

# STATUTORY RULES.

1952. No. 23

## HIGH COURT OF AUSTRALIA.

### RULES OF COURT.\*

(As of *Saturday, the 12th day of April, 1952*)

PURSUANT to the *Judiciary Act 1903-1950* and to all other powers thereunto enabling, it is ordered that, on and after the first day of January, 1953, the following Rules of Court shall come into force.

*G. Hardman*  
Principal Registrar.

(L.S.)

*J. Ratham C.J.*  
*Edwin Kinnear J.*  
*Edmund G. Gurne J.*  
*Dudley Williams J.*  
*Arthur J. B. J.*  
*L. K. Fullagar J.*  
*F. W. Kitt J.*

\* Notified in the *Commonwealth Gazette* on  
5231.—PRICE

, 1952.  
3/31.3.1952.

## ORDER 1.

## PRELIMINARY, INTERPRETATION AND COMMENCEMENT OF PROCEEDINGS.

I.—*Preliminary and Interpretation.*

1. These Rules may be cited as the High Court Rules. Citation.
2. These Rules shall come into operation on the first day of January, 1953, and shall apply to all proceedings and appeals commenced or instituted on or after that date. Commencement.
- 3.—(1.) The Rules of Court in force immediately before the commencement of these Rules regulating the practice and procedure in the High Court of Australia are repealed. Repeal and saving.  
 (2.) The repeal effected by the last preceding sub-rule does not affect the validity of any proceedings taken under the Rules of Court so repealed, or a right, privilege, obligation or liability acquired, accrued or incurred under any of those Rules, or a legal proceeding or remedy in respect of such a right, privilege, obligation or liability.
4. A proceeding pending and a judgment, decree or order given or made before the commencement of these Rules, being of a kind to which these Rules apply, shall be treated as if pending, given or made under these Rules, and may be proceeded with, enforced, varied, reversed or otherwise dealt with accordingly, subject to any special order or direction made or given by a Justice in a particular case. Pending proceedings, &c.
5. In these Rules, unless the contrary intention appears— Interpretation.  
 “Act” means—
  - (a) an Act of the Parliament of the United Kingdom which is in force in the Commonwealth or in a part of the Commonwealth;
  - (b) an Act of the Parliament of the Commonwealth;
  - (c) an Act of the Parliament of a State; and
  - (d) an Ordinance in force in a State or Territory;
 “action” means a civil proceeding commenced by writ or in such other manner as is prescribed by Rules of Court, but does not include a criminal proceeding by the Crown;
- “address for service” means an address which complies with the provisions of Order 4 of these Rules;
- “administrator” includes an officer or agent of the Commonwealth, or of a State or Territory, authorized under the law of the Commonwealth, or of a State or Territory, to administer the estate of a deceased person;
- “Admiralty action” means a proceeding instituted in the Court in the exercise of the jurisdiction conferred on it by or under the Colonial Courts of Admiralty Act, 1890;
- “affidavit” or “statutory declaration” means—
  - (a) in the case of an affidavit or statutory declaration made within the Commonwealth, an affidavit or declaration made under the provisions of a law of the Commonwealth or of a State or Territory;

- (b) in the case of an affidavit or statutory declaration made in the United Kingdom or in a part of the Queen's dominions outside the Commonwealth, an affidavit or a declaration made before a Justice of the Peace, Notary Public or other person having authority under any law for the time being there in force to take or receive an affidavit or a declaration therein; and
- (c) in the case of an affidavit or statutory declaration made in any other place, an affidavit or a declaration made before a British or Australian Consul or Vice Consul or before a person having authority, under a law of the Parliament of the United Kingdom or of the Commonwealth, or of a State or Territory, for the time being in force, to take or receive an affidavit or a declaration therein;

"Attorney-General" means the Attorney-General of the Commonwealth;

"body politic" includes the Crown in right of the Commonwealth or of a State, and also in right of a part of the Queen's dominions other than the Commonwealth, including the Crown in right of the United Kingdom;

"cause" includes a suit and criminal proceedings;

"Chief Justice" includes a Justice upon whom the powers and duties of the Chief Justice devolve for the time being;

"committee" includes a person entrusted under the law of the Commonwealth, or of a State or Territory, with the care or management of the person or estate of a person of unsound mind;

"Commonwealth" means the Commonwealth of Australia, and includes a Territory;

"the Court" means the High Court of Australia;

"defendant" includes a person against whom relief is sought by originating process;

"document" includes book, map, plan, drawing and photograph;

"existing" means existing immediately before the commencement of these Rules;

"file" means file in a Registry, and "filed" and "filing" have corresponding meanings;

"formerly", when used in relation to the Courts or the law or practice in England, means immediately before the date of the commencement of the Supreme Court of Judicature Act, 1873, namely the first day of November, 1875, and, when used in relation to the High Court or the practice or procedure in the High Court, means immediately before the commencement of these Rules, and "former" has a corresponding meaning;

"issue of fact" includes the assessment of damages in a cause or matter;

- “judgment” includes decree, order and sentence;
- “Justice” or “single Justice” means a Justice of the Court, including the Chief Justice, and includes—
- (a) a Justice sitting in Court or in Chambers;
  - (b) a Justice sitting in Court or elsewhere as in Chambers;
  - (c) a Justice sitting in a place otherwise than as a Court or as a member of a Court; and
  - (d) a Justice sitting with a jury or with an assessor or assessors,
- and in the expressions “Court or Justice” and “Court or a Justice” means a Justice of the Court sitting in Chambers;
- “Law Officer” means the Attorney-General or the Solicitor-General of the Commonwealth or of a State, as the case requires;
- “Marshal” means the Marshal of the Court, and includes a Deputy Marshal and any other officer or person bound or entitled to discharge the duties and perform or execute the functions or office of the Marshal or a Deputy Marshal;
- “matter” includes a proceeding in a Court, whether between parties or not, and also an incidental proceeding in a cause or matter;
- “oath” and “affidavit” include affirmation and statutory declaration, and “swear” includes affirm and declare;
- “officer” includes Registrar;
- “order” includes rule made by a Court or judge;
- “original proceeding” means a proceeding in the Court which is not a proceeding in a pending cause or matter, and includes a cause and a summons in an interpleader proceeding;
- “originating process” means writ of summons or other summons by which a cause or matter is commenced;
- “originating summons” means a summons other than a summons in a pending cause or matter;
- “party” and “parties” include as well as the plaintiff and defendant—
- (a) a person not originally a party against whom a counterclaim is set up or who has been served with notice to appear under any of these Rules; and
  - (b) a person served with notice of or attending a proceeding although not named on the record or in the process;
- “person” includes corporation and body politic;
- “person of unsound mind” includes a person in respect of whom there has been made, given or taken under the law of the Commonwealth or of a State or Territory an order, certificate or proceeding in consequence of which, under that law, that person, or property of that person, is, by reason of his mental infirmity, committed to the care, management or control of some other person;

“plaintiff” includes a person seeking relief against another person by a form of proceeding in a Court;

“prescribed” means prescribed by Rules or by an Act or law;

“proceeding” includes action, cause, matter and suit;

“proper officer”, when used in relation to an officer of the Court, means an officer ascertained as follows:—

(a) where a duty or function to be discharged or performed under an Act or these Rules is a duty or function which has, before the commencement of these Rules, been discharged or performed by an officer, that officer shall, unless otherwise provided by these Rules and subject to any direction given by the Chief Justice, continue to be the proper officer to discharge or perform that duty or function;

(b) where a new duty or function is, under an Act or these Rules, to be discharged or performed, the proper officer to discharge or perform the same shall be the officer directed by these Rules, or, if there is no such officer, then such other officer as is from time to time be directed to discharge or perform the duty or function by the Chief Justice, or, subject to any other direction by the Chief Justice, by a Registrar pursuant to these Rules;

(c) where a doubt arises as to the proper officer to discharge a duty or perform a function, the proper officer shall be such officer as is directed by the Chief Justice to perform the duty or perform the function;

“receiver” includes consignee or manager appointed by or under an order of the Court;

“Registrar” means the Principal Registrar or a District Registrar, as the case may be, and includes a Deputy Registrar or other officer for the time being discharging the duties of a Registrar or Deputy Registrar;

“Registry” includes the Principal Registry and a District Registry;

“Rules”, “these Rules” or “rules of Court” means these Rules, and includes—

(a) any forms, fees and costs referred to in these Rules; and

(b) any other rules of Court, forms, fees and costs made or prescribed in amendment of, or in addition to, these Rules;

“seal” or “seal of the Court” includes a seal of the Court for a District Registry;

“sealed” means sealed with the seal referred to in section 3 of the *High Court Procedure Act 1903-1950*, or such other seal as is prescribed by these Rules;

“State” means a State of the Commonwealth;

- “sue” means commence or take part in proceedings as plaintiff, petitioner or applicant;
- “suit” includes an action or original proceeding between parties;
- “taxing officer” means a Registrar or other person whose duty it is to tax costs to be taxed in the Court;
- “Territory” means a territory of the Commonwealth, and includes a territory administered by the Commonwealth under the trusteeship system of the United Nations;
- “trial” includes hearing;
- “United Kingdom” means the United Kingdom of Great Britain and Northern Ireland, or of Great Britain and Ireland, as the case requires;
- “writing” includes printing and typewriting and other similar methods of producing words in a visible form and “written” has a corresponding meaning.

6. Where the provisions of an Act, or of these Rules, referred to in these Rules, have been amended, or repealed and re-enacted with or without modification, by a subsequent Act or Rules, reference in these Rules to the provisions so amended or repealed shall, unless the contrary intention appears, be construed as reference to the provisions as amended or re-enacted.

Reference to  
Acts, &c.

## II.—Commencement and Title of Proceedings.

7.—(1.) Proceedings commenced by writ of summons shall be called actions.

Commencement  
of proceedings.  
Ct. H.C.R.  
O. I. r. 1.

(2.) If there is not an applicable provision providing for the manner of commencement of particular proceedings, they may be commenced in a manner directed by a Justice.

8.—(1.) A proceeding in the Court shall be entitled “In the High Court of Australia”.

Title of  
proceedings.  
Ct. H.C.R.  
O. I. r. 2.

(2.) If the proceeding is in the Principal Registry, the words “Principal Registry” shall be added, if the proceeding is in the District Registry in the Australian Capital Territory, the words “Canberra Registry” shall be added, and, if the proceeding is in any other District Registry, the word “Registry” shall be added, preceded by the name of the State concerned.

## ORDER 2.

### WRITS OF SUMMONS.

1. A writ of summons shall, before it is issued, be endorsed with a concise statement of the nature of the claim made and of the relief or remedy required in the action.

Endorsement  
of claim.  
R.S.C. O. II.  
r. 1.

2. Any costs occasioned by the use of any forms of writs, and of endorsements thereon, other than, or more prolix than, the forms prescribed, shall be borne by the party using them unless the Court or a Justice otherwise directs.

Costs of prolix  
writs.  
R.S.C. O. II.  
r. 2.

**ORDERS 2, 3.**

3. The writ of summons for the commencement of an action shall, except where a different form is required by these Rules, be in one of the forms numbered 1 and 2 in the First Schedule, with such variations as the circumstances require.

Form of writ.  
R.S.C. O. II.  
r. 3.

4. A writ of summons or other originating process for service out of the Commonwealth, or of which notice is to be given out of the Commonwealth, shall not be issued without the leave of the Court or a Justice.

Leave to issue  
out of  
Commonwealth.  
R.S.C. O. II.  
r. 4.

5.—(1.) A writ of summons to be served out of the Commonwealth, or of which notice is to be given out of the Commonwealth, shall be in one of the forms numbered 3 and 4 in the First Schedule, with such variations as the circumstances require.

Form of writ  
for service out  
of the  
Commonwealth.  
R.S.C. O. II.  
r. 5.

(2.) The notice shall be in the form numbered 5 in the First Schedule, with such variations as the circumstances require.

6. The writ of summons in an Admiralty action *in rem* shall be in the form numbered 10 in the First Schedule, with such variations as the circumstances require.

Admiralty  
action.  
R.S.C. O. II.  
r. 7.

7. A writ of summons and (unless by these Rules or by any law it is otherwise provided) every other writ or originating process shall bear date on the day on which it is issued and shall be tested in the name of the Chief Justice.

Dating and  
testing of  
writs.  
R.S.C. O. II.  
r. 8.

8. When a writ is issued from a District Registry and a defendant neither resides nor carries on business in the State or Territory in which the Registry is situated, there shall be a statement upon the face of the writ that the defendant may, at his option, cause an appearance to be entered either at that District Registry or at the Principal Registry, or to the like effect.

Writ issued  
from District  
Registry.  
H.C.R.  
O. 6. r. 11.

**ORDER 3.****ENDORSEMENT OF CLAIM.**

1. In the endorsement required by Order 2, rule 1, it is not essential to set forth the precise ground of complaint or the precise remedy or relief to which the plaintiff considers himself entitled.

Endorsement  
under Order 2,  
rule 1.  
R.S.C. O. III.  
r. 2.

2. The endorsement of claim shall be in such concise form as the nature of the case requires.

Forms of  
endorsement.  
R.S.C. O. III.  
r. 3.

3. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the endorsement shall show in what capacity the plaintiff or defendant sues or is sued.

Endorsement  
to show  
representative  
capacity.  
R.S.C. O. III.  
r. 4.

4.—(1.) In an action in which the plaintiff's claim is for a debt or liquidated demand only, the endorsement, besides stating the nature of the claim, shall state the amount claimed for debt or in respect of that demand and for costs respectively, and shall further state that, upon payment of that amount within the time allowed for appearance, further proceedings will be stayed.

Endorsement  
where the  
claim is  
liquidated.  
R.S.C. O. III.  
r. 7.

(2.) The statement shall be as in the form numbered 2 in the First Schedule.

(3.) The defendant may, notwithstanding any such payment, have the costs taxed and, if more than one-sixth is disallowed, the plaintiff's solicitor shall pay the costs of taxation.

5. Where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be endorsed with a claim that an account be taken. Ordinary account.  
R.S.C. O. III.  
r. 8.

6. In an action for libel, the endorsement on the writ shall state sufficient particulars to identify the publications in respect of which the action is brought. Libel.  
R.S.C. O. III.  
r. 9.

#### ORDER 4.

##### ENDORSEMENT OF ADDRESS.

1.—(1.) The solicitor of a plaintiff suing by a solicitor shall endorse upon the writ of summons the address of the plaintiff and also his own name and place of business or the name of his firm and its place of business. Where plaintiff sues by solicitor.  
R.S.C. O. IV.  
r. 1.  
H.C.R. O. I.  
r. 3.

(2.) Where the place of business so endorsed is not more than three miles from the office of the Registry in which the proceeding is commenced, it shall be the address for service of the plaintiff.

(3.) Where that place of business is more than three miles from the office of that Registry, the solicitor shall also endorse upon the writ the address of a proper place, which is not more than three miles from that office, to be the address for service of the plaintiff.

(4.) Where the solicitor is acting as agent of another solicitor, he shall add to his own name and place of business, or firm name and its place of business, the name and place of business of the principal solicitor, or the name of the firm of the principal solicitor and its place of business.

2.—(1.) A plaintiff suing in person shall endorse upon the writ of summons his place of residence and his occupation. Where plaintiff sues in person.  
R.S.C. O. IV.  
r. 2.  
H.C.R. O. I.  
r. 4.

(2.) Where his place of residence is not more than three miles from the office of the Registry in which the proceeding is commenced, it shall be his address for service.

(3.) Where that place of residence is more than three miles from the office of that Registry, he shall also endorse upon the writ the address of a proper place, which is not more than three miles from that office, to be his address for service.

3. Notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications, if not required to be served personally, may be left for the plaintiff at his address for service. Address for service.

4. Where notice of a writ of summons or other originating process is to be served on a defendant in pursuance of Order 10, the endorsement required by the preceding rules of this Order shall be made both on the writ, or other originating process, and on the notice. Where notice is served in lieu of writ.  
R.S.C. O. IV.  
r. 3.

## ORDERS 4, 5.

5. Where proceedings are commenced otherwise than by writ of summons, the preceding rules of this Order apply to the process by which the proceedings are originated as if it were a writ of summons.

Matters not commenced by writ.  
R.S.C.O. IV.  
r. 4.

## ORDER 5.

ISSUE OF, AND APPEARANCES TO, WRITS OF SUMMONS AND  
ORIGINATING PROCESSES.

## I.—Place of Issue.

1. A writ of summons or other originating process may be issued out of any Registry.

Writs, &c., may be issued out of any Registry.  
R.S.C. O. V.  
rr. 1 and 2.

2. Where a writ of summons or other originating process is issued out of the Principal Registry, and that writ or other process, or notice of that writ or other process, is to be served upon or given to a person, a statement in accordance with the "Memorandum to be subscribed on writs, &c., issued from the Principal Registry" set forth in form numbered 1 in the First Schedule shall appear upon the face of the writ of summons or other process.

Endorsement as to appearance on writs, &c., issued out of a District Registry

3. Where a writ of summons or other originating process is issued out of a District Registry, and that writ or other process, or notice of that writ or other process, is to be served upon or given to a person, a statement in accordance with the "Memorandum to be subscribed on writs, &c., issued from District Registries" set forth in form numbered 1 in the First Schedule shall appear upon the face of the writ of summons or other process.

Endorsement as to appearance on writs, &c., issued out of a District Registry.  
cf. H.C.R. O. V. r. 11.

## II.—General.

4. A writ of summons or other originating process shall be prepared by the plaintiff or his solicitor and shall be written, printed or typewritten on paper of the same kind as these Rules direct in the case of documents required to be printed.

Preparing and printing writs.  
R.S.C. O. V.  
r. 10.

5. A writ of summons or other originating process shall be signed, sealed and numbered by the proper officer and shall thereupon be deemed to be issued.

Signing, &c., by proper officer.  
R.S.C. O. V.  
r. 11.

6.—(1.) The plaintiff or his solicitor shall, on presenting a writ of summons or other originating process for signing, sealing and numbering, leave with the officer a copy (written, printed or typewritten on paper of the kind specified in rule 4 of this Order) of the writ or other originating process and of all endorsements thereon.

Copy of writ, &c., to be left with proper officer.  
R.S.C. O. V.  
r. 12.

(2.) The copy shall be signed by or for the solicitor leaving it, or by the plaintiff himself if he sues in person.

7.—(1.) The officer receiving a copy of a writ or other originating process under the last preceding rule shall, on payment of the prescribed fee, file the copy.

Filing and marking of copy of writ, &c.  
R.S.C. O. V.  
r. 13.

(2.) An entry of the filing of the copy shall be made in a book to be called the Cause Book, or in a book to be called the Court Book, as the case may be, which are to be kept in the Registries in the manner and form in which those books were respectively kept immediately before the commencement of these Rules.

(3.) The action or other proceeding shall be distinguished—

- (a) by the date of the year and a number in the same manner in which matters were distinguished in those books immediately before the commencement of these Rules; and
- (b) by the name of the Registry out of which the writ of summons or other originating process, as the case may be, is issued.

### III.—Admiralty Actions.

8.—(1.) In an Admiralty action *in rem*, a warrant for the arrest of property shall be in the form numbered 11 or the form numbered 12 in the First Schedule, with such variations as the circumstances require, and may be issued at the instance of either the plaintiff or the defendant at any time after the writ of summons has issued.

Admiralty,  
arrest warrant  
after affidavit.  
R.S.C. O. V.  
r. 16.

(2.) Except by leave of the Court or a Justice, a warrant of arrest shall not be issued until an affidavit by the party or his agent has been filed and the provisions of sub-rules (3.), (4.) and (5.) of this rule complied with.

(3.) The affidavit shall state—

- (a) the name and description of the party at whose instance the warrant is to be issued;
- (b) the nature of the claim or counterclaim;
- (c) the name and nature of the property to be arrested;
- (d) that the claim or counterclaim has not been satisfied;
- (e) that the aid of the Court is required to enforce it;
- (f) in an action of wages or of possession, the national character of the vessel proceeded against and, if against a foreign vessel, that notice (a copy of which shall be annexed to the affidavit) of the commencement of the action has been given to a consular officer of the State to which the vessel belongs, if there be one within the Commonwealth; and
- (g) in an action of distribution of salvage, the amount of salvage money awarded or agreed to be accepted and the name, address and description of the party holding the salvage money.

(4.) In an action of bottomry, the bottomry bond, and, if it is in a foreign language, a notarial translation of the bond, shall be produced for the inspection and perusal of the Registrar and a copy of the bond, or of the translation of the bond, certified to be correct, shall be annexed to the affidavit.

(5.) The solicitor who applies for the issue of the warrant shall lodge an undertaking to pay the fees and expenses of the Marshal.

## ORDERS 5, 6.

9. The Court or a Justice may, if it or he thinks fit—

- (a) allow a warrant of arrest to issue although the affidavit referred to in the last preceding rule does not contain all the required particulars;
- (b) in an action of wages against a foreign ship, waive the service of the notice; and
- (c) in an action of bottomry, waive the production of the bond.

Special  
circumstances.  
R.S.C. O. V.  
r. 17.

IV.—*Time for Appearance.*

10. Where a writ of summons or other originating process is to be served within the Commonwealth, the time to be limited in the writ or other process for the appearance of a defendant shall be—

- (a) where the place of service is in the State or Territory in which the Registry from which it is issued is situated—fourteen days;
- (b) where the place of service (not being in Papua, New Guinea or Norfolk Island) is in a State or Territory other than the State or Territory in which the Registry from which it is issued is situated—twenty-one days;
- (c) where the place of service is in Papua, New Guinea or Norfolk Island—twenty-eight days; and
- (d) in any other case—three months.

Time for  
appearance to  
be limited by  
writ.  
H.C.R. O. V.  
r. 14.

V.—*Actions on Relation.*

11.—(1.) Where a proceeding is commenced in the name of the Attorney-General of the Commonwealth or of a State on the relation of a private person, the writ of summons or other originating process, when presented for issue, shall have upon it a fiat under the hand of the Attorney-General concerned directing or approving its issue.

Actions by  
Attorney-  
General on  
relation.

(2.) A copy of the fiat shall be endorsed upon each copy of the writ of summons or other process to be served.

## ORDER 6.

## CONCURRENT WRITS.

1.—(1.) The plaintiff in an action may, at the time of, or at any time during twelve months after, the issue of an original writ of summons, issue one or more concurrent writ or writs.

Concurrent  
writs, how  
issued, &c.  
R.S.C. O. VI.  
r. 1.

(2.) A concurrent writ shall bear teste of the same day as the original writ, and shall be marked with a seal, impressed upon the writ by the proper officer, bearing the word "Concurrent" and the date of issue of the concurrent writ.

2. A concurrent writ shall be in force only for the period during which the original writ in the action is in force.

Period during  
which  
concurrent writ  
in force.

3.—(1.) A writ for service within the Commonwealth may be issued and marked as a concurrent writ with a writ for service outside the Commonwealth or a writ of which notice in lieu of service is to be given.

Concurrent  
writs for  
service within,  
and outside, the  
Commonwealth.

(2.) A writ for service outside the Commonwealth, or a writ of which notice in lieu of service is to be given, may be issued and marked as a concurrent writ with a writ for service within the Commonwealth.

R.S.C. O. VI.  
r. 2.

4. Where a proceeding is required or permitted to be commenced otherwise than by writ of summons, the preceding rules of this Order apply, *mutatis mutandis*, to the issue of a concurrent originating process in that proceeding.

## ORDERS 6, 7.

Concurrent  
originating  
process.  
Of R.S.C. O.  
VI. rr. 1A and  
2A.

## ORDER 7.

## DISCLOSURE BY SOLICITORS AND PLAINTIFFS, AND CHANGE OF SOLICITOR.

1.—(1.) A solicitor whose name is endorsed on a writ of summons or other originating process shall, on demand in writing made by or on behalf of a defendant who has been served with or has appeared to the writ or process, forthwith declare in writing whether the writ or other process has been issued by him or with his authority or privity.

Where name of  
solicitor  
endorsed on  
writ.  
R.S.C. O. VII.  
r. 1.

(2.) Where the solicitor fails so to declare within three days after service of the demand, a Justice may order him, within a specified time, so to declare and also to declare the profession or occupation and place of abode of the plaintiff.

(3.) Where the solicitor declares that the writ or other originating process was not issued by him or with his authority or privity, proceedings upon the writ or other process shall be stayed and further proceedings shall not be taken upon the writ or other process without leave of the Court or a Justice.

2.—(1.) Subject to the provisions of Order 16, rule 36, sub-rule (2.), a party suing or defending by a solicitor may change his solicitor in a proceeding without an order for that purpose.

Change of  
solicitor.  
R.S.C. O. VII.  
r. 2 (1.) and  
(6.).

(2.) Subject to rules 6 and 7 of this Order, the former solicitor shall be considered the solicitor of the party until the final conclusion of the proceeding before the Court, whether on appeal or otherwise, unless and until—

- (a) notice of a change of solicitor is filed in the Registry in which the proceeding is then pending; and
- (b) a copy of the notice, endorsed with a memorandum stating that the notice has been duly filed and the name of the Registry in which it has been filed, is served on each other party to the proceeding, other than a party in default as to entry of appearance.

(3.) A notice under the last preceding sub-rule shall be signed by the new solicitor and shall state his place of business.

(4.) Where that place of business is not more than three miles from the office of the Registry in which the proceeding is pending, it shall be the address for service of the party.

(5.) Where that place of business is more than three miles from the office of that Registry, the notice shall also state the address of a proper place, which is not more than three miles from that office, to be the address for service of the party.

(6.) Notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications, if not required to be served personally, may be left for the party at his address for service.

3.—(1.) Where a party, after having sued or defended in person, appoints a solicitor to act on his behalf in a proceeding, he may give notice of that appointment.

Notice of  
appointment of  
solicitor.  
R.S.C. O. VII.  
r. 2 (7.).

(2.) The provisions of the last preceding rule relating to a notice of change of solicitor and to service apply, with the necessary modifications, in the case of notice of appointment of a solicitor.

4.—(1.) Where a party, after having sued or defended by a solicitor, intends to act in person, he may give notice stating his intention to act in person and giving an address for service.

Notice of intention to act in person.  
R.S.C. O. VII.  
r. 2 (8.).

(2.) The provisions of rule 2 of this Order relating to a notice of change of solicitor apply, with the necessary modifications, to a notice of intention to act in person.

5. A party giving notice under rule 2 or rule 3 of this Order may perform the duties prescribed by those rules in person or through his new solicitor.

Power to act through new solicitor.  
R.S.C. O. VII.  
r. 2 (9.).

6.—(1.) Where a solicitor who has acted for a party in a proceeding—

Removal of solicitor from the record at the instance of another party.  
R.S.C.O. VII.  
r. 3.

(a) has died;

(b) has become bankrupt;

(c) cannot be found;

(d) has failed to take out a practising certificate, where one is required, or to register as a practitioner, in the High Court; or

(e) has ceased to have the right to practise in the High Court, and the party has not given notice of change of solicitor or notice of intention to act in person in accordance with the provisions of this Order, another party to the proceeding may, on notice to be served on the first-named party personally, or by pre-paid post letter addressed to his last-known place of address, unless the Court or a Justice otherwise directs, apply to the Court or a Justice for an order declaring that the solicitor has ceased to be the solicitor acting for the first-named party in the proceeding, and the Court or Justice may make an order accordingly.

(2.) Where an order is made under the last preceding sub-rule, the party on whose application the order was made shall—

(a) serve on each other party to the proceeding (other than a party in default as to entry of appearance) a copy of the order;

(b) procure the order to be filed in the Registry in which the proceeding is then pending; and

(c) leave at that Registry a certificate signed by the applicant or his solicitor that the order has been duly served.

(3.) Where the party on whose application the order was made has complied with the last preceding sub-rule, the party against whom the order was made shall either appoint another solicitor or give notice of intention to act in person in accordance with the provisions of this Order, and, in default of his so doing, documents in respect of which personal service is not required may be served on the party so in default by being filed in the Registry.

(4.) An order made under this rule does not affect the rights or liabilities of a solicitor and the party for whom he acted as between themselves.

7.—(1.) Where a solicitor who has acted for a party in a proceeding has ceased so to act and the party has not given notice of change of solicitor or notice of intention to act in person in accordance with the provisions of this Order, the solicitor may, on notice to be served on the party personally or by pre-paid post letter addressed to his last-known place of address, unless the Court or a Justice otherwise directs, apply to the Court or a Justice for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the proceeding, and the Court or Justice may make an order accordingly.

Withdrawal of  
solicitor who has  
ceased to act  
for a party.  
R.S.C. O. VII.  
r. 4.

(2.) Where an order is made under the last preceding sub-rule, the solicitor on whose application the order was made shall—

- (a) serve on each party to the proceeding (other than a party in default as to entry of appearance) a copy of the order;
- (b) procure the order to be filed in the Registry in which the proceeding is then pending; and
- (c) leave at that Registry a certificate signed by him that the order has been duly served,

and, in default of his so doing, and subject to rules 2, 4 and 6 of this Order, he shall be considered the solicitor of the party for whom he has acted to the final conclusion of the proceeding before the Court, whether on appeal or otherwise.

(3.) Where—

- (a) an order made under this rule has been filed in the appropriate Registry; and
  - (b) the party to whom the order relates has not appointed another solicitor or given notice of intention to act in person in accordance with the provisions of this Order,
- a document in respect of which personal service is not required may be served on that party by being filed in that Registry.

(4.) An order made under this rule does not affect the rights or liabilities of a solicitor and a party as between themselves.

8. A solicitor shall not act in a proceeding for plaintiff and defendant or for any two or more defendants having adverse interests in a matter.

Solicitor not to  
act for adverse  
parties.

## ORDER 8.

### RENEWAL OF WRITS.

1.—(1.) Subject to the next succeeding sub-rule, an original writ of summons shall not be in force for more than twelve months from the day of the date of the writ, including the day of that date.

Original writ in  
force for twelve  
months.  
R.S.C. O. VIII.  
r. 1.

(2.) Where a defendant named in an original writ has not been served with the writ, the plaintiff may, before the expiration of twelve months from the day of the date of the writ, apply to the Court or a Justice for leave to renew the writ and the Court or Justice, if satisfied

that reasonable efforts have been made to serve the defendant, or for other good reason, may order that the original or concurrent writ be renewed for six months from the date of the renewal inclusive, and so from time to time during the currency of the renewed writ.

(3.) Where an order is made under the last preceding sub-rule, the writ shall be renewed by being marked with a seal bearing the word "Renewed" and the date of the day, month and year of the renewal.

(4.) A writ so renewed shall remain in force, and be available to prevent the operation of a law whereby the time for the commencement of the action is limited, and for all other purposes, from the date of issue of the original writ of summons.

(5.) A seal for the purpose of marking writs in accordance with this rule shall be provided and kept for that purpose at each Registry and shall be impressed upon the writ by the proper officer upon delivery to him by the plaintiff or his solicitor of a memorandum in the form numbered 13 in the First Schedule, with such variations as the circumstances require.

2. The production of a writ of summons purporting to be marked with the seal of the Court showing the writ to have been renewed in accordance with this Order is sufficient evidence of its having been so renewed and of the commencement of the action as of the first date of the renewed writ for all purposes. Evidence of renewal.  
R.S.C. O. VIII.  
r. 2.

3. Where a writ or other originating process, of which the production is necessary, has been lost, the Court or a Justice, upon being satisfied of the loss and of the correctness of a copy of the writ or other process, may order that the copy shall be sealed in lieu of the original writ or other originating process. Lost writ.  
R.S.C. O. VIII.  
r. 3.

## ORDER 9.

### SERVICE OF WRITS OF SUMMONS.

#### I.—*Mode of Service.*

1. Service of a writ or other originating process upon a party is not required when the solicitor of the party to be served undertakes in writing to accept service and an appearance is entered. Undertaking to accept service.  
R.S.C. O. IX.  
r. 1.

2.—(1.) Where service is required, the writ or other originating process shall, whenever it is practicable, be served by delivering a copy of the writ or other process, and of the endorsement thereon, and at the same time producing the original. When service required, how effected.  
R.S.C. O. IX.  
r. 1 and O.  
XXXVII. r. 82.

(2.) Where it appears to the Court or a Justice that the plaintiff is, from any cause, unable to effect prompt personal service, the Court or Justice may make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as is just.

3. An application to the Court or a Justice 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. Substituted service.  
R.S.C. O. X.

## II.—On Particular Defendants.

4.—(1.) Where an infant is a defendant, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or a Justice otherwise orders, be deemed good service on the infant. Infant.  
R.S.C. O. IX.  
r. 4.

(2.) The Court or Justice may order that service made, or to be made, on the infant shall be deemed good service.

5. Where a person of unsound mind is a defendant in a proceeding, service on him shall be effected in such a manner as a Justice directs upon application made supported by affidavit. Persons of  
unsound mind.  
R.S.C. O. IX.  
r. 5.

## III.—On Corporations and Agents.

6. Subject to a contrary statutory provision, a writ of summons or other originating process, or notice of a writ or other process, to be served on a corporation aggregate, may be served on the mayor, president or other head officer, or on the town clerk, clerk, treasurer, secretary, manager or other principal officer of that corporation within the Commonwealth. Service on  
corporations,  
&c.,  
R.S.C. O. IX.  
r. 8.

7.—(1.) Where a contract has been entered into within the Commonwealth by or through an agent residing or carrying on business within the Commonwealth on behalf of a principal residing or carrying on business outside the Commonwealth, a writ of summons in an action relating to or arising out of that contract may, by leave of the Court or a Justice given before the determination of the agent's authority or of his business relations with the principal, be served on the agent, in lieu of or in addition to service upon his principal. Service on  
agent.  
R.S.C. O. IX.  
r. 8A.

(2.) Notice of the order giving leave to serve an agent, and a copy of that order and of the writ of summons, shall forthwith be sent by pre-paid registered post letter to the defendant or defendants at his or their address outside the Commonwealth.

## IV.—In Particular Actions.

8. Service of a writ of summons in an action to recover land may, in case of vacant possession, when service 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. Service in  
action for  
recovery of  
land.  
R.S.C. O. IX.  
r. 9.

9. In an Admiralty action *in rem*, service of a writ or warrant is not required where the solicitor of the defendant agrees in writing to accept service and to put in bail, or to pay money into Court in lieu of bail. Admiralty  
actions *in rem*.  
R.S.C. O. IX.  
r. 10.

10.—(1.) In an Admiralty action *in rem*, the warrant of arrest shall be served by the Marshal or his deputy. Service of  
warrant of  
arrest.  
R.S.C. O. IX.  
r. 11.

(2.) The party issuing the warrant shall, within seven days from its service, file the warrant, endorsed with a certificate of service, in the Registry out of which it was issued.

11. In an Admiralty action *in rem*, service of a writ of summons or warrant against a ship, freight or cargo on board shall be effected by nailing or affixing the original writ or warrant for a short time on the mainmast, or on the single mast, of the vessel or on some other conspicuous part of the vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place. Service of writ  
or warrant,  
how effected.  
R.S.C. O. IX.  
r. 12.

## ORDERS 9, 10.

12. Where cargo has been landed or transhipped, service of the writ of summons or warrant to arrest the cargo and freight shall be effected by placing the writ or warrant for a short time on the cargo, and, on taking off the process, by leaving a true copy upon it.

When cargo landed.  
R.S.C. O. IX.  
r. 13.

13. Where cargo is in the custody of a person who will not permit access to it, service of the writ or warrant may be made upon the custodian.

Where no access to cargo.  
R.S.C. O. IX.  
r. 14.

14. In an Admiralty action *in rem*, the service of a writ of summons or warrant upon proceeds in Court shall be effected by showing the original writ to the Registrar and leaving with him a copy of it, which service shall be a sufficient arrest of the proceeds.

Proceeds in Court.  
R.C.R. O.  
XLIII. r. 15 (d).

## V.—Generally.

15.—(1.) The person serving a writ of summons or other originating process shall, within three days after service, endorse on the writ or other originating process the day of the month and week, and the time of the day, of the service of the writ or other process, and, if he does not do so, the plaintiff, in case of non-appearance, may not proceed as upon default without the leave of the Court or a Justice.

Endorsement after service.  
R.S.C. O. IX.  
r. 15.

(2.) An affidavit of service of the writ or other originating process shall state the day on which the endorsement referred to in the last preceding sub-rule was made.

(3.) This rule applies to substituted as well as to other service.

## ORDER 10.

## SERVICE OUTSIDE THE COMMONWEALTH.

1.—(1.) Leave to serve a writ of summons, or notice of a writ of summons, outside the Commonwealth may be given by the Court or a Justice where—

In certain cases service of writ, &c., allowed outside Commonwealth

(a) the whole subject-matter of the action is land situated within the Commonwealth (with or without rents or profits), or the perpetuation of testimony relating to land within the Commonwealth;

R.S.C. O. XI.  
r. 1.  
R.C.R. O. IX.  
r. 1.

(b) an act, deed, will, contract, obligation or liability affecting land or hereditaments situated within the Commonwealth is sought to be construed, rectified, set aside or enforced in the action;

(c) relief is sought against a person domiciled or ordinarily resident within a State or Territory;

(d) the action is for the execution, as to property situated within the Commonwealth, of the trusts of a written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of the Commonwealth or of a State or Territory;

(e) the action is one brought to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or other relief for or in respect of the breach of a contract—

(i) made within the Commonwealth;

- (ii) made by or through an agent trading or residing within the Commonwealth on behalf of a principal trading or residing outside the Commonwealth; or
  - (iii) which is governed by the law of the Commonwealth or of a State or Territory;
  - (f) the action is brought in respect of a breach committed within the Commonwealth of a contract wherever made, even though that breach was preceded or accompanied by a breach outside the Commonwealth which rendered impossible the performance of the part of the contract which ought to have been performed within the Commonwealth;
  - (g) the action is founded on a tort committed within the Commonwealth;
  - (h) an injunction is sought as to anything to be done within the Commonwealth, or a nuisance within the Commonwealth is sought to be prevented or removed, whether damages are or are not also sought in respect of that thing or nuisance;
  - (i) a person outside the Commonwealth is a necessary or proper party to an action properly brought against some other person duly served within the Commonwealth;
  - (j) the action is by a mortgagee or mortgagor in relation to a mortgage of personal property situated within the Commonwealth 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 paragraph (e) of this sub-rule) a personal judgment or order for payment of moneys due under the mortgage; or
  - (k) the action is brought under the *Carriage by Air Act 1935*.
- (2.) In paragraph (j) of the last preceding sub-rule—
- (a) “mortgage” means a mortgage, charge or lien of any description;
  - (b) “mortgagee” means a party for the time being entitled to or interested in a mortgage;
  - (c) “mortgagor” means a party for the time being entitled to or interested in property subject to a mortgage;
  - (d) “personal property situated within the Commonwealth” 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 under the law of a State or Territory.

2.—(1.) Where the parties to a contract upon which an action which is within the jurisdiction of the Court is brought have agreed—

- (a) that the Court shall have jurisdiction to entertain an action in respect of that contract;

Agreement as to jurisdiction and mode of service.  
R.S.C. O. XL  
r. 2A.

- (b) that service of a writ of summons in that action may be effected at a place within or outside the Commonwealth on a party, or on a person on behalf of a party, or in a manner specified or indicated in the contract,

service of the writ of summons at the place (if any), on the party or on the person (if any) and in the manner (if any) specified or indicated in the contract shall be deemed to be good and effective service wherever the parties are resident.

(2.) Where no place, mode or person is so specified or indicated, service outside the Commonwealth of the writ may be ordered.

3.—(1.) An application for leave to serve a writ of summons, or notice of a writ of summons, on a defendant outside the Commonwealth shall be supported by affidavit or other evidence stating—

Application to be supported by evidence.  
R.S.C. O. XI.  
r. 4.

- (a) that, in the belief of the deponent, the plaintiff has a good cause of action;
- (b) the place or country where that defendant is or probably may be found; and
- (c) the grounds upon which the application is made.

(2.) Leave to serve the writ or notice outside the Commonwealth shall not be granted unless it is made sufficiently to appear to the Court or Justice that the cause is a proper one for service outside the Commonwealth under this Order.

4.—(1.) An order giving leave to effect service or give notice outside the Commonwealth shall limit a time after the service or notice within which the defendant in respect of whom the leave is given is to enter an appearance.

Order to fix time for appearance.  
R.S.C. O. XI.  
r. 5.

(2.) The time referred to in the last preceding sub-rule shall depend on the place or country where or within which the writ is to be served or the notice given, and on whether the airmail is available to the defendant.

5. Where the defendant is not within the Commonwealth, service of notice of a writ is deemed to be effective service of the writ.

Notice of writ.  
R.S.C. O. XI.  
r. 6.

6. Where leave is given under rule 1 of this Order to serve notice of a writ of summons outside the Commonwealth, the notice shall, subject to rules 7 and 9 of this Order and to any direction given by the Court or a Justice as to the manner in which the notice shall be served or brought under the notice of the defendant, be served in the manner in which a writ of summons is served.

Service of notice of writ.  
R.S.C. O. XI.  
r. 7.

7.—(1.) Where leave is given to serve a writ of summons, or a notice of a writ of summons, in a country to which this rule, by order of the Chief Justice from time to time, is applied, the procedure prescribed by the succeeding sub-rules of this rule may be adopted.

Service abroad by letter of request.  
R.S.C. O. XI.  
r. 8.

(2.) The document to be served shall be sealed with the seal of the Court used for sealing documents which are to be served outside the Commonwealth and shall be transmitted to the Attorney-General by the Chief Justice together with—

- (a) a copy of the document translated into the language of the country in which service is to be effected; and

- (b) a request in the form numbered 6 in the First Schedule, with such variations as the circumstances require, for the further transmission of the document and the copy to the government of the country in which leave to serve the document has been given.

(3.) The party bespeaking a copy of a document for service under this rule shall, at the time of bespeaking the copy, file a *praecipe* in the form numbered 8 in the First Schedule.

(4.) An official certificate, or declaration upon oath or otherwise, transmitted through the diplomatic channel by the government or a court of a country to which this rule applies, to the High Court, if it certifies or declares the document—

(a) to have been personally served; or

(b) to have been duly served upon the defendant in accordance with the law of that country, or words to that effect,

is sufficient proof of that service, and shall be filed of record as, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.

(5.) Where an official certificate or declaration, transmitted to the Court in manner provided in the last preceding sub-rule, certifies or declares that efforts to serve a document have been without effect, the Court or a Justice may, upon the *ex parte* application of the plaintiff, order in the form numbered 42 in the First Schedule, with such variations as the circumstances require, that the plaintiff may bespeak a request for substituted service of the document.

(6.) A request for substituted service of a document under this rule may be bespoken by the plaintiff, at the Registry out of which the document has been issued, upon filing a *praecipe* in the form numbered 8 in the First Schedule, and the document and a copy of the document and of the order shall be sealed and transmitted to the Attorney-General in the manner described in sub-rule (2.) of this rule together with a request in the form numbered 9 in the First Schedule, with such variations as the circumstances require.

8.—(1.) Service outside the Commonwealth may be allowed by the Court or a Justice of an originating process, other than a writ of summons, or of a summons, order or notice in interlocutory proceedings, in a case in which it is, in the opinion of the Court or Justice, proper to make such an order.

Other  
originating  
processes.  
cf. R.S.C. O.  
XI. r. 8A.

(2.) Rules 3, 4, 5, 6 and 7 of this Order apply, *mutatis mutandis*, to service allowed pursuant to this rule.

9.—(1.) Where service is authorized by or under these Rules of a writ of summons or other originating process, or of a summons, order, notice or other document, in a foreign country with which a Convention in that behalf has been made and extended to the Commonwealth, the procedure specified in the succeeding sub-rules of this rule shall, subject to any special provisions contained in the Convention, be adopted.

Service of  
Australian  
documents in  
Convention  
countries.  
R.S.C. O. XI.  
r. 11.  
H.C.R. O. IX  
(a).

(2.) The party bespeaking the service shall file in the Registry out of which the writ of summons or other originating process is to be issued, or in which the matter is pending, a request in the form numbered 8 in the First Schedule, with such variations as the circumstances require.

(3.) The request shall state the medium through which it is desired the service shall be effected, that is, whether—

- (a) directly through the British or Australian Consul; or
- (b) through a foreign judicial authority.

(4.) Subject to the next succeeding sub-rule, the request shall be accompanied by—

- (a) the original document;
- (b) a translation of that document in the language of the country in which service is to be effected certified by or on behalf of the person making the request;
- (c) a copy of the document and the translation for every person to be served; and
- (d) such further copies as the Convention requires.

(5.) Where the service is required to be made on a British subject directly through the British or Australian Consul, the translation and copies of the translation need not accompany the request unless the Convention expressly requires that they should do so.

(6.) The document to be served shall be sealed with the Office seal and shall be forwarded by the Registrar of the Registry referred to in sub-rule (2.) of this rule to the Attorney-General for transmission to the foreign country.

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

(8.) Where a writ of summons or other originating process, or notice of a writ or other process, is served pursuant to this rule and an official certificate of service is produced, an endorsement of service under Order 9, rule 15, is not required.

10. The last preceding rule does not apply to, or render invalid or insufficient, a mode of service in a foreign country, with which a Convention has been made, which is otherwise valid or sufficient according to the procedure of the Court and which is not expressly excluded by the Convention made with that foreign country and extended to the Commonwealth.

Validity of  
other service.  
R.S.C. O. XI.  
r. 12.

11. Where the Court or a Justice, gives leave to serve a document outside the Commonwealth under this Order, he or it may, in an appropriate case, direct that the document shall be transmitted by air mail.

Airmail.  
R.S.C. O. XI.  
r. 12a.

## ORDER 10.

12. Where the party to be served outside the Commonwealth is a British subject, the Court or a Justice, upon being satisfied by affidavit—

British subjects  
residing outside  
the  
Commonwealth.  
H.C.R. O. IX.  
r. 2.

- (a) that the subject-matter of the proceeding is such that, under the provisions of this Order, the originating process was such as could properly be served outside the Commonwealth;
- (b) that it was personally served upon the party, or that reasonable efforts were made to effect personal service of it upon the party and that it came to his knowledge; and
- (c) that he wilfully neglects to appear in the proceeding, or that he is living out of the jurisdiction of the Court in order to defeat and delay the plaintiff,

may direct, from time to time, that the plaintiff may proceed in such manner, and subject to such conditions, as the Court or a Justice thinks fit.

13.—(1.) Where, for the purpose of an action under the *Carriage by Air Act 1935* and the Convention set out in the First Schedule to that Act, leave is given to serve a notice of a writ of summons upon a High Contracting Party to the Convention, other than the Commonwealth, the provisions of this rule apply.

Actions under  
*Carriage by Air*  
*Act 1935.*  
R.S.C. O. XI.  
r. 8B.

(2.) The notice shall specify the time for entering an appearance as limited in pursuance of rule 4 of this Order.

(3.) The notice shall be sealed with the Office Seal and shall be transmitted to the Attorney-General, together with—

- (a) a copy of the notice translated into the language of the country of the defendant; and
- (b) a request, in the form numbered 7 in the First Schedule, with such variations as the circumstances require, for the further transmission of the notice and the copy to the government of that country.

(4.) The party bespeaking a copy of a document for service under this rule shall, at the time of bespeaking the copy, file a *praecepe* in the form numbered 8 in the First Schedule.

(5.) An official certificate transmitted by the Attorney-General to the Court certifying that the notice was delivered on a specified date to the government of the country of the defendant, shall be deemed to be sufficient proof of service and shall be filed of record as, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.

(6.) After entry of appearance by the defendant or, if no appearance is entered, after the expiry of the time limited for appearance, the action may proceed to judgment in all respects as if the defendant had, for the purposes of the action, waived all privilege and submitted to the jurisdiction of the Court.

(7.) Where it is desired to serve or deliver a summons, order, notice or other document in the proceedings on the defendant outside the Commonwealth, the provisions of this rule apply, with such variations as the circumstances require.

14. These rules do not in any way prejudice or affect the practice or power of the Court under which, when lands, funds, choses in action, rights or property within the Commonwealth are sought to be dealt with or affected, the Court may, without affecting to exercise jurisdiction over a person outside the Commonwealth, cause that person to be informed of the proceedings with a view to that person having an opportunity of opposing, claiming or otherwise intervening.

Power of Court to cause persons to be informed.

### ORDER 11.

#### APPEARANCE.

1. Except in cases otherwise provided for by these Rules or the *High Court Procedure Act 1903-1950*, a defendant shall enter his appearance in the Registry out of which the writ or other originating process was issued.

Appearance in Registry.  
R.S.C. O. XII.  
r. 1.

2. Where a defendant does not reside or carry on business in the State or Territory in which the Registry out of which the process was issued is situated, he may appear either in that Registry or in the Principal Registry.

Where defendant does not reside, &c., in district.  
R.S.C. O. XII.  
r. 5.

3.—(1.) A defendant shall enter his appearance to a writ of summons or other originating process, to which an entry of an appearance is required, by delivering to the proper officer—

Mode of entering appearance: memorandum and duplicate.  
R.S.C. O. XII.  
r. 8.

(a) a memorandum of appearance in writing dated on the day of its delivery containing the name of the defendant's solicitor or stating that the defendant defends in person; and

(b) a duplicate of the memorandum of appearance.

(2.) The officer shall seal the duplicate memorandum of appearance with a seal bearing the words "Appearance entered" and showing the date on which it is sealed, and then return it to the person entering the appearance.

(3.) The duplicate memorandum of appearance so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

4. Where a defendant desires to object—

Conditional appearance.

- (a) to the jurisdiction;
- (b) to the writ or other originating process; or
- (c) to the service of the writ or other process or of a notice of the writ or other process,

he may, before the time limited for appearance has expired, obtain leave from a Justice on an *ex parte* application to enter a conditional appearance.

5. A defendant, before appearing, may, without entering, or obtaining an order to enter, a conditional appearance, take out a summons or serve notice of motion—

Motion to set aside writ.  
R.S.C. O. XII.  
r. 30.

- (a) to set aside the writ or other originating process;
- (b) to set aside the service upon him of the writ or other originating process or of notice of the writ or other originating process; or
- (c) to discharge the order authorizing that service.

## ORDER 11.

6.—(1.) A defendant shall, on the day on which he enters an appearance, give notice of his appearance, in the form numbered 16 or the form numbered 19 in the First Schedule, to the plaintiff's solicitor or, if the plaintiff sues in person, to the plaintiff himself.

Notice of entry  
to plaintiff.  
R.S.C. O. XII.  
r. 9.

(2.) The notice may be given either by notice in writing served at the address for service, or by pre-paid letter directed to that address and posted on the day of entering appearance in due course of post, and shall, in either case, be accompanied by a sealed duplicate memorandum of appearance.

7.—(1.) Where a defendant is entitled to enter an appearance either at a District Registry or at the Principal Registry and he has entered it at the Principal Registry, the plaintiff shall, upon receipt of the notice and sealed duplicate memorandum of appearance referred to in the last preceding rule, forthwith give notice in writing to the defendant's solicitor or, if the defendant appears in person, to the defendant himself, of a proper place, which is not more than three miles from the Principal Registry, to be his address for service, where notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications, if not required to be served personally, may be left for the plaintiff.

Entry by  
defendant  
entitled to enter  
at Principal  
Registry.

(2.) Notice under this rule may be given by serving it at the address for service of the defendant or by pre-paid letter directed to that address.

8.—(1.) The solicitor of a defendant appearing by a solicitor shall state in the memorandum of appearance his name and place of business or the name of his firm and its place of business.

Defendant's  
address for  
service.  
R.S.C. O. XII.  
r. 10.

(2.) Where the place of business so stated is not more than three miles from the office of the Registry in which the appearance is entered, it shall be the address for service of the defendant.

(3.) Where that place of business is more than three miles from the office of that Registry, the solicitor shall also state in the memorandum of appearance the address of a proper place, which is not more than three miles from that office, to be the address for service of the defendant.

(4.) Where the solicitor is acting as agent of another solicitor, he shall add to his own name and place of business, or firm name and its place of business, the name and place of business of the principal solicitor, or the name of the firm of the principal solicitor and its place of business.

9.—(1.) A defendant appearing in person shall state in the memorandum of appearance his place of residence.

Defendant in  
person.  
R.S.C. O. XII.  
r. 11.

(2.) Where his place of residence is not more than three miles from the office of the Registry in which he enters his appearance, it shall be his address for service.

(3.) Where that place of residence is more than three miles from the office of that Registry, he shall also state in the memorandum of appearance the address of a proper place, which is not more than three miles from that office, to be his address for service.

10. Notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications, if not required to be served personally, may be left for the defendant at his address for service.

Address for  
service.

## ORDER 11

11.—(1.) Where a memorandum of appearance does not contain a proper address for service, it shall not be received.

Memorandum  
irregular,  
address  
fictitious.  
R.S.C. O. XII.  
r. 12.

(2.) Where a memorandum of appearance contains an address for service which is illusory or fictitious, the appearance may be set aside by the Court or a Justice on the application of the plaintiff, and the plaintiff may be permitted to proceed by filing proceedings in the Registry in which the matter is then pending without further service.

12. A memorandum of appearance shall be in such of the forms numbered 14, 15, 18, 20, 21 and 22 in the First Schedule as is applicable, with such variations as the circumstances require.

Form of  
memorandum  
of appearance.  
R.S.C. O. XII.  
r. 13.

13. Upon receipt of a memorandum of appearance, the proper officer shall forthwith enter the appearance in the Cause Book or Court Book, as the case may be.

Officer to enter  
memorandum.  
R.S.C. O. XII.  
r. 14.

14. Where a defendant is entitled to enter an appearance either at a District Registry or at the Principal Registry and he enters it at the Principal Registry, the Principal Registrar shall on the same day notify the Registrar of the District Registry by telegraph that the appearance has been entered.

Appearance at  
Principal  
Registry to be  
notified to  
District  
Registry.  
H.C.R. O. X.  
r. 9.

15. Where two or more defendants appear by the same solicitor and at the same time, the names of the defendants so appearing shall be inserted in one memorandum of appearance.

Defendants  
appearing by  
same solicitor.  
R.S.C. O. XII.  
r. 17.

16. Where a solicitor fails to enter an appearance or to put in bail or to pay money into Court in lieu of bail in an Admiralty action *in rem* in pursuance of his written undertaking so to do on behalf of a party, he is liable to attachment.

Solicitor not  
entering  
appearance.  
R.S.C. O. XII.  
r. 18.

17. In an Admiralty action *in rem*, bail may be taken before—

Bail bond in  
Admiralty  
actions.  
R.S.C. O. XII.  
r. 19.

(a) the Principal Registrar;

(b) a District Registrar;

(c) a Commissioner to administer oaths for the purposes of the High Court or the Supreme Court of a State or Territory;  
or

(d) a Justice of the Peace or Notary Public,

and in every case the sureties shall justify.

18.—(1.) Except by consent, a bail bond shall not be filed until after the expiration of twenty-four hours from the time when a notice, containing the names and addresses of the sureties and of the Registrar, Commissioner, Justice of the Peace or Notary Public before whom the bail was taken, has been served upon the adverse solicitor.

Time for filing  
bond.  
R.S.C. O. XII.  
r. 20.

(2.) A copy of the notice, verified by affidavit, shall be filed with the bail bond.

19. A Commissioner, Justice of the Peace or Notary Public shall not take bail on behalf of a person for whom he, or a person in partnership with him, is acting as solicitor or agent.

Commissioner  
in certain cases  
not to take bail.  
R.S.C. O. XII.  
r. 21.

## ORDER II.

20.—(1.) A commission or fee paid to a person becoming surety to a bail bond, or otherwise giving security, may be recovered on taxation. Commission recoverable on taxation.  
R.S.C. O. XII.  
r. 21A.

(2.) The amount of the commission or fee shall not, in the aggregate, exceed One pound per centum on the amount in which bail is given.

21.—(1.) A defendant may appear at any time before judgment. Time for appearance.  
R.S.C. O. XII.  
r. 22.

(2.) Where a defendant appears after the time limited by the writ or other originating process for appearance, he shall on the same day give notice of his appearance to the plaintiff's solicitor or, if the plaintiff sues in person, to the plaintiff himself.

(3.) Unless the Court or a Justice otherwise orders, the defendant shall not be entitled to any further time for delivering his defence; or for any other purpose, than if he had appeared according to the tenor of the writ or other originating process.

22. In an Admiralty action *in rem*, a person not named in the writ may intervene and appear on filing an affidavit showing that he is interested in the *res* under arrest or in the fund in Court. Admiralty intervention.  
R.S.C. O. XII.  
r. 24.

23. A person not named as a defendant in a writ of summons for the recovery of land may, by leave of the Court or a Justice, appear and defend on filing an affidavit showing that he is in possession of the land either by himself or by his tenant. Recovery of land.  
R.S.C. O. XII.  
r. 25.

24. A person appearing to defend an action for the recovery of land as landlord, in respect of property of which he is in possession only by his tenant, shall state in his appearance that he appears as landlord. Landlord appearing.  
R.S.C. O. XII.  
r. 26.

25.—(1.) Where a person not named as defendant in a writ of summons for the recovery of land has obtained leave of the Court or a Justice to appear and defend, he shall enter an appearance, in accordance with the preceding rules of this Order, entitled in the action against the party named in the writ as defendant, and shall forthwith give notice of that appearance to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. Recovery of land, person not named defendant.  
R.S.C. O. XII.  
r. 27.

(2.) In subsequent proceedings, that person shall be named as a party defendant to the action.

26.—(1.) A person appearing to a writ of summons for the recovery of land is at liberty to limit his defence to a part only of the property mentioned in the writ. Recovery of land, limiting defence.  
R.S.C. O. XII.  
rr. 28 and 29.

(2.) Where a person so limits his defence, he shall describe that part of the property to which he limits his defence in his memorandum of appearance or in a notice which shall be—

- (a) entitled in the action;
- (b) in the form numbered 17 in the First Schedule, with such variations as the circumstances require;
- (c) signed by him or his solicitor; and
- (d) served on the plaintiff within three days after appearance.

(3.) An appearance, where the defence is not limited in accordance with this rule, shall be deemed an appearance to defend for the whole.

## ORDER 12.

## DEFAULT OF APPEARANCE.

1.—(1.) Where an appearance has not been entered to a writ of summons or other originating process for a defendant who is an infant or a person of unsound mind, the plaintiff shall, before further proceeding against the defendant, apply to the Court or a Justice for an order that some proper person be assigned guardian of the defendant, by whom he may appear and defend.

Default of appearance by infant or person of unsound mind: notice of application.  
R.S.C. O. XIII  
r. 1.

(2.) The order shall not be made unless it appears on the hearing of the application—

(a) that the writ of summons or other originating process was duly served; and

(b) that, after the expiration of the time allowed for appearance and at least seven clear days before the day in the notice named for hearing the application—

(i) notice of the application was served upon or left at the place of residence of the person with whom or under whose care the defendant was at the time of serving the writ of summons or other originating process; and

(ii) where the defendant is an infant not residing with or under the care of his father or guardian, and the Court or Justice at the time of hearing the application does not dispense with such service, notice of the application was served upon or left at the place of residence of the father or guardian, if any, of the infant.

(3.) Where a guardian has been appointed, he has the same time for appearance after the service of the order on him as if it were a writ of summons.

2. Where a defendant fails to appear to a writ of summons or other originating process and the plaintiff is desirous of proceeding upon default of appearance under any of the succeeding rules of this Order or under Order 15, rule 1, the plaintiff shall, before taking proceedings upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

Default of appearance generally.  
R.S.C. O. XIII.  
r. 2.

3. Where the writ of summons is endorsed for a debt or liquidated demand only, and the defendant fails, or all the defendants, if more than one, fail, to appear to the writ, the plaintiff may enter final judgment for a sum not exceeding the sum claimed by the writ, together with interest, if so claimed, to the date of the judgment, and costs.

Liquidated demand endorsed.  
R.S.C. O. XIII.  
r. 3.

4. Where the writ of summons is endorsed for a debt or liquidated demand only, and there are several defendants, of whom one or more appears or appear to the writ, and another or others of them fails or fail to appear, the plaintiff may enter final judgment, as provided by the last preceding rule, against a defendant who has not appeared, and may issue execution upon that judgment without prejudice to his right to proceed with the action against a defendant who has appeared.

Liquidated demand; several defendants.  
R.S.C. O. XIII.  
r. 4.

## ORDER 12.

5.—(1.) Where the writ is endorsed 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 to the writ, the plaintiff may enter interlocutory judgment.

Detention of goods.  
R.S.C. O. XIII.  
r. 5.

(2.) The value of the goods and the damages, or either of them, as the case may be, in respect of the causes of action disclosed by the endorsement on the writ of summons, shall be ascertained by the Registrar of the Registry in which the interlocutory judgment is entered unless the Court or a Justice otherwise directs.

(3.) The Court or a Justice may order a statement of claim or particulars to be filed before an assessment of damages and may order that, instead of ascertainment by a Registrar, the value and amount of damages, or either of them, shall be ascertained in a way which the Court or Justice directs.

6.—(1.) Where the writ is endorsed as in the last preceding rule mentioned, and there are several defendants of whom one or more appears or appear to the writ and another or others of them fails or fail to appear, the plaintiff may enter interlocutory judgment against a defendant so failing to appear.

Detention of goods; several defendants.  
R.S.C. O. XIII.  
r. 6.

(2.) The value of the goods and the damages, or either of them, as the case may be, may be assessed, as against a defendant suffering judgment by default, at the time of the trial of the action or issue in the action against another defendant, unless the Court or a Justice otherwise directs.

(3.) The Court or a Justice may order that, instead of an ascertainment by a Registrar or proceeding to trial, the value and amount of damages, or either of them, shall be ascertained in a way which the Court or a Justice directs.

7. Where the writ is endorsed with a claim for pecuniary damages, or for detention of goods, with or without a claim for pecuniary damages, and is further endorsed for a debt or liquidated demand, and a defendant fails to appear to the writ, the plaintiff may enter—

Detention of goods, damages and liquidated demand: final and interlocutory judgment.  
R.S.C. O. XIII.  
r. 7.

(a) final judgment for the debt or liquidated demand, together with interest, if so claimed, to the date of judgment, and costs, against a defendant so failing to appear; and

(b) interlocutory judgment for the value of the goods and the damages, or either of them, as the case may be,

and proceed according to such of the preceding rules of this Order as are applicable.

8. Where, in an action for the recovery of land—

Recovery of land.  
R.S.C. O. XIII.  
r. 8.

(a) an appearance is not entered within the time limited by the writ for appearance; or

(b) an appearance is entered but the defence is limited to part only of the property,

the plaintiff may enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part to which the defence does not apply, as the case may be.

## ORDER 12.

9. Where the plaintiff has endorsed upon a writ for the recovery of land any other claim, he may enter judgment as in the last preceding rule mentioned for the land and may proceed as in the other rules of this Order mentioned as to that other claim so endorsed.

Other claims.  
R.S.C. O. XIII.  
r. 9.

10.—(1.) Where, in a case to which rules 3 to 8 (inclusive) of this Order do not apply, the defendant fails, or all the defendants, if more than one, fail, to appear, and the plaintiff informs the Court that by reason of payment, satisfaction, abatement of nuisance, or for any other reason he does not desire to proceed, he may, by leave of the Court or a Justice, enter judgment for costs.

Plaintiff not proceeding—  
judgment for costs.  
R.S.C. O. XIII.  
r. 9A.

(2.) Leave under the last preceding sub-rule shall be obtained on summons in Chambers and the summons shall be filed and served in the manner in which the service of the writ or other originating process was effected or in such other manner as the Court or a Justice directs.

11. Where judgment is entered pursuant to a preceding rule of this Order, the Court or a Justice may set aside or vary that judgment upon just terms.

Setting aside judgment.  
R.S.C. O. XIII.  
r. 10.

12. Where a defendant fails to appear to a writ of summons or other originating process issued out of a District Registry, and the defendant had the option of entering an appearance either in the District Registry or in the Principal Registry, the plaintiff shall not enter judgment for want of appearance until after such time as a letter posted in Melbourne on the day after the day on which the time for appearance expired ought, in due course of post, to have reached him.

Action in District Registry; time for entering judgment.  
R.S.C. O. XIII.  
r. 11.

13. Where, in cases not by the rules of this Order otherwise specially provided for, the party served with the writ or other originating process does not appear within the time limited for appearance, upon the filing by the plaintiff of—

Default of appearance in cases not otherwise specially provided for.  
R.S.C. O. XIII.  
r. 12.

(a) a proper affidavit of service; and

(b) where the writ is not specially endorsed under Order 13, rule 1—a statement of claim,

the proceeding may continue as if that party had appeared, subject, as to actions where an account is claimed, to the provisions of Order 15.

14. Where, in an Admiralty action *in rem*, the defendant does not appear within the time limited for appearance, upon the filing by the plaintiff of—

Default in Admiralty action.  
R.S.C. O. XIII.  
r. 12A.

(a) a proper affidavit of service;

(b) a statement of claim; and

(c) a certificate of non-appearance,

the action may, on the expiration of twenty-one days from the service of the writ, be set down for judgment by default.

15. Where an Admiralty action *in rem*, upon default of appearance, comes before a Justice, he may, if satisfied that the plaintiff's claim is well founded—

Default in Admiralty action.  
R.S.C. O. XIII.  
r. 13.

(a) pronounce for the claim with or without a reference to a Registrar, or to a Registrar assisted by merchants;

- (b) order the property to be appraised and sold, with or without previous notice, and the proceeds to be paid into court; or
- (c) make such order as he thinks just.

16.—(1.) Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear within the time limited, the plaintiff may apply to the Court or a Justice for an appointment for the hearing of the summons.

*Default of appearance to originating summons.*  
R.S.C. O. XIII.  
r. 15.

(2.) Upon a certificate that an appearance has not been entered, the Court or Justice shall appoint a time for the hearing of the summons upon such conditions (if any) as it or he thinks fit.

17. Where a plaintiff enters judgment under the provisions of this Order against a defendant who fails to appear, that entry of judgment does not, nor does the issue of execution on the judgment, prejudice his right to proceed against another defendant.

*Judgment against one not to prejudice right against other defendant.*  
H.C.R. O. XI.  
r. 10

### ORDER 13.

#### SUMMARY RELIEF.

1.—(1.) This Order applies to actions—

- (a) in which the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—

*Special endorsement.*  
R.S.C. O. III.  
r. 6.

- (i) upon a contract, express or implied (as, for instance, on a bill of exchange, promissory note or cheque, or other simple contract debt);
- (ii) on a bond or contract under seal for payment of a liquidated amount of money;
- (iii) 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;
- (iv) on a guarantee, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand; or
- (v) on a trust;
- (b) in which a landlord seeks to recover possession of land, with or without a claim for rent or mesne profits, 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 a tenant;
- (c) in which the plaintiff seeks to recover possession of a specific chattel with or without a claim for hire thereof or for damages for its detention;
- (d) in which the plaintiff claims possession of property forming a security for the payment of money; and
- (e) for damages, other than actions for libel, slander, malicious prosecution, false imprisonment or breach of promise of marriage, or in which fraud is alleged by the plaintiff.

(2.) In an action to which this Order applies, the writ may, at the option of the plaintiff, be specially endorsed with his claim as in the forms numbered 2 and 4 in the First Schedule, with such variations as the circumstances require.

2.—(1.) Where the defendant has appeared to a writ of summons in an action to which this Order applies, the plaintiff may, on affidavit made by himself or by another person who can swear positively to the facts, verifying the cause of action and the amount claimed (if a 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 Justice for leave to enter judgment for such remedy or relief as upon the statement of claim the plaintiff may be entitled to.

Judgment on writ specially endorsed under O. III. r. 4. R.S.C. O. XIV. r. 1. H.C.R. O. XIII. r. 1 (4).

(2.) The Justice may thereupon, unless the defendant satisfies him that he has a good defence to the action on the merits, or discloses such facts as may be deemed sufficient to entitle him to defend the action generally, make an order empowering the plaintiff to enter such judgment as is just, having regard to the nature of the remedy or relief claimed.

