order shall have the same effect as a writ of Prohibition. A writ of Prohibition shall be in the Form No. 11 in Appendix J, with such variations as circumstances may require.

#### 5. QUO WARRANTO.

Relator to be  
named.

31. Upon an application for an order for leave to exhibit an information of Quo Warranto, or for relief of a like nature, the applicant must state by affidavit that the application is to be made at his instance as relator. The Court or a Judge may allow a new relator to be substituted for the original relator, on such terms as to costs or otherwise as are just.



32. Every objection intended to be made to the title of the defendant or person called on to show cause shall be stated in the order *nisi*, and no objection not so stated shall be raised on the return of the order *nisi*, or in the information, without the leave of a Court or a Judge.

Objections to be  
stated in order  
*nisi*.

33. An information shall not, without the leave of the Court or a Judge, be filed until the applicant has given security in the sum of £50 conditioned to file the information in the Prothonotary's office and prosecute the same with effect, and to pay to the defendant such costs, if any, as the Court or a Judge shall order.

Security for  
costs.

34. The information shall set forth the facts relied on by the relator as invalidating the title of the defendant to the office in question in the same manner as in a statement of claim.

Form of  
information.

35. The information shall be in the name of the Attorney-General or the relator, as the case may be, on behalf of His Majesty, and shall be signed by the Attorney-General or relator. A copy of the information shall be served upon the defendants, or, if at the return of the order *nisi* he appeared by solicitor, then upon his solicitor.

Signature of  
service of  
information.

36. The defendant shall plead to the information within the same time and in the same manner as if the information were a statement of claim in an action to which a statement of defence was ordered, and thereupon the same proceedings shall be taken in all respects as if the proceeding by information were an action in which the relator was plaintiff and the defendant was defendant.

Defence and  
subsequent  
proceedings.

37. If judgment is given for the Crown, the judgment shall award that the defendant be ousted from the office usurped by him.

Judgment costs.

38. The defendant may, if he thinks fit, disclaim the office in question. Such disclaimer shall be signed by the defendant and attested by a commissioner for affidavits, and shall be filed in the Prothonotary's office, and a copy thereof shall be served on the relator within the time allowed for delivering a defence. The relator shall thereupon, unless the Court or a Judge otherwise orders, be entitled to enter judgment of ouster with costs, including the costs of the order giving leave to exhibit the information.

Disclaimer.

39. When proceedings by information of Quo Warranto, or for relief of a like nature, are pending against several persons for usurpation of offices of the same nature, and upon the same grounds of objection, the Court or a Judge may direct the proceedings to be consolidated, as in the case of actions, and for that purpose may make such orders as are just. But an order for consolidation or stay of proceedings against any defendant shall not be made upon the application of a defendant, unless he undertakes to enter a disclaimer in the event of judgment being given for the relator in the proceeding which is not stayed.

Consolidation.

#### 6. HABEAS CORPUS.

40. Applications for writs of Habeas Corpus, or for orders for the production of persons in confinement for the purpose of examination or trial, may be made to the Court or a Judge *ex parte*. The affidavits upon which the application is made shall be entitled "In the Supreme Court," without other title, except in the case of applications for orders for the production of persons for examination as witnesses in causes or matters pending in the Court, in which case they shall also be entitled in the cause or matter.

How applied  
for.

- How granted.** 41. The Court or a Judge may make an order absolute in the first instance for the issue of the writ or production of the person, or may make an order calling upon the person who would be required to obey the writ or order, if granted, to show cause why it should not be issued or made. The order and all subsequent proceedings shall be entitled "The King against" the person to whom the writ or order is directed, except in the case of orders for the production of persons as witnesses, which shall be entitled in the cause or matter.
- Service.** 42. Writs of Habeas Corpus, and orders for production directed to persons charged by law with the custody of persons in lawful custody or confinement, may be served either personally, or by leaving the original with a servant or officer of the person to whom the writ or order is directed at the place where the person in question is confined or detained. Other writs of Habeas Corpus must be served personally unless an order for substituted service is made as provided for by Order X. When a writ of Habeas Corpus is directed to more persons than one, it shall be served in the same manner as a writ of Mandamus directed to several persons. Together with the writ there shall be served a notice, directed to the person to whom the writ is addressed, and pointing out the acts to be done by him in obedience to the writ, and the consequences of making default.
- Return to writ of Habeas Corpus.** 43. The person to whom a writ of Habeas Corpus is directed shall, at the time and place specified therein, make his return to the writ, which shall be indorsed upon or attached to the writ, and shall set out all the causes of the detention of the person named in the writ. The return shall be filed in the office of the Prothonotary.
- Amendment of return. Proceedings on return.** 44. The return may be amended by leave of the Court or a Judge.
45. Upon the return of the writ the return shall be read, and a motion shall then be made for the disposition of the person therein named, or for amending or questioning the return.
- Discharging without writ.** 46. When an order to show cause has been made, the Court or Judge may, on the return of the order, direct the discharge or other disposition of the person in question without the issue of a writ of Habeas Corpus; and any such order shall be as effectual as if it had been made on the return of a writ.

#### ORDER LIV.

##### APPLICATIONS AND PROCEEDINGS AT CHAMBERS.

- Office of Chief Clerk to be deemed Judge's Chambers.** 1A. The office of the Chief Clerk shall be deemed to be Judge's Chambers for the purposes of all business referred to or ordered to be investigated by the Chief Clerk.
- Summons.** 1. Every application at Chambers not made *ex parte* shall be made by summons.
- Forms of originating summons.** 2. An originating summons shall be in the Form No. 25 in Appendix L, with such variations as circumstances may require. It shall be prepared by the applicant or his solicitor, and shall be sealed at the Prothonotary's Office, and when so sealed shall be deemed to be issued. The person obtaining the summons shall leave at such office a copy thereof, which shall be duly filed.

3. The day and hour for attendance under an originating summons shall be left to be added after the issue thereof in the margin or at the foot of the same, and shall be there inserted when such day and hour shall have been fixed at the Chambers of the Judge.

Time for  
attendance.

4. Where from any cause an originating summons may not have been served upon any party seven clear days before the return thereof, an indorsement may be made upon the summons and upon a copy thereof appointing a new time for the parties not before served to attend at the Chambers of the Judge, and such indorsements shall be marked at the Judge's Chambers, and the service of the copy so indorsed and marked shall have the same force and effect as the service of an originating summons, and where any party has been served before such indorsement, the hearing thereof may, upon the return of the summons, be adjourned to the new time so appointed.

Where  
summons not  
served in time,  
fresh  
appointment.

4A. The parties served with an originating summons under Order 54A or Order 55, Rule 3, shall, before they are heard in Chambers, enter appearances in the Prothonotary's Office and give notice thereof.

Appearances to  
be entered.

4B. An originating summons, where service is necessary, shall, unless otherwise directed by the Judge, be served seven clear days before the return thereof.

Time for  
service of  
original  
summons.

4C. Every summons, other than an originating summons, shall be served within a reasonable time before the return thereof, and in no case later than two of the clock of the day previous to its being made attendable, or if served on Saturday not later than twelve o'clock, and shall operate as a stay of proceedings from the hour at which it is attendable. Provided that it shall be lawful for a Judge, if under special circumstances he shall see fit, to order that any such summons operate as a stay of proceedings from the time of service, when it shall be drawn up accordingly and signed by such Judge.

Time of service  
of summons.

Stay of  
proceedings.

5. Where any of the parties to a summons fail to attend, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the Judge may proceed *ex parte*, if considering the nature of the case he think it expedient so to do. No affidavit of non-attendance shall be required or allowed, but the Judge may require such evidence of service as he may think just.

Proceeding *ex  
parte* in case of  
party  
summoned  
failing to  
attend.

6. Where the Judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in the Judge's Chambers, unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same at the time and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just.

Reconsideration  
of *ex parte*  
proceedings.

7. Where a proceeding in Chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally.

Non-attendance.

Costs.

- Further attendance on summons. 8. Where matters in respect of which a summons has been issued are not disposed of upon the return of the summons, the parties shall attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter.
- Summons may include all matters. 9. In every cause or matter where any party thereto makes any application at Chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court or Judge; and upon the hearing of such application it shall be lawful for the Court or Judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the Judge thinks fit, be adjourned from Chambers into Court, or from Court into Chambers.
- Adjournment from and into Court. 10. A summons other than an originating summons shall be in the Form No. 1 in Appendix K, with such variations as circumstances may require; and shall be addressed to all the persons on whom it is to be served.
- Form of summons. 10A. The business to be disposed of in Chambers shall consist of the following matters in addition to those which under any other Rule or by any Act may be disposed of in Chambers :—
- Business at Chambers. (a) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all applications relating to the conduct of any cause or matter.
- (b) Such other matters as the Judge may think fit to dispose of at Chambers.
- Issue of summons. 11. In all cases of applications originating in Chambers a summons shall be prepared by the applicant or his solicitor and a copy thereof shall be left with the Associate which copy after the signing shall be forwarded to the Prothonotary's office to be duly filed. The summons when signed shall be deemed to be issued.
- Hour of return. 12. Unless a Judge otherwise directs, summonses shall be returnable at 10.30 in the forenoon.
- Form of order. 13. An order shall be in the Form No. 2 in Appendix K, with such variations as circumstances require. It shall be prepared by the party entitled to the order, and signed by the Judge by whom it is made.
- Copy of certain orders to be left with Associate. 14. Whenever any order is made on any originating summons or on any application originating in Chambers and in any other case of an order made in Chambers where the Judge at any time before the signing of the order so directs there shall be left with the Associate a copy of such order which shall be forwarded to the Prothonotary to be duly filed.

#### ORDER LIV. (A.)

##### DECLARATION ON ORIGINATING SUMMONS.

- Summons for construction of instruments. 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. Any person claiming any legal or equitable right in a case where the right depends upon the construction of a statute may apply by originating summons for the determination of the question of construction and for a declaration as to the right claimed. Summons for construction of statute.

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

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

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

## ORDER LV.

CHAMBERS IN MATTERS WITHIN THE COGNIZANCE OF THE COURT IN ITS EQUITABLE JURISDICTION PREVIOUSLY TO THE COMMENCEMENT OF THE JUDICATURE ACT 1883.

1. *Introductory.*

1. The business to be disposed of in Chambers by a Judge shall, unless otherwise ordered by such Judge, consist of the following matters, in addition to the matters which under any other Rule or by Statute may be disposed of in Chambers :— Business to be disposed of in Chambers.

- (1) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights, or where the title depends only upon proof of the identity or the birth, marriage, or death of any person.
- (2) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter, where the cash does not exceed £1,000, or the securities do not exceed £1,000 nominal value.
- (3) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise. Payment of dividends.
- (5) Applications under the *Trusts Act* 1928, or any Act amending the same, in all cases where the money or securities in Court do not exceed £1,000 or £1,000 nominal value. Statute of Trusts, under £1,000.
- (7) Applications under the *Lands Compensation Act* 1928, or any Act amending the same. Lands Compensation Act 1928.
- (8) Applications under the *Trusts Act* 1928, or any Act amending the same, in all cases where a judgment or order has been given or made for the sale, conveyance, or transfer of any stock, or of any hereditaments, whatever may be the estate or interest therein. After judgment for sale.
- (12) Applications as to guardianship and maintenance or advancement of infants. Guardianship.
- (13) Applications connected with the management of property. Management of property.

- |   |   |
|---|---|
| Sale of property.   | (14) Applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into Court and investment of the purchase money. |
| Taxation of costs and delivery of deeds.                    | (15) All applications (not being applications for orders of course) for the taxation and delivery of bills of costs, and for the delivery by any solicitor of deeds, documents, and papers.                           |
| Orders on further consideration for distribution of estate. | (16) Applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of the estate of an intestate, or for the distribution of a fund among creditors. |
| Other matters.  | (17) Such other matters as the Judge may think fit to dispose of in Chambers.   |

Judge in Chambers to have powers formerly exercisable by Master.

2. All other powers and authorities which at the commencement of *The Judicature Act* 1883 were exercisable by the Master-in-Equity, under or by virtue of any general order or orders of the Court in relation to any reference made by the Court to him, may be exercised by the Judge in Chambers.

#### 2. Administration and Trusts.

Originating summons for relief without administration.

3. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person, or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid may take out, as of course, an originating summons returnable in the Chambers of a Judge of the Court for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require, that is to say, the determination without an administration of the estate or trust of any of the following questions or matters:—

- |                                      |   |
|--------------------------------------|---|
| Rights of creditor, &c.              | (a) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law or <i>cestui que trust</i> .        |
| Ascertainment of class.              | (b) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others.  |
| Accounts of executors, &c.           | (c) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts.                           |
| Payment into Court by executors, &c. | (d) The payment into Court of any money in the hands of the executors, administrators, or trustees.   |
| Direction to executors, &c.          | (e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors, administrators, or trustees. |
| Approval of sale &c.                 | (f) The approval of any sale, purchase, compromise, or other transaction.   |
| Questions in administrations.        | (g) The determination of any question arising in the administration of the estate or trust.   |

4. Any of the persons named in the last preceding Rule may in like manner apply for and obtain an order for—

- |  |   |
|--|---|
| (a) The administration of the personal estate of the deceased. | Summons for administration.<br>Personal estate. |
| (b) The administration of the real estate of the deceased.     | Real estate.                                    |
| (c) The administration of the trust.                           | Trusts.   |

5. The persons to be served with the summons under the last two preceding Rules in the first instance shall be the following (that is to say):—

A. Where the summons is taken out by an executor or administrator or trustee—

- |  |                                |
|--|--------------------------------|
| (a) For the determination of any question under sub-sections (a), (e), (f), or (g) of Rule 3, the persons, or one of the persons, whose rights or interests are sought to be affected. | Where summons by executor, &c. |
| (b) For the determination of any question, under sub-section (b) of Rule 3, any member or alleged member of the class.   |                                |
| (c) For the determination of any question under sub-section (c) of Rule 3, any person interested in taking such accounts.  |                                |
| (d) For the determination of any question under sub-section (d) of Rule 3, any person interested in such money.  |                                |
| (e) For relief under sub-section (a) of Rule 4, the residuary legatees, or next of kin, or some of them.   |                                |
| (f) For relief under sub-section (b) of Rule 4, the residuary devisees or heirs, or some of them.  |                                |
| (g) For relief under sub-section (c) of Rule 4, the <i>cestuis que trustent</i> or some of them.   |                                |
| (h) If there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.                                    |                                |

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

5A. Any mortgagee or mortgagor whether legal or equitable or any person entitled to or having property subject to a legal or equitable charge or any person having the right to foreclose or redeem any mortgage whether legal or equitable may take out as of course an originating summons for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee; but as to any land under the *Transfer of Land Act 1928* nothing in this Rule shall be construed to give any right to foreclose or to sell otherwise than as by the said Act provided.

5B. The persons to be served with the summons under the last preceding Rule shall be such persons as under the existing practice of the Supreme Court would be proper defendants to an action for the like relief as that specified by the summons.

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

Chapter I.—Civil Proceedings.  
Order LV.

3998

Evidence and  
directions as to  
trial.

7. The application shall be supported by such evidence as the Court or a Judge may require, and directions may be given as they or he may think just for the trial of any questions arising thereout.

Judgment.

8. It shall be lawful for the Court or a Judge upon such summons to pronounce such judgment as the nature of the case may require.

Special  
directions.

9. The Court or a Judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as they or he may think just.

Decision  
without  
judgment for  
administration.

10. It shall not be obligatory on the Court or a Judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

Orders which  
may be made  
on application  
for  
administration  
or execution of  
trusts.

11. Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust where no accounts or insufficient accounts have been rendered, the Court or a Judge may, in addition to the powers already existing—

- (a) order that the application shall stand over for a certain time and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings;
- (b) when necessary to prevent proceedings by other creditors or by persons beneficially interested, make the usual judgment or order of administration with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge.

Not to affect  
power of  
trustees.

12. The issue of a summons under Rule 3 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

3. *Powers and Duties of Chief Clerk.*

Powers of Chief  
Clerk.

16. The Chief Clerk shall, for the purpose of any proceedings directed to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to require production of documents, to take affidavits and acknowledgments, to receive affirmations, and to examine parties and witnesses *vivâ voce*, and to receive evidence upon affidavit.

Parties not  
attending  
liable to  
process, &c.

17. Parties and witnesses summoned to attend before the Chief Clerk shall be bound to attend in pursuance of the summons, and shall be liable to process of contempt in like manner as parties or witnesses are liable thereto in case of disobedience to any order of the Court, or in case of default in attendance, in pursuance of any order of the Court or of any writ of *subpoena ad testificandum*, and all persons swearing or affirming before the Chief Clerk shall be liable to all such penalties, punishments, and consequences, for any



wiltul and corrupt false swearing or affirming, as if the matters sworn or affirmed had been sworn or affirmed before any other person by law authorized to administer oaths, to take affidavits, and to receive affirmations

18. The Court or a Judge may direct any computation of interest or the apportionment of any fund to be certified by the Chief Clerk, and to be acted upon by any officer or other person without any further order.

Interest and  
apportionment.

#### 4. *Assistance of Experts.*

19. The Judge in Chambers may, in such way as he thinks fit, obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, the better to enable such Judge to determine any matter at issue in any action or proceeding, and may act upon the certificate of any such person, and may make such order as to the costs thereof as he shall think fit.

Accountants,  
merchants, &c.

#### 5. *Summonses in Chambers.*

24. The summons by the Chief Clerk requiring the attendance of parties, witnesses, or others, shall be in the Form No. 1 in Appendix L; with such variations as the circumstances of the case may require.

Summons by  
Chief Clerk.  
Form.

#### 6. *Proceedings relating to Infants, &c.*

25. Upon applications for the appointment of guardians of infants and allowance for maintenance the evidence shall show—

Evidence on  
application to  
appoint  
guardian, &c.

- (a) the ages of the infants ;
- (b) the nature and amount of the infants' fortunes and incomes ;
- (c) what relatives the infants have.

27. At any time during the proceedings at Judge's Chambers under any judgment or order, the Judge may, if he shall think fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition, who has been served with notice of such judgment or order.

Appointment of  
guardian  
*ad litem*.

#### 7. *Documents to be left at Chambers.*

28. In all cases of proceedings in Chambers under any judgment or order the party prosecuting the same shall leave the original or a copy of such judgment or order at the Judge's Chambers unless the original judgment or order shall have been previously filed in the Prothonotary's office and in the case of a copy shall certify the same to be a true copy of the judgment or order as made by the Judge.

Proceedings  
under  
judgment.

29. Whenever any matter is adjourned from the Court to Chambers, or any directions are given in Court to be acted upon at Chambers, whether upon a matter adjourned into Court from Chambers, or upon any other occasion, without an order being drawn up, a note signed by the Judge, stating for what purpose such matter is adjourned to Chambers, or the directions given, shall be sufficient.

Adjournment to  
Chambers  
without order  
drawn, note  
sufficient.

30. A note stating the names of the solicitors for all the parties, and showing for which of the parties such solicitors are concerned, shall be left at Chambers with every judgment or order.

Names of  
solicitors.

8. *Summonses to Proceed.*

Summons to proceed with accounts or inquiries.

33. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed; and, upon the return of such summons, the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken: And a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied by addition thereto or otherwise as may be found necessary.

Settling deed under judgment, &c., in case parties differ.

34. Where by a judgment or order a deed is directed to be settled by the Judge in Chambers in case the parties differ, a summons to proceed shall be issued; and upon the return of such summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall think fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within eight days after the delivery of such copy; and the proceedings shall be adjourned until after the expiration of the said period of eight days.

Service of notice of judgment or order, where dispensed with.

35. Where upon the hearing of the summons to proceed it appears to the Judge that by reason of absence or for any other sufficient cause the service of notice of the judgment or order upon any party cannot be made, or ought to be dispensed with, the Judge may, if he shall think fit, wholly dispense with such service, or may, at his discretion, order any substituted service or notice by advertisement or otherwise in lieu of such service.

Power to bind persons, service on whom is dispensed with.

35A. Where service of notice of a judgment or order for accounts and inquiries is dispensed with, the Judge may at any time, if he thinks fit, order that the persons as to whom service is dispensed with, shall be bound as if served, and they shall be bound accordingly, except where the judgment or order has been obtained by fraud or non-disclosure of material facts.

Advertisements for the creditors may be issued before appearance of all parties.

36. If on the hearing of the summons to proceed, it shall appear that all necessary parties are not parties to the action, or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors and for leaving the accounts in Chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken except for the purpose of ascertaining the parties to be served until all necessary parties shall have been served and are bound, or service shall have been dispensed with, and until directions shall have been given as to the parties who are to attend on the proceedings.

Course of proceeding.

37. The course of proceeding in Chambers shall ordinarily be the same as the course of proceeding in Court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall if directed be supplied for the use of the Judge and the Chief Clerk, and where so directed copies shall be handed over to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in unless the Judge shall otherwise direct.

10. *Attendances.*

40. Where upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the Judge with respect to the whole or any portion of the proceedings that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon a solicitor to represent them, the Judge may nominate such solicitor for the purpose of the proceedings before him; and where any of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the Judge with respect to which such nomination shall have been made and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated.

Judge may  
nominate one  
solicitor for a  
class.

41. Whenever in any proceeding before a Judge in Chambers the same solicitor is employed for two or more parties the Judge may, at his discretion, require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceeding until such party is so represented.

Judge may  
require distinct  
solicitors to  
represent  
parties.

42. Any of the parties other than those who shall have been directed to attend may attend at their own expense, and upon paying the costs (if any) occasioned by such attendance; or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

Attendance of  
parties other  
than those  
directed to  
attend.

43. An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who shall have been directed to attend and such of them (if any) as shall have elected to attend at their own expense, and such order is to be recited in the Chief Clerk's certificate.

Order to state  
parties to  
attend.

11. *Advertisements for Creditors and Claimants.*

44. Where a judgment or order is given or made, whether in Court or in Chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement shall be excluded from the benefit of the judgment or order.

Claimants not  
coming in to  
prove excluded.

45. Where an advertisement is required for the purpose of any proceeding in Chambers a peremptory advertisement and only one shall be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements; and any advertisement may be repeated as many times and in such papers as may be directed.

Peremptory  
advertisement.

46. The advertisement shall be prepared by the party prosecuting the judgment or order, and submitted to the Chief Clerk for approval, and when approved shall be signed by him, and such signature shall be sufficient authority to the printer of the *Government Gazette* to insert the same.

Advertisements  
to be signed by  
Chief Clerk.

Chapter I.—Civil Proceedings.  
Order I.V.

4002

Advertisements  
for creditors  
and other  
claimants.

Form.

47. Advertisements for creditors and other claimants shall fix a time within which each claimant not being a creditor is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased, or to such other party as the Judge shall direct, or to his solicitor to be named and described in the advertisement, the name and address of such creditor, and the full particulars of his claim, and a statement of his account, and the nature of the security (if any) held by him; and such advertisement shall be in one of the Forms Nos. 2 and 3 in Appendix L hereto, with such variations as the circumstances of the case may require; and at the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

Office copies of  
affidavits.

48. Claimants filing affidavits shall not be required to take office copies, but the person who examines the claims shall take office copies and produce the same at the hearing unless the Judge shall otherwise direct.

Creditor need  
not make  
affidavit or  
attend unless  
required.

49. No creditor need make any affidavit nor attend in support of his claim (except to produce his security) unless he is served with a notice requiring him to do so as is hereinafter provided.

Notices to  
creditors to  
produce  
security, &c.

Form.

50. Every creditor shall produce the security (if any) held by him, before the Judge at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims; and every creditor shall, if required by notice in writing (Form No. 4 in Appendix L), to be given by the executor or administrator of the deceased, or by such other party as the Judge shall direct, produce all other deeds and documents necessary to substantiate his claim before the Judge at his Chambers at such time as shall be specified in such notice.

Creditor  
neglecting  
notice not  
allowed costs of  
proving.

51. In case any creditor shall neglect or refuse to comply with the last preceding Rule he shall not be allowed any costs of proving his claim, unless the Judge shall otherwise direct.

Claim to be  
examined and  
result verified  
by affidavit of  
executor.

Form.

Form.

52. The executor or administrator of the deceased, or such other party as the Judge shall direct, shall examine the claims sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable; and he shall, at least seven clear days prior to the time appointed for adjudication, file an affidavit (Form No. 5 in Appendix L) to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor, or other competent person, or otherwise as the Judge shall direct, verifying a list of the claims (Form No. 6 in Appendix L) the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is, in the opinion of the deponent, justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief.

Affidavits may  
be postponed.

53. In case the Judge shall think fit so to direct, the making of the affidavit referred to in the last preceding Rule shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the Judge may give.

54. Where on the day appointed for hearing the claims any of them remain undisposed of, an adjournment day for hearing such claims shall be fixed, and where further evidence is to be adduced a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced.

Adjournment  
and further  
evidence.

55. At the time appointed for adjudicating upon the claims of creditors or at any adjournment thereof, the Judge may, in his discretion, allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor to attend and prove his claim, or any part thereof; and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

Adjudication on  
claims.

56. Notice (Form No. 7, Appendix L) shall be given by the executor or administrator, or such other party as the Judge shall direct, to every creditor whose claim, or any part thereof, has been allowed, without proof by the creditor, of such allowance, and to every such creditor as the Judge shall direct, to attend and prove his claim, or such part thereof as is not allowed, by a time to be named in such notice (Form No. 8, Appendix L), not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned; and, in case any creditor shall not comply with such notice, his claim or such part thereof as aforesaid shall be disallowed.

Notice to  
creditors of  
claims allowed  
or disallowed.

57. After the time fixed by the advertisement no claims shall be received unless the Judge at Chambers shall think fit to give special leave upon application made by summons upon such terms and conditions as to costs and otherwise as the Judge shall think fit.

Claims excluded  
after time  
prescribed.

58. A creditor who has come in and established his debt in the Judge's Chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the Judge unless he shall think fit to direct the taxation thereof; and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established.

Costs.

59. A list of all claims allowed shall, when required by the Judge, be made out and left in the Judge's Chambers by the person who examines the claims.

Lists of claims  
allowed.

60. Where any judgment or order is made for payments to creditors, the party whose duty it is to prosecute such judgment or order shall send to each such creditor or his solicitor (if any) a notice (Form No. 9, Appendix L) that the amount of his claim is payable; and such party shall, when required, produce such judgment or order, and any other papers necessary to enable such creditors to receive such payments.

Notice to  
creditor of  
payment.

61. Every notice by this Order required to be given to creditors or other claimants shall, unless the Judge shall otherwise direct, be deemed sufficiently given and served if transmitted by the post (prepaid) to the creditor or other claimant to be served, according to the address given in the claim sent in by him pursuant to the advertisement, or, in case such creditor or other claimant shall have employed a solicitor, to such solicitor, according to the address given by him.

Notice by post  
sufficient.

12. *Interest.*

Rate of interest  
on debts.

62. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum from the date of the judgment or order.

Interest  
payable out of  
surplus assets.

63. A creditor whose debt does not carry interest, who comes in and establishes the same before the Judge in Chambers under a judgment or order of the Court or of the Judge in Chambers, shall, unless otherwise ordered, be entitled to interest upon his debt at the rate of four per cent. per annum from the date of the judgment or order out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest.

Interest on  
legacies.

64. Where a judgment or order is made directing an account of legacies interest shall be computed on such legacies after the rate of four per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

13. *Certificates of the Chief Clerk.*

Directions to  
be in no  
particular  
form.

65. The directions to be given by a Judge for or touching any proceedings before the Chief Clerk shall require no particular form, but the result of such proceedings shall be stated in the shape of a short certificate to the Judge, and shall not be embodied in a formal report unless in any case the Judge shall see fit so to direct.

Not to set out  
documents, &c.

66. The certificate of the Chief Clerk shall not, unless the circumstances of the case render it necessary, set out the judgment or order, or any document, or evidence, or reasons, but shall refer to the judgment or order, document and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded.

Form of  
certificate.

67. The certificate of the Chief Clerk shall be in the Form No. 10, Appendix L, with such variations as the circumstances may require; and when prepared and settled it shall be transcribed by the solicitor prosecuting the proceedings in such form and within such time as the Chief Clerk shall require, and shall be signed by the Chief Clerk either then or (if necessary) at an adjournment to be made for the purpose; and, when the Judge shall approve of such certificate or report, he shall sign the same in testimony of his adopting the same.

Where accounts  
are directed.

68. When an account is directed the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which (if any) of such items have been disallowed or varied, and shall state what additions (if any) have been made by way of surcharge or otherwise; and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered such transcript may be required to be made by the

party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be filed therewith or retained in Chambers, and subsequently filed as the Judge in Chambers may direct. No copy of any such account shall be required to be taken by any party.

69. No exceptions shall lie to any certificate or report of the Chief Clerk, although signed and adopted by the Judge; but any party shall, either during the proceedings before such Chief Clerk, or within such time after such proceedings shall have been concluded, and before such certificate or report shall have been signed and adopted, as is hereinafter prescribed, be at liberty to take the opinion of the Judge upon any particular point or matter arising in the course of the proceedings or upon the result of the whole proceeding when it is brought by the Chief Clerk to a conclusion.

No exceptions  
to lie to  
certificate.

Parties may  
take opinion of  
Judge on any  
particular point.

Rule 69A.—Taking the opinion of a Judge, as hereinbefore provided, shall not operate as a stay of proceedings before the Chief Clerk, but he may at his discretion either continue the proceeding in the course of which the point or matter has arisen or defer further proceeding until such opinion has been obtained.

Proceeding to  
take opinion of  
Judge not a  
stay of  
proceedings.

70. When any certificate or report of the Chief Clerk shall have been signed and adopted by the Judge the same shall be transmitted by the Chief Clerk to the Prothonotary's office to be there filed, and shall thenceforth be binding on all parties unless discharged or varied either at Chambers or in Court, according to the nature of the case, upon application by summons or motion; and nothing herein contained shall prejudice or affect the power of the Court at any time to open any such certificate or report upon the same or like grounds as any report of the Master-in-Equity which has been absolutely confirmed may have been opened prior to *The Judicature Act 1883*.

Certificate  
signed and  
adopted by  
Judge binding  
on all parties  
unless  
discharged or  
varied.

70A. The time within which any party is to be at liberty to take the opinion of the Judge upon any proceeding which shall have been concluded, but as to which the certificate of the Chief Clerk shall not have been signed and adopted by the Judge, shall be four clear days after the certificate shall have been signed by the Chief Clerk.

Time for  
taking opinion  
of Judge before  
certificate signed  
by him.

70B. Any party desiring to take the opinion of the Judge, as mentioned in the last preceding Rule, shall within four clear days after the certificate shall have been signed by the Chief Clerk obtain a summons for such purpose.

Summons for  
taking opinion  
of Judge.

70C. At the expiration of four clear days after the certificate shall have been signed by the Chief Clerk, if no party has in the meantime obtained a summons to take the opinion of the Judge thereon, the Chief Clerk shall submit the certificate to the Judge for his approval; and the Judge may thereupon, if he approve the same, sign such certificate in testimony of his adoption thereof, as follows:—"Approved this                      day of                      ."

Time for  
signature of  
certificate of  
Judge.

71. The time within which an application may be made by summons or motion to discharge or vary any certificate which has been signed and adopted by the Judge in Chambers shall be eight clear days after the filing of such certificate.

Time for  
applying to  
discharge or  
vary certificate  
signed.

14. *Further Consideration.*

Further  
consideration.

72. Where any matter originating in Chambers shall, at the original or any subsequent hearing, have been adjourned for further consideration in Chambers, such matter may, after the expiration of eight days and within fourteen days from the filing of the Chief Clerk's certificate, be brought on for further consideration by a summons to be taken out by the party having the conduct of the matter, and after the expiration of such fourteen days by a summons to be taken out by any other party. Such summons shall be in the form following :—

“That this matter, the further consideration whereof was adjourned by the order of the       day of       19       , may be further considered,” and shall be served six clear days before the return : Provided that this Rule shall not apply to any matter the further consideration whereof shall, at the original or any subsequent hearing, have been adjourned into Court.

15. *Registering and Drawing up of Orders in Chambers.*

Notes of  
proceedings.

73. Notes shall be kept of all proceedings in the Judge's Chambers, with proper dates, so that all such proceedings in each cause or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at every hearing.

Drawing up  
orders in  
Chambers.

74. The Judge may direct that any Order made in Chambers shall be drawn up by the Chief Clerk, and all such Orders shall be entered in the same manner as Orders made in open Court.

Forms.

75. The Forms Nos. 11 to 22 in Appendix L shall be used for the respective purposes therein mentioned, with such variations as circumstances may require.

ORDER LVII.

INTERPLEADER.

1. Relief by way of interpleader may be granted—

When granted.

(a) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto :

Where liability  
to be sued  
by two parties.

Sheriff.

(b) Where the applicant is the Sheriff or other officer charged with the execution of process by or under the authority of the Court and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the persons against whom the process issued.

Affidavit.

2. The applicant must satisfy the Court or a Judge by affidavit or otherwise—

(a) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs ; and

(b) That the applicant does not collude with any of the claimants ; and



- (c) That the applicant, except where he is the Sheriff or other officer charged with the execution of process by or under the authority of the Court who has seized goods and who has withdrawn from possession in consequence of the execution creditor admitting the claims of the claimant under Rule 16 of this Order, is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a Judge may direct.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another. Where claims adverse.

4. Where the applicant is a defendant application for relief may be made at any time after service of the writ of summons. Time defendant may apply.

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them. Summons to state claim.

6. If the application is made by a defendant in an action, the Court or a Judge may stay all further proceedings in the action. Stay of proceedings.

7. If the claimants appear in pursuance of the summons the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant, and the mode in which and the number of jurors (if any) with which such trial shall be had. Order on summons.

8. The Court or a Judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just. On consent or request of claimant Court may decide.

9. Where the question is a question of law, and the facts are not in dispute, the Court or a Judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court. If a special case is stated Order XXXIV. shall, as far as applicable, apply thereto. Question of law.

10. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a Judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves. Claimant failing to appear, &c., barred.

11. The plaintiff in an interpleader issue shall file such issue in the Prothonotary's office within four days after the making of the order under Rule 7 of this Order, and shall thereupon pay the fees and jury fees (if any) payable on entering a cause for trial. If the plaintiff make default in so doing the order shall be deemed to be abandoned, and the Court or a Judge may make such further order on the applicant's summons, and as to the costs of the issue directed, as may be just and reasonable. Issue to be filed.

Goods seized in execution.

12. When goods or chattels have been seized in execution by a Sheriff or other officer charged with the execution of process of the Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

Order for sale.

Trial of issue.

13. Orders XXXI. and XXXVI. shall, with the necessary modifications, apply to an interpleader issue; and the Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

Where several causes pending.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending in the Court, such order may be made by the Court or Judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

Costs.

15. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

Sheriff's costs.

16. Where a claim is made to or in respect of any goods or chattels taken in execution under the process of the Court it shall be in writing, and upon the receipt of the claim the Sheriff or his officer shall forthwith give notice thereof to the execution creditor according to Form 28 in Appendix B or to the like effect, and the execution creditor shall, within four days after receiving the notice, give notice to the Sheriff or his officer that he admits or disputes the claim, according to Form 29 in Appendix B or to the like effect. If the execution creditor admits the title of the claimant, and gives notice as directed by this Rule, he shall only be liable to such Sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Withdrawal by Sheriff.

16A. When the execution creditor has given notice to the Sheriff or his officer that he admits the claim of the claimant, the Sheriff may thereupon withdraw from possession of the goods claimed, and may apply for an order protecting him from any action in respect of the said seizure and possession of the said goods, and the Judge may make any such order as may be just and reasonable in respect of the same: Provided always, that the claimant shall receive notice of such intended application, and, if he desires it, may attend the hearing of the same, and if he attend, the Judge may, in and for the purposes of such application, make all such orders as to costs as may be just and reasonable.

Costs in interpleader.

17. When the execution creditor does not in due time, as directed by the preceding Rules, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the Sheriff or his officer, the Sheriff may apply for an interpleader summons to be issued, and should the claimant withdraw his claim by notice in writing to the Sheriff or his officer, or the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such summons, and at the same time give notice of such admission to the claimant,

the Judge may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges, and expenses as may be just and reasonable.

## ORDER LVIII.

## APPEALS TO THE FULL COURT, NEW TRIALS, ETC.

1. All appeals to the Full Court from a single Judge, whether sitting in Court or in Chambers, and every application to the Full Court for a new trial or to set aside a verdict, finding, or judgment shall be brought by notice. The notice shall state whether the whole or part only and which part of the decision is complained of, and shall also state specifically and not in general terms but concisely the grounds of complaint. Appeals by notice.  
Contents of.

In the following Rules of this Order, unless the context otherwise requires the word "appeal" shall include an application for a new trial or to set aside a verdict finding or judgment and the word "appellant" shall include the person making such application.

## 1A.—

- (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; Time.
- (b) Every notice of appeal from any decision in Chambers shall be served within seven days after the pronouncing of such decision unless a Judge otherwise orders.

1B. Every appeal from the refusal of any *ex parte* application shall be made by a fresh application to the Full Court not later than the first seven days of the next sittings of the Full Court for hearing civil appeals after such refusal. Appeals in *ex parte* applications.

2. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct notice of the appeal to be served on all or any parties to the action or other proceeding or upon any person not a party and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Full Court may think fit. Notice of appeal.  
Service.  
Adjournment.  
Amendment of notice.

2A. Where a party who has been duly served with a notice of appeal does not appear, then on proof by affidavit of such service such order shall be made on the appeal as under the circumstances of the case shall appear to be just. Party served not appearing.