(3.) On the hearing of an application under this rule, the Justice may, if he thinks fit, amend the endorsement on the writ in any manner, whether the writ be sufficiently endorsed or not.

(4.) Where, on the hearing of an application under this rule, it appears that a claim which should not have been specially endorsed under this Order has been included in the endorsement on the writ, the Justice may, if he thinks fit, forthwith amend the endorsement by striking out that claim, or may deal with the claim specially endorsed as if no other claim had been included in the endorsement, and allow the action to proceed with respect to the residue of the claim.

(5.) Where the plaintiff's claim is for the delivery up of a specific chattel (with or without a claim for its hire or for damages for its detention), a Justice may make an order for the delivery up of the chattel without giving the defendant an option of retaining it upon paying its assessed value.

3.—(1.) An application by the plaintiff for leave to enter final judgment under the last preceding rule shall be made by summons returnable not less than three clear days after service.

Application by summons. R.S.C. O. XIV. r. 2.

(2.) Copies of the affidavits and exhibits to be used upon the hearing of the summons shall be served with the summons.

4.—(1.) The defendant may shew cause against the application by affidavit or, except in actions for the recovery of land or for the delivery up of a specific chattel, by offering to bring into Court the sum endorsed on the writ.

Defendant may show cause. R.S.C. O. XIV. r. 3.

(2.) 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.

**ORDER 13.**

5. The Justice may, if he thinks fit, order the plaintiff or the defendant, or, in the case of a corporation which is a party, an officer of that corporation, to attend and be examined upon oath, or to produce any leases, deeds, books, papers, or other documents, or copies thereof or extracts therefrom.

Examination of witnesses.  
R.S.C. O. XIV.  
r. 3 (c).

6.—(1.) Where it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that a part of his claim is admitted, the plaintiff is entitled to 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 Marshal or Deputy Marshal, the taxation of costs, or otherwise, as the Justice thinks fit.

Judgment for part of claim.  
R.S.C. O. XIV.  
r. 4.

(2.) The defendant may defend as to the residue of the plaintiff's claim.

7. Where it appears to the Justice that a defendant has a good defence to, or ought to be permitted to defend, the action and that another defendant has not a good defence and ought not to be permitted to defend, the former defendant may be permitted to defend, and the plaintiff shall be entitled to final judgment against the latter defendant and may issue execution upon that judgment without prejudice to his right to proceed with his action against the former defendant.

Where one defendant has good defence, but other not.  
R.S.C. O. XIV.  
r. 5.

8. Leave to defend may be given unconditionally or subject to such terms as to giving security, time, mode of trial or otherwise as the Justice thinks fit.

Leave to defend.  
R.S.C. O. XIV.  
r. 6.

9. Upon the hearing of the application, with the consent of all parties, the Justice may dispose of the whole action in a summary manner.

Summary disposal.  
R.S.C. O. XIV.  
r. 7.

10.—(1.) Where, in a claim for unliquidated damages, the plaintiff has entered interlocutory judgment, the Registrar of the Registry in which the interlocutory judgment is entered shall, subject to the next succeeding sub-rule, assess the value of the goods claimed or the damages to be awarded.

Assessment of damages.  
R.S.C. O. XIV.  
r. 7A.

(2.) The Court or a Justice may order that, instead of assessment by a Registrar, the value and amount of damages, or either of them, shall be ascertained in a way which the Court or Justice directs.

11.—(1.) Where leave, whether conditional or unconditional, is given to defend, the Justice may—

Directions as to trial.  
R.S.C. O. XIV.  
r. 8.

- (a) give such directions as to the further conduct of the action as might be given on a summons for directions under Order 31;
- (b) direct that the affidavit filed by the defendant under this Order shall serve in lieu of defence;
- (c) order the action to be set down for trial forthwith; and
- (d) define the issues that are to be tried.

(2.) Where the plaintiff has obtained leave to enter final judgment subject to a suspension of execution pending the trial of a counterclaim, this rule applies to the counterclaim as if it were an action.

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

Relief from forfeiture.  
R.S.C. O. XIV.  
r. 10.

13. Where an application has been dismissed on the ground of formal defects in the proceedings or in the evidence, a fresh application may be made on amended proceedings.

Fresh application.  
H.C.R. O. XIII.  
r. 1 (5).

#### ORDER 14.

##### SUMMARY JUDGMENT FOR SPECIFIC PERFORMANCE.

1.—(1.) Where the defendant has appeared to a writ of summons endorsed with a claim for specific performance of a contract in writing for sale or purchase of property, the plaintiff may, on affidavit made by himself or by another person who can swear positively to the facts, verifying the cause of action and stating that in his belief there is no defence to the action, apply to a Justice for an order for specific performance of the contract and for such consequential accounts, inquiries and directions as to payment of purchase money, interest, damages and costs, or otherwise, as the case requires.

Judgment on writ for specific performance.  
R.S.C. O. XIVA.  
r. 1.

(2.) The Justice may thereupon, unless the defendant, by affidavit or by his own *viva voce* evidence, or otherwise, satisfies him that he has a good defence to the action on the merits or discloses such facts as are deemed sufficient to entitle him to defend, make such order as is just.

2.—(1.) An application by the plaintiff under the last preceding rule shall be made by summons returnable not less than three clear days after service.

Application by summons.  
R.S.C. O. XIVA.  
r. 2.

(2.) Copies of the affidavits and exhibits to be used upon the hearing of the summons shall be served with the summons.

3. The defendant may shew cause against the application by affidavit.

Defendant may shew cause.  
R.S.C. O. XIVA.  
r. 3 (1).

4. The Justice may, if he thinks fit, order the plaintiff or the defendant or, in the case of a corporation which is a party, an officer of that corporation, to attend and be examined upon oath, or to produce any leases, deeds, books, papers or other documents, or copies thereof or extracts therefrom.

Examination of witnesses.  
R.S.C. O. XIVA.  
r. 3 (2).

5. Leave to defend may be given unconditionally or subject to such terms as to giving security, time, mode of trial, or otherwise, as the Justice thinks fit.

Leave to defend.  
R.S.C. O. XIVA.  
r. 4.

**ORDERS 14, 15.**

6. Where leave, whether conditional or unconditional, is given to defend, the Justice may—

Directions as to trial.  
R.S.C. O. XIV.  
r. 5.

- (a) give directions limiting the time within which pleadings are to be delivered and as to any interlocutory matter; and
- (b) order the action to be set down for trial forthwith or as at such date as he thinks proper.

7. Upon the hearing of the application, with the consent of all parties, the Justice may dispose of the whole action in a summary manner.

Summary disposal.  
Cf. ante O. 13.  
r. 7.

**ORDER 15.****APPLICATION FOR AN ACCOUNT.**

1. Where—

Order for account.  
R.S.C. O. XV.  
r. 1.

- (a) a writ of summons has been endorsed for an account under Order 3, rule 5, or the endorsement on a writ of summons involves taking an account; and
- (b) the defendant fails to appear, or does not, after appearance, by affidavit or otherwise, satisfy the Court or a Justice that there is some preliminary question to be tried,

an order for the proper accounts, with all necessary inquiries and directions, shall forthwith be made.

2.—(1.) An application for an order under the last preceding rule may be made at any time after the time for appearance has expired.

Application, how made.  
R.S.C. O. XV.  
r. 2.

(2.) Where the defendant has failed to appear, the application may be made *ex parte*.

(3.) Where the defendant has appeared, the application shall be made by summons supported by an affidavit stating concisely the grounds of the claim to an account.

3.—(1.) In an action in which an account has been taken under the preceding rules of this Order, the plaintiff may, at any time after the account has been taken, apply to the Court by motion for judgment in a summary way.

Judgment without pleadings.

(2.) The Court shall thereupon proceed to hear and determine the action and give such judgment as is just.

4. Unless the Court otherwise directs, the motion shall be heard upon affidavit and the Court may give such directions as it thinks just for the trial of any question arising on the motion.

Evidence.

5. On an application for summary judgment under the two last preceding rules, the Court may refuse to give judgment on the motion and may direct the action to proceed in the usual manner.

Action may be directed to proceed in usual course.

## ORDER 16.

## PARTIES.

## I.—Generally.

## 1.—(1.) Where—

- (a) a right to relief in respect of, or arising out of, the same transaction or series of transactions is alleged to exist in more than one person, whether jointly, severally or in the alternative; and

Persons claiming jointly, severally or in the alternative may be plaintiffs.  
R.S.C. O. XVI.  
r. 1.

- (b) if those persons brought separate proceedings a common question of law or fact would arise,

those persons may be joined in one proceeding as plaintiffs.

(2.) Where, upon the application of a defendant, it appears that the joinder may embarrass or delay the trial or hearing, the Court or a Justice may order separate trials or hearings, or make such other order as is expedient, and judgment may be given for such one or more of the plaintiffs as are found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment.

(3.) The defendant, though unsuccessful, is entitled to his costs occasioned by so joining a person who is not found entitled to relief, unless the Court or a Justice, in disposing of the costs, otherwise directs.

2. Another proceeding shall not be brought against the defendant by a person so joined as plaintiff in respect of the same cause of action unless by leave of the Court or a Justice.

No other proceeding to be brought for same claim.

3. Where a proceeding has been commenced in the name of the wrong person as plaintiff, or it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Justice, if satisfied that—

Proceeding in name of wrong plaintiff.  
R.S.C. O. XVI.  
r. 2.

- (a) it has been so commenced through a *bona fide* mistake; and  
(b) it is necessary for the determination of the real matter in dispute so to do,

may order another person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as are just.

4.—(1.) A proceeding shall not be defeated by reason of misjoinder or non-joinder of parties, and the Court or a Justice may deal with the matter in controversy so far as regards the rights and interests of the parties actually before it or him.

Misjoinder and non-joinder.  
R.S.C. O. XVI.  
r. 11.

(2.) The Court or a Justice may—

- (a) at any stage of the proceedings;  
(b) either upon or without the application of a party; and  
(c) on such terms as appear to the Court or a Justice to be just,

order that the names of parties improperly joined, whether as plaintiffs or as defendants, be struck out and that the names of parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court or Justice may be necessary in order to enable the Court or Justice effectually and completely to adjudicate upon and settle all the questions arising, be added.

(3.) A party whose name is so added as defendant shall be served with the amended writ of summons or other originating process, or notice of the amended writ or other process in lieu of service, as the

case may be, in accordance with this Order, or in such manner as is prescribed by a special order, and the proceedings as against that party shall be deemed to have begun only on the service of the writ or other originating process or notice.

5. A person shall not be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under a disability, without his own consent in writing.

Consent of plaintiff or next friend.  
R.S.C. O. XVI.  
r. 11.

6. Where a person has been improperly or unnecessarily joined as a co-plaintiff, the defendant may rely upon a counterclaim or set-off against the plaintiffs properly joined and shall not be deemed thereby to have waived any objection to the misjoinder.

Counterclaim-misjoinder.  
R.S.C. O. XVI.  
r. 3.

7. Where a right to relief is alleged to exist against more than one person, whether jointly, severally or in the alternative, those persons may be joined as defendants and judgment may be given against such one or more of them as are found to be liable, according to their respective liabilities, without any amendment.

All persons may be joined as defendants.  
R.S.C. O. XVI.  
r. 4.

8.—(1.) It is not necessary that every defendant be interested as to all the relief prayed for, or as to every cause of action included in a proceeding against him.

Defendant need not be interested in all the relief.  
R.S.C. O. XVI.  
r. 5.

(2.) The Court or a Justice may make such order as appears just to prevent a defendant from being embarrassed, or put to expense, by being required to attend proceedings in which he has no interest.

9. The plaintiff may, at his option, join as parties in the same proceeding 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.

Joinder of persons severally, or jointly and severally liable.  
R.S.C. O. XVI.  
r. 6.

10. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in accordance with these Rules or as the Court or a Justice may direct, join two or more persons as defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, and as to what relief the plaintiff is entitled to, may be determined in the proceedings as between all parties.

Plaintiff in doubt as to person from whom redress is to be sought.  
R.S.C. O. XVI.  
r. 7.

11.—(1.) Trustees, executors and administrators may sue and be sued in respect of the property or estate which they hold as such, without joining any of the persons beneficially interested in the trust property or estate, and shall be considered as representing those persons.

Trustees, executors, &c., may sue and be sued in respect of estate.  
R.S.C. O. XVI.  
r. 8.

(2.) The Court or a Justice may, at any stage of the proceedings, order any of the persons beneficially interested to be made parties, either in addition to, or in lieu of, the previously existing parties.

(3.) This rule extends and applies to trustees, executors, and administrators suing or sued in proceedings to enforce a security by foreclosure or otherwise.

12. Where there are seven or more persons having the same interest, one or more of those persons may sue or be sued, or may be authorized by the Court or a Justice to defend on behalf of, or for the benefit of, all persons so interested.

Numerous persons.  
R.S.C. O. XVI.  
r. 9.

## ORDER 16.

## 13.—(1.) Where—

(a) a compromise is proposed in proceedings concerning—

- (i) the estate of a deceased person;
- (ii) property subject to a trust; or
- (iii) the construction of a written instrument;

(b) some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons); and

(c) there is some other person in the same interest before the Court who assents to the compromise, or on whose behalf the Court sanctions a compromise, or the absent persons are represented by a person appointed under rule 44 of this Order who so assents,

the Court or Justice, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons.

(2.) The absent persons shall be bound by the order unless it has been obtained by fraud or non-disclosure of material facts.

Power to  
approve  
compromise.  
R.S.C. O. XVI.  
r. 9A.

14. An application to add, strike out or substitute a plaintiff or defendant may be made to the Court or a Justice at any time before the trial or hearing by motion or summons, or at the trial or hearing in a summary manner.

Application to  
add or strike  
out.  
R.S.C. O. XVI.  
r. 12.

15.—(1.) Where a defendant is added or substituted, the writ of summons or other originating process shall be amended accordingly.

Where  
defendant  
added.  
R.S.C. O. XVI.  
r. 13.

(2.) The plaintiff shall, unless otherwise ordered by the Court or a Justice—

- (a) file a copy of the writ or other originating process as amended; and
- (b) serve the new defendant and all other parties with the amended writ or other originating process, or notice in lieu of service of the amended writ or other process, in the same manner as original defendants are served.

(3.) The proceedings shall be continued as if the new defendant had originally been made a defendant.

16. In an action under the *Carriage by Air Act 1935* and the Convention set out in the Schedule to that Act, a High Contracting Party to the Convention who, for the purposes of that action, and by virtue of that Act, is deemed to have submitted to the jurisdiction of the Court, may, subject to and in accordance with these Rules, be made a defendant.

Actions under  
*Carriage by Air  
Act 1935*.  
R.S.C. O. XVI.  
r. 14.

17.—(1.) Subject to the next succeeding sub-rule, where, in any proceedings, a person (including a party to the proceedings) is referred to in a writ, pleading or other document, the first name or other name or names (other than the surname) of that person may be designated in that writ, pleading or other document by an initial letter or letters or other contraction.

Initial letters  
may be used.

(2.) Where the name of a person is so designated, it shall be averred in the writ, pleading or other document that that name is unknown to the party using the initial letter or letters or other contraction.

## II.—Persons under Disability.

18.—(1.) An infant may sue as plaintiff by his next friend.

Proceedings by  
infants.

(2.) An infant may defend in a proceeding by his guardian appointed for that purpose.

R.S.C. O. XVI.  
r. 16.

19.—(1.) A person of unsound mind may sue as plaintiff in a proceeding by the committee, if any, of his person or estate, as the case may be, or, where there is no such committee, by his next friend.

Persons of  
unsound mind.  
R.S.C. O. XVI.  
r. 17.

(2.) A person of unsound mind may defend by his committee, if any, or, where there is no such committee, by his guardian appointed for that purpose.

20.—(1.) An infant shall not enter an appearance except by his guardian *ad litem*.

Appearance by  
infant.  
R.S.C. O. XVI.  
r. 18.

(2.) An order for the appointment of the guardian is not necessary, but the solicitor applying to enter the appearance shall make and file an affidavit in the form numbered 23 in the First Schedule, with such variations as the circumstances require.

21.—(1.) Where the appointment of a special guardian is not provided for, an infant served with a petition, notice of motion or summons shall appear on the hearing thereof by a guardian *ad litem*.

Guardian  
*ad litem*.  
R.S.C. O. XVI.  
r. 19.

(2.) An order for the appointment of the guardian *ad litem* is not necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last preceding rule.

22. Where proceedings are directed to be continued by or against an infant, or an infant may attend proceedings, he shall appear as in the last preceding rule.

Other cases.  
H.C.R. O. X.  
r. 16.

23. Before the name of a person is used as next friend of an infant or other party, or as relator, that person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the Principal Registry or, where the proceeding is pending in a District Registry, in that District Registry.

Next friend or  
relator.  
R.S.C. O. XVI.  
r. 20 cf. ante  
O.5. r. 11.

24. In proceedings to which an infant or person of unsound mind, or person under any other disability, is a party, a consent as to the mode of taking evidence or as to any other procedure shall, if given with the approval of the Court or a Justice 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 that party were under no disability and had given that consent.

Consent of  
persons under  
disability to  
procedure.  
R.S.C. O. XVI.  
r. 21.

25.—(1.) The Court or a Justice may, for sufficient cause shown, remove a next friend or guardian *ad litem*.

Removal and  
appointment of  
next friend  
or guardian  
*ad litem*.  
H.C.R. O. II.  
r. 16.

(2.) Where, for any reason, there is not a next friend or guardian *ad litem* of an infant, the Court or a Justice may appoint a fit person, with his own consent, to be next friend or guardian *ad litem* of the infant.

### III.—*Proceedings by and against Poor Persons.*

26. The Court or a Justice may allow a person to sue or defend in, or be a party to, a proceeding in the Court as a poor person on proof—
- (a) that, excluding his wearing apparel, tools of trade and the subject-matter of the proceeding, he is not worth a sum exceeding One hundred pounds or, in special circumstances, a sum not exceeding Two hundred pounds;
  - (b) that his usual income from all sources does not exceed Nine pounds a week; and
  - (c) that he has reasonable grounds for suing, defending or becoming a party.
27. Except under special circumstances, a person may not sue, defend or become a party as a poor person if he has directly or indirectly paid or agreed to pay a sum of money, or has given or agreed to give a security, to a legal practitioner or to another person for the conduct of the proceedings in the Court.
28. Where a person desires to sue, defend or become a party in proceedings as a poor person, he shall lay a case before counsel for his opinion as to whether or not he has reasonable grounds for suing, defending or becoming a party, as the case may be.
29. A person may not sue, defend or become a party as a poor person unless he or his solicitor produces to the Court or Justice to whom the application is made the case laid before counsel for his opinion and his opinion on the case with an affidavit (referring to the case as an exhibit) of the party or his solicitor which—
- (a) states that the case contains a full and true statement of all the material facts to the best of his knowledge and belief;
  - (b) denies that the applicant has directly or indirectly paid or agreed to pay a sum of money, or has given or agreed to give a security, to a legal practitioner or to another person for the conduct of the proceedings in the Court or states fully the special circumstances relied upon in excuse; and
  - (c) gives full information and particulars as to the assets and liabilities of the applicant, his income from all sources, the persons dependent upon him and the nature and extent of the dependency of each of them respectively.
30. A person allowed to sue, defend or become a party as a poor person is not liable to pay Court fees.
31. Upon obtaining the order allowing him to sue, defend or become a party as a poor person, the applicant or his solicitor shall, before taking any other step in the proceeding, file the order in the Principal Registry or, where the proceeding has been or is intended to be commenced in a District Registry, in that District Registry.
- 32.—(1.) On the filing of the order, a memorandum of the filing bearing the seal of the Registry where the order is filed shall be issued to the applicant or his solicitor.

Suing or  
defending as  
poor person.  
R.S.C. O. XVI.  
r. 22, 23 (1.),  
25 (4.) and  
23A (4.).  
H.C.R. O. III.  
r. 1.

Disqualification.

Case before  
counsel.  
H.C.R. O. III.  
r. 2.

Affidavit in  
support of  
application.  
H.C.R. O. III.  
r. 3.

No Court fees  
payable.  
H.C.R. O. III.  
r. 4.

Order to be  
filed.  
R.S.C. O. XVI.  
r. 25.

Memorandum of  
filing.  
R.S.C. O. XVI.  
r. 27.

(2.) In subsequent proceedings the production of the memorandum is sufficient evidence that the order has been duly filed.

**33.—**(1.) Where a person is allowed to sue, defend or become a party as a poor person, the Court or a Justice may, if necessary, assign counsel or a solicitor, or both, to assist him.

Assignment of  
counsel or  
solicitor.  
R.S.C. O. XVI.  
r. 30 (3.).  
H.C.R. O. III.  
r. 5.

(2.) Counsel or solicitor so assigned may not refuse or discontinue his assistance unless he satisfies the Court or a Justice that he has some good reason for so refusing or discontinuing or unless, in the case of counsel, he satisfies the solicitor that other counsel can be briefed in the proceedings without prejudice to the conduct of the proceedings.

(3.) Except as provided in this Order, a fee is not payable by a poor person to his assigned counsel or solicitor.

**34.—**(1.) Where a person intends to apply to be allowed to sue, defend or become a party as a poor person, a person who, with knowledge of that intention, takes or agrees to take or seeks to obtain from him a payment, fee, profit or reward for the conduct of the proceedings in the Court, is guilty of contempt of Court.

Prohibition of  
fees.  
R.S.C. O. XVI.  
r. 28 (2.) and  
(3.).

(2.) While a person sues, defends or is a party as a poor person, a person who, except as provided by this Order, takes or agrees to take or seeks to obtain from him a payment, fee, profit or reward for the conduct of the proceedings in the Court is guilty of contempt of Court.

(3.) If a poor person makes or gives or agrees to make or give a payment, fee, profit or reward for the conduct of the proceedings in the Court otherwise than as provided by this Order, an order shall forthwith be made revoking the order allowing him to sue, defend or be a party as a poor person, as the case may be, and he may not afterwards again in the same matter sue, defend or be a party as a poor person unless otherwise ordered.

**35.—**(1.) The Court or a Justice may at any time, and whether or not an application is made by another party or person for that purpose, revoke the order allowing a person to sue or defend or be a party as a poor person.

Revoking  
order.  
R.S.C. O. XVI.  
r. 29 (1.).

(2.) Upon the revocation, the poor person is not entitled to the benefit of this Order in a proceeding to which the order relates unless otherwise ordered.

**36.—**(1.) A poor person, a solicitor conducting the proceedings for him or counsel briefed on his behalf shall not, whether before or after the commencement of the proceedings, enter into a settlement or compromise of the proceedings, or discontinue them, without the leave of the Court or a Justice.

Settlement, &c.,  
and discharge  
of solicitor.  
R.S.C. O. XVI.  
r. 30 (1.) and  
(2.).

(2.) A poor person shall not discharge a solicitor or counsel acting for him without the leave of the Court or a Justice.

**37.—**(1.) Where a poor person becomes possessed of or entitled to assets or income beyond those stated in the affidavit made by him or his solicitor in pursuance of rule 29 of this Order, he shall forthwith and from time to time report the matter to the solicitor conducting the proceedings for him.

Alteration in  
means of poor  
person.  
R.S.C. O. XVI.  
r. 31.

(2.) When the matter comes to the knowledge of the solicitor, whether by means of the report or otherwise, he shall forthwith make and file an affidavit embodying that information.

38.—(1.) Except for the discharge of his solicitor, a poor person, or a person acting on his behalf, shall not—

- (a) serve a notice of motion;
- (b) make an application;
- (c) issue a summons; or
- (d) present a petition,

unless it is signed by his solicitor.

Solicitor to  
sign notices,  
&c.  
R.S.C. O. XVI.  
r. 31D.  
H.C.R. O. III.  
rr. 7 and 8.

(2.) The solicitor assigned to a poor person shall take care that, without good cause—

- (a) a notice is not served;
- (b) an application is not made;
- (c) a summons is not issued; or
- (d) a petition is not presented.

39.—(1.) Notwithstanding that an order has not been made revoking the order allowing a poor person to sue, defend or be a party as a poor person, where he omits to proceed, he may be called upon by notice of motion or summons to shew cause to the Court or a Justice why he should not pay costs and why further proceedings should not be stayed until the costs have been paid.

Failure to  
proceed.  
H.C.R. O. III.  
r. 6.

(2.) On the hearing of the notice of motion or summons, the Court or a Justice may make such order as seems just.

40.—(1.) A poor person is not entitled to receive costs from another party unless the Court or a Justice orders that he is so entitled.

Costs—poor  
persons.  
R.S.C. O. XVI.  
rr. 28 and 31B.  
H.C.R. O. III.  
rr. 9 and 10.

(2.) The Court or a Justice may order the out-of-pocket expenses of a poor person to be paid by another party and, where such an order is made, it shall be deemed to include all out-of-pocket expenses properly incurred in the course of the proceedings but not office expenses or fees of counsel.

(3.) Where it appears to the Court or a Justice that another party has acted unreasonably in bringing, defending or intervening in the proceedings or in his conduct of them, or that the special circumstances of the case require it, the Court or a Justice may order that other party to pay the costs of a poor person, including profit costs or a proportion, or sum of money in respect, of profit costs, in addition to out-of-pocket expenses properly incurred in the course of the proceedings.

(4.) Where it appears to the Court or a Justice that proceedings are of such length or difficulty as to throw an unusual burden on the solicitor acting for a poor person, the Court or a Justice may order the other party to pay, in addition to out-of-pocket expenses properly incurred in the course of the proceedings, such sum as the Court or a Justice thinks fit in respect of that unusual burden.

(5.) Where an order to pay costs is made under either of the two last preceding sub-rules of this rule, the order shall not be enforced without leave of the Court or a Justice, and the Court or a Justice may

refuse leave if satisfied by the party ordered to pay the costs that he has not the means (including insurance or other indemnity) to pay them.

(6.) Out-of-pocket expenses and other costs ordered to be paid to a poor person shall, unless the order fixes their amount or the Court or a Justice otherwise directs, be taxed as in other cases.

41. Unless the Court or a Justice otherwise orders, a poor person is not liable to pay costs to another party.

Liability of poor person for costs.  
R.S.C. O. XVI.  
r. 28 (1.).  
Costs where order obtained by fraud.  
R.S.C. O. XVI.  
r. 31Bb.

42.—(1.) Where it appears to the Court or a Justice that the order allowing a person to sue or defend or be a party as a poor person was obtained by fraud or misrepresentation, the Court or Justice may order that person to pay the costs of another party.

(2.) Where such an order is made, the costs shall be taxed as if the party ordered to pay them were not a person in whose favour an order allowing him to sue, defend or be a party as a poor person had been made.

43.—(1.) Subject to the next succeeding sub-rule, the Court or a Justice may order to be paid to the solicitor for a poor person out of money recovered by that poor person, or may charge in favour of the solicitor upon real or personal property recovered by the poor person, such sum in respect of costs (including a fee to counsel which is reasonable in the circumstances) as would have been allowed to the solicitor on taxation between himself and his client if he had been retained by his client in the ordinary manner, less such amount as may be recovered by way of costs from another party, or such other sum in respect of costs as to the Court or a Justice seems fit.

Costs to solicitor from proceeds of action.  
R.S.C. O. XVI.  
r. 31c.

(2.) The total amount so to be paid out for profit costs, or so charged upon property for profit costs, shall not in either case exceed one fourth of the amount or value recovered and remaining after the deduction from that amount or value of all proper disbursements made by the solicitor.

(3.) In this rule, "money recovered" and "property recovered" include respectively money recovered and property recovered by virtue of a settlement or compromise.

#### IV.—Administration and Execution of Trusts.

44.—(1.) Where—

- (a) the right of the next of kin, or a class, depends upon the construction which the Court or a Justice may put upon an instrument; and
- (b) it is not known, or is difficult to ascertain, who is or are that next of kin or class; and
- (c) the Court or a Justice considers that, in order to save expense or for some other reason, it is convenient to have the questions of construction determined before that next of kin or class have been ascertained by means of inquiry or otherwise,

Appointment of person to represent next of kin or a class.  
R.S.C. O. XVI.  
r. 32.

the Court or Justice may appoint a person to represent the next of kin or class, and the judgment of the Court or Justice in the presence of that person is binding upon the next of kin or class so represented.

(2.) In any other case where next of kin, or a class, is interested in proceedings, the Court or Justice may (if it appears expedient by reason of the nature and extent of the interest of, and the difficulty of ascertaining, those persons, or any of them, or in order to save expense) appoint a person to represent all or any of the next of kin or class, and the judgment or order of the Court or Justice in the presence of the person so appointed is binding upon the persons so represented.

45. Where a residuary legatee or next of kin is entitled to a judgment or order for the administration of the personal estate of a deceased person, he may have the judgment or order without serving the remaining residuary legatees or next of kin.

Residuary legatee and next of kin.  
R.S.C. O. XVI.  
r. 33.

46. Where—

(a) a legatee is interested in a legacy charged upon real estate;  
or

(b) a person is interested in the proceeds of real estate directed to be sold,

Person interested in proceeds of realty.  
R.S.C. O. XVI.  
r. 34.

and that legatee or that person is entitled to a judgment or order for the administration of the estate of a deceased person, the legatee or person may have the judgment or order without serving any other legatee or person interested in the proceeds of the estate.

47. Where a residuary devisee or next of kin is entitled to a judgment or order for the administration of the estate of a deceased person, he may have that judgment or order without serving a co-residuary devisee or other next of kin.

Residuary devisee or heir.  
R.S.C. O. XVI.  
r. 35.

48. Where one of several *cestuis que trust* under a deed or instrument is entitled to a judgment or order for the execution of the trusts of the deed or instrument, he may have that judgment or order without serving any other *cestui que trust*.

*Cestuis que trust*.  
R.S.C. O. XVI.  
r. 36.

49. In proceedings for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and other persons having the same interest.

Waste.  
R.S.C. O. XVI.  
r. 37.

50. Where an executor, administrator or trustee is entitled to 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, he may have that judgment or order.

Executor, administrator or trustee.  
R.S.C. O. XVI.  
r. 38.

51.—(1.) Where, in a proceeding for the administration of the estate of a deceased person or the execution of the trusts of a deed or instrument, or for the partition or sale of hereditaments, a judgment or order has been pronounced or made—

(a) under Order 15 or Order 34; or

(b) affecting the right or interests of persons not parties to the action,

Notice of judgment to be served on certain persons and its effect.  
R.S.C. O. XVI.  
r. 40.

the Court or a Justice may direct that persons interested in the estate or under the trust or in the hereditaments shall be served with notice of the judgment or order.

(2.) After service with notice of the judgment or order, those persons shall be bound by the proceedings in the same manner as if they had originally been made parties, and they may attend the proceedings under the judgment or order.

(3.) A person so served may, within twenty-eight days after the service, apply to the Court or Justice to set aside or vary the judgment or order.

52. A person served with notice of a judgment or order need not obtain an order for liberty to attend the proceedings under that judgment or order, but may attend the proceedings upon entering an appearance in the same manner, and subject to the same provisions, as a defendant entering an appearance.

Order for liberty to attend not necessary, but appearance to be entered.  
R.S.C. O. XVI.  
r. 41.

53. A memorandum of the service upon a person of notice of a judgment or order under rule 51 of this Order shall, upon due proof by affidavit of that service, be entered in the Registry in which the proceeding is pending.

Memorandum of service to be entered in the Registry.  
R.S.C. O. XVI.  
r. 42.

54. Notice of a judgment or order served pursuant to rule 51 of this Order shall be entitled in the proceeding, and shall be endorsed with a memorandum in the form numbered 36 in the First Schedule.

Form of memorandum.  
R.S.C. O. XVI.  
r. 43.

55. Service of a judgment or order, or of notice of a judgment or order, shall be effected on an infant or a person of unsound mind in the same manner as in the case of a writ of summons.

Service of notice of judgment on infants, &c.  
R.S.C. O. XVI.  
r. 44.

56.—(1.) Where in a proceeding it appears to the Court or a Justice that a deceased person interested has no legal personal representative, the Court or Justice may (on such notice to such persons, if any, as the Court or Justice thinks fit, either specially or generally by public advertisement) proceed in the absence of a person representing the estate of the deceased person, or may appoint some person to represent his estate for the purposes of the proceeding.

Court may appoint or dispense with legal personal representative.  
R.S.C. O. XVI.  
r. 46.

(2.) An order made under this rule, and an order consequent on that order, 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 proceeding.

57.—(1.) In a proceeding for the administration of the estate of a deceased person, a party (other than the executor or administrator) may not, unless by leave of the Court or a Justice, appear either in Court or in Chambers on the claim of a person, not a party to the proceeding, against the estate of the deceased person in respect of a debt or liability.

Administration—appearance at chambers in respect of creditor's claims.  
R.S.C. O. XVI.  
r. 47.

(2.) The Court or a Justice may direct or allow another party to the proceeding to appear, either in addition to or in place of the executor or administrator, upon such terms as to costs, or otherwise, as it or he thinks fit.

## ORDER 17.

### THIRD PARTY PROCEDURE.

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

Third party procedure.  
R.S.C. O. XVIa.  
r. 1.

(a) that he is entitled to contribution or indemnity;

(b) that he is entitled to relief or a 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 a question or issue relating to or connected with that 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 of them, the Court or a Justice may give leave to the defendant to issue and serve a third party notice.

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

2.—(1.) A third party 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. Form and issue of notice.  
R.S.C. O. XVIIA.  
r. 2.

(2.) The notice shall be in accordance with form numbered 24 or form numbered 25 in the First Schedule, with such variations as the circumstances require, and shall be sealed and served on the third party in the same manner as a writ of summons is sealed and served.

(3.) A copy of the notice shall be filed in the Registry in which the action is then pending.

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

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 a claim made against him, and otherwise, as if he had been duly sued in the ordinary way by the defendant. Effect of notice.  
R.S.C. O. XVIIA.  
r. 3.

4.—(1.) The third party may enter an appearance in the action within such number of days from service of the notice upon him as is directed by the Court or Justice and specified in the notice. Appearance.  
R.S.C. O. XVIIA.  
r. 4.

(2.) The third party shall give notice of appearance to the plaintiff and the defendant and any other party to the action in the same manner as if the third party notice were a writ of summons.

(3.) Where a third party fails to appear within the time directed, he may apply to the Court or Justice for leave to appear, and that leave may be given upon such terms, if any, as the Court or Justice thinks fit.

5. If a third party duly served with a third party notice does not enter an appearance or makes default in delivering a pleading which he has been ordered to deliver— Default by third party.  
R.S.C. O. XVIIA.  
r. 5.

(a) he shall be deemed to admit the validity of, and shall be bound by, a judgment given in the action (whether by consent or otherwise) and by a decision in the action on any question specified in the notice; and

(b) where contribution, indemnity or other relief or remedy is claimed against him in the notice, he shall be deemed to admit his liability in respect of that contribution, indemnity or other relief or remedy.

## ORDER 17.

6.—(1.) Where a third party makes default in entering an appearance or delivering a pleading which he has been ordered to deliver and the defendant giving the notice suffers judgment by default, that defendant may, at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or a Justice—

Where judgment  
by default  
against  
defendant.  
R.S.C. O. XVIIA.  
r. 6.

- (a) enter judgment against the third party to the extent of any contribution or indemnity claimed in the third party notice; and
- (b) by leave of the Court or a Justice, enter such judgment in respect of any other relief or remedy claimed as the Court or a Justice directs.

(2.) The Court or a Justice may set aside or vary a judgment entered against a third party under this rule upon such terms as are just.

7.—(1.) If a 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 a Justice for directions.

Third party  
directions.  
R.S.C. O. XVIIA.  
r. 7.

(2.) The Court or Justice 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 requires to be entered against the third party in favour of the defendant giving the notice;

(b) if satisfied—

- (i) 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 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 other relief or remedy claimed in the notice by the defendant; or
- (ii) 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 of them,

order that question or issue to be tried in such manner as the Court or Justice directs; or

(c) dismiss the application.

(3.) Directions given pursuant to this rule may—

- (a) be given either before or after any judgment has been signed by the plaintiff against the defendant in the action;
- (b) be varied from time to time; and
- (c) be rescinded.

(4.) The third party proceedings may at any time be set aside by the Court or a Justice.

## ORDER 17.

8. The Court or a Justice, upon the hearing of the application for directions, may, if it appears desirable to do so—

Leave to  
defend.  
R.S.C. O. XVIa.  
r. 8.

- (a) give the third party liberty to defend the action, either alone or jointly with the original defendant, upon such terms as are just, or to appear at the trial and take such part in the trial as may be just; and
- (b) 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 Justice appears 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.

9.—(1.) Where the action is tried, the Justice who tries the action may, at or after the trial—

At trial.  
R.S.C. O. XVIa.  
r. 9.

- (a) enter such judgment as the nature of the case requires for or against the defendant giving the notice against or for the third party; and
- (b) 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 brought against him by the defendant.

(2.) Execution shall not be issued without leave of the Court or a Justice until after satisfaction by the defendant of the judgment against him.

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

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

Costs.  
R.S.C. O. XVIa.  
r. 10.

11.—(1.) Where a third party makes, as against a 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 apply, *mutatis mutandis*, as between the third party and that other person, and the Court or Justice may give leave to the third party to issue a third party notice, and the preceding rules of this Order apply, *mutatis mutandis*, and the expressions “third party notice” and “third party” apply to and include a notice so issued and a person served with the notice, respectively.

Fourth and  
subsequent  
parties.  
R.S.C. O. XVIa.  
r. 11.

(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, has effect with respect to that other person and any other further person or persons so served and so on successively.

## ORDERS 17, 18.

12.—(1.) Where a defendant claims against another defendant—  
Co-defendants.  
 R.S.C. O. XVIIA.  
 r. 12.

(a) that he is entitled to contribution or indemnity;

(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 a question or issue relating to or connected with that 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 of them,

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

(2.) An appearance to the notice is not necessary and the same procedure shall be adopted for the determination of that claim, question or issue between the defendants as would be appropriate under this Order if such other defendant were a third party.

(3.) This rule does not prejudice the rights of the plaintiff against any defendant to the action.

13. Where a defendant makes a counterclaim against the plaintiff or against the plaintiff and other persons, the provisions of this Order apply as if the plaintiff or the plaintiffs and those other persons were defendants, and the defendant a plaintiff, in an action.  
Counterclaim.  
 Cf. R.S.C. O.  
 O. XVIIA. r. 13.

## ORDER 18.

## CHANGE OF PARTIES BY DEATH, ETC.

1.—(1.) Where the cause of action survives or continues, a proceeding does not become abated by reason of the marriage, death or bankruptcy of a party, and does not become defective by the assignment, creation or devolution of an estate or title *pendente lite*.  
Proceeding not  
 abated where  
 cause of action  
 continued.  
 R.S.C. O. XVII.  
 r. 1.

(2.) Whether the cause of action survives or continues or not, there is no abatement of action by reason of the death of a party between the verdict of a jury, or finding of issues of fact by a jury, and the judgment, and judgment may in such case be entered, notwithstanding the death.

2.—(1.) Where—

(a) by reason of marriage, death, bankruptcy or any other event occurring after the commencement of a proceeding and causing a change or transmission of interest or liability; or  
Order to carry  
 on proceeding.  
 R.S.C. O. XVII.  
 r. 4.  
 H.C.R. O. XII.  
 r. 4.

(b) by reason of a person interested coming into existence after the commencement of the proceeding,

it becomes necessary or desirable that a person not already a party should be made a party or that a person already a party should be made a party in another capacity, an order that the proceeding be carried on between the continuing parties and that new party or

parties may be obtained *ex parte* either by a continuing party or by a person who may be made a party on application to the Court or a Justice upon proof of—

- (c) the change or transmission of interest or liability; or
- (d) the person interested having come into existence.

(2.) Where the party applying to be made a party as a plaintiff is an infant, the application shall be made by him by his next friend.

3.—(1.) An order obtained under the last preceding rule shall, unless the Court or a Justice otherwise directs, be served upon—

- (a) the continuing party or parties or his or their solicitor or solicitors; and
- (b) unless the person making the application be himself the only new party—upon each new party.

Service of  
order to  
continue  
proceeding.  
R.S.C. O. XVII.  
r. 5.  
Cf. H.C.R. O.  
XII. r. 5.

(2.) Subject to the next two succeeding rules, the order shall, from the time of service, be binding on the persons served with the order, and a person so served who is not already a party shall enter an appearance to the order within the same time and in the same manner as if he had been served with the writ of summons or other originating process by which the proceeding was commenced.

(3.) Before the service of the order, it shall be endorsed with a notice to every person to be served with it who is not already a party that an appearance must be entered by him and of the time within which, and the manner in which, the appearance must be entered.

4. Where a person who—

- (a) is not under a disability;
- (b) is not under a disability, other than coverture; or
- (c) is under a disability, other than coverture, but has a guardian *ad litem* in the proceeding,

Application to  
discharge order  
by person under  
no disability or  
having a  
guardian.  
R.S.C. O. XVII.  
r. 6.

is served with an order obtained under rule 2 of this Order, that person or his guardian *ad litem*, as the case may be, may apply to the Court or a Justice to discharge or vary that order at any time within fourteen days from the service of the order.

5.—(1.) Where a person who is under a disability, other than coverture, and has not a guardian *ad litem* in the proceeding, is served with an order obtained under rule 2 of this Order, that person may, at any time within fourteen days from the appointment of a guardian *ad litem* for that person, apply by his guardian *ad litem* to the Court or a Justice to discharge or vary that order.

By person  
under disability  
having no  
guardian.  
R.S.C. O. XVII.  
r. 7.

(2.) Until the period of fourteen days has expired, the order shall have no force or effect as against that person.

6.—(1.) Where—

- (a) the plaintiff or defendant in a proceeding dies and the cause of action survives; and
- (b) the person entitled to proceed fails to proceed,

Death of sole  
plaintiff or  
defendant.  
R.S.C. O. XVII.  
r. 8.

the defendant, or the person against whom the proceeding may be continued, may apply by summons to compel the plaintiff, or the person entitled to proceed, to proceed within such time as is ordered.

(2.) In default of such proceeding, judgment may be entered, with or without costs, for the defendant or, as the case may be, for the person against whom the proceeding might have been continued.

(3.) Where judgment is so continued and the plaintiff has died, execution may issue as in the case provided for by Order 45, rule 2.

7.—(1.) Where a proceeding becomes abated or there is a change of interest as provided for by this Order, the solicitor for the plaintiff or person having the conduct of the proceeding, as the case may be, shall certify the fact to the proper officer.

Solicitor of plaintiff to give notice of abatement.  
R.S.C. O. XVII.  
r. 9.

(2.) The proper officer shall cause an entry of the abatement or the change of interest, as the case may be, to be made in the Cause Book or in the Court Book, as the case may be, opposite to the name of the proceeding.

8. Where a proceeding has been standing for one year in the Cause Book or the Court Book marked as "abated", or standing over generally, the proceeding shall, at the expiration of the year, be struck out of the Cause Book or the Court Book, as the case may be.

Abated proceeding to be struck out.  
R.S.C. O. XVII.  
r. 10.

## ORDER 19.

### JOINDER OF CAUSES OF ACTION.

1.—(1.) Subject to this rule and the succeeding rules of this Order, the plaintiff may join in the same action several causes of action.

All causes of action may be joined.  
R.S.C. O.  
XVIII. r. 1.

(2.) Where it appears to the Court or a Justice that those causes of action, or any of them, cannot be conveniently tried or disposed of together, the Court or Justice may —

(a) order separate trials of any of those causes of action to be had; or

(b) make such other order as is necessary or expedient for the most convenient and expeditious separate trial and disposal of the several causes of action.

2. A claim by a trustee in bankruptcy or a trustee under a deed of arrangement, composition, scheme of arrangement or deed of assignment shall not, unless by leave of the Court or a Justice, be joined with a claim in another capacity.

Claims of trustees in bankruptcy, &c.  
Cf. R.S.C. O.  
XVIII. r. 3.

3. Subject to rules 1, 6, and 7 of this Order, a claim by or against husband and wife may be joined with a claim by or against either of them separately.

Husband and wife.  
R.S.C. O.  
XVIII. r. 4.

4. Subject to rules 1, 6 and 7 of this Order, a claim by or against an executor or administrator as such may be joined with a claim by or against him personally if the claim by or against him personally is alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

Executor and administrator.  
R.S.C. O.  
XVIII. r. 5.

5. Subject to rules 1, 6 and 7 of this Order, a claim by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

Claims by joint plaintiffs.  
R.S.C. O.  
XVIII. r. 6.

## ORDERS 19, 20.

6. Where a defendant alleges that the plaintiff has joined in the same action several causes of action which cannot be conveniently disposed of together, the defendant may at any time apply to the Court or a Justice for an order confining the action to such of the causes of action as may be conveniently disposed of together.

Remedy for  
misjoinder.  
R.S.C. O.  
XVIII. r. 8.

7. Where, on the hearing of an application made under the last preceding rule, it appears to the Court or a Justice that the causes of action are such as cannot all be conveniently disposed of together, the Court or Justice may—

Order for  
exclusion.  
R.S.C. O.  
XVIII. r. 9.

- (a) order any of those causes of action to be excluded and consequential amendments to be made; and
- (b) make such order as to costs as is just.

## ORDER 20.

## PLEADING GENERALLY.

1. The rules of pleading set out in this Order shall be used in the Court.

Pleadings in  
High Court.  
R.S.C. O. XIX.  
r. 1.

2.—(1.) The plaintiff shall, in accordance with the provisions of Order 21, and at such time and in such manner as is prescribed in that Order, deliver to the defendant a statement of his claim and of the relief or remedy to which he claims to be entitled.

Delivery of  
pleadings—  
costs of prolix  
pleadings.  
R.S.C. O. XIX.  
r. 2.

(2.) The defendant shall, in accordance with the provisions of Order 22, and at such time and in such manner as is prescribed in that Order, deliver to the plaintiff his defence, set-off or counterclaim, if any.

(3.) The plaintiff shall, in accordance with the provisions of Order 24, and at such time and in such manner as is prescribed in that Order, deliver his reply to the defence, set-off or counterclaim.

(4.) The pleadings shall be as brief as the nature of the case admits, and the taxing officer, in adjusting the costs of the action, shall, at the instance of any party, or may, without a request, inquire into unnecessary prolixity and order the costs occasioned by that prolixity to be borne by the party chargeable with it.

3.—(1.) By way of defence to a claim for a liquidated demand, whether at law or in equity, a defendant may, unless the Court or a Justice otherwise orders, rely upon a set-off consisting of a liquidated demand at law or in equity.

Set-off and  
counterclaim.  
cf. R.S.C. O.  
XIX. r. 3.

(2.) Subject to the provisions of Order 22, rule 14, a defendant in an action may set up by way of counterclaim against the claims of a plaintiff any right or claim, whether the counterclaim sounds in damages or not.

(3.) The counterclaim 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 upon the original and upon the cross-claim.

4.—(1.) A 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.

Pleading to state material facts and not evidence.  
R.S.C. O. XIX.  
r. 4.

(2.) The pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each paragraph containing as nearly as may be a separate allegation.

(3.) Dates, sums and numbers shall be expressed in figures and not in words.

(4.) Where 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.

5.—(1.) Where the party pleading relies on a contract or on misrepresentation, fraud, breach of trust, wilful default or undue influence, and in other cases in which particulars are necessary, particulars, with dates and items if necessary, shall be stated in the pleading.

Particulars to be given where necessary.  
R.S.C. O. XIX.  
r. 6.

(2.) Where the particulars are of debt, expenses or damages, and exceed three folios, the fact that they exceed three folios must be stated, with a reference to full particulars already delivered or to be delivered with the pleading.

(3.) In an action for libel or slander, if the plaintiff alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of that sense.

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

Further and better statement or particulars.  
R.S.C. O. XIX.  
r. 7.

7.—(1.) Before applying for particulars by summons or notice, a party may apply by letter for them and the costs of the letter and of particulars delivered pursuant to the letter shall be allowable on taxation.

Letter for particulars.  
R.S.C. O. XIX.  
r. 7A.

(2.) In dealing with the costs of an application for particulars by summons or notice, the provisions of this rule shall be taken into consideration by the Court or Justice.

(3.) Costs shall not be allowed on taxation of an application for particulars which is prolix, unreasonable or unnecessary.

8. Particulars of a claim shall not, under rule 6 of this Order, be ordered to be delivered before defence unless the Court or Justice is 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.  
R.S.C. O. XIX.  
r. 7B.

9.—(1.) The party at whose instance particulars have been delivered under a Justice'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.

Order for particulars when a stay.  
R.S.C. O. XIX.  
r. 8.

(2.) Except as provided in this rule, an order for particulars does not, unless the order otherwise provides, operate as a stay of proceedings or give an extension of time.

## ORDER 20.

10. A pleading shall be printed, typewritten or written.

Printing, &c., of  
pleadings.

11.—(1.) A pleading or other document required to be delivered to a party shall be delivered at the address for service to the solicitor of a party who sues or appears by a solicitor, or to the party if he does not sue or appear by a solicitor.

R.S.C. O. XIX.  
r. 9.

(2.) Where no appearance has been entered for a party, the pleading or document shall be deemed to be delivered to the party if it is filed in the Registry in which the proceeding is then pending.

Delivery of  
pleadings.  
R.S.C. O. XIX.  
r. 10.  
H.C.R. O. XVII.  
r. 7.

12.—(1.) Every pleading shall be delivered between parties, and—

Marking  
pleadings.  
R.S.C. O. XIX.  
r. 11.

(a) 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

(b) shall be endorsed with the name and place of business of the solicitor and agent, if any, delivering the pleading, or the name and address of the party delivering the pleading if he does not act by a solicitor.

(2.) At the beginning of a statement of claim, there shall be a memorandum of the date of the issue of the writ.

13. The defence of "Not guilty by statute" shall not be used.

"Not guilty by  
statute"  
abolished.

14. Where an allegation of fact in a pleading—

(a) is not denied specifically or by necessary implication; or  
(b) is not stated to be not admitted,

H.C.R. O.  
XVII. r. 9.  
Specific denial.  
R.S.C. O. XIX.  
r. 13.

in the pleading of the opposite party, it shall be taken to be admitted, except as against an infant or a person of unsound mind.

15.—(1.) A 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.

Condition  
precedent.  
R.S.C. O. XIX.  
r. 14.

(2.) Subject to the last preceding sub-rule, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant is implied in his pleading.

16. The defendant or plaintiff, as the case may be, shall raise by his pleading—

What must be  
specially  
pleaded.  
R.S.C. O. XIX.  
r. 15.

(a) all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law; and

(b) such grounds of defence or reply, as the case may be, as, if not raised, would—

- (i) be likely to take the opposite party by surprise; or
- (ii) 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, or a law requiring contracts to be made in or evidenced by writing.

17. A pleading of a party shall not, except by way of amendment, raise a new ground of claim or contain an allegation of fact inconsistent with the previous pleadings of that party.

Departure.  
R.S.C. O. XIX.  
r. 16.

## ORDER 20.

18. It is not sufficient for a defendant in his defence to deny generally the allegations in the statement of claim, or for a plaintiff in his reply to deny generally the allegations in a defence by way of counterclaim, but each party shall deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Denial to be specific.  
R.S.C. O. XIX.  
r. 17.

19.—(1.) 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.

Joinder of issue.  
R.S.C. O. XIX.  
r. 18.

(2.) The joinder of issue operates as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

20.—(1.) When a party in a pleading denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but shall answer the point of substance; thus, if it is alleged that he received a certain sum of money, it is not sufficient to deny that he received that particular amount, but he shall deny that he received that sum or any part of that sum, or set out how much he received.

Evasive denial.  
R.S.C. O. XIX.  
r. 19.

(2.) Where an allegation is made with divers circumstances, it is not sufficient to deny it along with those circumstances.

21. Where a contract, promise or agreement is alleged in a pleading or particulars, a bare denial of that contract, promise or agreement by the opposite party—

Denial of contract.  
R.S.C. O. XIX.  
r. 20.  
H.C.R. O. XVII.  
r. 10.

(a) 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 contract, promise or agreement may be implied by law; and

(b) shall not be construed as a denial of the legality or sufficiency in law of that contract, promise or agreement, whether with reference to a law requiring contracts to be made in, or evidenced by, writing or otherwise, or of the authority of a person by whom the contract, promise or agreement is alleged to have been made.

22. Where the contents of a document are material, it is sufficient in a pleading to state the effect of the document as briefly as possible, without setting out the whole or any part of it unless the precise words of the document or any part of it are material.

Effect of documents to be stated.  
R.S.C. O. XIX.  
r. 21.

23.—(1.) Where it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of a person, it is sufficient to allege that malice, intention, knowledge or condition of mind as a fact without setting out the circumstances from which it is to be inferred.

Malice, knowledge, condition of mind, &c.  
R.S.C. O. XIX.  
r. 22.

(2.) Where, in an action for libel or slander, the defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, the plaintiff, if he alleges in his reply that the defendant was actuated by express malice, shall give particulars of the facts and matters from which that malice is to be inferred.

## ORDER 20.

24. Where in an action for libel or slander the defendant alleges that—

- (a) in so far as the words complained of consist of statements of fact, they are true in substance and in fact; and
- (b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest,

or pleads to the like effect, he shall give particulars stating which of the words complained of he alleges are true in substance and in fact and of the facts and matters he relies on in support of the allegation that the words are true.

25. Where it is material to allege notice to a person of a fact, matter or thing, it is sufficient to allege that notice as a fact, unless the form or the precise terms of the notice, or the circumstances from which the notice is to be inferred, are material.

26.—(1.) Where a contract or a relation between persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it is sufficient to allege that contract or relation as a fact, and to refer generally to those letters, conversations or circumstances without setting them out in detail.

(2.) If the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from those circumstances, he may state those contracts or relations in the alternative.

27. Neither party need, in a pleading, allege a matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless that matter of fact has first been specifically denied, for example, consideration for a bill of exchange where the plaintiff sues only on the bill, and not upon the consideration as a substantive ground of claim.

28. In actions for trespass to land, the close or place in which the trespass is alleged to have been committed shall be designated in the statement of claim by name or abutments or other sufficient description or by a plan drawn in the margin.

29. The Court or a Justice may, at any stage of the proceedings—
- (a) order to be struck out or amended any matter in an endorsement or pleading which is unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the action; and
  - (b) if the Court or Justice thinks fit, order the costs of the application to be paid as between solicitor and client.

30.—(1.) In an action for damage by collision between vessels, unless the Court or a Justice otherwise orders, the plaintiff or his solicitor shall, within seven days after the commencement of the action, and the defendant or his solicitor shall, within seven days after appearance and before any pleading is delivered, respectively file in the Registry in which the action is then pending a document to be called a Preliminary Act.

(2.) The Preliminary Act shall be sealed up and shall not be opened until the pleadings are completed and a consent signed by the respective parties or their solicitors that the Preliminary Act shall be opened is filed in the Registry in which the action is then pending.

(3.) The Preliminary Act shall contain a statement as to—

- (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) were given, and when; and
- (p) what sound signals (if any) were heard from the other vessel, and when.

(4.) The Court or a Justice may at any time, on the application of a party, order the Preliminary Act to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings, and as soon as that order has been made, the pleadings as between the parties shall be deemed to be closed.

(5.) Where an order is made under the last preceding sub-rule and either party intends to rely on the defence of compulsory pilotage, he may do so, and shall give notice in writing of that intention to the other party within two days from the opening of the Preliminary Act, or within such further time as the Court or a Justice allows.

## ORDER 21.

### STATEMENT OF CLAIM.

1.—(1.) Subject to the next succeeding sub-rule and to the provisions of Order 12, rule 13, as to filing a statement of claim where there is no appearance, the plaintiff shall deliver a statement of claim—

Statement of claim.  
Cf. R.S.C. o.  
XX. r. 1.

- (a) with the writ of summons or notice in lieu of writ of summons; or
- (b) within twenty-one days after appearance or such other time as is fixed by consent in writing or by the Court or a Justice.

(2.) A statement of claim delivered under paragraph (a) of the last preceding sub-rule may be endorsed upon the writ.

(3.) Where the writ is specially endorsed with or accompanied by a statement of claim under Order 13, rule 1, a further statement of claim shall not be delivered unless the Court or a Justice so orders, and the endorsement on the writ shall be deemed to be the statement of claim.

2. A statement of claim, whether endorsed on the writ or not, shall allege that the matter is one within the original jurisdiction of the Court and the facts upon which that allegation is based.

Allegation of jurisdiction.  
Cf. O. 22. r. 9  
post.

3. Where a statement of claim not endorsed upon the writ is delivered, the plaintiff may in that statement of claim alter, modify or extend his claim without amendment of the endorsement of the writ.

Claim beyond endorsement.  
R.S.C. O. XX.  
r. 4.

4.—(1.) A statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it is not necessary to ask for general or other relief which may always be given, as the Court or a Justice thinks just, to the same extent as if it had been asked for.

Relief to be specifically stated.  
R.S.C. O. XX.  
r. 6.

(2.) This rule applies to a counterclaim made, or relief claimed, by the defendant in his defence.

5.—(1.) 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.

Relief founded on separate grounds.  
R.S.C. O. XX.  
r. 7.

(2.) This rule applies where the defendant relies upon several distinct grounds of defence, set-off or counterclaim founded upon separate and distinct facts.

6.—(1.) Where the cause of action is a stated or settled account, it shall be alleged with particulars.

Stated or settled account.  
R.S.C. O. XX.  
r. 8.

(2.) Where a statement of account is relied on by way of evidence or admission of another cause of action which is pleaded, it shall not be alleged in the pleadings.

## ORDER 22.

### DEFENCE AND COUNTERCLAIM.

1. In an action for a debt or liquidated demand in money comprised in Order 13, rule 1, a mere denial of the debt is inadmissible.

Mere denial insufficient.  
R.S.C. O. XXI.  
r. 1.

2. In an action upon a bill of exchange, promissory note or cheque, a defence in denial must deny some matter of fact, for example, the drawing, making, endorsing, accepting, presenting, or notice of dishonour of the bill, note or cheque.

Defences to action on bills, &c., R.S.C. O. XXI. r. 2.

3. In an action comprised in paragraphs (a) and (b) of sub-rule (1.) of Order 13, rule 1, a defence in denial shall deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed, for example, in an action for goods bargained and sold or sold and delivered, the defence shall deny the order or contract, the

Defences to actions under Order 3, r. 4 (1.) (a) and (b).  
R.S.C. O. XXI.  
r. 3.

## ORDER 22.

delivery or the amount claimed, and in an action for money had and received, it shall deny the receipt of the money, or the existence of those facts which are alleged to make that receipt by the defendant a receipt to the use of the plaintiff.

4. A denial or defence is not necessary as to damages claimed or their amount, but they are in issue in all cases unless expressly admitted.

Pleading to  
damage.  
R.S.C. O. XXI.  
r. 4.

5. Where a party wishes to deny—

(a) the right of another party to claim as executor, administrator or trustee (whether in bankruptcy or otherwise) or in a representative or other alleged capacity; or

Persons in  
representative  
capacity.  
R.S.C. O. XXI.  
r. 5.

(b) the alleged constitution of a partnership firm,

he shall deny that right or constitution specifically.

6. Where a defendant has entered an appearance, he shall deliver his defence—

Time for  
delivery of  
defence.  
R.S.C. O. XXI.  
r. 6.

(a) within twenty-one days from the time limited for appearance or for the delivery of the statement of claim, whichever is the later; or

(b) within such other time as is fixed by consent in writing or by the Court or a Justice, unless, in an action in which the writ of summons has been specially endorsed with or accompanied by a statement of claim under Order 13, rule 1, the plaintiff in the meantime serves a summons for judgment under Order 13.

7. Where leave has been given to a defendant to defend under Order 13 or Order 14, he shall deliver his defence, if any, within such time as is limited by the order giving him leave to defend, or if no time is thereby limited, within twenty-one days after the order.

Where leave to  
defend given  
under Order 13  
or 14.  
R.S.C. O. XXI.  
r. 7.

8. Where the Court or a Justice is of opinion that an allegation of fact denied or not admitted by the defence ought to have been admitted, the Court or Justice may make such order as is just with respect to any extra costs occasioned by the allegation having been denied or not admitted.

Proper  
admissions not  
made.  
R.S.C. O. XXI.  
r. 8.

9. A counterclaim shall not be pleaded which would not, if the claim in that counterclaim were made by a plaintiff in an action, be within the jurisdiction of the Court.

Allowable  
counterclaim.  
Cf. O. 21. r. 2.  
*ante*.

10. Where a defendant sets up a counterclaim which raises questions between himself and the plaintiff with any other persons, he shall—

Title on  
counterclaim.  
R.S.C. O. XXI.  
r. 11.

(a) add to the title of his defence a further title similar to the title in a statement of claim, setting forth as defendants the names of the persons who, if the counterclaim were to be enforced by cross action, would be defendants to that cross action; and

(b) deliver his defence and counterclaim to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

**ORDER 22.**

11.—(1.) Where such a person as is mentioned in the last preceding rule is not a party to the action, he shall be summoned to appear by being served with a copy of the defence and counterclaim, and that service shall be regulated by the same rules as are contained in these Rules with respect to the service of a writ of summons.

Counterclaim  
against person  
not party.  
R.S.C. O. XXI.  
r. 12.

(2.) A defence and counterclaim so served shall be endorsed in the form numbered 26 in the First Schedule, with such variations as the circumstances require.

12. Where a person not already a party to the action is served with a defence and counterclaim under the last preceding rule, he shall appear and may be proceeded against as if he had been served with a writ of summons, or notice of a writ, to appear in an action.

Appearance by  
added parties.  
R.S.C. O. XXI.  
r. 13.

13. A person against whom a counterclaim is made shall deliver a defence to the counterclaim within the time within which he might deliver a defence if it were a statement of claim.

Reply to  
counterclaim.  
R.S.C. O. XXI.  
r. 14.

14. Where a person against whom a counterclaim is made contends that the claim raised by the counterclaim ought not be disposed of by way of counterclaim, but in an independent action, the Court or a Justice may at any time order that the counterclaim be excluded.

Exclusion of  
counterclaim.  
R.S.C. O. XXI.  
r. 15.

15. Where the defendant sets up a counterclaim and the action of the plaintiff is stayed, discontinued or dismissed, the counterclaim may nevertheless be proceeded with.

Discontinuance.  
R.S.C. O. XXI.  
r. 16.

16. Where in an action a counterclaim is established against the plaintiff's claim, the Court or a Justice may, if the balance is in favour of the defendant, give judgment for the defendant for that balance, or may otherwise adjudge to the defendant such relief as he is entitled to upon the merits of the case.

Judgment for  
balance.  
R.S.C. O. XXI.  
r. 17.

17. A plea or defence shall not be pleaded in abatement.

Plea in  
abatement.  
R.S.C. O. XXI.  
r. 20.

18.—(1.) Where a defendant in an action for the recovery of land is in possession by himself or his tenant, he need not plead his title unless—

Plea of  
possession.  
R.S.C. O. XXI.  
r. 21.

- (a) he is in possession by virtue of a lease or tenancy granted by the plaintiff or his predecessor in title;
- (b) his defence depends upon an equitable estate or right; or
- (c) he claims relief upon some equitable ground against a right or title asserted by the plaintiff.

(2.) Except in the cases mentioned in the last preceding sub-rule, it is sufficient to state by way of defence that he is in possession and it shall be taken to be implied in that statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim, but he may, nevertheless, rely upon any other ground of defence.

## ORDER 23.

## PAYMENT INTO AND OUT OF COURT AND TENDER.

1.—(1.) In an 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. Payment into Court.  
R.S.C. O. XXII.  
r. 1.

(2.) Where a defence sets up tender before action, the sum of money alleged to have been tendered shall be brought into Court.

(3.) Where the money is paid into Court in satisfaction of one or more of several causes of action, the notice shall, unless the Court or a Justice otherwise orders, 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.

(4.) The notice shall be in the form numbered 27 in the First Schedule and shall state whether liability is admitted or denied.

(5.) Receipt of the notice shall be acknowledged by the plaintiff in writing, specifying the date of that receipt, within three days of the receipt.

2.—(1.) Where money is paid into Court under the last preceding rule, the plaintiff may— Plaintiff may  
take out  
money.  
R.S.C. O. XXII.  
r. 2.

(a) within seven days of the receipt of the notice of payment into Court; or

(b) where more than one payment into Court has been made—  
within seven days of the receipt of the notice of the last payment into Court,

accept the whole sum, or any one or more of the sums paid in in satisfaction of the claim or in satisfaction of the cause or causes of action to which the sum or sums relate, by giving notice to the defendant in the form numbered 28 in the First Schedule, and thereupon he shall be entitled to receive payment of the accepted sum or sums in satisfaction of the claim or cause or causes of action, as the case may be.

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

(3.) Where the plaintiff—

(a) accepts money paid into Court in satisfaction of his claim or accepts a sum or sums paid in respect of one or more of specified causes of action; and

(b) gives notice that he abandons the other cause or causes of action,

he may, after seven days from payment-out, and unless the Court or a Justice otherwise orders, tax his costs incurred to the time of payment into Court, and two days after taxation may sign judgment for his taxed costs.

(4.) Where a plaintiff in an action for libel or slander takes money out of Court, he may apply by a summons to a Justice in Chambers for leave to make in open court a statement in terms approved by a Justice.

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

3. Where the whole of the money in Court is not taken out under the last preceding rule, 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 Justice, which may be made at any time before, at or after trial.

Money remaining in Court.  
R.S.C. O. XXII.  
r. 3.

4.—(1.) Money may be paid into Court under rule 1 of this Order by one or more of several defendants sued jointly or in the alternative upon notice to the other defendant or defendants.

Several defendants.  
R.S.C. O. XXII.  
r. 4.

(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 in the form numbered 28 in the First Schedule to each defendant.

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

5. A plaintiff or other person made defendant to a counterclaim may pay money into Court in accordance with the preceding rules of this Order, with the necessary modifications.

Counterclaim.  
R.S.C. O. XXII.  
r. 5.

6.—(1.) Except in an action to which a defence of tender before action is pleaded or in which a plea under the provisions of a law corresponding with the Acts of the Parliament of the United Kingdom known as the Libel Acts, 1843 and 1845, has been filed—

Non-disclosure of payment into Court.  
R.S.C. O. XXII.  
r. 6.

(a) a statement of the fact that money has been paid into Court under the preceding rules of this Order shall not be inserted in the pleadings; and

(b) a communication of that fact shall not, at the trial of an action, be made to the Justice or jury until all questions of liability and the amount of debt or damages have been decided.

(2.) The Justice 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 that payment.

7. Money shall not be paid into Court under the certificate of a Registrar unless that payment is expressly authorized in the certificate.

Payment into Court under certificate.  
R.S.C. O. XXII.  
r. 7.

8.—(1.) Money paid into Court under an order of the Court or a Justice, or certificate of a Registrar, shall not be paid out of Court except in pursuance of an order of the Court or a Justice.

Money paid into Court under order.  
R.S.C. O. XXII.  
r. 8.

(2.) Where, before the delivery of defence, money has been paid into Court by the defendant pursuant to an order under Order 13, he may (unless the Court or a Justice otherwise orders)—

- (a) by his pleading or by notice in writing appropriate the whole or any part of that money, and any additional payment if necessary, to the whole or a specified portion of the plaintiff's claim; or
- (b) if he pleads a tender, by his pleading appropriate the whole or any part of the money in Court as payment into Court of the money alleged to have been tendered.

(3.) 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, or money paid into Court with a plea of tender, as the case may be, and shall be subject in all respects to those rules.

9. Where a person pays money into Court under an order, he shall forthwith give notice of that payment to such parties and in such manner as is specified in the order. Notice of payment in. R.S.C. O. XXII. r. 9.

10. The affidavit in support of a summons for dealing with money or securities in Court, chargeable with a duty payable under the laws of the Commonwealth or of a State or Territory, or the dividends of those securities, shall contain a statement showing whether that duty has or has not been paid. Duty. R.S.C. O. XXII. r. 10.

11.—(1.) In an action in which money or damages is or are claimed by or on behalf of an infant or a person of unsound mind suing either alone or with other parties, a settlement, compromise, payment or acceptance of money paid into Court, whether before, at or after the trial, are not, with respect to the claims of the infant or person of unsound mind, valid without the approval of the Court or a Justice. Money recovered by or paid into account for infant or person of unsound mind. R.S.C. O. XXII. r. 14.

(2.) Where money, including damages, is recovered, adjudged, ordered, awarded or agreed to be paid in an action of the kind referred to in the last preceding sub-rule in respect of the claims of the infant or person of unsound mind, whether by judgment, order, settlement, compromise, payment, payment into Court or otherwise, before, at or after the trial, it shall not be paid to the plaintiff, the committee or next friend of the plaintiff, or the plaintiff's solicitor, unless the Court or a Justice so directs.

(3.) Money so recovered, adjudged, ordered, awarded or agreed to be paid shall be dealt with as the Court or a Justice directs and the money, or any part of it, may be directed—

- (a) to be paid into Court to the credit of an account intituled in the action and to be invested or otherwise dealt with there; or
- (b) to be otherwise dealt with.

(4.) The directions referred to in the last preceding sub-rule may be given from time to time and may include any general or special directions that the Court or Justice thinks fit to give, including (without prejudice to the generality of the above provision) directions as to how the money is to be applied or dealt with and as to any payment to be made, out of the amount paid into Court, to the plaintiff or to the committee or next friend in respect of moneys paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the infant or person of unsound mind, or otherwise, or to the plaintiff's solicitor in respect of costs or of the difference between party and party and solicitor and client costs.

(5.) Where, in a proceeding in a District Registry in which money is recovered by or on behalf of an infant or person of unsound mind, that money is ordered to be paid into the Court and invested on behalf of the infant or person of unsound mind, the Court or Justice may order—

- (a) that the money be invested by the Principal Registrar in such names and in such securities as are specified in the order or in a subsequent order;
- (b) that the interest as it accrues shall be paid to the infant or to the next friend of the infant or person of unsound mind or to such other person as the Court or Justice orders; or
- (c) that the dividends be accumulated in the like securities for the benefit of the infant during minority.

(6.) The Court or a Justice may also make an order directing the transfer or sale of the securities, or any part of them, and the payment out of the proceeds of the sale to the infant, or to such person as it or he directs, for the benefit of the infant or the person of unsound mind.

(7.) This rule also applies—

- (a) to an action in which damages are claimed or recovered by or on behalf of, or are adjudged, ordered, awarded or agreed to be paid to, an infant or person of unsound mind under the provisions of a law corresponding with the Acts of the Parliament of the United Kingdom known as the Fatal Accidents Acts, 1846 to 1908; and
- (b) in the same way as it applies to money recovered by or adjudged or ordered to be paid to an infant—to money, which in an action under those provisions, is recovered by or adjudged to be paid to the widow of the person killed.

(8.) Where such an action is taken by or for the benefit of more than one person and the amount recovered is to be divided amongst those persons, the Justice or jury, as the case may be, shall divide and apportion the share to be paid to each of those persons and the amount so apportioned shall be specified in the order or judgment made or directed in the Court.

(9.) This rule does not prejudice the lien of a solicitor for costs.

(10.) This rule applies to a counterclaim by an infant or a person of unsound mind, and when so applied the expressions "plaintiff", "plaintiff's solicitor" and "committee" or "next friend" shall be read as applying to a defendant setting up the counterclaim or his guardian *ad litem* or committee, as the case may be.

(11.) The provisions of this rule apply, *mutatis mutandis*, to an action which is settled on behalf of an infant or person of unsound mind before trial.

12. Where a solicitor desires to prevent the payment of money out of Court in an Admiralty action, he shall file a notice objecting to the payment and thereupon a caveat shall be entered in the Registry in which the matter is then pending in a book to be kept in each Registry called the "Caveat Payment Book".

Admiralty  
Caveat  
Payment Book.  
R.S.C. O. XXII.  
r. 21.

#### ORDER 24.

##### REPLY.

1. A plaintiff shall deliver his reply—
  - (a) within fourteen days from the delivery of the defence or the last of the defences; or
  - (b) within such other time as is fixed by consent in writing or by the Court or a Justice.
2. Where a counterclaim is pleaded, a reply to the counterclaim is subject to the rules applicable to defences.
3. A pleading subsequent to reply shall not be pleaded without leave of the Court or a Justice, and then only within such time and upon such terms as the Court or Justice thinks fit.
4. A new assignment is not necessary and shall not be used, but everything which was formerly alleged by way of new assignment may be introduced by amendment of the statement of claim or by way of a reply.

Time for reply.  
R.S.C. O.  
XXIII. r. 1.

Reply to  
counterclaim.  
R.S.C. O.  
XXIII. r. 2.  
Subsequent  
pleadings—  
time for  
pleading after  
reply.

New  
assignment.  
H.C.R. O.  
XXII. r. 5.

#### ORDER 25.

##### MATTERS ARISING PENDING THE ACTION.

1.—(1.) A ground of defence which has arisen after action brought, but before the defendant has delivered his defence and before the time limited for his doing so has expired, may be raised by the defendant in his defence, either alone or together with any other ground of defence.

New grounds  
of defence  
arising.  
R.S.C. O.  
XXIV. r. 1.

(2.) Where, after a defence has been delivered, a ground of defence arises to a set-off or counterclaim alleged in that defence by the defendant, it may be relied upon by the plaintiff, or another defendant to the counterclaim, in his reply, either alone or together with any other ground of reply.

2.—(1.) Where a ground of defence arises after the defendant has delivered a defence, or after the time limited for his doing so has expired, the defendant may, within fourteen days after that ground of defence has arisen, or at a subsequent time by leave of the Court or a Justice, deliver a further defence setting forth that ground of defence.

Further defence  
or reply.  
R.S.C. O.  
XXIV. r. 2.

(2.) Where a ground of defence to a counterclaim or answer to a set-off arises after reply, or after the time limited for delivering a reply has expired, the plaintiff or another defendant to the counterclaim may, within fourteen days after that ground of defence or answer has arisen, or at a subsequent time by leave of the Court or a Justice, deliver a further reply setting forth that ground of defence or answer.

3.—(1.) Where a defendant, in his defence or in a further defence as mentioned in the last preceding rule, alleges a ground of defence which has arisen after the commencement of the action, the plaintiff—

Confession of  
defence.  
R.S.C. O.  
XXIV. r. 3.

- (a) may deliver a confession of that defence; and
- (b) may thereupon, unless the Court or a Justice, either before or after the delivery of the confession, otherwise orders, sign judgment for his costs up to the time of the pleading of that defence with costs of judgment.

(2.) A confession of defence may be in the form numbered 29 in the First Schedule with such variations as the circumstances require.

(3.) This rule applies, *mutatis mutandis*, to a reply to a counterclaim.

#### ORDER 26.

##### DEMURRER AND OBJECTIONS TO PLEADINGS.

1. A party may demur—

Demurrer.  
H.C.R. O.  
XXIV. r. 1.

- (a) to a pleading of the opposite party;
- (b) to a part of a pleading which sets up a distinct cause of action;
- (c) to a distinct and severable claim for damages;
- (d) to a claim for damages exceeding an amount named by the demurring party; or
- (e) to a pleading or part of a pleading of the opposite party which sets up a distinct ground of defence, set-off, counterclaim or reply, as the case may be,

on the ground that the facts alleged do not show a cause of action, claim for damages, ground of defence, set-off, counterclaim or reply, as the case may be, to which effect can be given by the Court as against the party demurring.

2.—(1.) A demurrer shall state—

- (a) whether it is to the whole or to a part, and if so to what part, of the claim or pleading of the opposite party; and
- (b) some ground in law for the demurrer.

Demurrer to  
state whether  
the whole or  
part—frivolous  
demurrer may  
be set aside  
with costs.

(2.) The party demurring shall not on the argument of the demurrer be limited to the ground so stated.

H.C.R. O.  
XXIV. r. 2.

(3.) Where no ground or only a frivolous ground of demurrer is stated, the Court or a Justice may set the demurrer aside with costs.

3. A party demurring to the pleading of another party shall deliver his demurrer to that other party—

Delivery.  
Cf. H.C.R. O.  
XXIV. r. 3.

- (a) within the time within which the demurring party is required to answer that pleading; or
- (b) within such time as is fixed by consent in writing or by the Court or a Justice.

## ORDER 28.

4. Where a party entitled to deliver a pleading desires both to demur and plead to the last pleading of the opposite party, or to demur to part of the last pleading of the opposite party and to plead to other part of that pleading, he shall combine the demurrer and other pleading.

Demurrer and pleading in one document.  
H.C.R. O.  
XXIV. r. 4.

5.—(1.) A party may plead and demur to the same matter without leave.

Leave to plead and demur together not necessary.  
H.C.R. O.  
XXIV. r. 5.

(2.) Where a party demurring pleads as well as demurs, it is in the discretion of the Court or a Justice to direct whether the issues of law or fact shall be first disposed of.

6.—(1.) Where the claim or defence of a party depends, or may depend, upon the construction of a written document, and the party in his pleading refers to the document but does not set it out at length, the opposite party may, in his demurrer, set out the document at length or so much of the document as is material, and demur to the claim or defence founded upon it, in the same manner as if it had been pleaded at length by the other party.

Demurrer to claim founded on document.  
H.C.R. O.  
XXIV. r. 6.

(2.) If he does not set out the document truly or sufficiently, the Court or a Justice may order the demurrer to be struck out or amended.

7.—(1.) When a demurrer, either to the whole or part of a pleading, is delivered, either party may set down the demurrer for argument before the Court immediately, and the party setting down the demurrer shall on the same day give notice of the demurrer to the other party.

Demurrer not entered for argument to be held sufficient.  
H.C.R. O.  
XXIV. r. 7.

(2.) If—

- (a) the demurrer is not set down and notice given within fourteen days after delivery; and
- (b) the party whose pleading or claim is demurred to does not within that time amend,

the demurrer is sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument, and the same judgment may be entered thereon.

8. A demurrer shall be set down by filing in the Registry in which the action is then pending—

Form of setting down for argument.  
H.C.R. O.  
XXIV. r. 13.

- (a) a memorandum requiring the demurrer to be set down either before a Full Court or a single Justice; and
- (b) a copy of the pleadings so far as they relate to the matters of law raised by the demurrer.

9.—(1.) Where the party setting down a demurrer for argument sets it down to be heard before a single Justice, and another party desires it to be heard before a Full Court, that other party may, within seven days after receiving notice that the demurrer has been so set down, file in the Registry in which the action is then pending a memorandum to that effect and deliver to the other party a copy of the memorandum.

When demurrer required to be heard before Full Court.  
H.C.R. O.  
XXIV. r. 14.

(2.) The demurrer shall thereupon be deemed to have been set down to be heard before a Full Court.

(3.) If the action is pending in a District Registry, the pleadings shall be forthwith transmitted to the Principal Registry unless a sitting of a Full Court is appointed to be held at the place where the District Registry is situated either within sixty days or prior to the next sitting of a Full Court appointed to be held at the place where the Principal Registry is situated.

(4.) The pleadings shall, after the decision of the Full Court, be returned to the District Registry with a certificate of the judgment or order of the Full Court.

10. After a demurrer has been set down for argument, the party setting it down shall forthwith lodge in the Principal Registry or the District Registry, as the case may be, for the Justice, or each Justice, who is to sit on the hearing of the argument, a copy of the pleadings so far as they relate to the matters of law raised by the demurrer.

Copy pleadings  
for Justices.  
Cf. H.C.R. O.  
XXIV. r. 15.

11. While a demurrer to the whole or part of a pleading is pending, that pleading shall not be amended except on payment of the costs of the demurrer, unless by leave of the Court or a Justice.

Amendment  
pending  
demurrer.  
H.C.R. O.  
XXIV. r. 8.

12. Where a demurrer to the whole or part of a pleading or claim is allowed upon an argument, the party whose pleading or claim is demurred to shall pay to the demurring party the costs of the demurrer, and, where a demurrer is overruled, the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless in either case the Court otherwise orders.

Costs.  
H.C.R. O.  
XXIV. r. 9.

13. Subject to the power of amendment, when a demurrer to the whole of a pleading, so far as it relates to a separate cause of action, is allowed or overruled, the Court shall give such judgment as to that cause of action as upon the pleadings the successful party appears to be entitled to, and, if the judgment is for the defendant with respect to the whole action, the plaintiff shall pay to the defendant the costs of the action, unless the Court otherwise orders.

Effect of  
decision on  
demurrer going  
to whole action.  
H.C.R. O.  
XXIV. r. 10.

14. Where a demurrer to a pleading or claim, or part of a pleading or claim, is allowed in a case not falling within the last preceding rule, then, subject to the power of amendment, the matter demurred to, shall, as between the parties to the demurrer, be deemed to be struck out of the pleadings, and the rights of the parties are the same as if it had not been pleaded.

Where demurrer  
allowed to part  
of a pleading,  
that part is to  
be deemed to  
be struck out.  
H.C.R. O.  
XXIV. r. 11.

15. Where a demurrer is overruled, the Court may make such order, and upon such terms as the Court thinks fit, for allowing the demurring party to raise by further pleading any case which he desires to set up in opposition to the matter demurred to.

Demurrer  
overruled with  
leave to plead.  
H.C.R. O.  
XXIV. r. 12.

**ORDERS 26, 27.**

16. A party is entitled to raise by his pleading any point of law, and a point so raised shall, subject to section 18 of the *Judiciary Act* 1903-1950—

Points of law may be raised by pleadings.  
R.S.C. O. XXV.  
r. 2.

- (a) be disposed of by the Justice who tries the action; or
- (b) by consent of the parties or by order of the Court or a Justice on the application of either party, be set down for hearing and disposed of at any time before the trial.

17. Where, in the opinion of the Court or a Justice, the decision of that point of law substantially disposes of the whole action or a distinct cause of action, ground of defence, set-off, counterclaim or reply in the action, the Court or Justice may thereupon dismiss the action or make such other order in that action as is just.

Dismissal of action.  
R.S.C. O. XXV.  
r. 3.

18.—(1.) The Court or a Justice may order a pleading to be struck out on the ground that it does not disclose a reasonable cause of action or answer.

Striking out pleading where no reasonable cause of action disclosed.  
R.S.C. O. XXV.  
r. 4.

(2.) In that case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Justice may order the action to be stayed or dismissed, or judgment to be entered accordingly, as is just.

19. A proceeding is not open to objection on the ground that a merely declaratory judgment or order is sought by the proceeding, and the Court may make binding declarations of right in an action or other proceeding whether any consequential relief is or could be claimed in that action or proceeding or not.

Declaratory judgment.  
R.S.C. O. XXV.  
r. 5.

**ORDER 27.****DISCONTINUANCE.**

1.—(1.) A party to an action or proceeding may, by notice in writing, wholly discontinue or withdraw his action, counterclaim or defence as against another party, or withdraw part or parts of his claim or cause of complaint, counterclaim or defence.

Discontinuance by a party.

(2.) The party so discontinuing or withdrawing his action, counterclaim or defence, or a part or parts of his claim or cause of complaint, counterclaim or defence, shall pay the other party his costs in the action or proceeding, or, if the action, counterclaim or defence is not wholly discontinued or withdrawn, the costs occasioned by the matter so withdrawn.

(3.) The costs shall be taxed, and the discontinuance or withdrawal, as the case may be, shall not be a defence to a subsequent action for the same cause.

## ORDERS 27, 28.

2. An action or proceeding may be discontinued at any time upon the filing in the Registry in which it is then pending of a consent in writing signed by all parties.

Withdrawal by  
consent.  
R.S.C. O.  
XXVI. r. 2.

3. A party may enter judgment—

(a) for the costs of the action or proceeding if it is wholly discontinued against him; or

Entering  
judgment on  
discontinuance.  
R.S.C. O.  
XXVI. r. 3.

(b) for the costs occasioned by the matter withdrawn if the action or proceeding is not wholly discontinued,

if the said costs are not paid within seven days after taxation.

4. Where a subsequent action is brought before payment of the costs of a discontinued action or counterclaim for the same, or substantially the same, cause of action, the Court or a Justice may, if it or he thinks fit, order a stay of that subsequent action until the costs have been paid.

Staying action  
until costs paid.  
R.S.C. O.  
XXVI. r. 4.

## ORDER 28.

## DEFAULT IN PLEADING.

1.—(1.) Where the plaintiff is bound to deliver a statement of claim and he does not deliver it within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Justice to dismiss the action, with costs, for want of prosecution.

Default of  
plaintiff in  
delivering  
statement of  
claim.  
R.S.C. O.  
XXVII. r. 1.

(2.) On the hearing of the application, the Court or Justice may, if a statement of claim has not been delivered, order the action to be dismissed accordingly or may make such other order on such terms as the Court or Justice thinks just.

2.—(1.) Where—

(a) the plaintiff's claim is for a debt or liquidated demand only; and

Claim for debt  
or liquidated  
demand.  
R.S.C. O.  
XXVII. r. 2.

(b) the defendant is bound to deliver a defence and he does not, within the time allowed for that purpose, deliver a defence,

the plaintiff may, at the expiration of that time, upon filing an affidavit showing the facts referred to in paragraph (a) and (b) of this sub-rule, enter final judgment for the amount claimed, with costs.

(2.) In an action by a money-lender or an assignee for the recovery of money lent by a money-lender or the enforcement of an agreement or security relating to that money, judgment shall not be entered in default of defence unless the leave of the Court or Justice has been obtained.

3. Where, in an action such as is mentioned in sub-rule (1.) of the last preceding rule, there are several defendants and one of them makes default as mentioned in that sub-rule, the plaintiff may, subject to sub-rule (2.) of that rule, enter final judgment against the defendant so making default and issue execution upon that judgment without prejudice to his right to proceed with his action against the other defendants.

Several  
defendants,  
default of one.  
R.S.C. O.  
XXVII. r. 3.

## ORDER 28.

## 4.—(1.) Where—

- (a) the plaintiff's claim is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages; and
- (b) the defendant, or all the defendants, if more than one, make default as mentioned in sub-rule (1.) of rule 2 of this Order,

Damages—  
detention of  
goods.  
R.S.C. O.  
XXVII r. 4.

the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default, and the value of the goods and the amount of the damages, or either of them, as the case may be, shall be assessed by the Registrar of the Registry in which the interlocutory judgment is entered, unless the Court or a Justice otherwise directs.

(2.) The Court or a Justice may order that instead of assessment by a Registrar, the value of the goods and amount of damages, or either of them, shall be ascertained in a way which the Court or Justice directs.

5.—(1.) Where, in an action such as is mentioned in the last preceding rule, there are several defendants and one or more of them make default as mentioned in sub-rule (1.) of rule 2 of this Order, the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default and proceed with his action against the others.

Default of one  
or more  
defendants.  
R.S.C. O.  
XXVII r. 5.

(2.) The value and amount of damages against a defendant so making default shall be assessed at the same time as the trial of the action, or issues in the action, against the other defendants, unless the Court or a Justice otherwise directs.

## 6. Where—

- (a) the plaintiff's claim is for a debt or liquidated demand, and also for pecuniary damages, or for detention of goods with or without a claim for pecuniary damages; and
- (b) a defendant makes default as mentioned in sub-rule (1.) of rule 2 of this Order,

Debt or  
damages and  
detention of  
goods or  
damages.  
R.S.C. O.  
XXVII r. 6.

the plaintiff may, subject to sub-rule (2.) of that rule—

- (c) enter final judgment against that defendant for the debt or liquidated demand; and
- (d) enter interlocutory judgment for the value of the goods and the damages, or either of them, as the case may be, and proceed as provided in rules 4 and 5 of this Order.

7. Where, in an action for the recovery of land, the defendant makes default as mentioned in sub-rule (1.) of rule 2 of this Order, the plaintiff may enter a judgment that he shall recover possession of the land, with his costs.

Recovery of  
land.  
R.S.C. O.  
XXVII r. 7.

8. Where the plaintiff has endorsed another claim upon a writ for the recovery of land and a defendant makes default in delivering a defence, the plaintiff may—

- (a) enter judgment against that defendant with respect to the land as provided in the last preceding rule; and
- (b) proceed with respect to the other claim as provided in this Order with respect to such a claim.

Claims joined  
with claim for  
recovery of  
land.  
R.S.C. O.  
XXVII r. 8.

## ORDER 28.

## 9. Where—

- (a) the plaintiff's claim is for a debt or liquidated demand, or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any of those matters, or for the recovery of land;
- (b) the defendant delivers a defence in answer to part only of the plaintiff's alleged cause of action; and
- (c) the part unanswered 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,

Where a defence is delivered to part of claim only.  
R.S.C. O.  
XXVII. r. 9.

the plaintiff may, by leave of the Court or a Justice, enter judgment, final or interlocutory, as the case may be, for the part unanswered.

(2.) Where there is a counterclaim, execution on judgment entered under the last preceding sub-rule in respect of the plaintiff's claim shall not issue without leave of the Court or a Justice.

10.—(1.) When, in an Admiralty action *in rem*, the defendant makes default in delivering a defence within the time limited by or under these Rules, the plaintiff may, on the expiration of twenty-one days after the expiration of the time so limited, and on filing an affidavit of non-delivery of defence, set down the action for judgment by default.

Admiralty actions *in rem*.  
R.S.C. O.  
XXVII. r. 11 A.

(2.) Order 12, rule 15, applies to an action set down under this rule.

11. Where, in an action not being an action mentioned in the preceding rules of this Order, the defendant is bound to deliver a defence and makes default in delivering it, the plaintiff may set down the action on motion for judgment, and shall recover the judgment to which, upon the writ or statement of claim, he is entitled.

Defendant in default.  
R.S.C. O.  
XXVII. r. 11.

12. Where, in an action such as is mentioned in the last preceding rule, there are several defendants, then, if one of the defendants makes default as mentioned in that rule, the plaintiff may, if the cause of action is severable—

One of several defendants default.  
R.S.C. O.  
XXVII. r. 12.

- (a) set down the action at once on motion for judgment against the defendant so making default; or
- (b) 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.

13.—(1.) Where a party makes default in delivering a reply or a subsequent pleading, the pleadings shall be deemed to be closed and all material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.

Close of pleadings on default.  
R.S.C. O.  
XXVII. r. 13.

(2.) This rule does not apply to a reply to a counterclaim.

(3.) Unless the plaintiff, or other person defendant to a counterclaim, delivers a reply or defence to the counterclaim, the statements of fact contained in the counterclaim shall, at the expiration of twenty-one days from its delivery or of such time, if any, as may by order be allowed for delivery of the reply or defence, be deemed to be admitted, but the Court or Justice may, at any subsequent time, give leave to the plaintiff to deliver a reply.

**ORDERS 28, 29.**

14.—(1.) Where an issue arises other than between plaintiff and defendant and a party to that issue makes default in delivering a pleading which he is bound to deliver, the opposite party may set down the action on motion for such judgment, if any, as upon the pleadings he appears to be entitled to.

Default of  
third party.  
R.S.C. O.  
XXVII. r. 14.

(2.) The Court or Justice may order judgment to be entered accordingly or may make such other order as is necessary to do complete justice between the parties.

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

Setting aside  
judgment by  
default.  
R.S.C. O.  
XXVII. r. 15.

16. Where a plaintiff enters judgment under this Order against a defendant who makes default in delivering a defence when bound to do so, the entry of judgment and the issue of execution on the judgment, or either of them, does not prejudice his right to proceed in the action against another defendant or defendants.

Effect of  
judgment by  
default.  
H.C.R. O.  
XXVI. r. 12.

17. This Order applies to counterclaims, and to proceedings on counterclaims, as if the counterclaim were a statement of claim and the defendant or other party setting up the counterclaim were a plaintiff.

Counterclaims.

**ORDER 29.****AMENDMENT.**

1.—(1.) The Court or a Justice may, at any stage of the proceedings, allow a party to amend his endorsement or pleadings in such manner, and on such terms, as is just.

Amendment of  
endorsement.  
R.S.C. O.  
XXVIII. r. 1.

(2.) All such amendments shall be made as are necessary for the purpose of determining the real questions in controversy between the parties.

2. The plaintiff may, without leave, amend his statement of claim, whether endorsed on the writ or not—

When plaintiff  
may amend  
without leave.

(a) once at any time before the expiration of the time limited for reply and before replying; or

R.S.C. O.  
XXVIII. r. 2.

(b) where a defence is not delivered, at any time before the expiration of twenty-eight days from the appearance of the defendant who last appeared.

3. A defendant may, without leave, amend his defence or counterclaim once at any time before the expiration of fourteen days from delivery of the reply.

By defendant.  
Cf. R.S.C. O.  
XXVIII. r. 3.

4.—(1.) When a party has amended his pleading under either of the last two preceding rules, the opposite party may, within fourteen days after the delivery to him of the amended pleading, apply to the Court or a Justice to disallow the amendment or a part of the amendment.

Disallowance of  
amendment,  
application for,  
within 14 days.  
R.S.C. O.  
XXVIII. r. 4.

(2.) The Court or Justice may, if satisfied that the justice of the case requires it, disallow the amendment, or allow it upon such terms as to costs, or otherwise, as are just.

Pleading to  
amendment.  
R.S.C. O.  
XXVIII, r. 5.

Other cases.  
R.S.C. O.  
XXVIII. p. 6.

Other cases.  
R.S.C. O.  
XXVIII. p. 6.

Failure to  
amend under  
order.

R.S.C. O.  
XXVIII. r. 7.

R.S.C. O.  
XXVIII. r. 7.

How  
amendments  
made.  
R.S.C. O.  
XXV III. F. 8.

How  
amendments  
made.  
R.S.C. O.  
XXV III. F. 8.

R.S.C. O.  
XXV. II. r. 8.

R.S.C. O.  
XXV. II. r. 8.

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f Date of order  
and date of  
amendment to  
be marked.  
B S C O

XXV11, r. 9.

S Delivery of  
C amended  
document.  
R.S.C. O.

g Clerical mistakes  
y and accidental  
omissions.  
R.S.C. O.  
XXVIII, r. 11.

## ORDERS 28, 30.

12. The Court or a Justice may at any time, and upon such terms as to costs or otherwise as the Court or Justice thinks just, amend a 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 proceeding.

General power  
to amend.  
R.S.C. O.  
XXVIII. r. 12.

13. The costs of and occasioned by an amendment made pursuant to rules 2 and 3 of this Order shall be borne by the party making the amendment, unless the Court or a Justice otherwise orders.

Costs.  
R.S.C. O.  
XXVIII. r. 13.

## ORDER 30.

## CAVEATS AND RELEASES IN ADMIRALTY ACTIONS.

1. Where a party desires to prevent the arrest of property, he may cause a *caveat* against the issue of a warrant for the arrest of the property to be entered in the Principal Registry.

*Caveat against  
warrant to  
arrest.*  
H.C.R. O.  
XLIIA. r. 21.

2.—(1.) For the purpose mentioned in the last preceding rule, the party shall cause to be filed in the Registry a notice, signed by himself or his solicitor, undertaking—

*Caveat Warrant  
Book.*  
H.C.R. O.  
XLIIA. r. 22.

(a) to enter an appearance in any action that may be commenced against the property; and

(b) to give security in that action in a sum not exceeding an amount to be stated in the notice or to pay that sum into Court.

(2.) A *caveat* against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the Registry, called the Caveat Warrant Book.

3. When an action is proceeding in a District Registry, the District Registrar, unless required to act under rule 18 of this Order, shall, before issuing a warrant for the arrest of the property, ascertain by telegraph, or otherwise, from the Principal Registry whether or not a *caveat* has been entered against the issue of a warrant for the arrest of the property.

*Search for  
caveat before  
issue of arrest  
warrant in  
District  
Registry.*  
R.S.C. O.  
XXIX. r. 13.

4. Where a plaintiff commences an action against property in respect of which a *caveat* has been entered in the Caveat Warrant Book, he shall forthwith serve a copy of the writ upon the party on whose behalf the *caveat* has been entered, or upon his solicitor.

*Writ to be  
served on  
party  
entering caveat.*  
H.C.R. O.  
XLIIA. r. 23.

5. The party on whose behalf the *caveat* has been entered shall, if the sum in respect of which the action is commenced does not exceed the amount for which he has undertaken to give security or pay into Court, give security in that sum within three days from the service of the writ.

*Security to be  
given within  
three days.*  
H.C.R. O.  
XLIIA. r. 24.

6. Where, after the expiration of fourteen days from the filing of the notice mentioned in rule 2 of this Order, the party on whose behalf the *caveat* has been entered has not, within three days from the service of the writ, given security as required by the last preceding rule, the plaintiff may proceed with the action as upon default of appearance.

*If security not  
given, action  
may proceed as  
on default.*  
H.C.R. O.  
XLIIA. r. 25.

## ORDER 30.

7. If, when the action comes before the Court, the Court is satisfied that the claim is well founded, it may pronounce for the amount which appears to be due, and may enforce payment of that amount by attachment against the party on whose behalf the *caveat* has been entered, as well as by the arrest of the property, if it then is, or thereafter comes, within the jurisdiction of the Court.

Judgment may be enforced by attachment and warrant.  
H.C.R. O.  
XLIIA. r. 26.

8.—(1.) Property arrested by warrant in an Admiralty action shall not be released except under the authority of an instrument, to be called “a release” issued from the Registry from which the warrant for arrest issued.

Release.  
H.C.R. O.  
XLIIA. r. 27.  
R.S.C. O.  
XXIX. r. 2.

(2.) A party, or the solicitor of a party, at whose instance property has been arrested may, before an appearance has been entered, obtain the release of that property by filing a notice that he withdraws the warrant.

9.—(1.) Where a party desires to prevent the release of property under arrest, he shall file a notice objecting to the release in the Registry from which the warrant for arrest issued.

*Caveat* against release.  
H.C.R. O.  
XLIIA. r. 28.

(2.) Thereupon a *caveat* against the release of the property shall be entered in a book to be kept in the Registry, called the Caveat Release Book.

10. Except as provided by the succeeding rules of this Order, a party may obtain the release of property by paying into Court the sum in respect of which the action has been commenced, or giving security for that sum.

Payment into Court.  
H.C.R. O.  
XLIIA. r. 29.

11. Where cargo is arrested for freight only, it may be released—

- (a) by filing an affidavit as to the value of the freight, and paying the amount of the freight into Court; or
- (b) upon an order of the Court or a Justice upon proof that the freight has already been paid.

Release of cargo arrested for freight only.  
H.C.R. O.  
XLIIA. r. 30.

12. In an action for salvage, the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released, unless the Court or a Justice otherwise orders.

In salvage actions.  
H.C.R. O.  
XLIIA. r. 31.

13. A party—

- (a) who has given security in the sum in respect of which the action has been commenced, or has paid that sum into Court; and
- (b) if the action is one of salvage, who has also filed an affidavit as to the value of the property arrested,

is entitled to a release for that property, unless a *caveat* against the release is outstanding in the Caveat Release Book.

On giving security.  
H.C.R. O.  
XLIIA. r. 32.

14. Unless a *caveat* against the release is outstanding in the Caveat Release Book, a release may also be issued by the Registrar of the Registry from which the warrant for arrest issued—

On consent or discontinuance or dismissal of action.  
H.C.R. O.  
XLIIA. r. 33.

- (a) on a consent in writing being filed, signed by the party at whose instance the property was arrested; or
- (b) on discontinuance or dismissal of the action in which the property was arrested.

## ORDER 30.

15. When the release is obtained, the party taking it out shall—  
 (a) leave it with the Marshal; and  
 (b) at the same time pay all costs, charges and expenses attending the care and custody of the property while under arrest,  
 and the property shall thereupon be released.
16. The Registrar may refuse to issue a release without the order of a Justice.
17. Where a party delays the release of property by the entry of a *caveat*, he is liable to be condemned in the costs and damages occasioned by the entry, unless he shows to the satisfaction of the Court or a Justice good and sufficient reason for having done so.
- 18.—(1.) Subject to the next succeeding sub-rule, these Rules do not prevent a solicitor from taking out a warrant for the arrest of property, notwithstanding the entry of a *caveat* in the Caveat Warrant Book.
- (2.) The party at whose instance property, in respect of which the *caveat* was entered, has been arrested is liable to have the warrant discharged, and to be condemned in costs and damages, unless he shows to the satisfaction of the Court or Justice good and sufficient reason for having so done.
19. A book shall be kept in each Registry, called the Caveat Payment Book, in which *caveats* shall be entered against the payment of money out of Court in Admiralty actions.
20. Where a person desires to prevent the payment of money out of Court in an Admiralty action, he shall file a notice objecting to the payment, and thereupon a *caveat* shall be entered in the Caveat Payment Book.
21. The party at whose instance a *caveat* against payment is entered is liable to be condemned in the costs and damages occasioned by that entry unless he shows to the satisfaction of the Court or Justice good and sufficient reason for entering the *caveat*.
22. If the person entering a *caveat* is not a party to the action, the notice shall state his name and address, and an address within three miles of the Registry in which the action is pending, at which documents required to be served upon him may be left.
23. A *caveat* may at any time be withdrawn by the person at whose instance it has been filed on his filing a notice withdrawing it.
24. The Court or a Justice may set aside a *caveat*.
25. In an Admiralty action, a *caveat*, whether against the issue of a warrant, the release of property or the payment of money out of Court, shall not remain in force for more than six months from the date of the *caveat*.

Release to be left with Marshal.

H.C.R. O. XLIIA. r. 34.

Registrar may require Justice's order.

H.C.R. O. XLIIA. r. 35.

Liability for delaying release.

H.C.R. O. XLIIA. r. 36.

Arrest notwithstanding *caveat*.

H.C.R. O. XLIIA. r. 37.

Caveat Payment Book.

H.C.R. O. XLIIA. r. 38.

*Caveat* against payment out of Court.

H.C.R. O. XLIIA. r. 39.

Liability for delaying payment.

H.C.R. O. XLIIA. r. 40.

Address of caveator.

H.C.R. O. XLIIA. r. 41.

Withdrawal of *caveats*.

H.C.R. O. XLIIA. r. 42.

*Caveats* may be overruled.

H.C.R. O. XLIIA. r. 43.

*Caveat* in Admiralty actions in force for six months.

R.S.C. O. LXIV. r. 15.

## ORDER 31.

## SUMMONS FOR DIRECTIONS AND CONSOLIDATION.

1.—(1.) A party to an action may take out a summons for directions at any time before judgment. Summons for directions.

(2.) A summons for directions shall not be taken out by or against a defendant until after that defendant has entered an appearance.

2.—(1.) Upon the hearing of the summons, the Court or a Justice may give such directions with respect to the proceedings as the Court or Justice thinks proper. Interlocutory proceedings.  
R.S.C. O. XXX.  
r. 2.

(2.) Without prejudice to the generality of the last preceding sub-rule, the Court or a Justice may—

- (a) make such order as is just with respect to—
  - (i) discovery and inspection of documents;
  - (ii) interrogatories;
  - (iii) inspections of real or personal property;
  - (iv) admissions of fact or of documents; and
  - (v) the place, time and mode of trial;
- (b) order that evidence of a particular fact or facts, to be specified in the order, shall be given at the hearing or trial—
  - (i) by statement on oath of information and belief;
  - (ii) by production of documents or entries in books;
  - (iii) by copies of documents or entries; or
  - (iv) otherwise as the Court or Justice directs;
- (c) order that no more than a specified number of expert witnesses may be called;
- (d) appoint a Court expert under Order 38;
- (e) order the action to be set down for trial forthwith and settle the issues to be tried;
- (f) make such order as is just with respect to pleadings and particulars;
- (g) where two or more tortfeasors are sued together in respect of the same tort or damage and one of them in the same proceedings claims contribution from the other or others, order that a written offer of contribution made by one of those tortfeasors to the other or others of them shall be treated for the purposes of that claim as a notice of payment into Court; and
- (h) may revoke or vary an order made under this sub-rule.

3. An affidavit shall not be used on the hearing of a summons for directions except by leave of the Court or a Justice.

No affidavit to be used without leave.  
R.S.C. O. XXX.  
r. 3.  
Parties to apply for directions.  
R.S.C. O. XXX.  
r. 4.

4. On the hearing of the summons, a party to whom the summons is addressed shall, so far as practicable, apply for any interlocutory order or directions.

**ORDERS 31, 32.**

5. An application by a party subsequent to the original summons and before judgment for directions as to an interlocutory matter or thing shall be made under the summons by two clear days' notice to the other party stating the grounds of the application.

Subsequent applications.  
R.S.C. O. XXX.  
r. 5.

6. An application by a party which might have been made at the hearing of the original summons shall, if granted on a subsequent application, be granted at the cost of the party applying unless the Court or a Justice is of opinion that the application could not properly and reasonably have been made at the hearing of the original summons.

Costs of subsequent applications.  
R.S.C. O. XXX.  
r. 8.

7. Proceedings may be consolidated at any time by order of the Court or a Justice.

Consolidation of proceedings.  
R.S.C. O.  
XLIX. r. 8.

**ORDER 32.****DISCOVERY AND INSPECTION.**

1.—(1.) In an action, and in any other proceeding by leave of the Court or a Justice, a party may deliver interrogatories in writing for the examination of an opposite party.

Discovery by interrogatories.  
R.S.C. O.  
XXXI. r. 1A.

(2.) The interrogatories when delivered shall have a note at their foot stating which of the interrogatories a particular party is required to answer.

(3.) Interrogatories which do not relate to matters in question in the proceeding shall be deemed irrelevant notwithstanding that they might be admissible on the oral cross-examination of a witness.

(4.) Where, in an action for libel or slander, the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, interrogatories shall not be allowed as to the defendant's sources of information or grounds of belief.

2. A party shall not deliver more than one set of interrogatories to the same party without leave of the Court or a Justice.

Further interrogatories by leave.

3. A copy of the interrogatories delivered by a party shall be filed by him before the time at which they are delivered.

Copy to be filed.  
H.C.R. O.  
XXIX. r. 1.

4.—(1.) The affidavit in answer to interrogatories in the case of a body politic or corporate, or other body of persons empowered or allowed by law to sue or be sued, whether in its own name or in the name of an officer or other person, shall be made by the secretary or other proper officer, agent or servant of that body politic or corporate or other body.

Interrogatories to corporation or body politic.

(2.) An opposite party may apply for an order allowing him to deliver interrogatories to be answered by a specified officer, agent or servant of such a body as is mentioned in the last preceding sub-rule.

## ORDER 32.

5.—(1.) Interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or may be struck out on the ground that they are prolix, oppressive, unnecessary or scandalous. Applications to set aside.

(2.) An application to set aside interrogatories shall be made within fourteen days after service of the interrogatories.

6.—(1.) Interrogatories shall be answered by affidavit to be filed within fourteen days of their delivery or within such other time as a Justice allows. Affidavit in answer, filing. H.C.R. O. XXIX. r. 4.

(2.) A copy of the affidavit shall be delivered to the interrogating party before the time at which the affidavit is filed.

7. An objection to answering any one or more of several interrogatories may be taken in the affidavit in answer— Objections to interrogatories by answer. R.S.C. O. XXXI. r. 6.

(a) on the ground that it or they is or are scandalous or irrelevant, or not *bona fide* for the purpose of the proceeding, or are unreasonable, prolix, oppressive or unnecessary;

(b) on the ground that the matters inquired into are not sufficiently material at that stage; or

(c) on any other ground.

8. If a person interrogated omits to answer or answers insufficiently, the party interrogating him may apply to the Court or a Justice for an order requiring him to answer, or to answer further, as the case may be, either by affidavit or upon oral examination. Order to answer or answer further. R.S.C. O. XXXI. r. 11.

9. A party may serve a notice in accordance with the form numbered 30 in the First Schedule upon another party to a proceeding requiring him to make discovery on oath of the documents which are or have been in his possession or power, relating to a matter in question in the proceeding. Application for discovery of documents.

10. Where a party is served with a notice for discovery—

(a) that party; or

(b) where that party is a body politic or corporate, or any other body of persons empowered or allowed by law to sue or be sued whether in its own name or in the name of an officer or other person, the secretary or other proper officer, agent or servant of the body,

Affidavit of discovery.

shall, within fourteen days after service of the notice, make an affidavit in answer to the notice.

11.—(1.) The affidavit to be made by a person on whom a notice for discovery of documents has been served shall specify which, if any, of the documents mentioned in the affidavit he objects to produce, and the grounds of his objection. Affidavit of documents. R.S.C. O. XXXI. r. 13.

(2.) The affidavit shall be filed and a copy of the affidavit delivered to the party who served the notice for discovery within fourteen days of service of the notice.

12.—(1.) The Court or a Justice, at any time during the pendency of a proceeding, may order the production by a party to the proceeding, upon oath, of such of the documents in his possession or power, relating to a matter in question in the proceeding, as the Court or Justice thinks right.

Production of documents.  
R.S.C. O.  
XXXI. r. 14.

(2.) The Court or Justice may deal with the documents, when produced, in such manner as appears just.

13. If a party neglects or refuses to make discovery within the time limited or makes insufficient discovery, the Court or a Justice may order compliance with the notice for discovery upon such terms as it or he thinks fit.

Neglect to make discovery.

14.—(1.) A party may, at any time, by notice in writing, give notice to another party in whose writ, pleadings, particulars or affidavits reference is made to a document, to produce that document for the inspection of the party giving the notice, or of his solicitor, and to permit either of them to take copies of the document.

Inspection of documents referred to in pleadings or affidavits.  
R.S.C. O.  
XXXI. r. 15.

(2.) Where a party does not comply with a notice given under the last preceding sub-rule, he may not afterwards put a document referred to in the notice in evidence on his behalf in the proceeding except in accordance with the next succeeding sub-rule.

(3.) Where the party who has not complied with the notice satisfies the Court or a Justice that the document relates only to his own title, he being a defendant in the proceeding, or that he had some other cause or excuse which the Court or Justice deems sufficient for not complying with the notice, the Court or Justice may allow the document to be put in evidence on such terms as to costs and otherwise as the Court or Justice thinks fit.

15. The party to whom a notice to produce is given shall—

- (a) if all the documents referred to in the notice have been discovered by him in the affidavit referred to in rule 11 of this Order, within two days from the receipt of the notice; or
- (b) if any of the documents referred to in the notice have not been discovered by him in the affidavit, within fourteen days from the receipt of the notice to produce,

Time for inspection when notice given under rule 14; bank and trade books.

R.S.C. O.  
XXXI. r. 17.

deliver to the party giving the notice to produce a notice stating—

- (c) a time within fourteen days from the delivery of that notice at which the documents, or such of them as he does not object to produce, may be inspected—
  - (i) at the office of his solicitor;

- (ii) if he acts in person, at a place not more than three miles from the office of the Registry in which the proceeding is then pending; or
- (iii) in the case of banker's books or other books of account or books in constant use for the purposes of a trade or business, at their usual place of custody; and
- (d) which, if any, of the documents he objects to produce, and on what ground.

16.—(1.) If the party served with notice under rule 14 of this Order omits to give notice of a time for inspection under the last preceding rule, or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, or if he acts in person, elsewhere than at a place not more than three miles from the office of the Registry in which the proceeding is pending, the Court or Justice may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it or he thinks fit.

Order for inspection.  
R.S.C. O.  
XXXI. r. 18.

(2.) The order shall not be made unless the Court or a Justice is of opinion that it is necessary either for disposing fairly of the proceeding or for saving costs.

(3.) An application for an order for inspection of documents, other than documents referred to in the writ, pleadings, particulars or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing—

- (a) the documents of which inspection is sought;
- (b) that the party applying is entitled to inspect them; and
- (c) that they are believed to be in the possession or power of the other party.

(4.) The Court or Justice shall not make an order for inspection of those documents unless the Court or Justice is of opinion that it is necessary either for disposing fairly of the proceeding or for saving costs.

17.—(1.) Where inspection of business books is applied for, the Court or a Justice may, if it or he thinks fit, instead of ordering inspection of the original books, order a copy of any entries in those books to be furnished and verified by the affidavit of some person who has examined the copy with the original entries.

Verified copies.  
R.S.C. O.  
XXXI. r. 19A.

(2.) The affidavit shall state whether or not there are in the original book any, and what, erasures, interlineations and alterations.

(3.) Notwithstanding that the copy has been supplied, the Court or a Justice may order inspection of the book from which the copy was made.

(4.) When, on an application for an order for inspection, privilege is claimed for a document, the Court or a Justice may inspect the document for the purpose of deciding as to the validity of the claim of privilege.

**ORDER 32.**

**18.—(1.)** The Court or a Justice may—

- (a) on the application of a party to a proceeding at any time; and
- (b) whether or not an affidavit of documents has already been made or ordered,

Power to order discovery of particular document or class of documents.

make an order requiring another party to state by affidavit—

- (c) whether a particular document or documents, or a class or classes of documents, specified or indicated in the application is or are, or has or have at any time been, in his possession, custody or power; and
- (d) if it or they is or are not then in his possession, custody or power, whether and when he parted with it or them and what has become of it or them.

(2.) The 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, custody or power the particular document or documents, or the class or classes of documents, specified or indicated in the application, and that they relate to a matter in question in the proceeding.

**19.** If the party from whom discovery of any kind or inspection is sought objects to the discovery or inspection, or a part of it, the Court or a Justice may, if satisfied—

Premature discovery.  
R.S.C. O.  
XXXI. r. 20.

- (a) that the right to the discovery or inspection sought depends on the determination of an issue or question in dispute in the proceeding; or
- (b) that for any other reason it is desirable that an issue or question in dispute in the proceeding should be determined before deciding upon the right to the discovery or inspection,

order that that issue or question be determined first, and reserve the question as to the discovery or inspection.

**20.—(1.)** If a party fails to comply with an order—

- (a) to answer interrogatories;
- (b) to give discovery or inspection of documents; or
- (c) to allow inspection of property,

he is liable to attachment.

Non-compliance with order for discovery or inspection.  
R.S.C. O.  
XXXI. r. 21.

(2.) If a party fails to answer interrogatories, to give discovery or inspection of documents or to allow inspection of property as required by these Rules or by an order—

- (a) where that party is a plaintiff, his action may be dismissed for want of prosecution;
- (b) where that party is a defendant, his defence, if any, and counterclaim, if any, may be struck out;
- (c) where that party is a third party, his appearance may be set aside; and

(d) where that party is a defendant who has given a third party notice, the notice may be set aside and the party placed in the same position as if he had not defended or appeared, and the party interrogating, seeking discovery or inspection of documents or inspection of property, as the case may be, may apply to the Court or a Justice for an order to that effect.

21.—(1.) Service of an order for interrogatories, discovery or inspection made against a party on his solicitor is sufficient service to found an application for an attachment for disobedience to the order. Service on solicitor of order for discovery. R.S.C. O. XXXI. r. 22.

(2.) 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.

22. When a solicitor to whom interrogatories for the examination of a party are delivered, or upon whom an order for interrogatories, a notice or order for discovery or an order for inspection is served, neglects, without reasonable excuse, to give notice of that delivery or service to his client, he is liable to attachment and the payment of such costs as the Court or a Justice thinks fit. Attachment of solicitor. R.S.C. O. XXXI. r. 23.

23.—(1.) Subject to the next succeeding sub-rule, a party may, at the hearing or trial of a proceeding, use in evidence any one or more of the answers, or part of an answer, of an opposite party to interrogatories without putting in the other answers, or the whole of that answer, as the case may be. Using answer to interrogatories at trial. R.S.C. O. XXXI. r. 24.

(2.) The Court or Justice may look at the whole of the answers and, if it or he is of opinion that any other of them, or the remaining part of an answer, is so connected with an answer, or part of an answer, proposed to be put in that that last-mentioned answer, or part of an answer, ought not to be used without the other answer, or part of answer, the Court or Justice may direct that an answer, or part of an answer, shall not be put in unless the other answer, or remaining part of an answer, is also put in.

24. In an action against or by the Marshal or a Deputy Marshal in respect of a matter connected with the execution of his office, the Court or a Justice may, on the application of a party, order that the affidavit to be made in answer to interrogatories, or to a notice or order for discovery, shall be made by the officer actually concerned. Discovery against Marshal. R.S.C. O. XXXI. r. 28.

25.—(1.) This Order applies to an infant plaintiff or defendant, and to the next friend of an infant plaintiff and the guardian *ad litem* of an infant defendant. Order to apply to infants. R.S.C. O. XXXI. r. 29.

(2.) The Court or a Justice may order that any discovery or inspection of documents be made or given by some person on behalf of a party who is under a legal disability.

### ORDER 33.

#### ADMISSIONS AND NOTICES TO PRODUCE.

1. A party may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or a part of the case of another party. Notice of admission of facts. R.S.C. O. XXXII. r. 1.

## ORDER 33.

2.—(1.) A party may, by notice in writing, at any time not later than seven days before the day for which the notice of trial has been given, or which otherwise has been appointed for trial, call upon another party to admit a document, saving all just exceptions.

Notice to  
admit  
documents.  
R.S.C. O.  
XXXII. r. 2.

(2.) If the other party desires to challenge the authenticity of the document, he shall, within seven days after service of the notice to admit, give notice that he does not admit the document and requires it to be proved at the trial.

(3.) If a notice given in pursuance of sub-rule (1.) of this rule contains or is endorsed with a memorandum that, unless within seven days notice declining to admit the document is given, failure to give such notice will be deemed an admission of the document, and if the other party refuses or neglects to give notice of non-admission within the said last-mentioned seven days, he shall be deemed to have admitted the document, unless the Court or a Justice otherwise orders.

(4.) Where a party gives notice of non-admission within the time prescribed by sub-rule (2.) of this rule and the document is proved at the trial, the Court or Justice may order the party who has not admitted the authenticity of the document to pay the costs of proving it.

(5.) Where a party proves a document without having given notice to admit under sub-rule (1.) of this rule, the Court or Justice may order that that party shall not receive the costs of proving it.

3.—(1.) A party may, by notice in writing, at any time not later than seven days before the day for which notice of trial has been given, or which has otherwise been appointed for trial, call upon another party to admit, for the purposes of the proceeding only, a specific fact or facts mentioned in the notice.

Notice to  
admit facts.  
R.S.C. O.  
XXXII. r. 4.

(2.) If that other party refuses or neglects to admit the fact or facts within three days after service of the notice, or within such further time as is allowed by the Court or a Justice, the Court may order the party who has not admitted the fact or facts to pay the costs of proving it or them.

(3.) An admission made in pursuance of a notice to admit facts shall be deemed to be made only for the purposes of the particular proceeding, and not as an admission to be used against the party on another occasion or in favour of a person other than the party giving the notice.

(4.) The Court or a Justice may at any time allow a party to amend or withdraw an admission made under this rule on such terms as are just.

4.—(1.) A party may, at any stage of a proceeding where admissions of fact have been made, either on the pleadings or otherwise, apply to the Court or a Justice for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties.

Judgment or  
order upon  
admissions  
of facts.  
R.S.C. O.  
XXXII. r. 6.

(2.) The Court or a Justice may, upon an application under the last preceding sub-rule, make such order, or give such judgment, as the Court or Justice thinks just.

5. An affidavit of the solicitor for a party, or of the clerk of the solicitor, of the due signature of admissions made by that party in pursuance of a notice to admit documents or facts, is sufficient evidence of those admissions, if that evidence is required.

Affidavit of signature to admissions.  
R.S.C. O.  
XXXII. r. 7.

6. An affidavit of the solicitor for a party, or of the clerk of the solicitor, of the service of a notice to produce, and of the time when it was served, exhibiting a copy of the notice to produce, is sufficient evidence of the service of the notice, and of the time when it was served.

Service of notice to produce documents.  
R.S.C. O.  
XXXII. r. 8.

7. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned by the inclusion of those documents in the notice shall be borne by the party giving the notice.

Costs of notice where documents unnecessary.  
R.S.C. O.  
XXXII. r. 9.

#### ORDER 34.

##### ISSUES, INQUIRIES AND ACCOUNTS.

1.—(1.) Where in a proceeding it appears to the Court or a Justice that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues.

Issues may be prepared and settled.  
R.S.C. O.  
XXXIII. r. 1.

(2.) The issues shall, if the parties differ, be settled by the Court or a Justice.

2. The Court or a Justice may, at any stage of a proceeding, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it appears that there is some special or further relief sought, or some special issue to be tried, as to which it is proper that ordinary procedure should apply.

Inquiries and accounts, when directed.  
R.S.C. O.  
XXXIII. r. 2.

3. The Court or a Justice may, either by the judgment or order directing an account to be taken or by a subsequent order—

(a) give special directions with regard to the mode in which the account is to be taken or vouched; and

Special directions as to mode of taking account.  
R.S.C. O.  
XXXIII. r. 3.

(b) in particular, 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 contained in those books, with liberty to the parties to take such objections as they may be advised.

4.—(1.) Where an account is directed to be taken, the accounting party, unless the Court or a Justice otherwise directs, shall make out his account and verify it by affidavit.

Accounts to be verified by affidavit and items numbered.  
R.S.C. O.  
XXXIII. r. 4.

(2.) The items on each side of the account shall be numbered consecutively.

(3.) The account shall be referred to by the affidavit as an exhibit and filed in the Registry in which the proceeding is then pending.

## ORDERS 34, 35.

5. Upon the taking of an account, the Court or a Justice 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 Justice in Chambers.

Mode of  
vouching  
accounts.  
R.S.C. O.  
XXXIII. r. 4A.

6. A party intending to surcharge an accounting party shall give notice of his intention to the accounting party, stating, so far as he is able, the amount sought to be surcharged and the particulars of the amount in a concise manner.

Surcharge.  
R.S.C. O.  
XXXIII. r. 5.

7. A judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry as to what parts, if any, of that personal estate are outstanding or undisposed of, unless the Court or a Justice otherwise directs.

Inquiry as to  
outstanding  
personal estate.  
R.S.C. O.  
XXXIII. r. 6.

8. Where by a judgment or order, whether made in Court or in Chambers, accounts are directed to be taken or inquiries to be made, the direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number.

Accounts and  
inquiries to be  
numbered.  
R.S.C. O.  
XXXIII. r. 7.

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

Just  
allowances.  
R.S.C. O.  
XXXIII. r. 8.

10. Where there has been undue delay in the proceedings before the Registrar, he shall report to the Court or Justice by whom an account or inquiry was directed, or a matter or thing referred, the fact of that delay in the proceedings, and shall state, in his opinion, its cause.

Registrar to  
report delay.

11.—(1.) If it appears to the Court or a Justice, on the representation of a Registrar or otherwise, that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under a judgment or order, the Court or Justice may—

Expediting  
proceedings in  
case of undue  
delay.  
R.S.C. O.  
XXXIII. r. 9.

(a) require the party having the conduct of the proceedings, or any other party, to explain the delay; and

(b) thereupon make such order, as the circumstances of the case require, with regard to—

(i) expediting the proceedings or the conduct or stay of the proceedings; and

(ii) the costs of the proceedings.

(2.) For the purposes of the last preceding sub-rule, a party, or the Principal or a District Registrar, may be directed to summon the persons whose attendance is required, and to conduct such proceedings and carry out such directions as are given.

(3.) Any costs of the Registrar shall be paid by such parties or out of such funds as the Court or Justice directs and, if those costs be not otherwise paid, they shall be paid out of such moneys, if any, as may be provided by Parliament.

## ORDER 35.

## QUESTIONS OF LAW AND ISSUES OF FACT WITHOUT PLEADINGS.

I.—*Special Case.*

1.—(1.) The parties to a proceeding may concur in stating the questions of law arising in the proceeding in the form of a special case for the opinion of the Court or of the Full Court.

Special case by  
consent.  
R.S.C. O.  
XXXIV. r. 1.

(2.) The special case shall be divided into paragraphs numbered consecutively and shall concisely state such facts and documents as are necessary to enable the Court to decide the questions raised by the special case.

(3.) Upon the argument of the case the Court and the parties may refer to the whole contents of the documents stated.

(4.) The Court may draw from the facts and documents stated in the special case any inference, whether of fact or law, which might have been drawn from them if proved at a trial.

2.—(1.) If it appears to the Court or a Justice that there is, in a proceeding, a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact determined, the Court or Justice may make an order accordingly and may direct that question of law to be raised for the opinion of the Court or of the Full Court, either by special case or in such other manner as the Court or Justice deems expedient.

Special case by  
order before  
trial.  
R.S.C. O.  
XXXIV. r. 2.

(2.) Such other or further proceedings as the decision of the question of law may render unnecessary may thereupon be stayed.

3.—(1.) A special case shall be—

- (a) prepared by the plaintiff or the party having the carriage of the proceedings;
- (b) signed by the several parties, their counsel or solicitors;
- (c) filed by the plaintiff or the party having the carriage of the proceedings in the Registry in which the proceeding is then pending.

Special case to  
be prepared,  
&c.  
R.S.C. O.  
XXXIV. r. 3.

(2.) A copy of the special case for the use of the Justice, or copies for the use of each of the Justices of the Full Court, shall be left in that Registry.

4.—(1.) A special case in a proceeding to which an infant or person of unsound mind is a party shall not be set down for argument without leave of the Court or a Justice.

Leave to set  
down where  
person under  
disability is a  
party.

(2.) An application for leave under the last preceding sub-rule must be supported by sufficient evidence that the statements contained in the special case, so far as the same affect the interest of the infant or person of unsound mind, are true.

R.S.C. O.  
XXXIV. r. 4.

5. A party may enter a special case for argument before the Court or the Full Court in accordance with the agreement of the parties or the order of the Court or a Justice—

Form of entry  
for argument.  
R.S.C. O.  
XXXIV. r. 5.

- (a) by filing in the Registry in which the proceeding is then pending a memorandum of entry; and
- (b) if an infant or person of unsound mind is a party, by producing a copy of the order giving leave to enter the special case for argument.

6. On the day on which a special case is entered for argument the party entering it shall give written notice of the entry to all other parties.

Notice of entry.

7.—(1.) The parties to a special case may, if they think fit, enter into an agreement in writing that, on 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 directs, shall be paid by a party to another party either with or without costs of the proceedings.

Agreement as to payment of money and costs.  
R.S.C. O.  
XXXIV. r. 6.

(2.) 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 upon that judgment forthwith unless otherwise agreed or unless stayed on appeal.

8. A Justice may order that a special case, which has been set down for hearing before a single Justice, shall be argued before a Full Court.

Special case heard by Full Court in first instance.  
Cf. H.C.R. O.  
XXXII. r. 7.

## II.—Issues of Fact without Pleadings.

9.—(1.) When the parties to a proceeding 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 Justice, proceed to the trial of those questions of fact without formal pleadings.

Trial of questions of fact agreed upon.  
R.S.C. O.  
XXXIV. r. 9.

(2.) The questions may be stated for trial in an issue in the form numbered 31 in the First Schedule, with such variations as the circumstances require.

(3.) The issue may be entered for trial and tried in the same manner as an issue joined in an ordinary action.

(4.) The proceedings shall be under the control and jurisdiction of the Court or Justice in the same way as the proceedings in an action.

10. The Court or a Justice may, by consent of the parties, order that, upon the finding in the affirmative or negative of the issue mentioned in the last preceding rule, a sum of money, fixed by the parties, or to be ascertained by the Court or in such manner as the Court directs, shall be paid by a party to another party either with or without the costs of the proceeding.

Order for payment of sum of money.  
R.S.C. O.  
XXXIV. r. 10.

11. Upon the finding on an issue such as is mentioned in rule 9 of this Order—

Entry of judgment upon the finding.  
R.S.C. O.  
XXXIV. r. 11.

(a) judgment may be entered for the sum so agreed or ascertained as mentioned in the last preceding rule, with or without costs, as the case may be; and

(b) execution may issue upon that judgment forthwith,

unless otherwise agreed or the Court or a Justice otherwise orders for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial or appealing.

## ORDER 36.

## TRIAL.

## I.—Place.

1. Unless the place of trial or hearing is fixed by an order of the Court or a Justice, the trial or hearing in a proceeding shall be at the place where is situated the Registry in which the proceeding is pending.

Place of trial or hearing.

2. Where an order has been made under this Order or Order 31 directing the place, time or mode of hearing or trial, the directions may be subsequently revoked or varied by the Court or a Justice.

Revoking or varying directions as to trial or hearing.  
Cf. R.S.C. O. XXXVI. r. 1.  
H.C.R. O. XXXIII. r. 4.

## II.—Mode of Trial.

3.—(1.) In every proceeding the mode of trial shall be by a Justice without a jury unless the Court or a Justice otherwise orders.

Mode of trial.  
R.S.C. O. XXXVI. r. 2.

(2.) The Court or a Justice may at any time revoke or vary an order made under the last preceding sub-rule upon such terms as it or he thinks fit.

4. A party to a proceeding may at any time, not (unless the Court or a Justice otherwise orders) being less than fourteen clear days before the date for which notice of trial has been given, apply to the Court or a Justice for an order under section 13 of the *High Court Procedure Act* 1903-1950 for trial with a jury.

Party seeking trial by jury.  
Cf. H.C.R. O. XXXIII. r. 2.

5. If, in a proceeding, it appears to the Court or a Justice before or at the trial that an issue of fact could be more conveniently tried before a Justice with a jury, the Court or Justice may direct that it shall be so tried, and may for that purpose vary a previous order.

Court may direct trial with jury at any time.  
H.C.R. O. XXXIII. r. 3.

6.—(1.) Subject to the provisions of the preceding rules of this Order, the Court or a Justice may, in any proceeding, at any time or from time to time—

Questions of fact may be tried differently, one before the other.

(a) order that different questions or issues of fact arising in the proceeding be tried by different modes of trial, or that one or more questions or issues of fact be tried before the others; and

R.S.C. O. XXXVI. r. 7.

(b) appoint the places for the trials.

(2.) The Court or Justice may, for any of the purposes specified in the last preceding sub-rule, vary a previous order.

7. A trial of a question or issue of fact with a jury shall be by a single Justice unless the trial is specially ordered to be by two or more Justices.

Number of Justices.  
R.S.C. O. XXXVI. r. 8.

## III.—Notice of and Entry for Trial.

8. Notice of trial may be given with a joinder of issue closing the pleadings, or with the reply, or at any time after the close of pleadings or after the issues of fact are ready for trial.

Notice of trial by plaintiff.  
H.C.R. O. XXXIII. r. 6.

## ORDER 36.

9.—(1.) If the plaintiff does not give notice of trial—

- (a) within six weeks after he is first entitled to do so;
- (b) within the like period after a new trial is ordered; or
- (c) in either case, within such extended time as the Court or a Justice allows,

Notice of trial by defendant—motion to dismiss for want of prosecution.  
H.C.R. O.  
XXXIII. r. 7.

a defendant may, before notice of trial given by the plaintiff, give notice of trial or apply to the Court or a Justice to dismiss the action for want of prosecution.

(2.) On the hearing of the application the Court or a Justice may order the action to be dismissed accordingly or make any other appropriate order on such terms as are just.

10. The notice of trial shall state whether it is for the trial of the cause or of questions or issues in the cause, and shall name the place where, and the day on which, the trial is to be had.

Form of notice of trial.  
H.C.R. O.  
XXXIII. r. 8.

11. Twenty-one days' notice of trial shall be given unless the Court or a Justice otherwise orders or unless the party to whom it is given has consented, or is under terms, to take shorter notice.

Length of notice.  
H.C.R. O.  
XXXIII. r. 9.

12.—(1.) Notice of trial shall be given before entering the action or questions or issues for trial.

Entry of cause for trial.  
H.C.R. O.  
XXXIII. r. 10.

(2.) An action may be entered for trial, notwithstanding that the pleadings are not closed, provided that notice of trial has been given.

13. A notice of trial ceases to have effect unless the party making the entry for trial files in the Registry in which the proceeding is pending a copy of the notice of trial within seven days after the giving of the notice.

Avoidance of notice of trial.  
H.C.R. O.  
XXXIII. r. 11.

14. Notice of trial of a cause or questions or issues before a Justice with a jury shall be for the first day of a sittings unless the Court or a Justice allows it to be given for a later day.

Notice of trial.  
H.C.R. O.  
XXXIII. r. 12.

15. A notice of trial shall not be countermanded except by consent or by leave of the Court or a Justice, and that leave may be given subject to such terms as to costs, or otherwise, as are just.

Countermanding notice.  
H.C.R. O.  
XXXIII. r. 13.

16. If the party giving notice of trial omits to enter the action or questions or issues for trial on the day of, or the day after, giving notice of trial, the party to whom notice has been given may, within three days after the last-mentioned day, enter the same for trial unless in the meantime the notice has been countermanded under the last preceding rule.

Entry for trial by party served with notice.  
H.C.R. O.  
XXXIII. r. 14.

17. Upon the filing of the copy of notice of trial the Registrar shall, unless the Court or a Justice otherwise orders, enter the case in the list for trial upon the day mentioned in the notice or as soon after that day as is practicable.

Entry by Registrar in list.

18. Unless the Court or a Justice otherwise orders, a notice of trial shall cease to have effect if entry for trial required by these Rules is not made at least seven clear days before the day appointed for the commencement of the sittings for which such notice has been given.

Time for entry before commencement of sittings.

## ORDER 36.

19.—(1.) When a proceeding has been adjourned for further consideration, it may, after the expiration of seven days, and within fourteen days, from the filing of the Registrar's certificate, on the written request of the party having the carriage of the proceedings or his solicitor, be set down by the Registrar in the Cause Book or in the Court Book, as the case may be, for further consideration.

Setting down  
of causes on  
further  
consideration.  
R.S.C. O.  
XXXVI. r. 21.

(2.) After the expiration of fourteen days from the filing of the Registrar's certificate, the proceedings may be set down by the Registrar on the written request of a party or his solicitor.

(3.) The judgment or order adjourning further consideration, or an office copy of that judgment or order, and an office copy of the Registrar's certificate, or a memorandum of the date when the certificate was filed endorsed on the request by the proper officer, shall be produced on a setting down under this rule.

(4.) The request may be in the form numbered 53 in the First Schedule.

(5.) When the proceeding is set down under this rule, it shall not be put into the list for further consideration until after the expiration of seven days from the day on which the proceeding was so set down, and shall be marked in the Cause Book or in the Court Book, as the case may be, accordingly.

(6.) Notice of the putting of the proceeding into the list for further consideration shall be given by the Registrar to the other parties in the action at least four days before the day for which the proceeding is so marked for further consideration.

(7.) The notice under the last preceding sub-rule may be in the form numbered 54 in the First Schedule.

20. Upon a request in writing signed by the plaintiff and all other parties (except, where appearance is necessary, such parties as have not appeared) that a proceeding entered for trial be withdrawn from the list of cases for trial for the next sittings of the Court at the place of the Registry in which the case is pending or from that list of cases for any specified length of time or until further notice to the Registrar, the Registrar may comply with the request, subject to any order of the Court or a Justice.

Withdrawal of  
trial after  
entering.

21. If an entry for trial is duly made by a plaintiff and by a defendant, the defendant's entry shall be vacated.

Order of trial.  
R.S.C. O.  
XXXVI. r. 28.

#### IV.—Papers for Justice.

22.—(1.) The party entering a proceeding for trial shall deliver to the proper officer two copies of the whole of the pleadings and of the issues, or of such other documents as show the questions for trial.

Copies of  
pleadings, &c.,  
to be delivered.  
H.C.R. O.  
XXXIII. r. 15.

(2.) One of the copies shall be for the use of the Justice at the trial.

(3.) Where numerous letters or other documents are intended to be put in evidence, a party may provide copies of them, conveniently indexed and arranged, for the use of the Justice, and the costs of so doing shall be costs in the cause unless otherwise ordered.

*V.—Proceedings at Hearing or Trial.*

**23.** If, when a trial is called on, the plaintiff appears and the defendant does not appear, then the plaintiff—

Default of appearance by defendant at trial.