3. Within four days after service of the notice of appeal the appellant shall deliver a copy thereof to the Prothonotary, who shall thereupon enter the appeal for hearing on the first available day, and shall forthwith give notice thereof to the parties. Provided that no appeal shall be set down for hearing earlier than four days after the service of such notice upon the parties. Copy of notice to Prothonotary.

4. The Full Court shall have all the powers and duties as to amendment and otherwise as the Court of the first instance, together with full discretionary power to receive further evidence upon questions of fact, such Full Court may receive further evidence on special grounds.

- evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or a Commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits such further evidence (save as to matters subsequent as aforesaid) shall be admitted upon special grounds only, and not without special leave of the Court. The Full Court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have appealed from or complained of the decision. The said Court shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.
- Special leave.
- Varying judgment for parties not appearing.
- Costs.
- New trial may be directed.
5. If upon hearing of an appeal it shall appear to the Full Court that a new trial ought to be had, it shall be lawful for the said Full Court, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.
- No new trial for misdirection, &c., unless substantially wrong.
6. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them unless in the opinion of the Full Court some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy or some or one only of the parties, the said Court may give final judgment as to part thereof or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties.
- New trial as to part.
7. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.
- Ruling as to stamp.
8. A new trial shall not be granted by reason of the ruling of a Judge that the stamp upon any document is sufficient, or that the document does not require a stamp.
- Order to provide for further proceedings.
9. The Court shall in the order granting a new trial give all necessary directions for further proceedings in the cause.
- No notice by way of cross appeal.
10. It shall not under any circumstances be necessary for a respondent to give any notice by way of cross appeal.
- Preparation of appeal book.
11. Every appellant from any judgment shall submit a note of what he proposes to insert in the appeal book to the Judge from whose decision the appeal is made within fourteen days after the pronouncing of such decision, and the Judge may alter, add to, or vary the same in such way as he may think fit, and may make such order as to the costs of such note and the settling thereof as may be just. Every appeal book when settled shall be printed unless a Judge shall otherwise order, and three

copies thereof forthwith delivered without charge to each respondent, and one copy thereof to each member of the Full Court. The costs of the appeal book shall be costs in the cause unless the Full Court shall otherwise order.

12. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Full Court, as follows:—

Evidence of questions of fact on appeal.

(a) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed and office copies of such of them as have not been printed.

(b) As to any evidence given orally, by the production of a copy of the Judge's notes or such other materials as the Full Court may deem expedient.

13. Where evidence has not been printed in the Court below, the Court below or a Judge, or the Full Court may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Full Court or a Judge shall otherwise order.

Order for printing evidence.

14. If upon the hearing of an appeal a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence and to such other materials as the Court may deem expedient.

Direction of Judge.  
Verified notes.

15. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Full Court from giving such decision upon the appeal as may be just.

Interlocutory order not to prejudice order on appeal.

16. No appeal shall be heard except by special leave of the Full Court, unless notice of appeal has been given within the prescribed time and the copy duly lodged with the Prothonotary. Such deposit or other security for the costs of any appeal shall be made or given as may be directed under special circumstances by the Full Court.

Appeal by special leave.

Security for costs.

17. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court or a Judge may so order; and no intermediate act or proceeding shall be invalidated except so far as the Court or Judge appealed from may direct.

Stay of proceedings.

#### ORDER LVIII. (A).

##### CROWN CASES RESERVED.

1. Where any case shall be transmitted by any Court of Criminal Jurisdiction for the consideration of the Full Court, the original case (signed by the Judge or other person presiding in such first-mentioned Court) reserving the question of law shall be delivered or sent by the general post to the Prothonotary.

Case reserved.

2. Every such case shall briefly state the question or questions of law reserved, and such facts only as raise the question or questions submitted. If the question turns upon the presentment, or upon any count thereof, then the case must set forth the presentment or the particular count.

What to be stated in.

Case to state  
if judgment  
passed, &c.

3. Every such case shall state whether judgment on the conviction was passed, or postponed, or the execution of the judgment respited, and whether the person convicted be in prison or has been discharged on recognizance of bail to appear and receive judgment, or to render himself in execution.

Copies of case  
to be left at  
Chambers.

4. The Prothonotary, as soon as possible after the receipt of such case, shall cause to be made a sufficient number of printed copies thereof, and shall cause one of such copies to be forthwith left at the Chambers of each of the Judges, who will sit for the consideration of such case.

No new trial  
for misdirection,  
&c., unless  
substantial  
wrong.

5. Upon the reservation of a question of law for the consideration and determination of the Full Court under section 477 or section 481 of the *Crimes Act* 1928, a judgment shall not be reversed or avoided, nor shall a new trial be directed to be had on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Full Court some substantial wrong or miscarriage has been thereby occasioned at the trial.

ORDER LVIII. (B).

APPEALS TO PRIVY COUNCIL.

Transcript of  
evidence and  
proceedings to  
be prepared and  
delivered to  
Prothonotary.

1. When any person or persons feeling aggrieved by any judgment, decree, order, or sentence of this Court shall apply to the said Court by motion or petition for leave to appeal therefrom to His Majesty, his heirs, and successors in His or their Privy Council, the party or parties appellant shall, in the event of leave being granted, prepare and deliver to the Prothonotary a transcript or copy of the evidence, proceedings, judgment, decree, or order so far as the same have relation to the matters of appeal, in order that the same may be certified and sent or transmitted to England, and if such transcript or copy shall not be so prepared and delivered within three months from the date of such motion or petition, or within such further time as may be allowed by the Court or a Judge or by consent, the appeal shall be deemed to have been abandoned.

Appeal may be  
discontinued.

2. The party or parties appellant may at any time before the transcript or copy of the evidence, proceedings, judgment, decree, or order shall have been despatched to England discontinue the appeal by giving to the respondent or his solicitors a notice headed in the Court and cause stating that he discontinues such appeal.

If security not  
entered into  
within three  
months  
respondent's  
costs to be  
taxed.

3. If the security required by law shall not be entered into by the party or parties appellant within three months from the date of the motion or petition for leave to appeal, or if the appeal shall be abandoned or discontinued as hereinbefore mentioned, the respondent's costs of and occasioned by the motion or petition for leave to appeal and all subsequent costs *bonâ fide* incurred by him and rendered useless by the failure to enter into the said security or by the abandonment or discontinuance of the appeal shall be taxed in like manner as the costs of an action, and in case of non-payment thereof within two days after such taxation the respondent may apply by summons to a Judge in Chambers for an order that the party or parties appellant shall pay the amount so taxed to the respondent, and such Judge may make an order accordingly with or without costs.

## ORDER LIX.

## APPEALS FROM INTERIOR JURISDICTIONS.

1. Where a compulsory reference to arbitration has been ordered any party to such reference may appeal from the award or certificate of the arbitrator or referee upon any question of law; and on the application of any party the Court may set aside the award on any ground on which the Court might set aside the verdict of a jury. Such appeal shall be to the Full Court, which shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just.

Appeal from  
arbitrator where  
reference  
compulsory.

2. An application to set aside or remit an award may be made at any time within six weeks after such award has been made and made available to the parties: Provided that the Court or a Judge may by order extend the said time either before or after the same has elapsed.

Time for  
setting aside  
award.

3. Four clear days before the day appointed for hearing the appeal the appellant shall deliver copies of the appeal case as provided by Order XXXIV., Rule 3A, with reference to special cases.

Copies for the  
Judges.

4. In every appeal from a County Court the case or appeal book shall be printed or typewritten and three copies thereof forthwith delivered without charge to each respondent and one copy thereof to each member of the Full Court. The costs of the case or appeal book shall be costs in the appeal unless the Full Court shall otherwise order.

Appeals from  
County Court.

5. Upon receipt of any notice of appeal from the County Court the Prothonotary shall proceed as directed by Order 58, Rule 3, with reference to appeals from a Judge of the Supreme Court.

## ORDER LX.

## OFFICERS.

1. All officers who at the time when these Rules come into force were discharging duties relating to the business of the Court in its several jurisdictions shall, unless otherwise provided by any Act or these Rules, continue to discharge the same or duties analogous to those which they respectively performed previous to the passing of the said Rules.

Duties.

2. In the absence of the Chief Clerk or the Prothonotary from his office all acts which they respectively are required to do may be done during their absence by the first or second clerk in their respective offices or by some other person in that behalf to be appointed by the Judges of the Court.

Absence of Chief  
Clerk, &c.

3. Where by any of these rules the Prothonotary is required to do any act of a merely ministerial nature it shall be sufficient if such act be done by a clerk in his office.

Clerk may  
perform merely  
ministerial  
duties.

Chapter I.—Civil Proceedings.  
Order LXI.

4014

ORDER LXI.

PROTHONOTARY'S OFFICE.

- Seal of office. 6. The official seal to be used in the Prothonotary's office shall be the seal heretofore used by the Prothonotary or such as the Chief Justice shall from time to time direct.
- Filing stamp of Deputy Prothonotary's office. 6A. The filing stamp to be used in every Deputy Prothonotary's office shall have inscribed thereon the name of the city, town, or other place in which his office is situated, as "Ballarat," "Bendigo," and the like, but otherwise shall be such as the Chief Justice may from time to time direct.
- Office copies, &c. 7. All copies, certificates, and other documents appearing to be sealed with a seal of the Prothonotary's office shall be presumed to be office copies or certificates or other documents issued from such office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Prothonotary's office, shall be required for the authentication of any such copy, certificate, or other document.
- Petitions, &c., to be filed before judgment, &c., passed. 15. No order made on petition, and no order to make a submission to arbitration or an award, an order of the Court, and no judgment or order wherein any written admissions of evidence are entered as read shall be passed until the original petition, submission to arbitration or award, or written admission of evidence shall have been filed in the Prothonotary's office and a note thereof made on the judgment or order by the proper officer.
- Date of filing. 16. Upon every pleading or other proceeding which is filed in the Prothonotary's office the date of filing the same shall be printed, typewritten, or written.
- Indexes. 17. Proper indexes or calendars to the files or bundles of all documents filed in the Prothonotary's office shall be kept, so that the same may be conveniently referred to when required, and such indexes or calendars and documents shall at all times during office hours be accessible to the public on payment of the usual fee.
- Entries on filing documents. 18. There shall be indorsed on every document delivered at the Prothonotary's office to be filed, the date and time of the filing thereof.
- Distinguishing marks on documents. 19. Every judgment, order, certificate, petition, affidavit, or document made, presented, filed or used in any cause or matter shall be distinguished by having plainly written or stamped on the first page thereof the year and the number by which the cause or matter is distinguished in the books kept at the Prothonotary's office.
- Entry of date of judgment. 20. There shall also be entered in the Cause Books the date of every judgment, order, and certificate made in every cause or matter.
- Searches. 23. The Prothonotary shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes or calendars under his custody, and issue a certificate of the result of the search.
- Certificate of state of cause. 24. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the Prothonotary shall, at



the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the usual fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter in the Prothonotary's office.

28. No order of a Judge shall be necessary for taking out of any office of the Court any affidavit or record of the Court. The same may in any cause or matter be produced upon notice to the proper officer by the person requiring the same. Production of records.

29. Any officer being required to attend with any record or document at any Court or place out of the Supreme Court at Melbourne shall be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which may not be fully answered by such deposit. Deposit for officer's expenses.

30. Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in Chambers, or otherwise, the same shall be left or deposited in the Prothonotary's office, and shall be subject to such directions as may be given for the production thereof. Deposit of deeds.

30A. Impounded documents, while in the custody of the Court, are not to be parted with; and are not to be inspected, except on a written order signed by the Judge on whose order they were impounded; or in case of documents impounded on the order of the Full Court by an order of that Court or a Judge thereof. Such documents shall not be delivered out of the custody of the Court except upon an order made by a Judge of the Court. Impounded documents.

31. All certificates of the Chief Clerk, and all petitions and written admissions of evidence whereon any order is founded, and all submissions to arbitration made orders of the Court, shall be transmitted to and left at the Prothonotary's offices, to be there filed or preserved. And all office copies thereof, or of any part thereof that may be required, shall be ready to be delivered to the party requiring the same within forty-eight hours after the same shall have been bespoken. Certificate, &c., to be filed.

32. The Forms contained in the Appendices shall be used in or for the purposes of any office of the Court, with such variations as circumstances may require. Forms.

33. All papers left at the office of the Prothonotary to be filed shall be written, typewritten, or printed on not less than half-a-sheet of foolscap paper, folded lengthways. Foolscap to be used and folded lengthways.

34. Every copy of a case transmitted by any Court of Criminal Jurisdiction, and every copy of an appeal case, or of any case stated for the consideration of the Court, shall be written, typewritten, or printed on foolscap paper, folded lengthways. Crown cases reserved and appeal cases to be on foolscap and folded lengthways.

35. The Prothonotary may from time to time prescribe the use in and for the purpose of his office of such modified or additional forms as may be deemed expedient. New forms.

Chapter I.—Civil Proceedings.  
Orders LXI., LXII.

4016

- Deputy Prothonotary. 36. Every Deputy Prothonotary appointed under the provisions of section 228 of the *Supreme Court Act* 1928 may issue all such process and discharge all such duties as the Prothonotary may lawfully issue or discharge.
- Documents filed or lodged in office of Deputy Prothonotary. 37. All documents and proceedings in an action or matter commenced in the office of a Deputy Prothonotary shall be lodged or filed in the office of such Deputy Prothonotary, and, subject to any order that may be made by the Court or a Judge, shall remain in the custody of such Deputy Prothonotary.
- Proceedings in office of Deputy Prothonotary. 38. All proceedings in actions or matters commenced in the office of a Deputy Prothonotary, including payment of money into Court, shall be taken in the office of such Deputy Prothonotary.
- Payment of money into office of Deputy Prothonotary. 39. Money received by a Deputy Prothonotary by way of payment into Court shall remain in the hands of such Deputy Prothonotary, and shall be dealt with by such Deputy Prothonotary in the same manner in all respects as money so received by the Prothonotary would be dealt with by him.
- Removal, &c., of papers in office of Deputy Prothonotary. 40. The Court or a Judge may, if under the special circumstances of any case it appear advisable, make an order for the removal of papers in the office of a Deputy Prothonotary to the office of another Deputy Prothonotary or to the office of the Prothonotary, or for the removal of papers in the office of the Prothonotary to the office of a Deputy Prothonotary, and may by the same order or by any later order give directions as to the retention or return of such papers, and such order may be made upon such terms, if any, as may appear to be just.
- Books in office of Deputy Prothonotary. 41. Every Deputy Prothonotary shall keep the same books, showing the business transacted in his office, as are kept from time to time by the Prothonotary.
- List of documents forwarded by Deputy Prothonotary. 42. Every Deputy Prothonotary shall, when forwarding papers to the Prothonotary, send with such papers a list specifying each document sent therewith, and a pressed copy of every such list shall be kept by the Deputy Prothonotary.
- Reports by Deputy Prothonotary. 43. Every Deputy Prothonotary shall forward to the Prothonotary quarterly, in the first week in February, May, August, and November in each year, or at any intermediate date if required, a report containing an account of the nature and extent of the business in his office.

ORDER LXII.

SETTLING AND PASSING JUDGMENTS AND ORDERS IN MATTERS WITHIN THE COGNIZANCE OF THE COURT IN ITS EQUITABLE JURISDICTION PREVIOUSLY TO THE JUDICATURE ACT 1883.

- Mode of entry of judgments. 1. All judgments and orders settled by the Chief Clerk, and all præcipes for attachments, and such other documents (if any) as, according to the present practice or the practice for the time being, ought to be entered, shall be entered without abbreviations, and in a clear and legible hand, under the direction of the Prothonotary, and all such entries shall be examined by the clerk entering the same, and be marked with his initials to denote such examination.

2. Proper calendars or indexes of such entries shall be made, so that the same may be conveniently referred to when required, and the calendars or indexes and the books in which the entries are made shall, when completed, be preserved, and shall at all times during office hours be accessible to the public on payment of the proper fee.

Indexes of  
entries.

3. No minute of any judgment or order shall be necessary, and no attendance on the Chief Clerk to settle or draw up any such judgment or order shall be allowed unless the Chief Clerk require the same.

No minutes.  
Attendance to  
settle order.

4. Within seven days after the judgment or order is pronounced or finally disposed of by the Court or a Judge, any party may prepare and leave with the Chief Clerk a draft of the judgment or order to which he considers himself entitled, and shall deliver a copy thereof to the other parties.

Draft  
judgment.

5. The Chief Clerk shall be at liberty, in any case in which he may think it expedient so to do, to settle and pass any judgment or order, without making any appointment for such purpose and without notice to any party, or may require the attendance of the parties before him.

Chief Clerk  
may proceed  
without  
appointment.

6. Where the Chief Clerk requires the attendance of the parties before him to settle the draft judgment or order, he shall deliver out to the party on whose behalf the draft has been prepared an appointment in writing of a time for so settling the same.

Appointment to  
settle.

7. A notice of the appointment shall be served on the opposite party one clear day at least before the time fixed thereby for settling the draft judgment or order, and the party serving the notice, and the party so served, shall attend the appointment, and produce to the Chief Clerk their briefs and such other documents as may be necessary to enable him to settle the draft.

Service of  
notice on other  
party.

8. Service of the notice of appointment shall be effected by leaving it at the address for service of the party to be served, or by transmitting it by post to such party at such address for service.

Mode of service.

9. At the time fixed for settling the draft, the Chief Clerk shall satisfy himself in such manner as he may think fit that service of the notice of appointment has been duly effected, and thereupon settle the same.

Proof of  
service and  
settlement of  
draft.

10. If any party fails to attend the Chief Clerk's appointment for settling the draft of any judgment or order, or fails to produce his briefs and such other documents as the Chief Clerk may require to enable him to settle such draft judgment or order, the Chief Clerk may proceed to settle the draft judgment or order in his absence, and the Chief Clerk shall be at liberty to dispense with the production of counsels' briefs, and to act upon such evidence as he may think fit of the actual appearance by counsel of the party failing to attend, or to produce such documents or papers as aforesaid, or may require the matter to be mentioned to the Court or Judge.

Failure to  
attend or  
produce  
documents.

11. The Chief Clerk may adjourn any appointment for settling the draft of or passing any judgment or order to such time as he may think fit, and the parties who attend the appointment shall be bound to attend such adjournment without further notice.

Adjournment.

12. In case no draft of the judgment or order has been prepared and left with the Chief Clerk within the prescribed time he may decline to draw up the judgment or order without the leave of the Court or Judge.

Where no  
draft prepared  
within  
prescribed time.

13. A fair copy of the draft judgment or order as settled by the Chief Clerk shall be prepared by the party entitled thereto, and left by him, together with the original draft, at the Prothonotary's office to be passed and entered. Such fair copy shall be compared with the draft by a clerk in such office, and be marked with his initials to denote such examination; and the Prothonotary shall obtain the signature of the Chief Clerk thereto as passed, and shall, after the expiration of eight days, if no application to add to or alter the same shall have been made, cause the same to be entered. Such fair copy when passed and entered shall be re-delivered to the party entitled thereto, and the draft retained in the office.
14. Any party shall be at liberty within seven days after the draft judgment or order has been settled by the Chief Clerk to apply to the Court or Judge to add to or alter the same for the purpose of making the same correspond with the judgment or order of the Court as pronounced.
15. The Chief Clerk shall, at the time of any attendance before him for the purpose of settling and passing any judgment or order, if requested to do so by any party, on the ground that it is of a special nature or of unusual length or difficulty, certify, for the information of the taxing officer, whether in his opinion any special allowance ought to be made in taxation of costs in respect thereof.

ORDER LXIII.

SITTINGS AND VACATIONS.

1. The sittings of the Full Court and of the Court shall be held at such times as the Judges shall direct.
2. One of the Judges of the Court shall be accessible for the hearing in Melbourne, at all times, of all such applications as may require to be immediately or promptly heard.
3. The sittings of the several offices of the Supreme Court shall extend over the whole year, except upon Sundays and holidays.
4. The vacations to be observed in the Court shall be in every year from the twentieth day of December to the first day of February following, and from the first to the fifteenth day of July. The Court shall not sit during vacations nor upon any Sunday, nor upon any of the days specified in the next following rule unless the Court deems the exigency of public business requires it.
5. The following and no other days shall be observed and kept as holidays in the offices of the Court (that is to say):—New Year's Day, Christmas Day and the following day, Good Friday and the following Saturday, Monday, and Tuesday, the birthday of His Majesty, and every day duly appointed for a general public holiday. When any of such days falls on a Sunday, the next following Monday shall be a holiday in lieu of such day.
6. The office hours in the several offices of the Court shall be from ten o'clock in the forenoon to three o'clock in the afternoon, except on Saturdays and in the long vacation, when the offices shall close at noon.
7. One of the Judges of the Court shall be selected at the commencement of vacation for the hearing in Melbourne during vacation of all such applications as may require to be immediately or promptly heard.

## ORDER LXIV.

## TIME.

1. Where by these rules, or by any judgment or order given or made after the commencement of *The Judicature Act 1883*, time for doing any act or taking any proceeding is limited by months, and where the word month occurs in any document which is part of any legal procedure under these rules, such time shall be computed by calendar months unless otherwise expressed.

Months are  
calendar  
months.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

Certain days  
not  
reckoned.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time for doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

Time expiring  
on Sunday or  
when offices  
closed.

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 1928*, any applications under Order XIV. or Order XIVA., the application for and granting of any writ of *capias*, *ne exeat*, execution, injunction, *habeas corpus*, prohibition, mandamus, *certiorari*, sequestration, or other writ or process of a like nature rendered necessary by the special exigency of any particular case, the granting and disposing of orders *nisi* to review making orders by consent, entering orders, obtaining and entering orders for default of pleading, or issuing execution or the hearing of probate or insolvency applications.

Vacation not  
reckoned.

Process in  
vacation.

5. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter.

Time for  
proceedings  
where security  
ordered.

6. The Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

Enlargement or  
abridgment of  
time.

7. The time for delivering, amending, or filing any pleading or document may be enlarged by consent in writing, without application to the Court or a Judge.

Enlargement of  
time by  
consent.

Time for  
service.

8. Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be effected before the hour of four in the afternoon, except on Saturdays, when it shall be effected before the hour of noon. Service effected after four in the afternoon on any week-day except Saturday shall for the purpose of computing any period of time subsequent to such service be deemed to have been effected on the following day. Service effected after noon on Saturday shall be deemed to have been effected on the following Monday.

Time to be  
reckoned  
exclusive of  
first day and  
inclusive of last  
day.

9. In any case in which any particular number of days not expressed to be clear days is prescribed by these Rules the same shall be reckoned exclusively of the first day and inclusively of the last day.

Proceedings  
after a year.

10. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this Rule.

#### ORDER LXV.

##### I.—COSTS.

Costs, with  
certain  
exceptions, to  
be in the  
discretion of  
the Court.

1. Subject to the provisions of any Act and these Rules, the costs of and incident to all proceedings in the Court and in Chambers including the administration of estates and trusts shall be in the discretion of the Court or Judge. Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity.

Trustees, &c.

Costs where  
trial with jury  
to follow event.

Cost of issues.

2. An order, giving a party costs, except so far as they have been occasioned or incurred by or relate to some particular issue or part of his proceedings shall be read and construed as excluding only the amount by which the costs have been increased by such issue or proceedings, but the Court or Judge, if the whole costs of the action are not intended to be given to the party, may, by the order direct taxation of the whole costs, and payment of such proportion thereof as the Court or Judge shall determine.

Where cause  
removed.

3. If a cause be removed from an inferior Court, having jurisdiction in the cause, the costs in the Court below shall be costs in the cause.

Solicitor  
personally  
liable for costs.

5. Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or Judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award.

Security for  
costs.

6. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such time or times and in such manner and form as the Court or a Judge shall direct.

6A. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

Security by plaintiff temporarily within jurisdiction.

7. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the Court.

Security for costs where given by bond.

8. Except when otherwise provided, the provisions of this order shall apply to all causes, matters, and proceedings in all jurisdictions of the Supreme Court, except that the scale of witnesses' expenses in Appendix N shall not apply in criminal proceedings by the Crown.

Scope of order.

9. Except when otherwise ordered, in causes, matters, or proceedings commenced after this rule comes into operation solicitors shall be entitled to charge and be allowed the fees set forth in Appendix N, and no higher fees shall be allowed in any case except such as are by this Order otherwise provided for.

Scale of costs.

10. An increase on the scale not exceeding 30 per cent. may be allowed either generally in any cause, matter, or proceeding, or as to the costs of any particular application made, or business done, if on special grounds arising out of the nature and importance or the difficulty or urgency of the case, the Court or a Judge shall, at the trial or hearing, or further consideration, or at the hearing of any application, whether the cause, matter or proceeding shall or shall not be brought to trial or hearing, or to further consideration (as the case may be) so order; or if the taxing officer, under directions given to him for that purpose by the Court or Judge, shall think that such allowance ought to be so made upon such special grounds as aforesaid.

Increased scale.

11. If in any case it shall appear to the Court or a Judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or Judge may call on the solicitor or the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or Judge may, if they or he think fit, refer the matter to a taxing officer for inquiry and report, and direct the solicitor to show cause before such taxing officer. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or Judge may direct.

Costs improperly incurred, &c.

12. In actions of contract or of tort in which the plaintiff recovers, by judgment or otherwise, a sum (exclusive of costs) not exceeding £50, he shall be entitled to no more costs than he would have been entitled to had he brought his action in a County Court, unless the Court or a Judge otherwise orders.

County Court costs where judgment under £50.

13. Where the Court or a Judge appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court or Judge may direct that the costs to be incurred in the performance

where solicitor appointed guardian *ad litem*.

of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

Set-off notwithstanding lien for costs.

14. A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought. This Rule shall include cases where the set-off arises in independent actions or in different Courts.

Costs out of estate.

14A. The costs occasioned by any unsuccessful claim or unsuccessful resistance to any claim to any property shall not be paid out of the estate unless the Judge shall otherwise direct.

Costs as regards particular shares.

14B. The costs of inquiries to ascertain the person entitled to any legacy, money, or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money, or share, unless the Judge shall otherwise direct.

Distribution not to be delayed by difficulties as to some shares.

14C. Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the Court or a Judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in all such cases such order may be made for ascertaining and payment of the costs incurred down to and including such payment as the Court or Judge shall think reasonable.

Costs may be ordered out of portion of an estate.

14D. In any action in which it is ordered that any costs shall be paid out of the estate, the Judge making such order may direct out of what portion or portions of the estate such costs shall be paid, and such costs shall be paid accordingly.

On Award.

15. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

Notice to tax.

16. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the party or the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary.

Where no appearance.

17. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian.

Taxing officers to assist each other.

19. The taxing officers shall be respectively assistant to each other, and in the discharge of their duties, and, for the better despatch of the business of their respective offices, any taxing officer may tax or assist in the taxation of a bill of costs which has been referred to any other taxing officer for taxation, and for ascertaining what is due in respect of such costs, and in such case shall certify accordingly.

Order to tax to be left with taxing officer.

20. The solicitor having the carriage of any order directing a taxation of costs shall, when obtaining an appointment to tax, leave with the taxing officer the original or a copy of such order, unless he shall have previously filed such original in the Prothonotary's office. In every bill of costs the professional charges shall be entered in a separate column from the disbursements, and every column therein shall be cast before the bill is left for taxation.

Bill of costs.



22. Where in pursuance of any direction by the Court or a Judge in Chambers drafts are settled by any counsel, the expense of procuring such drafts to be previously or subsequently settled by other counsel, on behalf of the same parties, shall not be allowed on taxation as between party and party, or as between solicitor and client, unless the Court or a Judge shall otherwise direct.

*Drafts directed  
to be settled by  
counsel.*

23. In any case where the Court or a Judge shall think fit to award costs to any party, the Court or Judge may by the order direct taxation of the costs of such party, and payment of a proportion thereof, or payment of the taxed costs less a specified sum in gross to be deducted therefrom, or direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such proportion, or taxed costs, or sum shall be paid. Nothing in this Rule contained shall derogate from the discretion of the Court or Judge as to costs.

*Gross sum of  
costs.*

26. The fees and allowances to solicitors on proceedings under the *Trusts Act 1928*, section thirty-two, or any amendment thereof, shall be the same as are payable under these Rules, and by the practice of the Court for business of a similar nature.

*Trusts Act 1928  
s. 32.*

## II.—SPECIAL ALLOWANCES AND GENERAL REGULATIONS.

27. The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court :—

- (1) As to writs of summons requiring special indorsement, and as to special cases, pleadings and affidavits in answer to interrogatories, and other special affidavits, and admissions under Order XXXII., Rule 2, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing and attendances, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.
- (2) As to drawing any pleading or other documents, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.
- (3) As to instructions to sue or defend or the preparation of briefs, if the taxing officer shall on special grounds consider the fee in either scale provided inadequate he may make such further allowance as he shall in his discretion consider reasonable.
- (4) As to affidavits, when there are several deponents to be sworn or it is necessary for the purpose of an affidavit being sworn to go to a distance or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.
- (5) The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponents to settle and read over.
- (6) As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

*Allowance for  
work in  
preparation of  
documents.*

*Fees to include  
copy for use.*

*Further  
allowance on  
special  
grounds.*

*And on  
affidavit of  
several  
deponents.*

*Allowance on  
affidavits  
to include  
attendances.*

*Where same  
solicitor for  
both parties.*

- Mileage on several writs, &c.
- (6A) When two or more writs, summonses, orders, or notices in the same cause or matter can be served at the same time on any party, they shall be so served, and, when such is the case, fees shall be allowed for the service of one only.
- Perusals.
- (7) As to perusals, the fees are not to apply where the same solicitor is for both parties.
- Separate pleadings where same solicitor.
- (8) Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.
- Procuring evidence.
- (9) As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.
- Agency correspondence.
- (10) As to agency correspondence in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special or extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.
- Settling and passing judgments.
- (11) As to the attendance of solicitors upon the Chief Clerk for the purpose of settling the terms of and passing judgments or orders, the taxing officer may, in such cases as are provided for by Order LXII., Rule 15, make such special allowances in respect thereof as he shall consider reasonable.
- Higher remuneration may be allowed on special circumstances in attendance at Chambers.
- (12) As to attendance at the Judge's Chambers, where, from the length of the attendance, or from the difficulty of the case, the Judge shall think the highest of the fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the Judge, shall have required skill and labour for which no fee has been allowed, the Judge may allow such fee in lieu of the fee provided, not exceeding £5 5s., as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a Judge in Chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the Judge, specifying distinctly the grounds of such allowance, such fee, not exceeding £10 10s., as in his discretion he may think fit, instead of the fee of £5 5s.

- (13) As to attendances at the Judge's Chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested. On non-attendance or neglect by party at Chambers, Judge may order costs.
- (14) A folio is to comprise 72 words, every figure comprised in a column being counted as one word. Folios.
- (15) Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time. Costs of procuring advice of counsel.
- (16) As to counsel attending at Judge's Chambers, no cost thereof shall in any case be allowed unless the Judge certifies it to be a proper case for counsel to attend. Counsel attending Chambers.
- (17) (a) The cost of inspection of documents shall be in the discretion of the taxing officer, but no allowance is to be made for any inspection unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for making such inspection. Allowance for notice to inspect.
- (b) The taxing officers of the Supreme Court shall have power and authority to make one or more interim certificate or certificates, allocatur or allocaturs, in any taxation for any portion or portions of the taxed costs directed to be taxed without waiting until a certificate for the full amount can be made. Power to make an interim certificate.
- (18) As to taking copies of documents in possession of another party, or extracts therefrom, under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may by writing require at the rate of 6d. per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same the solicitor requiring the copy or extract is to be at liberty to make it and the solicitor for the party producing is not to be entitled to any fee in respect thereof. Rate of payment for copies of documents.
- (19) Where a petition in any cause or matter within the cognizance of the Court in its Equitable Jurisdiction prior to *The Judicature Act 1883* is served, and notice is given to the party served that Tender of costs for perusing petition where notice that appearance not required.

in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be £2 2s. The party making such payment shall be allowed the same in his costs provided that such service was proper, but not otherwise; but this Order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon he is to be allowed a fee not exceeding the amount aforesaid.

Court or Judge  
may disallow  
costs of  
pleading  
or matter  
improper or  
unnecessary.

- (20) The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion or summons, or other proceeding, or any part thereof, which is improper, vexatious unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the Court or Judge it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any judgment or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

Duty of taxing  
officer.

Costs may be  
set-off or  
adjusted  
between parties.

- (21) In any case in which, under the last preceding regulation or any other Rule of Court, or by the order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and direct payment, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

- (22) Where any question as to any costs is, under Regulation 20, dealt with at Chambers, the Judge or Chief Clerk is to make a note thereof and state the same on his allowance of the fees for attendances at Chambers or otherwise as may be convenient for the information of the taxing officer. Note for taxing officer.
- (23) Where any party appears upon any application or proceeding in Court or at Chambers in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or Judge shall expressly direct such costs to be allowed. Disallowance where party not interested, &c.
- (24) The costs of an application to extend the time for taking any proceeding shall be in the discretion of the taxing officer, unless the Court or a Judge shall have specially directed how such costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary and could not with due diligence have been avoided. The costs of a summons to extend time shall not be allowed in cases to which Rule 8 of Order LXIV. applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application; and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment or deal with such costs in the manner provided by Regulation 21. Extension of time.
- (25) The taxing officers of the Court shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as prior to the *Judicature Act 1883* were performed by the Master-in-Equity or Prothonotary; and shall, in respect thereof, have such powers and authorities as previous to the commencement of such Act were vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge. Taxing officers may administer oaths.
- (25A) The taxing officers of the Court shall be the Master-in-Equity, the Chief Clerk, the Prothonotary, the Taxing Master, and the officers who at the time of the coming into operation of these rules shall be performing the duties of taxing officers of the Court. Who may tax.

The first or second clerk in the Prothonotary's office, or such other persons as the Chief Justice shall direct, may tax any bill of costs, and give his allocatur at the foot of such bill.

Taxing officer regulates the attendance of parties on taxation.

- (27) On the taxation of costs to be borne by any fund or estate the taxing officer shall have authority to arrange and direct what parties are to attend and what parties are to be served with appointments to tax and copies of bills of costs, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary.

On neglect of party to tax costs, taxing officer may prevent prejudice to other party.

- (28) When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

Costs to be allowed on taxation.

- (29) On every taxation the taxing officer shall allow all such costs, charges, and expenses as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party: Provided that in taxations as between party and party no costs shall be allowed which have been incurred or increased through over portion or by payment of special fees to Counsel or special charges or expenses to witnesses or other persons or by other unusual expenses.

Disbursements in bills brought in for taxation under the *Supreme Court Act 1928 s. 104*.

- (29A) In taxations under or pursuant to Section 104 of the *Supreme Court Act 1928*, of a solicitor's fees, charges and disbursements, no such disbursements shall be allowed which have not been actually made before the delivery of the bill of costs, unless the bill shall expressly state that they have not then been made, and shall set out such unpaid items of disbursements under a separate heading in the bill, in which case they may be allowed by the taxing master if they are actually made before the commencement of the proceedings in which the taxation takes place; and are made in discharge of an antecedent liability of the solicitor (including counsel's fees) properly incurred on behalf of the client. For the purposes of computation of one-sixth thereof, such bill shall be deemed to include such unpaid items as part of the bill:

Provided also that if the proceedings for taxation shall have been commenced by the client or a third party, payments made by the solicitor pending such proceedings in discharge of any such antecedent liability so set out in the bill (including counsel's fees) may be allowed by the taxing master if actually made before the commencement of the taxation, if it appears to him that such payments have been properly made and that no injustice is done thereby.

The provisions as to the review of taxations shall apply to anything done by the taxing master pursuant to this Rule.

- (30) As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed. Fees for work and labour.
- (31) Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to the defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment. Costs in the cause.
- (32) Where upon taxation a plaintiff, who has obtained a judgment with costs, is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff. Costs of amendments.
- (33) Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the Court or a Judge, upon the application of the party alleging himself to be aggrieved, prohibits the taxation of such costs. Taxation without order to refer.
- (34) Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper taxing officer, and give notice of his having so done to the other party, and at any time within eight days after such notice such other party shall have liberty to inspect the same without fee, if he thinks fit. And at or before the expiration of the eight days, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs. Where parties differ.
- (35) Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order. Costs out of fund.

Costs in  
jurisdictions  
transferred.

- (37) The rules, orders, and practice of any Court whose jurisdiction is transferred to the Court, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of *The Judicature Act 1883* shall, in so far as they are not inconsistent with the said Act and these rules, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the Court.

Discretionary  
fees.

- (38) As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel (if any) in respect of the work to which such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances; and, when a party is entitled to sign judgment for his costs, the taxing officer in taxing the costs may allow a fixed sum for the costs of the judgment.

Fixed sum on  
judgment for  
costs.

Power to taxing  
officer to assess  
costs at a gross  
sum.

- (38A) If upon any taxation it shall appear that the costs have been increased by unnecessary delay or by improper, vexatious, prolix, or unnecessary proceedings, or by other misconduct or negligence, or that from any other cause the amount of the costs is excessive, having regard to the nature of the business transacted or the interests involved, or the money or value of the property to which the costs relate, or to the other circumstances of the case, the taxing officer shall allow only such an amount of costs as may be reasonable and proper, and may assess the same at a gross sum, and shall (if necessary) apportion the amount among the parties if more than one, or may report the matter to the Judge who may make such order as he shall think fit.

The provisions as to review of taxation shall apply to allowances and certificates of the taxing officer under this rule.