- (a) where he would have been entitled to final judgment for the whole or a part of his claim had default been made in appearance, shall be entitled to judgment for the whole or that part of his claim; and
- (b) in all other cases, may prove his claim so far as the burden of proof lies on him.

**24.** If, when a trial is called on, the defendant appears and the plaintiff does not appear, the defendant—

Default of appearance by plaintiff.

- (a) if he has no counterclaim, shall be entitled to judgment dismissing the action; or
- (b) if he has a counterclaim, then—
  - (i) may prove the counterclaim so far as the burden of proof lies upon him; or
  - (ii) in cases where, if plaintiff, he would have been entitled to judgment in default of appearance, shall be entitled to judgment without such proof.

**25.** If, when a trial is called on, neither the plaintiff nor the defendant appears, the case may be struck out and shall thereupon, unless the Court or a Justice otherwise orders, be wholly discontinued, and neither party shall be entitled to costs, but the case may be restored to the list for trial by order of the Court or a Justice upon such terms as are just.

Default of appearance by both parties.

**26.—(1.)** A verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a Justice upon such terms as may seem fit, upon an application made within fourteen days after the trial.

Judgment by default may be set aside on terms.  
R.S.C. O.  
XXXVI. r. 33;  
H.C.R. O.  
XXXIII. r. 18.

**(2.)** The application may be made at any sittings of the Court, and thereupon the Court or Justice may order the matter to be re-tried at the same or any other sittings of the Court.

**27.** The Justice may, at or before the trial, if he thinks it expedient for the interests of justice, postpone or adjourn the trial for such time, to such place and upon such terms, if any, as he thinks fit.

Adjournment of trial.  
R.S.C. O.  
XXXVI. r. 34.

**28.** Where, upon a trial, it appears that it cannot conveniently proceed by reason of the solicitor for a party—

Solicitor through whose default trial is delayed may be ordered to pay costs.

- (a) having neglected to attend personally or by some proper person on his behalf; or
- (b) having omitted to deliver any paper necessary for the use of the Court or a Justice which, according to practice, ought to have been delivered,

that solicitor shall personally pay to all or any of the parties such costs as the Justice or Court thinks fit to award.

## ORDER 36.

29. Where, in an action for libel or slander, the defendant does not by his defence assert the truth of the statement complained of, he may not on the trial give evidence in chief, with a view to mitigation of damages—

Evidence in mitigation of damages in action for libel or slander.  
R.S.C. O.  
XXXVI. r. 37.

- (a) as to the circumstances in which the libel or slander was published; or
- (b) as to the character of the plaintiff,

without the leave of the Justice, unless fourteen days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

30. The Justice may in all cases disallow a question put in cross-examination of a party or other witness which appears to him to be vexatious and not relevant to a matter proper to be enquired into in the case or matter.

Disallowance of vexatious question in cross-examination.  
R.S.C. O.  
XXXVI. r. 38.

31. The Justice, at or after trial, shall direct judgment to be entered as he thinks right upon motion for judgment which may be made forthwith without notice.

Judgment to be entered at or after trial.  
Cf. R.S.C. O.  
XXXVI. r. 39.

32. There is no judgment of non-suit.

No non-suit.

33.—(1.) The Registrar, Associate or other proper officer, present at a hearing or trial, shall make a note of the times at which that hearing or trial commences and terminates, and of the time actually occupied by it on each day on which it takes place, for communication to the taxing officer if required.

Times of commencement and termination of trial.  
R.S.C. O.  
XXXVI. r. 40.

(2.) The Justice may, if he considers the time occupied has been excessive, certify what time ought to have been so occupied, and that certificate is final.

(3.) A certificate of a Justice under the last preceding sub-rule shall be communicated to the taxing officer by the Registrar, Associate or other proper officer, as the case may be.

34. Upon a hearing or trial where the officer present at the trial is not the officer by whom judgments ought to be entered, the Associate or other proper officer present at the trial shall enter, in a book to be kept for the purpose—

Entry of findings of fact on trial.  
R.S.C. O.  
XXXVI. r. 41.

- (a) all such findings of fact as the Justice directs to be entered;
- (b) the directions, if any, of the Justice as to judgment; and
- (c) the certificates, if any, granted by the Justice.

35.—(1.) If the Justice directs that a judgment be entered for a party absolutely, the certificate of the Associate or other proper officer to that effect is a sufficient authority to the proper officer to enter judgment accordingly.

Certificate for entry of judgment.  
R.S.C. O.  
XXXVI. r. 42.

(2.) The certificate shall be in the form numbered 32 in the First Schedule, with such variations as the circumstances require.

(3.) If the Justice directs that a judgment be entered for a party subject to leave to move, judgment shall be entered accordingly upon the filing of the certificate of the Associate or other proper officer.

VI.—*Writ of Inquiry and Reference as to Damages.*

36. Rules 11, 12, 15, 26, 27 and 29 of this Order apply, with the necessary modifications, to an inquiry for the assessment of damages.

Application of Rules.  
R.S.C. O.  
XXXVI. r. 56.  
Writ of trial and inquiry abolished.

37. A writ of trial or of inquiry as to damages shall not be used but the inquiry shall in every case be had and made without a writ for that purpose or as the Court or a Justice directs.

38.—(1.) Where in a proceeding it appears to the Court or a Justice that the amount of damages sought to be recovered is substantially a matter of calculation, the Court or a Justice may direct that the amount for which final judgment is to be entered shall be ascertained by a Registrar.

Ascertainment of damages where a matter of calculation.  
R.S.C. O.  
XXXVI. r. 57.

(2.) The attendance of witnesses and the production of documents before the Registrar may be compelled by *subpoena*.

(3.) The Registrar may adjourn the inquiry from time to time.

(4.) The Registrar shall endorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with that endorsement to the person entitled to the damages.

(5.) Such and the like proceedings may thereupon be had as to entering judgment, taxation of costs and otherwise as upon the finding of a Justice upon an issue.

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

Damages in respect of continuing cause of action.  
R.S.C. O.  
XXXVI. r. 58.

## ORDER 37.

## EVIDENCE.

I.—*Office Copies.*

1. A person may bring into a Registry a copy of a document in the Registry to be checked and marked and delivered out as an office copy.

Obtaining office copies.  
Cf. H.C.R. O.  
I.VII. r. 4.  
Office copies admissible in evidence.  
R.S.C. O.  
XXXVII. r. 4.

2. An office copy of a writ, record, pleading or document filed in the Court is admissible in evidence in all proceedings, and between all persons or parties, to the same extent as the original is admissible.

II.—*Examination of Witnesses upon Commission, &c.*

3.—(1.) The Court or a Justice may, in any proceeding, if it appears necessary for the purpose of justice—

Court or Justice may order depositions to be taken.  
R.S.C. O.  
XXXVII. r. 5.

(a) make an order for the examination upon oath before the Court, Justice, an officer of the Court or any other person, and at any place, of a witness or person; and

(b) may empower a party to the proceeding to give the deposition in evidence in the proceeding on such terms, if any, as the Court or a Justice directs.

(2.) The Court or Justice may give directions with respect to the procedure to be followed in and in relation to the examination.

(3.) In this rule "deposition" includes a document, or a certified copy of a document, produced at the examination and any answers made, or reduced into writing, to any written interrogatories presented at the examination.

## ORDER 37.

4.—(1.) Where the Court or a Justice so orders, a request to examine witnesses shall be issued.

Letters of request.  
R.S.C. O.  
XXXVII. r. 6A.

(2.) The forms numbered 45 and 46 in the First Schedule shall be used for the order and the request respectively, with such variations as the circumstances require.

5. Where an order is made for the issue of a request to examine a witness or witnesses in a foreign country with which a Convention in that behalf has been made and extended to the Commonwealth or to a State or Territory—

Examination of witnesses abroad.  
R.S.C. O.  
XXXVII. r. 6B.

(a) the party obtaining the order shall file in the Registry in which the matter is then pending an undertaking in the form numbered 48 in the First Schedule, with such variations as the circumstances require; and

(b) the undertaking shall be accompanied by—

- (i) a request in the form numbered 49 in the First Schedule, with such variations as are directed in the order for its issue;
- (ii) a translation of the request in the language of the country in which it is to be executed;
- (iii) a copy, and a translation, of the interrogatories, if any, to accompany the request; and
- (iv) a copy, and a translation, of the cross-interrogatories, if any.

6. Where an order is made for the examination of a witness before the British or Australian Consular authority in a foreign country with which a Convention in that behalf has been made and extended to the Commonwealth or to a State or Territory, the order shall be in the form numbered 44 in the First Schedule, with such variations as the circumstances require.

Form of order for examination of witnesses abroad.  
R.S.C. O.  
XXXVII. r. 6C.

7.—(1.) The Court or a Justice may, in any proceeding at any stage and upon such terms as it or he thinks reasonable, order the attendance, at any time or place, either before the Court, a Justice, an officer of the Court or other person, of a person, including a party, for the purpose of—

Order for attendance of person to produce.  
R.S.C. O.  
XXXVII. r. 7.

(a) producing any writings or other documents named in the order which the Court or Justice thinks fit to be produced; or

(b) being examined *viva voce*.

(2.) A person shall not be compelled to produce under such an order a writing or other document, or to answer a question, which he could not be compelled to produce or answer at the hearing or trial.

8. A person wilfully disobeying an order requiring his attendance for the purpose of being examined or producing a document is guilty of contempt of court.

Disobedience to order for attendance.  
R.S.C. O.  
XXXVII. r. 8.

9. A person required to attend for the purpose of being examined or producing a 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 person ordered to attend.  
R.S.C. O.  
XXXVII. r. 9.

## ORDER 37.

10. Where a witness or person is ordered to be examined before an officer of the Court or before a 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.

Examiner to have copy of writ and pleadings.  
R.S.C. O.  
XXXVII. r. 10.

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

Examination, how taken.  
R.S.C. O.  
XXXVII. r. 11.

12.—(1.) The depositions taken before an officer of the Court, or before another 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.

Depositions to be taken down in writing, read over to and signed by witness, or if he refuses, by the examiner.  
R.S.C. O.  
XXXVII. r. 12.

(2.) When completed the depositions shall be read over to the witness and signed by him in the presence of the parties or such of them as attend.

(3.) If the witness refuses to sign the depositions, the examiner shall sign them.

(4.) The examiner may put down a particular question or answer at length if there should appear any special reason for doing so, and may put a question to the witness as to the meaning of an answer or as to a matter arising in the course of the examination.

(5.) When objection is made to a question, the examiner shall—

- (a) record in the depositions the question and the objection and his opinion on the objection; and
- (b) state his opinion to the counsel, solicitors or parties,

but he may not decide upon the materiality or relevancy of a question.

13.—(1.) If a person duly summoned by *subpoena* to attend for examination refuses to attend, or if, having attended, he refuses to be sworn or to answer a lawful question, a certificate of that refusal, signed by the examiner, shall be filed at the Registry in which the proceeding is then pending.

Refusal of witness to attend or to be sworn.  
R.S.C. O.  
XXXVII. r. 13.

(2.) Upon the filing of the certificate, the party requiring the attendance of the witness may apply to the Court or a Justice *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer a question, as the case may be.

14.—(1.) If a witness objects to a question which is put to him before an examiner, the question so put, and the objection of the witness to the question, shall be taken down by the examiner and transmitted by him to the Registry in which the proceeding is then pending, and there filed.

Objection by witness to questions.  
R.S.C. O.  
XXXVII. r. 14.

(2.) The validity of the objection shall be decided by the Court or a Justice.

## ORDER 37.

15.—(1.) When the examination of a witness before an examiner has been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Registry in which the proceeding is pending, and there filed.

Depositions to be transmitted to Registry.  
R.S.C. O.  
XXXVII. r. 16.

(2.) A party may have a copy of the depositions, or of a part of the depositions, on payment of the prescribed fee.

16.—(1.) The person taking the examination of a witness under these Rules may make a special report to the Court touching the examination and the conduct or absence of a witness or other person.

Special report by examiner.  
R.S.C. O.  
XXXVII. r. 17.

(2.) The Court or a Justice may direct such proceedings and make such order as upon the report it or he thinks just.

17.—(1.) Except where otherwise provided by this Order or directed by the Court or a Justice, a deposition shall not be given in evidence at a hearing or trial without the consent of the party against whom it is offered unless the Court or Justice is satisfied that the deponent is dead, beyond the Commonwealth, or unable from sickness or other infirmity or good cause to attend the hearing or trial.

Depositions not to be given in evidence without consent or by leave of Justice.  
R.S.C. O.  
XXXVII. r. 18.

(2.) Where the Court or Justice is so satisfied, the deposition, certified under the hand of the person taking the examination, is admissible in evidence, saving all just exceptions, without proof of the signature to the certificate.

18. An officer of the Court, or other person directed or authorized to take the examination of a witness or person, or a person nominated or appointed to take the examination of a witness or person pursuant to the provisions of a Convention made with a foreign country and extended to the Commonwealth or to a State or Territory, may administer oaths.

Oaths.  
R.S.C. O.  
XXXVII. r. 19.

19.—(1.) A party in any proceeding may by *subpoena ad testificandum* or *duces tecum* require the attendance of a witness before an officer of the Court, or other person appointed to take the examination, for the purpose of using his evidence in the proceeding in like manner as that witness would be bound to attend and be examined at the hearing or trial.

Attendance of witness under subpoena for examination or to produce.  
R.S.C. O.  
XXXVII. r. 20.

(2.) A person who has made an affidavit to be used on any proceeding shall be bound, on being served with such a *subpoena*, to attend before the officer or other person for cross-examination.

20. Evidence taken subsequently to a hearing or trial shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial.

Evidence taken after trial.  
R.S.C. O.  
XXXVII. r. 21.

21. The practice with reference to the examination, cross-examination and re-examination of witnesses at a trial is applicable to evidence taken in a proceeding at any stage.

Practice as to taking evidence at any stage.  
R.S.C. O.  
XXXVII. r. 22.

22. 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 a proceeding after the hearing or trial, is subject to any special directions which may be given in any case.

Special directions as to taking evidence.  
R.S.C. O.  
XXXVII. r. 23.

## ORDER 37.

23. Evidence taken at a hearing or trial may be used in any subsequent proceedings in the same case.

Evidence in proceedings subsequent to trial.

R.S.C. O. XXXVII. r. 25.

## III.—Subpoena.

24.—(1.) Where it is intended to sue out a subpoena, a praecipe for that purpose in the form numbered 35 in the First Schedule shall be delivered and filed at the Registry in which the proceeding is then pending.

Form of praecipe for a subpoena.  
R.S.C. O. XXXVII. r. 26.

(2.) The praecipe shall state the name, or the name of the firm, and the place of business or residence of the solicitor (or of the party himself if he acts in person) intending to sue out the subpoena, and, where the solicitor is acting as agent only, then also the name or firm name and place of business or residence of the principal solicitor.

25. A writ of subpoena shall be in one of the forms numbered 37 to 39 in the First Schedule, with such variations as the circumstances require.

Form of writ of subpoena.  
R.S.C. O. XXXVII. r. 27.

26. Where entry for trial or hearing has been made at a District Registry, a writ of subpoena may be sued out by a party, and may be issued out of the Principal Registry or out of a District Registry, notwithstanding that the proceeding is not pending in that Registry.

Subpoenas in District Registry.  
R.S.C. O. XXXVII. r. 27A.

27. When a subpoena is required for the attendance of a witness for the purpose of proceedings in Chambers, the subpoena shall issue from any Registry upon a note from a Justice.

Subpoena for attendance of witness in chambers.  
R.S.C. O. XXXVII. r. 28.

28. When a subpoena is required for the attendance of a witness for the purpose of proceedings before a Registrar or other officer of the Court, the subpoena shall be issued upon the direction of a Registrar or that officer.

Subpoena for attendance before Registrar.  
H.C.R. O. XXXIV. r. 14.

29.—(1.) A subpoena, other than a subpoena duces tecum, may contain any number of names.

Number of persons in a subpoena other than a subpoena duces tecum.

(2.) Names of witnesses may be inserted in a subpoena after the issue of the writ of subpoena without re-sealing where the subpoena contains the name of at least one witness and the words "and others".

R.S.C. O. XXXVII. r. 29.

30.—(1.) No more than three persons shall be included in one subpoena duces tecum.

Number of persons in subpoena duces tecum.

(2.) The party suing out a subpoena duces tecum may sue out a subpoena for each person if he thinks fit.

R.S.C. O. XXXVII. r. 30.

31. In the interval between the suing out and service of a subpoena the party suing out the subpoena may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected praecipe of the subpoena marked with the words "altered and re-sealed" and signed with the name and address of the solicitor or party suing it out.

Correction of errors in subpoena.  
R.S.C. O. XXXVII. r. 31.

32.—(1.) The service of a subpoena shall be effected by delivering a copy of the subpoena, and of the endorsement on the subpoena, and at the same time producing the original.

Service of subpoena.  
R.S.C. O. XXXVII. r. 32.  
H.C.R. O. XXXIV. r. 15.

(2.) The copy of a subpoena for a witness served upon him need not contain the name of any witness other than the person served.

33. An affidavit filed for the purpose of proving the service of a *subpoena* upon a person shall state when, where, how and by whom the service was effected.

## ORDERS 37, 38.

Affidavit to  
prove service  
of *subpoena*.  
R.S.C. O.  
XXXVII. r. 3.

34.—(1.) The service of a *subpoena* is not valid if not made within twelve weeks after the date of issue of the *subpoena*.

Within what  
time *subpoena*  
can be served.  
R.S.C. O.  
XXXVII. r. 34.

(2.) If the *subpoena* is served within that period, it remains in force from the date of issue until completion of the trial or hearing of the proceeding in which it is issued.

IV.—*Shorthand Notes.*

35.—(1.) The Court or a Justice, or, in proceedings before a Registrar, upon the application of a party, the Registrar, may order or direct that *viva voce* evidence and any rulings or directions shall be taken down in shorthand and transcribed.

Shorthand  
notes.

(2.) The Court, a Justice or the Registrar may give all necessary directions for the appointment of shorthand writers and the transcription of the evidence, rulings and directions.

(3.) The costs of and incidental to taking down evidence, rulings and directions in shorthand, and transcribing the shorthand notes, is in the discretion of the Court or a Justice, but the Registrar may certify how in his opinion the costs should be borne.

## ORDER 38.

## COURT EXPERTS.

1. In this Order, unless the contrary intention appears—

“Court expert” means an independent expert appointed under the next succeeding rule to inquire into and report upon a question of fact or opinion;

Definitions.  
R.S.C. O.  
XXXVIII. r.  
11.

“expert” includes a scientific person, a lawyer, a medical man, an engineer, an accountant, an actuary, an architect, a surveyor or other skilled person whose opinion on a question relevant to the issues involved would be received by the Court;

“issue for the expert” means a question of fact or opinion which a Court expert is required to inquire into and report upon.

2. In a case which is to be tried or heard without a jury and which involves a question for an expert witness, the Court or a Justice may in its or his discretion at any time on the application of a party, appoint an independent expert to inquire into and report upon a question of fact or of opinion not involving questions of law or construction.

Application to  
appoint  
independent  
expert.  
R.S.C. O.  
XXXVIII. r. 1.

3.—(1.) The report, so far as it is not accepted by all parties, shall be treated as information furnished to the Court and shall be given such weight as the Court thinks fit.

The report of  
Court expert.  
R.S.C. O.  
XXXVIII. r.  
2.

(2.) The report shall be made in writing to the Court, together with such carbon or other copies as the Court requires.

(3.) Copies of the report shall be forwarded by the proper officer to the parties or to their solicitors.

4.—(1.) A party may, within fourteen days after receipt of a copy of the report or within such other time as the Court or Justice directs, apply for leave to cross-examine the Court expert on his report. Cross examination. R.S.C. O. XXXVIIA. r. 3.

(2.) The Court or Justice shall on an application made under the last preceding sub-rule—

(a) make an order for the cross-examination of the Court expert by all parties at the trial or hearing, he being called and sworn at such stage as the Court at the hearing directs; or

(b) make an order for a like cross-examination before an examiner at such time and place as the Court or Justice directs.

5.—(1.) The Court expert shall, if possible, be a person agreed between the parties, but, failing agreement, he shall be nominated by the Court or a Justice. Nomination and instructions. R.S.C. O. XXXVIIA. r. 4.

(2.) The question or the instruction submitted or given to the Court expert, failing agreement between the parties, shall be settled by the Court or Justice.

6.—(1.) If the Court expert is of the opinion that an experiment or test of any kind (other than an experiment or test of a trifling character) is necessary to enable him to report in a satisfactory manner, he shall communicate the fact to the parties or their solicitors and shall endeavour to arrange with them with respect to the expenses involved, the persons to attend and other similar matters. Experiments. R.S.C. O. XXXVIIA. r. 5.

(2.) Failing agreement between the parties, those matters shall be determined by the Court or Justice.

7. The Court or Justice may at any time direct the Court expert to make a further or supplemental report which shall be treated as annexed to his original report. Further report. R.S.C. O. XXXVIIA. r. 6.

8.—(1.) The remuneration of the Court expert shall be fixed by the Court or Justice and shall include— Remuneration. R.S.C. O. XXXVIIA. r. 7.

(a) a fee for making the report and a fee for any supplementary report; and

(b) a sum for each day during which the presence of the Court expert is required either in Court or before an examiner.

(2.) The parties shall be jointly and severally liable to pay the remuneration so fixed without prejudice to the question by whom it shall be ordered to be paid as part of the costs of the proceeding.

(3.) Where the appointment of a Court expert is opposed, the Court or Justice may require the party applying for the appointment to give such security for the remuneration of the Court expert as the Court or Justice thinks proper as a condition of making the appointment.

9. Where more than one issue for the expert arises, the Court or a Justice may appoint more than one Court expert to inquire into and report on the separate issues so arising, and these Rules apply to each Court expert so appointed.

ORDERS 38, 39.

Several issues.  
R.S.C. O.  
XXXVIII. r.  
9.

10. In taxing the costs incurred in proceedings in which a Court expert has been appointed, such just and reasonable charges and expenses shall be allowed as appear to have been properly incurred in obtaining the advice of an expert, whether called as a witness or not, with respect to—

Costs of  
proceedings.  
R.S.C. O.  
XXXVIII. r.  
10.

- (a) whether a proceeding should be brought or defended;
- (b) whether the report or reports of the Court expert should be accepted to any and what extent;
- (c) the matters on which he might properly be cross-examined upon his report or reports; and
- (d) if proper, the attendance in Court of the expert so employed.

## ORDER 39.

### AFFIDAVITS AND DEPOSITIONS.

1.—(1.) Upon a motion, petition or summons, evidence may be given by affidavit.

Evidence on  
motions, &c.  
R.S.C. O.  
XXXVIII. r.  
1.

(2.) The Court or a Justice may, on the application of a party, order the attendance for cross-examination of the person making the affidavit.

(3.) If the person does not attend, his affidavit shall not be read as evidence without the leave of the Court or a Justice.

2.—(1.) An affidavit shall be entitled in the proceeding, if any, in which it is sworn, and bear the number, if any, of the proceeding.

Title of  
affidavits.  
R.S.C. O.  
XXXVIII. r.  
2.

(2.) When there are more than one plaintiff or defendant, it is 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.

(3.) The costs occasioned by unnecessary prolixity in a title shall be disallowed by the taxing officer.

3.—(1.) An affidavit shall, except as provided by sub-rule (3.) of this rule, be confined to such facts as the witness is able of his own knowledge to prove.

Contents of  
affidavit.  
R.S.C. O.  
XXXVIII.  
r. 3.

(2.) The costs of an affidavit which unnecessarily sets forth matters of hearsay, argumentative matter or copies of or extracts from documents shall be paid by the party filing the affidavit.

(3.) On interlocutory proceedings or by leave under Order 31, rule 2, an affidavit may contain statements of information and belief with the sources and grounds of that information and belief.

4.—(1.) Documents and other objects and things 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.  
R.S.C. O.  
XXXVIII. r.  
23.

(2.) Instead of making a document an exhibit to an affidavit the relevant portion of the document may be included in the body of the affidavit and the party filing the affidavit shall in that case produce the document whenever the affidavit is used.

5. An exhibit to an affidavit shall have endorsed on it the short title of the proceeding, if any, and the number, if any, of the proceeding, and a certificate signed by the person before whom the affidavit is sworn or taken identifying the exhibit with the affidavit to which it is an exhibit.

Certificate on  
exhibit.

6. In an affidavit for use in Court or in Chambers, dates and sums of money shall be written or printed in figures instead of words.

Use of  
figures.  
H.C.R. O.  
XXXV. r. 10A.

7.—(1.) An affidavit may be sworn before a Justice, a Registrar, a Commissioner or officer empowered to administer oaths for the purposes of the Court and proceedings in the Court, a Notary Public or Justice of the Peace, whose title and the date when and the place where the affidavit was sworn shall be stated in the *jurat*.

Before whom  
affidavits may  
be sworn.  
H.C.R. O.  
XXXV. rr. 3A  
and 6.

(2.) Where the seal or signature, as the case may be, of a person authorized under this rule to take an affidavit is attached, appended or subscribed to an affidavit, the Court, the Justices and officers of the Court shall take judicial notice of that seal or signature.

(3.) A person, other than a Justice of the Peace, before whom an affidavit is sworn or affirmed, or who attests the execution of an instrument of security, may charge the fees set out in the following table:—

	£	s.	d.
For each oath or affirmation .. .. .	0	2	6
If not at Registry or Commissioner's Office ..	0	5	0
If more than three miles from Registry or Com- missioner's Office, in addition to travelling expenses .. .. .	1	1	0
For signing an exhibit .. .. .	0	1	0
For attesting each instrument of security, for each surety .. .. .	0	5	0

8.—(1.) An examination, affidavit, declaration or affirmation in proceedings pending in the Court may be sworn and taken in a place under the dominion of Her Majesty out of the Commonwealth before a Judge, Court, Notary Public or person lawfully authorized to administer oaths in that place, and in foreign parts out of Her Majesty's dominions, before any of Her Majesty's Consuls or Vice-Consuls or a Notary Public.

Affidavits, &c.,  
how to be  
sworn and  
taken abroad.  
R.S.C. O.  
XXXVIII. r. 6.

(2.) The title of the Court or person before whom an examination, affidavit, declaration or affirmation is sworn and taken under the last preceding sub-rule, and the date when and the place where it was so sworn and taken, shall be stated in that examination, affidavit, declaration or affirmation.

(3.) Where the seal or signature, as the case may be, of a Court or person authorized under this rule to take an examination, affidavit, declaration or affirmation is attached, appended or subscribed to an examination, affidavit, declaration, affirmation, or any other deed or document, the Court, the Justices and officers of the Court shall take judicial notice of the seal or signature.

9.—(1.) An affidavit shall be drawn up in the first person and divided into paragraphs.

Form of affidavits.  
R.S.C. O.  
XXXVIII. r. 7.

(2.) Every paragraph in an affidavit shall be numbered consecutively and, as nearly as may be, confined to a distinct portion of the subject.

(3.) An affidavit shall be written, typewritten or printed.

(4.) Costs shall not be allowed for an affidavit or part of an affidavit substantially departing from this rule.

10. An affidavit shall state the description and true place of abode of the deponent.

Description and abode of deponent to be stated.  
R.S.C. O.  
XXXVIII. r. 8.

11.—(1.) Subject to the next succeeding sub-rule, in an affidavit made by two or more deponents the names of the several deponents making the affidavit shall be inserted at length in the *jurat*.

Affidavits made by two or more deponents.  
R.S.C. O.  
XXXVIII. r. 9.

(2.) If the affidavit of all the deponents is taken at one time before the same person, it shall be sufficient to state that it was sworn by both, or all, of the "abovenamed" deponents.

12. An affidavit to be used before the Court or a Justice shall be filed before it is used unless otherwise directed by the Court or a Justice.

Filing before using.

13.—(1.) An affidavit used in any proceeding shall be filed in the proper Registry.

Affidavits to be filed in proper Registry.

(2.) There shall be endorsed on an affidavit a note stating the name of the deponent, the date of swearing and on whose behalf it is filed.

H.C.R. O.  
XXXV. r. 11.

(3.) An affidavit shall not be filed or used without such a note unless the Court or a Justice otherwise directs.

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

Scandalous matter.  
R.S.C. O.  
XXXVIII. r. 11.

15. When in the *jurat* or body of an affidavit there is an interlineation, alteration or erasure, the affidavit shall not, without leave of the Court or a Justice, be read or made use of in any proceeding unless—

Alterations in affidavits.  
R.S.C. O.  
XXXVIII. r. 12.

(a) the interlineation or alteration, not being an alteration by erasure, is authenticated by the initials of the person taking the affidavit, or, if taken at the Principal or a District Registry, either by his initials or by the stamp of that Registry; and

(b) in the case of an erasure, the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the person taking it.

## ORDER 39.

16.—(1.) Where an affidavit is sworn by a deponent who appears to the person before whom the affidavit is taken to be illiterate or blind, that person shall certify in the *jurat* that—

Affidavits by illiterate or blind persons.  
R.S.C. O.  
XXXVII. r. 13.

- (a) the affidavit was read in his presence to the deponent;
- (b) the deponent seemed perfectly to understand it; and
- (c) the deponent made his or her mark or signature in the presence of that person.

(2.) The affidavit shall not be used in evidence without such a certificate unless the Court or a Justice is otherwise satisfied that the affidavit was read over to the deponent and that he appeared to understand it perfectly.

17. When a deponent does not take an oath, the form of *jurat* shall be varied and the necessary alterations made so as to conform with the solemn affirmation or declaration of the deponent.

Affirmations.  
H.C.R. O.  
XXXV. r. 10.

18. The Court or a Justice may receive an affidavit notwithstanding a defect by misdescription of parties or otherwise in the title or *jurat* or any other irregularity in its form, and may direct a memorandum to be made on the document that it has been so received.

Use of defective affidavit.  
R.S.C. O.  
XXXVIII. r. 14.

19. An affidavit is not sufficient if sworn before—

- (a) the solicitor acting for the party on whose behalf the affidavit is to be used;
- (b) an agent or correspondent of that solicitor; or
- (c) the party himself.

Affidavit sworn before solicitor or his agent.  
R.S.C. O.  
XXXVIII. r. 16.

20. An affidavit which would be insufficient if sworn before a solicitor, agent, correspondent or party himself is insufficient if sworn before his clerk or partner.

Affidavit sworn before clerk or partner of solicitor.  
R.S.C. O.  
XXXVIII. r. 17.

21. Where a special time is limited for filing affidavits, an affidavit filed after that time shall not be used except by leave of the Court or a Justice.

Special times for filing affidavits.  
R.S.C. O.  
XXXVIII. r. 18.

22. Except by leave of the Court or a Justice, an order made *ex parte* in Court founded on an affidavit is not of any force unless the affidavit on which the application was made was actually made before the order was applied for, and was produced or filed at the time of making the application.

Affidavits in support of *ex parte* applications.  
R.S.C. O.  
XXXVIII. r. 19.

23.—(1.) Copies of an affidavit intended to be used by a party in a proceeding in Court or in Chambers or before a Registrar shall be delivered to all other parties at the same time as the notice, if any, of the application to be made in the proceeding, or a reasonable time before the hearing.

Copies of affidavits to be served.  
Cf. H.C.R. O.  
XXXVII. r. 12.

(2.) When a party intends to adduce oral evidence on the hearing of an application or upon a reference, he shall serve on all other parties notice of that intention a reasonable time before the hearing.

**ORDERS 39, 40, 41.**

24. An alteration in an account verified by affidavit to be left at Chambers or in a Registry shall be marked with the initials of the person before whom the affidavit is sworn or taken, and the alteration shall not be made by erasure.

Alterations in accounts to be initialled.  
R.S.C. O.  
XXXVIII.  
r. 22.

**ORDER 40.****EXHIBITS.**

1.—(1.) The Associate, Registrar or other proper officer—

- (a) shall take charge of every document or object put in as an exhibit during the trial or hearing of any proceeding;
- (b) shall mark or label every exhibit so as to indicate the party by whom the exhibit was put in and so that all exhibits put in by a party are lettered or numbered consecutively; and
- (c) shall cause a list of all the exhibits in the proceeding to be made in accordance with form numbered 50 in the First Schedule.

List of exhibits.  
R.S.C. O.  
XXXVIIIb.  
r. 1.

(2.) The list of exhibits when completed shall form part of the record of the proceeding.

(3.) For the purpose of this Order, a bundle of documents may be treated and counted as one exhibit.

2.—(1.) A party may apply for and, on payment of the prescribed fee, obtain an office copy of the list of exhibits for the purpose of an appeal.

Office copy of list of exhibits.  
R.S.C. O.  
XXXVIIIb.  
r. 3.

(2.) Where there is an appeal, the appellant shall include an office copy of the list of exhibits amongst the documents supplied to the proper officer for the purpose of the appeal.

**ORDER 41.****NEW TRIALS.**

1.—(1.) If, after a trial or hearing of a cause or matter before a Justice without a jury, an order setting aside the judgment or a finding, or directing a new trial, is sought upon the ground of discovery of fresh evidence, fraud, surprise or any other ground not falling within the Appellate Jurisdiction, the application shall be made to a Full Court by motion on notice.

New trial of cause heard without a jury.  
cf. R.S.C. O.  
XXXIX. r. 1.

(2.) The application may be made although an appeal against the judgment is instituted by the applicant and, in such a case, the proceedings may be combined.

2.—(1.) An application for a new trial, or to set aside a verdict, finding or judgment, in a cause or matter in which a verdict has been found or a finding made by a jury, shall be made to a Full Court by motion on notice.

New trial of cause tried with a jury.  
cf. R.S.C. O.  
XXXIX. rr.  
1 and 3.

(2.) No rule *nisi* or order to show cause, or other formal proceeding, other than the notice of motion, shall be made or taken.

(3.) The notice of motion shall state the grounds of the application and whether the whole or part only of the verdict, finding or judgment is complained of.

3.—(1.) The notice of motion shall be served upon the party in whose favour the judgment was given within twenty-one days after the conclusion of the trial, or the date of the pronouncing of the judgment upon further consideration, as the case may be, or within such extended time as the Court or a Justice allows.

Service of  
notice of  
motion.  
Cf. R.S.C. O.  
XXXIX. r. 4.

(2.) In the computation of the period referred to in this rule, the time of the vacations shall be included.

4. The provisions of these Rules relating to appeals apply, so far as applicable, to applications under this Order.

Application of  
Rules relating  
to appeals.

5.—(1.) Upon the hearing of an application for a new trial or to set aside the verdict or finding of a jury, the Court may, 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, and may for that purpose draw any inference of fact not inconsistent with the findings, if any, of the jury.

Cf. R.S.C. O.  
XXXIX. r. 2.  
Hearing of  
application.  
Cf. R.S.C. O.  
XL. r. 10.

(2.) If the Court is of opinion that it has not sufficient materials before it to enable it to give judgment, it may direct that the motion stand over for further consideration, and may also direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it thinks fit.

6. If, upon the hearing of an application for a new trial or to set aside a verdict or finding of a jury, a question arises as to the ruling or direction of the Justice to the jury, the Court shall have regard to the Justice's notes and to such evidence or materials as the Court deems expedient.

Evidence of  
Judge's  
direction.

## ORDER 42.

### MOTION FOR JUDGMENT.

1. Except where by an Act or law 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 for judgment.

Judgment on  
motion for  
judgment.  
R.S.C. O. XL.  
r. 1.

2.—(1.) 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 those issues or questions have been determined.

Setting down  
motion for  
judgment  
where issues  
have been  
directed and  
tried.

(2.) If the plaintiff does not set down such a motion and give notice thereof to the other parties within seven days after his right so to do has arisen, then, after the expiration of that period of seven days, a defendant may set down a motion for judgment and give notice thereof to the other parties.

R.S.C. O. XL.  
r. 7.

## ORDERS 42, 43.

## 3.—(1.) Where—

- (a) issues have been ordered to be tried, or issues or questions of fact to be determined in any manner; and
- (b) some only of those issues or questions of fact have been tried or determined,
- a party who considers that the result of the trial or determination—
- (c) renders the trial or determination of the others of them unnecessary; or
- (d) renders it desirable that the trial or determination of them should be postponed,
- may apply to the Court or a Justice for leave to set down a motion for judgment without waiting for that trial or determination.

Where some only of issues directed have been tried, any party may apply to set down action on motion for judgment.  
R.S.C. O. XL.  
r. 8.

(2.) The Court or a Justice may, if satisfied of the expediency of so doing, give such leave, upon such terms, if any, as appears just, and may give any directions which appear desirable as to postponing the trial of the other issues of fact.

4. A motion for judgment shall not, except by leave of the Court or a Justice, be set down after the expiration of one year from the time when the party seeking to set down the motion first became entitled so to do.

Motion to be set down within one year.  
R.S.C. O. XL.  
r. 9.

5. Upon a motion for judgment, the Court may draw all inferences of fact, not inconsistent with the verdict or findings of the jury if the trial was with a jury, and—

- (a) 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
- (b) if it is 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 thinks fit.

Where judgment given, &c., on motion for judgment.  
R.S.C. O. XL.  
r. 10.

## ORDER 43.

## ENTRY OF JUDGMENTS.

- 1.—(1.) Every judgment shall be entered by the proper officer in a book kept for that purpose.
- (2.) The party entering the judgment shall deliver to the officer a copy of the pleadings, if any, not already filed.

Mode of entry.  
H.C.R. O.  
XXXVIII.  
r. 1.

2. In a judgment, whether in default of appearance or defence or after hearing or trial or otherwise, the party entering the judgment is, if he so desires, entitled to have recited in the judgment a statement as to the manner and place in and at which the service of the writ of summons or other originating process by which the proceedings were commenced was effected.

Recital regarding service.  
R.S.C. O. XLI.  
r. 1A.

## ORDER 43.

3.—(1.) When a judgment is pronounced by the Court, the entry of the judgment shall, subject to the next succeeding sub-rule, be dated as of the day on which the judgment is pronounced, unless the Court otherwise orders, and the judgment shall take effect from that date.

Date of judgment pronounced in Court.  
H.C.R. O.  
XXXVIII. r. 2.

(2.) By special leave of the Court, a judgment may be ante-dated or post-dated.

4. In any other case 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 the entry, and the judgment shall take effect from that date.

Date of entry of other judgments.  
H.C.R. O.  
XXXVIII. r. 3.

5. Where a judgment or order made in a proceeding requires a person to do an act—

Time to be stated for doing any act ordered to be done.  
H.C.R. O.  
XXXVIII. r. 4.

(a) it shall state the time, or the time after service of the judgment or order, within which the act is to be done; and

(b) there shall be endorsed upon the copy of the judgment or order served upon the person required to obey it a memorandum in the following words or to the following effect:—

“If you, the within-named A.B., neglect to obey this judgment (*or* order) by the time limited in it, you will be liable to process of execution for the purpose of compelling you to obey the judgment (*or* order).”.

6. When it is provided that a judgment may be entered upon the filing of an affidavit or production of a document, the officer shall examine the affidavit or document produced and, if it is regular and contains all that is by law required, he shall enter judgment accordingly.

Judgment on production of affidavit or document.  
H.C.R. O.  
XXXVIII. r. 5.

7. When it is provided that a judgment may be entered pursuant to an order or certificate, or to the return of a writ, the production of the order or certificate sealed with the seal of the Court, or of the return, is sufficient authority to the officer to enter judgment accordingly.

Judgment on production of order or certificate.  
H.C.R. O.  
XXXVIII. r. 6.

8. When reference is made to a Registrar to ascertain the amount for which final judgment is to be entered, the Registrar's certificate shall be filed in the Registry in which the proceeding is then pending before judgment is entered.

Judgment on Registrar's certificate.  
H.C.R. O.  
XXXVIII. r. 7.

9. When a party sues or appears by a solicitor, a consent order for entering judgment against that party shall not be made unless the consent of the party is given by his solicitor or the agent of his solicitor.

Judgment by consent when party appears by a solicitor.  
H.C.R. O.  
XXXVIII. r. 8.

10. When a plaintiff sues in person, or a defendant has not appeared or has appeared in person, a consent order for entering judgment against that plaintiff or defendant, as the case may be, shall not be made unless he attends before a Justice and gives his consent in person, or unless his written consent, if he is not a barrister or solicitor, is attested by a solicitor acting on his behalf.

Consent of party in person.  
H.C.R. O.  
XXXVIII. r. 9.

## ORDERS 43, 44.

11.—(1.) A memorandum of satisfaction of a judgment may be entered upon a consent to the entry being filed in the Registry in which the proceeding is then pending.

Entry of satisfaction.  
H.C.R. O.  
XXXVIII. r. 10.

(2.) The consent to the entry shall be signed by the party entitled to the benefit of the judgment and attested and verified by the affidavit of the attesting witness.

(3.) If the attesting witness is not a barrister or solicitor, the approval of a Justice shall be obtained, and that approval may be endorsed on the affidavit.

12.—(1.) When an appeal from a judgment or order of the Court or a Justice has been made to the Privy Council, the order of the Privy Council, or an office copy of that order, verified by the affidavit of a party or his solicitor, shall be filed in the Registry in which the proceeding was pending at the date of the order of the Privy Council.

Privy Council judgments.

(2.) Upon the order or copy order being filed, where the order reverses or modifies the judgment or order of the Court or Justice, the order of the Privy Council shall be deemed to be an order of the Court and shall be carried into effect accordingly.

(3.) When the order of the Privy Council directs that judgment be entered in the High Court, judgment shall be entered accordingly, and shall be dated as of the day of the date of the order of the Privy Council.

## ORDER 44.

## DRAWING UP JUDGMENTS AND ORDERS.

1. A judgment or order, whether given or made in Court or in Chambers, or by default, shall be drawn up by a Registrar, or under his direction, unless otherwise directed by the Court or a Justice.

By whom judgments and orders to be drawn up.

H.C.R. O.  
XXXIX. r. 1.

2. A judgment or order founded, in whole or in part, on a petition, affidavits, written admissions or other written documents, shall not be signed until the petition, admissions, affidavits or other written documents have been filed in the Registry in which the proceeding is pending.

Documents to be filed before judgment or order signed.

H.C.R. O.  
XXXIX. r. 2.

3. At the time of bespeaking a judgment or order, the party bespeaking it shall leave with the Registrar his counsel's brief, if any, and such other documents as are required by the Registrar for the purpose of enabling him to draw up the judgment or order.

Documents to be left with Registrar on bespeaking judgment or order.

H.C.R. O.  
XXXIX. r. 3.

4.—(1.) The Registrar may require the party bespeaking a judgment or order to prepare a draft of it and leave the draft in the Registry for his use or assistance.

Registrar may require party to submit draft.

(2.) The Registrar may accept the draft so prepared and left as his own draft of the judgment or order, with such alterations, if any, as he thinks fit.

H.C.R. O.  
XXXIX. r. 4.

5. A judgment or order shall be bespoken, and the requisite documents mentioned in rule 3 of this Order shall be left with the Registrar, within seven days after the judgment or order is finally given or made by the Court or Justice.

Time for bespeaking judgment or order.  
H.C.R. O.  
XXXIX. r. 5.

## ORDER 44.

6. If a judgment or order is not bespoken and the requisite documents are not left with the Registrar within the time prescribed by the last preceding rule, the Registrar may decline to draw up the judgment or order without the direction of the Court or a Justice.

Where judgment or order not bespoken.  
H.C.R. O.  
XXXIX. r. 6.

7. At the time of delivering out the draft of a judgment or order which, in the opinion of the Registrar, ought to be settled in the presence of the parties, he shall deliver out to the party on whose application the draft has been prepared an appointment in writing of a time for settling it.

Appointment for settling judgment or order.  
H.C.R. O.  
XXXIX. r. 7.

8.—(1.) A notice of the appointment shall be served on the opposite party three clear days at least before the time appointed for settling the draft.

Notice of appointment to be served on opposite party.  
H.C.R. O.  
XXXIX. r. 8.

(2.) The party serving the notice and the party served shall attend the appointment and shall produce to the Registrar counsel's briefs, if any, and such other documents as are necessary to enable him to settle the draft.

9. 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 the party at that address.

Service of notice of appointment.  
H.C.R. O.  
XXXIX. r. 9.

10. At the time appointed for settling the draft, the Registrar shall satisfy himself, in such manner as he thinks fit, that service of the notice of appointment has been duly effected, and for that purpose he may require evidence on oath.

Proof of service.  
H.C.R. O.  
XXXIX. r. 10.

11.—(1.) When the draft has been settled by the Registrar, he shall name a time in the presence of the several parties, or else deliver out an appointment in writing of a time, for passing the judgment or order.

Appointment for passing judgment or order.  
H.C.R. O.  
XXXIX. r. 11.

(2.) Where he delivers out an appointment in writing of a time, notice of the appointment shall be served by the party to whom the appointment is delivered on the opposite party, and the service shall be proved in the manner prescribed by the last two preceding rules of this Order with reference to an appointment to settle the draft of a judgment or order.

12.—(1.) If a party fails—

(a) to attend the Registrar's appointment for settling the draft of a judgment or order; or

(b) fails to produce his counsel's briefs and such other documents as the Registrar may require to enable him to settle the draft or to pass the judgment or order,

the Registrar may proceed to settle the draft, or to pass the judgment or order, in his absence.

Default in attending appointment with documents.  
H.C.R. O.  
XXXIX. r. 12.

(2.) Where the Registrar proceeds under the last preceding sub-rule, he may—

(a) dispense with the production of counsel's briefs or of the requisite documents or papers and act upon such evidence, as he thinks fit, of the appearance by counsel of the party failing to attend; or

(b) require the matter to be mentioned to the Court or a Justice.

## ORDER 44.

13. The Registrar may adjourn an appointment for settling the draft of a judgment or order, or for passing a judgment or order, to such time as he thinks fit, and the parties who attended the appointment shall attend upon the adjournment without further notice.

Adjournment of appointments.  
H.C.R. O.  
XXXIX. r. 13.

14. Notwithstanding the preceding rules of this Order, the Registrar may, where he thinks it expedient so to do, settle and pass a judgment or order without making an appointment for either purpose and without notice to any party.

Settling and passing judgment or order without appointment.  
H.C.R. O.  
XXXIX. r. 14.

15. A judgment or order when settled and passed shall be engrossed by the party having the carriage of the judgment or order.

Party to engross judgment or order.  
H.C.R. O.  
XXXIX. r. 15.

16.—(1.) Every judgment and order shall be kept in the Registry as a record.

Judgments and orders to be filed; duplicates.  
H.C.R. O.  
XXXIX. r. 16.

(2.) A duplicate of a judgment or order shall, one clear day after it has been entered, or, in urgent cases, sooner if so directed by the Registrar, be signed and sealed by the Registrar, without fee, and delivered to the party having the carriage of the judgment or order.

(3.) When a rule or order or the practice of the Court requires the production of a judgment or order, it is sufficient to produce the duplicate.

(4.) A further duplicate may at any time, with the sanction of the Registrar and on payment of the prescribed fee, be issued on production of the duplicate first issued or on the Registrar being satisfied of the loss of that duplicate and that the person applying is properly entitled to it.

(5.) A judgment or order shall not be amended except on production of the duplicate or duplicates, or the duplicate last issued, as the case may be, which shall, after the original order has been amended and under the direction of the Registrar, be amended in accordance with the amendment of the original order.

(6.) The amendment in the duplicate shall be sealed under the direction of the Registrar.

17. If the Registrar is requested to do so by a party at the time of an attendance before him for the purpose of settling the draft of a judgment or order or of passing a judgment or order, he shall certify, for the purposes of the taxation of costs, whether in his opinion a special allowance ought to be made on taxation of costs in respect of the attendance, or in respect of the preparation of the draft by a party whom he has requested to prepare it, on the ground that the judgment or order is of a special nature or of unusual length or difficulty.

Certificates for special allowance.  
H.C.R. O.  
XXXIX. r. 17.

18.—(1.) When an order is made which does not embody any special terms or include any special directions, but only—

When orders need not be drawn up.  
H.C.R. O.  
XXXIX. r. 18.

- (a) gives leave to an officer of the Court, other than a solicitor, to do some act;
- (b) enlarges the time for taking a proceeding or for doing an act;
- (c) gives leave—
  - (i) to issue a writ or originating process, other than a writ of attachment;

- (ii) to amend a writ or originating process or pleadings;
- (iii) to enter a judgment or order *nunc pro tunc*; or
- (iv) to file a document or take a document off the file; or

(d) directs a clerical mistake or an error appearing in a judgment or order to be corrected,

it is not necessary to draw up the order unless the Court or Justice so directs.

(2.) When, under the last preceding sub-rule, it is not necessary to draw up an order, the production of a note or memorandum of the order, which may be made upon any document filed in the proceeding, signed or initialled by the Justice or Registrar is sufficient authority for the enlargement of time, issue, amendment, entry, filing or other act.

(3.) A direction that the costs of such an order shall be costs in a cause or matter shall be deemed a special direction within the meaning of this rule.

(4.) The person, or solicitor of the person, on whose application the order is made shall forthwith give notice in writing of the order to such person, if any, as would, if this rule had not been made, have been required to be served with the order.

19. An order which is drawn up shall be dated as of the day on which it was made, unless the Court or a Justice otherwise directs, and shall take effect accordingly.

Date of Order.  
R.S.C. O. LII.  
r. 13.

20.—(1.) A judgment or order shall be marked to show by whom it was made.

Authentication.  
H.C.R. O.  
XLVI. r. 9.  
R.S.C. O. LIV.  
r. 29.

(2.) An order made in Chambers is sufficiently authenticated if signed by the Registrar and sealed in accordance with the provisions of Order 58 with the Office Seal.

(3.) A judgment or order, other than an order made in Chambers, shall be signed by the Registrar and sealed in accordance with the provisions of Order 58 with the Office Seal.

21.—(1.) A judgment or order, when settled and passed, shall be filed by the party having the carriage thereof.

Entry of judgments and orders, &c.  
R.S.C. O.  
EXII. r. 2.

(2.) An entry of the filing shall be made in books to be kept for that purpose.

(3.) A judgment or order when filed shall be deemed to be duly entered, and the date of the filing shall be deemed the date of entry.

(4.) In the case of a procedure order drawn up in Chambers, entry of the order is not necessary before an attachment can be issued for disobedience of it.

(5.) An order which is not required to be formally drawn up before being acted upon need not be entered unless it becomes necessary to serve the order for any purpose.

22. A party may, within seven days after a draft judgment or order has been settled by the Registrar, apply to the Court or Justice to add to or alter it for the purpose of making it correspond with the judgment or order of the Court as pronounced.

Application to add to or vary.

## ORDERS 44, 45.

23.—(1.) A written consent, duly verified by affidavit, of the parties to a proceeding, or their solicitors, to the making of an order in the proceeding may be filed in the Registry in which the proceeding is pending.

Consent orders.  
H.C.R. O.  
LVII. r. 16.

(2.) Notwithstanding anything contained in these Rules, upon the written consent being so filed, the Registrar shall bring the matter before a Justice who, if he thinks fit, may, without any other application being made to him, direct the Registrar to draw up, sign and seal an order in accordance with the terms of the consent.

(3.) The order shall state that it is made by consent and shall be of the same force and validity as if it had been made after a hearing by the Justice.

## ORDER 45.

## EXECUTION.

(See *High Court Procedure Act 1903-1950*, ss. 26, 27, and 28; and *Judiciary Act 1903-1950*, ss. 25, 31, 53, 54, and 55.)

## I.—General.

1. 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 to issue within six years.  
R.S.C. O.  
XLII. r. 22.

## 2.—(1.) Where—

- (a) six years have elapsed since the judgment or date of the order, or a change has taken place by death or otherwise in the parties entitled or liable to execution;
- (b) a husband is entitled or liable to execution upon a judgment or order for or against his wife;
- (c) a party is entitled to execution upon a judgment of assets *in futuro*; or
- (d) a party is entitled to execution against any shareholders of a company upon a judgment recorded against the company, or against a public officer or other person representing the company,

Leave to issue execution in certain cases.  
R.S.C. O.  
XLII. r. 23.

the party alleging himself to be entitled to execution may apply on summons to the Court or a Justice for leave to issue execution accordingly.

## (2.) The Court or Justice may—

- (a) if satisfied that the party so applying is entitled to issue execution, make an order to that effect; or
- (b) order that an issue or question necessary to determine the rights of the parties shall be tried in a way in which an issue or question may be tried,

and impose such terms as to costs or otherwise as are just.

3. An order of the Court or a Justice in a proceeding may be enforced against all persons bound by the order in the same manner as a judgment to the same effect.

Orders enforceable like judgments.  
R.S.C. O.  
XLII. r. 24.

## ORDER 45.

4.—(1.) If a *mandamus*, a mandatory order, an injunction or a judgment for the specific performance of a contract is not complied with, the Court or a Justice, whether or not proceedings for contempt have been taken against the disobedient party, 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 by another person appointed by the Court or Justice, at the cost of the disobedient party.

Court may order act to be done at expense of party refusing.  
R.S.C. O.  
XLII. r. 30.

(2.) Upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Justice directs and execution may issue for the amount so ascertained and costs.

5. Where a judgment or order against a corporation is wilfully disobeyed, it may, by leave of the Court or a Justice, be enforced by sequestration against the corporate property, by attachment against the directors or other officers of the corporation or by writ of sequestration against their property.

Enforcing judgment or order against corporation.  
R.S.C. O.  
XLII. r. 31.

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

Enforcing award.  
R.S.C. O.  
XLII. r. 31A.

7. A proceeding by *audita querela* shall not be used, but a party against whom judgment has been given may apply to the Court or a Justice for a stay of execution or other relief against the judgment upon the ground of facts which have arisen too late to be pleaded, and the Court or Justice may give such relief, and upon such terms, as are just.

No proceeding by *audita querela*.  
R.S.C. O.  
XLII. r. 27.

## II.—Discovery in Aid of Execution.

8.—(1.) When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply *ex parte* to the Court or a Justice for an order that—

Examination of judgment debtor as to debts owing to him.

(a) the debtor liable under the judgment or order; or

R.S.C. O.  
XLII. r. 32.

(b) in the case of a corporation or other body of persons empowered by a law to sue or be sued (whether in its own name or in the name of an officer or other person), an officer of that corporation or other body,

attend and be orally examined before a Justice or an officer of the Court as to—

(c) whether any and what debts are owing to the debtor; and

(d) whether the debtor has any and what other property or means of satisfying the judgment or order.

(2.) The Court or Justice may make an order for the attendance and the examination of the debtor, or of any other person, and for the production or impounding of any books or documents.

9. Where, in the case of a judgment or order, other than a judgment or order for the recovery or payment of money, a difficulty arises in or about its execution or enforcement, a party interested may apply to the Court or a Justice for, and the Court or Justice on that application

Difficulty in enforcing judgment.  
R.S.C. O. XLII.  
r. 33.

may make, such order for the attendance and examination of a party or other person, or otherwise, as is just, for giving effect to the judgment or order.

10.—(1.) Subject to the next succeeding sub-rule, impounded documents shall not be delivered out of the custody of the Court except upon an order made on motion in open Court, and inspection of impounded documents shall not be permitted except upon a written order of the Court or Justice upon whose order they were impounded.

Impounded documents.  
R.S.C. O.  
XLIII. r. 33A.

(2.) Impounded documents in the custody of the Court shall, upon the request in writing of the Attorney-General, the Solicitor-General or the Crown Solicitor of the Commonwealth, be given into the custody of the person so requesting.

11.—(1.) The examination referred to in rules 8 and 9 of this Order may be ordered to take place before the Principal or a District Registrar.

Examination before Registrar.  
R.S.C. O.  
XLIII. r. 35.

(2.) A difficulty that arises in the course of such an examination may be referred to a Justice for determination or direction, and he may determine the difficulty or give such directions as he deems fit.

(3.) When the examination takes place before a Registrar, the costs of the application for the examination and of the examination, and of any proceedings arising from or incidental to the examination, are in the discretion of the Court or Justice making the order, and may be dealt with by it or him either before or after the examination.

### III.—Attachment and Committal.

12. A judgment or order for the payment of money into Court, or for the performance of a judgment, order or writ by which a person is required to do an act, other than the payment of money to some person, may be enforced by writ of attachment.

For performance of an act.  
H.C.R. O.  
XLI. r. 1.

13. A judgment or order requiring a person to abstain from doing an act may be enforced by committal.

Judgment to abstain from an act.  
H.C.R. O.  
XLI. r. 1.

14. A writ of attachment shall not be issued without the leave of the Court or a Justice, and the leave shall be applied for by motion on notice to the party against whom the attachment is to be issued.

Application for leave to issue writ of attachment.  
H.C.R. O.

15. In the case of non-performance of an undertaking given to the Court or a Justice, the Court or a Justice may, in the first instance, instead of directing the issue of a writ of attachment or ordering committal, make a peremptory order for the performance of the act undertaken to be done.

XLI. r. 4.  
Court may make peremptory order before issue of writ.  
H.C.R. O.  
XLI. r. 5.

16. The provisions of Order 56 (other than rule 1 of that Order) relating to committal for contempt of Court apply in the case of applications for attachment or committal for disobedience to judgments or orders, or for failure to perform or observe such an undertaking as is mentioned in the last preceding rule.

Order 56 to apply.  
H.C.R. O.  
XLI. r. 7.

## ORDER 46.

## ATTACHMENT OF DEBTS.

## 1.—(1.) A Registrar may—

- (a) upon the *ex parte* application of a person who has obtained a judgment or order for the recovery or payment of money, either before or after an oral examination of the debtor liable under that judgment or order; and
- (b) upon affidavit by that person or his solicitor, or by another person who can swear to the facts, stating—
  - (i) that the judgment has been recovered or the order made;
  - (ii) that the judgment or order is still unsatisfied, and to what amount; and
  - (iii) either that in fact or that according to a statement made by the debtor upon his oral examination or otherwise another person is indebted to the debtor, either alone or jointly with another person, and is within the Commonwealth,

Order for attachment of debts.

issue a summons calling on that other person to shew cause why all debts owing or accruing from that other person (in this Order called "the garnishee") to the debtor, whether alone or jointly with another person, should not be attached to answer the judgment or order, together with the costs of the garnishee proceedings.

(2.) Upon the hearing of the summons, the Court or Justice may order that the garnishee shall pay to the person who has obtained the judgment or order the debt due from him to the debtor, or so much of that debt as is sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

(3.) The summons 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.

(4.) Service on the judgment debtor may be made in manner provided by Order 62, rule 3—

- (a) at his address for service if he has appeared in the proceeding and given an address for service;
- (b) on his solicitor if he has appeared by solicitor; or
- (c) if there has been no appearance, at his usual residence or place of business, or in such other manner as the Court or Justice directs.

2. Service on or notice to the garnishee of a summons issued under rule 1 of this Order binds in his hands all debts owing or accruing from him to the debtor whether alone or jointly with another person.

Service of summons to bind debts.

## 3. Where—

- (a) the garnishee is the Commonwealth Bank of Australia, a Savings Bank or a corporation which—
  - (i) carries on in the Commonwealth the business of banking; or
  - (ii) as part of its ordinary trading operations receives money on deposit on current account and advances moneys on overdrawn current account; and

Garnishee order against a bank.

(b) the debt is money held by that bank or corporation for the deposit or current account respectively of the debtor (whether alone or jointly with another person), the debt is bound by the summons only to the extent of a sum to be specified in the summons at the time of its issue, being such sum as will be sufficient in the opinion of the Registrar to provide for the payment of the amount of the judgment debt, interest and a reasonable sum for costs.

4.—(1.) The garnishee may pay into Court the amount due from him to the debtor (whether alone or jointly with another person) or an amount equal to the amount payable under the judgment or order. Execution against garnishee.

(2.) If the garnishee does not do so and—

(a) appears upon the hearing of the summons and does not dispute the debt due, or claimed to be due, from him to the debtor (whether alone or jointly with another person); or  
(b) does not appear upon the hearing of the summons, the Court or Justice may order execution to issue against him, and it may issue accordingly, without any previous writ or process, to levy the amount due from the garnishee to the debtor, or so much of that amount is sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

5. If the garnishee disputes his liability, the Court or a Justice may determine the question of his liability and may order that execution shall issue against him, or may order that an issue or question necessary for determining his liability be tried or determined in a manner in which an issue or question in an action may be tried or determined. Trial of liability of garnishee. R.S.C. O. XLV. r. 4.

6. When, in proceedings to obtain an attachment of a debt, it is suggested by the garnishee, or otherwise appears, that the debt sought to be attached belongs or may belong to a third person, or that a third person has or may have an interest in or a lien or charge upon it, the Court or a Justice may order that third party to appear and state the nature and particulars of his claim upon the debt. Lien or claim of third person on debt. R.S.C. O. XLV. r. 5.

7. Where—

(a) the Court or a Justice has heard the allegations of a third person under an order made under the last preceding rule and of any other person whom, by the same or a subsequent order, the Court or a Justice has ordered to appear; or  
(b) the third person does not appear when ordered, the Court or Justice may—  
(c) order execution to issue against the garnishee to levy the amount due from the garnishee to the debtor (whether alone or jointly with another person) or so much of that amount as is sufficient to satisfy the judgment or order, together with costs of the garnishee proceedings;  
(d) order an issue or question to be tried or determined according to the preceding rules of this Order;  
(e) bar the claim of the third person; or  
(f) make such other order as the Court or Justice thinks fit, upon such terms, in all cases, with respect to the interest, lien or charge (if any) of the third person, and to costs, as the Court or Justice thinks just and reasonable. Trial of claim of third person and order thereon or on non-appearance. R.S.C. O. XLV. r. 6.

## ORDERS 46, 47.

8. Payment made by, or execution levied upon, the garnishee in proceedings under this Order is a valid discharge to him, as against the debtor liable under a judgment or order, to the extent of the amount paid or levied, notwithstanding that the proceeding may be afterwards set aside or the judgment or order reversed.

Payment by or execution on garnishee a valid discharge.  
R.S.C. O. XLV.  
r. 7.

9.—(1.) A debt attachment book shall be kept by the proper officer in each Registry.

Debt attachment book.  
R.S.C. O. XLV.  
r. 8.

(2.) In the debt attachment book entries shall be made of the attachment, and proceedings on the attachment, with names, dates and statements of the amount recovered, and otherwise.

(3.) A copy of an entry in a debt attachment book may be taken by a person upon an application to the proper officer of the Registry in which the entries have been made, and upon payment of the prescribed fee.

10.—(1.) The costs of an application for an attachment of debts, and of proceedings arising from or incidental to the application, are in the discretion of the Court or a Justice.

Costs of proceedings.  
R.S.C. O. XLV.  
r. 9.

(2.) 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.

(3.) The Court or Justice may order the creditor to pay the costs of the garnishee and may allow him to add them to his own costs of the garnishee proceedings.

11. The Court or Justice may refuse to order the attachment of a debt where, from the smallness of the amount to be recovered or of the debt sought to be attached or otherwise, the remedy sought would be worthless or vexatious.

Refusal of order in certain cases.

## ORDER 47.

## CHARGING ORDERS AND STOP ORDERS.

1.—(1.) When a judgment debtor is the beneficial owner of, or has a beneficial interest in, any funds in Court, or the income arising from those funds, the Court or a Justice, upon the application of the judgment creditor, may order that the funds or any of them, or the whole or a part of the judgment debtor's interest in the funds or income, shall stand charged with payment of the judgment debt.

Order charging funds in Court.

(2.) The order shall, in the first instance, be an order to show cause only and may be made *ex parte*.

(3.) An order *nisi* or order absolute made under this rule shall be served on the judgment debtor and on the Registrar of the Registry in which the funds are.

(4.) After service upon him of the order *nisi*, the judgment debtor is not capable of making a valid disposition of any funds charged by the order until the order is discharged.

(5.) An attempted disposition contrary to the last preceding sub-rule is of no validity or effect against the judgment creditor.

(6.) After service upon him of the order *nisi*, the Registrar shall hold the funds charged by the order to abide the order of the Court or a Justice unless and until the order *nisi* is discharged.

(7.) At or after the time of making the order absolute, the Court or a Justice, upon proof that the judgment debt or a part of the judgment debt remains unsatisfied, may make such orders and give such directions as are necessary to procure the satisfaction of the judgment debt, or a part of the judgment debt, out of the funds charged by the order.

(8.) The Court or a Justice may, at any time, upon the application of the judgment debtor or of a person interested, vary or discharge such an order *nisi* or order absolute.

(9.) In this rule, "funds" or "funds in Court" means any money, government security or annuity, or other securities, including shares, or a part of them, standing or to be placed to the credit of an account in the books of the Court.

2. When—

- (a) any moneys or securities are in Court to the general credit of a proceeding or to the account of a class of persons; and
  - (b) an order is made to prevent the transfer or payment of the moneys or securities, or a part of them, without notice to the assignee of a person entitled in expectancy or otherwise to a share or portion of the moneys or securities,
- the person by whom the order has been obtained is liable, at the discretion of the Court or a Justice, to pay any costs, charges and expenses which, by reason of the order having been obtained, are occasioned to a party to the proceedings, or to a person interested in those moneys or securities.

Costs occasioned  
by stop orders.  
R.S.C. O.  
XLVI. r. 12.

3. A person moving on notice or taking out a summons for such an order as is mentioned in the last preceding rule shall not be required to serve the notice or summons upon the parties to the proceedings, or upon the persons interested in such parts of the moneys or securities as are not sought to be affected by the order.

Service of  
application for  
stop order.  
R.S.C. O.  
XLVI. r. 13.

## ORDER 48.

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

1.—(1.) Any two or more persons claiming, or alleged to be liable, as co-partners and carrying on business within the Commonwealth may sue or be sued in the name of the firm in which those persons were co-partners at the time of the accruing of the cause of action.

Proceedings by  
and against  
firms within  
the  
Commonwealth.  
R.S.C. O.  
XLVIII. r. 1.

(2.) A party may, in such case, apply by summons to a Justice 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 the firm, to be furnished in such manner, and verified on oath or otherwise, as the Justice directs.

2.—(1.) When a writ or other originating process is sued out in the name of a firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of another party to the proceedings, forthwith declare in writing the names and places of residence of the persons constituting the firm on whose behalf the proceeding is commenced.

Disclosure of  
partners' names.  
R.S.C. O.  
XLVIII. r. 2.

(2.) If the plaintiffs or their solicitors fail to comply with the demand, all proceedings may, upon an application for that purpose, be stayed upon such terms as the Court or a Justice directs.

(3.) When the names of the partners are declared, the proceeding shall continue 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 or other originating process, but all the proceedings shall, nevertheless, continue in the name of the firm.

3.—(1.) Except in a case to which sub-rule (3.) of this rule relates, when persons are sued as partners in the name of their firm under rule 1 of this Order, the writ or other originating process shall be served—

- (a) upon any one or more of the partners; or
- (b) at the principal place, within the Commonwealth, of the business of the partnership, upon a person apparently having, at the time of service, the control or management of the partnership business there.

(2.) Subject to these Rules, service in accordance with the last preceding sub-rule shall be deemed good service upon the firm so sued, whether any of the members of the firm are out of the Commonwealth or not, and leave to issue a writ or other originating process against them is not necessary.

(3.) Where a co-partnership has, to the knowledge of the plaintiff, been dissolved before the commencement of the proceeding, the writ of summons or other originating process shall be served upon every person within the Commonwealth sought to be made liable.

4.—(1.) When a writ or other originating process is issued against a firm, and is served as directed by the last preceding rule, every person upon whom it is served shall be informed by notice in writing, given at the time of the service, whether he is served—

- (a) as a partner;
- (b) as a person apparently having the control or management of the partnership business; or
- (c) in both characters.

(2.) In default of such notice, the person served shall be deemed to be served as a partner.

5. When 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.

6. When a writ or other originating process is served under rule 3 of this Order upon a person apparently having the control or management of the partnership business, an appearance by him is not necessary unless he is a member of the firm sued.

7.—(1.) When a person served as a partner under rule 3 of this Order denies that he was a partner, or liable as a partner at any material time, he may enter an appearance which states that he does so as "a person served as a partner in the defendant firm, but who denies that he was a partner at any material time".