Disallowances  
where bill  
reduced by a  
sixth.

- (38B) If on the taxation of a bill of costs payable out of a fund or estate (real or personal), or out of the assets of a company in liquidation, the amount of the professional charges and disbursements contained in the bill is reduced by a sixth part, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, nor for attending the taxation.

Party  
dissatisfied with  
taxation may  
object.

- (39) Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any items may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the



items or parts thereof objected to, and the grounds and reasons for such objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same. The taxing officer may, if he shall think fit, issue, pending the consideration of such objections, a certificate of taxation or allocatur for or on account of the remainder of the bill of costs, and such further certificate or allocatur as may be necessary shall be issued by the taxing officer after his decision upon such objections.

- (40) Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by any party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon and any special facts or circumstances relating thereto. Taxing officer may review taxation.
- (41) Any party who may be dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item which may have been objected to as aforesaid, may, within fourteen days from the date of the certificate or allocatur, or such other time as the Court or Judge, or the taxing officer at the time he signs his certificate or allocatur, may allow, apply to a Judge at Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as the Judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid. Party dissatisfied with taxing officer may apply to Judge.
- (42) Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof unless the Judge shall otherwise direct. Evidence thereon.
- (44) No retaining fee to counsel shall be allowed on taxation as between party and party. Retainer of counsel.
- (45) Fees for conferences are not to be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it shall appear to the taxing officer for some special reason that a conference was necessary or proper. Conferences.
- (46) In any case in which under Rule 12 of this order the scale of costs in County Courts is applicable, the costs of briefing more than one counsel shall not be allowed, unless the taxing officer shall, for special reasons, be of opinion that briefing more than one counsel was proper. Counsel where County Court scale applicable.
- (47) Where the costs of retaining two counsel may properly be allowed such allowance may be made, although both such counsel may have been selected from the outer bar. Allowances of two junior counsel.

Refreshers.	(48) As to refresher fees, in any cause or matter whether witnesses are examined or not 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 six hours the following fees :—																																																				
Amount.	To the leading counsel not exceeding £12 12s. To the second of two or three counsel not exceeding £8 8s. To the third of three counsel not exceeding £5 5s. The final refresher may be allowed for such period less than five hours that the trial may occupy.																																																				
Brief where cause not tried.	(49) Where a cause or matter shall not be brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed if the taxing officer shall be of opinion that such costs were prematurely incurred.																																																				
Where set down again after being struck out.	(50) Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter.																																																				
Clerk's fees.	(51) The following fees are to be allowed to counsel's clerks :— <table><tr><td>Upon a fee under 5 guineas .. .. .</td><td>£</td><td>s.</td><td>d.</td></tr><tr><td>5 guineas and under 10 guineas .. .. .</td><td>0</td><td>2</td><td>6</td></tr><tr><td>10 guineas and under 20 guineas .. .. .</td><td>0</td><td>5</td><td>0</td></tr><tr><td>20 guineas and under 30 guineas .. .. .</td><td>0</td><td>10</td><td>0</td></tr><tr><td>30 guineas and under 50 guineas .. .. .</td><td>0</td><td>15</td><td>0</td></tr><tr><td>50 guineas and upwards, per cent. .. .. .</td><td>1</td><td>0</td><td>0</td></tr><tr><td>On consultations, senior's clerk .. .. .</td><td>2</td><td>10</td><td>0</td></tr><tr><td>On consultations, junior's clerk .. .. .</td><td>0</td><td>5</td><td>0</td></tr><tr><td>On conferences .. .. .</td><td>0</td><td>2</td><td>6</td></tr><tr><td>On conferences .. .. .</td><td>0</td><td>5</td><td>0</td></tr><tr><td>On retainers (where allowed) :</td><td></td><td></td><td></td></tr><tr><td>    General retainer .. .. .</td><td>0</td><td>10</td><td>6</td></tr><tr><td>    Common retainer .. .. .</td><td>0</td><td>2</td><td>6</td></tr></table>	Upon a fee under 5 guineas .. .. .	£	s.	d.	5 guineas and under 10 guineas .. .. .	0	2	6	10 guineas and under 20 guineas .. .. .	0	5	0	20 guineas and under 30 guineas .. .. .	0	10	0	30 guineas and under 50 guineas .. .. .	0	15	0	50 guineas and upwards, per cent. .. .. .	1	0	0	On consultations, senior's clerk .. .. .	2	10	0	On consultations, junior's clerk .. .. .	0	5	0	On conferences .. .. .	0	2	6	On conferences .. .. .	0	5	0	On retainers (where allowed) :				General retainer .. .. .	0	10	6	Common retainer .. .. .	0	2	6
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On retainers (where allowed) :																																																					
General retainer .. .. .	0	10	6																																																		
Common retainer .. .. .	0	2	6																																																		
Counsel's signature.	(52) No fee to counsel shall be allowed on taxation unless vouched by his signature.																																																				
Office copy of affidavit.	(53) In cases in which an original affidavit can be used, and to which Order XXXVIII., Rule 15, applies, it shall not be necessary to take an office copy.																																																				
Of affidavit of discovery.	(54) It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used against such party.																																																				
Delay before taxing officer.	(55) Where in proceedings before the taxing officer any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under Regulation 21.																																																				

- (56) Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill or any part thereof previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address, for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable. Where costs out of fund bill to be sent to clients.
- (57) The taxing officer shall have power to limit or extend the time for any proceeding before him; and where, by any general order or any order of the Court or a Judge, a time is appointed for any proceeding before or by a taxing officer, unless the Court or a Judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and, although the application for the same is not made till after the expiration of the time appointed, it shall not be necessary to make a certificate or order for the purpose, unless required for any special purpose. Taxing officer may limit or extend time.
- (58) Every bill of costs which shall be left for taxation shall be indorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor (if any) for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed. Indorsement of name and address of solicitor.
29. (a) 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. Special scale of costs when amount claimed does not exceed £500.
- (b) In any action in which it shall appear to a Judge that costs on the ordinary scale ought not to be allowed, he may order that all costs in the action between party and party and between solicitor and client or either shall be taxed under the special scale of costs in Appendix N, subject to any agreement in writing between solicitor and client. Judge's discretion to order such scale.
- (c) In taxation under such scale no item not included therein shall be allowed unless a Judge before taxation otherwise orders, or unless it is covered by an agreement between solicitor and client. Item not in scale not to be allowed.
- (d) Such special scale of costs shall not apply to costs of appeal.
30. In actions where a barrister and solicitor acts in both capacities or appears as a barrister, instructed by his partner acting as solicitor, neither he nor his partner shall be entitled to make any charge for "instructions for Fees to barristers and solicitors.

brief," nor for "drawing" or "engrossing brief"; but, in lieu of all such charges, such barrister and solicitor, or partner, as the case may be, shall be entitled to such fees as may be allowed by the taxing officer for "preparing for trial," and for "preparing brief notes for use on trial." Any person dissatisfied with the decision of the taxing officer in regard to such allowance may appeal within fourteen days of such decision by summons to the Judge who tried the action, who may review the taxation as to such item without being bound by the discretion of the taxing officer. This appeal may be had in addition to any other application to review the taxation.

ORDER LXVI.

NOTICES, PRINTING, PAPER, COPIES, OFFICE COPIES, ETC.

Notices to be  
in writing.

1. All notices and consents required or allowed by these Rules shall be in writing, unless expressly authorized by a Court or Judge to be given orally.

Foolscap paper.

2. Subject to the Rules following all documents left at Chambers and intended for the use of a Judge or of the Chief Clerk or any other officer of the Court shall, whenever practicable, be written upon foolscap paper.

Where copies of  
documents may  
be printed or  
typewritten.

2A. When five or more copies of any document containing more than ten folios are required in any cause or matter, or where the parties consent, the copies may be printed or type-written.

Paper, type,  
and margin.

3. Proceedings required to be printed or type-written shall be printed or typed on foolscap folio paper, with an inner margin about three-quarters of an inch wide and an outer margin about two inches and a half wide, and, if printed, in pica type leaded.

Affidavits.

4. Any affidavit may be wholly or partly in print, type-writing or in manuscript.

Depositions to  
be printed or  
type-written.

5. Where any written deposition of a witness has been filed, such deposition shall, subject to Rule 2A, be printed or type-written unless otherwise ordered.

Where  
affidavits, &c.,  
previously used.

6. The Rules as to printing or typewriting depositions and affidavits to be used in a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed or type-written.

Regulations as  
to printed  
copies.

7. Where any document is to be printed or type-written, and where any printed or other office copy thereof is to be taken, the following regulations shall be observed:—

Party filing  
affidavit to  
print.

(a) The party on whose behalf the deposition or affidavit is taken and filed is to print or type-write the same in the manner provided by Rule 3 of this order.

Copy for  
printing.

(b) To enable the party printing or type-writing to print or type-write any deposition or affidavit, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only.

Printed copies  
to be  
furnished.

(c) The party printing or type-writing shall, on demand in writing, furnish to any other party any number of printed or type-written copies, not exceeding ten, upon payment therefor at the rate of 2d. per folio for one copy and 1d. per folio for every other copy.

- (d) As between a solicitor delivering any printed or type-written copies and his client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed or type-written copies. Credit for copies.
- (e) The party entitled to be furnished with a print or type-written copy shall not be allowed any charge in respect of a written copy unless the Court or Judge shall otherwise direct. No costs of written copy.
- (f) Except as provided by Order LV., Rule 48, a party by or on whose behalf any deposition, affidavit or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original, and mark it as an office copy; such copy shall be a copy printed or type-written as above provided where such deposition or affidavit is to be printed or type-written. Office copy.
- (g) The party or solicitor who has taken any printed type-written or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates. Production of office copy by party taking it.
- (ga) Either party may obtain from the other party a copy of any pleading already pleaded by such other party on payment or tender of the cost thereof. Copies of pleadings.
- (h) Where any party is entitled to a copy of any deposition, affidavit, proceeding or document filed or prepared by or on behalf of another party which is not required to be printed or type-written, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared. Party filing document not required to be printed to furnish copy.
- (i) The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or Judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges. Mode and time of application and delivery.
- (j) In the case of an *ex parte* application for an injunction or writ of *habeas corpus* or *ne exeat coloniam*, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court or a Judge. And on certain ex parte applications.
- (k) It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed or type-written on every printed or type-written copy of an affidavit or set of affidavits and copied on every office copy and copy furnished to a party. Affidavit to show on whose behalf filed.
- (l) The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be Indorsement on copies furnished.

answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy (as the case may be).

Numbering of  
folios and  
written copies  
to be legibly  
written.

(m) The folios of all printed type-written and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed or type-written copies.

Consequence of  
not furnishing  
copies.

(n) In case any party or solicitor who shall be required to furnish any such written copy aforesaid shall either refuse, or for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for.

Direction of  
Court as to  
cost of  
printing,  
typewriting, or  
shorthand.

(o) Where, by any order of the Court or a Judge, any document is ordered to be printed or type-written, or where the evidence has been directed to be taken in shorthand the Court or Judge may order the expense of printing or type-writing or of the shorthand writer to be borne and allowed, and printed, type-written or transcribed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

When action  
commenced in  
office of Deputy  
Prothonotary  
how documents  
to be  
distinguished.

8. Whenever any action or matter is commenced in the office of a Deputy Prothonotary every pleading served upon or delivered to any party, and every document filed or lodged in the office of such Deputy Prothonotary or left with him in the course of such action or matter shall bear on its face immediately after the title of the action or matter the name of the city, town, or other place in which the office of such Deputy Prothonotary is situated as "Ballarat" "Bendigo" and the like.

What document  
may be filed  
or lodged with  
Deputy  
Prothonotary.

9. No document shall be filed or lodged in the office of any Deputy Prothonotary or left with him unless in an action or matter commenced in the office of such Deputy Prothonotary.

#### ORDER LXVII.

##### SERVICE OF ORDERS, ETC.

Office copy  
instead of  
original.

1. It shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited.

Where service  
not required to  
be personal.

2. All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours at the address for service of the person to be served as defined by Orders IV. and XII., with any person resident at or belonging to such place.

Notices from  
office of  
Court by post.

3. Notices sent from any office of the Court may be sent by post, and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

4. Where no appearance has been entered for a party, or where a party or his solicitor (as the case may be), has omitted to give an address for service as required by Orders IV. and XII., all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them in the Prothonotary's office.

Where no appearance or address, service by filing.

5. Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons.

Personal service.

6. Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, and it is made to appear to the Court or a Judge that prompt personal service cannot be effected, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just.

Substituted service.

7. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor.

On solicitor after appearance in person.

8. Where a person who is not a party appears in any proceeding either before the Court or in Chambers, service upon the solicitor in Melbourne by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service.

On solicitor appearing for person not party.

9. Affidavits of service shall state when, where, and how and by whom such service was effected.

Affidavit of service.

#### ORDER LXVII. (A).

##### SHERIFF'S RULES.

1. When the Sheriff shall take in execution both real and personal estate belonging to the same party, he shall, unless a Judge shall otherwise direct, cause the personal estate to be first sold; and in case the proceeds be not sufficient to satisfy the execution, he shall then sell the real estate.

Personal estate to be sold first.

2. When the property, either real or personal, of any person is taken in execution under a writ of *fiery facias* such person may point out what portion thereof respectively he will have sold first, and the portion so pointed out shall be sold first unless a Judge shall otherwise order.

Portions of property sold first.

3. When personal property is taken in execution by the Sheriff under a writ indorsed to levy a sum less than £50, he shall cause the same to be sold as soon as reasonably convenient after twenty-four hours from the levy thereof, subject to the provisions of the next Rule.

Under £50, time of sale.

Publicity of  
sale.  
Other cases.

4. When the Sheriff intends to put up for sale any property taken in execution, he shall give due publicity to the time, place, and particulars of the intended sale by advertisement; and when the property is intended to be sold at the place of levy by affixing notices in and about the place of levy.

Place of sale.

5. The Sheriff shall cause any property taken in execution to be sold at the place of levy or elsewhere as he may deem most advantageous. Provided that all property real and personal taken in execution shall be offered for sale by the Sheriff by public auction and shall not be offered for sale in any licensed house or premises.

How Sheriff to  
pay moneys  
received in  
certain cases.

6. Subject to the provisions of the Commonwealth *Bankruptcy Act* 1924–1933 and any amendments thereof when the Sheriff shall, by virtue of any writ to him directed, receive any moneys, he shall pay them on demand to the party entitled to receive the same or his solicitor (deducting all lawful charges therefrom) whether such writ be then returnable or not, unless he shall have received from some person claiming to be interested therein notice to retain the same.

How Sheriff to  
act when estate  
sequestered.

6A. When an order *nisi* for the sequestration of the estate of any person has been made and an office copy thereof lodged with the Sheriff pursuant to the Rules of the Court of Insolvency the Sheriff shall, if he has taken in execution any property of such person and has not sold the same, give up possession thereof to the assignee in insolvency, and if the order *nisi* be discharged the Sheriff shall, if any of such property be still in the bailiwick, resume possession thereof and deal with the same as if the order *nisi* had not been made. Provided that the person at whose suit the process was issued shall give sufficient proof to the Sheriff that the order has been discharged.

Notice to  
Sheriff not to  
pay money to  
execution  
creditor.

7. When the Sheriff shall, by virtue of any writ to him directed, receive any moneys, and shall have been served with notice by any person claiming to be interested therein, not to pay over the same, the Sheriff may retain such moneys in his hands, to abide the order of the Court or a Judge thereon; and if no application be made by the party giving such notice to the Court or a Judge, within four days next after the date of such notice, the Sheriff may pay over such moneys in pursuance of the writ, without regard to the notice.

Suspension of  
execution.

8. The Sheriff shall not suspend the execution of any writ or process directed to him, except upon an absolute order in writing to that effect lodged with him by the person entitled to the benefit of the same, or his solicitor or agent. Any such person may at any time afterwards withdraw such order, and lodge with the Sheriff a written instruction to execute the said writ or process.

Judge's order  
in vacation to  
enforce  
performance  
of duty.

9. Where the Sheriff shall not execute or return a writ directed to him; according to the exigency thereof, or shall not pay over money received, or deliver possession of the premises taken by him, or bring in the body of a party he is directed to arrest or attach, or otherwise neglect or omit to perform any duty incumbent upon him, an order may be obtained from a Judge in vacation on summons to enforce the performance of such duty.

Persons  
arrested to be  
lodged in  
nearest gaol.

10. When any person shall be arrested by any Sheriff on any civil process of the Court, he shall be lodged in the gaol nearest to the place of his arrest, and be there detained until the Court or a Judge shall order his discharge.



11. In the execution of process poundage shall be chargeable under a writ of *fiery facias* or a writ of *venditioni exponas* on the money obtained by the seizure at the rate of 5 per centum up to £100; and at the rate of 2½ per centum for the excess when the money so obtained exceeds £100, and under a writ of possession at the rate of 5 per centum on the annual value of the property delivered up to £100, and at the rate of 2½ per centum for the excess when the annual value exceeds £100. The Sheriff shall, as far as practicable, levy the poundage and other fees and the expenses of the execution in addition to the amount directed to be recovered.

Rate of poundage.  
Levy of poundage, &c.

12. In every action against the Sheriff for anything done or omitted to be done by him in the intended execution of his duty, the plaintiff shall be compelled to give security for costs.

Security for costs.

13. Save as herein appears, all duties discharged in the Chancery Division of the High Court of Justice in England in respect of process issued out of the said Court or otherwise by a Serjeant-at-Arms shall be discharged within Victoria by the Sheriff.

Duties discharged by Serjeant-at-Arms in England to be discharged by Sheriff.

14. The Rules of this Order shall apply to the Sheriff and his Deputy Sheriff.

Deputy Sheriff

#### ORDER LXVIII.

##### APPLICATION OF RULES.

1. Nothing in these Rules, save as expressly provided, shall affect the practice or procedure in any criminal proceedings.

Rules not to affect criminal procedure.

#### ORDER LXX.

##### EFFECT OF NON-COMPLIANCE.

1. Non-compliance with any of these Rules or with any rule of practice for the time being in force shall not render any proceedings void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

Not to avoid proceedings.

May be set aside.

1A. The Court or a Judge may at any time upon such terms as may be just relieve any party from the consequences of non-compliance with any of these rules or with any rule of practice for the time being in force.

Court may relieve from consequences of non-compliance.

2. No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, or if the party applying has taken any fresh step after knowledge of the irregularity.

Time for application to set aside.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

Objections to be stated.

#### ORDER LXXI.

##### INTERPRETATION OF TERMS.

1. In the construction of these Rules unless there is anything in the subject or context repugnant thereto the words defined in section three of the *Supreme Court Act 1928* and in section sixteen of the *Acts Interpretation Act 1928* respectively shall when used in these rules have or include the meanings therein set forth and the words "pleading," "claim," "statement of claim,"

Interpretation.

“defence,” “statement of defence,” and “counterclaim” shall include particulars ordered in lieu thereof, and the several words hereinafter mentioned or referred to shall have or include the meanings following:—

Originating  
summons.

“Originating Summons” means a summons by which proceedings are commenced without writ:

Person.

“Person” shall include a body corporate or politic:

Proper officer.

“Proper officer” shall unless and until any rule to the contrary is made mean an officer to be ascertained as follows:—

(a) Where any duty to be discharged under any Act or these Rules is a duty which has heretofore been discharged by any officer, such officer shall unless otherwise provided by these Rules continue to be the proper officer to discharge the same:

(b) Where any new duty is under any Act or these Rules to be discharged, the proper officer to discharge the same shall be the officer directed by these Rules (such officer having previously discharged analogous duties), or, if no such officer, such other officer as may from time to time be directed by the Chief Justice to discharge the same:

(c) Where any doubt shall arise as to who is the proper officer to discharge any new duty, the Chief Justice may direct by what officer such duty is to be discharged.

Prothonotary.

“Prothonotary,” so far as regards actions or matters commenced in the office of any Deputy Prothonotary, means Deputy Prothonotary in whose office the action or matter was commenced.

Receiver.

“Receiver” includes consignee or manager appointed by or under an order of the Court.

Solicitor.

“Solicitor” shall include attorney, solicitor, and proctor.

The Act.

“The Act” shall mean the *Supreme Court Act 1928*.

#### ORDER LXXII.

##### GENERAL RULES.

Non-revival of  
former rules.

1. No Order or Rule annulled by any former Order shall be revived by any of these Rules unless expressly so declared.

Practice in  
matters not  
provided for.

2. In all matters not herein provided for, the previous practice of this Court shall be followed, or, if there be no such practice, the practice, if any, prevailing in the High Court in England.

## THE APPENDICES ABOVE REFERRED TO.

## APPENDIX A.

## PART I.

## FORMS OF WRITS OF SUMMONS, ETC.

## No. 1.

*Writ for Service within the Jurisdiction.*

19 . No.

In the Supreme Court.

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

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

To C.D. of

and E.F. of

We command you, That within eight days after the service of this writ on you, inclusive of the  
day of such service, you do cause an appearance to be entered for you in our Supreme Court in an  
action at the suit of A.B.; and take notice, that in default of your so doing the plaintiff may pro-  
ceed therein, and judgment may be given in your absence. Witness Chief  
Justice, at [Melbourne], the day of

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if  
renewed, within six calendar months from the date of the last renewal, including the day  
of such date, and not afterwards.

The defendant [or defendants] may appear hereto by entering an appearance [or appearances]  
either personally or by solicitor at [the Prothonotary's office in The Law Courts, Melbourne,  
or, in the case of a writ issued out of the office of a Deputy Prothonotary, the office of  
such Deputy Prothonotary, as the case may be].

When the amount claimed by the writ does not exceed £500, the plaintiff may indorse on the  
writ the following notice:—Take notice that the plaintiff intends to proceed under the  
special scale of costs in Appendix N of the Rules of the Supreme Court. But where in  
any such case such notice is not so indorsed, the following memorandum shall be made:—  
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 of the Rules of the Supreme Court.

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, &amp;c.

Place of trial

Mode of trial

This writ was issued by the plaintiff in person, who is a\* and resides at  
; or, This writ was issued by G.H., of solicitor for the said plaintiff, who  
resides at ; or, This writ was issued by J.K., of whose address for  
service is agent for of solicitor for the said plaintiff,  
who resides at [mention the city, town, borough, or place, and also the name of the  
street and number of the house of the plaintiff's residence, if any].

\*State  
plaintiff's  
occupation.*Indorsement to be made on the writ after service thereof.*

This writ was served by me at on [the defendant, or one of the defendants]  
on day the day of 19 .

(Signed)

X.Y.

Indorsed the day of

19 .

(Signed)

(Address)

APPENDIX A.  
Part I.

## No. 2.

*Specially Indorsed Writ (Order III., Rule 6).*

[Title as in No. 1.]

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

To

of

We command you, That within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness Chief Justice, at [Melbourne] the day of in the year of our Lord One thousand nine hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at [the Prothonotary's office in The Law Courts, Melbourne, or, in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be].

When the amount claimed by the writ does not exceed £500, the plaintiff may indorse on the writ the following notice:—Take notice that the plaintiff intends to proceed under the special scale of costs in Appendix N of the Rules of the Supreme Court. But where in any such case such notice is not so indorsed, the following memorandum shall be made:—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 of the Rules of the Supreme Court.

*Statement of Claim.*

The plaintiff's claim is

*Particulars.*

Place of trial

Mode of trial

(Signed)

And the sum of £ [or such sum as may be allowed on taxation], for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within four days from the service hereof, further proceedings will be stayed.

\* State plaintiff's occupation.

This writ was issued by the said plaintiff, who is a\* and resides at ; [or] This writ was issued by G.H., of whose address for service is solicitor for the said plaintiff, who resides at ; [or] This writ was issued by J.K., of whose address for service is agent for of solicitor for the said plaintiff, who resides at

This writ was served by me at on the defendant on the day of 19 Indorsed the day of 19

(Signed)  
(Address)

## No. 5.

*Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Jurisdiction.*

[Title as in No. 1.]

GEORGE THE SIXTH, by the Grace of God, &amp;c.—[as in No. 1.]

To C.D., of

\* Insert number of days directed by Court or Judge

† If notice of the writ is to be served, insert here "of notice."

We command you, C.D., that within after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in Our Supreme Court in an action at the suit of A.B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness Chief Justice, &c.

*Memoranda and Indorsements as in Form No. 1.**Indorsement to be made on the writ before the issue thereof.*

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is residing out of the jurisdiction of the Court, notice of the writ, and not the writ itself, is to be served upon him.

## No. 6.

APPENDIX A.  
Part I.*Specially Indorsed Writ for Service out of the Jurisdiction.*

[Title as in No. 1.]

GEORGE THE SIXTH, by the Grace of God, &amp;c.—[as in No. 1.]

To \_\_\_\_\_ of \_\_\_\_\_  
We command you, That within\* \_\_\_\_\_ days after service† of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of \_\_\_\_\_ And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

\* Insert number of days, directed by Court or Judge

Witness \_\_\_\_\_ Chief Justice, at [Melbourne] the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord One thousand nine hundred and \_\_\_\_\_

† If notice of the writ is to be served, insert here "of notice."

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at [the Prothonotary's office in The Law Courts, Melbourne, or, in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be].

When the amount claimed by the writ does not exceed £500, the plaintiff may indorse on the writ the following notice:—Take notice that the plaintiff intends to proceed under the special scale of costs in Appendix N of the Rules of the Supreme Court. But where in any such case such notice is not so indorsed, the following memorandum shall be made:—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 of the Rules of the Supreme Court.

*Statement of Claim.*

The plaintiff's claim is

*Particulars.*

Place of trial

Mode of trial

(Signed)

And £ \_\_\_\_\_ [or such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within\* \_\_\_\_\_ days from service† hereof, further proceedings will be stayed.

\* Insert number of days limited for appearance.  
† If notice to be served insert here "of notice."

This writ was issued, &amp;c.

This writ [or notice of this writ] was served, &amp;c.

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is resident out of the jurisdiction of the Court, notice of the writ, and not the writ itself, is to be served upon him.

## No. 9.

*Notice of Writ in lieu of Service to be given out of the Jurisdiction.*

[Title, etc., as in No. 1.]

To G.H., of \_\_\_\_\_

Take notice, that A.B. of \_\_\_\_\_ has commenced an action against you, G.H., in His Majesty's Supreme Court at Melbourne in the State of Victoria, in the Commonwealth of Australia, by writ of that Court, dated the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 19 \_\_\_\_\_; which writ is indorsed as follows [copy in full the indorsements], and you are required within \_\_\_\_\_ days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said A.B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at [the Prothonotary's office in the Law Courts, Melbourne, or, in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be].

(Signed)

A.B. of \_\_\_\_\_ &amp;c.

X.Y. of [or] \_\_\_\_\_ &amp;c.

solicitor for A.B.

No. 18.

[Heading as in Form No. 1.]

\_\_\_\_\_

### FORMS OF ENTRY OF APPEARANCE.

*Memorandum of Appearance in General.*

X.Y, of  
agent for  
of

(or) C.D., defendant in person.

To Mr. X.Y., plaintiff's solicitor.

(Signed)  
of\*  
agent for  
of  
[or] C.D., defendant in person.

## No. 5.

*Entry of Appearance.*

[Heading as in Form No. 1.]

Enter an appearance for \_\_\_\_\_ to the notice issued in this action on the  
 day of \_\_\_\_\_ 19\_\_\_\_ by the defendant \_\_\_\_\_ under the Rules of the Supreme Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

(Signed)  
 of\*  
 agent for  
 of  
 \_\_\_\_\_

APPENDIX A.  
Part II.

\* If this address be beyond three miles from the office of the Prothonotary, an address for service within three miles thereof must be given.

## No. 6.

*Entry of Appearance.*

[Heading as in Form No. 1.]

Enter an appearance for \_\_\_\_\_ who has been served with an order dated the  
 day of \_\_\_\_\_, to carry on and prosecute the proceedings in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

(Signed)  
 of\*  
 agent for  
 of  
 \_\_\_\_\_

\* If this address be beyond three miles from the office of the Prothonotary, an address for service within three miles thereof must be given.

## No. 7.

*Entry of Appearance to Counter-claim.*

[Heading as in Form No. 1.]

Enter an appearance for \_\_\_\_\_ to the counter-claim of the above-named defendant in  
 this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

(Signed)  
 of\*  
 agent for  
 of  
 \_\_\_\_\_

\* If this address be beyond three miles from the office of the Prothonotary, an address for service within three miles thereof must be given.

## No. 8.

*Affidavit for Entry of Appearance as Guardian.*

[Heading as in Form No. 1.]

I, \_\_\_\_\_ of \_\_\_\_\_ make oath and say as follows:—  
 A.B., of \_\_\_\_\_ is a fit and proper person to act as guardian *ad litem* of the above-named  
 infant defendant, and has no interest in the matters in question in this action [matter] adverse to that of  
 the said infant, and the consent of the said A.B. to act as such guardian is hereto annexed.

Sworn, &c.

[To this Affidavit shall be annexed the document signed by such guardian in testimony of his consent  
 to act.]

APPENDIX A.  
Part III.

## PART III.

## Section III.

## INDORSEMENT FOR COSTS [ADD TO THE ABOVE FORMS].

And £ for costs; and if the amount claimed be paid to the plaintiff or his solicitor within four days [or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time limited for appearance] from the service hereof, further proceedings will be stayed.

## INDORSEMENTS ON WRITS OF SUMMONS.—SECTION VII.

## Indorsement of Character of Parties.

The plaintiff's claim is as executor [or administrator] of C.D., deceased, for, &c.  
 The plaintiff's claim is against the defendant A.B. as executor [or, &c.] of C.D., deceased, for, &c.  
 The plaintiff's claim is against the defendant A.B., as executor of X.Y., deceased, for, &c., and against the defendant C.D., in his personal capacity, for, &c.  
 The plaintiff's claim is as trustee under the insolvency of A.B. for  
 The plaintiff's claim is as [or is against the defendant as] trustee under the will of A.B. [or under the settlement upon the marriage of A.B. and X.Y., his wife].  
 The plaintiff's claim is as public officer of the Bank for  
 The plaintiff's claim is against the defendant as public officer of the Bank for  
 The plaintiff's claim is against the defendant A.B. as principal, and against the defendant C.D. as surety for  
 The plaintiff's claim is as well for the King as for himself, for

## APPENDIX B.

## APPENDIX B.

## NOTICES, ETC.

## No. 1.

## Third Party Notice.

In the Supreme Court.

19

No.

Notice filed

19

Between A.B., Plaintiff,

and

C.D., Defendant.

To Mr. X.Y.

Take notice that this action has been brought by the plaintiff against the defendant [as surety for M.N., upon a bond conditioned for payment of £2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, or, also surety for the said M.N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of A.D. [ ]).

Or [as acceptor of a bill of exchange for £500, dated the day of A.D. [ ] drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C.D., or your liability to the defendant C.D., you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant C.D., and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court.

(Signed)

E.T.

[or] X.Y.

solicitor for the defendant,

E.T.

Appearance to be entered at the [Prothonotary's office, in the Law Courts, Melbourne, or, in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be].



## No. 2.

## APPENDIX B.

*Notice of Counter-claim.*

In the Supreme Court.

19 . No.

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

To the within-named X.Y.

Take notice that if you do not appear to the within counter-claim of the within-named C.D. within eight days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

Appearances are to be entered at the [Prothonotary's office, in the Law Courts, Melbourne, or, in the case of a writ issued out of the office of a Deputy Prothonotary, the office of such Deputy Prothonotary, as the case may be].

## No. 3.

*Notice of Payment into Court.*

In the Supreme Court.

19 . No.

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

Take notice that the defendant has paid into Court £ and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim for, &c.]

To Mr. X.Y.,  
the plaintiff's solicitor.

W.Z.,  
defendant's solicitor.

[*Note.*—If a defendant to an action in which there are to be no pleadings pays money in with a defence of tender, he should add "which amount is paid in with the defence of tender before action brought, but without delivery of defence, there being no pleadings in this action."]

## No. 3A.

*Notice of Payment into Court with denial of liability.*

[Heading as in Form No. 3.]

Take notice that the defendant has paid into Court £ with denial of liability, and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim for, &c.]

To Mr. X.Y.,  
the plaintiff's solicitor.

W.Z.,  
defendant's solicitor.

## No. 4.

*Acceptance of Sum paid into Court.*

[Heading as in Form No. 3.]

Take notice that the plaintiff accepts the sum of £ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

## No. 5.

*Confession of Defence.*

[Heading as in Form No. 3.]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [or of the defendant's further defence, or in his notice in writing, dated, &c.]

## No. 6.

*Interrogatories.*

In the Supreme Court.

19 . No.

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

Interrogatories on behalf of the above-named [plaintiff, or defendant C.D.], for the examination of the above-named [defendants E.F. and G.H., or plaintiff].

1. Did not, &amp;c.

2. Has not, &amp;c.

&amp;c.,

&amp;c.,

&amp;c.

[The defendant E.F. is required to answer the interrogatories numbered .]

[The defendant G.H. is required to answer the interrogatories numbered .]

## APPENDIX B.

## No. 7.

*Answer to Interrogatories.*[Heading as in No. 6 *supra*.]

The answer of the above-named defendant *E.F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E.F.*, make oath and say as follows :—

.....

.....

## No. 8.

*Affidavit as to Documents.*[Heading as in No. 3 *supra*.]

I, the above-named defendant *C.D.*, make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the First Schedule hereto.

2. I object to produce the said documents set forth in the second part of the said First Schedule hereto.

That [here state upon what grounds the objection is made, and verify the facts as far as may be].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the Second Schedule hereto.

5. The last-mentioned documents were last in my possession or power on [state when]

6. That [here state what has become of the last-mentioned documents, and in whose possession they now are].

7. According to the best of my knowledge, information, and belief, I have not now, and never had, in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the document set forth in the said First and Second Schedules hereto.

## No. 9.

*Notice to produce Documents.*[Heading as in No. 3 *supra*.]

Take notice that the [plaintiff or defendant] requires you to produce for his inspection the following documents referred to in your [writ, or pleading, or particulars, or affidavit] dated the day of A.D. :—

*Describe documents required.*

To Mr. *W.Z.*,  
solicitor for

*X.Y.*,  
solicitor to the

## No. 10.

*Notice to inspect Documents.*[Heading as in No. 3 *supra*.]

Take notice that you can inspect the documents mentioned in your notice of the day of A.D. [except the deed numbered in that notice] at my office on Thursday next the instant, between the hours of 12 and 4 o'clock.

Or that the [plaintiff or defendant] objects to giving you inspection of the documents mentioned in your notice of the day of A.D. on the ground that [state the ground] :—

## No. 11.

## Notice to admit.

## APPENDIX B.

[Heading as in No. 2 *supra*.]

Take notice that the plaintiff [*or* defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or* plaintiff], his solicitor or agent, at \_\_\_\_\_ on \_\_\_\_\_ between the hours of \_\_\_\_\_; and the defendant [*or* plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

[Here describe the documents, the manner of doing which may be as follows:—]

## ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between <i>A.B.</i> and <i>C.D.</i> , first part, and <i>E.F.</i> , second part ...	January 1, 1848.
Indenture of lease from <i>A.B.</i> to <i>C.D.</i> ... ..	February 1, 1848.
Indenture of release between <i>A.B.</i> , <i>C.D.</i> , first part, &c. ... ..	February 2, 1848.
Letter, defendant to plaintiff ... ..	March 1, 1848.
Policy of insurance on goods by ship <i>Isabella</i> , on voyage from Oporto to London ...	December 3, 1847.
Memorandum of agreement between <i>C.D.</i> , captain of said ship, and <i>E.F.</i> ...	January 1, 1848.
Bill of exchange for £100 at three months, drawn by <i>A.B.</i> on and accepted by <i>C.D.</i> , indorsed by <i>E.F.</i> and <i>G.H.</i> ... ..	May 1, 1849.

## COPIES.

Description of Documents.	Date.	Original or Duplicate served, sent, or delivered, when, how, and by whom
Register of baptism of <i>A.B.</i> , in the parish of <i>X.</i> ...	January 1, 1848.	
Letter—plaintiff to defendant ... ..	February 1, 1848 ...	Sent by General Post, February 2, 1848.
Notice to produce papers ... ..	March 1, 1848 ...	Served March 2, 1848, on defendant's solicitor by <i>E.F.</i> , of—
Record of a judgment of the Court of Queen's Bench at Dublin, in an action <i>J.S. v. J.N.</i> ...	Trinity Term, 10th Vic.	
Letters Patent of King Charles II. ... ..	January 1, 1680.	

and

or

Take notice that the plaintiff [*or* defendant] in this cause requires the defendant [*or* plaintiff] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [*or* plaintiff] is hereby required, within [ ] days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1870.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

Dated, &amp;c.

*C.D.*, solicitor [*or* agent] for the plaintiff [*or* defendant].To *E.F.*, solicitor [*or* agent] for the defendant [*or* plaintiff].

(Signed)

## APPENDIX B.

## No. 13.

## Admission of Facts, pursuant to Notice.

[Heading as in No. 3 supra.]

The defendant [or plaintiff] in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion, or by any one other than the plaintiff [or defendant or party requiring the admission].

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1870.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1870.
5. That Julius Smith never was married.	5.

(Signed)

Delivered, &amp;c.

E.F., solicitor [or agent] for the defendant [or plaintiff].  
To G.H., solicitor [or agent] for the plaintiff [or defendant].

## No. 14.

## Notice to Produce (General Form).

[Heading as in No. 3 supra.]

Take notice, that you are hereby required to produce and show to the Court on the trial of this all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this and particularly

Dated the                      day of                      19                      .

To the above-named                      .

h                      solicitor                      or agent                      .