(2.) An appearance so entered shall, as long as it stands, be treated as an appearance for the firm.

(3.) Where an appearance to which this rule applies is entered—

- (a) the plaintiff may apply to set it aside on the ground that the person entering it was a partner or liable as a partner, or may leave that question to be determined at a later stage of the proceedings; or
- (b) the person entering the appearance may apply to set aside the service on him on the ground that he was not a partner or liable as a partner, or he may, at the proper time, deliver a defence denying either or both—
  - (i) his liability as a partner; or
  - (ii) the liability of the defendant firm in respect of the plaintiff's claim.

(4.) An order may, on the application of a party at any time, be made that the questions as to the liability of the person served and the liability of the defendant firm may be tried in such manner, and at such time or times, as the Court or a Justice thinks fit.

8.—(1.) When a judgment or order is against a firm, execution may issue—

- (a) against any property of the partnership within the Commonwealth; and
- (b) against a person—
  - (i) who has appeared in his own name under rule 5 or rule 6 of this Order;
  - (ii) who has admitted on the pleadings that he is a partner;
  - (iii) who has been adjudged to be a partner; or
  - (iv) who has been individually served, as a partner, with the writ of summons or other originating process, and has failed to appear.

(2.) If the party who has obtained judgment or an order claims to be entitled to issue execution against another person as being a member of the firm, he may apply to the Court or a Justice for leave so to do, and the Court or Justice may—

- (a) if the liability is not disputed, give that leave; or
- (b) if the liability is disputed, order that the liability of that other person be tried and determined in a manner in which an issue or question may be tried and determined.

(3.) Except as against property of the partnership, a judgment against a firm does not render liable, release or otherwise affect a member of the firm who—

- (a) was out of the Commonwealth when the writ or other originating process was issued; or
- (b) has not appeared to the writ or other originating process, unless he has been—
  - (c) made a party to the proceeding under Order 10; or
  - (d) served within the Commonwealth after the writ or other originating process in the proceeding was issued.

Execution of  
judgment  
against a firm.  
R.S.C. O.  
XLVIII. r. 8.

## ORDERS 48, 49.

9.—(1.) A debt owing or accruing from a firm carrying on business within the Commonwealth may be attached under Order 46, notwithstanding that one or more members of the firm may be resident abroad, if some person apparently having the control or management of the partnership business, or some member of the firm within the Commonwealth, is served with the garnishee order.

Attachment of debts owing from a firm.  
R.S.C. O.  
XLVIII. r. 9.

(2.) An appearance by a member pursuant to a garnishee order is a sufficient appearance by the firm.

10.—(1.) The proceeding rules of this Order apply to proceedings between a firm and one or more of its members, and to proceedings between firms having one or more members in common, if the firm or firms carry on business within the Commonwealth.

Application of this Order to proceedings between co-partners.  
R.S.C. O.  
XLVIII. r. 10.

(2.) Execution shall not be issued in proceedings to which the last preceding sub-rule applies without leave of the Court or a Justice, and, on application for leave to issue execution, such accounts and inquiries may be directed to be taken and made, and such directions given, as is just.

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

Application of rules to person trading as firm.  
R.S.C. O.  
XLVIII. r. 11.

12. For the purpose of this Order, the proprietors of an unincorporated proprietary club shall be deemed to be persons carrying on business in co-partnership, and may sue and be sued in the name of the club which, for the purpose of this Order, shall be deemed to be a firm.

Proprietary club.

## ORDER 49.

## INTERLOCUTORY ORDERS FOR INJUNCTIONS, ETC., AND RECEIVERS.

I.—*Interlocutory Orders for Injunctions or Preservation or Management of Property, &c.*

1. When, by a 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 the liability, the Court or a Justice 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.

Preservation or interim custody of subject-matter of disputed contract.  
R.S.C. O. L. r. 1.

2.—(1.) The Court or a Justice may, on the application of a party, make an order for the sale, by a person or persons named in the order, and in such manner and on such terms as the Court or Justice thinks desirable, of —

Order for sale of perishable goods, &c.  
R.S.C. O. L. r. 2.

- (a) any goods, wares or merchandise of a perishable nature;
- (b) any shares or securities which appear likely to depreciate in value; or
- (c) any personal property whatever which, for any just and sufficient reason, it is desirable to sell at once.

(2.) This rule applies to goods, wares, merchandise, shares and securities which are the subject of a proceeding or as to which a question arises in a proceeding.

## ORDER 49.

3.—(1.) The Court or a Justice may, upon the application of a party, and upon such terms as are just—

- (a) make an order for the detention, preservation or inspection of any property or thing, being the subject of a proceeding or as to which a question arises in a proceeding;
- (b) for all or any of those purposes, authorize a person to enter upon or into any land or building in the possession of a party to the proceeding; and
- (c) authorize any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

Detention,  
preservation or  
inspection of  
property.  
R.S.C. O. L. r. 3.

4. A Justice, by whom a proceeding is heard or tried, with or without a jury, or before whom, as a member of the Full Court, a proceeding is brought by way of appeal, may inspect any property or thing concerning which a question arises in that proceeding.

Inspection by  
Justice.  
R.S.C. O. L. r. 4.

5.—(1.) Rule 3 of this Order applies to inspection by a jury, and, in that case, the Court or a Justice may give such directions to the Marshal, his Deputy or other person as are necessary to procure the attendance of the jury at such time and place, and in such manner, as the Court or Justice thinks fit.

Inspection by  
jury.  
R.S.C. O. L. r. 5.

(2.) The Court or Justice may make such provision as to defraying the expenses of the inspection as are just.

6. An application for an injunction or to appoint a receiver, or an application under rule 2 or rule 3 of this Order, may be made either to the Court or to a Justice by a party.

Application for  
injunctions, &c.  
R.S.C. O. L. r. 6.

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

Time for  
application  
under rule 1.  
R.S.C. O. L. r. 7.

8. When—

- (a) a proceeding is commenced to recover, or a defendant in his defence seeks by way of counterclaim to recover, specific property other than land; and
- (b) the party from whom the recovery is sought does not dispute the title of the party seeking to recover it, but claims to retain the property by virtue of a lien, or otherwise, as security for a sum of money,

Order for  
recovery of  
specific  
property, other  
than land,  
subject to lien,  
&c.  
R.S.C. O. L. r. 8.

the Court or a Justice may, at any time after that claim appears from the pleadings, or by affidavit or otherwise to the satisfaction of the Court or Justice, order—

- (c) that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the proceeding, 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 the Court or Justice directs; and
- (d) that, upon the payment into Court being made, the property claimed be given up to the party claiming it.

## ORDER 49.

## 9. Where—

- (a) any real or personal property forms the subject of a proceeding in the Court; and
- (b) the Court or a Justice is satisfied that it will be more than sufficient to answer all the claims on it which ought to be provided for in the proceeding,

Allowance of  
income of  
property  
*pendente lite*.  
R.S.C. O. L. r. 9.

the Court or a Justice may, at any time after the commencement of the proceeding, allow to a party interested in the property—

- (c) the whole or part of the annual income of the real property; or
- (d) the whole or part of the income of the personal property, up to such time as the Court or Justice directs; or
- (e) a part of the personal property,

and for that purpose the Court or Justice may make such orders as appear to the Court or Justice necessary or expedient.

10. When, 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 an executor, administrator or trustee, the conduct of the sale shall be given to that executor, administrator or trustee, unless the Court or a Justice otherwise directs.

Conduct of sale  
of trust  
estates.  
R.S.C. O. L.  
r. 10.

11.—(1.) A writ of injunction shall not be issued.

(2.) An injunction shall be granted by a judgment or order, and the judgment or order shall have the effect which a writ of injunction had before the commencement of these Rules.

Injunction to be  
by judgment or  
order.  
R.S.C. O. L.  
r. 11.

12.—(1.) In an action 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—

- (a) the repetition or continuance of the wrongful act or breach of contract complained of; or
- (b) the commission of an injury or breach of contract of a like kind relating to the same property or right or arising out of the same contract.

Injunction  
against  
repetition of  
wrongful act or  
breach of  
contract.  
R.S.C. O. L.  
r. 12.

(2.) The Court or a Justice may grant the injunction, either upon or without terms, as is just.

II.—*Receivers.*

13. Where application is made for the appointment of a receiver by way of equitable execution, the Court or a Justice, in determining whether it is just or convenient that the 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 costs of his appointment, and may, if it or he thinks fit, direct any inquiries on these or other matters before making the appointment.

Appointment of  
receiver by way  
of equitable  
execution.  
R.S.C. O. L.  
r. 15A.

14.—(1.) When an order is made directing a receiver to be appointed, unless otherwise ordered the person to be appointed shall first give security duly to account for what he shall receive as such receiver, and to pay the same as the Court or Justice directs.

Receivers—  
security and  
allowance.  
R.S.C. O. L.  
r. 16.

(2.) The person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance.

(3.) A security given under sub-rule (1.) of this rule shall be approved by the Court or a Justice and taken before a person authorized to administer oaths for the purposes of the Court and proceedings in the Court.

15. Where a judgment or order is pronounced or made in court appointing a person named in the judgment or order to be receiver, the Court or a Justice may adjourn the proceedings to Chambers, in order that the person named as receiver may give security, and may thereupon direct the judgment or order to be drawn up.

Where receiver appointed in court, adjournment into chambers to give security.  
R.S.C. O. L.  
r. 17.

16.—(1.) When a receiver is appointed with a direction that he shall pass accounts, the Court or Justice shall fix—

(a) the days upon which he shall annually, or at longer or shorter periods, leave and pass the accounts; and

(b) the days upon which he shall pay the balances appearing due on the accounts so left, or such part of those balances as shall be certified as proper to be paid by him.

Fixing days for receivers to leave and pass their accounts and pay in balances.  
R.S.C. O. L.  
r. 18.

(2.) If a receiver neglects to leave and pass his accounts or to pay the balances due on the accounts at the times fixed for those purposes under the last preceding sub-rule, the Justice may order that the Registrar before whom the receiver is to account may, from time to time, when the receiver's subsequent accounts are produced to be examined and passed—

(a) disallow the salary claimed in the accounts by the receiver; and

(b) if he thinks fit, charge the receiver with interest at the rate of Five pounds per centum per annum upon the balances so neglected to be paid by him during the time those balances appear to have remained in the hands of the receiver.

(3.) A decision of a Registrar under this rule may be varied or set aside upon application to a Justice.

17. A receiver shall leave with the Registrar of the Registry in which the proceeding is pending his account, together with an affidavit verifying the account in the form numbered 52 in the First Schedule, with such variations as the circumstances require, and an appointment shall thereupon be obtained by the plaintiff, or by the person having the conduct of the proceeding, for the purpose of passing the account.

Leaving account with Registrar.  
R.S.C. O. L.  
r. 20.

18.—(1.) Where a receiver fails—

(a) to leave an account or affidavit;

(b) to pass an account;

(c) to make a payment; or

(d) to perform a duty,

Consequences of default by receiver.  
R.S.C. O. L.  
r. 21.

the receiver and any party may be required, on a summons taken out by a Registrar or a party, to attend before a Justice to shew cause why the account or affidavit has not been left, the account passed, the payment made or any other proper proceeding taken.

(2.) Thereupon such directions as are proper may be given at Chambers, or by adjournment into Court, including the discharge of the receiver and appointment of another, and payment of costs.

19. A certificate of a Registrar, stating the result of a receiver's account, shall from time to time be taken.

Certificate of receiver's account.

20. When a receivership has been completed, the book containing the accounts shall be deposited in the Registry in which the proceeding is then pending.

R.S.C. O. L. r. 22.  
Books to be deposited.

21. 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 receiver's accounts.

Passing a guardian's accounts.  
R.S.C. O. L. r. 24.

### ORDER 50.

#### SALES BY THE COURT.

##### *I.—General.*

1.—(1.) If, in a proceeding relating to any real estate, it appears necessary or expedient that the real estate or a part of the real estate should be sold, the Court or Justice may order the real estate or the part to be sold.

Power of court to order sale of real estate.  
R.S.C. O. L. r. 1.

(2.) A party bound by the order and in possession of the estate, or in receipt of the rents and profits of the estate, shall deliver up the possession or receipt to the purchaser or to such other person as is directed by the order.

2. A sale, mortgage, partition or exchange ordered by the Court or a Justice shall be carried out in accordance with directions given by a Justice in Chambers.

Mode of carrying out sale, mortgage, partition or exchange, when ordered by court.

3.—(1.) Before any estate or interest is put up for sale under a judgment or order, an abstract of the title shall, unless otherwise ordered, be laid before some person who—

R.S.C. O. L. r. 1A.

(a) is entitled to practise as a barrister or solicitor in the Court; and

Abstract of title to be laid before practitioner.

(b) is approved by the Court or Justice,

R.S.C. O. L. r. 2.

for his opinion on the abstract of the title to enable proper directions to be given respecting the conditions of sale and other matters connected with the sale.

(2.) The conditions of sale shall specify a time for the delivery of the abstract of title to the purchaser or to a solicitor.

4.—(1.) 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 property shall be sold by auction, with the approbation of the Justice, to the best purchaser that can be got for it, to be approved by the Justice.

Sale with the approbation of the Justice.  
R.S.C. O. L. r. 3.

(2.) All proper parties shall join in the sale and conveyance or transfer as the Justice directs.

5. An order for the payment of purchase-money into Court is not necessary, but a direction for that purpose, signed by the Justice, is sufficient authority for a Registrar to receive the money.

Order for payment of purchase money into court not necessary.  
R.S.C. O. L. r. 3A.

6. An affidavit for the purpose of enabling the Justice to fix reserved biddings upon a sale by auction shall state the value of the property by reference to an exhibit stating the value, so that the value may not be disclosed by the affidavit when filed.

Form of affidavits of value.  
R.S.C. O. LI.  
r. 4.

7. An office copy of the affidavit of the person appointed to sell of the result of the sale, with the bidding paper and particulars referred to in the bidding paper, shall be left in the Registry in which the proceeding is pending at least one clear day before the day appointed for settling the certificate of the result of the sale.

Office copy of affidavit as to result of sale.  
R.S.C. O. LI.  
r. 5.

8.—(1.) In the case of sales under the direction of the Court, the particulars of sale shall be signed by, and the result of the sale shall be certified under, the hands of the auctioneer and the solicitor of the party having the conduct of the sale.

Certificate of result of sale to be made by auctioneer and solicitor in lieu of affidavit.  
R.S.C. O. LI.  
r. 6A.

(2.) It is not necessary to file an affidavit verifying the particulars or the result of the sale.

9. An order is not necessary for allowing a party to the record to bid at a sale under the direction of the Court if he would be allowed by law to bid at the same sale if it had not been under the direction of the Court.

Bidding by parties.

#### II.—In Admiralty Actions.

10.—(1.) A commission for the appraisement or sale of property under the order of the Court shall, unless the Court or a Justice otherwise orders, be executed by the Marshal or his Deputies or officers.

Appraisement or sale of property.  
R.S.C. O. LI.  
r. 14.

(2.) A solicitor who takes out a commission for appraisement or sale shall file an undertaking to pay the fees and expenses of the Marshal or his Deputy if they are demanded.

11.—(1.) The Marshal or his Deputy shall pay into Court the gross proceeds of any property which has been sold by him.

Payment into Court of gross proceeds of sale.

(2.) The Marshal or his Deputy shall bring into Court the account for sale, with vouchers in support of the account, for taxation by the Registrar of the Registry in which the proceeding is pending.

R.S.C. O. LI.  
r. 15.

12.—(1.) A person interested in the proceeds may be heard before the Registrar on the taxation of the Marshal's or Deputy Marshal's account of expenses.

Taxation of Marshal's expenses.  
R.S.C. O. LI.  
r. 16.

(2.) An objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs.

#### ORDER 51.

##### MOTIONS AND OTHER APPLICATIONS.

1.—(1.) Where, by these Rules, an application is authorized to be made to the Court or a Justice, the application shall—

Application by motion, &c.  
R.S.C. O. LI.  
r. 1.

- (a) if made to a Full Court or to a Justice in Court, be made by motion, unless it is required to be made by petition; and
- (b) if made to a Justice in Chambers, be made by summons.

(2.) A copy of a notice of motion or petition to be served upon, or of which notice is to be given to, a person or party shall be filed before it is so served or notice of it so given.

(3.) A copy of a notice of motion or petition which is not to be served upon, or of which notice is not to be given to, a person or party shall be filed before the motion or petition is heard or, if that is not practicable, then as soon as conveniently may be thereafter.

2. An application, whether by motion, petition or summons, shall be entitled in the proceeding in which it is made and in the matter of any statute under which the application is made.

Title of notice of motion, &c.  
Of H.C.R. O.  
XXXVII. r. 1.

3. A notice of motion, or a notice setting down a petition for hearing in Court, shall—

Notice of motion, &c., to name Court.

(a) state whether it is intended to be made before the Full Court or a Justice in Court, and the time and place at which it is intended to be made;

H.C.R. O.  
XXXVII. r. 3.

(b) be signed with the name of the party intending to move, or his solicitor, if he acts by a solicitor; and

(c) addressed to the party to be affected by the order sought.

4.—(1.) If an application of which notice has been given is not made at the sitting for which notice was given, or at an adjournment of that sitting at which the application could be made, the party to whom the notice was given may apply to the Court or a Justice by summons in Chambers for an order for the payment to him by the party by whom the notice was given of his costs of the application.

Costs of abandoned applications.  
H.C.R. O.  
XXXVII. r. 5.

(2.) The order may be set aside by the Court or a Justice upon sufficient cause shown.

5.—(1.) Except as by these Rules otherwise provided, an application shall not be made without previous notice to the party to be affected thereby, but the Court or a Justice, if satisfied that the delay caused by giving notice would or might entail irreparable or serious mischief, may make an order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Justice thinks just.

Where notice of application to be given;  
*ex parte* applications.  
H.C.R. O.  
XXXVII. r. 6.

(2.) A party affected by such an order may move to set it aside.

6. Unless the Court or a Justice otherwise orders, upon application which may be made *ex parte*—

Length of notice of motion and petition.

(a) there shall be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion; and

R.S.C. O.  
LII. r. 5.

(b) there shall be at least seven clear days between the service of the notice of the day appointed for the hearing of a petition and that day.

7. If, on the hearing of an application, the Court or a Justice is of opinion that a person to whom notice has not been given ought to have that notice, the Court or a Justice may either dismiss the application, or adjourn the hearing of the application, in order that the notice may be given, upon such terms, if any, as the Court or Justice thinks fit to impose.

Motions may be dismissed or adjourned where necessary notice not given.  
R.S.C. O.  
LII. r. 6.

## ORDER 51.

8. The hearing of an application may from time to time be adjourned upon such terms, if any, as the Court or Justice thinks fit.

Adjournment  
of hearing.  
R.S.C. O.  
LII. r. 7.

9. The Court or a Justice may order that a question of fact arising upon an application be tried in a manner in which a question or issue of fact in an action may be tried, and may give such directions as are considered necessary or desirable for that purpose.

Trial of  
questions of  
fact.  
H.C.R. O.  
XXXVII. r. 9.

10. The plaintiff may, without special leave, serve a notice of motion or other notice or a summons upon a defendant with the writ of summons or other originating process, or at any time after service of the writ of summons or other originating process and before the time (if any) limited for the appearance of that defendant.

Service of  
notice of  
motion with  
writ.  
H.C.R. O.  
XXXVII. r. 10.

11. The plaintiff may, without special leave, serve a notice of motion or other notice or summons upon a defendant, who, having been duly served with a writ of summons to appear or other originating process requiring an appearance to be entered, has not appeared within the time limited for that purpose.

Service of  
notice on  
defendant  
served with  
writ but not  
appearing.  
R.S.C. O. LII.  
r. 8.

12. At the foot of a petition and each copy of the petition, a statement shall be made of the persons, if any, intended to be served with the petition, and if it is not intended to serve the petition upon any person, a statement to that effect shall be made at the foot of the petition and of each copy.

Statement of  
persons to be  
served with  
petition.  
R.S.C. O. LII.  
r. 16.

13. Unless the Court or a Justice otherwise orders, a petition which is to be served on a person shall be served at least seven clear days before the day appointed for the hearing of the petition.

Length of  
notice of  
petition.  
R.S.C. O. LII.  
r. 17.

14.—(1.) A petition shall contain a statement, as brief as the nature of the case allows, of the material facts on which the petitioner relies, but not of the evidence by which they are to be proved, nor, except so far as they are material, of the contents of documents.

Form of  
petition.  
H.C.R. O. LI.  
r. 2.

(2.) The petition shall, when necessary, be divided into paragraphs, numbered consecutively, and each containing as nearly as may be a separate allegation.

(3.) Dates, sums and numbers may be expressed in a petition in figures or in words.

(4.) If the petition has been settled by counsel, it shall be signed by him, and, if not so settled, it shall be signed by the solicitor, or by the party if he is proceeding in person.

15.—(1.) At any time after—

Appointment  
for hearing.  
cf. H.C.R. O.  
LII. rr. 7, 8 and  
11.

(a) the time limited for appearance, or the last of the appearances, to a petition or notice of motion to which an appearance is, or may be, required to be entered has expired; or

(b) the time has expired within which, under these Rules, the petition or notice of motion, or notice thereof, would or might be required to be served upon or given to a person, the party making the application may apply to the Registrar of the Registry in which the petition or motion is pending to appoint a day and place for hearing the application.

(2.) At least seven clear days before the day appointed, the party making the application shall—

(a) give notice in writing of the day and place appointed to every other party to the application and to every person upon whom the process by which the application is brought before the Court has been served or to whom notice of the application has been given; and

(b) shall file in the Registry in which the application is pending a copy of the notice.

(3.) If the party making the application does not, within six months after he is first entitled to do so, apply for the appointment of a day and place for hearing the application, any other party to the application, or a person upon or to whom the application, or notice of the application, has been served or given under the last preceding sub-rule, may apply to the Court or a Justice to dismiss the application for want of prosecution.

(4.) The Court or Justice may order the application to be dismissed accordingly or make such other order, and on such terms, as the Court or Justice deems just.

## ORDER 52.

### CHAMBERS.

#### *I.—Jurisdiction in Chambers.*

1. A Justice in Chambers may hear and determine—

(a) an application which, by an Act or by these Rules, is authorized to be made to a Justice, and is not specifically required to be made to a Justice in Court;

(b) an application for payment or transfer to a person of any money or securities standing to the credit of a proceeding where—

(i) there has been a judgment or order declaring the rights of the applicant;

(ii) the title of the applicant depends only upon proof of the identity, or of the birth, marriage or death, of particular persons; or

(iii) the nominal amount or value of either the money or the securities proposed to be dealt with does not exceed Five hundred pounds, exclusive of interest;

(c) an application for payment to a person of the interest or dividends on any money or securities standing to the credit of a proceeding, whether to a separate account or otherwise;

(d) an application relating to the investment or disposition of money or securities in Court;

(e) an application for an order on the further consideration of a proceeding, when the order to be made is for the distribution of a fund or property;

General  
jurisdiction.  
H.C.R. O.  
XLVI r. 1.  
Sec. Judiciary  
Act 1903-1950,  
ss. 16, 45 (2.),  
and 63 (3.).

- (f) an application in a proceeding for or relating to the sale of property by auction or private contract, and as to the manner in which the sale is to be conducted, and for payment into Court and investment of the purchase money; and
- (g) an application for directions as to the management of any property under the control of the Court.

2. The Justice may, if he thinks fit, either upon the application of a party or without such an application being made, direct that an application brought on in Chambers shall be heard in Court.

Adjournment from Chambers to Court.

R.S.C. O. LIV. r. 22.

3. An application brought on in Court may, if the Court thinks fit, be adjourned into Chambers.

H.C.R. O. XLVI. r. 8.

Adjournment from Court to Chambers.

H.C.R. O. XLVI. r. 8.

## II.—Procedure.

4. An application at Chambers not made *ex parte* shall, unless otherwise required or authorized by these Rules or otherwise, be made by summons.

Applications to be by summons. R.S.C. O. LIV. r. 1.

5. An application for payment or transfer out of Court, and an application made *ex parte* where the Justice thinks fit so to require, shall be made by summons, to be served upon such persons as the Justice directs.

*Ex parte* applications by summons. R.S.C. O. LIV. r. 2.

6.—(1.) A summons, other than an originating summons, shall be in the form numbered 40 in the First Schedule, with such variations as the circumstances require, and shall be addressed to all the persons on whom it is to be served.

Form of summons. R.S.C. O. LIV. r. 10.

(2.) The person obtaining the summons shall file in the Registry a copy of the summons.

7.—(1.) An originating summons shall be in the form numbered 41 in the First Schedule, with such variations as the circumstances require.

Form of originating summons. R.S.C. O. LIV. r. 4b.

(2.) The person obtaining the summons shall file in the Registry a copy of the summons.

(3.) The summons shall be intitled in the matter of the Act, if any, under which the application is to be made and of the estate or trust, or of the property, person or matters, to which or to whom it relates.

(4.) An originating summons which is issued out of a District Registry, and to which an appearance is required to be entered, shall contain the statement required by Order 2, rule 8.

(5.) Where appearance to an originating summons is not required, the summons shall state the persons upon whom it is intended to be served, or that it is not intended to be served on any person.

8.—(1.) A party served with an originating summons, or notice of an originating summons, shall, except as otherwise provided, before he is heard, enter an appearance at the appropriate Registry and give notice of the appearance to the person obtaining the summons.

Appearance to originating summons. R.S.C. O. LIV. r. 4c.

(2.) A party served with an originating summons, or notice of an originating summons, may appear at any time before the hearing of the summons.

(3.) If the party served appears at any time after the time limited by the summons for appearance, he shall not, unless the Court or a Justice otherwise orders, be entitled to any further time for any purpose than if he had appeared according to the summons.

(4.) The Court or a Justice, if it or he sees fit so to do, may permit a party served with an originating summons, or notice of an originating summons, to be heard on the summons (notwithstanding that that party has not entered an appearance) on the undertaking of the solicitor of that party, or of the party himself where he appears in person, to enter an appearance forthwith.

9. The time to be limited for appearance to an originating summons to which an appearance is required to be entered shall, in every case, be the same as it would be if the summons were a writ of summons in an action.

Time for appearance.

10.—(1.) Subject to the next succeeding sub-rule, a summons, not being an originating summons to which an appearance is required to be entered, shall be served two clear days before the return day of the summons, unless the Court or a Justice allows a shorter period of service.

Time of service of summons and stay of proceedings.  
R.S.C. O. LIV. r. 41b.  
H.C.R. O. XLVI. rr. 5 and 6.

(2.) A summons for time only may be served on the day previous to its return and a summons signed by a Justice may be made returnable at any time.

(3.) A Justice may, if under special circumstances he thinks fit, order that a summons shall operate as a stay of proceedings from the time of service, and the summons shall be drawn up accordingly and signed by the Justice.

11. Upon an application for the appointment of a guardian of an infant and allowance for maintenance, or with respect to the advancement of an infant or the administration of an infant's estate, the evidence shall show—

Evidence upon applications relating to infants.  
R.S.C. O. LV. r. 25.

(a) the age of the infant;

(b) the nature and amount of the infant's fortune and income;

and

(c) what relatives the infant has.

12.—(1.) When a party to a summons fails to attend, whether upon the return of the summons or at a time appointed for the consideration or further consideration of the matter, the Justice may proceed *ex parte* if, considering the nature of the case, he thinks it expedient so to do.

Proceeding *ex parte* where a party fails to attend.  
R.S.C. O. LIV. r. 5.

(2.) An affidavit of non-attendance is not required and shall not be allowed, but the Justice may require such evidence of service as he thinks just.

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

Costs thrown away by non-attendance of a party.  
R.S.C. O. LIV. r. 7.

14. When the 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 are appointed, for the consideration or further consideration of the matter.

Further attendance where summons not fully disposed of.  
R.S.C. O. LIV.  
r. 8.

15.—(1.) In a proceeding when a party makes an application at Chambers, either by way of summons or otherwise, he may include in the same application all matters upon which he then desires the order or direction of the Justice.

What matters to be included in the same summons.  
R.S.C. O. LIV.  
r. 9.

(2.) Upon the hearing of the application, the Justice may make such order and give such directions relevant to or consequential on the matter of the application as are just.

16. The Justice, on hearing an originating summons, is not bound—

- (a) to determine a question or matter the determination of which requires a decision on a disputed question of fact; or
- (b) to make an order under the summons in respect of a question or matter which he is of opinion should be determined in an action or otherwise.

Justice not bound to determine question.

17. A summons is returnable at such time as is fixed by a Justice or Registrar.

Time of return.

18. If a Justice is not sitting in Chambers at the time at which a summons issued under these Rules is returnable, the summons shall stand adjourned until a Justice is sitting in Chambers.

Procedure where no Justice available.

### III.—*Proceedings under Judgments and Orders.*

19. A Registrar may, for the purpose of any proceedings directed to be taken before him—

- (a) publish advertisements;
- (b) summon parties and witnesses;
- (c) administer oaths;
- (d) require the production of documents;
- (e) take affidavits and acknowledgments;
- (f) receive affirmations;
- (g) unless otherwise ordered by the Court or a Justice, examine parties and witnesses, either upon interrogatories or *viva voce*, and receive evidence on affidavit; and
- (h) require a party to be represented by a separate solicitor.

Powers of Registrars.  
R.S.C. O. LV.  
r. 16.

20. A party or witness summoned to attend before a Registrar shall attend in pursuance of the summons and is liable to process of contempt in like manner as parties or witnesses are liable to process of contempt in case of disobedience to an order of the Court, or in case of default in attendance.

Duty of persons summoned to attend before Registrar.  
R.S.C. O. LV.  
r. 17.

21. The Court or a Justice may direct a computation of interest, or the apportionment of a fund, to be certified by a Registrar, and to be acted upon by an officer or other person without further order.

Computation of interest, &c., to be acted upon.  
R.S.C. O. LV.  
r. 18.

*IV.—Summons in Chambers.*

22. The summons by a Registrar requiring the attendance of a party, witness or other person shall be in the form numbered 51 in the First Schedule, with such variations as the circumstances of the case require.

Form of Registrar's summons.  
R.S.C. O. LV.  
r. 24.

*V.—Proceedings relating to Infants, &c.*

23. At any time during the proceedings in Chambers under a judgment or order, the Justice may, if he thinks fit, require a guardian *ad litem* to be appointed for an infant or person of unsound mind who has been served with notice of the judgment or order.

Guardian *ad litem* with reference to proceedings in Chambers.  
R.S.C. O. LV.  
r. 27.

*VI.—Documents to be left at Chambers.*

24. In the case of proceedings in Chambers under a judgment or order, the party prosecuting the proceedings shall leave the original, or a copy, of the judgment or order at the Registry in which the proceedings are being had, unless the original judgment or order has been previously filed, and, in the case of a copy, he shall certify the copy to be a true copy of the judgment or order as made by the Justice.

Proceedings under judgment or order.

25. When a proceeding is adjourned from Court to Chambers, or any directions are given in Court to be acted upon at Chambers, whether upon a proceeding adjourned into Court from Chambers or upon any other occasion, without an order being drawn up, a note signed by the Associate or other proper officer stating for what purpose the proceeding is adjourned to Chambers, or the directions given, shall be procured from the Associate or officer and filed in the Registry in which the proceeding is pending.

Associate's note where order not drawn up.  
R.S.C. O. LV.  
r. 29.

26. The Registrar may require that a note stating the names of the solicitors for all the parties, and showing for which of the parties the solicitors are concerned, shall be left at the Registry with a judgment or order.

Names of solicitors.  
R.S.C. O. LV.  
r. 30.

*VII.—Summons to Proceed.*

27.—(1.) Upon a judgment or order being made directing accounts or inquiries to be taken or made, a summons shall be issued to proceed with the accounts or inquiries directed.

Summons to proceed with accounts and inquiries directed.

(2.) If upon the return of the summons, it appears by proper evidence that all necessary parties have been served with notice of the judgment or order, directions shall be given as to—

R.S.C. O. LV.  
rr. 32 and 33.

- (a) the manner in which each of the accounts and inquiries is to be prosecuted;
- (b) the advertisements, if any, to be published;
- (c) the evidence to be adduced in support;
- (d) the parties who are to attend on the several accounts and inquiries; and
- (e) the time within which each proceeding is to be taken.

(3.) A day or days may be appointed for the further attendance of the parties, and directions given under the last preceding sub-rule may afterwards be varied by addition thereto or otherwise, as is found necessary.

(4.) The summons shall be taken out by the party entitled to prosecute the judgment or order within seven days after the judgment or order has been filed or left, and, in default of that party so doing, then any other party to the proceeding may take out the summons and that other party shall have the prosecution of the judgment or order unless a Justice otherwise directs.

28.—(1.) Where, by a judgment or order, a deed is directed to be settled in Chambers in case the parties differ, a summons to proceed shall be issued.

Settling deed  
in case parties  
differ.  
R.S.C. O. LV.  
r. 34.

(2.) Upon the return of the summons, the party entitled to prepare the draft deed shall be directed to deliver a copy of the draft deed, within such time as is fixed, to the party entitled to object to it.

(3.) 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 twenty-one days, or within such period as is directed after the delivery of the copy, and the proceeding shall be adjourned until after the expiration of the period so fixed or directed.

29. Where, upon the hearing of the summons to proceed, it appears that, by reason of absence or for any other sufficient cause, the service of notice of the judgment or order upon a party cannot be made or ought to be dispensed with, a direction may be given dispensing with that service, or ordering any substituted service, or notice by advertisement or otherwise, in lieu of that service.

Where service  
of notice of  
judgment or  
order dispensed  
with.  
R.S.C. O. LV.  
r. 35.

30.—(1.) Where service of notice of a judgment or order for accounts and inquiries is dispensed with, an order may be made at any time, if it is thought fit, that the persons as to whom service is dispensed with shall be bound as if served.

Power to bind  
persons on  
whom service is  
dispensed with.  
R.S.C. O. LV.  
r. 35A.

(2.) Those persons shall be bound accordingly, except where the judgment or order has been obtained by fraud or non-disclosure of material facts.

31.—(1.) If, on the hearing of the summons to proceed, it appears that all necessary parties are not parties to the proceeding 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.

Stoppage of  
proceedings  
where all  
necessary  
parties have  
not been served  
with notice of  
judgment or  
order.

(2.) The adjudication on creditors' claims and the accounts shall not be proceeded with, and no other proceeding taken except for the purpose of ascertaining the parties to be served, until—

R.S.C. O. LV.  
r. 36.

(a) all necessary parties have been served and are bound, or service has been dispensed with; and

(b) directions have been given as to the parties who are to attend on the proceedings.

## ORDER 52.

32.—(1.) The course of proceeding in Chambers under a judgment or order shall ordinarily be the same as the course of proceeding in Court upon motions.

Course of proceeding at Chambers. Papers for use of Justice and Registrar.  
R.S.C. O. LV.  
r. 37.

(2.) 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 Justice and Registrar and, where so directed, copies shall be handed over to the other parties.

(3.) Unless the Justice otherwise directs, copies shall not be made of deeds or documents where the originals can be brought in.

VIII.—*Summons Book.*

33. At the time a summons is obtained an entry of the summons shall be made in the Summons Book stating—

Entries in Summons Book.  
R.S.C. O. LV.  
r. 38.

- (a) the date on which the summons is issued;
- (b) the name of the proceeding;
- (c) by what party and, shortly, for what purpose, the summons is obtained; and
- (d) at what time the summons is returnable.

IX.—*Certificates of the Registrar.*

34.—(1.) The directions to be given for, or touching on, proceedings before a Registrar shall not require a particular form, but the result of the proceedings shall be stated in the shape of a concise certificate to the Justice.

Registrar's certificate.  
R.S.C. O. LV.  
r. 35.

(2.) It is not necessary for the Justice to sign the certificate, and, unless an order to discharge or vary the certificate is made, the certificate shall be deemed to be approved and adopted by the Justice.

35. The certificate of a Registrar shall not, unless the circumstances of the case render it necessary, set out the judgment or order or a document, evidence or reason, but shall refer to the judgment or order and documents and evidence, or particular paragraphs thereof, so that it appears upon what the result stated in the certificate is founded.

Reference to judgment, &c.  
R.S.C. O. LV.  
r. 36.

36.—(1.) When the Justice or Registrar so directs, the certificate shall be prepared by the solicitor of one of the parties.

Preparation and settlement of Registrar's certificate.  
R.S.C. O. LV.  
r. 36A.

(2.) The solicitor shall obtain an appointment to settle the certificate and shall give notice of the appointment to the other parties.

(3.) A summons to settle the certificate of a Registrar shall not be issued.

37. The certificate of a Registrar—

- (a) when prepared and settled, shall be transcribed in such form, and within such time, as the Registrar requires; and
- (b) shall be signed by the Registrar either then or, if necessary, at an adjournment to be made for the purpose.

Form of certificate.  
R.S.C. O. LV.  
r. 37.

**38.—**(1.) Where an account is directed, the certificate shall state the result of the account and not set the account 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 the items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or otherwise.

Contents of certificate in cases of accounts.  
R.S.C. O. LV.  
r. 68.

(2.) 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, the transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate.

(3.) The accounts and the transcripts, if any, referred to by a certificate shall be filed with the certificate or retained in the Registry and subsequently filed, as may be directed.

(4.) A copy of such an account is not required to be taken by a party.

**39.—**(1.) A party may, before proceedings before the Registrar are concluded, take the opinion of the Justice upon a point or matter arising in the course of the proceedings without a fresh summons for the purpose and the Registrar shall act upon the opinion of the Justice accordingly.

Taking opinion of Justice.  
R.S.C. O. LV.  
r. 69.

(2.) The decision of the Justice shall not be deemed to be finally given upon a point or matter so referred to him until the filing of the Registrar's certificate embodying the result of the Justice's opinion.

**40.** Taking the opinion of a Justice, as provided in the last preceding rule, does not operate as a stay of proceedings before the Registrar, 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 the opinion has been obtained.

Proceeding to take opinion of Justice not a stay of proceedings.

**41.** A certificate, with the accounts and transcripts, if any, to be filed with the certificate, shall be filed in the Registry and, when filed, shall thenceforth be binding on all the parties to the proceedings unless discharged or varied upon application by summons to be made before the expiration of seven clear days after the filing of the certificate, or within such further time as the Court or Justice allows.

When certificate becomes binding; application to discharge or vary it.  
R.S.C. O. LV.  
r. 70.

**42.—**(1.) When a Registrar has assessed or ascertained damages, he shall certify the amount and file his certificate.

(2.) Within seven days of the filing of the certificate, any party interested may apply to the Court or a Justice to discharge or vary the certificate or make such other order thereon as may be just.

Certificate of Registrar; application to discharge or vary; confirmation of judgment.

(3.) The Court or Justice hearing and determining the application may discharge the certificate or may confirm the certificate or the certificate as varied.

(4.) If an application is not made under sub-rule (2.) of this rule, the Registrar shall, after the expiration of seven days from the filing of his certificate, bring it before a Justice in Chambers, who may confirm it or give such directions thereon as may appear just.

(5.) The Registrar shall enter judgment in accordance with a certificate or with the order or directions thereon of the Court or Justice.

*X.—Further Consideration.*

43.—(1.) Where a matter originating in Chambers has, at the original or a subsequent hearing, been adjourned for further consideration in Chambers, it may, after the expiration of fourteen days and within a period of twenty-eight days, or such further period as the Justice allows, after the filing of the Registrar's certificate, be brought on for further consideration by a summons, to be taken out by the party having the conduct of the proceedings, and, after the expiration of that period of twenty-eight days or that further period, by a summons to be taken out by any other party.

Further consideration of matters originating in Chambers.  
R.S.C. O. LV.  
r. 72.

(2.) The summons shall be in the following form:—"That this matter, the further consideration of which was adjourned by the order of the                      day of                      19                      , may be further considered."

*XI.—Registering and Drawing up of Orders in Chambers.*

44. The Associate or other proper officer shall—

Notes of proceedings in Chambers.

- (a) keep a book in which he shall enter particulars of all proceedings had in Chambers, with—
- (i) dates;
  - (ii) names of cases;
  - (iii) a description of the proceedings; and
  - (iv) a minute of the decisions, with a short statement of the questions or points decided or ruled; and
- (b) deliver all documents used at Chambers to the Registrar.

45.—(1.) An order made in Chambers to be acted on by a Registrar or other proper officer shall, unless the Justice otherwise directs, be drawn up by the Registrar.

Drawing up and entry of orders made in Chambers.  
R.S.C. O. LV.  
r. 71.

(2.) An order drawn up by a Registrar shall be entered in the same manner as an order made in open Court.

46. In the case of an order to be drawn up by a Registrar as mentioned in the last preceding rule, an order signed by the Registrar, or a note or memorandum endorsed on the summons upon which the order is made and signed or initialled by the Registrar, is sufficient evidence of the order having been made.

Evidence of orders made in Chambers.  
R.S.C. O. LV.  
r. 74A.

**ORDER 53.***REFERENCES IN ADMIRALTY ACTIONS.*

1. This Order applies to a reference to a Registrar, whether the reference is to a Registrar alone or to a Registrar assisted by a merchant or merchants.

Application of this Order.  
H.C.R. O.  
XLIIA. r. 60.

2. The Court or a Justice may refer the assessment of damages and the taking of an account to a Registrar, either alone or assisted by a merchant or merchants.

Reference to Registrar and merchants.  
H.C.R. O.  
XLIIA. r. 61.

**ORDER 53.**

3.—(1.) Within fourteen days from the day when the order for the reference is made, the claimant shall file his claim and his affidavits verifying it.

Filing of claim  
and affidavits.  
H.C.R. O.  
XLIIA. r. 62.

(2.) Within fourteen days from the day when the claim and affidavits are filed, the opposite party shall file his affidavits in answer.

4. After the filing of the answering affidavits, seven days shall be allowed to the parties for filing further affidavits, and, after that period, further affidavits shall not be filed except by order of the Court or a Justice or by permission of the Registrar.

Filing of further  
affidavits.  
H.C.R. O.  
XLIIA. r. 63.

5. Within three days from the expiration of the time allowed for filing the last affidavits, the claimant shall file in the Registry in which the reference is proceeding a notice asking to have the reference set down for hearing, and, if he does not do so, the opposite party may apply to the Court or a Justice to have the claim dismissed with costs.

Time for  
hearing.  
H.C.R. O.  
XLIIA. r. 64.

6.—(1.) At the time appointed for the reference, if a party is present, the reference may be proceeded with.

Hearing.  
H.C.R. O.  
XLIIA. r. 65.

(2.) The Registrar may adjourn the reference from time to time as he deems proper.

7. Facts may be proved upon a reference by *viva voce* evidence or by affidavit.

Evidence on  
reference.  
R.S.C. O. LVI.  
r. 0.

8. Counsel may attend the hearing of a reference but the expenses attending the employment of counsel shall not be allowed on taxation unless the Registrar or a Justice is of opinion that the attendance of counsel was proper.

Counsel.  
H.C.R. O.  
XLIIA. r. 67.

9. When a reference has been heard, the Registrar shall make a report in writing of the result in the form of a certificate showing the amount, if any, found due, and to whom, together with any further particulars that are necessary.

Report by  
Registrar.  
H.C.R. O.  
XLIIA. r. 68.

10. The Registrar may, if he thinks fit, report whether any and what part of the costs of the reference shall be allowed, and to whom.

Costs.  
H.C.R. O.  
XLIIA. r. 69.

11. When the report is ready, notice shall be sent to the parties and a party may thereupon take up and file the report.

Notice to  
parties.  
H.C.R. O.  
XLIIA. r. 70.

12. Within fourteen days from the date of the filing of the Registrar's report, a party may give notice of motion to vary the report, specifying the items objected to.

Motion to  
vary.  
H.C.R. O.  
XLIIA. r. 71.

13. At the hearing of the motion, the Justice may make such order on the motion as he thinks just, or may remit the matter to the Registrar for further inquiry or report.

Order on the  
motion.  
H.C.R. O.  
XLIIA. r. 72.

14. If a notice of motion to vary the report is not filed within fourteen days from the date of the filing of the Registrar's report, the report shall stand confirmed.

Confirmation if  
no motion to  
vary.  
H.C.R. O.  
XLIIA. r. 73.

## ORDER 54.

## INTERPLEADER.

1. Relief by way of interpleader may be granted—
  - (a) when 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 liable to claims in the Court by two or more parties (in this Order called “the claimants”) making adverse claims to that debt or money or to those goods or chattels; or
  - (b) when the applicant is the Marshal or his Deputy 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 a process or to the proceeds or value of those goods or chattels, or of any land, by a person other than the person against whom the process is issued.
2. The applicant shall satisfy the Court or a Justice by affidavit or otherwise—
  - (a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;
  - (b) that the applicant does not collude with any of the claimants; and
  - (c) that the applicant (except where he is the Marshal or his Deputy 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 claim 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 Justice directs.
3. The applicant is not 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.
4. When the applicant is a defendant, application for relief may be made at any time after the commencement of the proceedings in the Court.
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.
6. If the application is made by a defendant, the Court or a Justice may stay all further proceedings.
7. If the claimants, or any of them, appear in pursuance of the summons, the Court or a Justice may—
  - (a) order that a claimant be made a defendant in a proceeding already commenced in respect of the subject-matter in dispute in lieu of, or in addition to, the applicant; or

When relief by  
interpleader  
granted.

R.S.C. O.  
LVII. r. 1.

Matters to be  
proved by  
applicant.

R.S.C. O.  
LVII. r. 2.

Adverse titles  
of claimants.  
R.S.C. O.  
LVII. r. 3.

When  
application  
to be made.  
R.S.C. O.  
LVII. r. 4.

Summons by  
applicant.  
R.S.C. O.  
LVII. r. 5.

Stay of  
proceedings.  
R.S.C. O.  
LVII. r. 6.

Order upon  
summons.  
R.S.C. O.  
LVII. r. 7.

- (b) order that an issue between the claimants be stated and tried and direct which of the claimants is to be plaintiff and which defendant, and the mode in which the trial shall be had.

8.—(1.) The plaintiff in an interpleader issue shall file the issue within three days after the making of the order under the last preceding rule and shall thereupon pay the fees and jury fees, if any, payable on entering an action for trial. Issue to be filed.

(2.) If the plaintiff makes default in filing the issue, the order shall be deemed to be abandoned and the Court or Justice may make such further order on the applicant's summons, and as to the costs of the issue directed, as is just and reasonable.

9. The Court or a Justice may---

- (a) with the consent of all claimants; or  
(b) on the request of a claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, Disposal of matters in summary manner. R.S.C. O. LVII. r. 8.

dispose of the merits of their claims and decide the claims in a summary manner and on such terms as are just.

10.—(1.) When a question of law arises in interpleader proceedings and the facts are not in dispute, the Court or a Justice may decide the question without directing the trial of an issue or may order that a special case be stated for the opinion of the Full Court. Questions of law. R.S.C. O. LVII. r. 9.

(2.) If a special case is stated, Order 35 shall, as far as applicable, apply to the special case.

11.—(1.) 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 an order made after his appearance, the Court or a Justice may make an order declaring him, and all persons claiming under him, for ever barred against the applicant and persons claiming under the applicant. Failure of claimant to appear, or neglect to obey summons. R.S.C. O. LVII. r. 10.

(2.) The order shall not affect the rights of the claimants as between themselves.

12. When goods or chattels have been seized in execution by the Marshal or his Deputy or other officer charged with the execution of process of the Court, and a 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 Justice may order the sale of the whole or a part of the goods or chattels and direct the application of the proceeds of the sale in such manner and upon such terms as are just. Order for sale of goods seized in execution. R.S.C. O. LVII. r. 12.

13.—(1.) Orders 32, 33 and 36, with the necessary modifications, apply to an interpleader issue. Application of Orders 32, 33 and 36 to interpleader proceedings. R.S.C. O. LVII. r. 13.

(2.) The Court or Justice who tries the issue may finally dispose of the whole matter of the interpleader proceedings including costs not otherwise provided for.

## ORDER 54.

**14.—(1.)** When, in an interpleader proceeding, it is necessary or expedient to make one order in several proceedings pending in the Court, the order may be made by the Court or Justice before whom the interpleader proceeding is taken, and shall be entitled in all the proceedings.

Title of order,  
R.S.C. O.  
LVII. r. 14.

(2.) The order, subject to the right of appeal, shall be binding on the parties in all those proceedings.

**15.** The Court or a Justice may, in or for the purposes of any interpleader proceedings, make such orders as to costs and other matters as are just.

Costs,  
R.S.C. O.  
LVII. r. 15.

**16.—(1.)** A claim made to or in respect of any goods or chattels taken in execution under the process of the Court shall be in writing and shall state an address for service of the claimant which shall comply with the provisions of Order 4.

Marshal's costs.  
R.S.C. O.  
LVII. r. 16.

(2.) Upon receipt of the claim, the Marshal or his Deputy or other officer shall forthwith give notice of the claim to the execution creditor in the form numbered 33 in the First Schedule, or to the like effect.

(3.) The execution creditor shall, within seven days after receiving the notice, give notice to the Marshal, his Deputy or the officer, in the form numbered 34 in the First Schedule or to the like effect, whether he admits or disputes the claim.

(4.) If the execution creditor admits the title of the claimant and gives notice as directed by this rule, he shall be liable to the Marshal, his Deputy or the officer only for any fees or expenses incurred prior to the receipt of the notice admitting the claim.

**17.—(1.)** When the execution creditor has given notice to the Marshal, his Deputy or other officer that he admits the claim of the claimant, the Marshal, his Deputy or the officer may thereupon—

Withdrawal  
by Marshal.  
R.S.C. O.  
LVII. r. 16A.

(a) withdraw from possession of the goods claimed; and

(b) apply for an order protecting him from any action in respect of the seizure and possession of the goods,

and the Court or a Justice may make such order as is just and reasonable.

(2.) The Marshal, his Deputy or the officer shall give notice to the claimant of an application under this rule.

(3.) The claimant may attend the hearing of the application and, if he attends, the Court or Justice may, in and for the purposes of the application, make such orders as to costs as are just.

**18.—(1.)** When the execution creditor does not in due time, as directed by rule 16 of this Order, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim to the goods or chattels by notice in writing to the Marshal, his Deputy or the officer, the Marshal, his Deputy or the officer may take out an interpleader summons.

Costs in  
interpleader.  
R.S.C. O.  
LVII. r. 17.

(2.) The service of the summons on the claimant may be effected at his address for service either by personal service upon the claimant or by registered post as provided by Order 62, rule 3.

(3.) If the claimant withdraws his claim by notice in writing to the Marshal, his Deputy or the officer, or the execution creditor in like manner serves an admission of the title of the claimant prior to the return day of the summons and, at the same time, gives notice of the admission to the claimant, the Court or Justice may, in and for the purposes of the interpleader proceedings, make such orders as to costs, fees, charges and expenses as are just.

## ORDER 55.

MANDAMUS, PROHIBITION, CERTIORARI, HABEAS CORPUS,  
QUO WARRANTO.

## I.—General.

## 1.—(1.) An application for—

- (a) a writ of *habeas corpus*;
- (b) an order for the production of a person in confinement for the purpose of examination or trial;
- (c) a writ of *certiorari*, *mandamus* or prohibition, or for leave to exhibit an information of *quo warranto*; or
- (d) relief of like nature to *mandamus* or *quo warranto*,

Application,  
how made.  
H.C.R. O.  
XLVII. r. 1.  
R.S.C. O. LIX.  
r. 14.

may, subject to sub-rules (5.) and (6.) of this rule, be made to the Court or a Justice *ex parte* and shall be supported by affidavit.

(2.) Subject to sub-rules (3.) and (4.) of this rule, the application shall, in the first instance, be for an order calling on the proposed respondent to shew cause why the writ or order should not be issued or made, the information filed or other relief given.

(3.) In the case of an application by a Law Officer *ex officio* for a writ of *certiorari* or for leave to file an information of *quo warranto*, the order shall, if so sought, be absolute in the first instance.

(4.) The Court or Justice may, in its or his discretion, in a case in which it appears necessary for the advancement of justice, grant an order absolute in the first instance for a writ of *habeas corpus*, *certiorari*, *mandamus* or prohibition, or for the production of a person.

(5.) An application for an order to bring up a person in confinement to give evidence in a proceeding, civil or criminal, before a court, justice or other judicature shall be made to a Justice in Chambers.

(6.) When an application for a writ of *habeas corpus* is made on behalf of an infant, it shall be made, in the first instance, to a Justice sitting in Chambers.

2. When application is made to a Justice in Court or in Chambers, or otherwise, he may, if he thinks fit, direct that the application be made by notice of motion to a Justice in Court or to a Full Court, and may adjourn the application so that notice of the application may be given accordingly.

Justice may  
direct  
application to  
Court or to  
Full Court.  
R.S.C. O. LIX.  
r. 10.

## ORDER 55.

3. When application is made to a Full Court, the Court may adjourn the application so that notice of the application may be given.

Adjournment of application by Full Court.  
R.S.C. O. LIX.  
r. 16 (c).

4. An order to shew cause shall be to shew cause before a Full Court, unless the matter appears to be one of urgency, in which case the Court or Justice may make the order returnable before a single Justice in Court or Chambers.

Order to be returnable before Full Court.  
H.C.R. O.  
XLVII. r. 2.

5.—(1.) The order to shew cause, or notice of motion, shall be served on such persons and in such manner as the Court or Justice directs.

Service of order to shew cause or notice of motion.  
R.S.C. O. LIX.  
r. 5 (2.), (2A.) and (3.).

(2.) Unless the Court or Justice otherwise directs, there shall be at least three clear days between service of the order to shew cause, or notice, and the date named in the order or notice for the hearing of the application.

(3.) When the order or notice relates to a proceeding in or before a court, and the object is either to compel the court or an officer of the court to do an act in relation to the proceedings or to quash them or an order made in them, it is sufficient to serve the order or notice of motion on—

- (a) the Clerk, the Registrar or other proper officer of the court and the other parties to the proceedings, unless the Court or a Justice otherwise orders; and
- (b) where an objection to the conduct of the judge, justice or magistrate constituting the court is to be made, on that judge, justice or magistrate.

(4.) An affidavit stating the names and addresses of, and the place and date of service on, the persons who have been served with the order to shew cause or notice of motion shall be filed before the order or notice is put in the list for hearing, and, if a person who ought to be served under or pursuant to these Rules has not been served, the affidavit shall state that fact and the reason why service has not been effected.

(5.) If, on the application for the order absolute or the hearing of the motion, the Court or Justice is of opinion that a person who ought to have had notice of the application has not been served (whether or not he is a person who ought to have been served under or pursuant to the foregoing provisions of this rule), the Court or Justice may direct service on that person, and adjourn the hearing in the meantime, upon such terms, if any, as it or he thinks fit.

6. An affidavit intended to be used on the application and upon which the application is made shall be entitled "In the High Court of Australia" without any other title, except in the case of an application for an order for the production of a person for examination as a witness in proceedings pending in the Court, in which case it shall also be entitled in the proceeding.

Title of affidavits.  
H.C.R. O.  
XLVII. r. 3 and  
O. XLVIII. r. 2.

7. A party to the application shall supply on demand by a party or person who desires to be heard, and on payment of the proper charges, copies of any affidavits previously used in the proceeding or which he proposes to use at the hearing of the application.

Copies of affidavits.  
R.S.C. O. LIX.  
rr. 6, 12 (3.) and 18.

8.—(1.) The order to shew cause and all subsequent proceedings shall be entitled “The Queen” against the judicial or other authority or person to whom the writ or order is or is proposed to be directed, or against whom the information is proposed to be exhibited, “*ex parte*” the applicant, except in the case of an order for the production of a person as witness which shall be entitled in the proceeding.

Title of proceedings.  
H.C.R. O.  
XLVII. r. 4 and  
O. XLVIII. r. 3.

(2.) In the case of—

- (a) a writ of *habeas corpus* or an order for the production of a person in confinement for the purpose of examination or trial; or
- (b) a writ of *certiorari*, *mandamus* or prohibition which is proposed to be directed to a judicial or public authority or officer,

the authority or officer shall be described—

- (c) by his name of office; or
- (d) in the case of a magistrate or justice in a court of summary jurisdiction, as the magistrate or justice at the place where the court is held.

(3.) The applicant shall be called—

- (a) in the case of an application for a writ of *mandamus* or relief of a like nature, or of an application for a writ of prohibition—the prosecutor;
- (b) in the case of an application for an information of *quo warranto* or relief of a like nature—the relator; and
- (c) in the case of an application for a writ of *habeas corpus* or *certiorari*—the applicant.

9. The order to shew cause may be granted upon such terms as to costs and as to giving security or otherwise as the Court or Justice thinks fit.

Terms.  
R.S.C. O. LIX.  
r. 3 (3.).

10. An order *nisi* for *certiorari* or prohibition shall, if the Court or a Justice so directs, operate as a stay of the proceedings in question until the determination of the application or until the Court or a Justice otherwise orders.

Stay of proceedings.  
R.S.C. O. LIX.  
r. 3 (4.).

11.—(1.) The grounds of the application and the relief sought shall be set out in the order *nisi* or notice of motion, if any, and, if the applicant intends to ask for an amendment at the hearing, he shall give notice of his intention and of the proposed amendment.

Applicant limited to grounds and relief set out in order *nisi*.  
R.S.C. O. LIX.  
r. 6.

(2.) The Court or Justice may allow an amendment which it or he thinks necessary for the advancement of justice, but, without the leave of the Court or Justice, a ground shall not be relied upon or relief sought on the hearing other than a ground set out in the order *nisi* or notice of motion.

12.—(1.) At the hearing of the application, the Court or Justice shall hear any person who desires to oppose it and appears to the Court or Justice to be a proper person to be heard, notwithstanding that he has not been served with the order *nisi* or notice of motion.

Right to be heard in opposition and liability to costs.  
R.S.C. O. LIX.  
r. 7.

(2.) A person who is served with the order *nisi* or notice of motion, or who is heard under this rule, may be ordered to pay costs in the discretion of the Court or Justice.

13.—(1.) At the hearing of the application the Court or Justice may allow the applicant to use further affidavits upon such terms as to adjournment or costs as the Court or Justice thinks just.

Affidavits in reply and direct trial or inquiry.  
R.S.C. O. LIX.  
rr. 6 and 41.

(2.) When the applicant intends to ask to be allowed to use further affidavits, he shall give reasonable notice of his intention, and shall supply, on demand and upon payment of the proper charges, copies of the further affidavits to the other parties.

(3.) When a question or issue of fact arises upon the affidavits, the Court or Justice may give such directions as it or he thinks fit for the determination of the question or issue by trial or inquiry.

14. An order absolute need not be served, but the costs of service of an order absolute 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.  
H.C.R. O.  
XLVII. r. 5.

15. When the order is made absolute, the Court or a Justice may dispose of the costs of the proceedings either by the final judgment or by a separate order.

Costs.  
H.C.R. O.  
XLVII. r. 6.

16.—(1.) A writ issued in proceedings to which this Order relates shall—

Issue and filing of writs, &c.  
R.S.C. O.  
LIX. r. 43 (1.),  
(3.) and (4.).

- (a) bear date of the day on which it is issued;
- (b) be tested in the manner provided in Order 2, rule 7; and
- (c) be filed in the Registry out of which it is issued, together with the return to the writ and a copy of any order made on it.

(2.) Such a writ shall be prepared by the solicitor or party issuing it out and shall, before being sealed, be endorsed with the name and address of that solicitor or party, and, if issued out by the solicitor as agent, with the name and address of the principal also.

(3.) An order to return the writ shall require the return to be made within such period as is named in the order.

## II.—*Certiorari*.

17.—(1.) An order *nisi* for a writ of *certiorari* to remove a judgment, order, conviction or other proceeding, for the purpose of its being quashed, of an inferior court or tribunal, or of a magistrate or justices, shall not be granted unless the application for the order is made not later than six months after the date of the judgment, order, conviction or other proceeding, or within such shorter period as may be prescribed by any law.

Time and notice.  
H.C.R. O.  
XLVII. r. 7.

(2.) Where the judgment, order, conviction or other proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Court or Justice may adjourn the application for the order *nisi* until the appeal is determined or the time for appealing has expired.

### III.—*Mandamus*.

18.—(1.) 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.

Person  
interested—  
prosecutor to be  
named.

(2.) Subject to the next succeeding sub-rule, the applicant shall state by his own affidavit that the application is to be made at his instance as prosecutor.

H.C.R. O.  
XLVII. r. 13.

(3.) Where the applicant is a corporation, an officer or agent of the corporation shall state by his affidavit that the application is to be made by the corporation as prosecutor.

19.—(1.) Unless otherwise ordered by the Court or Justice, a writ of *mandamus* shall command the person to whom it is addressed to do the act in question or shew cause why he has not done it.

Form of writ.  
H.C.R. O.  
XLVII. r. 15.

(2.) The Court or Justice may direct that the command shall be peremptory in the first instance.

20. Unless otherwise ordered by the Court or Justice, 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.  
H.C.R. O.  
XLVII. r. 16.

21. Unless the Court or Justice otherwise directs—

(a) when a writ of *mandamus* is directed to one person only, the original writ shall be personally served upon him by delivering it to him; and

Service.  
H.C.R. O.  
XLVII. r. 17.

(b) 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 upon the remaining person by delivering the original writ to him.

22. Unless otherwise directed by the Court or Justice, when a writ of *mandamus* is directed to a body corporate or public authority, it shall be served on that body or authority in the manner provided by Order 9, rule 6.

Service on  
corporate  
body, &c.

23. The person or persons to whom a writ of *mandamus* is directed shall, within the time allowed by the writ, file the writ or a copy of the writ in the Registry from which it was issued, together with a certificate, endorsed on or attached to the writ or copy, and signed by him or them, setting forth that he or they has or have done the act commanded by the writ or setting forth the reason why he or they has or have not done so.

Return.  
H.C.R. O.  
XLVII. r. 19.

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

Service.  
H.C.R. O.  
XLVII. r. 20

## ORDER 55.

25. 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 the return as his defence.

Pleading to  
return.  
H.C.R. O.  
XLVII. r. 21.

26. When a point of law is raised in answer to a return or another pleading in *mandamus*, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party without a motion for judgment being made or required.

No motion for  
judgment.

27.—(1.) If the questions of fact and law raised by the return are 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 person or persons to whom the first writ was directed to do the act commanded in that writ.

Peremptory  
writ.  
H.C.R. O.  
XLVII. r. 22.

(2.) The peremptory writ shall be awarded by the judgment, if any, or, if there is no judgment, by a separate order.

28.—(1.) When a peremptory writ is awarded in the first instance, the Court or Justice shall, at the time of granting the writ, direct by and to whom the costs of the proceedings shall be paid.

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

(2.) 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 after the return is filed, at a time not later than the seventh day of the sittings of the Court held next after the day on which the return is filed, at the place of the Registry in which it is so filed.

H.C.R. O.  
XLVII. r. 23.

29.—(1.) When, upon an application for a writ of *mandamus*, it appears that a 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*, notice of motion or writ is directed may apply to the Court or a Justice for an order that that other person be substituted for him, or joined with him, in all subsequent proceedings up to the issue of a peremptory writ of *mandamus*.

Proceedings in  
nature of  
interpleader.  
H.C.R. O.  
XLVII. r. 23.

(2.) The Court or Justice may make such order on the application as is just.

(3.) The proceedings shall not abate or be discontinued by reason of the death, resignation or removal from office of the person to whom the order *nisi*, notice of motion or writ is directed, but they may be continued and carried on either in his name or otherwise, and, if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

30. An application for a writ of *mandamus*, or an order in the nature of *mandamus*, to a judicial tribunal to hear and determine 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 a Justice.

Time.  
H.C.R. O.  
XLVII. r. 25.

## ORDER 55.

31. Subject to paragraph (v) of section 75 of the Constitution of the Commonwealth, when the Court or Justice directs that the command shall be peremptory in the first instance, the command may be expressed in an order of the Court without the issue of a writ, and the order shall have the same effect as a peremptory writ of *mandamus*.

*Mandamus* by order.  
H.C.R. O.  
XLVII. r. 26.

32. The provisions of Order 45, rule 3, apply to *mandamus*.

Enforcement of order like judgment.

33. An action or proceeding shall not be commenced or prosecuted against a person in respect of a thing 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 a Justice.

No action against party obeying writ or order.  
R.S.C. O. LIX.  
r. 9.

IV.—*Prohibition*.

34. The Court or Justice 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 on a statement of claim in an action.

Pleadings in prohibition.  
H.C.R. O.  
XLVII. r. 27.

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

Proceeding on judgment.  
H.C.R. O.  
XLVII. r. 28.

36.—(1.) When a writ of prohibition has been issued and it is afterwards made to appear to the Court or a Justice that relief ought to be given against the judgment or order by which the writ was awarded on a ground on which relief might be given against a judgment in an action, the Court or Justice may direct that 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 in the matter as if the writ of prohibition had not been issued.

Writ of *procedendo*.  
H.C.R. O.  
XLVII. r. 29.

(2.) The writ of *procedendo* shall be in the form numbered 56 in the First Schedule, or to the like effect.

37. Subject to paragraph (v) of section 75 of the Constitution of the Commonwealth, the prohibition may be expressed in an order of the Court without the issue of a writ and the order shall have the same effect as a writ of prohibition.

Prohibition by order.  
H.C.R. O.  
XLVII. r. 30.

V.—*Habeas Corpus*.

38.—(1.) Subject to the next succeeding sub-rule, in the case of an application for a writ of *habeas corpus*, an affidavit shall be made by the person restrained showing that the application is made at his instance and setting out the nature of the restraint.

Affidavit in case of *habeas corpus*.  
R.S.C. O. LIX.  
r. 15.

(2.) The last preceding sub-rule does not apply—

- (a) to an application made on behalf of an infant; or
- (b) when the person restrained is unable to make the affidavit.

39. The Court or a Justice may by order, and without the issue of a writ of *habeas corpus*, direct the production of a person in confinement, for the purpose of his examination as a witness or for his trial, at a time and place named in the order.

Order for production of person in confinement for examination or trial.  
H.C.R. O.  
XLVIII. r. 1.

## ORDER 55.

40.—(1.) A writ of *habeas corpus* or an order for production, directed to a person charged by law with the custody of persons in lawful custody or confinement or to a public officer, may be served personally or by leaving the original with a servant, agent 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.

Service.  
H.C.R. O.  
XLVIII. r. 4.  
R.S.C. O.  
LIX. r. 21.

(2.) A writ of *habeas corpus* to which the last preceding sub-rule does not apply shall be served personally unless an order for substituted service is made as provided for by Order 9, rule 3, and Order 62, rule 7.

(3.) 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.

(4.) A notice, directed to the person to whom the writ is addressed, shall be served with a writ of *habeas corpus*.

(5.) The notice shall state—

- (a) the Court or Justice before whom, and the date on which, the person restrained is to be brought;
- (b) that, in default of obedience, proceedings for attachment of the party disobeying will be taken;
- (c) the acts to be done by the person on whom the notice is served in obedience to the writ; and
- (d) the consequences of making default.

41. When the writ is ordered to issue, the Court or Justice by whom the order is made shall give directions as to the Court or Justice before whom the writ is returnable, and the writ shall be returnable immediately.

Direction as to  
return of writ.  
R.S.C. O. LIX.  
r. 20.

42.—(1.) The person to whom a writ of *habeas corpus* is directed shall, at the time and place specified in the writ, make his return to the writ.

Returns to  
writs of  
*habeas corpus*.  
H.C.R. O.  
XLVIII. r. 5.

(2.) The return shall—

- (a) be endorsed upon or attached to the writ;
- (b) set out all the causes of the detention of the person named in the writ; and
- (c) be filed in the Registry from which the writ issued.

43. The return may be amended or another return substituted for it by leave of the Court or a Justice.

Amendment of  
return.  
H.C.R. O.  
XLVIII. r. 6.