(Signed)

of

agent for

solicitor

for the above-named

## No. 15.

## Issue.

[Heading as in No. 3 supra.]

Whereas A.B. affirms, and C.D. denies, [here state the question or questions of fact to be tried], and it has been ordered by His Honour Mr. Justice                      that the said question shall be tried [here state mode of trial, whether with or without a jury, if with a jury whether of six or twelve], therefore let the same be tried accordingly.

## No. 15A.

## Memorandum of Close of Pleadings.

[Heading as in No. 2 supra.]

The pleadings in this                      were closed on                      day the                      day of                      19                      .  
The issues herein are to be tried with (or without) a jury [of twelve or six].  
Add (if such be the case)                      .

The parties have consented to a trial on affidavit.

X.Y., plaintiff's solicitor [or as the case may be].

## No. 16.

APPENDIX B.

## Notice of Trial.

[Heading as in No. 3 supra.]

Take notice of trial of this [or of the issues in this] ordered to be tried [or inquiry  
for the assessment of damages in this] by a Judge [and jury of] men [or as the case  
may be] for the next assizes [or sittings] at

Dated

A.B.,  
[Plaintiff's Solicitor].

To Mr. W.Z., defendant's solicitor [or as the case may be].

## No. 16A.

## Notice of Trial without Pleading.

[Heading as in No. 3 supra.]

Take notice of trial of this cause without pleadings in Melbourne [or as the case may be] for  
the day of next.

X.Y., plaintiff's solicitor [or as the case may be].

Dated

To Z., defendant's solicitor [or as the case may be].

## No. 17.

## Certificate of Officer after Trial with a Jury.

[Heading as in No. 3 supra.]

I certify that this was tried before His Honour, Mr. Justice and a  
jury of men at on the 12th and 13th days of November, 19  
The jury found [state findings].  
The Judge directed that judgment shall be entered for the plaintiff for £ with  
costs [or as the case may be].

A.B.,  
[Title of officer].

## No. 18

## Notice of Motion.

[Heading as in No. 3 supra.]

Take notice, that the Court will be moved on the day of 19  
at o'clock in the forenoon, or so soon thereafter as counsel can be heard, by that

Dated the day of 19

(Signed) of

agent for solicitor for the  
To

## No. 19

## Notice of Discontinuance.

[Heading as in No. 3 supra.]

Take notice, that the plaintiff hereby\*

Dated the day of 19

(Signed) of

agent for solicitor for the plaintiff.  
To

\* "wholly  
discontinues  
this action" or  
"withdraws so  
much of his  
claim in this  
action as relates  
to," &c.

† If not  
against all the  
defendants add  
"as against the  
defendant," &c.

## APPENDIX B.

## No. 20.

*Notice of Cross-examination of Deponents at Trial.**[Heading as in No 3 supra.]*

Take notice, that the                      intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.  
And also take notice, that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the                      day of                      19 .

(Signed)                      agent for

solicitor for the

To

THE SCHEDULE above referred to.

Name of Deponent.	Address and Description.	Date when Affidavit Filed.

## No. 21.

*Notice of Renewal of Writ of Execution.**[Heading as in No. 3 supra.]*

Take notice, that the writ of                      issued in this action directed to the sheriff and bearing date the                      day of                      19                      has been renewed for one year from the                      day of                      19 .

Dated the                      day of                      19 .

(Signed)                      of

agent for

solicitor for the

To the Sheriff.

## No. 22.

*Notice as to Stock under Order XLVI.*To the *[here add the name of the company]*.

Take notice that the stock comprised in and now subject to the trusts of the *[settlement, will, &c.]* referred to in the affidavit to which this notice is annexed consists of the following (that is to say) *[here specify the stock]*.

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends *[or, the receipt of the dividends on the stock as well as the transfer of the stock]*.

(Signed) A.B.

## No. 23.

*Affidavit of Service of Summons.**[Heading as in No. 3 supra.]*

I,                      of                      solicitor for the above-named                      *[or as the case may be]* make oath and say as follows:—

I did on the                      day of                      19                      before the hour of                      in the                      noon,  
serve                      the above-named                      in this action with a true copy duly stamped of the  
summons hereto annexed marked A. by leaving it at the                      of the said  
situate                      with                      there

Sworn at  
this  
day of                      19 . }

Before me—

This affidavit is filed on behalf of the

## No. 25.

*Affidavit in support of Garnishee Order.*

In the Supreme Court.

19 . No.

APPENDIX B.

Between A.B., Judgment Creditor,  
and  
C.D., Judgment Debtor.

I, \_\_\_\_\_ of \_\_\_\_\_ the above-named judgment creditor [or solicitor for the above-named judgment creditor] make oath and say as follows:—

1. By a judgment of the Court given in this action, and dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 . it was adjudged that I [or the above-named judgment creditor] should recover against the above-named judgment debtor the sum of £ \_\_\_\_\_, and costs to be taxed, and the said costs were by a taxing officer's certificate dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 allowed at £ \_\_\_\_\_

2. The said \_\_\_\_\_ still remains unsatisfied to the extent of \_\_\_\_\_ and interest amounting to £ \_\_\_\_\_

3.\* \_\_\_\_\_ is indebted to the judgment debtor \_\_\_\_\_ in the sum of £ \_\_\_\_\_ or thereabouts.

4. The said \_\_\_\_\_ is within the jurisdiction of this Court.

Sworn at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Before me—

This affidavit is filed on behalf of the \_\_\_\_\_

\* Name, address, and description of garnishee.

## No. 26.

*Affidavit on Interpleader.*

[Heading as in No. 3 *supra*.]

I, \_\_\_\_\_ of \_\_\_\_\_ the defendant in the above action, make oath and say as follows:—

1. The writ of summons herein was issued on the \_\_\_\_\_ day of \_\_\_\_\_ 19 and was served on me on the \_\_\_\_\_ day of \_\_\_\_\_ 19 and was

2. The action is brought to recover \_\_\_\_\_ The said \_\_\_\_\_ \* in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed† by one who†

4. I do not in any manner collude with the said \_\_\_\_\_ or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said \_\_\_\_\_ in such manner as the Court may order or direct.

Sworn at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Before me—

This affidavit is filed on behalf of the \_\_\_\_\_

\* "is" or "are."

† If claim in writing, make the writing an exhibit.

‡ State expectation of suit, or that he has already sued.

## No. 27.

*Affidavit as to Stock under Order XLVI.*

In the matter of [here state the nature of the document comprising the stock, and add the date and other particulars, so far as known to the deponent sufficiently to identify the document].

I, \_\_\_\_\_ of \_\_\_\_\_ make oath and say that according to the best of my knowledge, information, and belief, I am [or if the affidavit is made by the solicitor, A.B. of \_\_\_\_\_ is] beneficially interested in the stock comprised in the [settlement, will, &c.] above-mentioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

This affidavit is filed on behalf of A.B., whose address is [state address for service].

## No. 28.

## NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION.

Take notice that A.B. has claimed the goods (or certain goods) [where only certain goods are claimed here enumerate them] taken in execution by the Sheriff under the warrant of execution issued in this action. You are hereby required to admit or dispute the title of the said A.B. to the said goods, and give notice thereof in writing to the said sheriff within four days of the receipt of this notice, failing which the said sheriff may issue an interpleader summons. If you admit the title of the said A.B. to the said goods, and give notice thereof in manner aforesaid to the said sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, &c.

(Signed)

Sheriff.

To the plaintiff.

## APPENDIX B.

No. 29.

## NOTICE OF PLAINTIFF OF ADMISSION OR DISPUTE OF TITLE OF CLAIMANT.

Take notice that I admit (*or*, dispute) the title of *A.B.* to the goods [*or*, to certain of the goods, namely (*set them out*)] seized by you under the execution issued under the judgment of this action.

(Signed)

Plaintiff  
or  
Solicitor.

To the Sheriff and his officers.

## APPENDIX C.

APPENDIX C.  
Secs. I. & II.

## FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT TO ORDER XIX., RULE 5.

## SECTION I.

General.

In the Supreme Court.

19 . No.

Writ issued the of 19 .  
Between *A.B.* and  
*C.D.*

Plaintiff,  
Defendant.

Statement of Claim.

The plaintiff, &c.  
[*or*]

The plaintiff's claim is, &amp;c.

[*To be filled up in manner exemplified in the following forms.*]The plaintiff claims [*as in the following forms*].

Place of trial,

(Signed)

Delivered the day of 19 .

## SECTION II.

ACTIONS IN MATTERS WITHIN THE COGNIZANCE OF THE COURT IN ITS EQUITABLE JURISDICTION  
PREVIOUSLY TO THE COMMENCEMENT OF THE JUDICATURE ACT 1883.

No. 1.

Administration.

The plaintiff is a creditor of *X.Y.*, deceased, of whom the defendant *C.D.* is executor [*or* administrator] and the defendant *E.F.* is heir-at-law [*or* devisee].

Particulars of the claim:—

Principal due on the bond of the testator [*or* intestate] dated

the of 19 . . . . . £2,000 0 0  
Interest from the of . . . . . at 5 per cent. . . . . 250 0 0

£2,250 0 0

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said *X.Y.* administered.

(Signed)

Delivered

No. 2.

Wilful default.

1. The plaintiff is residuary legatee of *A.B.* of the city of Ballarat, who died March 3rd, 19 ., having made his will dated March 2nd, 19 ., and appointed the defendants his executors, who proved his will April 6th, 19 .

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows:—

*C.D.* owed to the testator £1,000, in respect of which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to *C.D.* for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims:—

- (1.) Account of testator's estate on footing of wilful default.
- (2.) Administration of the testator's estate.

(Signed)

Delivered



## No. 3.

APPENDIX C.  
Sect. II.

1. The plaintiff, on December 20th, 19 , entered into partnership articles with the defendant for ten years.
2. The defendant has broken the partnership articles as follows :—
  - (a.)
  - (b.)
  - (c.)

Dissolution of  
partnership.

The plaintiff claims :—

- (1.) Dissolution.
- (2.) Accounts and inquiries.
- (3.) A receiver and manager.

(Signed)  
Delivered

## No. 4.

For accounts.

1. The plaintiffs are executors of A., deceased.
2. From the year 19 till his death A. employed the defendant as his confidential agent in the management of a large building estate at X.
3. The defendant as such agent received large sums of money for the said A., for which he refuses to account.

The plaintiffs claim :—

- (1.) Accounts of all sums received and paid by the defendant as agent of A.
- (2.) Payment of the amount found due.

(Signed)  
Delivered

## No. 5.

Foreclosure or  
sale.

1. The plaintiff is mortgagee of lands belonging to the defendant
2. The following are the particulars of the mortgage :—
  - (a.) [Date and names of mortgagor and mortgagee.]
  - (b.) [Sum secured.]
  - (c.) [Rate of interest.]
  - (d.) [Property subject to mortgage.]
  - (e.) [Amount now due.]

[If the plaintiff's title is a derivative title, state shortly the assignments under which he claims.]

[If the plaintiff is mortgagee in possession add:]

3. The plaintiff took possession of the mortgaged property on the                      of                      and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure [and possession.]

(Signed)  
Delivered

[NOTE.—If a judgment for personal payment against the mortgagor is sought, the claim should set out the usual mortgagor's covenant for payment of the mortgage debt and interest.]

## No. 6.

Redemption.

1. The plaintiff is mortgagor of lands, of which the defendant is mortgagee.
2. The following are the particulars of the mortgage :—
  - (a.) [Date.]
  - (b.) [Sum secured.]
  - (c.) [Rate of interest.]
  - (d.) [Property subject to mortgage.]

[If the plaintiff's title is derivative, state shortly the deeds under which he claims.]

[If the defendant is mortgagee in possession add:]

3. The defendant has taken possession [or has received the rents] of the mortgaged property. The plaintiff claims to redeem the said premises, and to have the same reconveyed to him [and to have possession thereof].

(Signed)  
Delivered

APPENDIX C,  
Sect. II.For raising  
portions or  
other charges  
on land.

## No. 7.

1. By a settlement on the marriage of *A.B.* and *C.B.* dated January 10, 1880, Whiteacre was demised to trustees for 1,000 years on trust after the deaths of *A.B.* and *C.B.* to raise £5,000 for the younger children of the marriage who should attain 21.

2. *A.B.* died February 15, 1900.

3. *C.B.* died June 10, 1905.

4. There were five children only of the marriage of *A.B.* and *C.B.*, all of whom are now living and have attained 21. The plaintiff is the second born child.

5. The defendants were on April 5, 1906, appointed trustees of the settlement.

The plaintiff claims:—

(1) To have £5,000 raised by sale or mortgage and distributed among the persons entitled.

(Signed)

Delivered

## No. 8.

Sale and  
distribution  
of proceeds of  
property  
subject to any  
lien or charge.

1. On November 12, 1900, *A.* and the defendant *B.* deposited with the plaintiff 500 Government debentures as security for a debt of £1,000 and interest at 4 per cent. due from *A.* and the defendant *B.* to the plaintiff.

2. *A.* died March 12, 1901.

3. On March 30, 1901, the administration of the estate of *A.* was granted to the defendant *C.*

4. £800 and £30 for interest is owing to the plaintiff on the security of the said debentures.

The plaintiff claims:—

(1.) Sale of the said debentures.

(2.) Application of the proceeds in payment of his debt.

(3.) Distribution of the surplus among the parties entitled.

(Signed)

Delivered

## No. 9.

Breach of  
trust.

1. By a settlement dated July 3, 1892, on the marriage of the plaintiff's father and mother, of which the defendant *A.B.* and one *C.D.* were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On August 5, 1894, *C.D.* died, and the defendant *E.F.* was appointed in his place.

3. On December 1, 1899, the plaintiff's father died.

4. On January 1, 1900, the plaintiff's mother died.

5. The defendants have committed the following breaches of trust by:—

(a) Sale of £3,000 bank shares and investment of the proceeds in the business of the defendant *A.B.*

(b) Sale of leasehold property worth £5,000 to *G.H.* for £1,000 [without taking any proper steps to ascertain its value or to obtain such value].

The plaintiff's claim:—

(1) The replacement of £3,000 bank shares and £5 per cent. interest on the proceeds of the bank shares sold from the date of sale till replacement.

(2) Payment of £4,000 and interest at 5 per cent. per annum from the date of the sale.

(Signed)

Delivered

## No. 10.

Execution of  
trust.

1. By a settlement dated June 10, 1886, upon trust for *A.B.* and *C.B.* successively for life with remainder for their children who should attain 21, the following property was assured:—

(a) A sum of £5,000 Government debentures.

(b) £4,000 invested on mortgage of land at *X.*

(c) One-fifth of the residuary estate of *D.* deceased, subject to a prior life interest.

2. On August 15, 1892, *C.B.* died.

3. On February 18, 1895, *A.B.* died.

4. On September 10, 1899, *D.* died.

5. *A.B.* and *C.B.* had five children only, of whom the plaintiff is one.

6. The defendants are the present trustees of the settlement.

The plaintiff claims:—

(1) Execution of the trusts of the settlement.

(2) All necessary accounts and inquiries.

(3) A receiver.

(Signed)

Delivered

## No. 11.

APPENDIX C.  
Sect. II.

1. In 1885 a marriage was arranged between *A.B.* and the plaintiff.
2. By an agreement contained in two letters, dated February 10 and 12, 1885, it was agreed between *C.B.*, the father of *A.B.*, and *D.*, the father of the plaintiff, that each should settle £10,000 on trust for *A.B.*, and the plaintiff successively for life, with the remainder on the usual trusts for the children of the marriage.
3. By letter, dated March 7, 1885, from *D.* to Messrs. *E. & Co.*, his solicitors, he instructed them to prepare a settlement.
4. A settlement dated April 25, 1885, was executed upon the marriage of *A.B.* and the plaintiff, accidentally omitting to give a life interest to the plaintiff after the life interest of *A.B.*
5. On May 20, 1902, *A.B.* died.
6. The defendants *H.* and *K.* are the present trustees of the settlement.
7. The defendants, *L.*, *M.*, and *N.*, are the only children of the marriage.
- The plaintiff claims:—  
Rectification of the settlement.

For rectification  
&c., of  
instruments.(Signed)  
Delivered

## No. 12.

1. By an agreement [or letters] dated [or made verbally at intervals on or about] the day of the plaintiff agreed to sell to the defendant the Home Farm, Brighton for £ day Specific performance.  
The sale was to be completed on the of  
[If the agreement was verbal, add—]
2. The agreement so entered into has been part performed as follows [state how].
- The plaintiff claims specific performance of the above agreement and that the defendant may be ordered to execute a proper conveyance of the premises [stating in each case what the defendant is required specifically to do].

(Signed)  
Delivered

## No. 13.

1. By will dated January 5, 1894, *A.* devised Whiteacre to *B.*, *C.*, and *D.* as tenants in common. Partition or sale of real estates.
2. On March 10, 1895, *A.* died.
3. On March 20, 1895, *A.*'s will was proved.
4. On June 25, 1897, *B.* conveyed to the plaintiff his share of Whiteacre.
5. On July 30, 1899, *C.* conveyed his share to the defendants on trust for sale.
6. By will, dated November 5, 1902, *D.* devised his share among his children equally.
7. On December 2, 1902, *D.* died.
8. On December 15, 1902, *D.*'s will was proved.
9. There were 10 children of *D.* living at his decease, some of whom have since died.
10. Whiteacre consists of a mansion, house, and grounds.
11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property.

The plaintiff claims:—

A division of Whiteacre among the parties interested [or a sale of Whiteacre and distribution of the proceeds among the parties interested].

(Signed)  
Delivered

## No. 14.

1. By will, dated August 10, 1902, *A.* devised Whiteacre and £10,000 to defendant on trust for plaintiff. Wardship of infants and care of infants' estates.
2. On August 15, 1902, *A.* died.
3. On August 30, 1902, probate was granted to the defendant, the sole executor.
4. The plaintiff is an infant 12 years old.
- The plaintiff claims:—  
(1) That the plaintiff may become a ward of court.  
(2) Administration of the trusts of the will of *A.* so far as necessary.

(Signed)  
Delivered

APPENDIX C.  
SECT. IV.

## SECTION IV.

Goods sold and  
delivered:*Actions included in Order III., Rule 6, Classes A, B, C, D, E, and F.*

## No. 1.

The plaintiff's claim is for the price of goods sold and delivered.

Particulars:—

1902—31st December—	£	s.	d.
Balance of account for butcher's meat to this date	35	10	0
1903—1st January to 31st March—			
Butcher's meat	74	5	0
	109	15	0
1903—1st February.—Paid	45	0	0
Balance due	£64	15	0

Place of trial, Melbourne.

(Signed)

## No. 2.

Money had and  
received.

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars:—

1902—1st January—	£	s.	d.
To amount of rents of No. 5, Smith-street, collected by the defendant	72	10	0
To deposit on intended sale of Eva Villa	100	0	0
Amount due	£172	10	0

Place of trial, Melbourne.

(Signed)

## No. 3.

Payee against  
maker of a  
promissory  
note.

The plaintiff's claim is against the defendant as maker of a promissory note for £250, dated 1st January, 1902, payable four months after date.

Particulars:—

Principal	£	250
Interest	10	
Amount due	£260	

Place of trial, Bendigo.

(Signed)

## No. 4.

Indorsee against  
acceptor of a  
bill of exchange.

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for £400 dated 1st January, 1902, drawn by A.B., payable three months after date to the order of E.F., and indorsed to the plaintiff.

Particulars:—

Principal due	£	400
Interest	16	
Amount due	£416	

Place of trial, Port Fairv.

(Signed)

## No. 5.

The plaintiff's claim is against the defendant *A.B.* as acceptor, and against the defendant *C.D.* as drawer, of a bill of exchange for £500, dated 1st January, 1902, payable three months after date, and indorsed by the defendant *C.D.* to the plaintiff, of the dishonour of which on presentation the defendant *C.D.* had notice.

APPENDIX C.  
Sect. IV.

Indorsee against acceptor and drawer of a bill of exchange severally.

Particulars:—									£
Principal	...	...	...	...	...	...	...	...	500
Interest	...	...	...	...	...	...	...	...	20
Amount due	...	...	...	...	...	...	...	...	520

Place of trial, Ballarat.

(Signed)

## No. 6.

The plaintiff's claim is against the defendant as a drawer of a bill of exchange for £600 dated 1st March, 1904, drawn upon *A.B.*, payable to plaintiff three months after date, which was duly presented for payment and dishonoured, but *A.B.* had no effects of the defendant, nor was there any consideration for the payment of the said bill by the said *A.B.*

Payee against drawer of a bill of exchange excusing notice of dishonour.

Particulars [as in Form 4].  
Place of trial, Melbourne.

(Signed)

## No. 7.

The plaintiff's claim is for principal and interest due, upon the defendant's bond to the plaintiff dated 1st January, 1900, conditioned for payment of £100 on the 26th December, 1900.

Obligee against obligor of a money bond.

Particulars:—									£
Principal	...	...	...	...	...	...	...	...	50
Interest	...	...	...	...	...	...	...	...	2
Amount due	...	...	...	...	...	...	...	...	52

Place of trial, Beechworth.

(Signed)

## No. 8.

The plaintiff's claim is for principal and interest due under a covenant in a deed dated the 1st of January, 1902.

Covenantee against covenantor on a covenant to pay money.

Particulars:—									£
Principal	...	...	...	...	...	...	...	...	100
Interest	...	...	...	...	...	...	...	...	20
Principal due	...	...	...	...	...	...	...	...	80
Interest	...	...	...	...	...	...	...	...	3
Amount due	...	...	...	...	...	...	...	...	83

Place of trial, Melbourne.

(Signed)

## No. 9.

The plaintiff's claim is for money in which the defendant, as a member of the company, is indebted to the plaintiffs (being a company incorporated under *The Companies Act 1913*) for allotment money of ... per share on ... shares in the company allotted to the defendant as such member at his request, and for calls of £ ... each upon shares in the company, of which the defendant is a holder, whereby an action has accrued to the plaintiffs.

Against shareholder for allotment money and calls by a company.

Particulars:—									£
19 — Allotment of	...	...	...	...	...	...	...	...	...
19 — [1st] call at £	...	...	...	...	...	...	...	...	...
[2nd] call at £	...	...	...	...	...	...	...	...	...
Amount due	...	...	...	...	...	...	...	...	...

Place of trial, Bendigo.

(Signed)

APPENDIX C.  
SECTS. IV. & V.

## No. 10.

On a guarantee  
for the price of  
goods setting  
out the  
guarantee.The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to *E.F.* under the following guarantee :—

SIR,

2nd February, 1902.

In consideration of your supplying goods to *E.F.*, I undertake to see you paid.

Yours, &amp;c.,

To Mr. *A.B.* (plaintiff.)*C.D.* (defendant.)

Particulars :—

1902.

25 March, 55 tons of coal, at 20s. ... .. £55 0 0

Amount due ... .. £55 0 0

Place of trial, Sale.

(Signed)

## No. 11.

Creditor  
against  
principal debtor  
and his surety  
severally on a  
guarantee for  
goods sold.The plaintiff's claim is against the defendant *A.B.* as principal and against the defendant *C.D.* as surety, for the price of goods sold and delivered by the plaintiff to *A.B.* on the guarantee by *C.D.*, dated the 2nd of February, 1902.

Particulars :—

2nd February—Goods ... .. £ 47 15 0

3rd March—Goods ... .. 105 14 0

17th March—Goods ... .. 14 12 0

5th April—Goods ... .. 34 0 0

Amount due ... .. 202 1 0

Place of trial, Maryborough.

(Signed)

## No. 12.

Debt upon a  
trust.The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of *A.B.* and *X.Y.*, dated January 1st., 1900, whereby £10,000 invested on mortgage of land at *Z.*, was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Particulars :—

1904, December 25th, half-a-year's income ... .. £200

Place of trial.

## No. 13.

See Section VII., Form No. 1.

Landlord  
against tenant  
whose term  
has expired or  
has been  
determined by  
notice to quit.

## SECTION V.

ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY ARISING OUT OF CONTRACT.

## No. 1.

Buyer against  
seller of goods  
for not  
delivering.

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons of Scotch pig iron at £5 per ton to be delivered on rail at Ararat on the 15th of March, 1904.

2. The defendant did not deliver any [or tons, as the case may be] of the said iron.

Particulars of contract :—

The contract was

[here state whether in writing or how otherwise made

and the date].

Particulars of damage :—

Loss of profit at £1 per ton on 100 tons ... .. £100

The plaintiff claims £100.

Place of trial, Ararat.

(Signed)

Delivered

## No. 2.

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant for sale and delivery of 100 sacks of flour known as seconds as 35s. per sack.  
 2. 80 sacks delivered were inferior to seconds, and 20 sacks were not delivered.

Particulars of contract:—

The contract was  
and the date].

[here state whether in writing or how otherwise made

Particulars of damage:—

80 sacks at 4s. ..	..	..	..	..	..	..	..	£
20 sacks at 5s. ..	..	..	..	..	..	..	..	16
								5
								21

The plaintiff claims £21.  
 Place of trial, Beechworth.

(Signed)  
 Delivered

APPENDIX C.  
Sect. V.

Buyer against  
seller of goods  
for delivering  
them inferior  
to contract.

## No. 3.

1. The plaintiff has suffered damage by breach of a charter-party dated the 10th of March, 1903, between the plaintiff and the defendant of the ship *Mary*.  
 2. The ship was detained at the port of loading.

Particulars of damage:—

1904, Jan. 1  
to  
Jan. 10

} 10 day's detention beyond the demurrage days at £25 per day,  
£250

Ship-owner  
against  
charterer for  
detention  
beyond the  
demurrage days.

The plaintiff claims £250.  
 Place of trial, Geelong.

(Signed)  
 Delivered

## No. 4.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the *Jane* signed by defendant, dated the 1st of January, 1904.  
 2. 50 bales of cotton were delivered in a damaged condition.

Particulars of damage:—

50 bales at £2 .. .. . £100

Shipper against  
master on a bill  
of lading for  
damage to  
goods.

The plaintiff claims £100.  
 Place of trial, Geelong.

(Signed)  
 Delivered

## No. 5.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff signed by the master of the ship *Mary* as the defendant's agent, dated the 1st of January, 1904.  
 2. 50 quarters of wheat were delivered in a damaged condition, and 100 quarters were not delivered.

Particulars of damage:—

100 quarters at 40s. ..	..	..	..	..	..	..	..	£
50 quarters at 4s. ..	..	..	..	..	..	..	..	200
								10
								210

Shipper against  
ship-owner or a  
bill of lading for  
damage and  
short delivery.

The plaintiff claims £210.  
 Place of trial, Geelong.

(Signed)  
 Delivered

## No. 6.

- The plaintiff was interested to the amount of £ .. .. under a marine policy of insurance for that amount, dated the .. of .. 19 .., on the ship *Hero*, subscribed by the defendant for £ .. ..

On a marine  
policy against  
underwriter.

Particulars:—

1. Valued or open:—Valued at £20,000.
2. Voyage:—At and from Melbourne to Valparaiso.
3. [Or Time:—From noon of 1st January, 19 .., to noon of 1st January, 19 ..]
4. Premium to defendant:—£ .. per cent.
5. Perils insured against causing loss:—of the seas.
6. Loss:—Total for exceeding 3 per cent. l.

The plaintiff claims £ ..  
 Place of trial, Melbourne.

(Signed)  
 Delivered

APPENDIX C.  
Seots.V. & VI.

## No. 7.

Passenger  
against  
Railways  
Commissioners  
for negligence.

The plaintiff has suffered damage from the defendants' negligence in carrying the plaintiff as passenger by railway from Melbourne to Brighton, causing personal injuries to the plaintiff in a collision near Jolimont on the 15th January, 1905.

Particulars of expenses, &amp;c. :—

	£	s.	d.
Loss of 15 weeks' salary as clerk at £2 per week	...	...	...
Dr. Smith	...	...	...
Nurse for 6 weeks	...	...	...
	43	10	0

The plaintiff claims £500.  
Place of trial, Melbourne.

(Signed)  
Delivered

## No. 8.

Client against  
solicitor for  
negligence.

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.
2. The negligence was in making an application under Order XIV., Rule I., in the case of *A.B. (the plaintiff) v. C.D.*, where the case was one of unliquidated damages and not of debt.

Particulars of damage :—

Taxed costs paid to defendant on dismissal of summons, £  
The plaintiff claims £

Place of trial,

(Signed)  
Delivered

## No. 9.

Landlord  
against tenant  
for breach of  
covenant to  
repair.

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 19 , of a house No. , Collins-street, for seven years from the 25th day of December, 19 , the defendant covenanted to keep the premises in such repair and condition as therein mentioned.
2. The premises were during the term out of such repair as was required by the covenant.
3. They were yielded up out of such repair at the expiration of the term.
4. Particulars of dilapidations were delivered to the defendant's solicitor on the 19 , and exceed three folios.

The plaintiff claims £

Place of trial,

(Signed)  
Delivered

## No. 10.

Breach of  
promise of  
marriage.

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the death of *A.B.*, which happened before action.] [or within a reasonable time, which elapsed before action]
2. The defendant refused to marry the plaintiff on the death of *A.B.*]. [or within a reasonable time]

Particulars of special damage.

[As the case may be, if any.]

The plaintiff claims £

Place of trial,

(Signed)  
Delivered

## SECTION VI.

Actions claiming Injunctions, Damages, or Declarations of Right founded on Wrongs.

## No. 1.

Conversion of  
goods.

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil by refusing to give them up on demand [or throwing them overboard out of a boat in the Yarra, &c.].

[If any special damage is claimed, add]—

Particulars [fill them in].

The plaintiff claims £100.

Place of trial, Beechworth.

(Signed)  
Delivered



## No. 2.

The defendant detained from the plaintiff the plaintiff's goods and chattels—that is to say, a horse, harness, and gig.

The plaintiff claims a return of the said goods and chattels or their value, and £10 for their detention.

APPENDIX C.  
SECT. VI.

Detinue.

Place of trial, Bendigo.

(Signed)  
Delivered

## No. 3.

The plaintiff has suffered damage from personal injuries to the plaintiff, and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1902, negligently driving a cart and horse in Bourke-street. Negligent driving.

Particulars of expenses, &c. :—

	£	s.	d.
Charges of Mr. Smith, surgeon ... ..	10	10	0
Charges of Mr. Jones, coachmaker ... ..	14	5	6
	24	15	6

The plaintiff claims £150.  
Place of trial, Melbourne.

(Signed)  
Delivered

## No. 4.

The plaintiff, as executor of *C.D.*, deceased, brings this action for the benefit of Eva, the wife, and William and Margaret and Dorothea, the children of *C.D.* [as the case may be], who have suffered damage from the defendant's negligence in carrying the said *C.D.* by omnibus, whereby the said *C.D.* was killed in Collins-street, Melbourne, on the 15th of January, 1905. The Wrongs Act 1928.

Particulars pursuant to the *Wrongs Act* 1928 are delivered herewith.

The plaintiff claims £500.  
Place of trial, Melbourne.

(Signed)  
Delivered

## No. 5.

The plaintiff has suffered damage from injuries to his ship, the *Betsy*, and the cargo on board thereof, by a collision with the ship the *Jane*, caused by the negligent navigation thereof by the defendant or his servants on the river Yarra, on the 1st of February, 1903. Collision of ships.

Particulars of loss and expenses :—

1. Charges of Jones & Co., shipwrights, £450 2s.
2. Loss of use of ship from 1st of February, 1903, to 1st of March, 1903, £280.

Particulars of damage to cargo :—

[Insert them.]

The plaintiff claims £  
Place of trial, Melbourne.

(Signed)  
Delivered

## No. 6.

The defendant has infringed the plaintiff's patent, No. 14,084, granted for the term of 14 years, from the 21st of May, 1900, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor. Injunction, &c. for infringement of patent.

The plaintiff claims an injunction to restrain the defendant from further infringement and £100 damages.

Particulars of breaches are delivered herewith.

Place of trial, Beechworth.

(Signed)  
Delivered

APPENDIX C.  
Sect. VI.Damages for  
infringement of  
copyright.

## No. 7.

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the day of

Particulars of special damage are as follows:—

Loss of sale of 50 copies	...	...	...	...	...	£	50
Loss of profit in the copyright	...	...	...	...	...	...	50
						100	—

The plaintiff claims £100.  
Place of trial, Geelong.

(Signed)  
Delivered

## No. 8.

Injunction, &c.  
for infringement  
of trade mark.

1. The defendant has infringed the plaintiff's trade mark.

2. The trade mark is [describe it].

[If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.]

3. The following are the acts complained of, viz.:—  
[Set them out.]

The plaintiff claims an injunction to restrain the defendant his servants and agents from infringing the plaintiff's said trade mark, and in particular from [stating any particular injunction sought].

The plaintiff also claims an account or damages.  
Place of trial.

(Signed)  
Delivered.

## No. 9.

Seduction.

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of G.H. [the daughter and] servant of the plaintiff.

Particulars of special damage are as follows:—

	£	s	d.
Loss of service from the 1st of March to the 30th November, 1902	100	0	0
Nursing and medical attendance	10	10	0
	110	10	0

The plaintiff claims £500.  
Place of trial, Hamilton.

(Signed)  
Delivered

## No. 10.

Obstruction of  
lights.

1. The plaintiff is the owner [or lessee] and occupier of a house, No. Swanston-street, and is entitled to the following lights therein:—

- (1) The kitchen window in the basement on the south side.
- (2) The two back dining-room windows on the ground floor on the south side.
- (3) The landing window and back drawing-room window on the south side.

2. The defendant is erecting a building which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants, and workmen, from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain if the same is completed and not pulled down.

Place of trial.

(Signed)  
Delivered

## No. 11.

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling house, No. James-street, Bendigo.

The plaintiff claims:—

(1) £50.

(2) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind in respect of the same property.

Place of trial, Bendigo.

APPENDIX C.  
Sect. VI.

Nuisance by  
smells.

(Signed)  
Delivered

## No. 12.

1. The plaintiff is the owner [or lessee] and occupier of a farm known as through which there runs a river known as

2. The defendant or persons in his employ pollute the water in the said river by passing into the same the refuse of the defendant's dye works, situated higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from sending from the said dye works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff [or as the case may be].

The plaintiff will also claim damages in respect of the said nuisance.

Place of trial,

Nuisance by  
pollution of  
water.

(Signed)  
Delivered

## No. 13.

1. On 31st January, 1903, the defendant issued a prospectus to the public relating to the A B. Company Limited.

2. On February 1st, 1903, the plaintiff received a copy of this prospectus.

3. The plaintiff subscribed for 100 shares in the company on the faith of this prospectus.

4. The prospectus contained misrepresentations, of which the following are particulars:—

(a) The prospectus stated " . . . . . whereas in fact . . . . .

(b) The prospectus stated " . . . . . whereas in fact . . . . .

(c) The prospectus stated " . . . . . whereas in fact . . . . .

5. The defendant knew of the real facts as to the above particulars.

6. The following facts, which were within the knowledge of the defendant, are material, and were not stated in the prospectus:—

(a)

(b)

7. The plaintiff has paid calls to the company to the extent of £1,000. The plaintiff claims:—

(1) Repayment of £1,000 and interest.

(2) Indemnity.

Place of trial

Fraudulent  
prospectus.

(Signed)  
Delivered

## No. 14.

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the George public-house, Portland, by fraudulently representing to the plaintiff that the takings of the said public-house were £40 a week, whereas in fact they were much less, to the defendant's knowledge.

Particulars of special damage:—

[Fill them in.]

The plaintiff claims £

Place of trial.

Fraudulent sale  
of lease.

(Signed)  
Delivered

## No. 15.

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a justice of the peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted at the Melbourne General Sessions, where the plaintiff was acquitted.

Particulars of special damage:—

Messrs. L. and L.'s bill of costs, £65.

Loss in business from January 1, 1905, to February 18, 1905, £100. The plaintiff claims

£500.

Place of trial,

Malicious  
prosecution.

(Signed)  
Delivered

## SECTION VII.

*Actions for Recovery of Land, &c.*APPENDIX C.  
Sect. VII.

## No. 1.

Landlord  
against tenant  
whose term has  
expired, &c.

1. The plaintiff is entitled to the possession of a farm and premises called Church Farm, situate at \_\_\_\_\_, which was let by the plaintiff to the defendant for the term of 3 years from the 20th of September, 19\_\_\_\_, which term has expired [or as tenant from year to year from the 20th September, 19\_\_\_\_, which said tenancy was duly determined by notice to quit expiring on the 29th September, 19\_\_\_\_].

The plaintiff claims possession and £50 for mesne profits.

Place of trial, \_\_\_\_\_

(Signed)  
Delivered

## No. 2.

Executor  
against  
stranger.

1. The plaintiff is entitled to the possession of Blackacre, situate at \_\_\_\_\_ [or of No. \_\_\_\_\_ Bridge-street, Ballarat].

2. On and before the \_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_ A.B. was seised in fee and in possession of the premises.

3. On the \_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_ the said A.B. died, having by will dated \_\_\_\_\_ appointed plaintiff his executor.

4. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ probate was granted to the plaintiff.

5. After the death of the said A.B. the defendant wrongfully took possession of the premises.

The plaintiff claims:—

(1) Possession of the premises.

(2) Mesne profits from the \_\_\_\_\_ of \_\_\_\_\_

Place of trial, \_\_\_\_\_

(Signed)  
Delivered

## APPENDIX D.

APPENDIX D.  
Sect. I.

## FORMS OF DEFENCE TO BE USED PURSUANT TO ORDER XIX, RULE 5:

## SECTION I.

(1) *General Form.*

In the Supreme Court.