44. Upon the return of the writ, the return shall be read, and a motion shall then be made for the disposition of the person named in the writ or for amending or quashing the return.

Proceedings on  
return.  
H.C.R. O.  
XLVIII. r. 7.

45. When the person in custody is brought up in accordance with the writ, he or his counsel shall first be heard, then the person denying his right to be discharged, or his counsel, and then the first-named person, or his counsel, in reply.

Order of  
speeches.

46. When an order to show cause has been made, the Court or Justice 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 such an order is as effectual as if it had been made on the return of a writ.

Discharge  
without writ.  
H.C.R. O.  
XLVIII. r. 8.

#### VI.—*Quo Warranto*.

47.—(1.) Upon an application for an order for leave to exhibit an information of *quo warranto*, or for relief of a like nature, the applicant shall state by affidavit that the application is to be made at his instance as relator.

Relator to be  
named.  
H.C.R. O.  
XLVII. r. 31.

(2.) The Court or a Justice may allow a new relator to be substituted for the original relator, on such terms as to costs or otherwise as are just.

48.—(1.) 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.  
H.C.R. O.  
XLVII. r. 34.

(2.) An objection to the title of the defendant not set out in the order *nisi* shall not be raised in the information without the leave of the Court or a Justice.

49.—(1.) The information shall be in the name of the Attorney-General for the Commonwealth or the relator, as the case may be, on behalf of Her Majesty, and shall be signed by the Attorney-General or relator.

Signature and  
service of  
information.  
H.C.R. O.  
XLVII. r. 35.

(2.) A copy of the information shall be served upon the defendant, or, if at the return of the order *nisi* he appeared by solicitor, then upon his solicitor.

50.—(1.) 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.

Defence and  
subsequent  
proceedings.  
H.C.R. O.  
XLVII. r. 36.

(2.) Thereupon the same proceedings shall be taken in all respects as if the proceeding by information were an action in which the relator was the plaintiff and the defendant was the defendant.

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

Judgment.  
H.C.R. O.  
XLVII. r. 37.

52.—(1.) The defendant may, if he thinks fit, disclaim the office in question.

Disclaimer.  
H.C.R. O.  
XLVII. r. 38.

(2.) The disclaimer shall be—

- (a) signed by the defendant and attested by a person before whom affidavits are authorized by Order 39 to be sworn or taken; and
- (b) filed in the Registry from which the information was issued.

(3.) A copy of the disclaimer shall be served on the relator within the time allowed for delivering a defence.

(4.) The relator shall thereupon, unless the Court or a Justice otherwise orders, be entitled to enter judgment of ouster with costs, including the costs of the order giving leave to exhibit the information.

53.—(1.) 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 Justice may direct the proceedings to be consolidated, as in the case of other proceedings, and for that purpose may make such orders as are just.

Consolidation.  
H.C.R. O.  
XLVII. r. 30.

(2.) An order for consolidation or stay of proceedings against a defendant shall not be made upon the application of that 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.

#### ORDER 56.

##### COMMITTAL FOR CONTEMPT OF COURT.

1.—(1.) When it is alleged, or appears to the Court upon its own view, that a person has been guilty of contempt of Court, committed in the face of the Court or in the hearing of the Court, the presiding Justice may, by oral order, direct that person to be arrested and brought before the Court forthwith, or may issue a warrant under his hand for the arrest of the accused person.

Contempt in the  
face of the  
Court.  
H.C.R. O.  
XLIX. r. 1.

(2.) When the accused person is brought before the Court, the Court shall—

- (a) cause him to be informed orally of the contempt with which he is charged;
- (b) require him to make his defence to the charge;
- (c) after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and
- (d) make such order for the punishment or discharge of the accused person as is just.

(3.) Unless the Court allows him to be discharged on bail, the accused person shall be detained in such custody as the Court or Justice directs until the charge is disposed of.

(4.) The powers given by this rule are exercisable, *mutatis mutandis*, by a Justice sitting in Chambers except that the accused person shall be brought before a Justice or Justices sitting in Court, and he or they shall hear and determine the charge and make the order.

2. In a case to which the last preceding rule does not apply, application for punishment for contempt of Court shall be made by motion, upon notice to the accused person, for an order that he be committed to prison for his contempt.

In other cases.  
H.C.R. O.  
XLIX. r. 2.

3. The notice of motion shall—

- (a) specify the contempt of which the accused person is alleged to be guilty; and

Form of  
notice.  
H.C.R. O.  
XLIX. r. 3.

(b) be entitled in the proceeding, if any, with reference to which the contempt is alleged to have been committed, or, if it is not alleged to have been committed with reference to a particular proceeding, shall be entitled "The Queen against" the accused person, naming him, *ex parte* the applicant.

4. The notice of motion shall be served personally unless the Court or Justice otherwise orders.

Service.  
H.C.R. O.  
XLIX. r. 4.

5. Copies of the affidavits intended to be used upon the application to the Court shall be served with the notice of motion.

Copies of affidavits to be served.

6. When it is made to appear to a Justice that—

(a) a notice of motion for the committal of a person for contempt has been filed; and

Arrest of contemnor likely to abscond.  
H.C.R. O.  
XLIX. r. 5.

(b) the accused person is likely to abscond or otherwise withdraw himself from the jurisdiction of the Court,

the Justice may by his warrant direct that the accused person shall be arrested and detained in custody until he is brought before the Court to answer the charge, unless he, in the meantime, gives security, in such sum as the Justice directs, for his appearance in person to answer the charge and to submit to the judgment of the Court.

7. A bench or other warrant or precept which may be required for the arrest or detention of a person under these Rules, or for the purpose of giving effect to an order of committal, shall be addressed to the Marshal, and may be issued—

Form of warrant.

(a) where the arrest or detention is ordered or directed by the Court, under the hand of the presiding Justice; or

(b) in other cases, under the hand of the Justice.

8. The accused person in proceedings for committal shall not be put to answer interrogatories.

Abolition of interrogatories.  
R.S.C. O.  
LIX. r. 28.

9.—(1.) Upon the hearing of an application for committal, the Court may impose a fine instead of ordering the accused person to be committed to prison or may impose a fine in addition to ordering his committal.

Punishment.  
H.C.R. O.  
XLIX. r. 8.

(2.) When the Court imposes a fine, it may order that the accused person be imprisoned, or further imprisoned, until the fine is paid.

10. When the accused person is ordered to be committed to prison, the order of committal shall specify the prison to which he is to be committed.

Order of committal.  
H.C.R. O.  
XLIX. r. 9.

11. The Court may order the discharge of a person committed to prison for contempt notwithstanding that the time for which he was ordered to be committed has not expired.

Discharge.  
H.C.R. O.  
XLIX. r. 10.

12. The costs of an application for committal shall be in the discretion of the Court, whether an order for committal is made or not.

Costs.  
H.C.R. O.  
XLIX. r. 10.

## ORDER 57.

## OFFICERS, AND EXECUTION OF PROCESS.

1. The Marshal or a Deputy Marshal charged with the service or execution of a process shall serve or execute by himself or his officers any instrument issued from the Court which is addressed to him and shall make such return of the service or execution, as the case may be, as is required by the instrument.

Execution of  
process by  
Marshal, &c.  
H.C.R. O. LII.  
r. 1.

2. The return shall be made by filing the original process in the Registry from which the process was issued with a certificate, endorsed on or annexed to it, signed by the Marshal or Deputy Marshal and setting forth what has been done under the process.

Mode of  
making returns.  
H.C.R. O. LII.  
r. 2.

3. When a writ of summons or other process is delivered to the Marshal, Deputy Marshal or other officer appointed in that behalf for service upon a person, and the Marshal, Deputy Marshal or other officer is unable to find the person to be served, he shall, if so required by the party by whom the process was delivered to him, return the process into Court in the same manner as in the case of process of execution, with a certificate setting forth the inability.

Return of non  
est *inventus*.  
H.C.R. O. LII.  
r. 3.

## 4.—(1.) Where—

(a) notice from a person issuing a writ or obtaining an order for attachment or committal, or, if he is represented by a solicitor, from his solicitor, calls upon the Marshal or his Deputy to return the writ, to make his report or to bring in the body within a time specified in the notice; and

Notice to  
Marshal to  
return writ.  
R.S.C. O. LII.  
r. 11.  
H.C.R. O. LII.  
r. 4.

(b) the notice is not complied with,  
that person may apply for an order for attachment of the Marshal or Deputy.

(2.) The time to be specified in the notice shall not be less than seven days.

## 5. The Principal Registrar shall—

Rules of Court.

- (a) countersign all rules of Court made and promulgated by the Justices;
- (b) cause copies of rules of Court, certified by him, to be transmitted to the Attorney-General's Department and to be notified in the *Gazette*; and
- (c) keep the originals of rules of Court, and of all rules and Orders made before the commencement of these Rules, in safe custody.

6. A Registrar shall have the general supervision of the officers employed in the Registry of which he is Registrar, and shall, subject to these Rules and any law, distribute their duties from time to time in such manner as he thinks fit, but so that when an officer is appointed to discharge a special duty, that duty shall be discharged by that officer.

General  
authority of  
Registrar.

7.—(1.) A writ or commission may be signed for a Registrar, and a document may be received and filed, by an officer to whom such duties are assigned in a Registry.

Power of  
officers.

(2.) A judgment which is not actually settled by a Registrar may, in like manner, be signed for a Registrar by an officer to whom that duty is assigned.

8. A document in respect of which a fee is payable shall not be received, sealed or filed until the fee has been paid. Fees to be prepaid.

## ORDER 58.

## REGISTRIES.

1. A Registrar has, by virtue of his office, authority to take oaths, affirmations and affidavits for the purposes of the Court and proceedings in the Court. Taking of oaths and affidavits. R.S.C. O. LXI. r. 5.

2. That seal of the Court known as the Great Seal shall be affixed to— Use of Great Seal. H.C.R. O. LVII. r. 1.

- (a) rules of Court made by the Justices;
- (b) commissions issued by authority of the Court or a Justice, whether under the authority of an Act or of rules of Court;
- (c) exemplifications of proceedings in the Court;
- (d) writs of *certiorari*, *mandamus*, prohibition and *habeas corpus*;
- (e) documents issued from the Court for use outside the Commonwealth, not being writs or other documents for service on a party to a proceeding; and
- (f) such other documents as the Court or a Justice in any case directs.

3.—(1.) At every Registry there shall be kept a seal, called the Office Seal, which shall bear the words “High Court of Australia”, and also the word “Registry” with the word “Principal” prefixed in the case of the Principal Registry, and the name of the State or Territory prefixed in the case of a District Registry. Office Seal. H.C.R. O. LVII. r. 2.

(2.) The Office Seal shall be affixed to all writs, process, judgments and orders, and to all other documents which are authorized to be sealed, except as provided by the last preceding rule.

4.—(1.) Where a person desires to sue out a writ, process or commission authorized by law or by these or any other rules of Court, he may prepare it (in the prescribed form, if any) and present it to a Registrar for issue. Sealing writs, &c., receivable in evidence. H.C.R. O. LVII. r. 3.

(2.) If it appears that the writ, process or commission is in proper form and that the person presenting it for issue is entitled to sue it out, the Registrar or his clerk shall sign and seal it with the Office Seal.

(3.) If the writ, process or commission appears to a Registrar on its face to be an abuse of the process of the Court or a frivolous or vexatious proceeding, the Registrar shall seek the direction of a Justice who may direct him to issue it or to refuse to issue it without the leave of a Justice first had and obtained by the party seeking to issue it.

5. A copy, exemplification, certificate or other document appearing to be sealed with a seal of a Registry shall be presumed to be an office copy, exemplification, certificate or other document issued from that Registry, and, if it is duly stamped where a stamp is required, may be Sealed copies, &c., receivable in evidence. R.S.C. O. LXI. r. 7.

received in evidence, and no signature or other formalities, except the sealing with a seal of a Registry, shall be required for the authentication of that copy, exemplification, certificate or other document.

6. Upon every document which is filed in a Registry the date of filing it shall be noted.

Date upon documents filed.  
R.S.C. O. LXI.  
r. 16.  
Custody of papers.

7. Each Registrar shall have the custody of such of the records of the Court as are kept in the Registry of which he is Registrar and of the documents filed in that Registry or ordered to be deposited for safe custody, or impounded, in that Registry.

8.—(1.) Proper indexes or calendars to the files or bundles of documents filed in a Registry shall be kept so that they may be conveniently referred to when required.

Indexes to files to be kept.  
R.S.C. O. LXI.  
r. 17.

(2.) The indexes or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the prescribed fee.

9.—(1.) In each Registry a record of all documents filed and all steps taken in every proceeding in that Registry shall be kept, showing the dates of filing the documents and taking the steps so that all steps in the proceeding are shown consecutively and in chronological order.

Register of documents filed and steps taken.

(2.) The record shall, at all times during office hours, be accessible to the public on payment of the prescribed fee.

10. A document left at the office of a Registry to be filed shall be printed, typewritten or written on not less than half a sheet of foolscap paper, folded lengthwise.

Foolscap to be used and folded lengthwise.

11. Each judgment, order, certificate, petition, affidavit or document made, presented, filed or used in a proceeding shall be distinguished by having plainly written or stamped on its first page the year and the number, if any, by which the proceeding is distinguished in the books kept at the Registry in which the proceeding is or was pending.

Reference on judgment, &c. to record.  
R.S.C. O. LXI.  
r. 19.

12. The date of every judgment, order and certificate made in every proceeding shall be entered in the appropriate books in the Registry in which the proceeding is or was pending.

Dates of judgments, &c., to be entered in appropriate books.  
R.S.C. O. LXI.  
r. 20.

13. A certificate of a Registrar made in pursuance of a judgment or order shall be filed in the Registry in which the judgment or order is entered.

Certificates to be filed.

14.—(1.) Except for the purpose of transmission between Registries under the *High Court Procedure Act 1903-1950*, a document shall not be taken out of a Registry without the permission of the Court or a Justice.

Production of records.  
R.S.C. O. LXI.  
r. 28.

(2.) A *subpoena* for the production of a document in a Registry shall not be issued.

15. Where an officer of a Registry is required to attend with a record or document at a sittings or at a court or place other than in or at the building where the Registry of which he is an officer is situated, he may

Fees of officer required to attend away from Registry.  
R.S.C. O. LXI.  
r. 29.

require that the solicitor or party desiring his attendance shall—

- (a) deposit with him a sufficient sum of money to answer his just fees, charges and expenses in respect of his attendance; and
- (b) undertake to pay any further just fees, charges and expenses which may not be fully answered by the deposit.

16. The Court or a Justice may, upon application, order that—

- (a) an affidavit or other document filed in a Registry which contains scandalous matter shall be taken off the file; and
- (b) the costs of the application be paid by the party by whom the affidavit or document was filed, or by his solicitor.

17. A party may apply to the Court or a Justice *ex parte* in a summary way for a direction to a Registrar to do an act—

- (a) which he is bound or entitled to do;
- (b) which the party applying requires him to do; and
- (c) which he refuses to do.

18. Any officer of the Court shall attend a sitting of a Full Court or a sitting of a Justice in Court on any occasion when he is required by the Court or the Justice to do so.

## ORDER 59.

### SITTINGS AND VACATIONS.

1.—(1.) Sittings of a Full Court shall be held in each year at such places and on such days as are appointed by rule of Court for that year.

(2.) Sittings of a Full Court may also be held at such places and on such days as may be specially appointed by the Chief Justice, or, if the office of Chief Justice is vacant or the Chief Justice is absent from the Commonwealth or is on leave or unable to perform the duties of his office, by the senior Justice.

2. Sittings of single Justices in Court or in Chambers shall be held at such places and on such days as are appointed by rule of Court, and may also be held at such places and on such days as a Justice thinks fit to sit in Court or in Chambers.

3. If the day appointed for the commencement of a sitting is a day on which the Registry of the Court at the place where the sitting is proposed to be held is closed in accordance with rule 5 of this Order, the sitting shall commence upon the next day on which that Registry is open.

4.—(1.) There shall be two vacations in each year, namely, the Long Vacation of eight weeks beginning on a day in December to be appointed annually by the Justices or a majority of them, and the Winter Vacation of four weeks beginning on a day in June or July to be appointed annually in like manner.

(2.) The days of the commencement and termination of each sitting and vacation shall be included in the sitting and vacation respectively.

5.—(1.) Subject to the next succeeding sub-rule, each Registry of the Court shall be open during office hours on every day in the year except—

Holidays.  
Of. H.C.R. O.  
LVI. r. 4.  
R.S.C. O.  
LXIII. r. 6.

- (a) Saturdays, Sundays, New Year's Day, Good Friday, Easter Monday, Easter Tuesday, Christmas Day, and the days between Christmas Day and New Year's Day inclusive;
- (b) the day observed as a general public or bank holiday for the birthday of the Sovereign in the place where each Registry is situated respectively;
- (c) every day observed as a holiday in the Commonwealth Public Service, or duly appointed as a general public or bank holiday in the State or Territory where each Registry is situated respectively and observed by the Supreme Court of that State or Territory as a Court holiday; and
- (d) such other days as may be appointed from time to time by the Chief Justice.

(2.) The Chief Justice may direct that a Registry shall be open upon any day.

6.—(1.) The office hours in each Registry (other than the District Registry in the Australian Capital Territory) shall be from nine o'clock in the forenoon until one o'clock in the afternoon, and from two o'clock in the afternoon until four o'clock in the afternoon, except in the vacations when they shall be from nine o'clock in the forenoon until one o'clock in the afternoon.

Office hours.  
H.C.R. O. LVI.  
r. 5.

(2.) In the District Registry in the Australian Capital Territory the office hours shall be from ten o'clock in the forenoon until twelve o'clock noon, and from half-past one o'clock in the afternoon until four o'clock in the afternoon, except in the vacations, when they shall be from ten o'clock in the forenoon until twelve o'clock noon.

## ORDER 60.

### TIME.

1. Where by these Rules, or by a judgment or order, the time for doing an act is limited by months, and where the word "month" occurs in a document which is part of any legal procedure under these Rules, the time shall be computed by calendar months, unless otherwise expressed.

"Month"  
means calendar  
month.  
R.S.C. O. LXIV.  
r. 1.

2. Where a limited time less than six days from or after a date or an event is appointed or allowed for doing an act, Sunday, Christmas Day, Good Friday, and any other day on which the Registry of the Court is not open in the State or Territory where the act is to be done, shall not be reckoned in the computation of that limited time.

Exclusion of  
Sundays, &c.  
R.S.C. O. LXIV.  
r. 2.

3.—(1.) Where—

- (a) the last day prescribed or allowed by these Rules, or by a judgment or order of the Court or a Justice, for doing an act or filing a document expires on a Saturday or Sunday or other day on which the Registry is not open in the State or Territory where the act is to be or may be done or the document is to be or may be filed; and

Time expiring  
on Sunday or  
close day.  
R.S.C. O. LXIV.  
r. 3.  
Acts  
Interpretation  
Act 1961-1950,  
s. 36 (2.).

(b) by reason of the Registry not being so open the act cannot be done or the document cannot be filed on that day, the act shall, so far as regards the time of doing it, be held to be duly done, and the document shall in like manner be held to be duly filed, if done or filed, as the case may be, on the day on which that Registry is next open.

(2.) When the time for entering an appearance expires on a day between the twenty-fourth day of December and the first day of January, both inclusive, that time shall extend up to and include the tenth day of January.

4.—(1.) Subject to this rule and the succeeding rules of this Order, in vacation ordinary proceedings shall not be taken or carried on in the Court, and time shall not run for the return of a process or doing an act, unless otherwise ordered by the Court or a Justice. Taking of proceedings in vacation. R.S.C.O. LXIV. r. 4.

(2.) Pleadings shall not be amended, delivered or filed during the Long Vacation except by direction of the Court or a Justice.

(3.) This rule does not apply to—

- (a) proceedings in Admiralty or actions within Order 13;
- (b) the issue of an originating process;
- (c) the entry of appearance to a writ of summons or other originating process to which entry of appearance is required;
- (d) the entry of judgment in default of appearance to a writ of summons;
- (e) the entry of judgment pursuant to an order;
- (f) an application under Order 13 or Order 14;
- (g) a rule *nisi* or order to show cause or a summons for obtaining a writ of *capias ne exeat*, execution, *habeas corpus*, prohibition, *mandamus*, *certiorari*, sequestration or other writ or process of a like nature;
- (h) an application for and the granting of an injunction, rendered necessary by the exigency of a particular case;
- (i) the making of an order by consent;
- (j) entering an order;
- (k) obtaining and entering an order upon default of pleading;
- (l) issuing and effecting execution; and
- (m) the filing and serving of a notice of appeal under Order 65 or Order 70.

5. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which the security is given, shall not be reckoned in the computation of time allowed to a party, other than the party ordered to give the security, to plead, answer interrogatories or take any other step. When time for giving security for costs not to be reckoned. R.S.C.O. LXIV. r. 6.

6.—(1.) A Court or Justice may enlarge or abridge the time appointed by these Rules or fixed by an order of the Court or a Justice for doing an act upon such terms, if any, as the justice of the case requires. Power of Court or Justice to enlarge or abridge time. R.S.C.O. LXIV. r. 7.

(2.) An enlargement of time may be ordered although the application for it is not made until after the expiration of the time appointed or fixed.

(3.) When the time for delivering a pleading or document, for filing an affidavit, answer or document or for doing an act is or has been fixed or limited by these Rules, or by a direction on or under a summons for directions or by an order of the Court or a Justice, the costs of an application to extend that time, and of an order on the application, shall be borne by the party making the application, unless the Court or a Justice otherwise orders.

7. The time for delivering, amending or filing a pleading, answer or other document may be enlarged by consent in writing without application to the Court or a Justice.

Enlargement of time by consent.  
R.S.C. O. LXIV.  
r. 8.

8.—(1.) In an Admiralty action, the Court or a Justice may at any stage, upon a motion or summons by a party for the trial to take place on an early day to be appointed by the Court or a Justice, appoint that the trial shall take place on such day, or within such time, as the Court or Justice thinks fit.

Appointment of early day for trial in Admiralty actions.  
R.S.C. O. LXIV.  
r. 9.

(2.) For that purpose the Court or Justice may, upon the motion or summons, dispense with the giving of notice of trial or abridge the time or times appointed by these Rules for giving the notice, for the delivery of pleadings, or for doing any other act, upon such terms as are just.

9.—(1.) Service of pleadings, notices, summonses, orders, rules and other documents, other than a warrant, shall not be made on Sunday, Christmas Day or Good Friday.

No service on Sunday, &c., and time of day of service.  
Cf. R.S.C. O. LXVII. r. 12.  
H.C.R. O. LV.  
r. 8.

(2.) Service of pleadings, notices, summonses, orders, rules and other documents effected after four o'clock in the afternoon on a weekday, other than Friday or Saturday, shall, for the purpose of computing a period of time subsequent to the service, be deemed to have been effected on the day following the day of service.

(3.) Service effected after four o'clock in the afternoon on Friday, and service effected on Saturday, shall be deemed to have been effected on the day on which the Registry in the State or Territory where the service is effected is next open.

10. Where a period of time dating from or after a given day, act or event is prescribed or allowed by these Rules, or by a judgment or order of the Court or a Justice, for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of that day or of the day of that act or event.

Reckoning of time.  
Cf. *Acts Interpretation Act 1901-1950*, s. 36 (1.).

11.—(1.) Where a particular number of days, not expressed to be clear days, is prescribed by these Rules, they shall be reckoned exclusive of the first day and inclusive of the last day.

Number of days, how computed.  
R.S.C. O. LXIV.  
r. 12.

(2.) Whenever the expression "clear days" is used in these Rules, the days shall be reckoned exclusive of the first and last day and of any day on which the Registry of the Court in the State or Territory in which the act is to be done is not open.

12.—(1.) In a proceeding in which a step has not been taken for one year, the party who desires to proceed shall give one month's notice to every other party of his intention to proceed.

(2.) When six years have elapsed from the time when the last step in a proceeding was taken, a fresh step shall not be taken without an order of the Court or a Justice, which may be made either *ex parte* or upon notice.

(3.) For the purposes of this rule—

- (a) a summons on which an order has not been made shall not be deemed a step taken; and
- (b) notice of trial, although avoided by non-entry or countermanded, shall be deemed a step taken.

13. An application to set aside or remit an award may be made at any time within six weeks after the award has been made and published to the parties.

#### ORDERS 60, 61.

Delays of one year and six years in taking steps.  
H.C.R. O. LIII.  
r. 8.

Time for applications to set aside awards.  
R.S.C. O. LXIV.  
r. 14.

#### ORDER 61.

##### NOTICES, PRINTING, PAPER, COPIES, ETC.

1. In this Order, unless the contrary intention appears, "print" and derivatives of that word include any form of reproduction which complies with the next succeeding rule.

Definition.

2. Where by any provision of these Rules a document is required or allowed to be printed, that document may be either printed or reproduced, subject to the provisions of rule 4 of this Order, by roneograph or some other multigraphing process which gives uniform *facsimile* pages of clear, sharp and legible type.

Regulations for printing.

3. A notice or consent required or allowed by these Rules shall be written, typewritten or printed unless expressly authorized by the Court or a Justice to be given orally.

Notices to be in writing.  
R.S.C. O. LXVI.  
r. 1.

4.—(1.) Subject to the preceding rules of this Order, a writ, summons, petition, notice, consent, pleading, affidavit, deposition, certificate, judgment, order, account, bill of costs, copy, paper or other document required or allowed by these Rules, or delivered to a party or person, or filed or left in a Registry or at Chambers or with an officer of the Court, or otherwise, for use in or in connexion with a proceeding, shall, unless the nature of the document renders it in any respect impracticable—

Requirements as to documents.  
Cf. H.C.R. O. LVII. r. 12.  
R.S.C. O. LXVI rr. 2 and 3 (b.).

- (a) be legibly and clearly written, typewritten or printed, without blotting, erasure or such alteration as to cause material disfigurement;
- (b) have a space of not less than a quarter of an inch between each line;
- (c) be upon folio foolscap paper of good and durable quality and capable of receiving ink writing;
- (d) be upon one side only of the paper with a quarter margin upon the left hand side of each sheet;
- (e) be folded lengthwise;

- (f) have each page, and every tenth line on each page, numbered in the margin; and
- (g) have a backsheet upon which appears the number, if any, and title of the proceeding, a short description of the document and the name and address of the solicitor, if any, delivering, filing, leaving or using the document.

(2.) The Registrar may refuse to file or accept a document to which the last preceding sub-rule applies if it does not comply with the provisions of that sub-rule, and the costs of the document may be disallowed upon taxation.

(3.) A written or typewritten copy of a document to which sub-rule (1.) of this rule applies shall not be filed, registered or marked as an office copy unless it is a first black ink copy.

5.—(1.) When five or more copies of a document which contains more than ten folios are required for use in proceedings in the Court, or where all parties consent, copies of the document may be printed or typewritten, but, if the Court or a Justice so directs, they shall be printed and not typewritten. Where copies to be printed or typewritten.

(2.) Where five or more copies of a document which contains more than ten folios are required for use in any proceeding in the Court, and the copies have not been printed, the taxing officer may disallow the whole or a part of any sum by which the cost of the copies exceeds the sum for which they could have been printed.

6. An affidavit may be sworn to either wholly or partly in, or in any combination of, print, typewriting or writing. Affidavits. R.S.C. O. LXVI r. 4.

7. Where a written deposition of a witness has been filed, the deposition shall be printed or typewritten unless otherwise ordered. Deposition for use at trial. R.S.C. O. LXVI r. 5.

8. The provisions of these Rules as to printing or typewriting depositions and affidavits to be used on a hearing or trial do not apply to a deposition or affidavit which has previously been used upon a proceeding without having been printed or typewritten. When depositions and affidavits previously used without being printed or typewritten. R.S.C. O. LXVI r. 6.

9.—(1.) Where a copy or copies of a document to which rule 4 of this Order applies is or are required by a party, the party on whose behalf the document has been delivered, filed, left or used shall furnish to the party requiring the copy or copies any number of printed or typewritten copies, not exceeding ten, upon payment at the rate of six pence per folio for each copy. Copies furnished to other parties. Cf. R.S.C. O. LXVI r. 7.

(2.) As between a solicitor delivering the printed or typewritten copies and his client, credit shall be given by the solicitor for the whole amount payable by the other party for those copies.

(3.) A party entitled to be furnished with a printed or typewritten copy or copies shall not be allowed any charge in respect of a written copy, unless the Court or a Justice otherwise directs.

(4.) The party requiring a copy or copies of a document under this rule, or his solicitor, shall make a written application to the party by whom the copy or copies is or are to be furnished, or to his solicitor, with an undertaking to pay the proper charges, and thereupon the copy or copies shall be made and be ready to be delivered, as soon as reasonably practicable, upon payment of the proper charges.

75.) If the copy or copies is or are not delivered within seventy-two hours of the application, the party requiring it or them may apply to a Justice, who may make such order as he thinks proper.

(6.) The name and address of the party or solicitor by whom a copy is furnished shall be endorsed on the copy in like manner as upon a document in proceedings in the Court, and the party or solicitor shall be answerable for the copy 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.

10.—(1.) Where upon an *ex parte* application an order is made against or affecting the rights of a person, that person may obtain a copy of the affidavits filed by the applicant in support of his application in the manner provided by the last preceding rule. Copies of affidavits on *ex parte* applications. Cf. R.S.C. O. LXVI. r. 7 (j).

(2.) The party who made the application shall furnish the copies upon payment of the proper charges immediately upon the receipt of the written request and undertaking mentioned in the last preceding rule, or within such time as may be specified in the request or may be directed by the Court or a Justice.

11. In Admiralty actions, a record of all actions commenced and appearances entered, of all instruments and documents issued or filed, of all acts done, and of all judgments and orders made in the action, whether made by the Court or a Justice or by consent of the parties, shall be entered, in order of date under the head of each Admiralty action, and on a page numbered with the number of the action, in a book to be kept in each Registry called the Admiralty Minute Book. Minute book in Admiralty actions. H.C.R. O. XLIIA. r. 82. R.S.C. O. LXVI. r. 8.

## ORDER 62.

### SERVICE.

#### *I.—Service of Orders, &c.*

1.—(1.) Except in the case of an order for attachment, it is not necessary to the regular service of a judgment or order that the original judgment or order be shown if an office copy of it is exhibited. Showing original order on service. R.S.C. O. LXVII. r. 1. H.C.R. O. LV. r. 3.

(2.) When it is intended to enforce obedience to a judgment or order by process of attachment, the judgment or order shall be served personally upon the person against whom the process is to be sought.

2. Except where otherwise required by or pursuant to these Rules, personal service of a judgment or order, or of notice of a judgment or order, is not necessary. Where personal service required. H.C.R. O. LV. r. 3.

3.—(1.) A writ, notice, pleading, order, summons, warrant or other document, in respect of which personal service is not required by these Rules or otherwise, may be served by being left at the address for service of the person to be served with a person apparently above the age of sixteen years resident at or belonging to that place, or by posting in a pre-paid registered envelope properly addressed to the person to be served at his address for service. Mode and time of service where not personal. R.S.C. O. LXVII. r. 2.

(2.) Where service under this rule is made by registered post, the time at which the document so posted would be delivered in the ordinary course of post shall be deemed to be the time of service of the document.

## ORDER 62.

4.—(1.) A notice sent from a Registry may be sent by post.  
 (2.) The time at which the notice so posted would be delivered in the ordinary course of post shall be deemed to be the time of service of the notice.  
 (3.) The posting of the notice is a sufficient service.

Service of  
notice from  
Registry.  
R.S.C. O.  
LXVII. r. 3.

5.—(1.) Where—

- (a) an appearance has not been entered for a party;
- (b) a party or his solicitor, as the case may be, has not given an address for service as required by these Rules;
- (c) a plaintiff sues in person and a person cannot be found at the address for service given by him; or
- (d) a solicitor who has acted for a party in a proceeding has ceased so to act and the party has not given a fresh address for service,

Service where  
no appearance  
or no address  
for service.  
R.S.C. O.  
LXVII. r. 4.  
H.C.R. O. LV.  
r. 6.

a writ, notice, pleading, order, summons, warrant or other document, in respect of which personal service is not required by these Rules or otherwise, may be served by filing it with the proper officer of the Court.

(2.) A document so filed shall—

- (a) bear an endorsement on the outside in the following words:—  
“Filed in default of appearance” (or as the case may be); and
- (b) be posted up, and remain posted up for fourteen days, in the Registry in which it is filed.

6. Where personal service of a writ, notice, pleading, order, summons, warrant or other document 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.

Manner of  
personal  
service.  
R.S.C. O.  
LXVII. r. 5.

7.—(1.) Where personal service of a writ, notice, pleading, summons, order, warrant or other document is required by these Rules or otherwise, and it is made to appear to the Court or a Justice that prompt personal service cannot be effected, the Court or Justice may make such order for substituted or other service, or for the substitution for service of notice by telegram, letter, public advertisement or otherwise, as is thought proper.

Substituted  
service.  
R.S.C. O.  
LXVII. r. 6.  
H.C.R. O. LV.  
r. 2.

(2.) Service effected in accordance with an order for substituted service has the same operation as personal service.

8. When a person who is not a party appears in a proceeding either before the Court or in Chambers, service in the place where the Registry in which the proceeding is pending is situate upon the solicitor, if any, by whom the person appears, whether the solicitor acts as principal or agent, shall be deemed good service except in matters requiring personal service.

Service upon  
solicitor of  
person not a  
party.  
R.S.C. O.  
LXVII. r. 8.

9. An affidavit of service shall state when, where, how and by whom the service was effected, and, in the case of a writ of summons or other originating process, the date on which the endorsement required by Order 9, rule 15, was made.

Affidavits of  
service.  
R.S.C. O.  
LXVII. r. 9.

*II.—Admiralty Actions.*

10. An instrument requiring to be served shall be served within twelve months from the day on which it bears date, otherwise the service of the instrument is not valid.

Service of  
instrument.  
R.S.C. O.  
LXVII. r. 11.

11. A warrant or other instrument required to be served or executed by the Marshal or Deputy Marshal shall be left by the party taking it out in the Registry with written instructions for its service or execution.

Service of  
warrants, &c.,  
by Marshal.  
R.S.C. O.  
LXVII. r. 13.

12.—(1.) The service or execution of an instrument by the Marshal or Deputy Marshal, or any other officer charged with the service or execution of process, shall be verified by his certificate.

Verification  
of service.  
R.S.C. O.  
LXVII. r. 14.

(2.) The certificate shall state by whom the instrument has been served or executed and the date and mode of service or execution, and shall be signed by the Marshal, Deputy Marshal or that other officer, as the case may be.

(3.) The service of an instrument by a solicitor, or by his clerk or agent, or by any other person, shall be verified by an affidavit.

## ORDER 63.

## STAYING PROCEEDINGS.

1. The Court or a Justice may, at any time after the institution of a proceeding, direct a stay of proceedings, either as to the whole or part of the proceeding or as to any proceedings under a judgment or order given or made in the proceeding.

General  
authority  
to stay.  
H.C.R. O.  
XLIV. r. 1.

2. An application to stay proceedings on the ground that there is not a reasonable or probable cause of action or suit, or that the proceeding is vexatious and oppressive or is an abuse of the process of the Court, may be made at any time and whether the plaintiff does or does not admit the allegations of fact, if any, on which the application is founded.

Stay of  
proceedings  
on ground of  
abuse of  
process.  
H.C.R. O.  
XLIV. r. 2.

3. The Court or a Justice may stay a proceeding which has been improperly instituted in the name of a person by a next friend.

Stay of  
proceedings  
instituted by  
next friend.  
H.C.R. O.  
XLIV. r. 3.

4. When, at the trial of an action before a Justice with a jury, a juror is withdrawn with the consent of the parties, the withdrawal has the effect of an order by consent for the staying of the proceeding, except so far as the Court or Justice at the time of the withdrawal, and with the consent of the parties, otherwise orders.

Withdrawing  
juror.  
H.C.R. O.  
XLIV. r. 4.

5. When an action is discontinued or dismissed for want of prosecution and, before payment of the costs, a subsequent action is brought for the same, or substantially the same, cause of action, the Court or a Justice may order that proceedings in the subsequent action shall be stayed until the costs have been paid.

Staying action  
until costs paid.  
H.C.R. O.  
XLIV. r. 5.

6.—(1.) Upon the application of a Law Officer, or the Crown Solicitor, of the Commonwealth or of the Principal Registrar of the Court, the Court or a Justice, if satisfied that a person, or another person in concert with that person, frequently and without reasonable ground has instituted vexatious legal proceedings, may, after hearing that person or that other person or giving him an opportunity of being heard, order that legal proceedings shall not, without the leave of the Court or a Justice, be instituted by that person or that other person in the Court.

Vexatious  
proceedings.  
H.C.R. O.  
XLIVa.

(2.) Leave shall not be given under this rule unless the Court or a Justice is satisfied that the proceedings are not an abuse of the process of the Court and that there is *prima facie* ground for the proceedings.

#### ORDER 64.

##### EFFECT OF NON-COMPLIANCE.

1.—(1.) Subject to the next succeeding sub-rule, non-compliance with these Rules or with a rule of practice for the time being in force, does not render any proceedings void unless the Court or a Justice so directs.

Non-compliance  
with Rules not  
to render  
proceedings  
void.  
R.S.C. O. LXX.  
r. 1.

(2.) The proceedings may be set aside, either wholly or in part, as irregular, or may be amended or otherwise dealt with in such manner and upon such terms as the Court or Justice thinks fit.

2. The Court or a Justice may at any time, upon such terms as are just, relieve a party from the consequences of non-compliance with these Rules or with a rule of practice for the time being in force.

Court may  
relieve from  
consequences  
of non-  
compliance.

3. An application to set aside proceedings for irregularity shall not be allowed—  
(a) unless the application is made within reasonable time; or  
(b) if the party applying has taken a fresh step after knowledge of the irregularity.

Application to  
set aside for  
irregularity,  
when allowed.  
R.S.C. O. LXX.  
r. 2.

4. Where an application is made to set aside proceedings for irregularity, the several objections intended to be relied upon shall be stated in the summons or notice of motion.

Objections of  
irregularity.  
R.S.C. O. LXX.  
r. 3.

5. The several forms in the First Schedule may, and, in a case in which it is so required by these Rules, shall, be used for the several purposes to which they are respectively applicable, with such variations as the circumstances require.

Forms.  
H.C.R. O. LVII.  
r. 13.

#### ORDER 65.

##### TAXATION APPEALS.

##### I.—General.

1. This Order applies to an appeal to the High Court or to the Supreme Court of a State or Territory under or pursuant to a law of the Commonwealth or of a Territory dealing with the assessment of taxation and to questions referred under such a law to the High Court.

Application of  
Order.

2. Subject to this Order and to any law of the Commonwealth, the provisions of the other Orders of these Rules apply, so far as is practicable, to proceedings to which the last preceding rule applies.

Application  
of other Orders.

## ORDER 65.

3. Order 70 applies to the bringing of an appeal to the High Court from a decision of a Justice of the High Court or of the Supreme Court of a State or Territory in relation to proceedings to which rule 1 of this Order applies.

Appeals from  
Supreme Court  
or Justice.

4. An appeal to which this Order applies shall, subject to section 18 of the *Judiciary Act* 1904-1950, be heard before a single Justice or Judge and shall be by way of original hearing.

Hearing by  
single Justice  
or Judge :  
stating case.  
H.C.R. O. LIA.  
rr. 13 and 20.

5.—(1.) If an appellant does not, within two months after the expiration of the period within which, under this Order, he is required to set down an appeal for hearing, set it down for hearing, another party to the appeal may apply to the court in which the appeal is pending, by motion upon notice, for an order dismissing the appeal for want of prosecution.

Default of  
appellant in  
setting down.

(2.) The court may order the appeal to be dismissed accordingly, or may make such other order, and upon such terms, as the court deems just.

6. Personal service is not required of a document required under this Order to be served on any person.

Personal service  
not necessary.

## II.—*Appeals from Disallowance of Objections.*

7. When a person has been requested under an Act to forward or refer an objection with respect to taxation to a court, he shall—

Notice of  
forwarding or  
reference of  
objection.

- (a) forward or refer the notice of the objection to that court within the time prescribed by law, or, if no time has been so prescribed, then within thirty days after the date of the receipt by him of the request, or within such further time as is agreed between him and the appellant; and
- (b) within seven days after the date on which he has forwarded or referred the notice of objection, give to the person who made the request notice in writing that the objection has been forwarded or referred.

H.C.R. O.  
LIA. r. 3.

8.—(1.) The person forwarding or referring the objection to the court shall also forward, together with the notice of objection, to the proper officer of the court—

Documents to  
be forwarded.  
H.C.R. O. LIA.  
r. 7.

- (a) the assessment in respect of which the objection was made (including any amendment of the assessment);
- (b) the notice of the disallowance of the objection;
- (c) the request for the forwarding or reference of the objection to the court; and
- (d) any other documents in his possession or power which are necessary for the hearing of the appeal.

(2.) If a dispute arises concerning the documents to be forwarded or as to their genuineness or the correctness of a copy of the documents, a Justice or Judge of the court to which the appeal is brought may, upon application made by a party to the appeal by summons in Chambers, make such order as he thinks fit with respect to the dispute.

9.—(1.) The appellant shall, within fourteen days after the receipt by him of notice that his objection has been forwarded or referred, set down the appeal for hearing at the next available sittings of the court to which the objection has been forwarded or referred appointed for the hearing of such appeals.

Setting down  
appeal.  
H.C.R. O. LIA.  
rr. 2 and 6.

(2.) The appellant shall give to the person who has forwarded or referred the objection notice of the setting down at least fourteen days before the day for which the appeal has been set down.

10. Where an appellant has a right to request that an objection be forwarded or referred to a court after the decision of a Board with respect to a matter comprised in the objection, the time for making the request, if there is no statutory limitation of time, shall be within thirty days after the decision of the Board.

Forwarding or reference of objection after decision of Board.

### III.—*Appeals from Boards.*

11. An appeal to the High Court from a decision of a Board shall be instituted by a Notice of Appeal.

Mode of institution.  
H.C.R. O. LIA.  
rr. 10 and 17.

12.—(1.) The Notice of Appeal shall—

- (a) be signed by the appellant or by his solicitor;
- (b) be entitled "In the High Court of Australia" and as of the Registry in which it is filed; and
- (c) shall state—

Contents of Notice of Appeal and amendment.  
H.C.R. O. LIA.  
rr. 12 and 19.

- (i) the decision of the Board from which the appeal is brought;
- (ii) whether the appeal is from the whole or part only, and if so what part, of the decision;
- (iii) the question or questions of law involved in the decision; and
- (iv) concisely the grounds of the appeal.

(2.) On the hearing of the appeal, the appellant shall be limited to the grounds stated in the Notice of Appeal unless the Court allows an amendment of the Notice of Appeal.

(3.) The Notice of Appeal may be amended by leave of the Court at the hearing upon such terms as the Court thinks fit.

13.—(1.) Within thirty days after the Board's decision the party desiring to appeal from the decision shall—

- (a) file the Notice of Appeal in the Registry at the place where it is desired that the appeal be heard;
- (b) serve a copy of the Notice of Appeal upon the opposite party; and
- (c) serve a copy of the Notice of Appeal upon the chairman or other proper officer of the Board from the decision of which the appeal is brought.

Filing and service of Notice of Appeal.  
H.C.R. O. LIA.  
rr. 11 and 18.

(2.) Service of a copy of a Notice of Appeal under this rule may be effected by sending the copy in a prepaid letter through the post properly addressed to the person to be served at his usual or last known place of residence or business, or, in the case of a chairman or other proper officer of a Board, at his proper office.

(3.) A copy of a Notice of Appeal served by post under the last preceding sub-rule shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post.

14.—(1.) Within fourteen days from the service of the copy of a Notice of Appeal upon the chairman or other proper officer of the Board from the decision of which the appeal is brought, the chairman of the Board shall cause to be forwarded to the Registry in which the appeal is pending—

- (a) a copy of its assessment, determination or decision;
- (b) a copy of any statement made by the members of the Board of their findings of fact and their reasons in law for their decision;
- (c) a copy of the assessment or notices of assessment (including any amendment of the assessment or notices) the subject matter of the proceedings before the Board;
- (d) a copy of any notice of objection, so far as relevant;
- (e) a copy of any decision upon the objection;
- (f) a copy of any request for the forwarding or reference of the objection or decision to the Board;
- (g) a copy of the document forwarding or referring the objection or decision to the Board; and
- (h) a copy of any other document necessary for hearing the appeal which is in the possession or power of the Board.

(2.) If a dispute arises concerning a document forwarded, or to be forwarded, under the last preceding sub-rule, or as to the genuineness of such a document or the correctness of a copy, a Justice may, upon application made by a party to the appeal by summons in Chambers, make such order as he thinks fit with respect to the dispute.

(3.) Not later than the expiration of seven clear days after the date on which any documents have been forwarded under this rule to the Registry in which the appeal is pending, the person who forwarded the documents shall cause to be served upon every party to the appeal a notice of the date on which the documents were forwarded.

15.—(1.) The appeal shall be set down by the appellant for hearing at the first sittings of the Court at the place where the Registry in which the appeal is pending is situate occurring after the expiration of twenty-eight days from the filing of the Notice of Appeal.

(2.) The appellant shall give the respondent fourteen days' notice of the date of the sittings for which the appeal has been set down to be heard.

#### IV.—References of Questions.

16.—(1.) A question referred to or a case stated for the Court under a law referred to in rule 1 of this Order shall be referred and stated in like manner and form as is provided by Order 35 and, so far as the provisions of that Order are applicable, and subject to sub-rule (2.) of this rule, is subject to those provisions—

- (a) as if the reference of the question or the statement of the case were a special case within that Order; and
- (b) where the question is referred by a Board, as if the parties to the proceeding in which the reference is made had concurred in stating the question for the opinion of the High Court.

Materials to be forwarded to Court.  
H.C.R. O. LIA.  
rr. 14 and 21.

Setting down for hearing.  
H.C.R. O. LIA.  
rr. 14 and 23  
and rr. 2 and 6.

Questions referred and cases stated.

(2.) Where the proceeding in which the question is referred or the case is stated was not at the time of the reference or statement pending in the High Court, the special case referring the question or stating the case shall be filed by the party having the carriage of the proceeding in the Registry of the High Court situate in the State or Territory in which the proceeding was theretofore being had, or, if there is no Registry in that State or Territory, then in the Principal Registry.

17.—(1.) The party having the carriage of the proceeding shall cause to be prepared and bound in a transcript (in like manner and form as is required in the case of transcripts under Order 70)—

Preparation of transcript.

- (a) a copy of the special case prepared in accordance with the provisions of Order 35;
- (b) copies of the documents stated in the case; and
- (c) an index to the transcript.

(2.) The transcript shall be settled by the Registrar of the Registry in which the special case is filed under the last preceding rule.

(3.) For the purposes of the preparation and settlement of the transcript, the party having the carriage of the proceedings shall be given access to the documents referred to in sub-rule (1.) of this rule.

18.—(1.) The special case shall be prepared and filed within such time as is fixed by the court or Board by which the question is referred or the case stated.

Time for filing case and preparation of transcripts.

(2.) The transcript shall be prepared under the last preceding rule forthwith after the special case has been filed.

19.—(1.) The special case shall, in accordance with Order 35, be entered for argument by the party having the carriage of the proceedings at the first sittings of the Court, at the place where the Registry in which the special case was filed is situate, occurring after the expiration of twenty-eight days from the filing of the special case.

Entry for argument.

(2.) The party entering the special case for argument shall give the other parties fourteen days' notice of the date of the sittings for which the case has been entered.

20. Rule 5 of this Order applies, *mutatis mutandis*, in the case of failure to file the special case, or to enter the special case for argument, as required by the preceding rules of this Order.

Default in entry for argument.

## ORDER 66.

### INDUSTRIAL PROPERTY.

#### I.—General.

1. In this Order, unless the contrary intention appears—

Definitions.

“a law relating to industrial property” means a law of the Commonwealth or of a Territory relating to Patents, Trade Marks, Designs or Copyrights;

*Omit these initials*

*Solitor* "Law Officer" means the Attorney-General or the ~~Solicitor~~ *General* of the Commonwealth, but not of a State;

"Registrar" means the Registrar of Trade Marks, the Registrar of Designs or the Registrar of Copyrights, as the case requires;

"the Commissioner" means the Commissioner of Patents.

ORDER 66.

2. This Order applies to all proceedings in the Court under a law relating to industrial property. Application of Order.

3. Subject to this Order and to any law of the Commonwealth, the provisions of the other Orders of these Rules apply, so far as is practicable, to proceedings to which the last preceding rule applies. Application of other Orders.

4.—(1.) Unless otherwise required or authorized by any law, an application or appeal to the Court under a law relating to industrial property shall be made by motion on notice. Appeals and applications. R.S.C. O. LIII. rr. 1 and 2. H.C.R. O. L. r. 1.

(2.) In the case of an appeal, the notice shall state—

(a) whether the appeal is from the whole or part only of a decision, and, if so, what part; and

(b) the grounds of the appeal.

(3.) Grounds other than those so stated shall not, except with the leave of the Court, be given on such terms and conditions as are just, be allowed to be relied upon by the appellant at the hearing.

5.—(1.) Notice of an application or appeal to the Court under or pursuant to a law relating to industrial property shall be given forthwith after the notice of motion or other document by which the application or appeal is brought before the Court has been filed— Notice to Commissioner or Registrar and persons affected, and service of affidavits. H.C.R. O. L. rr. 9 and 10.

(a) to the Commissioner or appropriate Registrar; and

(b) to persons directly affected by the application or appeal.

(2.) The notice shall be given by serving or delivering the notice of motion or other document, or a copy of the notice of motion or other document, upon or to the person to whom notice is to be given.

(3.) The service or delivery shall be effected not less than twenty-one clear days before the day on which the application or appeal is to come before the Court for hearing.

(4.) A copy of an affidavit intended to be used by a person upon the hearing of the application or appeal shall be served or delivered by him upon or to every other party to the application or appeal, and to each person to whom notice of the application or appeal has been given.

(5.) Service or delivery of an affidavit under the last preceding sub-rule shall be effected within seven days of the date on which the affidavit was filed in the Registry in which the application or appeal is pending and not less than fourteen clear days before the day on which

the application or appeal is to come before the Court for hearing, except that an affidavit in reply shall be filed and served or delivered a reasonable time before that day.

6.—(1.) A document required under these Rules to be served on or delivered to the Commissioner or a Registrar, as the case may be, may be served or delivered by sending it in a prepaid letter through the post properly addressed to the Commissioner or Registrar at his office, and, if so sent, the document shall be deemed to have been served or delivered at the time when the letter containing it would be delivered in the ordinary course of post.

(2.) Unless otherwise provided, personal service is not required of a document required under this Order to be served on or delivered to a person.

7.—(1.) In proceedings before the Court under or pursuant to this Order or a law relating to industrial property, the Commissioner or a Registrar, as the case may be, may appear and be heard, but he shall not be deemed to be a party to the proceedings except in the case of an appeal from a decision of that Commissioner or Registrar not directly affecting a person other than the appellant.

Assistance to  
Court by  
Commissioner  
or Registrar.

(2.) Unless otherwise directed by the Court, the Commissioner or Registrar, in lieu of or as well as appearing and being heard, may submit to the Court and deliver to the parties a statement in writing signed by him giving particulars—

- (a) of any proceedings before him in relation to the matter in issue;
- (b) of the grounds of a decision given by him affecting it;
- (c) of the practice of his office in like cases; or
- (d) of such other matters relevant to the issues and within his knowledge as Commissioner or Registrar as he thinks fit.

(3.) A statement under the last preceding sub-rule shall be deemed to form part of the evidence in the proceedings before the Court.

8. If the Commissioner elects or is required by the Court to appear, he shall not, except by the direction of the Court or a Justice, be required to give notice of the grounds of any objection he may think fit to take or of any evidence he may think fit to place before the Court.

Commissioner  
need not give  
notice.  
R.S.C. O.  
LIIA. rr. 3 (a)  
and 4 (i).

9. For the purpose of an appeal to the Court from a decision of a Law Officer or of the Commissioner or a Registrar, as the case may be, under a law relating to industrial property, the Law Officer, Commissioner or Registrar shall state in writing the grounds of his decision.

Material for  
hearing appeal.

10.—(1.) A copy of the statement referred to in the last preceding rule shall be lodged by the Law Officer, Commissioner or Registrar in the Registry in which the appeal is pending not less than fourteen clear days before the day on which the appeal is to come before the Court for hearing.

Copies of  
statement for  
Court.  
H.C.R. O. L.  
r. 5.

(2.) Not less than seven clear days before the day on which the appeal is to come before the Court for hearing, the appellant shall—

- (a) lodge in the Registry in which the appeal is pending a sufficient number of copies, for the use of the Justices who will hear the appeal, of the statement and of all documents necessary for the hearing of the appeal; and
- (b) deliver copies of the statement and documents to every other party to the appeal.

11.—(1.) A respondent who desires to appeal from a part of a decision from which the appellant has appealed, or to seek a variation of a part of that decision, need not institute a substantive appeal, but he shall, within twenty-one days after the service upon him of notice of the appeal, or within such further or other time as the Court or a Justice fixes—

- (a) file in the Registry in which the appeal is pending a notice of cross-appeal; and
- (b) serve a copy of the notice upon the appellant and any other person affected by the relief which he seeks.

(2.) The notice of cross-appeal shall state—

- (a) what part of the decision the respondent cross-appeals from or contends should be varied; and
- (b) the grounds of the cross-appeal and the relief which he seeks.

(3.) It is not necessary to give notice of cross-appeal if a respondent proposes to contend that some matter of fact or law has been erroneously decided against him but does not seek a discharge or variation of any part of the decision actually pronounced or made.

## II.—*Extension of Letters Patent.*

12.—(1.) When application for the extension of a patent is made by originating summons, a summons shall be issued for directions from a Justice in Chambers as to advertisements to be published, time of hearing, whether evidence should be given orally or upon affidavit, and any other matters upon which directions may be desired.

(2.) In determining what advertisements shall be published, consideration shall be given to any advertisements which may already have been published by the applicant.

(3.) Advertisements directed to be published shall state the time and place fixed for the hearing of the summons.

13. An applicant for the extension of a patent shall file an affidavit verifying the publication of the necessary advertisements.

14.—(1.) A person who wishes to oppose an application for the extension of a patent shall give notice that he intends to oppose by filing in the Registry in which the application is to be filed a *caveat* not later than the expiration of the time within which the application is to be filed, or the expiration of fourteen days after the publication of any advertisement of the application, whichever is the later.

Cross-appeal.

Applications by originating summons.

Affidavit of advertisements re extension of patents.

R.S.C. O. LIIIA. r. 3 (f).  
Caveat against extension of patent.  
R.S.C. O. LIIIA. rr. 3 (k) and 4 (f).

(2.) The *caveat* shall have endorsed on it an address for service of the caveator complying with the provisions of Order 11.

(3.) A copy of the *caveat* shall, not later than seven days after the *caveat* is filed, be served by the caveator upon the applicant and upon the Commissioner in the manner provided by this Order for the giving of other notices to him.

15.—(1.) On receipt of a copy of a *caveat* under the last preceding rule, the applicant shall forthwith serve upon the caveator a copy of the petition or originating summons, and of every affidavit then filed by him in connexion with the petition or originating summons.

Service of  
petition,  
summons and  
affidavits on  
caveator.  
R.S.C. O.  
LIIIA. r. 3 (i).

(2.) Copies of all further affidavits filed or intended to be used by the applicant upon the hearing shall also be served upon the caveator not less than seven clear days before the day on which the application is to come before the Court for hearing.

16.—(1.) A caveator shall—

(a) not more than twenty-one days after the service of the petition or originating summons upon him, file in the Registry in which the application is pending a copy of the particulars of any objections upon which he intends to rely; and

Particulars of  
objections to  
extension.  
R.S.C. O.  
LIIIA. r. 3 (j).

(b) within seven days of the filing of the particulars, serve a copy of the particulars upon the applicant and upon the Commissioner in the manner provided by rule 6 of this Order.

17. A caveator who does not comply with the provisions of the last preceding rule shall be deemed to have abandoned his opposition.

Non-compliance  
with rule 16.  
R.S.C. O.  
LIIIA. r. 3 (k).

18. A person is not entitled to oppose an application for the extension of a patent on a ground not stated in his particulars of objection, unless the Court otherwise orders.

Grounds of  
opposition to  
be stated.  
R.S.C. O.  
LIIIA. r. 3 (l).

19. The Commissioner and a caveator may be heard upon any application to fix or appoint a day for the hearing of an application for the extension of a patent, and they shall be served by the applicant with notice of the day fixed or appointed at least seven clear days before that day.

Appointment  
for hearing.  
R.S.C. O.  
LIIIA. r. 3 (m).

20.—(1.) An application for the extension of a patent shall not be put in the list for hearing until the expiration of the time limited for the filing and service of particulars of objections.

Time for  
hearing.  
R.S.C. O.  
LIIIA. r. 3 (n).

(2.) Before the application is put in the list for hearing, there shall be filed in the Registry in which the application is pending an affidavit by or on behalf of the applicant that the Commissioner and all persons who have served the applicant with notice of intention to oppose the application have, as required by these Rules, been served with or given notice of the application and notice of the day appointed for hearing the application.

## ORDER 66.

21. The Court may excuse any person from compliance with any of the requirements of this Order relating to applications to extend patents.

Discretion of Court.  
R.S.C. O.  
LIIA. rr. 3 (p)  
and 4 (h).

22.—(1.) The Court may award costs to or against a caveator against the extension of a patent.

Costs in extension cases.

(2.) If the Court refuses to extend the patent, it shall not, except in special circumstances, allow more than one set of costs amongst all the caveators.

R.S.C. O.  
LIIA. rr. 3 (r),  
3 (s), 4 (j) and  
4 (h).

23. The evidence upon the hearing of an application for the extension of a patent may be given by affidavit, unless the Court or a Justice, upon the application of a party or the Commissioner, orders that the evidence, or a part of it, be given orally.

Evidence by affidavit.

### III.—Infringement Actions.

24.—(1.) If a defendant in an action for infringement of a patent intends to rely, as a defence to the action, on the insertion by the patentee in a contract or contracts of a condition which is null and void by virtue of section 87B of the *Patents Act* 1903-1950, he shall deliver with his defence full particulars of—

Action for infringement of patent: defence under Patents Act s. 87B.  
R.S.C. O.  
LIIA. r. 6.

(a) the dates of, and parties to, the contracts on which he intends to rely as containing such a condition; and

(b) the particular conditions on which he intends to rely as being null and void by virtue of that section.

(2.) A defendant may not rely on a defence available to him under sub-section (5.) of section 87B of the *Patents Act* 1903-1950 of which particulars have not been delivered in accordance with the provisions of this rule.

25. In an action for infringement of a patent or of the copyright in a registered design, the plaintiff shall deliver with his statement of claim, or by order of the Court or a Justice at any subsequent time, particulars of the infringements complained of.

Particulars of infringements of patents and designs to be delivered.  
R.S.C. O.  
LIIA.  
r. 9.

26.—(1.) In an action of the kind referred to in the last preceding rule and in a proceeding for revocation of a patent or cancellation of the registration of a design, the defendant, the petitioner or the applicant, as the case may be, shall deliver with his statement of defence, petition or application, or, by order of the Court or a Justice, at any subsequent time, particulars of any objections on which he relies in support of his statement of defence, petition or application, as the case may be.

Particulars of objections to be delivered.  
R.S.C. O.  
LIIA. r. 10.

(2.) If the defendant, petitioner or applicant disputes the validity of the patent or of the design, the particulars delivered by him shall state the grounds on which he disputes it, and, if one of those grounds is want of novelty, he shall state the time and place of the previous publication or user alleged by him.

27. Particulars of infringements shall specify which of the claims in the specification of the patent sued upon are, or the manner in which the design is, alleged to be infringed, and shall give at least one instance of each type of infringement of which complaint is made.

What to be specified in particulars of infringements.  
R.S.C. O.  
LIIA. r. 12.

## ORDER 66.

**28.—(1.)** If in any particulars of objections it is alleged that an invention has been used prior to the date of the patent, the particulars shall also—

Objection of previous user of invention.  
R.S.C. O.  
LIIIA. r. 14.

- (a) specify the names of the person or persons alleged to have made the prior user, and whether the prior user is alleged to have continued down to the date of the patent, and, if not, the earliest and latest dates on which the prior user is alleged to have taken place;
- (b) contain a description, accompanied by drawings, if necessary, sufficient to identify the alleged prior user; and
- (c) if the user relates to any machinery or apparatus, specify whether the machinery or apparatus is in existence and where it can be inspected.

**29.—(1.)** On taxation of costs—

Certificate re costs of issues raised by particulars.  
R.S.C. O.  
LIIIA. r. 18.

- (a) in an action or counterclaim for infringement of a patent or of the copyright in a registered design;
- (b) in a petition for revocation of a patent; or
- (c) in an application for cancellation of the registration of a design,

if the action, counterclaim, petition or application proceeds to hearing, costs shall not be allowed to the parties delivering any particulars of breaches or particulars of objection in respect of any issues raised in those particulars and relating to that patent or that design, except in so far as those issues or particulars are certified by the Court to have been proven or to have been reasonable and proper.

(2.) Subject to the last preceding sub-rule, the costs of the issues raised by the particulars of breaches and the particulars of objection are in the discretion of the taxing officer.

**30.—(1.)** In a proceeding for infringement of a patent or registered design, or for revocation of a patent or cancellation of the registration of a design, the plaintiff, the petitioner or the applicant shall, as soon as he becomes entitled to give notice of trial or to apply to have a day appointed for the hearing, as the case may be, apply as to the mode of trial or hearing, and, if he fails to apply within fourteen days of becoming so entitled, the defendant or respondent, as the case may be, may make the application.

Directions for trial.  
R.S.C. O.  
LIIIA. r. 20.

(2.) The application may be dealt with in Chambers or in Court, as the Justice thinks fit.

(3.) Upon the application, the Court or Justice may give directions—

- (a) for the delivery of further pleadings or particulars;
- (b) for the taking by affidavit of evidence relating to matters requiring expert knowledge;
- (c) for the filing of such affidavits and the delivery of copies of them to the other parties and to the Commissioner;
- (d) for the making of experiments, tests, inspections or reports; and

- (e) otherwise as the Court or Justice thinks necessary or expedient for the purpose of defining and limiting the issues to be tried, restricting the number of witnesses to be called at the trial of a particular issue, and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner.

(4.) A proceeding to which sub-rule (1.) of this rule applies shall not be set down for trial or hearing unless and until an application under this rule has been made and disposed of.

### ORDER 67.

#### LIFE INSURANCE ACT 1945.

1.—(1.) Where a company desires to make a payment into Court under the *Life Insurance Act 1945* (in this Order called “the Act”), it shall cause an affidavit by its secretary or other authorized officer to be filed.

Affidavit with  
respect to  
payments into  
Court.  
R.S.C. O.  
LIVc. r. 1.

(2.) The affidavit shall set forth—

- (a) a short description of the policy and a statement of the persons entitled under the policy according to its terms, and the names and addresses of those persons so far as they are known to the company;
- (b) a short statement of any notices received by the company claiming an interest in or title to the money assured, the dates when the notices were received, the dates of withdrawal of such of the notices, if any, as have been withdrawn, and the names, and, except as to notices withdrawn, the addresses, so far as they are known to the company, of the persons by whom those notices were given;
- (c) a statement that, in the opinion of the board of directors of the company, a sufficient discharge cannot be obtained otherwise than by payment into Court under the Act;
- (d) a submission by the company to pay into Court such further sum, if any, whether for interest or otherwise, as the Court or a Justice may direct, and to pay any costs which the Court or a Justice may consider, under the circumstances of the case, ought to be paid by the company;
- (e) an undertaking by the company forthwith to transmit to the Registrar of the Registry at which the payment is to be made any notice of claim received by the company after the making of the affidavit; and
- (f) an address for service complying with the provisions of Order 4.

(3.) The affidavit shall be intitled “In the matter of Policy No. effected with (*name of company*) and in the matter of the *Life Insurance Act 1945*”.

2. The company shall not deduct any costs or expenses of or incidental to the payment into Court.

Costs of  
payment in.  
R.S.C. O.  
LIVc. r. 2.

3. A payment shall not be made into Court under the Act when a proceeding, to which the company is a party, is pending in relation to the policy or to the moneys assured by the policy, except by leave of a Justice to be obtained by summons in that proceeding.

No payment in  
when  
proceedings  
pending.  
R.S.C. O.  
LIVc. r. 3.

## ORDERS 67, 68.

4. The company shall forthwith give notice of the payment by prepaid letter through the post to each person appearing by the affidavit—

Notice of  
payment in.  
R.S.C. O.  
LIVc. r. 4.

(a) to be entitled to or interested in the money assured and paid into Court; or

(b) except where the notice has been withdrawn, to have given a notice of claim to the company,

except so far as the name or address of such a person is unknown to the company.

5. A person claiming to be entitled to or interested in the money paid into Court may apply by summons in respect of the money.

Applications  
regarding  
money paid in.  
R.S.C. O.  
LIVc. r. 5.  
Address for  
service.  
R.S.C. O.  
LIVc. r. 6.

6. A summons relating to the money shall not be issued unless the applicant has stated in the summons an address for service which complies with the provisions of Order 4.

Service of  
summons.  
R.S.C. O.  
LIVc. r. 7.

7. Unless the Court or a Justice otherwise directs, the applicant shall not, except when he asks for payment of a further sum for costs by the company, serve the summons on the company, but he shall serve it, or give notice of it, to every person appearing by the affidavit on which payment into Court was made to be entitled to, or interested in, or to have a claim upon the money, or who has given any further notice which has been transmitted to the Registrar of the Registry into which the money was paid.

## ORDER 68.

## ELECTION PETITIONS.

1. In this Order, "member" includes senator and member of the House of Representatives.

Definition.

2. These Rules, so far as they are applicable and are not inconsistent with this Order, extend and apply to proceedings in the Court in the exercise of its jurisdiction as the Court of Disputed Returns.

Application  
of Rules.  
H.C.R. O. LIV.  
r. 1.

3. The petitioner shall, forthwith after the filing of a petition—

Publication.  
H.C.R. O. LIV.  
r. 3.

(a) publish a copy of the petition in the *Commonwealth Gazette* and in the official *Gazette* of the State in which the election was held; and

(b) in the case of an election of a member of the House of Representatives, publish in some newspaper circulating in the Electoral Division for which the election was held a notice setting forth the fact of the filing of the petition, the date of filing, the name of the petitioner, the nature of the relief claimed and, as concisely as may be, the grounds on which the election is disputed.

4.—(1.) A person who has been returned as a member may file in the Registry in the State or Territory in which the election was held a notice in writing signed by him stating an address for service upon him of a petition under this Order.

Address for  
service.  
H.C.R. O. LIV.  
r. 5.

(2.) The address for service shall comply with the provisions of Order 4.

## ORDER 68.

5.—(1.) The petitioner shall, within twenty-eight days after the filing of the petition, or within such further time as a Justice allows, cause an office copy of the petition to be served upon every person whose election or return is disputed by the petition.

Service of  
petition.  
H.C.R. O. L.I.B.  
r. 4.

(2.) Service of the office copy of the petition under this rule may be effected either—

- (a) personally; or
- (b) in accordance with the provisions of Order 62, rule 3.

6.—(1.) A person returned as a member whose election or return is disputed by a petition shall, within fourteen days after service of the petition, and a person who voted or had a right to vote at the election to which the petition relates may, within fourteen days after the publication of the petition in the official *Gazette* of the State in which the election was held, enter an appearance to the petition.

Appearances.  
H.C.R. O. L.I.B.  
r. 6.

(2.) A person so entering an appearance shall be deemed to be a party to the proceedings upon the petition.