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

19\_\_\_\_ No. \_\_\_\_\_

## Defence.

The defendant says that:—

1. }  
2. } [To be filled up in the manner exemplified in the following forms.]  
3. }

(Signed)  
Delivered

## Counter-claim.

The defendant says that:—

1. }  
2. } [To be filled up in the manner exemplified in the following forms]

The defendant counter-claims:—

(Signed)  
Delivered

## Defence and Counter-claim.

APPENDIX D.  
Sects. I. & II.

## Defence.

The defendant says :—

1. } [To be filled up.]  
2. }

## Counter-claim

The defendant repeats paragraph 2 of his defence, and says that—

3. } [To be filled up.]  
4. }

The defendant counter-claims :—

(Signed)  
Delivered

## (2.) Form of Title where new Party brought in.

In the Supreme Court.

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

19 . No.

(By original action.)

And between the said C.D., Plaintiff,  
and  
The said A.B. and E.F., Defendants.

(By Counter-claim )

## SECTION II.

*To Actions in matters within the cognizance of the Court in its Equitable Jurisdiction prior to the Judicature Act 1883. Appendix C, Sect. II.* To actions for administration.

1. The defendants do not admit the plaintiff's claim.

[or]

The defendant A.B. admits the plaintiff's claim, but not assets.

[or]

The defendant C.D. admits assets, but not the plaintiff's claim.

2. The claim is barred by the Statute of Limitations.

[State which.]

3. Payment was made by deceased.

4. The claim is fraudulent in the following particulars :—

[Set out particulars.]

5. The defendant is entitled to a set-off, of which the following are the particulars :—

[Set out particulars.]

6. The claim was released by deed dated the of

7. Notice was given and assets distributed under the *Trusts Act 1928*.*Particulars of the Notice.*Advertisements in the *Times* of 1 January, 1902." " *New York Herald*, February, 1902." " *Bombay Gazette* of 25 January, 1902.

[Giving the titles of the newspapers and the dates of those in which the advertisement appeared.]

8. The estate of the testator is sufficient to pay the plaintiff his debt if established.

9. The defendant is not heir-at-law or devisee of the deceased.

(Signed)  
Delivered

## Chapter I.—Civil Proceedings.

4068

### APPENDIX D. Sect. II.

To actions for  
foreclosure by  
mortgagee.

#### No. 1.

1. The defendant did not execute the mortgage.
  2. The mortgage was not assigned to the plaintiff *[if more than one assignment is alleged say which is denied.]*
  3. The debt is barred by the Statute of Limitations.—*[State which.]*
  4. Payments have been made, viz.:—  
10 July, 1899, £1,000.  
18 October, 1901, £500.
  5. The plaintiff took possession on the      of      and has received the rents ever since.
  6. The plaintiff released the debt by deed, dated 1 June, 1900.
  7. The defendant conveyed all his interest to A.B. by deed, dated 25 November, 1902.
- The defendant claims—
- (1) Account.
  - (2) Re-conveyance.

(Signed)  
Delivered

#### No. 2.

To same by  
alleged second  
incumbrancer  
who claims  
priority.

1.      {
  2.      {
  3.      { *[As in preceeding form.]*
  4.      {
  5.      {
  6.      {
  7. By a deed dated 1 June, 19      , the mortgagor A.B. mortgaged the property in question to the defendant to secure £5,000 and interest at 5 per cent. per annum.
- The defendant claims—
- (1) A declaration of priority and foreclosure [and a receiver].

(Signed)  
Delivered

*[If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so, as in other cases of debt; or he can claim indemnity against the owner of the Equity of Redemption under Order XVIa., Rule 1.]*

To actions for  
redemption.

1. The plaintiff's right to redeem is barred by the Statute of Limitations.—*[State which.]*
  2. The plaintiff assigned all interest in the property to A.B.
  3. The defendant, by deed, dated the      day of      assigned all his interest in the mortgage debt, and property comprised in the mortgage to A.B.
  4. The defendant never took possession of the mortgaged property, or received the rents thereof.
- [If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.]*

(Signed)  
Delivered

To actions for  
specific  
performance.

1. The defendant did not enter into the agreement.
2. A.B. was not the agent of the defendant *[if alleged by plaintiff].*
3. The plaintiff has not performed the following conditions:—*[Conditions.]*
4. The defendants did not—*[Alleged acts of past performance.]*
5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters:—*[State why.]*
6. The *Instruments Act* 1928, sec. 128 has not been complied with.
7. The agreement is uncertain in the following respects:—*[State them.]*
8. *[or]* The plaintiff has been guilty of delay;
9. *[or]* The plaintiff has been guilty of fraud *[or]* misrepresentation;
10. *[or]* The agreement is unfair;
11. *[or]* The agreement was entered into by mistake;
- The following are particulars of (8), (9), (10), (11). *[or as the case may be].*
12. The agreement was rescinded under Conditions of Sale No. 11 *[or by mutual agreement].*

(Signed)  
Delivered.

*[In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., Statute of limitations, accord and satisfaction, release, fraud, &c.]*

## SECTION IV.

To Actions included in Order III, Rule 6, Classes A, B, C, D, E, and F.

APPENDIX D.  
Sect. IV.

To actions on  
bills of  
exchange,  
promissory  
notes or  
cheques.

1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the cheque.
4. The defendant did not indorse to A.B.
5. The defendant [or A.B.] did not indorse to the plaintiff.
6. The bill was not presented for payment.
7. The defendant had not due notice of dishonour.
8. The plaintiff was not the holder at the commencement of the action.
9. The bill was accepted [or the note was made] for the accommodation of the defendant without consideration.
10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.
11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant and contrary to the said purpose, indorsed the bill to the plaintiff without consideration [or with notice of the said fraud or overdue].
12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration [or with notice of the fraud, or overdue].
- Particulars of the fraud are as follows:—The drawer on or about the 15th May, 1902, falsely and fraudulently stated to the defendant that he had shipped 20 tons of pig iron for the defendant on board the *Ajax*, which he had not done.
13. The defendant accepted the bill [or made the note] for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1904, and the plaintiff failed to deliver the goods.
14. The bill [or note, or cheque] was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st January to the 2nd of January.

(Signed)  
Delivered

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not £ [or]
4. } Except as to £ same as { 1.
5. } { 2.
6. } { 3.
7. The defendant [or A.B., the defendant's agent] satisfied the claim by payment before action to the plaintiff [or to C.D., the plaintiff's agent] on the of 19 .
8. The defendant satisfied the claim by payment after action to the plaintiff on the of 19 .

To actions for  
any simple  
contract debts  
other than bills  
notes or  
cheques.

(Signed)  
Delivered

1. The bond [or deed] is not the defendant's bond [or deed].
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before action of the principal and interest mentioned in the bond.

To actions on  
bonds or  
contracts under  
seal for the  
payment of a  
liquidated  
amount in  
money.

(Signed)  
Delivered

1. The principal satisfied the claim by payment before action
2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

In actions on  
guarantees,  
whether under  
seal or not,  
where the  
claim against  
the principal  
is in respect of  
a debt or  
liquidated  
demand only.

(Signed)  
Delivered

1. As to £50 parcel of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff. Particulars are as follows:—

			£	s.	d.
19 Jan. 25.	To 20 tons of Silkstone coal at £1	...	20	0	0
" Feb. 1.	To 30 tons of Silkstone coal at £1	"	30	0	0
Total			50	0	0

To any action of  
debt.

2. As to the whole [or as to £ , parcel of the money claimed], the defendant made tender before action [or on the day on which it fell due] of £ , and has paid the same into court.

(Signed)  
Delivered

*General Defences.*

APPENDIX D. Sects. IV., V. & VI.	1. On 5th April, 19 , a brown horse was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action;
Accord and satisfaction.	[or on 5th April, 19 , an agreement between the plaintiff and the defendant, whereby it was agreed between the plaintiff and the defendant that the defendant should deliver the cargo of the <i>Mary</i> at the Surrey Commercial Docks instead of at Hull as per charter-party of 1st March, 19 , was accepted in discharge of the alleged cause of action].
Insolvency, &c.	2. The defendant became insolvent.
	3. The plaintiff became insolvent before action, and the cause of action vested in the trustees of his property.
	4. The defendant was discharged under a liquidation by arrangement pursuant to Part IX. of the <i>Insolvency Act</i> 1928.
Coverture.	5. The defendant compounded with his creditors under Part X. of the <i>Insolvency Act</i> 1928, and duly paid to the plaintiff the composition on the day appointed.
Infancy.	6. The defendant was covert at the time of making the alleged contract [or contracting the alleged debt].
Payment into Court.	7. The defendant was an infant at the time of making the alleged contract [or contracting the alleged debt].
	8. The defendant as to the whole action [or as to £ , parcel of the money claimed, or as to the plaintiff's claim on the guarantee of the of 19, or as the case may be], has paid into court £ , and says that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim herein pleaded to].
	9. The causes of action were released by deed dated the 1st May, 19 , between the plaintiff of the first part and the defendant of the second part.
Release, Rescission before breach.	10. The contract was rescinded [or the defendant was exonerated by the plaintiff] before breach. Particulars are as follows:—An arrangement between the plaintiff and the defendant, made verbally on the 15th of April, 19 [or by letter from the defendant to the plaintiff, and answer of the plaintiff dated the 14th and 15th of April, 19 ]
Statute of Limitations.	11. The debt was barred by the Statute of Limitations [state which].
Statute of Frauds.	12. The 9th section of the <i>Goods Act</i> 1928 has not been complied with.

(Signed)  
Delivered

## SECTION V.

*To Actions for Damages for Breach of Contract or Duty. Appendix C, Sect. V.*

Denials.	1. The defendant did not contract [or promise, or agree] as alleged.
	2. The defendant did not receive the goods for the alleged purpose [or on the alleged terms].
	3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.
	4. The defendant did not [insert breaches denied].
Contribution negligence.	5. The defendant was not ready and willing to accept and pay for the goods [or to deliver the goods, or as the case may be].
Carriers.	6. There was contributory negligence on the part of the plaintiff.
	7. The plaintiff did not pay or tender the money for the carriage.
	8. The damage or loss occurred from the inherent vice [or bad condition when received] of the goods [or horse, or as the case may be].
	9. The loss occurred by reason of the excepted perils mentioned in the charter-party [or bill of lading], that is to say, the perils of the seas [or fire, or as the case may be].
	10. The goods were above the value of £10, and consisted of articles mentioned in the 3rd section of the <i>Carriers and Innkeepers Act</i> 1928, that is to say, silks [or as the case may be], and their value and nature was not declared or any increased charge paid, &c.
Charter-parties.	11. The charter-party was cancelled pursuant to cancelling clause therein, the ships not having arrived at port of loading on or before 1st May, 9 .
	12. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.
Insurance.	13. The loss was not by the perils insured against.
	14. The plaintiff was not interested in the subject-matter of the insurance.
Breach of promise.	15. The ship was not seaworthy at commencement of risk [or voyage].
	16. The plaintiff was not ready and willing to marry the defendant.

(Signed)  
Delivered

## SECTION VI.

*To Actions claiming Injunctions, Damages, or Declarations of Right, founded upon Wrongs: Appendix C, Sect. VI.*

To all action for wrongs.	1. Denial of the several acts [or matters] complained of.
---------------------------	---

(Signed)  
Delivered



1. The goods *[or chattels, as the case may be]* were not the plaintiff's.  
 2. The goods were detained for a lien to which the defendant was entitled. Particulars are as follows:—

APPENDIX D  
 Sects. VI.  
 VII.

1902—May 3. To carriage of the goods claimed from Melbourne to Beechworth:—

45 tons at 2s. ... .. £ 5.  
 ... 4 10  
 (Signed)  
 Delivered

To actions for  
 detention or  
 conversion of  
 chattels.

1. The defendant did the acts complained of in necessary self-defence.  
 2. There was contributory negligence on the part of the plaintiff *[or the plaintiff's servant]*.

(Signed)  
 Delivered

To actions for  
 personal bodily  
 injuries or  
 injuries to  
 carriages, goods  
 or animals by  
 trespass or  
 negligence.

1. The defendant did not infringe the patent  
 2. The invention was not new.  
 3. The plaintiff was not the first or true inventor.  
 4. The invention was not useful.  
 5. *[Denial of any other matter of fact affecting the validity of the patent.]*  
 6. The patent was not assigned to the plaintiff.

(Signed)  
 Delivered

To actions for  
 infringement  
 of a patent.

1. The plaintiff is not the author *[assignee, &c., as the case may be.]*  
 2. The book was not registered.  
 3. The defendant did not infringe.

(Signed)  
 Delivered

Copyright

1. The trade mark is not the plaintiff's.  
 2. The alleged trade mark is not a trade mark.  
 3. The defendant did not infringe.

(Signed)  
 Delivered

Trade mark.

1. The plaintiff is not entitled as alleged *[or deny his other alleged rights]*.  
 2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.  
 3. The defendant denies that he or his servants pollute the water *[or do what is complained of]*.  
*[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of his claim, i.e., whether by prescription, grant, or what.]*  
 4. The plaintiff has been guilty of laches, of which the following are particulars:—  
   1890. Plaintiff's mill began to work.  
   1891. Plaintiff came into possession.  
   1903. First complaint.  
 5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. *[If other grounds are relied on they must be stated, e.g., the Statute of Limitations as to past damage.]*

(Signed)  
 Delivered

Light.  
 Nuisance.

1. The said A.B. was not the servant of the plaintiff.  
 2. The defendant did not seduce and carnally know the said A.B.

(Signed)  
 Delivered

To actions for  
 seduction.

#### SECTION VII.

##### To Actions for Recovery of Land. Appendix C. Sec. VII.

1. The defendant is in possession of the premises by himself or his tenant.  
 2. The defendant had no notice to quit.

(Signed)  
 Delivered

## SECTION VIII.

*Counter-claims.*APPENDIX D.  
Sect. VIII.

The defendant lent £500 to the plaintiff on 1st May, 19 .  
 The defendant counter-claims £500.  
 1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of Merthyr steam coal at 18s. 6d. per ton f.o.b. at Cardiff by equal monthly deliveries over the first five months of 19 .  
 2. The April and May instalments were not delivered.

## Particulars of the Damages.

Difference between market price in April and May, and the contract £ s. d.  
 price, 2s. 6d. per ton on 2,000 tons ... .. 250 0 0  
 The defendant counter-claims £250.

(Signed)  
Delivered

## APPENDIX E.

APPENDIX E.  
Sects. I. & II.

## FORMS OF REPLY, ETC., TO BE USED PURSUANT TO ORDER XIX., RULE 5.

## SECTION I.

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

General form.

## Reply.

The plaintiff as to the defence says that—

1.  
2.

The plaintiff as to the counter-claim says that—

1.  
2.

## Reply.

(Signed)  
Delivered

The plaintiff as to the defence says that—

1. He joins issue.

2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff as to the counter-claim says that—

1. The defendant was not ready and willing to accept and pay for the goods.

(Signed)  
Delivered

To actions on a guarantee to which defence raised of time given to the principal and counter-claim for non-delivery of goods.

## SECTION II.

*Example of a Statement of Claim, Defence, and Reply.*In the Supreme Court. Between A.B. . . . . Plaintiff, 19 . No.  
and  
C.D. . . . . Defendant.

## Statement of Claim.

The plaintiffs claim is for work done and materials provided by the plaintiff for the defendant at his request.

## Particulars—

19 .	January 1 to 31st May.	To rebuilding house at Hamilton, as per contract dated the 24th December, 19	...	...	...	£	s.	d.
		To extras as per account delivered	...	...	...	3,400	0	0
						243	0	0
						3,643	0	0
		Paid on account	...	...	...	3,000	0	0
		Balance due	...	...	...	643	0	0

The plaintiff also seeks to recover interest on the above balance from the 31st May, 19 , till payment or judgment.

Place of trial,

(Signed)  
Delivered the 1st of January, 19 .

In the Supreme Court.

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

19 . No.

APPENDIX E.  
Sects. II. &  
III.

## Defence and Counter-claim.

## Defence.

The defendant says that—

1. Except as to £200, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.
2. As to £200, parcel of the money claimed, the defendant brings [*or* has brought] into court £200, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

## Counter-claim.

The defendant says that—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st of March, 19 , or in default pay to the defendant £1 a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for 61 days to the 31st May.

The defendant counter-claims £61.

(Signed)

Delivered the 22nd of January, 19 .

In the Supreme Court.

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

19 . No.

## Reply.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue.
2. As to the second paragraph thereof, the plaintiff accepts the £ in satisfaction.

The plaintiff as to the counter-claim says that—

3. The liquidated damages were waived by ordering extras and material alterations in the works.
4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed)

Delivered the 5th of February, 19 .

## SECTION III.

*Defence including an Objection in Point of Law.*

## No. 1.

In the Supreme Court.

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

19 . No.

## Defence.

The defendant says that—

1. The goods were not supplied to E.F. on the guarantee.
2. The defendant will object that the guarantee discloses a past consideration on the face of it.

To action on a  
guarantee for  
price of goods.

(Signed)

Delivered

## No. 2.

In the Supreme Court.

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

19 . No.

## Defence.

The defendant says that—

1. The defendant did not speak or publish the words.
2. The words did not refer to the plaintiff.
3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

To action for  
slander  
actionable only  
by reason of  
special damage.

(Signed)

Delivered

Chapter I.—Civil Proceedings.

4074

APPENDIX E.  
Sect. III.

In the Supreme Court.

No. 3.

19

No.

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

Defence.

To action on a marine policy stated to contain clauses that the policy was to be proof of interest and without benefit of salvage.

The defendant says that—

1. The defendant did not make the policy.
2. The loss was not by the perils insured against.
3. The defendant will object that the policy was avoided by sect. 113 of the *Instruments Act 1915*.

(Signed)  
Delivered

APPENDIX F.

APPENDIX F.

FORMS OF JUDGMENT

No. 1.

*Default of Appearance and Defence in case of Liquidated Demand.*

In the Supreme Court.

19

No.

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

The day of 19

The defendants [or the defendant C.D.] not having appeared to the writ of summons herein [or not having delivered any defence], it is this day adjudged that the plaintiff recover against the said defendant £ and costs to be taxed.

No. 2.

*Interlocutory Judgment in default of Appearance or Defence where demand Unliquidated.*

[Heading as in Form No. 1.]

The day of 19

No appearance having been entered to the writ of summons [or no defence having been delivered by the defendant herein].

It is this day adjudged that the plaintiff recover against the defendant the value of the goods [or damages or both, as the case may be] to be ascertained.

The amount found due to the plaintiff under this judgment having been ascertained at the sum of £ as appears by [the Prothonotary's certificate, or as the case may be] filed the day of 19

It is adjudged that the plaintiff recover against the defendant £ and costs to be taxed.

No. 3.

*Judgment in default of Appearance in Action for Recovery of Land.*

[Heading as in Form No. 1.]

The day of 19

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the indorsement on the writ described as

## No. 5.

## APPENDIX F.

*Judgment after Appearance and Order under Order XIV, Rule 1.**[Heading as in Form No. 1.]*

The day of 19 .  
 The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of , dated the day of 19 , obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV, Rule 1, for *[recite order]*:  
 It is this day adjudged that the plaintiff recover against defendant £ . *[or possession of the land in the indorsement on the writ described as ]*, and costs to be taxed.

The above costs have been taxed and allowed at £ ., as appears by a [Taxing Officer's] Certificate, dated the day of 19 .

## No. 6.

*Judgment at Trial by Judge without a Jury.**[Heading as in Form No. 1.]*

This action coming on for trial [the day of and] this day before in the presence of counsel for the plaintiff and the defendants *[or if some of the defendants do not appear, for the plaintiff and the defendant C.D., no one appearing for the defendants E.F. and G.H., although they were duly served with notice of trial as by the affidavit of filed the day of appears]* upon hearing the probate of the will of the answers of the defendants C.D., E.F., and G.H., to interrogatories, the admission in writing, dated and signed by [Mr. the solicitor for] the plaintiff A.B., and by [Mr. the solicitor for] the defendant C.D., the affidavit of filed the day of the affidavit of filed the day of the evidence of taken on their oral examination at the trial, and an exhibit marked X, being an indenture dated, &c., and made between *[parties]*, and what was alleged by counsel on both sides. This Court doth declare, &c.  
 And this Court doth order and adjudge, &c.

## No. 7.

*Judgment after Trial with a Jury.**[Heading as in Form No. 1.]*

The day of 19 .  
 This action having on the day of 19 been tried before His Honour, Mr. Justice with a jury of *[six or]* twelve, of the bailiwick, and the jury having found *[state findings as in officer's certificate]*, and the said Mr. Justice having ordered that judgment be entered for the plaintiff for £ and costs *[or as the case may be]*: Therefore it is adjudged that the plaintiff recover against the defendant £ and £ for his costs *[or that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff £ for his costs of defence, or as the case may be]*.

## No. 8.

*Judgment after Trial before Referee.**[Heading as in Form No. 1.]*

The day of 19 .  
 The action having on the day of 19 been tried before X.Y., Esq., a referee and the said X.Y. having found *[or having ordered that judgment be entered]* *[state substance of referee's certificate]*, it is this day adjudged that

## No. 9.

*Judgment after Trial of Questions of Account by Referee.**[Heading as in Form No. 1.]*

The day of 19 .  
 The questions of account in this action having been referred to , and he having found that there is due from the to the the sum of £ and directed that the do pay the cost of the reference:  
 It is this day adjudged that the recover against the said £ and costs to be taxed.

The above costs have been taxed and allowed at £ . as appears by the Taxing Officer's Certificate dated the day of 19 .

## 4076

## No. 10.

[Heading as in Form No. 1.]

}

*Judgment after Trial by Court without Jury.*

[Heading as in Form No. 1.]

3



*Judgment of Dismissal.*

[Heading as in Form No. 1].

*Judgment in pursuance of Order.*

[Heading as in Form No. 1].

3

*Judgment for Defendant's Costs on Discontinuance.*

[Heading as in Form No. 1].

•

## No. 15.

APPENDIX F.

*Judgment for Plaintiff's Costs after Confession of Defence.**[Heading as in Form No. 1.]*

The day of 19 .  
 The defendant in his statement of defence herein having alleged a ground of defence which  
 arose after the commencement of this action, and the plaintiff having on the day of 19  
 delivered a confession of that defence:

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's  
 Certificate dated the day of 19 .

## No. 16.

*Judgment for Costs after Acceptance of Money paid into Court.**[Heading as in Form No. 1.]*

The day of 19 .  
 The defendant having paid into Court in this action the sum of £ in satisfaction of the  
 plaintiff's claim, and the plaintiff having by his notice dated the day 19 accepted  
 that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed,  
 and the defendant not having paid the same within forty-eight hours after the said taxation:

It is this day adjudged that the plaintiff recover against the defendant, costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's  
 Certificate dated the day of 19 .

## No. 17

*Judgment where no Judgment entered at Trial by Jury**[Heading as in Form No. 1.]*

The day of 19 .  
 This action having on the 19 been tried before and a jury of  
 [six or twelve] of the bailiwick, and the jury having found and the not  
 having thought fit to order any judgment to be entered: Now on motion before the Court for judgment  
 on behalf of the the Court having

It is this day adjudged that the recover against the the sum of £  
 and costs to be taxed.

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's  
 Certificate dated the day of 19 .  
 Judgment entered the day of 19 .

## No. 18.

*Judgment on Motion after Trial of Issue.**[Heading as in Form No. 1.]*

The day of 19 .  
 The\* of fact arising in this action [or cause or matter] by the order dated the  
 day of ordered to be tried before having on the day of  
 been tried before and the having found : Now on motion before the  
 Court for judgment on behalf of the the Court having  
 It is this day adjudged that the recover against the the sum of £  
 and costs to be taxed.

\* "issues" or  
"questions."

The above costs have been taxed and allowed at £ as appears by the Taxing Officer's  
 Certificate dated the day of 19 .  
 Judgment entered the day of 19 .

## APPENDIX F.

No. 19A.

*Judgment after Motion on leave reserved.**[Heading as in Form No 1].*

The day of 19 . . . . .  
 This action having on 19 . . . . .  
 a jury of the . . . . . and the jury having found . . . . . and  
 having ordered that judgment be entered for . . . . . subject to leave  
 to the . . . . . to move to set aside the judgment . . . . . ; Now on motion before the Court  
 for judgment on behalf of the . . . . . the Court having . . . . .  
 † "do stand or "be set aside and that the recover against the sum of £ and costs to be taxed."  
 It is this day adjudged that the said judgment† . . . . .  
 The above costs have been taxed and allowed at £ . . . . . as appears by the Taxing Officer's  
 Certificate dated the . . . . . day of 19 . . . . .  
 Judgment entered the . . . . . day of 19 . . . . .

## APPENDIX G.

## APPENDIX G.

## FORMS OF PRÆCIPUE.

No. 1.

*Fieri Facias.*

In the Supreme Court. . . . . 19 . . . . . No.  
 Between A.B. . . . . Plaintiff,  
 . . . . . and . . . . . Defendants.  
 C.D. and others . . . . .  
 Seal a writ of *feri facias* directed to the sheriff to levy against C.D. the sum of £ . . . . .  
 and interest thereon at the rate of £ . . . . . per cent. per annum from the . . . . . day of . . . . .  
 to the . . . . . day of . . . . . [and . . . . . costs]  
 Judgment [or order] dated the . . . . . day of . . . . .  
 [Taxing officer's certificate, dated . . . . . day of . . . . .]  
 X.Y., solicitor for [party on whose behalf writ is to issue].

No. 3

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

Seal a writ of *venditioni exponas* directed to the sheriff to sell the real and personal estate  
 of C.D. taken under a writ of *feri facias* in this action tested . . . . . day of . . . . .  
 X.Y., solicitor for . . . . .

No. 6.

*Writ of Sequestration.**[Heading as in Form No 1.]*

Seal a writ of sequestration against C.D. . . . . for not . . . . . as the suit of A.B.  
 directed to [names of Commissioners].  
 Order dated . . . . . day of . . . . .

No. 7.

*Writ of Possession.**[Heading as in Form No 1.]*

Seal a writ of possession directed to the sheriff to deliver possession to A.B. of . . . . .  
 Judgment dated . . . . . day of . . . . .

No. 8.

*Writ of Delivery.**[Heading as in Form No 1.]*

Seal a writ of delivery directed to the sheriff to make delivery to A.B. of . . . . .



## No. 10.

APPENDIX G.

*Writ of Attachment.*

[Heading as in Form No 1.]

Seal in pursuance of order dated the \_\_\_\_\_ day of \_\_\_\_\_ an attachment directed to  
the sheriff against C.D. for not delivering to A.B.

## No. 11.

*Distringas against Ex-Sheriff.*

[Heading as in Form No. 1.]

Seal a writ of *distringas nuper vicecomitem quod venditioni exponat*, directed to the sheriff  
to sell the real and personal estate of \_\_\_\_\_ taken under a writ of *feri facias* in this action  
tested the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
(Signed)  
(Address)

Solicitor for the \_\_\_\_\_

## No. 13.

*Certiorari.*

[Heading as in Form No 1.]

Seal in pursuance of order dated \_\_\_\_\_ a writ of *certiorari* directed to  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
(Signed)  
(Address)

Solicitor for the \_\_\_\_\_

## No. 14.

*Prohibition*

In the Supreme Court. \_\_\_\_\_ 19 \_\_\_\_ . No.  
In the matter of a certain \_\_\_\_\_ now depending in the \_\_\_\_\_ Court.  
Between A.B. \_\_\_\_\_ Plaintiff,  
and \_\_\_\_\_ Defendant.  
C.B. \_\_\_\_\_

Seal a writ of prohibition directed to a Judge of the above-named Court and to the above-  
named plaintiff to prohibit them from further proceeding in the said  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
(Signed)  
(Address)

Solicitor for the \_\_\_\_\_

## No. 15.

*Mandamus*

[Heading as in Form No 1.]

Seal in pursuance of order dated \_\_\_\_\_ a writ of *mandamus* directed to \_\_\_\_\_ com-  
manding \_\_\_\_\_ to \_\_\_\_\_ returnable \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_ .

(Signed)  
(Address)

Solicitor for the \_\_\_\_\_

## No. 16.

*Habeas Corpus ad Testificandum.*

[Heading as in Form No 1.]

Seal in pursuance of order dated \_\_\_\_\_ a writ of *habeas corpus ad testificandum* directed  
to the \_\_\_\_\_ to bring \_\_\_\_\_ before \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_ .

(Signed)  
(Address)

Solicitor for the \_\_\_\_\_

## APPENDIX G.

No. 17.

*Of Commission to Examine Witnesses.**[Heading as in Form No. 1.]*

Seal in pursuance of order dated \_\_\_\_\_ a writ in the nature of a mandamus or commission  
to examine witnesses directed to \_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
(Signed)  
(Address)  
Solicitor for the \_\_\_\_\_

No. 18.

*Commission of Partition.**[Heading as in Form No. 1.]*

Seal in pursuance of order dated \_\_\_\_\_ a commission of partition directed to \_\_\_\_\_ returnable  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
(Signed)  
(Address)  
Solicitor for the \_\_\_\_\_

No. 19.

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

Amend in pursuance of order *[or fiat]* dated \_\_\_\_\_ the writ of summons in this  
action by\* \_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
(Signed)  
(Address)  
Solicitor for the \_\_\_\_\_

\* Set out  
amendments  
when required.

No. 20.

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

Seal in pursuance of order dated \_\_\_\_\_ a renewed writ of summons in this action,  
indorsed as follows:—  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
(Signed)  
(Address)  
Solicitor for the \_\_\_\_\_

No. 21.

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

Seal writ of subpoena \_\_\_\_\_ on behalf of the \_\_\_\_\_ directed to \_\_\_\_\_ returnable  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
(Signed)  
(Address)  
Solicitor for the \_\_\_\_\_

No. 23.

*Entry of Appeal**[Heading as in Form No. 1.]*

Enter this appeal from the order *[or judgment]* of \_\_\_\_\_ in this action,  
dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
(Signed)  
(Address)



## APPENDIX H.

## APPENDIX H.

## FORMS OF WRITS.

## No. 1.

*Writ of Fieri Facias.*

In the Supreme Court.  
Between A.B. - - - - - Plaintiff, 19      No.

C.D. and others - - - - - Defendants.

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

We command you that of the real and personal estate of C.D. you cause to be made the sum  
of £      and also interest thereon at the rate of £      per centum per annum from the  
day of      \* which said sum of money and interest were lately before us in our  
Supreme Court in a certain action [or, certain actions, *as the case may be*] wherein A.B. is plaintiff  
and C.D. and others are defendants [or in a certain matter there depending intituled "In the matter  
of E.F." *as the case may be*] by a judgment [or order, *as the case may be*] of our said Court, bear-  
ing date the      day of      adjudged [or ordered, *as the case may be*] to be paid by  
the said C.D. to A.B., together with certain costs in the said judgment [or order, *as the case may  
be*] mentioned, and which costs have been taxed and allowed at the sum of £      as appears by  
the certificate of the taxing officer, dated the      day of      And that of the  
real and personal estate of the said C.D., you further cause to be made the said  
sum of £      [costs] together with interest thereon at the rate of £      per centum  
per annum from the      day of      \* and that you have that money and  
interest before us in our said Court immediately after the execution hereof to be paid to the said  
A.B. in pursuance of the said judgment [or order, *as the case may be*]: And in what manner you  
shall have executed this our writ make appear to us in our said Court immediately after the execu-  
tion thereof; and have there then this writ.

Witness      Chief Justice, at Melbourne, the      day of  
\* Day of the judgment or order, or day on which money directed to be paid, or day from which  
interest is directed by the order to run, as the case may be.

## No. 2.

*Fieri Facias on Order for Costs.*

[Heading as in Form No. 1.]

GEORGE THE SIXTH, by the Grace of God, &c. [as in Form No. 1].

To the sheriff, greeting:

We command you that of the real and personal estate of      you cause to be  
made the sum of      for certain costs which by an order of our Supreme Court dated the  
day of      19      were ordered to be paid by the said      to  
and which have been taxed and allowed at the said sum, and interest on the said sum at the rate  
of £      per centum per annum from the      day of      19      and that you  
have the said sum and interest before us in our said Court, immediately after the execution hereof,  
to be rendered to the said      And in what manner you shall have executed this our  
writ make appear to us immediately after the execution hereof; and have there then this writ.

Witness      Chief Justice, the      day of      19      at Melbourne.  
Levy £      and £      for costs of execution, &c., and also interest on £      at  
£      per centum per annum from the      day of      19      until payment; besides  
sheriff's poundage, officer's fees, costs of levying, and all other legal incidental expenses.

This writ was issued by      of      agent for      of  
solicitor for the

The      is a      and resides at

## No. 4.

*Writ of Venditioni Exponas.*

[Heading as in Form No. 1.]

GEORGE THE SIXTH, by the Grace of God, &c. [as in Form No. 1].

To the sheriff, greeting:

Whereas by our writ we lately commanded you that of the real and personal estate of C.D.  
[here recite the fieri facias to the end]: And on the      day of      you returned to  
us in our said Court, that by virtue of the said writ to you directed you had taken real and per-  
sonal estate of the said C.D. to the value of the money and interest aforesaid, which said real and per-  
sonal estate remained in your hands unsold for want of buyers: Therefore we, being desirous that  
the said A.B. should be satisfied his money and interest aforesaid, command you that you expose to  
sale, and sell or cause to be sold, the real and personal estate of the said C.D. by you in form  
aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have  
the money arising from such sale before us in our said Court immediately after the execution hereof,  
to be paid to the said A.B.; and have there then this writ.

Witness      Chief Justice, at Melbourne, the      day of  
[Indorsement: This writ was issued by, &c.]

No. 8.

APPENDIX H.

*Writ of Possession.**[Heading as in Form No. 1.]*GEORGE THE SIXTH, &c. *[as in Form No. 1.]*

To the sheriff, greeting:

Whereas lately in our Supreme Court, by a judgment of the same Court [*A.B. recovered*] or [*E.F. was ordered to deliver to A.B.*] possession of all that with the appurtenances: Therefore we command you that you enter the same and, without delay, you cause the said *A.B.* to have possession of the said land and premises with the appurtenances: And in what manner you have executed this our writ make appear to us in our said Court immediately after the execution hereof; and have you there then this writ. Witness, &c.

*[Indorsement: This writ was issued by, &c.]*

No. 10.

*Writ of Delivery.**[Heading as in Form No. 1.]*GEORGE THE SIXTH, by the Grace of God, &c. *[as in Form No. 1.]*

To the sheriff, greeting:

We command you that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue*] to be returned to *A.B.*, which the said *A.B.* lately in our Supreme Court recovered against *C.D.* [*or C.D. was ordered to deliver to the said A.B.*] in an action in our said Court: And we further command you that if the said chattels cannot be found† you distrain the said *C.D.* by all his lands and chattels, so that neither the said *C.D.* nor any one for him do lay hands on the same until the said *C.D.* render to the said *A.B.* the said chattels\*: And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof: and have you there then this writ. Witness, &c.

*[Indorsement: This writ was issued by, &c.]*

No. 11.

*The Like, in another form.**[Heading as in Form No. 1.]*

*[Proceed as in the preceding form until the† and then thus:]* of the goods and chattels of the said *C.D.* you cause to be made £ *[the assessed value of the chattels]*: And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof; and have you there then this writ. Witness, &c.

*[If in either of the preceding forms it is wished to include damages, costs, and interest, proceed to the\* and continue thus:—*

And we further command you that of the real and personal estate or the said *C.D.*, you cause to be made the sum of £ *[damages]*. And also interest thereon at the rate of £ per centum per annum, from the day of which said sum of money and interest were in the said action by the judgment therein [*or by order*] dated the day of adjudged [*or ordered*] to be paid by the said *C.D.* to *A.B.*, together with certain costs in the said judgment [*or order*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of £ as appears by the certificate of the said taxing officer dated the day of . And that of the real and personal estate of the said *C.D.* you further cause to be made the said sum of £ [*costs*] together with interest thereon at the rate of £ per centum per annum from the day of and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said *A.B.* in pursuance of the judgment [*or order*].

And in what manner, &amp;c.

And have you there this writ.

Witness, &amp;c.

*[Indorsement: This writ was issued by, &c.]*

## APPENDIX H.

No. 12.

*Writ of Attachment.**[Heading as in Form No. 1].*GEORGE THE SIXTH, by the Grace of God, &c. *[as in Form No. 1].*

To the sheriff, greeting :

We command you to attach *C.D.*, so as to have him before us in our Supreme Court, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf; and hereof fail not, and bring this writ with you. Witness, &c.

No. 13.

*Writ of Sequestration.**[Heading as in Form No. 1].*GEORGE THE SIXTH, by the Grace of God, &c. *[as in Form No. 1].*To *[names of not less than four commissioners]* greeting :

Whereas lately in our Supreme Court, in a certain action there depending, wherein *A.B.* is plaintiff and *C.D.* and others are defendants *[or in a certain matter then depending, intituled "In the matter of E.F.," as the case may be]* by a judgment *[or order, as the case may be]* of our said Court, made in the said action *[or matter]*, and bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ it was ordered that the said *C.D.* should *[pay into Court to the credit of the said action the sum of £\_\_\_\_ or as the case may be]*: Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said *C.D.*, and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours go to and enter upon all the messuages, lands, tenements, and real estates of the said *C.D.*, and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C.D.* shall *[pay into Court to the credit of the said action the sum of £\_\_\_\_ or, as the case may be]* clear his contempt and our said Court make other order to the contrary. Witness, &c.

*[Indorsement: This writ was issued, &c.]*

No. 14.

*Distringas against Ex-Sheriff.**[Heading as in Form No. 1.]*GEORGE THE SIXTH, by the Grace of God, &c. *[as in Form No. 1].*

To the sheriff, greeting :

We command you that you distrain \_\_\_\_\_ late sheriff, by all his land and chattels, so that neither he nor any one by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said \_\_\_\_\_ expose for sale and sell or cause to be sold for the best price that can be gotten for the same those lands and chattels which were of \_\_\_\_\_, to the value of £\_\_\_\_, the sum of £\_\_\_\_ which lately before us in our Supreme Court in a certain action wherein \_\_\_\_\_ plaintiff and \_\_\_\_\_ defendant, by a \_\_\_\_\_ of our said Court bearing date the \_\_\_\_\_ day of \_\_\_\_\_ was \_\_\_\_\_ to be paid by the said \_\_\_\_\_ to the said \_\_\_\_\_, and of the sum of £\_\_\_\_, the amount at which the costs in the said \_\_\_\_\_ mentioned have been taxed and allowed, and of interest on the said sum of £\_\_\_\_ at the rate of £\_\_\_\_ per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_, and on the said sum of £\_\_\_\_ at the same rate from the \_\_\_\_\_ day of \_\_\_\_\_, which lands and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late sheriff hath lately returned to us in our said Court. And have the money arising from such sale before us in our said Court immediately after the execution hereof, to be paid to the said \_\_\_\_\_ And have there then this writ.

Witness \_\_\_\_\_ Chief Justice, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord One thousand nine hundred and \_\_\_\_\_ at Melbourne.

This writ was issued by \_\_\_\_\_ of \_\_\_\_\_ agent for \_\_\_\_\_ of \_\_\_\_\_ solicitor for the \_\_\_\_\_ who reside at \_\_\_\_\_

The defendant is a \_\_\_\_\_ and resides at \_\_\_\_\_

\* The "amount of" or "part of."  
† "judgment."  
‡ "order."  
§ "adjudged" or "ordered."

## APPENDIX J.

APPENDIX J.

## FORMS OF SUBPENA, &amp;c.

## No. 1.

*Subpœna ad testificandum (General Form).*

In the Supreme Court.

19 . No.

Between A.B. . . . . Plaintiff,

and

C.D. . . . . Defendant.

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

To [A.B. and others] greeting:

We command you to attend before at on day the  
day of 19 at the hour of in the noon, and so from day to day until  
the above cause is tried, to give evidence on behalf of the

Witness Chief Justice, the day of in the year of our † "plaintiff" or  
Lord One thousand nine hundred and at Melbourne. "defendant."

## No. 2.

*Habeas corpus ad testificandum.*

[Heading as in Form No. 1.]

GEORGE THE SIXTH, by the Grace of God, &amp;c.:

To the [keeper of our prison at]

We command you that you bring who it is said is detained in our prison under your  
custody before at on day the day of 19  
at the hour of in the noon, and so from day to day until the above action is tried,  
to give evidence on behalf of the . And that immediately after the said  
shall have so given his evidence you safely conduct him to the prison from which he shall have  
been brought.

Witness Chief Justice, the day of in the year of our  
Lord One thousand nine hundred and at Melbourne.

The writ was issued by  
of  
agent for  
of  
solicitor for the who reside at

## No. 3.

*Subpœna duces tecum (General Form.)*

[Heading as in Form No. 1.]

GEORGE THE SIXTH, by the Grace of God, &amp;c.:

To\* greeting:

We command you to attend before at on day the  
day of 19 at the hour of in the noon, and so from day to day  
until the above cause is tried, to give evidence on behalf of the and also to bring with you  
and produce at the time and place aforesaid†

Witness Chief Justice, the day of in the year of our  
Lord One thousand nine hundred and at Melbourne.

\* The names  
of three  
witnesses may  
be inserted.

† Specify  
documents to be  
produced.

## No. 6.

*Subpœna ad testificandum at sittings of the Supreme Court.*

[Heading as in Form No. 1.]

GEORGE THE SIXTH, by the Grace of God, &amp;c.:

To greeting:

We command you to attend at the sittings of our Supreme Court to be holden at  
on day the day of 19 at the hour of in the  
noon and so from day to day during the said sittings until the above cause is tried to give evidence on  
behalf of the

Witness Chief Justice, the day of in the year of our  
Lord One thousand nine hundred and at Melbourne.

## APPENDIX J.

## No. 7.

*Subpoena duces tecum at Sittings of Supreme Court.*

[Heading as in Form No. 1.]

GEORGE THE SIXTH, by the Grace of God, &amp;c.:

To\* greeting:

\* The names of three witnesses may be inserted.

† Specify documents to be produced.

We command you to attend at the sittings of our Supreme Court to be holden at \_\_\_\_\_  
 on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at the hour of \_\_\_\_\_ o'clock in the  
 noon, and so from day to day until the above cause is tried, to give evidence on behalf  
 of the \_\_\_\_\_ and also to bring with you and to produce at the time and place aforesaid†  
 Witness Chief Justice, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our  
 Lord One thousand nine hundred and \_\_\_\_\_ at Melbourne.

## No. 9.

*Certiorari to County Court.*

[Heading as in Form No. 1.]

GEORGE THE SIXTH, by the Grace of God, &amp;c.:

To the Judge of the County Court holden at \_\_\_\_\_ greeting:

We, willing for certain causes to be certified of a plaint levied in our Court before you against  
 at the suit of \_\_\_\_\_ command you that you send to us  
 forthwith in our Supreme Court the said plaint with all things touching the same, as fully and  
 entirely as the same remain in our said Court before you, by whatsoever names the parties may be  
 called therein, together with this writ, that we may further cause to be done thereupon what of right we  
 shall see fit to be done.

Witness Chief Justice, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our  
 Lord One thousand nine hundred and \_\_\_\_\_ at Melbourne.

This writ was issued by \_\_\_\_\_ of \_\_\_\_\_  
 agent for \_\_\_\_\_ of \_\_\_\_\_ solicitor for  
 the \_\_\_\_\_ who reside at \_\_\_\_\_

## No. 10.

*Certiorari (General).*

[Heading as in Form No. 1.]

GEORGE THE SIXTH, by the Grace of God, &amp;c.:

To the \_\_\_\_\_ greeting:

We, willing for certain causes to be certified of \_\_\_\_\_ command you that you send to us  
 in our Supreme Court on the \_\_\_\_\_ day of \_\_\_\_\_ the \_\_\_\_\_ aforesaid, with all things  
 touching the same, as fully and entirely as they remain in \_\_\_\_\_ together with this writ,  
 that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness Chief Justice, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our  
 Lord One thousand nine hundred and \_\_\_\_\_ at Melbourne.

This writ was issued by \_\_\_\_\_ of \_\_\_\_\_  
 agent for \_\_\_\_\_ of \_\_\_\_\_ solicitor for  
 the \_\_\_\_\_ who reside at \_\_\_\_\_

## No. 11.

*Prohibition...*

[Heading as in Form No. 1.]

GEORGE THE SIXTH, by the Grace of God, &amp;c.:

To the [Judge of the County Court holden at] \_\_\_\_\_ and to [name of plaintiff] of \_\_\_\_\_ greeting:

Whereas we have been given to understand that you the said \_\_\_\_\_ have [entered  
 a plaint against] C.D. in the said Court, and that the said Court has no jurisdiction in the said [cause],  
 or to hear and determine the said [plaint] by reason that [state facts showing want of jurisdiction].  
 We therefore hereby prohibit you from further proceeding in the said [action] in the said  
 Court.

Witness Chief Justice, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our  
 Lord One thousand nine hundred and \_\_\_\_\_ at Melbourne.

This writ was issued by \_\_\_\_\_ of \_\_\_\_\_  
 agent for \_\_\_\_\_ of \_\_\_\_\_ solicitor for  
 the \_\_\_\_\_ who reside at \_\_\_\_\_



No. 12.

APPENDIX J.

*Mandamus.*

GEORGE THE SIXTH, by the Grace of God, &c. : to of Greeting :

Whereas by [here recite Act of Parliament or Charter if the act required to be done is founded on either one or the other]. And whereas we have been given to understand and be informed in our Supreme Court before us that [insert necessary inducement and averments]. And you the said were then and there required by [insert demand] but that you the said then and there wholly neglected and refused to [insert refusal] nor have you or any of you at any time since as we have been informed. Whereupon we, being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every one of you firmly enjoining you that you [insert command] or that you show us cause to the contrary thereof, lest by your default the same complaint should be repeated to us, and how you shall have executed this our writ made known to us in our said Court forthwith then returning to us this our said writ, and this you are not to omit. Witness Chief Justice, the day of in the year of our Lord One thousand nine hundred and

By the Court,  
(Signed)

No. 13.

*Commission to Examine Witnesses**[Heading as in Form No. 1.]*

GEORGE THE SIXTH, by the Grace of God, &c. :

To of and of commissioners named  
by and on behalf of the and to of  
and of commissioners named by and on behalf of the  
greeting :

Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *vivâ voce* as hereinafter mentioned witnesses on behalf of the said and respectively at before you or any two of you, so that one commissioner only on each side be present and act at the examination. And we command you as follows:—

1. Both the said and the said shall be at liberty to examine on interrogatories and *vivâ voce* on the subject-matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *vivâ voce*, the parties producing any witness for examination being at liberty to re-examine him *vivâ voce*, and all such additional *vivâ voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business; and if the commissioners or commissioner of that party neglect to attend pursuant to the notice, then one of you, the commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract shall be annexed to the witness's deposition.

4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the commissioners or commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *vivâ voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

## APPENDIX J.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses and by the commissioners or commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Prothonotary of the Supreme Court on or before the \_\_\_\_\_ day of \_\_\_\_\_ enclosed in a cover under the seals or seal of the commissioners or commissioner.

8. Before you or any of you in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other commissioner, a commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the other or others of you.  
Witness \_\_\_\_\_, Chief Justice, the \_\_\_\_\_ day of \_\_\_\_\_ in the  
year of our Lord One thousand nine hundred and \_\_\_\_\_ at Melbourne.

This writ was issued by  
\_\_\_\_\_ of  
agent for  
of  
solicitor for the  
who reside at \_\_\_\_\_

*Witness's Oath.*

I swear by Almighty God that I will true answer to make to all such questions as shall be asked me, without favour or affection to either party, and therein I will speak the truth, the whole truth, and nothing but the truth.

*Commissioner's Oath.*

I swear by Almighty God that I will according to the best of my skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written.

*Interpreter's Oath.*

I swear by Almighty God that I will truly and faithfully, and without partiality to any or either of the parties in this cause and to the best of my ability, interpret and translate the oath or oaths, affirmation or affirmations, which shall be administered to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as I am directed and employed by the said commissioners to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language.

*Clerk's Oath*

I swear by Almighty God that I will truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross, all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as I am directed and employed by the commissioners to take, write down, transcribe, or engross the said questions and depositions.

Direction of Interrogatories, &c., when returned by the Commissioners.

*The Prothonotary of the Supreme Court, Melbourne.*

## APPENDIX K.

APPENDIX K.

## SUMMONSES AND ORDERS.

## No. 1.

*Summons (General Form.)*

In the Supreme Court. Between A.B. Plaintiff, 19 No.  
and C.D. Defendant.  
Let all parties concerned attend the Judge in Chambers on day the  
day of 19 at o'clock in the noon, on the hearing of an application on  
the part of  
Dated the day of 19 of solicitor for  
This summons was taken out by  
To

## No. 1A.

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

Upon reading the affidavit of [the plaintiff or as may be].  
Let all parties concerned attend the Judge in Chambers, Law Courts, William-street, Melbourne,  
on the day of 19 at o'clock in the noon on the  
hearing of an application on the part of the plaintiff that he be at liberty to sign final judgment in this  
action against the defendant [or if against one or some of several insert names] for the amount indorsed  
on the writ, with interest, if any [or for recovery of the land in the indorsement on the writ mentioned  
and the arrears of rent and mesne profits therein claimed] and costs.  
Dated the day of 19 of solicitor for  
This summons was taken out by  
To

## No. 2.

*Order (General Form.)*

In the Supreme Court. \*Judge in Chambers. 19 No.  
Between A.B. Plaintiff, Insert name  
and C.D. Defendant. of Judge.  
Upon hearing and upon reading the affidavit of filed the  
day of 19 and  
It is ordered and that the costs of this application be  
Dated the day of 19

## No. 3A.

*Summons for Directions.**[Heading as in Form No. 1.]*

Let all parties concerned attend the Judge in Chambers, at the Law Courts, William-street,  
Melbourne, on the day of 19 at o'clock in the noon,  
on the hearing of an application on the part of 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 E. solicitor for  
To

Chapter I.—Civil Proceedings.

4090

APPENDIX K.

NO. 4B.

Order for Directions.

[Heading as in Form No. 1.]

Upon hearing the solicitors on both sides, the following directions are hereby given, and it is ordered—

That there be pleadings in the action.  
That the deliver to the an account in writing of the particulars of and that unless such particulars be delivered within days from the date of this order all further proceedings be stayed until the delivery thereof, and that the defendant have days after delivery of said particulars to deliver his defence.

That the plaintiff and defendant do respectively within ten days from the date of this order answer on affidavit stating what documents are or have been in their possession or power relating to the matters in question in this action.

That the plaintiff be at liberty to deliver to the defendant and that the defendant be at liberty to deliver to the plaintiff interrogatories in writing [as approved by the Judge, or limited to a particular subject-matter to be specified] or generally and that the said interrogatories be answered as prescribed by Order XXXI. of the Rules of the Supreme Court.

That the action be tried at  
That the action be tried with  
Dated the day of

19

NO. 4E.

SUMMONS FOR THIRD PARTY DIRECTIONS.

[Heading as in Form No. 1.]

Let all parties concerned attend the Judge in Chambers, at the Law Courts, William-street, Melbourne, on the day of 19, at o'clock in the noon on the hearing of an application on the part of for an order for third party directions, as follows:—That the defendant deliver a statement of his claim to the said third party within days from this date, who shall plead thereto within days. And that the said third party be at liberty to appear at the trial of this action and take such part as the Judge shall direct, and be bound by the result of the trial.

And that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto.

Dated the day of 19  
This summons was taken out by of the solicitor for  
To

NO. 4F.

ORDER FOR THIRD PARTY DIRECTIONS.

[Heading as in Form No. 1.]

Upon hearing the solicitor for the plaintiff, defendant, and third party;  
It is ordered that the defendant deliver a statement of his claim to the said third party within days from this date, who shall plead thereto within days. And that the said third party be at liberty to appear at the trial of this action, and take such part as the Judge shall direct, and be bound by the result of the trial. And that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto, And that the costs of this application be

Dated the day of 19

NO. 5.

Order for Time.

[Heading as in Form No. 1.]

Upon hearing and upon reading the affidavit of filed the day of 19 and  
It is ordered that the shall have time and that the costs of this application be  
Dated the day of 19

## No. 6.

APPENDIX K.

*Order under Order XIV.*

## No. 1.

[Heading as in Form No. 1.]

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

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ, with interest, if any [or possession of the land in the indorsement of the writ described as                      ], and costs to be taxed, and that the costs of this application be

Dated the                      day of                      19                      .

## No. 7.

*Order under Order XIV.*

## No. 2.

[Heading as in Form No. 1.]

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

It is ordered that the defendant be at liberty to defend this action, and the following directions are hereby given, and it is ordered that [fill in directions], and that the costs of this application be

Dated the                      day of                      19                      .

## No. 8.

*Order under Order XIV.*

## No. 3.

[Heading as in Form No. 1.]

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

It is ordered that if the defendant                      pay into Court within a week from the date of this order the sum of £                      he be at liberty to defend this action, but that if that sum be not so paid the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons, with interest, if any, and costs, and that in either event the costs of this application be

Dated the                      day of                      19                      .

## No. 9.

*Order under Order XIV.*

## No. 4.

[Heading as in Form No. 1.]

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

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of £                      he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid the plaintiff be at liberty to sign judgment for that sum and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim.

And that the costs of this application be

Dated the                      day of                      19                      .

## No. 10.

*Order to Amend.*

[Heading as in Form No. 1.]

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

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by                      and that the costs of this application be

Dated the                      day of                      19                      .

## APPENDIX K.

No. 11.

*Order for Particulars (Partnership).*

[Heading as in Form No. 1.]

Upon hearing                      and upon reading the affidavit of                      filed the  
 day of                      19                      and                       
 It is ordered that the                      furnish the                      with a statement in writing, verified by  
 affidavit, setting forth the names of the persons constituting the members or co-partners of their firm,  
 pursuant to the Rules of the Supreme Court, and that the costs of this application be  
 Dated the                      day of                      19                      .

No. 12.

*Order for Particulars (General).*

[Heading as in Form No. 1.]

Upon hearing                      and upon reading the affidavit of                      filed the  
 day of                      19                      and                       
 It is ordered that the plaintiff deliver to the defendant                      an account in writing of the  
 particulars of the plaintiff's claim in this action, and that unless such particulars be delivered within  
                     days from the date of this order all further proceedings be stayed until the delivery thereof,  
 and that the costs of this application be  
 Dated the                      day of                      19                      .

No. 13.

*Order for Particulars (Accident Case).*

[Heading as in Form No. 1.]

Upon hearing                      and upon reading the affidavit of                      filed the  
 day of                      19                      and                       
 It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars  
 of the injuries and expenses mentioned in the statement of claim, together with the time and place  
 of the accident, and the particular acts of negligence complained of, and that unless such particulars  
 be delivered within                      days from the date of this order all further proceedings in this action  
 be stayed until the delivery thereof, and that the costs of this application be  
 Dated the                      day of                      19                      .

No. 14.

*Order to Discharge or Vary on Application by Third Party.*

[Heading as in Form No. 1.]

Upon hearing                      and upon reading the affidavit of                      filed the  
 day of                      19                      and                       
 It is ordered that the order of                      in this action dated the                      day  
 of                      19                      , be discharged [or varied by                      ], and that the costs of this  
 application be  
 Dated the                      day of                      19                      .

No. 15.

*Order to Dismiss for Want of Prosecution.*

[Heading as in Form No. 1.]

Upon hearing                      and upon reading the affidavit of                      filed the  
 day of                      19                      and                       
 It is ordered that this action be, for want of prosecution, dismissed with costs to be taxed and  
 paid to the defendant by the plaintiff, and that the costs of this application be  
 Dated the                      day of                      19                      .

## APPENDIX K.

[Heading, as in Form No. 1.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_

*Order for Affidavit as to Documents.*

[Heading as in Form No. 1.]

Dated the                      day of                      19                     

*Order to Produce Documents for Inspection.*

[Heading as in Form No. 1.]

Dated the                      day of                      19

*Order for Production (Underwriters).*

[Heading as in Form No. 1.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_

## APPENDIX K.

## No. 21.

*Order for Substituted Service.**[Heading as in Form No. 1.]*

Upon hearing                      and upon reading the affidavit of                      filed the  
    day of                      19                      and                      day of  
 It is ordered that service of a copy of this order, and of a copy of the writ of summons in  
 this action, by sending the same by a prepaid post letter, addressed to the defendant  
 at                      [or such other substituted service as may be ordered,] shall be good and sufficient  
 service of the writ.  
 Dated the                      day of                      19                      .

## No. 22.

*Order for Renewal of Writ.**[Heading as in Form No. 1.]*

Upon hearing                      and upon reading the affidavit of                      filed the  
    day of                      19                      and                      day of  
 It is ordered that the writ in this action be renewed for six months from the date of its  
 renewal, pursuant to the Rules of the Supreme Court.  
 Dated the                      day of                      19                      .

## No. 23.

*Order for Issue of Notice Claiming Contribution.**[Heading as in Form No. 1.]*

Upon hearing                      and upon reading the affidavit of                      filed the  
    day of                      19                      and                      day of  
 It is ordered that the defendant                      be at liberty to issue a notice claiming  
    over against                      pursuant to the Rules of the Supreme Court, and  
 that such notice may be served upon the said                      within                      days of this order.  
 Dated the                      day of                      19                      .

## No. 24.

*Order of Reference.**[Heading as in Form No. 1.]*

Upon hearing                      and by consent  
 It is ordered as follows:—  
 1. [State matters to be referred] shall be referred to the award of  
 2. The arbitrator shall have all the powers as to certifying and amending of a Judge of the  
 Supreme Court.  
 3. The arbitrator shall make and publish his award in writing of and concerning the matters  
 referred, ready to be delivered to the parties in difference, or such of them as require the same (or  
 their respective personal representatives if either of the said parties die before the making of the  
 award) on or before the                      next or on or before such further day as the arbitrator may from  
 time to time appoint and signify in writing signed by him and indorsed on this order.  
 4. The said parties shall in all things abide by and obey the award so to be made.  
 5. The costs of the said cause and the costs of the reference and award shall be  
 6. The arbitrator may (if he think fit) examine the said parties to this cause and their respective  
 witnesses, upon oath or affirmation.  
 7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in  
 their or either of their custody or power relating to the matters in difference.  
 8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbi-  
 trator or concerning the matters so to be referred.  
 9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from  
 making an award, he or they shall pay such costs to the other as                      may think reasonable  
 and just.  
 10. In the event of either of the said parties disputing the validity of the said award, or  
 moving the                      to set it aside, the said                      shall have power to remit the matters hereby  
 referred or any or either of them to the reconsideration of the arbitrator.  
 11. In the event of the arbitrator declining to act or dying before he has made his award, the  
 said parties may, or, if they cannot agree, a Judge of the Supreme Court may, on application by  
 either side, appoint a new arbitrator.



12. Unless restrained by any order of the Supreme Court, or of any Judge thereof, the party or parties in whose favour the award shall be made shall be at liberty within \_\_\_\_\_ days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

APPENDIX-K.

## No. 25.

*Order for Examination of Witnesses before Arbitrator.*

[Heading as in Form No. 1.]

Upon hearing \_\_\_\_\_ day of \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
 It is ordered that \_\_\_\_\_ attend before \_\_\_\_\_ the arbitrator herein on  
 the \_\_\_\_\_ day of \_\_\_\_\_ 19 at \_\_\_\_\_ and then and there submit to be examined on  
 oath or affirmation on behalf of the \_\_\_\_\_ touching the matters referred to the said arbitrator.  
 Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

## No. 26.

*Order for Examination of Witnesses and Production of Documents.*

[Heading as in Form No. 1.]

Upon hearing \_\_\_\_\_ day of \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
 It is ordered that \_\_\_\_\_ attend before \_\_\_\_\_ the arbitrator herein on  
 the \_\_\_\_\_ day of \_\_\_\_\_ 19 at \_\_\_\_\_ and then and there submit to be examined on  
 oath or affirmation on behalf of the \_\_\_\_\_ touching the matters referred to the said arbitrator.  
 And it is further ordered that the said \_\_\_\_\_ do at the time and place aforesaid produce  
 and deliver to the said arbitrator the papers, documents, and writings hereafter mentioned, that is  
 to say,\*  
 dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Specify  
documents to be  
produced.

## No. 27.

*Order Charging Stock—Nisi.*

[Heading as in Form No. 1.]

Upon hearing \_\_\_\_\_ day of \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
 judgment against the defendant on the \_\_\_\_\_ day of \_\_\_\_\_ 19 whereby it appears that the plaintiff recovered  
 £ \_\_\_\_\_ and £ \_\_\_\_\_ costs, that the said defendant is still indebted to the plaintiff in the sum of  
 £ \_\_\_\_\_, and that there is standing in  
 It is ordered that unless sufficient cause be shown to the contrary before \_\_\_\_\_ on  
 \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 19 at \_\_\_\_\_ o'clock in the forenoon, the  
 defendant's interest in the \_\_\_\_\_ so standing as aforesaid shall, and that it in the meantime do,  
 stand charged with the payment of the above-mentioned amount due on the said judgment, together  
 with the costs of this application.  
 Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

## No. 28.

*Order Charging Stock—Absolute.*

[Heading as in Form No. 1.]

Upon hearing \_\_\_\_\_ day of \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
 day of \_\_\_\_\_ 19 reciting the affidavit of \_\_\_\_\_ and an order nisi made herein on the  
 a judgment against the defendant on the \_\_\_\_\_ day of \_\_\_\_\_ 19 whereby it appeared that the plaintiff recovered  
 £ \_\_\_\_\_ and £ \_\_\_\_\_ costs, that the said defendant is still indebted to the plaintiff in the said sums  
 so recovered, and that there is standing in  
 It is ordered that the defendant's interest in the \_\_\_\_\_ so standing as aforesaid stand  
 charged with the payment of the above-mentioned amount due on the said judgment, together with the  
 costs of this application.  
 Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

## APPENDIX K.

No. 32.

*Order of Reference.*

[Heading as in Form No. 1.]

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
 day of \_\_\_\_\_ 19 \_\_\_\_\_ and  
 It is ordered that the following question arising in this action, namely \_\_\_\_\_ be referred  
 for inquiry and report to \_\_\_\_\_ and that the cost of this application be \_\_\_\_\_  
 Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

No. 33.

*Order of Reference.*

[Heading as in Form No. 1.]

Upon hearing \_\_\_\_\_ and upon \_\_\_\_\_ reading the affidavit of \_\_\_\_\_ filed the  
 day of \_\_\_\_\_ 19 \_\_\_\_\_ and  
 It is ordered that the [state whether all or some, and, if so, which of the questions are to be  
 tried] in this action be tried by \_\_\_\_\_, who shall have all the powers as to  
 certifying and amending of a Judge of the Supreme Court, and shall make his report of and concern-  
 ing the matters ordered to be tried as aforesaid pursuant to Statute for direct judgment to be entered  
 and otherwise deal with the whole action pursuant to Order XXXVI., Rule 37]. And it is further  
 ordered that the said referee may, if he thinks fit, examine the parties to this action and their  
 respective witnesses upon oath or affirmation, and that the said parties shall produce before the said  
 referee all books, papers, and writings in their or either of their custody or power relating to the  
 matters so ordered to be tried.  
 And it is further ordered that neither the plaintiff nor the defendant shall bring or prosecute  
 any action against the referee, or against each other, of or concerning the matters so ordered to be  
 tried; and that if either party by affected delay, or otherwise wilfully prevent the said referee from  
 making his report he or they shall pay such costs to the other as the Court or any Judge thereof  
 may think reasonable or just.

And it is further ordered that in the event of the said referee declining to act, or dying before  
 he has made his report, the said parties may, or if they cannot agree one of the Judges of the  
 Court may upon application by either party, appoint a new referee. And it is ordered that the costs  
 of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

No. 34.

*Order of Reference to Chief Clerk or Prothonotary.*

[Heading as in Form No. 1.]

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
 day of \_\_\_\_\_ 19 \_\_\_\_\_ and  
 It is ordered that this action [or the matters of account in this action, or the following ques-  
 tions in this action being matters of account, namely, stating them] be referred to the Chief Clerk [or  
 Prothonotary], with all the powers as to certifying and amending of a Judge of the Supreme Court,  
 and that the costs of the \_\_\_\_\_ and of the reference be in the discretion of the Chief Clerk [or  
 Prothonotary], and the costs of this application be \_\_\_\_\_  
 Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

No. 35.

*Order for Examination of Witnesses before Trial.*

[Heading as in Form No. 1.]

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
 day of \_\_\_\_\_ 19 \_\_\_\_\_ and  
 It is ordered that \_\_\_\_\_ a witness on behalf of the \_\_\_\_\_ be examined  
*viva voce* (on oath or affirmation) before \_\_\_\_\_ of the Supreme Court [or before \_\_\_\_\_,  
 esquire, special examiner] the \_\_\_\_\_ solicitor or agent giving to the \_\_\_\_\_  
 solicitor or agent \_\_\_\_\_ notice in writing of the time and place where the examination  
 is to take place.

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

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

No. 36.

APPENDIX K.

*Short Order for Issue of Commission to examine Witnesses.*

[Heading as in Form No. 1.]

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
 day of \_\_\_\_\_ 19\_\_\_\_ and \_\_\_\_\_  
 It is ordered that the \_\_\_\_\_ be at liberty to issue a commission for the examination of  
 the witnesses on \_\_\_\_\_ behalf at \_\_\_\_\_  
 And it is further ordered that the trial of this action be stayed until the return of the said com-  
 mission, the usual long order to be drawn up, and unless agreed upon by the parties within one week,  
 to be settled in chambers, and that the costs of this application be \_\_\_\_\_  
 Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

No. 37.

*Long Order for Commission to examine Witnesses.*

[Heading as in Form No. 1.]

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

## APPENDIX K.

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

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

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

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

Dated the                      day of                      19                      .

## No. 37A.

*Order for Issue of Request for Commission.*

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

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

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

## No. 37B.

*Request for Commission.*

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

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

*(Endorsement upon writ.)*

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

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

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

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

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

No. 37c.

APPENDIX K.

*Certificate of Service of Foreign Process.*

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

(1) The original Letter of Request for service of process received from the Court or Tribunal at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ in the matter of \_\_\_\_\_

versus \_\_\_\_\_ and \_\_\_\_\_

(2) The process received with such Letter of Request; and

(3) The evidence of service upon \_\_\_\_\_, the person named in such Letter of Request, together with the verification of a Notary Public.

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

No. 37b.

In the Supreme Court of Victoria  
Between \_\_\_\_\_

19 \_\_\_\_\_

No. \_\_\_\_\_

Plaintiff

and \_\_\_\_\_

Defendant.

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

(a) Name of country.

(b) or substituted service.

(c) If under Order 11 r. 11 add—"Directly through the British Consul" or "by the foreign judicial authority."

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

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Signature of Solicitor.

No. 37e.

In the Supreme Court of Victoria  
Between \_\_\_\_\_

19 \_\_\_\_\_

No. \_\_\_\_\_

Plaintiff

and \_\_\_\_\_

Defendant.

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

Plaintiff's agent:— \_\_\_\_\_

of \_\_\_\_\_

Defendant's agent:— \_\_\_\_\_

of \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Solicitors for \_\_\_\_\_

No. 37f.

In the Supreme Court of Victoria  
Between \_\_\_\_\_

19 \_\_\_\_\_

No. \_\_\_\_\_

Plaintiff

and \_\_\_\_\_

Defendant.

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

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

## APPENDIX K.

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

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

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

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

No. 376.

In the Supreme Court

19 \_\_\_\_\_

No. \_\_\_\_\_

Between \_\_\_\_\_

and \_\_\_\_\_

Plaintiff.

Defendant.

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

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

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

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

## No. 38.

## APPENDIX K.

*Order for Examination of Judgment Debtor.*

In the Supreme Court. 19 . No.

Between A.B. - - - - - Judgment Creditor,

and

C.D. - - - - - Judgment Debtor.

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

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

\* Or as may be ordered.

Dated the day of 19 .

## No. 39.

*Garnishee Order (Attaching Debt).*

In the Supreme Court. 19 . No.

Between A.B. - - - - - Judgment Creditor,

and

C.D. - - - - - Judgment Debtor.  
X.Y. - - - - - Garnishee.

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

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

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

And that the costs of this application be then dealt with

Dated the day of 19 .

## No. 40.

*Garnishee Order (Absolute).**[Heading as in Form No. 39.]*

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

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

Dated the day of 19 .  
1829.—15

Chapter I.—Civil Proceedings.

14102

APPENDIX K.

NO. 41.

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

In the Supreme Court.

In the matter of the taxation of costs and in the matter of A.B. [Name] gentleman,  
[Name] one of the solicitors of the Supreme Court.

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

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

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

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

And it is ordered that the costs of this application be

Dated the            day of            19           

No. 42.

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

In the Supreme Court.

In the matter of the taxation of costs and in the matter of A.B. [Name] gentleman,  
[Name] one of the solicitors of the Supreme Court.

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

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

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

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

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

And it is ordered that the costs of this application be

Dated the            day of            19           

No. 43.

*Order to tax after Action brought.*

[Heading as in Form No. 1.]

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

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

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

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

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

Dated the            day of            19           

31-1001



## No. 44.

APPENDIX K.

*Order to try Action in County Court.**[Heading as in Form No. 1.]*

Upon hearing 19 and upon reading the affidavit of filed the  
 day of It is ordered that this action be tried before the County Court holden at  
 and that the costs of this application be  
 Dated the day of 19 .

## No. 45

*Order to give Security or try Action in County Court.**[Heading as in Form No. 1.]*

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

## No. 50.

*Interpleader Order.*

No. 1.

In the Supreme Court. 19 . No.

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

Upon hearing 19 and upon reading the affidavit of filed the  
 day of It is ordered that the claimant be barred, that no action be brought against the above-named  
 [sheriff] and that the costs of this application be  
 Dated the day of 19 .

## No. 51.

*Interpleader Order.*

No. 2.

In the Supreme Court. 19 . No.

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

Upon hearing 19 and upon reading the affidavit of filed the  
 day of It is ordered that the above-mentioned claimant be substituted as defendant in this action in  
 lieu of the present defendant, and that the costs of this application be  
 Dated the day of 19 .

Chapter I.—Civil Proceedings.

4104

APPENDIX K.

No. 52.

Interpleader Order.

No. 3.

In the Supreme Court,

Between A.B. Plaintiff,

C.D. Defendant,

and between

E.F. Claimant,

and the said  
the sheriff

execution creditor, and

Respondents.

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

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

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

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

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

Dated the day of 19

No. 53.

Interpleader Order.

No. 4.

[Heading as in Form No. 52.]

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

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

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

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

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

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

Dated the day of 19

No. 54.

APPENDIX K.

*Interpleader Order.*

No. 5.

*[Heading as in Form No. 52.]*

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

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

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

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

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

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

Dated the                      day of                      19                      .

No. 55.

*Interpleader Order.*

No. 6.

*[Heading as in Form No. 52.]*

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

It is ordered that

And that the costs of this application be

Dated the                      day of                      19                      .

No. 56.

*Interpleader Order.*

No. 7.

*[Heading as in Form No. 52.]*

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

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

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

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

Dated the                      day of                      19                      .

No. 57.

*Order Dismissing Summons (Generally).**[Heading as in Form No. 1.]*

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

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

Dated the                      day of                      19                      .

\* If the  
 dismissal is with  
 costs add these  
 words.

Chapter I.—Civil Proceedings.

4106

APPENDIX K.

In the Supreme Court of Victoria.

No. 73.

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

Between

Plaintiff,

and

Defendant.

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

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

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

Dated this day of 19 .

No. 74.

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

Dated this day of 19 .

APPENDIX L.

APPENDIX L.

No. 1.

Summons by Chief Clerk.

In the Supreme Court.

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

between C.D., plaintiff,

and

E.F., defendant.

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

Dated this day of 19 .

X.Y.,  
Chief Clerk.

This summons was taken out by of solicitors for

## No. 2.

## APPENDIX L.

*Advertisement for Claimants not being Creditors.*

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

Dated the day of 19

A.B.,  
Chief Clerk.

## No. 3.

*Advertisement for Creditors.*

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

Dated this day of 19

G.H.,  
Chief Clerk.

## No. 4.

*Notice to Creditor to produce Documents.*

In the Supreme Court. 19 No.

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

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

Dated this day of 19

G.R.,

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

To Mr. S.T.

## No. 5.

*Affidavit of Executor or Administrator as to Claims.*

In the Supreme Court. 19 No.

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

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

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

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

## APPENDIX I.

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

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

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

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

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

No. 6.

Exhibit referred to in Affidavit No. 5.

19 No.

A.

Between A.B.

Plaintiff,

and

C.D. and others

Defendants.

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

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

W.B., &c.

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

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

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

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

No. 7.

APPENDIX L

[Short Title.]

*Notice to Creditor of allowance of Claim.*

The claim sent in by you against the estate of *A.B.*, deceased, has been allowed at the sum of £ with interest thereon at £ per cent. per annum from the day of 19 and £ for costs.

[If part only allowed add]—If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit as you may be advised in support of your claim, and to give notice thereof to me on or before the day of 19 next; and to attend at the office of the Chief Clerk, Law Courts, Melbourne, on the day of 19 at o'clock of the noon, being the time appointed for the adjudicating on the claim.

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

To Mr. *P.R.*

No. 8.

*Notice to Creditor to prove his Claim.*

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

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

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

To Mr. *S.T.*

No. 9.

*Notice that Cheques may be received.*

In the Supreme Court.

19 No.

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

The amounts directed to be paid to the creditors of *A.B.*, deceased, by an order made in this [matter and] action dated the day of 19 may be received at the office on and after the day of 19 *G.R.*, of &c., solicitor for the plaintiff [or defendant, or as may be].

To Mr. *W.S.*

No. 10.

*Certificate of Chief Clerk.*

In the Supreme Court.

19 No.

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

In pursuance of the directions given to me by Mr. Justice I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment [or order] in this cause dated the day of is as follows:—  
1. The defendants the executors of the testator, have received personal estate to the amount of £ and they have paid or are entitled to be allowed on account

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No. 11.

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

In the Supreme Court.

9 No.

Between A.B., Plaintiff,

and

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

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

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

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

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



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

APPENDIX L.

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

This should  
accord with the  
order directing  
the account.

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

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

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

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

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

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

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

This should  
accord with the  
order directing  
the account.

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

#### THE FIRST SCHEDULE above referred to.

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

## APPENDIX L.

THE SECOND SCHEDULE above referred to.

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

THE THIRD SCHEDULE above referred to.

[To contain short particulars of the real estate.]

THE FOURTH SCHEDULE above referred to.

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

No. 12.

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

In the Supreme Court.

A.

19

No.

Between A.B., Plaintiff,  
and

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

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

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

## RECEIPTS.

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

## DISBURSEMENTS.

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

No. 13.

APPENDIX L.

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

B.

In the Supreme Court.

19 . No.