7.—(1.) When the petition, not being a petition merely claiming a fresh count of the votes actually counted at the election, claims the seat for a person who has not been returned as a member, alleging that that person had a majority of valid votes, each party shall, seven days before the day appointed for the trial of the petition, file in the Registry and deliver to the opposite party at his address for service a list of the ballot-papers or classes of ballot-papers intended to be claimed or objected to, specifying, in the case of ballot-papers objected to, the ground of objection on which he intends to rely.

Particulars of  
votes objected  
to.  
H.C.R. O. L.I.B.  
r. 7.

(2.) An objection shall not be entertained against the validity of a ballot-paper upon a ground not specified in the lists so filed and delivered except by leave of the Court or a Justice, and upon such terms as to amendment of the list, adjournment of the trial and payment of costs, as the Court or Justice orders.

8.—(1.) When a petition claims a seat for a person who has not been returned as a member and a party respondent desires to contend that the person for whom the seat is claimed was not duly elected upon some grounds other than those mentioned in the last preceding rule, he shall, within seven days after entering his appearance, or within such further time as the Court or a Justice allows, file in the Registry and deliver to the petitioner at his address for service a statement of the grounds on which he intends to rely.

Counter-  
charges.  
H.C.R. O. L.I.B.  
r. 8.

(2.) The statement shall set forth the grounds in the same manner in which facts relied on to invalidate an election or return are required to be set forth in a petition.

9. The Court or a Justice may order a party to the proceedings upon a petition to deliver to another party particulars, or further and better particulars, of a matter alleged by that party.

Particulars.  
H.C.R. O. L.I.B.  
r. 9.

10.—(1.) The trial of a petition under this Order shall be held at a time and place to be appointed by the order of a Justice on the application of a party to the petition.

Trial.  
H.C.R. O. L.I.B.  
r. 10.

(2.) Fourteen days' notice of trial shall be given by the party obtaining the order to the other parties to the petition, and shall be advertised by the petitioner in some newspaper circulating in the State or Electoral Division for which the election was held.

(3.) An order appointing the time and place of trial may be varied from time to time.

11.—(1.) A petition may be withdrawn by leave of the Court or a Justice upon such terms as the Court or Justice thinks fit.

Withdrawal of  
petition and  
substitution  
of another  
petitioner.  
H.C.R. O. L.I.B.  
r. 11.

(2.) Fourteen days' notice of the intention to apply for leave under the last preceding sub-rule shall be given by the petitioner by advertisement in some newspaper circulating in the State or Electoral Division for which the election was held.

(3.) At the hearing of the application, the Court or Justice may allow any other person who was competent to file a petition on the like grounds to be substituted for the petitioner, and the proceedings upon the petition shall thereupon be continued as if the person so substituted had been the original petitioner.

12. When a sole petitioner dies before the trial of the petition, the Court or a Justice may allow some other person who was competent to file a petition on the same grounds to be substituted as petitioner and the proceedings upon the petition shall thereupon be continued as if the person so substituted had been the original petitioner.

Abatement by  
death of  
petitioner.  
H.C.R. O. L.I.B.  
r. 12.

## ORDER 69.

### PROCEEDINGS UPON INDICTMENTS FILED WITHOUT PREVIOUS EXAMINATION OR COMMITMENT FOR TRIAL.

1.—(1.) When an indictment has been filed by the Attorney-General without examination or commitment for trial, an office copy of the indictment shall be served upon the accused person.

Service of  
indictment.  
H.C.R. O. L.I.C.  
r. 1.

(2.) A summons shall be endorsed upon the office copy of the indictment, under the hand of a Registrar and the seal of the Court, requiring the accused person to appear to the indictment within the same time after the service within which he would be required to enter an appearance after the service of a writ of summons in a civil action.

(3.) The summons shall be endorsed upon the office copy whether a warrant for arrest is issued or not.

(4.) A notice shall be added to the summons informing the accused person that, in default of his compliance with the exigency of the summons, a warrant may be issued for his arrest.

2. The accused person shall, within the time limited by the summons, enter an appearance in the Registry named in the summons in that behalf, and deliver a copy of the appearance forthwith at the office of the Crown Solicitor for the Commonwealth, or his agent, in the State or Territory in which that Registry is situated.

Appearance.  
H.C.R. O. L.I.C.  
r. 6.

## ORDERS 69, 70.

3. If the accused person does not enter an appearance, a warrant may be issued for his arrest. Default of appearance.  
H.C.R. O. Lic.  
r. 7.
4. An application for a warrant to arrest the accused shall be supported by affidavit. Evidence for warrant.  
H.C.R. O. Lic.  
r. 2.
5. The warrant shall be addressed to the Marshal and shall require him to keep the accused in safe custody until the time appointed for the trial of the indictment, and then to bring him before the Court at the time and place appointed for the trial. Form of warrant.  
H.C.R. O. Lic.  
r. 3.
6. An office copy of the indictment, endorsed in accordance with rule 1 of this Order, shall be delivered to the accused at the time of arrest. Service of indictment.  
H.C.R. O. Lic.  
r. 4.
7. An application for bail may be made to a Justice sitting in Chambers. Applications for bail.  
H.C.R. O. Lic.  
r. 5.
8. When the accused person enters an appearance, either party may, on notice to the other party, apply to a Justice to appoint the time and place of trial. Time and place of trial.  
H.C.R. O. Lic.  
r. 8.

## ORDER 70.

## APPEAL RULES.

1.—(1.) Subject to any provision to the contrary in a law of the Commonwealth, this Order applies to an appeal in either a civil or criminal case from— Application of Order.

- (a) a single Justice;
- (b) a federal court or a court of a Territory;
- (c) a court exercising federal or territorial jurisdiction; or
- (d) the Supreme Court of a State.

(2.) When the court appealed from consists not of a Judge, but of a Magistrate or some other judicial officer, this Order, unless a contrary intention appears, applies as if the description of his office were substituted where the word "Judge" is used.

(3.) If the Court or a Justice directs that a party other than the appellant shall have the carriage of the appeal, or of a proceeding in or arising out of an appeal, this Order, so far as relevant, applies as if that party were included in the description "appellant".

2.—(1.) An application for leave or special leave to appeal may be made *ex parte*. How applications for leave to appeal to be made.

(2.) The application shall be made upon notice—

- (a) if the Court so directs; or
- (b) if a party interested in maintaining the judgment from which it is sought to appeal gives notice in writing to the applicant that he desires to be heard in opposition to, or upon a question arising out of, an application for leave or special leave to appeal.

(3.) An application by a prisoner or accused person or by the Crown for leave or special leave to appeal from a judgment, order or sentence pronounced or made in the exercise of a jurisdiction by way of criminal appeal in respect of indictable offences shall be made on notice to the prisoner or accused person, or to the Crown, as the case may be.

(4.) An application for leave or special leave shall be made on affidavit stating the nature of the case, the questions involved and the reasons why the leave should be given.

(5.) An application for leave or special leave shall be made to a Full Court by counsel.

(6.) The provisions of Order 16 with respect to proceedings by poor persons apply, *mutatis mutandis*, to applications for leave or special leave to appeal, and to appeals.

3.—(1.) The documents in an application for leave or special leave to appeal, or for an extension of time under rule 6 of this Order for filing or serving a notice of appeal, shall be entitled “In the High Court of Australia”, with the name of the Registry in which they are filed, and in the matter of the proceedings, which shall be described as pending in the court from which it is sought to appeal. Title of proceedings for leave to appeal and of proceedings on appeal.

(2.) A notice of appeal and all subsequent proceedings in an appeal shall be entitled “In the High Court of Australia”, with the name of the Registry in which they are filed, “On appeal from” the court from which the appeal is brought, naming it, and shall also be entitled as between the party appellant and the party respondent.

4.—(1.) Every appeal shall be instituted by the filing of a notice of appeal in the manner prescribed in rules 5 and 6 of this Order. Mode of instituting appeals.

(2.) The notice of appeal shall state—

- (a) whether the whole or part only, and what part, of the judgment is appealed from;
- (b) briefly, but specifically, the grounds relied upon in support of the appeal; and
- (c) what judgment the appellant seeks in lieu of that appealed from.

5.—(1.) The original notice of appeal shall be filed—

- (a) if the appeal is from a judgment of a Justice of the High Court—in the Registry in which the proceeding is pending; Filing and serving notice of appeal.
- (b) if the appeal is from the judgment of a court of a State—in the Registry in that State;
- (c) if the appeal is from a judgment of the Federal Court of Bankruptcy—in the Registry situated in the State most nearly corresponding with the District in which the proceedings in the Federal Court of Bankruptcy are pending; and
- (d) in other cases—in the Principal Registry, or in a District Registry for transmission to the Principal Registry, where it shall be dealt with as if filed in the Principal Registry.

(2.) Unless the appeal is from a Justice of the High Court, a copy of the notice of appeal shall be filed in the office of the Prothonotary, Registrar, Master or other proper officer of the court appealed from, or, if to file it in that office would not be in accordance with the practice or organization of that court, it shall be lodged with some officer of the court concerned with its records or process.

(3.) The notice of appeal shall be served upon every party affected by the relief sought by the notice of appeal or interested in maintaining so much of the judgment as is appealed from.

(4.) The Court or a Justice may direct that the notice of appeal be served on any other person.

(5.) Service of a notice of appeal may be effected in the manner provided by these Rules for the service of documents, or by leaving a copy at the address for service, if any, of the party to be served in the proceeding from which the appeal is brought.

6.—(1.) The notice of appeal shall be filed and served in the manner prescribed by the last preceding rule—

Time for  
filing and  
serving notice  
of appeal.

(a) within twenty-one days after—

- (i) the date when the judgment appealed from was pronounced;
- (ii) the date when leave or special leave to appeal was granted; or
- (iii) any later date fixed for the purpose by the Court appealed from; or

(b) within such further time as is allowed by a Justice upon application made to him by summons issued within the period of twenty-one days referred to in the last preceding paragraph.

(2.) Notwithstanding Order 60, rule 6, the summons mentioned in the last preceding sub-rule shall be issued within the period of twenty-one days fixed by that sub-rule, and, in the computation of that period, the time of the vacations shall be included but the Full Court for special reasons may at any time give special leave to appeal subject to any conditions which appear just.

7.—(1.) If the appeal is brought by leave or special leave of the High Court, the notice of appeal shall so state, and a copy of the order giving leave or special leave to appeal shall be annexed to the copy filed or lodged in the Court appealed from and to every copy of the notice of appeal served.

When appeal  
by leave,  
notice to  
state so;  
affidavits  
in appeals  
without leave.

(2.) If the appeal is brought from an interlocutory order by leave of the Supreme Court of a State, the notice of appeal shall so state, and, within the time limited for filing the notice of appeal, an affidavit shall be filed in the appropriate Registry showing that the appellant is entitled to appeal, and a copy of the affidavit shall be served upon the parties upon whom the notice of appeal is served.

(3.) If the appeal is brought without leave or special leave, then, within the time limited for filing the notice of appeal, an affidavit shall be filed in the appropriate Registry stating facts which show that an appeal lies without leave or special leave, and a copy of the affidavit shall be served upon the parties upon whom the notice of appeal is served.

8.—(1.) If a respondent objects to the competency of an appeal, he shall, within fourteen days after service upon him of the notice of appeal, file in the Registry a notice of objection stating briefly the grounds of his objection, and serve upon the appellant a copy of the notice.

Objections to  
competency of  
appeal.

(2.) If notice of objection has not been so given but nevertheless the appeal is afterwards dismissed by the Court as incompetent, the respondent shall not, unless upon special grounds the Court otherwise orders, receive any costs of the appeal, and the Court may order that he pay to the appellant any costs of the appeal proving useless or unnecessary.

(3.) Within fourteen days after service upon him of the notice of objection, the appellant shall set down the objection for hearing, and, on the day on which he sets it down, he shall give notice of the setting down to the opposite party.

(4.) If the appellant fails to set down the objection for hearing as required by the last preceding sub-rule, his appeal shall be deemed to be abandoned, and, at the expiration of fourteen days, the respondent may tax his costs of the appeal and they shall be paid by the appellant.

(5.) The appellant may set down the objection for hearing, at his election, before a Justice or before the Full Court, and, in the latter case, he may also file in the Registry a notice that he intends at or after the hearing of the objection to apply for leave or special leave to appeal.

(6.) A copy of a notice filed under the last preceding sub-rule shall be served on the respondent with the notice of setting down.

(7.) An objection to the competency of an appeal shall be set down for hearing at the next sittings of the Court at a place fixed in the same way as is prescribed by this Order for fixing the place where an appeal shall be heard.

(8.) Upon the hearing of the objection, the burden of establishing the competency of the appeal is upon the appellant.

(9.) Any party may file affidavits.

(10.) The Full Court or the Justice may allow the objection and dismiss the appeal as incompetent, or may overrule the objection.

9.—(1.) The security required by sub-section (2.) of section 35 of the *High Court Procedure Act 1903-1950* in the case of an appeal from a judgment of the Supreme Court of a State, or some other court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall be given within—

Security for costs of appeal from Supreme Court.

(a) one month after the institution of the appeal;

(b) such other time as may be fixed by an order giving leave or special leave to appeal; or

(c) such further time as the Court or a Justice allows.

(2.) Unless the Court or a Justice otherwise orders, security shall be given in the High Court and shall be given by payment into court.

(3.) The appellant shall, upon giving the security, forthwith serve upon the respondent written notice of the time and manner of his doing so.

(4.) If security is not given in accordance with this rule, the appeal shall be deemed to be abandoned, and, not earlier than fourteen days after the expiration of the time within which security ought to have been given, the respondent may tax his costs of the appeal, and they shall be paid by the appellant.

10.—(1.) In the case of appeals to which sub-section (2.) of section 35 of the *High Court Procedure Act 1903-1950* does not apply, the Court or a Justice may at any time order that the appellant give security, within a time to be limited by the order and in such amount as the Court or Justice fixes, for the prosecution of the appeal without delay and for the payment of such costs as may be awarded by the Court to the respondent.

Orders for security; giving security voluntarily.

(2.) The appellant may give such security as is referred to in the last preceding sub-rule voluntarily and without order.

(3.) The security shall be in the amount of Fifty pounds unless otherwise ordered.

(4.) The provisions of sub-rule (1.) of the last preceding rule as to the time for giving security and sub-rules (2.), (3.) and (4.) of that rule apply when security is ordered under this rule, and sub-rules (2.) and (3.) of the last preceding rule apply when security is given voluntarily.

11. Upon application by the respondent, the Registrar may issue a certificate that an appeal has, by reason of sub-rule (4.) of rule 8 of this Order, sub-rule (4.) of rule 9 of this Order, or sub-rule (4.) of the last preceding rule, been abandoned.

Certificate as to abandonment of appeal.

12.—(1.) Except as provided by this rule, an appeal does not operate as a stay of proceedings.

Stay of proceedings.

(2.) Except in a criminal proceeding, when security has been given pursuant to rule 9 or rule 10 of this Order, then, unless the Court or a Justice in the meantime has otherwise ordered, there shall be a stay of the judgment appealed from, and of all process in execution of the judgment or to compel obedience to it, until the determination of the appeal or until an order to the contrary is made under the power conferred by this rule by the High Court or a Justice, or by the Supreme Court of a State or a Judge of the Supreme Court of a State.

(3.) In the case of any appeal, the High Court or a Justice, and, in the case of an appeal from a court of a State if, on grounds of urgency, the Chief Justice refers the application to the Supreme Court of that State, the Supreme Court or a Judge of the Supreme Court may make an order removing the stay wholly or in part and upon such terms and conditions as appear just, unless the appellant gives such further security within such time, in such manner and in such amount as appears to the Court, Justice or Judge to be just, to satisfy or obey the judgment appealed from.

(4.) After notice of appeal has been duly given from a judgment, order or sentence in a criminal proceeding, the Court or a Justice, upon application made upon notice, may grant a stay of execution or admit the appellant to bail upon such terms or conditions as appear just.

13.—(1.) A respondent who desires to appeal from a part of the judgment from which the appellant has appealed, or to seek a variation of a part of the judgment, need not institute a substantive appeal, but he shall, within twenty-one days after the service upon him of the notice of appeal, or within such further or other time as the Court or a Justice fixes, file in the Registry a notice of cross-appeal and serve a copy of the notice upon the appellant and any other person affected by the relief which he seeks.

Cross-appeal.

(2.) The notice of cross-appeal shall state what part of the judgment he cross-appeals from or contends should be varied, and shall state briefly, but specifically, the grounds of the cross-appeal and—

(a) the relief which he seeks in lieu of the order cross-appealed from; or

(b) the variation of that order which he seeks.

(3.) It is not necessary to give notice of cross-appeal if a respondent proposes to contend that some matter of fact or law has been erroneously decided against him but does not seek a discharge or variation of a part of the judgment, decree, order or sentence actually pronounced or made.

14.—(1.) Unless it is otherwise ordered by the Court or a Justice, an appeal shall be set down by the appellant for hearing at the Registry in which the notice of appeal has been filed. Setting down appeal; place.

(2.) If an application in writing, signed by all the parties to an appeal or their solicitors, is filed in that Registry, the Registrar may, subject to any general or special direction given by the Chief Justice, cause the appeal to be set down for hearing at some other Registry specified in the application, and thereupon the appeal shall be set down for hearing and heard there unless the Court or a Justice otherwise orders.

(3.) The Court or a Justice may direct that an appeal shall be heard at a Registry other than that for which the appeal has been set down.

15.—(1.) Unless the Court or a Justice otherwise orders, an appeal shall be set down for hearing at the first sittings of the Court in its appellate jurisdiction appointed to be held at the place of hearing after the expiration of six weeks from the institution of the appeal, unless an objection to the competency of the appeal has been filed. Sittings for which to be set down, and time and place of hearing.

(2.) When an objection to the competency of an appeal is disallowed, the Court or Justice may by order fix the time and place for hearing the appeal.

(3.) Unless an order is made under the last preceding sub-rule, the appeal shall, forthwith after the objection is decided, be set down by the appellant for hearing at the next sittings of the Court in its appellate jurisdiction appointed to be held at the place of hearing as prescribed or fixed under the last preceding rule.

(4.) On the day on which an appeal is set down for hearing, notice of the setting down shall be served by the appellant upon the respondent.

16.—(1.) When, in a federal court or a court of a State or Territory, a judgment is given from which an appeal may be brought to the High Court, the officer of the court in which the judgment is given who has the custody of exhibits put in evidence or marked for identification shall, subject to the directions of that court— Exhibits.

(a) retain them for twenty-one days from the giving of the judgment; and

(b) if, before the expiration of the twenty-one days, leave or special leave to appeal to the High Court from the judgment is given, retain them for twenty-one days from the date when the leave is given.

(2.) Upon an appeal to the High Court being instituted, a list of the exhibits put in evidence or marked for identification shall be made out and certified by the officer of the court appealed from who has custody of those exhibits, or by some other proper officer of that court, and the list and the exhibits shall be delivered or transmitted to the Registry in which the appeal is pending.

(3.) If for any reason an exhibit cannot be so delivered or transmitted, the officer shall, in his certificate, state the circumstances and give such information as he can to enable the Registrar to cause the exhibit to be available to the High Court.

17.—(1.) Upon an appeal being instituted, the appellant shall apply to the associate of the Judge whose judgment is appealed from, or, if the court giving the judgment consisted of more than one Judge, to the associate of each Judge, or if there be no associate, to the proper officer of the court in which the judgment is given, for a certificate verifying the reasons given by the Judge or court.

Copy of reasons  
for judgment to  
be obtained.

(2.) The appellant shall obtain a copy or transcript of the reasons, or, if a copy or transcript is unobtainable, shall prepare a record of those reasons as accurately as possible.

(3.) The appellant shall lodge a fair copy of a record prepared under the last preceding sub-rule with the associate or other proper officer for the purpose of enabling him to give a certificate verifying the reasons.

18.—(1.) If evidence has been given orally, a copy of the record, if any, of the evidence made or used for the purposes of the court appealed from shall be obtained by the appellant.

Record or  
report of  
evidence.

(2.) If the oral evidence was given before the court appealed from and was taken in shorthand by or under the authority of the Court, he shall obtain a transcript of the evidence.

(3.) The appellant shall—

- (a) correct any errors that appear in the transcript;
- (b) submit a list of his corrections to the respondent; and
- (c) afford the respondent a reasonable opportunity of examining the transcript and making corrections.

(4.) If the parties disagree upon the accuracy of any part of the transcript, or are unable to agree upon a correction, the question shall be submitted to the associate or other proper officer of the court appealed from and he shall obtain the directions of the Judge on the matter.

(5.) If oral evidence was given before the court appealed from but was not taken in shorthand, the appellant shall obtain a copy of the notes of evidence taken by or for the Judge from the associate or other proper officer of the court.

(6.) If notes of evidence were not taken by or for the Judge, or the Judge considers that some other means of bringing the evidence before the High Court should be used, a report of the evidence shall be prepared by the parties under or subject to the Judge's direction obtained through the associate or other proper officer of the court.

(7.) If the appeal is brought under paragraph (b) of sub-section (2.) of section 39 of the *Judiciary Act* 1903-1950, the evidence may be brought before the High Court in the same way as it would have been brought before the Supreme Court of the State if the appeal had been to that court.

19.—(1.) Upon the institution of an appeal, the proper officer of the court from which the appeal is brought shall transmit to the Registry of the High Court in which it is instituted—

Certified list and copies of documents to be transmitted to the High Court.

(a) a certified list of the documents before the court appealed from; and

(b) certified copies of the pleadings and other documents which were before the court, not being documents to which rules 16, 17 and 18 of this Order apply.

(2.) The appellant shall lodge fair copies of the documents mentioned in the last preceding sub-rule with the officer who is required under that sub-rule to transmit them to the High Court for the purpose of enabling him to certify and transmit them.

20. The appellant shall lodge in the Registry the certified copy of the reasons of the court appealed from and the copy of the record of the evidence.

Certified copy of reasons and of evidence.

21.—(1.) When the documents mentioned in rules 16, 17, 18, 19 and 20 of this Order have been received in the Registry, the Registrar shall notify the appellant.

Record to be made up on receipt by Registry of documents.

(2.) The appellant shall thereupon make out a list of the documents, which shall constitute the record before the High Court, and shall file the list in the Registry and serve copies on the other parties to the appeal.

22.—(1.) If the appellant proposes not to include in the transcript any of the documents constituting the record, he shall so state in a memorandum on the list of documents.

What documents to be included in transcript.

(2.) A party dissatisfied with the list, or with a proposal to exclude documents from the transcript, may, within fourteen days after the receipt of the list, apply for its variation to the Registrar.

(3.) The Registrar may vary the list as he thinks proper and may, if he thinks necessary, obtain the direction of the Chief Justice or of the senior Justice available.

23.—(1.) The transcript for use upon the hearing of an appeal shall, unless the Court or a Justice otherwise orders, be prepared in accordance with the provisions of Order 61.

Preparation of transcript.

(2.) The thickness of any one volume of the transcript shall not exceed one and a half inches.

(3.) The title page shall give the full and correct title of the proceedings, including the title of the court from which the appeal is brought, and the names of the solicitors for each party and their addresses for service.

(4.) After the title page there shall follow an index consisting of a complete list of the documents contained in the record before the High Court, as settled under rules 21 and 22 of this Order, stating in the case of each document whether it is copied or not and, if copied, indicating at what page of the transcript it appears.

(5.) The index shall give the date of each document and, in the case of exhibits, the exhibit mark, and, in the case of documents marked only for identification, the letters "m.f.i." shall follow the exhibit mark.

(6.) In the index the exhibits shall be arranged in the order in which they have been lettered or numbered.

(7.) The documents shall be arranged in the transcript in the following order:—

- (a) Process and pleadings.
- (b) Evidence, oral or affidavit.
- (c) Testimony taken on commission or before an examiner and put in or used as evidence.
- (d) Exhibits—
  - (i) Exhibits shall be arranged not in the order in which they have been lettered or numbered as exhibits, but in chronological order according to the dates borne by the documents or, in the case of manifestly or admittedly misdated documents, their known dates.
  - (ii) If a document is undated, it shall be placed in the sequence contended for by the appellant, but the appellant shall inform the respondent of the position or order proposed for the document and the respondent may require that a note "Date and order disputed" be inserted in the transcript at the head of the document.
  - (iii) If the exhibits include a correspondence between or among two or more persons which should be read consecutively and not interspersed among other documents, the letters forming the correspondence may be arranged in order of their dates and given a position together at a convenient place in relation to the other exhibits.
- (e) The reasons for judgment of the primary Judge or court.
- (f) The formal judgment or order of the primary Judge or court.
- (g) The notice of appeal, if any, from that judgment or order to a court other than the High Court.
- (h) The reasons for judgment given in the court of appeal.
- (i) The formal order of the court of appeal.
- (j) The notice of appeal to the High Court, and the affidavit showing how the appeal lies.
- (k) The certificate that the transcript has been examined and is correct.

(8.) The date and a short description of the nature of each document shall precede it, but formal headings shall not be printed or copied, and *jurats*, formal identification of exhibits and the like shall be omitted.

(9.) Interrogatories and answers and affidavits of documents shall not be copied except so far as they were put in evidence.

(10.) A copy of the transcript shall be examined with the original documents copied by the appellant and the respondent, and all copies shall be corrected.

(11.) The examined copy of the transcript shall be filed in the Registry with a certificate by the parties or their solicitors that it has been examined and is correct.

(12.) The transcript shall be prepared and produced in a manner satisfactory to the Registrar.

24. Unless the Court or a Justice otherwise orders, not less than seven days before the commencement of the sittings at which the appeal is set down for hearing, the appellant shall lodge in the Registry such number of copies of the transcript as the Registrar may require for the use of the Justices upon the hearing of the appeal, and shall serve upon each of the respondents separately represented three copies of the transcript.

Copies of transcript to be lodged.

25.—(1.) Not less than fourteen days before the commencement of the sittings at which the appeal is set down for hearing, a party to an appeal may give a notice in writing to the other parties that he proposes to prepare and file a written case.

Written case.

(2.) Each party shall thereupon, unless the Court or a Justice otherwise directs, prepare a written case consisting of paragraphs consecutively numbered and stating as concisely as possible the circumstances out of which the appeal arises, the contentions to be urged by him and the reasons relied upon.

(3.) So far as practicable, in a written case references to the portions of the transcript relied upon shall be given by page and line and extracts shall not be set out.

(4.) Not later than ten days after the receipt of the notice, each party shall lodge in the Registry such number of copies of his case as the Registrar may require for the use of the Justices upon the hearing of the appeal and file in the Registry one copy of his case.

(5.) When a party has lodged his case, he shall on the day of lodging it give written notice to the other party that he has done so.

(6.) When all parties have lodged their cases, they shall exchange copies with one another.

(7.) Each party is entitled to three copies of the other's case.

(8.) If a party receiving a notice under this rule desires to object to the use of written cases, he may do so within two days by filing in the Registry a notice to that effect and serving a copy of the notice upon the other parties to the appeal.

(9.) Upon the filing of a notice under the last preceding sub-rule, the Registrar shall forthwith obtain the direction of the Chief Justice, or the senior Justice available, and communicate it to the parties.

(10.) The costs occasioned by the use of written cases are in the discretion of the Court.

## ORDERS 70, 71.

26. An interlocutory order or rule from which there has been no appeal does not operate so as to bar or prejudice the Court in its appellate jurisdiction from giving such decision upon an appeal as is just.

Interlocutory orders not to preclude relief on appeal against final judgment.

27. An appeal from the refusal of an *ex parte* application by a single Justice shall be brought within the time and in the manner prescribed by this Order, except that if there is no person interested in resisting the application or affected by the relief sought, service of the notice of appeal and of other proceedings or notices is not necessary.

Appeals in *ex parte* applications.

28. The Court or a Justice may fix any time peremptorily for the doing of an act required to be done by an appellant by or under this Order, and may order that upon non-compliance his appeal shall stand dismissed for want of prosecution, and may make such order as to the costs of the appeal in that event as appears just.

Court may fix time for doing any act.

29. The Court or a Justice may order that any person be added as a party to an appeal, or that the proceedings be amended, and may impose such conditions as appear just and give all consequential directions.

Adding parties and amendment.

30. A party dissatisfied with a direction given by a Justice under this Order may, upon notice to the other parties to, or concerned in, the appeal, apply to the Full Court, which may make such order as appears just.

Appeal to Full Court from direction of Justice.

31.—(1.) Notwithstanding anything contained in this Order, the Court or a Justice may expedite the hearing of an appeal of which notice has been filed in the High Court, or in respect of which leave or special leave has been granted.

Expediting appeals.

(2.) For the purpose of expediting an appeal, the Court or Justice may order the appeal to be set down for hearing on any day appointed for the Court to sit and hear appeals, and may abridge the time within which security is to be given, or the length of notice to be given to the respondent, to such extent and upon such terms as the justice of the case requires.

32.—(1.) In criminal cases an appellant may present his case and his argument to the Court in writing if he so desires, and, if he does so, it is not necessary for him to appear or to be represented upon the hearing of the appeal.

Special provisions in criminal cases.  
H.C.R. Part II.  
Sec. IVB. rr. 5, 6 and 7.

(2.) An appellant who is in custody is not entitled to be present on the hearing of his appeal, or of his application for leave to appeal, without the leave of the Court or a Justice.

(3.) The Court or a Justice may, upon such terms as it or he thinks fit, admit an appellant to bail pending the hearing of his appeal or his application for leave to appeal.

## ORDER 71.

## Costs.

1.—(1.) Subject to the provisions of any law of the Commonwealth and to these Rules, the costs of and incidental to all proceedings in the Court and in Chambers, including the administration of estates and trusts, are in the discretion of the Court or a Justice.

Costs to be in the discretion of the Court.  
R.S.C. O. LXV.  
r. 1.

(2.) This rule does not deprive an executor, administrator, trustee or mortgagee who has not unreasonably commenced or carried on or resisted any proceedings of a 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.

2.—(1.) A judgment or order giving a party costs, except so far as those costs have been occasioned or incurred by, or relate to, some particular issue or part of the proceeding, shall be read and construed as excluding only the amount by which the costs have been increased by that issue or that proceeding.

Costs of issues.  
H.C.R. O. LIV.  
r. 2.

(2.) If the whole costs of the proceeding are not intended to be given to a party, the Court or Justice may, by the judgment or order, direct taxation of the whole costs and payment of such proportion of those costs as the Court or Justice determines.

3. If a cause or part of a cause is removed from a court having jurisdiction in the cause into the High Court, the costs in the court below shall be costs in the cause.

Costs of cause removed from inferior court.  
R.S.C. O. LXV.  
r. 4.

4. Where a trial or hearing cannot conveniently proceed by reason of the solicitor for a party having—

Personal liability of solicitor to pay costs.  
R.S.C. O. LXV.  
r. 5.

(a) neglected to attend personally or by some proper person on his behalf; or

(b) omitted to deliver a document necessary for the use of the Court or Justice and which, according to the practice of the Court or these Rules, ought to have been delivered, the solicitor shall personally pay to all or any of the parties such costs as the Court or Justice thinks fit to award.

5. When security for costs is required or ordered, 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 Justice directs.

Security for costs.  
R.S.C. O. LXV.  
r. 6.

6.—(1.) A plaintiff ordinarily resident outside the Commonwealth may be ordered to give security for costs notwithstanding that he may be temporarily resident within the Commonwealth.

Security for costs by plaintiff temporarily within Commonwealth.  
R.S.C. O. LXV.  
r. 6A.

(2.) A defendant setting up a counter-claim not arising out of the plaintiff's claim may be ordered to give security for costs in a case in which a plaintiff making the like claim might be so ordered.

7. When, in an action brought by a person resident outside the Commonwealth, the plaintiff's claim is founded on a judgment or order, or on a bill of exchange or other negotiable instrument, security for costs shall not ordinarily be required, but the Court or a Justice may in any such case order security to be given if it appears to the Court or Justice that such an order should be made.

Action founded on judgment or bill of exchange.  
R.S.C. O. LXV.  
r. 6B.

8. Where a bond is to be given as security for costs, it shall, unless the Court or a Justice otherwise directs, be given to an officer of the Court.

Bond as security for costs.  
R.S.C. O. LXV.  
r. 7.

9.—(1.) When the Court or a Justice awards costs to a party, the Court or Justice may, by the order—

Fractional or gross sum for costs.  
R.S.C. O. LXV.  
r. 23.

(a) direct taxation of the costs of the party;

(b) direct payment of a proportion of the taxed costs, payment of the taxed costs less a specified sum to be deducted from them or payment of a sum in gross in lieu of taxed costs; and

(c) direct by and to whom the proportion, the taxed costs or the sum shall be paid.

(2.) The Court or Justice may direct payment of a sum in gross in lieu of taxed costs notwithstanding that that sum is greater or smaller than the amount of taxed costs.

10. The Court or a Justice may, after reference to and report by the taxing officer, order a solicitor to repay to his client costs ordered to be paid by the client to another party where those costs have been incurred by that party in consequence of the delay or misconduct of the solicitor.

Solicitor to repay costs due to his delay or misconduct.  
cf. R.S.C. O. LXV. r. 11.

11.—(1.) Where the Court or a Justice appoints a solicitor or public trustee to be guardian *ad litem* of an infant or person of unsound mind in a proceeding, the Court or Justice may direct that the costs to be incurred in the performance of the duties of that office shall be borne and paid—

Costs of solicitor-guardians.  
R.S.C. O. LXV. r. 13.  
H.C.R. O. LIV. r. 4.

(a) by the parties, or one or more of the parties, to the proceeding in which the appointment is made; or

(b) out of any fund in Court in which the infant or person of unsound mind may be interested,

and may give such directions for the repayment or allowance of the costs as the justice and circumstances of the case require.

(2.) When a solicitor acts as guardian of a person of unsound mind without an order of the Court or a Justice appointing him as guardian, the costs incurred in the performance of the duties of that office are in the discretion of the Court or Justice.

12.—(1.) A set-off for damages or costs between parties may be allowed by the Court or a Justice and, as to costs, by the taxing officer, notwithstanding the solicitor's lien for costs in the particular proceedings in which the set-off is sought.

Set-off for damages or costs.  
R.S.C. O. LXV. r. 14.

(2.) A set-off for damages or costs between parties may be allowed by the Court or a Justice in cases where the set-off arises as the result of different proceedings either notwithstanding or subject to the liens of the respective solicitors of the parties for their costs.

13. The costs occasioned by an unsuccessful claim or unsuccessful resistance to a claim to any property shall not be paid out of an estate or fund unless the Court or a Justice so directs.

Costs out of estate.  
R.S.C. O. LXV. r. 14A.

14. The costs of inquiries to ascertain the person entitled to a legacy, money or share, or otherwise incurred in relation to the inquiries, shall be paid out of the legacy, money or share, unless the Court or a Justice otherwise directs.

Costs as regards particular shares.  
R.S.C. O. LXV. r. 14B.

15.—(1.) 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 Justice 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.

Distribution not to be delayed by difficulties as to some shares.  
R.S.C. O. LXV. r. 14C.

(2.) Such order may be made for ascertaining and payment of the costs incurred down to and including the payment as the Court or Justice thinks reasonable.

## ORDER 71.

16. In a proceeding in which it is ordered that any costs shall be paid out of an estate or fund, the Justice making the order may direct out of what portion or portions of the estate or fund the costs shall be paid, and the costs shall be paid accordingly.

Costs in actions ordered to be paid out of estate.  
R.S.C. O. LXV.  
r. 14b.

17.—(1.) The Court or a Justice may, where costs are ordered to be paid to a party out of an estate or fund, direct that the costs shall be allowed and taxed as between solicitor and client.

Costs as between solicitor and client.

(2.) In the absence of a direction under the last preceding sub-rule, costs ordered to be paid out of an estate or fund shall be taxed as between party and party.

18. The costs of a receiver appointed by the Court or a Justice may be taxed by the taxing officer on the application of the receiver or a party.

Receivers' costs.

19.—(1.) Unless the Court or a Justice in a particular case otherwise directs, bills of costs and fees which—

Registrar to tax costs.  
H.C.R. O. LIV.  
r. 10.

(a) are payable to barristers and solicitors entitled or admitted to practise in the Court in respect of business transacted by them in the Court or its offices; and

(b) have been directed by a judgment or order to be taxed, shall be taxed, allowed and certified by a Registrar who, in these Rules, is referred to as "the taxing officer".

(2.) The taxing officer shall appoint a time for taxation on the application of the party claiming taxation.

20.—(1.) Two days' notice of the time appointed for the taxation of 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, except in cases where that party has not entered an appearance.

Notice of taxing costs and copy bill.  
R.S.C. O. LXV.  
r. 16.

(2.) The taxing officer may in cases of urgency direct that one day's notice only shall be given.

21. An affidavit of increase shall not be prepared unless ordered by the taxing officer.

No affidavit of increase.

22. Every taxation of costs and every decision of a taxing officer shall be subject to review by a Justice.

Review of taxation.  
H.C.R. O. LIV.  
r. 11.

23. Except when otherwise ordered, in all proceedings commenced or instituted after, or pending at the time when, these Rules come into operation, solicitors are, subject to these Rules, entitled to charge and be allowed the fees set forth in the Second Schedule in respect of the matters referred to in that Schedule, and higher fees shall not be allowed in any case except such as are by this Order otherwise provided for.

Scale of costs.  
R.S.C. O. LXV.  
r. 8.

24. The taxing officers shall be respectively assistant to each other, and, in the discharge of their duties and for the proper despatch of the business of their respective offices, a taxing officer may tax, or assist in the taxation, of a bill of costs which has been referred to another taxing officer for taxation and for ascertaining what is due in respect of the costs, and in that case shall certify accordingly.

Taxing officers to assist each other.  
R.S.C. O. LXV.  
r. 19.

25. All costs to which a party is entitled under an interlocutory order made in a proceeding shall be included in the final judgment when signed or entered, unless the costs have then been paid.

Costs of interlocutory proceedings.

## ORDER 71.

**26.**—(1.) Unless the Court or a Justice otherwise orders, the costs of a motion or application in a cause shall be deemed to be part of the costs of the cause of the party in whose favour the motion or application is determined unless the motion or application is unopposed.

Costs of incidental applications.

(2.) When the motion or application is unopposed, the costs of both parties shall be deemed to be part of their costs of the cause, unless the Court or a Justice otherwise orders.

**27.** When a motion, application or other proceeding is ordered to stand over to the trial and no order is made at the trial as to the costs of the motion, application or proceeding, the costs of both parties of the motion, application or proceeding shall be deemed to be part of their costs of the cause.

Costs of motion not disposed of.

**28.** When the costs of a motion, application or other proceeding are reserved by the Court or Justice, costs of the motion, application or proceeding shall not be allowed to a party without an order of the Court or Justice.

Costs reserved.

**29.** When an order directing the taxation of any costs in a proceeding has been made, the taxing officer may of his own motion give notice to a party to carry in his bills of costs for taxation, and may limit a time for that purpose.

Taxing officer may give notice to parties to carry in their bills.

**30.** The taxation shall, if possible, be continued without interruption till completed, but, if it is adjourned for any reason, notice of the adjournment shall be sent by post to a solicitor or person not present at the time of the adjournment whose attendance the taxing officer may desire at the next appointment.

Notice of adjournment of taxation.  
H.C.R. O. LIV.  
r. 15.

**31.** A bill of costs shall be filed before it is taxed.

Bill to be filed before taxation.

**32.** A solicitor who fails to file the bill of costs as required, or who in any way delays or impedes the taxation, shall, if the taxing officer so directs, forfeit the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation, and the taxing officer may also, if he thinks fit, exercise all or any of the powers vested in him by rules 73 and 104 of this Order.

H.C.R. O. LIV.  
r. 16.  
Neglect, &c., of solicitor.  
H.C.R. O. LIV.  
r. 17.

**33.** In a bill of costs the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is filed.

Form of bills of costs.  
R.S.C. O. LXV.  
r. 19II.

**34.** Where costs are ordered to be taxed as between party and party, and also as between solicitor and client, all the costs shall be submitted for taxation in one bill with the additional costs as between solicitor and client shown in a separate column.

Where taxation as between party and party and also as between solicitor and client.

**35.**—(1.) Subject to the last two preceding rules, bills of costs for taxation shall be prepared so as to shew clearly—

Matters to be shewn.

- (a) dates (specifying years, months and days);
- (b) items consecutively numbered;
- (c) particulars of the services charged for;
- (d) disbursements; and
- (e) professional charges.

(2.) A bill of costs shall, at the end of the bill, contain a summary of the charges and disbursements showing the totals of each column of the charges and disbursements.

(3.) When several items of the same date are set out consecutively, it is only necessary to show the date in the case of the first item.

36. An addition or alteration shall not be made in a bill of costs after it is filed for taxation except by permission or direction of the taxing officer. Amendment of bill.

37. A copy of a bill of costs shall be made page for page, so as to correspond with the bill left for taxation. Copies of bills.

38. The taxing officer, in taxing any subsequent costs in the same proceeding, shall have regard to the preceding bills so as to ascertain that none of the items charged were included in a previous bill. Previous costs.

39. When for any reason the further prosecution of a proceeding becomes unnecessary, except for the purpose of determining by whom the costs of the proceeding should be paid, any party may apply to the Court or a Justice to determine that question, and thereupon the Court or Justice may make such order as is just. Costs when further proceedings become unnecessary.

40. In an Admiralty action, a party claiming an excessive amount, either by way of claim, set-off or counter-claim, may be ordered to pay all costs and damages occasioned by the excess. Costs of excessive claims in Admiralty actions.

41. In an Admiralty action, if a tender is rejected but is afterwards accepted or is held by the Court to be sufficient, the party rejecting the tender shall, unless the Court otherwise orders, pay all the costs incurred after the tender is made. H.C.R. O. XLIIIA. r. 91. Tender improperly rejected in Admiralty action.

42.—(1.) When the sum in dispute in an Admiralty action does not exceed One hundred pounds, or the value of the *res* does not exceed Two hundred pounds, one half only of the ordinary costs shall be allowed. H.C.R. O. XLIIIA. r. 92. Costs in small Admiralty cases.

(2.) In this rule, when costs are awarded to a plaintiff, the words “sum in dispute” mean the sum recovered by him in addition to the sum, if any, counter-claimed from him by the defendant, and, when costs are awarded to a defendant, they mean the sum claimed from him, in addition to the sum, if any, recovered by him. H.C.R. O. XLIIIA. r. 93.

43. In the case of—

- (a) writs of summons requiring special endorsement;
- (b) special cases;
- (c) cases stated or questions reserved under an Act;
- (d) pleadings;
- (e) affidavits in answer to interrogatories;
- (f) affidavits of documents and other special affidavits (including affidavits requiring special or unusual care in their preparation or consideration); and
- (g) admissions under Order 33, rule 3,

Allowances for pleadings, &c., in discretion of taxing officer. R.S.C. O. LXV. r. 27 (1.).

the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, and for attendances, make such allowance for work, labour and expenses in or about the preparation of the documents as in his discretion he thinks proper.

## ORDER 71.

44. The fees allowed for drawing a pleading or other document shall include a copy made for the use of the solicitor, agent or client or for counsel to settle.

Drawing pleadings.  
R.S.C. O. LXV.  
r. 27 (2.).

45. In the case of instructions to sue or defend or the preparation of briefs, if the taxing officer on special grounds considers the fee provided in the scale inadequate, he may make such further allowance as he, in his discretion, considers reasonable.

Instructions to sue or defend, &c.  
R.S.C. O. LXV.  
r. 27 (3.).

46. The taxing officer shall allow only the copying of such documents, or parts of documents, accompanying briefs, as he considers necessary for the instruction of counsel or for use at the trial or hearing.

Copies with briefs.  
H.C.R. O. LIV.  
r. 20 (2.).

47. In the case of 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 thinks fit.

Swearing affidavits.  
R.S.C. O. LXV.  
r. 27 (4.).

48. The allowances for instructions for and drawing an affidavit in answer to interrogatories, an affidavit of documents or any other special affidavit (including an affidavit requiring special or unusual care in its preparation or consideration), and for attending the deponent to be sworn, include all attendances on the deponent to settle and read over.

Drawing affidavits and attending deponent.  
R.S.C. O. LXV.  
r. 27 (5.).

49. Fees for the delivery of pleadings, services and notices are not to be allowed more than once when the same solicitor acts for both parties, unless he so acts for the purpose of making an affidavit of service.

Delivery of pleading, &c.  
R.S.C. O. LXV.  
r. 27 (6.).

50. When two or more writs, summonses, orders or notices in the same proceeding can be served at the same time on a party, they shall be so served, and, in that case, fees and mileage shall be allowed for the service of one only.

Mileage on several writs, &c.

51. The fees for perusals do not apply where the same solicitor acts for both parties.

Perusals.  
R.S.C. O. LXV.  
r. 27 (7.).

52.—(1.) 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 of those defendants separately, the taxing officer shall consider, in the taxation of the solicitor's bill of costs, either between party and party or between solicitor and client, whether the separate pleadings or other proceedings were necessary or proper.

Separate answers or proceedings by the same solicitor.  
R.S.C. O. LXV.  
r. 27 (8.).

(2.) If the taxing officer is of opinion that a part of the costs occasioned by the separate pleadings or other proceedings has been unnecessarily or improperly incurred, that part shall be disallowed.

53. In taxing the costs as between party and party of joint executors or trustees who defend separately, the taxing officer, unless otherwise ordered by the Court or a Justice, shall allow one set of costs only for those defendants, and those costs shall be apportioned among them as the taxing officer deems just.

Costs of joint trustees not joining in defence.

54. Such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses shall be allowed.

Evidence.  
R.S.C. O. LXV.  
r. 27 (9.).

## ORDER 71.

**55.—**(1.) In the case of agency correspondence, if it is shown to the satisfaction of the taxing officer that the correspondence has been special and extensive, he may make such special allowance in respect of the correspondence as in his discretion he thinks proper.

Agency correspondence.  
R.S.C. O. LXV.  
r. 27 (10.).  
H.C.R.  
Schedule  
Part II. Item  
166.

(2.) In agency matters an allowance shall be made for the necessary expense of postage, carriage and transmission of documents.

**56.—**(1.) The taxing officer may make such allowances in respect of the preparation of the draft judgment or order referred to in Order 44, rule 4, and for any attendance upon settling it, as he considers reasonable.

Drawing and settling judgments or orders.  
R.S.C. O. LXV.  
r. 27 (11.).

(2.) The taxing officer may, in respect of the attendance of solicitors upon Registrars for the purpose of settling the terms of and passing judgments or orders in such cases as are provided for by Order 44, rule 17, make such special allowances as he considers reasonable.

**57.** In the case of attendance at a Justice's Chambers or before a Registrar, where, from the length of the attendance or from the difficulty of the case, the Justice or Registrar thinks that the fees prescribed in the Second Schedule are an insufficient remuneration for the services performed, or, where the preparation of a case has required skill and labour in respect of which no fee has been prescribed, the Justice or Registrar may allow such special fee as in his discretion he thinks fit.

Special allowance for attendance at Chambers in cases of difficulty, &c.  
R.S.C. O. LXV.  
r. 27 (12.).

**58.—**(1.) In the case of attendance at a Justice's Chambers or before a Registrar, where, by reason of the non-attendance of a party and it not being considered expedient to proceed *ex parte*, or by reason of the neglect of a party in not being prepared with any proper evidence or necessary document, the attendance is adjourned without any useful progress being made, the Justice may order such an amount of costs, if any, as he thinks reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally.

Non-attendance or neglect of parties on proceedings in Chambers.  
R.S.C. O. LXV.  
r. 27 (13.).

(2.) The party so absent or neglectful shall not be allowed a fee in respect of the attendance as against another party or out of an estate or fund in which another party is interested.

**59.** A folio comprises seventy-two words, and a figure shall be counted as one word.

Folios.  
R.S.C. O. LXV.  
r. 27 (14.).

**60.—**(1.) Such costs of procuring the advice of counsel on the pleadings, evidence and proceedings as the taxing officer in his discretion thinks just and reasonable, and of procuring counsel to settle such writs, pleadings, interrogatories, special affidavits (including affidavits requiring special or unusual care in their preparation or consideration) and notices of appeal as the taxing officer in his discretion thinks proper to be settled by counsel, shall be allowed.

Fees to counsel for settling pleadings, affidavits, &c., and advising thereon.  
R.S.C. O. LXV.  
r. 27 (15.).

(2.) In the case of affidavits, a separate fee shall not be allowed for each affidavit but one fee shall be allowed for all the affidavits proper to be so settled which were or ought to have been filed at the same time.

## ORDER 71.

61. When a practitioner acts in the capacities of both barrister and solicitor, or in the capacity of counsel, instructed by his partner acting as solicitor, the taxing officer shall (in cases where a fee would have been allowed to independent counsel) allow to the practitioner in respect of—

Solicitor  
counsel  
preparing  
pleading, &c.

(a) the drawing or settling of any writ, pleading, interrogatories, special affidavit (including an affidavit requiring special or unusual care in its preparation or consideration) or notice of appeal; or

(b) the appearance of the practitioner as counsel at a trial or hearing,

such sum as a counsel's fee as the taxing officer in his discretion thinks just and reasonable having regard to the fact that the practitioner is acting as both barrister and solicitor, or as counsel instructed by his partner acting as solicitor, as the case may be.

62.—(1.) Where counsel attends at Justice's Chambers or before a Registrar, costs of the attendance shall not be allowed unless the Justice or Registrar certifies it to be a proper case for counsel to attend.

Counsel at  
Chambers.  
R.S.C. O. LXV.  
r. 27 (16.).

(2.) The Justice or Registrar may also certify for counsel in cases where the parties, or any of them, are represented by their solicitor, and not by separate counsel, if the Justice or Registrar thinks the case was a proper one for counsel to attend.

63.—(1.) The costs of inspection of documents is in the discretion of the taxing officer, but an allowance shall not 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 the inspection.

Inspection of  
documents.  
R.S.C. O. LXV.  
r. 27 (17.).

(2.) A taxing officer may from time to time make an interim certificate or allocatur in a taxation for a portion or portions of the taxed costs directed to be taxed without waiting until a certificate for the full amount can be made.

64.—(1.) Where a petition, notice of motion, originating summons or summons is served, and notice, accompanied by a tender of costs for perusing the petition, notice, originating summons or summons, is given to the party served that in case of his appearance upon the hearing of the petition, notice, originating summons or summons his costs will be objected to, the amount to be tendered shall be Three pounds three shillings.

Tender for  
respondent's  
costs on service  
of petition, &c.  
R.S.C. O. LXV.  
r. 27 (19.).

(2.) The party making the payment shall be allowed it in his costs if the service was proper, but not otherwise.

(3.) This rule is without prejudice to the rights of any party to costs, or to object to costs, where a tender of costs for perusing is not made, or where the Court or a Justice considers the party entitled, notwithstanding the notice or tender, to appear upon the hearing.

(4.) In any other case in which a solicitor of a party served necessarily or properly peruses such a petition, notice of motion, originating summons or summons, without appearing on it, he shall be allowed a fee not exceeding Three pounds three shillings.

## ORDER 71.

65.—(1.) The Court or Justice may, at a trial or hearing or upon an application in Court or at Chambers, and whether or not objection is taken—

Disallowance of costs of improper, vexatious or unnecessary matter in documents or proceedings.  
R.S.C. O. LXV.  
r. 27 (20.).

- (a) direct that any costs which have been improperly, unreasonably or negligently incurred be disallowed; or
- (b) direct the taxing officer to examine the costs incurred, and to disallow such costs as he shall find to have been improperly, unreasonably or negligently incurred.

(2.) A party whose costs are so disallowed shall pay to the other parties the costs incurred by those parties in relation to the proceeding in respect of which his costs have been disallowed.

(3.) Where the question of costs having been improperly, unreasonably or negligently incurred has not been raised before and dealt with by the Court or Justice, it is the duty of the taxing officer to look into that question (including the evidence, although it may be entered as read in any judgment, decree or order), and thereupon the same consequences shall ensue as if he had been specially directed under paragraph (b) of sub-rule (1.) of this rule to examine the costs incurred, and to disallow such costs as he finds to have been improperly, unreasonably or negligently incurred.

66. Where, under these Rules or by the order or direction of the Court or a Justice, a party entitled to receive costs is liable to pay costs to another party, the taxing officer may tax the costs which that party is liable to pay and—

Set-off of costs.  
R.S.C. O. LXV.  
r. 27 (21.).

- (a) adjust the costs by way of deduction or set-off;
- (b) delay the allowance of the costs the party is entitled to receive until he has paid or tendered the costs he is liable to pay; or
- (c) certify the costs to be paid.

67. Where a question as to any costs is dealt with by a Justice in Chambers, the associate shall make a note thereof for the information of the taxing officer.

Costs of prolixity in Chambers.  
R.S.C. O. LXV.  
r. 27 (22.).

68. Where a party appears upon a proceeding in Court, at Chambers or before a Registrar, in which he is not interested or upon which, according to the practice of the Court, he ought not to attend, he shall not be allowed any costs of appearance unless the Court, Justice or Registrar expressly directs the costs to be allowed.

Unnecessary appearance in Court or at Chambers.  
R.S.C. O. LXV.  
r. 27 (23.).

69.—(1.) Costs of an application for consent to an extension of time for taking any proceedings are in the discretion of the taxing officer.

Costs of applications to extend time.  
R.S.C. O. LXV.  
r. 27 (24.).

(2.) The taxing officer shall not allow the costs of more than one extension of time unless he is satisfied that the extension was necessary and could not, with due diligence, have been avoided.

(3.) The costs of a summons to extend time shall not be allowed unless the party taking out the summons has previously applied to the opposite party to consent to a sufficient extension of time and the opposite party has not consented, or the taxing officer considers there was a good reason for not making the application.

## ORDER 71.

70. The taxing officer may, for the purpose of taxation of costs—
- (a) summon and examine witnesses either orally or upon affidavit;
  - (b) administer oaths;
  - (c) direct or require the production of books, papers and documents;
  - (d) issue *subpoenas*;
  - (e) make separate or interim certificates or allocaturs;
  - (f) require a party to be represented by a separate solicitor; and
  - (g) do such other acts and direct or take all such other steps as are directed by these Rules or by the Court or a Justice.

Powers of  
taxing officer.  
R.S.C. O. LXV.  
r. 27 (25).  
H.C.R. O. LIV.  
r. 38.

71.—(1.) Where an account consists in part of a bill of costs, the Court or Justice may direct the taxing officer to assist in settling the costs, not being the ordinary costs of passing the account of a receiver.

Taxing officer  
to assist when  
account  
comprises  
bill of costs.  
R.S.C. O. LXV.  
r. 27 (26).

(2.) The taxing officer, on receiving the direction, shall proceed to tax the costs, and shall have the same powers, and the same fees shall be payable in respect of the taxation, as if those costs had been referred to the taxing officer by an order.

(3.) The taxing officer shall report and certify the costs to the Court or Justice by whose direction the costs were taxed.

72. The taxing officer may, on the taxation of costs to be borne by a fund or estate—

Attendance of  
parties on  
taxation.  
R.S.C. O. LXV.  
r. 27 (27).

- (a) arrange and direct what parties are to attend before him and what parties are to be served with appointments to tax and with copies of bills of costs; and
- (b) disallow the costs of a party whose attendance the taxing officer in his discretion considers unnecessary.

73. When a party entitled to costs refuses or neglects to bring in his costs for taxation or to procure them to be taxed, and thereby prejudices another party, the taxing officer may, so as to prevent another party being prejudiced by the refusal or neglect—

Refusal or  
neglect to  
procure  
taxation.  
R.S.C. O. LXV.  
r. 27 (28).

- (a) certify the costs of the other parties and the refusal or neglect; or
- (b) allow a nominal or other sum to the party refusing or neglecting for his costs.

74. On every taxation, the taxing officer shall allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for maintaining or defending the rights of a party, but, except as against the party who incurred them, costs shall not be allowed which appear to the taxing officer to have been incurred or increased—

Costs to be  
allowed on  
taxation.  
R.S.C. O. LXV.  
r. 27 (29).

- (a) through over-caution, negligence or mistake;
- (b) by payment of special fees to counsel or special charges or expenses to witnesses or other persons; or
- (c) by other unusual expenses.

75.—(1.) Subject to the next succeeding sub-rule, in taxation of a solicitor's fees, charges and disbursements, a disbursement shall not be allowed which has not been actually made before the delivery of the bill of costs.

Disbursements  
in solicitors'  
bills.  
R.S.C. O. LXV.  
r. 27 (29a).

(2.) Where the bill expressly states that disbursements have not been made before delivery of the bill, and sets out the unpaid items of disbursements under a separate heading in the bill, they may be allowed by the taxing officer if they have been actually paid before the commencement of the taxation, and are paid in discharge of an antecedent liability of the solicitor, including counsel's fees, properly incurred on behalf of the client.

(3.) For the purposes of computation of one-sixth of a bill, the bill shall be deemed to include the unpaid items which are allowed as part of it.

76. Such sum shall be allowed as the taxing officer in his discretion thinks just and reasonable, having regard to all the circumstances of the case, for work and labour properly performed and not specifically provided for by these Rules, but in respect of which, in the opinion of the taxing officer, an allowance should be made.

Fees not here provided for.  
H.C.R. O. LIV.  
r. 48.

77. Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by an amendment of the plaintiff's pleadings shall be deemed to be part of the defendant's costs in the cause (except as to an amendment which appears to have been rendered necessary by the default of the defendant), but there shall be deducted from the costs any sum which has already been paid by the plaintiff in respect of the amendment.

Costs of amendment of plaintiff's pleadings.  
R.S.C. O. LXV.  
r. 27 (31.).

78. Where, upon taxation, a plaintiff who has obtained a judgment with costs is not allowed the costs of an amendment of his pleadings on the ground of the amendment having been unnecessary, the defendant's costs occasioned by the amendment shall be taxed, and the amount of those costs shall be deducted from the costs to be paid by the defendant to the plaintiff.

Plaintiff refused costs of his amendment.  
R.S.C. O. LXV.  
r. 27 (32.).

79. Where—

- (a) a proceeding is dismissed with costs;
- (b) an application is refused with costs; or
- (c) any costs are by a general or special order directed to be paid,

Taxation where action, &c., dismissed with costs.  
R.S.C. O. LXV.  
r. 27 (33.).

the taxing officer may tax the costs without a further order referring the costs for taxation unless the Court or a Justice, upon the application of the party alleging himself to be aggrieved, prohibits the taxation of the costs.

80.—(1.) Where it is directed that costs shall be taxed in case the parties differ about them—

- (a) 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 done so to the other party; and
- (b) at any time within seven days after the notice, the other party may inspect the bill, without fee.

Taxation of costs where parties differ.  
R.S.C. O. LXV.  
r. 27 (34.).

(2.) At or before the expiration of the seven days, or such further time as the taxing officer in his discretion allows, the other party shall agree to pay the costs or shall signify his dissent from them, and he may thereupon tender a sum of money for the costs.

(3.) Where the other party makes no such tender, or where the party claiming the costs refuses to accept the sum tendered, the taxing officer shall proceed to tax the costs.

(4.) Where the taxed costs do not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs.

81. Where any costs are by a 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 the costs as taxed without any direction for that purpose in the judgment or order.

Where total  
of costs taxed  
to be stated.  
R.S.C. O. LXV.  
r. 27 (35.).

82. The allowances in respect of fees to such a person as is mentioned in Order 50, rule 3, and to an accountant, merchant, engineer, actuary or other scientific or expert person to whom a question or matter is referred, or whose aid or assistance is obtained, shall be regulated by the taxing officers.

Fees of experts,  
&c.  
R.S.C. O. LXV.  
r. 27 (36.).

83.—(1.) In the case of a fee or allowance which is discretionary, it shall, unless otherwise provided, be allowed at the discretion of the taxing officer.

Taxing officers'  
discretion.  
R.S.C. O. LXV.  
r. 27 (38.).

(2.) The taxing officer, in the exercise of his discretion, shall take into consideration—

- (a) the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which such a fee or allowance applies;
- (b) the nature and importance of the proceeding;
- (c) the amount involved;
- (d) the interest of the parties;
- (e) the fund, estate or persons to bear the costs;
- (f) the general conduct and costs of the proceeding; and
- (g) all other circumstances.

84. Where 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.

Costs of  
judgment.  
R.S.C. O. LXV.  
r. 27 (38.).

85.—(1.) If, upon a taxation, it appears that—

- (a) the costs have been increased by unnecessary delay, by improper, vexatious, prolix or unnecessary proceedings, or by other misconduct or negligence; or
- (b) from any other cause, the amount of the costs is excessive having regard to the nature of the business transacted or the interests involved, to the money or value of property to which the costs relate, or to the other circumstances of the case,

Power of  
taxing officer  
to assess costs  
at a gross  
sum.  
R.S.C. O. LXV.  
r. 27 (38A.).

the taxing officer shall allow only such an amount of costs as is reasonable and proper, and may assess the amount of those costs at a gross sum.

(2.) The taxing officer shall, if necessary, apportion the amount among the parties, if more than one, or may report the matter to a Justice who may make such order as he thinks fit.

## ORDER 71.

86. If, on the taxation of a bill of costs payable out of a fund or estate 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, costs shall not be allowed to the solicitor leaving the bill for taxation for drawing and copying it, or for attending the taxation.

Cases where bill reduced by one-sixth.  
H.C.R. O. LXV.  
r. 52.

87.—(1.) Where a party is dissatisfied with the allowance or disallowance by the taxing officer, in a bill of costs taxed by him, of the whole or a part of any items, he may, at any time before a certificate or allocatur is signed, or at such other time as may, in any case, be fixed by the taxing officer—

Objections to taxation review.  
R.S.C. O. LXV.  
r. 27 (39.).

- (a) deliver to the other party interested in the allowance or disallowance, and carry in before the taxing officer, an objection in writing to the allowance or disallowance, specifying in the objection by a list, in a short and concise form, the items or parts of items objected to, and the grounds and reasons for the objections; and
- (b) thereupon apply to the taxing officer to review the taxation in respect of those items or parts.

(2.) Pending the consideration and determination of the objection, the taxing officer may, if he thinks fit, issue a certificate of taxation or allocatur for or on account of the remainder, or of a part, of the bill of costs.

(3.) Any further certificate or allocatur which may be necessary shall be issued by the taxing officer after his decision upon the objections.

88.—(1.) Upon an application under the last preceding rule to review the taxation, the taxing officer shall reconsider and review his taxation in relation to the objections, and he may, if he thinks fit, receive further evidence in respect of the objections.

Review of taxation by taxing officer.  
R.S.C. O. LXV.  
r. 27 (40.).

(2.) If so required by a party, the taxing officer shall state in his certificate of taxation or allocatur, or by reference to the objection, the ground and reasons of his decision on the objection, and any special facts or circumstances relating to his decision.

(3.) The taxing officer may tax the costs of the objections and add them to, or deduct them from, any sum payable by or to a party to the taxation.

(4.) Except as provided by this rule, the taxing officer shall not, after a certificate or allocatur is signed, review his taxation or amend his certificate, except to correct a clerical or manifest error before payment or process issued for recovery of the costs.

89.—(1.) If a party is dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item objected to under rule 87 of this Order, he may, within fourteen days from the date of the certificate or allocatur, or such other time as the Court or a Justice, or the taxing officer at the time he signs his certificate or allocatur, allows, apply to a Justice in Chambers for an order to review the taxation as to that item or part of an item.

Review of taxing officer's certificate by Justice.  
R.S.C. O. LXV.  
r. 27 (41.).

(2.) The Justice may thereupon make such order as the Justice thinks just.

(3.) The certificate or allocatur of the taxing officer is final and conclusive as to all matters which have not been objected to in accordance with these Rules.

90. An application under the last preceding rule to a Justice to review the taxation shall be heard and determined by the Justice upon the evidence which has been brought in before the taxing officer, and further evidence shall not be received upon the hearing of the application unless the Justice otherwise directs.

Evidence on review.  
R.S.C. O. LXV.  
r. 27 (42.).

91. Such fees may be allowed to counsel as in the circumstances of the case the taxing officer thinks reasonable.

Fees to Counsel.  
H.C.R. O. LIV.  
r. 49.

92. A retaining fee to counsel shall not be allowed on taxation as between party and party.

Retaining fee.  
R.S.C. O. LXV.  
r. 27 (44.).

93. A counsel's fee shall not in any case be allowed to a practitioner who is a paid clerk of, or is in receipt of a salary from, a practitioner or firm of practitioners, or the Commonwealth or a State.

Employed counsel.

94. When a practitioner acts in the capacities of both barrister and solicitor, or appears as counsel instructed by his partner acting as solicitor, neither he nor his partner may make a charge for "instructions for brief" or for "drawing" or "engrossing" brief, but, in lieu of those charges, the practitioner or partner, as the case may be, is entitled to such fees as are allowed by the taxing officer for "preparing for trial" and for "preparing brief notes for use on trial".

Fees to barristers and solicitors.

95. Fees for conferences shall not be allowed in a proceeding 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 appears to the taxing officer for some special reason that a conference was necessary or proper.

Fees for conferences.  
R.S.C. O. LXV.  
r. 27 (45.).

96. The taxing officer may, in his discretion, in any case allow the costs of briefing two or more counsel.

Two counsel.  
H.C.R. O. LIV.  
r. 50.

97. Where the costs of briefing two or more counsel may properly be allowed, the allowance may be made although none of the counsel is one of Her Majesty's Counsel.

Where none of several counsel is Queen's Counsel.  
R.S.C. O. LXV.  
r. 27 (47.).

98. Where the costs of employing two or more counsel may properly be allowed, the taxing officer may, in his discretion, allow the costs of consultations between them.

Consultations.

99. Where a trial or hearing (whether in open Court or not and whether witnesses are examined or cross-examined or not) extends beyond the day on which it is begun, the taxing officer may allow such refresher fees, as in his discretion he thinks reasonable, in respect of every five hours or part of five hours (including any midday adjournment) which is—

Refresher fees.

- (a) on a day subsequent to the day on which the trial or hearing began; and
- (b) subsequent to the expiration of the first five hours (including any midday adjournment) over which the trial or hearing has extended without being concluded.

## ORDER 71.

100. Where a proceeding is not 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 is of opinion that the costs were prematurely incurred.

Premature delivery of briefs.  
R.S.C. O. LXV.  
r. 27 (49.).

101. Where—

- (a) a proceeding which stands for trial or hearing is called on to be tried or heard but the proceeding cannot be decided by reason of a want of parties or other defect in the proceedings occasioned by the error or default of or on the part of the plaintiff;
- (b) the proceeding is therefore struck out of the list or adjourned; and
- (c) the same proceeding is again set down or comes on to be tried or heard,

Defendant's costs where hearing comes on but proceeding cannot be heard.  
R.S.C. O. LXV.  
r. 27 (50.).

the defendant shall, unless the Court or a Justice otherwise orders, be allowed the taxed costs occasioned by the first setting down, or adjournment, although he does not obtain the costs of the proceeding.

102. The fees specified in the following table are to be allowed to counsel's clerk:—

Counsel's clerk's fees.  
R.S.C. O. LXV.  
r. 27 (51.).

	£	s.	d.
Upon a fee of less than 5 guineas .. .. .	0	5	0
Upon a fee of 5 guineas or more and less than 10 guineas .. .. .	0	10	0
Upon a fee of 10 guineas or more and less than 20 guineas .. .. .	0	17	6
Upon a fee of 20 guineas or more and less than 30 guineas .. .. .	1	5	0
Upon a fee of 30 guineas or more and less than 50 guineas .. .. .	1	15	0
Upon a fee of 50 guineas or more .. .. .	4	0	0
per centum of the fee			
On consultations, senior's clerk .. .. .	0	10	0
On consultations, junior's clerk .. .. .	0	5	0
On conferences .. .. .	0	10	0

103. A fee to counsel, other than a fee to a practitioner acting as both solicitor and counsel, shall not be allowed on taxation unless vouched by his signature or it is proved to the satisfaction of the taxing officer that the fee has actually been paid.

Vouchers for counsel's fees.  
R.S.C. O. LXV.  
r. 27 (52.).

104. Where, in proceedings before the taxing officer, a party is guilty of neglect or delay, or puts another party to any unnecessary or improper expense, the taxing officer may exercise the powers vested in him by rule 73 of this Order.

Delay before taxing officer.  
R.S.C. O. LXV.  
r. 27 (55.).

105.—(1.) The taxing officer may limit or extend the time for a proceeding before him.

Power of taxing officer to limit or extend time.  
R.S.C. O. LXV.  
r. 27 (57.).

(2.) Where, by these Rules or any other rule of Court, or by an order of the Court or a Justice, a time is appointed for a proceeding before or by a taxing officer, the officer may, unless the Court or Justice otherwise directs, from time to time extend the time appointed upon such terms as the justice of the case requires, notwithstanding that the application for the extension is not made until after the expiration of the time appointed.

## ORDERS 71, 72

106. Every bill of costs filed for taxation shall be endorsed with the name and address of—

- (a) the solicitor by whom it is filed;
- (b) in agency matters, the principal solicitor; and
- (c) any solicitor who is entitled or intended to participate in the costs to be so taxed.

Endorsement on  
bill of costs.  
R.S.C. O. LXV.  
r. 27 (58.).

## ORDER 72.

## GENERAL RULES.

1.—(1.) When a party desires to take a step in a proceeding, and the manner or form of procedure is not prescribed by the rules or practice of the Court, the party may apply to a Justice for directions.

In cases not  
provided for,  
Justice may  
give directions.  
H.C.R. O. LVII.  
r. 8.

(2.) A step taken in accordance with the directions given by the Justice shall be deemed to be regular and sufficient.

(3.) A direction given pursuant to this rule is subject to review at any time by the Court or a Justice, and such further or other directions may be given as the Court or Justice thinks necessary or proper in the interests of justice.

2. Whenever by these Rules an act is required to be done by, to or with reference to a party, then in the case of a party who sues or appears by solicitor, the act shall be done by, to or with reference to that solicitor, unless it is expressly provided that it shall be done by, to or with reference to the party in question.

Solicitor to act  
for party.  
H.C.R. O. LVII.  
r. 9.

3.—(1.) A writ or commission issued from the Court, and a document issued under the seal of the Court, shall, unless by any law or by these Rules it is otherwise provided, bear date on the day on which it is issued.

Testing of writs  
and  
commissions.

(2.) A writ or commission shall be tested in the same manner as a writ of summons in an action.

4. When a judgment is pronounced in a proceeding, either by a Full Court or a single Justice, and the opinion of a Justice is reduced to writing, it is sufficient to state orally the opinion of the Justice without stating the reasons for the opinion, but his written opinion shall be then published by delivering it to the Registrar or associate in open Court.

Publication of  
written reasons  
for judgments.  
H.C.R. O. LVII.  
r. 11.

5. Unless otherwise provided, a document required to be delivered, filed or served on behalf of a party may be signed by the party, his counsel or his solicitor.

Documents,  
how signed.  
H.C.R. O. LVII.  
r. 10.

6. Moneys paid into Court are subject to the order of the Court or a Justice and shall be dealt with pursuant to that order or these Rules and not otherwise, and, in the meantime, shall not be considered as held for, on account of, or for the use or benefit of any person.

Money paid into  
Court, how to  
be held.  
H.C.R. O. LVII.  
r. 14.

7.—(1.) Subject to the provisions of Order 23, moneys or funds in Court shall be governed by the succeeding sub-rules of this rule.

Moneys in  
Court.  
H.C.R. O. LVII.  
r. 15.

(2.) An order which directs funds to be paid into Court shall direct the credit to which the funds are to be placed.

(3.) An order which directs funds in Court to be paid, sold, transferred, delivered or carried over to a credit other than that to which they are standing, or to be otherwise dealt with, shall state the particulars of the payment or other operation to be carried out.

(4.) Funds paid into Court under an order shall be paid into the Bank to the credit of an account entitled "High Court of Australia Suitors' Fund".

(5.) Funds so paid into the Bank shall not be withdrawn or paid from the Bank otherwise than under the authority or order of the Court or a Justice, but the Bank may make a payment under an order signed by the Principal Registrar or a District Registrar, and countersigned by an officer or person nominated by a Law Officer of the Commonwealth, without enquiry whether such an order has been made.

(6.) The Court or a Justice may direct that any funds paid or to be paid into Court under an order shall be deposited at interest in the Bank, or invested at interest in stock or securities of the Government of the Commonwealth, in the names of the Principal Registrar, or of one of the District Registrars, and a person nominated by a Law Officer of the Commonwealth.

(7.) The Court or a Justice may also direct how, in what manner, in what amounts and to what accounts the interest shall be credited.

(8.) In this rule, unless the contrary intention appears—

"funds" means any money, government stock, bonds or securities, or other securities, or any other investments of money including stocks and shares or any part thereof standing or to be placed to the credit of an account in the books of the Court;

"the Bank" means the Commonwealth Bank of Australia.

8. The fees and charges set forth in the Third Schedule shall, in respect of the matters to which they relate, be taken— Fees.  
H.C.R. O. LIV.  
r. 69.

(a) in the Court;

(b) in the several Registries of the Court;

(c) by the several officers of the Court; or

(d) by an examiner or other officer appointed to make or conduct an enquiry or examination,

as the case may be.

9. Subject to the succeeding rules of this Order, a process, affidavit, order or document shall not be issued, filed, sealed or otherwise dealt with, and any other matter or thing in respect of which a fee is payable or a charge provided shall not be done in the Court, or by an officer of the Court, unless all fees payable and charges provided under these Rules upon or in respect of that document, or in respect of issuing, filing, sealing or dealing with that process, affidavit, order or document, or upon or in respect of the doing of that matter or thing, have been paid by the practitioner or party, as the case may be. Fees required  
to be paid.

10. The Registrar shall, immediately upon payment of a fee upon or in respect of a document, or in respect of the filing, issuing, sealing or dealing with a document, mark upon the document the amount of the fee paid and the date of payment. Marking of fee.

## ORDER 72.

11. If a question arises as to which of the fees is applicable in a particular case, the question shall be determined by the Registrar, but a person affected by the determination of the Registrar may have it reviewed by a Justice in a summary manner. Registrar to decide disputed fees.

12. The Court or a Justice may, in a particular case for special reason, direct— Court may remit fees.

- (a) that a fee shall not be taken, or that part only shall be taken, or, if taken, that the whole or a part of the fee be remitted; or
- (b) that the payment of the whole or a part of a fee be postponed until such time, and upon such conditions, if any, as the Court or a Justice thinks fit.

13. When it appears to the Attorney-General that the payment of a fee referred to in these Rules would, owing to the exceptional circumstances of the particular case, involve undue hardship, the Attorney-General may reduce or remit the fee in that particular case. Remission of fees by Attorney-General.

14. Where, by a Convention entered into by the Queen and extended to the Commonwealth, it is provided that a fee is not required to be paid in respect of any proceedings, the fees referred to in rule 8 of this Order shall not be taken in respect of those proceedings. Conventions.

## THE SCHEDULES.

## FIRST SCHEDULE.

Form 1.

O. 2, r. 3.

O. 5, rr. 2 and 3.

## GENERAL FORM OF WRIT OF SUMMONS.

In the High Court of Australia  
(Registry).

Between A.B. (an infant, by G.H., his next friend),

Plaintiff,

and

C.D. and E.F.,

Defendants.

ELIZABETH THE SECOND by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas Queen, Defender of the Faith.

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

WE command you that within 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 High Court of Australia 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: Y.Z., Chief Justice of Our said High Court, the  
day of , in the year of Our Lord One thousand nine hundred  
and

(L.S.)

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.

*Memorandum to be subscribed on writs, &c., issued from the Principal Registry.*

Appearance (or Appearances) to this writ may be entered by the defendant (or defendants) either personally or by solicitor at the Principal Registry of the High Court at [Principal Seat of Court].

*Memorandum to be subscribed on writs, &c., issued from District Registries.*

If a defendant resides or carries on business in the State (or Territory) of [State or Territory in which District Registry is situated], his appearance to this writ may be entered, either personally or by solicitor, at [Registry above-mentioned].

If a defendant neither resides nor carries on business in the State (or Territory) of [State or Territory in which District Registry is situated], he may, at his option, cause his appearance to be entered either at the Registry above-mentioned or at the Principal Registry of the High Court at [Principal Seat of the Court].

*Endorsements to be made on the writ before issue.*

The plaintiff's claim is, &c. [state briefly the nature of the relief claimed in the action].

This writ was issued by the plaintiff in person, who resides at  
and whose address for service is at the same place (or at ).

This writ was issued by X.Y., of , whose  
address for service is at , solicitor for the plaintiff,  
who resides at .

This writ was issued by V.W., of , whose  
address for service is , agent for X.Y., of ,  
solicitor for the plaintiff, who resides at .

*Mention the locality and situation of the plaintiff's residence in such a manner as to enable it to be easily discovered.*

*Endorsement to be made on the writ after service.*

This writ was served by me on the defendant  
at on day, the day of ,  
19 .

Endorsed the day of , 19 .  
(Signed) M.N.  
(Address)

## FIRST SCHEDULE.

## Form 2.

O. 2, r. 3.  
O. 3, r. 4 (2.).  
O. 13, r. 1.

## SPECIALLY ENDORSED WRIT.

(Title, &c. [as in Form 1].)

ELIZABETH THE SECOND by the Grace of God, &c. [as in Form 1].

To \_\_\_\_\_ of \_\_\_\_\_ in the  
\_\_\_\_\_ of \_\_\_\_\_

We command you, &c. [as in Form 1].

Witness, &c. [as in Form 1].

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.

(Memorandum re Appearance [as in Form 1].)

If the defendant enters an appearance, he must also deliver a defence within twenty-one days from the last day of the time limited for appearance, unless such time is extended by the Court or a Justice, otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a summons for judgment.

## STATEMENT OF CLAIM.

The plaintiff's claim is

## Particulars.

(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 to his solicitor or agent, within \_\_\_\_\_ days from the service hereof, further proceedings will be stayed.

This writ was issued, &c. [as in Form 1].

This writ was served by me, &c. [as in Form 1].

## Form 3.

O. 2, r. 5 (1.).

WRIT WHERE SERVICE OUTSIDE THE COMMONWEALTH or WHEN NOTICE IN LIEU OF SERVICE IS TO BE GIVEN OUTSIDE THE COMMONWEALTH.

(Title, &c. [as in form 1].)

ELIZABETH THE SECOND by the Grace of God, &c. [as in Form 1].

To C.D., of

We command you that, within \_\_\_\_\_ days after the service of this writ (or notice of this writ [as the case may be]) on you, inclusive of the day of such service, you do cause an appearance to be entered for you in Our High Court of Australia, in an action at the suit of A.B., and take notice that, in default of your so doing, the plaintiff may, by leave of the Court or a Justice, proceed therein, and judgment may be given in your absence.

Witness, &c. [as in Form 1].

N.B.—This writ is to be served, &c. [as in Form 1].

Memorandum re Appearance [as in Form 1].

Endorsements [as in Form 1].

Further endorsement to be made on the writ before the issue thereof, or before amendment to include a defendant to be served outside the Commonwealth.

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 to be served outside the Commonwealth of Australia.

Form 4.

O. 2, r. 5 (1).  
O. 13, r. 1.

## SPECIALLY ENDORSED WRIT WHERE SERVICE OUTSIDE THE COMMONWEALTH.

(Title, &amp;c. [as in form 1].)

ELIZABETH THE SECOND by the Grace of God, &amp;c. [as in Form 1].

To , of

WE command you, that within days after the service of this writ (or notice of this writ [as the case may be]) on you, inclusive of the day of such service, you do cause an appearance to be entered for you in Our High Court of Australia in an action at the suit of A.B., and take notice that, in default of your so doing, the plaintiff may, by leave of the Court or a Justice, proceed therein, and judgment may be given in your absence.

Witness, &amp;c. [as in Form 1].

N.B.—This writ is to be served, &amp;c. [as in Form 1].

Memorandum re Appearance [as in Form 1].

If the defendant enters, &amp;c. [as in Form 2].

## STATEMENT OF CLAIM.

The plaintiff's claim is

Particulars.

(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 to his solicitor or agent, within days from service hereof, further proceedings will be stayed.

This writ was issued, &amp;c. [as in Form 1].

This writ (or notice of this writ) was served, &amp;c. [as in Form 1].

N.B.—This writ is to be used, &amp;c. [as in Form 3].

Form 5.

O. 2, r. 5 (2).

## NOTICE TO BE SERVED OUTSIDE THE COMMONWEALTH IN LIEU OF WRIT.

In the High Court of Australia.

Between A.B.,

Plaintiff,

and

C.D. and E.F.,

Defendants.

To E.F., of

Take notice that A.B., of , has commenced an action against you, E.F., in the High Court of Australia, by writ of that Court dated the day of , 19 , which writ is endorsed as follows [copy in full the endorsements], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the 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, by leave of the Court or a Justice, proceed therein, and judgment may be given in your absence.

If writ issued out of Principal Registry.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Principal Registry of the Court at [Principal Seat of the Court].

If writ issued out of District Registry.

If you reside or carry on business in the State (or Territory) of [State or Territory in which District Registry is situated], you must cause your appearance to be entered at [the District Registry].

## FIRST SCHEDULE.

If you neither reside nor carry on business in the said State (or Territory) of you may, at your option, cause your appearance to be entered either at the District Registry above-mentioned or at the Principal Registry of the High Court at [*Principal Seat of the Court*].

(Signed) A.B., of &c.  
or  
X.Y., of &c.  
solicitor for A.B.

This notice was served by me of  
at on the defendant on the  
day of , 19 .

Endorsed the day of , 19 .  
Signature and address of server .

N.B.—This notice is to be used where the person to be served is not within the Commonwealth.

## Form 6.

O. 10, r. 7 (2.).

## REQUEST TO ATTORNEY-GENERAL TO TRANSMIT NOTICE OF WRIT TO FOREIGN GOVERNMENT.

The Chief Justice of the High Court presents his compliments to Her Majesty's Attorney-General for the Commonwealth of Australia and begs to enclose a notice of a writ of summons (and a copy thereof) issued in an action *versus* pursuant to order, out of the High Court for transmission to the Ministry of Foreign Affairs in [*name of country*] with the request that the same may be served personally upon [*name of defendant to be served*] against whom proceedings have been taken in the Australian Court, and with the further request that such evidence of the service of the same upon the said defendant may be officially certified to the Australian Court, or declared upon oath, or otherwise, in such manner as is consistent with the usage or practice of the Courts of the [*name of country*] in proving service of legal process.

The Chief Justice begs further to request that, in the event of efforts to effect personal service of the said notice of writ proving ineffectual, the Government or Court of the said country be requested to certify the same to the Australian Court.

## Form 7.

O. 10, r. 13 (3.).

## REQUEST TO ATTORNEY-GENERAL TO TRANSMIT NOTICE OF WRIT TO A FOREIGN GOVERNMENT.

The Chief Justice of the High Court presents his compliments to Her Majesty's Attorney-General for the Commonwealth of Australia and has the honour to enclose a notice of a writ of summons issued in an action of *versus* the [*insert name of the defendant High Contracting Party*] pursuant to order, out of the High Court for delivery to the Government of [*insert name of the High Contracting Party*] and to request that an official certificate may in due course be despatched to the Australian Court stating that the notice of writ of summons has been so delivered and on what date.

## FIRST SCHEDULE.

Form 8.

O. 10, rr. 7 (3.), 7 (6.),  
9 (2.) and 13 (4.).

## REQUEST FOR SERVICE ABROAD.

(Title, &amp;c. [as in Form 1].)

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 be transmitted through the proper channel to [name of country] for service (or substituted service) on the defendant (naming him) at [address of defendant] or elsewhere in [name of country] (if under O. 10 r. 9 add "directly through the British or Australian Consul" or "through a foreign judicial authority" [or the like as the case may require]).

I (or we) hereby personally undertake to be responsible for all expenses incurred by the Commonwealth 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 Treasury and to produce the receipt for such payment to the proper officer of the High Court of Australia.

Dated, &amp;c.

(Signature of solicitor.)

Form 9.

O. 10, r. 7 (6.).

## LETTER FORWARDING REQUEST FOR SUBSTITUTED SERVICE.

The Chief Justice of the High Court presents his compliments to Her Majesty's Attorney-General for the Commonwealth of Australia and begs to enclose a notice of a writ of summons in the case of *versus* in which the plaintiff has obtained an order of the High Court (which is also enclosed) giving leave to bespeak a request that the said notice of writ may be served by substituted service on the defendant at in the [name of country].

The Chief Justice requests that the said notice of writ and order may be forwarded to the proper authority in [name of country] with the request that the same may be transmitted by post addressed to the defendant at (the last known place of abode or the place of business) of the said defendant, or there delivered in such manner as may be consistent with the usage or practice of the Courts of [name of country] for service of legal process where personal service cannot be effected; and with the further request that the same may be officially certified to the Australian Court, or declared upon oath, or otherwise, in such manner as is consistent with the practice of the Courts of the [name of country] in proving service of legal process.

Form 10.

O. 2, r. 6.

WRIT OF SUMMONS IN ADMIRALTY ACTIONS *in rem*.

In the High Court of Australia.

A.B., Plaintiff,

against

The Ship X,

or

The Ship X and freight,

or

The Ship X, her cargo and freight,

or

(if the action is against cargo only) The cargo ex the Ship [state the name of ship on board of which the cargo is or lately was laden],

or

(if the action is against the proceeds realized by the sale of a ship or cargo) The proceeds of the Ship X (or of the cargo ex the Ship X),

or

Fifty cases of opium [or as the case may be].

## FIRST SCHEDULE.

ELIZABETH THE SECOND by the Grace of God, &c.

To the owners and all others interested in the Ship X, her cargo and freight [or as the case may be, describing the subject-matter of the action]:

We command you, &c. [as in Form 1].

*Memorandum re Appearance and Endorsements [as in Form 1].*

This writ was served by me by [state mode of service] on, &c. [as in Form 1].

NOTE.—If the action is by the Crown, instead of the plaintiff's name put "Our Sovereign Lady the Queen", adding, if necessary, "in Her Office of Admiralty".

## Form 11.

O. 5, r. 8 (1.).

WARRANT OF ARREST IN ADMIRALTY ACTION *in rem*.

(SHIP, CARGO AND FREIGHT.)

(Title [as in Form 10].)

ELIZABETH THE SECOND by the Grace of God, &c. [as in Form 1].

To the Marshal of Our High Court of Australia in Admiralty and to all and singular his substitutes. We hereby command you to arrest the ship or vessel of the port of , and the cargo now or lately laden therein, together with the freight due for the transportation thereof, and to keep the same under safe arrest until you shall receive further orders from Us.

Witness, &c.

## Form 12.

O. 5, r. 8 (1.).

WARRANT OF ARREST IN ADMIRALTY ACTION *in rem*.

(SHIP AND FREIGHT.)

(Title [as in form 10].)

ELIZABETH THE SECOND by the Grace of God, &c. [as in Form 1].

To the Marshal of Our High Court of Australia in Admiralty and to all and singular his substitutes. We hereby command you to arrest the ship or vessel of the port of , and the freight due for the transportation of the cargo now or lately laden therein, and to keep the same under safe arrest until you shall receive further orders from Us.

Witness, &c.

## Form 13.

O. 8, r. 1 (5.).

## FORM OF MEMORANDUM FOR RENEWED WRIT.

(Title [as in Form 1].)

Seal renewed writ of summons in this action endorsed as follows:—

[Copy original writ and the endorsements.]

## Form 14.

O. 11, r. 12.

## GENERAL FORM OF ENTRY OF APPEARANCE BY DEFENDANT.

In the High Court of Australia.

(Title, &c. [as in writ of summons], adding after the name of a defendant who is an infant "by G.H., his guardian ad litem.")

Enter an appearance in this action for the defendant C.D.

Dated, &c.

C.D., defendant in person,  
(or Y.Z., solicitor for the defendant C.D.)

The address of C.D. is

His address for service is

(or The place of business of Y.Z. is

His address for service is .)

## FIRST SCHEDULE.

## Form 15.

O. 11, r. 12.

## ENTRY OF CONDITIONAL APPEARANCE.

(Title &amp;c. [as in Form 14].)

Enter a conditional appearance in this action for the defendant *C.D.*, who denies the jurisdiction of the Court to entertain the action against him without his consent (or denies that he is a partner in the defendant firm).

Dated, &amp;c.

[Signature and memoranda as in Form 14.]

## Form 16.

O. 11, r. 6 (1.).

## GENERAL FORM OF NOTICE OF APPEARANCE BY DEFENDANT.

(Title, &amp;c. [as in writ of summons].)

Take notice that I have this day entered an appearance in this action at the Principal (or District) Registry of the High Court of Australia at  
(for the defendant, *C.D.*).

*C.D.*, defendant in person  
(or *Y.Z.*, solicitor for the defendant, *C.D.*)

The address of *C.D.* is

His address for service is

(or The place of business of *Y.Z.* is

His address for service is .)

In the case of a conditional appearance insert the word "conditional" before "appearance".

## Form 17.

O. 11, r. 26 (2.)

## NOTICE LIMITING DEFENCE.

(Title [as in Form 1].)

Take notice that the [above-named] defendant [*C.D.*] limits his defence to part only of the property mentioned in the writ of summons namely, to the close called "the Big Field".

Dated the                      day of                      , 19                      .

(Signed)                      , of

Agent for                      , of

solicitors for the above-named defendant.

To Messrs.                      the plaintiff's solicitors.

## Form 18.

O. 11, r. 12.

## ENTRY OF APPEARANCE LIMITING DEFENCE.

(Title [as in Form 1].)

Enter an appearance for the defendant *C.D.* in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "the Big Field".

The address of                      is

Dated the                      day of                      , 19                      .

(Signed)                      , of

Agent for                      , of

NOTE.—A person appearing to defend as landlord must so state in his appearance (O. 11, r. 24), and, if he is not named as a defendant, the date of the order giving him leave to defend must be added (O. 11, r. 23.).

## FIRST SCHEDULE.

## Form 19.

O. 11, r. 6 (1.).

## NOTICE OF ENTRY OF APPEARANCE AFTER LEAVE OBTAINED.

(Title [as in Form 1].)

Take notice that \_\_\_\_\_ has obtained leave to appear to the writ of summons in this action and that I have this day entered an appearance for him at \_\_\_\_\_.

Dated the \_\_\_\_\_

(Signed)

of

Agent for

solicitor for \_\_\_\_\_

To \_\_\_\_\_

## Form 20.

O. 11, r. 12.

## ENTRY OF APPEARANCE, ORDER 17, RULE 4.

(Title [as in Form 1].)

Enter an appearance for *G.H.* to the third party notice issued in this action on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by the defendant \_\_\_\_\_, and served on the said *G.H.* on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Dated the \_\_\_\_\_

day of \_\_\_\_\_

, 19\_\_\_\_.

(Signed)

, of

Agent for

, of \_\_\_\_\_

## Form 21.

O. 11, r. 12.

## ENTRY OF APPEARANCE, ORDER 18, RULE 3.

(Title [as in Form 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 \_\_\_\_\_

## Form 22.

O. 11, r. 12.

## ENTRY OF APPEARANCE TO COUNTERCLAIM.

(Title [as in Form 1].)

Enter an appearance for \_\_\_\_\_ to the counterclaim of the above-named defendant \_\_\_\_\_ in this action.

Dated the \_\_\_\_\_

day of \_\_\_\_\_

, 19\_\_\_\_.

(Signed)

, of

Agent for

, of \_\_\_\_\_

(NOTE.—The heading should contain the double title of claim and counterclaim.)

## FIRST SCHEDULE.

Form 23.

O. 16, r. 20 (2.).

## AFFIDAVIT FOR ENTRY OF APPEARANCE AS GUARDIAN.

(Title [as in Form 1].)

I, \_\_\_\_\_ of \_\_\_\_\_, the solicitor for (or a member of the firm of X.Y. & Co., solicitors for) the above-named defendant C.D., an infant, 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 proceeding adverse to that of the said infant, and the consent of the said A.B. to act as such guardian is hereto annexed.

Sworn, &amp;c.

[To this Affidavit shall be annexed the document signed by the guardian in testimony of his consent to act.]

## ALTERNATIVE FORM OF AFFIDAVIT.

[To meet cases where a positive oath as to fitness cannot reasonably be insisted upon, the following form is accepted.]

I, \_\_\_\_\_ of \_\_\_\_\_, the solicitor for (or member of the firm of X.Y. & Co., solicitors for) the above-named defendant C.D., an infant, make oath and say as follows:—

1. I am informed and verily believe that A.B., of \_\_\_\_\_, is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and the consent of the said A.B. to act as such guardian is hereto annexed.

2. The said A.B. has no interest in the matters in question in this proceeding adverse to that of the said infant.

Sworn, &amp;c.

## USUAL FORM OF CONSENT.

I, A.B., of [address and description] consent to act as guardian *ad litem* for C.D., an infant defendant in this proceeding, and I authorize Mr. \_\_\_\_\_ of \_\_\_\_\_ to defend this proceeding.

(Signature of guardian)

Form 24.

O. 17, r. 2 (2.).

## THIRD PARTY NOTICE CLAIMING INDEMNITY OR CONTRIBUTION OR OTHER RELIEF OR REMEDY.

19 . No.

In the High Court of Australia  
(Registry)

Between A.B.,

Plaintiff,

and

C.D.,

Defendant,

and

E.F.,

Third Party.

## THIRD PARTY NOTICE.

Issued pursuant to the order of \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

To E.F., of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_.

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant [here state concisely the nature of the plaintiff's claim] as appears by the endorsement on the writ of summons (or statement of claim) a copy whereof is delivered herewith.\*

**FIRST SCHEDULE.**

The defendant claims against you [*here state concisely the nature of the claim against the third party, as for instance*] to be indemnified against the plaintiff's claim and the costs of this action or contribution to the extent of [*one half*] of the plaintiff's claim or the following relief or remedy, namely, \_\_\_\_\_ on the grounds that [*state concisely the grounds of the claim against the third party*].

And take notice that if you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, you must cause an appearance to be entered for you within \_\_\_\_\_ days after the service of this notice upon you.

In default of your entering such appearance, you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to [indemnify the defendant or to contribute to the extent claimed or to (*stating the relief or remedy sought*)] and the validity of any judgment that may be given in the action and you will be bound by such judgment and such judgment may be enforced against you pursuant to Order 17 of the Rules of the High Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(Signed) \_\_\_\_\_ solicitors for the defendant.

Appearance is to be entered at \_\_\_\_\_.

Form 25.

O. 17, r. 2 (2).

**THIRD PARTY NOTICE WHEN QUESTION OR ISSUE TO BE DETERMINED.**

(*Title, &c. [as in Form 24] down to \*, and then proceed.*)

The defendant claims that the following question or issue, viz. [*here state concisely the question or issue to be determined*] should be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and yourself.

And take notice that, if you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant, you must cause an appearance to be entered for you within \_\_\_\_\_ days after service of this notice.

In default of your so doing you will be deemed to admit the validity of and will be bound by any decision or judgment arrived at or given in this action on the said question or issue, and to admit any consequent liability of yourself, and judgment may be given against you and enforced pursuant to Order 17 of the Rules of the High Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(Signed) \_\_\_\_\_ solicitors for the defendant.

Appearance is to be entered [*&c., as in Form 24*].

Form 26.

O. 22, r. 11 (2).

**NOTICE OF COUNTERCLAIM.**

To the within-named X.Y.

Take notice that, if you do not appear to the within counterclaim of the within-named C.D. within \_\_\_\_\_ days from the service of this defence and counterclaim upon you, you will be liable to have judgment given against you in your absence.

Appearance to be entered at [*Registry in which proceeding is pending*].

*Memorandum re Appearance [as in Form 1].*

**FIRST SCHEDULE.**

Form 27.

O. 23, r. 1 (4.).

**NOTICE OF PAYMENT INTO COURT.***(Title.)*

Take notice that the defendant has paid into Court £ ,  
 and says that (or £ part of) that sum is enough to satisfy the plaintiff's claim  
 (or for and £ the other part of that sum is enough to  
 satisfy the plaintiff's claim for ) and admits (or but denies) liability therefor.

Dated the day of , 19 .

*P.Q.*, solicitor for the defendant, *C.D.*

To Mr. *X.Y.*, the plaintiff's solicitor  
 (and to Mr. *R.S.*, solicitor for the defendant, *E.F.*).

*(To be filled in by the proper officer.)*

Received the above sum of pounds shillings and  
 pence into Court in this action.

£ : : .

Dated the day of , 19 .

Form 28.

O. 23, rr. 2 (1.) and 4 (2.).

**ACCEPTANCE OF SUM PAID INTO COURT.***(Title.)*

Take notice that the plaintiff accepts the sum of £ paid by the defendant  
*C.D.* into Court in satisfaction of the claim in respect of which it was paid in (and  
 abandons his other claims in this action).

Dated the day of , 19 .

*X.Y.*, plaintiff's solicitor.

To Mr. *P.Q.*, solicitor for the defendant *C.D.*, and Mr. *R.S.*, solicitor for the defendant  
*E.F.*

Form 29.

O. 25, r. 3 (2.).

**CONFESSION OF DEFENCE.***(Title.)*

The plaintiff confesses the defence stated in the paragraph of the defendant's  
 defence (or of the defendant's further defence).

Form 30.

O. 32, r. 9.

**NOTICE FOR DISCOVERY.**

You are required within days after service of this notice to answer  
 on affidavit stating what documents are or have been in your possession or power  
 relating to the matters in dispute in this action and what you know as to the custody of  
 such as have been but no longer are in your possession or power, and whether you object  
 and, if so, on what grounds, to the production of such as are in your possession or power.  
 To

solicitors for

## FIRST SCHEDULE.

Form 31.

O. 35, r. 9 (2.).

ISSUE.

(Title.)

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 the Hon. Mr. Justice that the said question shall be tried [*here state mode of trial, whether with or without a jury*], therefore let the same be tried accordingly.

Form 32.

O. 36, r. 35 (2.).

## CERTIFICATE OF OFFICER AFTER TRIAL.

(Title.)

I certify that this was tried before the Honorable Mr. Justice  
[*with a jury*], on the and days of 19 ,  
and occupied the time of the Court as follows:—

The jury found [*state findings*].

The Justice directed that judgment should be entered for the plaintiff for £  
with costs [*as the case may be*].

*A.B.* [*Title of officer*].

The day of , 19 .

Form 33.

O. 54, r. 16 (2.).

## 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, her enumerate them*] taken in execution by *C.D.* under the writ 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 *C.D.* within days from the receipt of this notice, failing which the said *C.D.* 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 *C.D.*, you will be liable only for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, &c.

(Signed)

To the plaintiff.

Form 34.

O. 54, r. 16 (3.).

## NOTICE BY 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 in this action.

(Signed)

Plaintiff  
*or*  
Solicitor.

To

## FIRST SCHEDULE.

Form 35.

O. 37, r. 24 (1.).

## PRAECIPE FOR SUBPOENA.

(Title [as in Form 1].)

Seal writ of subpoena  
directed to, on behalf of the  
Returnable

Dated, &amp;c.

(Signed)

(Address)

solicitor for the

Form 36.

O. 16, r. 54.

## MEMORANDUM ON NOTICE OF JUDGMENT.

Take notice that, from the time of the service of this notice, you (*or [as the case may be] the infant or person of unsound mind*) will be bound by the proceedings herein in the same manner as if you (*or the said infant or person of unsound mind*) had been originally made a party, and that you (*or the said infant or person of unsound mind*) may, on entering an appearance at , attend the proceedings under the within-mentioned judgment (*or order*) and that you (*or the said infant or person of unsound mind*) may within twenty-eight days after the service of this notice apply to the Court to set aside or vary the judgment (*or order*).

Form 37.

O. 37, r. 25.

## SUBPOENA AD TESTIFICANDUM (General Form).

(Title.)

ELIZABETH THE SECOND by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas Queen, Defender of the Faith, to [names of witnesses] 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  
proceeding is tried, to give evidence on behalf of the plaintiff (*or defendant*).

Witness, &amp;c.

Form 38.

O. 37, r. 25.

## HABEAS CORPUS AD TESTIFICANDUM.

(Title.)

ELIZABETH THE SECOND 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  
proceeding 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, &amp;c.

This writ was issued, &amp;c.

## FIRST SCHEDULE.

Form 39.

O. 37, r. 25.

## SUBPOENA DUCES TECUM (General Form).

(Title.)

ELIZABETH THE SECOND by the Grace of God, &c., to [the names of three witnesses may be inserted] 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  
proceeding is tried, to give evidence on behalf of the \_\_\_\_\_, and also  
to bring with you and produce at the time and place aforesaid [specify documents to be  
produced].

Witness, &c.

Form 40.

O. 52, r. 6 (1.).

## SUMMONS (General Form).

(Title.)

Let all parties concerned attend the Justice in Chambers at  
on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the hearing of an application on the part  
of \_\_\_\_\_, for an order that \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

This summons was taken out by \_\_\_\_\_ of  
\_\_\_\_\_, solicitor for \_\_\_\_\_

To \_\_\_\_\_

Form 41.

O. 52, r. 7.

## ORIGINATING SUMMONS.

(Title.)

In the matter of \_\_\_\_\_  
(Between C.D., Plaintiff,  
and  
E.F., Defendant.)

Let E.F. (or all parties concerned) attend the Justice in Chambers at  
at the time specified in the margin hercof, upon the application  
of C.D., of \_\_\_\_\_ for [state the object of the application].

Dated the \_\_\_\_\_ of \_\_\_\_\_, 19\_\_\_\_.

(Seal.)

This summons was taken out by \_\_\_\_\_  
of \_\_\_\_\_, solicitors for the above-named C.D.

*If appearance is required to be entered—*

NOTE.—Each defendant must enter an appearance to this summons within  
days after service thereof upon him inclusive of the day of such service.

## FIRST SCHEDULE.

*If appearance required, memorandum re appearance [as in Form 1].*

N.B.—If you do not enter an appearance within the time and at the place above-mentioned (or attend either in person or by your solicitor at the time and place above-mentioned) such order will be made and proceedings taken as the Justice may think just and expedient.

*If appearance is not required—*

NOTE.—It is intended to serve this summons upon the following persons.

or

It is not intended to serve this summons on any person.

## Form 42.

O. 10, r. 7 (5).

## ORDER TO BESPEAK REQUEST FOR SUBSTITUTED SERVICE ABROAD.

(Title [as in Form 1].)

Upon reading the (certificate, declaration [or as the case may be, describing the same]).

It is ordered that the plaintiff be at liberty to bespeak a request for substituted service of notice of the writ of summons herein on the defendant at \_\_\_\_\_, or elsewhere in the [name of country] and that the said defendant have \_\_\_\_\_ days after such substituted service within which to enter appearance.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

## Form 43.

O. 37, r. 3.

## SUMMONS FOR APPOINTMENT OF SPECIAL EXAMINER TO TAKE EVIDENCE ABROAD.

(Title [as in Form 1].)

Let all parties concerned attend Mr. Justice in Chambers, at \_\_\_\_\_, on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon on the \_\_\_\_\_ hearing of an application on the part of the \_\_\_\_\_ that \_\_\_\_\_ 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 solicitors to give to the \_\_\_\_\_ solicitors \_\_\_\_\_ days' notice in writing of the date on which they propose to send out this order to \_\_\_\_\_ for execution, and that \_\_\_\_\_ days after the service of such notice the solicitors for the plaintiffs and defendants respectively do exchange the names of their agents at \_\_\_\_\_ to whom notice relating to the examination of the said witnesses may be sent. And that \_\_\_\_\_ days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party (unless such notice be dispensed with). And that the depositions when so taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be transmitted by the examiner, under seal, to the Principal Registrar of the High Court of Australia on or before the \_\_\_\_\_ day of \_\_\_\_\_ next, or such further or other day as may be ordered, to be filed in the proper Registry. 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 incident to this application and such examination be costs in the action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

This summons was taken out by \_\_\_\_\_,  
of \_\_\_\_\_, solicitor for \_\_\_\_\_.  
To \_\_\_\_\_.

## FIRST SCHEDULE.

## Form 44.

O. 37, r. 6.

## ORDER FOR APPOINTMENT OF BRITISH OR AUSTRALIAN CONSUL AS SPECIAL EXAMINER (IN CONVENTION COUNTRY).

(Title [as in Form 1].)

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

It is ordered that the British (or Australian) 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 English procedure. The solicitors to give to the solicitors days' notice in writing of the date on which they propose to send out this order to for execution and that days after the service of such notice the solicitors for the plaintiffs and defendants respectively do exchange the names of their agents at to whom notice relating to the examination of the said witnesses may be sent. And that days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party (unless such notice be dispensed with). And that the depositions when so taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be transmitted by the Examiner, under seal, to the Principal Registrar of the High Court of Australia on or before the day of next, or such further or other day as may be ordered, there to be filed in the proper 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 incident 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.)

## Form 45.

O. 37, r. 4 (2.).

## ORDER FOR ISSUE OF LETTER OF REQUEST TO TAKE EVIDENCE ABROAD.

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 Principal Registry, 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.

## Form 46.

O. 37, r. 4 (2.).

## LETTER OF REQUEST TO TAKE EVIDENCE ABROAD (WHERE NO CONVENTION).

(Heading:—*To the President and Judges of, &c., &c. [or as the case may be].*)

Whereas an action is now pending in the High Court of Australia, in which *A.B.* is plaintiff and *C.D.* is defendant. And in the said action the plaintiff claims [endorsement upon writ].

## FIRST SCHEDULE.

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 as the Chief Justice of the said High Court of Australia have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said High Court, you as the President and Judges of the said 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, and 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, through Her Majesty's Attorney-General for the Commonwealth of Australia, for transmission to the said High Court of Australia.

## Form 47.

O. 37, r. 3.

ORDER FOR APPOINTMENT OF SPECIAL EXAMINER TO TAKE EVIDENCE ABROAD  
(WHERE NO CONVENTION).

(Title [as in Form 1].)

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

It is ordered that 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 solicitors to give to the solicitors days' notice in writing of the date on which they propose to send out this order to for execution, and that days after the service of such notice the solicitors for the plaintiffs and defendants respectively do exchange the names of their agents at , to whom notice relating to the examination of the said witnesses may be sent. And that days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party (unless such notice be dispensed with). And that the depositions when so taken together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be transmitted by the examiner, under seal, to the Principal Registrar of the High Court of Australia on or before the day of next, or such further or other day as may be ordered, there to be filed in the proper 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 incident to this application and such examination be costs in the action.

Dated the day of , 19 .



## FIRST SCHEDULE.

Form 50.

O. 40, r. 1 (1.).

## LIST OF EXHIBITS.

(Title [as in Form 1].)

Tried on  
the Honorable Mr. Justice  
a jury at

day of

, 19 , before  
with (or without)

Name of Associate

Number of Exhibit.	Description of Exhibit.	Party who put in Exhibit.	Witness who proved Exhibit.	Notes.

Form 51.

O. 52, r. 22.

## SUMMONS BY REGISTRAR.

(Title.)

The defendant *E.F.* (or *G.H.*, of, &c.) is hereby summoned to attend before  
at , on the day of , 19 ,  
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., Registrar.

This summons was taken out by of  
, solicitors for .

Form 52.

O. 49, r. 17.

## AFFIDAVIT VERIFYING RECEIVER'S ACCOUNT.

(Title.)

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

1. The account marked with the letter A. 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 rent and profits accrued due on or before the said day of and 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.

**FIRST SCHEDULE.**

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.* of \_\_\_\_\_, the sureties named in the recognizance dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, are both alive, and neither of them has become bankrupt or insolvent.

(NOTE.—Additional paragraphs as to wages and petty cash are sometimes necessary.)

**Form 53.**

O. 36, r. 19 (4.).

**REQUEST TO SET DOWN CAUSE FOR FURTHER CONSIDERATION.**

(Title.)

I request that this cause, the further consideration whereof was adjourned by order of the \_\_\_\_\_ day of \_\_\_\_\_, may be set down for further consideration before Mr. Justice \_\_\_\_\_.

*C.D.*, plaintiff's (or defendant's) solicitor.

**Form 54.**

O. 36, r. 19 (7.).

**NOTICE THAT CAUSE HAS BEEN SET DOWN FOR FURTHER CONSIDERATION.**

(Title.)

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

Dated, &c.

*C.D.*, solicitor for \_\_\_\_\_.

To Mr. \_\_\_\_\_, solicitor for \_\_\_\_\_.

**Form 55.**

O. 16, r. 18 (1.).

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR APPOINTMENT OF NEW NEXT FRIEND OF INFANT PLAINTIFF.**

(Title.)

I [*name and address*], the solicitor for (or a member of the firm of the solicitors for) the above-named plaintiff, *C.D.*, an infant, make oath and say as follows:—

1. [*Reasons why the appointment of a new next friend is sought*].
2. *A.B.* [*name, address and description of proposed new next friend*] is a [*state relationship (if any) of A.B. to C.D.*], and has no interest in the matter in question in this action (matter) adverse to that of *C.D.*. The consent of the said *A.B.* to be appointed as such next friend is annexed hereto.
3. The said *A.B.* is a fit and proper person to act as the next friend of the said *C.D.*

Sworn, &c.

## FIRST SCHEDULE.

Form 56.

O. 55, r. 36 (2.).

## WRIT OF PROCEDENDO.

(Title [as in Form 1].)

ELIZABETH THE SECOND, &amp;c.

To [the same persons to whom the writ of prohibition is directed].

## Greeting :

Whereas by Our writ we lately commanded you [*&c.*, *recite writ of prohibition*]:  
 We do now command you that you do proceed in the said cause [*or as the case may be*],  
 with the expedition which to you shall seem right, notwithstanding Our writ so sent  
 to you as aforesaid.

Witness, &amp;c.

This writ was issued by [*&c.*, *as in the case of a writ of summons*].

[To be endorsed as in Form 1.]

Form 57.

O. 55, r. 36 (2.).

## PRAECIPE FOR WRIT OF PROCEDENDO.

(Title [as in Form 1].)

Seal, in pursuance of order dated, &c., a writ of *procedendo* directed to, &c., to  
 proceed notwithstanding writ of prohibition dated, &c.

Dated, &amp;c.

[To be signed by the party or his solicitor.]

## SECOND SCHEDULE.

O. 71, r. 23.

## COSTS.

## WRITS.

	£	s.	d.
1. Writ of summons for the commencement of an action or other writ not specially provided for .. .. .	1	5	0
2. Endorsement of claim (if special) .. .. .	12	6	
3. If more than three folios, for every extra folio .. .. .	2	0	
4. Concurrent writ of summons .. .. .	12	0	
5. Writ of mandamus .. .. .	1	5	0
6. Writ of <i>subpoena duces tecum</i> .. .. .	15	0	
7. Writ or writs of <i>subpoena ad testificandum</i> for any number of persons not exceeding three .. .. .	15	0	
For any additional number of persons not exceeding three .. .. .	15	0	
8. Writ of <i>fieri facias</i> or of possession .. .. .	1	10	0
9. Writ of execution or other writ to enforce a judgment or order .. .. .	1	1	0
10. Procuring a writ of execution or notice to the Marshal or Deputy Marshal marked with a seal of renewal .. .. .	12	0	
11. Notice thereof to serve on the Marshal or Deputy Marshal, and service .. .. .	12	0	
12. Any other writ not specified above .. .. .	1	5	0
13. If any of the above writs (except writs of summons) exceed four folios, for each extra folio .. .. .	2	6	
These costs include all endorsements, and copies or <i>præcipes</i> for the officers sealing them, and attendances to issue or seal, but not the Court fees.			

## SUMMONSES.

14. Summons to attend at Justices' Chambers .. .. .	12	0	
or			
If special, at taxing officer's discretion, not exceeding .. .. .	1	11	6
15. Originating summons for proceeding in Chambers (including drawing, engrossing and copy to file) .. .. .	18	0	
or			
At taxing officer's discretion, not exceeding .. .. .	1	17	6
16. Attending to issue, including attendance to get date of return fixed .. .. .	15	0	
17. An allowance shall not be made for <i>præcipes</i> unless special and exceeding three folios.			

## SERVICES AND NOTICES.

18. Service, or filing in lieu of service, of any writ, summons, warrant, interrogatories, petition, order, notice, notice of appeal or other document on a party,—			
(a) where service by post is not authorized .. .. .	15	0	
(b) where service by post is authorized .. .. .	4	0	
(c) where service is at the office of the solicitor on the record .. .. .	8	0	
19. If served at a distance of more than three miles from the nearest place of business, or office of the solicitor serving the same, according to the time occupied and fares paid.			
20. When, in consequence of the distance of the party to be served, it is proper to effect such service through an agent, for correspondence .. .. .	15	0	
In addition, correspondent's charges .. .. .	1	11	6
or			
The amount actually and reasonably charged by and paid to the person serving.			
21. When more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowances may be made as the taxing officer thinks fit.			
22. For service out of the jurisdiction such allowance is to be made as the taxing officer thinks fit.			
23. Where a writ, order and notice, or any two of them, are or have to be served together, one fee only for service is to be allowed.			

## SECOND SCHEDULE.

£ s. d.

24. The amount to be allowed as fees properly paid for service of a writ, or any other document which requires personal service, shall be as follows :—

- (a) If served by the nearest Marshal's officer, the amount properly paid to the Marshal or to the officer in accordance with the scale of fees in force for the time being.
- (b) If served by any other person, the amount (not exceeding the amount payable under the last preceding sub-item) actually paid to that person consisting of—
  - (i) the fee paid for swearing the affidavit of service ;
  - (ii) reasonable and necessary expenses of travelling and sustenance ; and
  - (iii) a fee of 15s., with an additional 15s. for each day necessarily occupied after the first day.
- (c) Where more than one attendance is necessary but can be made on the same day, an additional allowance shall not be made.
- (d) If served by an officer of a court in a State or Territory, the same amount as would be payable to that officer in respect of the service of process issued out of the court of which he is an officer.

25. Notice of an appointment before an officer of the Court, including copy and service, when that notice is necessary .. .. . 8 0

## APPEARANCES.

26. Preparing and entering an appearance .. .. . 15 0  
 27. If entered at one time, for more than one person, for every defendant beyond the first .. .. . 2 6  
 28. Sealed copy appearance for service .. .. . 3 0

## INSTRUCTIONS.

29. To sue or defend .. .. . 1 11 6  
 30. To appeal, cross-appeal or oppose appeal .. .. . 1 11 6  
 31. For statement of claim .. .. . 1 5 0  
     *or*  
     Such amount as the taxing officer thinks fit.  
 32. For special case .. .. . 1 11 6  
     *or*  
     Such amount as the taxing officer thinks fit.  
 33. For defence, or plea or demurrer .. .. . 1 1 0  
     *or*  
     Such amount as the taxing officer thinks fit.  
 34. For counterclaim .. .. . 1 1 0  
     *or*  
     Such amount as the taxing officer thinks fit.  
 35. For defence to counterclaim .. .. . 1 1 0  
     *or*  
     Such amount as the taxing officer thinks fit.  
 36. For reply in any other case, with or without joinder of issue .. .. . 15 0  
     *or*  
     Such amount as the taxing officer thinks fit.  
 37. For confession of defence .. .. . 18 0  
     *or*  
     Not to exceed .. .. . 2 5 0  
 38. For special petition, any other pleading (not being a summons) and interrogatories for examination of a party or witness .. .. . 1 1 0  
     *or*  
     Such amount as the taxing officer thinks fit.  
 39. For statement of facts in an action or for particulars of breaches, or objections, in actions for infringement of a patent, such fee may be allowed as the taxing officer thinks fit, having regard to all the circumstances of the case.  
 40. To amend a pleading .. .. . 15 0

## SECOND SCHEDULE.

	£	s.	d.
41. For affidavit in answer to interrogatories and other special affidavits ..	12	0	
or			
Not to exceed ..	3	3	0
42. For documents to be brought into the Registry, such as accounts, &c...	12	0	
or			
Not to exceed ..	3	3	0
43. For or in opposition to a motion to be made in Court, or an application in Chambers ..	12	0	
or			
Not to exceed ..	3	3	0
44. To appeal against order of the Court or a Justice ..	1	11	6
or			
Such amount as the taxing officer thinks fit.			
45. To add parties by order of the Court or a Justice ..	12	0	
46. For counsel to advise on evidence when the evidence-in-chief is to be taken orally ..	1	1	0
or			
Not to exceed ..	3	3	0
47. For bond or any other deed ..	15	0	
48. For brief on application in Chambers ..	1	1	0
or			
Such amount as the taxing officer thinks fit.			
49. For brief, such fee may be allowed as the taxing officer thinks fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.			
50. An allowance in the nature of instructions for brief may be allowed to a solicitor when he conducts the cause or matter himself.			

## DRAWING PLEADINGS AND OTHER DOCUMENTS.

51. Statement of claim, including petition ..	18	0	
or			
Per folio ..	2	6	
52. Defence (including defence to counterclaim), plea or demurrer ..	18	0	
or			
Per folio ..	2	6	
53. Counterclaim ..	18	0	
or			
Per folio ..	2	6	
54. Reply with or without joinder of issue, confession of defence, and for any pleading and amendments of any pleading ..	15	0	
or			
Per folio ..	2	6	
55. Particulars, breaches and objections, when required ..	10	0	
or			
Such amount as the taxing officer thinks fit, not exceeding per folio ..	2	6	
56. Special case, whether original or in an action, affidavits in answer to interrogatories, and other affidavits and interrogatories, per folio..	2	6	
57. Affidavits verifying pleadings or other documents, such allowance as the taxing officer thinks fit.			
58. Briefs, including necessary and proper observations, per folio..	2	6	
59. Brief to hear reserved judgment, including copy (not allowed in Chamber applications) ..	12	0	
60. Notices of appeal and notices of motion ..	15	0	
or			
Per folio ..	2	6	
61. Accounts, statements and other documents, when required, not exceeding per folio ..	2	6	
62. Advertisements to be signed by an officer of the Court or a Justice, including attendance therefor ..	15	0	
or			
Per folio ..	2	6	
63. Bill of costs for taxation, including copy for the taxing officer, per folio..	2	6	
64. No more than one affidavit of increase is to be allowed unless, in the opinion of the taxing officer, more than one affidavit is necessary.			
65. Endorsement of fiat on petition or copy thereof or of citation on statement of claim ..	7	6	

## SECOND SCHEDULE.

	£	s.	d.
66. Preparing certificate of non-appearance, or as to funds, including copy for signature .. .. .	7	6	
67. Affidavit of service of any writ or other proceedings, including copy, where, in the opinion of the taxing officer, the affidavit was required .. .. .	10	0	
68. Marking each exhibit to an affidavit .. .. .	1	6	
69. Any other document not specially provided for, per folio .. .. .	2	6	

## COPIES.

70. Of pleadings, briefs and other documents, where no other provision is made, per folio .. .. .	1	0	
71. Carbon copies, per folio .. .. .	4		
72. When a document is printed and, in the opinion of the taxing officer, it would not have been reasonably safe or convenient to send the original to the printer, the solicitor of the party printing may be allowed, for a copy for the printer, at per folio .. .. .	1	0	
73. For the amount actually and properly paid to the printer, exclusive of the cost of binding, not exceeding per folio .. .. .	4	0	
74. And where any part shall be properly printed in a foreign language, or as a <i>fursimile</i> , 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 thinks reasonable. These allowances are exclusive of all necessary attendances upon the printer.			
75. For preparation by roneograph or other similar multigraph process, the amount actually and properly paid to the person preparing same, exclusive of the cost of binding, not exceeding per folio .. .. .	1	0	
76. Close copies, whether printed or written, shall not be allowed as of course, but the allowance shall depend upon the propriety of making or sending the copies, which in each case shall be shown and considered by the taxing officer.			
77. Inserting amendments in printed copies of a pleading, special case, or petition, when not reprinted or in written copies when made under order of the Court or a Justice .. .. .	7	6	
Per folio .. .. .	1	0	
78. For completing and filling in printed forms, except as otherwise provided, such allowance as the taxing officer deems reasonable.			

## PERUSALS.

79. Of statement of claim, plea, demurrer, petition, answer, defence, reply, or other similar pleading, or of a notice of motion by the solicitor of the party to whom the same is delivered .. .. .	12	0	
or			
Per folio .. .. .	6		
80. Of amendment of such a pleading in writing or of a pleading reprinted to include an amendment .. .. .	12	0	
or			
Per folio of amendment .. .. .	6		
81. Of interrogatories to be answered by a party or his solicitor .. .. .	1	1	0
or			
Per folio .. .. .	2	0	
82. Of special case, particulars and objections, or statement of facts by the solicitor of a party, except the one by whom it is prepared .. .. .	12	0	
or			
Per folio .. .. .	6		
83. Of copy order to add parties .. .. .	10	0	
84. Of notice to produce on trial or hearing of action, and notice to admit by the solicitor of the party served .. .. .	1	1	0
or			
If to admit facts, per folio .. .. .	2	0	
85. Of affidavit in answer to interrogatories by the solicitor of the party interrogating, of affidavit or list of documents, and of other special affidavits by the solicitor of the party against whom they can be read, per folio .. .. .	8		
86. Of deeds, accounts and other documents when no other provision is made, per folio .. .. .	8		

## SECOND SCHEDULE.

	£	s.	d.
87. Of exhibits to affidavits or other documents, evidence taken on commission, or <i>de bene esse</i> , such allowance as the taxing officer thinks fit, not exceeding per folio .. .. .			8

## ATTENDANCES.

88. To obtain consent of next friend to sue in his name, or of a guardian <i>ad litem</i> .. .. .	12	0	
89. To inspect, or produce for inspection, documents pursuant to a notice to admit .. .. .	12	0	
or			
Per hour .. .. .	1	4	0
90. To examine and sign admissions .. .. .	18	0	
or			
Per folio .. .. .	2	6	
91. To inspect, or produce for inspection, documents referred to in a pleading, notice in lieu of pleading or affidavit .. .. .	12	0	
or			
Per hour .. .. .	1	4	0
92. To obtain or give any necessary or proper consent or undertaking ..	12	0	
93. To obtain an appointment to examine witnesses .. .. .	12	0	
94. On examination of witnesses before an officer of the Court or other person with counsel .. .. .	1	10	0
and			
For every hour after the first hour .. .. .	1	1	0
95. On examination of witnesses before an officer of the Court or other person without counsel .. .. .	3	3	0
and			
For every hour after the first hour .. .. .	1	10	0
96. If the examination is more than three miles from a place of business of the solicitor, then such additional allowance may be made as the taxing officer thinks reasonable.			
97. On deponents being sworn to a statement of defence or affidavit, or by a solicitor or his clerk to be sworn to an affidavit .. .. .	12	0	
98. On a summons in Chambers if matter heard .. .. .	1	1	0
or			
Not to exceed .. .. .	3	3	0
99. If matter in list but not heard .. .. .	15	0	
100. If matter heard without counsel .. .. .	2	2	0
or			
Not to exceed .. .. .	5	5	0
101. To file Registrar's and taxing officer's certificates, and get copy marked as an office copy .. .. .	7	6	
102. On counsel with brief or other papers—			
(a) If counsel's fee less than ten guineas .. .. .	12	0	
(b) If ten guineas or more and less than twenty guineas .. .. .	1	1	0
(c) If twenty guineas or more .. .. .	1	11	0
103. On counsel to mark refresher or to appoint conference or consultation ..	12	0	
104. On consultation or conference with counsel .. .. .	1	5	0
or			
Per hour .. .. .	1	1	0
105. Examining appeal books, per hour .. .. .	12	0	
106. To enter or set down cause, special case or appeal for trial or hearing ..	10	0	
107. In Court on hearing of motion, originating summons, special case, petition, appeal or any other hearing where no witnesses are examined, per day .. .. .	1	1	0
or			
Not to exceed .. .. .	6	6	0
108. If matter heard without counsel, such allowance as the taxing officer thinks reasonable.			
109. If matter in list but not heard .. .. .	1	1	0
110. On hearing or trial of a cause, matter or issue of fact in the city or town where the solicitor resides or carries on business, when witnesses are examined, per day .. .. .	2	2	0
or			
Not to exceed .. .. .	8	8	0

## SECOND SCHEDULE.

	£	s.	d.
111. If matter heard without counsel, such allowance as the taxing officer thinks reasonable.			
112. 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
113. Clerk's attendance, if witnesses are examined or cross-examined, per day .. ..	1	1	0
114. Where, in the opinion of the taxing officer, it is necessary for a solicitor to leave the city or town where he resides or carries on business and to journey to another place, an allowance (in addition to reasonable travelling expenses) may be made for each day (other than Saturdays and Sundays) that he is necessarily absent, not exceeding .. ..	12	12	0
<i>or</i>			
If clerk attends in place of principal, a similar daily allowance (in addition to reasonable travelling expenses) may be made, not exceeding .. ..	5	5	0
The taxing officer must be satisfied that the purpose of the journey could not have been satisfactorily accomplished by an agent.			
115. To hear reserved judgment .. ..	1	1	0
116. To deliver papers for the use of Justices .. ..	12		0
117. On taxation of bills of costs, per hour .. ..	1	1	0
118. To obtain signature of the Registrar to an order made in Chambers, or to obtain signature and seal to an order made by Court .. ..	12		0
119. To file, lodge or deliver a document or other papers, to obtain an appointment from an officer of the Court, to insert advertisements, or other attendance of a similar nature capable of performance by a junior clerk .. ..	7	6	
120. At Registry, in connexion with the payment of money into or out of Court .. ..	12		0
121. To search whether appearances or a document is filed .. ..	5		0
122. To bespeak and for copy of jury panel, or any other document necessarily ordered from an officer of the Court .. ..	12		0
123. Upon a reference before the Principal Registrar, or other officer of the Court, to settle minutes of judgment or order or the like, per hour .. ..	1	1	0
124. 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 .. ..	15		0
125. An attendance for which no other provision is made .. ..	12		0
<i>or</i>			
Such amount as the taxing officer thinks reasonable.			

## LETTERS.

126. For a letter making an appointment, asking a person to call or forwarding a document without comment, or to like effect .. ..	6	0
127. Any other ordinary letter, including a necessary letter between principal and agent .. ..	8	0
128. Special letters, in the discretion of the taxing officer.		
129. Circular letters after the first .. ..	3	0

## VIEWS BY JURY.

130. Such fees shall be allowed as the taxing officer considers necessary, including all fees paid for travelling.		
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## MAPS, PLANS AND MODELS.

131. The taxing officer may allow such fees for maps, plans and models for use at the trial or hearing as he considers reasonable.		
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## WITNESSES' EXPENSES.

## SECOND SCHEDULE.

					Allowance per day.	
					£ s. d.	£ s. d.
132. Professional men, including—						
Medical Practitioners	..	..	..	..	1 5 0 to 5 5 0	
Legal Practitioners	..	..	..	..		
Architects	..	..	..	..		
Engineers or Surveyors	..	..	..	..		
Dentists	..	..	..	..		
Veterinary Surgeons	..	..	..	..		
University Professors	..	..	..	..		
Accountants (carrying on business as principals)	..	..	..	..		
Patent Attorneys	..	..	..	..		
If country witnesses, an additional daily allowance of					5 0 to 1 10 0	
Graziers, merchants, bankers, accountants, auctioneers,						
and the like					10 6 to 3 3 0	
If country witnesses, an additional daily allowance of					5 0 to 1 5 0	
Police inspectors, journalists, tradesmen, artisans,						
mechanics, master mariners, farmers, clerks, and the					7 6 to 2 10 0	
like					5 0 to 1 5 0	
If country witnesses, an additional daily allowance of						
Constables, apprentices, sailors, labourers and the like					5 0 to 1 10 0	
If country witnesses, an additional daily allowance of					5 0 to 1 5 0	
Female witnesses not engaged in business or a profession,						
and not in receipt of salary or wages					5 0 to 1 1 0	
If country witnesses, an additional daily allowance of					3 0 to 1 5 0	
Female witnesses engaged in business or a profession, or in						
receipt of salary or wages					Same as male witnesses	

of similar class.

A witness shall be deemed to be a country witness if he does not reside within five miles of the principal post office or court house of the city or town where the cause or matter is tried or heard, or if he does not ordinarily proceed to an office or place of employment which is within five miles of such post office or court house.

In addition to the above allowances, country witnesses may be allowed such sum as the taxing officer thinks reasonable to provide for actual expenses of conveyance to and from the place of trial or hearing, excluding any charges for maintenance or sustenance.

The taxing officer may also allow such amount as he thinks has been reasonably and properly incurred and paid to witnesses for qualifying to give skilled evidence.

## DISBURSEMENTS.

133. All Court fees, counsel's fees and other fees and payments which, in the opinion of the taxing officer have been properly paid, shall be allowed.

## THIRD SCHEDULE.

## THIRD SCHEDULE.

O. 72, r. 8.

## SCALE OF FEES.

## SEALING DOCUMENTS.

	£	s.	d.
1. Writ of summons for commencement of an action .. .. .	1	0	0
2. Concurrent, renewed or amended writ of summons or a copy of a lost writ or a duplicate memorandum of appearance .. .. .		5	0
3. Writ of <i>subpoena</i> , for each person .. .. .		2	6
4. Writ of execution .. .. .		15	0
5. Originating summons .. .. .		10	0
6. Commission .. .. .	1	10	0
7. Document issued for use beyond the jurisdiction of the Court, or to which the Great Seal is required to be affixed .. .. .	1	0	0
8. Summons to attend a Justice's Chambers .. .. .		7	6
9. Summons to attend a Registrar's Chambers .. .. .		5	0
10. Third party notice .. .. .		10	0
11. Writ of <i>habeas corpus</i> , <i>certiorari</i> , <i>mandamus</i> , prohibition or <i>quo warranto</i> ..	1	10	0
12. Order or summons to show cause .. .. .		15	0
13. Warrant to arrest .. .. .		10	0
14. Originating process not elsewhere specified .. .. .		10	0
15. Commission for appraisement or sale .. .. .	1	0	0
16. Transcript on appeal to the Privy Council .. .. .	1	0	0

## APPEARANCES.

17. On entering an appearance, for each person .. .. .	3	0
or		
If by the Commonwealth, a State or a corporate body .. .. .	10	0

## COPIES.

18. For an office copy of a record of the Court or of a document filed in a Registry, or of a list of exhibits, if in the English language, per folio	1	0
19. If in a foreign language, the actual cost of making and examining the copy, and, in addition, for marking and sealing the copy as an office copy	10	0
20. For an office copy of a plan, map, section, drawing, photograph or diagram, the actual cost of making and examining the copy, and, in addition, for marking and sealing the copy as an office copy	10	0
21. For a copy of reasons for judgment of a Justice or a Court, per folio		6
But with a minimum fee, for one set of reasons, of		5
And with a maximum fee, for one set of reasons, of	10	10
22. For a copy of a report of a Registrar, per folio		6
23. For a copy of reasons for decision of a taxing officer, per folio		6

## ATTENDANCES AND PRODUCTION OF PAPERS.

24. On an application for an officer to attend with a record or document at a Court or place out of the Court building, in addition to the just charges and expenses of the officer, for each day or part of a day during which the officer is necessarily absent from the Registry ..	3	3	0
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## SECURITIES.

25. On enquiring as to sureties, and endorsing approval on instrument of security .. .. .	15	0
26. On attesting execution of instrument of security .. .. .	10	0
27. On vacating a security .. .. .	10	0

## FILING DOCUMENTS.

28. Special, stated or written case .. .. .	1	0	0
29. Instrument of security .. .. .		5	0
30. Affidavit originating an application or matter .. .. .		10	0
31. Any other affidavit .. .. .		5	0
32. Exhibit to an affidavit .. .. .		1	0

## THIRD SCHEDULE.

	£	s.	d.
33. Copy of a notice of motion or other document originating a cause or matter .. .. .	15	0	0
34. Petition .. .. .	1	0	0
35. Pleading, or a copy of pleadings or particulars .. .. .	5	0	0
36. Consent .. .. .	2	6	0
37. Notice of change of solicitor .. .. .	5	0	0
38. Order of the Full Court .. .. .	1	0	0
39. Order of a single Justice .. .. .	1	0	0
40. Writ of execution with return .. .. .	10	0	0
41. Copy of a warrant of possession .. .. .	5	0	0
42. Copy of a writ of attachment .. .. .	5	0	0
43. Copy of a warrant to arrest .. .. .	5	0	0
44. Request (other than a request under section 8 of the <i>High Court Procedure Act 1903-1950</i> ) .. .. .	2	6	0
45. <i>Praecipe</i> .. .. .	2	6	0
46. Certificate .. .. .	5	0	0
47. Bail bond .. .. .	5	0	0
48. Preliminary act .. .. .	10	0	0
49. Memorandum for hearing before a Full Court .. .. .	5	0	0
50. Depositions .. .. .	5	0	0
51. Undertaking .. .. .	5	0	0
52. Release .. .. .	5	0	0
53. Caveat .. .. .	10	0	0
54. Interrogatories .. .. .	5	0	0
55. Copy of a writ of <i>habeas corpus</i> , <i>certiorari</i> , <i>mandamus</i> , prohibition or <i>quo warranto</i> .. .. .	2	6	0
56. Indictment .. .. .	2	6	0
57. Bill of costs or a report of a Registrar or examiner .. .. .	5	0	0
58. Document, memorandum or notice not elsewhere specified .. .. .	2	6	0

## PAYMENT INTO COURT.

59. On payment of money into or out of Court .. .. .	7	6	0
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## CERTIFICATES.

60. For a certificate of an Associate .. .. .	1	1	0
61. For a certificate of a taxing officer .. .. .	1	1	0
62. For a certificate of a Registrar .. .. .	1	1	0

## SEARCHES.

63. For appearance .. .. .	2	6	0
64. In a register, index, file or calendar, and inspecting documents, for every hour or part of an hour occupied .. .. .	5	0	0
Not to exceed, per day .. .. .	1	0	0

## EXAMINATION OF WITNESSES.

65. On obtaining appointment for examination of a witness before an officer of the Court or other person .. .. .	7	6	0
66. In respect of every witness examined by an officer or other person in his office, for each hour or part of an hour .. .. .	10	0	0
67. For an examination of witnesses away from the office of the examiner, in addition to reasonable travelling and other expenses—			
If the time occupied is less than three hours .. .. .	3	0	0
If the time occupied is more than three hours, for each day or part of a day .. .. .	6	6	0

## HEARING.

68. For entering or setting down an appeal to the Full Court, or a cause, suit, petition or matter for trial or hearing before a single Justice .. .. .	2	0	0
69. For entering a special case, case stated, point of law or demurrer for argument .. .. .	1	0	0
70. For setting down an action on motion for judgment .. .. .	15	0	0

## THIRD SCHEDULE.

## JUDGMENTS, DECREES AND ORDERS.

	£	s.	d.
71. For entering a judgment by default or by consent .. .. .	15	0	
72. For drawing up and entering any other judgment, decree or order ..	1	10	0
73. For drawing up an order made in Chambers .. .. .	10	0	

## TAXATION OF COSTS.

74. On appointment for taxation of a bill of costs .. .. .	5	0	
75. For taxing a bill of costs—for every Two pounds or part thereof of the amount found due upon taxation .. .. .	1	0	

## MISCELLANEOUS.

76. On a fiat of a Justice .. .. .	5	0	
77. On settling a form of advertisement or security .. .. .	10	0	
78. On taking a recognisance or bond .. .. .	10	0	
79. On vacating a recognisance or bond .. .. .	10	0	
80. On appointment to settle transcript on appeal to the Privy Council ..	10	0	
81. On examining a transcript on appeal, per folio .. .. .	3		
82. The fees to be taken in the offices of the Marshal or a Deputy Marshal are the same as those which, by the practice of the Supreme Court of the State or Territory in which the proceeding is taken or the act is done or authorized, are required to be taken by the Sheriff in respect of a like proceeding or act in a cause pending in that Court.			

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.