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

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

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

## RECEIPTS.

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

## DISBURSEMENTS.

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

No. 14.

*Receiver's Account.*

In the Supreme Court.

19 . No.

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

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

## REAL ESTATE—RECEIPTS.

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

## APPENDIX L.

## PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

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

## RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.

No. of Item.	Date when received.	Names of Persons from whom received.	On what account received.	Amount received.

## PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed.

## SUMMARY.

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

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

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

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

## No. 15.

## Ordinary Conditions of Sale.

## Conditions of Sale.

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

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

APPENDIX L.

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

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

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

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

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

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

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

## No. 16.

## Affidavit of Result of Sale.

In the Supreme Court.

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

19 . No.

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

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

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

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

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

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

## APPENDIX L.

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

The SCHEDULE above referred to.

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

## No. 17.

*List of Debts allowed.*

James v. Jones.

*List of Debts.*

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

## No. 18.

*List of Legacies remaining unpaid.*

James v. Jones.

*List of Legacies.*

Name of Legatee.	Descriptions.	Amounts of Principal and Interest.	Total Amounts due.
James Oliver ...	Son of testator, an infant ... Interest ...	£ s. d. 100 0 0 7 5 6	£ s. d. 107 5 6
Mary Russell ...	Of No. Collins-street, Melbourne, widow ... Interest from 1st January, 19... the death of testator ...	150 0 0 4 8 0	54 8 0
Jane, the wife of John Williams	Of Sandhurst, Esq. ... Paid in part ... Interest ...	250 0 0 50 0 0 200 0 0 14 11 0	214 11 0
		Total £	

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

APPENDIX L.

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

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

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

No. 21.  
Receiver's Recognizance.

of and of and of  
Before our Sovereign Lord the King in his Supreme Court personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to and the sum of to be paid to the said and or one of them, or the executors or administrators of them, or one of them, and unless they do pay the same, they, the said do grant, and each of them doth grant for himself, his heirs, executors, and administrators, that the said sum of shall be levied, recovered, and received of and from them and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods and chattels of them, and each of them wheresoever the same shall or may be found. Witness our said Sovereign Lord George the Sixth, by the Grace of God, of Great Britain Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India, and so forth, at the Supreme Court, the day of 19.

Whereas, by an order of the Supreme Court made in a cause wherein are plaintiffs and defendants, and dated the day of It was ordered that a proper person should be appointed to receive [or that upon the above bounden first giving security he should be appointed receiver of] the rents and profits of the real estate, and to collect and get in the outstanding personal estate of in the said order named. And whereas Mr. Justice hath [approved of the said as a proper person to be such receiver, and hath] approved of the above bounden and as sureties for the said and hath also approved of the above-written recognizance with the underwritten condition as a proper security to be entered into by the said and pursuant to the said order and the general orders of the said Court in that behalf, and in testimony of such approbation the Chief Clerk has signed an allowance in the margin hereof.

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

Now the condition of the above-written recognizance is such that if the said do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said , at such periods as the said Judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed or shall hereafter direct, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged by the above-named, &c.

## APPENDIX L.

NO. 21A.

*Receiver's Security by Undertaking.*

In the Supreme Court.

(Title.)

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

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

NO. 22.

*Affidavit Verifying Receiver's Account.*

In the Supreme Court.

19 \_\_\_\_\_ No. \_\_\_\_\_

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

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

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

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

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

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

NO. 25.

*Originating Summons.*

In the Supreme Court.

19 \_\_\_\_\_ No. \_\_\_\_\_

In the matter of the estate of A.B., deceased.

Between C.D., Plaintiff,  
and  
E.F., Defendant.

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

Dated the \_\_\_\_\_ of \_\_\_\_\_ 19 \_\_\_\_\_ (Seal.)

This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_ solicitors for the above-named C.D.

The following note to be added to the original summons, and when the time is altered by indorsement the indorsement to be referred to as below:—

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

This is to  
accord with the  
order appoint-  
ing the receiver  
The date to  
which the  
account is made  
up.



# 4119 Chapter I.—Civil Proceedings.

No. 27.

APPENDIX L.

*Notice that cause has been set down for further consideration.*  
In the Supreme Court.

19 . No.

Between A.B., Plaintiff.

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

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

X.Y.,  
[Prothonotary.]

To Mr.  
Solicitor for

No. 28.

*Form of ordering Accounts and Inquiries.*

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

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

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

(If ordered.)

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

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

(If Sale ordered.)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.
10. An inquiry what are the priorities of such last-mentioned incumbrances.

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

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

No. 29.

*Consent to Act.*

I, A.B., of , hereby consent to act as a trustee of the [describe the instrument].  
Dated the day of 19 .

(Signed) A.B.

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

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

## APPENDIX N.

APPENDIX N.

### ORDINARY SCALE OF COSTS.

Subject Matter.

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

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

# Chapter I.—Civil Proceedings. 4120

## APPENDIX N.

## SCALE OF COSTS—continued.

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

## SCALE OF COSTS—continued.

## APPENDIX N.

## Subject Matter.

£ s. d.

*Drawing Pleadings and other Documents.*

40. Pleadings, including Petitions (but not including Particulars or Summonses), not exceeding eight folios .. .. . 0 12 0
41. If exceeding eight folios, for every extra folio .. .. . 0 1 6
42. Any other necessary document, per folio .. .. . 0 1 6
- Allowance is not to be made to a Solicitor for drawing a document actually drawn by Counsel, but the Taxing Officer shall allow for drawing matter necessary in order to instruct Counsel. In making allowances for drawing the Taxing Officer may disallow anything which, in his opinion, is a repetition or adaptation of matter for the drawing of which allowance has otherwise been made in the same action or matter.

*Copies.*

43. Of documents, where no other provision is made, per folio .. .. . 0 0 8
44. Carbon or machine-made copies .. .. . 0 0 4
- Where two or more copies could have been made with a typewriter by the same impression, the Taxing Officer may allow for each copy, however made, the same rate only as for carbon copies. This rule may be applied in cases where both or all copies are made by hand.
- Close copies are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown to and considered by the Taxing Officer.

*Printing.*

45. When, pursuant to Rules of Court, or for any sufficient reason, any document is printed, the Solicitor of the party printing shall be allowed for a copy for the printer (except where made by the Officer of the Court) at per folio .. .. . 0 0 6
46. And for examining the proof print, at per folio .. .. . 0 0 2
47. And, for printing, the amount actually and properly paid to the printer, not exceeding per folio .. .. . 0 2 0
- In addition, all necessary attendances on the printer.
- And, when any part shall properly be printed in a foreign language, or as a *fac-simile*, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the Taxing Officer shall think reasonable.

*Attendances.*

48. Personal service of any process or proceeding, where necessary .. .. . 0 12 0
49. If served at a distance of more than 2 miles from the nearest place of business or office of the Solicitor serving the same, according to the time occupied and fares paid.
50. Where in consequence of the distance of the party to be served, it is proper to effect such service through an agent other than the Melbourne agent, instead of the allowance for service, for correspondence .. .. . 0 8 0
51. Correspondent's charges .. .. . 1 1 0
- Or the amount actually and reasonably charged by and paid to the person serving.
- Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance shall be made as the Taxing Officer shall think reasonable.
- For service out of the jurisdiction such allowance is to be made as the Taxing Officer shall think reasonable.
52. Service on the Solicitor for a party who has issued process or entered an appearance, or at the address for service of a party .. .. . 0 5 0
53. Or, if authorized to be served by post .. .. . 0 2 0
- When any two or more documents have to be, or may be, served together, one fee only for such service may be allowed.
- On Counsel with brief or other papers or to appoint consultation or conference.
54. If Counsel's fee one guinea to four guineas .. .. . 0 6 0
55. If over four guineas .. .. . 0 12 0
56. To mark refresher .. .. . 0 6 0
57. On consultation .. .. . 1 4 0
58. On conference, if Counsel's fee one guinea .. .. . 0 12 0
59. If over one guinea .. .. . 1 4 0
60. If conference or consultation occupies more than one hour, at the discretion of the Taxing Officer, not to exceed per hour, after the first hour .. .. . 0 12 0
61. Examining Appeal Books, per hour .. .. . 0 8 0
62. On a Summons or other application in Chambers .. .. . 0 8 0
63. Or according to circumstances, not to exceed .. .. . 3 3 0
64. On Motion, Special Case, Petition, Application adjourned from the Judges' Chambers, Appeal, or other application to the Court, when in list or likely to be heard .. .. . 0 12 0
65. When heard .. .. . 1 0 0

## APPENDIX N.

## SCALE OF COSTS—continued.

Subject Matter.	£	s.	d.
<i>Attendances—continued.</i>			
66. Or according to circumstances, not to exceed .. .. .	4	4	0
67. To present Petition .. .. .	0	12	0
68. On hearing or trial of any action, cause, or matter, or issue of fact, whether before a Judge with or without a jury, special referee, or on assessment of damages, when in the list .. .. .	0	16	0
69. When heard or tried .. .. .	1	10	0
70. Or according to circumstances, not to exceed .. .. .	5	5	0
71. For every hour, after the first two hours, including attendance to hear judgment .. .. .	1	0	0
As to attendances at Court or in Chambers, when the Solicitor has not given personal attendance, the maximum allowances shall be as follows:—			
Applications in Chambers .. .. .	£2	2	0
Motions or other applications to the Court .. .. .	3	3	0
Hearing or trial of actions, &c., per hour .. .. .	0	12	0
or per day .. .. .	3	3	0
72. When in the opinion of the Taxing Officer it is necessary for two principals, or for a Solicitor and managing clerk to attend the trial, an additional allowance may be made per day of .. .. .	2	2	0
73. Attending by appointment or on application at Judges' Chambers or before the Chief Clerk, the Prothonotary, the Master-in-Equity or Master-in-Lunacy .. .. .	0	12	0
74. Or if the Judge, Prothonotary, Chief Clerk, or Master shall certify that a further sum should be allowed, not exceeding .. .. .	3	3	0
75. On examination of witnesses before an Examiner, Officer, or other person .. .. .	0	16	0
76. Or according to circumstances, not to exceed per day, if Counsel employed .. .. .	3	3	0
Or, if without Counsel, at the discretion of the Taxing Officer.			
77. To settle judgment or order, per hour .. .. .	0	12	0
78. On taxation of costs .. .. .	0	12	0
79. Or, according to circumstances, not to exceed per day of six hours (including luncheon adjournment) .. .. .	3	3	0
80. If for any purpose, such as attending a trial, conference with Counsel, taxation of costs, or collection of evidence, it is in the opinion of the Taxing Officer necessary for a Solicitor to leave the town where he resides or carries on business and journey to another place, for each day (except Sunday) that he is necessarily absent from such town .. .. .	4	4	0
81. And expenses (besides actual reasonable fares or payment for transport), each day (24 hours) of necessary absence .. .. .	0	15	0
In all such cases the Taxing Officer must be satisfied that the purpose of the journey could not have been satisfactorily accomplished by an agent.			
If the journey be not undertaken solely for purposes of the cause or matter, such proportion of the above fees may be allowed as the Taxing Officer shall think reasonable.			
82. To file, lodge, or deliver any document or other papers (including filing in lieu of service, but not other services), to obtain an appointment from any officer of the Court, to insert advertisement, or other attendance of a similar nature capable of performance by a junior clerk .. .. .	0	5	0
83. If the attendance is one requiring the personal attendance of the Solicitor or his managing clerk and involving the exercise of skill or legal knowledge, per hour .. .. .	0	12	0
84. Or such larger amount as the Taxing Officer may think reasonable having regard to the importance or difficulty of the subject-matter of the attendance, not exceeding per hour .. .. .	1	5	0
85. Any attendance, for which no other provision is made .. .. .	0	8	0
<i>Perusals.</i>			
86. Of all Pleadings, including Petitions, Amendments of Pleadings (exceeding three folios), and Originating Summonses, Interrogatories, Answers thereto, Special Cases, Statements of Facts, Notices of Defendants' Claim under Order XVI. Rule 49, Special Affidavits or Declarations, Draft Orders submitted for approval by the Solicitor for another party, Drafts of Documents to be settled by an Officer of the Court, Orders (unless an allowance has been made previously for perusal of the draft thereof), Notices of Motion, by the Solicitor for the party to whom the same are delivered, per folio .. .. .	0	1	0
87. Of Counsel's opinion or advice on evidence, per folio .. .. .	0	1	0
88. Notices to produce or admit, deeds, correspondence and other documents, including exhibits which are necessary and proper to be perused, per folio .. .. .	0	0	6
But if the Solicitor is already familiar with the contents of the document or if it is not necessary to carefully read the whole, such smaller sum (if any) as the Taxing Officer may think reasonable.			
No allowance is to be made for perusal of letters received by the Solicitor, nor of notices or summonses except where specially provided.			
89. For perusal of a bill of costs, with a view to taxing the same adversely, at the discretion of the Taxing Officer, not exceeding per folio .. .. .	0	0	4
<i>Oaths, Exhibits, and Special Bail.</i>			
90. Commissioners to take oaths or affidavits, for every oath, declaration, or affirmation .. .. .	0	1	6
91. The Solicitor for preparing each exhibit .. .. .	0	1	0
92. The Commissioner for marking each exhibit .. .. .	0	0	6
93. The Commissioner on taking special bail .. .. .	1	1	0

## SCALE OF COSTS—continued.

APPENDIX N.

## Subject Matter.

## Correspondence, Agency, &amp;c.

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

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

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

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

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

## Instructions for and Drawing and Perusing Deeds, Wills, and Other Documents.

Such fees for instructions as, having regard to the care and labour required, the number and lengths of the papers to be perused, and the other circumstances of the case, may be fair and reasonable. In ordinary cases, as to drawing, &c., the allowance shall be—

For drawing .. .. .	2s. per folio.
For engrossing .. .. .	8d. "
For fair copying .. .. .	6d. "
For perusing .. .. .	1s. "
Attested copies .. .. .	9d. "

## Attendances.

	£	s.	d.
In ordinary cases .. .. .	10	0	
In extraordinary cases the Taxing Officer may increase or diminish the above charge, if for any special reasons he shall think fit.			

## Abstracts of Title (where not covered by the above Scales).

	£	s.	d.
Drawing each brief sheet of eight folios .. .. .	6	8	
Fair copy .. .. .	3	4	

## Journeys from Home.

	£	s.	d.
In ordinary cases for every day of not less than seven hours employed .. .. .	5	5	0
on business or in travelling .. .. .	0	15	0
Where a less time than seven hours is so employed, per hour .. .. .	0	15	0
In extraordinary cases the Taxing Officer may increase or diminish the above allowance, if for any special reasons he shall think fit.			

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

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

## SCALE OF COSTS—continued.

## APPENDIX N.

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

## Witnesses' Expenses.

## Allowance per Day.

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

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

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

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

Dated this 18th day of November, 1937.

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

## CHAPTER II.

## RULES OF PROCEDURE IN DIVORCE AND MATRIMONIAL CAUSES.

Commencement  
of Rules.

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

Proceedings to  
be commenced  
by petition.

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

Affidavit to  
accompany  
every petition.

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

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

## CO-RESPONDENTS.

Applications as  
to  
co-respondents  
how made.

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



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

Where name of  
alleged  
adulterer  
unknown.

#### CITATION.

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

Warning against  
re-marriage

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

Form of  
citation.

#### SERVICE OF CITATION.

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

Personal  
service of  
citation.

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

Substitution of  
service.

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

Citation to be  
filed after  
service.

#### INDORSEMENT OF ADDRESS.

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

Where  
petitioner sues  
by solicitor.

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

Where  
petitioner  
proceeds in  
person.

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

Change of  
address.

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

#### APPEARANCE.

Entry of  
appearance.  
First Schedule,  
Form No. 3.

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

Time for  
entering.

15. An appearance to a citation, by or on behalf of the party cited, may be entered at any time pending the proceedings of the cause.

Address for  
service of  
solicitor.

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

Address for  
service of  
defendant in  
person.

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

Questions of  
jurisdiction.

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

Appearance  
under  
protest.

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

Judge to direct  
how questions  
to be tried.

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

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

Appeal from Judge on question of jurisdiction.

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

Cannot object after absolute appearance.

#### SUITS IN FORMA PAUPERIS.

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

Paupers.

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

Application of Order XVI. to Divorce and Matrimonial Causes.

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

Affidavit in application by wife.

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

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

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

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

#### PERSONS OF UNSOUND MIND.

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

Proceedings by committee or guardian.

#### ANSWER.

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

Form and filing of answer.

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

Indorsement: address.

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

## FURTHER PLEADINGS.

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

## GENERAL RULES AS TO PLEADING.

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

## SERVICE.

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

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

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

44. If such address be not furnished as aforesaid, or if such address be illusory or fictitious, the opposite party may proceed by filing all such pleadings, notices, proceedings, and documents in the Prothonotary's Office. Where no address or address illusory.

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

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

## MODE OF TRIAL.

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

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

## QUESTIONS OF FACT FOR THE JURY.

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

## SETTING DOWN THE CAUSE FOR TRIAL OR HEARING.

Questions of  
fact to be  
filed and cause  
set down.

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

Where cause to  
be heard  
without jury.

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

Respondent may  
proceed where  
petitioner fails.

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

## TRIAL OR HEARING.

Time for  
hearing.

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

Time for  
hearing not  
before  
twenty-one days.

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

Decree to be  
entered.

55. The Associate or other officer shall enter in the Court book the finding of the jury and the decree of the Court, and shall sign the same.

Respondent  
may be heard  
as to costs and  
custody of  
children.

56. After appearance so entered as aforesaid by or on behalf of any respondent, he or she may be heard in respect of any question as to costs of suit, and may also be heard in respect to any question as to custody of children, although he or she may have filed no answer to the petition in the cause, but may not file affidavits touching matters in issue in the cause, and no such affidavit can be read or made use of as evidence in the cause.

Jury how  
summoned and  
other  
proceedings.

57. The practice and procedure as to summoning, attendance, and challenging of jurors; summoning and attendance of witnesses; orders made or commissions or letters of request issued for the examination of witnesses; admission of documents; hearing and addresses of counsel; and all other proceedings with reference to the hearing or to the trial of any issue, shall, unless otherwise provided, be as nearly as may be according to the practice and procedure of the Supreme Court in civil proceedings.

## EVIDENCE TAKEN BY AFFIDAVIT.

Time for filing.

58. Where any party intends on the hearing or trial of any issue to verify his or her case in whole or in part by his or her own affidavits, such affidavits shall be filed within eight days from the filing of the last proceeding.

59. Counter affidavits to any facts stated in such affidavits may be filed by either party within fifteen days from the filing of the affidavits which they are intended to answer. Counter affidavits.

60. Copies of all such affidavits and counter affidavits shall, on the day the same are filed, be delivered to the other parties entitled or to their proctors. Copies to be delivered.

61. Affidavits in reply to counter affidavits cannot be filed without permission of a Judge. Affidavits in reply.

62. Application for an order for the attendance of a deponent for the purpose of being cross-examined in open Court shall be made to a Judge on summons. Cross-examination of deponent.

#### SUMMONSES.

63. A summons to attend before a Judge at Chambers may be taken out by any person in any matter pending in the Court, and the practice and procedure thereon in all respects shall, unless otherwise provided for by these rules, be, as nearly as may be, according to the practice and procedure in Chambers of the Supreme Court in civil proceedings, but all orders made on such summonses shall be filed in the office of the Prothonotary within seven days after the pronouncing thereof, or in default thereof shall be deemed to have lapsed. Practice on summons; order to be filed.

64. All applications to the Court, except those expressly required to be made by motion or petition, shall be made by summons; but the Judge before whom such summons shall be heard may, at the request of either party, or without such request, direct that it shall be heard in open Court. Applications to be by summons.

#### NEW TRIAL AND RE-HEARING.

65. An application to the Judge for a new trial of issues of fact tried by a jury, or for the re-hearing of a cause, may be made by motion within fourteen days from the day on which the issues were tried or the cause was heard if the Judge be then sitting to hear motions; if not, on the first day appointed by the Judge for hearing motions after the expiration of fourteen days. Motion for new trial.

#### REVERSAL OF DECREE FOR JUDICIAL SEPARATION.

66. Petitions for the reversal of a decree of judicial separation must set out the grounds upon which the petitioner relies according to Form No. 6. Form of petition.

67. Before such a petition can be filed, an appearance on behalf of the party praying for a reversal of the decree of judicial separation must be entered in the cause in which the decree has been pronounced. First Schedule, Form No. 6. Appearance.

68. A certified copy of such petition, under seal of the Court, shall be delivered personally to the party in the cause in whose favour the decree has been made, who may, within fourteen days, file an answer thereto in the Prothonotary's Office, and shall on the day on which the answer is filed deliver a copy thereof to the other party in the cause, or to his or her proctor. Answer.

69. All subsequent pleadings and proceedings arising from such petition and answer shall be filed and carried on in the same manner as before directed in respect of an original petition for judicial separation and answer thereto, so far as such directions are applicable. Further pleadings.

#### INTERVENERS.

70. Every party intervening must join in the proceedings at the stage in which he finds them unless it is otherwise ordered by the Court. Time for intervention.

## INTERVENTION, ETC., BY THE ATTORNEY-GENERAL.

Application to  
intervene.

71. Application for leave to intervene by the Attorney-General in any cause must be made to the Court or a Judge by motion supported by affidavit.

Appearance by  
Attorney-  
General.

72. The Attorney-General shall, within fourteen days after he has obtained leave to intervene in any cause, enter an appearance and plead to the petition; and on the day he files his plea in the Prothonotary's Office shall deliver a copy thereof to the petitioner or to his proctor.

Subsequent  
pleadings.

73. All subsequent pleadings and proceedings in respect to the Attorney-General's intervention in a cause shall be filed and carried on in the same manner as before directed in respect of the pleadings and proceedings of the original parties to the cause.

Where  
Attorney-  
General shows  
cause by plea.

74. When the Attorney-General desires to show cause against making absolute a decree *nisi* for dissolution or nullity of marriage, he shall enter an appearance in the cause in which such decree *nisi* has been pronounced, and shall within fourteen days after entering appearance file his plea in the Prothonotary's Office, setting forth the grounds upon which he desires to show cause as aforesaid; and on the day he files his plea shall deliver a copy thereof to the person in whose favour such decree has been pronounced or to his or her solicitor; and all subsequent pleadings and proceedings in respect to such plea shall be filed and carried on in the same manner as directed by the two last preceding rules and regulations.

## SHOWING CAUSE AGAINST A DECREE.

Appearance.

75. Any person other than the Attorney-General wishing to show cause against making absolute a decree *nisi* for dissolution or nullity of marriage shall enter an appearance in the cause in which such decree *nisi* has been pronounced.

Affidavits to be  
filed.

76. Every such person shall at the time of entering an appearance, or within four days thereafter, file affidavits setting forth the facts upon which he relies.

Copy to be  
delivered.

77. Upon the same day on which such person files his affidavit he shall deliver a copy of the same to the party in the cause in whose favour the decree *nisi* has been pronounced.

Answering  
affidavits.

78. The party in the cause in whose favour the decree *nisi* has been pronounced may, within eight days after the delivery of the affidavits, file affidavits in answer, and shall, upon the day such affidavits are filed, deliver a copy thereof to the person showing cause against the decree being made absolute.

Affidavits in  
reply.

79. The person showing cause against the decree *nisi* being made absolute may, within eight days, file affidavits in reply, and shall upon the same day deliver copies thereof to the party supporting the decree *nisi*.

No rejoinder  
without leave.

80. No affidavits are to be filed in rejoinder to the affidavits in reply without permission of a Judge.

Questions how  
tried.

81. The questions raised on such affidavits shall be argued in such manner and at such time as the Judge may on application by motion direct; and if he thinks fit to direct any controverted questions of fact to be tried by a jury, the same shall be settled and tried in the same manner and subject to the same rules as any other issue tried in the Court.



## DECREE ABSOLUTE.

82. In every case where a decree *nisi* for dissolution of marriage or a decree *nisi* or absolute of nullity of marriage is pronounced a draft thereof shall be lodged with the chief clerk within fourteen days of such pronouncement and a fair copy (duly stamped) of the draft decree as settled by the chief clerk together with the original draft shall be lodged at the Prothonotary's Office within seven days after such decree has been settled and such times shall be deemed to be the times prescribed under Section 132 of the *Marriage Act* 1928. In case of non-compliance with the foregoing provisions within the time prescribed the chief clerk or the Prothonotary (as the case may be) may permit a subsequent lodging to be made and shall permit subsequent lodging which has been ordered by a Judge.

Draft decree  
and fair copy  
to be lodged.

83. No decree *nisi* for dissolution or nullity of marriage shall be made absolute till after the expiration of three months from the pronouncing thereof.

Decree *nisi*  
when made  
absolute.

## DISMISSAL OF PETITION.

84. When an order has been made for the dismissal of a petition on payment of costs, the cause will not be removed from the list of causes in the Court books without an order of the proper officer, to obtain which it must be shown to his satisfaction that the costs have been paid.

Removal from  
list.

## APPEALS TO THE FULL COURT.

85. The provisions contained in Order LVIII. of the Rules of Procedure in Civil Proceedings shall, subject to the provisions of section 130 of the *Marriage Act* 1928, apply to appeals from the decision of a single Judge so far as the same are applicable.

Practice on  
appeals.

86. All appeals to the Full Court shall be heard at such times during any sitting of the Full Court as that Court may direct.

Time for  
hearing.

## ALIMONY.

87. The wife being petitioner in a cause may apply for alimony at any time after personal service of the citation on the husband, or after service in some other mode substituted by order of the Court, or after service on the husband has been dispensed with, provided that the fact of marriage between the parties is established by affidavit filed in the cause.

Application by  
wife after  
citation.

88. The wife being the respondent in a cause after having entered an appearance to the citation may also apply for alimony.

Appearance.

89. Upon any such application any party may require the production of documents and the attendance of the husband or wife or of any witnesses for the purpose of being examined or cross-examined upon the hearing thereof.

Evidence.

90. A wife who has obtained a decree of judicial separation, on such decree being affirmed on appeal, or after the expiration of the time for appealing against the decree if no appeal be then pending, may apply for an allotment of permanent alimony though no alimony shall have been allotted to her, pending suit, provided that she shall, eight days at least before making such application, give notice to the husband or to his solicitor of her intention

Permanent  
alimony.

so to do; and the preceding Rules relating to applications for alimony *pendente lite* shall, so far as the same are applicable, be observed in respect to the proceedings upon such application for permanent alimony.

Application for increase.

91. A wife may at any time after alimony has been allotted to her, whether alimony *pendente lite* or permanent alimony, apply for an increase of the alimony allotted by reason of the increased faculties of the husband, or the husband may apply for a diminution of the alimony allotted by reason of reduced faculties; and the course of proceeding in such cases shall be the same as required by these Rules in respect to the original application for alimony and the allotment thereof, so far as the same are applicable.

Time for commencement for permanent alimony.

92. Permanent alimony shall, unless otherwise ordered, commence and be computed from the date of the final decree of the Judge, or of the Full Court on appeal, as the case may be.

To whom payable.

93. Alimony *pendente lite*, and also permanent alimony, shall be paid to the wife, or to some person or persons to be nominated in writing by her, and approved by the Court, as trustee or trustees on her behalf.

#### MAINTENANCE AND SETTLEMENTS.

Application how made.

94. Application to the Court to exercise the authority given by sections 95, 96, 106, or 107 of the *Marriage Act* 1928 shall be made by summons.

Time.

95. In case of application under section 95 or 96 of the *Marriage Act* 1928, such application may be made as soon as the decree *nisi* has been pronounced, but not before.

Service on other party.

96. A certified copy of such summons shall be personally served on the husband or wife (as the case may be), and on the person or persons who may have any legal or beneficial interest in the property in respect of which the application is made, unless the Judge shall direct any other mode of service, or dispense with the service of the same on them or any of them.

Costs of wife when allowed.

97. The costs of a wife of and arising from the application shall not be allowed on taxation of costs against the husband before the final decree in the principal cause, without direction of the Judge.

#### CUSTODY, MAINTENANCE, AND EDUCATION OF CHILDREN.

Service on other party.

98. A certified copy of a summons or petition under Part VII. of the *Marriage Act* 1928, or under section 105 of the said Act, shall be personally served on the husband or wife (as the case may be), and on any trustee, guardian, or person having or claiming the custody or control of the children, unless a Judge shall direct any other mode of service, or dispense with the service of the same.

Answer.

99. The husband or wife (as the case may be), and the other person or persons (if any) who are served with a petition, within fourteen days after service, may file his, her, or their answer on oath to the said petition, and shall on the same day deliver a copy thereof to the opposite party, or to his proctor.

Appearance.

100. Any person served with a petition, not being a party to the principal cause, must enter an appearance before he or she can file an answer thereto.

101. Within fourteen days from the filing of the answer, the opposite party may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder. Reply.

102. After such pleadings have been completed, the petitioner shall proceed to examine witnesses in support of the petition, and apply by motion for an order thereon; notice of the motion and of the intention to examine witnesses being given to the opposite party four days previously to the motion being heard and the witnesses examined, unless the Judge shall dispense with such service. Evidence and hearing.

103. Before the trial or hearing of a cause, a husband or wife who is a party to it may apply on affidavit to a Judge for an order with respect to the custody, maintenance, or education of or for access to children, issue of the marriage. Application by husband or wife.

#### GUARDIANS TO MINORS.

104. A minor above the age of seven years may elect any one or more of his next of kin as guardian for the purpose of proceeding on his or her behalf as petitioner, respondent, or intervener in a cause. Infant may elect.

105. The form of an instrument of election is given in Form No. 8. First Schedule, Form No. 8.

106. The necessary instrument of election must be filed in the Prothonotary's Office before the guardian elected can be permitted to extract a citation or to enter an appearance on behalf of the minor. Election to be filed.

107. When a minor shall desire to elect some person or persons other than his or her next of kin as guardian for the purposes of a suit, or when an infant (under the age of seven years) becomes a party to a suit, application, founded on affidavit, is to be made to a Judge, who will assign a guardian to the minor or infant for such suit. When Judge to elect.

108. It shall not be necessary for a minor who, as an alleged adulterer, is made a co-respondent in a suit, to elect a guardian or to have a guardian assigned to him for the purpose of conducting his defence. A minor co-respondent need not elect.

#### NOTICES AND CONSENTS.

109. Whenever it becomes necessary to give a notice to the opposite party in the cause, or to enter into a consent, such notice and consent shall, unless otherwise ordered, be in writing, signed by the party or by his or her proctors. Notices to be in writing.

#### OFFICE COPIES, EXTRACTS, ETC.

110. Office copies of documents furnished from the office of the Prothonotary will not be collated with the originals from which the same are copied unless specially required. Every copy so required to be examined shall be certified under the hand of the Prothonotary or other officer to be an examined copy. How made.

#### AMENDMENT.

111. It shall be lawful for the Court or a Judge sitting in Chambers or at the hearing or trial of any cause or issue, if such Court or Judge shall see fit so to do, to amend all defects and errors in any proceeding in any cause whether there is anything in writing to amend by or not and whether the defect or error be that of the party applying to amend or not; and all General powers of.

such amendments may be made with or without costs and upon such terms as to the Court or Judge may seem fit, and all such amendments as may be necessary for the purpose of determining in the existing suit the real question of controversy between the parties shall be so made.

## BOND NOT REQUIRED.

No bond  
against  
re-marriage.

112. Where a decree of judicial separation has been pronounced, it shall not be necessary for either party to enter into a bond conditional against marrying again.

## CHANGE OF SOLICITOR.

Order for  
change.

113. A party may obtain an order to change his or her solicitor upon application by summons to a Judge.

Costs of  
former solicitor.

114. In case the former solicitor neglects to file his bill of costs for taxation at the time required by the order served upon him, the party may, with the sanction and by order of a Judge, proceed in the cause by the new solicitor without previous payment of such costs.

## COSTS.

Appointment to  
tax.

115. In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, the solicitor of the party to whom such costs are to be paid may forthwith obtain an appointment for the taxation of his bill of costs, provided that such taxation shall not take place before the time allowed for moving for a new trial or re-hearing shall have expired, or, in case a motion should have been made, until it is disposed of, unless a Judge shall, for cause shown, direct a more speedy taxation.

Who may tax.

116. All bills of costs shall be referred to the taxing officers of the Court for taxation, and may be taxed by them without any special order for that purpose.

Order for  
taxation how  
obtained.

117. If an order for payment of costs is required, the same may be obtained by summons, on the amount of such costs being certified by the taxing officer.

Order for  
payment before  
decree absolute.

118. The order for payment of costs of suit in which a respondent or co-respondent has been condemned by a decree *nisi* shall, if applied for before the decree *nisi* is made absolute, direct the payment thereof to the Prothonotary, and such costs shall not be paid out to the party entitled to receive them under the decree *nisi* until the decree absolute has been obtained.

## CUSTODY OF DOCUMENTS.

Prothonotary.

119. The Prothonotary shall, except where these Rules otherwise provide, have the custody of all pleadings and other documents now or hereafter to be brought in and filed in any matter or suit pending in the said Court in its Divorce and Matrimonial Causes Jurisdiction, and all orders and fees payable in respect of searches for an inspection or copies of and extracts from and attendances with documents filed in the office of the Prothonotary shall extend to such pleadings and other documents filed in the said Court in its Divorce and Matrimonial Causes Jurisdiction.

120. The Prothonotary and the clerks and other officers of the Supreme Court shall discharge similar duties in the said Court in its Divorce and Matrimonial Causes Jurisdiction, and in the registry thereof, as they discharge in the other jurisdictions of the said Court. Officers.

SETTLING AND PASSING DECREES AND ORDERS.

121. All decrees and orders of the Court shall be settled and passed and entered as nearly as may be in the same manner as is provided by Order LXII. of The Rules of Procedure in Civil Proceedings, as to judgments and orders.

SUPPLEMENTARY.

122. The Rules, practice, and mode of procedure now or hereafter in force in the Court in its civil jurisdiction shall, so far as applicable, and where no provision is made by these Rules, be adopted and be in force in the Court in its Divorce and Matrimonial Causes Jurisdiction. Practice where none provided.

INTERPRETATION.

123. In the construction of these Rules, unless there is something in the subject or context repugnant thereto, the several words hereinafter mentioned shall have or include the meanings following:— Meaning of words.

“Respondent” shall include all co-respondents so far as the same is applicable to them.

A “folio” shall comprise seventy-two words, every figure being counted as one word.

“Prothonotary” shall include Deputy-Prothonotary.

124. In all matters not hereinbefore provided for, the previous practice of the Court shall be followed or if there be no such practice, then the practice, if any, prevailing in the High Court in England. Practice in matters not provided for.

## SCHEDULES.

## FIRST SCHEDULE.

## FORMS.

## FORM 1.

*Citation.*

In the Supreme Court of Victoria.

*Divorce and Matrimonial Causes.*

A.B., Petitioner,  
against

C.B., Respondent,  
and

E.F., Co-respondent.

GEORGE THE SIXTH, by the Grace of God of Great Britain, Ireland, and the British  
Dominions beyond the Seas King, Defender of the Faith, Emperor of India.

To C.B. and E.F., of

These are to command you that within eight days of the service hereof on you, inclusive of the day of  
such service, if you intend to defend this suit, you do cause an appearance to be entered at the  
office of the Prothonotary of this Court, in Melbourne, and take notice that, in default of so doing  
the Court may proceed to hear this suit in your absence. If you intend to defend this suit you  
must also file an answer in the said office within twenty-one days from the service of this citation.

(L.S.) (Signed) the day of , 19 . X.Y., Prothonotary.

Supreme Court,  
William-street, Melbourne.

*Indorsement to be made after service.*

This citation was duly served by me, G.H. of for a judicial separation for cause of  
at on the day of 19 . (Signed) G.H.

NOTE.—This form must be altered to suit when the citation is issued by a deputy-prothonotary.

## FORM 2.

*Præcipe for Citation.*

In the Supreme Court of Victoria.

*Divorce and Matrimonial Causes Jurisdiction.*

A.B., Petitioner,  
against

C.B., Respondent,  
and

E.F., Co-respondent.

Citation for A.B., of  
adultery [or as the case may be].

against C.B. of for a judicial separation for cause of

(Signed) P.A., Solicitor for the said A.B.  
[or A.B. in person.]

[Here insert the address required within three miles from the office of the Prothonotary.]

## FIRST SCHEDULE—continued.

## FORM 3.

*Entry of Appearance.*

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,  
against  
C.B., Respondent,  
and  
E.F., Co-respondent.

The respondent, C.B., appears in person [or G.H., solicitor, appears for the respondent]

[Here insert the address required by Rule 15 or 16.]

Entered this       day of       19      

*Note.—If the appearance is under protest, the fact must be so stated.*

## FORM 3A.

Rule 19.

*Notice of an Appearance under protest having been entered.*

[Heading and title as in Form No. 1.]

To A.B., the above-named petitioner.

Take notice that an appearance under protest was entered herein on the       day of       , on behalf of the above-named respondent, and that the said respondent disputes the jurisdiction of the Court on the following ground (or grounds), that is to say:—That the petitioner is not at the present time, nor has she at any time been, domiciled in Victoria.

The       day of      

(Signed)       C.D., [or G.H., Solicitor for C.D.]

## FORM 4.

Rule 29.

*Answer.*

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,  
against  
C.B., Respondent,  
and  
E.F., Co-respondent.

The       day of       19      

The respondent, C.B., by C.D., her solicitor, or [in person] saith [here admit, deny, or refute the statements contained in the petition, paragraph by paragraph, and state fully and distinctly connivance, condonation, or other matters relied on as a ground for dismissing the petition, and, if respondent can truthfully do so, here deny fully and unequivocally past or present connivance or collusion direct or indirect with the petitioner].

Wherefore the respondent humbly prays that your honorable Court will be pleased to reject the prayer of the said petition, &c.

Chapter II.—Divorcé.

4142

FIRST SCHEDULE—continued.

Rule 49.

FORM 5.

Questions of Fact for the Jury.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,  
against  
C.B., Respondent,  
and  
R.S., Co-respondent.

Questions for the Jury.

1. Whether C.B., the respondent, committed adultery with R.S., the co-respondent.
2. Whether A.B., the petitioner, has condoned the adultery (if any) committed by C.B., the respondent.
3. Whether A.B., the petitioner, has been guilty of cruelty towards C.B., the respondent.  
[Here set forth in the same form all the questions at issue between the parties.]
4. What amount of damages should be paid by R.S., the co-respondent, in respect of the adultery (if any) by him committed.

Rule 50.

FORM 6.

Petition for Reversal of Decree.

In the Supreme Court of Victoria.

The                      day of                      19

Divorce and Matrimonial Causes Jurisdiction.

To the Supreme Court of Victoria.

The petition of A.B., of

Showeth,—

1. That your petitioner was on the                      day of                      lawfully married to C.B., then C.D., spinster [or widow], at the parish of, &c. [here state where the marriage took place].
2. That on the                      day of                      the said Court, by final decree pronounced in a cause then depending in the Court, entitled C.B. against A.B., decreed as follows, to wit,  
[Here set out the decree.]
3. That the aforesaid decree was obtained in the absence of your petitioner, who was then residing at  
[State facts tending to show that the petitioner did not know of the proceedings; and further, that had he known of them he might have offered a sufficient defence.]  
or  
That there was reasonable ground for your petitioner leaving his said wife, for that his said wife  
[Here state any legal grounds justifying the petitioner's separation from his wife]

Your petitioner therefore humbly prays—  
That Your Honours will be pleased to reverse the said decree.



FIRST SCHEDULE—*continued*.

## FORM 8.

Rule 105.

*Election of a Guardian.**By a Petitioner.*

Whereas a suit is about to be instituted in the Supreme Court, in the Divorce and Matrimonial Causes Jurisdiction, on behalf of *A.B.*, against *C.B.* (the wife of the said *A.B.*) and *R.S.*: And whereas the said *A.B.* is now a minor of the age of \_\_\_\_\_ years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in his own name:

Now I, the said *A.B.*, do hereby make choice and elect *G.H.*, my natural and lawful father and next of kin, to be my guardian for the purpose of instituting the said suit, and for the purpose of carrying on and prosecuting the same until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years; and I hereby appoint *C.D.*, of \_\_\_\_\_ &c., my proctor, to file or cause to be filed this my election for me in the office of the Prothonotary.

In witness whereof I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_

(Signed \_\_\_\_\_ *A.B.* (l.s.))

Signed, sealed, and delivered by the within-  
named *A.B.*, in the presence of  
[*One attesting witness.*]

*By a Respondent.*

Whereas a citation bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ has issued under seal of the Supreme Court at the instance of *A.B.*, claiming to have been lawfully married to *C.B.*, citing the said *C.B.* to appear in the said Court, and then and there to make answer to a certain petition of the said *A.B.* filed in the Prothonotary's Office: And whereas the said *C.B.* is now a minor of the age of \_\_\_\_\_ years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in her own name:

Now I, the said *C.B.*, do hereby make choice of and elect *G.H.*, my lawful and natural father and next of kin, to be my guardian for the purpose of entering an appearance for me and on my behalf in the said Court, and for the purpose of making answer for me to the said petition, and of defending me in the said cause, and to abide for me in judgment until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years; and I hereby appoint, &c.

Dated this 18th day of November, 1937.

F. W. MANN, C.J.  
J. R. MACFARLAN, J.  
CHARLES J. LOWE, J.  
C. GAVAN DUFFY, J.  
RUSSELL MARTIN, J.

## CHAPTER III.

## PROBATE AND ADMINISTRATION RULES.

Repeal.

On and after the first day of April, 1938, the Probate and Administration Rules of 1916 shall be repealed and of no effect, except so far as regards matters then pending, and on the said first day of April, 1938, the Rules hereinafter set out shall come into force and shall apply to all matters commenced on or after that date.

Application of Rules.

1. These rules shall so far as applicable regulate the practice to be observed in applications to the Registrar of Probates, and shall apply to all applications for sealing under Part III. of the *Administration and Probate Act 1928*.

## APPLICATIONS.

Applications how made.

2. Every application to the Court in its probate jurisdiction shall be made by motion on Thursday, or on any other day appointed for hearing the same.

Advertisement.

3. No probate of any will or administration of the estate of any deceased person shall be granted to any person, except after the expiration of fourteen clear days from the publication of an advertisement by him or some proctor on his behalf in one of the Melbourne daily newspapers of his intention to apply for the same, stating the date or dates of any will and codicil, if any, in such advertisement referred to. Where the deceased was at the time of his death resident in Victoria 25 miles or more out of Melbourne, such advertisement may be so published in a newspaper published and circulating in the district in which the deceased was so resident. In such last-mentioned case the Registrar of Probates may require such further advertisements as he may deem necessary.

Affidavit in support of application for probate.

4. Every application for probate of a will shall be supported by an affidavit or affidavits setting forth—

That the applicant, being a person, is of the full age of twenty-one years  
The death of the testator;

The date of his decease;

That he has left a will and that such will is unrevoked (if such be the fact);

The date thereof;

That the testator was of the full age of twenty-one years at the date of the execution of the will, and has not married since that date;

The name of each executor and of each of the subscribing witnesses thereto, and the residence of each of the same at the time the affidavit in support is sworn (if known);

An identification or statement of the contents of the will;

An inventory of the estate of deceased in Victoria, distinguishing real and personal property, and setting out the value of each item of the estate provided that the Court or a Judge or the Registrar may in special cases dispense with full compliance with this paragraph;

A search in the Registrar-General's office for any other will deposited;

The publication of advertisements;

That no caveat has been lodged up to the morning of the application;

That no application for probate or administration in this matter has theretofore been made to or been granted by the Court or the Registrar; or if any previous application has been made the full particulars thereof.

5. Every application for administration with the will annexed shall be supported by an affidavit or affidavits setting forth the particulars required by the last preceding rule so far as practicable, and also stating the character in which the person making the application claims to be entitled, and the truth thereof.

Affidavit in support of applications for administration with will annexed.

6. Every applicant for probate of a will or administration with the will annexed shall on the grant being made and prior to the issue thereof cause to be prepared in typewriting on durable foolscap a fair copy of the original will and codicils (if any) as admitted to probate or annexed to the letters of administration, and shall cause the same to be examined at the same time as the original probate or letters of administration with the will annexed in the office of the Master-in-Equity. Such copy, on being so examined, shall be lodged in the said office of the Master-in-Equity for record purposes. Provided, however, that this Rule shall not apply to applications under Part II. of the *Administration and Probate Act 1928*.

Examined copy to be lodged.

7. When a will is executed by a testator by his affixing his mark thereto an affidavit of the due execution thereof and of the cause of it being by mark shall also, if possible, be made by one or more of the subscribing witnesses thereto.

Where testator a markman.

8. When a will is believed to be wholly or in part inoperative or not to dispose of the whole estate of the deceased, the Court or the Registrar may require from the applicant a statement on oath showing what relatives or next of kin deceased left surviving him so far as may be known and material by law to the right to administer or share in his property.

When will inoperative.

9. Every application for administration by a person applying not as a creditor shall be supported by an affidavit or affidavits setting forth—

Application for administration by person not as creditor.

That the applicant, being a person, is of the full age of twenty-one years;  
The death of the deceased, and the status of the deceased, that is, whether leaving a wife or husband, or dying a bachelor, widower, spinster, widow, or divorced person;

The date of his decease;

That he died intestate, leaving property in Victoria;

An inventory of the estate of the deceased in Victoria distinguishing real and personal property and setting out the value of each item of the estate provided that the Court or a Judge or the Registrar may in special cases dispense with full compliance with this paragraph;

What relatives or next of kin he left surviving him, so far as the same may be known and material by law to the right to administer or share in his property;

The character in which the person making the application claims to be entitled, and the truth thereof;

That the applicant has carefully inquired if there be a will;

A search made in the Registrar-General's office for a will deposited;

The publication of advertisements;

That no caveat has been lodged up to the morning of the application.

That no application for probate or administration in this matter has theretofore been made to or granted by the Court or the Registrar, or if any previous application has been made, the full particulars thereof.

10. The affidavit in support of an application for any form of administration shall show such facts as establish the applicant's right to have the administration.

Prior rights to be cleared off.

Application  
by creditor.

No administration shall be granted to a creditor unless upon an affidavit or affidavits setting forth—

That the applicant, being a person, is of the full age of twenty-one years;  
The death of the person, and the status of the deceased, that is, whether leaving a wife or husband, or dying a bachelor, widower, spinster, widow, or divorced person;  
The date of his decease;  
That he left property in Victoria;  
An inventory of the estate of deceased in Victoria distinguishing real and personal property and setting out the value of each item of the estate provided that the Court or a Judge or the Registrar may in special cases dispense with full compliance with this paragraph;  
Whether he died intestate, or left any and what will;  
That the applicant has carefully inquired if there be a will;  
A search made in the Registrar-General's office for a will deposited;  
What relatives or next of kin the deceased left surviving him, so far as the same may be known and material in law to the right to administer or share in his estate;  
That the applicant is a creditor, and to what amount;  
The particulars of his debt, and the evidence in support thereof;  
The publication of advertisements;  
That no caveat has been lodged up to the morning of the application;  
That no application for probate or administration in this estate has theretofore been made to or granted by the Court or Registrar, or if any previous application has been made the full particulars thereof.

Supreme Court  
rules as to  
affidavits to  
apply.

12. The provisions of Order XXXVIII. of the Rules of the Supreme Court in civil proceedings shall as far as practicable apply to all applications for probate or administration.

Affidavit of  
searches; by  
whom to be  
made.

12A. In all applications for probate or for administration, the person making searches must be:—

- (a) The solicitor acting generally in the application;
- (b) A clerk in the sole and permanent employ of such solicitor only;
- (c) The Melbourne agent of such solicitor being himself a solicitor;
- (d) A clerk in the sole and permanent employ of such town agent only;
- (e) The applicant in person.

The affidavit of searches and of notice of intention to apply must show compliance with this rule.

Delay.

13. In every case where probate or administration with or without the will annexed is for the first time applied for after the lapse of three years from the death of the deceased, or in the case of an application for administration *de bonis non* after three years from the death of the last administrator, the reason of the delay is to be explained by affidavit to the Court or Registrar. Should the explanation be unsatisfactory the Court or Registrar may require such proof of the alleged cause of delay as either may think fit.

Proof of  
identity of  
party applicant.

14. The Court or Registrar may in cases where either deem it necessary require proof in addition to the oath of the executor or administrator of the identity of the deceased or of the party applying for the grant.

15. The Court or Registrar may require such further affidavits relating to the execution or attestation of any will or codicil as the Court or Registrar may think fit. Further affidavits

16. Grants of administration *durante minore aetate* may be made to guardians of infants for their use and benefit, subject to such limitations or conditions as the Court or a Judge or the Registrar of Probates may order. Grants of administration to guardians.

Infants above the age of seven years may elect a guardian, but in other cases a guardian must be assigned by the Court or a Judge or the Registrar of Probates founded on an affidavit showing that the proposed guardian is either *de facto* next of kin of the infants, or that their next of kin *de facto* has renounced his right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship; and upon any application for administration by such guardian evidence of his election or assignment must be produced.

In a family where there are infants both above and under the age of seven years, an elected guardian may act for all the infants without special assignment.

17. Applications for probate or administration under peculiar circumstances, not expressly referred to herein, shall be made upon such grounds and materials as have been heretofore acted upon by the Court, or as near thereto as circumstances permit, and the forms of affidavits, orders, and documents heretofore in use shall be followed in all matters not expressly hereby provided for and not inconsistent herewith or with the *Administration and Probate Act 1928*. Application under peculiar circumstances.

18. All applications for probate or letters of administration shall be dealt with by the Registrar of Probates in the order of and within ten days from the filing thereof; but in urgent cases on an affidavit setting out the urgency to the satisfaction of the Registrar, the application may be dealt with earlier by the Registrar; and the Registrar shall within such time legibly indorse upon the *præcipe* his grant thereof or the short particulars of his objections, if any, to such grant being made; and in cases of doubt or difficulty within section 7 of the *Administration and Probate Act 1928* shall refer the matter to the Court. Applications how to be dealt with.

19. Grants of probate and administration shall be made during vacation.

20. If the person obtaining an order for probate or administration shall not take out such probate or procure such administration to be issued within three months of the making of such order, any other person having claim thereto may proceed to obtain administration *cum testamento annexo* or other administration, as the case may be, notwithstanding such order; and if such last-mentioned person, after the expiration of the said three months, lodge a caveat against the issuing of such probate or administration respectively the same shall not issue to the person who has obtained such order without the special direction of the Court. Grants in vacation. Failure by person obtaining order to take out probate or procure administration

21. Every order made under section 29 of the *Administration and Probate Act 1928* shall contain a condition providing that the substituted administrator shall give a bond with proper sureties to the satisfaction of the Master-in-Equity. Provided that a Judge may in granting the order dispense with this condition if he think fit. Such order shall not be issued by the Associate unless and until the probate or letters of administration or any previous order made under such section be brought into the Master's office to have Substituted representatives.

an indorsement made thereon and on the copy thereof in the Master's office as to such order having been made unless a Judge shall otherwise order. A copy of such order when issued shall be filed in the Master-in-Equity's office.

Deceased  
citizens of  
United States.

22. Pursuant to clause III. of a Convention between the United Kingdom and the United States of America relative to the disposal of real and personal property signed at Washington on 2nd March, 1899, and acceded to by the Commonwealth on 3rd April, 1902: Upon any application to the Court or Registrar for the administration of the estate of a deceased person, if it shall appear that such deceased person was a citizen of the United States of America and that he died in Victoria without leaving any executor or known next of kin in Victoria, the applicant shall give notice of the application to the Chief Consular Officer of the United States of America in Victoria. The said Chief Consular Officer shall have the right to appear personally or by delegate in any proceedings relating to the said application and to be heard in the interests of any next of kin or creditors who may be in the United States of America or be citizens of that country until they are otherwise represented.

#### SURETIES AND BONDS.

Bond.

23. The bond of an ordinary administrator and his sureties shall be in the Form No. 2 in the First Schedule hereto, and the bond of an administrator to whom administration has been granted as a creditor of the deceased shall be in the Form No. 3 in the First Schedule hereto.

Justification by  
affidavit.

24. Sureties to administration bonds shall justify by affidavits, and such bonds may be executed by all or any of the parties thereto in the presence of and attested by any Commissioner of the Court for taking Affidavits not being the solicitor, or clerk of the solicitor, of the person applying for such administration. Provided always that every such affidavit shall specify the particulars of the property of the person making the same, and the value of such particulars over and above his just debts and liabilities respectively, and such affidavits shall be filed in the office of and laid before the Master-in-Equity, who, if not fully satisfied therewith, may require further information or assurance as to the sufficiency of the security, either by further affidavit made as hereinbefore provided, or by the personal attendance and examination upon oath of the proposed surety. Every such affidavit of justification shall be in the Form No. 4 in the First Schedule hereto.

Bond by  
incorporated  
company or  
guarantee  
society.

25. Where the bond of an incorporated company or guarantee society approved by the Governor in Council is received as security, under the *Administration and Probate Act 1928*, section 51, instead of the security of individuals, such bond and condition shall be in the same form, substituting the name of such company or society for those of the individuals, and the Master, before the issue of the letters of administration, shall satisfy himself of the due execution of such bond.

Price for  
procuring  
security.

26. No administrator shall be allowed the price he may pay for procuring the security either of individuals or of such company or society as an expense of administration.

#### INVENTORY AND ACCOUNT.

Affidavit of due  
performance

27. In all cases of probate and administration there shall be filed with the affidavits in support of the application an oath of the proposed executors and administrators in the Form No. 1 in the First Schedule hereto promising the due performance of their duties.

28. All executors and administrators shall respectively make or cause to be made a true and just account of the administration of the estate which they have undertaken as to their receipts and disbursements, and as to what portion is retained by them and what portion remains uncollected, and the same so made shall sign with their proper handwriting (or mark, if illiterate), and shall respectively exhibit and deposit, or cause to be exhibited and deposited, the same account in the said office of the Master-in-Equity within fifteen calendar months next ensuing the order granting probate or letters of administration respectively: Provided that this Court may, under special circumstances, by order dispense with the performance of this rule, or excuse the omission to have performed it so far as relates to allowing administration bonds to be put in suit under the *Administration and Probate Act 1928*, section 51. Inventory to be made.

#### ORDERS *Nisi*.

29. Every caveat shall bear date of the day it is entered, and shall remain in force for the space of six months only and then expire; but a caveat may be renewed from time to time by lodging a new caveat. Every caveat and withdrawal of caveat must be signed, either by the caveator or his solicitor with his proper handwriting. Caveats.

30. On the return of any order *nisi* under section 53 of the *Administration Act 1928*, it shall not be necessary for either party to prove his case by witnesses in the first instance, but the caveator shall state generally his ground of objection to the grant of probate or administration, and unless it be such as can be disposed of summarily the Court shall fix a day for hearing or direct the case to be entered on a list of causes for hearing. Return of order nisi.

31. Within four days from such direction unless the Court shall otherwise order the caveator shall deliver to the party seeking probate or administration particulars of objection in the form hereinafter set forth, according to the circumstances of the case. Particulars of objection.

#### *Particulars of Objection to Will.*

- (a) Later will or act of revocation and date thereof.
- (b) Not executed by testator.
- (c) Not executed in conformity with the Wills Act.
- (d) Want of testamentary capacity—
  - (1) confined to the period shortly before and at the time of execution;
  - (2) existing before such period, and due to insanity or imbecility of which the symptoms first manifested themselves at a date to be set out.
- (e) Undue influence and by whom exercised.

#### *Particulars of Objections to Grant of Administration on Intestacy.*

- (a) A will and date thereof.
- (b) That the person applying does not fill the capacity or stand in the relationship in which he seeks administration.
- (c) That the caveator or some other person seeking administration has a better right, stating the nature thereof.
- (d) That the proposed administrator is disqualified, and, if so, how.

Special grounds  
of objection.

32. The caveator shall also state in the particulars any special ground of objection not included in those above specified, and shall not without the leave of the Court raise any objection not stated in the particulars. The Court shall at its discretion direct the mode of proceeding at the hearing as to right to begin rebutting case and otherwise.

Witnesses.

33. Where an order is made fixing a time for showing cause against an order *nisi* under the *Administration and Probate Act 1928*, section 53, both parties may subpoena their witnesses for the hearing in the same manner as in an action, and such subpoena shall be issued by the Master-in-Equity.

Affidavits to be  
filed and notice  
served.

34. Either party shall, four clear days before the day appointed for hearing, file in the office of the Master-in-Equity any affidavits he may propose to use at the said hearing, and serve notice of the filing thereof upon the opposite party; and the opposite party, desiring to cross-examine a deponent, shall, two clear days before the said day appointed for hearing, serve a notice requiring the production of such deponent for cross-examination; but the Court may at its discretion, specially order variations from this rule.

Discovery and  
inspection of  
documents.

35. On the return of any order *nisi* under the *Administration and Probate Act 1928*, the Court may, in its discretion, order that the parties, or either of them, shall make discovery upon oath of all documents which are or have been in their or his possession, power, custody, or control, or which were in the possession, power, custody, or control of the testator or intestate at the time of his death relating to any matter in dispute in the cause and inspection thereof or make any other order for the conduct of the hearing that the Court may in its discretion think fit.

#### FEES, COSTS, ETC.

Fees to  
Registrars of  
County Courts.  
Costs.

36. The fees mentioned in the Second Schedule hereto shall be taken by and are hereby made payable to Registrars of the County Courts.

37. Subject to the provisions of the *Administration and Probate Act 1928*, sections 60, 61, and 62, and of any Act amending the same, in all applications for the grant of probate or letters of administration made after these Rules come into operation, the costs shall be taxed according to the scale of costs provided in Appendix N to the Rules of the Supreme Court in civil proceedings.

38. The Rules, practice, and mode of procedure now or hereafter in force in the Court in its civil jurisdiction shall, so far as applicable, and where no provision is made by these Rules, be adopted and be in force in the Court in its Probate jurisdiction.

39. In all matters not hereinbefore provided for the previous practice of the Court shall be followed, or if there be no such practice then the practice prevailing in the High Court in England.



## SCHEDULES.

## FIRST SCHEDULE

## FORM 1.

*Affidavit of Executor or Administrator promising the due Performance of Duties.*

In the Supreme Court.—In the Probate Jurisdiction.

In the estate of \_\_\_\_\_, late of \_\_\_\_\_, deceased.  
I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say:—

That I am seeking to obtain probate of the will [or administration of the estate] of \_\_\_\_\_, late of \_\_\_\_\_, deceased.

That if I obtain probate [or administration] I will well and truly collect and administer according to law, to the best of my knowledge and ability, the property, lands, and hereditaments, goods, chattels, and credits of the said deceased at the time of his death, which at any time after shall come to the power or control, hands, or possession of me as his executor [or administrator], or of any other person or persons for me; that I will make or cause to be made a true and just account of the administration of the estate which I have undertaken as to my receipts and disbursements, and as to what portion is retained by me, and what portion remains uncollected, and the same so made will sign with my proper handwriting [or mark], and will exhibit and deposit, or cause to be exhibited and deposited, the same account in the said office of the Master-in-Equity within fifteen calendar months next ensuing the order granting probate [or administration].

## FORM 2.

## Administration Bond

Know all men by these presents that we—

\_\_\_\_\_, of \_\_\_\_\_,  
\_\_\_\_\_, of \_\_\_\_\_,  
\_\_\_\_\_, of \_\_\_\_\_,

are jointly and severally held and firmly bound to the Registrar of Probates and Administrations of the Supreme Court of Victoria, his successors and assigns, in the sum of \_\_\_\_\_ of lawful money of the Commonwealth of Australia, to be paid to the said

Registrar, his successors and assigns, for the due payment whereof we hereby bind ourselves and each and any two of us, our heirs, executors, and administrators firmly by these presents. Sealed with our seals, dated this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord One thousand nine hundred and \_\_\_\_\_

The condition of this obligation is such that if the said \_\_\_\_\_ the administrator of all and singular the property of \_\_\_\_\_ late of \_\_\_\_\_ deceased, do and shall well and truly collect and administer according to law the property, lands, and hereditaments, goods, chattels, and credits of the said deceased at the time of his death which shall come to the power or control, hands, or possession of him as his administrator, or of any other person or persons for him, and do and shall make or cause to be made a true and just account of the administration of the estate which he shall have undertaken as to his receipts and disbursements, and as to what portion shall be retained by him, and what portion shall remain uncollected, and the same so made do and shall sign with his proper handwriting [or mark], and do and shall exhibit and deposit, or cause to be exhibited and deposited, the same account in the said office of the Master-in-Equity within fifteen calendar months next ensuing the order granting letters of administration; then this obligation to be void and of none effect, or else to remain in full force and virtue.

## FORM 3.

## Creditor's Administration Bond.

Know all men [*&c.*, as in usual form]—

The condition of this obligation is such that if the said C.D., a creditor and administrator of all and singular the property of A.B., late of \_\_\_\_\_ who died at \_\_\_\_\_ aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, do and shall well and truly collect and administer according to law the property, lands, and hereditaments, goods, chattels, and credits of the said deceased at the time of his death which shall come to the power or control, hands, or possession of him as such administrator, or of any other person or persons for him, and do and shall out of the said property, lands, and hereditaments, goods, chattels, and credits of the said deceased, and so far as the same shall thereto extend pay and satisfy all and singular the just debts of the said deceased in a due course of administration rateably and proportionably and according to the priority required by law, and not unduly preferring his own debt or debts of any other of the creditors of the said deceased by reason of his being administrator as aforesaid, and do and shall make or cause to be made [*and then as in usual form*].

## FORM 4.

## Affidavit of Justification.

In the Supreme Court.—In the Probate Jurisdiction.

In the estate of \_\_\_\_\_ late of \_\_\_\_\_ in Victoria,  
deceased intestate.

I, \_\_\_\_\_ or \_\_\_\_\_ 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 personally, and a separate gross value for each particular parcel or item thereof must be stated.*]

\* The gross value at which property of deceased was sworn.

(a) When realty, the allotment, parish, street, &c., the area of the land, whether there are buildings on the land, should be stated with sufficient accuracy to identify the land.

(b) When personally, the following particulars should be given, for example:—

- (1) Description of lease and number of years to run.
- (2) Number of shares in bank, building society, trading company, &c.
- (3) Money on deposit or current account, giving name and address of bank, society, &c.
- (4) Money lent on mortgage and registered number of same.
- (5) Household furniture and where kept.
- (6) Stock in trade of a business and premises wherein kept.
- (7) Farming implements, &c., where kept, and grain, quantity and where stored.
- (8) Policy of life insurance, number of years in force with surrender value, and age of surety at time of making his affidavit.
- (9) Live stock, number and kind and where depastured or kept.
- (10) Good book debts only.

[*Cash in hand or in house or a licence for land under any Land Act will not be accepted as sufficient.*]

3. That I am not surety in any other matter [*or if a surety in any other matter state in what matter and to what amount*].

Sworn at \_\_\_\_\_ in Victoria this \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred and \_\_\_\_\_ before me \_\_\_\_\_

A Commissioner of the Supreme Court of Victoria for taking Affidavits.

## SECOND SCHEDULE.

Where the whole estate does not exceed Fifty pounds—Five shillings.

Where the whole estate exceeds Fifty pounds—The sum of Five shillings, and the further sum of Two shillings and sixpence for every Fifty pounds, or fraction of Fifty pounds, by which the estate exceeds Fifty pounds.

Dated this 18th day of November, 1937.

F. W. MANN, C.J.  
J. R. MACFARLAN, J.  
CHARLES J. LOWE, J.  
C. GAVAN DUFFY, J.  
RUSSELL MARTIN, J.



# VICTORIA GOVERNMENT GAZETTE.

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No. 330]

FRIDAY, NOVEMBER 26.

[1937

Factories and Shops Acts.

## DETERMINATION OF THE IRONMOULDERS BOARD.

NOTE.—This Determination applies to the whole of the State of Victoria.

IN accordance with the provisions of the Factories and Shops Acts, the Wages Board appointed to "determine the lowest prices or rates of payment which may be paid to any person or persons or classes of persons (other than moulders employed in moulding metal bedsteads) employed in the process, trade, or business of an ironmoulder," has made the following Determination, namely:—

NOTES.—(a) Section 168 of the *Factories and Shops Act 1928* (No. 3677) extends the powers of this Board to "steel moulding."

(b) The following trades were proclaimed on 13th January, 1932, as apprenticeship trades under the *Apprenticeship Act 1928* for the Metropolitan Districts:—Jobbing Moulding and Coremaking, Jobbing Brass Moulding and Coremaking.

Full particulars of the apprenticeship regulations for these trades may be obtained on application to the Secretary, Apprenticeship Commission, Gisborne-street, Melbourne, C.2. (Price 3d.)

(1) That as from the beginning of the first pay period to commence in December, 1937, the last previous Determination of this Board shall be revoked and replaced by this Determination.

(2)

Apprentices or Improvers.	WAGES. Per Week of 44 hours. s. d.	Other Employees.	Per Week of 44 Hours.*	
			Within the Metropolitan District and such Portion of the City of Sandringham as is not included within the said District and the Cities of Geelong and Warrnambool.	All other Parts of Victoria where this Determination applies.
WAGES.	Per Week of 44 hours. s. d.	WAGES.	£ s. d.	£ s. d.
1st year ..	15 0	<i>Pipe Moulders making Pipes (other than Steam and Hydraulic Pipes) on a Bank or Cast Vertically.</i>		
2nd year ..	21 6	Bank pipe moulders—		
3rd year ..	34 3	5 and 6 inch, headmen .. .. .	5 2 0	5 2 0
4th year ..	55 9	5 and 6 inch, footmen .. .. .	4 11 0	4 11 0
5th year ..	69 9	4 inch and under, headmen .. .. .	4 15 0	4 15 0
		4 inch and under, footmen .. .. .	4 7 0	4 7 0
		Vertical pipe moulders—		
		Rammers, coremakers, corers, or casters .. .. .	4 5 0	4 5 0
		Dressers of pipes, including dressers on emery wheels .. .. .	4 5 0	4 5 0
		Furnacemen .. .. .	4 9 0	4 9 0
		Furnacemen's assistant (i.e., any person assisting in daubing ladles, charging, mixing daubing, and breaking pig iron) .. .. .	4 4 0	4 4 0
		<i>Persons Employed in making Pipes by machinery.</i>		
		Coremakers—		
		5 and 6 inch, faucet .. .. .	5 2 0	5 2 0
		5 and 6 inch, spigot .. .. .	4 11 0	4 11 0
		4 inch and under, faucet .. .. .	4 15 0	4 15 0
		4 inch and under, spigot .. .. .	4 7 0	4 7 0
		Finishers and Casters—		
		5 and 6 inch .. .. .	5 2 0	5 2 0
		4 inch and under .. .. .	4 15 0	4 15 0

One apprentice to every three or fraction of three workers receiving not less than 77s. per week of 44 hours.

An indenture of apprenticeship prescribed by the Board was approved on 5th November, 1911.

\* The hours of persons engaged in the Agricultural and Dairying Implement Industries shall be 46 per week and from the first day of March, 1938, shall be 44 per week.

Apprentices or Improvers.	Other Employees.	Per Week of 44 Hours.*	
		Within the Metropolitan District and such Portion of the City of Sandringham as is not included within the said District and the Cities of Geelong and Warrnambool.	All other Parts of Victoria where this Determination applies.
		£ s. d.	£ s. d.
<i>Improvers.</i>	<i>Ironmoulding and Cast Malleable Ironmoulding.</i>		
	Jobbing moulders or coremakers .. .. .	5 7 0	5 4 0
	Agricultural stove dairying implement moulders or core makers ..	4 17 0	4 14 0
	Machine or plate moulders or coremakers—		
	1st six months .. .. .	4 6 0	4 3 0
	2nd six months .. .. .	4 9 0	4 6 0
	3rd six months .. .. .	4 12 0	4 9 0
	After two years .. .. .	4 17 0	4 14 0
	Irondressers using pneumatic hammer .. .. .	4 11 0	4 11 0
	Irondressers (including dressers on emery wheels) .. .. .	4 5 0	4 5 0
	Furnacemen .. .. .	4 9 0	4 9 0
	Furnacemen's assistant (i.e., any person assisting in daubing ladles, charging, mixing daubing, and breaking pig iron) .. .. .	4 4 0	4 4 0
	Annealers of malleable iron castings .. .. .	4 1 0	4 1 0
	Shot-blast and sand blast dressers who are not protected from flying shot and sand by a properly enclosed cabin .. .. .	4 9 0	4 9 0
	Shot-blast and sand-blast dressers who are protected from flying shot and sand by a properly enclosed cabin .. .. .	4 5 0	4 5 0
	<i>Steel Moulding.</i>		
	Steeldressers using pneumatic hammer .. .. .	4 13 0	4 13 0
	Dressers (including dressers on emery wheels) .. .. .	4 7 0	4 7 0
	Crucible furnacemen .. .. .	5 3 0	5 3 0
	Assistant crucible furnacemen .. .. .	4 7 0	4 7 0
	Converter furnacemen (i.e., persons in charge of a converter) ..	4 15 0	4 15 0
	Assistant converter furnacemen (i.e., persons in charge of a cupola) ..	4 7 0	4 7 0
	Electric furnacemen .. .. .	5 3 0	5 3 0
	Assistant electric furnacemen .. .. .	4 7 0	4 7 0
	Annealers .. .. .	4 1 0	4 1 0
	Shot-blast and sand-blast dressers who are not protected from flying shot and sand by a properly enclosed cabin .. .. .	4 11 0	4 11 0
	Shot-blast and sand-blast dressers who are protected from flying shot and sand by a properly enclosed cabin .. .. .	4 7 0	4 7 0
	<i>Labourers.</i>		
	Labourers (steel moulding) .. .. .	3 19 0	3 19 0
	All other labourers .. .. .	3 17 0	3 17 0

\* The hours of persons engaged in the Agricultural and Dairying Implement Industries shall be 46 per week, and from the first day of March, 1938, shall be 44 per week.

(3) OVERTIME.—(a) Moulders (except Pipe Moulders).

All time worked outside ordinary daily hours shall be paid for at the rate of time and a half for the first four hours and double time thereafter, such double time to continue until the employee has been relieved from work for at least eight hours: Provided that an employee shall not be entitled to payment for such rest period.

(b) All others.

All time worked outside the ordinary daily hours in any place shall be paid for at the rate of time and a half, and each day shall carry its own overtime.

(4) SHIFT WORK.—i.e., for work done outside the ordinary time of starting and finishing for five or more days consecutively the rate to be paid shall be ordinary time with addition of five per cent.

Such shift workers times of starting and finishing to be arranged by mutual agreement.

All shift workers shall be paid overtime rates in excess of shift hours agreed upon.

CONTRACT OF EMPLOYMENT FOR JOBBING MOULDERS AND JOBBING COREMAKERS.

(5) (a) With the exceptions hereinafter stated, employment may be by the week or by the hour. If by the week it shall be terminable on either side by one week's notice given on any day or (if the employer terminate it without such notice), by payment of one week's wages.

A contract for weekly employment may be terminated by any employer, without liability to pay for more than time actually worked for misconduct or for absence from work without reasonable excuse.

If an employee engaged by the week absents himself from duty, except on public holidays or for days for which he produces a certificate from a medical practitioner or other proof satisfactory to his employer of sickness (aggregating 4 days' sickness in each year), a sum proportionate to his time of absence may be deducted from his pay, i.e., one-sixth of the weekly wage for each day of absence, including Saturday in shops working six days and one-fifth in shops working five days per week: Provided that only time actually lost shall be deducted when an employee is absent with leave on a Saturday.

(b) If the contract of employment is for hourly hiring, the total amount of the rates prescribed in clause 2 hereof shall be increased by 5s. per week (with a proportionate amount added to the wages of apprentices or improvers), but such amount shall not be taken into account in computing overtime, Sunday and holiday rates.

(c) An employee starting work on hourly hiring shall be entitled to a minimum of four consecutive hours' work or to four hours pay for the job—such hours may be deemed to be consecutive if worked in ordinary hours at the end of a day and the beginning of the next succeeding day.

MEAL ALLOWANCE.

(6) An employee required to work overtime for more than two hours without being notified the day before that he will be so required to work, shall either be supplied with a meal by the employer or paid 1s. 6d., or if work extends into a second meal hour 2s. 6d. for the two meals, but such payment need not be made to employees living in the same locality as their work-shop who can reasonably return home for meals.

If an employee pursuant to notice has provided a meal or meals and is not required to work overtime he shall be paid for each meal so provided.

## PAYMENT FOR HOLIDAYS.

(7) (a) Employees, excepting jobbing moulders and jobbing coremakers, shall be entitled to the following public holidays (without deduction of pay except as hereinafter provided):—New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Labour Day, King's Birthday, Christmas Day and Boxing Day, or such other day as is generally observed in the locality as a substitute for any of the said days respectively.

(b) Any employee who is absent without leave prior to a holiday and who does not resume work after the holiday shall not be entitled to holiday pay. An employee meeting with an accident at work before a holiday shall be paid for such holiday if no new hand is put on in his place.

(c) Where rationing is in operation during four weeks prior to a holiday occurring, such holiday shall be paid for proportionate to the time worked.

(d) Where an employee's services are terminated a week before the occurrence of a holiday and he is re-employed within two weeks after the holiday, or where an employee's services are terminated two weeks before the occurrence of a holiday and he is re-employed within a week after the holiday, or where an employee's services are terminated three weeks before the occurrence of a holiday and he is re-employed immediately after the holiday, payment shall be made for such holiday.

(8) SUNDAYS AND PUBLIC HOLIDAYS.—Double time shall be paid for all work done on Sundays, Good Friday, Easter Saturday, Easter Monday, Australia Day (26th January), Labour Day (21st April), King's Birthday, Christmas Day, Boxing Day, and New Year's Day; but if any other day be by Act of Parliament or Proclamation substituted for any of the above-named public holidays the special rate shall only be payable for work done on the day so substituted.

(9) DAY AND HOUR FOR PAYMENT OF WAGES.—All payments of wages shall be made within a quarter of an hour from the time of the worker ending work on each pay day.

(10) TERMINATION OF EMPLOYMENT.—Excepting for jobbing moulders and jobbing coremakers, four hours' notice of termination of employment shall be given by either employer or worker.

(11) TIME LOST THROUGH INJURY.—Any employee injured whilst at work shall, provided he returns to duty the same day, be paid at his ordinary rate of wages for the time lost in receiving first-aid or medical attention for the injury sustained.

(12) PIECE-WORK.—The Board determines under the provisions of Section 150 of the *Factories and Shops Act 1928* that any employer may fix and pay piece-work prices to any person employed at any work in the process, trade, or business of an ironmoulder, provided that any such employer shall base such piece-work prices on the earnings of an average worker working under like conditions and such piece-work prices shall be fixed so that an average worker can earn not less than the wages that are fixed by the Board for such work.

W. W. HARRIS, Chairman.

A. G. ALLEN, Secretary.

Melbourne, 12th November, 1937

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